

TITLE 8: SOCIAL SERVICES
CHAPTER 2: FOOD ASSISTANCE AND SUPPORT
PART 2: REQUIREMENTS FOR PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM

8.2.2.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD).

[8.2.2.1 NMAC – Rp 8 NMAC 2.2.1, 11-30-01]

8.2.2.2 SCOPE: This policy applies to all CYFD staff who work with the Child and Adult Care Food Program and to participating sponsoring organizations.

[8.2.2.2 NMAC – Rp 8 NMAC 2.2.2, 11-30-01]

8.2.2.3 STATUTORY AUTHORITY: Code of Federal Regulations, 7 CFR Part 226, Section 17 of the National School Lunch Act .

[8.2.2.3 NMAC – Rp 8 NMAC 2.2.3, 11-30-01]

8.2.2.4 DURATION: Permanent

[8.2.2.4 NMAC – Rp 8 NMAC 2.2.4, 11-30-01]

8.2.2.5 EFFECTIVE DATE: November 30, 2001

[8.2.2.5 NMAC – Rp 8 NMAC 2.2.5, 11-30-01]

8.2.2.6 OBJECTIVE: To establish regulations for administration of the Child and Adult Care Food Program, including requirements for participating organizations.

[8.2.2.6 NMAC – Rp 8 NMAC 2.2.6, 11-30-01]

8.2.2.7 DEFINITIONS:

- A. “Act” means the National School Lunch Act, as amended.
- B. “Administrative costs” means costs incurred by an institution related to planning, organizing, and managing a food service under the Program and allowed by the state agency financial management instruction.
- C. “Adult” means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.
- D. “Adult day care center” means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined in this section) which (a) is licensed or approved by federal, state or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangement made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.
- E. “Adult day care facility” means a licensed or approved adult day care center under the auspices of a sponsoring organization.
- F. “Adult participant” means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.
- G. “Advanced payment” means financial assistance made available to an institution for its Program cost prior to the month in which such costs will be incurred.
- H. “Child care center” means any public or private nonprofit organization, or any proprietary Title XX center, as defined in this section, required to be licensed and which provides non-residential child care services and supervision for less than 24 hours a day to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for disabled children. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.
- I. “Child care facility” means a licensed or approved child care center, day care home or outside-school-hours care center under the auspices of a sponsoring organization.

- J. "Children" means:
- (1) Persons 12 years of age and under,
 - (2) Children of migrant workers 15 years of age and under, and
 - (3) Mentally or physically handicapped persons, as defined by the state, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.
- K. "Claiming percentage" means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price, or paid) to the total of enrolled participants in the institution.
- L. "Component" means one of four food categories of the USDA Meal Pattern Requirements arranged by age group, including:
- (1) Milk,
 - (2) Meat/Meat Alternates,
 - (3) Bread/Bread Alternates, and
 - (4) Fruits/Vegetables.
- M. "Creditable foods" means foods used to meet the requirements for a reimbursable meal. Foods are creditable based on the following:
- (1) Nutrient content,
 - (2) Customary function in a meal,
 - (3) USDA regulations,
 - (4) The Food and Drug Administration's (FDA) Standards of Identity,
 - (5) State Agency policies, which includes the non creditable foods list as defined in .
- N. "Current income" means income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.
- O. "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.
- P. "Department" means the New Mexico Children, Youth and Families Department.
- Q. "Disallowance" means the monetary repayment to the state agency resulting from a meal or meals that have been determined ineligible for reimbursement due to:
- (1) Failure to record meals, types of food and amounts prepared, in the Menu Record Book;
 - (2) Meals which lack one or more required components;
 - (3) Meals which contain a non creditable food as a required component; or
 - (4) The menu records and/or food receipts indicate that not enough food was served, or recorded as served, to have given each participant the required minimum portion size of each component. The state agency uses the USDA Food Buying Guide to determine how many servings of each component were available.
- R. "Documentation" means the completion of information to determine the eligibility for free and reduced price meals.
- S. "Enrolled child" means a child whose parent or guardian has submitted annually to an institution a signed document which indicates that the child is enrolled for child care. In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with Code of Federal Regulations 7 CFR 226.13(d)(3)(ii) and 226.13(d)(3)(iii), "enrolled child" (or "child in attendance") means a child whose parent or guardian has submitted a signed document which indicates the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period.
- T. "Enrolled participant" means an "Enrolled child" (as defined in this section) or "Adult participants" (as defined in this section).
- U. "Family" means, in the case of children, a group of related or non related individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.
- V. "Family Style Meals Service" means a style of meal service in which both adults and children participate in setting the table, serving the food, eating together and cleaning up after the meal.
- W. "FDPIR" means Food Distribution Programs on Indian Reservations.
- X. "Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending

with September 30 of the following year.

Y. "FNS" means the Food and Nutrition Service of USDA.

Z. "FNSRO" means the appropriate Regional Office of the Food and Nutrition Service.

AA. "Food service equipment assistance" means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

AB. "Food service management company" means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals with or without milk for use in the Program.

AC. "Food Stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

AD. "Free meal" means a meal served under the Program to (a) a participant from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or qualified TANF reciprocity, is a Head Start participant, belongs to a FDPIR household, or to (c) an adult participant who is automatically eligible for free meals by virtue of food stamp reciprocity or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of (a), (b) or (c), neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

AE. "Functionally impaired adult" means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

AF. "Household" means "family" as defined in U of this section.

