

5. Civil Rights, Complaints and Fair Hearings

Policy

- The Louisiana Office of Public Health WIC Program provides WIC benefits without regard to race, color, national origin, age, sex, or disability.
- The Louisiana WIC program collects data and formulates reports on the ethnicity of WIC participants
- The Louisiana WIC program provides annual civil rights training for all WIC staff and all new WIC employees
- The appropriate nondiscrimination statement will be used on developed materials concerned with outreach, program information, or participant's rights
- WIC applicants/participants are informed of the following: non-discriminatory policy; complaint procedures; right to appeal decisions; and the fair hearing process.
- WIC applicants/participants have a right to a fair hearing to appeal a WIC program decision/action which results in a claim against the applicant or participant for repayment of the cash value of improperly issued benefits or which results in the applicant's/participant's denial of participation in or disqualification from the program.

Procedure

State Agency Responsibilities

- I. The Louisiana Office of Public Health WIC Program notifies the public of its non-discriminatory policy and the complaint rights of participants and potential participants by prominently displaying together in every clinic's waiting room the following:
 - The "And Justice For All" poster
 - The Office of Public Health WIC Complaint Notice
 - WIC Complaint and Appeal Form
- II. The Louisiana Office of Public Health contracts with the Language Line Service to provide translation in the appropriate language for non-English speaking WIC applicants/participants.
- III. The following procedure is used by **OPH WIC Clinics** to access the Language Line Service:
 - ✓ Call 1-800-752-6096
 - ✓ Provide clinic Client ID Number
 - ✓ Provide your Personal Code
 - ✓ Provide your Access Code
- IV. The following procedure is used by **WIC Contract Sites and State Agency** to access the Language Line Service:
 - ✓ Call 1-800-752-6096
 - ✓ Provide Client ID Number-549056
 - ✓ Provide Personal Code- OPH Nutrition Services
 - ✓ Provide Access Code - 7630

The information from the "And Justice for All" poster and the Office of Public Health WIC Complaint Notice and Complaint and Appeal Form must be translated for non-English speaking participants.

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WIC Staff Responsibilities

- I. The staff is responsible for reading the “And Justice for All” poster and the Office of Public Health WIC Complaint Notice and Complaint and Appeal form to individuals who are unable to read.
- II. The race and ethnicity of WIC applicants/participants is obtained for statistical purposes by self-identification at certification.
- III. The applicant/caregiver must be allowed to read or have the following statement read to them before they are asked to provide their racial/ethnic background: **“The federal government collects information on racial and ethnic background to see if WIC is accessible to all groups of individuals. This information will in no way affect your eligibility for WIC or your participation in WIC.”** Informing a person of how their ethnic information will be used is required when asking for this information over the telephone or in person.
 - Racial and ethnic data is obtained by the WIC staff asking the individual for their racial/ethnic background and this is documented in PHAME.
 - Individuals are made aware of their option to select more than one (1) racial category. If a participant chooses not to self-identify her/his racial and /or ethnic group, visual identification by a WIC program staff is used to determine the participant’s racial and ethnic category. The selection of one race is acceptable when the WIC staff performs visual identification.
- IV. Before requesting this information, the WIC staff must tell the participant why racial/ethnic information is being collected and that it will have no effect on eligibility or participation in the WIC Program.
 - Informing a person of how their ethnic information will be used is required when asking for this information over the telephone or in person.
 - It is recommended that a statement similar to this one be used: “The federal government collects information on racial and ethnic backgrounds to see if WIC is accessible to all groups of individuals and to monitor compliance with Federal Civil Rights laws. Ask, “Would you please state whether you/your child is “Hispanic or Latino” or state if they are “Not Hispanic or Latino”. The WIC staff must enter the reply in the computer. Next, ask, “Would you please give us your/your child’s racial background.”

Determining Race and Ethnicity

- I. **The following are the appropriate definitions for ethnicity and racial categories:**
 - **Ethnicity as Hispanic or Latino**-A person of Cuban, Mexican, Puerto Rican, South or Central America, or other Spanish culture or origin, regardless of race. The term, “Spanish origin”, may be used by the applicant to denote that they are “Hispanic or Latino”.
- II. **The following are the five (5) racial categories that must be used. The participant may select one or more racial categories:**
 - **American Indian or Alaska Native.** A person having origins in any of the original peoples of North America and South America (including Central America, and who maintains tribal affiliation or community attachment.

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- **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” may be used by the applicant to denote that they are “Black or African American”
- **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **White.** A person having origins in any of the original peoples of Europe, Middle East, or North Africa.

