



CONNECTICUT STATE DEPARTMENT OF EDUCATION

Serious Deficiency (SD) 101:

Child and Adult Care Food Program (CACFP)

Day Care Homes (DCH)

January 25, 2022

Acronyms

CACFP	Child and Adult Care Food Program	SA	State Agency (CSDE)
CAP	Corrective Action Plan	SD	Serious Deficiency
CFR	Code of Federal Regulations	SO	Sponsoring Organization (sponsor)
DCH	Day Care Home	USDA	U.S. Department of Agriculture
FNS	Food Nutrition Service	VCA	Viability, Capability, Accountability
NDL	National Disqualified List		
RP/I	Responsible Principal or Responsible Individual		



What is Serious Deficiency (SD)?

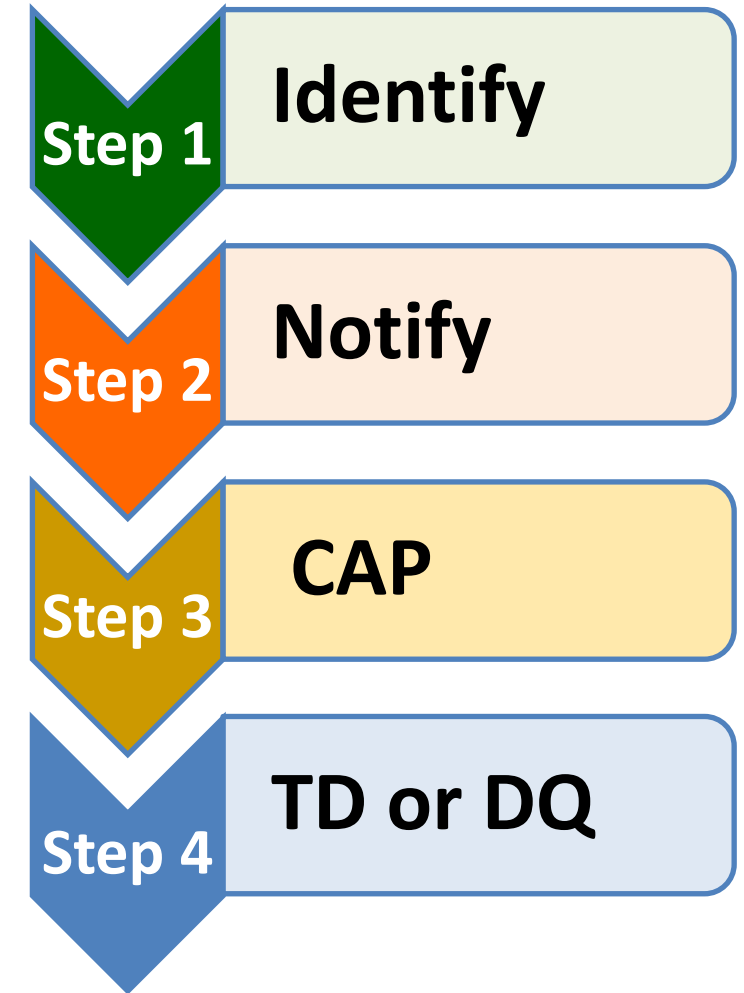
Definition (7 CFR Part 226.2)

“the status of an institution or a day care home that has been determined to be ***non-compliant*** in one or more aspects of its operation of the Program.”



