

**CHAPTER 1105. REQUIREMENTS OF WIC
AUTHORIZED STORES**

Sec.

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Cross References

This chapter cited in 28 Pa. Code § 1101.2 (relating to definitions).

§ 1105.1. Training.

(a) *Initial training.* Following authorization, the local agency shall provide initial training for the personnel the WIC authorized store designates. The training shall be mandatory and shall occur within 30 days after the date of authorization. A store receiving authorization may not accept WIC checks prior to having its designated personnel attend the initial mandatory training.

(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

- (1) A WIC authorized store shall ensure that at least one representative from the store who is responsible for training store personnel on the WIC Program shall attend.
- (2) Attendance is mandatory.
- (3) The Department will offer each WIC authorized store two opportunities to attend.
- (4) The Department will ensure that annual training is offered to a WIC authorized store either within the county in which it is located or in an adjoining county within the appropriate local agency's jurisdiction.
- (5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store under § 1107. 1a(d)(15) (relating to disqualifications).

(c) *Corrective training.* The Department will provide corrective training as set forth in §§ 1103.2 and 1105.6 (relating to probationary, authorization; and monitoring of WIC authorized stores). Attendance is mandatory.

Authority

The provisions of this § 1105.1 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

1105-1

(345225) No. 420 Nov. 09

Source

The provisions of this § 1105.1 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300341) to (300342).

Cross References

This section cited in 28 Pa. Code § 1105.3 (relating to terms and conditions of participation).

§ 1105.2. Price adjustment.

(a) *Determination of overpayment.* In each calendar quarter, the Department will compare the maximum amount for which a WIC authorized store could have redeemed a WIC check, based upon the maximum allowable prices applicable to the store's peer group for foods authorized for purchase on the check, against the actual amount for which the WIC check was redeemed, to determine whether there was an overpayment.

(b) *Pursuit of reimbursement.* The Department will seek reimbursements from a WIC authorized store when the price comparison reveals overpayments to the store in excess of \$10 in a calendar quarter.

(c) *Reimbursement of overpayments.* A WIC authorized store shall reimburse the Department for overpayments within 20-calendar days of the date on the Department's notice of the overpayment, unless the WIC authorized store disputes the determination of overpayment.

(d) *Dispute of overpayments.* A WIC authorized store that disputes a determination of overpayment shall submit the basis for its dispute in writing to the Department, postmarked within 15-calendar days of the date on the Department's notice. Reimbursement the Department determines is owed shall be due within 15-calendar days of the mailing date of the Department's notification of its resolution of the dispute. The Department's resolution of a dispute regarding overpayments is not an adverse action that may be appealed.

(e) *Sanctions.* The Department will impose a sanction against a WIC authorized store under § 1107.1a(d)(11) (relating to disqualifications) if the store fails to reimburse the Department for an overpayment within the time required under subsections (c) and (d).

Authority

The provisions of this § 1105.2 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1105.2 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial page (300342).

1105-2

Cross References

This section cited in 28 Pa. Code § 1113.1 (relating to right to administrative appeal).

§ 1105.3. Terms and conditions of participation.

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions under § 1107.1 (relating to imposition of sanctions). A WIC authorized store shall:

(1) Adhere to all applicable statutes and State and Federal regulations, regulating the WIC Program, including the nondiscrimination provisions of 7 CFR Parts 15, 15a, 15b and 246, and this part.

(2) Inform the public of its participation in the WIC Program by displaying at least one WIC decal supplied by the Department in a place conspicuously visible to the general public.

(3) Be accountable for the actions of owners, officers, managers, agents and employees in the handling of WIC checks, the selling of allowable foods, and the performance of other conduct related to the WIC Program.

(4) Comply with the selection criteria in § 1103.4 (relating to selection criteria for authorization and reauthorization) throughout the authorization period.

(5) Provide orientation and training to employees regarding applicable regulations governing the WIC Program.

(6) Maintain a copy of the current WIC food list at each check-out aisle.

(7) Send at least one representative who is responsible for training store personnel on the WIC Program to WIC Program training annually, or more often if required by the Department under § 1105.1(c) (relating to training).

(8) Immediately notify the Department when store ownership changes, when store operations cease on a permanent or temporary basis, or when any other circumstance impacting service to participants occurs.

(9) Allow Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, to visit the store to observe its procedures for accepting and handling WIC checks and to conduct announced or unannounced onsite reviews to determine compliance with applicable Federal and State regulations.

(10) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to all WIC checks accepted by the store and on its premises at the time of an onsite review.

(11) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access, which includes providing copies if

requested by the Department, to purchase records used for Federal tax reporting purposes and other records as requested to determine compliance with WIC Program requirements.

