

## WSR 23-16-149

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 2, 2023, 10:39 a.m., effective September 2, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-770 WAC, Fruit and vegetable incentives. The department of health (department) created a new chapter to implement a fruit and vegetable incentives program. The new 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.

Citation of Rules Affected by this Order: New [chapter 246-770 WAC].

Statutory Authority for Adoption: RCW 43.70.780.

Adopted under notice filed as WSR 23-07-125 on March 21, 2023.

A final cost-benefit analysis is available by contacting Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98540-7830, phone 360-999-8967, email [alyssa.auvinen@doh.wa.gov](mailto:alyssa.auvinen@doh.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 2, 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.

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#### 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 department 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.

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#### 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.

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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.

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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.

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#### 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 reapply for reauthorization.

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