



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

SUMMARY

WIC staff work closely with vendors to correct any problems. If a vendor is not complying with WIC regulations, a warning will be issued to the vendor by phone or letter to correct the problem. If a vendor continues to have problems, additional mandatory training focusing on the problem area will be provided. When these efforts fail, a vendor is subject to disqualification periods or being assessed a civil money penalty. Before any disqualifications or civil money penalties occur, a warning letter will be sent to the vendor to indicate any program violations that require a pattern of incidences.

SANCTION SYSTEM

The vendor sanction system is a way to track vendor violations and ensure that all vendors are being treated equally. The sanctioning system is broken into two categories: **mandatory vendor sanctions** and **state agency sanctions**.

1. Mandatory vendor sanctions are federally required and may result in a permanent disqualification from the WIC Program or a one to six year disqualification period.
2. The state agency sanctions may result in additional training, a three or six-month disqualification, or the maximum of a one year disqualification period.

A civil money penalty may be assessed in lieu of a disqualification at the discretion of the State agency. A civil money penalty or fine may not exceed \$11,000 for each violation. The total amount of civil money penalties and administrative fines imposed for violations investigated as part of a single investigation may not exceed \$44,000.

NOTIFICATION

Vendors will be notified when they are not complying with program regulations. When a problem occurs the vendor should be provided with a warning letter, prior to assigning any sanction points. A copy of the warning letter should also be sent to the State Office. If the problem isn't corrected after one warning, sanction points will be applied. Depending on the number of points assigned, one of the following may occur:

Date

11/13

Page

1 of 6



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

- A noncompliance letter sent to the vendor
- A mandatory additional training focusing on the problem area
- Disqualification periods
- Assessment of civil money penalties (fines)

The vendor should be notified by written notice in the form of a letter if sanction points are assigned for failing to comply with WIC regulations. The letter should include the violation and date it was committed, and the number of points assigned.

SANCTION POINTS

Sanction points assigned to a vendor must be documented in WICnet and should be discussed with the State WIC office. Generally, sanction points are only applied during a compliance buy and not an educational buy. Prior to assigning points, the vendor should be provided with one warning regarding the specific violation. If the violation is found during a monitoring visit, the vendor should be notified by phone or letter that the violation occurred and is being counted as a warning. The letter or phone call should also indicate that the next time the violation occurs, sanction points can be assigned. Follow-up will need to occur with each warning by reviewing the vouchers from the following month for that particular store. If the same violation is found, sanction points should be assigned accordingly.

DISQUALIFICATION

If enough sanction points are accumulated, the vendor may need to be disqualified for a three month, six month, or 1 year period. The vendor should be notified by letter, which must include:

- Each violation that occurred and the date of the violation
- The points assigned for each violation
- The effective date the disqualification will go into effect (the vendor must be notified at least 15 days before

Date

11/13

Page

2 of 6



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

disqualification, except for the permanent mandatory sanction, which would require immediate disqualification)

- A copy of the administrative appeal fact sheet (the vendor must appeal within 30 days).

At the end of the disqualification period the vendor will need to reapply for program authorization. This process is not as intensive as applying for initial authorization. As long as the store still meets all of the selection criteria and has not undergone a change in ownership or management, the situation is similar to a contract renewal. The vendor needs to complete a current price list and application form and sign a new contract.

FORMS TO STATE OFFICE

The following forms need to be sent to the State Office:

- Compliance Buys forms for each buy
- Food Disposition forms
- Warning letters for noncompliance/program violation
- Letter for assigning sanction points
- Any disqualification notices/letters

ADMINISTRATIVE REVIEWS

All vendors participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) have the right to an administrative review when any adverse action (i.e., disqualification, fines, application denial) affects their participation in the Program. The following are not subject to a review:

- Expiration of the agreement.
- The State Agency's determination regarding participant access or applying selection or peer group criteria.
- Disqualification as a result of disqualification from the Food Stamp Program.
- The State Agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.
- Disputes regarding vendor payments and claims after being offered one opportunity to fix or make adjustments to any errors made by the vendor.
- The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the approved infant formula manufacturer list.

Date

11/13

Page

3 of 6



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

- The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.

Written notification of the administrative action, a copy of the administrative review fact sheet, the cause for and the effective date of the action must be sent to the vendor not less than 15 days prior to the effective date of action. Permanent disqualifications for trafficking convictions are effective upon notice.

Disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

A vendor's request for a hearing must be submitted in writing to the State WIC Office, North Dakota Department of Health, 600 East Boulevard Avenue, Bismarck, North Dakota 58505-0200, no later than 30 days from when the notice is received. No particular written form is required, only that the request is signed by the individual making the hearing request, and that the request identifies the individual and the decision from which the request is made.

Once a hearing request is received by the State, the individual will be forwarded a copy of the North Dakota WIC Administrative Review Procedure. The procedure outlines all of what is involved in the hearing process.

