

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget** Drafter: **tdodge**
 By: **Bollhorst** Secondary Drafters:
 Date: **10/24/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **DOASBOStatLanguage@wisconsin.gov**
sarah.walkenhorstbarber@legis.wisconsin.gov
tamara.dodge@legis.wisconsin.gov

Pre Topic:

DOA:.....Bollhorst, BB0034 -

Topic:

WIC statutory change

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 1/5/2019	kfollett 1/9/2019			
/P1	tdodge 2/15/2019	kfollett 2/16/2019	mbarman 1/9/2019		
/P2			chanaman 2/17/2019		State

FE Sent For: **<END>**

Walkenhorst Barber, Sarah

From: Hanaman, Cathlene
Sent: Wednesday, October 24, 2018 11:07 AM
To: Dodge, Tamara; Walkenhorst Barber, Sarah
Subject: FW: Statutory Language Drafting Request - 2019-21
Attachments: WIC Sample Statutory Language.docx

From: Bollhorst, Nathan - DOA
Sent: Wednesday, October 24, 2018 11:03 AM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Dombrowski, Cynthia A - DOA <Cynthia.Dombrowski@wisconsin.gov>; Bollhorst, Nathan - DOA <Nathan.Bollhorst@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: WIC Statutory Change

Tracking Code: BB0034

SBO Team: HSI

SBO Analyst: Bollhorst, Nathan
Phone: 266-8593
E-mail: Nathan.Bollhorst@wisconsin.gov

Agency Acronym: 435

Agency Number: 435

Priority: Low

Intent:

Update language to reflect the use of the new EBT system in place of paper vouchers. Create language to establish standards for infant formula suppliers. Create language to impose warning letters and corrective action plans for vendors and suppliers. Create language to establish guidelines for the confidentiality of participant and vendor information. Relevant statutes include s. 253.06. See attachment for DHS sample language.

Attachments: True

Please send completed drafts to SBOSatlanguage@spmail.enterprise.wistate.us

Appendix
Proposed Statutory Changes

253.06 State special supplemental nutrition program for women, infants and children.

(1) DEFINITIONS. In this section:

(a) "Alternate" means a person who has been authorized to request benefits, participate in nutrition education, bring an infant or child to WIC appointments, and have access to information in the participant's file. An alternate may be identified as the eWIC cardholder.

(ab) "Authorized supplemental food" means food identified by the department in accordance with 7 CFR 246.10 as acceptable for use under the federal special supplemental food nutrition program for women, infants and children under 42 USC 1786. Also known as approved foods.

(c) "Department" means the Wisconsin Department of Health Services 253.06(1)(c)

~~**(b)** "Authorized vendor" means a vendor that has been authorized by the department to accept drafts from participants and have the drafts redeemed by the department.~~

~~**(c)** "Draft" means the negotiable instrument distributed by the department for use by a participant to purchase authorized food.~~

~~**(em)(d)** "Food distribution center" "Direct Distribution Center" means an entity, other than a vendor, that is under contract with the department under sub. (3m) to distribute authorized approved food to participants.~~

(e) "Electronic Benefit Transfer (EBT)" means a method that permits electronic access to WIC benefits using a device, approved by the department, with payments in accordance with Wis. Stats. Ch.401-411 Uniform Commercial Code – Funds Transfers. **(f)** "EBT Cardholder" means a participant, parent, legal guardian, caretaker, alternate or another person in possession of a WIC EBT card and the personal identification number (PIN).

(f) "EBT Cardholder" means a participant, parent, legal guardian, caretaker, alternate or another person in possession of a WIC EBT card and the personal identification number (PIN).

(g) Food instrument means a voucher, check, EBT card, EBT card number and the personal identification number (PIN), coupon or other method which is used by a participant to obtain WIC approved foods.

(h) "Infant Formula Supplier" means a wholesaler, distributor, retailer, or manufacturer of infant formula.

~~(d)~~**(i) "Participant" means a person who is eligible for services under this section and who receives services under this section.**

(j) "Summary Suspension" means an emergency action taken by the department to suspend WIC authorization.

~~(dm)~~**"Proxy" means a person who has been designated in writing by a participant or by the department to obtain and exchange drafts for authorized food on behalf of the participant.**

(k) "Trafficking" means:

1. The buying, selling, stealing, or otherwise effecting an exchange of WIC benefits issued and accessed via a food instrument for cash or consideration other than approved food, either directly, indirectly, in complicity or collusion with others, or acting alone;
2. The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for a food instrument;
3. Purchasing a product with a food instrument with the intent of obtaining cash or consideration other than approved food by reselling the product, and subsequently intentionally reselling the product purchased with a food instrument in exchange for cash or consideration other than approved food; or
4. Intentionally purchasing products originally purchased with a food instrument in exchange for cash or consideration other than approved food.

(e)(l) "Vendor" means a grocery store or pharmacy that sells authorized food sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores or pharmacies authorized by the department to provide approved foods to participants under a retail food delivery system. Each store operated by a business entity constitutes a separate vendor and must be authorized separately from other stores operated by the business entity. Each store must have a single, fixed location, except when the authorization of mobile stores is necessary to meet special needs in accordance with 7 CFR 246.4(a)(14)(xiv).