(12) Agree that authorization does not constitute a license or a property interest, that the store must reapply for authorization in accordance with § 1103.1(c) (relating to authorization and reauthorization process and requirements), and that neither the Department nor the WIC authorized store has an obligation to renew the store's authorization to participate in the WIC Program.

(13) Agree that the store's authorization to participate in the WIC Program shall become void when ownership of the store changes.

(14) Display the current shelf price of each allowable food either on the allowable food, on the shelf immediately above or below the allowable food, or prominently on an allowable food price list easily located by participants and clearly visible to them.

(15) Not transfer or assign its WIC authorization or reauthorization to another person or entity.

(16) Maintain purchase records and records used for Federal tax reporting purposes for allowable foods for a minimum of 2 years.

(17) Purchase infant formula for resale to WIC participants only from Department authorized infant formula manufacturers, wholesalers, distributors or retailers. Information on where to obtain the list will be published by the Department in the *Pennsylvania Bulletin* simultaneously with the initial publishing of this subsection.

(18) Provide the Department, within 20 calendar days of the store's receipt of a written notice from the Department requesting the additional information, any information the Department has requested necessary to determine whether the store qualifies as an above-50-percent-store. This paragraph does not apply to stores solely owned or operated by nonprofit entities.

(b) *Terms and conditions of participation with regard to participants.* A WIC authorized store shall serve participants and authorized representatives as set forth in this subsection. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Provide allowable foods to a participant or authorized representative only as authorized on the WIC food list as specified on the WIC check.

(2) Not encourage or discourage a participant or authorized representative from purchasing an allowable food specified on the WIC check.

(3) Provide an allowable food to a participant or authorized representative at or below the current price the store charges other customers, and at or below the maximum allowable price applicable to the store's peer group.

(4) Not seek restitution or payment from a participant or authorized representative for a WIC check not reimbursed by the Department, or contact a participant or authorized representative concerning a WIC transaction that occurs in the store.

(5) Not seek restitution or payment from a participant or authorized representative for an allowable food authorized for purchase on the WIC check tendered by the participant or authorized representative.

(6) Not request the personal address, telephone number or other personal identification of a participant or authorized representative.

(7) Offer each participant or authorized representative the same courtesies offered other customers, and not distinguish or identify a participant or authorized representative from other customers, if no other terms and conditions of participation are violated in doing so.

(8) Provide services to each participant or authorized representative without regard to race, color, age, sex, religion, nationality origin or disability.

(9) Provide the same promotional incentive for a purchase made with a WIC check as given for a cash purchase.

(10) Accept cents-off coupons, a store discount card or other discounts from a participant or authorized representative for an allowable food, and deduct the savings in calculating the total purchase price entered into the "Pay Exactly" amount on WIC checks.

(11) Accept "buy one get one free" coupons and manufacturers' promotional free product offers from a participant or authorized representative.

(12) Provide a promotional incentive for use of a WIC check only if the same incentive is offered for a cash purchase.

(c) *Terms and conditions of participation with regard to WIC check processing and redemption.* A WIC authorized store shall adhere to the requirements of this subsection with regard to WIC check processing and redemption. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Treat the acceptance of a WIC check as a financial transaction between the WIC authorized store and the Department, not the participant.

(2) Accept a WIC check only if the participant or authorized representative presents the WIC check on or between the "First Day to Use" and the "Last Day to Use" designations on the WIC check.

(3) Accept a WIC check only if a valid WIC identification card is presented at the time of the WIC transaction.

(4) Accept a WIC check only if the signature of the participant or authorized representative is obtained on the WIC check at the time of the WIC transaction and the family identification number on the WIC check matches the family identification number on the identification card.

(5) Accept a WIC check only if there is no visible alteration on the WIC check.