AG. "Income standards" means the family size and income standards prescribed annually by USDA for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

AH. "Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

AI. "Independent center" means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

AJ. "Infant cereal" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

AK. "Infant formula" means any iron-fortified infant formula intended for dietary use as sole source of food for normal healthy infants served in liquid state at manufacturer's recommended dilution.

AL. "Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the state agency to assume final administrative and financial responsibility for Program operations.

AM. "Meals" means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

AN. "Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs -Medicaid.

AO. "Menu Record Book" means the official record which is used to document the types of food served and the quantities used to meet USDA Meal Pattern requirements by sponsoring organizations of Child Care Centers, Adult Day Care Centers, After school hours programs and Head Starts, as well as by sponsors participating in the Summer Food Service Program.

AP. "Milk" means pasteurized fluid types of unflavored or whole flavored milk, low-fat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8

months up to 1 year of age), “milk” means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

AQ. “Non creditable foods” (also called “Other Foods” or “Extras”) means foods that do not meet the criteria for a creditable food, as determined by the state agency, and appear on the CYFD/FNB non creditable foods list. A meal may contain both creditable and non creditable foods. Non creditable foods are allowed to supply calories to meet the energy needs of growing children or to improve acceptability of the rest of the meal. However, non creditable foods may not be used to meet the meal pattern requirements.

AR. “Non pricing program” means an institution in which there is no separate identifiable charge made for meals served to participants.

AS. “Non profit food service” means all food service operations conducted by the institution principally for the benefit of enrolled participants for which all of the Program reimbursement funds are used solely for the operations or improvements of such food service.

AT. “Non reimbursable” means those meals for which a sponsor cannot receive the established reimbursement rate.

AU. “Non residential” means that the same participants are not maintained in care for more than 24 hours on a regular basis.

AV. “Not recommended foods” means creditable foods which are generally higher in fat, sugar and salt than recommended foods of the same food group.

AW. “OIG” means the Office of the Inspector General, which is the federal enforcement agency of the Department of Justice.

AX. “Operating costs” means expenses incurred by an institution in serving meals to participants under the program, and allowed by the State agency financial management institution.

AY. “Outside-school-hours care center” means a public or private nonprofit organization, or a proprietary Title XX center, as defined in this section (“Proprietary Title XX center”), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

AZ. “Participants” means “Children” or “Adult participants” as defined in this section.

BA. “Pricing program” means an institution in which a separate identifiable charge is made for meals served to participants.

BB. “Program” means the Child and Adult Care Food Program authorized by section 17 of the National School Lunch Act, as amended.

BC. “Program payments” means financial assistance in the form of start-up payments, advance payments, expansions funds or reimbursement paid or payable to institutions for operating costs and administrative costs.

BD. “Proprietary Title XIX center” means any private, for profit center (a) providing non-residential adult day care services for which it receives compensation from amounts granted to the States under title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual re-application for Program participation.

BE. “Proprietary Title XX center” means any private, for-profit center (a) providing non residential child or adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, in the calendar month preceding initial application or annual re-application for Program participation.

BF. “Recommended foods” means creditable foods, as determined by the state agency, which are naturally low in fat, sugar and salt. They are generally less processed than other foods of the same component.

BG. “Reduced-price meal” means a meal served, and reimbursed, under the Program to a participant from a family which meets the income standards for reduced-price school meals.

BH. “Reimbursement” means federal financial assistance paid or payable to institutions for Program costs within the rates assigned by USDA.

BI. “Reimbursable meals” means those meals that are served as a unit and meet the following requirements: a) the USDA Meal Pattern Requirements; b) Federal regulations; and c) State Agency policies relating to creditable and reimbursable meals.

BJ. “SSI participant” means an adult participant who receives assistance under Title XVI of the Social

Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

BK. "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in; (a) one or more day care homes; (b) a child care center, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any child care center, adult day care center and outside-school-hours care center which is part of the same legal entity as the sponsoring organization, and which are proprietary Title XX centers, as defined in this section.

BL. "Start-up payments" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations.

BM. "State" means the State of New Mexico.

BN. "State agency" means the Children, Youth and Families Department

BO. "Suspension" means the discontinuance of Program benefits, including claim reimbursement, for a specific time period up to 12 months due to non compliance with significant program or Self Certification Registration Requirements. Once the non compliance is corrected the suspension is lifted and program participation can begin again. Appeal rights are given at time of suspension.

BP. "TANF assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Temporary Assistance to Needy Families Program in a state where the standard of eligibility for TANF benefits does not exceed the income eligibility guidelines for free meals under this part.

BQ. "Termination" means the cancellation of the Child and Adult Care Food Program agreement between a participating sponsor and the State agency or between a sponsoring organization of day care homes and a participating day care home provider. Terminations of day care home providers by a sponsor may be "for cause" or "for convenience," and appeal rights are given.

(1) Terminations for cause result from serious non compliance(s) with Program regulations or Self Certification Registration Requirements or for fraudulent activity committed by the provider.

(2) Terminations for convenience result from a mutual agreement between the provider and the sponsor to transfer the provider to another sponsor, or because of a request from a provider to voluntarily terminate their agreement. If the provider chooses to terminate their agreement, they must wait thirty days before signing an agreement with another sponsor. If a provider is transferred to another sponsor under mutual consent, the thirty day waiting period is waived, but the provider cannot claim with the new sponsor until the following month, and may only request a transfer once a year.

BR. "Title XVI" means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program-SSI.

BS. "Title XIX" means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance program-Medicaid.

