



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN J. WHISTON  
STATE SUPERINTENDENT

**FISCAL YEAR 2015  
CHILD AND ADULT CARE FOOD PROGRAM  
FAMILY DAY CARE HOME SPONSOR MEMORANDUM #35**

**TO:** Family Day Care Home Sponsors

**FROM:** Marla J. Moss, Director  
Office of School Support Services

**DATE:** September 30, 2015

**SUBJECT: Serious Deficiency Process for Sponsors of Family Day Care Home Providers**

This memorandum supersedes Fiscal Year (FY) 2012, Family Day Care Home (FDCH) Sponsor Memorandum #6, Serious Deficiency Process for Day Care Homes, and provides guidance and instruction on the implementation of the Serious Deficiency (SD) process for sponsors of Family Day Care Home (FDCH) providers operating the Child and Adult Care Food Program (CACFP). In accordance with 7 CFR 226.6(c)(3)(ii)(R), "failure [by a sponsoring organization] to properly implement and administer the day care home termination and administrative review provisions set forth at paragraph (I) of this section and 226.16(l)" is a serious deficiency, and could jeopardize the sponsoring organization's participation in the CACFP.

Included with this memorandum are the following document templates:

- The Serious Deficiency Flow Chart for Sponsors of Unaffiliated sites and FDCH Sponsors.
- Prototype letters (A through K) that must be used during the SD process.
- Sample Appeal Procedures.
- Other sample appeal documents.

Failure by a sponsor of family day care homes to take proper action against a site that has committed one or more serious deficiencies will result in Michigan Department of Education (MDE) taking action against the sponsor.

### **Serious Deficiency Determination**

If the sponsor of family day care homes determines that a participating provider has committed one or more of the following serious deficiencies, or receives notification forwarded by MDE from the Child Care Licensing Division of Intent to Revoke License, Intent not to Renew License or a Summary Suspension, or related notices, action must be initiated to terminate the agreement of the participating provider and to disqualify the provider by starting the serious deficiency process.

#### **STATE BOARD OF EDUCATION**

JOHN C. AUSTIN – PRESIDENT • CASANDRA E. ULBRICH – VICE PRESIDENT  
MICHELLE FECTEAU – SECRETARY • PAMELA PUGH – TREASURER  
LUPE RAMOS-MONTIGNY – NASBE DELEGATE • KATHLEEN N. STRAUS  
EILEEN LAPPIN WEISER • RICHARD ZEILE

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909  
[www.michigan.gov/mde](http://www.michigan.gov/mde) • (517) 373-3324

During a monitoring visit in which the sponsoring organization identifies SD findings described in 226.16(I)(2) the sponsor must document the findings in their monitoring report. The provider, if available, must sign the monitoring report as acknowledgement that the finding(s) have been explained to the provider.

7CFR 226.16(I)(1) states "The sponsoring organization must initiate action to terminate the agreement of the day care home for cause if the sponsoring organization determines the day care home has committed one or more serious deficiency."

The following list of SDs for FDCH can be found at 7 CFR 226.16(I)(2):

- i. Submission of false information on the application.
- ii. Submission of false claims for reimbursement.
- iii. Simultaneous participation under more than one sponsoring organization.
- iv. Non-compliance with the program meal pattern.
- v. Failure to keep required records. A frequent finding at monitoring visits is missing records such as menus, meal attendance, and daily attendance. On a first offense for missing records, if a provider is behind with recordkeeping for less than six days, this does not constitute an SD finding. Training must be completed with the provider and documented, and written corrective action must be submitted by the provider even if the findings do not rise to the level of SD. If a provider is missing six days or more of records, the sponsor shall immediately issue an SD notice. An SD Notice must be issued for any SD findings as listed in this memo.
- vi. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety.
- vii. A determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency, or the concealment of such a conviction.
- viii. Failure to participate in training.
- ix. Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or MDE.

### **Serious Deficiency Notice**

Once the sponsor determines the provider is seriously deficient, the sponsor must issue a timely Serious Deficiency Notice (Letter A) to the provider. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail. It is not regulatory to send the notice by regular mail as well as certified mail, but it is a best practice that MDE highly recommends. The notice must describe the action proposed or taken by a sponsoring organization with regard to a provider's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the Michigan Department of Education (MDE). The notice must do all of the following:

- Clearly describe the SD finding(s).

