Maine Center for Disease Control and Prevention
WIC Nutrition Program

Effective: October 1, 2011 Policy No. VM-6
Revised: August 1, 2014

Vendor Sanction System, Other Disqualifications, and Causes for Termination

Authority

7 CFR §246.4(a)(14)(iii), §246.12(h)(3)(xviii) and (xx), and §246.12(l);
22 MRSA §255; and
10-144 CMR Chapter 286 § IV.G, H, I, J and K

Policy

1. The Maine CDC WIC Nutrition Program may initiate administrative action to disqualify or assess a civil money penalty, in lieu of disqualification, against a vendor for non-compliance on the basis of an incident of violation or a pattern of violations.

    1.1. An incident is defined as one isolated event in a single point in time or any single occurrence of a violation.

    1.2. A pattern is defined as two or more incidences of a violation, unless otherwise stated.

    1.3. A violation includes, but is not limited to the occurrence of a violation and the intent to commit a violation.

    1.4. All incidents of a violation occurring during the first compliance buy visit shall constitute only one incident of that violation for the purpose of establishing a pattern of violations.

    1.5. The Vendor Agreement specifies that failure to meet certain of its requirements provides cause for immediate termination of the Agreement.

2. Mandatory sanctions are federal penalties as defined in 7 CFR 246.12(l) and shall constitute grounds for disqualification from the Maine CDC WIC Nutrition Program for a minimum of one (1) year and up to permanent disqualification.

3. State violations shall constitute grounds for the assessment of sanction points and disqualification from the Maine CDC WIC Nutrition Program. State sanctions will not be added to a mandatory sanction within the same investigation unless a mandatory sanction from the same investigation is not upheld on appeal. Notwithstanding the imposition of any mandatory or state sanctions, a WIC vendor who violates any WIC rules or Program requirements as set forth in the vendor policies and procedures is also subject to potential reciprocal Supplemental Nutrition Assistance Program (SNAP) sanctions, and potential

disqualification by the New Hampshire WIC Program as a consequence of engaging in conduct which resulted in sanctions imposed by those programs.

4. A vendor committing fraud or abuse of the Maine CDC WIC Nutrition Program is liable to prosecution under applicable federal, state or local laws.

5. Class I and II violations are subject to mandatory federal sanctions as defined in 7 CFR 246.12 and shall constitute grounds for disqualification from the Maine CDC WIC Nutrition Program for a minimum of one (1) year and up to permanent disqualification.

Violations

1. CLASS I VIOLATIONS: One instance of these violations shall constitute grounds for disqualification from the Maine CDC WIC Nutrition Program for a minimum of three (3) years and up to permanent disqualification:

    1.1. A conviction for trafficking (buying or selling WIC FIs (food instruments)/ conviction for selling firearms, ammunition, explosives, or controlled substances in exchange for WIC FIs. Length of disqualification – permanent.

    1.2. One incident of trafficking (buying or selling WIC FIs) or selling firearms, ammunition, explosives, or controlled substances in exchange for WIC FI. Length of disqualification – six (6) years.

    1.3. One incident of the sale of alcohol, alcoholic beverages or tobacco products in exchange for WIC FIs. Length of disqualification – three (3) years.

    When a vendor violates 1.2 or 1.3 above after having previously received a sanction for violation of either provision, the length of disqualification shall be doubled. Civil money penalties in lieu of disqualification also shall be doubled, up to the maximum penalty allowed under 7 CFR 246.12(l)(1)(x)(C).

    When a vendor violates 1.2 or 1.3 above after having previously received two (2) or more sanctions for violation of either provision, the length of disqualification shall be doubled for that violation and all subsequent violations. Civil money penalties shall not be imposed in lieu of disqualification for third and subsequent sanctions.

2. CLASS II VIOLATIONS: These violations require a pattern of violations to be documented before a sanction can be imposed. Unless otherwise noted, “pattern” is defined as two or more Class II violations that occur during the period the vendor is under contract.

    2.1 Claiming reimbursement for the sale of any WIC item that exceeds the store’s documented inventory of that food item for a specific period of time. Length of disqualification – three (3) years.