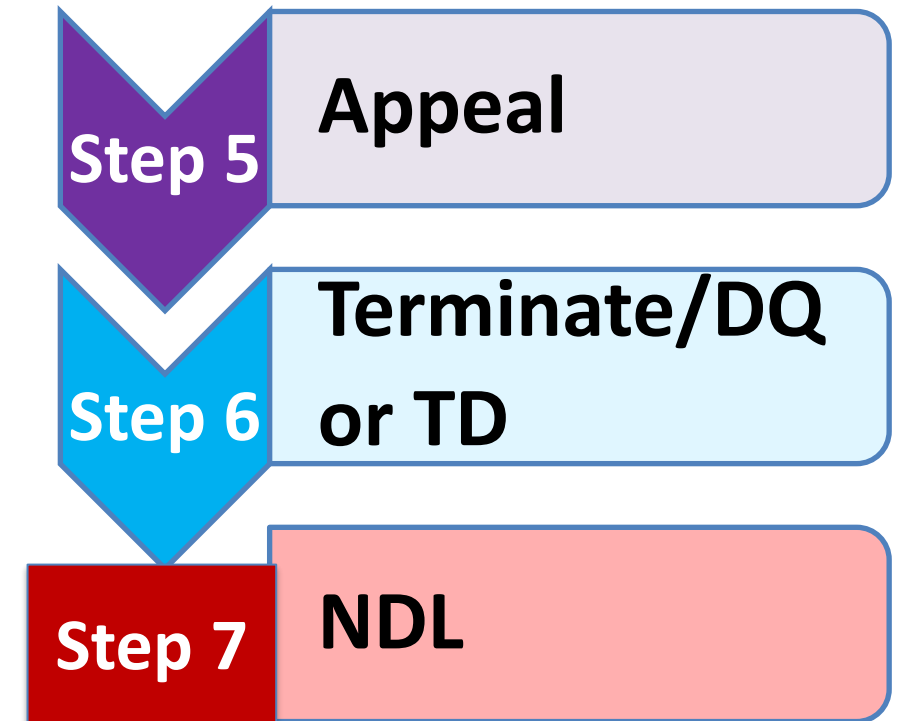
The Process

- 1. Identify SD (SD slides 7-12)**
- 2. Issue SD notice (refer to prototype letter, slides 13-18)**
- 3. Assess Corrective Action Plan (CAP slides 19-23)**
- 4. Issue notice of temporary deferral (TD) or proposed termination and disqualification (DQ) (slides 24-28): Refer to prototype letter**