- State the legal basis for each SD finding [cite the SD regulation(s) as well as specific provisions in the sponsor/provider agreement and/or regulations that support the SD finding(s)].
- Inform the provider that voluntary termination from the CACFP will result in proposed disqualification of the provider.
- Specify the corrective action(s) to be taken and the time allotted to correct the SD finding(s). In accordance with 7CFR 226.16(l)(3)(i)(C), corrective action(s) must be taken as soon as possible, but not to exceed 30 calendar days.
- State that failure to fully and permanently correct each SD finding will result in the proposed termination of the provider's CACFP agreement with the sponsor and the proposed disqualification of the provider.
- Notify the provider that there are no appeal rights of the SD determination.
- Inform the provider that program payments will be made during the corrective action period, unless one of the findings is an imminent threat to health and safety of children, at which time the suspension process must be followed.

### **Sponsor's Requirement to Hear Provider Appeals**

Michigan Department of Education (MDE) has delegated the responsibility to hear provider administrative reviews (appeals) to FDCH sponsors per 7CFR 226.6(l). The sponsor must select and train administrative review officials. Officials must be trained at least annually on program requirements and provided copies of CACFP regulations, guidance, and applicable handbooks. MDE will review documentation of training of administrative review officials during on-site reviews.

*Administrative review official.* The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review.

*Basis for decision.* The administrative review official must make a determination based on the information provided by the sponsoring organization and the day care home and on federal and state laws, regulations, policies, and procedures governing the program.

*Time for issuing a decision.* The administrative review official must inform the sponsoring organization and the day care home of the administrative review's outcome within 75 calendar days from the receipt of the request for appeal. This timeframe is an administrative requirement for the sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

*Final decision.* The determination made by the administrative review official is the final administrative determination to be afforded the day care home. Once the sponsor has received the final determination, the sponsor must inform the provider in writing of the outcome of the administrative review and provide a copy of the decision.

MDE will not intervene once the provider has been terminated and disqualified unless evidence suggests that the sponsor or hearing official did not follow proper regulatory procedures.

Prototype templates for correspondence related to the appeal process are attached (appeal procedures, etc.) as well as a flowchart with applicable timelines.

## **Corrective Action**

A sponsor may allow the provider a maximum of 30 calendar days to submit a Corrective Action Plan (CAP). However, in most situations, providers will be able to implement permanent corrective action in less time. Sponsors can choose to include a copy of *Serious Deficiency – CAP Guidelines* with the corrective action letter.

If the provider corrects the SD finding(s) within the allotted time and to the sponsor's satisfaction, the sponsor must send a notice accepting corrective action, Notice of Temporary Deferral of Serious Deficiency (Letter B), to the provider. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number or e-mail address. A copy of the Notice of Temporary Deferral of Serious Deficiency (Letter B) must also be sent to MDE. The notice must inform the provider all of the following:

- Corrective action(s) must be permanent.
- If corrective action(s) is/are not permanently corrected, the sponsor will immediately propose termination and disqualification of the provider.
- If it is found in any subsequent review that any of these SD(s) have not been fully and permanently corrected, the sponsor will immediately propose to terminate and disqualify without any further opportunity for corrective action.

## **Permanent Corrective Action**

Defining permanent corrective action depends on a number of factors, including the nature of the original problem, the amount of time that has elapsed between the accepted corrective action and the next review, changes in the institution's personnel, and the availability of records documenting the original noncompliance.

It is reasonable for a sponsor to decide that too much time has elapsed to simply reinstate the proposed termination, in which case it would restart the process by issuing a new notice of serious deficiency [USDA Handbook on *Serious Deficiencies, Suspensions and Appeals for State Agencies and Sponsoring Organizations*, February, 2015].

However, this policy was not intended to allow sponsors to issue a new notice of serious deficiency simply because there has been a time lapse or because there has been staff turnover; the provider must have procedures in place that will train and support successful operations over time and regardless of staffing changes.

