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## Milk Substitute Clarification Memo

### Fluid Milk and Fluid Milk Substitution Questions and Answers from the United States Department of Agriculture (USDA):

#### A. Non-Dairy Milk Substitutions

**1. Is a caregiver required to provide a non-dairy milk substitute if it is not related to a medical disability?**

No, it is at the caregiver's discretion to provide a non-dairy milk substitute if it is not related to a medical disability.

**2. Will caregivers receive additional meal reimbursements if they provide a non-dairy milk substitution?**

No, all non-dairy milk substitutions are at the expense of the caregiver and/or the child's parent or guardian.

**3. If a parent provides a creditable non-dairy milk substitute, can the caregiver serve it and still receive reimbursement?**

Yes, if a parent provides a non-dairy milk substitute that meets the nutritional standards as outlined in Title 7, *Code of Federal Regulation (7 CFR)*, Section 210.10(m)(3) and that has been approved by the state agency, the caregiver may serve the non-dairy milk substitute and still claim reimbursement for the meal.

**4. If a parent or adult participant can request a non-dairy milk substitute that is equivalent to cow's milk, can the parent or adult participant also request that their child or themselves be served whole or reduced-fat (2 percent) milk?**

No, the Healthy, Hunger-Free Kids Act of 2010 requires that milk served to children and adults in the Child and Adult Care Food Program (CACFP) be aligned with the most recent version of the Dietary Guidelines for Americans (DGA). The 2010 DGA recommends that persons over the age of two consume low-fat (1 percent) or fat-free (skim) milk. Therefore, any request for higher fat milk must be made through a medical statement, related to a medical disability, and prescribed by a licensed physician.

## **B. Compliance**

### **5. What if the parent agrees to provide the non-dairy substitute, but brings in one that does not meet the USDA's nutritional standards; can the caregiver serve it and still receive reimbursement?**

Caregivers should inform parents about the types of creditable non-dairy milk substitutes. If a non-dairy milk substitute is served that does not meet the nutritional standards outlined in Title 7 *CFR* 210.10(m)(3), then the meal is not reimbursable.

### **6. When submitting menus for review, do caregivers need to document the type of milk that they serve?**

No, caregivers are not required to document the type of milk served on their menus. However, it is the responsibility of the state or sponsor, as applicable, to ensure that the correct type of milk is being served when conducting reviews.

### **7. What type of milk may one-year-old children be served?**

The milk requirements for children one year of age remain unchanged at this time. It is recommended, but not required, that children 12 through 23 months of age be served whole milk only.

### **8. If one-year-old and two-year-old children sit together for the same meal, must they be served different types of milk?**

Children older than two must be served low-fat (1 percent) or fat-free (skim) milk and it is recommended that children one year of age be served whole milk. Providers must ensure that children of various ages seated at the same meal receive the appropriate type of milk.

### **9. What happens if a caregiver serves reduced-fat (2 percent) or whole milk on or after October 1, 2011?**

Effective October 1, 2011, meals served to participants two years of age and older that include reduced-fat (2 percent) or whole milk are not reimbursable and must be disallowed. In addition, the provider should submit a corrective action plan and the state agency or sponsor should follow-up to ensure that it has been successfully implemented.

## **C. Adult Participants**

### **10. Must adults participating in the Child Care and Adult Food Program (CACFP) be served 1 percent or fat-free milk only?**

Yes, the provision in the law [42 *United States Code* §1766(g)] requires all CACFP institutions to serve low-fat or fat-free milk, which includes adult day care facilities.

## **11. Can adults submit a written request for a non-dairy milk substitution?**

Yes, adult participants, or their caregivers, may request in writing a non-dairy milk substitute that meets the nutritional standards as outlined in 7 *CFR* 210.10(m)(3) and that has been approved by the state agency.

### **Supplemental Questions and Answers**

The following supplemental questions and answers were made available to the Nutrition Services Division (NSD) after the USDA published Policy Memo CACFP 21-2011-REVISED.

#### **S1. Are soy milk substitutes allowable and if so, what are the milk fat content requirements?**

Soy milk substitutes are allowed so long as they meet the requirements outlined in 7 *CFR* 210.10(m)(3). There are no fat limitations on non-dairy milk substitutes.

