

JULY 30, 1998

SUBJECT: Child and Adult Care Food Program (CACFP)
Policy Memorandum #1-98: Incorporated Providers

TO: Regional Directors
Child Nutrition Programs
All Regions

Recently, we received information that several States are concerned about CACFP providers incorporating their day care home operations under the laws of their respective States and the effect incorporation has on program participation. This memorandum attempts to answer specific questions raised concerning incorporation by providers.

The intent of the National School Lunch Act's (NSLA) provisions regarding day care home participation in the CACFP is to provide nutrition support to small groups of children in a residential setting. Both the NSLA and the CACFP regulations provide a greatly reduced set of operational requirements for day care home providers (such as no requirement to have tax exempt status and no requirement to document operating costs) in recognition of the non-business oriented private setting.

Neither the NSLA nor the CACFP regulations addresses the concept of incorporated day care home providers. We understand that several reasons for incorporation have been put forward, including liability limitation. This has raised a number of questions about the effect of incorporation on CACFP participation, including:

1. Is the CACFP agreement with the corporation or the individual?
2. Can a single corporation operate several day care homes, licensing each home in each provider's name, but with the corporation receiving a single reimbursement check?
3. Whose income is subject to the income test for tiering determinations and for the purpose of reimbursement of meals served to the provider's own children, the corporation or the individual?

The decision to incorporate is up to the provider, but plays no role in the provider's participation in the CACFP. As noted above, the structure for the participation of day care homes set forth in the NSLA presumes operation by an **individual**. Thus, sponsors may only enter into an agreement with a provider as an **individual**, not as a corporation. While a corporation may operate one or more day care homes, this will not have a bearing on CACFP participation. Each home must be operated by a different provider and **each provider** must have an individual agreement with a sponsor. In May 1994, we issued a memorandum clarifying the definition of **day care homes** and explained that a provider may not operate more than one day care home.

Similarly, a provider's income for purposes of tiering determinations and for the purpose of reimbursement of meals served to the provider's own children is the income of the provider's household, not that of the corporation. You should note that providers associated with a corporation will have wages from the corporation rather than the self-employment status typical of day care home providers. If the provider is a shareholder of the corporation, the provider may also receive dividends from the corporation. Both the wages and any dividends must be included in the provider's household income. Sponsoring organizations should refer to the CACFP's *Eligibility Guidance for Family Day Care Homes*, Part II -Determinations of Individual Income or Categorical Eligibility in order to determine the rules for including or excluding income from the calculation of a household's total income and the determination of its eligibility.

Finally, if new questions are raised concerning this issue, please let us know. If you have any concerns regarding this memorandum, please contact Norma Ball or Melissa Rothstein at (703) 305-2620.

/ORIGINAL SIGNED/

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