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Title 22@ Social Security

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Division 2@ Department of Social Services-Department of Health Services

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Part 2@ Health and Welfare Agency-Department of Health Services Regulations

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Subdivision 6@ Preventive Medical Services

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Chapter 6@ California Special Supplemental Food Program for Women, Infants and Children

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Article 7@ Food Delivery System

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Section 40741@ Sanctions Against Food Vendors

40741 Sanctions Against Food Vendors

(a)

The Department shall disqualify food vendors from the Program for a period of one (1) year for the violations listed below or the violations of the food vendor agreement. A prior warning and an opportunity for correction may be provided to the food vendor in lieu of disqualification when the food vendor has had no previous disqualifications from the Program and the Program can secure from the food vendor a written agreement incorporating an agreed upon action plan relative to the violations within ten (10) working days, to be verified by at least one (1) follow-up on-site visit to the food vendor by Program staff. Violations shall include, but are not limited to: (1) Charging Program participants or the Department a fee for using the food instruments; (2) Accepting the food instrument prior to or after its valid period; (3) Depositing the food instrument with amounts entered which exceed the maximum value printed on the food instrument; (4) Delivering supplemental foods to a participant and accepting food instruments at a location other than the food vendor's fixed location identified on the vendor agreement such as the participant's home or place of business. (5) Stocking an insufficient quantity of Program supplemental foods so that a participant cannot redeem a food instrument for the full quantity listed on the food instrument. This shall be determined by store inspection; (6) Unsanitary conditions or outdated merchandise; (7) Failing to post prices on supplemental food items so that prices are easily

visible to participants. The prices must be posted next to the supplemental food items offered for sale or on the shelf on which those items are placed; (8) Charging prices for the Program supplemental foods that are unreasonably high or not comparable to the prices of other stores in the area, as determined by the Department; (9) Failing to enter the purchase price on the food instrument at the time of purchase and in the participant's presence; (10) Forging a customer's signature onto a food instrument; (11) Redeeming food instruments with erroneous or otherwise improper endorsements; (12) Having a conflict of interest with local agency personnel, as in the case of a food vendor who could profit by having a relative on the staff of a local agency refer participants to his/her store; (13) Influencing or attempting to influence participants' store selection through solicitation on or in the vicinity of a local clinic distribution site; (14) Failing to meet any of the Department's authorization criteria; (15) Requiring participants to provide any personal information in the process of exchanging food instruments for supplemental food items. Personal information is information that identifies or describes a participant including, but not limited to: name; address; telephone number; social security number; driver's license; physical description; education; financial information; employment history; medical history; and Program appointment information. Personal information does not include the identification provided by the Program to the participant which identifies them as a participant. (16) Failing to provide supplemental food to a participant in exchange for a food instrument because that participant did not provide personal information as described in (a)(15) of this Section, other than the information required by the Program which identifies him/her as a participant. (17) Requiring a participant to purchase the full quantity of supplemental food listed on a food instrument when that food instrument states "up to" that amount. "Up to" means a participant may

choose to purchase less than the full quantity listed.

(1)

Charging Program participants or the Department a fee for using the food instruments;

(2)

Accepting the food instrument prior to or after its valid period;

(3)

Depositing the food instrument with amounts entered which exceed the maximum value printed on the food instrument;

(4)

Delivering supplemental foods to a participant and accepting food instruments at a location other than the food vendor's fixed location identified on the vendor agreement such as the participant's home or place of business.

(5)

Stocking an insufficient quantity of Program supplemental foods so that a participant cannot redeem a food instrument for the full quantity listed on the food instrument. This shall be determined by store inspection;

(6)

Unsanitary conditions or outdated merchandise;

(7)

Failing to post prices on supplemental food items so that prices are easily visible to participants. The prices must be posted next to the supplemental food items offered for sale or on the shelf on which those items are placed;

(8)

Charging prices for the Program supplemental foods that are unreasonably high or not comparable to the prices of other stores in the area, as determined by the Department;

(9)

Failing to enter the purchase price on the food instrument at the time of purchase and in the participant's presence;

(10)

Forging a customer's signature onto a food instrument;

(11)

Redeeming food instruments with erroneous or otherwise improper endorsements;

(12)

Having a conflict of interest with local agency personnel, as in the case of a food vendor who could profit by having a relative on the staff of a local agency refer participants to his/her store;

(13)

Influencing or attempting to influence participants' store selection through solicitation on or in the vicinity of a local clinic distribution site;

(14)

Failing to meet any of the Department's authorization criteria;

(15)

Requiring participants to provide any personal information in the process of exchanging food instruments for supplemental food items. Personal information is information that identifies or describes a participant including, but not limited to: name; address; telephone number; social security number; driver's license; physical description; education; financial information; employment history; medical history; and Program appointment information. Personal information does not include the identification provided by the Program to the participant which identifies them as a participant.

(16)

Failing to provide supplemental food to a participant in exchange for a food instrument because that participant did not provide personal information as described in (a)(15) of

this Section, other than the information required by the Program which identifies him/her as a participant.

(17)

Requiring a participant to purchase the full quantity of supplemental food listed on a food instrument when that food instrument states "up to" that amount. "Up to" means a participant may choose to purchase less than the full quantity listed.

(b)

Prior to disqualifying a food vendor for any of the violations listed in (a) of this Section, the Program shall determine if disqualification would result in inadequate participant access. The Program shall impose a civil money penalty in lieu of disqualification for any of the violations in this Section if there is a finding of inadequate participant access, unless the violation is for any third or subsequent disqualification for any violations of this Section. A participant access determination shall be made in accordance with the provisions of Section 40740(h), and any civil money penalty shall be determined in accordance with the provisions of Section 40740(n). A participant access determination made by the Program shall not be subject to appeal or administrative hearing review.

(c)

The Program shall provide the food vendor with a fifteen (15) calendar day written notice of disqualification in advance of the effective date of any proposed adverse action pursuant to this Section, which states the cause(s) for and effective date(s) of the action.

(d)

If the food vendor has been disqualified for any of the Program violations listed in this Section, the Department shall require that the food vendor present a collateral bond or irrevocable letter of credit payable to the Department prior to being

reauthorized to participate in the Program.