#### **S2. Is goat's milk allowable? If so, what are the milk fat content requirements for goat's milk?**

Goat's milk substitutes are allowable so long as they meet the requirements outlined in 7 *CFR* 210.10(m)(3). Goat's milk served must be pasteurized and low-fat (1 percent) or fat-free (skim).

#### **S3. If a provider serves 1 percent milk and the child refuses to drink it, can the provider serve a glass of 2 percent milk in addition to the 1 percent milk served, which the child will not consume?**

No, only 1 percent or non-fat milk can be served in reimbursable meals.

#### **S4. What about almond milk? Is that an allowable substitute?**

Currently, there are no almond milks on the market that meet the requirements outlined in 7 *CFR* 210.10(m)(3).

#### **S5. Is the doctor's statement permanently valid for a child or must it be renewed every year?**

So long as the disability listed in the doctor's statement still applies to the child, it does not need to be renewed annually.

#### **S6. What documentation do child care agencies need to keep on file from parents requesting a fluid milk-substitute?**

If a child care agency chooses to offer a fluid milk substitute for children without a disability who have a medical or special dietary need, it may accept a written statement from a recognized medical authority or from the child's parent or legal guardian. The written substitution request must identify the child's medical or other special dietary need (see enclosed Parental Request for a Fluid Milk Substitution for Children in Child Care form). The written statement will remain in effect and on file with the child care agency until the

parent or legal guardian revokes such statement or until the child care agency discontinues the fluid milk substitution option.

**S7. If a school (or child care agency) chooses to offer milk substitutes for children with medical or special dietary needs, may it only accept written requests from medical authorities?**

No, the school (or child care agency) does not have the option to refuse a parent's request. Section 9(a)(2)(B) of the National School Lunch Act and program regulations at 7 CFR 210.10(g)(2)(ii)(B) allow a statement from a parent/guardian, as well as a medical authority.

**S8. Can a child care agency continue to have a "no flavored milk" policy so long as they don't disallow meals if flavored milk is served?**

Yes, a child care agency may have a no flavored milk rule. Meals should not be disallowed, as long as the appropriate fat content of milk is being served.

**S9. If a doctor orders a product such as Enfagrow Soy as a milk substitute for a non-disabled toddler who is 18 months old, can we still use the medical statement for non-disabled children up to 23 months of age?**

The non-dairy milk substitutions become effective when the child begins to consume cow's milk which is at 12 months of age, thus the provider must serve milk or an approved milk substitute to the non-disabled 18 month old child.

**S10. What do we do for a non-disabled child who is over 12 months and the doctor orders Enfagrow Soy as a milk replacement at meals?**

If the substitution is not related to a medical disability, the non-dairy substitution must be approved by the State and meet the requirements as outlined in 7 CFR 210.10(m)(3). If Enfagrow soy milk is not an approved non-dairy substitution, it may not be served to a child who does not have a medical disability that requires it.

**S11. What does a caregiver do when the doctor orders whole milk for a child over 2 years of age for a "failure to thrive" (non-disability) diagnosis?**

Legislation requires that children over the age of two be served low-fat or skim milk. In order to deviate from this and still receive reimbursement for the meal, the child must have a documented medical disability, which is ultimately determined by the child's physician. If the physician determines the child's failure to thrive is not a medical disability, but instead is considered a special dietary need, the provider should work with the parent and the child's physician to obtain directions that comply with CACFP rules.

**S12. If sponsors/providers have medical statements already in place for milk replacements from recognized medical authorities for non-disability medical conditions that don't meet the 7 CFR 210.10(m)(3) standards , they are going to need some time to go back to their doctors to get these changed over to medical statements that order "approved milk substitutes." Are they allowed a grace period to get this taken care of so long as the agency has a plan to have these medical statements updated?**

Any non-dairy milk substitutions that do not meet the requirements outlined in 7 CFR 210.10(m)(3) must be related to a medical disability that prohibits consumption of cow's milk and approved non-dairy milk substitutes. The WRO is unaware of any grace periods given to sponsors at this time. There was a grace period back in the spring until October 1, 2011 to provide time for sponsors to comply with the new milk requirements.

**S13. Is 7 CFR 226.20(h) still valid? It states: “(h) *Individual substitutions*. Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participants are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.”**

This regulation still in effect in reference to all foods served in CACFP *except* milk. Substitutions for milk are outlined in memo CACFP 21-2011.