United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

March 1, 2002

SUBJECT: Use of "stop payments" in the Child and Adult Care Food Program (CACFP)

TO: Regional Directors
All Regions

It has come to our attention that there is still some question regarding the ability of State agencies (SAs) and sponsoring organizations (SOs) to use "stop payments" (suspension of all Program reimbursement to institutions or providers) as a tool to enforce an institution or a provider's compliance with Program requirements. This memorandum answers some of the most frequently asked questions regarding this subject.

Consistent with the NSLA, could a SA or SO use stop payments to enforce regulatory compliance?

No. The National School Lunch Act (NSLA), as amended by the Agricultural Risk Protection Act of 2000 (ARPA), requires that an institution or a provider have an opportunity for an administrative review prior to termination and that, except when the law authorizes "suspension" of payments, the institution or provider continue to receive Program reimbursement for all valid claims filed during the period of appeal.

What is "suspension"?

Suspension refers to a period of time (prior to the formal termination of an institution or day care home's Program agreement) when the institution or home's Program participation, including Program payments, is suspended. The law, as amended by ARPA and the Grain Standards and Warehouse Improvement Act of 2000 (Public Law 106-472), specifies only two circumstances warranting suspension. In all other cases, an entity would continue to participate and receive Program reimbursement until its Program agreement is terminated.

Are suspension and stop payment the same thing?

Suspension and a stop payment are the same, insofar as they both result in the discontinuation of Program payments prior to any formal termination of the entity's Program agreement. Prior to ARPA's amendment of the NSLA, some State agencies argued that a stop payment and a denial of payment were different (stop payment was temporary, while denial was permanent), but this was an argument designed to justify not offering an appeal to an institution in a stop pay status. Clearly, since enactment of the ARPA, no such distinction can be made.

What are the two circumstances warranting suspension under the NSLA?

As described in the Program guidance issued on October 17, 2000, and April 12, 2001, when an institution or family day care home engages in conduct that poses an imminent threat to the health or safety of participants or the public, the SA or SO must suspend Program participation, including Program reimbursement. This is the only circumstance under which the law permits a "stop payment" procedure without first offering the institution or home opportunity for corrective action and appeal.

In addition, Public Law 106-472 amended the NSLA to permit State agencies to suspend payments to an institution under one other circumstance (the institution's knowing submission of a false or fraudulent claim) as well. However, in this instance, suspension can only occur after the institution has been declared seriously deficient and provided an opportunity to take corrective action, and after a suspension review official has found that the preponderance of the evidence suggests that the institution knowingly submitted a false or fraudulent claim.

Can't sponsors suspend payment to a provider that submits false or fraudulent claims?

As mentioned in our April 12, 2001 guidance, the law only provides for the suspension of payments to providers when a provider has engaged in conduct that poses an imminent threat to the health or safety of participants or the public. However, neither a SA nor a SO may pay an invalid claim.

Doesn't the prohibition on paying "invalid claims" to an institution or provider amount to a de facto suspension of payments?

No. Suspension involves a total cessation of Program payments until an administrative review officer has ruled on a home or institution's appeal, or until a home or institution fails to request an appeal prior to the regulatory deadline. The prohibition on paying invalid claims means that a SA or SO must not reimburse an institution or home for that portion of a claim that the SA or SO knows to be invalid.

Are there any circumstances under which an entire claim could be deemed "invalid"?

Yes, under certain circumstances.

For example, if a State agency determined that an independent center had improperly claimed meals for an extended period of time by failing to take meal counts, the State agency would declare the center seriously deficient and provide an appropriate period of time for the completion of corrective action. If the State agency learned on a follow-up review that the center had failed to institute meal counting as required in the corrective

action plan, no part of the claim for that period (the period of corrective action) could be considered valid and, therefore, no portion of the claim could be reimbursed.

Doesn't the prohibition on "stop payments" limit a SA or SO's ability to employ a graduated series of sanctions in situations where regulatory non-compliance is minor?

We agree that a single instance of non-compliance with minor Program requirements should not lead to a declaration of serious deficiency, and we encourage SAs and SOs to develop and disseminate policies that clearly define escalating consequences in these situations. For example, a provider whose menus contain a minor error should receive additional training or technical assistance, and not be declared seriously deficient. In these situations, it would be appropriate for an SO to develop a clear policy with regard to corrective action, short of declaring the provider seriously deficient.

How should a SA or SO determine whether regulatory non-compliance rises to the level of a "serious deficiency"?

The Program regulations at 226.6(c) define "serious deficiencies" for institutions. Our April 12, 2001 guidance concerning termination procedures for family day care homes provides a list of serious deficiencies that, if not corrected, would result in a provider's termination for cause. Serious deficiencies for family day care homes include:

- Misrepresentation of information submitted on the application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsor;
- Non-compliance with the Program meal pattern;
- Failure to keep required records; or
- Any other circumstance related to non-performance under the sponsor-provider agreement, as specified by the sponsoring organization or the State agency.

What if a State has a law or regulation that prohibits a State agency from making payments to seriously deficient institutions that have failed to take corrective action? Wouldn't a "stop payment" be acceptable in this circumstance?

No. The provisions of the Federal law would take precedence, and the law requires that institutions and homes continue to receive Program reimbursement for valid claims submitted, either until their appeal is concluded or until they fail to meet the regulatory deadline for filing an appeal.

Please contact Ed Morawetz or Melissa Rothstein if you have comments or questions concerning this guidance.

STANLEY C. GARNETT
Director
Child Nutrition Division