(m) "Vendor Authorization" means the process by which the department assesses, selects, and enters into agreements with stores or pharmacies that apply or subsequently reapply to be authorized as vendors.

(n) "WIC" or "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants, and Children. It is the federal program that provides funding to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk.

(f) "Vendor stamp" means a rubber stamp provided to a vendor or food distribution center by the department for the purpose of validating drafts.

(2) Use of funds. From the appropriation under s. 20.435 (1) (em), the department shall supplement the provision of supplemental foods, nutrition education, and other services, including nutritional counseling, to low-income women, infants, and children who meet the eligibility criteria under the federal special supplemental nutrition program for women, infants, and children authorized under 42 USC 1786. To the extent that funds are available under this section and to the extent that funds are available under 42 USC 1786, the department shall provide the supplemental food, nutrition education, and other services authorized under this section and shall administer that provision in every county. The department may enter into contracts for this purpose.

(3) Authorization of vendors.

(a) The department may authorize a vendor ~~to accept drafts~~ only if the vendor meets all of the following conditions:

1. The vendor submits to the department a completed application.

2. The vendor meets the minimum requirements for authorization, as established by the department by rule under sub. (5) (a) 1.

3. The vendor does not have any outstanding fines, forfeitures, or recoupments, or costs, fees, and surcharges imposed under ch. 814, that were levied against that vendor for a violation of this section or for a violation of rules promulgated under this section. This subdivision does not apply if the vendor has contested the fine, forfeiture, or recoupment, or costs, fees, and surcharges imposed under ch. 814, and has not exhausted administrative or judicial review.

4. The vendor is fit and qualified, as determined by the department. In determining whether a vendor is fit and qualified, the department shall consider any relevant conviction of the vendor or any of the vendor's employees for civil or criminal violations substantially related to the operation of a grocery store or pharmacy.

5. The vendor has an EBT capable cash register system or payment device, approved by the department, that can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files, and successfully complete WIC EBT purchases and process WIC EBT payments.

(bg) The department may limit the number of vendors that it authorizes under this subsection if the department determines that the number of vendors already authorized under this subsection is sufficient to permit participants to obtain ~~authorized~~ approved food conveniently.

(bm) The department shall approve or deny initial authorization within 90 days after the receipt of a completed application. If the application is denied, the department shall give the applicant reasons, in writing, for the denial and shall inform the applicant of the right to appeal that decision under sub. (6).

~~(c) The department may not shall redeem drafts process a payment only when submitted by a person who is not an authorized vendor except as provided in sub. (3m).~~

(3m) Food Direct distribution centers.

(a) The department may contract for an alternative system of ~~authorized~~ approved food distribution with an entity other than a vendor only if the entity meets all of the following requirements:

1. The entity meets the minimum requirements established by the department by rule under sub. (5) (a) 1.

2. The entity does not have any outstanding fines, forfeitures, or recoupments, or costs, fees, and surcharges imposed under ch. 814, that were levied against that entity for a violation of this section or for a violation of rules promulgated under this section. This subdivision does not apply if the entity has contested the fine, forfeiture, or recoupment, or costs, fees, and surcharges imposed under ch. 814, and has not exhausted administrative or judicial review.

3. The entity is fit and qualified, as determined by the department.

4. The entity has an EBT capable cash register system or payment device, approved by the department, that can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files, and successfully complete WIC EBT purchases and process WIC EBT payments.

(b) The department shall ~~redeem valid drafts~~ process a payment if submitted by a ~~an~~ food authorized direct distribution center.

(4) Prohibited practices.

(a) No person may do any of the following:

1. ~~Accept drafts or submit drafts~~ Accept drafts or submit drafts food instruments or submit requests to the department for redemptive payment without authorization.

~~2. Provide cash or commodities, other than authorized food, in exchange for drafts or in exchange for authorized food purchased with a draft.~~

2. Buy or sell food instruments, the available food benefits, or the food purchased with a food instrument for cash (trafficking) or commodities, other than approved food.

3. ~~Accept a draft food instrument other than in exchange for authorized~~ Accept a draft food instrument other than in exchange for approved food that is provided selected by the person—EBT cardholder.

3m. Provide ~~authorized~~ approved food or other commodities to a ~~an~~ participant or proxy EBT cardholder in exchange for a ~~draft~~ draft food instrument accepted by a 3rd party.

~~4. Enter on a draft~~ Submit a payment request for a dollar amount that is higher than the actual retail price of the item for which the ~~draft~~ food instrument was used.

