**Seriously Deficiency Procedures**

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SO NAME will use its discretion to determine whether the specific problem rises to the level of serious deficiency. SO NAME will consider, but not limit themselves to the following items:

* **The severity of the problem.** Is the noncompliance on a minor or substantial scale? Are the violations indicative of a recurring problem at the provider, or is the problem an isolated event? Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once.
* **The degree of responsibility attributable to the provider.** To the extent that evidence is available, can SO NAME determine whether the violations were inadvertent errors of an otherwise responsible provider? Is there evidence of negligence or a conscious indifference to regulatory requirements? Or, even worse, is there evidence of deception, or intentional noncompliance?
* **The provider’s history of participation in the Program.** Are problems of noncompliance frequently recurring at the same provider?
* **The nature of the requirements that relate to the problem.** Are the provider’s violations a clear violation of Program requirements? Has the provider failed to implement new CACFP policy appropriately?
* **The degree to which the problem impacts Program integrity.** Are the violations undermining the intent or purpose of the CACFP?

A provider must be declared seriously deficient by SO Name SO Name if any of the following areas of noncompliance exist:

* ***7 CFR 226.16(l)(2)(i) -*** Submission of false information on the application;
* ***7 CFR 226.16(l)(2)(ii) -*** Submission of false claims for reimbursement;
* ***7 CFR 226.16(l)(2)(iii) -*** Simultaneous participation under more than one sponsoring organization;
* ***7 CFR 226.16(l)(2)(iv) -*** Noncompliance with the Program meal pattern;
* ***7 CFR 226.16(l)(2)(v) -*** Failure to keep required records;
* ***7 CFR 226.16(l)(2)(vi) -*** Conduct or conditions that threaten the health or safety of children in care, or the public health or safety;
* ***7 CFR 226.16(l)(2)(vii) -*** A determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State Agency, or the concealment of such a conviction;
* ***7 CFR 226.16(l)(2)(viii) -*** Failure to participate in training; or
* ***7 CFR 226.16(l)(2)(xix) -*** Any other circumstances related to nonperformance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State Agency.
* NOTE: Any provider who submits a claim in which adjustments result in a 25 percent or more error rate will be declared seriously deficient (see Payment Voucher/Disbursement Records).

Only an authorized representative(s) of SO NAME will be responsible for signing each notice.

A notice detailing the seriously deficiencies with an enclosed corrective action plan (CAP) will be sent by certified mail (or the equivalent private delivery service), by fax, or by email in a timely manner. A notice is considered received by SO NAME five (5) days after being sent to the addressee’s last known mailing address, fax number, or email address. At the same time a notice is issued, SO NAME will provide a copy of the notice to the State agency.

**Corrective Action Plans (CAP) for Providers**

In response to the serious deficiency notice, the provider must submit a CAP within 30 calendar days (not just post marked) that details the processes implemented to ensure that the serious deficiencies have been fully and permanently corrected. SO NAME will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. An acceptable CAP must include the following information:

* Name of the provider(s) associated with the serious deficiencies;
* Address of the provider;
* Date of birth for the provider(s) associated with the serious deficiencies; and
* Details of the serious deficiencies:
  + What are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?
  + Who addressed the serious deficiencies? List FDCH personnel responsible for this task.
  + When was the procedure for addressing the serious deficiencies implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually, and when did implementation of the corrective action plan begin)?
  + Where is the CAP documentation retained?
  + How will the provider ensure that the CAP corrects the deficiency and continues to be implemented?

The provider may include copies of income eligibility forms, enrollment rosters, menus, Child Nutrition Labels or manufacturers’ product analysis sheets or recipes, attendance records, meal count forms, etc., if applicable.

If the CAP and supporting documentation is acceptable, SO NAME will approve it.

**Successful Corrective Action of a Provider**

If the provider submits corrective action that corrects the serious deficiencies to SO NAME’s satisfaction within the allotted timeframe, the serious deficiency determination will be temporarily deferred. As required by 7 CFR 226.16(l)(3)(i)(C), the provider has 30 calendar days to correct the issues, not simply to provide a plan for correcting. If the corrections are made to SO NAME’s satisfaction, SO NAME will:

• Notify the provider by certified mail (or the equivalent private delivery service), by fax, or by email within 10 calendar days that SO NAME has temporarily deferred its serious

deficiency determination; and

• Remind all parties that the corrective action must be permanent or the serious deficiency process will be reinstated starting with the Notice of Proposed Termination and Disqualification. At the same time this notice is issued, SO NAME will provide a copy of the notice to the State agency.

