



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Van T. Mitchell, Secretary

October 3, 2016

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 – 2016 Annual Report – Health-General §24-507(b), Annotated Code of Maryland, Chapter 502 of the Acts of 2007

Dear President Miller and Speaker Busch:

Pursuant to Health-General §24-507(b), Annotated Code of Maryland, the Department of Health and Mental Hygiene (the Department) is submitting this report summarizing the enforcement efforts of the Department, in partnership with local health departments, to eliminate environmental tobacco smoke in indoor areas open to the public from September 2015 through August 2016.

The overall impact of Maryland's Clean Indoor Air Act has been positive. For the last eight years, the regulated establishments and advocates have been working together to keep indoor areas open to the public smoke-free. The Department feels strongly that important public health laws such as the Clean Indoor Air Act help to make our State a healthier place to live.

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. Allison Taylor, Director of Governmental Affairs at 410-767-6481.

Sincerely,

Van T. Mitchell
Secretary

Enclosure

cc: Allison Taylor, Director, Office of Governmental Affairs
Howard Haft, Deputy Secretary, Public Health Services
Michelle Spencer, Director, Prevention and Health Promotion Administration
Clifford Mitchell, Director, Environmental Health Bureau
Sarah Albert, MSAR #6090



**THE MARYLAND CLEAN INDOOR AIR ACT OF 2007
2016 ANNUAL REPORT
HEALTH-GENERAL ARTICLE §24-507(b)**

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Van T. Mitchell
Secretary
Department of Health and Mental Hygiene

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Introduction

In Maryland, the Clean Indoor Air Act (CIAA), signed into law on May 17, 2007, was enacted “to preserve and improve the health, comfort, and environment of the people of the State by limiting exposure to environmental tobacco smoke.” The CIAA prohibits smoking in indoor areas open to the public except in limited circumstances. The CIAA specifically prohibits smoking in indoor public areas and meeting places such as bars and restaurants, public transportation vehicles, and indoor places of employment. The Department of Health and Mental Hygiene (the Department) has regulatory authority for enforcement of the CIAA in public areas. The Department of Labor, Licensing, and Regulation (DLLR) has authority in workplace areas not ordinarily open to the public.

This report summarizes the enforcement efforts of the Department, in partnership with local health departments and DLLR’s Maryland Occupational Safety and Health (MOSH) program, from September 2015 through August 2016, to eliminate environmental tobacco smoke in indoor areas open to the public. As Maryland approaches the ten year anniversary of the passage of the CIAA, the State continues to make progress in reducing smoking and smoking-related health outcomes. Overall, compliance with the CIAA remains high and Marylanders continue to benefit from smoke-free indoor areas open to the public. As noted in prior reports, recent trends in electronic nicotine delivery systems such as e-cigarettes, federal rule-making on tobacco and nicotine, and persistent questions about the scope of the exemption for tobacco retailers continue to challenge the Department’s implementation of the CIAA and will likely remain concerns in coming years.

Two new federal initiatives may affect CIAA implementation in the coming years:

(1) On May 10, 2016, the U.S. Food and Drug Administration (FDA) announced its final rule under the Tobacco Control Act (TCA), expanding the agency’s regulatory authority to any tobacco product starting on September 1, 2016.¹ While this new rule will not directly affect the CIAA, it is likely this new rule will pose new challenges, and that the Department will receive questions about the rule from the business community and consumers. The new rule extends the FDA’s regulatory authority to all tobacco products, including e-cigarettes; all cigars; hookah, waterpipe, and pipe tobacco; and other nicotine delivery systems.

(2) In November 2015, the U.S. Department of Housing and Urban Development (HUD) proposed a rule to require the nation’s public housing authorities to implement smoke-free policies within 18 months of the final rule. The Department has been working with other state and local agencies assist with the transition to smoke-free housing.

Overall, the CIAA still receives strong support from the public and the business community, and the Department continues working to ensure consistent application of the CIAA across the State.

