

OCTOBER 17, 2000

Dear CACFP State Director:

Public Law 106-224, the Agricultural Risk Protection Act of 2000 (ARPA), made a significant change to the procedures involved in terminating the participation in the Child and Adult Care Food Program (CACFP) of an institution or a day care home determined to be seriously deficient. Specifically, these new procedures will require a change in the effective date of the termination and the flow of CACFP funds prior to the termination.

Institutions: Current Rules Relating to Termination and Program payments during the administrative review [appeal] process

Under current rules, if an institution fails to correct a serious deficiency within the allotted period of time, a State agency must terminate the institution's participation in CACFP and provide the institution with an opportunity to request an administrative review of the termination decision. During the time between the effective date of the termination letter and the resolution of the administrative review, in accordance with Program regulations at 7 CFR 226.6(k)(9):

The State agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants. . . Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State agency's action is upheld..

Thus, under current regulations, an institution receives reimbursement for costs incurred during the time it was pursuing an administrative review only after completion of the review and if the institution prevails.

Institutions: New Rules Relating to Termination and Program payments during the administrative review process

Section 243(c) of the ARPA changes the sequence of events leading up to the termination of an institution's agreement and its participation in CACFP. Now, Section 17(d)(5)(D) of the Richard B. Russell National School Lunch Act, as amended, requires that:

An institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) *prior to any determination to terminate participation* by the institution or family or group day care home under the program. (italics added)

This language requires State agencies to proceed differently in those cases where a seriously deficient institution has failed to complete corrective action during the allotted period of time.

Under the new procedures, instead of issuing a termination letter which effectively withholds Program payments to an institution pending the outcome of its administrative review, the State

agency must issue a notice of intent to terminate the institution's agreement. Like the current termination letter, this letter informs the institution of its right to request an administrative review; however, unlike the effect of the current termination letter, Program payments will not be withheld during the administrative review process. Rather, reimbursement for eligible meals and allowable administrative costs will continue to be paid to the institution (provided that appropriate records to support the claim are available) pending the outcome of the administrative review.

Exception

The only exception provided for in section 243(c) is when the State agency determines that participants at the institution or the day care home face an imminent threat to their health or safety, or when the institution or home's activities pose a threat to public health or safety. In these cases, the State agency or sponsoring organization may immediately suspend Program operation without providing an institution or day care home the opportunity to take corrective action. The State agency or sponsoring organization must still offer the institution or day care home an administrative review, but shall not make Program payments pending the outcome of the administrative review.

Family Day Care Homes: New Rules Relating to Termination and Program payments during the appeal process

As noted above, section 243(c) of the ARPA also added statutory language which, for the first time, gives day care homes the right to request an administrative review of a termination of their Program participation. Specifically, the home must be given the right to request a review of the determination to terminate their participation, and Program payments continue for claims supported by appropriate records pending the outcome of the administrative review.

This change to the statute will require State agencies either to: (1) establish a State-level administrative review process for day care homes; or (2) require sponsoring organization (either individually or through a sponsor association) to establish an administrative review process for day care homes. Under either of these options, the administrative review process must:

- Give notice to the home that the sponsor intends to terminate the home's participation, as well as the reasons for the intended action;
- Give the home and the sponsor adequate time to submit documentation of their case to a review official; and
- Ensure that the administrative review official is an impartial and independent person not involved in the decision to terminate the home's participation.

Implementation

These procedures take effect on October 18, 2000. If a State agency has begun a process which, following its normal procedures and timeframes, leads to an institution or day home's

termination prior to that date, it must proceed under the current regulations, provided that termination letter is issued no later than October 17, 2000.

We apologize for the delayed transmission of this guidance. We had hoped that Cong might act on pending legislation to allow withholding of Program payments when the State agency alleged that the institution had engaged in fraudulent activity or filed a false claim. Should that pending legislation be enacted, we will issue additional guidance regarding this subject.

Please contact Bob Eadie or Ed Morawetz at (703) 305-2620 if you have questions involving this memorandum.

Sincerely,

Original Signed

STANLEY C. GARNETT
Director
Child Nutrition Division