



**Bernard J. Sadusky, Ed.D.**  
**Interim State Superintendent of Schools**

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**TO:** Members of the State Board of Education  
**FROM:** Bernard J. Sadusky, Ed.D. *BS*  
**DATE:** August 30, 2011  
**SUBJECT:** COMAR 13A.06.01.02 and .03  
Nutrition Appeal Procedures  
**ADOPTION**

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**PURPOSE:**

The purpose of this action is to seek adoption of regulations that govern Nutrition Appeal Procedures for Local Educational Agencies (LEAs) and other agencies participating in the federal Nutrition Programs.

**HISTORICAL BACKGROUND:**

In April 2009, the Mid Atlantic Regional Office of the United States Department of Agriculture (USDA) conducted a management evaluation of the Child and Adult Care Food Program administered by the Department. As a result of that review, USDA made three recommendations to align the COMAR regulation with the Code of Federal Regulation 7 C.F.R. Part 226. In addition, terminology was updated to conform to changes in federal standards. The regulation was last updated in 2005.

**SUMMARY:**

Members of the Department met with the Attorney General's Office, edited some of the existing language, and included the following changes:

- Added language to provide for an abbreviated hearing procedure
- Provided for combined administrative hearings for responsible principals and responsible individuals
- Provided for a standard review hearing based solely on the information provided by the State agency, the institution, and the responsible principals and individuals, and based on federal and State laws, regulations, policies, and procedures governing the Program

**ACTION:**

I am recommending State Board adoption of the revised COMAR regulations (.01, .02. and .03) under 13A.06.01

**.01 Purpose.**

The purpose of these regulations is to enable the Commission to fully measure and compare hospital-specific performance on readmissions and to use the data to further enhance and strengthen the financial incentives linked with performance.

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

**B. Terms Defined.**

(1) "Health Information Exchange (HIE)" means an infrastructure that provides organizational and technical capabilities for the exchange of protected health information electronically among entities not under common ownership.

(2) "Health Services Cost Review Commission (Commission)" means the independent organization within the Department of Health and Mental Hygiene that is responsible for reviewing and approving the rates for hospitals pursuant to Health-General Article, §19-201 et seq., Annotated Code of Maryland.

(3) "Maryland Health Care Commission (MHCC)" means the agency established by Health-General Article, Title 19, Subtitle 2, Annotated Code of Maryland.

(4) "Master Patient Index (MPI)" means an electronic database, created by the State-Designated HIE that maintains a unique index (or identifier) for every individual who has been, or who becomes, registered as a patient at a Maryland hospital.

(5) "State-Designated HIE" means an HIE designated by the MHCC.

**.03 Hospital Participation.**

Effective December 1, 2011, each hospital under the jurisdiction of the Commission shall electronically connect to the State-Designated HIE to enable the Commission to fully measure hospital-specific performance on readmissions using the HIE's MPI.

**.04 Method of Connection.**

Each hospital shall establish connectivity with the State-Designated HIE over a secure and encrypted connection. This connectivity shall be established using industry standards specified by the State-Designated HIE.

**.05 Collection and Submission of Master Patient Index Data.**

Each hospital under the jurisdiction of the Commission shall collect and electronically submit to the State-Designated HIE the data elements as published in the Maryland Register and on the Commission's website (<http://www.hsrc.state.md.us>). The format and data time period for submission shall also be published in the Maryland Register and on the Commission's website.

**.06 Privacy of Information.**

Data submitted in accordance with this chapter are not public information pursuant to Health-General Article, §19-207(d), Annotated Code of Maryland. The Commission will take reasonable steps to safeguard and protect the confidentiality of protected health information consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Maryland Confidentiality of Medical Records Act, and all other applicable State and federal laws and regulations.

**.07 Summary Studies, Reports, Compilations.**

Summary studies, reports, or other compilations developed by the Commission or its staff from the data submitted in accordance with this chapter shall be public information except that disclosure may not be made in such a way that the data furnished can lead to the identification of an individual.

**.08 Corrections to Data.**

The Commission shall prescribe on its website the process for a hospital to submit corrections and revisions to the data it has submitted.

**.09 Required Report.**

Data submitted in accordance with this chapter shall be considered a required report under COMAR 10.37.01.03N.

FREDERICK W. PUDESTER  
Chairman

Health Services Cost Review Commission

**Title 13A  
STATE BOARD OF  
EDUCATION**

**Subtitle 06 SUPPORTING PROGRAMS**

**13A.06.01 Programs for Food and Nutrition**

Authority: Education Article, §§5-214, 7-601—7-605, and 7-701—7-704, Annotated Code of Maryland  
Federal Statutory Reference: 42 U.S.C §§1751-1762a, 1765, 1766, 1766a, 1769a, 1772, 1773, 1776, 1779, 1788;  
Federal Regulatory Reference: 7 CFR 210, 215, 220, 225-227, 235, 240, 245, 250

**Notice of Proposed Action**

[11-145-P]

The Maryland State Board of Education proposes to amend Regulations .01 — .03 under COMAR 13A.06.01 Programs for Food and Nutrition. This action was considered at the Maryland State Board of Education meeting on March 22, 2011.

