Determining Institutions to be Seriously Deficient

STATE AGENCY DIRECTORS (Special Nutrition Programs) - Colorado DH, Iowa, Kansas, Missouri DH, Montana DHES, Nebraska ED, North Dakota, South Dakota, Utah and Wyoming ED

The Child and Adult Care Food Program Regulations, Part 226.6(c) addresses seriously deficient institutions. We believe that clarification in this area is needed.

The State Agency (SA) must notify Food and Nutrition Service (FNS) whenever it has denied an application from, or terminated the participation of a seriously deficient institution. In all such actions, the institution must be given the right of appeal. The notification to FNS is to be within 15 days of the review official upholding the SA's decision, or, if the institution elects not to appeal the decision, within 15 days of the expiration of the appeal right. The institution should be clearly informed that it is being placed on the seriously deficient list. We are pointing out this time frame, since it has not always been followed in the past.

The following reasons for determining an institution to be seriously deficient are stated in Part 226.6(c), and are not to be considered all inclusive:

- Noncompliance with the applicable bid procedures and contract requirements of Federal Child Nutrition Program Regulations;

- The submission of false information to the SA;

- Failure to return to the SA any advance payments which exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up payments;

- Failure to maintain adequate records;

- Failure to adjust meal orders to conform to variations in the number of participants;

- The claiming of Program payments for meals not served to participants;

- Service of a significant number of meals which did not include required quantities of all meal components;
- Continued use of food service management companies that are in violation of health codes;

- Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

- A history of administrative or financial mismanagement in any Federal Child Nutrition Program;

- The claiming of Program payment for meals served by a propriety Title XIX or Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

In addition to the above, other reasons that have come up in states include:

- Lack of administrative and financial capability;

- Misappropriation of funds;

- Failure to meet audit requirements, and failure to provide information pertaining to an audit;

- Failure to cooperate in the review process;

- Non-compliance with Program Regulations;

- Claiming non-existent family day care home providers.

Any institution which is identified with an already seriously deficient institution through its corporate organization, officers, employees, or otherwise will also be considered to be ineligible unless, however, it is demonstrated to the satisfaction of the SA and FNS that good cause exists for considering the institution distinct from the seriously deficient institution.

When notifying the Regional Office that an institution is to be placed on the seriously deficient list, the SA should furnish the following:

- Name and address of the institution;

- Name(s) of individual(s) involved with the institution (if only an individual is to be placed on the list, this should be clearly stated);

- Date of termination;

- Reasons for termination.
This list is updated periodically by FNS and sent to the SAAs. We remind you that the SA must terminate any participating institution included on the list within 30 days of the receipt of notification by FNS of the institution's ineligible status. Once on the list, an institution will be ineligible to participate in the Program until such time as FNS, in consultation with the SA, determines that the serious deficiency which resulted in the ineligible status has been corrected.

Please feel free to contact our office for any additional information or clarification you might need at (303) 844-0359.

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