BT. "Title XX" means Title XX of the Social Security Act.

BU. "Uniform Federal assistance regulations" means the U.S. Department of Agriculture's regulations, 7 CFR part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

BV. "Verification" means a review of the information reported by institutions to the state agency regarding the eligibility of participants for free or reduced-price meals, and at State discretion, any other information required on the application which is defined as "Documentation" in subsection R of 8.2.2.7 NMAC. However, if a food stamp case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household; or, for an adult participant, if a food stamp case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp household or is a current SSI or Medicaid participant.

[8.2.2.7 NMAC – Rp 8 NMAC 2.2.7, 11-30-01]

8.2.2.8 APPLICATION APPROVAL, RENEWAL AND DENIAL:

A. The Children, Youth and Families Department (CYFD)/ Family Nutrition Bureau (FNB) may enter

into an agreement with any non-profit (501- (c) (3) organization or proprietary Title XX organization which meets the established criteria.

B. CYFD does not enter into an agreement with any new applicant sponsoring organization of family day care homes which does not meet the new sponsor criteria established by the Family Nutrition Bureau. The criteria for candidates of sponsorship of family day care homes are as follows: The new applicant must:

- (1) Demonstrate the need for a new sponsorship by supplying a list of fifty eligible family child care homes which have expressed an interest in participating in the CACFP;
- (2) Submit documents to establish financial stability and accountability;
- (3) Demonstrate their method for covering non-program related costs;
- (4) Document an adequate level of staffing to administer the CACFP and to provide a responsible sponsor representative, and a sub-office in the service area within the state of New Mexico, for program clients and state agency staff during normal working hours;
- (5) Submit a training plan, describing how the sponsor ensures administrative staff are trained in program requirements;
- (6) Provide assurance that they will not employ an individual in a responsible administrative capacity who has been convicted of embezzlement or any similar crimes that would have a harmful effect on the administration of the program;
- (7) Submit a copy of the organization's by-laws, detail of the organization's structure, officers of the organization and a list of their responsibilities;
- (8) Submit information about the organization's board of directors, including their responsibility in program management, their role in approving or determining fiscal actions and the relationship of board members to others in the organization;
- (9) Provide assurance that they will not recruit or allow participation of any child care provider who is terminated from participation in CACFP for cause by another sponsoring agency, unless CYFD has granted prior approval under 8.17.2.13 NMAC for that child care provider to participate; and
- (10) Submit a complete and accurate application for sponsorship.

C. Any non-profit organization, or proprietary Title XX center, wishing to participate as a sponsoring organization in the Child and Adult Care Food Program completes and submits an application packet that includes at a minimum: a management plan, an administrative budget, non-discrimination and non-pricing policy statement, signed agreement, certificate of authority, copy of current letter to households, civil rights questionnaire, certification regarding lobbying, copy of family day care home sponsor's appeal procedures and internal policies and procedures, public release statement, an affidavit or certification statement that the organization has not been terminated from any publicly funded program for failure to comply with that program's requirements and documentation that all institutions under the sponsor are in compliance with licensing, registration and other approval provisions. In addition, all current and prospective sponsoring organizations must be able to demonstrate that they are; Financially viable, Administratively capable, and Have internal controls in place to ensure accountability.

(1) For proprietary Title XX centers, documentation is submitted that they are currently providing non residential day care services for which they receive compensation under Title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled participants in each such center during the most recent calendar month were Title XX beneficiaries.

(2) Institutions are notified by the state agency of approval or denial of their application for sponsorship in writing within 30 days of filing a complete and correct application. If an institution submits an incomplete application, the state agency will notify the institution-of the incomplete application and provide technical assistance. CYFD will renew the agreement with a sponsoring organization upon approval of the institution's renewal application.

(3) Applications for participation by all interested or current sponsors of child care centers, adult day care centers, after-school-hours-programs, Head Starts and sponsoring organizations of day care homes are required to be submitted annually, unless program approval has been granted for two or three year terms, in which case only appropriate renewal forms need to be submitted. All information required for approval is submitted with the application or renewal forms.

(4) Initial and renewal applications for the fiscal year beginning October 1 are submitted to CYFD by August 15, and no later than September 30 of that year.

(5) Renewal applications submitted after September 30 will be approved effective the date all required documents are submitted and may result in loss of reimbursement.

D. CYFD does not enter into an agreement with any applicant institution which CYFD determines to have been seriously deficient at any time in its operation of any federal child nutrition program, except that CYFD may enter into an agreement with such an institution when, with FNS concurrence, it is determined that all deficiencies have been corrected.

E. CYFD terminates the program agreement with any institution which it determines to be seriously deficient in the operation of the Program, and which fails to satisfactorily and permanently correct the seriously deficient status by the date prescribed by CYFD.

(1) CYFD provides an institution at least 60 days to correct problems before terminating the institution for being seriously deficient.

(2) FNB notifies FNS within 15 days of the termination of an institution for failure to correct a serious deficiency. The organization is placed on a national list of seriously deficient institutions.

(3) Serious deficiencies which are grounds for denial of applications and for termination of program participation include, but are not limited to, any of the following:

(a) Non-compliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(b) Submission of false information to CYFD;

(c) Failure to return to CYFD any advance payments which exceeded the amount earned for serving eligible meals;

(d) Failure to maintain adequate records;

(e) Failure to adjust meal orders to conform to variations in the number of participants;

(f) Claiming of Program payments for meals not served to participants;

(g) Service of a significant number of meals which did not include required quantities of all meal components;

(h) Continued use of food service management companies that are in violation of health codes;

(i) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

(j) History of administrative or financial mismanagement in any federal child nutrition program;

(k) Claiming of Program payments for meals served by a proprietary Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XX beneficiaries;

(l) Failure of sponsoring organizations of day care homes to implement appropriate procedures, as defined by federal regulation, for determining tier classifications of family day care homes; or.

