

Provider Appeal Procedures

Overview

The right of a provider to appeal certain actions by a sponsor is a mandate of federal law. The regulations around CFR 226.6(l) may be found within the NH CACFP Toolkit section IN 5.2. The Day Care Provider will receive this document and sign for the understanding and receipt annually. Any Day Care Home Provider will be provided the procedures as outlined below and detailed within the Toolkit when action taken by the sponsor is subject to appeal.

The provider may appeal:

- A notice of intent to terminate their agreement for cause.
- Suspensions for Health and Safety Violations

Who Holds the Provider Appeal Hearing

In NH the Sponsoring Agencies are the Appeals Hearing Officials

Name of sponsor's Appeals Hearing Official _____

What is Appealable

- Proposed termination of provider for cause
- Proposed disqualification of provider
- Suspension of the provider program for health and/or safety violations

What is Not Appealable

- All other occurrences

When is an Action Appealable

- A provider may request an appeal when:
 - A sponsor issues a notice of proposed termination of provider for cause
 - A sponsor issues a notice of proposed disqualification of the provider
 - A sponsor issues a suspension notice to the program provider for health and safety violations.

How Will Provider Know They Have an Adverse Determination Against Them

- A sponsor must:
 - Provide the notice of adverse action (see above list) to provider in writing
 - Sponsor must tell provider and pay claims for eligible meals served during appeal process unless home is suspended.

How will Providers be Notified of Their Appeal Rights

- The sponsor will:
 - Attach these documents with signatures to the provider-sponsor agreement
 - Establish deadlines for requesting an appeal and for submitting written documentation opposing the action under appeal, and inform providers of those deadlines
 - Distribute the appeal procedure
 - Annually with agreement to participate
 - When any appealable action is taken
 - Upon request

What are the Minimum Appeal Procedures

- The sponsor will:
 - Ensure that all parties know that in-person hearing is Not required.
 - Ensure that each party has access to review all documents
 - Ensure uniformity regarding procedures
 - Ensure appropriate representation
 - Review of sponsor record
 - Review of opposition record

What are the Responsibilities of the Hearing Official

Overview

The Hearing Official must answer the basic question.

- Has the Program requirement been properly applied?

The Hearing Official does not have the authority to agree or disagree with the requirement, but to simply answer the question. The determination by the hearing official is the final administrative decision afforded to the provider (however, the provider retains the right to pursue the matter through a court of law.)

- The official must:
 - Be Independent, i.e., has not been involved in the action that is the subject of the appeal
 - Be Impartial, i.e., has not direct personal or financial interest in the outcome
 - May be a SA employee
 - An employee or Board member of the sponsor
 - An outside contractor
 - Communicate in writing to the sponsor and the provider of the appeal's outcome within the period of time specified in the sponsor's administrative review procedures.
- The sponsor must:
 - Establish a timeframe in which the appeal decision must be rendered.

The SA will ensure sponsors implement provider appeal process by including in sponsor review

What are the sponsor responsibilities after an adverse determination has been made

The sponsor must report the findings to the state agency. The state agency will make provider placement on a National Disqualified List if applicable.

What exactly will the sponsor send to the SA

- Send to SA a copy of the notice of termination and the Disqualified determination and the provider's Date of Birth.

What will the SA do with this information

- Within 10 working days, SA will send to the USDA Food and Nutrition Service Regional Office a detailed description of the Serious Deficiency to include:
 - Provider's name
 - Mailing address
 - Date of Birth
 - Amount of money owed to the CACFP program

What will the Regional Office do with this information

- FNS regional Office will send to Washington Headquarters
- Washington Office will add this provider to a National Disqualified List

How long will provider stay on DQ List

- Generally removed from list after 7 years
 - Unless the deficiency has been permanently corrected and the provider applies to the SA to be removed from the list before the end of the 7 years.
 - Unless provider still owes a debt after 7 years; then the provider will remain on the List until the debt is repaid.

Signature of Provider

Date

Signature of sponsoring Representative

Date

Procedures for Suspension of Providers

Overview

The suspension of a provider may only occur for imminent threat to health or safety of children in their care occurs.

Health and Safety Issues

Suspension for Health and Safety and Imminent Danger

The process of suspension depends on who discovers the occurrence.

- **When Health and Safety or Licensing find the occurrence and contacts the Sponsor or State Agency.**
 - **The SA will notify the Sponsor immediately**
 - **The sponsor sends a suspension notice to the provider which includes:**
 - The identified Serious Deficiency
 - Suspends the home and notifies the home that Program payments are suspended
 - Proposes termination for cause
 - Proposes to disqualify the home
 - Identifies the methods for the provider to appeal the decision
 - Sends a copy of the letter to the SA
 - **Provider Appeals the Suspension**
 - Provider appeals all adverse actions which include:
 - Suspension
 - Proposed termination for cause
 - Proposed disqualification

The Appeal Hearing is held

If the Sponsor Wins

1. Send termination/disqualification notice
 - a. Agreement is terminated for cause
 - b. Provider is disqualified and
 - c. Will be placed on the National Disqualified List

If the Sponsor Does Not Win

1. Send letter informing provider
 - a. Suspension is ended
 - b. Agreement is intact
 - c. Provider is not disqualified
 - d. Provider will be paid for eligible meals

Final Sponsor Step:

Send a copy of the final appeal hearing determination letter to provider

The process of suspension depends on who discovers the occurrence.

- When the Sponsor discovers the Health and Safety Issue
- Immediately notify the Health and Safety/Licensing bureau
 - Take action recommended or required by Health and Safety/Licensing bureau such as immediate suspension.
 - Notify the State Agency
- Provider may appeal the suspension
 - Sponsor would then follow the appeal procedures