

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1193                      Maternal and Child Health Programs  
**SPONSOR(S):** Healthcare Council, Rivera  
**TIED BILLS:**                                **IDEN./SIM. BILLS:** SB 2652

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Healthcare Council	13 Y, 4 N, As CS	Lowell/Massengale	Gormley
2) Policy & Budget Council	20 Y, 6 N	Leznoff	Hansen
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

CS/HB 1193 requires the Department of Health to implement an electronic benefit transfer (EBT) system, with the assistance of the Department of Children and Families, to disseminate Special Supplemental Nutrition Program for Women, Infants and Children (WIC) benefits by July 1, 2010. The system must be compatible with the existing EBT system for benefits provided by the Department of Children and Families and Workforce Florida, Inc. In addition, the bill requires the department to use item-level averages in setting allowable reimbursement levels for WIC-only stores.

The bill prohibits the department from discontinuing a WIC-eligible generic product unless the product no longer meets the nutritional guidelines of the WIC program.

The bill appears to have a significant but indeterminate fiscal impact to the Department of Health's Federal Grants Trust Fund. The bill restricts the funding of the WIC program to the federal grant funds, but the department is authorized to seek a budget amendment to request additional trust fund authority if the department exceeds federal grant funds.

The bill will take effect July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill requires the Department of Health to implement an electronic benefits transfer system for the WIC program.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### *Federal*

The Women, Infants, and Children (WIC) is a 100 percent federally-funded program that provides food, nutrition education, and referrals to social services to eligible participants at no charge. The WIC program began in 1972 as a pilot program, becoming permanent in 1974. The WIC program is administered by the Division of Food and Nutrition Services (FNS) of the United States Department of Agriculture. WIC benefits are redeemed through the use of a food instrument that lists the food items that may be purchased. FNS rules state that a food instrument (food voucher) may in the form of a “voucher, check, electronic benefits transfer card . . . or other document used by a participant to obtain supplemental foods.”<sup>1</sup> According to FNS, most WIC programs provide paper vouchers to participants to use at authorized food stores; roughly 46,000 merchants nationwide accept WIC vouchers.<sup>2</sup>

Eligible participants include low-income pregnant, postpartum, and breastfeeding women, and infants and children up to age 5 who are at nutrition risk and income eligible.<sup>3</sup> Income eligible participants include those who meet the WIC income guidelines<sup>4</sup> and those who are receiving Medicaid, Temporary Cash Assistance, or Food Stamps. Foods available through the WIC program include milk, cheese, eggs, cereals, and peanut butter, as well as infant formula and infant cereal and fruit juice for infants 6 months or older.<sup>5</sup>

###### *Florida*

In Florida, the WIC program is administered by the Department of Health (department), Bureau of WIC and Nutrition Services. The WIC program is available in all 67 Florida counties through 42 local agencies, including county health departments. According to the department, the number of participants in the program varies from month-to-month; according to the latest data, more than 440,000 participants were being served by the program at the end of Fiscal Year 2006-2007. Approximately 2,000 vendors in Florida, including major grocery chain stores and above-50-percent (50-percent) stores, are authorized to accept WIC vouchers. A 50-percent vendor is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food vouchers. Of these approximately 2000 authorized vendors, there are approximately 39 50-percent vendors, of which 37 derive nearly 100 percent of their revenue from the WIC program.

Florida WIC benefits are redeemed through the use of a paper voucher (see Figure 1). According to the department, a typical WIC participant receives an average of three vouchers per month. A WIC

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<sup>1</sup> 7 C.F.R. §246.2 (2007).

<sup>2</sup> Division of Food and Nutrition Services, United States Department of Agriculture, WIC’s mission <http://www.fns.usda.gov/wic/aboutwic/mission.htm> (last updated September 12, 2003).

<sup>3</sup> Division of Food and Nutrition Services, United States Department of Agriculture, Nutrition Program Facts (last updated March 2006).

<sup>4</sup> The Income Guidelines range from \$1,575 gross income per month for a household of 1, to \$5,330 gross income per month for a household of 8 (185% of the Federal Poverty Level).

