

**216-RICR-20-05-3**

## **216 - DEPARTMENT OF HEALTH**

### **CHAPTER 20 - COMMUNITY HEALTH**

#### **SUBCHAPTER 05 - MATERNAL AND CHILD HEALTH**

##### **PART 3 - WIC PROGRAM**

### **3.1 Authority**

- A. These Regulations pertaining to the WIC Program are promulgated pursuant to R.I. Gen. Laws § 23-13-17. Pursuant to R.I. Gen. Laws § 23-13-17, these regulations shall be administered in a manner consistent with 42 U.S.C. § 1786.

### **3.2 Incorporated Materials**

- A. These regulations hereby adopt and incorporate 7 C.F.R. § 246 (2016) by reference (<https://www.fns.usda.gov/sites/default/files/wic/WICRegulations-7CFR246.pdf>), not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. These regulations hereby adopt and incorporate Department of Agriculture; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): 2016/2017 Income Eligibility Guidelines, 81 Fed. Reg. 14826 (March 18, 2016) (<https://www.gpo.gov/fdsys/pkg/FR-2016-03-18/pdf/2016-06222.pdf>) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

### **3.3 Definitions**

As used in these regulations, the following terms shall have the meaning indicated:

1. “Agreement” means the written document between the Rhode Island Department of Health WIC Program and a local agency which states the responsibilities and obligations of both parties in order to provide the WIC Program. The period covered by the WIC agreement is the Federal fiscal year.
2. “Applicant” means an individual who makes application for WIC Program benefits.
3. “Breastfeeding Women” means women up to one year postpartum who are breastfeeding their infants on average of at least once a day.

4. "Certification" means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.
5. "Children" means persons who have had their first birthday but have not yet attained their fifth birthday.
6. "Clients" means pregnant women, breastfeeding women, postpartum women, infants, and children who are receiving supplemental foods or food instruments under the WIC Program and the breastfed infants of breastfeeding women who are receiving supplemental foods or food instruments under the WIC Program.
7. "Clinic" means a facility where applicants are certified.
8. "Competent Professional Authority (CPA)" means an individual on the staff of the local agency who is authorized to determine nutritional risk and prescribe supplemental foods. The professional qualifications required of competent professional authorities are set forth in Federal Regulations. A competent professional authority is herein considered to be a physician, a nutritionist, a dietician, a registered nurse, a physician's assistant or a state or local medically trained health professional approved by the state agency. Also applies to qualified persons not on the staff of the local agency who are qualified to provide medical/nutritional assessment data.
9. "Confidential health care information" means all information relating to a patient's health care history, diagnosis, condition, treatment or evaluation.
10. "Days" means calendar days except for those time standards which specify working days.
11. "Disqualification" means the act of ending Program participation of a participant, food Vendor, or authorized state or local agency, whether as a punitive sanction or for administrative reasons.
12. "Dual Participation" means simultaneous participation in the Program in one or more than one WIC clinic.
13. "Family" means a group of related or non-related individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.
14. "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.
15. "Fiscal Year" means the period of 12 calendar months beginning 1 October of any calendar year and ending 30 September of the following calendar year.

16. “Homeless Facility” means the following types of facilities which provide meal service: A supervised publicly or privately operated shelter (including a welfare hotel, congregate shelter or shelter for victims of domestic violence) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for or normally used as a regular sleeping accommodation for human beings.
17. “Homeless Individual” means one who lacks a fixed and regular nighttime residence or whose primary nighttime residence is one of the following (1) A supervised publicly or privately operated shelter (including a welfare hotel, congregate shelter or shelter for victims of domestic violence) designed to provide temporary living accommodations; (2) an institution that provides a temporary residence for individuals intended to be institutionalized; (3) a temporary accommodation in the residence of another individual; or (4) a public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings.
18. “Income Poverty Guidelines” means 185% of the United States Department of Agriculture (USDA) poverty guidelines.
19. “Infants” means persons under one year of age.
20. “Institution” means any residential accommodation which provides meal service, except private residences and homeless facilities.
21. “Local Agency” means an agency under contract with the Rhode Island Department of Health to provide WIC Program services.
22. “NSA Funds” means Nutrition and Administration funds used to provide WIC services.
23. “Nutrition Education” means individual or group educational sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.
24. “Nutritional Risk” means:
  - a. Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;
  - b. Other documented nutritionally related medical conditions;
  - c. Dietary deficiencies that impair or endanger health or

