

**641—73.19(135) WIC program violation.** Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the WIC program or its regulations.

**73.19(1) Participant violation.** Violations may be reported by contract agency staff, vendors, the public, FNS staff, or department staff. All suspected cases of fraud will be investigated by the department. All sanctions will be administered by the department. Contract agencies will be notified of any actions taken against WIC participants by the department.

*a.* Whenever possible, the participant is contacted via telephone concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

*b.* Participants who violate WIC program regulations are subject to sanction in accordance with the schedule below:

Violation	Sanction Action
1. Intentional false statement(s) or misrepresentation of income, name, residence, family size (including receiving and using benefits for children no longer in the family), medical data, pregnancy, and/or date of birth to obtain WIC benefits.	One-year disqualification and pay full restitution
2. Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount less than \$100.  Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell, or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer or sell eWIC card/ benefits for unapproved food items, nonfood items, cash or favors. Claim amount less than \$100.	Two-month disqualification and pay full restitution  Subsequent violation of any claim amount: one-year disqualification and pay full restitution
3. Return of WIC foods to vendor for unapproved food items, nonfood items, credit or cash (attempted or actual). Claim amount greater than \$100.  Buy, trade, exchange, transfer, sell, or offer to buy, trade, exchange, transfer, sell or allow any other person to buy, trade, exchange, transfer, sell or offer to buy, trade, exchange, transfer, or sell WIC foods for unapproved food items, nonfood items, cash or favors. Claim amount greater than \$100.	One-year disqualification and pay full restitution
4. Creating a public nuisance or disrupting normal activities through verbal misconduct or physical disruptions at the local WIC agency, farmers market, or vendor location.	First violation: Education/counseling Second subsequent violation: Warning letter Third subsequent violation: Two-month disqualification Fourth subsequent violation: Any subsequent violation(s) will result in a one-year disqualification.
5. Verbal abuse or harassment of WIC staff, vendors, farmers market vendors and/or other WIC participants. This includes verbal abuse or harassment in person, on social media, or over the telephone.	Two-month disqualification Subsequent violation will result in a one-year disqualification.
6. Physical abuse (directly or indirectly carrying out the actual harm or threatening to do harm) of WIC staff, vendors, vendor staff, farmers market vendors, farmers market vendor staff, and/or other WIC participants.	Any violation will result in a one-year disqualification.
7. Destruction of property, theft of eWIC card(s) or theft from a local WIC agency, vendor, vendor staff, farmers market vendor, farmers market vendor staff, and/or another WIC participant.	Any violation will result in a one-year disqualification.
8. Collusion with staff to improperly obtain benefits.	One-year disqualification and pay full restitution
9. Dual participation resulting from intentional misrepresentation.	One-year disqualification and pay full restitution

- |     |   |   |
|-----|---|---|
| 10. | Trafficking WIC food benefits, WIC benefits, or WIC items and/or collusion with an authorized vendor. | One-year disqualification and pay full restitution                          |
| 11. | Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.                         | As appropriate per this chapter or the Iowa WIC Policy and Procedure Manual |

- c. Local law enforcement may be notified in appropriate cases.
- d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, of the right to appeal the decision through the fair hearing process, and of eligibility to receive WIC services at the end of the disqualification period.
- e. A disqualification may apply to all members of a family who are on the WIC program.
- f. Violations are cumulative. However, a participant will not have sanctions assessed for committing a second violation when the second violation occurs before the participant receives notice of the first violation and the second violation is the same as the first. A participant who commits the same violation a second time following receipt of a notice for the first violation is subject to a one-year disqualification.
- g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement(s) or intentionally misrepresenting, concealing, or withholding facts or sells or attempts to sell benefits the participant received from the WIC program and is disqualified from the WIC program, the participant may be required to make restitution of the cash value of the improperly received or used WIC benefits. The department may establish a claim against the participant for the full value of the improperly received benefits.

The department shall issue a written notice of restitution and disqualification.

If the participant chooses a repayment plan for claims, the department will assist in developing a payment schedule. If the participant has not paid the department directly within 30 days of the notice of restitution and disqualification, the department will pursue collection of the dollar amount owed and benefits will be discontinued until the claim is paid.

h. The department may decide not to impose a mandatory disqualification if a family makes full restitution for a monetary claim, establishes a repayment schedule within 30 days of receipt of the letter demanding repayment, makes full restitution or agrees to a repayment schedule or, in the case of a participant who is an infant, a child, or under the age of 18, the state or local agency approves the designation of a proxy. The department may permit the participant to receive WIC services before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, a child, or under the age of 18, the department or local agency approves the designation of a proxy. All decisions are at the discretion of the department.

i. When a disqualification period has ended, the individual disqualified may be reinstated if the individual's certification period is still current. If the individual's certification period is not current, the individual will need to complete a certification appointment.

j. The department shall maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

**73.19(2) Vendor violations.** There are five types of sanctions that are applied to vendors for violations of WIC program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties.

a. Nonpayment of food instruments. If the vendor has been terminated from the WIC program and submits a claim, it will be fully denied.

