

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1098

(Delegate Kipke)

Health and Government Operations

Finance

---

Health Insurance - Maryland Health Benefit Exchange - Small Business Tax  
Credit Subsidy

---

This bill authorizes the Maryland Health Benefit Exchange (MHBE), in consultation with the Insurance Commissioner and as approved by the MHBE Board, to submit a State Innovation Waiver application for a federal Section 1332 waiver to allow the State to administer the federal small business health care tax credit to small businesses for monthly premium payments. Before applying for a waiver, MHBE must determine whether the State needs a waiver to distribute the federal tax credit on a monthly basis to eligible employers enrolling in the Small Business Health Options Program (SHOP) Exchange. The funding sources for the MHBE Fund are expanded to include any federal funds received for the administration of the tax credits. **The bill takes effect July 1, 2019.**

---

Fiscal Summary

**State Effect:** To the extent MHBE applies for the waiver, special fund expenditures increase by \$75,000 on a one-time basis only as early as FY 2020 for costs associated with the waiver application. This analysis does not reflect any impact on State operations or finances should the waiver be approved.

**Local Effect:** None.

**Small Business Effect:** None as a result of the waiver application; however, to the extent the waiver is granted and implemented, small businesses benefit from upfront premium assistance payments.

---

## Analysis

### Current Law:

#### *Maryland Health Benefit Exchange*

MHBE was created during the 2011 session to provide a marketplace for individuals and small businesses to purchase affordable health coverage. Through the Maryland Health Connection, Maryland residents can shop for health insurance plans, compare rates, and determine their eligibility for federal advanced premium tax credits (APTCs), cost-sharing reduction plans, and public assistance programs such as Medicaid. MHBE also assists qualified employers in the State by facilitating the enrollment of their employees in qualified health plans (QHPs) in SHOP and their access to federal small business health care tax credits. As of August 1, 2018, MHBE has implemented a direct enrollment process whereby small employers and their brokers can enroll directly with insurance carriers. SHOP enrollment in Maryland has remained low, with 111 active groups and 644 covered lives as of December 31, 2017.

#### *Small Business Health Care Tax Credit*

The federal Patient Protection and Affordable Care Act (ACA) includes a small business health care tax credit, which can benefit small employers who provide health coverage for their employees. The tax credit benefits employers who have fewer than 25 full-time equivalent employees, pay an average wage of less than \$51,600 a year, and pay at least half of employee health insurance premiums. The credit percentage is 50% of employer-paid premiums; for tax-exempt employers, the percentage is 35%. Small employers may claim the credit for only two consecutive taxable years beginning in tax year 2014 and beyond. Beginning with tax year 2015, the credit is phased out beginning when average wages equal \$25,800 and is fully phased out when average wages exceed \$51,600. The average wage phase out is adjusted annually for inflation. Generally, small employers are required to purchase a QHP from a SHOP to be eligible to claim the credit.

In contrast to APTCs, which can be received by an individual on a monthly basis or at the end of the tax year when the individual files his/her income tax return, the small business health care tax credit may only be received at the end of the year when an employer files taxes and is determined by the federal Internal Revenue Service.

#### *Maryland's State Reinsurance Program*

Chapters 6 and 7 of 2018 required MHBE to submit an application for a State Innovation Waiver under Section 1332 of the ACA to establish a State Reinsurance Program and seek

federal pass-through funding. The federal government approved the waiver in August 2018. The waiver is approved through 2023.

Funding for the State Reinsurance Program includes State special funds from the 2.75% health insurance provider fee assessment for calendar 2019 only and federal pass-through funding. Under the Section 1332 waiver, Maryland is able to use federal pass-through funds (federal funding that would have been provided to Maryland residents in the form of APTCs in the absence of the reinsurance program) to provide additional funding for the program.

**Background:** In 2016, the federal government approved Hawaii's application for a State Innovation Waiver. The waiver allows the small business health care tax credit amounts that would otherwise be paid to small employers who purchase coverage through SHOP in Hawaii to be provided to the state and used primarily to support a state fund that helps small businesses offer health coverage. Hawaii has a long-standing state law, referred to as the Prepaid Health Care Act, which requires virtually all employers to offer coverage to their employees and provides small employers premium assistance. Hawaii estimated that the value of the small business health care tax credit was \$182.0 million based on full utilization by all eligible employers and the maximum annual value of the credits for each employer multiplied by two years.

**State Fiscal Effect:** To the extent MHBE applies for a waiver, MHBE special fund expenditures increase by \$75,000 on a one-time basis only as early as fiscal 2020 to fund an actuarial study needed for the waiver application. This cost can be absorbed within the existing \$35 million annual appropriation for MHBE as the mandated appropriation has not been fully spent in recent years. This analysis does not reflect any impact on State operations or finances should the waiver be approved and implemented. To the extent the waiver is approved and implemented, federal fund revenues as well as special fund revenues and expenditures increase significantly beginning as early as fiscal 2020.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Internal Revenue Service; Comptroller's Office; Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

**Fiscal Note History:**  
md/ljm

First Reader - March 13, 2019

Third Reader - March 26, 2019

Revised - Amendment(s) - March 26, 2019

Revised - Updated Information - May 17, 2019

---

Analysis by: Jennifer B. Chasse

Direct Inquiries to:

(410) 946-5510

(301) 970-5510