

WSR 23-07-125

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 21, 2023, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-186.

Title of Rule and Other Identifying Information: Chapter 246-770 WAC, Fruit and vegetable incentives program. The department of health (DOH) is proposing rules to establish the criteria for food retailers, farmers' markets, and farm stands to participate in the fruit and vegetables incentives program, as well as the eligibility criteria for consumers to receive and use fruit and vegetable incentives.

Hearing Location(s): On May 1, 2023, at 1:00 p.m. DOH will be holding a virtual only hearing. Please register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_uOqd37jqSxKMtfxq5qEVUw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 8, 2023.

Submit Written Comments to: Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98504-7830, email alyssa.auvinen@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, by May 1, 2023.

Assistance for Persons with Disabilities: Contact Ashley Noble, phone 360-628-3776, TTY 711, email ashley.noble@doh.wa.gov, by April 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The fruit and vegetable incentives program includes farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers. These incentives allow eligible participants to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers. Fruit and vegetable incentives supplement the buying power of low-income people and families.

The proposed rules establish the criteria for food retailers, farmers' markets, and farm stands to participate in the fruit and vegetables incentives program, as well as the eligibility criteria for consumers to receive and use fruit and vegetable incentives.

Reasons Supporting Proposal: RCW 43.70.780 Fruit and vegetable incentives program, requires DOH to adopt rules to implement a fruit and vegetable incentives program. These incentives allow eligible participants (low-income people and families) to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers.

Statutory Authority for Adoption: RCW 43.70.780.

Statute Being Implemented: RCW 43.70.780.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alyssa Auvinen, 101 Israel Road S.E., Tumwater, WA 98501, 360-999-8967.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alyssa

Auvinen, P.O. Box 47830, Olympia, WA 98540[98504]-7830, phone 360-999-8967, email alyssa.auvinen@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: RCW 43.70.780 Fruit and vegetable incentives program, requires DOH (department) to make rules to implement a fruit and vegetable incentives program. The program includes farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers. These incentives allow eligible participants to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers.

The United States Department of Agriculture's Food and Nutrition Services established the Food Insecurity Nutrition Incentives (FINI) program in 2014 to enable grantees to supplement Supplemental Nutrition Assistance Program (SNAP) benefits and encourage consumption of fruits and vegetables. The department was awarded \$5,859,307 in FINI grant funds for a large scale, multi-year project (April 2015 - March 2020). The FINI grant funded farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers.

Recognizing the value of fruit and vegetable incentives to supplement the buying power of low-income people and families, the Washington state legislature passed legislation (SHB 1587) in 2019 to ensure these incentives would remain available to low-income Washingtonians regardless of the availability of future federal grant funding.

The FINI program was amended by federal legislation in 2018, which changed the program's name to the Gus Schumacher Nutrition Incentive Program (GusNIP). The department was awarded GusNIP funds in 2020 (September 2020 - August 2023) to support farmers' market basic food incentives and grocery store basic food incentives. The GusNIP funds no longer support fruit and vegetable vouchers.

To become authorized to offer basic food incentives and fruit and vegetable vouchers, farmers' markets, farm stands, grocers, convenience stores, retailers, and health care systems will be required to submit applications and enter into contracts with the department, complete trainings, maintain point of sale mechanisms that allow tracking and redemption of basic food incentives and/or fruit and vegetable vouchers, employ a designated staff member on-site who has received food incentives training, and sell fresh fruits and vegetables.

Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are: The department identified grocers, retailers, fruit and vegetable markets, and health care systems as the types of businesses directly impacted by the proposed rules. Table A summarizes the minor cost thresholds for each applicable code.

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	# Of Businesses In Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
4451	Grocery Stores	1,999	\$11,227.61	\$26,576.83
445110	Supermarkets and Other Grocery (except Convenience) Stores	1,330	\$24,632.97	\$39,505.18
445120	Convenience Stores	665	\$1,268.47	\$3,619.63
445230	Fruit and Vegetable Markets	107	\$2,435.71	\$2,220.48
621111	Offices of Physicians (except Mental Health Specialists)	1,866	\$27,457.90	\$10,767.33
621491	HMO Centers	47	Redacted	\$106,630.18

Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue: WAC 246-770-030 Farmers' market and farm stand basic food incentives.

