

PART ONE – VENDOR RELATIONS

This part describes the Department’s Vendor Management policies and procedures in the WIC Program food delivery system including contracting, training, monitoring, data analysis, etc.

VENDOR AUTHORIZATION

The Department operates a retail purchase food delivery system. Under this system, WIC participants shop at authorized vendors (retail food stores or pharmacies) and obtain supplemental WIC foods of their choice by submitting WIC food instruments to the authorized vendors at the time of transaction. The Department does not operate a “home food delivery system” or a “direct food distribution system.”

The Department is responsible for authorization of each vendor (retail food store or pharmacy) before the vendor may participate in the WIC Program.

Vendor authorization means the process by which the Department assesses, selects and enters into a signed agreement or contract with retail food stores or pharmacies that apply or subsequently reapply to be authorized as vendors.

Vendor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized or applying for authorization by the Department to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location.

The Department will not authorize “mobile stores” which are stores that do not have a single fixed location.

The Department will not authorize “WIC only” stores, or retailers that would have 50% or more of total food sales for any annual period from WIC.

A. Application Procedures

1. Open Application Period

The Department uses a staggered contract cycle, one for the southeastern part, one for the central part, and the other for the northern part of the state. The open application period for each region is January 1 through February 15, on alternating years, and generally takes place every three years.

The first open application period, i.e., January 1 through February 15 of the first year, will apply to the southeastern part of the state, consisting of the following local agency areas: Lenawee, Livingston, Macomb, Monroe, Oakland, Washtenaw and Wayne counties.

The second open application period, i.e., January 1 through February 15 of the following year, will apply to the central part of the state, consisting of the following local agency areas: Allegan, Barry, Bay, Berrien, Branch, Cass, Calhoun, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Jackson, Kalamazoo, Kent, Lapeer, Montcalm, Muskegon, Ottawa, Saginaw, Sanilac, Shiawassee, St. Clair, St. Joseph, Tuscola and Van Buren counties.

The third open application period, i.e., January 1 through February 15 of the third year, will apply to the remaining northern part of the state.

Currently authorized vendors in each area will be mailed an application at the beginning of the open application period. In addition, notice of the open application period will be published in the WIC Vendor Newsletter. Applications will also be mailed to any interested retail food stores or pharmacies upon receipt of a written request.

All applications received after the open application period will be dated and kept on file and will be retained only until the next open application period. The applications on file will be considered only in the event of any opening for a WIC vendor in the area during the course of the contract period.

However, the Department, at its discretion, may, in lieu of a formal application and contracting process explained above, conduct a review of the qualifications of all authorized food vendors during the periods mentioned using standard criteria. Based upon the results of such review, the Department may renew the contracts of the authorized vendors for additional time periods, as determined by the Department.

2. The Initial Authorization

The application process for vendors who have never participated in the WIC Program or who have not participated for the past three years, will include:

- a) A needs assessment.
- b) Based on need, a review and analysis of the vendor application.

- c) An on-site visit by the Department prior to completion of the WIC Vendor Contract to verify information on the application and provide on-site training. The vendor will not be authorized if the Department cannot satisfactorily verify the information on the application, or the vendor fails to participate in the scheduled training session. In this case, the Department will rescind approval of the vendor's application for authorization and no further action will be taken. New vendors that fail the initial authorization site visit will not be eligible to re-apply for 90 days.

3. Reauthorization

The vendor contract does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current contract, the vendor must re-apply for authorization. In all cases, the vendor's new application will be subject to the Department's vendor selection criteria and any vendor limiting criteria in effect at the time of re-application.

Vendors with a history of participation in the WIC Program at any business location during the previous three years, will be subject to a review which includes:

- a) An analysis of a newly completed vendor application.
- b) An evaluation of the vendor's file to determine the vendor's past performance at all business locations, including the following areas:
 - i Compliance with the vendor contract and other policies, rules and regulations;
 - ii Ability and willingness to cooperate with the Department in carrying out the program;
 - iii Responsiveness to warnings and sanctions given; and
 - iv Responsiveness to complaints by participants or other sources.
 - v In the case of stores owned jointly or by corporations, the Department may evaluate past performance as described above at other locations with one or more of the same partners, shareholders, directors or officers as the applicant.