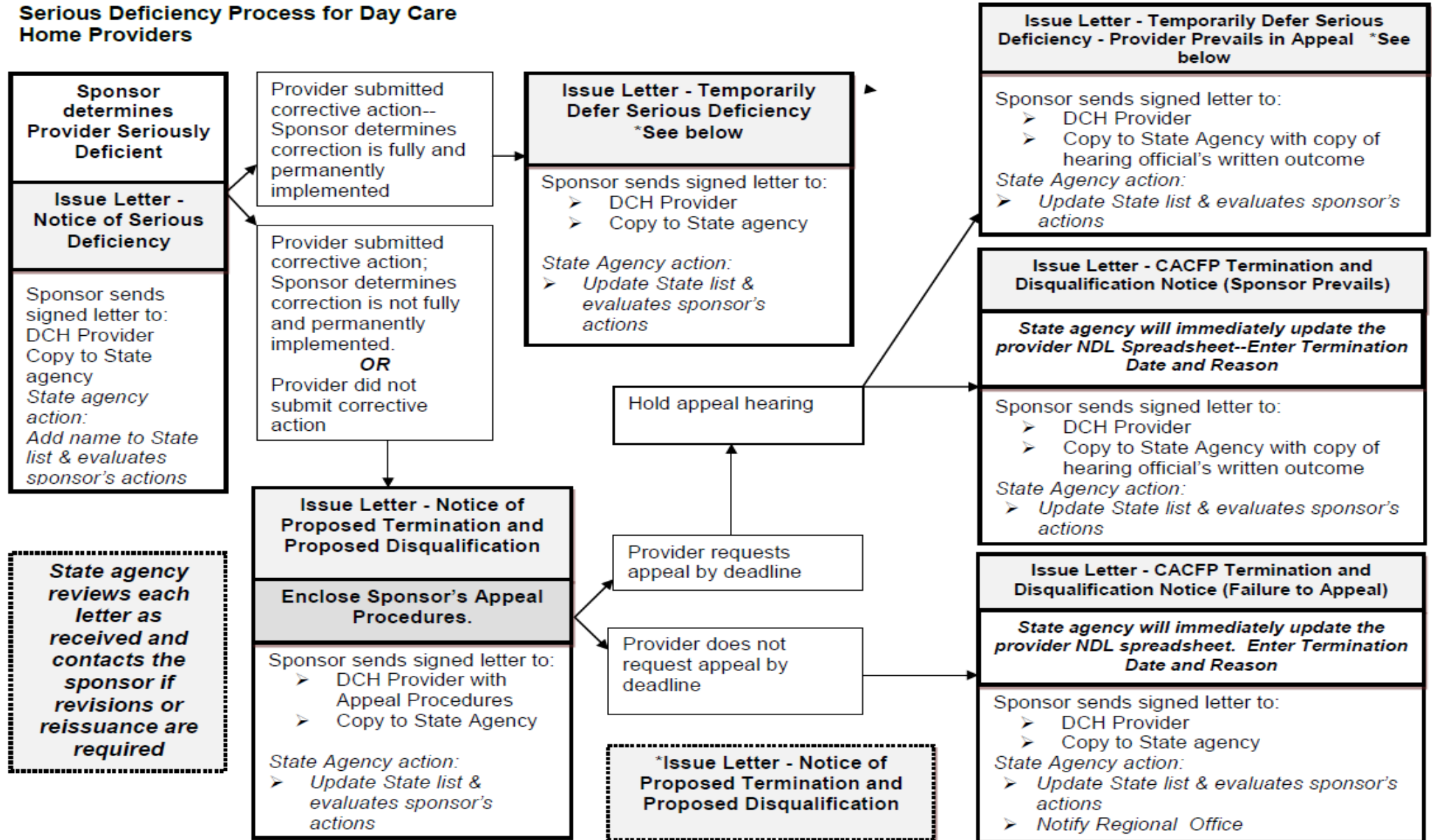


The Process

- 5. Hold the appeal (slides 29-32)**
- 6. Terminate and disqualify OR notice of temporary deferral (slide 33)**
- 7. If terminated and disqualified (slide 34)**
 - Place DCH on National Disqualified List (NDL)
 - Once on NDL, DCH is ineligible to participate in CACFP in CT and any other state as a responsible principal/individual (RP/I) at an institution or as DCH provider



Serious Deficiency Process for Day Care Home Providers



Step 1: Identify the Serious Deficiency (SD)

Distinguishing between error and SD: When does a problem rise to level of SD?

- How frequently does it occur?
- How severe is it?
- How does it affect Viability, Capability, Accountability (VCA)?
- What is degree of responsibility attributable to a DCH?



Step 1: Identify the SD

Distinguishing between error and SD: When does a problem rise to level of SD?

- Are problems of noncompliance frequently recurring at the same DCH?
- What is the nature of requirements relating to the problem?
- To what degree does the problem impact program integrity?



Step 1: Identify the SD

Noncompliance of DCH and issues that rise to level of SD

1. Submission of false information on DCH application
2. Submission of false claims for reimbursement
3. Simultaneous participation under more than one sponsor



Step 1: Identify the SD

Noncompliance of DCH and issues that rise to level of SD

- 4. Noncompliance with CACFP meal pattern
- 5. Failure to keep required records
- 6. Conduct or conditions that threaten the health or safety of a child or children in care, or the public's health/safety



Step 1: Identify the SD

Noncompliance of DCH and issues that rise to level of SD

7. A determination that provider 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 deceit, antitrust 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



Step 1: Identify the SD

Noncompliance of DCH and issues that rise to level of SD

- 8. Failure to participate in training
- 9. Any other circumstance related to non-performance under SO's DCH agreement, as specified by SO, or state agency