Description: This section describes how farmers' markets and farm stands may become authorized to offer basic food incentives, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program, and describes the circumstances that constitute noncompliance.

Costs: Farmers' markets and farm stands that meet the proposed requirements must submit an application to the department to become authorized to offer basic food incentives. The department estimates negligible cost for farmers' markets and farm stands to prepare and submit the initial application and to renew the application.

If the department approves the application the administrative work for entering into contract with the department is estimated at one hour annually.¹ The department estimates that meeting contract requirements, which includes administering the program at a farmers' market or farm stand, submitting reporting/data to the department, and submitting monthly invoices will require 40 hours annually.

¹ Time estimates in section 5 of the analysis are based on fiscal records collected for a previous federal grant (FINI grant program) that operated very similarly to the farmers markets' and farm stand basic food incentives.

For farmers' markets and farm stands that are then authorized to offer basic food incentives, the department will provide training and no cost and estimates that the time to complete training for basic food incentives is two hours for a single employee annually.

The department used an hourly wage for farmers' market and farm stand managers and staff of \$29.95.² The department estimates that compliance with the proposed rule will require 43 hours annually, multiplied by \$29.95/hour, resulting in \$1,288 total annual costs per farmers' market or farm stand.

² Value of volunteer time was used as a comparable hourly salary, <https://independentsector.org/value-of-volunteer-time-2021/>. Reference accessed on September 16, 2022.

WAC 246-770-040 Grocery store basic food incentives.

Description: This section describes how grocery stores may become authorized to offer basic food incentives, states that stores that do not comply with these rules will be subject to disqualification from participation in the voucher program, and describes the circumstances that constitute noncompliance.

Costs: Grocery stores that meet the proposed requirements must submit an application to the department to become authorized to offer

basic food incentives. The department estimates negligible cost to the grocery stores to prepare and submit the initial application and to renew the application.

If the department approves the application the administrative work for entering into the contract with the department estimates one hour annually³. The department estimates that meeting contract requirements, which includes administering the program at the grocery store, submitting reporting/data to the department, and submitting monthly invoicing will require 49 hours annually.

³ Ibid 2.

For grocery stores that are authorized to offer basic food incentives, the department will provide training at no cost and estimates that the time to complete training for basic food incentives will require two hours annually.

The department based its cost estimations using a grocery store manager as the program coordinator earning a median hourly wage of \$43⁴. The department estimates the cost to comply with the proposed rule section to be 49 hours multiplied by \$43/hour, resulting in \$2,107 per grocery store per year to comply with the proposed rule.

⁴ Used grocery store manager in Washington state hourly wage, <https://www.salary.com/tools/salary-calculator/grocery-store-manager-hourly/wa>. Reference accessed on September 16, 2022.

WAC 246-770-050 Fruit and vegetable vouchers for health care systems.

Description: This section describes how health care systems may become authorized to distribute fruit and vegetable vouchers, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program and describes the circumstances that constitute noncompliance.

Costs: Health care systems that meet the proposed requirements must submit an application to the department to become authorized to distribute fruit and vegetable vouchers. The department estimates a negligible cost for health care systems to prepare and submit an application and to renew an application. For health care systems that are authorized to offer fruit and vegetable vouchers, the department estimates that the cost to complete training for fruit and vegetable vouchers is four hours annually; administrative work for entering into the contract with the department estimates one hour annually; meeting contract requirements, which includes administering the program in the health care system and submitting reports and data to the department, is 96 hours annually. Time estimates are based on fiscal records collected for a previous federal grant (FINI grant program) that operated very similarly to the fruit and vegetable vouchers program and using the assumption of a dietitian earning \$69,747 annually as the coordinator. Total cost for 101 hours multiplied by \$33.53/hour⁵ results in \$3,387 per health system per year.