- (6) Charge the WIC Program only for the types and quantities of allowable foods specified on the WIC check and selected for purchase by the participant or authorized representative.
 - (7) Record in ink, on each WIC check immediately after completion of the WIC transaction and prior to the participant or authorized representative signing the WIC check, the actual purchase amount of the transaction net of any cents-off coupons or other discounts.
 - (8) Properly correct an error made in recording the "Pay Exactly" amount of a WIC check by drawing a single line through the incorrect amount and writing the correct amount above or below the error and having the participant or authorized representative initial next to the corrected amount. No other corrections are permissible.
 - (9) Not alter any information on the WIC check as presented by the participant or authorized representative.
 - (10) Not provide a substitute item, raincheck or cash reimbursement for an allowable food that is unavailable.
 - (11) Not provide cash or credit for a WIC check.
 - (12) Not provide change for a coupon tendered during the WIC transaction.
 - (13) Not provide an exchange to replace an allowable food returned by a participant or authorized representative unless the exchange is to replace an identical product that was found to be damaged or otherwise unusable.
 - (14) Not refund money for an allowable food purchased in a WIC transaction that is returned by a participant or authorized representative.
 - (15) Not accept a WIC check as payment for an item other than an allowable food specified on the WIC check.
 - (16) Not charge the WIC Program for an allowable food not received by the participant or authorized representative or for an allowable food in excess of the quantity prescribed on the WIC check.
 - (17) Not charge the WIC Program for the sale of an amount of an allowable food which exceeds the store's documented inventory of that food item covering the period of time under review and in which the sale was made.
 - (18) Prior to depositing WIC checks, transmit records of WIC check numbers from WIC checks accepted by the store to the Department through transmission mechanisms made available by the Department.
 - (19) Deposit a WIC check accepted by it directly to its bank account no later than 45 days after the "First Day to Use" date on the WIC check.
 - (20) Not receive, transact, redeem or otherwise dispose of a WIC check in violation of check redemption procedures set forth in this section.
 - (21) Not use a WIC check for the purchase of any item other than an allowable food or for the payment of any debt.
 - (22) Not collect Sales Tax in connection with a WIC transaction.
- (d) *Denial of.* When the Department determines, prior to payment of a check submitted for redemption, that the store has committed a violation of this section

that affects the payment to the store, the Department may deny payment. If payment already has been made, the Department may establish a claim for reimbursement by sending the store a written notice of the overcharge or other improper charge. The store may dispute the Department's claim and shall submit the basis for its dispute in writing within 15-calendar days of the date of the Department's written notice. The Department will notify the store of the resolution of the claim dispute. The Department's resolution of a claim dispute is not an adverse action that may be appealed.

Authority

The provisions of this § 1105.3 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1105.3 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300343) to (300347).

Cross References

This section cited in 28 Pa. Code § 1105.6 (relating to monitoring of WIC authorized stores).

§ 1105.4. Change of ownership of a WIC authorized store.

- (a) A store's status as a WIC authorized store is void when a change of ownership of the store occurs.
- (b) To allow uninterrupted service to participants subsequent to a change of ownership of a WIC authorized store, the Department may accept an application for authorization from the prospective new owner of the store prior to a change of ownership.
- (c) The Department will not accept a store's application for authorization if the Department determines that the store submitting the application, either under prior ownership or in a previous location, was disqualified and the purpose of the relocation or sale of the store was to avoid a disqualification.

Authority

The provisions of this § 1105.4 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1105.4 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial page (272445).

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§ 1105.5. Changes in availability or location of WIC authorized stores.

(a) *Notification of store closing.* A WIC authorized store shall notify the Department at least 15 days prior to a temporary or permanent closing of the store, and provide the reason for closing and the expected duration of a temporary closing, if it has at least 15 days prior knowledge. Otherwise, it shall provide this information to the Department immediately after it acquires the information.

(b) *Temporary store closing.* The Department may permit a WIC authorized store to temporarily close for reasons such as a natural disaster, death in immediate family or personal illness, without imposing a sanction against the store. In making a determination to permit a temporary closure, as well as the length of time of the closure, the Department will consider circumstances such as the nature of the disaster, number of WIC authorized stores affected by the disaster, nature and expected duration of illness, length of closing anticipated by the WIC authorized store, number of and distance to other WIC authorized stores, number of participants served by the store, or any other information that the Department may determine to be relevant.

(c) *Store closing for remodeling.*

(1) A WIC authorized store that closes for less than 15 days for remodeling shall continue as a WIC authorized store if it notifies the Department at least 15-calendar days prior to the day the store closes for remodeling.

(2) A WIC authorized store that closes in excess of 15 store operation days for remodeling, shall automatically lose its status as a WIC authorized store and shall apply for and secure authorization before it may again serve as a WIC authorized store.

(d) *Store relocations.*

(1) A WIC authorized store that relocates 1 mile or less from its current location or within the same geographical area assigned to the local agency, and reopens within 15-calendar days at its new location, shall provide the Department with written notification of its new address. The store will continue as a WIC authorized store if it notifies the Department at least 15-calendar days prior to the day the store closes for relocating.

(2) A WIC authorized store that relocates in excess of 1 mile of its current location and to a geographical area assigned to another local agency shall automatically lose its status as a WIC authorized store and shall apply for authorization at its new location to again serve as a WIC authorized store.

(3) A WIC authorized store that closes in excess of 3 store operation days for relocating shall notify the Department before doing so, or shall automatically lose its status as a WIC authorized store and shall apply for authorization to again serve as a WIC authorized store.

Authority

The provisions of this § 1105.5 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1105.5 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300347) to (300348).