## **Repeat Serious Deficiency Findings**

As a guide to assist in determining when to declare a serious deficiency if repeat findings occur, MDE utilizes the following rules:

- 30 months or 8 monitoring visits must pass with no reoccurrence of the SD findings. If at any time during 30 months or 8 monitoring visits the same SD findings reoccur, it would be considered a repeat finding and the sponsor would immediately issue a notice of Proposal to Terminate and Proposal to Disqualify (PTPD) the provider.
- After 30 months or 8 monitoring visits, if the same SD findings reoccur, a new SD would have to be declared.

The repeat SD should typically be the same level of severity at least as severe as the original SD (i.e., at least 6 or more days of missing paperwork).

However, there is still room for independent sponsor discretion, if the file is documented properly. For example, what should a sponsor do if a provider was originally declared SD for six or more days of missing paperwork, and at six additional follow up monitoring visits, the provider had missing paperwork of 4-5 days. In this case, in spite of continued documented technical assistance from the sponsor, the provider continued to show a pattern of non-compliance, that while not at the same level of severity, was persistent and on-going and would warrant a repeat finding determination. Contact MDE for guidance in unusual situations.

### **Proposed Termination and Proposed Disqualification of Agreement**

If a provider fails to permanently correct the serious deficiency(ies) in the time allotted for corrective action **or any time after the original SD notice had been temporarily deferred**, sponsor must issue a Notice of Proposed Termination and Proposed Disqualification (Letter C or Letter D) to the provider. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address and regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a provider's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to MDE.

The notice must:

- Reference the SD notice and findings and state why corrective action was not acceptable (or state that the provider failed to submit a CAP within the time allotted or that the SDs have not been fully and permanently corrected) and list them.
- Offer the provider the opportunity to appeal the PTPD per 226.16(l)(3)(iii) and provide appeal procedures.
- Notify the provider that the termination of the provider's CACFP agreement will result in termination for cause and disqualification from the CACFP.
- Notify the provider that voluntary termination of the CACFP agreement after the receipt of the PTPD will result in the provider being placed on the National Disqualified List (NDL).
- Notify the provider that he/she may continue to participate in the CACFP through the appeal deadline or, if an administrative review is requested, until the hearing officer issues a decision.

### **Program Payments**

The sponsor must continue to pay the valid portion of any claims until the serious deficiency(ies) is/are corrected or the agreement is terminated, including the period of an appeal, unless the provider is suspended. No payments are made during suspension. As always, the sponsor must deny invalid claims.

### **Suspension – Imminent Threat to Health & Safety**

If a provider is cited for a serious health or safety violation by state or local health officials, or by a licensing official, the sponsor must immediately suspend the provider's CACFP participation, even before any formal action has been taken to revoke the provider's license 226.16(l)(4). If the sponsor determines that there is imminent threat to the health or safety of participants in the home, or the provider engages in activities that threaten public health or safety, the sponsor must immediately notify state or local licensing officials. For all imminent threat to health and safety issues, the sponsor must issue the Combined Notice of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety notice (Letter H), including appeal procedures, to the provider if such action is consistent with the citation findings identified by the state or local health or licensing officials. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a provider's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. The sponsor should obtain a copy of the state or local licensing official's report or letter to substantiate the sponsor's suspension action. A copy of the combined notice must also be sent to the MDE.

The notice must:

- Inform the provider that participation in the CACFP has been suspended, that the provider has been designated as seriously deficient, and that the sponsor is proposing termination and disqualification.
- Specify the SD(s) found and the day care home's opportunity for administrative review of the proposed termination and proposed disqualification.
- State that participation, including all program payments, will remain suspended until the administrative review is concluded.
- Inform the provider that if the administrative review official overturns the PTPD, this also overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension.
- Inform the provider that termination of their CACFP agreement will result in the placement of the provider on the NDL.
- Inform the provider that if he/she voluntarily terminates their CACFP agreement after receiving the suspension notice, the provider will be terminated for cause, disqualified, and placed on the NDL.

### **Withdrawal of Proposed Termination and Proposed Disqualification after Provider Wins Appeal**

If the provider requests an administrative review and the hearing official overturns the sponsor's PTPD, the sponsor must issue a Notice of Withdrawal of Proposed Termination and Proposed Disqualification Notice (after provider wins appeal) (Letter G) or Notice of Withdrawal of Suspension, and Proposed Termination and Proposed Disqualification: Imminent Threat to Health or Safety (after provider wins appeal) (Letter K) to the provider. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a provider's participation. The notice is considered received five calendar days after being

sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the Michigan Department of Education (MDE).