- d. Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.
- 25. "Participation" means the number of persons who have received supplemental foods or food instruments in the reporting period plus the number of breastfed infants of breastfeeding women who have received supplemental foods or food instruments in the reporting period.
- 26. "Payee" means the custodial parent or guardian or, if unavailable, the delegated caretaker for an infant or child. Authorized to pick up checks and redeem them for food at authorized Program Vendors.
- 27. "Postpartum Women" means women up to six months after termination of pregnancy.
- 28. "Pregnant Women" means women determined to have one or more embryos or fetuses in utero.
- 29. "Resident" means a person making one's home in a place, who can provide evidence of such residence or who is homeless and living in an authorized WIC homeless facility or institution or is homeless and can show evidence of living and sleeping in a place not designed for or normally used as a regular sleeping accommodation for human beings.
- 30. "RIDOH" means Rhode Island Department of Health.
- 31. "State agency" means Rhode Island Department of Health.
- 32. "Vendor" means a grocer, pharmacy, small corner store that has contracted with RIDOH WIC Program to provide WIC authorized foods to WIC clients and accepting WIC checks as payment.
- 33. "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children.
- 34. "WIC Check" means a check issued by the Rhode Island Department of Health WIC Program specifying certain WIC allowed foods which is used by a participant to obtain the specified foods.

### **3.4 Application of Eligibility and Determination**

- A. WIC applicant income screening will be determined by USDA WIC Income Poverty Guidelines, incorporated above at § 3.2(A) of this Part. WIC participants must be either eligible under the USDA WIC Income Poverty Guidelines or be adjunctively eligible.
- B. All WIC applicants must sign an applicant agreement form that gives the WIC Program permission for coordination of services, describes rights and

responsibilities of both the client and the program and indicates agreement that the information provided is accurate.

- C. To be eligible to receive available benefits of the WIC Program, a person must be:
1. A resident of the State of Rhode Island; and
  2. A pregnant, breastfeeding or postpartum woman; an infant; or a child up to his/her fifth birthday; and
  3. A member of a household with an income at or less than 185 percent of the poverty level guideline or be adjunctively eligible (based on enrollment in SNAP, Medicaid, TANF, Katie Beckett); and
  4. Be at nutritional risk.
- D. A Competent Professional Authority (CPA) determines nutritional risk by performing a complete nutritional assessment on an individual basis. Each individual seeking certification or recertification for participation in the program shall be physically present at the clinic site for determination of program eligibility. This applies to all new applicants for their initial certification as well as those applying for a subsequent certification.
1. The following assessment tools must be considered in determining the individual's nutritional status:
    - a. WIC Medical Information Form (if applicable);
    - b. Prenatal Weight Gain Grid (if applicable);
    - c. Infant/ Child WHO growth standards for children birth to 2 years (if applicable);
    - d. Child Growth Charts, for children over two years, measuring stature (if applicable);
    - d. Client Centered Survey tool for Infants, Children and Women
  2. An individual history must include a Client Centered Assessment.
    - a. A Client Centered Assessment must include:
      - (1) An understanding of and response to the clients major concerns to build rapport and provide referrals and support that is most important to the client.
      - (2) A nutrition assessment: Understanding and description of food preferences, family mealtime dynamics, nutritional

supplements, fads, or any factors that impact nutritional status.

- (3) Medical history related to nutrition: The history may be obtained through a review of the applicant's medical record or referral information from a competent professional not on staff of the local agency.
- (4) Socioeconomic factors that affect nutrition including: resources available for food purchase, availability of food storage and cooking facilities and educational level of the participant.
- (5) Anthropometric Measurements: The consistent and accurate use of pregnancy weight gain grids, or growth grids as a recording and evaluation tool for the heights, weights, and BMI following measurements is necessary.
- (6) Laboratory Analyses: A blood test for anemia such as a hemoglobin, hematocrit, shall be performed and/or documented at certification or within 90 days of certification. Review of Lead results that was performed within the past 12 months, provided by the client's doctor.

E. Nutrition Education and Follow up

1. At the first nutrition education meeting, contact staff must create obtainable nutrition goals with the client and the client's child.
2. At the first nutrition education appointment contact staff must explain to clients/guardian:
  - a. Why the client qualified for WIC Program benefits and what is provided by the program and that the nutrition and food benefit is for the individual that has applied whether it be a child, pregnant woman, or breastfeeding woman;
  - b. WIC Program procedures pertaining to the appointment, anthropometrics, hematological, counselling, check pick up and cashing WIC checks and follow-up appointments;
  - c. The fact that the WIC Program is a supplemental nutrition program, that does not provide the complete nutritional needs for the client;
  - d. The current nutritional standing of the client; and
  - e. What the client's nutritional risks are; and