(m) Failure to respond to state agency requests for investigations of integrity report findings.

[8.2.2.8 NMAC – Rp 8 NMAC 2.2.8, 11-30-01]

8.2.2.9 INSTITUTIONAL APPEAL:

A. The Children, Youth and Families Department Hearing process and the Family Nutrition Bureau Appeal Policy will be followed by institutions for the following state actions:

(1) A denial of an institution's application for participation;

(2) A denial of an application submitted by a sponsoring organization on behalf of a facility;

(3) A termination of the participation of an institution or facility;

(4) A suspension of an institution's agreement;

(5) A denial of an institution's application for start up funds;

(6) A denial of advance payment;

(7) A denial of all or part of a claim for reimbursement, except for late submission as stated in 7 CFR 226.10(e);

(8) A denial of forwarding an exception request by an institution or sponsoring organization for payment of a late claim or a request for upward adjustment to a claim to FNS; or

(9) A demand for the remittance of an overpayment, or any other action affecting the participation of an institution in the Program or the institution's claim for reimbursement.

B. The appeal procedures are made available in writing each year to all institutions at the time of application for participation in the program and at any time after that upon request.

C. Appellants receive notice of decisions rendered in a timely manner and of a fair and impartial hearing before an independent official at which the institution may be represented by legal counsel.

D. The determination by the state review official is the final administrative determination afforded to

the appellant.

E. Appeals are not allowed on decisions made by FNS on requests for exceptions to the claims submission deadlines as stated in 7 CFR 226 10 (e), or on requests for upwards adjustments to claims. [8.2.2.9 NMAC – Rp 8 NMAC 2.2.9, 11-30-01]

8.2.2.10 PROGRAM ASSISTANCE AND REVIEW:

A. The Children, Youth and Families Department, Family Nutrition Bureau provides at least annual training and technical assistance, as needed, to sponsoring organizations.

(1) CYFD/FNB conducts ongoing program reviews of sponsoring organizations to assess compliance with state and federal guidelines for operating the Child and Adult Care Food Program. The state agency may conduct a review of any institution, at any time, without prior notification in order to ascertain program compliance.

(2) CYFD/FNB annually reviews at least one-third of all sponsoring organizations.

(3) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 providers will be reviewed at least once every three years. Reviews of sponsoring organizations will include reviews of at least 15 percent of their child care, adult day care and outside-school-hours care centers and 10 percent of their day care homes. More than 10 percent of day care home providers may be reviewed if necessary.

(4) Sponsoring organizations with more than 200 homes will be reviewed at least once every two years. Reviews of such sponsoring organizations will include reviews of at least 10 percent of the first 200 homes, 5 percent of the next 800 homes, and 2.5 percent of all homes in excess of 1,000 homes.

B. Reviews are conducted for newly participating sponsoring organizations with five or more child care or adult day care facilities, and all home sponsoring organizations, within the first 90 days of program operations.

(1) CYFD conducts pre-approval visits to all new private institutions prior to approval of their applications

(2) CYFD conducts additional visits to any institution participating in the Program which the state agency has determined to have a history of significant deficiencies.

(3) CYFD conducts initial reviews of all newly participating center sponsors within six months of program approval.

(4) CYFD conducts reviews of for-profit centers at least every other year.

(5) CYFD reviews all center sponsors at least once every three years.

(6) CYFD reconciles at least one full month of a center's claim as a sample during administrative reviews.

(7) CYFD provides technical assistance to center staff at least yearly and upon request.

C. CYFD conducts follow up visits of sponsors found to be seriously deficient within 60 days of the notification to the sponsor of a seriously deficient status.

[8.2.2.10 NMAC – Rp 8 NMAC 2.2.10, 11-30-01]

8.2.2.11 COMPLAINT AND REFERRAL PROVISIONS: CYFD promptly investigates complaints received by the public or other state offices as well as irregularities noted in connection with the operation of the Program, and takes appropriate action to correct any irregularity or deficiency.

A. CYFD maintains a file of all such investigations and related actions taken.

B. CYFD, while conducting complaint or referral investigations of approved sponsors or facilities, determines compliance with the child care licensing regulations (8.16.2 NMAC) and registration Standards (8.17.2 NMAC) used to establish eligibility.

C. Institutions found to be in non compliance receive written notice and are required to correct all violations. CYFD makes the determination that the institution has corrected all violations.

D. CYFD terminates Program participation of institutions if serious violations are not corrected within 60 calendar days of written notification to the institution. The offending institution is provided with notice of fair hearing right

E. CYFD immediately terminates participation of providers when the health and safety of the children is imminently threatened.

F. When CYFD observes, during investigations, violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed or other approved capacity, CYFD promptly refers such violations to the approved authority.