<sup>5</sup> See also Florida Department of Health, WIC Eligible Foods, <http://www.floridawic.org/Documents/WICEligibleFoodList.pdf> (last updated November 2007).

customer does not need to purchase all of the items listed on a voucher (resulting in a “partial redemption”). A WIC customer who partially redeems a WIC voucher does not receive a credit for the unused balance and may not purchase the unredeemed items at a subsequent visit. Thus, once a voucher is used, whether it is fully redeemed or partially redeemed, it may not be used again.

### Sample Florida WIC Voucher

CHECK NUMBER			AGENCY SITE		WIC I.D. NO.	FIRST DAY TO USE	LAST DAY TO USE	63-05 031
00001001			12	1	1234567	JUL 04, 2007	AUG 03, 2007	
BUY LEAST EXPENSIVE BRANDS OF MILK, FROZEN JUICE AND EGGS. (SEE BACK FOR ELIGIBLE FOODS)						AMOUNT MUST NOT EXCEED TOTAL PRICE OF ITEMS LISTED		NOT NEGOTIABLE UNLESS WIC VENDOR STAMP IS HERE
161	MILK*2 GAL OR 8 CANS EVAP OR 8 QTS DRY WIC CHEESE*UP TO 1 LB JUICE*24 OZ FROZ OR 2 CANS/BOTTLES 46-OZ SIZE WIC CEREAL*UP TO 36 OZ EGGS*1 DOZEN DRY BEANS OR PEAS*UP TO 1 LB					PAY EXACTLY <b>31 16</b>		
NAME OF PARTICIPANT LAST: PARTICIPANT FIRST: PATTY						AUTHORIZED SIGNATURE • PRESENT I.D. <i>X Patty Participant</i>		
CAPITAL CITY BANK, TALLAHASSEE, FLORIDA ⑈00001001⑈ ⑆063100688⑆ 01 18553 7⑈01								

(Figure 1)

#### *Federal Vendor Cost Containment Requirements*

FNS rules require a state, in administering the WIC program, to implement vendor cost-containment procedure that include establishing,

- A vendor peer group system; and
- Competitive price criteria and allowable reimbursement levels for each vendor peer group.<sup>6</sup>

A vendor peer group classifies authorized vendors into groups based on common characteristics.<sup>7</sup> Competitive price criteria must be used by a state to evaluate the prices of vendor applicants compared to other vendor applicants and authorized vendors.<sup>8</sup>

In implementing a vendor peer group, the state’s methodology must include:

- At least two criteria for establishing peer groups, one of which must geography (such as a metropolitan statistical area).
- Routine collection and monitoring of vendor shelf prices at least every 6 months.
- Assessment of the effectiveness of the peer groupings and competitive price criteria at least every 3 years.

A state that decides to contract with 50-percent vendors must receive FNS certification of its vendor cost containment system.<sup>9</sup> In order to receive certification, a state must submit information demonstrating that its competitive price criteria and allowable reimbursement levels do not result in higher average payments per food voucher to 50-percent vendors than regular vendors.<sup>10</sup> A state must calculate average payments per food voucher by including either all food vouchers redeemed by

<sup>6</sup> *Id.*

<sup>7</sup> 7 C.F.R. §246.2 (2007).

<sup>8</sup> 7 C.F.R. §246.12(g)(4) (2007).

<sup>9</sup> 7 C.F.R. §246.12(g)(4)(vi) (2007).

<sup>10</sup> *Id.*

authorized vendors or a representative sample of the redeemed food vouchers.<sup>11</sup> In contrast, a state with an electronic benefits transfer (EBT) system must compare the average cost of each WIC food item purchased by participants at 50-percent vendors with the average cost of each food item purchased from comparable vendors.<sup>12</sup> Importantly for 50-percent vendors, item level averaging of food purchases eliminates the influence on the average of partial redemptions of multi-item food vouchers.