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of the WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2. Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3. Failure to allow WIC participants to leave the vendor with WIC foods that were debited/ removed from their eWIC account during a WIC transaction.	5
4. Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.	5
5. Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.	5
6. Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	10
7. Refusal to accept valid WIC food instruments from participants.	10
8. Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions.	10
9. Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	10
10. Providing to WIC participants incentive items not prior authorized by the department.	10
11. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
12. Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
13. Issuing "rain checks" or credit in exchange for WIC food instruments.	10
14. Stocking out-of-date, stale, or moldy WIC foods.	10
15. Failure to submit vendor price assessment reports as requested.	10
16. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
17. Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
18. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
19. Requiring to enter the PIN for the participant and/or asking for the participant's PIN.	10
20. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
21. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
22. Providing false information on the price assessment report.	15
23. Knowingly entering false information or altering information on the eWIC receipt/ benefits.	10
24. Requiring other cash purchases to redeem WIC food instruments.	15
25. Failure to obtain infant and/or special needs formula from an approved source listed by the Iowa WIC program.	15
26. Offering incentive items with a value of more than \$1.99.	15
27. Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.	20
28. Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20
29. Other violations of this chapter or the WIC vendor agreement or the Iowa WIC Policy and Procedure Manual.	As appropriate per this chapter, the WIC Vendor Agreement and Handout, or the Iowa WIC Policy

Violation	Points Per Event and Procedure Manual
<p><i>c.</i> One-year disqualification. With an administrative finding of the following patterns of sanctions, the vendor will be disqualified for one year.</p>	
<p>(1) A pattern of allowing purchase of nonapproved food items in exchange for WIC food instruments or for foods provided in excess of those listed on the WIC food instrument. (federally mandated sanction)</p>	
<p>(2) Accumulation of 45 or more violations points within a single federal fiscal year of the agreement period. (department sanction)</p>	
<p>(3) Failure to provide access to vendor premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit. (department sanction)</p>	
<p>(4) Loss of Iowa department of inspections and appeals license. (department sanction)</p>	
<p>(5) Submitting for payment a WIC food instrument redeemed by another authorized vendor. (department sanction)</p>	
<p>(6) Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions. (department sanction)</p>	
<p>(7) Submitting for payment WIC food instruments known by the vendor to have been lost or stolen. (department sanction)</p>	
<p>(8) Participating with other individuals, including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instrument. (department sanction)</p>	
<p><i>d.</i> With an administrative finding of the following federally mandated sanctions, the vendor will be disqualified from being a WIC vendor for three years.</p>	
<p>(1) A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.</p>	
<p>(2) A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.</p>	
<p>(3) A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.</p>	
<p>(4) One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.</p>	
<p>(5) A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.</p>	
<p>(6) A pattern of claiming reimbursement for the sale of a quantity of a specific food item which exceeds the vendor's documented inventory of that food item for a specified period of time.</p>	
<p><i>e.</i> With an administrative finding of the following federally mandated sanctions, the vendor will be disqualified for six years.</p>	
<p>(1) One incidence of buying or selling food instruments for cash (trafficking).</p>	
<p>(2) One incidence of selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments.</p>	
<p><i>f.</i> With a conviction in a criminal court of law for trafficking in WIC food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, that:</p>	
<p>(1) Disqualification of the vendor would result in inadequate participant access; or</p>	
<p>(2) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.</p>	
<p><i>g.</i> The following does not have a point value, but shall result in or extend a disqualification period:</p>	

For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.

*h.* The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR Part 246 or the Iowa Code.

*i.* A vendor shall not be entitled to receive any compensation for revenues lost as a result of any temporary or permanent disqualification.

*j.* A minimum of 15 days' notice is provided prior to all disqualifications, except for permanent disqualifications assessed under paragraph 73.19(2)"*f*," which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal. Voluntary withdrawal from the WIC vendor agreement to avoid a sanction is not allowed.

*k.* The department is responsible for issuing all warning and disqualification letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

*l.* Federal Supplemental Nutrition Assistance Program (SNAP) regulations require automatic disqualification from SNAP for vendors disqualified by the WIC program for certain types of violations. When a vendor is disqualified from the WIC program, the disqualification letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Supplemental Nutrition Assistance Program (SNAP). Such disqualification may not be subject to administrative or judicial review under SNAP." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

*m.* The department shall disqualify a vendor who has been disqualified from SNAP. The disqualification shall be for the same length of time as the SNAP disqualification, may begin at a later date than the SNAP disqualification, and shall not be subject to administrative or judicial review under the WIC program. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

*n.* Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2)"*f*" or 73.19(2)"*m*," it shall use the civil money penalty formula in accordance with Title 7 CFR 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. "Failure to timely pay a CMP" includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as WIC program income.

[ARC 2839C, IAB 12/7/16, effective 1/11/17; ARC 4487C, IAB 6/5/19, effective 7/10/19]