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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED
07/25/2018 5:01 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: WIC Participant Administration

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/22/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Brittany Hall
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/20/2018

TIME: 11:00 AM

OFFICER: Jana Fussell

ADDRESS: Portland State Office

Building

800 NE Oregon St, Room 1B

Portland, OR 97232

NEED FOR THE RULE(S):

The Oregon Health Authority, Public Health Division is proposing to permanently amend administrative rules in chapter 333, division 53 as they pertain to participants in the Nutrition & Health Screening - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These amendments include updating the notification obligations in the event of suspensions per the revisions to ORS 411.095 in 2015 (SB 225; Oregon Laws 2015, chapter 269) (333-053-0000) and clarifying the definition of a "Food Instrument" to only include EBT cards (333-053-0040).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

7 CFR 246, Public Law 108-265 - Both documents are available at <http://www.fns.usda.gov>

ORS 411.095 - https://www.oregonlegislature.gov/bills_laws/ors/ors411.html

SB 225; Oregon Laws 2015, chapter 269: <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB225>

FISCAL AND ECONOMIC IMPACT:

There are no anticipated fiscal or economic impacts as a result of these proposed amendments.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Since these rules apply to WIC participants, other state agencies, units of local government and members of the public are not expected to be fiscally or economically impacted by the proposed changes.

(2)(a) These rules do not apply to small businesses or industries with small businesses.

(b) Not applicable as these rules do not apply to small businesses.

(c) Not applicable as these rules do not apply to small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved as these rules apply to WIC participants.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

333-053-0000, 333-053-0040

AMEND: 333-053-0000

RULE SUMMARY: Amend OAR 333-053-0000: Remove "notifying participants in writing" per previous ORS 411.095 revision (Oregon Laws 2015, chapter 269).

CHANGES TO RULE:

333-053-0000

Suspension of WIC Program ¶¶

(1) Notwithstanding any other rules in this division, all WIC program benefits are suspended if there is a government or WIC program closure or if the government does not provide WIC funding. A suspension shall remain in effect until such time as funding is approved or as soon as the closure ends and only to the extent benefit issuance to participants is approved by the federal government.¶¶

(2) Notice of suspensions shall be made by the Oregon Health Authority by posting a notice on the WIC program website and by notifying participants in writing. Notice of suspensions shall include the suspension effective date. As soon as funding is restored or as soon as the closure has ended, the Authority shall notify participants of the date that a suspension is lifted.¶¶

(3) Benefits may not be issued to participants and participants shall not redeem WIC food instruments they have already received during a suspension.¶¶

(4) Participants who disagree with a suspension are not entitled to continuing benefits or a contested case hearing but may challenge a suspension through a rule challenge under ORS 183.335 or 183.400.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500

AMEND: 333-053-0040

RULE SUMMARY: Amend OAR 333-053-0040: Amend the definition of "Food Instrument" to accurately represent post WIC EBT implementation.

CHANGES TO RULE:

333-053-0040

Definitions ¶¶

- (1) "Adjunctively income eligible" means an applicant or participant who is eligible for WIC because they are:¶
 - (a) Certified and fully eligible to receive benefits for the:¶
 - (A) Food Distribution Program on Indian Reservations (FDPIR);¶
 - (B) Supplemental Nutrition Assistance Program (SNAP);¶
 - (C) Medicaid/Oregon Health Plan (OHP); or¶
 - (D) Temporary Assistance for Needy Families (TANF); or¶
 - (b) A member of a household with:¶
 - (A) A SNAP recipient;¶
 - (B) A pregnant woman or infant currently on Medicaid/OHP;¶
 - (C) A TANF recipient; or¶
 - (D) A FDPIR recipient.¶
- (2) "Appeal" means review of an agency decision by a neutral third party.¶
- (3) "Applicant" means any pregnant woman, post-partum woman, infant or child who is applying to receive WIC program benefits, and a breastfed infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are re-applying because their certification period is about to expire.¶
- (4) "Authority" means the Oregon Health Authority.¶
- (5) "Authorized food" means any supplemental foods approved by the Oregon WIC program and listed on the WIC Authorized Food List or food instrument.¶
- (6) "Authorized shopper" means:¶
 - (a) The participant or any person designated by a participant who has been documented as such to act on the participant's behalf; and¶
 - (b) In the case of an infant or child, the caretaker or the caretaker's designee; or¶
 - (c) Any representative of the Authority posing as a participant or participant designee as authorized by the Authority.¶
- (7) "Cardholder" means the person authorized by the WIC program to use the eWIC card to purchase WIC food benefits at WIC-authorized vendors.¶
- (8) "Cash Value Benefit" or "CVB" means a fixed-dollar benefit on a ~~check, voucher,~~ an electronic benefit transfer (EBT) card or other document which is used by an authorized shopper to obtain WIC authorized fruits and vegetables.¶
- (9) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.¶
- (10) "CFR" means Code of Federal Regulations.¶
- (11) "Claim" means a demand for repayment for intentional misuse of WIC or FDNP benefits.¶
- (12) "CSFP" means the Commodity Supplemental Food Program.¶
- (13) "Disqualification" means termination of participation in the WIC program and cessation of WIC benefits due to a participant violation for a specific amount of time.¶
- (14) "Dual participation" means simultaneous participation in more than one WIC program (more than one state or more than one local agency within Oregon) or participation in the WIC program and in the CSFP at the same time.¶
- (15) "Electronic benefit account" or "EBA" means an account established for a WIC household administered by