**Statement of Purpose**

The purpose of this action is to align the regulations with the Code of Federal Regulation 7 CFR Part 226.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Robin Ziegler, Branch Chief, School and Community Nutrition Programs Branch, Division of Business Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0199 (TTY: 410-333-6442), or email to [rziegler@msde.state.md.us](mailto:rziegler@msde.state.md.us), or fax to 410-333-2635. Comments will be accepted through July 5, 2011. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on

August 30-31, 2011, at 200 West Baltimore Street, Baltimore, Maryland 21201.

**.01 Scope.**

A. Program Standards. The Department shall administer the following food and nutrition programs according to the following federal laws and the implementing regulations, which are incorporated by reference:

(1) National School Lunch Program, 42 U.S.C. §§1751—1760, 1769a, and 1779, and 7 CFR Part 210;

(2) — (4) (text unchanged)

(5) Child and Adult Care Food Program, 42 U.S.C. §§1758, 1759a, 1762a, 1765, [and] 1766, and 1766a, and 7 [Part] CFR Part 226;

(6) Nutrition Education and Training Program, 42 U.S.C. §1788, and 7 [Part] CFR Part 227;

(7) — (10) (text unchanged)

**B. Program Administration.**

(1) This chapter applies to the administration of the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Summer Food Service Program, the Child and Adult Care Food Program, Nutrition Education and Training Program, State Administrative Expense Funds, Cash in Lieu of Donated Foods, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, and the Food Distribution Program pursuant to the federal programs standards set forth in this regulation and pursuant to the terms and conditions set forth in the agreements between the State Department of Education and the local educational agencies, [sponsoring organizations,] and institutions, commercial food processors, and other contractors.

(2) Local educational agencies[, sponsoring organizations,] and institutions participating in the federal programs set forth in this regulation shall maintain a financial management system as authorized by the federal regulations and prescribed by the Department in compliance with the [School Food Service] Financial[, Accounting, and] Reporting Manual for Maryland Public Schools Revised 2009, [May 2005,] which is incorporated by reference at COMAR 13A.02.01.02C.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) “Administrative [review] hearing” [means a comprehensive on-site administrative review conducted by the Department, the U.S. Department of Agriculture staff, or both, for the purpose of evaluating the administration of the food and nutrition program by an institution, sponsoring organization, or local educational agency, consistent with the requirements set forth in the applicable program standards set forth in Regulation .01 of this chapter.] *means the fair hearing provided upon request to:*

(a) *An institution that has been given notice by the Department of any action or proposed action that will affect their participation or reimbursement under any of the programs listed in Regulation .01 of this chapter, in accordance with 7 CFR §226.6(k) and Regulation .03A of this chapter; or*

(b) *A principal or individual responsible for an institution's serious deficiency after the responsible individual has been given a notice of intent to disqualify them from any of the programs listed in Regulation .01 of this Chapter.*

(2) — (4) (text unchanged)

(5) “Local educational [authority]” means the governing body which is:

(a) Responsible for the administration of one or more schools, colleges, or universities; and

(b) Has the legal authority to operate a program.] *agency” has the meaning stated in 7 CFR §210.2.*

(6) “National Disqualification List” means the list maintained by the U.S. Department of Agriculture of institutions, responsible principals and responsible individuals, and day care homes disqualified from participation in the Child and Adult Care Food Program authorized by Section 17 of the National School Lunch Act, as amended, in accordance with 7 CFR §226.2.

[(6)] (7) (text unchanged)

[(7)] “Sponsoring organization” means any agency or organization which is participating in or applying to participate in a program to operate one or more facilities.]

**.03 Program Hearing Procedures.**

A. Actions Subject to [Review] *an Administrative Hearing Upon Request.* [A sponsoring organization,] An institution[,] or local educational agency may request a hearing to review the following actions by the Department:

(1) Denial of [a sponsoring organization's,] an institution's[,] or local educational agency's application for participation in a [program] Program;

(2) Denial of an application submitted by [a sponsoring organization] an institution or local educational agency on behalf of a facility to participate in the Program;

(3) Proposed termination of the participation of [a sponsoring organization,] an institution, local educational agency, or facility in a [program] Program;

(4) (text unchanged)

(5) Suspension of [a sponsoring organization's,] an institution's[,] or local educational agency's [agreement] participation;

(6) Denial of [a sponsoring organization's,] an institution's[,] or local educational agency's application for expansion funds or start-up payments;

(7) — (9) (text unchanged)

(10) Denial by the Department to forward to the U.S. Department of Agriculture, Food and Nutrition Service, an exception request by [the sponsoring organization,] an institution[,] or local educational agency for payment of a late claim or request for an upward adjustment to a claim;

(11) — (12) (text unchanged)

(13) Any other action of the Department affecting the participation of [a sponsoring organization,] an institution[,] or local educational agency in the Program or the institution's claim for reimbursement under the Program.