⁵ Hourly salary was calculated by dividing annual salary estimate by 2,080 hours worked.

WAC 246-770-060 Fruit and vegetable vouchers for retailers.

Description: This section describes how a retailer may be authorized to accept fruit and vegetable vouchers, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program and describes the circumstances that constitute noncompliance.

Costs: Retailers that meet the proposed requirements must submit an application to the department to become authorized to accept fruit

and vegetable vouchers. The department estimates a negligible cost to the retailers to prepare and submit the application. For retailers that are authorized to accept fruit and vegetable vouchers, the department estimates that two hours will be required to complete training for fruit and vegetable vouchers each year. Administrative work for entering into the contract with the department will require one hour annually. Meeting contract requirements, which includes accepting fruit and vegetable vouchers in the retail setting, submitting reports and data to the department, and submitting monthly invoices to the department, will require 30 hours annually. These time estimates are based on a retailer that has participated in incentive programs historically. Cost estimates were reached using the assumption of a grocery store manager acting as the coordinator earning a median hourly wage of \$43.⁶ Total costs per retailer over 33 hours multiplied by \$43/hour results in \$1,419 per retailer per year.

⁶ Ibid 7.

Summary: The department anticipates that businesses will experience increased sales from people who use fruit and vegetable incentives to purchase items at participating locations.

Table B:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	WAC Section	Estimated time to comply with the proposed rule section per regulated entity	Estimated annual cost to comply with the proposed rule section per regulated entity*	Minor Cost Threshold
4451	Grocery Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$11,227.61
445110	Supermarkets and Other Grocery (except Convenience) Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$24,632.97
445120	Convenience Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$1,268.47
445230	Fruit and Vegetable Markets	246-770-030	43 hours/year	\$1,227	\$2,220.48
621111	Offices of Physicians (except Mental Health Specialists)	246-770-050	101 hours/year	\$3,387	\$10,767.33
621491	HMO Centers	246-770-050	101 hours/year	\$3,387	\$106,630.18

*Entries are not meant to be summed across rows and costs are duplicated to show the cost of compliance per entity.

Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: The department estimates that fruit and vegetable markets (NAICS code 445230) annual cost of compliance per entity due to the proposed rule is \$1,227, which falls below the minor cost threshold of \$2,220.48. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Grocery Stores (NAICS code 4451) annual cost of compliance per entity due to the proposed rule is \$3,526, which falls below the minor cost threshold of \$11,227.61. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Supermarkets and Other Grocery (except Convenience) Stores (NAICS code 445110) annual cost of compliance

per entity due to the proposed rule is \$3,526, which falls below the minor cost threshold of \$24,632.97. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Convenience Stores (NAICS code 445120) annual cost of compliance per entity to the proposed rule is \$3,526, which falls above the minor threshold of \$1,268.

The department estimates that Offices of Physicians (except Mental Health Specialists) (NAICS code 621111) annual cost of compliance per entity due to the proposed rule is \$3,387 which falls below the minor cost threshold of \$10,767. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that HMO Centers (NAICS code 621491) annual cost of compliance per entity due to the proposed rule is \$3,387, which falls below the minor cost threshold of \$106,630. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

Sections five through seven will focus on cost impacts to Convenience Stores as they have been identified through the analysis as the only NAICS code to potentially fall above the minor cost threshold.

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: A total of 665 convenience stores (NAICS code 445120) are currently operating in Washington state. Participation in the grocery store basic food incentives program, as well as participation in the fruit and vegetable vouchers program, is voluntary. The department estimates that a convenience store would incur annual costs of \$1,502 if they chose to participate in the fruit and vegetable voucher program and \$2,094 if they chose to participate in the grocery store basic food incentives program, with a total probable cost to comply of \$3,596.

It is possible that participating convenience stores may experience increased sales of fruit and vegetables purchased by customers with each program. Increased sales and reimbursement for the basic food incentives and fruit and vegetable vouchers could result in participating convenience stores recouping the cost of participation. The department has no reason to believe that there will be a disproportionate impact on small vs. large convenience stores because the costs to comply should be similar for all convenience stores. The department does not anticipate the proposed rule will have a disproportionate impact on small businesses as compared to large businesses.

