

Summary of Changing Tides Family Services' Serious Deficiency Policy for Providers Participating in the Child and Adult Care Food Program



Serious Deficiency Determination

1. Steps will be followed in accordance with timelines, levels of review, and steps as described in [7 CFR §226.16(l)].
2. Changing Tides Family Services must initiate action to terminate the agreement of a day care home (provider) for cause in the operation of the CACFP, if Changing Tides Family Services determines the provider has committed one or more of the serious deficiencies listed below. Failure for Changing Tides Family Services to take appropriate action with regard to a Serious Deficiency (SD) could jeopardize Changing Tides Family Services' ability to remain a sponsor in good standing, and could result in Changing Tides Family Services itself becoming identified as Seriously Deficient.

Per Section 226.16 (l)(1) of 7CFR, Changing Tides Family Services must initiate action to terminate the agreement of a day care home for cause if it determines the day care home has committed one or more of the serious deficiencies listed below.

- Submission of false information on the application (sponsor/provider agreement)
- Submission of false claims for reimbursement
- Simultaneous participation under more than one sponsoring organization
- Noncompliance with the program meal pattern
- Failure to keep required records
- Conduct or conditions that threaten the health or safety of the children in care or the public health or safety
- A determination that the 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 fraud, 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
- Failure to participate in training, or
- Any other circumstance related to non-performance under the agreement between the provider and Changing Tides Family Services as specified by Changing Tides Family Services or the California Department of Social Services, Child and Adult Care Food Program

Upon making a Serious Deficiency determination, if the provider does not take action to fully and permanently correct the serious deficiency within the allotted time, the provider's agreement must be terminated.

Serious Deficiency Notice

Once a day care home provider is found to be Seriously Deficient, Changing Tides Family Services will immediately send a Serious Deficiency Notice to the provider and send a copy to the California Department of Social Services, Program Integrity Unit (PIU). The notice must:

- Clearly describe the SD finding(s)
- State the legal basis for each SD basis (citing the SD regulations) as well as specific provisions in the sponsor/provider agreement and/or regulations that support the SD finding (s))
- Inform the provider that the voluntary termination from the CACFP will result proposed disqualification of the provider
- Specify the corrective action(s) to be taken and the time allotted to correct the SD finding(s). Corrective action(s) must be taken as soon as possible, but not to exceed 30 days.
- State that failure to fully and permanently correct each SD finding will result in proposed termination of the provider's CACFP agreement and the proposed disqualification of the provider
- Notify the provider that there are no appeal rights for the SD determination
- Inform the provider that program payments will be made during the corrective action period

It is Changing Tides Family Services' policy to monitor day care home providers' operation of the CACFP. If, during a monitoring visit, Changing Tides Family Services identifies findings and is unsure if the finding(s) constitute an immediate issuance of a SD notice, Changing Tides Family Services will document in its monitoring report the finding(s) and what corrective actions must be taken to resolve the finding(s). The provider, if available, must sign the monitoring report as acknowledgement that the finding(s) and corrective actions have been explained to the provider. Changing Tides Family Services will also notify the provider of the finding(s) and required corrective actions in a separate letter.

Recordkeeping requirements of the provider: If, on a first offense, a provider fails to provide records for not more than two days, Changing Tides Family Services must follow the monitoring report requirements stated above. If a provider has failed to provide records for more than two days, Changing Tides Family Services shall immediately issue an SD notice. Staff will consider all the facts surrounding the reason for the finding(s) and determine the appropriate action. In a case where Changing Tides Family Services allows a provider more than two days without records and does not declare the provider SD, Changing Tides Family Services will indicate, in its program file for the day care home provider, the reason(s) why the SD notice was not issued. If an SD notice is eventually issued, Changing Tides Family Services must tell the PIU why the SD notice was not issued when the sponsor first was aware of the recordkeeping finding.

Corrective Action

Changing Tides Family Services may allow the provider no more than 30 days from the receipt date of the Serious Deficiency Notice to submit a Corrective Action Plan. In most situations, the provider will be expected to implement permanent corrective action in less time.

If the provider corrects the SD finding(s) within the allotted time and to Changing Tides Family Services' satisfaction, Changing Tides Family Services will send a notice of Successful Correction Action, Rescission of Serious Deficiency to the provider using a method of delivery that confirms receipt and/or delivery of the notice. A copy of the rescission notice will also be sent to the PIU. The rescission notice must inform the provider that:

- Corrective action(s) must be permanent
- If corrective action(s) is/are not permanently corrected, Changing Tides Family Services will immediately propose termination and disqualification of the provider
- The provider may not transfer to another sponsoring organization until Changing Tides Family Services completes an additional monitoring visit (no later than 180 days after the date of the rescission notice) verifying the provider implemented permanent corrective actions for the SD(s)
- If it is found in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, Changing Tides Family Services will immediately propose to terminate the provider's agreement for cause and propose to disqualify the provider without any further opportunity for corrective action.

