

APPEAL PROCEDURES FOR CHILD CARE HOMES

Appeal Procedures:

1. Pursuant to 7 CFR 226.6(l) the State agency or the sponsoring organization must provide administrative review procedures to day care homes as follows:
 - a) Annually to all day care homes;
 - b) To a day care home when the sponsoring organization takes any action subject to an administrative review as described in paragraph (l)(2) of section 226.6; and
 - c) Any other time upon request.

2. The Sponsoring Agency will issue a combined Notice of Serious Deficiency and Notice of Proposed Termination by certified mail, unless immediate termination is warranted based on the actions of the Home Provider which imminently threaten the health and safety of participants or the public. The notice must inform the Home Provider of the ground(s) for proposed termination and disqualification. The notice must also inform the Home Provider of his/her right to request a fair hearing or to request that written information be reviewed by a hearing officer in lieu of a hearing, and that meal payments will not be withheld during the appeal process so long as the appropriate records to support the meal payments are available pending the outcome of the fair hearing.

3. If a Notice is issued to immediately suspend a Home Provider's participation, including payment based on an imminent threat to the health and safety of participants or to the public, the Notice must inform the Home Provider of the ground(s) for proposing termination and disqualification and of the date for this action. The notice must also inform the Home Provider of his/her right to request a fair hearing of the Proposed Termination.

4. A request for a fair hearing or for the review of written information in lieu of a hearing must be presented by the Home Provider in writing to the TDHS Division of Appeals and Hearings not later than 15 calendar days from the date the Home Provider receives the Notice of Proposed Termination . The TDHS Division of Appeals and Hearings must notify the Home Provider of the receipt of the review request within 10 calendar days of the receipt of the request. If the request for a fair hearing or for the review of written information in lieu of a hearing is sent to the Sponsoring Agency, the Sponsoring Agency must forward the request with a photocopy of the Notice of Proposed Termination and photocopies of any monitoring reports or other related materials to the TDHS Division of Appeals and Hearings immediately upon receipt of the Home Provider's request for review.

5. All requests for a fair hearing or for a review of written information in lieu of a hearing must be submitted to:

**Tennessee Department of Human Services
Division of Appeals and Hearings
PO Box 198996, Clerk's Office
Nashville, TN 37219-8996
Fax: (615) 248-7013 or (866) 355-6136**

E-mail: AppealsClerksOffice.DHS@tn.gov

6. If the written appeal request from the Home Provider does not specifically request a hearing, a review of written information in lieu of a hearing will occur. To be considered for a fair hearing or for a review of written information in lieu of a fair hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the Notice of Proposed Termination. If the written documents are submitted to the sponsoring agency, the sponsoring agency will forward the written documents to TDHS Division of Appeals and Hearings immediately upon receipt.

7. The hearing officer must be independent and impartial and shall be designated by the TDHS Division of Appeals and Hearings. If a fair hearing is requested, the TDHS Division of Appeals and Hearings must notify the Home Provider in writing of the date and place of the fair hearing at least 10 calendar days in advance. A copy of the written notice will also be provided by the TDHS Division of Appeals and Hearings to the CACFP program staff of the Tennessee Department of Human Services.

8. The Home Provider must refute the charges contained in the Notice of Proposed Termination during the fair hearing or in the written information that is submitted in lieu of the hearing.

9. The Home Provider may retain legal counsel, or may be represented by another person.

10. Except in situations that imminently threaten the health and safety of participants or the public and that are identified in the notice of action by the Sponsoring Agency, program payments will not be withheld during the appeal process for the Home Provider. This is providing that appropriate records to support the payments are available and maintained by the Home Provider. If the Home Provider does not request a fair hearing within 15 calendar days from the date the Home Provider receives the proposed termination notice, the Sponsoring Agency will issue a letter advising the Home Provider that it is terminated and disqualified from the CACFP effective on the 16th calendar day following the Home Provider's receipt of the Notice of Proposed Termination.

11. Any information on which the Sponsoring Agency based its adverse administrative action shall be available to the Home Provider for inspection from the date of the receipt of the appeal request from the Home Provider.

12. The hearing officer must make a determination based on the information provided by the sponsoring organization, the day care home, TDHS and on Federal and State laws, regulations, polices, and procedures governing the Program in accordance with 7 CFR Part 226.6 (l)(5)(v).

13. The decision of the hearing officer shall be the final administrative determination to be afforded to the Home Provider, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the Home Provider's appeal request by the Sponsoring Agency.

14. The processing limits for administrative appeals MUST be met. In the event a continuance is requested by a party, one continuance may be granted at the Hearing Official's discretion. This

continuance shall not be for a period longer than ten (10) calendar days unless there are exceptional circumstances. Exceptional circumstances must be detailed in the order of continuance and the order must contain a date certain for the hearing, to be set as soon as possible. A report of pending CACFP desk review and fair hearing requests will be generated and reviewed daily by the Clerk's Office and the Legal Director for Appeals and Hearings who will monitor the dates for timeliness. In the event a decision has not been rendered within forty-five (45) calendar days of the date of receipt of the request for fair hearing or desk review, the Legal Director for Appeals and Hearings or their back-up shall notify the hearing official to take appropriate action.

15. If the Notice of Proposed Termination is upheld by the hearing officer, the Sponsoring Agency will issue a final termination and disqualification notice to the Home Provider. The effective date of the termination and disqualification will be the date of the appeal ruling issued by the hearing officer. The agency maintains searchable records of all administrative reviews and their dispositions for a period of five (5) years.

16. As required by 7 CFR Part 226.6 (c) (7), each disqualified Home Provider will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, a Home Provider shall remain on the list until such time as the TDHS determines in consultation with FNS, that the serious deficiencies that led to the provider's placement on the list have been corrected, or until seven years have elapsed since the provider's agreement was terminated for cause. However, if the Home Provider has failed to repay debts owed under the program, the provider will remain on the list until the debt has been paid.