

4617.0020 AGENCY APPLICATION REVIEW AND APPROVAL.

Subpart 1. **General procedure.** The commissioner shall authorize an agency to administer the WIC program as a local agency by following in order the steps in subparts 2 to 9a.

Subp. 2. **Agency application; review.** The commissioner shall review an application to determine whether the agency applicant meets the eligibility criteria in part 4617.0015 and whether the application was submitted according to part 4617.0010.

Subp. 3. **Agency application to serve geographic area; approval and disapproval.** The commissioner shall approve or disapprove an application to serve a geographic area according to items A to G.

A. The commissioner shall approve only one application for each geographic area.

B. If an application does not document that the agency meets the eligibility criteria in part 4617.0015 or is not submitted according to part 4617.0010, the commissioner shall disapprove the application except as provided in item C.

C. If an applicant fails to meet a deadline in part 4617.0010 but is the only applicant that meets the eligibility criteria under part 4617.0015 to serve a particular geographic area, the commissioner shall approve the application. If, after the approval of an application under this item, the commissioner receives a subsequent application to serve the same geographic area, the commissioner shall disapprove the subsequent application.

D. Except as provided in items E and F, the commissioner shall approve an application and authorize the applicant to become a local agency if the application was submitted according to part 4617.0010 and if the application documents that the applicant meets the eligibility criteria under part 4617.0015.

E. If, after disapproving applications under item B, there are two or more remaining applications to serve the same geographic area:

(1) the commissioner shall determine whether any of these remaining applicants is an agency that is or has in the past been a WIC local agency, and, if so, shall determine whether such applicants had significant WIC compliance issues. For purposes of this part, an applicant had significant WIC compliance issues if:

(a) the applicant, while a WIC local agency, committed a violation of this chapter or Code of Federal Regulations, title 7, part 246; and

(b) the commissioner determines that a violation or violations described in unit (a) represents significant WIC compliance issues, based on the following factors:

i. the number of violations;

- ii. the duration of the violations;
- iii. the impact or potential impact of the violations on participants;
- iv. the frequency of violations;
- v. how long ago the violations occurred;
- vi. the agency's response to technical assistance and training provided by the commissioner in connection with the violations; and
- vii. the adequacy of the agency's staff to avoid future violations, both in terms of ratio of staff to participants and in terms of staff qualifications; and

(2) the commissioner shall approve the application with the highest priority according to the following priority system:

(a) except as provided in item F, first priority to a community health board whose jurisdiction under Minnesota Statutes, chapter 145A, is the geographic area that the board is applying to serve;

(b) except as provided in item F, second priority to a community health board that, under one or more contracts between the applicant and another community health board, provides maternal or child health care or health promotion to residents of the geographic area that the board is applying to serve;

(c) except as provided in item F, third priority to any other community health board;

(d) except as provided in item F, fourth priority to a public or private nonprofit health service agency;

(e) except as provided in item F, fifth priority to a public human service agency; and

(f) except as provided in item F, sixth priority to a private nonprofit human service agency.

F. If the agency applicant that has the highest priority under item E had significant WIC compliance issues, as determined according to item E, subitem (1), or if there are two or more applicants with the highest priority under item E, the commissioner shall:

(1) request each applicant to provide to the commissioner information, as specified by the commissioner, that relates to the commissioner's consideration of the factors identified in subitem (2), units (a) to (i). The commissioner shall consider relevant information provided by the applicant unless the commissioner receives the information more than ten business days after the date of the commissioner's request; and

(2) determine which of the applications to approve based on the following factors:

(a) each applicant's ability to continue meeting the WIC program needs that are currently being met in the area;

(b) each applicant's ability to meet any unmet WIC program needs in the area, including language skills of the applicant's staff, use of interpreters, and the staff's knowledge of cultures and health practices. For purposes of this unit, "unmet WIC program needs" in an area includes both:

i. WIC program needs in the area that are not being met at the time of the application; and

ii. WIC program needs in the area that are anticipated to be unmet during the time for which the applicant is applying to be a local agency;

(c) the relative benefits to the population to be served;

(d) each applicant's experience with the WIC program, other maternal and child health programs, and other public health programs;

(e) each applicant's experience with coordinating and ability to coordinate WIC program benefits with benefits from other health or human service programs;

(f) the proposed sites at which each applicant will deliver WIC services;

(g) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities within five years before the application due date as specified in the instructions for completing the application;

(h) the results of any audits of each applicant, conducted by an independent accounting firm or the state auditor within five years before the application due date as specified in the instructions for completing the application;

(i) the availability of local or other funds or in-kind contributions to supplement the federal funds to be expended by each applicant in administering the WIC program; and

(j) the recommendation, if any, of each community health board whose jurisdiction includes all or part of the geographic area the applicants are applying to serve and each community health board's rationale for its recommendation.

G. For purposes of the priority system under item E, an agency other than a community health board must be classified as a health service agency or as a human service agency, based on the type of services it primarily provides during its current fiscal year.

An agency must not be simultaneously classified as a health service agency and a human service agency. The commissioner shall consider an agency to be a health service agency if more than 50 percent of expenses in an agency's budget are allocated to non-WIC program health promotion or health care and if more than 50 percent of the agency's employee work hours are non-WIC program health promotion or health care.