G. CYFD denies reimbursement to providers for program meals served to attending children in excess

of the licensed or other approved capacity.
[8.2.2.11 NMAC – Rp 8 NMAC 2.2.11, 11-30-01]

8.2.2.12 FINANCIAL MANAGEMENT:

- A. CYFD approves all institution administrative budgets submitted with the application.
- (1) CYFD approves all budget adjustment requests with adequate justification.
 - (2) CYFD approves all changes made to the Management Plan.
 - (3) Institutions are responsible for accounting for costs correctly and for maintaining sufficient supporting documentation to demonstrate that costs claimed have been incurred, are allowable to the program and comply with State policies, financial management requirements and with FNS Instruction 796-2, Revision 3.
 - (4) Program costs which are not properly documented and recorded pursuant to generally accepted accounting principles, State agency financial management requirements, the Federal Acquisition Regulations, Part 31 (for profit centers) the applicable OMB Circulars and FNS Instruction 796-2, Revision 3, are unallowable.
- B. CYFD approves applications and issues start-up payments to eligible sponsoring organizations, and monitors the use of these payments.
- C. CYFD approves applications and issues advance payments to eligible sponsoring organizations, and monitors the use of these payments.
- (1) CYFD recovers outstanding start-up and advance payments from institutions which, in the opinion of the State agency, are not able to earn these payments.
 - (2) CYFD issues Termination Payments when an institution voluntarily (termination for convenience) or involuntarily (termination for cause) ceases program operation, per FNS Instruction 796-2, Revision 3.
- D. Claims for reimbursement are submitted by institutions by the tenth of the month following the month being claimed and report information in accordance with the financial management system established by CYFD.
- (1) Each institution certifies that the claim is correct and that records are available to support the claim.
 - (2) Independent proprietary Title XX centers submit a list of the eligible children with beginning and ending contract dates to validate that not less than 25 percent of enrolled participants were Title XX beneficiaries in the month claimed. CYFD will randomly require proprietary Title XX centers to submit copies of contracts of eligible children claimed to validate the 25 percent requirement.
 - (3) All valid claims are paid within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, the state agency notifies the institution as to why and how such claim must be revised.
 - (4) All records to support the claim are retained for a period of three years after the submission of the final claim for the fiscal year to which they pertain.
 - (5) All accounts and records pertaining to the Program are made available, upon request, to representatives of CYFD, USDA and of the US General Accounting Office for audit or review.
- E. CYFD ensures that payment is not made for meals served to participants attending in excess of the authorized capacity of the institution.
- F. CYFD maintains a financial management system in accordance with the Uniform Federal Assistance Regulations, 7 CFR part 3015, and FNS Instruction 796-2, Revision 3 to identify allowable program costs and establish standards for institutional record keeping and reporting.
[8.2.2.12 NMAC – Rp 8 NMAC 2.2.12, 11-30-01]

8.2.2.13 AUDIT REQUIREMENTS:

- A. Audits of sponsoring organizations are conducted in accordance with the Office of Management and Budget Circulars A-133 and A-110 and the U.S. Department of Agriculture's Uniform Federal Assistance Regulations (7 CFR Part 3015). Title XIX and Title XX proprietary institutions not subject to organization-wide audits are audited by the state agency at least once every two years.
- B. In accordance with CYFD policies, audits are due to CYFD no later than nine months after the close of the sponsoring organization's fiscal year.
[8.2.2.13 NMAC – Rp 8 NMAC 2.2.13, 11-30-01]

8.2.2.14 PAYMENT PROVISION:

- A. Congress assigns rates of reimbursement for centers, annually, on the basis of family-size and

income information reported by each institution.

B. Institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, participants from families meeting the eligibility standards for reduced-price meals, and participants from families not meeting such guidelines.

C. The method used by the state agency to reimburse providers participating in the Program is meals times rates payment.

[8.2.2.14 NMAC – Rp 8 NMAC 2.2.14, 11-30-01]

8.2.2.15 CLAIMS AGAINST INSTITUTIONS: CYFD disallows any portion of a claim for reimbursement and recovers any payment to an institution not properly payable. CYFD notifies all institutions of the reasons for any over claim or demand for repayment, and allows the institution full opportunity to submit evidence on appeal as provided in section 9 of this policy.

[8.2.2.15 NMAC – Rp 8 NMAC 2.2.15, 11-30-01]

8.2.2.16 INSTITUTION OPERATIONAL PROVISIONS:

A. Each sponsoring organization is solely responsible for the administrative and financial management of the program, including the actions of their employees. Sponsoring organizations may not use independent contractors to manage the program.

B. Each sponsoring organization provides adequate supervisory and operational personnel for monitoring and management of the program.

C. Each sponsoring organization establishes procedures to collect and maintain all necessary program records as described in the Code of Federal Regulations, 7 CFR 226.15 e(1), (3), (4), (7), (8), (9), (10), (11), and (12).

D. Sponsoring organizations of day care homes maintain their provider, participant, meal attendance, monitoring visits and claim payment records in an electronic format using a state agency approved computer data base program. Sponsors submit their data electronically on a regular basis and as requested by CYFD in a format compatible with CYFD's data base program.

E. Each sponsoring organization is required to maintain appropriately staffed offices and phone lines for access by program clients and CYFD staff.

[8.2.2.16 NMAC – Rp 8 NMAC 2.2.16, 11-30-01]

8.2.2.17 SPONSORING ORGANIZATION PROVISIONS:

A. Sponsoring organizations of day care homes monitor the Program at all day care homes under their respective jurisdiction according to the schedule outlined in 7 CFR 226.16 d (1), (2), (3), and (4). Additionally, sponsors are required to review each day care home participating with the organization at least four times during the provider's application year and follow the prescribed procedures for various types of home visits to be completed, in addition to the requirements listed in 7 CFR 226.16(d).

