

Institution Appeals

Who, What, When, Where & How

- Who can appeal
- What can be appealed
- When appealable
- Where appeal is heard
- How appeal is handled



Related Issues

- Required State procedures
- Separating appeals
- Abbreviated appeals
- Fiscal recoveries
- Questions and Answers



Terminology



- **Administrative reviews** = appeals
- **Administrative review official** = hearing official
- **Hearing** = in-person meeting



Who

- Old
Institutions

- New
✓

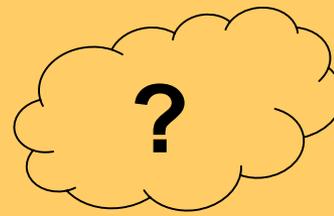
- Responsible principals
Responsible individuals
- Providers

Responsible Principals and Individuals

- Responsible + proposed for disqualification =
right to appeal
- Responsible by action/inaction



What



- Old

- ~~Termination~~
- Application denial
- Funding denial
- Repayment demand
- Refusal to forward claim
- Any other adverse action
- ~~Agreement suspension~~
- =

- New

- Proposed termination
- ✓
- ✓
- ✓
- ✓
- ✓
- Participation suspension
- Proposed disqualification

Not Appealable

- FNS denial of late claim exception
- Serious deficiency determination
- Requirement for corrective action
- Disqualification & placement on National DQ List
- Agreement termination



When



- Old

- After adverse action

- New

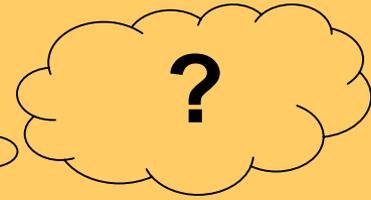
- After most adverse actions

Except:

Before termination

Before disqualification

Where



• **Old**

- State appeal except:
 - OIG audit claims
 - FNS decision

• **New**

- ✓
- ✓
- ✓

No Change

How

?

It Stayed the Same

- Old

- Written notice
- Legal counsel permitted
- Right to review record
- File information
- Appear in person
- Independent & impartial hearing official
- Annual notice of procedures

New

✓

✓

✓

✓

✓

✓

✓



How

?

It Changed



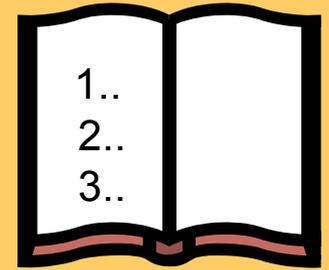
- **Old:** State or reg requirements
- **New:** Uniform standards
- Mandatory minimums
- **Old:** Independent/impartial standard unclear
- **New:** Standard defined
- Direct contact by appellant
- **Old:** Discretionary application of laws & regs
- **New:** Nondiscretionary. Must use applicable laws, regs & policy

“Let’s talk...”



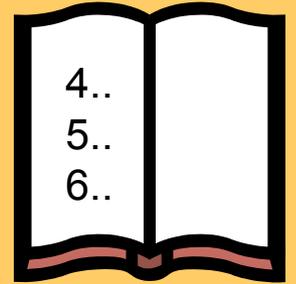
- 1. Keep your hearing officials up-to-date
- 2. Prepare explicit correspondence that accurately and fully explains State agency decision
- 3. Learn from the hearing official’s decision

Minimum Procedures



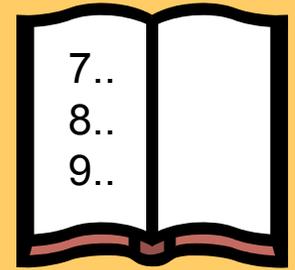
- **Written notice:** Institution & RP/RI
Basis for action
How to appeal
- **Request:** 15 days after notice received by
institution, RP/RI
- **Acknowledged:** 10 days after receiving appeal
request

