
Public Law 106-224, the Agriculture Risk Protection Act of 2000 (ARPA), and the Interim Rule, Child and Adult Care Food Program, Implementing Legislative Reforms To Strengthen Program Integrity, establish a serious deficiency process for providers. In addition, the law established the National Disqualified List (NDL).

The NDL is a list maintained by the United States Department of Agriculture, which includes contractors, responsible principals and responsible individuals, and day care home providers disqualified from participation in the CACFP. While on the NDL, a provider is not eligible to participate in the CACFP as a day care home provider, or as a principal in any CACFP organization or facility. The provider will remain on the list for 7 years after the disqualification unless the Texas Department of Human Services (DHS) Special Nutrition Programs (SNP) determines that the serious deficiencies have been corrected. Exception: If a provider owes a debt to the CACFP, the provider will not be removed from the NDL until the debt is paid.

SERIOUS DEFICIENCY PROCESS

Agreements can always be terminated for either cause or convenience. These new procedures require that a serious deficiency process be followed when terminating a provider “for cause”.

The distinction between termination for cause and termination for convenience is crucial to understanding when this formal, serious deficiency process must be used and when a less formal process of termination may occur. The terms “termination for cause” and “termination for convenience” are defined as follows:

Termination for cause means termination of a home’s agreement due to the home’s violation of the agreement. Termination for cause is initiated by the sponsor, not the provider.

Termination for convenience means termination of a home’s agreement for reasons that are not related to either the provider’s or sponsor’s performance of CACFP responsibilities. Either the sponsor or the home can take this action. Provider’s terminated for convenience will not be placed on the NDL after their agreement is terminated.

STEPS IN THE SERIOUS DEFICIENCY PROCESS:

Step 1. The serious deficiency determination.
Step 2. The serious deficiency notice.
Step 3. The opportunity for corrective action.
Step 4. The notice of proposed termination and disqualification.
Step 5. The notice of termination and disqualification.

**Step 1. The Serious Deficiency Determination:**

Serious deficiencies that could lead to a day care home’s termination include:
- Submission of false information on the Form 1537, Day Care Home Application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsor;
- Non-compliance with CACFP meal patterns;
- Failure to keep required records;
- Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety;
- A determination that the provider has been convicted of an activity that indicated a lack of business integrity. Convictions indicating a lack of business integrity must have:
  - occurred during the previous 7 years, and
  - been criminal convictions only, and not civil judgements, audit or review findings, “common knowledge”, or supposition.
- Any other circumstance related to non-performance under the Form 1542, Agreement Between Sponsor and Day Care Home Provider, as specified by the sponsoring organization or SNP.

This list of serious deficiencies for providers is not meant to be all-inclusive. You may declare a day care home seriously deficient for any serious management or integrity problems, even if it is not specifically listed above.

You must use discretion in making these serious deficiency determinations. To appropriately use discretion, you must be able to distinguish between:

- Occasional versus systemic errors, and
- Minor versus major errors.

Being able to make these distinctions is critical because, once a notice of serious deficiency is issued, it can result in only two possible outcomes:

- the provider corrects the serious deficiency to your satisfaction, within the period allotted for corrective action; or
- the provider does not correct the serious deficiency and you propose termination of the agreement for cause and disqualification of the provider.

You can take into account several factors in deciding whether a problem rises to the level of a serious deficiency:

- the frequency of the error
- the severity of the error
- length of the provider’s CACFP experience and
• the provider’s literacy level or English proficiency.

Once a serious deficiency has been determined you must immediately prepare a serious deficiency notice.

Step 2. The Serious Deficiency Notice

The Serious Deficiency Notice must:

• Fully describe the serious deficiency;
• Specify the corrective action required to resolve the serious deficiency and the deadline (not to exceed 30 days) by which the action must be taken;
• State that the serious deficiency determination is not subject to appeal;
• State that failure to fully and permanently correct the serious deficiency by this deadline will result in your:
  1. proposed termination of the provider’s agreement for cause and
  2. proposed disqualification of the provider;
• Request the provider’s Date of Birth (DOB), if you do not already have this information.
• Inform the provider if he/she will receive CACFP payments during the period of corrective action.
  Note: You may allow the provider to participate during the corrective action process. The one exception is the suspension of the provider based on an imminent threat to the health or safety of participants or the public.
• State that if the provider voluntarily terminates the agreement after he/she receives the serious deficiency notice, you will still proceed with the proposed disqualification.

Immediately send a copy of this letter to your Area Program Office (APO). Do not wait until the serious deficiency process is completed to send letters to your APO.

Step 3. The Opportunity for Corrective Action

Providers are allowed up to 30 days to correct a serious deficiency. You may not allow a provider additional time.

In all but one case, you must give the provider the chance for corrective action before you propose to terminate the provider’s agreement. The one exception is the suspension of a provider based on an imminent threat to the health or safety of participants or the public. In that case, suspension occurs first. The provider’s participation, including CACFP payments, is suspended, either until the deadline for requesting an appeal passes or until the appeal is completed. See Policy Alert CACFP DCH 2003-9, Suspension of Provider Participation, for additional details related to the suspension process.