- f. The importance of regular physician checkups; and
  - g. Counseling on breastfeeding (if applicable);
  - e. The importance of STD testing and the risk of transmission to their child (if applicable);
  - f. The detrimental effects of drugs, alcohol, and tobacco; and
  - g. The nutrition goals set with the client or the client's guardian.
- 2. The Second Nutrition Education Contact (SNEC)
  - a. SNECs are to be provided by CPA's only.
  - b. Routine nutrition education contact:
    - (1) The Local WIC site must provide group information sessions which can count as a SNEC or schedule a SNEC on an individual basis. The client can refuse the SNEC education and still receive the remaining benefits.
    - (2) This secondary contact is the time in which individual goals must be discussed and adjusted as necessary.
  - b. High risk nutrition education contact: All clients designated as high risk, according to state and local agency criteria, will receive a high risk care plan outlined in the client notes. It will include a plan designed by the local agency nutritionist and client/guardian. Each high risk client will receive a minimum of one follow-up visit. An individualized care plan can also be provided to any non-high risk participant at his/her request.
- 3. Breastfeeding Education and Support: Ongoing support and rapport building for Pregnant and Breastfeeding Women
  - a. Prenatal Clients: At least 1 contact at each trimester (1-3 months, 3-6 months, 6-9 months) and again at 2-4 weeks before anticipated due date.
  - b. Postpartum: Follow-up contacts within 2-3 days or as requested by participant. Follow-up on problems within 24 hours (see Problem Referrals). After first 2 weeks postpartum: contact at 2-3 weeks, 4-8 weeks, and 3-4 months postpartum. Maintain contact as needed or as requested for entire breastfeeding duration.

- c. Breastfeeding Problems: Follow-up is required referrals by WIC staff within 24 hours of receiving referral of breastfeeding problems. Follow-up contact with client must be within 24 hours of problem discussion.
- 4. Referrals and Coordination: Local Agencies shall refer WIC participants to additional services provided by other health and human resources to avoid duplication of effort.

### **3.5 Management Evaluations and Monitoring Reviews**

- A. Upon being contacted by the state agency, the local agency administrator and local WIC staff will mutually establish the time with the state staff for the team to conduct an on-site review.
- B. Local agency staff members must be available to participate in discussions with the review team, to provide observation of local agency procedures and review of local agency records, and to arrange participant interviews. Local agency staff members must be available to assist the review as required. All local WIC records must be made available as requested by the review team.
- C. Local agency staff must respond to the process in a constructive, objective, and professional manner that will result in conclusions that are useful to the local agency. State and local staff must identify local agency needs and deficiencies, and feasible corrections and improvements.
- D. Any deficiencies corrected prior to the completion of the review must be brought to the attention of state review staff.
- E. At the completion of the local agency review, a local agency administrator, above the level of the WIC Program Coordinator, and other staff at the administrator's discretion must meet with the review team in an exit conference, to discuss a verbal summary of findings and recommendations.
- F. Upon receipt of the written formal statement of review findings and recommendations by the WIC state agency, the local agency staff must review the findings and formulate the plan of correction.
- G. Within thirty days of the receipt of the letter of the review findings, the local agency must submit to the state agency a written response to the findings, including plans of corrections and projected dates of implementation (and dates of corrections that have already been made).
- H. The plan of correction must be signed by the Executive Director, or other management level administrator acceptable to the RIDOH, to assure administrative review of WIC Program operations and agency commitment to the plan.



- I. The state agency will accept the plan of correction or notify the local agency of needed revisions.
- J. The local agency shall implement the plan of corrections according to the stated timetable. If it is unable to do so, the local agency must notify the state agency and submit a revised plan of corrections acceptable to the state agency.
- K. If the state agency determines that an acceptable plan of correction is not submitted within thirty days, or if corrective action is not completed according to the schedule established in the corrective action plan, the state agency may withhold administrative and program services funds through a reduction in the local agency funds allocation.

### **3.6 Program Abuse and Participant Sanctions**

#### **A. Abuse**

##### **1. Dual/Multiple Participation**

- a. Whether discovered through participation reports or other sources, once dual participation is verified, the State Agency shall not issue checks.
- b. The local agency with which the participant has the next scheduled appointment or check pickup shall:
  - (1) Discuss dual participation with client; and
  - (2) Inform client that dual participation is not allowed; and
  - (3) Have client determine which agency he/she prefers; and
  - (4) Retrieve the WIC ID folder of other agency and send it to the Rhode Island Department of Health WIC Office; and
  - (5) Determine with the state agency whether checks should be issued. The dual benefits received should, in most cases, be applied towards the current or next month; and
  - (6) Notify in writing the state agency as to local agency preference, and steps that have been taken; and
  - (7) Terminate the client from one agency.
- c. The circumstances of the dual participation will be reviewed by a state supervisor and local agency liaison and the local agency. This review must include a determination as to whether the child participants have been receiving the supplemental foods.

- d. The state and local agency shall then determine the severity of the violation, procedures to be followed, and sanctions, if any, to be imposed.
- e. If the client refuses reduction of service to one local agency only or persistently denies dual participation, in the face of conclusive evidence or there is evidence of deliberate dual participation, a supervisor at the state agency and the WIC coordinator at the local agencies involved must review the case for disqualification from the WIC Program.

