



**New York State Waiver Request to USDA to Allow Flexibility of CACFP Monitoring Requirements during COVID19 Outbreaks**

**1.State agency submitting waiver request and responsible State agency staff contact:**

New York State Department of Health, Child and Adult Care Food Program  
Danielle Quigley, Director, Bureau of Child and Adult Care Food Programs  
518-402-7331; [Danielle.quigley@health.ny.gov](mailto:Danielle.quigley@health.ny.gov)  
Riverview Center, 150 Broadway, Suite 650, Menands, NY 12204

**2. Region:**

Northeast Region

**3. Eligible service providers participating in waiver and affirmation that they are in good standing:**

This waiver request includes flexibilities for:

- NYS Department of Health Child and Adult Care Food Program (State Agency)
- Child and Adult Care Food Program Sponsoring Organizations.

**4. Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

The State Agency is requesting to waive the CACFP review cycle and suspend the formal program review process found at 7 CFR 226.6(m)(6) and 226.16(d)(4)(iii) in FFY21 due to the continued COVID-19 public health emergency including:

- Reducing the frequency and number of required annual review (226.6(m)(6)(i)-(iii));
- Review content requirements (226.6(m)(3)(iv), (vi)-(vii) for the State Agency; and
- Reducing monitoring requirements at 226.16(d)(4)(iii)(A)-(D) for Sponsoring Organizations.

Approximately 1,383 Sponsoring Organizations participate in New York State's CACFP (1,314 Sponsoring Organizations of Day Care Centers and 69 Sponsoring Organizations of Day Care Homes). In a typical program year, CACFP conducts approximately 460 program reviews to meet annual review requirements. Due to the ongoing COVID-19 crisis, suspension of non-essential travel in New York, and continued operational challenges experienced at the local level, the State Agency is unable to conduct all monitoring requirements as specified in 7 CFR 226.6. Accordingly, the State Agency is seeking approval to reduce the frequency and number of required annual reviews as well as some of the review content requirements. Temporary childcare closures and/or decreased enrollment have negatively impacted providers' staffing levels and delayed their ability to submit documents for State Agency review.

The numerous flexibilities offered to CACFP in FFY21 are instrumental in ensuring that children continue to receive nutritious meals during this public health emergency. Continued use of non-congregate feeding, parent pick up, ability to serve multiple days' worth of food and allowing non-area eligible CACFP At-Risk sites to participate in CACFP improves access to healthy

meals, alleviates hunger and minimizes potential exposure to COVID-19. However, these flexibilities, combined with a change in usual onsite monitoring requirements, alters normal program operations and increases programs' susceptibility to fraud. In an effort to ensure that program integrity is maintained, the State Agency will conduct targeted program reviews to monitor Sponsoring Organizations, offer training and technical assistance, and review FFY20 claiming reports to identify potentially fraudulent activities.

In addition, the State Agency is seeking approval to allow flexibility in meeting monitoring requirements for DCH Sponsor's provider visits and Sponsoring Organization's site visits during the COVID-19 pandemic. This request supports social distancing measures to prevent the spread of COVID-19 by decreasing the number of monitoring visits through September 30, 2021. While the COVID-19 Child Nutrition Response #39 allows monitoring visits to be conducted offsite, some programs in NYS remain closed while others are not expecting to be fully operational until later in the year. In addition, some facilities have restrictions on visitors as a risk mitigation measure to prevent the spread of COVID-19. Furthermore, conducting unannounced reviews in an offsite environment is challenging for the majority of Sponsoring Organizations.

#### **5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:**

The State Agency is requesting a waiver of the following requirements:

- 7 CFR 226.6(m)(3)(iv) which requires a review of any applicable instructions and handbooks issued by FNS and the Department, and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part;
- 7 CFR 226.6(m)(3)(vi) which requires a review for compliance with the requirements for annual updating of enrollment forms;
- 7 CFR 226.6(m)(3)(vii) which requires observation of a meal service;
- 7 CFR 226.6(m)(6) which requires an annual review of at least 33.3% of all institutions;
- 7 CFR 226.6(m)(6)(i) which requires reviewing independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years, including reviews of 10% of their facilities;
- 7 CFR 226.6(m)(6)(ii) which requires reviewing sponsoring organizations with more than 100 facilities at least once every two years, including reviews of 5% of the first 1,000 facilities and 2.5% of the facilities in excess of 1,000; and
- 7 CFR 226.6(m)(6)(iii) which requires reviewing new institutions that are sponsoring organizations of 5 or more facilities within the first 90 days of Program operations.

The State Agency is requesting a waiver of the following requirements for Sponsoring Organizations:

- 7 CFR 226.16(d)(4)(iii) which requires that sponsoring organizations review each CACFP facility three times per year;
- 7 CFR 226.16(d)(4)(iii)(A) which requires that at least two of the three reviews be unannounced;
- 7 CFR 226.16(d)(4)(iii)(B) which requires that at least one unannounced review include observation of a meal service;
- 7 CFR 226.16(d)(4)(iii)(C) which requires that at least one review be made during each new facility's first four weeks of Program operations; and
- 7 CFR 226.16(d)(4)(iii)(D) that not more than six months may elapse between reviews.