You may not suspend participation of a provider who you believe has submitted a false or fraudulent claim. The requirement to provide an opportunity for corrective action when you believe that the provider has submitted a false or fraudulent claim gives the provider time to demonstrate:

• that you have made an administrative error;
• that you have confused two providers with similar or identical names; or
• that the information submitted by the home was not, in fact, false.
In addition to declaring the provider seriously deficient and offering a brief period for corrective action, you must deny that portion of the claim which is false or fraudulent. You must never reimburse providers for invalid claims. If you determine after a claim has been paid that the claim was invalid, you will notify the provider in the Notice of Serious Deficiency that a suspected overclaim is owed and the dollar amount of that debt. You must submit amended claims to SNP to remove the meals that you suspect were falsely claimed. The provider must repay the overclaim in order to achieve corrective action.

Whenever feasible, you should make onsite visits to verify and evaluate the implementation and effectiveness of the provider’s corrective action.

If the provider fully and permanently corrects the serious deficiency within the time allowed for corrective action, send a notice to the provider, with a copy to your APO, stating that the serious deficient determination has been rescinded due to the provider’s successful corrective action.

If the provider fails to take corrective action, or the corrective action is inadequate, you must issue a Notice of Proposed Termination and Proposed Disqualification to the home, with a copy to your APO. Do not send the Notice of Proposed Termination and Proposed Disqualification until after the period allowed for corrective action has expired.

Step 4. Notice of Proposed Termination and Proposed Disqualification:

This notice must:

- State that you are proposing to terminate the provider’s agreement for cause and to place the provider on the NDL.
- State that the reason for these actions is because the serious deficiency was not corrected.
- Inform the provider that he/she may appeal the proposed termination and proposed disqualification.
- Inform the provider whether he/she will receive CACFP payments during the period of appeal – usually he/she will.
- Inform the provider that if he/she voluntarily terminates the agreement after receiving the serious deficiency notice, you will proceed with the proposed disqualification.
- Inform the provider if you suspect that the provider submitted false claims and the dollar amount of overclaims, if appropriate.

The effective date of the proposed termination and proposed disqualification must be no earlier than 30 days from the date of the letter.

If the provider appeals your Notice of Proposed Termination and Proposed Disqualification and your action is overturned, you must issue a Rescission of Serious Deficiency, Proposed Termination and Disqualification to the provider, with a copy to your APO. The effective date of the rescission is the date of the Hearing Official’s decision.
Step 5. Notice of Termination and Disqualification:

If the provider fails to appeal the Notice of Proposed Termination and Proposed Disqualification, or if the hearing official rules in your favor, you must issue a notice immediately terminating the agreement with the provider and disqualifying the provider. Do not give appeal rights. Send a copy of this letter to your APO. If the provider’s DOB is known, write this date on the copy of the Notice of Termination and Disqualification that is sent to the APO, you will also need to send Form 1603, Changes in Day Care Home Participation, deleting the provider’s participation.

If the provider does not appeal, the effective date of the termination and disqualification is the date in the Notice of Proposed Termination and Proposed Disqualification letter. If the provider appealed and your action is upheld, the effective date is the date of the Hearing Official’s decision.

Status of Provider CACFP Payments

You must include the status of the provider’s CACFP payments in any notices you send to the provider during the serious deficiency process. CACFP participation, including CACFP payments, will continue during the process, except when a provider is suspended. In all other cases, you must continue to make CACFP payments from the time the provider is declared seriously deficient to the time the serious deficiency is resolved. This will happen either when you terminate the provider’s agreement or when you remove the serious deficiency finding.

Sample Letters and Flow Chart

Attached to this Policy Alert are sample letters that may be used throughout the serious deficiency process. In addition, a flow chart is attached showing the steps in the serious deficiency process.

REMOVAL OF A PROVIDER FROM THE NATIONAL DISQUALIFIED LIST

Once included on the NDL, a day care home will remain on the list until the DHS SNP determines that the serious deficiency(ies) that led to its placement on the list has(ve) been corrected, or until seven years have elapsed since its agreement was terminated for cause, whichever comes first. However, if the day care home failed to repay debts owed under the CACFP, it will remain on the list until the debt has been repaid.

If a provider contacts you for assistance in removal from the NDL, refer them to your APO.
LIST OF EXCLUDED PROVIDERS

The DHS SNP maintains a List of Excluded Providers. This list contains the names of day care home providers who have been determined seriously deficient in their operation of the CACFP prior to implementation of the NDL. The providers on the List of Excluded Providers are not eligible to participate in the CACFP as a day care home provider. In order to make the List of Excluded Providers consistent with the NDL we are changing the amount of time that a provider remains on the List of Excluded Providers from indefinitely (as stated in CACFP-DCH Handbook Section 8134, Denial and Termination of Providers) to 7 years from the date the provider was added to the list. Effective July 1, 2003, any provider who has been on the List of Excluded Providers for 7 years will be removed from the list. In addition, all providers put on the list prior to the implementation of the NDL will be removed no later than July 29, 2009.

If you have any questions regarding this Policy Alert, please contact your Area Program Office.

ATTACHMENTS