B. Vendor Selection Criteria

Vendors requesting authorization, for participation in the WIC Program must meet all of the selection criteria. Failure or difficulty in meeting any of the selection criteria may be used as just cause for denial of a vendor application for authorization or disqualification of a current WIC vendor. For failure to meet selection criteria, a participant access determination is not required prior to denying an application or disqualifying a current vendor. Incomplete applications will not be considered or processed and will be returned to the vendor.

The Department will review the vendor applications utilizing some or all of the following selection criteria:

1. Availability of mandatory minimum stock of specified items with the exception of special infant formulas and the availability of all categories of WIC supplemental foods. (Appendix G)
2. Variety of available WIC authorized foods and accessibility of a store to WIC participants.
3. Competitive prices as determined by the Department.

As a guide, the Department uses the peer group average price of foods as competitive price. In addition, prices for food categories may be compared among vendors serving the same geographic area. The Department may, at its discretion, allow some variation above the peer group average as the competitive price. A WIC Vendor Peer Group description is included in Appendix H.

4. Current valid license issued by the Michigan Department of Agriculture, except in the case of "formula only" pharmacies.
5. A WIC vendor must be authorized to accept and redeem food stamp benefits and provide documented proof of participation in the Food Stamp Program. A WIC vendor must be in good standing with the USDA Food and Nutrition Service.
6. Lack of any conflict of interest between the vendor and the local agency or the Department as defined by applicable State laws, regulations and policies.
7. Low volume of WIC transactions. An average of \$100 or less per quarter of food instruments will be considered as low volume of WIC transactions and will be treated as lack of demand for a particular store in an urban area.

8. Unless denying authorization of a vendor applicant would result in inadequate participant access the Department will not authorize a vendor applicant if during the past six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include but are not limited to fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice.
9. Compliance history with WIC program policies, rules and regulations as applicable and compliance with any prior contract with the Department. In the case of stores owned jointly or by corporations, the Department may evaluate past performance of one or more of the same partners, shareholders, directors or officers at other locations.
10. Review and determination by the Department as to whether the store was sold by its previous owner in an attempt to circumvent a WIC sanction. The Department will consider such factors as to whether the store was sold to a relative by blood or marriage of the previous owner(s) or sold to an individual or organization for less than its fair market value. The Department may also consider other factors in making its determination.
11. Compliance with the price limitations in the amount the Department pays vendors for WIC food instruments.
12. A vendor's total WIC sales for any annual period cannot exceed 50% of the vendor's total annual food sales.

The Department may reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and may terminate the agreements with those vendors that fail to meet them.

Where there are many food vendors in a geographic area, comparison of prices between vendors for food categories and variety of food item availability will be a major consideration.

If there are more qualified applicants than openings in a zip code, the vendors will be selected using a point score system to rank vendors for selection. The criteria for scoring vendors for authorization include lower food prices, the maximum number of WIC approved food types and brands, WIC Program participation and compliance and other factors listed in the Department's Limitation and Selection Plan.

C. Vendor Limitation Policy

The Department will determine the number and distribution of WIC vendors needed within a local agency using the zip code area and reserves the right to limit the number of authorized WIC vendors. The following factors will be used in determining the need for a distribution of vendors.

1. The Department will classify each zip code in accordance with the population of the area. The classifications will be rural and urban. A city, town, or township will be classified as urban for the purpose of vendor authorization, if the population is 2,500 or more.

The number of vendors the Department may authorize is based on the vendor to participant ratio of 1 to 75 in each rural zip code and 1 to 175 in each urban zip code throughout the state. The number of vendor openings in a zip code area will be the greater of the following:

- a) The number of vendor openings established by the ratio as explained above, or
- b) The current number of vendor openings, which considers participant access.

In zip code areas where there are no current vendors and no openings for vendors, but there are at least 25 participants, the Department may consider establishing one vendor opening for that zip code area.

The Department will use the number of openings determined by the vendor to participant ratio or current openings (which considers participant access), whichever is greater, to determine the number of vendors to be authorized to serve the participants residing in the zip code area. However, the Department, at its discretion, reserves the right to determine the number of vendors in each zip code/local agency area due to unique circumstances. Geographic barriers may also be taken into consideration at the Department's discretion, for determining the number of vendors needed.