## 2. Other Violations of Program Abuse

- a. Violations of Program rules, shall include but not be limited to:
  - (1) The violations described where evidence indicates absence of intent or deliberateness or where other extenuating circumstances would not support a conclusion of WIC Program abuse.
  - (2) Failure of a payee to make all supplemental food available to a participant.
  - (3) Failure to inform the local agency of a change in address, residence, or other circumstances which might have an effect on eligibility.
  - (4) Failing to report any unused WIC foods to the local agency WIC staff.
  - (5) Any other violation of Program regulations, rules, or procedures.
  - (6) Attempting any violation of Program rules.
- b. Investigation: When there is reasonable evidence of violations, the local agency must notify the client (via telephone or mail) and offer an interview to consult with and counsel the client covering relevant topics, including but not limited to:
  - (1) What occurred and where, in a manner indicating that the participant is given the benefit of the doubt (if applicable);
  - (2) Advising the client that the practice is in violation of program regulations or procedures and warn that person that any information given may be used against him/her in determining sanctions or penalties or in any subsequent

appeal procedure, and inform them of the penalties that may be instituted for such practices (if applicable);

- (3) Counsel and educate the client on the proper procedures to be used, in picking up and cashing WIC checks, indicating the correct procedures and why they are necessary. Offer the client the opportunity to ask any questions and answer them (if applicable);
- (4) A determination will then be made of the client's intention, the severity of any violation, and of the client's cooperation in attempting to change the practices (if applicable). The local agency will then take appropriate additional measures as warranted.

c. Prosecution of Fraud and Abuse

- (1) All instances of fraud, abuse or misrepresentation must be reported to the State WIC Office.
- (2) The state agency may, at its discretion, refer cases which appear to violate the provisions of R.I. Gen. Laws § 23-13-17 to federal, state or local authorities for prosecution pursuant to the provisions of 7 C.F.R. § 246.23, incorporated in § 3.2(A) of this Part.

B. Sanctions Against Clients

1. The local agency will follow procedures to handle abuse or violations of the program. The local agency will confer with the state agency, before imposing any sanction. The state agency reserves the authority to direct that sanctions be imposed by the local agency or that sanctions be modified or not imposed.
  - a. When sanctions are to be imposed, the local agency shall notify the participant by registered mail, return receipt requested, that there is evidence that he/she has engaged in violation(s) or abuse of the WIC Program. Notice of imposition of the sanction may be included or deferred until further steps are completed.
  - b. The participant shall be advised of the sanction to be imposed for the abuse or violation, and/or the effective date of the sanction (giving at least fifteen days' notice). He/she shall be offered an opportunity prior to the imposition or effective date of the sanction to meet in conference to present any information or evidence that the information is in error, that the violation did not take place, that extenuating circumstances exist, or that severe hardship or serious health risk may result from WIC Program disqualification.

- c. The Competent Professional Authority shall determine whether a serious health risk may result from WIC Program disqualification.
- d. The local agency must consider a serious health risk to the participant and other relevant factors in determining whether or not the sanction should be waived in a particular case.
- e. If restitution by the participant is required under 7 C.F.R. § 246.23(c), incorporated above at § 3.2(A) of this Part such restitution will be in cash and will equal the value of Program benefits improperly issued unless it is determined that the recovery would not be cost effective.
- f. If not waived or modified, the following sanctions shall apply:
  - (1) Category I: Disqualification for three months and, if appropriate, restitution of the value of benefits improperly issued.
  - (2) Category II: Disqualification for one month and, if appropriate, restitution of the value of any benefits improperly received.
- g. In the event of physical abuse or threat of physical abuse of staff the sanction will be imposed without offering a conference, or despite a determination of health risk, this is appropriate to protect the safety of staff. The local agency staff must notify the client that, such abuse during a certification appointment may prevent the completion of the certification/recertification and lead to denial of eligibility or failure to recertify.
- h. Before disqualifying a child participant, the local agency must determine whether the abusive person can be excluded from the agency and an acceptable alternative payee utilized.
- i. If not already accomplished, the participant shall be given fifteen day notification by certified mail, return receipt requested, of the implementation of the disqualification from the WIC Program. Any notice of violation or disqualification shall include the Fair Hearing statement, request, and information forms. The notification must specify the date that the person may reapply for the WIC Program. This date should allow for enough time in advance of the end of the disqualification period for the person to be reinstated in the following month.
- j. After this period, the local agency shall review the eligibility of the participant as a new applicant.