Further, each state that decides to contract with 50-percent vendors must:

- Distinguish 50-percent vendors from regular vendors in its peer group system, either establishing separate peer groups for 50-percent vendors or placing 50-percent vendors in peer groups with regular vendors and establishing distinct competitive price selection criteria and allowable reimbursement levels for the 50-percent vendors.
- Compare 50-percent vendors' prices against the prices of regular vendors to determine whether 50-percent vendors have competitive prices and to establish allowable reimbursement levels for 50-percent vendors.
- Compare the average cost of each type of food voucher redeemed at 50-percent vendors against the average cost of the same type of food voucher redeemed by regular vendors. If the average payment per food voucher to 50-percent vendors exceeds average payments to food vouchers to regular vendors, the state must take action to ensure compliance, including adjusting payment levels, recouping excess payments, or terminating 50-percent vendor agreements.
  - FNS will file a claim against a state to recover excess funds expended if a state fails to ensure compliance.
  - If an EBT system is used, the rule notes that "it may be more appropriate to compare prices of individual WIC food items" to ensure that average payments to 50-percent vendors do not exceed average payments to regular vendors.<sup>13</sup>

The department has established six vendor peer groups, including one solely for 50-percent vendors. All WIC vendors, including 50-percent vendors, are authorized biennially.

The department does not prohibit the sale or conveyance of 50-percent stores. However, FNS rules require a vendor to provide the state advance notification of any change in ownership, location, or cessation of operations.<sup>14</sup> With the exception of a change in location that involves a move of a short distance, the state must terminate the vendor's agreement upon a change in ownership, location, or cessation of operations.<sup>15</sup> Consequently, while the store may be sold or conveyed, the vendor agreement may not.

### *WIC EBT Systems*

Over the past 8 years, several states have begun implementation of an electronic benefits transfer (EBT) system for WIC, using both off-line smartcards and on-line magstripe cards. An off-line smartcard system uses a smartcard with encoded data that is modified by the vendor at the point-of-sale. In contrast, an on-line magstripe system uses a card that functions much like a debit or credit card, using vendor point-of-sale equipment and processors to communicate with a state-contracted processor to determine, for example, remaining benefits. No data is stored on an on-line magstripe card.

A state that decides to move to an EBT system must first obtain FNS approval by submitting an advanced planning document to FNS.<sup>16</sup> In addition, a state is prohibited from imposing the costs of any

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 7 CFR §246.12(h)(3)(xvii) (2007).

<sup>15</sup> *Id.*

<sup>16</sup> Division of Food and Nutrition Services, United States Department of Agriculture, FNS Handbook 901, [http://www.fns.usda.gov/apd/Handbook\\_901/Handbook\\_901.htm](http://www.fns.usda.gov/apd/Handbook_901/Handbook_901.htm) (last updated February 7, 2008).

equipment, system, or processing required for EBT on any authorized vendor as a condition of authorization or participation in the program.<sup>17</sup> Consequently, the state must pay for any modifications to the vendor's point-of-sale equipment or provide new equipment if existing equipment cannot be modified.

### **Sample WIC EBT Cards**



(Figure 2)

In 2003, FNS developed a 5-year plan for the implementation of WIC EBT to modernize and streamline business practices; enhance client services; increase accountability, and make WIC benefit redemptions more efficient for retailers. As part of this plan, FNS provides WIC EBT grants to plan, develop, implement, evaluate and expand systems.<sup>18</sup> Grants were awarded for existing projects in Federal Fiscal Year 2007 to Kentucky (\$2,142,315), Michigan (\$854,565), New Mexico (\$550,823), Texas (\$1,300,000), and Wyoming (66,125).<sup>19</sup> FNS is developing a new 5-year grant program; however, grant funds will be limited to projects that employ innovative approaches to implementing EBT (relative to other states).

In a January 2006 progress report, FNS identified<sup>20</sup> numerous positive outcomes, including:

- Participants: unrestricted number of shopping trips, convenient and discreet transactions, and ability to purchase the full food benefits (as opposed to partial redemption of WIC paper vouchers).
- Retailers: reduced errors, faster transactions, and reduced paperwork.
- State agency: reduced time spent on retailer compliance; reduced forgery and fraud; reduced paperwork; and increased accountability.

New Mexico and Wyoming are currently the only states that are operating a statewide WIC EBT system, both of which use off-line smartcard systems.

The states that have attempted or are engaged in off-line smartcard projects include<sup>21</sup>:

- New England Partners (New Hampshire, Maine, Vermont, Massachusetts, Rhode Island, and Connecticut): the scope of the project would have included 16 clinics, 70 retailers, and 7,700 clients. According to FNS, the partnership was terminated in January 2006 prior to implementation due to cost and timeline concerns.