    2.2 A pattern of vendor overcharges- intentionally or unintentionally charging the State more for authorized WIC foods than is permitted under the vendor agreement. Length of disqualification – three (3) years.

2.3 Receiving, transacting, and/or redeeming WIC FIs outside of authorized channels, including the use of an unauthorized retailer and/or an unauthorized person. Length of disqualification – three (3) years.

2.4 Charging the Maine CDC WIC Nutrition Program for WIC foods not received by the WIC customer. Length of disqualification – three (3) years.

2.5 Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, in exchange for WIC FIs. Length of disqualification – three (3) years.

2.6 Providing unauthorized food items in exchange for FIs, including charging for supplemental foods provided in excess of those listed on the FI. Length of disqualification – one (1) year.

2.7 When a vendor receives a second disqualification sanction for any violation of provisions 2.1 through 2.6 above, the length of disqualification shall be doubled. Civil money penalties in lieu of disqualification also shall be doubled, up to the maximum penalty allowed under 7 CFR 246.12(l)(1)(x)(C).

2.8 When a vendor receives a third or subsequent disqualification sanction for any violation of provisions 2.1 through 2.6 above, the length of disqualification shall be doubled for that violation and all subsequent violations. Civil money penalties shall not be imposed in lieu of disqualification for third and subsequent sanctions.

3. CLASS III VIOLATIONS are primarily administrative in nature, involve the assessment of sanction points and are subject to state sanctions. A vendor is subject to disqualification for six (6) months after being assessed 15 sanction points. If the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points. The maximum disqualification for violations for Class III violations is one (1) year. Disqualified vendors must return their vendor stamp to the State Agency and may no longer accept food instruments/cash-value vouchers.

   Points range in value from three (3) to ten (10) depending on the seriousness of the violation. The points are retained for one year from the date the points were assessed. The vendor will have the opportunity to attend an approved WIC Vendor Training once per calendar year to remove three (3) points from the vendor's sanction tally. The methods used to determine whether these violations have occurred include: inventory audits, compliance buys, WIC check edits, monitoring, Supplemental Nutritional Assistance Program (SNAP) reports, redemption analyses and other objective means as determined by the State Agency.

   A Class III sanction will not be added to a mandatory sanction (Class I and II above) within the same investigation, but all violations will be included in the notice of violation. The Maine CDC WIC Nutrition Program may impose a Class III sanction if a mandatory sanction from the same investigation is not upheld on appeal. If the disqualification of the vendor would result in inadequate participant access, the State Agency shall impose a civil money penalty in lieu of disqualification.

   Class III Violations and point values are as follows:

3.1 Contacting a WIC customer in an attempt to recover funds for a WIC FI that was not reimbursed or for which overcharges were requested. 10 points

3.2 Improperly refusing to accept a WIC FI from a WIC customer. 10 points

3.3 Transacting WIC FIs outside of the authorized store location. 7 points

3.4 Altering information on a WIC FI. 7 points

3.5 Failure to submit information requested, in the format requested by the State Agency, within the time specified, including, but not limited to, food price lists and food stocking information. 5 points

3.6 During a WIC transaction, providing WIC-approved food that is beyond the expiration or last sale date imprinted on the product packaging by the product's manufacturer. 5 points

3.7 Failure to maintain the minimum stock of any WIC-approved foods. Any vendor in violation also will be required to correct the insufficient inventory within 48 hours and provide verification to the State Agency within 72 hours. 5 points

3.8 Accepting or requiring a signature before the actual amount of sale is entered on the WIC FI by the customer when the FI is a paper instrument. 5 points

3.9 Failure to request the WIC ID Folder and to verify the participant's signature when the FI is a paper instrument. 5 points

3.10 Charging sales tax on a WIC purchase. 5 points

3.11 Obtaining/using WIC vendor stamps from sources other than the State Agency. 5 points

3.12 Accepting WIC FIs that appear to be altered. 3 points

3.13 Failure to have a participant enter the purchase price on the WIC FI at the time of the transaction when the FI is a paper instrument. 3 points