C. In addition to the sanctions above, additional measures may include:

1. A warning letter, indicating further violations would be grounds for more severe penalties or for establishing a case of abuse.
2. Cancellation of checks or reduction or deletion of items in the food package as determined by the competent professional authority as being unusable, unneeded, excess benefits, or not being made available to the participant.
3. Disqualification for one month if the investigation or review reveals that the participant is ineligible or violates WIC Program rules, regulations, or requirements twice within a 24 month period, or disqualification for three months for three violations within a 24 month period.
4. If restitution by the participant is required, such restitution will be in cash and will equal the value of WIC Program Benefits improperly issued unless it is determined that the recovery would not be cost effective.
5. Document in the record the efforts for counseling, content, and the response of the participant.

### **3.8 Confidentiality**

#### **Limitations on Disclosure**

1. Each agency shall restrict the disclosure of information obtained from WIC Program applicants or participants to:
  - a. Persons directly connected with the administration or enforcement of the Program; or
  - b. Those public health or helping organizations listed on the Client Agreement which the state agency has designated for purposes of establishing eligibility; or
  - c. Other programs or services which may be of help to the participants.
    - (1) Any person seeking permission to inspect WIC records shall provide his/her identity and shall state his/her reasons for making such a request.
    - (2) A client's confidential health care information shall not be released or transferred without the written consent of such client or his authorized representative, on a consent form meeting designated requirements.

- (3) Consent forms for the release or transfer of confidential health care information shall contain the following information:
  - (AA.) A statement of the need for and proposed uses of such information.
  - (BB.) A statement that all information is to be released or clearly indicating the extent of the information to be released.
  - (CC.) A statement that such information will not be given, sold, transferred or in any way relayed to any other person not specified in the consent form or notice without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of such information or the need for its transfer.
  - (DD.) A statement that the consent for release or transfer of information may be withdrawn at any future time.

### **3.9 WIC Vendor Systems**

- A. Threshold requirements:
  - 1. An application will only be issued to a grocery or pharmacy owner, partner or corporate officer which satisfies the requirements of these regulations.
  - 2. Mobile stores and home Vendor companies are not eligible to be WIC Vendors.
- B. The applicant-Vendor must return the following documents prior to approval:
  - 1. Vendor Application signature Page from Online Application;
  - 2. Email Price Survey List;
  - 3. Proof of ownership;
  - 4. Annual or quarterly tax forms;
  - 5. Copy of a recent driver's license or other positive photo identification; and
  - 6. List names of stores, owner, partnership, manager, spouse, and clerk, to be reviewed by the WIC program, after completed by the Vendor.
- C. Vendor Agreements

1. All approved Vendors must review and execute a Vendor Agreement prior to participation.
2. Each Vendor Agreement shall include a sanction schedule for Vendor Violations in accordance with 7 C.F.R. § 246.12(l)(3).

D. Application Denials

1. If the Vendor has withheld, misrepresented or falsified any information required by the application process, the application will be denied and/or any subsequent Vendor Agreements relating to the application will be immediately rendered null and void, upon discovery.
2. If the Vendor has participated in any actions which are violations of Program rules or accepted WIC checks prior to authorization, (in accordance with Vendor Compliance, V-4) the application will be denied and/or any subsequent Vendor Agreement relating thereto will be immediately rendered null and void, upon discovery.
3. The Vendor may not be accepted if it has been debarred or suspended from participating in any transactions involving federal funds or other assistance with grantees and sub grantees of federal funds.

E. FNS and WIC: Unless needed to serve an area, a grocery Vendor will not be approved to accept WIC, unless the Vendor is authorized by the Supplemental Nutrition Assistance Program (SNAP) under the current ownership. If the Vendor is disqualified from SNAP as a result of disqualification from the WIC Program, the Vendor may not reapply until SNAP authorization is reinstated.

1. A Vendor will not be approved if an individual as a Vendor owner, officer, partner, or manager
  - a. Has not paid in full any fiscal claim, penalty, or fine owed to any USDA or other Federal or State Program or if the Vendor has not corrected any previous violation.
  - b. Has committed or been convicted of any violation of, or been found in violation of, any of the laws and/or regulations, or rules of any USDA or other Federal or State Program, or the terms of any previous Vendor Agreement.
  - c. The Vendor will not be accepted for one to six years from the time of the last violation committed, or from the time it was determined the violation had been committed, or prior to the end of any disqualification, sentence, or sanction imposed with respect to that violation; whichever of these occurred last.

