

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193

Maternal and Child Health Programs

SPONSOR(S): Rivera

TIED BILLS:

IDEN./SIM. BILLS: SB 2652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Healthcare Council		Lowell/Massengale	Gormley
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1193 requires the department to:

- Implement an electronic benefits transfer (EBT) system for the WIC program by October 1, 2008.
- Require the Bureau of WIC and Nutrition Services to calculate the statewide average retail price of each WIC-eligible product by each item rather than by WIC voucher.
- Contact the Division of Food and Nutrition Services of the United States Department of Agriculture when notified by a manufacturer of a price increase on any WIC-eligible product and request authorization from the Division of Food and Nutrition Services to allow food retailers to increase the price for the same WIC-eligible product by the same percentage.
- Authorize a vendor who owns a WIC-approved retail store that only sells WIC-eligible products to sell, convey, or devise the store to any qualifying vendor.
- Require annual reauthorization of the contract of an existing WIC-approved vendor who is in compliance with department requirements.

In addition, the bill prohibits the department from discontinuing a WIC-eligible generic product unless the product no longer meets the nutritional guidelines of the WIC program.

The bill appears to have a significant negative fiscal impact to the Federal Grants Trust Fund. The actual cost is indeterminate at this time. Depending upon the actual cost to implement and maintain an EBT system, General Revenue may be needed to supplement federal funds (see fiscal analysis).

The bill will take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill requires the Department of Health to implement an electronic benefits transfer system for the WIC program.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal

The Women, Infants, and Children (WIC) is a 100 percent federally-funded program that provides food, nutrition education, and referrals to social services to eligible participants at no charge. The WIC program began in 1972 as a pilot program, becoming permanent in 1974. The WIC program is administered by the Division of Food and Nutrition Services (FNS) of the United States Department of Agriculture. WIC benefits are redeemed through the use of a food instrument that lists the food items that may be purchased. FNS rules state that a food instrument (food voucher) may in the form of a “voucher, check, electronic benefits transfer card . . . or other document used by a participant to obtain supplemental foods.”¹ According to FNS, most WIC programs provide paper vouchers to participants to use at authorized food stores; roughly 46,000 merchants nationwide accept WIC vouchers.²

Eligible participants include low-income pregnant, postpartum, and breastfeeding women, and infants and children up to age 5 who are at nutrition risk and income eligible.³ Income eligible participants include those who meet the WIC income guidelines⁴ and those who are receiving Medicaid, Temporary Cash Assistance, or Food Stamps. Foods available through the WIC program include milk, cheese, eggs, cereals, and peanut butter, as well as infant formula and infant cereal and fruit juice for infants 6 months or older.⁵

Florida

In Florida, the WIC program is administered by the Department of Health (department), Bureau of WIC and Nutrition Services. The WIC program is available in all 67 Florida counties through 42 local agencies, including county health departments. According to the department, the number of participants in the program varies from month-to-month; according to the latest data, more than 440,000 participants were being served by the program at the end of Fiscal Year 2006-2007. Approximately 2,000 vendors in Florida, including major grocery chain stores and above-50-percent (50-percent) stores, are authorized to accept WIC vouchers. A 50-percent vendor is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food vouchers. Of these approximately 2000 authorized vendors, there are approximately 39 50-percent vendors, of which 37 derive nearly 100 percent of their revenue from the WIC program.

Florida WIC benefits are redeemed through the use of a paper voucher (see Figure 1). According to the department, a typical WIC participant receives an average of three vouchers per month. A WIC

¹ 7 C.F.R. §246.2 (2007).

² Division of Food and Nutrition Services, United States Department of Agriculture, WIC’s mission <http://www.fns.usda.gov/wic/aboutwic/mission.htm> (last updated September 12, 2003).


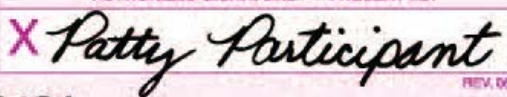
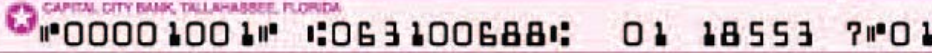
³ Division of Food and Nutrition Services, United States Department of Agriculture, Nutrition Program Facts (last updated March 2006).

