

## § 226.19

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served during the unannounced review will be disallowed;

(15) The day care home's opportunity to request an administrative review if a sponsoring organization issues a notice of proposed termination of the day care home's Program agreement, or if a sponsoring organization suspends participation due to health and safety concerns, in accordance with § 226.6(1)(2); and

(16) If so instructed by its sponsoring organization, the day care home's responsibility to distribute to parents a copy of the sponsoring organization's notice to parents.

(c) Each day care home must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one meal and two snacks, provided daily to each child.

(d) Each day care home participating in the program shall serve the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children;

(e) Each day care home must maintain on file documentation of each child's enrollment and must maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care. Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with § 226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the number and types of meals served to each enrolled child by name. Payment may be made for meals served to the provider's own children only when (1) such children are en-

rolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program and (3) providers' children are eligible to receive free or reduced-price meals. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served at any one time to children in excess of the home's authorized capacity or for meals served to providers' children who are not eligible for free or reduced-price meals.

(f) The State agency may not require a day care home or sponsoring organization to maintain documentation of home operating costs.

(g) Each day care home shall comply with the recordkeeping requirements established in § 226.10(d) and in this section. Failure to maintain such records shall be grounds for the denial of reimbursement.

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18989, May 4, 1984; 50 FR 8580, Mar. 4, 1985; 52 FR 36907, Oct. 2, 1987; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 903, Jan. 7, 1997; 63 FR 9105, Feb. 24, 1998; 63 FR 9729, Feb. 26, 1998; 64 FR 72261, Dec. 27, 1999; 67 FR 43493, June 27, 2002; 69 FR 53546, Sept. 1, 2004; 70 FR 34633, June 15, 2005; 72 FR 41610, July 31, 2007]

### § 226.19 Outside-school-hours care center provisions.

(a) Outside-school-hours 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. Outside-school-hours care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All outside-school-hours care centers, independent or sponsored, shall meet the following requirements:

(1) In accordance with § 226.6(d)(1), if Federal, State or local licensing or approval is not otherwise required, outside-school-hours care centers must meet State or local health and safety standards. When State or local health

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and safety standards have not been established, State agencies are encouraged to work with appropriate State and local officials to create such standards. Meeting these standards will remain a precondition for any outside-school-hours care center's eligibility for CACFP nutrition benefits. In cases where Federal, State or local licensing or approval is required, outside-school-hours care centers that 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 that indicates the renewal will be denied.

(2) Except for for-profit centers, outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1986.

(3) Nonresidential public or private nonprofit schools which provide organized child care programs for school children may participate in the Program as outside-school-hours care centers if:

(i) Children participate in a regularly scheduled program that meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing services to children and is distinct from any extra-curricular programs organized primarily for scholastic, cultural, or athletic purposes; and

(ii) Separate Program records are maintained.

(4) Outside-school-hours care centers shall be eligible to serve one or more of the following meal types: breakfasts, snacks and suppers. In addition, outside-school-hours care centers shall be eligible to serve lunches to enrolled children during periods of school vacation, including weekends and holidays, and to children attending schools which do not offer a lunch program. Notwithstanding the eligibility of outside-school-hours care centers to serve Program meals to children on school vacation, including holidays and weekends, such centers shall not operate under the Program on weekends only.

(5) Each outside-school-hours care center participating in the Program shall claim only the meal types specified in its approved application and

served in compliance with the meal pattern requirements of § 226.20. Reimbursement may not be claimed for more than two meals and one snack provided daily to each child or for meals served to children at any one time in excess of authorized capacity. For-profit centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries.

(6) Each outside-school-hours care center must require key operational staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service must be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this section. Operational personnel must ensure that:

(i) Meals are served only to children and to adults who perform necessary food service labor;

(ii) Meals served to children meet the meal pattern requirements specified in § 226.20;

(iii) Meals served are consumed on the premises of the centers;

(iv) Accurate records are maintained; and

(v) The number of meals prepared or ordered is promptly adjusted on the basis of participation trends.

(7) Each outside-school-hours care center shall accurately maintain the following records:

(i) Information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1);

(ii) Number of meals prepared or delivered for each meal service;

(iii) Daily menu records for each meal service;

(iv) Number of meals served to children at each meal service;

(v) Number of children in attendance during each meal service;

(vi) Number of meals served to adults performing necessary food service labor for each meal service; and

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(vii) All other records required by the State agency financial management system.

(8) An outside-school-hours 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 outside-school-hours care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

(c) Each outside-school-hours care center shall comply with the record-keeping requirements established in §226.10(d), in paragraph (b) of this section and, if applicable, in §226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 56 FR 58175, Nov. 16, 1991; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997; 64 FR 72261, Dec. 27, 1999; 67 FR 43493, June 27, 2002; 69 FR 53546, Sept. 1, 2004; 70 FR 43262, July 27, 2005; 72 FR 41603, 41610, July 31, 2007]

**§226.19a Adult day care center provisions.**

(a) Adult day 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 non-profit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Adult day care centers participating as independent centers shall comply with the provisions of §226.15.

(b) All adult day care centers, independent or sponsored, shall meet the following requirements:

(1) Adult day care centers shall provide a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. Such a program shall be a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants.

(2) Adult day care centers shall provide care and services directly or under arrangements made by the agency or organization whereby the agency or or-

ganization maintains professional management responsibility for all such services.

(3) Adult day care centers shall have Federal, State or local licensing or approval to provide day care services to functionally impaired adults (as defined in §226.2) or individuals 60 years of age or older in a group setting outside their home or a group living arrangement on a less than 24-hour basis. Adult day 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.

(4) Except for for-profit centers, adult day care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1986.

(5) Each adult day care center participating in the Program must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one snack and two meals, provided daily to each adult participant.

(6) Each adult day 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. Participating centers may not claim CACFP reimbursement for meals claimed under part C of title III of the Older Americans Act of 1965. Reimbursement may not be claimed for meals served to persons who are not enrolled, or for meals served to participants at any one time in excess of the center's authorized capacity, or for any meal served at a for-profit center during a calendar month when less than 25 percent of enrolled participants were title XIX or title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(7) An adult day care center may obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in