B. Sponsoring organizations of day care homes maintain information concerning dates and amount of disbursement to each day care home and information concerning the dates and location of each day care home review.

C. Sponsoring organizations of day care homes provide payments of claim reimbursement funds to their day care home providers within five working days of receipt of funds from CYFD.

D. Sponsoring organizations of day care homes maintain their data on providers, program participants, monitoring visits, meal attendance and claim payments made to providers, in a CACFP software system approved by the state agency in order to provide consistent data reporting. Sponsoring organizations of day care homes respond to CYFD inquiries regarding possible duplicate participants and/or providers, monitoring visits that appear to be out of compliance and any other program integrity questions in a timely manner.

E. Sponsoring organizations of child care and adult day care facilities provide adequate supervision and monitoring of the program at all child care and adult day care facilities under their jurisdiction and according to federal regulations 7 CFR 226.16(d) and (e).

(1) Child care centers are state licensed, have tribal or military approval and comply with federal regulations 7 CFR 226.17.

(2) Adult day care centers are state licensed, have tribal or military approval and comply with federal regulations 7 CFR 226.19a.

(3) Outside-school-hours care centers are state licensed, have tribal or military approval and comply

with federal regulations 7 CFR 226.19.

(4) Family day care homes are state licensed or registered, have tribal or military approval, and comply with federal regulations 7 CFR 226.18.

[8.2.2.17 NMAC – Rp 8 NMAC 2.2.17, 11-30-01]

8.2.2.18 REQUIREMENTS FOR MEALS:

A. Each meal served in the Program complies with USDA meal patterns as outlined in federal regulations 7 CFR 226.20 and with the Family Nutrition Bureau creditable foods list.

(1) Non-creditable foods are not used to meet the meal pattern component requirement. Some foods which are non-creditable are: hot dogs, sausage, bologna, salami, and other sausage type lunch meats and doughnuts. All items which are asterisked (*) on the non creditable list supplied by CYFD are also not reimbursable, and their purchase price is subtracted from total food costs by CYFD review staff during administrative and other on site reviews.

(2) Infants are provided with meals which follow USDA meal pattern for infants. Meals are not reimbursed if parents provide any components of an infant meal, with the exception of milk/formula as follows: The provider/center is responsible for providing one milk-based formula only. The parent is notified in writing of the availability of this formula. If the parent elects to use a different formula which the parent provides, the infant may still be claimed for reimbursement if the infant is at least four months old and is receiving other components at the same meal. Care givers can not deviate from the infant meal pattern without a doctor's written statement which specifies what foods to allow or not allow for the individual infant.

B. Special dietary needs and requirements of children are met, with the approval of a medical authority. This includes, but is not limited to, diabetic diets, high calorie, lower calorie, mechanically altered, and substitutions for food allergies and/or intolerance. This does not include enteral/parenteral formulas which may be covered by medical insurance or Medicare/Medicaid. Providers are not permitted to interpret diet orders, rather the order must specify any texture modifications, foods to be eliminated and which foods to substitute for the eliminated foods, and other diet modifications.

C. Child Nutrition (CN) Labeled products are not required for CACFP programs, and do not necessarily meet the meal requirements for the state agency creditable foods list. For combination food items purchased which do not have a CN label, the sponsor must provide a product analysis sheet from the manufacturer.

D. Breading on creditable meat items, such as chicken nuggets, is not counted as a bread alternate unless a CN label identifies that the breading meets the required bread alternate amount.

E. Family Style Meal Service (FSMS) or a modified version thereof, where all required components of the meal are placed on the table at the start of the meal and children are encouraged to take a portion from each meal component, is required at all CACFP centers and homes, unless there is a documented reason why FSMS cannot be implemented.

F. Institutions, with the exception of family day care homes, document on a daily basis the type and number of meals served in the Menu Record Book provided by CYFD.

(1) Family day care home providers document on a daily basis the types and number of meals served to enrolled children on an approved attendance sheet.

(2) Meals served by family day care home providers, including components, are recorded on the menu records which are approved by CYFD.

(3) Family day care home providers are not required to document quantities served, but are required to offer at least the minimum required portion size of each component for each meal.

(4) Family day care home providers are required to specify the times when approved meals are regularly served. Meal service is required to begin within fifteen minutes before or after of the documented meal times as documented on the provider-sponsor agreement.

[8.2.2.18 NMAC – Rp 8 NMAC 2.2.18, 11-30-01]

8.2.2.19 FOOD SERVICE MANAGEMENT COMPANIES:

A. Institutions which contract with a food service management company remain responsible for ensuring that the food service operation conforms to its agreement with CYFD.

B. All procurement of meals from food service management companies adhere to the procurement standards set forth in 7 CFR 226.22, Procurement Standards.

C. Institutions with Program meal contracts of an aggregate value in excess of \$10,000 formally

advertise such contracts and comply with the federal procedures in 7 CFR 226.21, which are intended to prevent fraud, waste and program abuse.

D. The institution and the food service management company enter into a standard contract as required in 7 CFR 226.6(I).

E. A copy of the contract between each institution and the food service management company is submitted to CYFD prior to the beginning of Program operations under the subject contract.

F. Proposed additional provisions to the standard contract are submitted to CYFD for approval.
[8.2.2.19 NMAC – Rp 8 NMAC 2.2.19, 11-30-01]

8.2.2.20 FREE AND REDUCED-PRICE MEALS:

A. Each institution submits, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-price meals to be uniformly used in all child care and adult day care facilities under its jurisdiction.

