



Georgia Department of Early Care and Learning

2 Martin Luther King Jr. Drive SE, Suite 754, East Tower, Atlanta, GA 30334

(404) 656-5957

Nathan Deal
Governor

Bobby Cagle, MSW
Commissioner

MEMORANDUM

To: All Child and Adult Care Food Program (CACFP) Sponsors of Unaffiliated Centers and Sponsors of Day Care Homes

From: Falita S. Flowers, Nutrition Services Interim Director 

Date: October 31, 2013

Subject: Health and Safety in the Child and Adult Care Food Program

Legal Authority: United States Department of Agriculture Memoranda CACFP 13-2013

Definitions: "Health and Safety," relates to the well-being of participants in care under the Child and Adult Care Food Program; "Program Staff," mean persons who work in any capacity of the Child and Adult Care Food Program.

The purpose of this memo is to provide guidance to sponsoring organizations of the Child Adult Care Food Program (CACFP) on detecting and responding to incidents which pose an imminent threat to a child or adult's health and safety while in care.

In monitoring day care homes and centers, it is important to remember that the facility's main priority is to protect the health and safety of those in care. CACFP regulations require sponsoring organizations to notify appropriate licensing or health authorities of conduct or conditions that pose an imminent threat to the health or safety of participants or to the public. This memorandum provides guidance to help sponsoring organizations detect and report the types of problems that rise to this higher level of concern.

Monitors and members of program staff of sponsoring organizations must exercise judgment in making a determination of an imminent threat. *Caring for Our Children*¹ is a resource that provides additional guidance on managing, reporting, and documenting incidents of imminent threat. It recommends that child care facilities have written plans for reporting, managing, and training staff on what they determine to be incidents that threaten the health, safety, or welfare of children, staff, or volunteers.

¹ American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. 2011. *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition.* Elk Grove Village, IL: American Academy of Pediatrics; Washington, DC: American Public Health Association. Also available at <http://nrckids.org>.

Although monitors and members of the institution's program staff do not routinely assess health and safety issues during their onsite reviews, they must still be trained to recognize conditions that pose an imminent threat to the health or safety of the participants. Caring for Our Children identifies a number of circumstances that rise to the level of imminent threat, including:

- Lost or missing child;
- Suspected maltreatment of a child;
- Suspected sexual, physical, or emotional abuse of staff, volunteers, or family members occurring while they are on the premises of the child care facility;
- Injuries to children requiring medical or dental care;
- Illness or injuries requiring hospitalization or emergency treatment;
- Mental health emergencies;
- Health and safety emergencies involving parents or guardians and visitors to the child care facility;
- Death of a child or staff member (including a death that occurred outside of child care hours that had resulted from serious illness or injury at the child care facility); or
- The presence of a threatening individual who attempts or succeeds in gaining entrance to the facility.

In addition, Bright from the Start's Child Care Services (CCS) Division indicates any disciplinary actions used to correct a child's behavior, guidance techniques and any activities in which the children participate or observe at the center shall not be detrimental to the physical or mental health of any child. Disciplinary actions that could be detrimental to a child's physical or mental health include:

- Physically or sexually abusing a child or engaging or permitting others to engage in sexually overt conduct in the presence of any child enrolled in the center;
- Inflicting corporal/physical punishment upon a child;
- Shaking, jerking, pinching or handling a child roughly;
- Verbally abusing or humiliating a child which includes, but is not limited to, the use of threats, profanity or belittling remarks about a child or his family;
- Isolating a child in a dark room, closet or unsupervised area;
- Using mechanical or physical restraints or devices to discipline children;
- Using medication to discipline or control children's behavior without written medical authorization issued by a licensed professional and given with the parent's written consent;
- Restricting unreasonably a child from going to the bathroom;
- Punishing toileting accidents;
- Force-feeding a child or withhold feeding a child's regularly scheduled meals and/or snacks;
- Forcing or withhold naps;
- Allowing children to discipline or humiliate other children;
- Confining a child for disciplinary purposes to a swing, highchair, infant carrier, walker or jump seat;
- Committing any criminal act, as defined under Georgia law which is set forth in O.C.G.A., Sec. 16-1-1 et seq., in the presence of any child enrolled in the center; or
- Leaving a child unattended on a vehicle (per CCS's transportation guidelines).

Monitors and members of program staff of sponsoring organizations must exercise judgment in making a determination of an imminent threat. If, for the reasons mentioned above or for any other reason, a monitor or program staff member determines that a child or adult participant is in imminent danger, the monitor or program staff member **must immediately contact one of the following authorities** and stay at the site until authorities have arrived:

- Georgia Department of Early Care and Learning (Bright from the Start) Child Care Services Division's Complaint Unit via email at ccscomplaints@dec.al.ga.gov or call (404) 657-5562;

- Georgia Division of Family and Children Services (DFACS); or
- Local health authorities or local police department.