3.14 Requiring a WIC customer to purchase all food listed on the WIC FI. 3 points

3.15 Failure to provide a WIC customer with an itemized receipt for foods purchased with a WIC FI. 3 points

3.16 First incident intentionally or unintentionally charging the State more for authorized WIC foods than is permitted under the vendor agreement. 10 points

3.17 First incident of charging the Maine CDC WIC Nutrition Program for WIC foods not received by the WIC customer. 10 points

3.18 First incident of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, in exchange for WIC FIs. 10 points

3.19 First incident of providing unauthorized food items in exchange for FIs, including charging for supplemental foods provided in excess of those listed on the FI. 10 points

3.20 Failure to train all staff and store representatives who conduct cash register transactions in WIC procedures and requirements. 5 points

3.21 Charging WIC for the Maine Bottle Bill deposits. 3 points

3.22 Requiring WIC participants to buy specific brands when the brands are not stipulated on the WIC FI or in the WIC Authorized Food List. 3 points

3.23 Substituting or allow substitution of one WIC authorized food for another WIC authorized food that is not on the WIC participant's FI. 5 points

3.24 Requiring WIC participants to make a cash purchase to transact a WIC FI. 7 points

3.25

Other Disqualifications:

1. The State Agency shall disqualify a vendor that has been disqualified from SNAP. The WIC disqualification will be for the same length of time as the SNAP disqualification, and the WIC disqualification may begin at a later date than the SNAP disqualification. This disqualification is not subject to appeal.

2. The State Agency shall disqualify a vendor who has been assessed a civil money penalty for hardship in SNAP under 7 CFR §278.6. The length of disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP. Such disqualification may not be imposed unless the State Agency has first determined in its sole discretion that the disqualification would not result in inadequate participant access. If the State Agency determines that inadequate participant access would result from the disqualification, then neither a disqualification nor a civil money penalty in lieu of disqualification will be imposed.

3. The State Agency shall disqualify a Maine vendor also authorized in the state of New Hampshire who has been disqualified or assessed a civil money penalty in lieu of disqualification by New Hampshire for any mandatory sanction. If the disqualification of the vendor would result in inadequate participant access, the State Agency will impose a civil money penalty in lieu of disqualification.

4. In the event that the State Agency determines that mandatory *disqualification of a vendor would result in inadequate participant access* and the State Agency does not authorize new WIC vendor(s) or otherwise devise a plan to meet participant access needs, the State Agency will impose a civil money penalty in lieu of disqualification of the violating vendor.

    4.1 The State Agency, in its sole discretion (7 CFR §246.18), will determine and document in the vendor file, whether the disqualification of a violating vendor would result in inadequate participant access. To determine inadequate participant access, the State Agency will consider several factors that include, but are not limited to:

4.2 A WIC participant would be required to travel more than ten (10) miles one way from the disqualified vendor to the nearest authorized WIC vendor.

4.3 The presence of physical barriers or conditions would make normal travel to another authorized vendor difficult or impossible (e.g. an island store, poor road conditions).

4.4 A participant access determination is not subject to appeal.

5. Imposition of a civil money penalty in lieu of disqualification from other Food and Nutrition Service (FNS) programs shall result in automatic disqualification from the WIC Program for the same length of time as the potential FNS disqualification period; up to a maximum of three (3) years.

6. When during the course of a single investigation the State Agency determines that a vendor has committed multiple violations (which may include violations subject to state sanctions), the State Agency shall disqualify the vendor for the period corresponding to the most serious mandatory violation. All violations will be included in the notice of violation.

7. The State Agency shall not accept voluntary withdrawal from the WIC Program or non-renewal of the Vendor Agreement as an alternative to disqualification for any mandatory sanction.

8. If a vendor does not pay a civil money penalty in full within the specified time frame, the State Agency will notify the store that the balance of the payment is due within twenty (20) days or the vendor will be disqualified from the Program for the remaining balance of the original disqualification (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

Termination of Agreement for Cause

1. A Vendor Agreement may be terminated for cause by the Maine CDC WIC Nutrition Program, with fifteen (15) days' advance written notice. The vendor will be required to reapply for authorization, and the waiting period before reapplication will be one (1) year unless otherwise specified. The Vendor's new application will be subject to the Maine CDC WIC Nutrition Program's vendor selection criteria in effect at the time of the reapplication. Causes for termination include:

   1.1 Failure to maintain compliance with vendor selection criteria, including changes to selection criteria made during the Vendor Agreement period.

