

CR 94-159

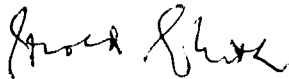
CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to conditions for vendor authorization under the Supplemental Food Program for Women, Infants and Children (WIC) were duly approved and adopted by this Department on December 29, 1994.

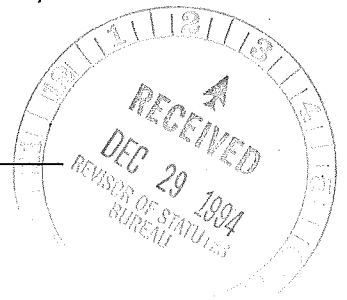
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 29th day of December, 1994.



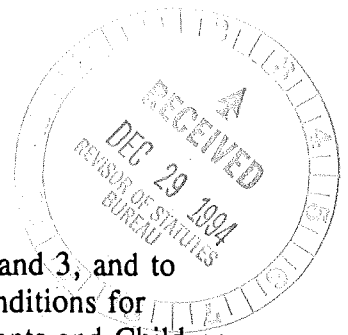
\_\_\_\_\_  
Gerald Whitburn, Secretary  
Department of Health and Social Services

SEAL:



3-1-95

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
AMENDING AND CREATING RULES



To amend HSS 149.02(6), 149.03 (7)(a), 149.07 and 149.08(1)(a) 2 and 3, and to create HSS 149.03 (7)(d) and (e), 149.065 and 149.08(1)(a)4, relating to conditions for vendor authorization under the Supplemental Food Program for Women, Infants and Children (WIC).

Analysis Prepared by the Department of Health and Social Services

The Supplemental Food Program for Women, Infants and Children (WIC) under s. 46.016, Stats., s. 253.06, Stats., as renumbered by 1993 Wisconsin Act 27, and ch. HSS 149 provides infant formula and other foods to low-income Wisconsin residents who are at proven nutritional risk. The program provides vouchers, called drafts, to participants for free food specifically suited to the needs of participants. Participants redeem the vouchers, that is, exchange the drafts for food at authorized grocery stores and pharmacies.

The Legislative Audit Bureau (LAB) recently released a report evaluating administration of the WIC program. The report cited growing fraud and abuse in the program. Discussing the Department's response to this problem, LAB recognized that the Department was in the process of taking action to tighten enforcement of its existing rules. Over the longer term, LAB noted that the Department was planning a review and revision of its existing permanent rules. Finally, LAB stated that "the Department is considering a number of rule changes that might be promulgated on an emergency basis because of the threat to public health and safety presented by fraudulent practices." Those rule changes were published as emergency rules on August 10, 1994. These are the replacement permanent rules.

This rulemaking order changes the contract term for all new applicants for WIC authorization from two years to one year and permits the Department to remove a vendor from the WIC program in a case where the vendor has been convicted of a criminal offense involving WIC or other nutrition programs without having to re-prove the facts underlying the vendor's criminal conviction. Shortening the initial term of authorization will permit the Department to more effectively screen applicants and to remove those demonstrating unacceptable performance.

The Department's authority to amend and create these rules is found in s. 46.016, Stats., s. 253.06, Stats., as renumbered by 1993 Wisconsin Act 27, and s. 227.11(2)(a), Stats. The rules interpret s.46.016, Stats., and s. 253.06, Stats., as renumbered by 1993 Wisconsin Act 27.

SECTION 1. HSS 149.02(6) is amended to read:

HSS 149.02(6) "Contract period" means a period of 2 calendar years beginning January 1 of the odd-numbered years, except as otherwise indicated in s. HSS 149.03(7).

SECTION 2. HSS 149.03(7)(a) is amended to read:

HSS 149.03 (7) DURATION OF AUTHORIZATION. (a) ~~All~~ Except for initial authorizations, all authorizations shall expire on December 31 of even-numbered years regardless of when ~~initial an~~ authorization was granted. ~~A new application shall be submitted for each 2-year contract period.~~

SECTION 3. HSS 149.03(7)(d) and (e) are created to read:

HSS 149.03(7) (d) When an application is approved for a vendor's initial authorization at a location, the initial authorization shall expire one year after the date on which the authorization was granted.