Civil Rights Training

- I. The Louisiana WIC State Agency provides annual Civil Rights training to all WIC staff.
- II. Each staff person shall receive annual training to include the following:
 - **Public Notification**
 - **Racial/Ethnic Participation Data Collection and Reporting**
 - **Procedure for Reporting Complaints of Discrimination**
- III. The Regional Nutritionist submits as requested to the WIC State Agency Training Coordinator documentation of participation in the annual Civil Rights Training.
- IV. Annual Civil Rights training documentation is maintained as advised by the Training Coordinator at the State Agency. The original documentation is available at each WIC site and reviewed during each Management Evaluation and self - evaluation.
- V. Each new employee will receive Civil Rights training within 30 days of employment
 - The latest Annual Civil Rights training will be used.
 - The employee's supervisor will administer the training and ensure maintenance of the documentation at the site.
 - The training documentation for new employees is reviewed during each Management and Self-Evaluation.
- VI. All WIC sites must have a Civil Rights Compliance Review conducted as a part of regularly scheduled Management Evaluations and self - evaluations. Civil Rights assurance will be included in all contracts.
 - The Civil Rights Compliance Review shall include an evaluation of compliance with the nondiscrimination requirements of Title VI of the CR Act of 1964, non-discrimination on the basis of sex, 7CFR part 15, section 504 of the Rehabilitation Act of 1973, CFR part 15A and the Age Discrimination Act of 1975 (See Appendix C for the Civil Rights Compliance Review Form). **Any probable or identified non-compliance with Civil rights will be reported to the site for immediate corrective action.**
 - The State Agency WIC Contract Manager shall review all contract applications to ensure that the Civil Rights assurance is included in the contract prior to approval.

WIC Handouts and Printed Literature

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- I. All developed materials concerned with outreach, program information or participants' rights that are distributed to the public or posted for public viewing must include the following appropriate nondiscrimination statements:
 - **"In accordance with Federal Law and the U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.**
 - **To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20205-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). "USDA is an equal opportunity provider and employer"**
 - **WIC Program material printed in Spanish must contain the following nondiscrimination statement:**
 - **De acuerdo con la ley federal y las políticas del Departamento de Agricultura de los EE.UU. (USDA, sigla en inglés), se le prohíbe a esta institución que discrimine por razón de raza, color, origen, sexo, edad, o discapacidad.**
 - **Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410, o llame gratis al (866) 632-9992 (voz). Personas con discapacidad auditiva o del habla pueden contactar con USDA por medio del Servicio Federal de Relevos (Federal Relay Service) al (800) 845-6136 (español) o (800) 877-8339 (inglés). USDA es un proveedor y empleador que ofrece oportunidad igual para todos.**
- II. If the material is too small to permit the full statement to be included, the material at a minimum will include the statement, that **"This institution is an equal opportunity provider"**. (The Spanish translation is as follows: **"Esta institución es un proveedor y empleador que ofrece oportunidad igual para todos."**)
- III. The non-discrimination statement will be located on the material in a prominent place in bold print and in print size no smaller than the text.
- IV. Nutrition education and breastfeeding promotion and support material that strictly provide a nutrition message with no mention of the WIC Program, are not required to contain the nondiscrimination statement.

WIC Program Complaints Process

- I. All complaints are to be processed as follows:
 - **Non- Civil Rights complaints**
 - A. Must be acknowledged within 14 days and resolved within 45 days of receipt.

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- B. Every effort shall be made to protect the applicant/ participant from punitive actions
 - C. WIC Director manages the resolution of all non - civil rights complaints
 - D. Original complaints and the resolution must be maintained at the State Agency. A copy of the complaint and the resolution must be maintained at the site of occurrence and another copy forwarded to the OPH Regional Administrator
- **Civil Rights complaints**
 - A. Civil Rights complaints are sent to:
USDA
Director-Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410
 - B. Civil Rights complaints are processed by USDA with assistance provided by the WIC Director as requested. The time frame for processing assistance is determined by USDA.
 - C. The WIC Director will track and record the closure of Civil Rights complaints.
 - D. A copy of the Civil Rights complaint and the resolution must be maintained at the State Agency, at the site of occurrence and another copy forwarded to the OPH Regional Administrator.

Hearing Requests

- I. A request for a fair hearing is any clear expression by the applicant/participant, the applicant's/participant's parent, caretaker, or representative, that he or she desires an opportunity to present his or her case to a higher authority.
 - The WIC Program staff shall not limit or interfere with the applicant's/participant's freedom to request a hearing.
 - The Louisiana Office of Public Health WIC program provides for WIC applicant/participant appeals using the State of Louisiana, Division of Administrative Law in accordance with the Louisiana Administrative Procedure Act relative to administrative hearings (R. S. 49:991 et seq) and in accordance with WIC Federal Regulation.
- II. A hearing request may be made by completing and submitting the "WIC Complaint and Appeal Form" form located at each clinic. However, a request for a fair hearing is any clear expression by the applicant/participant, or their parent, caretaker, or representatives that he or she desires an opportunity to present his or her case to a higher authority.
- III. The WIC Director reviews all eligibility decisions prior to a formal hearing using the following administrative complaint resolution process:
 - Notifies the clinic supervisor of the appeal
 - Determines if the decision of the WIC staff was appropriate/inappropriate
 - If it is determined that the decision of the WIC staff was inappropriate the action will be rescinded and benefits will begin immediately
 - If it is determined that the decision of the WIC staff was appropriate the appeal is processed through the State of Louisiana, Division of Administrative Law.