   1.2 Intentionally providing false information in the vendor application or price survey.

   1.3 A change to the store location by more than a short distance as determined by State Agency staff.

   1.4 A change in ownership of the Vendor by more than 50%.

   1.5 Cessation of operations of the authorized Vendor location.

1.6 The State agency identifies a conflict of interest, as defined by applicable State laws, regulations and policies.

1.7 Failure to stock any WIC-approved items in three or more of the WIC-approved food categories.

1.8 Failure to attend mandatory vendor training.

1.9 Nonpayment of a claim for documented overcharges to the Maine CDC WIC Nutrition Program.

1.10 Failure to allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations, and policies. Monitoring and inspection includes, but is not limited to, allowance of access to WIC FIs negotiated the day of monitoring, access to shelf price records and any other vendor records pertinent to the purchase of WIC supplemental food items, including the documentation of the source of infant formula.

1.11 Failure to maintain inventory records used for federal tax reporting purposes; to maintain records in accordance with generally accepted accounting procedures; and to assure that records reflecting justification and receipt of WIC funds, FIs and all other program-related records of the Vendor are available for inspection or audit by federal, state or other authorized personnel.

1.12 Failure to cooperate with federal and state WIC Program and other authorized personnel during announced and unannounced on-site vendor reviews, inspections and audits.

1.13 Failure to provide the Maine CDC WIC Nutrition Program with purchase invoices from wholesalers or receipts for WIC-approved products purchased from other retailers, when requested.

1.14 Failure to meet minimum redemption requirements (no less than an average of 15 WIC FIs/CVVs or an average of $200.00 in value of WIC FIs/CVVs redeemed per month averaged over the previous 12 months). The Maine CDC WIC Nutrition Program will consider a reapplication prior to the end of the termination period if circumstances that caused the failure to meet minimum redemption requirements have changed.

1.15 The Vendor's prices have increased over the prices submitted in the Vendor's application or the most recent price list submitted, and such increase is not due to the inflation rate and/or other legitimate factors. If, within the fifteen (15) days, the Vendor can demonstrate that the prices have been lowered so as to not exceed the MRP established for the Vendor's assigned peer group, termination will not occur.

1.16 During the course of routine monitoring the State agency determines that the Vendor derives more than 50% of their sales volume from WIC FIs.

1.17 Failure to participate in the transition of WIC FIs from paper instruments to eWIC card.

1.18 The Vendor is disqualified for any reason.

Procedures

1. The State Agency shall determination non-compliance with the Vendor Agreement and the Vendor Management Policies thru the following methods:

   1.1 Monitoring

   1.2 WIC FI transactions

   1.3 Compliance buys

   1.4 Inventory audits

   1.5 SNAP reports

   1.6 Redemption analyses

   1.7 Other objective means as determined by the State Agency.

2. The State Agency shall issue written notices of violation for all violations for which action will be taken by the State Agency. A description of the violation, the action to be taken and the right to appeal will be included in the notice (Refer to CR-4, Complaints Process for appeal process information).

3. The State Agency shall notify the vendor in writing if it has been determined that an initial incident of a violation has occurred for which a pattern of incidents must be established to impose a sanction. The State Agency, in its discretion and on a case by case basis, must notify the vendor before another such incident is documented; unless it determines that notifying the vendor would compromise an investigation. Such a determination will be documented in the vendor's file.

4. Any civil money penalty imposed by the State Agency will be calculated using the following formula:

   4.1 Ten (10) percent of the average monthly redemption for the most current six (6)-month period prior to the scheduled disqualification, multiplied by the number of months of the disqualification period, not to exceed $11,000 per violation and $44,000 per investigation.

5. Payment of a civil money penalty shall be made in a lump sum payment or by equal monthly installments due the first day of three consecutive months. All payments (either lump sum or installments) shall be made by certified checks or money orders made payable to "Treasurer, State of Maine," and mailed to the Maine CDC WIC Nutrition Program.