Even after the withdrawal of the PTPD, the provider must still submit corrective action to correct all SD(s). Letter G and K require the provider to submit corrective action to correct all SD(s). If proper corrective action is submitted, the sponsor will send Letter B to temporarily defer the serious deficiency. If proper corrective action is not submitted, the sponsor will send Letter C, Notice of Proposed Termination and Proposed Disqualification.

### **Termination of the Agreement and Disqualification**

If the provider does not submit a timely request for appeal, or if the hearing official upholds the sponsor's proposed actions, the sponsor must immediately terminate the provider's agreement to participate in the CACFP and disqualify the provider from future CACFP participation.

If the hearing official upholds the sponsor's proposed actions, the sponsor must issue a Notice of Termination and Disqualification (after sponsor wins appeal) (Letter F) or a Notice of Termination and Disqualification: Imminent Threat to Health and Safety (after sponsor wins appeal) (Letter J) to the provider. The date of the termination and disqualification will be the date of the hearing official's decision.

If the provider did not request an administrative review, the sponsor must issue a Notice of Termination and Disqualification (following failure to appeal) (Letter E) or a Notice of Termination and Disqualification: Imminent Threat to Health and Safety (following failure to appeal) (Letter I) to the provider. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a provider's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the MDE. The notice must also provide MDE any amount the provider owes to the CACFP.

Upon receipt of the Termination and Disqualification notice, the MDE shall provide the United States Department of Agriculture (USDA) - CACFP, Food and Nutrition Service, Midwest Regional Office, a copy of the notice and add the provider to the NDL.

Once a child care provider is terminated and disqualified, the SD(s) that caused the action are listed on the CACFP Report of Disqualification. Once a provider is disqualified and placed on the NDL, the child care provider no longer has an agreement with the sponsor and is not subject to the requirements of the CACFP. Therefore, the child care provider may not be terminated and disqualified multiple times because the provider's permanent agreement has already been terminated by the sponsor. Any SD(s) issues subsequent to the original termination do not affect the NDL status.

### **Sponsoring a Provider Previously on the NDL**

After a provider is removed from the NDL, the provider must still submit a CAP to address the SD(s) that caused them to be placed on the NDL. The sponsor must collect

a CAP from the provider that fully and permanently corrects the previously cited deficiency(ies). The sponsor can then approve the CAP or chose not to. There is no requirement that the sponsor add the provider to its application if the sponsor is not comfortable with the CAP, but the sponsor must notify the provider in writing of the reason why the CAP was not accepted.

The following documents are available on the Michigan Department of Education [Child and Adult Care Food Program Website<sup>1</sup>](#) under Forms & Instructions, Family Day Care Home Sponsors. For questions regarding this memo, contact our office at 517-373-7391.

### **Attachments:**

Serious Deficiency (SD) Flow Chart for Sponsors

Sample Appeal Procedures

Serious Deficiency – Corrective Action Plan Guidelines

Letter A: Serious Deficiency Notice

Letter B: Corrective Action Accepted, Temporary Deferral of Serious Deficiency

Letter C: Notice of Proposed Termination and Proposed Disqualification

Letter D: Proposed Termination and Disqualification (Repeat Finding of Serious Deficiency)

Letter E: Notice of Termination and Disqualification (following failure to appeal)

Letter F: Notice of Termination and Disqualification (after Sponsor wins appeal)

Letter G: Notice of Temporary Deferral of Serious Deficiency and Rescission of Proposed Termination and Disqualification (after provider wins appeal)

Letter H: Notice of Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health and Safety

Letter I: Notice of Termination and Disqualification: Imminent Threat to Health and Safety (following failure to appeal)

Letter J: Notice of Termination and Disqualification: Imminent Threat to Health and Safety (after Sponsor wins appeal)

Letter K: Notice of Temporary Deferral of Serious Deficiency, Rescission of Suspension, Proposed Termination and Proposed Disqualification: Imminent Threat to Health or Safety (after provider wins appeal)

---

<sup>1</sup> [www.michigan.gov/cacfp](http://www.michigan.gov/cacfp)