2. A Vendor will not be approved if they were sanctioned with a civil money penalty, or fine or other monetary settlement imposed in lieu of a disqualification, or agreed to as part of resolution of a charge of violation of USDA rules, until the monetary penalty is paid in full.
  3. If a Vendor was removed from the WIC Program, re-applicant(s) must serve the length of time of the sanction the WIC Program before they can be re-approved as a WIC Vendor or such term as consistent with the nature of the act and penalties for a similar act. The WIC Program may accept such a Vendor if it deems Vendor would be a special benefit to the WIC Program and acceptance of the Vendor would be in the best interests of the WIC Program, and impose an alternative penalty and/or special conditions of participation in lieu of denial of participation.
  4. A Vendor will not be approved if the store is owned, in whole or in part, or is managed by any person who has committed or been convicted of any violation of or found in violation of the laws, regulations, or rules, of any USDA Program in accordance with the above.
  5. A Vendor will not be approved if the Vendor employs any person who has committed or been convicted of any violation of, or found in violation of, any of the laws, regulations, or rules of any USDA Program in accordance with the above, whether such violations occurred in relation to that applicant store while the store was under previous ownership, or any other store where such person committed such violations unless such person is under on-site supervision of a superior during all hours of WIC Program related activity and is not allowed to take part in any WIC check transactions.
  6. A Vendor will not be approved if the Vendor has committed any violation of the laws, rules, or regulations of any USDA Program, while under disqualification or other sanction by any USDA Program, or when not participating in SNAP.
  7. A Vendor will not be approved where there is evidence of an attempt to circumvent, or assist in a circumvention of, a period of disqualification from any USDA Program or a civil money penalty imposed for violations of the rules or regulations of any USDA Program.
  8. A Vendor will not be approved where there is likelihood that a former owner, who would not him/herself qualify, still retains direct or indirect ownership in, control over or interest in the business or its operations.
- F. Re-application/Re- approval of Vendor Agreement: When reliable evidence or likelihood exists of violations of the regulations, rules, or procedures of any USDA Program in accordance with RIDOH Vendor Policies, such evidence shall be grounds for denial of the WIC Vendor Agreement. The WIC Program may



deny Vendor participation in the WIC Program for a period in accordance with the WIC Vendor Policies contained in the Vendor Agreement, or until such time as the Vendor is no longer subject to, or under judicial, administrative penalties, sanctions and/or sanction reviews, or other punishment, whichever last occurs. Any of the conditions of the above, shall constitute a violation for purposes of re-approval of a Vendor even when it has been served under any USDA Program but not under the WIC Program (i.e. SNAP Applicant(s) or re-applicant(s) must serve this time under the WIC Program before he/she can be re-approved as a WIC Vendor.

1. The WIC Program may, at its option, enter into a conditional Vendor Participation Agreement when a Vendor is pending judicial or administrative finding, decision, or applicant sanction for an alleged violation, or being readmitted following an allegation of violation, or for special authorization needs.
2. Each applicant Vendor, including re-applications, will be reviewed for compliance with any current or previous WIC Agreement for the past three years from the date of application or from the termination of the most recent WIC Agreement.

G. A Vendor who is currently operating as a WIC Vendor will not be accepted or renewed if the Vendor:

1. Is currently suspended or disqualified from any USDA Program for non-compliance, or is under threat of disqualification related to pending charges. This shall not be subject to administrative or judicial review under the WIC Program.
2. Has committed three violations of the Vendor Agreement such as would be grounds for a 90 day or less disqualification.
3. Has committed two violations, and/or was issued two notices of violation: per the Violations and Sanction Types described in the Vendor Policies within the Vendor Agreement.
4. Has received two suspensions or disqualifications during the preceding three years. Such Vendors shall not be renewed or approved for participation for from one to three years from the date of termination of their current or most recent WIC Vendor Agreement.
5. Has been determined to be charging excessive prices, either by charging for foods not received on the WIC check or charging for foods at higher prices than submitted on the quarterly price survey.
6. If federal regulations for the WIC Program change the maximum disqualification or suspension term or standards for Vendor authorization, during the period of disqualification the WIC Program may modify the

terms of disqualification or non-approval for participation in accordance with the standards set forth in the new federal regulations. The WIC Program cannot modify any federal sanctions.

7. If the WIC Program has reason to believe a change of ownership or control may have occurred and the Vendor fails to furnish sufficient proof that a change has not occurred.
8. If a new WIC Vendor is determined to be an “Above 50% Vendor” (A50%V), they will be authorized on a six month probationary period. During this time, monthly redemption data will be reviewed to identify if, in fact, the probationary WIC Vendor is an A50%V. If this is confirmed, they will be terminated from the WIC Program.
  - a. The “potentially Above-50% Vendor” (PA50%V) peer group will be assigned to applicants who have the potential for total WIC Program sales to comprise more than 50% of their total food sales.
  - b. The “Above 50% Vendor” (A50%V) Peer group will be applied to those Vendors whose total WIC sales comprise 50% or more of their total food sales.
  - c. The redemption histories of all new WIC authorized grocery (i.e. non-pharmacy, non-farmers market) Vendors will be reviewed during the application process. To identify a potential Above 50% Vendor (PA50%V) the following information will be considered:
    - (1) If the applicant is a new business with no redemption history;
    - (2) Recent Supplemental Nutrition Assistance Program (SNAP) redemption data for the applicant;
    - (3) Self-reported total gross food sales for the prior year;
    - (4) Recent State of RI Monthly Sales & Use Tax Return;
    - (5) Recent State of RI Quarterly Reconciling;
    - (6) Recent State of RI Annual Reconciling;
    - (7) Projected WIC food sales, based on the WIC Program’s analysis of peer group food redemption profiles;
    - (8) A new Vendor with no food sales history or SNAP sales history will be considered a potential A50%V for the first 6 months of WIC authorization;

- (9) A new branch of a national chain grocery store will not be considered as a potential A50%V;
- d. During the 6-month period of time, the potential A50%V's redemptions will be monitored to ensure their reimbursements are no greater than the statewide average price of their peer group, or the maximum allowed price for their peer group (whichever is the lower amount).