2. Vendor Authorization Outside the Open Application Period

The Department, at its discretion, may fill any openings for WIC vendors outside the open application period from the applicant vendors on the waiting list and/or based on requests received from new applicant-vendors. Such openings may be created because of store closure, termination or disqualification of authorized vendors, change of ownership or location of authorized stores which do not meet the requirements under the exceptions to the limitation policy set out in section C-2 (a) and (b)

below, increases of vendors determined in a particular zip code or changes in policy. Whenever openings are filled by the Department outside the open application period, if there are more qualified applicants than openings in a zip code, the vendor(s) will be selected using the ranking procedures currently in place.

If a vendor applies for authorization outside the open application period, and there are no openings in a zip code, the Department will consider participant access and review the distance between stores in determining whether a qualified applicant should be authorized. The Department will apply a general guideline of 1 mile between vendors in urban areas and 5 miles between vendors in rural areas for participant access. If a qualified vendor-applicant is located within a 1 mile radius (for urban areas) or a 5 mile radius (for rural areas) of an authorized/approved WIC vendor, the vendor-applicant will not be considered and will be placed on the waiting list until an opening is identified or until the next open application period.

3. This limitation policy will be subject to the following exceptions:
 - a) Change of Ownership Applications – Applications received from new owners who purchased stores from vendors who were authorized to participate in the WIC Program at the same location at the time of the change of ownership will be processed for authorization upon submission and approval of the application subject to the following conditions:
 1. A new owner's request for a WIC vendor application, including documented proof of ownership, must be received at the Michigan Department of Community Health no later than thirty (30) calendar days after the date the ownership changed or no later than thirty (30) calendar days after the date the previously WIC authorized vendor ceased doing business as a WIC authorized vendor, at that location.

If the request for authorization from the new owner does not meet the 30-day criteria specified in this provision, the Department may nonetheless determine that it is in the best interest of the WIC Program to consider an application as timely received in those cases where: (1) both the current owner and the new owner are eligible for participation in the SNAP or any other FNS Program, (2) neither the current owner nor the new owner are being investigated for WIC Program violations, (3) there is no indication that the change of ownership is an attempt to circumvent a sanction, and, (4) there is evidence of Client

preference for this vendor based on recent WIC redemption activity.

2. The business under the new owner should be operational from the date of purchase in order to receive WIC authorization as soon as possible. The Department may, at its sole discretion, grant specific approval for temporary closure from the date of purchase for a period not to exceed 60 days for store renovations, other business improvements, etc., upon receipt of specific written request from the new owner.
3. A change of ownership will not be considered whenever a notice of action has been issued to a vendor initiating a disqualification or civil money penalty in lieu of disqualification regardless of the stage of the proceedings or whether a final decision has been issued.
4. The Department will not authorize the new owner if it determines that the store had been sold by its previous owner in an attempt to circumvent a WIC sanction.

If a contract is granted to the new owner, it will expire on the same date as the contract which had been granted to the previously authorized vendor. Contracts will not be granted to new owners under this provision when there are 30 or fewer calendar days remaining from the actual date of change of ownership, before the expiration date of the contract with a prior owner. This is due to the administrative costs and time required to review applications, authorize and train new vendors, and to facilitate proper review of all applications received during the open application period.

- b) Change of Location – A change in the location of business is defined as a move from the authorized business location to a distance greater than 1-mile radius in an urban area or 2½ mile radius in a rural area. In this circumstance the WIC Vendor Contract will become null and void and new authorization will be subject to the limitation policy. For vendors who change their business location within a distance of a 1-mile radius from the previous location in an urban area or 2½ mile radius from the previous location in a rural area, an amendment to the contract will be processed identifying the new business location. The amended contract will expire on the same date as the prior contract with the vendor.

The above two exceptions apply only to changes of ownership or location which occur during a contract period (i.e., before the contract with the prior owner or for the prior location has expired). These exceptions do not apply to applications for new contracts (i.e., a contract which would commence after the expiration date and would cover the next contract period). Such applications are subject to the standard application review procedures.

