

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Notice of Adoption of Final Rule Establishing a Subsidized Grocery Program

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of the Department of Health and Mental Hygiene (DOHMH) by sections 556 and 1043(a) of the New York City Charter, that DOHMH adopts the following rule establishing a subsidized grocery program. DOHMH published a Notice of Opportunity to Comment on the proposed rule in the City Record on December 13, 2022. On January 13, 2023, DOHMH held a public hearing on the proposed rule.

Statement of Basis and Purpose

The Department is adopting rules establishing a subsidized grocery program, called the Groceries to Go Program (“Program”).

The Program will provide eligible New Yorkers at risk for food insecurity with money to purchase groceries through an online marketplace of local grocery stores. Eligible participants will be invited to enroll and activate an account with the vendor providing the online marketplace platform. Enrolled and activated accounts will be provided with a monthly credit to spend on groceries, some or all of which may be limited to certain categories for the purpose of health promotion, as determined by the Department. Participants can opt for grocery delivery or pick-up, and the credit can be applied toward delivery costs and tip. Participants will be screened for re-enrollment every six months.

This rule is necessary because food insecurity is a significant problem facing New York City. Approximately 1.1 million New Yorkers were food insecure prior to COVID-19. The COVID-19 pandemic exacerbated food insecurity for many New Yorkers through historically high unemployment rates, creating financial instability and the closure of institutions such as senior centers and public schools, where people reliably accessed meals prior to the pandemic. During the height of the pandemic in New York City from April to October 2020, about 45% of New Yorkers surveyed reported having less income and about 20% reported being unable to buy groceries due to lack of money for food. New Yorkers of color, those living in very high-poverty neighborhoods, and those with chronic conditions were disproportionately impacted.¹

Eligibility criteria for Program participation recognizes that while food insecurity is associated

¹ Crossa A, Baquero M, Etheredge AJ, et al. Food insecurity and access in New York City during the COVID-19 pandemic, 2020. New York City Department of Health and Mental Hygiene: Epi Data Brief (128); 2021.

with many chronic conditions, research demonstrates that US adults in households with marginal, low and very low food security are more likely to have hypertension and diabetes, two of the most common diet-related chronic diseases that disproportionately burden communities of color², compared to adults in high food-secure households³.

Within New York City, food insecurity risk (measured and defined as per the Hunger Vital Sign)⁴ is more prevalent among adults with diabetes than those without (47.7% vs. 32.7%) and among those with hypertension than those without (43.1% versus 31.6%).⁵ Hypertension is a leading risk factor for heart disease and stroke, which, along with diabetes, are among the leading causes of premature deaths in NYC.⁶ Evidence also suggests food insecurity may exacerbate outcomes related to these diet-related chronic diseases,⁷ making New Yorkers at risk for food insecurity with these conditions a high priority population for food support programs.

Food insecurity risk is also more prevalent among NYC adults without health insurance (53.5%), compared to those with health insurance (31.6%).⁵ Included in the eligibility criteria is enrollment in New York City Care, a health care access program through NYC Health and Hospitals, that guarantees low-cost or no-cost services to New Yorkers who do not qualify for or cannot afford health insurance.

This rule is intended to support eligible New Yorkers who are at high risk for food insecurity and to assist enrollees in mitigating associated health risks. This rule is also needed to continue to develop and maintain a flexible model for online grocery ordering that can be adapted for future emergencies, such as future pandemics.

A public hearing regarding the rule was held on January 13, 2023. At the hearing, one person testified, and eleven comments were received, all generally supportive of the program. Three comments recommended the program use additional online grocery, delivery platforms or regional farms and farmers markets on the online platform. Three comments recommended removing participants who have not used credits after five months and redistributing unused credits to active program participants. Many raised concerns regarding platform accessibility and provided suggestions for program implementation to support online platform utilization and increase accessibility. Collectively, the comments received addressed concerns with the online ordering platform, credit levels, eligibility, as well as considerations beyond the scope of the rule for evaluation and implementation. The Department will consider comments related to program implementation and evaluation as the program is implemented, but no changes to the proposed

² New York City Department of Health and Mental Hygiene. EpiQuery – Community Health Survey, 2017. Viewed on 11/22/2022. <https://nyc.gov/health/epiquery>

³ Gregory CA, Coleman-Jensen A. *Food Insecurity, Chronic Disease, and Health Among Working-Age Adults*. Agriculture USDo; 2017. July 2017. <https://www.ers.usda.gov/webdocs/publications/84467/err-235.pdf?v=4007.7>

⁴ <https://childrenshealthwatch.org/public-policy/hunger-vital-sign/>

⁵ NYC Community Health Survey, 2021

⁶ Li W, Onyebekwe C, Huynh M, Castro A, Falci L, Gurung S, Levy D, Kennedy J, Maduro G, Sun Y, Evergreen S, and Van Wye G. Summary of Vital Statistics, 2019. New York, NY: Bureau of Vital Statistics, New York City Department of Health and Mental Hygiene. <https://www.nyc.gov/assets/doh/downloads/pdf/vs/2019sum.pdf>

⁷ C. Gundersen, J.P. Ziliak Food insecurity and health outcomes. *Health Affairs*, 34 (2015), pp. 1830-1839

rule will be made at this time. With respect to accessibility concerns, we note that the rule includes a process for enrollees to seek a reasonable accommodation to access the online ordering platform. In such a case, an enrollee may contact the Department at the number provided at the time of enrollment.