<sup>17</sup> Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265.

<sup>18</sup> Division of Food and Nutrition Services, United States Department of Agriculture, WIC Electronic Benefit Transfer (EBT) System Development, Implementation, and Expansion – 5-year Plan (2003-2008) (March 2006).

<sup>19</sup> Division of Food and Nutrition Services, United States Department of Agriculture, WIC EBT Grants 2007, <http://www.fns.usda.gov/wic/EBT/grants07.htm> (last updated 9/19/2007).

<sup>20</sup> *Id.*

<sup>21</sup> Division of Food and Nutrition Services, United States Department of Agriculture, WIC EBT State Projects, <http://www.fns.usda.gov/wic/EBT/wicebtstatus.htm> (Last updated March 2008).



- Ohio: the scope of the project included the city of Dayton—5 clinics, 43 retailers, and 11,000 clients. According to FNS, Ohio reverted to paper in June 2005 “due to the high cost of EBT”, after approximately 5 years of operation.
- New Mexico: WIC EBT is currently operating statewide—108 clinics, 230 retailers, and 64,000 clients. New Mexico is partnering with Texas in the development of the system. The pilot was launched in July 2003.
- Texas: the scope of the project is currently 117 counties—191 clinics, 491 retailers, and 161,959 clients. According to FNS, Texas plans to complete a statewide rollout by April 2009. The pilot was launched June 1, 2004.
- Wyoming: WIC EBT is currently operating statewide—37 clinics, 91 retailers, and 11,650 clients. According to FNS, Wyoming began development in 1995 and subsequently became the first state to operate statewide in January 2002. Wyoming is currently participating in the Western States EBT Alliance to move to an on-line EBT system, with a plan to convert to the new system by September 2008.
- Nevada: the project is currently operating in Reno, parts of Washoe County, and parts of Las Vegas—22 clinics, 127 retailers, and 42,787 clients. According to FNS, the pilot was launched June 2, 2000.

The states that have attempted or are engaged in on-line magstripe projects include:

- Michigan: the scope of the project includes several counties—20 clinics, 135 retailers, and 24,450 clients. According to FNS, Michigan is planning to implement a statewide system by February 2009. The pilot began in July 2005.
- Washington: the scope of the project includes Tacoma—1 clinic, 3 retailers, and 300 families. Washington participated in an FNS on-line demonstration project from June 2005 through November 2005.
- Kentucky: the scope of the project initially includes Warren and Barren counties—2 clinics, 25 retailers, and 1,600 families. According to FNS, Kentucky began the project in August 2006. The pilot is expected to begin in 2009, and statewide rollout is expected to commence 6-9 months thereafter.

#### *Other State Assistance Programs utilizing EBT*

According to FNS, EBT has been implemented for food stamps in all states as of June 2004.<sup>22</sup> In Florida, s. 409.942, F.S., required the department of Children and Family Services to establish an electronic benefit transfer program to disseminate food stamp benefits and temporary assistance payments. Similarly, Workforce Florida, Inc., through the Agency for Workforce Innovation, was required to establish an electronic benefit transfer program for the use and management of education, training, child care, transportation, and other program benefits under its direction. In addition, the department of Children and Family Services was required to assist Workforce Florida, Inc., in developing an electronic benefit transfer program that is fully compatible with the department's electronic benefit transfer program.

According to the Department of Children and Family Services, the electronic benefit transfer program required in s. 409.942, F.S., became fully operational statewide in October 1998 using an on-line magstripe system that uses one card for the benefits described above.<sup>23</sup> According to the department, there are more than 10,000 authorized retailers participating in the food stamp EBT program.

#### Effect of Proposed Changes

The bill requires the department to:

<sup>22</sup> Division of Food and Nutrition Services, United States Department of Agriculture, Electronic Benefit Transfer, <http://www.fns.usda.gov/fsp/ebt/> (last viewed March 25, 2008).

<sup>23</sup> According to the Department of Children and Families, federal payments, such as SSI, SSA, and VA, are not available through EBT as the US Treasury decided to move to either direct deposit or a direct payment card in 2001-2002.