(e) A new application shall be submitted for each contract period, including the contract period that begins immediately following the period of initial authorization.

SECTION 4. HSS 149.065 is created to read:

HSS 149.065 CRIMINAL CONVICTION. (1) TERMINATION AND DISQUALIFICATION. Notwithstanding ss. HSS 149.03 and 149.06 and the reference to an arrest or conviction record in s. HSS 149.04(1):

(a) The state WIC office shall terminate the authorization of a vendor after giving the vendor reasonable written notice of 15 days and opportunity for hearing, if the state WIC office determines that the vendor as an individual, partnership, corporation or other business structure was convicted of a criminal offense involving WIC, food stamps or any other program operated by the food and nutrition service of the USDA. All grocery stores and pharmacies wholly or partially owned or managed by the convicted individual, partnership, corporation or other business structure, by a partner of a convicted partnership or by an officer, director or majority stockholder of a convicted corporation shall be terminated from WIC vendor authorization and shall be disqualified from future WIC vendor authorization for the maximum disqualification period allowed by 7 CFR 246.12 (k)(1)(ii). This termination and disqualification shall occur whether or not the grocery store or pharmacy was the location at which the crime occurred, and regardless of any penalty imposed upon the convicted party by the court of conviction.

(b) During the disqualification period imposed under this section, the state WIC office shall not process a vendor application from a grocery store or pharmacy that is wholly or partially owned or managed by an individual or entity described in par. (a).

(2) APPEAL. In an appeal under s. HSS 149.08 from termination of authorization under this section, the sole issues shall be whether the criminal conviction occurred and whether the store in question is wholly or partially owned or managed by an individual or

entity described in sub. (1)(a). The existence of the criminal conviction may be proved by submission of a certified copy of the judgement of conviction.

SECTION 5. HSS 149.07 is amended to read:

HSS 149.07 The state WIC office may waive any condition of eligibility specified in s. HSS 149.03(2) or the suspension or termination of a vendor's authorization under s. HSS 149.06 or 149.065 if the office determines, after consultation with the local project in the project service area in which the vendor is located, that requiring an applicant to meet the conditions of eligibility or suspending or terminating the vendor's authorization would create undue hardship for participants.

SECTION 6. HSS 149.08(1)(a) 2 and 3 are amended to read:

HSS 149.08(1)(a) 2. Suspension of authorization under s. HSS 149.06; and

3. Termination of authorization under s. HSS 149.06; and


SECTION 7. HSS 149.08(1)(a) 4 is created to read:

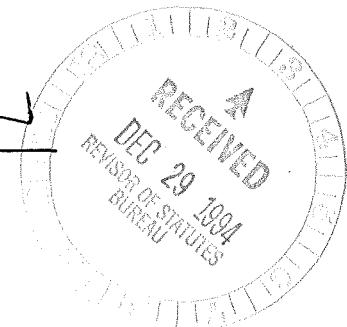
HSS 149.08(1)(a)4. Termination of authorization under s. HSS 149.065, subject to the restriction of s. HSS 149.065(2).

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and  
Social Services

Dated: December 29, 1994

By:   
Gerald Whitburn  
Secretary



SEAL:

Tommy G. Thompson  
Governor  
Gerald Whitburn  
Secretary



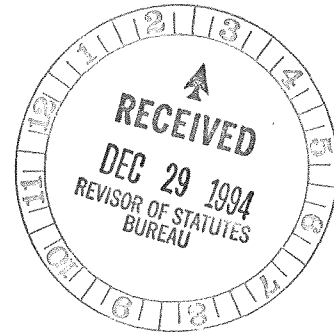
Mailing Address  
1 West Wilson Street  
Post Office Box 7850  
Madison, WI 53707-7850  
Telephone (608) 266-9622

## State of Wisconsin Department of Health and Social Services

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December 29, 1994

Mr. Bruce E. Munson  
Revisor of Statutes  
131 W. Wilson St., Suite 800  
Madison, WI 53703



Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ss. HSS 149.02, 149.03, 149.065, 149.07 and 149.08, administrative rules relating to conditions for vendor authorization under the Supplemental Food Program for Women, Infants and Children (WIC).

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Whitburn".

Gerald Whitburn  
Secretary

Enclosure