If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced provide a clear explanation of why: The department has no reason to believe that there will be a disproportionate impact on small vs. large convenience stores because the costs to comply should be similar for all convenience stores. The department DOES NOT anticipate the proposed rule will have a disproportionate impact on small businesses as compared to large businesses.

Describe how small businesses were involved in the development of the proposed rule: The department solicited feedback from interested parties by circulating the draft rule via email. The Washington State Farmers Market Association and the Washington Food Industry Association, two organizations that represent farmers markets and independent

grocery stores in Washington, did not provide any changes to the draft. The department sent the draft rule to 12 health care organizations for input, and one of the health care organizations provided minor suggested edits.

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The department does not anticipate the creation or loss of any jobs as a result of this rule.

A copy of the statement may be obtained by contacting Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98540[98504]-7830, phone 360-999-8967, TTY 711, email alyssa.auvinen@doh.wa.gov.

March 21, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3301.5

**Chapter 246-770 WAC
 FRUIT AND VEGETABLE INCENTIVES PROGRAM**

NEW SECTION

WAC 246-770-010 Fruit and vegetable incentives program—Purpose.

The purpose of the fruit and vegetable incentives program is to:

- (1) Improve access and affordability to culturally relevant fruits and vegetables for individuals and families with limited financial resources;
- (2) Increase fruit and vegetable consumption and nutrition security among program participants; and
- (3) Support Washington's food systems and agriculture and promote local economic development.

[]

NEW SECTION

WAC 246-770-020 Definitions. The following definitions apply throughout this chapter unless otherwise specified:

- (1) "Authorized farm stand" means a farm stand in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.
- (2) "Authorized farmers' market" means a farmers' market in Washington that has met the selection criteria established by the depart-

ment and has signed a contract with the department allowing participation in basic food incentives.

(3) "Authorized grocery store" means a grocery store in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.

(4) "Authorized health care system" means an organization whose primary intent is to deliver health care services.

(5) "Authorized retailer" means any retail outlet that has met the selection criteria established by the department and has signed a contract with the department allowing participation in fruit and vegetable vouchers.

(6) "Basic food incentives" includes farmers' market basic food incentives and grocery store basic food incentives.

(7) "County with high food insecurity" means a county located within the borders of the state of Washington where the resident population experiences rates of food insecurity higher than the state average.

(8) "Culturally relevant" means the acknowledgment and appreciation of experiences, traditions, and diverse preferences of a group of people.

(9) "Department" means the Washington state department of health.

(10) "Electronic benefit transfer" means the method of transferring basic food benefits from eligible participants to eligible participating retailers via a benefits card.

(11) "Eligible fruits and vegetables" means:

(a) For farmers market basic food incentives, eligible fruits and vegetables means fruits, vegetables, herbs, plants, and seeds that produce food.

(b) For grocery store basic food incentives and fruit and vegetable vouchers, eligible fruits and vegetables means fruits and vegetables that are unprocessed or minimally processed including, but not limited to, frozen or cut products.

(12) "Eligible participant" means:

(a) For basic food incentives, a recipient of basic food benefits, including the supplemental nutrition assistance program and the food assistance program, as authorized under Title 74 RCW;

(b) For fruit and vegetable vouchers, a person who is determined to be experiencing food insecurity by a participating health care provider.

(13) "Farmers' market basic food incentives" means incentives provided to basic food program beneficiaries at authorized farmers' markets and farm stands to improve beneficiaries' purchase of eligible fruits and vegetables.

(14) "Food insecurity" means the limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods with dignity and without resorting to emergency food supplies or other coping strategies.

(15) "Fruit and vegetable vouchers" means cash-value benefits given to patients of approved health care systems to improve patient access to eligible fruit and vegetables.