### **3.10 Program Expenditures**

A. The following are acceptable program expenditures for local agencies:

1. In addition to the cost of nutrition education requirements, breastfeeding education and support must be calculated:
  - a. During each fiscal year, the local agency shall use a minimum amount of 20% of the local agency's NSA expenditures for nutrition education and Breastfeeding Promotion. The local agency shall document the full amount of total NSA expenditures attributable to nutrition education and breastfeeding, including grant funds and other funds or values in its final closeout report for each fiscal year. If the local agency's reported nutrition education expenditures are less than the amount required to be spent, RIDOH may issue a claim for the difference. The local agency may request prior written permission from RIDOH to spend less than the required amounts for nutrition education and breastfeeding promotion and support if the local agency can document that a total of funds from other sources and WIC Program funds will be expended at amounts equal to the required amount. Nutrition education costs are limited to activities which are distinct and separate efforts to help clients understand the importance of nutrition and breastfeeding promotion and support to health.
2. The cost of dietary assessments for the purpose of certification and the cost of prescribing and issuing supplemental foods shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education may include, but need not be limited to:
  - a. Salary and other costs for time spent on nutrition education consultations whether with an individual or group;
  - b. The cost of procuring and producing nutrition education materials including handouts, flip charts, food models or other teaching aids and mailing nutrition education materials to participants;

- c. The cost of training nutrition educators, including costs related to conducting training sessions and purchasing and producing training materials;
  - d. The cost of breastfeeding promotion and support, education and encouragement is an allowable nutrition education cost. Breastfeeding costs include the above categories and specific breastfeeding aids such as breast pumps, nursing bras, and nursing pads, which directly support the initiation and continuation of breastfeeding, and salary and benefits expenses of peer counselors to assist women to continue with an initial decision to breastfeed.
- 3. The cost of Program certification procedures, including the following:
  - a. Laboratory fees incurred for tests conducted to determine whether persons are at nutritional risk;
  - b. Expendable medical supplies necessary to determine whether persons are at nutritional risk;
  - c. In connection with nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia;
  - d. Salary and other costs for time spent on certification.
- 4. The cost of outreach services.
- 5. The cost of administering the food delivery system.
- 6. The cost of translators for materials and interpreters.
- 7. The cost of fair hearings including the cost of an independent medical assessment of the appellant, if necessary.
- 8. The cost of transporting rural participants to clinics when prior approval for using WIC Program funds to provide transportation has been granted by the state agency and documentation that such service is considered essential to assure WIC Program access has been filed at the state agency. Additional part time sites will be considered whenever there is a request for such funds. Direct reimbursement to participants for transportation cost is not an allowable cost.
- 9. The cost of monitoring and reviewing Program operations.

10. Costs for auditing both the WIC Program Services and Administration costs and expenditures for food benefit redemptions. Food benefits values are determined by the state agency based on actual redemptions (disregarding rebate credits) for months in which all issued checks have been paid or expired, and state agency estimated redemption values for any month for which checks have been issued but not yet paid or expired. Figures are available upon request from the state agency.
11. Training nutrition educators is an allowable nutrition education cost when it directly relates to the program. Periodic training such as in-service meetings, professional meetings and seminars for the nutrition professional including breastfeeding promotion and support, are a necessary and a justifiable expense.
12. The following costs are allowable only with the prior approval of RIDOH:
  - a. Capital expenditures over \$500(per unit) must be approved by the RIDOH Office. Capital expenditures exceeding \$5,000 must also be approved by USDA/FNS.
  - b. Requests for approval of purchases of \$500 or more up to \$999, must be accompanied by three quotes, which can be obtained verbally but must be recorded at the time. If the local agency's preference is not the lowest price, the preference must be sufficiently justified in writing.
  - c. Purchases over \$1,000 must go out to bid.
    - (1) If an agency has formal policies which differ from this, it may request permission to follow its normal policies, instead, but is this is not automatically approved by RIDOH.
    - (2) Any requests for purchasing medical equipment shall be submitted to the state WIC agency with complete information regarding the items to be purchased, including manufacturer's and model numbers for approval.
    - (3) Management Information System Expenditures. Any expenditures for automated information systems, except for those used in general management and payroll, including acquisition of automatic data processing hardware or software, whether by outright purchase, rental-purchase agreement or other method of acquisition, must receive prior approval of the state WIC agency and USDA/FNS, if funded in whole or in part with WIC administrative funds.
    - (4) Local agencies may not use WIC administrative funds for college or graduate school tuition or expenses nor for

college courses or training in the pursuit of a college or graduate school degree.