~~5. Require a participant or proxy to sign a draft before entering the dollar amount on the draft in permanent ink.~~

~~65. Accept a draft except during the period specified on the draft. Confiscate a food instrument, or ask for, or enter the EBT cardholder's PIN.~~

~~76. Provide materially false information to the department or fail to provide in a timely manner material information that the department requests.~~

~~8. Duplicate a vendor stamp or use a stamp other than a vendor stamp for any purpose for which a vendor stamp is required.~~

~~97. Submit for redemption a draft. Provide a food instrument, WIC EBT card, card number and PIN, or foods purchased with a food instrument for something of value to someone other than the department.~~

~~10. Accept a draft from someone other than a participant or proxy, except that the department shall accept for redemption valid drafts from vendors and food distribution centers.~~

(b) A person who violates any provision of this subsection is guilty of a Class I felony for the first offense and is guilty of a Class H felony for the 2nd or subsequent offense.

(c)1. Whenever a court imposes a fine, forfeiture, or recoupment for a violation of this subsection or imposes a forfeiture or recoupment for a violation of rules promulgated under sub. (5), the court shall also impose a supplemental food enforcement surcharge under ch. 814 in an amount of 50 percent of the fine, forfeiture, or recoupment imposed. If multiple offenses are involved, the court shall base the supplemental food enforcement surcharge on the total fine, forfeiture, and recoupment amounts for all offenses. When a fine, forfeiture, or recoupment is suspended in whole or in part, the court shall reduce the supplemental food enforcement surcharge in proportion to the suspension.

2. If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due, the clerk of the court shall collect and transmit such amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(5) Rules and penalties.

(a) The department shall promulgate rules to establish all of the following:

1. Minimum qualification standards for the authorization of vendors and infant formula suppliers, and for the awarding of a contract to an entity under sub. (3m).

2. Standards of operation for authorized vendors, authorized infant formula suppliers and food direct distribution centers, including prohibited practices.

3. Minimum requirements for participants, including prohibited practices.

4. Procedures for approving or denying an application to be a participant, including appeal procedures.

(b) A person who violates any rule promulgated under this subsection may be subject to any of the following:

1. Denial of the application to be a participant, ~~or authorized vendor~~ or authorized infant formula supplier.

2. Summary suspension or ~~Suspension or~~ termination of authorization for an authorized vendor, authorized infant formula supplier or, in the case of a ~~food~~ direct distribution center, termination of the contract.

3. Disqualification from the program under this section for a vendor, infant formula supplier, or a participant.

4. Forfeiture of not less than \$10 nor more than \$1,000.

5. Recoupment.

6. Civil money penalty.

7. Warning letter.

8. Implementation of a corrective action plan.

(c) Whenever the department imposes a forfeiture or recoupment for a violation of rules promulgated under this subsection, the department shall also impose an enforcement assessment in an amount of 50 percent of the forfeiture or recoupment imposed. If multiple offenses are involved, the department shall base the enforcement assessment upon the total forfeiture and recoupment amounts for all offenses. When a forfeiture or recoupment is suspended in whole or in part, the department shall reduce the enforcement assessment in proportion to the suspension.

(d) The department may directly assess a forfeiture provided for under par. (b) 4., recoupment provided for under par. (b) 5. and an enforcement assessment provided for under par. (c). If the department determines that a forfeiture, recoupment or enforcement assessment should be levied, or that authorization or eligibility should be summarily suspended ~~suspended~~ or terminated, for a particular violation or for failure to correct it, the department shall send a notice of assessment, summary suspension or termination to the vendor, ~~food~~ direct distribution center, infant formula supplier, or participant. The notice shall inform the vendor, ~~food~~ direct distribution center, infant formula supplier or participant of the right to a hearing under sub. (6) and shall specify all of the following:

1. The amount of the forfeiture assessed, if any.
2. The amount of the recoupment assessed, if any.
3. The amount of the enforcement assessment, if any.
4. The violation.
5. The statute or rule alleged to have been violated.

6. If applicable, that the ~~suspension or termination of authorization of the vendor or eligibility of the participant is effective~~ date(s) beginning on the 15th day after receipt of the notice of summary suspension or termination.

(e) The ~~suspension or termination of authorization of a vendor, direct distribution center, infant formula supplier or eligibility of a participant shall be effective beginning on the 15th day after receipt of the notice of suspension or termination~~. All forfeitures, recoupments, and enforcement assessments shall be paid to the department within 15 days after receipt of notice of assessment or, if the forfeiture, recoupment, or enforcement assessment is contested under sub. (6), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is adverse to the department or unless the final decision is appealed and the decision is stayed by court order under sub. (7). The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund. The department shall deposit all enforcement assessments in the appropriation under s. 20.435 (1) (gr).

(f) The summary suspension of authorization of a vendor, direct distribution center or infant formula supplier shall be effective immediately upon service of the notice.

~~(f)~~**(g)** The attorney general may bring an action in the name of the state to collect any forfeiture or recoupment imposed under par. (b) or enforcement assessment imposed under par. (c), if the forfeiture, recoupment or enforcement assessment has not been paid following the exhaustion of all administrative and judicial reviews. The only issue that may be contested in any such action is whether the forfeiture or enforcement assessment has been paid.

(6) Appeal procedure.

(a) Any hearing under s. 227.42 granted by the department under this section may be conducted before the division of hearings and appeals in the department of administration.