Monitors and program staff must understand that their response to imminent threats to the health and safety of participants in the CACFP should be applied consistently and fairly. The health and safety of those in care must be the overarching goal. Wherever there is a situation in CACFP involving a health or safety threat, Program monitors and program staff are expected to respond to the problem when they see it. This does not mean, however, that every licensing violation is an imminent threat to health and safety, or that Bright from the Start may require sponsoring organizations to monitor for licensing agencies. (See Bright from the Start Policy Memo, “Monitoring of Licensing Requirements in the Child and Adult Care Food Program,” October 30, 2013.)

Day Care Home Sponsors:

CACFP regulations give day care home sponsors ample authority to act should they find that children at a day care home are not safe or that the day care home has engaged in activities that threaten public health or safety. Even if the proper authorities indicate that it is safe for the monitor to leave a home while they conduct further investigation or inquiry, the monitor and sponsor must initiate a suspension and the serious deficiency process in accordance with 7 CFR 226.16(l)(4) and CACFP Policy No. 01-16.

Daycare home sponsors are expected to take immediate action to stop payments and suspend the day care home provider’s CACFP participation and declare the provider seriously deficient, regardless of any formal procedures pending or underway by the licensing authorities to revoke the provider’s license or approval. Applying the serious deficiency process further minimizes risk to the Program and underscores the sponsor’s authority to determine whether a facility meets the requirements for CACFP participation.

CACFP Sponsors of Unaffiliated Centers (Administrative Sponsors):

When addressing health and safety issues in sponsored centers, administrative sponsors should use the process they have developed for notifying centers of suspension and serious deficiencies. In addition, sponsors of unaffiliated centers must immediately notify Bright from the Start, Georgia Division of Family and Children Services (DFACS), their local health authorities or their local police department and take action that is consistent with the recommendations and requirements of those authorities.

Suspension Procedures:

Sponsors of day care home providers must follow the suspension procedures in accordance with 7 CFR 226.16(l)(4)(ii) – (iv). For additional guidance on drafting notification, refer to sample letters enclosed with this memo (Attachments A-D). Bright from the Start authorizes sponsors of unaffiliated centers to use a similar suspension process. The sponsor must notify the day care home provider or center that: (a) their participation has been suspended; (b) the day care home provider or center has been determined seriously deficient; and (c) the sponsor proposes to terminate the provider’s or center’s agreement for cause. The sponsor also must provide a copy of the notice to Bright from the Start. Keeping Bright from the Start informed allows Bright from the Start to monitor the process and provide technical assistance when it is needed.

Once a day care home provider or center is suspended, participation, including all Program payments, remains suspended until the administrative review has been completed. If the suspension is overturned following the administrative review, the day care home provider or center may continue participation and may claim reimbursement for eligible meals served and documented during the suspension period. If the suspension is upheld or there is no timely request for an appeal, the sponsor must continue with termination and disqualification as outlined in **CACFP Policy No. 01-16** for sponsors of day care home providers and **CACFP Policy No. 04-31** for sponsors of unaffiliated centers.

For questions concerning this memorandum, please contact Sonja Adams, Program Administrator at (404) 651-8193.

Attachment A

Prototype Combined Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification Notice; Imminent Threat to Health or Safety (provider)

[Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or e-mail as required by §226.2 (definition of “notice”) in the regulations.]

Date

Provider Name

Provider Street Address

Provider City, State 00000

Dear [*Provider*]:

This letter concerns the [*brief description of the basis for the serious deficiency determination – review, audit, etc. and date*] of your operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/audit/etc.*], we have determined that you are seriously deficient in your operation of the CACFP.

SUSPENSION

One of the serious deficiencies we identified is the imminent threat to the health or safety of CACFP participants or the public (for details, see the description of the serious deficiencies later in this letter). Because of this imminent risk, we are suspending your CACFP participation (including all Program payments).

The suspension of CACFP participation (including all Program payments) will take effect on the date of this letter.

This action is being taken pursuant to section 226.16(l)(4) of the CACFP regulations (7 CFR 226.16(l)(4)).

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

We are also:

- Proposing to terminate your agreement to participate in the CACFP for cause effective [*date*], and
- Proposing to disqualify you from future CACFP participation effective [*date*].

[The effective date for the termination/disqualification must be after the deadline for requesting an appeal. In addition, the effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

In addition, if you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the State agency determines that the serious deficiencies have been corrected, or until 7 years after

your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to section 226.16(l)(4) of the CACFP regulations (7 CFR 226.16(l)(4)).

SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency.

[Insert discussion of serious deficiencies. Each serious deficiency discussed must include a cite to the relevant serious deficiency in the regs at §226.16(l)(2) (if the serious deficiency is not specifically listed, cite §226.16(l)(2)(vii) “any other circumstance related to non-performance under the sponsoring organization-day care home agreement”).]