Required Procedures



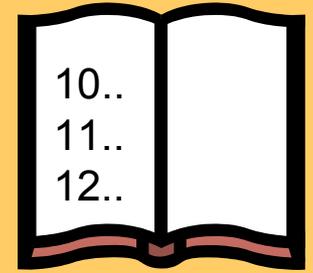
- **Representation:** Legal counsel & others
- **Records review:** Available when appeal offered
- **Opposition:** Written submission no later than 30 days after adverse action notice received

More Required Procedures



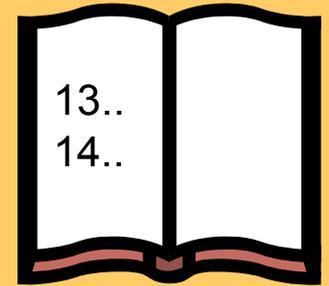
- **Hearing:** Except for abbreviated appeals
- **Hearing official:** Independent and impartial
- **Direct contact:** Cannot be denied by SA

Even More Required Procedures



- **Decision Basis:** Submission, laws, regs, policy, guidance
- **Decision Timeframe:** 60 days after request for appeal received by hearing official
- **Decision:** Final administrative action

The Last Two Required Procedures



- **Documentation:** Retrievable
- **State agency action:** In effect during appeal, i.e.,
- Proposed termination = continued participation

“Let me count the days..”

To request an appeal

July 2003

Sun	Mon	Tue	Wed	Thur	Fri	Sat
	1 Notice received	2 (Day 1)	3	4	5	6
Institution & RP/RI have 15 days after notice is received						
7	8	9	10	11	12	13
14	15	16 (Day 15) Last day to request appeal.		17	18	19
20						
21	22	23	24	25	26	27
28	29	30	31			

“Let me count the days..”

To Acknowledge an Appeal Request

July 2003						
Sun	Mon	Tue	Wed	Thurs	Fri	Sat
	1 Notice recd.	2 (Day 1)	3	4	5	6
7	8	9	10	11	12	13
14	15	16 Request due & recd.	17 (Day 1) 18 19 20 SA must send acknowledgement			
21	22	23	24	25	26 (Day 10) Last day to acknowledge	
within 10 days of its receipt of appeal request						27
28	29	30	31			

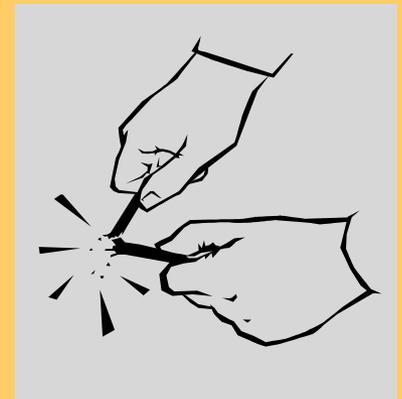
“Let me count the days..”

To Submit Written Opposition

July 2003						
Sun	Mon	Tue	Wed	Thur	Fri	Sat
	1 Notice recd	2 (Day 1)	3	4	5	6
Written documentation must be						
7	8	9	10	11	12	13
14	15	16	17	18	19	20
submitted to hearing official no later than 30 days after the notice						
21	22	23	24	25	26	27
28	29	30	31 (Day 30)			
was received.			Last day to submit			

Separate Appeals

- **When:** Demonstrated conflicting interests
- Institution does not request appeal
- **Who decides:** Hearing official



Suspension Appeals



- **Suspension review false/fraudulent claims:**

- Timing: Before suspension takes effect
- Review: Preponderance of evidence
- Appeal: Still available if suspended

- **Suspension appeal imminent health/safety violations:**

- Timing: After suspension takes effect

Abbreviated Appeals

- **Exceptions to “regular appeal” rules:**

- No right to appear in person

- Written record review only

- **Abbreviated appeals limited to:**

- False application information

- Ineligible applicant (disqualified, other cause)

- **Rationale:** Yes/no decision



Funds Recovery & Appeals



Overclaim Categories



1. Meals (pattern, counts, unapproved types)
2. Eligibility misclassifications
3. Facility participation (ineligible, dual, unapproved)
4. Facility payment errors
5. Costs (unallowable)

