

Section 8000

Denials, Terminations and Appeals

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Section 8000

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8100 Adverse Actions and Disputes

8110 Disputes

If you dispute or disagree with program guidance, policies or procedures, you should notify your area program office (APO) by telephone or in writing. Your APO will be responsible for resolving the dispute.

8120 Application Denials

We will deny your application and may terminate your Special Nutrition Programs (SNP) Agreement if we determine at any time that you:

- are ineligible to participate in the Summer Food Service Program (SNP);
- submitted false information to SNP;
- failed to return an advance payment that exceeds the amount earned for serving approved meals;
- failed to return an unearned advance for administrative payments;
- did not comply with the meal service times;
- failed to maintain required records;
- failed to adjust meal orders to conform to variations in the number of participants;
- claimed reimbursement for meals that did not meet program meal pattern requirements;
- claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the SFSP (concurrent participation);
- claimed reimbursement for meals that were not served to eligible children;
- regularly allowed the off-site consumption of SFSP meals;
- continued to purchase meals from a food service management company that does not comply with state and local health codes;
- have an outstanding or unresolved single audit; or
- failed to comply with procurement standards or contract requirements.

8130 Terminations

The Special Nutrition Programs (SNP) Agreement may be terminated in whole or in part. A termination in part applies to situations in which you participate in more than one program and withdraw from or are determined to be ineligible for at least one but not all of the programs.

If you are determined to be ineligible to participate in a program as a result of serious deficiency in the ability to comply with program requirements, your SNP Agreement must be terminated in whole.

We must terminate your SNP Agreement if we determine that there is cause for termination or if you mutually consent to terminate your agreement

8131 Contractor's Failure to Reapply

If you fail to reapply to participate in the Summer Food Service Program, your Special Nutrition Programs Agreement will be amended or terminated, as appropriate.

8132 Termination by Mutual Consent

Special Nutrition Programs (SNP) and you may mutually consent to terminate your SNP Agreement at any time. Termination by mutual consent generally occurs as a result of your decision to withdraw from a program and can occur at any time during the program year, including at the time of reapplication.

Note: Termination by mutual consent is not an adverse action. Therefore, you cannot appeal this termination.

8133 Termination for Cause

We may terminate or amend your Special Nutrition Programs Agreement if you:

- fail to resolve program noncompliance, as detailed in a corrective action plan;
- are determined to be seriously deficient in the ability to comply with program requirements in the Summer Food Service Program (SFSP) or the Child and Adult Care Food Program;
- submit falsified documents or fraudulent claims;
- fail to provide services specified in your SNP Agreement;
- fail to submit a complete and correct application within the specified time;
- fail to meet basic eligibility requirements;
- do not comply with applicable bid procedures;
- fail to return an advance payment that exceeds the amount earned for serving approved meals, or an unearned reimbursement;
- fail to maintain required records;
- claim reimbursement for meals that were not served to participating children;
- claim reimbursement for meals that did not meet program meal pattern requirements; or
- claim reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the SFSP (concurrent participation).

Note: Indications of fraud or misuse of funds will be referred to the Office of the Inspector General for investigation.

Before terminating an agreement for cause, we will consider:

- the severity of the non-compliance;
- the reason for the non-compliance;
- your efforts to correct the non-compliance; and
- whether providing or arranging additional training or technical assistance would help you to correct the problem.

If your SNP Agreement is terminated, we will notify you in writing of the specific reason for termination. You have the right to appeal any decision we make that adversely affects your participation in the program.

8200 Appeals

Special Nutrition Programs (SNP) will notify you in writing of any adverse action taken against your participation in the Summer Food Service Program. This written notification will include the following information, as applicable:

- a description of the adverse action;
- the basis for the action (for example, failure to comply with program requirements), and
- an explanation of your appeal rights and the date by which you must submit an appeal.

If the adverse action includes the termination or amendment of your SNP Agreement, the notification will advise you of the status of your agreement pending the completion of the appeal (that is, whether you may continue to participate and expect the consideration of claim payment by SNP). In either event, you have the right to review all information upon which the adverse action is based.

8210 Actions Subject to Appeal

You have the right to appeal any action that:

- denies an application for participation;
- terminates your participation or that of one of your sites;
- suspends your participation;
- denies an advance payment;
- denies or suspends program payment;
- denies your application for a specific site;
- denies or suspends all or part of any claim for reimbursement submitted not later than 60 days after the last day of the claim month;
- demands the remittance or settlement of any overpayment; or

- otherwise affects your participation in the Summer Food Service Program or your claim for reimbursement.

You may also appeal a Special Nutrition Programs (SNP) refusal to forward a denied late claim or a request for an upward adjustment to a claim to the U.S. Department of Agriculture (USDA) for consideration.

Exception: You cannot appeal the termination by mutual consent of your SNP Agreement. Additionally, a USDA decision to deny the payment of a late claim cannot be appealed.

8220 Appeal Process

You may appeal any decision we make that affects your participation in the Summer Food Service Program by submitting a written request, by attending a hearing or both. A written appeal should be filed as a formal petition or as a letter that includes:

- the reasons upon which you base your belief that a Health and Human Services Commission (HHSC) decision was made in error, and
- whether you request a review of written documentation, a hearing or both.

Requests for appeal must be received by HHSC within 10 days of receiving notice of adverse action. You must address your appeal to:

Appeals Division, MC W-613
Health and Human Services Commission
P.O. Box 149030
Austin, TX 78714-9030
512-231-5779

You may hand-deliver or submit your appeal request via overnight/special delivery service to the following street address:

8407 Wall St., Suite 300
Austin, TX 78754

The telephone number for contacting staff at the Appeals Division is 512-231-5729.

An HHSC review official will be appointed by HHSC. The official will be an administrative law judge (ALJ) who was not involved in the decision that you are appealing.

You may appear on your own behalf, be represented by an attorney or be represented by another person who presents written authorization from you. If you or your representative does not appear at a scheduled hearing, you waive the right to a personal hearing before the review official, unless the official agrees to reschedule the hearing.

An HHSC representative will attend the hearing to respond to your testimony and written documentation and to respond to the review official's inquiry.

You may withdraw a request for a hearing by sending a written notification to HHSC anytime before the conclusion of the hearing.

The review official makes a decision based on a complete review of the administrative record and sends a copy of the decision to you by certified mail, return receipt requested. This is completed within five workdays of a hearing or receipt of written documentation in lieu of a hearing. The official's decision is the final administrative determination of disputes.

The decision that you are appealing will remain in effect throughout the appeal process. However, you may continue to operate under the Summer Food Service Program during an appeal of termination. If the review official overturns HHSC's decision, you will be reimbursed for meals served during the appeal process.

Exception: Sponsors and sites must terminate program operation if HHSC's decision was based on danger to the health or welfare of children. HHSC will specify this in the notice of adverse action.