- (5) All local agency travel requests over \$100 requires prior approval from the state WIC agency in accordance with State Travel procedures. In requesting travel local agencies must follow the following procedures:

- (AA.) Planning: Travel requests must be in writing and mailed, emailed or faxed to the Chief, Office of WIC Program as far in advance as possible to the date of travel, for approval or rejection from the State WIC Agency.
- (BB.) Travel Advance: If necessary, a local agency employee may obtain a travel advance for conference fees and/or registration. If travel is approved; proper supporting documentation must be provided to the state agency.
- (CC.) Meal Allowance: in accordance with State Provisions Meal allowances for local agency WIC personnel.
- (DD.) Lodging: Overnight accommodations will not be allowed within a 55 mile radius from workstation. Distance from home cannot be used in calculating the 55 mile radius.
- (EE.) Supporting Documentation: A copy of all supporting documentation must be submitted to the local agency's finance staff who will then include it with the local agency's monthly NSA expenditure report to the State WIC Agency.
- (FF.) If there are any questions prior to travel, contact the State WIC Office Chief or Fiscal Manager, to avoid delay or denial in initial approval or reimbursement in accordance with 7 C.F.R. § 246.14, incorporated above at § 3.2(A) of this Part.

- d. State and local agencies must have established internal procedures to meet the financial management objectives of federally assisted programs.
- e. State and local agencies must providing accurate and reliable information to the Federal government.

13. The local agency shall have an independent annual audit conducted.
14. Each local agency shall send a copy of all local agency sponsored audit reports covering any aspect of local WIC Program related activities including, but not limited to, the complete A-110 and/or A-133 audit report and any related findings, separate reports and local agency response and corrective plans.
  - a. Such copies are due at the State WIC Agency no later than six months from the end of the fiscal year covered by the report.
  - b. The cost of these audits shall be considered a part of administrative and program services costs and may be funded from the local agency administrative and program services funds, as appropriate. For purposes of determining the WIC Program's pro rata share of indirect costs associated with organization-wide audits, the value of food instrument redemptions shall be considered in the total dollar amount of the Program. Program service funds and food instrument values shall be listed separately in 7 C.F.R. § 246.20, incorporated above at § 3.2(A) of this part.

### **3.11 Claims and Penalties**

- A. If the state agency determines through a review of the local agency's reports, program or financial analysis, monitoring, audit, or otherwise that any WIC Program funds provided to a local agency for supplemental foods or administrative and program services purposes were, through local agency negligence or fraud, misused or otherwise diverted from the WIC Program purposes, a formal claim will be assessed by state agency against the Local agency. The local agency shall promptly pay the State agency a sum equal to the amount of the administrative and program services funds or the value of supplemental foods or food instruments so misused or diverted.
- B. If the state agency determines that any part of the WIC Program funds received by a local agency; or supplemental foods, either purchased or donated commodities; or food instruments were lost as a result of thefts, embezzlements or unexplained causes, the local agency shall, on demand, pay a sum equal to the amount of the money or the value of the supplemental foods or food instruments so lost.
- C. The local agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.
- D. Penalties. In accordance with section 12(g) of the National School Lunch Act, whoever embezzles willfully misapplies, steals or obtains by fraud any

funds, assets or property provided under Section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplies, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, incorporated above at § 246.23 of this part.

### **3.12 Fair Hearing Procedures**

- A. Grounds for a Fair Hearing: An individual may request a Fair Hearing to appeal a state or local agency action which results in the individual's denial of participation, disqualification or termination from the Program, or the attempted recovery of the cash value of benefits issued to such individual.
- B. Local Agency Responsibilities:
  - 1. Inform each WIC applicant of his/her right to a Fair Hearing during the initial contact with the local agency.
  - 2. Assure an applicant (or client), against whom sanctions have been imposed, of unrestricted freedom to request a Fair Hearing.
  - 3. Offer assistance to help the applicant prepare and submit the Fair Hearing Request.
  - 4. Inform the applicant that he/she may request copies of any documents in his/her WIC record, in advance of the Fair Hearing.
  - 5. Inform each applicant (or client), against whom sanctions have been imposed, in writing, at the time the sanction is imposed, of the reason for the sanction, the right to a Fair Hearing, and how to request a Fair Hearing. This written information is contained in a separate form, "Fair Hearing Information," given to participants at the time of initial certification and at the time of denial, termination from the Program or other sanction.