



Food and
Nutrition
Service

December 17, 2020

Braddock
Metro Center

Danielle Quigley, Director
Bureau of Child and Adult Care Food Programs
New York State Department of Health
Riverview Center, 150 Broadway, Suite 650
Menands, NY 12204

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Dear Ms. Quigley:

This letter is in response to the December 2, 2020 waiver request from the New York State Department of Health (NYDOH). NYDOH requested to waive the following Child and Adult Care Food Program (CACFP) statutory and regulatory requirements for State agencies:

- 7 CFR 226.6(m)(3)(iv), the requirement to review 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;
- 7 CFR 226.6(m)(3)(vi), the requirement to review for compliance with the requirements for annual updating of enrollment forms;
- 7 CFR 226.6(m)(3)(vii), the requirement to conduct an observation of a meal service;
- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6), the requirement to annually review at least 33.3% of all institutions according to the schedule:
 - 7 CFR 226.6(m)(6)(i), the requirement to review 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), the requirement to review 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), the requirement to review new institutions that are sponsoring organizations of 5 or more facilities within the first 90 days of Program operations.

NYDOH requested to waive the following CACFP statutory and regulatory requirements for sponsoring organizations:

- 42 USC 1766(d)(2)(B)(i)(I) and 7 CFR 226.16(d)(4)(iii), the requirement to review each CACFP facility three times per year. In addition:
 - 42 USC 1766(d)(2)(B)(ii) and 7 CFR 226.16(d)(4)(iii)(A), the requirement that at least two of the three reviews be unannounced;

- 7 CFR 226.16(d)(4)(B), the requirement that at least one unannounced review include observation of a meal service;
- 7 CFR 226.16(d)(4)(iii)(C), the requirement 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), the requirement that not more than six months may elapse between reviews.

The Food and Nutrition Service (FNS) recognizes that due to Program operation changes as the result of *COVID 19: Child Nutrition Response #59* allowing the SFSP and the NSLP Seamless Summer Option (SSO) to continue to operate through June 30, 2021, many Child Nutrition Program monitoring requirements will be difficult for State agencies and local operators to meet. In light of this, FNS will waive program monitoring requirements when a State agency provides a waiver request with an alternative plan that ensures program integrity is continued this year.

In its waiver request, NYDOH proposed an alternative oversight plan that includes using a combination of targeted reviews and offering technical assistance and training to monitor sponsoring organizations. As a baseline, NYDOH will review 15 percent of sponsors through desk audits and will examine recordkeeping requirements, meal counts, administrative costs, facility licensing and approval, and claims for reimbursement. NYDOH will review the serious deficiency process and day care home classification for sponsoring organizations of family day care homes. To ensure program integrity, NYDOH will continue to offer one-on-one technical assistance and plans to conduct 30 trainings via WebEx in fiscal year (FY) 2021. NYDOH will also offer a library of self-paced e-learning opportunities for sponsoring organizations, and will monitor trends in noncompliance to determine if additional training topics should be added. NYDOH will review claim records from April through 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 FY 2021 as an additional targeted review above the 15 percent currently planned in order to identify potentially fraudulent activities.

In its waiver request, NYDOH proposed that sponsoring organizations will conduct two monitoring reviews during the fiscal year, and may allow more than six months to elapse between reviews. Unannounced reviews and meal observations will not be required. To ensure continued program integrity for CACFP facilities, 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.

Given the numerous flexibilities and waivers that FNS has provided during the novel coronavirus public health emergency, many of the current monitoring requirements and regulations do not efficiently address the oversight of the Child Nutrition Programs. Since these flexibilities alter the normal operations of the Programs, monitoring strategies must adapt. This waiver request and activities within do not increase the

overall cost of the Program to the Federal Government, rather it allows the State agency to alter its oversight activities in order to strengthen Program integrity and conduct efficient monitoring. Through implementation of this waiver, the State agency will continue to fulfill its oversight responsibilities and provide technical assistance, which is critical to ensure that current Program requirements are met.

Pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves NYDOH's waiver request effective through September 30, 2021. FNS has determined that, in light of the exceptional circumstances of the current novel coronavirus public health emergency and other program flexibilities provided by FNS, waiving the above statutory and regulatory requirements will facilitate NYDOH's ability to successfully carry out the purpose of the Programs.

NYDOH's oversight plan, as discussed above, provides assurance that the State will continue to conduct oversight and provide technical assistance upon approval of this waiver. These actions will help Program operators effectively operate Child Nutrition Programs that meet the nutritional needs of eligible Program participants. In addition, as part of this waiver, NYDOH must take Program integrity measures to identify any misuse of Federal funds and identify fraudulent activities.

The waiver authority at section 12(l)(5) of the NSLA requires that FNS review the performance of any State that is granted a waiver and terminate the waiver if the performance of the State has been inadequate to justify a continuation of the waiver. Beginning on January 1, 2021, FNS is requiring that for the duration of this waiver, NYDOH provide the FNS Northeast Regional Office (NERO) a quarterly written report. The report must provide information on how NYDOH is implementing its oversight plan and quantify the impact of the waiver, as described below.

The report must include:

- A description of how the waiver impacted meal service operations and eligible participants access to nutritious meals and snacks;
- A description of how the waiver has facilitated the State agencies oversight abilities and responsibilities;
- A summary of Program integrity measures taken to identify any misuse of Federal funds and identify fraudulent activities, and, if anything was identified, any actions taken;
- A description of how the waiver impacted the quantity of paperwork necessary to administer the program; and
- A summary of any technical assistance measures that were provided.

Should NYDOH determine this waiver is no longer necessary prior to September 30, 2021, please notify the NERO.

FNS understands that these are challenging times for all and that many State agencies and Program operators face significant resource and time constraints. We are committed to supporting State agencies and Program operators as they strive to run successful programs and meet Child Nutrition Program requirements in order to provide nutritious food to eligible participants.

If you have any questions or concerns, please contact the NERO.

Sincerely,

A handwritten signature in black ink, reading "Sarah E. Smith-Holmes". The signature is written in a cursive style with a large initial 'S' and 'H'.

Sarah Smith-Holmes
Director

Program Monitoring and Operational Support Division
Child Nutrition Programs