This list is not all-inclusive



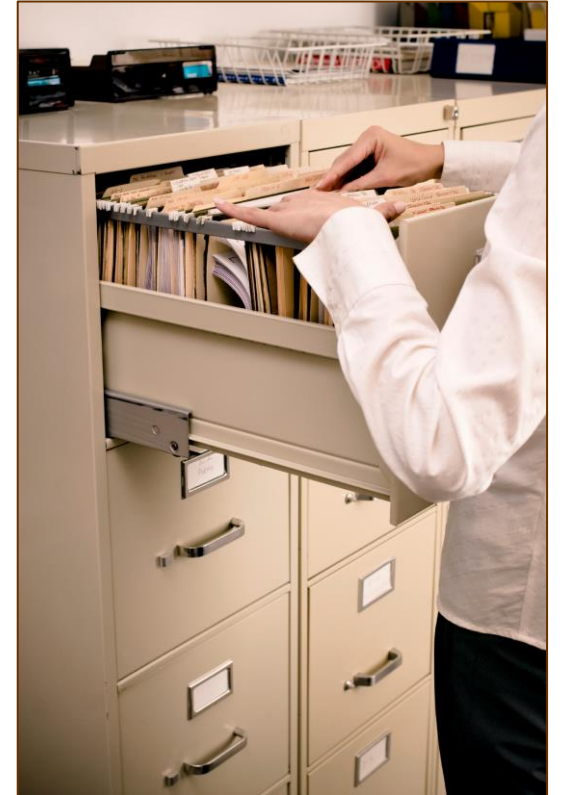
Step 2: Prepare the Notice

1. Investigate

- Sponsor must thoroughly investigate
- Document any serious deficiencies

2. Write SD Notice

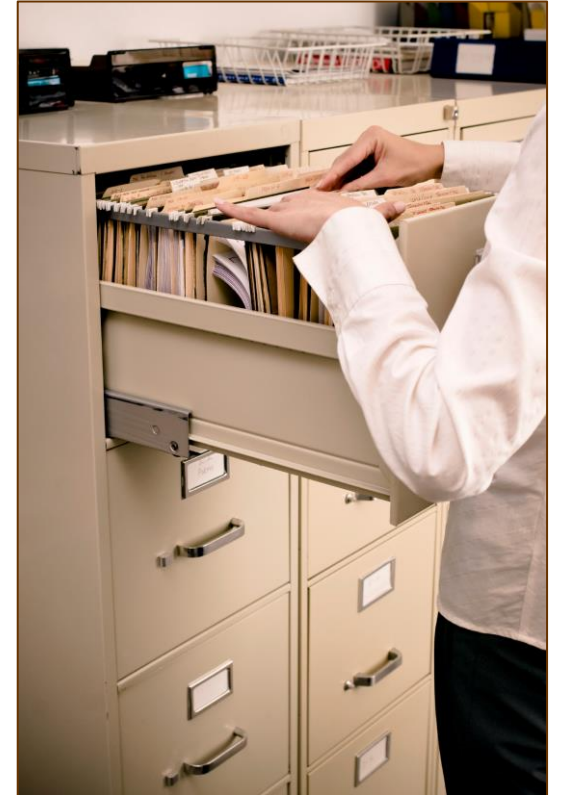
- Must clearly explain sponsor's action to hearing official in the event that provider later appeals
- Resource: *Prototype Letter 15: Notice of Serious Deficiency for Providers*



Step 2: Prepare the Notice

Notice includes

- a. All findings identified and a detailed explanation for each**
 - Findings not rising to level of SD must still be issued to DCH
 - in a separate letter OR
 - clearly identified as findings not rising to level of SD
- b. SD must include appropriate citations from regulations**

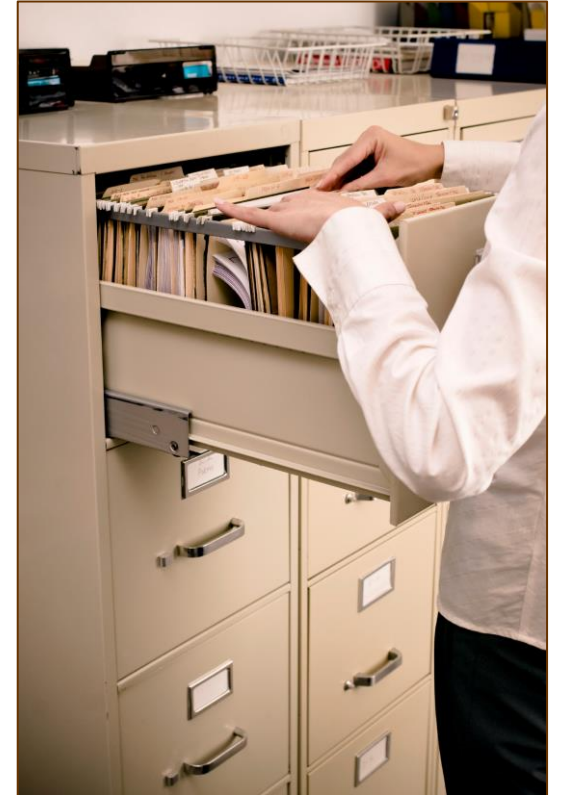


Step 2: Prepare the Notice

Notice includes

c. Actions to be taken to correct SD

- Sponsor must include required actions for DCH to ***fully and permanently*** correct SD
- DCH is responsible for detailing processes implemented to ensure SD has been ***fully and permanently corrected***