B. Institutions are not approved for participation unless the free and reduced price policy statement, in New Mexico called the Non-Pricing Policy Statement, has been approved. The policy statement is provided by CYFD and included with each initial application.

C. Each institution annually provides the information media serving the area from which the institution draws its attendance with a public release.

(1) The public release issued by all institutions, other than sponsoring organizations of day care homes, includes the USDA Income Eligibility Guidelines for Free and Reduced-Price Meals.

(2) The public release issued by sponsoring organizations of day care homes includes the Income Eligibility Guidelines for Reduced-Price Meals.

(3) The public release issued by all institutions announce the availability of meals at no separate charge and state that meals are available to all participants without regard to race, color, national origin, sex, age or disability.

D. All institutions, other than sponsoring organizations of day care homes, distribute applications for free and reduced-price meals to the families of participants enrolled in the institution.

(1) Sponsoring organizations of day care homes distribute free and reduced-price applications to day care home providers who wish to enroll their own children in the Program and, upon request, to parents of children in Tier 2 providers' homes wishing to receive Tier 1 rates.

(2) Applications for free and reduced price meals are made available by CYFD and are completed according to 7 CFR 226.23(e)(1).

(3) Completed applications for free and reduced-price meals are valid for 12 months and are completed annually.

(4) Free and reduced price applications will include:

(a) Names of all household members;

(b) The signature of an adult member of the household

(c) Social security number of the adult household member signing the application or an indication that the adult household member does not possess one;

(d) Household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income.

(5) For a child who is a member of a food stamp or FDPIR household only the following is required:

(a) The name(s) and appropriate food stamp or FDPIR case number(s); and

(b) The signature of an adult member of the household.

(6) For a child in a Tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals, the following is required:

(a) The name(s), appropriate case number(s) (if the program utilizes case numbers), and the name(s) of the qualifying program(s) for the child(ren), and the signature of an adult member of the household; or

(b) If the sponsoring organization or day care home possesses it, official evidence of the household's participation in a qualifying program (submission of a free and reduced price application by the household is not required in this case).

(7) For a child who participates in Head Start, only the official Head Start enrollment document which

certifies that the child is eligible based on income guidelines, is required.

(8) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, only the following is required:

(a) The name(s) and appropriate food stamp or FDPIR case number(s) for the participants or the adult participant's SSI or Medicaid identification number, as defined in this section, and

(b) The signature of an adult member of the household.

(9) Additional documentation requirements for Tier 1 classifications is required as outlined in the Final Rule of the Improved Targeting of Day Care Home Reimbursement regulations.

E. Institutions distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. Letters to households are provided by CYFD and are completed according to 7 CFR 226.23(e)(2).

[8.2.2.20 NMAC – Rp 8 NMAC 2.2.20, 11-30-01]

8.2.2.21 VERIFICATION OF PROVIDER ELIGIBILITY:

A. CYFD conducts verification of eligibility for free and reduced-price meals on an annual basis, in accordance with federal regulations 7 CFR 226.23(h).

B. Sponsoring organizations of Family day care homes are responsible for verifying the income eligibility for providers who are classified as Tier 1 based on household income.

[8.2.2.21 NMAC – Rp 8 NMAC 2.2.21, 11-30-01]

8.2.2.22 MONETARY SANCTIONS AND PENALTIES:

A. CYFD imposes monetary sanctions in the form of an over claim for deficiencies cited at child care centers which involve ineligible meals, lack of adequate milk purchases, and for failure to record appropriate food production amounts in the Menu Record Book. In addition, center sponsors are required to spend at least 70% of the monthly reimbursement on direct food costs and 30% on non food costs. Lower food cost percentages are approved on an individual basis.

(1) Lack of documentation to verify sufficient milk purchases to meet the required portion size for each age group, as documented in the menu record book and claimed for any month reviewed, results in a disallowance. In the case of centers using family style dining, documentation is only required to show purchases of milk were sufficient to meet 85 percent of the total required portion size at each main meal claimed for the month. The difference between the required amount of milk, based on portion size requirements, and the total verified purchases, is disallowed at the price per unit purchased.

(2) Lack of documentation in the form of receipts, invoices or other documents to show that all reimbursements received in a current fiscal year are spent on the meal service and for the benefit of the participants will result in any unspent monies being rolled over into a food service account for use in the next fiscal year.

(3) Reimbursement for meals, or snacks, claimed which lacked components is disallowed.

(4) Reimbursement for meals or snacks claimed which include non creditable foods as one of the required meal components, is disallowed.

(5) Reimbursement for meals claimed when food production and recorded amounts prepared indicate there was not enough food prepared to provide the minimum serving size for all meals claimed for eligible children at that meal service, is disallowed. Reimbursement for those meals in excess of what the food production amounts would satisfy, based on food production calculations using the Food Buying Guide, is disallowed.

(6) Reimbursement for meals claimed when there is insufficient, or lack of, documentation of the quantity and types of foods served, is disallowed.

(7) Reimbursement for meals claimed in excess of two main meals and one supplement, or two supplements and one main meal per child, per day, is disallowed.

(8) Reimbursement for meals claimed when meal count reports are not properly completed, or when any other required documentation to support the meals claimed, is not available, is disallowed. Reimbursement for meals claimed in excess of verified meal counts is disallowed.

(9) Reimbursement for meals served during unapproved meal time periods is disallowed.

(10) Reimbursement for individual meals claimed in excess of recorded attendance or authorized capacity is disallowed.

