

**Maryland General Assembly  
Department of Legislative Services**

**Emergency/Proposed Regulation  
Department of Health and Mental Hygiene  
(DLS Control No. 15-119)**

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**Overview and Legal and Fiscal Impact**

The regulation increases payment rates for certain services to promote and support breastfeeding under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program).

The regulation presents no legal issue of concern.

Federal fund expenditures for the Special Supplemental Nutrition Program for Women, Infants, and Children increase by a total of \$437,354. Federal fund revenues increase correspondingly. Local government revenues and expenditures increase by a total of \$268,862 in fiscal 2016, due to increased WIC awards to 15 local health departments.

**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

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**Legal Analysis**

**Background**

The WIC Program provides supplemental foods and nutritional education through local agencies to pregnant women, postpartum women, breastfeeding women, infants, and children who are from families with income below a certain established amount and who are determined to be at risk with respect to their physical and mental health by reason of inadequate nutrition or health care. The WIC Program is operated by the Department of Health and Mental Hygiene with funding substantially provided by the U.S. Department of Agriculture (USDA) under the Child Nutrition Act of 1966.

**Summary of Regulation**

The regulation increases the amounts that department must pay local agencies for providing WIC Program services by breastfeeding peer counselors to promote and support breastfeeding. More specifically, the regulation increases (1) the annual amount paid per pregnant or breastfeeding participant (based on caseload assignment) from \$53.75 to \$70.88 and (2) the amount paid per quarter for each additional pregnant or breastfeeding participant added by the department to the initial caseload assignment from \$13.437 to \$17.72.

## **Legal Issue**

The regulation presents no legal issue of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 18-107(a) and 18-108 of the Health – General Article as authority for the regulation. Section 18-107(a) 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. The provision also requires the Secretary to promote the welfare and hygiene of maternity and infancy.

Section 18-108 of the Health – General Article establishes requirements for the WIC Program. More specifically, § 18-108(a) defines certain terms, such as “local agency”, which means a public or private, nonprofit health or human service agency that provides health services either directly or through contract, and by written agreement provides WIC Program services in a designated agency. Section 18-108(c) requires the Governor to include in the annual budget State general funds of at least \$250,000 to cover the administrative and food costs of the WIC Program. Section 18-108(d) requires the department to maximize distribution of administrative funds to local agencies in a manner that assures equity among the local agencies. Section 18-108(e) specifies that the provisions of law governing the WIC program are effective only to the extent that they are not inconsistent with applicable federal law or regulations.

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

## **Reason for Emergency Status**

The department requests emergency status so that it may implement the new payment rates at the beginning of the next State fiscal year, July 1, 2015. According to the department, payment amounts are predicated upon the amount awarded by the USDA, and this information was received by the State’s WIC Program in April 2015. Because the process of adopting regulations generally takes four to six months, the department requests adoption of the provisions on an emergency basis to have them in effect beginning in July 2015, and lasting for 180 days. The regulation, in the meantime, will be adopted in the usual manner.

## **Fiscal Analysis**

Federal fund expenditures for WIC increase by a total of \$437,354. Federal fund revenues increase correspondingly. Local government revenues and expenditures increase by a total of \$268,862 in fiscal 2016, due to increased WIC awards to 15 local health departments.

## **Agency Estimate of Projected Fiscal Impact**

The regulation increases funding to local WIC agencies due to enhanced federal funding from the U.S. Department of Agriculture awarded in April 2015. Funding will be used to increase the awards made to local WIC agencies per pregnant or breastfeeding participant to

promote and support breastfeeding by peer support counselors. The department advises that expenditures decline by \$218,676 due to an increase in the cost of administering the WIC program for the first six months of fiscal 2016. The Department of Legislative Services disagrees and notes that federal fund expenditures *increase* by \$218,677 during the emergency period, and by a total of \$437,354 during fiscal 2016, due to increased WIC awards. Federal fund revenues also increase correspondingly. Local government revenues and expenditures increase by a total of \$268,862 in fiscal 2016, due to increased WIC awards to 15 local health departments.

### **Impact on Budget**

Federal fund expenditures for WIC increase by a total of \$437,354 in fiscal 2016. Federal fund revenues increase correspondingly. Local government revenues and expenditures increase by a total of \$268,862 in fiscal 2016.

### **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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