(b) A person may contest an assessment of forfeiture, recoupment, ~~or enforcement assessment,~~ civil money penalty in lieu of disqualification, a denial, disqualification, summary suspension or termination of authorization, or a termination of eligibility by sending a written request for hearing under s. 227.44 to the division of hearings and appeals in the department of administration within 10 days after the receipt of the notice issued under sub. (3) (bm) or (5) (d).

The administrator of the division of hearings and appeals may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division of hearings and appeals shall be the final administrative decision. The division of hearings and appeals shall commence the hearing and issue a final decision within 60 days after receipt of the request for hearing unless all of the parties consent to a later date. Proceedings before the division of hearings and appeals are governed by ch. 227. In any petition for judicial review of a decision by the division of hearings and appeals, the department, if not the petitioner who was in the proceeding before the division of hearings and appeals, shall be the named respondent. (7) Injunction procedure. No injunction may be issued in any proceeding for review under ch. 227 of a decision of the division of hearings and appeals under sub. (6), suspending or staying the decision except upon application to the circuit court or presiding judge thereof, notice to the department and any other party and hearing. No injunction that delays or prevents a decision of the division of hearings and appeals from becoming effective may be issued in any other proceeding or action in any court unless the parties to the proceeding before the division of hearings and appeals in which the order was made are also parties to the proceeding or action before the court.

(8) Inspection of premises. The department may visit and inspect each authorized vendor and each food-direct distribution center, and authorized infant formula supplier and for such purpose shall be given unrestricted access to the premises described in the authorization or contract.

History: 2009 a. 28 s. 1217; Stats. 2009 s. 253.06.

(9) Confidentiality of applicant and participant information—(1) WIC purposes. (i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

(2) Non-WIC purposes. (i) Use by WIC State and local agencies. Any WIC State or local agency may use confidential applicant and participant information in the administration of its other

programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(ii) Disclosure to public organizations. The State agency and its local agencies may disclose confidential applicant and participant information to public organizations for use in the administration of their programs that serve persons eligible for the WIC Program in accordance with paragraph (h) of this section.

(3) Child abuse and neglect reporting. Staff of the State agency and its local agencies who are required by State law to report known or suspected child abuse or neglect may disclose confidential applicant and participant information without the consent of the participant or applicant to the extent necessary to comply with such law.

(4) Release forms. Except in the case of subpoenas or search warrants (see paragraph (i) of this section), the State agency and its local agencies may disclose confidential applicant and participant information to individuals or entities not listed in this section only if the affected applicant or participant signs a release form authorizing the disclosure and specifying the parties to which the information may be disclosed. The State or local agency must permit applicants and participants to refuse to sign the release form and must notify the applicants and participants that signing the form is not a condition of eligibility and refusing to sign the form will not affect the applicant's or participant's application or participation in the WIC Program. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application or certification process. All other requests for applicants or participants to sign voluntary release forms must occur after the application and certification process is completed.

(5) Access to information by applicants and participants. The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision being appealed pursuant to §246.9.

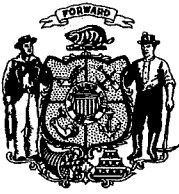
(10) Confidentiality of vendor information. Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address, telephone number, Web site/e-mail address, store type, and authorization status. Except as otherwise permitted by this section, the State agency must restrict the use or disclosure of confidential vendor information to:

(1) Persons directly connected with the administration or enforcement of the WIC Program or SNAP who the State agency determines have a need to know the information for purposes of these programs. These persons may include personnel from its local agencies and other WIC State and local agencies and persons investigating or prosecuting WIC or SNAP violations under Federal, State, or local law;

(2) Persons directly connected with the administration or enforcement of any Federal or State law or local law or ordinance. Prior to releasing the information to one of these parties (other than a Federal agency), the State agency must enter into a written agreement with the requesting party specifying that such information may not be used or redisclosed except for purposes directly connected to the administration or enforcement of a Federal, or State law; and

(3) A vendor that is subject to an adverse action, including a claim, to the extent that the confidential information concerns the vendor subject to the adverse action and is related to the adverse action.

(4) At the discretion of the State agency, all authorized vendors and vendor applicants regarding vendor sanctions which have been imposed, identifying only the vendor's name, address, length of the disqualification or amount of the civil money penalty, and a summary of the reason(s) for such sanction provided in the notice of adverse action. Such information may be disclosed only following the exhaustion of all administrative and judicial review, in which the State agency has prevailed, regarding the sanction imposed on the subject vendor, or the time period for requesting such review has expired.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0560?
TJD: [Handwritten initials]

In: 117

DOA:.....Bollhorst, BB0034 - WIC statutory change

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to: the budget** (1)

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 253.06 (1) (a) of the statutes ^fis renumbered 253.06 (1) (am) and
3 amended to read:

4 253.06 (1) (am) "Authorized Approved [✓] food" means food identified by the
5 department in accordance with 7 CFR 246.10 as acceptable for use under the federal
6 special supplemental ~~food~~ nutrition program for women, infants and children under
7 42 USC 1786.

