

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 14-192)**

Overview and Legal and Fiscal Impact

The regulation increases payments to local agencies for services provided under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

The regulation presents one minor legal issue of concern.

Federal fund revenues and expenditures increase by a total of \$1,115,563 in fiscal 2015 for the Special Supplemental Nutrition Program for WIC. Fifteen local health departments will receive and expend an additional \$737,351 in operating funds for the WIC program. These funds are included in the fiscal 2015 budget.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC):
Local Agency: COMAR 10.54.02.18

Legal Analysis

Background

The Special Supplemental Nutrition Program for WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. In Maryland, WIC is administered through local public and private nonprofit agencies under the direction of the Department of Health and Mental Hygiene.

Summary of Regulation

The regulation increases three types of payments to local agencies that administer WIC:

- base funding;
- per participant funding; and
- funding to promote and support breastfeeding by breastfeeding peer counselors.

While the base funding and per participant funding increase by 3-5%, the funding to promote and support breastfeeding increases by 43%.

Legal Issue

The regulation presents one minor legal issue of concern, as described below.

Statutory Authority and Legislative Intent

WIC is a federal program that is not specifically authorized in State law. However, the department cites §§ 18-107 and 18-108 of the Health – General Article as authority for the regulation. Section 18-107 requires the Secretary of Health and Mental Hygiene to devise and institute means to prevent and control morbidity and mortality associated with pregnancy, childbirth, infancy, and early childhood and promote the welfare and hygiene of maternity and infancy. Section 18-108(d) requires the department to maximize distribution of WIC administrative funds to local agencies in a manner that assures equity among the local agencies. The section also requires the distribution of administrative funds to local agencies to be reviewed annually by the Governor’s Advisory Council on Food and Nutrition, which may then recommend adjustments to the Governor, the department, and the General Assembly.

This statutory authority is correct and complete. The department advises that the Governor’s Advisory Council on Food and Nutrition, which was established by executive order, became defunct in 2002. Therefore, the Council did not review the distribution of WIC administrative funds, as required by law. The Department of Legislative Services staff advised the department to seek a repeal of this requirement in appropriate legislation. Although the legislative intent appears to have sought some independent review of the distribution of WIC administrative funds, the absence of such review for many years may indicate the review is no longer necessary. With this caveat, the action is consistent with legislative intent.

Reason for Emergency Status

The department requests emergency status to begin July 1, 2014, and expire December 27, 2014, to cover the period until final adoption of the accompanying, permanent, nonemergency regulation. The emergency period is within normal timeframes approved by the committee. Emergency action is requested, because the department just received notice of increased federal funding in May 2014. According to the department, in order to implement the new rates at the beginning of the 2015 fiscal year, amendments to the regulation must be effective on July 1, 2014.

Fiscal Analysis

Federal fund revenues and expenditures increase by a total of \$1,115,563 in fiscal 2015 for the Special Supplemental Nutrition Program for WIC. Fifteen local health departments will receive and expend an additional \$737,351 in operating funds for the WIC program. These funds are included in the fiscal 2015 budget.

Agency Estimate of Projected Fiscal Impact

The regulation increases base funding and per participant funding levels paid to local agencies to administer the WIC program, as well as the rate paid to support breastfeeding peer counselors. These increases result from a higher federal fund award and an estimated reduction in the number of WIC participants for fiscal 2015 compared with fiscal 2014.

Impact on Budget

Federal fund revenues and expenditures increase by a total of \$1,115,563 in fiscal 2015 for WIC (half during the requested emergency period and half during the second half of fiscal 2015). Fifteen local health departments will receive an additional \$737,351 in WIC operating funds. These funds are included in the fiscal 2015 budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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