⁴ The Income Guidelines range from \$1,575 gross income per month for a household of 1, to \$5,330 gross income per month for a household of 8 (185% of the Federal Poverty Level).

⁵ See also Florida Department of Health, WIC Eligible Foods, <http://www.floridawic.org/Documents/WICEligibleFoodList.pdf> (last updated November 2007).

customer does not need to purchase all of the items listed on a voucher (resulting in a “partial redemption”). A WIC customer who partially redeems a WIC voucher does not receive a credit for the unused balance and may not purchase the unredeemed items at a subsequent visit. Thus, once a voucher is used, whether it is fully redeemed or partially redeemed, it may not be used again.

Sample Florida WIC Voucher

 FLORIDA WIC PROGRAM DEPARTMENT OF HEALTH			00001001		63-05 031
CHECK NUMBER	AGENCY SITE	WIC I.D. NO.	FIRST DAY TO USE	LAST DAY TO USE	
00001001	12 1	1234567	JUL 04, 2007	AUG 03, 2007	
BUY LEAST EXPENSIVE BRANDS OF MILK, FROZEN JUICE AND EGGS. (SEE BACK FOR ELIGIBLE FOODS)			AMOUNT MUST NOT EXCEED TOTAL PRICE OF ITEMS LISTED		NOT NEGOTIABLE UNLESS WIC VENDOR STAMP IS HERE
161	MILK*2 GAL OR 8 CANS EVAP OR 8 QTS DRY WIC CHEESE*UP TO 1 LB JUICE*24 OZ FROZ OR 2 CANS/BOTTLES 46-OZ SIZE WIC CEREAL*UP TO 36 OZ EGGS*1 DOZEN DRY BEANS OR PEAS*UP TO 1 LB		PAY EXACTLY <div style="border: 1px solid black; padding: 5px; display: inline-block;"> 31 16 </div>		
NAME OF PARTICIPANT LAST: PARTICIPANT FIRST: PATTY			AUTHORIZED SIGNATURE - PRESENT I.D. 		
CAPITAL CITY BANK, TALLAHASSEE, FLORIDA 					

(Figure 1)

Federal Vendor Cost Containment Requirements

FNS rules require a state, in administering the WIC program, to implement vendor cost-containment procedure that include establishing,

- A vendor peer group system; and
- Competitive price criteria and allowable reimbursement levels for each vendor peer group.⁶

A vendor peer group classifies authorized vendors into groups based on common characteristics.⁷ Competitive price criteria must be used by a state to evaluate the prices of vendor applicants compared to other vendor applicants and authorized vendors.⁸

In implementing a vendor peer group, the state’s methodology must include:

- At least two criteria for establishing peer groups, one of which must geography (such as a metropolitan statistical area).
- Routine collection and monitoring of vendor shelf prices at least every 6 months.
- Assessment of the effectiveness of the peer groupings and competitive price criteria at least every 3 years.

A state that decides to contract with 50-percent vendors must receive FNS certification of its vendor cost containment system.⁹ In order to receive certification, a state must submit information demonstrating that its competitive price criteria and allowable reimbursement levels do not result in higher average payments per food voucher to 50-percent vendors than regular vendors.¹⁰ A state must calculate average payments per food voucher by including either all food vouchers redeemed by

⁶ *Id.*
⁷ 7 C.F.R. §246.2 (2007).
⁸ 7 C.F.R. §246.12(g)(4) (2007).
⁹ 7 C.F.R. §246.12(g)(4)(vi) (2007).
¹⁰ *Id.*

authorized vendors or a representative sample of the redeemed food vouchers.¹¹ In contrast, a state with an electronic benefits transfer (EBT) system must compare the average cost of each WIC food item purchased by participants at 50-percent vendors with the average cost of each food item purchased from comparable vendors.¹² Importantly for 50-percent vendors, item level averaging of food purchases eliminates the influence on the average of partial redemptions of multi-item food vouchers.