8 **SECTION 2.** 253.06 (1) (ag) of the statutes [✓]is created to read:

1 253.06 (1) (ag) “Alternate participant” means a person who has been
2 authorized by a participant to request benefits, participate in nutrition education,
3 bring an infant or child to a Women, Infants, and Children program appointment,
4 and have access to information in the participant’s file.

****NOTE: The requested language did not specify who the alternate is authorized by, and therefore I added that the alternate is authorized by a participant. Please advise if this is incorrect.

5 **SECTION 3.** 253.06 (1) (b) of the statutes is repealed.

6 **SECTION 4.** 253.06 (1) (br) of the statutes is created to read:

7 253.06 (1) (br) “Cardholder” means a participant; alternate participant;
8 parent, legal guardian, or caretaker of a participant; or another person in possession
9 of a Women, Infants, and Children program electronic benefit transfer card and the
10 personal identification number for the card.

11 **SECTION 5.** 253.06 (1) (c) of the statutes is repealed.

12 **SECTION 6.** 253.06 (1) (cm) of the statutes is amended to read:

13 253.06 (1) (cm) “Food Direct distribution center” means an entity, other than
14 a vendor, that is under contract with the department under sub. (3m) to distribute
15 authorized approved food to participants.

16 **SECTION 7.** 253.06 (1) (cp), (cs) and (cv) of the statutes are created to read:

17 253.06 (1) (cp) “Electronic benefit transfer” means a method that permits
18 electronic access to Women, Infants, and Children program benefits using a device,
19 approved by the department, with payments made in accordance with ch. 410.

****NOTE: The requested language stated that the payments should be in accordance with chs. 401-411. Some of these chapters would be irrelevant to the EBT transactions, and I believe the chapter range should be narrowed. This draft specifies the payments must be made in accordance with ch. 410, which relates to funds transfers. Please advise if there are other specific chapters or sections you want included in this definition.

OK
PCT
WLS

1 (cs) "Food instrument" means a voucher, check, electronic benefit transfer card,
2 electronic benefit transfer card number and personal identification number, coupon,
3 or other method used by a participant to obtain Women, Infants, and Children
4 program approved foods.

5 (cv) "Infant formula supplier" means a wholesaler, distributor, retailer, or
6 manufacturer of infant formula.

7 SECTION 8. 253.06 (1) (dm) of the statutes is repealed.

8 SECTION 9. 253.06 (1) (dr) and (dv) of the statutes is created to read:

9 253.06 (1) (dr) "Summary suspension" means an emergency action taken by the
10 department to suspend an authorization under the women, infants, and children
11 program.

12 (dv) "Trafficking" means doing any of the following:

13 1. Buying, selling, stealing, or otherwise exchanging for cash or consideration
14 other than approved food Women, Infants, and Children program benefits that are
15 issued and access^{ed} via a food instrument.

16 2. Exchanging firearms, ammunition, explosives, or controlled substances, as
17 defined in 21 USC 802, for a food instrument.

18 3. Intentionally purchasing and reselling for cash or consideration other than
19 approved food a product that is purchased with a food instrument.

20 4. Intentionally purchasing with cash or consideration other than approved
21 food a product that was originally purchased with a food instrument.

22 SECTION 10. 253.06 (1) (e) of the statutes is amended to read:

23 253.06 (1) (e) "Vendor" means ^{be plain} a grocery store or pharmacy that sells authorized
24 person that operates one or more stores or pharmacies authorized by the department
25 under sub. 3 to provide approved foods under a retail food delivery system.

1 **SECTION 11.** 253.06 (1) (f) of the statutes is repealed.

2 **SECTION 12.** 253.06 (1) (g) of the statutes is created to read:

3 253-06(1)(g) (9) "Women, Infants, and Children program" means the federal special supplemental
4 nutrition program for women, infants and children under 42 USC 1786 and this
5 section.

6 **SECTION 13.** 253.06 (1m) of the statutes is created to read:

7 253.06 (1m) PROGRAM ADMINISTRATION. (a) The department may identify an
8 alternate participant as the women, infants, and children program cardholder for
9 purposes of electronic administration of the Women, Infants, and Children program.

10 **SECTION 14.** 253.06 (3) (a) (intro.) of the statutes is amended to read:

11 253.06 (3) (a) (intro.) The department may authorize a vendor to accept drafts
12 only if the vendor meets all of the following conditions:

13 **SECTION 15.** 253.06 (3) (a) 5. of the statutes is created to read:

14 253.06 (3) (a) 5. The vendor has an electronic benefit transfer-capable cash
15 register system or payment device, approved by the department, that is able to
16 accurately and securely obtain Women, Infants, and Children program food balances
17 associated with the electronic benefit transfer card, maintain the necessary files,
18 successfully complete Women, Infants, and Children program electronic benefit
19 transfer purchases, and process Women, Infants, and Children program electronic
20 benefit transfer payments.