Step 2: Prepare the Notice

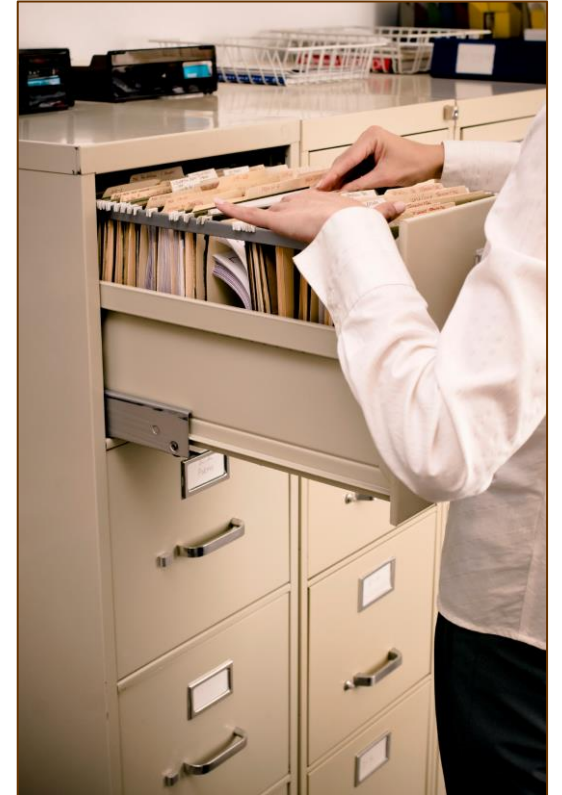
Notice includes

d. Allotted time to correct SD

- Must be as soon as possible
- Cannot exceed 30 calendar days

e. SD determination is not subject to administrative review (appeal)

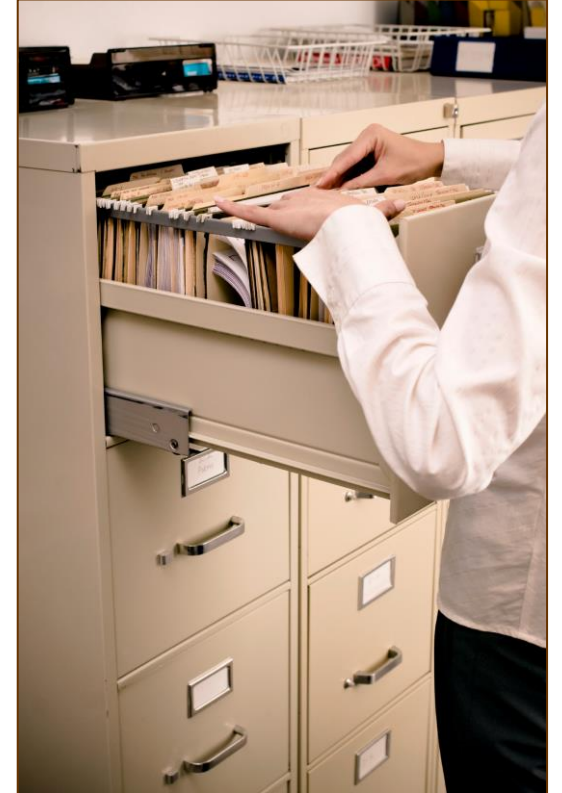
- Notice should state this



Step 2: Prepare the Notice

Notice includes

- f. Needs to inform provider that failure to fully and permanently correct SD within allotted timeframe will result in issuance of a Notice of Proposed Termination and Disqualification of DCH agreement and disqualification of DCH
- g. If DCH voluntarily terminates its agreement after being notified of SD determination this still results in DCH's formal termination by the sponsor and placement of DCH and provider's names on NDL [7 CFR 226.16(l)(3)]



Step 2: Prepare the Notice

Issuing the notice

- **Must be sent using one of the following**
 - Certified mail
 - Return receipt (or equivalent private delivery service)
 - Fax
 - Email
- **Must provide copy of notice to CSDE at the same time it is sent to DCH provider**

**Best Practice:
Get proof of
delivery of notice
for mail or email**



Step 3: Assess the Corrective Action Plan (CAP)

DCH provider's CAP must include

- Name of provider associated with SD
- Address of DCH
- Date of birth for provider associated with SD



Step 3: Assess the CAP

DCH provider's CAP must include

- Details of SD
 - **What** is SD and implemented procedures
 - **Who** are DCH personnel responsible for each task
 - **When** procedure for addressing SD is implemented including implementation timeline
 - **Where** documentation is retained
 - **How** provider will ensure CAP is fully and permanently corrected



Step 3: Assess the CAP

Example: During an administrative review, a SO discovers that a DCH provider fails to maintain adequate Program records (e.g., enrollment forms, attendance records, meal counts, menus, etc.). The SO sends a notice of SD to the provider.

The provider responds to SD and indicates he/she will comply with CACFP requirements in relation to the maintenance of program administrative records.

Is this CAP Acceptable?



Step 3: Assess the CAP

Example: During an administrative review, a SO discovers that a DCH provider fails to maintain adequate Program records (e.g., enrollment forms, attendance records, meal counts, menus, etc.). The SO sends a notice of SD to the provider.

The provider responds to SD and indicates he/she will comply with CACFP requirements in relation to the maintenance of program administrative records.

Is this CAP Acceptable?