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- IV. Applicants/participants are notified in writing by the WIC program of their right to a fair hearing and the method by which a hearing can be requested.

Right to Appeal

- I. Individuals are notified of their right to appeal eligibility decisions at certification and recertification by reading and signing the WIC-2. Applicants/ participants are to retain a copy for their records.
- II. **Initially** denied applicants are given an Initial Denial/ Termination card (WIC-6) includes notification of their right to appeal.
- III. Disqualified or terminated participants are notified of their right to appeal on the disqualification/termination letter and on the WIC-6.
- IV. **Participants** who receive a disqualification billing letter/termination are informed of the following:
 - Procedure for requesting a fair hearing including time limits
 - Right to have any position or argument on behalf of the applicant/ participant presented personally, or by a representative (such as a relative, friend, legal counsel, or spokesman) in any Division of Administrative Law hearing

Notification of Fair Hearing

- I. The WIC program allows seventy-five (75) days, from the date of the mailing or hand delivery of the letter of notification of the right to a fair hearing, in which an applicant/participant can request a hearing.
- II. **The WIC program must accept the request for hearing unless:**
 - The request is not received within seventy-five (75) days from the date of mailing or hand delivery of the notice of adverse action
 - The request is withdrawn in writing by the applicant/participant or representative of the applicant/participant
- III. **The Division of Administrative Law cannot dismiss the appeal unless:**
 - The applicant/participant or his/her representative fails, without good cause, to appear at the scheduled hearing.
 - The applicant/participant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC program eligibility have changed in such a way as to justify a hearing.

WIC Benefits During Appeal Process

- I. Participants, who appeal the termination of benefits within the fifteen (15) days after the notice of adverse action, shall continue to receive WIC program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first.
- II. Applicants, who are denied benefits at initial certification, or because of the expiration of their certification, may appeal the denial but shall not receive benefits while awaiting the hearing.

Fair Hearing Process

- I. The WIC program will process each request for a hearing in accordance to the Federal Regulations and policies of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the portion of the Louisiana Administrative Procedure Act, which is relative to administrative hearings. The WIC program will make the uniform rules of procedure available to participants for public inspection and copying. (See appendix C)

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- II. Hearings are conducted by an impartial hearing official at the Division of Administrative Law.
- III. The WIC program rules of procedure include the time limits for requesting and conducting a hearing, rights and responsibilities of the appellant. The rules of conduct at the hearing are subject to the Division of Administrative Law found in the Louisiana Administrative Procedure Act relative to administrative hearings and in accordance to WIC Federal Regulation.
- IV. **The WIC program staff will advise the Division of Administrative Law of the following:**
 - In accordance with 7 CFR 246.9(j), the hearing must be held within three (3) weeks from the date that the WIC program received the request for a fair hearing. However, the WIC program has no control over the docket of the Division of Administrative Law.
 - The applicant/participant should have a minimum of ten (10) days advance written notice of the time and place of the hearing.
 - The requirements of the WIC Federal Regulation which states that the decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations to policy.
 - The hearing officer's decision shall become a part of the record
 - The applicant/participant or representative must be notified in writing of the decision and the reason for the decision within 45 days of the receipt of the request for the hearing
- V. The WIC program will provide the applicant/participant or his/her representative with an opportunity to:
 - Examine, prior to and during the hearing, the documents and records presented to support the decision of the WIC program which is under appeal
 - Appear at the hearing and:
 - A. Be assisted or represented by an attorney or other person
 - B. Bring witnesses
 - C. Advance arguments without undue interference
 - D. Question witnesses and refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses
 - E. Submit evidence to establish all pertinent facts and circumstances in the case

Hearing Decisions

- I. The decision of the Division of Administrative Law hearing official shall be in accordance with the Federal Regulations and policies of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
- II. The record of the hearing shall be maintained for four years, and made available for public inspection and copying with the name and address of the participant and other members of the public deleted.
- III. If the hearing officer's decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately.
- IV. If the hearing officer's decision concerns disqualification and is in favor of the WIC program, as soon as administratively feasible, the WIC program shall terminate any continued benefits (in accordance with the hearing officer's determination and directions).
- V. If the decision regarding repayment of benefits by the appellant is in favor of the WIC program, the WIC program shall resume its efforts to collect the claim, even during a pending appeal for Judicial Review of the hearing officer's decision.

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- VI.** Judicial Review of decisions of the Division of Administrative Law is heard in the 19th Judicial District Court in Baton Rouge, Louisiana.