

Montana Department of Public Health & Human Services	Policy
	MT CACFP 2003-1 Rev 8
	Section: All Institutions
Child and Adult Care Food Program	Subject: Serious Deficiency Determinations
	Date Revised: 1/1/2020

### **Serious Deficiency Determinations**

Seriously Deficient (SD) means the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects of its operation of the Program. The determination of SD usually occurs following a review or an audit of the institution's operation of the CACFP. However, the determination of SD can be made at any time.

- The State agency (SA) and Sponsoring Organizations (SO) will use 7 CFR 226.6/226.16(I)(2); Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations Handbook, February 2015; and IP-50 MT CACFP 2020-1 Criteria for Serious Deficiency for reference and guidance in determining when an institution or a responsible individual(s) (RPI) are determined to be seriously deficient in their operation of the CACFP.
- The SA and/or SO will use the combined judgment of their staff and supervisors to determine whether the institution will be declared SD, *with SA Program Manager for CACFP making the final determination of SD.*
- The institution is allowed up to 30 days to completely and permanently correct all corrective action(s) associated with their SD determination and as required by the SA or SO.
- If the date of birth (DOB) for any individual named as an RPI is not known by the SA or SO, that information must be included as a corrective action within the SD notice.
- A provider in SD status cannot cease participation in the CACFP or switch to a different Sponsoring Organization without addressing the corrective action(s) associated with their SD. Providers must be in good standing for 30 days after the SD is temporarily deferred before switching to another Sponsoring Organization.
- If the Responsible/Person or Individual (RPI) is listed on the original SD and resigns or is terminated prior to completing the required corrective action plan, the SA will propose to terminate and disqualify the RPI. If the RPI does not appeal, they will be added to the (National Disqualified List (NDL) within 15 days.
- If the required corrective actions associated with the SD are not corrected by the institution within 30 days, then the SA or SO will proceed to terminate the institution from the CACFP. (See Policy MT 2000-8 Rev 4, Termination & Disqualification of Institutions)

- If the State agency determines the corrective actions are not complete and permanent, the institution may not appeal this determination. However, the provider may appeal a proposal to terminate or disqualify an institution or RPI from participation in CACFP.
- If the RPI prevails in the appeal for proposed termination and disqualification the SA or SO will follow up with an acceptable corrective action plan.
- An institution's agreement must continue throughout the duration of the SD process, to allow for payment of valid claims. If the SD occurs during the application update timeframe, the SA must continue to pay claims based on the institution's most recently approved budget.

### **SERIOUS DEFICIENCIES FOR NEWLY APPLYING AND RENEWING INSTITUTIONS**

Submission of false information on the institution's application, including but not limited to:

- concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity (ex. deception, antitrust violations, embezzlement, theft, forgery, bribery, fraud, or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice).
- or any other activity indicating a lack of business integrity as defined by the State agency
- Any other action affecting the institution's ability to administer the Program in accordance with Program requirements of [7 Code of Regulations (CFR) 226.6(c)(1)], [7 CFR 226.6(b)(1)(xviii);(b)(2)(vii)] and including but not limited to deficiencies listed on pg. 11 of the USDA Serious Deficiency, Suspension, & Appeals Handbook, February 2015.

### **FACILITIES UNDER A SPONSORING ORGANIZATION**

Sponsoring organizations should become familiar with the serious deficiencies. The following are non-compliance issues that rise to the level of a serious deficiency, however, is not considered all-inclusive:

- Submission of false information in the DCH's application.
- Submission of false claims for reimbursement.
- Simultaneous participation under more than one sponsor.
- Non-compliance with the Program meal pattern.
- Failure to keep required records.
- Conduct, or conditions that threaten the health or safety of a child(ren) in care,
- Or the public health or safety.
- A determination that the provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes deceit, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records
- Making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency, or the concealment of such a conviction.
- Failure to participate in training; and
- Any other circumstances related to non-performance under the sponsoring organization's DCH agreement, as specified by the SO or the SA

The Sponsoring Organization must provide the State Agency with a draft copy of the notice of action letter for the SD, using the pertinent prototype letter from the SD Handbook. It must include all the elements in 226.16(l)(3)(2) in addition to the required corrective action.

As SD is being issued to the facility/RPI, a final approved copy of the official SD letter will be sent to the SA Program Manager to be forwarded to the MPRO FNS office and filed in the facilities/RPI's SD folder within the State Agency.

Immediately after the Sponsoring Organization temporarily defers the SD for a provider, the Sponsoring Organization must notify the State agency of this action and must provide the State agency with a copy of the notice of action letter temporarily deferring the SD. The notice of action letter must include acceptance of the required corrective action(s).

### **LONG TERM CORRECTIVE ACTION**

Some serious deficiencies require long-term revision of management systems or processes.

- The SA may permit more than 30 days to complete the corrective action if a CAP is submitted to and approved by the SA within 30 days. The corrective action must include milestones and a definite completion date.
- The SA and/or SO will monitor the institution and ensure full implementation of the plan stated in the CAP. The determination of serious deficiency will remain in effect until the SA determines that the serious deficiencies have been fully and permanently corrected within the timeline stated in the CAP submitted by the institution. [7 CFR 226.6(c)(4)(iii)].

**[REF: 7 CFR 226]**

This Institution is an equal opportunity Provider.