§ 1105.6. Monitoring of WIC authorized stores.**(a) Purpose and types of monitoring of WIC authorized stores.**

(1) Federal, State or local representatives will conduct announced and unannounced onsite reviews of WIC authorized stores to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding a store. The types of onsite reviews that may be conducted for monitoring purposes are compliance investigations, inventory audits, routine reviews and WIC transaction reviews. The monitoring process, to determine compliance with applicable Federal and State regulations, operates independently of the authorization process and may overlap more than one authorization period.

(2) The Department will conduct an annual analysis of a WIC authorized store's sales data to determine whether the store qualifies as an above-50-percent-store, except that stores solely owned or operated by nonprofit entities shall not be subject to this annual analysis.

(b) Compliance investigations. The following standards apply:

(1) The Department will conduct at least two compliance buys during a compliance investigation.

(2) The Department will not notify the WIC authorized store that a compliance buy is scheduled.

(3) The Department will provide written notification to the WIC authorized store of the results of each compliance buy, including the store's violation of a statute or regulation governing its participation in the WIC Program, unless paragraph (8) applies.

(4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two compliance buys detect violations of a statute or regulation governing the store's participation in the WIC Program, unless paragraph (8) applies.

(5) If paragraph (8) does not apply, the Department will continue a compliance investigation of the WIC authorized store after store personnel have attended mandatory corrective training.

(6) The Department will impose a sanction in accordance with § 1107.1 (relating to imposition of sanctions) if three compliance buys detect violations of a statute or regulation governing the store's participation in the WIC Program. If multiple violations are found during the compliance investigation,

the Department will impose the sanction against the store for the term corresponding to the most serious violation.

(7) The Department will close the compliance investigation on a WIC authorized store if the Department discovers no violation of a statute or regulation governing the store's participation in the WIC Program after two consecutive compliance buys.

(8) The Department may withhold notification of compliance buy results, and may withhold providing training or conducting further compliance investigations, when fraudulent activity by the WIC authorized store is indicated during a compliance investigation or by local agency or participant complaint.

(c) *Inventory audits.* The Department will disqualify a WIC authorized store when an inventory audit establishes that the store has redeemed or attempted to redeem WIC checks for the purported sale of an allowable food in excess of documented inventory. No warning letter will be issued.

(d) *Routine reviews.* The Department will use routine reviews as follows to determine whether a WIC authorized store is in compliance with the terms and conditions of participation in § 1105.3 (relating to terms and conditions of participation):

(1) The Department will not notify the WIC authorized store that a routine review is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each routine review, including violation of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second routine review of the WIC authorized store if the first routine review detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two routine reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third routine review of a WIC authorized store after store personnel have attended mandatory corrective training.

(6) The Department will impose a sanction in accordance with § 1107.1 against a store if a third routine review detects violations of a statute or regulation governing the store's participation in the WIC Program. If multiple violations are found during the routine reviews, the Department will impose against the store the most severe sanction the Department may impose for any one of the violations committed by the store.

(e) *WIC transaction reviews.* The Department will use WIC transaction reviews to monitor WIC transaction procedures and compliance with statutes and regulations governing the store's participation in the WIC Program. The following standards apply:

(1) The Department will not notify the WIC authorized store that a WIC transaction review is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each WIC transaction review, including violations of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second WIC transaction review at the WIC authorized store if the first WIC transaction review detects a violation of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide the personnel of the WIC authorized store mandatory corrective training after two WIC transaction reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third WIC transaction review at the WIC authorized store after store personnel have attended the mandatory corrective training.

(6) The Department will impose a sanction in accordance with § 1107.1 if a third WIC transaction review detects a violation of a statute or regulation governing the store's participation in the WIC Program. If multiple violations are found during the WIC transaction reviews, the Department will impose against the store the most severe sanction the Department may impose for any one of the violations committed by the store.

(f) *Use of law enforcement agency.* The Department may utilize a law enforcement agency in the investigation of a WIC authorized store or other store suspected of trafficking WIC checks or other fraud or abuse of the WIC Program.

(g) *Reimbursement.* The Department will seek reimbursement from a WIC authorized store that received funds improperly due to a violation of regulations governing the store's participation in the WIC Program discovered during monitoring reviews. The Department will send notice to the store of the amount of money to be reimbursed to the WIC Program. The store shall make payment within 20 days from the date on the notice.

(h) *Annual determination of WIC sales percentage.* The Department may request from a store information necessary for the Department to determine whether the store qualifies as an above-50-percent store. This information may include a request for State or Federal Income Tax returns, State Sales Tax records, Department of Revenue Form PA-3 filings, and sales records. This paragraph does not apply to stores owned by nonprofit entities.

Authority

The provisions of this § 1105.6 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1105.6 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300348) to (300351).

Cross References

This section cited in 28 Pa. Code § 1105.1 (relating to training).

[Next page is 1107-1.]

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