APPEAL OF SUSPENSION, PROPOSED TERMINATION AND PROPOSED SUSPENSIONS

You may appeal the suspension, the proposed termination of your agreement for cause and your proposed disqualification. A copy of the appeal procedures is enclosed. If you decide to appeal the suspension or the proposed actions, make sure you follow the appeal procedures exactly because the failure to do so could result in the denial of your request for an appeal.

SUMMARY

We are suspending your CACFP participation (including all Program payments). In addition, we are proposing to terminate your agreement for cause and proposing to disqualify you.

The suspension will remain in effect during the period of any appeal However, if you request an appeal and the hearing official overturns the suspension, we will pay any valid claims for reimbursement submitted by you for the period of the suspension. As always, we will deny any portion of a claim we determine is invalid. If we deny payment of any portion of a claim, that action would be appealable.

If you appeal the proposed termination and the proposed disqualification, the proposed actions will not take effect until the hearing official issues a decision on the appeals. If you do not make a timely request for an appeal, your agreement will be terminated for cause on [date]. If you do not appeal your proposed disqualification, you will be disqualified from future CACFP participation effective [date] and placed on the National Disqualified List.

Sincerely,

Sponsor Employee Name & Title

Enclosure
Appeal Procedures

cc: State agency

Attachment B

Prototype Letter: Notice of Termination and Disqualification (following failure to appeal); Imminent Threat to Health or Safety (provider)

[Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or e-mail as required by §226.2 (definition of “notice”) in the regulations.]

Date

Provider Name

Provider Street Address

Provider City, State 00000

Dear [*Provider*]:

This letter concerns our [*date of Combo Notice*] letter, which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date of Combo Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You received our [*date of Combo Notice*] letter on [*date received*]. You had until [*insert deadline for requesting appeal*] to submit any request for an appeal of the proposed actions. No request for an appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, we are:

- Terminating your agreement to participate in the CACFP for cause effective on the date of this letter, and
- Disqualifying you from future CACFP participation effective on the date of this letter.

[Because the institution has already been suspended, the termination should be made effective on the date of this letter. The effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

Upon disqualification, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the State agency determines that the serious deficiencies have been corrected, or until 7 years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to section 226.16(1)(4) of the CACFP regulations (7 CFR 226.16(1)(4)).

Attachment B - Page 2

SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination of your agreement for cause or your disqualification.

Sincerely,

Sponsor Employee Name & Title

cc: State agency

Attachment C

Prototype Letter: Notice of Termination and Disqualification (after sponsor wins appeal); Imminent Threat to Health or Safety (provider)

[Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or e-mail as required by §226.2 (definition of “notice”) in the regulations.]

Date

Provider Name

Provider Street Address

Provider City, State 00000

Dear [*Provider*]:

This letter concerns our [*date of Combo Notice*] letter, which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date of Combo Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the suspension, proposed termination and proposed disqualification. On [*date of hearing official's decision*], the hearing official issued a decision on all of the appeals. In that decision, the hearing official upheld the suspension and both of our proposed actions.

TERMINATION AND DISQUALIFICATION

As a result of this decision, we are:

- Terminating your agreement to participate in the CACFP for cause effective on the date of this letter, and
- Disqualifying you from future CACFP participation effective on the date of this letter.

[Because the institution has already been suspended, the termination should be made effective on the date of this letter. The effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

In addition, if you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation.

Upon disqualification, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the State agency determines that the serious deficiencies have been corrected, or until 7 years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to section 226.16(l)(4) of the CACFP regulations (7 CFR 226.16(l)(4)).

Attachment C - Page 2

SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You may not appeal the termination of your agreement for cause or your disqualification.

Sincerely,

Sponsor Employee Name & Title

cc: State agency

Attachment D

Prototype Letter: Temporary Deferment of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification (after provider wins appeal); Imminent Threat to Health or Safety (provider)

[Note: You must send this letter by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or e-mail as required by §226.2 (definition of “notice”) in the regulations.]

Date

Provider Name

Provider Street Address

Provider City, State 00000

Dear [*Provider*]:

This letter concerns our [*date of Combo Notice*] letter, which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date of Combo Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the suspension, proposed termination and proposed disqualification. On [*date of hearing official's decision*], the hearing official issued a decision on all of the appeals. In that decision, the hearing official overturned the suspension and both of our proposed actions.

SERIOUS DEFICIENCY DETERMINATION, SUSPENSION, PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION RESCINDED

As a result, our serious deficiency determination as of [*date of hearing official's decision*] (the date of the hearing official's decision) has been temporarily deferred. We are also temporarily deferring the suspension, the proposed termination of your agreement for cause and your proposed disqualification as of the same date.

We will pay any valid claims for reimbursement submitted by you for the period of the suspension. You must submit these claims by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

Sponsor Employee Name & Title

cc: State agency