No! CAP is missing

- **What?**
- **Who?**
- **When?**
- **Where?**
- **How?**



Step 3: Assess the CAP

- Complete and permanent correction
- **One opportunity** to resolve problems
- Maximum time to complete CAP
(no more than 30 calendar days)



Step 4: Notification – Temporary Deferral

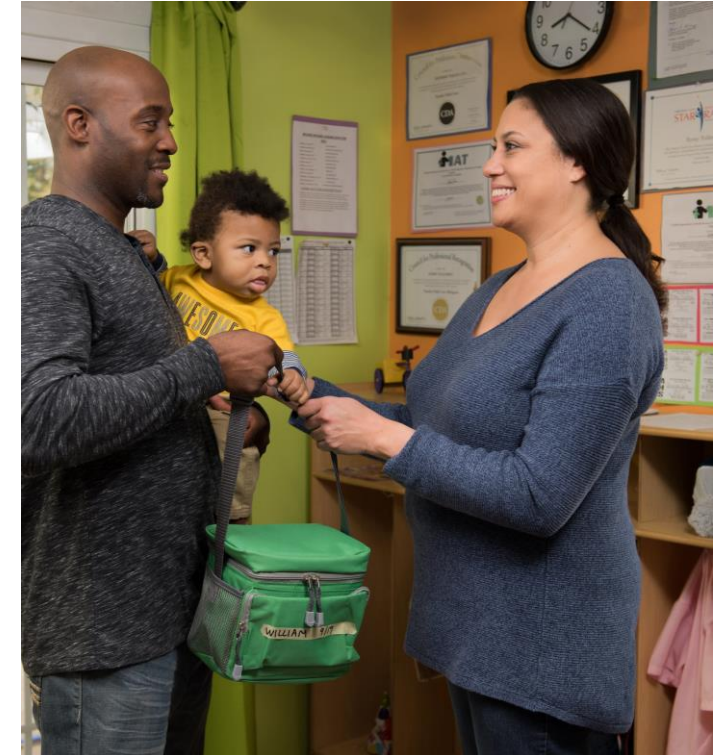
Successful CAP for a DCH

Acceptable if

- Provider submits CAP correcting SD to sponsor's satisfaction
- CAP is completed within allotted timeframe
- Provider corrects issues within 30 calendar days

Then

- SD determination will be temporarily deferred as of date of letter

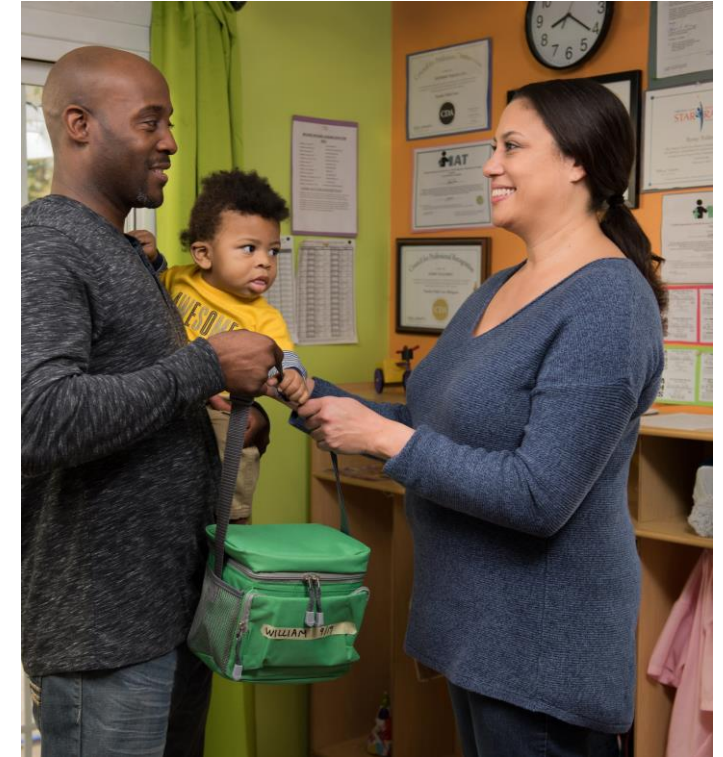


Step 4: Notification – Temporary Deferral

Successful CAP for a DCH

Sponsor must

- Notify DCH that sponsor has temporarily deferred SD determination (refer to prototype letter 16)
- Remind all parties that CAP must be permanent, or SD process is reinstated starting with Notice of Proposed Termination and Disqualification



