

Nutrition Services Department of State Health Services

Effective June 1, 2014

Policy No. GA:12.0

Participant Violations

Purpose

To provide an equitable control for identifying, reporting and investigating alleged WIC Program violations by participants and parents, guardians, client-designated proxies, state agency-appointed proxies or caretakers of participants.

Authority

7 CFR §246.7, §246.9, §246.12

Texas Government Code §531.102(d), §531.102(g), § 531.102(h)

Policy

Local agency (LA) staff shall report alleged WIC Program violations by participants and parents, guardians, client-designated proxies, state agency-appointed proxies or caretakers of participants to the Office of Inspector General (OIG) for follow up and action.

Participants and parents, guardians, client-designated proxies, state agency-appointed proxies, or caretakers of participants identified and documented as having committed program violations will be sanctioned.

I Definitions

Participant Violation - any intentional act of a participant, parent, guardian or caretaker of an infant or child participant that violates Federal or State statutes, regulations, rules, policies or procedures governing the WIC Program. Violations include the following:

- A. making a false or misleading statement;

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- B. misrepresenting, concealing, or withholding facts to obtain WIC benefits including:
 - 1. failure to report correct income during the certification process;
 - 2. failure to report members of the household and/or their income during the certification process; and/or
 - 3. not residing at the residence claimed during the certification process.
- C. simultaneous or dual participation (receipt of food instruments) in more than one WIC clinic during the same calendar month (see Policy CS:28.0) or in the Commodity Supplemental Food Program during the same period of time as WIC;
- D. selling or exchanging, offering to sell or exchange, or allowing any other person to sell, exchange, or offer to sell or exchange, any food instrument or benefit issued to the participant or any WIC food that is the same type as a WIC food item included in the participant's WIC food package prescribed by the WIC Program, for cash, credit, non-food item(s), or unauthorized food(s), including food(s) in excess of that authorized; an offer shall include any offer that is made verbally, in print, or online through a website such as Craigslist, Facebook, Twitter, eBay, or other website.
- E. alteration of a food instrument; or
- F. threatening to harm or physically harming LA, vendor or SA staff.

II. Procedures

- A. Once a participant violation is suspected or a complaint is received, the LA and the IRM shall follow the following steps:
 - 1. Document, to the fullest extent possible, the suspected/alleged participant violation and submit a report of it to the OIG either

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online at <https://oig.hhsc.state.tx.us/wafrep/> or by calling 1-800-436-6184. The OIG has an online form for fraud and abuse referrals.

2. When submitting a report of a suspected/alleged participant violation to the OIG, attach copies of certification records or other pertinent records, and printed screens of postings on Craigslist, Facebook, Twitter, eBay, or other website that contain or relate to an offer to sell or exchange any food instrument or benefit issued to the participant or any WIC food that is the same type as a WIC food item included in the participant's WIC food package prescribed by the WIC Program, including food(s) in excess of that authorized.
- B. The LA shall comply with requests from the Health and Human Services Commission Office of Inspector General's investigation protocol as follows:
1. The OIG staff will contact the WIC clinic, identify themselves, and follow these steps:
 - a. Obtain the name of the manager, supervisor, or nutritionist and fax number of the clinic;
 - b. Fax the request for documents to the manager, supervisor, or nutritionist;
 - c. Call the clinic contact to verify the fax arrived; and
 - d. Email the LA WIC Director the same day, notifying her/him of the records requested and the name of the manager, supervisor, or nutritionist to whom the request was faxed.
 2. The LA shall provide any requested documents to OIG within ten (10) business days of the date of the request. The day following the date of request is day one. The OIG will notify the WIC Director when the requested documents are not received within ten (10) working days of the date of the request.

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3. Requests from the OIG will include all certifying documents for the time period being requested, such as the application (WIC-35); Supplemental Information Form (SIF); copies of check stubs; any other documents furnished by the applicant during the certification process; any documents furnished by the clinic during the certification process; and the names, business addresses, and phone numbers of the employees who completed the certification.
4. When additional documents are required after the initial request, the OIG will contact the clinic person initially identified as the contact person.
5. In order to ensure a timely response to investigative staff, LAs are required to update the state agency regarding any changes to clinic locations, phone numbers, fax numbers, WIC director e-mail address, clinic managers, supervisors, nutritionists, and hours of operation.
6. Interviews with clients at the LA:
 - a. When an interview with a client will be conducted at the LA, OIG will contact the clinic manager, supervisor, or nutritionist five business days prior to the interview to ensure interview space at the clinic is available during working hours. The OIG will notify the manager, supervisor, or nutritionist and the LA WIC Director of the date, time, and place of the scheduled interview(s).
 - b. Upon arrival at the clinic, the OIG investigator(s) will notify the manager, supervisor, or nutritionist of their presence to receive instruction on space availability to conduct the interview(s).