21 **SECTION 16.** 253.06 (3) (bg) of the statutes is amended to read:

22 253.06 (3) (bg) The department may limit the number of vendors that it
23 authorizes under this subsection if the department determines that the number of
24 vendors already authorized under this subsection is sufficient to permit participants
25 to obtain ~~authorized~~ approved food conveniently.

1 SECTION 17. 253.06 (3) (c) of the statutes is amended to read:

2 253.06 (3) (c) The department may not redeem drafts only when submitted by
3 a person who is not an authorized vendor under this subsection except as provided
4 in sub. (3m).

5 SECTION 18. 253.06 (3) (d) of the statutes is created to read:

6 253.06 (3) (d) Each store operated by a business entity is a separate vendor for
7 purposes of this section and is required to have a single, fixed location, except when
8 the authorization of mobile stores is necessary to meet special needs in accordance
9 with 7 CFR 246.4 (1) (14) (xiv). The department shall require that each store be
10 authorized as a vendor separately from other stores operated by the business entity.

11 SECTION 19. 253.06 (3m) (title) and (a) (intro.) of the statutes ^{is} amended to
12 read:

13 253.06 (3m) (title) ~~FOOD~~ DIRECT DISTRIBUTION CENTERS.

14 (a) ^(intro.) The department may contract for an alternative system of authorized
15 approved food distribution with an entity other than a vendor only if the entity meets
16 all of the following requirements:

17 SECTION 20. 253.06 (3m) (a) 4. of the statutes is created to read:

18 253.06 (3m) (a) 4. The entity has an electronic benefit transfer-capable cash
19 register system or payment device, approved by the department, that is able to
20 accurately and securely obtain Women, Infants, and Children program food balances
21 associated with the electronic benefit transfer card, maintain the necessary files,
22 successfully complete Women, Infants, and Children program electronic benefit
23 transfer purchases, and process Women, Infants, and Children program electronic
24 benefit transfer payments.

25 SECTION 21. 253.06 (3m) (b) of the statutes is amended to read:

1 253.06 (3m) (b) The department shall ~~redeem valid drafts~~ may process a
2 payment if submitted by a food ~~direct~~ distribution center that is authorized by the
3 department under this subsection.

4 **SECTION 22.** 253.06 (4) (a) 1. of the statutes is amended to read:

5 253.06 (4) (a) 1. ~~Accept drafts or submit drafts~~ a food instrument or submit a
6 request to the department for redemption without authorization.

7 **SECTION 23.** 253.06 (4) (a) 2. of the statutes is ⁺repealed.

8 **SECTION 24.** 253.06 (4) (a) 2m. of the statutes is created to read:

9 253.06 (4) (a) 2m. 'Title.' ← Insert 6-9

10 **SECTION 25.** 253.06 (4) (a) 3. to 4. of the statutes are amended to read:

11 253.06 (4) (a) 3. ~~Accept a draft~~ food instrument other than in exchange for
12 authorized approved food that is ~~provided by the person selected by the electronic~~
13 benefit transfer cardholder.

14 3m. Provide authorized approved food or other commodities to ~~a participant or~~
15 ~~proxy~~ an electronic benefit transfer cardholder in exchange for a draft food
16 instrument accepted by a 3rd party.

17 4. ~~Enter on a draft~~ Submit a payment request for a dollar amount that is higher
18 than the actual retail price of the item for which the draft a food instrument was used.

History: 2009 a. 28 s. 1217; Stats. 2009 s. 253.06.

19 **SECTION 26.** 253.06 (4) (a) 5. of the statutes is ⁺repealed.

20 **SECTION 27.** 253.06 (4) (a) 5m. of the statutes is created to read:

21 253.06 (4) (a) 5m. Confiscate a food instrument or ask for or enter the electronic
22 benefit transfer cardholder's personal identification number.

23 **SECTION 28.** 253.06 (4) (a) 6. and 8. of the statutes ⁺are repealed.

24 **SECTION 29.** 253.06 (4) (a) 9. of the statutes is amended to read:

253.06
253.06 (4) (a)

9. ~~Submit for redemption a draft Provide to someone other than the department a food instrument; a Women, Infants, and Children program electronic benefit transfer card; or food purchased with a food instrument for something of value.~~

SECTION 30. 253.06 (4) (a) 10. of the statutes is repealed.

SECTION 31. 253.06 (5) (a) 1. and 2. of the statutes ~~is~~ ^{are} amended to read:

253.06 (5) (a) 1. Minimum qualification standards for the authorization of vendors and infant formula suppliers and for the awarding of a contract to an entity under sub. (3m).

2. Standards of operation for authorized vendors and infant formula suppliers and ~~food~~ direct distribution centers, including prohibited practices.

SECTION 32. 253.06 (5) (b) 1. to 3. of the statutes ~~is~~ ^{are} amended to read:

253.06 (5) (b) 1. Denial of the application to be a participant or authorized vendor or infant formula supplier.

2. ~~Suspension~~ Summary suspension or termination of authorization for an authorized vendor or infant formula supplier or, in the case of a ~~food~~ direct distribution center, termination of the contract.