## **6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:**

For FFY21, the State Agency will use a combination of conducting targeted reviews and offering technical assistance and training to monitor Sponsoring Organizations. As a baseline, it is expected that 15% of Sponsors (approximately 207) will be reviewed through desk audits, and reviews will include an examination of recordkeeping requirements, meal counts, administrative costs, facility licensing and approval documents and claims for reimbursement. For Sponsoring Organizations of Day Care Homes, implementation of the serious deficiency process and Tier I and II classification of day care homes will be reviewed. Sponsors outside of New York City will be selected based on who was due for a review in FFY21, in addition to Sponsors in the New York City area whose review was not completed in FFY20 due to the pandemic.

Training and technical assistance will be the primary method of working with Sponsors to come into compliance with issues identified during program reviews. While onsite classroom trainings are temporarily on hold until traditional, congregate training is safe to resume, CACFP's Public Health Nutritionists and Financial Representatives will continue to offer one on one technical assistance through phone conversations and emails as needed. In addition, NYS CACFP is planning to conduct 30 trainings via WebEx in FFY21 to ensure program compliance and correct deficiencies where needed. Training topics include:

- Recordkeeping in Childcare
- Recordkeeping in Adult Care
- How to Complete Food Production Records
- Meal Pattern for Infants, Children and Adults
- How to use CACFP Information and Payment System (CIPS)
- CACFP Financial Management

In addition to live, interactive WebEx trainings, CACFP also offers a library of self-paced e-learning opportunities for all Sponsoring Organizations. Topics include meal pattern, creditable foods, meal planning, attendance and meal counts, food production records, recordkeeping, income eligibility forms, claiming, staff training requirements, program reviews, corrective action planning and a variety of courses for Homes Sponsors (including approving new providers, tiering, monitoring, the serious deficiency process and appeals). The State Agency will monitor trends in noncompliance to determine if additional training topics should be added.

In an effort to focus on high-risk circumstances, the State Agency will review claim records from April – September 2020 to identify Sponsors whose claims remained unchanged or increased during the initial height of the pandemic. These Sponsors will be added to the review schedule for FFY21 as an extra review above the 15% currently planned to receive a targeted review.

If granted the waiver for Sponsoring Organizations, the State agency will allow a reduced number of monitoring visits; only require two monitoring visits during this fiscal year (2020-2021); and allow more than six months between visits. Unannounced visits and meal observations will not be required. To ensure Program integrity during this time, Sponsoring Organizations will be encouraged to use all methods available to conduct offsite reviews including use of video conferencing, photos, staff interviews, phone calls and desk audits.

## **7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(2)(A)(ii) of the NSLA]:**

There are no regulatory barriers at the state level.

**8. Anticipated challenges State or eligible service providers may face with the waiver implementation:**

There are no anticipated challenges with this waiver at this time.

**9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(I)(1)(A)(iii) of the NSLA]:**

The waiver will be used to accommodate Sponsors dealing with site closures and staffing shortages due to the COVID-19 outbreak, reduce the spread of infectious disease and encourage the maintenance of quarantine efforts, which will reduce costs to the federal government resulting from the disease.

**10. Anticipated waiver implementation date and time period:**

October 1, 2020 through September 30, 2021

**11. Proposed monitoring and review procedures:**

The State agency will review records of Sponsors during regular CACFP monitoring if the Sponsor is scheduled for monitoring during fiscal year 2020-2021 or the Sponsor has been identified as high-risk due to unusual higher claiming patterns during the pandemic. Sponsors who are not on the 2020-2021 review schedule would have their records reviewed during their next CACFP Program Review.

**12. Proposed reporting requirements (include type of data and due date(s) to FNS):**

The State Agency will report the number of Sponsors reviewed for FFY21 no later than December 31, 2021.

**13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(I)(1)(A)(ii) of the NSLA]:**

See attached notice.

**14. Signature and title of requesting official:**



Title: Director, Bureau of Child and Adult Care Food Programs

Requesting official's email address for transmission of response:

[Danielle.quigley@health.ny.gov](mailto:Danielle.quigley@health.ny.gov)

**TO BE COMPLETED BY FNS REGIONAL OFFICE:**

*FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.*

Date request was received at Regional Office:  Check this box to confirm that the State agency has provided public notice in accordance with Section 12(I)(1)(A)(ii) of the NSLA

**☒ Regional Office Analysis and Recommendations:** NERO has reviewed New York Department of Health's Oversight and Monitoring Plan for FFY 2021. NYDOH requests to waive the CACFP review cycle and suspend formal program reviews as a result the on-going effect of the Covid-19 pandemic. Alternately, NYDOH will conduct targeted program reviews, offer training through 30 live webinars and offer one-one-one technical assistance. NYDOH will also review FFY 20 claims from April-September to identify potentially fraudulent activities. Additionally, NYDOH is requesting to allow a reduced number of monitoring visits for SO, which will be conducted off-site necessary to continue to support social distancing measures. NYDOH would encourage SO to use all methods available to ensure program integrity. NERO support this monitoring and oversight plan from NYDOH and considers the State Agency in good standing.