Funds Recovery in the Interim Rule

- Prohibits overclaim recovery during appeal
- Requires interest assessment
- Advance recovery continues during appeal
- Valid claims paid during appeal



Repayment Demand Notice



- **No change:** Basis for demand
Require corrective action
Require repayment
Right to appeal
Repayment plan terms
- **Changed:** Overclaim recovery stayed
Advance recovery continues
Interest rate used
Interest accrues until debt fully paid

Interest



- Must accrue on unpaid balance
- Must be paid
- Must use Federal interest rate
- Current debts: Interest must be charged
- Old debts: Not required

Funds Recovery Appeals

- **Appeal:** SA basis for the recovery action
- **Not appealable:** Interest assessment/recovery
Repayment plan denial/limits

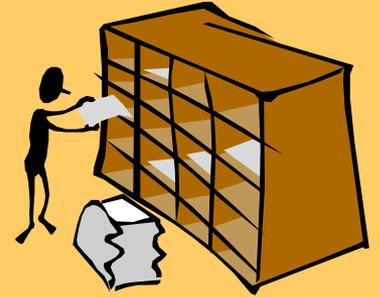


On The List

- Step 1. FNSRO receives copy of:
Termination/ DQ notice, mailing
addresses & date of birth information
- Step 2. FNSRO sends paperwork to FNSHQ
- Step 3. FNSHQ adds names to list
Internet available
Password protected



Paperwork



- Provides FNS
 - Serious deficiency
 - Institution name and address
 - Responsible party personal information
 - Serious deficiency status
 - Debt status

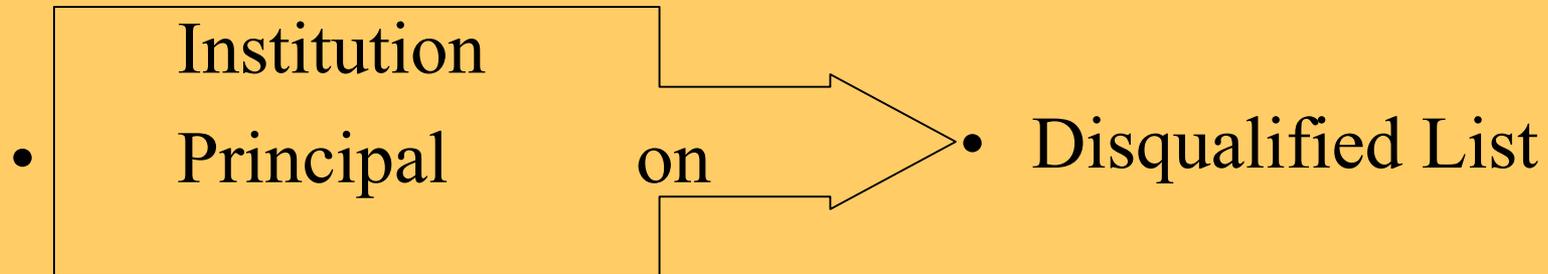
Off The List

- **7 years unless:**
- Earlier:
 - Removal requested
 - Corrective action taken
 - SA agrees and FNS concurs
- Later:
 - Until debt is repaid
- Never:
 - If debt remains unpaid