Step 4: Notification – Proposed Termination and Disqualification

Consequence of failure to complete Corrective Action

Notice *must* contain *all* of the following elements and specify

- Propose to terminate agreement and disqualify DCH from CACFP
- State appeal rights
- Provider's continued participation and ability to receive reimbursement for eligible meals served until a requested appeal has concluded
- Agreement will result in termination for cause and provider's disqualification



Step 4: Notification – Proposed Termination and Disqualification

Notice *must* specify

- If DCH voluntarily terminates its agreement with the SO after receiving Notice of Proposed Termination and Disqualification, **DCH will still be placed on NDL**



Step 4: Notification – Proposed Termination and Disqualification

References

- Prototype Letter 17: Notice Proposed Termination and Proposed Disqualification of Providers – Corrective Action Not Submitted
- Prototype Letter 18: Notice of Proposed Termination and Disqualification for Providers – Corrective Action Submitted But Not Acceptable

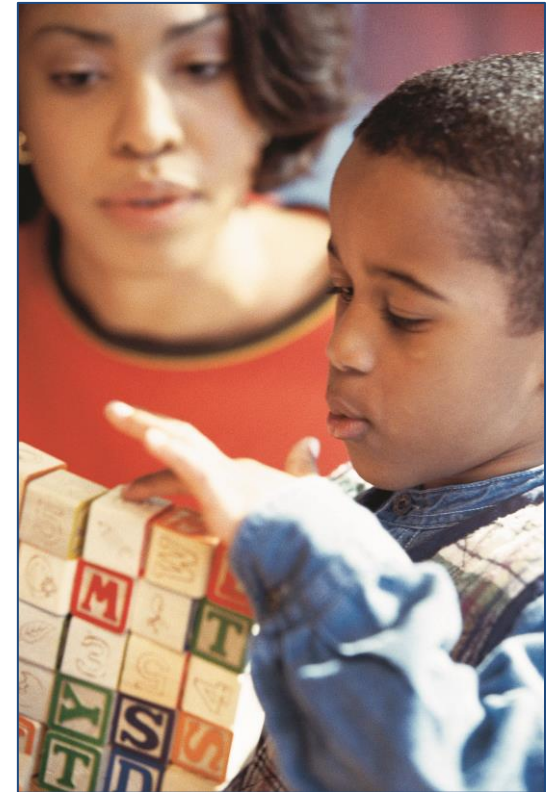
- **Sponsors must use prototype letters**
- **Do not change language in the letters**
- **Include specifics only in indicated areas**



Step 5: Appeal Process

Key Points

- Offering DCH provider the right to appeal is required only for a notice of proposed termination or suspension
- Institutions and responsible principals and individuals may request separate appeals
- Termination for cause or disqualification cannot be appealed
- States must use uniform procedures in regulations



Step 5: Appeal Process

Hearing officials

- Must base decisions on federal and state laws and policies
- Must be independent and impartial
- Must assess SA or sponsor's action to propose termination
- Must determine whether actions taken by all parties followed CACFP federal regulations, policies, and procedures
- Must base decisions on information presented by state agency



Step 5: Appeal Process

- Rulings must be based on an institution's full and permanent resolution of the SD in allowed CAP time frame
- Hearing officials must understand their role to make informed decisions based on CACFP regulations
- Prototype letters must fully document and support SA/sponsor case
- No settlement agreements for institutions who are declared SD



Step 5: Appeal Process

Common problems that arise at hearings

- States and sponsors fail to fully document cases
- Hearing officials fail to understand their roles
- Prototype letters are altered



Step 6: Terminate and Disqualify OR Notice of Temporary Deferral

Terminate and Disqualify

- No CAP (refer to prototype letter 17)
- CAP not acceptable (refer to prototype letter 18)
- Appeal Process confirms SO's SD prevails

Temporarily Defer

- Acceptable CAP within designated timeframe
- Full and permanent correction of SD

(refer to prototype letter 16)



Step 7: Place on National Disqualified List (NDL)

How long is a provider on the NDL?

