



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

NOV 02 2011

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House, H-107
Annapolis, MD 21401-1991

The Honorable Michael E. Busch
Speaker of the House of Delegates
State House, H-101
Annapolis, MD 21401-1991

Re: Clean Indoor Air Act - 2011 Annual Report - Health-General §24-507(b)

Dear President Miller and Speaker Busch:

Pursuant to Health-General §24-507(b), Annotated Code of Maryland, the Department is submitting this report summarizing the enforcement efforts related to the Clean Indoor Air Act. The report provides details on the enforcement activities conducted by the Department and its partners, the County Health Departments to eliminate environmental tobacco smoke in indoor areas open to the public from September 2010 through August 2011.

The overall impact of the Clean Indoor Air Act has been positive in Maryland. The regulated community and the advocates are working together to keep indoor places open to the public smoke-free. The Department feels strongly that such important public health laws help to make our state a healthier place to live in.

Thank you for your continued interest in the public health of the state. If you should have any questions or comments, please do not hesitate to contact Ms. Marie Grant, Director of Governmental Affairs at 410-767-6481.

Sincerely,

Joshua M. Sharfstein, M.D.
Secretary

Enclosure

cc: Ms. Frances Phillips
Ms. Heather Hauck
Ms. Marie Grant
Ms. Sarah Albert, MSAR # 6090





**MARYLAND DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
INFECTIOUS DISEASE AND ENVIRONMENTAL HEALTH
ADMINISTRATION (IDEHA)**

**THE MARYLAND CLEAN INDOOR AIR ACT OF 2007
MARYLAND CODE ANNOTATED,
HEALTH-GENERAL TITLE 24, SUBTITLE 5**

2011 Annual Report

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Joshua M. Sharfstein
Secretary
Department of Health & Mental Hygiene

September 2011

INTRODUCTION

The Clean Indoor Air Act (CIAA) was signed into law on May 17, 2007. Its purpose was “to preserve and improve the health, comfort, and environment of the people of the State by limiting exposure to environmental tobacco smoke.” The Act prohibits smoking in indoor areas open to the public except in limited circumstances. The Act specifically prohibits smoking in public meeting places, public transportation vehicles, and indoor places of employment. Regulatory authority for the Act is vested with the Department for public areas, and the Department of Labor, Licensing, and Regulation (DLLR) for workplace areas not ordinarily open to the public.

Pursuant to Annotated Code of Maryland, Health-General §24-507(b), this report summarizes the enforcement efforts in September 2010 thru August 2011 of the Department of Health and Mental Hygiene (the Department) and its partners, the Local Health Departments, to eliminate environmental tobacco smoke in indoor areas open to the public.

IMPLEMENTATION

As the CIAA enters its fourth year, anecdotal and enforcement data indicate that the Act has been extremely successful in reducing exposure to environmental tobacco smoke in the majority of indoor areas open to the public. Restaurants, hotels, bars, and other private and public entities have, for the most part, successfully implemented the CIAA without difficulty.

Technical Assistance

The Department has provided a number of resources to citizens, businesses, and others related to the CIAA. The Maryland Tobacco Quit line (1-800-QUITNOW) is available to individuals who wish to quit smoking. In addition, Infectious Disease & Environmental Health Administration (IDEHA) operates a toll-free help line (1-866-703-3266) that is available to anyone with questions or concerns related to the CIAA.

Maryland Tobacco Quit Line: 1-800-QUITNOW

The Department continues to look closely at data associated with its Quit line and other operations to measure the potential benefits of the Act to the citizens of Maryland. The Quit line received over 12,835 calls with approximately 6,456 callers registering for cessation services. Thirty percent of the callers were Medicaid participants, 28% of the callers were uninsured, and 1,608 callers were referred to local health department resources. 4,431 shipments of nicotine patches and nicotine gum were provided to residents in FY 2010-2011 through the Quit line.

IDEHA Toll-Free Help Line

The Department continued to operate its toll-free Help line (866-703-3266) to assist business owners, employees, news media, elected officials, and the public with implementation of the CIAA. Inquiries and complaints continue to come in regarding the scope of the CIAA, but overall the number of complaints decreased. This decrease is partly due to the increased

familiarity of businesses with the law, regulations and enforcement process. Many of the inquiries pertain to smoking-related issues not addressed by the CIAA, such as second-hand smoke in apartments (often with children) infiltrating from adjoining apartments. Complaints covered smoking in the common areas of senior housing; outside balcony drift; and sidewalk second-hand smoke.