¹ Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products. May 10, 2016: 81 FR 28973 -29106.

Implementation and Enforcement

Technical Assistance

Maryland Tobacco Quitline

The Department continues to provide a number of resources to citizens, businesses, and others related to the CIAA. The Maryland Tobacco Quitline (1-800-QUIT-NOW) is available to individuals who wish to quit smoking. In addition, the Department operates a toll-free environmental health helpline (1-866-703-3266) that is available to anyone with questions or concerns related to the CIAA. Local health departments (LHDs) have smoking cessation classes available and offer outreach materials.

For State Fiscal Year (SFY) 2016, the Quitline served 10,324 registered callers, including 9,846 tobacco users who received cessation services. More than forty percent of callers (3,784 callers, 40.5%) were insured through Medicaid, and 1,082 callers (11.6%) were uninsured. A total of 226 callers were referred to additional LHD/community resources and 16,024 shipments of nicotine patches and nicotine gum were provided to Maryland residents.

Environmental Health Helpline

The Department operates a toll-free Environmental Health Helpline (1-866-703-3266) to assist members of the public, business owners, employees, state and local agencies, and others with questions related to the CIAA. The Environmental Health Helpline receives about one call per week regarding interpretation, application, and enforcement of the CIAA. Most complaints relate to secondhand smoke in residences, particularly apartments and condominiums. Some of these concerns are associated with smoking in the common areas of housing while others pertain to secondhand smoke infiltrating from balconies, sidewalks, or other outdoor areas.

The Helpline also receives questions pertaining to the legal requirements for opening a hookah establishment, including requests to explain the CIAA's tobacco retailer exemption of "incidental," its application and enforcement by the Department, and the Department's policies regarding serving food and beverages at hookah establishments. These inquiries, noted in previous reports, are expected to increase in coming years due to the FDA's new rules on tobacco and hookah.

Enforcement

Local Health Departments

As Table 1 shows, LHDs vary considerably in the number of complaints received and investigations performed related to the CIAA. However, nearly all of these complaints are resolved without fines or appeals. The Department is unaware of any fines being levied in the past year as a result of CIAA complaints or investigations.

Table 1. Enforcement Activity for the Clean Indoor Air Act by Jurisdiction, 7/1/2015 - 6/30/2016

Jurisdiction	Number of Complaints Received, Investigated, and Successfully Resolved
Allegany	2
Anne Arundel	3
Baltimore City	12
Baltimore	2
Calvert	0
Caroline	0
Carroll	2
Cecil	2
Charles	0
Dorchester	0
Frederick	4
Garrett	1
Harford	1
Howard	5
Kent	0
Montgomery	38*
Prince George's	0
Queen Anne's	0
Saint Mary's	0
Somerset	2
Talbot	0
Washington	0
Wicomico	1
Worcester	1
Total	76

* Note: The number for Montgomery County includes both complaints and technical inquiries as a result of newly enacted County ordinances on indoor smoking that are more restrictive than the CIAA.

Department of Labor, Licensing, and Regulation

The Department continues to work closely with DLLR and its MOSH program, which has responsibility for implementation and enforcement of the CIAA in workplaces not open to the public.

Outcomes

One indication of the impact of the CIAA, as well as other Departmental efforts to reduce tobacco exposure, can be seen in Figure 1, which shows the percentage of public middle and high school youth (under age 18) who responded “0 days” when asked how many days out of the past 7 they were in the same room with someone smoking cigarettes.