3. Disqualification from the program under this section for a vendor, infant formula supplier, or participant.

SECTION 33. 253.06 (5) (b) 6. to 8. of the statutes are created to read:

253.06 (5) (b) 6. Civil monetary penalty.

7. Warning letter.

8. Implementation of a corrective action plan.

SECTION 34. 253.06 (5) (d) (intro.) and 6. of the statutes ~~is~~ ^{are} amended to read:

253.06 (5) (d) (intro.) The department may directly assess a forfeiture provided for under par. (b) 4., recoupment provided for under par. (b) 5. and an enforcement

1 assessment provided for under par. (c). If the department determines that a
2 forfeiture, recoupment or enforcement assessment should be levied, or that
3 authorization or eligibility should be summarily suspended or terminated, for a
4 particular violation or for failure to correct it, the department shall send a notice of
5 assessment, summary suspension or termination to the vendor, food infant formula
6 supplier, direct distribution center or participant. The notice shall inform the
7 vendor, food infant formula supplier, direct distribution center or participant of the
8 right to a hearing under sub. (6) and shall specify all of the following:

9 6. If applicable, ~~that the suspension or termination of authorization of the~~
10 ~~vendor or eligibility of the participant is effective beginning on the 15th day after~~
11 ~~receipt date of the notice of summary suspension or termination.~~

12 **SECTION 35.** 253.06 (5) (e) of the statutes is renumbered 253.06 (5) (e) 1. and
13 amended to read:

14 253.06 (5) (e) 1. The ~~suspension or~~ termination of authorization of a vendor,
15 infant formula supplier, or direct distribution center or eligibility of a participant
16 shall be effective beginning on the 15th day after receipt of the notice of suspension

17 ~~or~~ termination. 2. All forfeitures, recoupments, and enforcement assessments shall
18 be paid to the department within 15 days after receipt of notice of assessment or, if
19 the forfeiture, recoupment, or enforcement assessment is contested under sub. (6),
20 within 10 days after receipt of the final decision after exhaustion of administrative
21 review, unless the final decision is adverse to the department or unless the final
22 decision is appealed and the decision is stayed by court order under sub. (7). The
23 department shall remit all forfeitures paid to the secretary of administration for
24 deposit in the school fund. The department shall deposit all enforcement
25 assessments in the appropriation under s. 20.435 (1) (gr).

1 **SECTION 36.** 253.06 (5) (e) 3. of the statutes is created to read:

2 253.06 (5) (e) 3. The summary suspension of authorization of a vendor, infant
3 formula supplier, or direct distribution center shall be effective immediately upon
4 receipt of the notice under par. (d).

5 **SECTION 37.** 253.06 (6) (b) of the statutes is amended to read:

6 253.06 (6) (b) A person may contest an assessment of forfeiture, recoupment or
7 enforcement assessment, a denial, ~~suspension or termination of authorization, a civil~~
8 monetary penalty assessed in lieu of disqualification, a summary suspension, or a
9 ~~suspension or~~ termination of eligibility by sending a written request for hearing
10 under s. 227.44 to the division of hearings and appeals in the department of
11 administration within 10 days after the receipt of the notice issued under sub. (3)
12 (bm) or (5) (d). The administrator of the division of hearings and appeals may
13 designate a hearing examiner to preside over the case and recommend a decision to
14 the administrator under s. 227.46. The decision of the administrator of the division
15 of hearings and appeals shall be the final administrative decision. The division of
16 hearings and appeals shall commence the hearing and issue a final decision within
17 60 days after receipt of the request for hearing unless all of the parties consent to a
18 later date. Proceedings before the division of hearings and appeals are governed by
19 ch. 227. In any petition for judicial review of a decision by the division of hearings
20 and appeals, the department, if not the petitioner who was in the proceeding before
21 the division of hearings and appeals, shall be the named respondent.

22 **SECTION 38.** 253.06 (8) of the statutes is amended to read:

23 ^{253.06} **(8)** INSPECTION OF PREMISES. The department may visit and inspect each
24 authorized vendor and infant formula supplier and each food direct distribution

1 center, and for such purpose shall be given unrestricted access to the premises
2 described in the authorization or contract.

3 **SECTION 39.** 253.06 (9) and (10) of the statutes are created to read:

4 253.06 (9) CONFIDENTIALITY OF APPLICANT AND PARTICIPANT INFORMATION. (a) Any
5 information about an applicant or participant, whether it is obtained from the
6 applicant or participant or another source or is generated as a result of application
7 for the Women, Infants, and Children program, that identifies the applicant or
8 participant or a family member of the applicant or participant is confidential.

9 (b) Except as explicitly permitted under this section, the department shall
10 restrict the use and disclosure of confidential applicant and participant information
11 to any person directly connected with the administration or enforcement of the
12 Women, Infants, and Children program that the department determines has a need
13 to know the information for Women, Infants, and Children program purposes.
14 Persons who may be allowed to access confidential information under this paragraph
15 include personnel from the local agencies, persons under contract with the
16 department to perform research regarding the Women, Infants, and Children
17 program, and persons that are investigating or prosecuting Women, Infants, and
18 Children program violations of federal, state, or local law.

