

# Maine Center for Disease Control and Prevention

## WIC Nutrition Program

Effective: October 1, 2011

Policy No. VM-6

Revised: October 9, 2020

### 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 disqualify, 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 disqualification 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 with corrective guidance;
  - 3.2. Second incident- the vendor will be required to attend additional training and will be

required to submit a corrective action plan, including a written plan for additional training to staff;

3.3.Third 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 of the vendor would result in inadequate participant access, the State Agency shall impose a civil money penalty in lieu of disqualification or termination

## **Violations**

### **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 Benefits or a conviction for selling firearms, ammunition, explosives, or controlled substances in exchange for WIC Benefits. Length of disqualification – permanent.
  - 1.2. One incident of trafficking (buying or selling WIC Benefits) or selling firearms, ammunition, explosives, or controlled substances in exchange for WIC Benefits. Length of disqualification – six (6) years.
  - 1.3. One incident of the sale of alcohol, alcoholic beverages or tobacco products in exchange for WIC Benefits. 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 in a single transaction, 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 WIC Benefit 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 WIC transaction, four incidents will be required to define a pattern. Length of disqualification – three (3) years.
- 2.3.Receiving, transacting, and/or redeeming WIC Benefits 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 Benefits. Length of disqualification – three (3) years.
- 2.6.Providing unauthorized food items in exchange for WIC Benefits, including charging for supplemental foods provided in excess of those listed on the . 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. 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 within the same year. Sanctions imposed will be as described under Policy, Paragraph 3, Sections 3.1 – 3.3 of this VM-6 Vendor Sanction System.

State Violations are:

- 3.1. Contacting a WIC customer to recover funds for a WIC transaction that was not reimbursed or for which overcharges were requested.
- 3.2. Refusing to accept a valid eWIC Benefit card from a WIC customer.
- 3.3. Altering an eWIC Benefit card.
- 3.4. 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.
- 3.5. Charging sales tax on a WIC purchase.
- 3.6. Accepting eWIC Benefit cards that appear to be altered.
- 3.7. Requiring a WIC customer to purchase all food listed in their WIC benefit.
- 3.8. Failing to provide a WIC customer with an itemized receipt for foods purchased with WIC benefits.
- 3.9. Failing to train all staff and store representatives who conduct cash register transactions in WIC procedures and requirements.
- 3.10. Charging WIC for Maine Bottle Bill deposits.
- 3.11. Requiring WIC participants to buy specific brands when the brands are not stipulated on the WIC Approved Food List.
- 3.12. Requiring WIC customer to make a cash purchase or a minimum purchase to transact a WIC purchase.
- 3.13. Failing to maintain an eWIC Accepted Here sticker on the entry to the store.
- 3.14. Failing to maintain the minimum stock of any WIC-approved foods. Any vendor in violation also will be required to correct the insufficient inventory and provide verification to the State Agency within 72 hours. (update Deficiency & Corrective Actions Form) Vendor may request a waiver on certain stock requirements.
- 3.15. Failure to show the price of an WIC authorized food on the item, container, shelf or sign.
- 3.16. Advertising a non-WIC food item as a WIC-authorized food item or other improper use of the WIC logo or acronym.

- 3.17. Requiring WIC customer to show identification other than their Maine eWIC Card.
- 3.18. Failure to properly process eWIC transactions in accordance with the procedures set forth in the most recent publication of the Maine WIC Program Vendor
- 3.19. Guidebook and any revisions or supplements issued by the Department.
- 3.20. Not allowing a split tender transaction whereby a WIC customer is allowed to pay a remaining balance on a fresh fruit/vegetable transaction (CVB) with another form of tender. Fresh fruits and vegetables are the only WIC authorized items a Vendor may ask a client to pay the difference for with another form of tender.
- 3.21. Not allowing sales promotions, such as cents off coupons, and/or not honoring any and all manufacturer's promotional specials to WIC customer, but offered to other customers, and not reducing the corresponding amount from the food benefit price.
- 3.22. Providing incentive items or other free merchandise to only WIC customers and not offered to any other customers.
- 3.23. Failure to extend to WIC customers the same courtesy offered to other customers.
- 3.24. Issuing "Rain Checks" in exchange for food benefits.
- 3.25. Conducting WIC business in a way that is contrary to the health, welfare, and safety of WIC customers.

### **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.
7. Failure to attend the required training. The Department may issue a written warning after the first incident. Termination of Contract and/or ineligibility for reauthorization.
8. Failure to provide access to store premises and/or in any manner to hinder or impede authorized WIC Program staff in the act of conducting an on-site education, monitoring,

inventory audit, or investigation visit. The Department may issue a written warning after the first incident. Termination of Contract and immediate termination in the State MIS or ineligibility for reauthorization.

9. Threatening and/or verbally abusing WIC customers and/or authorized WIC Program staff in the conduct of legitimate WIC Program business. Termination of Contract and immediate termination in the State MIS.
10. Making false statements on a WIC Vendor Application, Contract, request for information, audit, etc. Termination of Contract and immediate termination in the State MIS.
11. The State Agency shall disqualify a vendor that has a suspension or loss of a license or permit to operate a food establishment issued by the Maine Department of Agriculture, Conservation and Forestry. Termination of Contract and/or immediate termination in the State MIS.
12. Vendor ceasing operation for any reason except due to temporary closure from casualty losses, natural disaster, or renovations for improvements. Termination of Contract and immediate termination in the State MIS.
13. A pattern of failing to maintain inventory records or other records the Department requires in the WIC Vendor Contract for a period of three-years after final payment has been received by the Vendor for redeemed food benefits or after all pending matters have been resolved. A pattern will be established when a Vendor fails to produce inventory records for specified WIC-authorized foods as requested by the Department corresponding to a 3- month to 36-month audit period as applicable. Termination of Contract and one-year disqualification.
14. Failure to make available to the Department, the United States Department of Agriculture, or the Comptroller General of the United States, upon request, at a reasonable time and place for inspection and audit or to provide legible copies to the Department within 21 calendar days of the date of the request, all WIC transaction information in the Vendor's possession and all Program related records, including purchase and inventory records for WIC-authorized food items for which the Vendor has claimed reimbursement from the Department. Termination of Contract and immediate termination in the State MIS.
15. Failure to purchase infant formula from licensed wholesalers, distributors and retailers as listed in the Authorized Infant Formula Supplier List. The Department may issue a written warning after the first incident. Termination of Contract and immediate termination in the State MIS or ineligibility for reauthorization.
16. Failure to immediately notify the Department when total WIC sales exceed more than 50% of total store food sales. Termination of Contract and immediate termination in the State MIS or ineligibility for reauthorization.

## **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 Benefit 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 incidents 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 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. 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 \$15,0411 per violation and \$60,1611 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.

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<sup>1</sup> The Secretary is required to adjust civil monetary penalties at least once every four years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended.