

§ 226.17

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only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor deems appropriate. Each sponsor shall disburse any reimbursement payments for food service due to each day care home within five working days of receipt from the State agency. Such payment shall be based on the number of meals served to enrolled children at each day care home, less any payments advanced to such home. However, the sponsoring organization may withhold from Program payments to each home an amount equal to food service operating costs incurred by the sponsoring organization in behalf of the home and with the home provider's written consent. If payments from the State agency are not sufficient to provide all day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(h) Sponsoring organizations shall make payments of program funds to child care centers, adult day care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

(i) Disbursements of advance payments may be withheld from child and adult day care facilities which fail to submit reports required by § 226.15(e).

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary title XIX or title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary title XIX or title XX centers which are

legally distinct from the organization, day care homes, or public or private nonprofit centers.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52591, Dec. 28, 1988]

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements

(1) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

(i) It receives title XX funds for child care; or

(ii) It demonstrates compliance with the CACFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary title XX centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A child care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the child care center shall immediately notify the State agency of such denial and the State agency shall terminate

the participation of the child care center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the child care center has failed to provide all required information, the State agency shall terminate the participation of the child care center until such time as IRS tax-exempt status is obtained.

(3) Each child care center participating in the Program shall serve one or more of the following meal types: (i) Breakfast, (ii) lunch, (iii) supper, and (iv) supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child, except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served to children at any one time in excess of the child care center's authorized capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children were title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of not more than two meals and one supplement per child per day is not exceeded. If the majority of children served by the center are participating

in an outside-school-hours care program, the center shall comply with reporting requirements of § 226.19 and, if it is a facility, shall be monitored by the sponsoring organization at the frequency specified in § 226.16(d)(4)(iii).

(6) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(7) Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1).

(8) Each child care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 53 FR 52591, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996]

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

(1) It receives title XX funds for providing child care; or

(2) It demonstrates compliance with CACFP child care standards or applicable State or local child care standards to the State agency.

(b) Day care homes participating in the program shall operate under the auspices of a public or private nonprofit sponsoring organization. Sponsoring organizations shall enter into a