****NOTE: The phrase "local agencies" comes directly from the federal rule, but
should it be defined in subs. (9) and (10) here to clarify who has access to confidential
information.

19 (c) The department or any local agency may use or disclose to public
20 organizations confidential applicant and participant information for the
21 administration of other programs that serve individuals eligible for the Women,
22 Infants, and Children program in accordance with 7 CFR 246.26 (h).

1 (d) Staff of the department and local agencies who are required by state law to
2 report known or suspected child abuse or neglect may disclose confidential applicant
3 and participant information without the consent of the participant or applicant to
4 the extent necessary to comply with the law.

5 (e) Except in the case of subpoenas or search warrants, the department and
6 local agencies may disclose confidential applicant and participant information to
7 individuals or entities not listed in this section only if the affected applicant or
8 participant signs a release form authorizing the disclosure and specifying the parties
9 to which the information may be disclosed. The department or local agency shall
10 allow applicants and participants to refuse to sign the release form and shall notify
11 the applicant or participant that signing the form is not a condition ^{of} eligibility and
12 refusing to sign the form will not affect the applicant's or participant's application
13 or participation in the Women, [^] Infants, and Children program. Release forms
14 authorizing disclosure to private physicians or other health care providers may be
15 included as part of the Women, [^] Infants, and Children program application or
16 certification process. All other requests for applicants or participants to sign
17 voluntary release forms may occur only after the application and certification
18 process is complete.

19 (f) The department or local agency shall provide ^{to an} applicants ^{or} and participants
20 access to all information he or she has provided to the Women, [^] Infants, and Children
21 program. In the case of an applicant or participant who is an infant or child, the
22 access may be provided to a parent or guardian of the infant or child, assuming that
23 any issues regarding custody or guardianship have been settled. The department or
24 local agency is not required to provide the applicant or participant or parent or
25 guardian of an infant or child applicant or participant access to any other

1 information in the file or record, including documentation of income provided by a
2 ^{3rd} third party and staff assessments of an applicant or participant's condition or
3 behavior, unless required by law or unless the information supports a state or local
4 agency decision being appealed under 7 CFR 246.9.

5 (10) CONFIDENTIALITY OF VENDOR INFORMATION. (a) Any information about a
6 vendor, whether it is obtained from the vendor or another source, that individually
7 identifies the vendor except for the vendor's name, address, telephone number,
8 Internet or electronic mail address, store type, and Women, [^] Infants, and Children
9 program authorization status is confidential. The department shall restrict the use
10 or disclosure of confidential vendor information to any of the following:

11 1. Persons directly connected with the administration or enforcement of the
12 Women, [^] Infants, and Children program or the food stamp program under s. 49.79
13 that the department determines has a need to know [^] the information for purposes
14 of these programs. These persons may include personnel from local agencies and
15 persons investigating or prosecuting violations of Women, [^] Infants, and Children
16 program or food stamp program federal, state, or local laws.

17 2. Persons directly connected with the administration or enforcement of any
18 federal or state law or local ordinance. Before releasing information to a state or local
19 entity, the department shall enter into a written agreement with the requesting
20 party specifying that the information may not be used or redisclosed except for
21 purposes directly connected with the administration or enforcement of the federal or
22 state law or local ordinance.

23 3. A vendor that is subject to an adverse action under sub. (5), including a claim,
24 to the extent that the confidential information concerns the vendor that is subject to
25 the adverse action and is related to the adverse action.

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0560/P1ins
TJD:...

- 1 INSERT 6-9
- 2 Engage in trafficking.
- 3 END INSERT 6-9

Dodge, Tamara

From: Bollhorst, Nathan - DOA
Sent: Friday, February 15, 2019 9:07 AM
To: Dodge, Tamara
Cc: Dombrowski, Cynthia A - DOA
Subject: 0560/P1

Tami,

Below are suggested edits for draft 0560/P1 please include any you feel are appropriate.

- Generally, throughout the document the reference to the program title and the program should be the official name: “Special Supplemental Nutrition Program for Women, Infants and Children”.
- Pg 1, line 4 – “Authorized Approved food” should be changed to “Authorized or approved food”. 7 CFR 246.10 uses the term “Authorized supplemental food.” The Wisconsin WIC program uses the terms “Authorized food” and “Approved food” interchangeably.
- Pg 4, line17 – “maintain the necessary files” should read “maintain the necessary electronic files, such as the approved product list”. This change is needed for clarification.
- Pg 5, line 2 – The word “drafts” should be replaced with “food instruments”.
- Pg 10, note – For subs. (9) and (10) include the following definition for local agency: “Local agency” means an entity that has a contract with the department to provide WIC services such as eligibility determination, WIC benefit issuance, and nutrition counseling for WIC participants.”

Thank you,



Nathan Bollhorst | Executive Policy & Budget Analyst
Department of Administration
Division of Executive Budget and Finance
Nathan.Bollhorst@wisconsin.gov
Main: (608) 267-7980