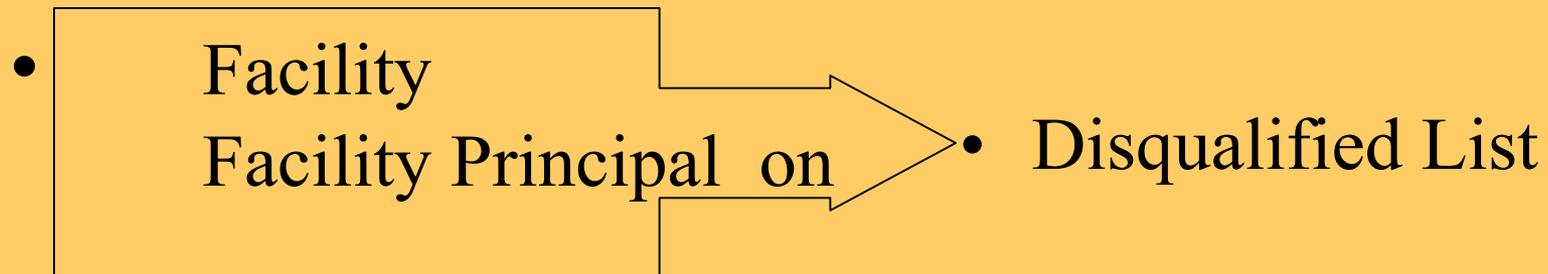


Ineligible Applicants

- Institution may not apply when:



- Facility applicant:



“Making a list - checking it twice”

- ✓ The list must be checked for every application
- ✓ On the list = Deny application
- **• Abbreviated appeal**

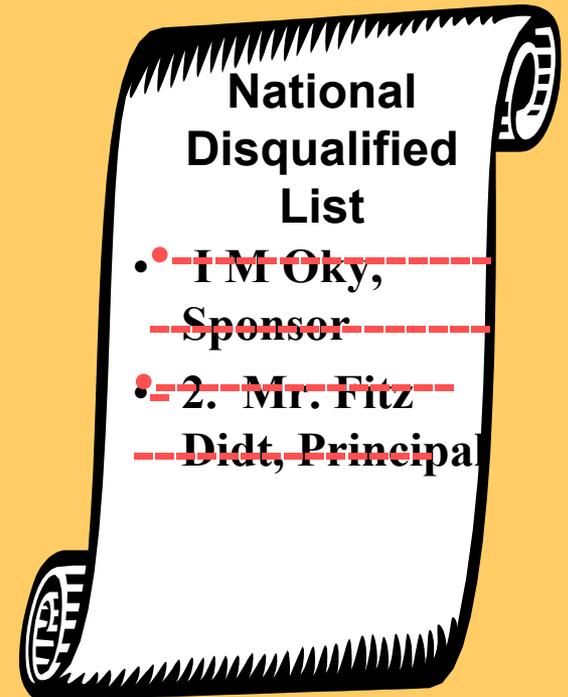
Timing = Off “The List” first - then reapplication



Off The List - By Request

- SA responsibilities:
 - Research corrective action
 - No required timeframes
 - Recommend removal to FNS
- Institution/Individual responsibilities:
 - Burden of proof

No appeal right if denied



“OK, but...”



- Question: How long will institutions and individuals already on the National Disqualified List before July 29, 2002, remain on the List?

Answer:

“We learned...”



- The interim rule has made some changes to the appeal process
- ✓ **Institutions:**
Appeal proposed termination/disqualification
- ✓ **Responsible principals & individuals:**
Appeal proposed disqualification

“And we learned...”



- ✓ **Suspension appeals: But we’ll learn more**
- ✓ **Some action are not appealable:**
 - Determination of serious deficiency
 - Requirement for corrective action
 - Placement on the DQ List
 - Termination

“We also learned...”



–✓ **Appeal procedures: Minimums exist**

–✓ **Abbreviated appeals: Two causes**

– 1. False application information or

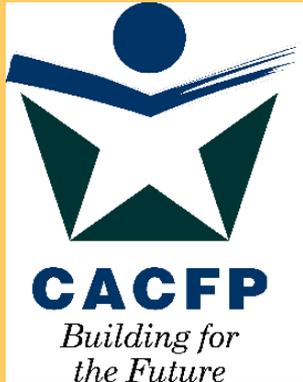
– 2. Ineligible applicant

– No right to appear in person



“And we even learned...”

- ✓ **National Disqualified List:**
Listed for 7 years or longer (unpaid debt)
Process exists for requesting early removal
- ✓ **Interest:** Applies to all current debts and continues to accrue until the debt & interest is fully paid
- ✓ **Overclaim appeals:** Recovery stops - not interest
- ✓ **Advance recovery appeals:** Recovery continues



Provider Appeals

Overview

- ARPA mandated changes for providers
 - SD process for providers
 - Suspension for health or safety violations
 - Provider appeals

Why?