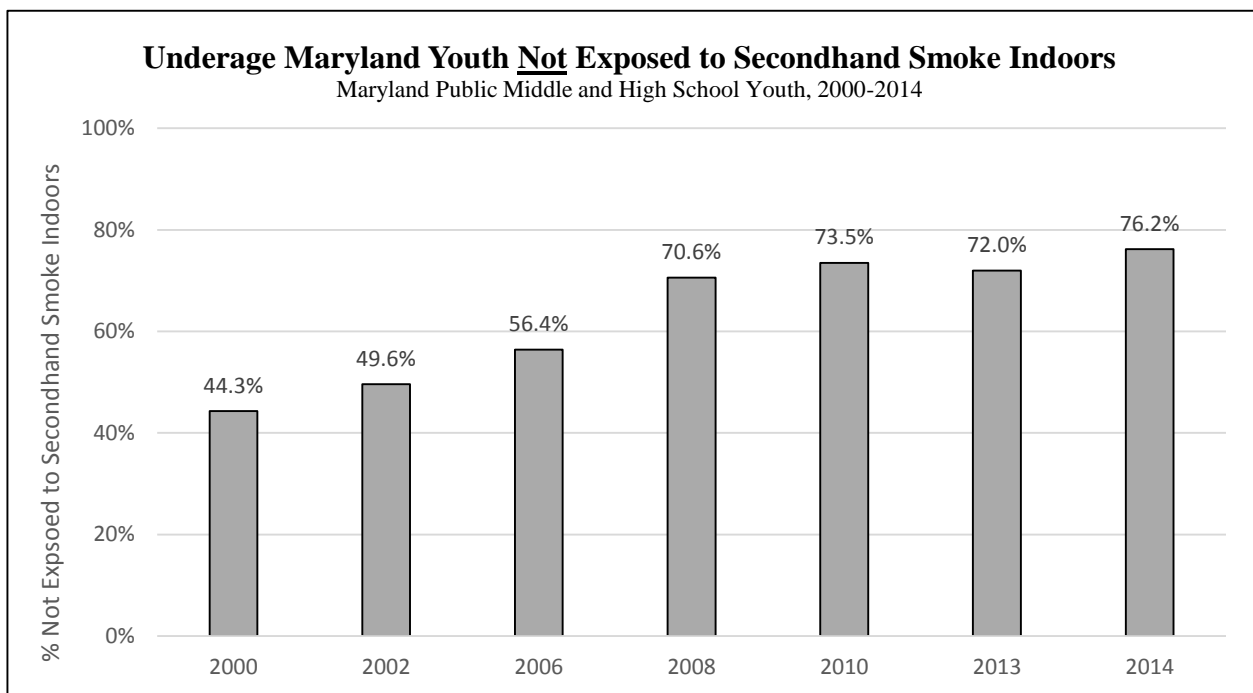


Figure 1. Underage Maryland Youth Reporting No Exposure in the Past Week to Secondhand Smoke Indoors (Source: Maryland Department of Health and Mental Hygiene. Monitoring Changing Tobacco Use Behaviors: 2000-2014, accessed at: <http://phpa.dhmh.maryland.gov/ohpetup/Documents/Legislative%20Report%20May%202016-%20Biennial%20Tobacco%20Study.pdf>).

The effectiveness of the CIAA in workplaces is demonstrated by responses to the Department's 2014 Maryland Healthier Communities Survey (MHCS-2014). The survey asked Maryland residents who were employed for wages in the fall of 2014 about their exposures to tobacco smoke and workplace smoking policies, and found that:

- A majority (78.2%) had not been exposed to secondhand smoke inside or outside the workplace, or in an employer's vehicle during the 7 days preceding the survey;
- Most (95.5%) reported that smoking inside their workplace is never allowed; and
- Most (90.9%) also reported that to their knowledge, no employees had used tobacco at the workplace when they were not supposed to do so.

Conclusion

The Clean Indoor Air Act continues to provide significant benefits to the people of Maryland by preventing exposures to environmental tobacco smoke in indoor areas open to the public. Some challenges remain, including federal action on new nicotine delivery systems and other tobacco products, and persistent ambiguities in interpretation of provisions of the law related to the definition of tobacco retailers. New challenges, such as HUD's proposed rule for smoke-free public housing, are expected to increase questions and requests for assistance to the Department in the coming years.