B. Actions Not Subject to *an Administrative [Review] Hearing.* The following actions are not subject to [a review] *an administrative hearing:*

(1) — (2) (text unchanged)

(3) Disqualification and placement on [State agency and] the national disqualified list; and

(4) Termination of participation in a [program] Program.

C. Notice of Department's Action. The [sponsoring organization,] institution[,] or local educational agency shall be advised in writing of the grounds on which the Department based its action affecting the institution's participation in a program, reimbursement, or other actions noted in [§B] §§A and B of this regulation. The notice of action shall be sent by certified mail, return receipt requested[, and shall indicate the sponsoring organization's, institution's, or local educational agency's right to request a hearing to review the action].

D. *Appeal of Agency Action and Request for a Hearing.*

(1) [The sponsoring organization,] *Except as provided in §B of this regulation, the institution[,]* or local educational agency may request [review of the Department action] *an administrative hearing* by filing a written request for a hearing with the Branch Chief of the Department not later than 14 calendar days from the date of the Department's notice of action. The request for a hearing shall clearly



identify the action appealed and contain a brief statement of the reasons for requesting [review] a hearing.

(2) The Department's action shall remain in effect during the [review] hearing process.

(3) Participating [sponsoring organizations,] institutions[,] or local educational agencies may continue to operate under the Program during [review] the hearing process of a proposed termination unless the action is based on imminent dangers to the health or welfare of participants or for submission of a false or fraudulent claim.

(4) If the [sponsoring organization,] institution[,] or local educational agency has been terminated based on imminent dangers to the health or welfare of participants, the Department shall so specify in its notice of action.

(5) [Sponsoring organizations, institutions,] Institutions or local educational agencies electing to continue operating while the proposed termination is under review shall be reimbursed for valid [meals served] claims submitted during the period of review in accordance with 7 CFR Parts 210—299.

E. Acknowledgment. The Branch Chief shall mail written acknowledgment of receipt of the request for a hearing to the [sponsoring organization,] institution[,] or local educational agency within 10 calendar days, and shall transmit the request to the Office of Administrative Hearings within 5 working days of receipt of the request for a hearing.

F. Delegation to the Office of Administrative Hearings.

(1) — (2) (text unchanged)

(3) The [sponsoring organization,] institution[,] or local educational agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

(4) [Except as provided in §F(5) of this regulation, the] The administrative law judge's findings of fact, conclusions of law, and final decision affirming, reversing, or modifying the Department's action shall be based solely on the information provided by the Department, the local educational agency, the institution, and the responsible principals and responsible individuals, and based on federal and State laws, regulations, policies and procedures governing the Program and shall be submitted to the Branch Chief and to the [sponsoring organization,] institution[,] or local educational agency within 60 days of the Department's receipt of the request for a hearing, unless:

(a) — (c) (text unchanged)

(5) Exception [For the] — Summer Food Service Program[:] — Appeal of Department Action.

(a) If a hearing is requested:

(i) The hearing shall be held within 14 calendar days of the Department's receipt of the request for hearing and conducted by an administrative law judge in accordance with COMAR 28,02.01; and

(ii) The administrative law judge's findings of fact, conclusions of law, and final decision affirming, reversing, or modifying the Department's action shall be based solely on the information provided by the Department, the local educational agency, the institution, and the responsible principals and responsible individuals, and based on federal and State laws, regulations, policies, and procedures governing the Program and shall be submitted to the Branch Chief and to the [sponsoring organization,] institution[,] or local educational agency within 5 working days of the conclusion of the hearing[; or].

(b) If the institution or local educational agency appeals the Department action but does not request a [no] hearing [is requested], the administrative law judge shall, within 5 working days after

receipt of the appeal [request for review, the administrative law judge shall]:

(i) Make a written determination based on a review of the administrative record; and

(ii) Inform the appellant and the Department of the final decision by certified mail, return receipt requested.

(6) Exception — Child and Adult Care Food Program — Abbreviated Administrative Review. If the institution or local educational agency appeals the Department action as described below and a hearing is requested, the Department must limit the administrative hearing to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

(a) The information submitted on the application was false;

(b) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;

(c) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

(d) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

G. Discovery. Information on which the Department's action was based shall be available to the [sponsoring organization,] institution[,] or local educational agency for inspection from the date of the Department's receipt of the request for a hearing.

H. Burden of Proof. The [sponsoring organization,] institution[,] or local educational agency has the burden of proof by a preponderance of the evidence.

I. (text unchanged)

NANCY S. GRASMICK  
State Superintendent of Schools

## Title 15 DEPARTMENT OF AGRICULTURE

### Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

#### 15.15.11 Corrective Agricultural Land Preservation Easements

Authority: Agricultural Article, §§2-504, 2-509, and 2-513, Annotated Code of Maryland

#### Notice of Proposed Action

[11-150-P]

The Secretary of Agriculture proposes to adopt new Regulations .01—.05 under a new chapter, COMAR 15.15.11 Corrective Agricultural Land Preservation Easements.

#### Statement of Purpose

The purpose of this action is to establish the criteria and procedure for entering into a corrective easement on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.