From: Wolfe, Valerie [Valerie.Wolfe@dshs.state.tx.us]
Sent: Tuesday, November 28, 2006 11:24 AM
To: WICHQ-SFPD
Subject: Docket ID Number 0584-AD71, Vendor Cost Containment Interim Rule

Importance: High

November 28, 2006

Patricia Daniels, Director
Supplemental Food Programs Division
Food and Nutrition Service, USDA
3101 Park Center Drive
Room 528
Alexandria, VA 22302

Dear Ms. Daniels:

This letter transmits the comments of the Texas Department of State Health Service's WIC Program regarding the Vendor Cost Containment Interim Rule dated November 29, 2005.

As you are aware, the Texas WIC Program has received FNS approval of its Vendor Cost Containment Plan and its Cost Containment System has also received certification. However, the modification of our vendor system to accommodate the extensive changes mandated by the interim rule has been difficult, time consuming, and very expensive. In terms of automation resources available to the state WIC Program, we have had to place on hold many critical system upgrades for months to accommodate the cost containment changes. Even so we were not able to make the changes effective until July 1, 2006.

With the additional requirements for screening new applicant vendors, assessing such vendors within six-months of contracting, collecting pricing information semi-annually for all vendors, and running of monthly cost containment recoupment reports, etc., our vendor unit has seen a significant increase in its workload. At a time when Texas is running dual systems for the Paper Voucher System plus our emerging EBT system, the additional workload is more than existing staff is able to handle. To that end, we have a request pending within our agency for eight additional full-time-equivalent positions to support all facets of vendor cost containment.

USDA's analysis of cost to implement the rule does not accurately reflect the costs to state WIC programs. USDA acknowledges that even states with existing peer grouping systems and/or other cost containment protocols in place do not necessarily utilize the peer groups in the manner required by the rule. USDA goes on to say in several places that states "may incur **some** [emphasis added] administrative costs" in changing their systems to comply. USDA then says the cost per participant can be quite low when calculated on that basis. Both of these statements give the impression that significant costs are not being incurred when that is actually the case. Texas has expended a significant amount of administrative funds to make complex IT system modifications, implement them, and administer the changes on an ongoing basis. These administrative costs are not offset by the savings in food costs as food dollars cannot be used for administration. In addition, Texas vendors report significant increases in time and costs, which the rule publication does not seem to address.

The vendor cost containment regulations, taken as a whole, are difficult to administer but of particular concern to the Texas WIC Program are the following:

- 246.12 (g)(4)(i)(D) related to ensuring that the prices of above 50 percent vendors do not inflate the competitive price criteria and allowable maximum reimbursement levels: This sub-section requires that the average cost per food instrument be weighted to reflect the relative proportion of food instruments redeemed by each category of vendors in the peer group system. We do not believe that this weighting requirement is needed. It greatly complicates an already complex computational scenario both from the perspective of the administrative burden to state to comply as well as the resultant difficulty of explaining system workings to the vendor community. Texas has found that the weighting component is not needed to attain the assurance that the 50 percent vendors prices are not allowed to inflate its competitive criteria nor the maximum allowable reimbursement levels. We ask that you make the weighting an option rather than a mandate.

- 246.12 (g)(4)(ii)(B) related to the routine collection of vendor shelf prices at least every six months: The Texas WIC Program asks that this requirement be modified to an annual collection of prices or altogether eliminated. The Texas system has no way to use the collected pricing information. Rather the Texas vendor system collects actual prices charged by all outlets each month and meticulously examines such pricing information by comparing similar vendors' prices (i.e. Texas uses a geographic determinant to compare only stores in the same geographic area and a gross WIC sales determinant to place outlets into one of four vendor sales volume bands). Grouping and comparing prices paid in this manner eliminates the need to collect shelf prices and compare them to actual redeemed instruments. The larger the base of vendors a state has under management, the less practical it is to periodically collect and manually compare pricing sheets from individual outlets. Prices change in grocery stores all the time such that pricing sheets collected at a point in time can only be used to compare prices charged by an outlet for a very narrow span of time. This whole concept may work for a relatively small state but is impractical for a large state such as Texas who manages over 2400 vendor outlets.

We also disagree with the USDA's repeated statements in the preamble and other explanatory sections of the rule publication that are given great flexibility in designing their systems. This is true in some regard, but concerning above-50-percent vendors and the requirement for cost neutrality, there is little choice but to hold these vendors to a maximum allowable reimbursement capped at the statewide average of regular vendors.

When Congress passed the vendor provisions contained in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108-265, we believe they intended to focus attention on management of 50 percent plus vendors. However, FNS' Interim Vendor Cost Containment Regulations go much further in modifying states' WIC vendor practices. At the time the Interim Regulations were published, slightly less than 12 percent of Texas WIC authorized outlets were 50 percent plus vendors. The regulatory changes have negatively impacted all 2400 of the state's authorized outlets seriously damaging the good working relationship that Texas once enjoyed with its vendor community.

It is our hope that FNS will back off a little on these regulations to facilitate a return to normalized operations. The vendor community should be viewed as a program partner that is not out to cheat the government. The vast majority of our contracted vendors are ordinary grocery stores including most state, regional, and national chain stores. These are the same stores that all of us routinely shop in. They definitely have varying price structures but the prices they charge the WIC Program are the same that are charged the other customers shopping with cash as well as credit and debit cards.

The latest round of government regulations has damaged our relationship with these stores and we now have, at best, an uneasy alliance with them.

Sincerely,

Mike Montgomery, Director

Nutrition Services Section

Texas Department of State Health Services