

## Food and Nutrition Service, USDA

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claiming is detected, the sponsoring organization must not include that facility among those facilities receiving less than three reviews during the current year, in accordance with § 226.16(d)(4), and must ensure that any facility submitting a block claim receives an unannounced review within 60 days of the discovery of the block claim. If, in the course of conducting this review, the sponsoring organization determines that there is a logical explanation for the facility to regularly submit a block claim, the sponsoring organization must note this in the facility's review file and is not required to conduct an unannounced visit after other block claims detected during the current year. In addition, if a State agency determines that the conduct of all required unannounced reviews within 60 days will impose unwarranted burdens on a particular sponsoring organization, the State agency may provide that sponsoring organization with up to 30 additional days to complete the required unannounced reviews.

(d) All records to support the claim shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(e) Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall cover only Program operations for that month except if the first or last month of Program operations in any fiscal year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the

State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of the Child and Adult Care Food Programs (FNS-44) for the claim month which is required under 226.7(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS-44 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization regardless of when it is determined that such adjustments are necessary.

(f) If, based on the results of audits, investigations, or other reviews, a State agency has reason to believe that an institution, child or adult care facility, or food service management company has engaged in unlawful acts with respect to Program operations, the evidence found in audits, investigations, or other reviews is a basis for non-payment of claims for reimbursement.

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 26975, July 1, 1985; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 62 FR 23618, May 1, 1997; 69 FR 53543, Sept. 1, 2004; 70 FR 43261, July 27, 2005; 71 FR 39519, July 13, 2006; 72 FR 41607, July 31, 2007]

### § 226.11 Program payments for centers.

(a) *Requirement for agreements.* Payments must be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, at-risk

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afterschool care centers, adult day care centers, emergency shelters, and outside-school-hours care centers. A State agency may develop a policy under which centers are reimbursed for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, or the State agency may develop a policy under which centers receive reimbursement only for meals served in approved centers on and after the effective date of the Program agreement. If the State agency's policy permits centers to earn reimbursement for meals served prior to the execution of a Program agreement, program reimbursement must not be received by the center until the agreement is executed.

(b) *Institutions*—(1) *Edit checks of sponsored centers*. Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization must conduct reasonable edit checks on the sponsored centers' meal claims, which at a minimum, must include those edit checks specified at § 226.10(c).

(2) *Child and adult care institutions*. Each child care institution and each adult day care institution must report each month to the State agency the total number of Program meals, by type (breakfasts, lunches, suppers, and snacks), served to children or adult participants, respectively, except as provided in paragraph (b)(3) of this section.

(3) *For-profit center exception*. For-profit child care centers, including for-profit at-risk afterschool care centers and outside-school-hours care centers, must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must not be considered in determining this percentage. For-profit adult day care centers must provide the reports required in paragraph (b)(2) of this section only for calendar months during which at least 25 per-

cent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(c) *Reimbursement*—(1) *Child and adult care institutions*. Each State agency must base reimbursement to each approved child care institution and adult day care institution on actual time of service meal counts of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(4) of this section.

(2) *At-risk afterschool care centers*. Each State agency must base reimbursement to each at-risk afterschool care center on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(4) of this section.

(3) *Emergency shelters*. Each State agency must base reimbursement to each emergency shelter on the number of meals served to children multiplied by the free rates for meals and snacks.

(4) *For-profit center exception*. For-profit child care centers, including for-profit at-risk and outside-school-hours care centers, must be reimbursed only for the calendar months during which at least 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only participate in an at-risk afterschool snack component of the Program must not be considered in determining this percentage. For-profit adult day care centers must be reimbursed only for the calendar months during which at least 25 percent of enrolled adult participants were beneficiaries of title XIX, title XX, or a combination of titles XIX and XX.

(5) *Computation of reimbursement*. Except for at-risk afterschool care centers and emergency shelters, the State agency must compute reimbursement by either:

(i) *Actual counts*. Base reimbursement to institutions on actual time of service counts of meals served, and multiply the number of meals, by type, served to participants that are eligible to receive free meals, participants eligible to receive reduced-price meals, and participants not eligible for free or

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reduced-price meals by the applicable national average payment rate; or

(ii) *Claiming percentages.* Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(iii) *Blended rates.* Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) *Limits on reimbursement.* If the State agency elects to reimburse its institutions according to the lesser of rates or actual costs, total Program payments to an institution during any fiscal year, including any cash payments in lieu of commodities, shall not exceed allowable Program operating and administrative costs, less income to the Program. The State agency may limit payments for administrative costs to the amount approved in the annual administrative budget of the institution. The State agency may prohibit an institution from using payments for operating costs to pay for administrative expenses.

(e) *Institution recordkeeping.* Each institution shall maintain records as prescribed by the State agency's financial management system.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 52 FR 36907, Oct. 2, 1987; 53 FR 52590, Dec. 28, 1988; 62 FR 23618, May 1, 1997; 69 FR 53543, Sept. 1, 2004; 70 FR 43262, July 27, 2005; 71 FR 5, Jan. 3, 2006; 72 FR 41607, July 31, 2007]

### § 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) *General.* Sponsoring organizations for day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the lesser of (1) actual expenditures for the costs of administering the Program less income to the Program, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's:

(i) Initial 50 day care homes by 42 dollars;

(ii) Next 150 day care homes by 32 dollars;

(iii) Next 800 day care homes by 25 dollars; and

(iv) Additional day care homes by 22 dollars.

During any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

(b) *Start-up and expansion payments.*

(1) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of less than 50 homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. Participating sponsoring organizations of day care homes which meet the criteria in paragraph (b)(2) of this section shall be entitled to receive expansion payments to initiate or expand Program operations in day care homes in low-income or rural areas. The State agency shall approve start-up payments only once for any eligible sponsoring organization, but may approve expansion payments for any eligible sponsoring organization more than once, provided that: the request must be for expansion into an area(s) other than that specified in their initial or prior request; and 12 months has elapsed since the sponsoring organization has satisfied all obligations under its initial or prior expansion agreement. Eligible sponsoring organizations which have received start-up payments shall be eligible to apply for expansion payments at a date no earlier than 12 months after it has satisfied all its obligations under its start-up agreement with the State agency.

(2) Sponsoring organizations which apply for start-up or expansion payments shall evidence:

(i) Public status or tax exempt status under the Internal Revenue Code of 1986;