



TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF FAMILY HEALTH & WELLNESS
WIC VENDOR AGREEMENT
FOR PHARMACIES
FOR 2019 - 2021

TENNESSEE DEPARTMENT OF HEALTH

and

(Pharmacy Name)

for

AUTHORIZATION TO PARTICIPATE IN THE TENNESSEE WIC PROGRAM

WHEREAS, the Tennessee Department of Health and _____
(Pharmacy Name)
desire to enter into an agreement beginning on _____
(Month, Date, Year)
relating to participation in the Tennessee WIC Program.

NOW, THEREFORE, the parties hereby agree as follows:

I. THE TENNESSEE WIC PROGRAM AGREES:

- (1) to reimburse authorized pharmacies for TNWIC transactions for therapeutic infant formulas and WIC-eligible nutritionals;
- (2) to provide annual training and updated materials to at least one representative of the vendor to support their proper participation in the WIC Program;
- (3) to supply WIC Program changes to the vendor in writing; and
- (4) to use the same standards for vendor participation in the WIC Program for everyone regardless of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

II. THE PHARMACY AGREES:

- (1) to transact TNWIC benefits for therapeutic infant formulas and WIC-eligible nutritionals that are within the manufacturer's product eligibility dates;
- (2a) to provide only therapeutic infant formulas and WIC-eligible nutritionals except as pertaining to clause (12a) of this section; presented only by program participants; only at the time of the transaction at the vendor's authorized location, and not to provide cash or credit (including rain checks) in exchange for TNWIC benefits and/or cards;
- (2b) to not allow refunds or exchanges for therapeutic infant formulas and WIC-eligible nutritionals provided, except exchanges for items that are defective, spoiled, or exceed their sell/use by date and only for the exact same brand, type and size approved item obtained and returned;
- (3a) to charge the WIC Program for therapeutic infant formulas and WIC-eligible nutritionals at the current price or less than the current price charged to all other customers, except that sales tax shall not be charged;
- (3b) to not charge the WIC Program for approved foods not received by program participants;

- (4) to properly complete TNWIC transactions on the vendor's premises to abide by procedures of the WIC Program and WIC Vendor Handbook, in order not to abuse, misuse, or defraud the WIC Program;
 - (5) to properly train and inform store employees of the firm's obligations to the WIC Program, to be accountable for the actions of owners, officers, managers, agents, and employees, and to have in place an effective policy and program to prevent trafficking, which is the exchange of TNWIC benefits and/or cards for cash, and, in addition, the vendor agrees to accept training offered by the WIC Program;
 - (6) to allow any authorized WIC Program representative to inspect all program related records on hand at any reasonable time and place at the discretion of the WIC Program;
 - (7a) to produce, upon request of an authorized WIC Program representative, bills of lading or invoices for a period not to exceed the previous ninety (90) days and/or pertinent inventory records used for federal tax reporting purposes, as proof of purchase of merchandise represented as being provided to program participants by redeemed TNWIC benefits. These records shall be original, on commercially printed invoice and/or receipt paper, readable and presented in a logical way;
 - (7b) to produce upon request of an authorized WIC Program representative, annual food sales information based on sales of all the USDA Supplemental Nutrition Assistance Program (SNAP) eligible foods as clarified in the WIC Vendor Handbook or, if requested, the "Self Declaration" for those pharmacies without sales information to submit;
- (The following clauses, 8a through 8c are applicable to those pharmacies who are SNAP authorized. Such pharmacies must provide the WIC Program their current SNAP authorization number and are subject to the federal requirements contained in these clauses.)
- (8a) to participate in USDA SNAP and acknowledge that the WIC Program shall disqualify a vendor who has been disqualified from USDA SNAP, and there shall be a Civil Money Penalty (CMP) imposed in lieu of disqualification due to inadequate participant access when solely determined by the WIC Program;
 - (8b) to acknowledge that a CMP imposed by USDA SNAP in lieu of disqualification due to inadequate participant access may result in disqualification from the WIC Program;
 - (8c) to acknowledge that disqualification from the WIC Program may result in disqualification as a retailer in USDA SNAP, and such disqualification may not be subject to administrative or judicial review under USDA SNAP;
 - (9a) to acknowledge that the WIC Program shall permanently disqualify a vendor convicted of trafficking in WIC benefits 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 TNWIC benefits and/or cards, and that a vendor shall not be entitled to receive any compensation for revenues lost as a result of such violations;
 - (9b) to acknowledge that, upon one incidence of investigative finding of trafficking, the WIC Program shall disqualify a vendor for trafficking in TNWIC benefits and/or cards or selling firearms, ammunition, explosives, or controlled substances, as defined in (9a) above;
 - (9c) to acknowledge that, upon one incidence of investigative finding of illegal sales, the WIC Program shall disqualify a vendor for conducting illegal sales, which is the exchange of TNWIC benefits and/or cards for alcohol, alcoholic beverages, or tobacco products;
 - (10) to not charge Program participants or attempt to seek reimbursement from Program participants for TNWIC transactions not paid or partially paid by the WIC Program;
 - (11) to acknowledge that Program participants may not be discriminated against based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA;
 - (12a) to provide suitable hours, visibly posted and adhered to, and environment for participant access, and to offer Program participants any courtesies offered other customers, including, but not limited to: bonus cards, cents off coupons, multiplying of coupon values, and additional products for free;
 - (12b) that vendors deriving more than fifty (50) percent of their annual food revenue from TNWIC transactions are prohibited from offering incentive items to WIC participants and if found violating this provision shall not receive payment from the WIC Program, as clarified in the WIC Vendor Handbook;
 - (13) to serve as or to designate a responsible contact(s) person for this establishment's WIC Program procedures and to inform the WIC Program of management changes;
 - (14) to authorize the Tennessee Department of Revenue to disclose the vendor's revenue figures, as applicable to the collection of sales tax, to the WIC Program for the purpose of administering the WIC Program;
 - (15) to grant the WIC Program the right to collect any claims (due to overcharges), as assessed in TNWIC transactions due to error, negligence, or fraud;