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7. Each LA shall establish internal procedures for their agency on how to assist the OIG investigators in accordance with this policy when the agency is contacted during an investigation.
- C. Upon a final determination by the OIG that a participant violation has occurred, participants and parents, guardians, client-designated proxies, SA-appointed proxies, or caretakers of participants identified and documented as having committed a participant violation shall be sanctioned as follows:
1. For a participant violation in which a claim of \$100 or more is assessed, the participant shall be disqualified for one year.
 2. When the SA or the OIG assesses a second or subsequent claim of any amount, the participant shall be disqualified for one year.
 3. For an offense in which a participant has illegally received benefits at more than one WIC office and the SA or the OIG assesses a claim for such dual participation, the participant shall be disqualified for one year.
 4. For a participant violation in which a participant has sold or exchanged, offered to sell or exchange, or allowed any other person to sell, exchange, or offer to sell or exchange, any food instrument or benefit issued to the participant or any WIC food that is the same type as a WIC food item included in the participant's WIC food package prescribed by the WIC Program, including food(s) in excess of that authorized, the participant shall be disqualified for a period of six months for a first offense and 12 months for a second or subsequent offense.
 5. Upon a final determination by the OIG that a participant violation does not warrant a one-year mandatory disqualification, the following sanctions will apply.

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- a. If a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant sells or exchanges, offers to sell or exchange, or allows any other person to sell, exchange, or offer to sell or exchange, any food instrument or benefit issued to the participant or any WIC food that is the same type as a WIC food item included in the participant's WIC food package prescribed by the WIC Program, including food(s) in excess of that authorized, for any of the following items, the participant shall be disqualified for a period of six months for a first offense and 12 months for a second or subsequent offense:
 - i. cash, credit or non-food items;
 - ii. firearms, explosives, ammunition, controlled substances, alcohol, or tobacco products;
 - iii. non-food items not listed in 25 TAC §31.30(f)(2); or
 - iv. unauthorized food, including foods in excess of that authorized.
 - b. If a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant threatens to harm local agency, vendor, or state agency staff, the participant shall be disqualified for a period of six months for the first offense and 12 months for a second or subsequent offense.
 - c. If a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant physically harms local agency, vendor, or state agency staff, the participant shall be disqualified for a period of six months for the first offense and 12 months for a second or subsequent offense.
6. Exceptions to disqualification:
- a. The SA or the OIG may decide not to impose a disqualification if, for a participant violation that results in a claim assessed against the participant, parent, guardian,

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- client designated proxy, SA-appointed proxy, or caretaker of a participant, full restitution is made within 30 days of receipt of a letter demanding repayment or a repayment schedule is agreed on.
- b. The SA may permit a disqualified participant to reapply for the program before the end of a disqualification period if, in the case of a participant violation for which a claim was assessed against the participant or parent, guardian, client-designated proxy, SA-appointed proxy, or caretaker of a participant, full restitution is made or a repayment schedule is agreed upon.
 - c. The SA may issue a waiver to appoint a person as a special proxy to transact food instruments and receive nutrition education for an infant, child, or participant under age 18 when the infant, child, or participant under age 18 will incur a serious health risk from the suspension of benefits.
7. The SA shall attempt to recover, in cash, the value of the benefits received by a participant or the parent, guardian, client-designated proxy, state agency-appointed proxy or caretaker of a participant as a result of a participant violation, other than a violation that consists solely of an offer to sell or exchange a food instrument or benefit issued to the participant or a WIC food that is the same type as a WIC food item included in the participant's WIC food package prescribed by the WIC Program, including food(s) in excess of that authorized.
- a. The SA or the OIG shall determine the amount of the benefits improperly received by a participant through an independent review of local agency records and such other procedures as the SA considers necessary under the specific circumstances.

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- b. In cases involving criminal prosecutions for violations of law, repayment of the cash value of benefits improperly received shall become a part of any restitution agreement with the prosecutor. In such cases, the participant shall not have the right to a fair hearing by the department.
 - c. In cases involving an administrative claim but no criminal prosecution, the OIG shall notify the participant or parent, caretaker, or guardian of a participant in writing that a financial claim has been established and shall request repayment of an amount equal to the value of the benefits improperly received. The written notification shall include the reasons for the claim, the value of the benefits improperly received, repayment methods, and the participant's right to a fair hearing.
 - d. Collection of a financial claim assessed against a participant by offset of future benefits is not authorized.
- D. The SA will notify the LA WIC Director about participant sanctions and provide any further instructions according to the particular incident and circumstances. As applicable, the SA may direct the LA to initiate sanctions.
- E. The SA shall provide a hearing procedure through which any individual may appeal an action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the denial of participation in, or disqualification from, the Program. Refer to Policy CR:03.0, Fair Hearing Procedure for Applicants/Participants.
- F. In all cases where it is found that a participant, parent, guardian, client-designated proxy, SA-appointed proxy, or caretaker of a participant unlawfully received benefits due to a WIC participant violation, including, but not limited to, dual participation, the SA and the OIG has the option to refer the matter for criminal prosecution.

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- G. If during an investigation, information is developed that indicates fraud and abuse in excess of \$1,000 or other major criminal activity, including large scale vendor trafficking in food instruments, firearms or narcotics, or involvement by organized crime elements, the State agency should immediately advise its FNS regional office, which will refer the case to the appropriate USDA Office of the Inspector General (OIG) regional office. In such cases, the State agency should hold further investigative action in abeyance, pending USDA OIG action. In such instances, the FNS regional office will notify the State agency of whether USDA OIG intends to assume the investigation. If USDA OIG does not assume the investigation, the State agency should refer the case to State and/or local law enforcement authorities for investigation and/or prosecution under applicable State or local laws.

- H. Failure to follow these procedures and/or to keep applicable documents per the records retention requirements may cause the LA to assume the liability for the amount of improperly issued program benefits.