

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene (the “Department”) is proposing to add a new Chapter 34 (Grocery Delivery Program) to Title 24 of the Rules of the City of New York, establishing rules for a subsidized grocery program.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM to 12:00PM on Friday, January 13, 2023. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m1be2f41ba24da0b8218f310ef2910fcd>
If prompted to provide an event number or password, please enter the following:
Event number: **2346 415 8768**, Password: **6AdmGFuFC56 (62364383** from phones)
- **Phone:** For access, dial: (408) 418-9388; (646) 992-2010 (New York City) then please enter the following Access code: **234 6415 8768**, Password: **62364383**

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN30
Long Island City, NY 11101-4132
- **Fax:** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing:** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10:00AM on January 13, 2023. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before January 13, 2023 at 5:00 p.m.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by December 30, 2022.

Can I review the comments made regarding the proposed rules? You may review the online comments made on the proposed rules at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time after the hearing by the Department's Office of General Counsel.

Where can I find the Department's rules? The rules of the Department can be found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? This notice is made according to the requirements of New York City Charter §1043. This proposed rule was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Statement of Basis and Purpose

Statutory Authority

This amendment to Title 24 of the Rules of the City of New York ("RCNY") is promulgated pursuant to sections 556 and 1043 of the New York City Charter.

Background

The Department seeks to establish rules for 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, which may be limited to certain categories 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

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.

Eligibility criteria for Program participation recognizes that while food insecurity is associated 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 needed to support eligible New Yorkers who are at high risk for food insecurity. 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.

Proposed Rule

The proposed rules are as follows.

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. The Table of Contents of Title 24 of the Rules of the City of New York is amended by adding a new Chapter 34, titled “Grocery Delivery Program”.

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, Onyebeke 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

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

§ 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.

(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 are subject to availability.

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

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Governing Groceries to Go Program

REFERENCE NUMBER: 2022 RG 080

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 6, 2022

**NEW YORK CITY MAYOR’S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Governing Groceries to Go Program

REFERENCE NUMBER: DOHMH-125

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor’s Office of Operations

December 6, 2022
Date