Approximately 7 years

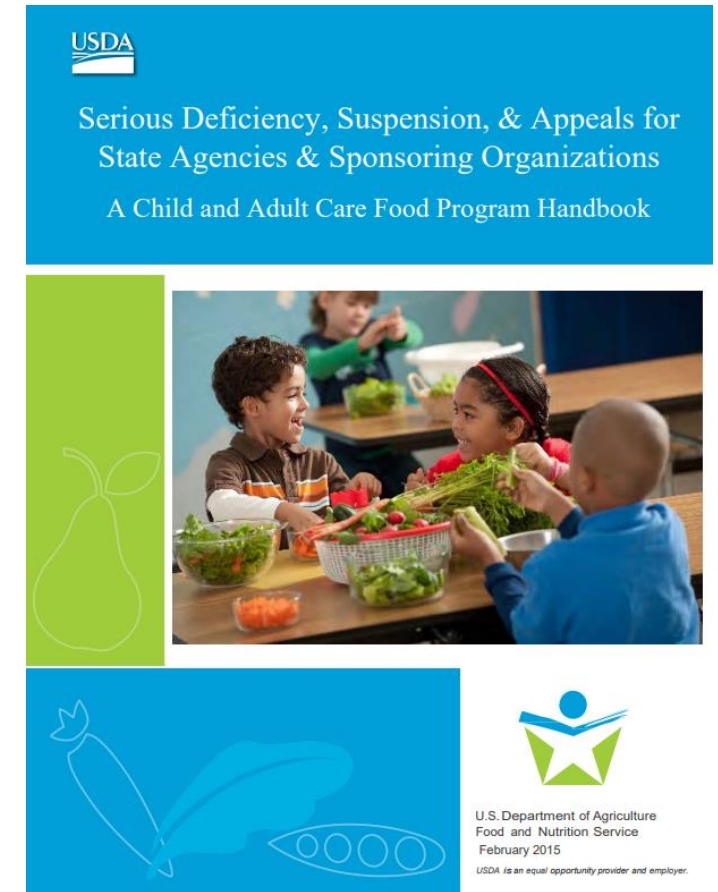
- Can be more than 7 years if debts are owed
- Can be removed in less than 7 years if the SA and USDA (FNS) concur
- When 7 years have elapsed and debt is repaid the institution, RP/I, or provider will be removed from NDL



SD Resources

Serious Deficiency Handbook: Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations


- Prototype Letters
- Flow charts
- Regulatory citations
- Processes and procedures
- Q & A



<https://www.fns.usda.gov/cacfp/serious-deficiency-suspension-appeals-state-agencies-and-sponsoring-organizations>

SD Resources

USDA Memo CACFP 14-2012: Guidance, Acceptable CAP, NDL Procedures and Debt Collection: Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection

	
<small>United States Department of Agriculture Food and Nutrition Service 3101 Park Center Drive Alexandria, VA 22302-1500</small>	DATE: May 1, 2012
	MEMO CODE: CACFP 14-2012
	SUBJECT: Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection
	TO: Regional Directors Special Nutrition Programs All Regions State Directors Child Nutrition Programs All States
<p>The purpose of this memorandum is to provide guidance on the regulatory serious deficiency, termination, and disqualification processes for the Child and Adult Care Food Program (CACFP). By providing this guidance, our objective is to assist Food and Nutrition Service (FNS) staff, State agencies, and sponsoring organizations in ensuring uniformity and Program integrity throughout the CACFP. To achieve this objective, we will:</p> <ul style="list-style-type: none">• Review the serious deficiency process;• Clarify FNS expectations for acceptable corrective action plans (CAP);• Review the termination and disqualification process;• Provide guidance on what is required for submissions to the National Disqualified List (NDL);• Provide guidance on what is needed to request removal from the NDL; and• Provide clarification on the collection of debts, including interest. <p>It is incumbent on FNS to assist State agencies and sponsoring organizations to come into compliance with CACFP requirements by stressing that the initiation of the serious deficiency process is the first step in successfully addressing an institution's non-compliance with one or more aspects of its operation of the Program. Proper implementation of the serious deficiency process includes development of a CAP. This allows the institution or provider to continue Program participation and to receive technical assistance from the State agency or sponsoring organization. It is critical to the integrity of the Program and the effectiveness of the serious deficiency process and the NDL that these procedures are consistently applied.</p>	
<small>AN EQUAL OPPORTUNITY DOCUMENT</small>	
<small>The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.</small>	



<https://www.fns.usda.gov/cacfp/child-and-adult-care-food-program-guidance-serious-deficiency-process-and-acceptable-corrective>

SD Resources

- **Code of Federal Regulations for the CACFP: 7 CFR Part 226**

<https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-226>

- **Commonly Used Acronyms and Abbreviations in the CACFP (CSDE)**

https://portal.ct.gov/-/media/SDE/Nutrition/CACFP/Acronyms_CACFP.pdf



Questions?



CSDE Contact Information

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Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

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