- Implement an EBT system, with the assistance of the Department of Children and Families, to disseminate WIC benefits by July 1, 2010. The system must be compatible with the existing EBT system for benefits provided by the Department of Children and Families and Workforce Florida, Inc.
- Use item-level averages in setting allowable reimbursement levels for WIC-only stores. In determining the item-level averages, the department is required to collect item-level redemption prices by requiring each vendor to record the price of each item redeemed on the voucher.

In addition, the bill restricts the funding of the WIC program to federal grant funds. However, the department is authorized to seek a budget amendment if the department exceeds federal grant funds.

Last, the bill prohibits the department from discontinuing a WIC-eligible generic product unless the product no longer meets the nutritional guidelines of the WIC program.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 409.942, F.S., relating to the electronic benefit transfer program.

Section 2. Amends s. 383.011, F.S., relating to administration of maternal and child health programs.

Section 3. Provides an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

See fiscal comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Authorized vendors will likely benefit from an EBT system by receiving more of the client's WIC allocation, since the client will be able to purchase single items throughout the month, instead of the current system where a client can only purchase items once per voucher. Under an EBT system, a client may return to the store and purchase the remaining item at a later date, thus using the entire WIC allocation.

Fifty-percent vendors may benefit from requiring calculation of the statewide average by the item, rather than by the voucher (which contains multiple food items). This calculation method will likely increase reimbursement to the vendor.

**D. FISCAL COMMENTS:**

The WIC program receives funding from the U.S. Department of Agriculture (USDA) in two separate grants. One is for food costs called the Special Supplemental Nutrition Program, and the other is nutrition services and administration (NSA). The U.S. General Accounting Office states that nutrition services and administration funds are typically used to pay the cost of client services, including nutrition and breastfeeding counseling; health care referrals; and program administration, such as planning and budgeting.<sup>24</sup> Currently, the national average of the grant per participant for the NSA grant is \$15.71; the department has calculated that the cost per WIC participant for the NSA grant was \$14.07 for 2007.

The fiscal impact to the DOH to plan for and implement a WIC EBT system is unknown; however, from the existing national WIC EBT projects, it is known that the DOH will have to provide for the following:

- Providing stand-beside point of sale devices for vendors.
- Paying the vendors to modify their internal systems to accommodate WIC EBT transactions.
- Modifying the WIC data system.
- Providing EBT cards and replacement cards for clients.
- Ongoing EBT transaction costs.

Using an existing on-line magstripe infrastructure, such as the one currently used by DCF for Food Stamps and cash assistance, should reduce the amount of funds needed for implementation of the EBT system. In addition, the department currently does not expend the full NSA grant award. Thus, there may be sufficient funds to support the implementation and maintenance of an EBT system.

The bill limits the department to expenditure of Federal funds to implement the program but authorizes the department to submit a budget amendment to request additional trust fund authority to implement the program.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The department has sufficient rulemaking authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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<sup>24</sup> Report to Congressional Committees, United States General Accounting Office. Food Assistance: Financial Information on WIC Nutrition Services and Administration Costs. GAO-RCED-00-66 (March 2000).



#### D. STATEMENT OF THE SPONSOR

Florida's WIC program is extremely important to the care of infants, toddlers and expectant mothers in our state and Florida's WIC-only grocers play a critical role in ensuring that the program is accessible to the most vulnerable on our communities. This legislation will modernize the program to the advantage of the state of Florida, the WIC vendor and, most importantly, the participant.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 8, 2008, the Healthcare Council adopted a strike-all amendment to the bill. The amendment:

- Requires the Department of Health, with the assistance of the Department of Children and Families, to implement an EBT system to disseminate WIC benefits by July 1, 2010. The system must be compatible with the existing EBT system for benefits provided by the Department of Children and Families and Workforce Florida, Inc.
- Clarifies that the department must use item-level averages in setting allowable reimbursement levels for WIC-only stores.
- Restricts the funding of the WIC program to federal grant funds, but permits the department to seek a budget amendment for trust fund authority if it exceeds federal grant funds.

The bill was reported favorably with a Council Substitute. The analysis reflects the Council Substitute.