

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 16-174)**

Overview and Legal and Fiscal Impact

The regulation alters 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 expenditures for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) increase by a total of \$174,499 in fiscal 2017. Federal fund revenues increase correspondingly. Local government revenues and expenditures increase by \$92,309 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

Legal Analysis

Background

The WIC Program 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, the WIC Program is administered through local public and private nonprofit agencies under the direction of the Department of Health and Mental Hygiene. The WIC Program annually reviews the funding that is returned unused from local agencies the prior year and recalculates allocations as necessary to better distribute the funds where they are needed and will be used.

Summary of Regulation

The regulation alters base funding and per participant funding payments made to local agencies that administer the WIC Program. Specifically, the regulation increases the following funding:

- base funding for caseloads up to 3,999 participants by 2%;
- base funding for caseloads from 4000 to 7,999 participants by 4%; and
- per participant funding by 2%.

Base funding for caseloads of 8,000 to 11,000 participants remains the same. However, in the previous year, local agencies with larger numbers of participants returned larger amounts of unspent funding. Therefore, this year the WIC Program established two additional size categories and reduced funding to better align with actual need as follows:

- base funding for caseloads for 11,001 to 20,000 is reduced by 5%; and
- base funding for caseloads of 20,001 or more participants is reduced by 14%.

Legal Issue

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

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites § 18-108 of the Health – General Article as statutory authority for the regulation. Section 18-108 establishes requirements for the WIC Program. More specifically, § 18-108(d) requires the department to maximize distribution of WIC Program 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. 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. It should be noted that in 2014 similar regulations were adopted and the Department of Legislative Services staff advised the department to seek a repeal of this requirement in appropriate legislation. The department indicates that departmental legislation will be introduced this year to repeal the obsolete provision. With this caveat, the action is consistent with legislative intent.

Fiscal Analysis

Federal fund expenditures for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) increase by a total of \$174,499 in fiscal 2017. Federal fund revenues

increase correspondingly. Local government revenues and expenditures increase by \$92,309 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. Funding will be used to increase base funding and per-participant funding for local agencies. The department advises that federal fund expenditures increase by a total of \$174,499 in fiscal 2017. Federal fund revenues increase correspondingly. This increase is based on the following (1) an additional \$216,950 in per participant funding; (2) an additional \$10,000 in base funding for local agencies; and (3) a reduction of \$52,451 for breastfeeding peer counseling, which is paid on a per-participant basis, due to an anticipated 740 fewer participants in fiscal 2017. Local government revenues and expenditures increase by \$92,309 in fiscal 2017, due to increased WIC awards to 15 local health departments. The Department of Legislative Services concurs.

Impact on Budget

Federal fund expenditures for WIC increase by a total of \$174,499 in fiscal 2017. Federal fund revenues increase correspondingly. Local government revenues and expenditures increase by a total of \$92,309 in fiscal 2017.

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

Legal Analysis: Lisa J. Simpson – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer B. Chasse – (410) 946/(301) 970-5510