Further, each state that decides to contract with 50-percent vendors must:

- Distinguish 50-percent vendors from regular vendors in its peer group system, either establishing separate peer groups for 50-percent vendors or placing 50-percent vendors in peer groups with regular vendors and establishing distinct competitive price selection criteria and allowable reimbursement levels for the 50-percent vendors.
- Compare 50-percent vendors' prices against the prices of regular vendors to determine whether 50-percent vendors have competitive prices and to establish allowable reimbursement levels for 50-percent vendors.
- Compare the average cost of each type of food voucher redeemed at 50-percent vendors against the average cost of the same type of food voucher redeemed by regular vendors. If the average payment per food voucher to 50-percent vendors exceeds average payments to food vouchers to regular vendors, the state must take action to ensure compliance, including adjusting payment levels, recouping excess payments, or terminating 50-percent vendor agreements.
 - FNS will file a claim against a state to recover excess funds expended if a state fails to ensure compliance.
 - If an EBT system is used, the rule notes that "it may be more appropriate to compare prices of individual WIC food items" to ensure that average payments to 50-percent vendors do not exceed average payments to regular vendors.¹³

The department has established six vendor peer groups, including one solely for 50-percent vendors. All WIC vendors, including 50-percent vendors, are authorized biennially.

The department does not prohibit the sale or conveyance of 50-percent stores. However, FNS rules require a vendor to provide the state advance notification of any change in ownership, location, or cessation of operations.¹⁴ With the exception of a change in location that involves a move of a short distance, the state must terminate the vendor's agreement upon a change in ownership, location, or cessation of operations.¹⁵ Consequently, while the store may be sold or conveyed, the vendor agreement may not.

WIC EBT Systems

Over the past 8 years, several states have begun implementation of an electronic benefits transfer (EBT) system for WIC, using both off-line smartcards and on-line magstripe cards. An off-line smartcard system uses a smartcard with encoded data that is modified by the vendor at the point-of-sale. In contrast, an on-line magstripe system uses a card that functions much like a debit or credit card, using vendor point-of-sale equipment and processors to communicate with a state-contracted processor to determine, for example, remaining benefits. No data is stored on an on-line magstripe card.

A state that decides to move to an EBT system must first obtain FNS approval by submitting an advanced planning document to FNS.¹⁶ In addition, a state is prohibited from imposing the costs of any

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 7 CFR §246.12(h)(3)(xvii) (2007).

¹⁵ *Id.*

¹⁶ Division of Food and Nutrition Services, United States Department of Agriculture, FNS Handbook 901, http://www.fns.usda.gov/apd/Handbook_901/Handbook_901.htm (last updated February 7, 2008).

equipment, system, or processing required for EBT on any authorized vendor as a condition of authorization or participation in the program.¹⁷ Consequently, the state must pay for any modifications to the vendor's point-of-sale equipment or provide new equipment if existing equipment cannot be modified.

Sample WIC EBT Cards



(Figure 2)

In 2003, FNS developed a 5-year plan for the implementation of WIC EBT to modernize and streamline business practices; enhance client services; increase accountability, and make WIC benefit redemptions more efficient for retailers. As part of this plan, FNS provides WIC EBT grants to plan, develop, implement, evaluate and expand systems.¹⁸ Grants were awarded for existing projects in Federal Fiscal Year 2007 to Kentucky (\$2,142,315), Michigan (\$854,565), New Mexico (\$550,823), Texas (\$1,300,000), and Wyoming (66,125).¹⁹ FNS is developing a new 5-year grant program; however, grant funds will be limited to projects that employ innovative approaches to implementing EBT (relative to other states).

In a January 2006 progress report, FNS identified²⁰ numerous positive outcomes, including:

- Participants: unrestricted number of shopping trips, convenient and discreet transactions, and ability to purchase the full food benefits (as opposed to partial redemption of WIC paper vouchers).
- Retailers: reduced errors, faster transactions, and reduced paperwork.
- State agency: reduced time spent on retailer compliance; reduced forgery and fraud; reduced paperwork; and increased accountability.

New Mexico and Wyoming are currently the only states that are operating a statewide WIC EBT system, both of which use off-line smartcard systems.

The states that have attempted or are engaged in off-line smartcard projects include²¹:

- New England Partners (New Hampshire, Maine, Vermont, Massachusetts, Rhode Island, and Connecticut): the scope of the project would have included 16 clinics, 70 retailers, and 7,700 clients. According to FNS, the partnership was terminated in January 2006 prior to implementation due to cost and timeline concerns.

¹⁷ Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265.

¹⁸ Division of Food and Nutrition Services, United States Department of Agriculture, WIC Electronic Benefit Transfer (EBT) System Development, Implementation, and Expansion – 5-year Plan (2003-2008) (March 2006).