Subp. 4. [Repealed, 29 SR 1202]

Subp. 5. [Repealed, 29 SR 1202]

Subp. 6. [Repealed, 29 SR 1202]

Subp. 7. [Repealed, 29 SR 1202]

Subp. 8. [Repealed, 29 SR 1202]

Subp. 9. [Repealed, 29 SR 1202]

Subp. 9a. **Agency application to serve special population; approval and disapproval.** For purposes of this subpart, "unmet WIC program needs" in a special population includes both: (i) WIC program needs in the special population that are not being met at the time of the application; and (ii) WIC program needs in the special population that are anticipated to be unmet during the time for which the applicant is applying to be a local agency. The commissioner shall approve or disapprove an application to serve a special population according to items A to E.

A. If the application does not document that the agency meets the eligibility criteria in part 4617.0015 or is not submitted according to part 4617.0010, the commissioner shall disapprove the application.

B. If the applicant is eligible for funds directly from the United States Department of Agriculture to fund the applicant to provide WIC services to the special population and if the application has not been disapproved under item A, the commissioner shall approve that application and shall disapprove all other applications to serve the same special population.

C. If the application has not been approved or disapproved under item A or B, the commissioner shall disapprove the application if:

(1) the application does not identify unmet WIC program needs in the special population the applicant is applying to serve or does not document how the applicant intends to meet the identified unmet WIC program needs in the special population;

(2) based on all information available to the commissioner, the applicant's assertion of unmet WIC program needs is incorrect; or

(3) the applicant does not, at the time of the application, provide health promotion or obstetric or pediatric health care.

D. If, after considering applications according to items A to C, there are one or more remaining applications to serve a special population, the commissioner shall:

(1) request information from each applicant that has applied to serve a geographic area that includes the geographic area where some or all of the members of the special population reside, except applicants whose applications have been disapproved. The commissioner shall request that each such applicant submit information that relates to the commissioner's determinations under subitem (2) and consideration of the factors identified in item E. The commissioner shall consider relevant information provided by the applicants to serve the geographic areas unless the commissioner receives the information more than ten business days after the date of the commissioner's request; and

(2) determine whether the applicant to serve the special population can better meet the unmet WIC program needs than the applicants to serve the geographic areas. Unless an applicant to serve the special population can better meet the unmet WIC program needs of the special population, the applications to serve the special population shall be denied. If one or more applicants to serve the special population can better meet the unmet WIC program needs of the special population, the commissioner shall approve the application of the applicant that can best meet the unmet WIC program needs of the special population and shall deny all other applications to serve the special population.

E. To determine under item D, subitem (2), whether an applicant can better meet the unmet WIC program needs of a special population and to determine which applicant can best meet the unmet WIC program needs of a special population, the commissioner shall consider the factors listed in subitems (1) to (13). For purposes of subitems (1) to (10), "applicant" means an applicant to serve the special population or an applicant to serve one of the geographic areas involved, except applicants whose applications have been disapproved:

(1) each applicant's ability to meet any unmet WIC program needs in the special population, including language skills of staff, use of interpreters, and staff's knowledge of cultures and health practices;

(2) the extent to which the special population is at high risk for health problems related to nutritional deficiencies and the ability of each applicant to meet the needs of the high-risk persons;

(3) each applicant's ability to continue meeting the WIC program needs that are currently being met in the special population;

(4) the relative benefits to the population to be served;

(5) each applicant's experience with the WIC program, other maternal and child health programs, and other public health programs;

- (6) each applicant's experience with and ability to coordinate WIC program benefits with benefits from other health or human service programs;
- (7) the proposed sites at which each applicant will deliver WIC services;
- (8) the results of any financial and administrative reviews of each applicant, conducted by local, state, or federal governmental authorities, within five years before the application due date as specified in the instructions for completing the application;
- (9) the results of any audits of each applicant by an independent accounting firm or the state auditor, within five years before the application due date as specified in the instructions for completing the application;
- (10) the availability of local or other funds or in-kind contributions to supplement the state and federal funds to be expended by each applicant in administering the WIC program;
- (11) the recommendation, if any, of each community health board whose jurisdiction includes the geographic area where some or all of the members of the special population reside and each community health board's rationale for its recommendation;
- (12) whether the applicant to serve the special population consulted with the existing WIC local agency serving the geographic area about the unmet WIC program needs in the special population, and how the existing WIC local agency responded; and
- (13) the financial impact on administrative resources of approving the application to serve the special population.

Subp. 10. **Notice of approval or disapproval.** Within 90 days after receiving a complete application, the commissioner shall give written notice to an agency that the commissioner has approved or disapproved its application. A notice of approval or disapproval must state that an application is approved as originally submitted, approved with changes, or disapproved.

A notice of disapproval must state the reason for the disapproval and must state that the agency applicant may appeal the disapproval according to part 4617.0100.

Subp. 11. [Repealed, 29 SR 1202]

Statutory Authority: *MS s 144.11; 145.891 to 145.897*

History: *14 SR 164; 19 SR 2089; 29 SR 1202*

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