- (16) to notify an authorized WIC Program representative of changes of name, location, ownership, management, and business structure or ending of operations;
- (17a) to acknowledge that patterns of non-compliance with clauses (2a), (2b), (3a), (3b), and (15) of this section of this agreement shall result in disqualification from the WIC Program. (The vendor shall be warned following the first act of non-compliance, unless such notification would compromise an investigation or as further clarified in the WIC Vendor Handbook);
- (17b) to acknowledge that non-compliance with clauses (1), (4) through (7b) and (10) through (12b) of this section of this agreement may result in disqualification from the WIC Program. (The vendor shall be warned following the first act of non-compliance that could result in a pattern of non-compliance, unless such notification would compromise an investigation or as further clarified in the WIC Vendor Handbook.);
- (18) to comply with this agreement and federal and state statutes, regulations, polices, and procedures governing the WIC Program, including changes made during the agreement period;
- (19) to comply with the vendor selection criteria throughout the agreement period, including any changes. Using current criteria, the WIC Program may reassess the vendor at any time during the agreement period and terminate the agreement if the vendor fails to meet the current criteria; and
- (20) to acknowledge that decisions regarding sanctions resulting from violations of the WIC Program are based on the Vendor Sanction Procedures as presented in the WIC Vendor Handbook.

III. BOTH PARTIES AGREE AS FOLLOWS:

- (1) This agreement shall be terminated, if ownership of the vendor's business changes, if the WIC Program identifies a conflict of interest as defined by applicable state laws, regulations, and policies, between the vendor and any WIC Program staff, or may be terminated by either party for negligence, fraud, abuse, violation of the agreement, or for any other reason after providing not less than fifteen (15) days advance notice, unless otherwise stated within the WIC Vendor Handbook.
- (2) This agreement shall be immediately terminated, if it is determined that the vendor has provided false information on the Vendor Application for Authorization to Participate in the Tennessee WIC Program.
- (3) The vendor agreement does not constitute a license or a property interest as clarified in the WIC Vendor Handbook.
- (4) A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Under Section 246.12 of the federal regulations, those who have willfully misapplied, stolen or fraudulently obtained WIC Program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five (5) years or both.
- (5) The WIC Program has the sole right to determine if inadequate participant access exists and impose a Civil Money Penalty (CMP) in lieu of disqualification regarding clauses (9a), (9b), (9c), and (17a) of "THE VENDOR AGREES" section, except where sanctions are issued for the third or greater time.
- (6) The WIC Program has the sole right to determine if inadequate participant access exists and impose a CMP in lieu of disqualification regarding clause (17b) of "THE VENDOR AGREES" section.
- (7) There shall be a CMP imposed in lieu of disqualification regarding clause (9a) of "THE VENDOR AGREES" section, when the vendor had an effective policy and program to prevent trafficking at the time of the violation and the vendor must also not have been aware of, did not approve of, and were not involved in the conduct of the violation.
- (8) The WIC Program shall ensure the vendor the right to request a hearing or administrative review from the State on actions they disagree with affecting their ability to participate in the WIC Program, except for expiration of this agreement, disqualification as a result of USDA SNAP disqualification, and WIC Program decisions regarding participant access.
- (9) The WIC Program shall undertake appropriate monitoring, auditing, and review of the vendor at least once a year.
- (10) The WIC Vendor Handbook is part of this agreement and is incorporated by reference.
- (11) This agreement shall be considered amended upon notice from the WIC Program, should federal or state laws or regulations require or permit amendments.