Why do we need provider appeal rights?

- Problem of non-compliant providers switching sponsors
- OIG suggestion
- ARPA requires FNS to maintain a National Disqualified List for terminated providers
- Importance of protecting provider rights

A Rose by Any Other Name

- Fair hearing, administrative review = appeal
- Administrative review official = hearing official



Who Holds the Appeal?

- Sponsor level appeals for providers



Sponsors' appeals costs are an allowable administrative expense

What is Appealable?

- Proposed termination for cause and proposed disqualification
- Suspension for health or safety violations

What is Not Appealable?

- Anything else



Sponsors may permit appeals of other actions

When is an Action Appealable?

- A provider may request an appeal when:
 - Sponsor issues a Notice of Proposed Termination for Cause and Proposed Disqualification
 - Sponsor issues a Suspension Notice

Notice of Adverse Action

- Notice must be in writing
- Sponsor must pay claims for eligible meals served during appeal unless home is suspended



How Will Providers Know?

- Amend the provider-sponsor agreement
- Give copy of the appeal procedures
 - Annually
 - When any appealable action is taken
 - Upon request

Minimum Appeal Procedures

- Uniformity
- Representation
- Review of record and opposition
- In-person hearing not required

Minimum Appeal Procedures (cont.)

- Hearing official must be:
 - Independent
 - Impartial
- Hearing official may be:
 - An employee of the SA
 - An employee or board member of a multi-faceted sponsor
 - A contractor (e.g. sponsor association)

Minimum Appeal Procedures

(cont.)

- Basis for decision
- Timeframes for issuing a decision
- Final administrative decision

No Place to Set Policy

- The hearing official is being asked:
 - Has the Program requirement been properly applied?
NOT
 - Do you agree with the requirement?

Supplemental Procedures

- Must be consistent with minimum procedures
- Examples
 - Timeframe for appeal decision
 - Deadline for requesting an appeal
 - Deadline for submitting additional written documentation

Supplemental Procedures (cont.)

- More examples
 - In-person hearing
 - Additional appealable actions
- SA approval required



Ensuring Compliance

- SA must ensure sponsors properly implement provider appeal process
 - Part of SA review of sponsors
 - Improper implementation of a provider appeal process = SD

Placement on the National Disqualified List

- Sponsor sends SA copy of Notice of Termination and DQ plus DOB
- Within 10 days, SA send FNS RO a detailed description of SD including:
 - Providers Name
 - Mailing address
 - DOB
 - Amount of money owed to the program



Placement on the National Disqualified List (cont.)

- FNS RO send to FNS HQ
- FNS HQ add to Nat'l DQ List



Removal from the National Disqualified List

- Generally removed after 7 years
- Two exceptions:
 - If SD is permanently corrected, removal before 7 years
 - If provider still owes a debt after 7 years, will remain on list until repaid

Applying after Disqualification

- What if home is on Nat'l DQ List?
- Sponsor is not required to:
 - Offer provider an appeal
 - Assist provider with removal from Nat'l DQ List

State Agency Responsibilities

- SA responsibilities:
 - Assess CA
 - Burden of proof for CA lies with home
 - SA submits determination to FNSRO
 - If not recommended, notify home of denial
 - Decision not appealable

How Long?

- Home on the National DQ List or on a SA List prior to July 29, 2002, will remain for 7 years
- Must remain on the list until July 29, 2009; longer if a debt is still owed

Questions

- Will homes be notified they are off the NDL after 7 years?
 - No. This is not required.

More Questions

- May State agencies forward the names of all disqualified providers on their “State agency” lists to FNS for inclusion on the National Disqualified List?
- No. However, providers placed on a State list after October 18, 2000, in accordance with ARPA corrective action and appeal requirements may be included on the National Disqualified List.

And Still More Questions

- Can a sponsor charge for cost of appeals?
 - No



Conclusion

- Important for providers to be
 - Held accountable, and
 - Afforded the right to appeal adverse action