Coordination with Local Health Departments

The Department has continued to work closely with its partners on implementation issues. The principal issues requiring coordination have been related to hookah bars, cigar bars, and ensuring consistency in enforcement. The local health departments have in most cases been able to enforce the CIAA consistently. As previously mentioned in the FY 2010 report, one exception involves hookah and cigar bars and the application of the tobacco retailer's exemption, which are discussed below.

Coordination with the Department of Labor, Licensing, and Regulation

The Department continues to work very closely with DLLR and its Maryland Occupational Safety and Health (MOSH) program, which has responsibility for the implementation of the Act in workplaces not open to the public.

OUTCOMES

Enforcement

Investigations

A comprehensive survey was undertaken to determine the level of effort in local health departments devoted to the CIAA. Table 1 demonstrates that there continues to be a need for active enforcement regarding the CIAA across the state. While some counties did not record any complaints, many jurisdictions have a significant number of complaints that end up requiring investigations.

Violations

Between September 1, 2010 and August 31, 2011, the Department has been informed of two letters of reprimand issued by local health departments. This is similar to the previous year.

Waivers

The Act allowed a business to apply for a waiver from certain provisions of the law if the business could demonstrate that compliance with the provision of the Act caused undue financial hardship, or that other factors rendered compliance with the Act unreasonable (Annotated Code of Maryland, Health-General §24-509). The period for granting waivers has ended; as of January 31, 2011 no additional waivers can be applied for, and the existing waivers ceased to be effective. The Department has contacted local health departments where waivers were in effect to determine how the local health departments were ensuring that the facilities in question are now able to comply fully with the CIAA as of February 1, 2011. In most cases the

local health departments notified the waiver recipients by mail that the waivers ceased to be in effect after January 31, 2011.

Activities of Maryland Occupational Safety and Health (MOSH)

In 2011, MOSH continued to be active in investigating worker-related complaints of smoking in the work place. MOSH issued 32 letters of reprimand during the current year, and one citation, (smoking indoors was observed by the inspector). The inspection occurred on 02/22/11. The citation involved an employer who had previously received a Letter of Reprimand for another violation, so the current violation resulted in a \$100.00 penalty that was subsequently reduced to \$60.00 at the informal conference due to employer cooperation and providing documentation of abatement. The employer paid the \$60.00 penalty on 05/25/2011 and the case was closed.

Table 1: Enforcement Activity and Waiver Status for the Clean Indoor Air Act by Jurisdiction, 9/01/2010-8/31/ 2011

County	Number of Complaints	Number of Investigations	Number of Complaints Successfully Resolved
Allegany	4	4	4
Anne Arundel	2	2	2
Baltimore City	17	17	17
Baltimore	15*	18*	15
Calvert	0	0	0
Caroline	4	4	4
Carroll	6	6	6
Cecil	2	2	2
Charles	0	0	0
Dorchester	0	0	N/A
Frederick	4	4	4
Garrett	3	3	3
Harford	5	5	5
Howard	0	0	N/A
Kent	1	1	1
Montgomery	3	3	3
Prince George's	2	2	2
Queen Anne's	0	0	N/A
Saint Mary's	0	0	N/A
Somerset	0	0	N/A
Talbot	2	2	2
Washington	6	6	6
Wicomico	0	0	N/A
Worcester	1	1	1
Total:	77	80	77

*The difference between complaints (15) and investigations (18) in Baltimore is due in two cases to recent complaints regarding facilities that were closed at the time of the original attempt to investigate, and in the third case to an ongoing follow-up investigation to ensure compliance with "No Smoking" signage.

OUTREACH

On October 5, 2010, the Department partnered with the Food and Drug Administration (FDA) in a press conference to recognize Maryland's 32% drop in adult smoking, making it the sixth-lowest state in the rate of smoking. Former Secretary of Health and Mental Hygiene John Colmers attributed the decline to a number of policy changes, including the doubling of the state's tobacco tax from \$1 to \$2 per pack in 2008, and the Clean Indoor Air Act. Additionally, then-Deputy Commissioner of the FDA Joshua Sharfstein (now the Secretary of Health and Mental Hygiene) announced additional support for Maryland's Alcohol and Drug Abuse Administration for enforcement measures aimed at keeping tobacco away from children.