¹⁹ Division of Food and Nutrition Services, United States Department of Agriculture, WIC EBT Grants 2007, <http://www.fns.usda.gov/wic/EBT/grants07.htm> (last updated 9/19/2007).

²⁰ *Id.*

²¹ Division of Food and Nutrition Services, United States Department of Agriculture, WIC EBT State Projects, <http://www.fns.usda.gov/wic/EBT/wicebtstatus.htm> (Last updated March 2008).

- Ohio: the scope of the project included the city of Dayton—5 clinics, 43 retailers, and 11,000 clients. According to FNS, Ohio reverted to paper in June 2005 “due to the high cost of EBT”, after approximately 5 years of operation.
- New Mexico: WIC EBT is currently operating statewide—108 clinics, 230 retailers, and 64,000 clients. New Mexico is partnering with Texas in the development of the system. The pilot was launched in July 2003.
- Texas: the scope of the project is currently 117 counties—191 clinics, 491 retailers, and 161,959 clients. According to FNS, Texas plans to complete a statewide rollout by April 2009. The pilot was launched June 1, 2004.
- Wyoming: WIC EBT is currently operating statewide—37 clinics, 91 retailers, and 11,650 clients. According to FNS, Wyoming began development in 1995 and subsequently became the first state to operate statewide in January 2002. Wyoming is currently participating in the Western States EBT Alliance to move to an on-line EBT system, with a plan to convert to the new system by September 2008.
- Nevada: the project is currently operating in Reno, parts of Washoe County, and parts of Las Vegas—22 clinics, 127 retailers, and 42,787 clients. According to FNS, the pilot was launched June 2, 2000.

The states that have attempted or are engaged in on-line magstripe projects include:

- Michigan: the scope of the project includes several counties—20 clinics, 135 retailers, and 24,450 clients. According to FNS, Michigan is planning to implement a statewide system by February 2009. The pilot began in July 2005.
- Washington: the scope of the project includes Tacoma—1 clinic, 3 retailers, and 300 families. Washington participated in an FNS on-line demonstration project from June 2005 through November 2005.
- Kentucky: the scope of the project initially includes Warren and Barren counties—2 clinics, 25 retailers, and 1,600 families. According to FNS, Kentucky began the project in August 2006. The pilot is expected to begin in 2009, and statewide rollout is expected to commence 6-9 months thereafter.

Other State Assistance Programs utilizing EBT

According to FNS, EBT has been implemented for food stamps in all states as of June 2004.²² In Florida, s. 409.942, F.S., required the department of Children and Family Services to establish an electronic benefit transfer program to disseminate food stamp benefits and temporary assistance payments. Similarly, Workforce Florida, Inc., through the Agency for Workforce Innovation, was required to establish an electronic benefit transfer program for the use and management of education, training, child care, transportation, and other program benefits under its direction. In addition, the department of Children and Family Services was required to assist Workforce Florida, Inc., in developing an electronic benefit transfer program that is fully compatible with the department's electronic benefit transfer program.

According to the Department of Children and Family Services, the electronic benefit transfer program required in s. 409.942, F.S., became fully operational statewide in October 1998 using an on-line magstripe system that uses one card for the benefits described above.²³ According to the department, there are more than 10,000 authorized retailers participating in the food stamp EBT program.

Effect of Proposed Changes

The bill requires the department to:

²² Division of Food and Nutrition Services, United States Department of Agriculture, Electronic Benefit Transfer, <http://www.fns.usda.gov/fsp/ebt/> (last viewed March 25, 2008).

²³ According to the Department of Children and Families, federal payments, such as SSI, SSA, and VA, are not available through EBT as the US Treasury decided to move to either direct deposit or a direct payment card in 2001-2002.

- Implement an electronic benefits transfer (EBT) system for the WIC program by October 1, 2008.
- Require the Bureau of WIC and Nutrition Services to calculate the statewide average retail price of each WIC-eligible product by each item rather than by WIC voucher.
- Contact the Division of Food and Nutrition Services of the United States Department of Agriculture when notified by a manufacturer of a price increase on any WIC-eligible product and request authorization from the Division of Food and Nutrition Services to allow food retailers to increase the price for the same WIC-eligible product by the same percentage.
- Authorize a vendor who owns a WIC-approved retail store that only sells WIC-eligible products to sell, convey, or devise the store to any qualifying vendor.
- Require annual reauthorization of the contract of an existing WIC-approved vendor who is in compliance with department requirements.