The hearing must be held within four weeks from the date of receipt of the request and is scheduled at the individual's convenience. A hearing officer makes the final decision on the hearing, an official that did not participate in making the decision under review. The written decision of the official is sent to the individuals involved within 60 days from the date of request for hearing.

Appealing an action does not relieve the vendor from the responsibility of continued compliance with the terms of the contract with the WIC Program.

Date

11/13

Page

4 of 6



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

MANDATORY VENDOR SANCTIONS FOR WIC PROGRAM VIOLATIONS

The WIC State Agency may disqualify a vendor or impose a civil money penalty in lieu of disqualification for reasons of program abuse. The vendor will be provided with prior warning that violations were occurring before imposing sanctions for violations that require a pattern of incidences.

Food Stamps. The WIC State Agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be the same length of time as the Food Stamp disqualification. Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program.

Permanent disqualification from WIC

- The State agency shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. In this event the vendor will not be entitled to receive any compensation for revenues lost as a result of such violation.

Six-year disqualification from WIC

- One incidence of buying or selling food instruments for cash (trafficking).
- One incidence of selling firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. 802 in exchange for food instruments.

Three-year disqualification from WIC

- One incidence of the sale of alcoholic beverages or tobacco products in exchange for food instruments
- A pattern of claiming reimbursement for the sale of an amount of specific supplemental food item which exceeds the store's documented inventory of that food item.
- A pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price.
- A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, or
- A pattern of charging for food not received by the participant.
- A pattern of providing credit or non-food items, other than alcohol or tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for food instruments.

One-year disqualification from WIC

- A pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.

Second Mandatory sanction

- When a vendor who previously has been assessed a sanction for any of the violations mentioned above, receives another sanction for any of these violations, the State agency shall double the second sanction, including civil money penalties to their limit.

Third or subsequent mandatory sanction

- When a vendor, who previously has been assessed two or more sanctions for any of the violations listed above, receives another sanction for any of these violations, the State shall double the third sanction and all subsequent sanctions.

If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State Agency shall impose a civil money penalty in lieu of WIC disqualification. If a civil money penalty is imposed in lieu of a Food Stamp disqualification, an abbreviated administrative review by the state WIC agency is required for any vendor who appeals the adverse action. The amount of the penalty will be based on a formula that uses the vendor's average redemption pattern. Failure to pay the penalty may result in legal action on the part of the Health Department. Installment plans for the CMP may be negotiated with the Health Department and will be determined on a case by case basis.

The State Agency may impose sanctions for other violations listed in the vendor agreement.

The vendor has a right to appeal a decision that denies participation or disqualifies the vendor, except when the disqualification is a result of a Food Stamp disqualification or if the contract has expired.

Date

11/13

Page

5 of 6



North Dakota
WIC

Food Delivery

Section

VENDOR

Subject

SANCTIONS FOR PROGRAM VIOLATIONS

STATE AGENCY SANCTIONS

The following are the North Dakota WIC established violations and sanctions. The point system listed below will be used to determine warning letters, additional training needed, and disqualification periods. The North Dakota WIC Program will provide the vendor with prior warning that violations were occurring (for those requiring a pattern of incidence) before imposing any of the sanctions described. All points are cumulative and will be kept for a period of one year as long as the vendor is authorized on the program. Points accrued for each violation will be erased exactly one year after the date that the violation occurred regardless of a renewal of a vendor agreement. The vendor will be notified in writing regarding any points assessed and the type of violations found.

State Agency Point System

5-9 points = noncompliance letter (explains violation(s) committed and offers suggestions for fixing)

10-13 points = additional training required focusing on violation(s)

14-16 points = three month disqualification

17-19 points = six month disqualification

20 or more points = 1 year disqualification

- 10 Offering any cash or change back to participant after processing a WIC food instrument
- 7 Accepting more than 3 checks in a six month period under any of the following conditions:
 - Over 30 days from date of issue
 - Cashed before date of issue
 - Altered date or amount with no WIC staff or client initials
 - Failing to deposit within 60 days
- 5 Failing to reimburse the State for overcharges or unauthorized foods
- 5 Failing to attend mandatory training sessions after giving one alternate date to attend
- 5 A pattern of charging sales tax on WIC transactions
- 5 Discourteous treatment of a WIC participant as substantiated by three or more complaints regarding three separate instances
- 4 Failing to submit any of the four required price surveys per year
- 3 Stocking or selling outdated WIC foods or formula to WIC participants. This will include any WIC product that has a specific expiration date, sell by, best if sold by, or similar wording with a date printed on the item.
- 2 A pattern of leaving any portion of a check blank including amount or client signature
- 2 A pattern of mislabeling WIC authorized foods
- 2 Failing to ask participant for their ID folder during a WIC transaction
- 2 Failing to submit the Infant Formula Return form monthly, or a time period mutually agreed upon by the Local WIC Office and the vendor.

Date

11/13

Page

6 of 6