(16) "Grocery store basic food incentives" means incentives provided to basic food program beneficiaries at approved grocery stores to improve beneficiaries' ability to purchase eligible fruits and vegetables.

(17) "Health care system" includes participating health care providers, health educators, community health workers, or other health

professionals who provide care to patients who experience food insecurity.

(18) "High food insecurity" means food insecurity rates higher than the state average.

(19) "Qualifying health condition" means any diet-related health condition including, but not limited to, diabetes mellitus, prediabetes, and hypertension.

(20) "Supplemental nutrition assistance program (SNAP)" means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(21) "Trafficking" means the purchase or exchange of basic food incentives or fruit and vegetable vouchers for cash or other compensation.

[]

NEW SECTION

WAC 246-770-030 Farmers' market and farm stand basic food incentives. (1) To become authorized to offer basic food incentives, a farmers' market or farm stand must:

(a) Be in good standing with the United States Department of Agriculture as an authorized farmers' market or farm stand that can accept SNAP benefits through electronic benefit transfer;

(b) Provide documentation to the department showing United States Department of Agriculture approval to accept SNAP benefits;

(c) Apply as a farmers' market or farm stand on a form determined by the department including documentation demonstrating that the farmers' market or farm stand applicant meets the following criteria:

(i) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training;

(ii) Have days and times posted for operating hours; and

(iii) Have at least one vendor selling fresh fruits and vegetables.

(d) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences.

(3) An authorized farmers' market or farm stand must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) Authorized farmers' markets and farm stands must, at a minimum:

(a) Comply with the basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, distribution and redemption procedures, data tracking, evaluation requirements, and fiscal recordkeeping;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the farmers' market or farm stand related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the farmers' market for compliance with basic food incentive requirements and fiscal recordkeeping;

(l) Notify the department immediately if the farmers' market's operations cease; and

(m) Comply with department instructions and guidance with respect to the program.

(5) Authorized farmers' markets or farm stands that do not comply with requirements of this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:

(a) Violating the requirements of any applicable state or federal law;

(b) Violating any provision of the contract between the department and the authorized farmers' market or farm stand; or

(c) Accepting basic food incentives without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether the contract termination would create undue hardships to participants.

(7) Trafficking in basic food incentives in any amount will result in contract termination. Farmers' markets and farm stands should ensure basic food incentives are not trafficked among any participants.

(8) An authorized farmers' market or farm stand that has a terminated contract may reapply for reauthorization.

[]

NEW SECTION

WAC 246-770-040 Grocery store basic food incentives. (1) To become authorized to offer basic food incentives, the grocery store must:

(a) Be in good standing with the United States Department of Agriculture as an authorized grocer that can accept SNAP benefits through electronic benefit transfer;

(b) Apply as a grocery store on a form determined by the department, including documentation demonstrating that the grocery store meets the following criteria:

(i) Have a point-of-sale mechanism that allows tracking and redemption of basic food incentives, including either automated or manual tracking;

(ii) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training; and

(iii) Sells fresh fruits and vegetables.

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences as collected by the department.

(3) An authorized grocery store must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) The authorized grocery store must, at a minimum:

(a) Comply with the grocery store basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the grocery store related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the grocery store for compliance with basic food incentive requirements and fiscal recordkeeping;

(l) Notify the department immediately if the grocery store's operations cease; and

(m) Comply with department instructions and guidance with respect to the program.

(5) Authorized grocery stores that do not comply with requirements of this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:

(a) Violating any applicable state or federal law;

(b) Violating any provision of the contract; or

(c) Accepting basic food incentives without having a signed contract with the department.

(6) Prior to disqualification, the department must consider whether the contract termination would create undue hardships to participants.

(7) Trafficking in basic food incentives in any amount will result in contract termination. Grocery stores should ensure basic food incentives are not trafficked among any participants.

(8) An authorized grocery store that has a terminated contract may reapply for reauthorization.