In addition, the bill prohibits the department from discontinuing a WIC-eligible generic product unless the product no longer meets the nutritional guidelines of the WIC program.

C. SECTION DIRECTORY:

Section 1. Amends s. 383.011, F.S., relating to administration of maternal and child health programs.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If an EBT system is implemented by October 1, 2008, authorized vendors will likely receive more of the client's WIC allocation, since the client will be able to purchase single items throughout the month, instead of the current system where a client can only purchase items once per voucher. Under an EBT system, a client may return to the store and purchase the remaining item at a later date, thus using the entire WIC allocation.

The 50-percent vendors may benefit from requiring calculation of the statewide average by the item, rather than by the voucher (which contains multiple food items). This calculation method will likely increase reimbursement to the vendor.

All WIC vendors will be adversely affected by the requirement to obtain annual, rather than biennial, reauthorization to participate in the WIC program

D. FISCAL COMMENTS:

Currently, the department pays a contractor to process (Capital City Bank in Tallahassee) WIC vouchers at a rate of \$.0615 per voucher. This cost includes the check stock, the check processing through the Federal Reserve Banking system, the contract bank performing required federal edits on each check and providing the department with data required for federal reconciliation purposes. The contractor currently processes more than 66,000 vouchers a day and transfers an average of \$1.5 million daily from the WIC program's account to WIC vendors across the state. Under the provisions of the bill, an EBT system would allow clients to redeem WIC benefits more frequently and permit them to receive more of their WIC allocation. Unfortunately, this will increase the cost of processing because of the volume increase.

The fiscal impact to the department to plan and implement WIC EBT is indeterminate, but will be significant. From the existing national WIC EBT projects, however, the department has determined that they will likely incur the following costs:

- Purchasing stand-beside point of sale devices for vendors.
- Paying the vendors to modify their internal systems to accommodate WIC EBT transactions.
- Modifying the WIC data system.
- Purchasing PIN devices for more than 200 WIC clinics statewide for clients to select their PIN number.
- Purchasing EBT cards and replacement cards for clients.
- Providing ongoing EBT transaction costs.

According to the department, changing from the current two-year vendor agreements to the proposed annual vendor agreement will require an additional 600 hours to evaluate and approve WIC vendors for authorization.

Under federal WIC cost containment requirements the department must demonstrate that its authorization of 50-percent vendors does not result in higher costs to the WIC Program. If the department does not comply with cost containment requirements, the state is subject to a federal fine.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide the department with specific rulemaking authority to implement the required EBT system.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 29-34 require the department to contact FNS to request a price increase for an individual WIC product. FNS, however, does not regulate the prices of individual items and thus, the “request” would have no effect.

Lines 35-40, paragraphs (3)(d) and (e), appear to conflict with federal law.

With regard to paragraph (d), federal law requires a vendor to provide the state advance notification of any change in ownership, location, or cessation of operations.²⁴ With the exception of a change in location that involves a move of a short distance, the state must terminate the vendor’s agreement upon a change in ownership, location, or cessation of operations.²⁵ Consequently, while the store may be sold or conveyed, the vendor agreement may not. To the extent that paragraph (d) may attempt to authorize the conveyance of the vendor agreement in the sale, conveyance, or devise, it appears to conflict with federal law.

With regard to paragraph (e), federal law notes that a vendor agreement is not a license or a property interest. Furthermore, federal law states that “if the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must re-apply for authorization.”²⁶ Consequently, the vendor must take an affirmative act—re-application for authorization—in order to continue to be authorized. To the extent that paragraph (e) attempts to require the automatic annual reauthorization of a vendor, it appears to conflict with federal law.

D. STATEMENT OF THE SPONSOR

Florida's WIC program is extremely important to the care of infants, toddlers and expectant mothers in our state and Florida's WIC-only grocers play a critical role in ensuring that the program is accessible to the most vulnerable on our communities. This legislation will modernize the program to the advantage of the state of Florida, the WIC vendor and, most importantly, the participant.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

²⁴ 7 CFR §246.12(h)(3)(xvii) (2007).

²⁵ *Id.*

²⁶ 7 CFR §246.12(h)(3)(xxi) (2007).