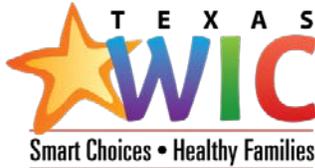




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NUTRITION SERVICES - WIC PROGRAM VENDOR MANAGEMENT & OPERATIONS UNIT

Technical Guidance Document

No: 04-0001

Subject: WIC authorized vendor change in ownership

Effective Date: 09/01/2015

This is a Technical Guidance Document (referred to as “TGD”) intended to provide instruction, clarification or interpretation of United States Department of Agriculture (USDA) Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) program (referred to as “Program”) policy issued by the Texas Department of State Health Services (DSHS), to which WIC authorized vendors are subject.

The purpose of this TGD is to provide WIC authorized vendors with clarification to section VI(B) of the WIC Vendor Agreement, which addresses a change in ownership. Specifically, DSHS requires that a WIC authorized vendor notify the state agency in writing of a change in ownership. Section VI(B) of the WIC Vendor Agreement states:

VI. Notice.

B. Vendor will submit written notice to the Agreement Manager in Section V within 10 business days of any change to:

- 1.** Vendors name, contact information, key personnel, organizational structure, such as merger, acquisition or change in form of business, legal standing, or authority to do business in Texas.
- 2.** Change in ownership and cessation of operations terminates the Agreement and renders it null and void. The State Agency, at its sole discretion, may permit a change in location over a short distance without terminating the vendor Agreement or determine if a change in business structure constitutes a change in ownership.

This section of the Vendor Agreement, and the corresponding WIC Policy, WV:10.0 (VII)(D), reflect the requirements found in federal regulations. *See* 7 CFR 246.12(h)(3)(xvii). In exercising its discretion concerning whether a change of ownership has occurred, a significant

variable that DSHS must take into account is the actual structure of the business.

Example:

If John Smith, owner of ABC Store, a sole proprietorship business, passes away and through his estate the business goes to his daughter Jane Smith, this would likely be considered a change in ownership. In this instance, the sole proprietor of the business has changed, even though it was passed down through an inheritance.

Alternatively, if ABC Store is owned by a corporate entity (i.e. a business entity that is legally incorporated or formed as a Limited Liability Corporation, etc.) of which John Smith and/or Jane Smith has an ownership interest – changes in the corporate structure or membership, such as in the example above, would not necessarily constitute a change in ownership because the corporate entity is still the owner of ABC Store. Likewise, the sale of a business may not constitute a change in ownership depending on the business structure before and after the sale. For instance, assuming that John Smith, Inc. owns ABC Store, the sale of or other ownership changes to John Smith, Inc. would not be considered a change of ownership if John Smith, Inc. remains the owner of ABC Store.

Due to the complexities and legal considerations of this issue, please consult your attorney for specific guidance on ownership legal issues. However, DSHS WIC staff are available to assist with any non-legal questions regarding change of ownership.

Refer any questions regarding this TGD to:

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Approved by: _____

Magdalena Blanco, Director

Vendor Management & Operations Unit