Health and Safety Violations

In accordance with 7CFR Section 226.16 (l)(2)(vi), 226.16(l)(4)(i), 226.20(l), if Changing Tides Family Services becomes aware that a provider has been cited for a serious health and safety violation by state or local health official, or by a licensing official, Changing Tides Family Services must immediately suspend the provider's CACFP participation, even before any formal action has been taken to revoke the provider's license. If Changing Tides Family Services 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, Changing Tides Family Services must immediately notify Community Care Licensing and issue to the provider the "Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety" notice, with appeal procedures. These documents will be sent utilizing a method of delivery that confirms receipt and/or delivery of the notice. Changing Tides Family Services will attempt to obtain a copy of the state or local licensing official's report. The report can be used to substantiate the sponsor's suspension action. A copy of the suspension notice must also be sent to the PIU. The notice must:

- Inform the provider that participation in the CACFP has been suspended and that the provider has been designated as Seriously Deficient and that Changing Tides Family Services is proposing termination and disqualification
- Specify the Serious Deficiency(ies) found

- 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 suspension, the provider may claim reimbursement for eligible meals served during the suspension
- Inform the provider that the termination of their CACFP agreement will result in the placement of the provider on the National Disqualified List (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 and placed on the NDL.

Proposed Termination and Disqualification After SD Notice Rescinded

In the event that a SD determination has been rescinded, if it is found in any subsequent review that any of the Serious Deficiencies have not been fully and permanently corrected, Changing Tides Family Services will immediately propose to terminate the agreement with the provider for cause and will propose to disqualify the provider without any further opportunity for corrective action. I.e., if in a future review the same or similar deficiency(ies) are found, the provider has demonstrated that their corrective action plan was not **permanently implemented**. Accordingly, Changing Tides Family Services must issue a Notice of Proposed Termination and Proposed Disqualification.

Proposed Termination of Agreement

If a provider fails to **permanently** correct the Serious Deficiency(ies) in the time allotted for correction action **or any time after the original SD notice has been rescinded**, Changing Tides Family Services must issue a Notice of Proposed Termination and Proposed Disqualification to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice and submit a copy of the notice to the PIU. The notice must:

- Reference the SD notice and state *why* corrective action was not acceptable (or state that the provider failed to submit a corrective action document within the time allotted).
- Offer the provider the opportunity to appeal, including appeal procedures (Attachment 3, Appeal Procedures for Day Care Homes)
- 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 proposed termination/disqualification notice will still result in the proposed disqualification
- Notify the provider that he/she may continue to participate in the CACFP through the appeal deadline, or, if an appeal is requested, until the hearing officer issues a decision (7 CFR Section 226.16 (I)(3)(iii))

Hearing Official's Decision

The hearing official must be independent and impartial. If the administrative review official is an employee or board member of Changing Tides Family Services, 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.

In accordance with Section 226.6(l)(5)(ii) "the day care home may retain legal counsel, or may be represented by another person." Therefore, if the provider is represented in an appeal by another person, the hearing official must be sure that all correspondence and communication pertaining to the appeal is done through the individual representing the provider. The hearing official must base his/her decision on the documents and testimony provided by the sponsor and the provider, on the applicable federal regulations, and on the applicable CDSS and USDA guidance governing the CACFP. The hearing official must not issue a decision in favor of the provider based solely on the provider's "promise" or "agreement" to abide by CACFP requirements. The hearing official's decision must be issued to the sponsor and the provider within 30 days from the receipt date of the hearing request. The hearing official's decision must include the documents reviewed, the legal basis(es), and facts supporting the decision. The decision issued by the hearing official is the final determination to be afforded to the provider (7 CFR, sections 226.6[l][5][v] and [vii]). A copy of the hearing official's decision must be sent to the PIU.

Rescission of Serious Deficiency, Proposed Termination, and Proposed Disqualification After Provider Wins Appeal

If the hearing official overturns the sponsor's proposed termination and proposed disqualification actions, the sponsor must issue a:

- Rescission of Serious Deficiency, Proposed Termination, and Proposed Disqualification (after provider wins appeal), or
- Rescission of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health or Safety (after provider wins appeal)

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU

If, in the future, the sponsor determines that the provider has committed the same or similar serious deficiency, the sponsor cannot move directly to proposed termination and proposed disqualification. Rather, the sponsor must implement the SD process from the beginning.

Agreement Termination and Disqualification

In accordance with 7CFR Section 226.16 (l)(3)(v) and 226.16(l)(4)(iii). 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 to the provider a:

- Notice of Termination and Disqualification (after sponsor wins appeal) or
- Notice of Termination and Disqualification: Imminent Threat to Health or Safety (after sponsor wins appeal)

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU.

The date of the termination and disqualification will be the date of the hearing official's decision.

If the provider did not request an appeal, the sponsor must issue to the provider a:

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

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU. The effective date will be the day after the appeal deadline.

Changing Tides Family Services must also access Child Nutrition Information & Payment System (CNIPS) and complete steps to terminate the provider in CNIPS.