(11) Reimbursement for all meals claimed for any month by for-profit Title XX centers when less than 25 percent of enrolled participants are Title XX beneficiaries, is disallowed.

B. CYFD imposes over claims, in the form of repayment of one month's administrative monies, on sponsoring organizations of family day care homes for each of the following deficiencies:

- (1) Failure to complete four monitoring visits per provider per program year,
- (2) Failure to conduct required types of visits during the program year, including,
 - (a) Two of the four visits are conducted during a meal service, including snacks.
 - (b) One supper visit is conducted if the provider is approved for suppers.
 - (c) One weekend visit is conducted if the provider is approved for weekend meals.
 - (d) Two of the four visits are unannounced, except in remote rural areas where only one of the four visits is to be unannounced. At least one of the unannounced visits is conducted during a meal service. Different types of visits may be combined, i.e., weekend and meal.
 - (e) A 28 day follow up visit is conducted for all new program participants.
- (3) Failure to ensure that no more than six months elapse between monitoring visits.
- (4) Continued reimbursement of providers who fail to attend the required annual training hours, including two hours of specific CACFP related training, during their twelve month program year.
- (5) Failure to ensure that no more than 20 percent of sampled providers during an administrative review are out of compliance and reimbursed for ineligible children or ineligible meals.
- (6) Failure to ensure that no more than 20 percent of providers visited during an administrative review are out of compliance with daily menu and attendance record keeping requirements.
- (7) Failure to complete and document 3% (or a minimum of 3) parent audits of total providers on a monthly basis as part of the organization's quality assurance and integrity efforts.

C. CYFD imposes monetary sanctions in the form of over claims to sponsoring organizations of family day care homes for the following deficiencies:

- (1) Reimbursement paid for meals served to ineligible children;
- (2) Reimbursement paid for ineligible meals or meals served during unapproved time periods;
- (3) Reimbursement paid for meals served that do not follow the USDA meal pattern as described in 7 CFR 226.20, and the state agency non creditable foods list;
- (4) Reimbursement for meals served to children not properly enrolled;
- (5) Reimbursement paid for meals served to providers' own children without current and complete Income Eligibility Applications on file;
- (6) Reimbursement paid for meals at Tier 1 rates to providers who are incorrectly classified as Tier 1. The difference between Tier 1 and Tier 2 reimbursement paid to providers, is disallowed; and
- (7) Reimbursement paid for meals at Tier I rates served by Tier II providers who do not have adequate Tier I eligibility documentation for non resident children.

D. Over claims are imposed on Family day care home providers for not maintaining daily menu and attendance records, for claiming meals when eligible enrolled children are not present, for claiming meals which do not meet meal pattern requirements, or when non resident children are not present at the meal service for which providers' own children are claimed. Any provider found to have committed fraud is terminated from program participation and may be subject to criminal prosecution.

E. Family day care home providers are considered seriously deficient by the sponsoring organization for the following non compliances discovered during monitoring visits:

- (1) The provider is found not at home, during stated hours of child care, on three consecutive unannounced visits and the absences are not excused;
- (2) Chronic non compliance with Program regulations, including menu and record keeping requirements, on three consecutive visits during the Self Certification registration period;
- (3) Chronic non compliance with significant health and safety Requirements for Registration of Non Licensed Family Child Care Homes, 8.17.2 NMAC, during the Self Certification period;
- (4) Failure to comply with the annual training requirements, as stated in the Requirements Governing Registration of Non-Licensed Family Child Care Homes, by the time of the annual renewal of the provider's Self Certification Registration. Non resident child(ren) found not at home, during stated hours of care, on three consecutive visits are disenrolled from the Program by the sponsor and the provider is not allowed to claim the child(ren) until verification of attendance by sponsor.

F. Family Day Care Home providers are terminated from program participation only after being notified of their seriously deficient status, given the opportunity to appeal, and if corrective action measures are not implemented to permanently correct the serious deficiency after a reasonable period of time. Terminated providers are

placed on a National Seriously Deficient list and may only participate again with approval from the Regional Office of FNS.

[8.2.2.22 NMAC – Rp 8 NMAC 2.2.22, 11-30-01]

8.2.2.23 OTHER NUTRITION PROVISIONS:

A. Sponsor and participant Nutrition Education and Training is provided by CYFD as an integral part of the Child and Adult Care Food Program administration in New Mexico.

(1) Nutrition education activities are conducted in child care centers on a monthly basis and these activities are documented and submitted by the center staff to the Family Nutrition Bureau on forms provided by CYFD.

(2) Nutrition education activities are included as part of the developmentally appropriate program provided by Family Day Care Home providers.

B. Center sponsors and family day care home providers are discouraged from utilizing reusable dishes and silverware at meal services unless a written plan is submitted which warrants the use of disposable food service items.

C. A sample of center menus are reviewed annually by CYFD staff to ensure nutritional quality and variety of meals served.

(1) Menu reviews which identify repetitive meals and/or lack of variety may require the center to contract for services with a licensed or registered dietician/nutritionist to correct the deficient menus.

(2) CYFD provides sample menus to assist the center in providing varied and nutritious meals.

[8.2.2.23 NMAC – Rp 8 NMAC 2.2.23, 11-30-01]

HISTORY OF 8.2.2 NMAC:

HISTORY OF REPEALED MATERIAL:

8 NMAC 2.2, Requirements for Participation in the Child and Adult Care Food Program - repealed, 11-30-01.