[]

NEW SECTION**WAC 246-770-050 Fruit and vegetable vouchers for health care systems.**

(1) To become a health care system authorized to distribute fruit and vegetable vouchers, an applicant must:

(a) Apply as a health care system on a form determined by the department;

(b) Complete all required training on fruit and vegetable voucher requirements offered by the department; and

(c) Receive a contract from the department signed by both the department and the applicant.

(2) The department is not required to authorize all applicants. Priority authorization will be given to applicants that:

(a) Routinely screen patients for food insecurity;

(b) Have a high percentage of patients who are medicaid clients;

(c) Are located in a county with a high level of food insecurity;

(d) Are a federally qualified health center or tribal health clinic;

(e) Have previously operated fruit and vegetable voucher programs; or

(f) Plan to distribute fruit and vegetable vouchers to people who have, or are at risk of developing, a qualifying health condition.

(3) An authorized health care system must reapply at the end of the current contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) The authorized health care system must, at a minimum:

(a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;

(b) Have at least one staff member who has completed training for fruit and vegetable vouchers;

(c) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure fruit and vegetable vouchers are only distributed to eligible participants;

(f) Consistently follow a distribution plan to assure equitable access to fruit and vegetable vouchers;

(g) Comply with federal and state nondiscrimination laws;

(h) Comply with federal laws regarding patient privacy, specifically the Health Insurance Portability and Accountability Act of 1995 and any regulations enacted to its provisions ("HIPAA Standards") and Washington state law;

(i) Ensure that participants receive the same courtesies as other customers;

(j) Promptly provide the department, upon request, with any information it has available regarding its participation in offering fruit and vegetable vouchers;

(k) Allow the department to share information about the health care system's participation related to fruit and vegetable vouchers with program partners and in public reports;

(l) Allow the department to monitor the health care system for compliance with fruit and vegetable voucher requirements;

(m) Notify the department immediately if the health care system's operations cease; and

(o) Comply with department instructions and guidance with respect to the program.

(5) Authorized health care systems that do not comply with requirements in this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:

(a) Violating the provisions of the contract; or

(b) Distributing fruit and vegetable vouchers without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether the disqualification would create undue hardships to participants.

(7) Any trafficking in fruit and vegetable vouchers in any amount will result in contract termination. Health care systems should ensure fruit and vegetable vouchers are not trafficked among any of their organization's participants.

(8) An authorized health care system that has a terminated contract may reapply for reauthorization.

[]

NEW SECTION

WAC 246-770-060 Fruit and vegetable vouchers for retailers. (1)

To become authorized to accept fruit and vegetable vouchers as distributed by a health care system under WAC 246-770-050, a retailer must:

(a) Apply as a retailer on a form provided by the department including documentation that the retailer meets the following criteria:

(i) Have a point-of-sale mechanism that allows either automated or manual tracking and redemption of fruit and vegetable vouchers;

(ii) Have a designated staff member on-site during operating hours that has completed all required fruit and vegetable voucher training; and

(iii) Sells fresh fruits and vegetables.

(b) Complete all required trainings on fruit and vegetable vouchers requirements offered by the department; and

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community need and preferences.

(3) An authorized retailer must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) An authorized retailer must, at a minimum:

(a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;

(c) Provide training to employees and volunteers on fruit and vegetable vouchers requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure fruit and vegetable vouchers are redeemed only once;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promptly provide the department, upon request, with any information it has available regarding its participation in accepting fruit and vegetable vouchers;

(i) Allow the department to share information about the retailer related to fruit and vegetable vouchers with program partners and in public reports;

(j) Allow the department to monitor the retailer for compliance with fruit and vegetable voucher requirements and fiscal recordkeeping;

(k) Notify the department immediately if the retailer's operations cease; and

(l) Comply with department instructions with respect to the program.

(5) Authorized retailers that do not comply with requirements in this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:

(a) Violating the provisions of the contract; or

(b) Accepting fruit and vegetable vouchers without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether termination of a contract would create undue hardships to participants.

(7) Any trafficking in fruit and vegetable vouchers in any amount will result in termination of a contract.

(8) An authorized retailer that has a terminated contract may re-apply for reauthorization.

[]