

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-214)**

Overview and Legal and Fiscal Impact

The regulations establish standards and procedures for a hiring tax credit available to specified employers through the Health Enterprise Zone initiative.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies beyond that already assumed in the fiscal 2015 operating budget.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Health Enterprise Zone Initiative: Health Enterprise Zone Tax Credits:
COMAR 10.61.01.03, .05, and .06

Legal Analysis

Background

Chapter 3 of 2012 established the Health Enterprise Zone (HEZ) initiative, a four-year pilot program that provides public incentives and resources to help attract private health care practitioners to serve in underserved communities. A HEZ is a contiguous geographic area that (1) demonstrates measurable and documented health disparities and poor health outcomes; (2) is small enough to allow for the incentives offered under the Act to have a significant impact on improving health outcomes and reducing racial, ethnic, and geographic health disparities; and (3) is designated as a HEZ by the Maryland Community Health Resources Commission and the Secretary of Health and Mental Hygiene.

There are two tax credits available under the HEZ initiative: an income tax credit for HEZ practitioners and a hiring tax credit. The hiring tax credit of \$10,000 against the State income tax is available to a qualified HEZ practitioner (an individual licensed or certified under the Health Occupations Article who provides primary care, behavioral health services, or dental services) who hires for a qualified position in the HEZ for the taxable year.

The Department of Health and Mental Hygiene has designated five HEZs: Dorchester-Caroline, Greater Lexington Park, Prince George's County Health Department/Capital Heights, West Baltimore, and Annapolis. Chapter 3 of 2012 specified that

the program would run for four fiscal years, financed at approximately \$4.0 million annually for calendar 2013 through 2016.

Summary of Regulations

The regulations establish standards and procedures, as well as define terms, to implement a HEZ hiring tax credit. The HEZ hiring tax credit is a refundable credit of \$10,000 against the State income tax for hiring for a qualified position in a HEZ by a HEZ employer.

Definitions

Under the regulations, among other terms, a “Health Enterprise Zone employer” is defined as a HEZ practitioner, for-profit entity, or nonprofit entity that employs qualified employees and provides health care services in a HEZ. In addition, a “qualified employee” is defined to mean a HEZ practitioner, community health worker, or interpreter who provides direct support to a HEZ practitioner and expands access to services in a HEZ. A “qualified position” means a position that pays at least 150 percent of the federal minimum wage, is full time and of indefinite duration, is located in a HEZ, is newly created as a result of the establishment of or expansion of services in a HEZ, and is filled. A “qualified position” does not include a position that is filled for a period of less than 12 months.

Verification and Audit of Hiring Tax Credits

The regulations authorize the department to request from a HEZ practitioner or employer additional information to verify statements in applications for the hiring tax credit. The department also may use independent verification to verify information reported on an application for the hiring tax credit.

Eligibility for, Certification for, and Conditions on the Hiring Tax Credit

An employer may be eligible for a hiring tax credit if the employer creates one or more qualified positions during any 24-month period, demonstrates support from the HEZ in which the HEZ employer is operating in the form and manner specified by the department, and meets any other criteria specified in applicable tax forms by the department. To be certified as preliminarily eligible to receive the hiring tax credit, a HEZ employer must submit an application to the department on a form approved by the department. To receive final certification of eligibility for the tax credit, a HEZ employer must have received preliminary certification and submit an application for final certification to the department on a form approved by the department. The regulations also specify procedures a HEZ employer must follow to claim the hiring tax credit.

The regulations establish conditions on the hiring tax credit. The hiring tax credit must be taken over a 24-month period, with one-half for the credit amount allowed each year beginning with the first taxable year in which the credit is certified. If the qualified position is filled for a period of less than 24 months, the hiring tax credit must be recaptured as specified in statute.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites Title 20, Subtitle 14 of the Health-General Article and § 10-731 of the Tax – General Article as authority for the regulations. More specifically, § 20-1402(b) of the Health – General Article authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out provisions of law governing the HEZ initiative and to specify eligibility criteria and application processes for the benefits available under the HEZ initiative.

In addition, § 10-731(d) of the Tax-General Article authorizes a HEZ employer to claim a refundable credit of \$10,000 against the State income tax for hiring a qualified position in the HEZ, as certified by the department for the taxable year. Section 10-731(d) also specifies eligibility criteria for the HEZ hiring tax credit, including the requirement that the credit be taken over a 24-month period, with one-half for the credit amount allowed each year beginning with the first taxable year in which the credit is certified, and the requirement that the credit be recaptured in a specified manner if the qualified position is filled for a period of less than 24 months.

Section 10-731(h) of the Tax – General Article requires the department, in consultation with the Comptroller, to adopt regulations to implement the HEZ hiring tax credit.

The authority cited by the department is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that already assumed in the fiscal 2015 operating budget.

Agency Estimate of Projected Fiscal Impact

The regulations establish procedures for implementation of the hiring tax credit available to certain employers in Health Enterprise Zones. The Maryland Community Health Resources Commission advises that the regulations increase special fund expenditures for the Health Enterprise Zone initiative by \$200,000 for fiscal 2015. The Department of Legislative Services notes that this is the amount that has been approved to be issued as hiring tax credits to the five Health Enterprise Zones and is already included in the fiscal 2015 budget.

Impact on Budget

There is no impact on the State operating or capital budget beyond the \$3.9 million in special funds included in the commission budget for this purpose, of which \$200,000 will be used for hiring tax credits in Health Enterprise Zones.

Agency Estimate of Projected Small Business Impact

The commission advises that the regulations have a meaningful impact on small businesses in the State by allowing them to access the hiring tax credits. The Department of Legislative Services disagrees as the regulations do not have an impact beyond that assumed in the fiscal and policy note for Chapter 3 of 2012 (SB 234 of 2012, which established the Health Enterprise Zone initiative and the hiring tax credits). A meaningful impact was assumed in the fiscal and policy note for Chapter 3.

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