Deleted material appears in [brackets]. New material is underlined. The terms “shall” and “must” may be used interchangeably and denote mandatory requirements unless the context clearly indicates otherwise.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 34 to read as follows:

CHAPTER 34
GROCERY DELIVERY PROGRAM

§ 1-01. Grocery delivery program.

(a) Definitions. For purposes of the section, the following terms have the following meanings:

The term “food insecurity” means that within last 12 months of applying for enrollment or re-enrollment in the Program, the individual:

- (1) Had concern regarding lack of food for their household;
- (2) Lacked funds to purchase enough food for their household; or
- (3) Received food from a food pantry.

The term “Program” means the Groceries to Go Program described in this section.

(b) Groceries to Go Program. An individual may apply for enrollment in the Groceries to Go Program to receive credits that can be redeemed for online grocery purchases, including service fees, tips, and delivery to the household of such individual. The individual may apply for enrollment by calling the Department at the number posted on the Department’s website.

(c) Eligibility criteria. Only one person per household may be enrolled in the Program at any time. The Program will not accept applications from more than one person at the same address. The Program will only be available to individuals that meet all of the following eligibility criteria:

- (i) The individual is a Health and Hospitals New York City Care Member;
- (ii) The individual reports diagnosis of hypertension or diabetes;

- (iii) The individual reports a risk for food insecurity; and
- (iv) The individual is a New York City resident.

(d) Program credits. Program credits will be allocated as follows:

- (i) A household of one or two people will receive \$140 per month;
- (ii) A household of three or more people will receive \$300 per month;
- (iii) The program credits will be eligible to be used for food categories posted on the Department's website. The Department will consider promotion of overall health when determining such categories.

(e) Ordering platform. Program enrollees will be able to use Program credits by ordering groceries through an online ordering platform using an active email address provided by the enrollee at the time of enrollment. Enrollees that require a reasonable accommodation to access the online ordering platform may contact the Department at the number provided at the time of enrollment.

(f) Enrollment capacity subject to available resources. Enrollment capacity for first time applicants of the Program is on a first-come, first-serve basis among eligible New Yorkers. Enrollment capacity is subject to resource availability as determined by the Department.

(g) Enrollment renewal. Enrollment eligibility of individuals in the Program will be reviewed by the Department every six months. Individuals will need to re-attest every six months that they meet each element of the eligibility criteria set forth in subdivision (c) of this section.

(h) Removal. The Department may remove an individual from the Program for the following reasons: (i) the individual is no longer eligible, (ii) inactivity for six months; or (iii) non-compliance with this section or established vendor policies. Individuals may also be removed at any time upon their request. The Department will provide written notice to the individual that they will be removed from the Program stating the reason for removal. An individual may object to such removal by submitting an objection in writing to the Commissioner or his or her designee within 10 calendar days of receipt of the notice, if received by e-mail or fax, or 15 days if received by mail. The objection will be reviewed and the individual will be notified of the Department's

determination regarding the removal of the individual from the Program. Such determination constitutes a final agency action.

(i) Nothing in this section shall be construed as granting any individual that meets the eligibility criteria provided in subdivision (c) of this section a right to receive credits to purchase food for delivery under this Program. Program funding for the purchase and delivery of groceries provided for under this Chapter is subject to availability.

(j) The Program provided for under this section will terminate on such date as determined by the Department.

FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

I hereby find and represent to the Mayor that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Department Health and Mental Hygiene’s (the “Department”) amendment to Title 24 of the Rules of the City of New York by the addition of Chapter 34. The added chapter establishes rules of eligibility, enrollment, and removal for a subsidized grocery program. The program will provide to eligible New Yorkers at risk for food insecurity money to purchase groceries through an online marketplace of local grocery stores. There is a substantial need to provide this service to support eligible New Yorkers at risk of food insecurity as soon as possible. Without a finding of substantial need, the enrollment of eligible New Yorkers in the program will be delayed from the expected launch of this program of January 2023. As that circumstance would be unreasonable and inequitable, I find that there is a substantial need for bringing these rules into effect immediately upon publication in The City Record.

This declaration is made pursuant to Section 1043, subdivision f, paragraph 1(c) of the City Charter.

/S/ Ashwin Vasani, MD, PhD

Commissioner

City of New York Department of Health and Mental Hygiene

APPROVED:

/S/ Eric Adams

Mayor