

WIC VENDOR BULLETIN

Volume II No. 4

July - September 2002 Quarter

To: WIC Vendors

This is the fourth quarterly WIC Vendor Bulletin for the Federal Fiscal Year 2002. Quarterly bulletins, in effect, update the terms of the WIC Vendor Agreement as set forth in that Agreement in Section 2.t.

Policy/Vendor Agreement Changes Since Last Bulletin

None.

Vendor Agreement Processing Activity

Vendor Agreements have been mailed to all active accounts. The Agreements must be fully executed before any claims may be paid for food instruments accepted by vendors after September 30, 2002. Vendor Agreements cannot be executed until all requested materials are returned to the State Office and materials initialed and signed as appropriate.

Revised Banded Food Package Cost Report

The Banded Food Package Cost Reports for May 2002 have been provided to vendors whose woman/child or infant food packages which have on average exceeded 108% of the local area average for their bands. The reports have also been provided to vendors requesting them. These reports were provided for informational purposes. The next set of reports, which will be sent to vendors exceeding 108% of their band average for the woman/child or infant food packages, will constitute an official warning. Vendors receiving these warnings who subsequently exceed 108% of their band average for the woman/child or infant food package will have the Vendor Agreement terminated for the affected outlet. The vendor shall repay charges to the State for the food packages in excess of 108%. The process for determining competitive pricing is described in general terms in the TAC Chapter 31.34.

New Colored WIC Approved Foods Brochure

The State WIC Program has just received from the printer its tri-fold colored WIC approved foods brochure for the Fiscal Year 2003 which commences October 1, 2002. The brochure is similar to those of past years but updated to reflect the changes in foods. As in past years, there will be an overlap for the period October 1 through December 31, 2002 when vendors may honor the foods listed on either brochure or approved foods lists provided by the State WIC Office. Vendors may expect to receive the brochures about the week of September 15th.

Compliance Buy Procedures Current and Proposed

The WIC Vendor Operations Division has been working with members of the WIC Advisory Committee, WIC vendors, and other interested stakeholders to review the process used by WIC staff to monitor vendors when conducting compliance investigation buys in WIC-authorized stores. A proposal for change was finalized at a meeting held on August 13th open to the public. The proposed change has

been endorsed by the Gulf Coast Retailers Association. We are now seeking input from all WIC vendors and other interested parties about the proposal.

Background:

When USDA, the federal agency which funds and regulates the WIC Program, implemented new regulations for WIC vendor violations recently, the penalty for selling an unauthorized food or brand of food became much more serious. Prior to these new regulations, the penalty for this offense was a suspension of one month or payment of a civil money penalty. The penalty now is disqualification for one year.

Because the WIC food package is a food prescription for specific healthy foods, allowing a client to buy a juice which is less than 100% juice, for example, is considered a serious infraction of WIC rules. In addition, selling a cereal not authorized by Texas WIC, even though it might be nutritionally acceptable, is likely not authorized for other specific reasons such as high cost. All parties involved recognize that these kinds of errors can occur with cashier turnover. Because of the much longer disqualification period, grocers have asked the state staff to consider giving additional warnings and modify the process for conducting compliance monitoring. All parties have come together in a good faith effort to reduce violations. Vendors have commented they recognize the need for ongoing training of staff and expressed assurances to the state that corrective action will be taken as soon as warnings are received.

Compliance Monitoring Process

During these buys, compliance monitors pose as WIC customers and attempt to purchase unauthorized items with WIC vouchers. Based on the number and types of violations which occur, stores are sanctioned for specific periods of time. Information about current sanctions can be found in WIC Policy WV 01.0.

The current procedures are:

Compliance monitors conduct six compliance buys during two separate trips to the area in which the store is located, with three buys conducted each trip. If one or more violations occur on the first trip, a warning letter is sent (for most violations) before the second trip. If a pattern of violations is reached as a result of the three buys on the second trip, the store is disqualified.

The proposed procedures are:

One compliance buy, or pass, will be conducted on the first trip to a vendor location. If a detectable violation occurs, the store will be notified within two weeks after the monitor returns to the office with a fax detailing the infraction. Monitors will send a follow-up letter in approximately 60 days, which includes the original infraction and any other pricing or signature violations that may not have been evident at the time of the buy. Also included in the letter will be a written warning advising the vendor to take appropriate measures to correct the violations noted.

A second buy will be conducted no sooner than 60 days from receipt of the warning set forth in the notice letter to determine if corrective action has been taken. If a pattern has not yet been reached, the same procedure as detailed above will be followed.

A third buy will be conducted, if needed, no sooner than 60 days from receipt of the warning set forth in the second notice letter to determine if corrective action has been taken.

Violations resulting from a third buy will usually result in a disqualification for most types of violations. For more severe violations only one or two incidences are required and a disqualification would result without performing three compliance buys.

Investigations are closed when a disqualification occurs or when two compliance buys occur in which there are no violations. In some cases, additional compliance buys may be required to close the investigation.

The new procedures will increase the number of times a monitor must visit a store from two to at least three and the number of warnings a store will receive increases from one to two (for most violations) before store disqualification. The actual number of passes through the store will usually decrease from six to three. Vendors who proposed the changes recommend that conducting only one buy each visit is fairer to the vendor because when multiple buys are done during a single visit they believe the chances increase that multiple violations will be found.

Changes in Definition of a "Pattern" of Violation

Under the USDA regulations, once a pattern of violation has been determined, the vendor must be sanctioned. The state is allowed to define what constitutes a pattern (subject to USDA approval) but this is the only leeway allowed to the state other than how the process is conducted. Commensurate with the changes described above, it is proposed that the number of incidences leading to a pattern pursuant to most violations be changed. Listed below are violations for which changes are proposed in establishing a pattern.

Charging the State Agency more than the customary selling price charged other customers by more than 1% for the same items.

Will change from 1% to 10% and the number of incidences consisting of a pattern will change from 4 to 2.

Charging for foods not received by the food instrument recipient.

The number of incidences consisting of a pattern will change from 4 to 2.

Providing credit, including rain checks or non-food items other than alcohol, cash, tobacco, firearms, explosives, controlled substances.

The number of incidences consisting of a pattern will change from 3 to 2.

Providing unauthorized food items or package sizes of food except non-contract formula substitution or excess foods.

The number of incidences consisting of a pattern will change from 4 to 3.

Providing non-contract formula contrary to food instrument imprint.

The number of incidences consisting of a pattern will change from 4 to 3.

Providing non-least expensive brand (milk products, juice).

The number of incidences consisting of a pattern will change from 5 to 3.

Not entering all prices at the time of purchase.

The number of incidences consisting of a pattern will change from 4 to 3.

Shelf prices not prominently displayed.

The number of incidences consisting of a pattern will change from 5 to 3.

Accepting food instruments outside valid period, failing to offer WIC customers the same courtesies and discounts as offered to other customers, seeking restitution from participants for food instruments not paid, incorrect labeling of WIC products, refusing to issue an authorized item in an authorized size when the price falls within the not to exceed price, not allowing an authorized product to be refused by a WIC client.

The number of incidences consisting of a pattern will change from 5 to 3.

Please give us your comments on the proposed method of conducting compliance buys. Your feedback is important to us. Answer the questions below and send your response to jack.metz@tdh.state.tx.us or fax at (512) 341-4422.

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Comments

I agree on the proposed procedure and think it should be adopted. Yes _____ No _____

Why? _____

My store can be characterized as:

National grocery chain _____

Regional grocery chain _____

Independent _____

WIC-Only _____

Specialty store such as a pharmacy or medical products supply _____