In November, 2010, in another indication of the State's leadership in tobacco prevention and control, Department staff provided a briefing to senior FDA officials on Maryland's policy and programmatic successes, including implementation and promotion of available cessation services surrounding the Clean Indoor Air Act.

CHALLENGES AND INITIATIVES

In the annual report for 2010, the Department noted that implementation of the CIAA had been successful across the State as a whole, but some challenges remained:

- Development of a policy and regulation to clarify the tobacco retailer exemption, particularly with respect to hookah bars;
- Maintenance of consistent enforcement policies across the State;
- Documentation of local health department activities related to the CIAA;
- Measurement of outcomes related to the CIAA; and
- Implications of the new federal Family Smoking Prevention and Tobacco Control Act.

Since the last annual report, the Department can report the following updates on these items:

Hookah bars and the tobacco retailer exemption

The Department does not collect any statistics on these establishments under the CIAA since it has no current regulatory authority in this area, but there continues to be inquiries regarding establishments that offer “hookah,” “narghile,” or “sheesha” as products for sale or consumption on site. This continues to be an area of active discussion in the Department and with local health departments.

Maintenance of consistent enforcement policies across the State

Over the years, inconsistent enforcement cases have been mostly related to establishment of a tobacco retailer exemption for a hookah bar. The other significant category of inconsistent enforcement policies previously related to waivers, but these are no longer relevant.

Measurement of outcomes related to the CIAA

In addition to the outcomes noted in Outreach on page 6, there are several other positive outcomes to report since the law passed in 2007. For instance, several college and university campuses have put non-smoking rules or policies into effect with as many as 16 actually switching over to an all campus non-smoking policy. These educational institutions join a growing list of hospitals and other service agencies that are establishing non-smoking policies:

- The University of Maryland (Baltimore County) has designated smoking areas outside, but as of summer 2011 was engaged in an all campus discussion about the best course of action regarding outdoor smoking.
- Harford County Public Library has adopted a smoke-free policy for all buildings and grounds, effective May 1, 2011. The use of any type of tobacco product is prohibited, including the carrying or smoking of any kind of lighted pipe, cigar, cigarettes or other lighted smoking equipment.
- In April 2011, Baltimore City banned smoking at the farmer's market.
- The city of Bowie in Prince George's County voted unanimously to restrict smoking on city-owned property, including buildings, parks and recreation areas.
- Howard County, Montgomery County and Ocean City have enacted regulations that make the public parks smoke free.
- Montgomery County reinforced the CIAA regulations by passing a county ordinance that would make smoking illegal in any common area within a shared community building, such as hallways, laundry rooms, lobbies, and so forth. The Montgomery County ordinance also bans smoking within 25 feet of playground areas on privately owned property shared by residents of more than one dwelling, including townhouse and subdivision communities.

The Department and local health departments worked closely with several businesses to help them design and build facilities that would comply with the law and therefore avert potential violations.

Implications of the new federal Family Smoking Prevention and Tobacco Control Act

Since June, 2010, Maryland has been implementing the new requirements under the Family Smoking Prevention and Tobacco Control Act. Other new State laws also have become effective, which in total require Maryland businesses to comply with the following new provisions:

- A sales clerk must check identification of any customer under the age of 27.
- No self-service displays of tobacco are allowed in businesses.

- No items such as hats and T-shirts with tobacco brand names or logos can be sold in Maryland.
- Cigarettes must be sold in a minimum package of 20. No “loosies” or partial packs may be sold.
- As of April 2011, FDA is developing a strategy to potentially regulate an emerging class of products, electronic cigarettes (e-cigarettes) under the Family Smoking Prevention and Tobacco Control Act of 2011.
- The FDA released nine new graphic warnings for cigarette packages in 2011 -- the first new labels in more than two decades. The new warnings, which depict the negative health impact of cigarettes, are required to cover at least 50 percent of every pack of cigarettes sold in the U.S. by mid-2013.

The State of Maryland was awarded a FDA contract to conduct enforcement of the federal law, and that enforcement is ongoing.