Maine Center for Disease Control and Prevention
WIC Nutrition Program

Effective: October 1, 2011 Policy No. VM-6
Revised: October 1, 2019

Vendor Sanction System

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 terminate, 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 at 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 in the description of the specific violation listed below.

   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 applied to the violations defined in 7 CFR 246.12(l). The federally-defined violations (Federal Violations) and resulting sanctions are listed in Class I and Class II below. Sanctions range from one-year to permanent disqualification from the WIC Program.

3. Patterns of state-defined violations (Class III State Violations) constitute grounds for termination from the Maine CDC WIC Nutrition Program. State Violations will be reported but will not be added to a mandatory federal sanction within the same compliance investigation unless a mandatory federal sanction from the same investigation is not upheld on appeal. Initial and subsequent incidents of a Class III State Violation will have the following consequences:

   3.1. First incident- the vendor will receive a warning letter;

3.2. Second incident- the vendor will be required to attend additional training;

3.3. Third incident- the vendor will be required to submit a corrective action plan, including a written plan for additional training to staff;

3.4. Fourth incident- the Vendor Agreement will be terminated. The vendor will need to wait 12 months to reapply for authorization with the WIC Program.

4. 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.

5. A vendor committing fraud or abuse of the Maine CDC WIC Nutrition Program is liable to prosecution under applicable federal, state or local laws. In addition, a claim can be established for any moneys inappropriately paid to the vendor.

6. Except when specifically stated with Class I and II violations below, if the disqualification or termination of the vendor would result in inadequate participant access, the State Agency shall impose a civil money penalty in lieu of disqualification or termination

Federal 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), or a 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.

   1.4. 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) and described in Procedures below.

   1.5. 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 incidents to be documented before a sanction can be imposed. Unless otherwise noted, “pattern” is defined as two or

more incidents of these violative behaviors described below 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.

2.1.1. This violation is typically identified through an inventory audit. An individual "incident" for this violation is defined based upon the largest quantity of the inventory item redeemed by the vendor on a single paper FI, or, if the item is obtained from a wholesale distributor, by the standard case size for the item. Using infant formula for an example, if a vendor's invoices show that it purchases a specific infant formula by the case and the case contains six units of formula, the inability to show documentation for eighteen units of that specific infant formula would represent three incidents of this violation. If the vendor purchases infant formula by the individual unit and the largest number of units on a paper FI redeemed by the vendor for a specific infant formula allowed 5 units, the inability of the vendor to show documentation for eighteen units of that specific infant formula would represent four incidents of this violation.

2.1.2. When incidents of this violation occur for multiple WIC foods, the incidents are additive. For example, three incidents of insufficient inventory for Formula A, two incidents of insufficient inventory for Formula B, and 1 incident of insufficient inventory for Formula C would constitute six total incidents.

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. For the purpose of this violation, if the overcharge is less than two dollars per food instrument, four incidents will be required to define a pattern. 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. For the purpose of this violation, a pattern shall be defined as four or more incidents for all foods except infant formula. Two incidents of selling the incorrect infant formula or excess infant formula will be considered a pattern. Length of disqualification – one (1) year.

2.7. If 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. If 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.

State Violations

3. CLASS III VIOLATIONS are state-defined and primarily administrative in nature. State Violations are:

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

3.2. Refusing to accept a valid WIC FI from a WIC customer.

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

3.4. Altering information on a WIC FI.

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

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

3.7. Failing 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.

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.

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

3.10. Charging sales tax on a WIC purchase.

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

3.12. Accepting WIC FIs that appear to be altered.

3.13. Failing 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.

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

3.15. Failing to provide a WIC customer with an itemized receipt for foods purchased with a WIC FI.

3.16. Failing to train all staff and store representatives who conduct cash register transactions in WIC procedures and requirements.

3.17. Charging WIC for Maine Bottle Bill deposits.

3.18. Requiring WIC participants to buy specific brands when the brands are not stipulated on the WIC FI or in the WIC Approved Food List.

3.19. Substituting or allowing substitution of one WIC authorized food for another WIC authorized food that is not on the WIC participant's FI. Exception: Selling an infant formula that is not listed on the participant's WIC FI

3.20. Requiring WIC participants to make a cash purchase to transact a WIC FI.

3.21. Failing to maintain a WIC Accepted Here sticker on the entry to the store.

Other Disqualifications:

4. 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.

5. 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.

6. 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.

Procedures:

1. The State Agency shall determine 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. With the exception of an audit that reveals two or more incidences of charging the WIC Program for a specific supplemental food in excess of the store's documented inventory of that food, 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.

3. The State Agency shall issue written notices of sanctions for all violations for which adverse action against the vendor 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.

4. In the event that the State Agency determines that a vendor should be disqualified or terminated based upon the occurrence of violations listed above, excluding Class I Violation 1.1, the State Agency shall make a determination of participant access. If 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 or termination of the violating vendor.

   4.1. The State Agency, in its sole discretion (7 CFR §246.18), will determine whether the disqualification or termination 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:

      4.1.1. Whether a WIC participant living in a town with a population of 5,000 or more people would be required to travel more than five miles one way from the disqualified vendor to the nearest authorized WIC vendor.

4.1.2. Whether a WIC participant living in a town with a population of less than 5,000 people would be required to travel more than ten (10) miles one way from the disqualified vendor to the nearest authorized WIC vendor.

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

4.2. A participant access determination is not subject to appeal.

4.3. Documentation of the participant access determination shall be placed in the vendor's file.

4.4. A civil money penalty imposed by the State Agency in lieu of disqualification due to a Class I or Class II sanction will be calculated using the following formula: 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 $49,000 per investigation.

4.5. A civil money penalty imposed by the State Agency in lieu of termination due to a Class III sanction will be calculated using the following formula: five (5) 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 termination period, not to exceed $2,000 per violation and $5,000 per investigation.

4.6. 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.

4.7. 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).

5. 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.