Oregon's eWIC banking contractor and where food benefits for all participants in the household are aggregated into that single account.¶

(16) "eWIC card" means the electronic benefit transfer (EBT) card used by cardholders to purchase WIC authorized foods or formulas from their electronic benefit account (EBA).¶

(17) "Fair hearing" means a proceeding before an administrative law judge to review actions proposed by the Authority.¶

(18) "Farm Direct Nutrition Program" or "FDNP" means the Farmers' Market Nutrition Program administered by the United States Department of Agriculture (USDA), Food and Nutrition Services and implemented by the State of Oregon, Oregon Health Authority.¶

(19) "First cardholder" means the required cardholder for an electronic benefit account. The first cardholder is either the woman participant or the parent or caretaker from the same household as the infant or child participant therefore sharing the same address.¶

(20) "Food instrument" means a WIC program ~~voucher, check, coupon,~~ electronic benefit transfer (EBT) card, or other document which is used to obtain authorized foods.¶

(21) "Hearing request" or "request for a hearing" means any clear expression by an individual, or the individual's parent, caretaker or representative, that he or she desires an opportunity to present his or her case to a higher authority.¶

(22) "Local agency" means:¶

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract with the Authority to provide services, in accordance with 7 CFR § 246.5;¶

(b) An Indian Health Service unit in contract with the Authority to provide services;¶

(c) An Indian tribe, band or group recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit; or¶

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit.¶

(23) "Notice of Non-compliance" means a letter notifying participants, parents or caretakers of an infant or child participant when they commit a program violation. This notice is an explanation of the violation and a warning about repercussions of subsequent violations.¶

(24) "Participant" means any pregnant woman, breastfeeding woman, post-partum non-lactating woman, infant or child who has been certified to receive benefits from the WIC program.¶

(25) "Participant's caretaker" means a person who has significant responsibility for providing food to the infant or child. The caretaker is usually part of the family unit, for example the parent or legal guardian of the infant or child.¶

(26) "Restitution" means reimbursement to the Authority of the cash value of WIC program benefits received by a participant as a result of a violation.¶

(27) "Sanction" means a penalty imposed by the state WIC program because of a violation.¶

(28) "Second cardholder" means an individual authorized on a WIC electronic benefit account who has been issued their own eWIC card with the permission of the first cardholder.¶

(29) "Service area" means a local program or subdivision of a local agency that encompasses a specific geographic area.¶

(30) "Termination" means a participant's file is closed and WIC program benefits cease for any reason including, but not limited to, lack of eligibility, no longer breastfeeding, or transferring out of state, and participant violations.¶

(31) "Trafficking" means the buying or selling of a WIC food instrument for cash.¶

(32) "Violation" means any intentional action of a participant, parent or caretaker of an infant or child participant, or any eWIC cardholder, including actions listed in OAR 333-053-0080, that violates federal or state statutes, regulations, policies or procedures governing the WIC program.¶

(33) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants and

Children authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. § 1786.¶
(34) "WIC program benefits" mean benefits a participant receives that includes but are not limited to food, formula, and breast pumps.

Statutory/Other Authority: ORS 413.500

Statutes/Other Implemented: ORS 413.500