- c) The Department, in its sole discretion, may allow an authorized WIC vendor to continue on the WIC program if the vendor had to be temporarily closed due to casualty losses or natural disaster or renovations or for other reasons. The vendor must notify the Department of the temporary closure immediately, but no later than 21 calendar days from the date the vendor closed temporarily. The notification from the vendor must indicate the date the vendor expects to reopen the business. The vendor may retain its WIC authorization for a period of temporary closure of up to 12 months from the date of temporary closure to complete the necessary repairs or renovations. The Department will not extend the vendors' contract for a period of temporary closure beyond 12 months or from one contract period to the next contract period. The Department will not process a WIC vendor application from a vendor that is closed and has not reopened for business.
- d) In order to promote greater variety and selection options to WIC clients, the Department, in its sole discretion, on a case by case basis, may consider the addition of new vendors in areas where no openings currently exist or it is outside of the designated open application period for that area. In such a case, a vendor may be considered for authorization to participate in the WIC Program if the vendor can demonstrate an ability to provide substantially more than the current minimum requirements in effect for variety and selection of WIC approved foods to WIC clients. The following criteria will be used as the primary guidelines to assist the Department in determining whether a vendor will be considered under this exception:
- The vendor routinely operates at least three checkout lanes; and
 - The vendor routinely maintains an inventory that is at least double the inventory requirements listed in the current

Mandatory Minimum Stock Requirements (see Appendix G), and

- The vendor's sales of alcohol does not exceed 30% of their gross sales.

In addition, the Department may also consider unique circumstances and other factors such as geographical barriers, item pricing, and overall vendor product mix to make its determination as to whether a vendor should be considered under this exception.

D. Notification Procedures

After completion of review of the applications received during the open application period, the Department will notify the vendor in writing, following the close of the open application period, regarding approval or denial of the vendor's application for authorization.

1. Denial

If any vendor's application for authorization is denied, the Department will inform the vendor of the reasons for denial and the right to appeal the denial in accordance with the Administrative Hearing or Administrative Review Procedures in effect at the time of the denial. Appendix J, "Administrative Hearing or Administrative Review Procedures for Vendors" provide more detailed information.

The Department will not consider or process a WIC vendor application received from a disqualified vendor during any period of disqualification from the WIC Program.

2. Application Decision Postponed

In lieu of an application denial action being issued, the Department will postpone making a decision on a WIC vendor application received from an authorized vendor who is in the process of being disqualified or is in the process of receiving a civil money penalty (CMP) in lieu of disqualification by the WIC program until the effective date of the action or until the effective date of the final decision on an appeal.

If a vendor does not appeal or a vendor loses its appeal after administrative review of the disqualification action, the Department will give no further consideration to the application.

In the event the Department's disqualification action is not upheld upon administrative review, the Department will review the vendor's application and may authorize the vendor provided the vendor meets all vendor selection criteria at the time of the review.

3. Limited Grant of Authority to Accept and Redeem Coupons and Process EBT Transactions

An authorized vendor who has timely appealed a disqualification/civil money penalty action or an application denial may be given a limited grant of authority to continue to accept and redeem coupons or process EBT transactions during the administrative appeal or administrative review process, subject to all of the vendor responsibilities as contained in the vendor's expired contract. This limited grant of authority shall only be valid with respect to the authorized vendor at the subject location, and may not be transferred to any other party or location. Further, this limited grant of authority may not be considered, nor may it be construed for any purpose, as an extension of the expired contract, or any of the rights contained therein, but rather, it shall be treated for all purposes as a limited grant of authority to continue to process WIC transactions during the administrative appeal or administrative review process. Any breach of the vendor responsibilities will result in the immediate revocation of this limited grant of authority. And this limited grant of authority shall automatically terminate, without further action or notice by the Department, on the date the decision on the vendor's appeal is entered by the administrative tribunal.

4. Approval

If the vendor's application for authorization is approved, the Department will provide the vendor with the following:

- a) Two unsigned copies of the WIC Vendor Contract with necessary instructions along with a copy of the Vendor Sanction Policy. The vendor may request a copy of the Administrative Hearing Procedures and the Administrative Review Procedures for Vendors.
- b) A fully executed copy of the WIC Vendor Contract, once approved by the Department.
- c) Notification of the scheduled training date as applicable.
- d) The date the vendor may begin to accept WIC food instruments (if applicable).
- e) A unique vendor number, stamp and billing materials (if applicable).

- f) Any new policies and procedures pertaining to the WIC Program as applicable.