**Unsuccessful Corrective Action of a Provider**

If the provider fails to implement timely corrective action to fully and permanently correct the serious deficiencies cited, SO NAME will issue a notice by certified mail (or the equivalent private delivery service), by fax, or by email within 10 calendar days proposing to terminate and disqualify the provider with enclosed Appeal Procedures and to include its name on the National Disqualified List (NDL).

At the same time this notice is issued, SO NAME will provide a copy of the notice to the State agency. If an appeal is requested, SO NAME and provider will follow the appeal procedures.

**Agreement Termination and Disqualification of a Provider**

When the time for requesting an appeal expires or when the appeal official upholds SO NAME’s proposed termination and disqualification, SO NAME will issue a notice by certified mail (or the equivalent private delivery service), by fax, or by email within 10 calendar days:

* Notify the provider that its agreement has been terminated and that the provider has been disqualified; and
* Provide a copy of the notice and the mailing address and date of birth for provider, with the full amount of any determined debt associated with both the provider; to the State agency within 10 days of the notification for inclusion on the NDL [7 CFR 266.16(l)(3)(v)].

**Program Payments during Serious Deficiency Process for Provider**

During the serious deficiency process, SO NAME will continue to pay a provider’s valid claims.

SO NAME will continue to pay any valid claims for reimbursement for eligible meals served until the serious deficiency is corrected or the provider’s agreement is terminated, including the period of any appeal [7 CFR 226.16(l)(3)].

**Suspension Process for Providers**

If State or local health or licensing officials cite a provider for serious health or safety violations, SO NAME will take action when it learns of the concerns, even though the licensing agency has not yet taken formal action to revoke the provider’s licensure or approval. Even if the proper authorities indicate that it is safe for the monitor to leave a provider’s home while they conduct further investigation or inquiry, SO NAME will initiate a suspension and the serious deficiency process. Food Nutrition Services (FNS) expects sponsoring organizations to take immediate action to stop payments and suspend the provider’s CACFP participation and declare the provider seriously deficient, regardless of any formal procedures pending or underway by the licensing authorities to revoke the provider’s license or approval [CACFP 13-2013, Health and Safety in the Child and Adult Care Food Program, July 26, 2013]. If SO NAME determines that there is an imminent threat to the health or safety of participants at a provider’s home, or that the provider has engaged in activities that threaten public health or safety, SO NAME will immediately notify the appropriate State or local licensing and health authorities. If the licensing agency cannot make an immediate onsite visit, SO NAME will take action that is consistent with the recommendations and requirements of the licensing agency.

**Notice of Serious Deficiency, Suspension and Proposed Termination Procedures for Providers**

Once a health or safety threat has been established, SO NAME will notify the provider, in writing by certified mail (or the equivalent private delivery service), by fax, or by email immediately that he or she has been suspended from Program participation, that he or she has been determined seriously deficient and that the sponsoring organization is proposing to terminate the provider’s agreement for cause.

Note: The appeal is of the proposed termination and disqualification. A suspension for imminent threat to health and safety cannot be appealed.

**Agreement Termination and Disqualification of a Provider**

SO NAME will immediately terminate the provider’s agreement and disqualify the provider when the hearing official upholds SO NAME’s suspension, proposed termination, and proposed disqualification. At the same time, the notice of termination and disqualification is issued to the provider [7 CFR 226.16(l)(4)(iii)]. The notice must state:

* That the provider has been terminated from the Program; and
* That the provider will be added to the NDL. If the provider does not request an appeal, the sponsoring organization will immediately terminate the DCH provider’s agreement and disqualify the provider when the opportunity to request the appeal expires. At the same time, the notice of termination and disqualification is issued to the provider.

If the provider requests an appeal and subsequently loses that appeal, SO NAME will immediately terminate the provider’s agreement and disqualify the provider when the decision of the appeal official is issued. At that time, the notice of termination and disqualification is issued to the provider. The State agency will report the name of the terminated and disqualified provider to the FNS Regional Office within 10 days of receipt from SO NAME after the provider has been terminated for cause, placing his or her name on the NDL. If the provider requests an appeal and the hearing official overturns SO NAME’s action to suspend the provider, SO NAME will temporarily defer the serious deficiency and withdraw the suspension. **Program Payments during the Suspension of a Provider** SO NAME is prohibited from making any Program payments to a provider that has been suspended until any appeal of the proposed termination is completed. If the suspended provider prevails in the appeal of the proposed termination, SO NAME will reimburse the provider for all eligible meals served during the suspension period that are properly documented [7 CFR 226.16(l)(4)(iv)]. If the provider loses the appeal, payments are not to be made to the provider.

**This institution is an equal opportunity provider.**