

The Governor approved this Statement of scope on September 19, 2017

## STATEMENT OF SCOPE

### DEPARTMENT OF HEALTH SERVICES

**Rule No.:** DHS 149

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**Relating to:** The Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

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**Rule Type:** Permanent

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#### Type of Statement of Scope:

Original

#### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable

#### 2. Detailed description of the objective of the proposed rule:

The department proposes to update ch. DHS 149 to achieve consistency with Title 7 CFR Part 246 – Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and to improve prevention and detection of fraud, waste, and abuse. Specific objectives include adding references to the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), *Operating Rules, Women, Infants and Children (WIC) Electronic Benefits Transfer (EBT)*, removing outdated provisions relating to WIC checks and vendor stamps, and clarifying vendor responsibilities to improve program integrity.

#### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

WIC is a federal grant program providing funds to states to provide nutritious foods, nutrition education and referrals to health and other social services to 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. Benefits include a means for participants to purchase certain authorized foods from grocery stores, convenience stores, and pharmacies authorized as WIC vendors.

Section 253.06 (5) (a), Stats., directs the department to promulgate rules establishing requirements for individuals applying to, or participating in, the WIC program. The department is also authorized to establish minimum requirements for authorizing and contracting with vendors, and for defining operational requirements and prohibited practices. These requirements are set forth by the department in ch. DHS 149. The department proposes to make the following revisions to the current rule chapter:

- EBT is an electronic system that replaced WIC checks with a card for issuing food benefits. In 2016, the USDA FNS updated federal regulations to require implementation of EBT no later than October 2020. Operational requirements for implementing EBT are detailed in the *Operating Rules, Women, Infants and Children (WIC) Electronic Benefits Transfer (EBT)*, published in 2014.<sup>1</sup> Although Wisconsin implemented EBT in 2015, ch. DHS 149 has not yet been updated to reflect

this change or to include EBT terminology. The department therefore proposes to remove from the rule any obsolete provisions related to WIC checks and vendor stamps.

<sup>1</sup>See <https://www.fns.usda.gov/sites/default/files/wic/WIC-EBT-Operating-Rules-September-2014.pdf>

- The department examines business integrity prior to authorizing WIC vendors. This may include a review of lease and purchase records to ensure that a business was acquired in good faith. In an effort to evade or circumvent an existing WIC or SNAP sanction, a vendor may transfer ownership of a business for inadequate consideration and through cash transactions that are difficult to verify or trace. The department therefore proposes to promulgate rules to only authorize vendors that can demonstrate the business was purchased in good faith with a verifiable form of payment.
- The department conducts audits of WIC vendors to detect fraud, waste, and abuse, and to meet federal program integrity standards. Audits may include a review of documentation to verify that a vendor had the inventory of authorized foods for which it received reimbursement by the WIC program. Invoices indicating that a vendor purchased authorized foods with cash cannot be adequately verified and present a significant opportunity for fraud. The department therefore proposes to establish rules that require WIC vendors to use verifiable forms of payment for WIC purchases reimbursed by the WIC program.
- Section DHS 149.08 requires vendors to maintain “inventory and accounting records.” These records may be reviewed in the course of audits intended to detect and prevent fraud, waste, and abuse. The department proposes to promulgate rules defining inventory and accounting records in order to provide greater clarity to WIC vendors about minimum documentation requirements for participation in the program.
- Chapter DHS 149 has not been substantially revised since July 1, 2008. The department proposes to update, correct, or clarify any outdated provisions in order to reflect current definitions, standards, and best practices.

There is no reasonable alternative to the proposed rulemaking. The current rule contains outdated provisions that do not reflect current operational and integrity standards for the program.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The Wisconsin State Legislature explicitly directed the department to promulgate rules governing WIC in the following statutory section:

Section 253.06 (5) (a), Stats., reads: 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 for the awarding of a contract to an entity under sub. (3m).
- 2.** Standards of operation for authorized vendors and food 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.

#### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

The department estimates that it will take approximately 600 hours to develop the proposed rule changes. This includes the time required for research and analysis, coordinating an advisory committee, rule

drafting, preparing any related documents, holding a public hearing, and communicating with affected persons and groups.

**6. List with description of all entities that may be affected by the proposed rule :**

The department or designated WIC State Agency, WIC vendors, and WIC vendor applicants.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

On July 13, 2016, Title 7 CFR Part 246 was amended to require implementation of EBT in the WIC program by October 2020. The department proposes to conform ch. DHS 149 to federal requirements and guidance.

**8. Anticipated economic impact of implementing the rule :**

The proposed rule is anticipated to have little to no economic impact if promulgated.

**Contact Person:**

Carrie Coenen  
(608) 267-9744  
carrie.coenen@dhs.wisconsin.gov