



STATE OF MARYLAND  
**DHMH**

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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

October 7, 2013

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 - 2013 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 in partnership with Local Health Departments to eliminate environmental tobacco smoke in indoor areas open to the public from September 2012 through August 2013.

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: Marie L. Grant, J.D.  
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**THE MARYLAND CLEAN INDOOR AIR ACT OF 2007  
MARYLAND CODE ANNOTATED,  
HEALTH-GENERAL TITLE 24, SUBTITLE 5  
2013 Annual Report**

Martin O'Malley  
Governor

Anthony G. Brown  
Lieutenant Governor

Joshua M. Sharfstein, MD  
Secretary, Department of Health & Mental Hygiene

**September 2013**



## **INTRODUCTION**

The Clean Indoor Air Act (CIAA), HB 359/Chapter 502 and SB 91/Chapter 501 of the Acts of 2007, 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 CIAA prohibits smoking in indoor areas open to the public except in limited circumstances. The CIAA specifically prohibits smoking in public meeting places, public transportation vehicles, and indoor places of employment. Regulatory authority for the CIAA is vested with the Department of Health and Mental Hygiene (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 the Annotated Code of Maryland, Health-General §24-507(b), this report summarizes the enforcement efforts of the Department, in partnership with local health departments, from September 2012 through August 2013 to eliminate environmental tobacco smoke in indoor areas open to the public.

## **IMPLEMENTATION**

February 1, 2013 marked the fifth anniversary of the enactment of the Maryland Clean Indoor Air Act. Five years later, it is clear that the CIAA has been a success. Maryland businesses have made the transition to smoke-free environments with relatively little effort, and Maryland citizens have the benefits of tobacco-free indoor environments throughout the State.

### **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, the Department operates a toll-free environmental health help line (1-866-703-3266) that is available to anyone with questions or concerns related to the CIAA.

#### *Maryland Tobacco Quitline: 1-800-QUITNOW*

From July 2012 through June 2013, the Maryland Tobacco Quitline received over 29,000 calls with over 12,000 callers registering for cessation services. 29 percent of the callers were Medicaid recipients and 23 percent of the callers were uninsured. 2,046 callers were referred to local health department cessation programs. Additionally, 8,288 residents received nicotine patches or gum shipped directly through the Quitline.

#### *Environmental Health Toll-Free Help Line*

The Department continues to operate a toll-free environmental help line (1-866-703-3266) to assist business owners, employees, news media, elected officials, and the public with implementation of the CIAA. Inquiries and complaints continue to be directed to the Department regarding the scope of the CIAA, and overall the number of complaints has remained steady. There continue to be inquiries relating to the legal requirements to opening a hookah establishment, clarification of the CIAA tobacco retailer exemption definition of “incidental” and its application and enforcement by the Department; and the Department’s policies regarding hookah establishments and their service of food and beverages. The Department also continues

to receive complaints regarding second-hand smoke in residences (particularly apartments and condominiums). Some of these concerns are related to smoking in the common areas of housing, while others are regarding second-hand smoke infiltrating from balconies, sidewalks, or other outdoor areas. More recently, the Department has received a number of inquiries related to the use of electronic cigarettes (e-cigarettes) in public places. Complaints are generally addressed directly by Department staff, either through referral to a local health department or to the Maryland Occupational Safety and Health program. Inquiries about e-cigarettes are not referred, because there is no authority over them in the CIAA.

#### *Coordination with Local Health Departments*

The Department works closely with local health departments on CIAA implementation issues. The main issues that require coordination continue to be related to hookah bars, drifting smoke, and ensuring consistency in enforcement. Local health departments have in most cases been able to enforce the CIAA consistently. As mentioned in previous reports, exceptions include hookah establishments, indoor second-hand smoke, and the application of the tobacco retailer's exemption, which are discussed below.

#### *Coordination with the Department of Labor, Licensing, and Regulation (DLLR)*

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 CIAA in workplaces not open to the public. DHMH and DLLR collaboratively address complaints which have elements of both public and workplace environmental tobacco smoke exposure, and share data related to enforcement.

## **OUTCOMES**

### **Enforcement**

#### *Investigations*

Local health departments were asked to report their enforcement activities devoted to the CIAA (Table 1). While some counties did not record any complaints, many jurisdictions have a significant number of complaints that result in investigations. Table 1 shows that there continues to be a need for active enforcement regarding the CIAA across the State.

#### *Violations*

Between September 1, 2012 and August 31, 2013, the Department was informed of nine letters of reprimand issued by local health departments.

#### *Activities of Maryland Occupational Safety and Health*

From September 1, 2012 through August 31, 2013, MOSH continued to be active in investigating worker-related complaints of smoking in the workplace. MOSH issued 21 letters of reprimand during the same period, of which 21 investigations resulted, and 0 citations were issued, as there were no repeat offenders.

Table 1: Enforcement Activity for the Clean Indoor Air Act by Jurisdiction, 9/1/2012-8/31/2013

County	Number of Complaints	Number of Investigations	Number of Complaints Successfully Resolved
Allegany	3	3	3
Anne Arundel	4	4	4
Baltimore City *	25	25	25
Baltimore	8	8	8
Calvert	1	1	1
Caroline	0	0	N/A
Carroll	1	1	1
Cecil	4	4	4
Charles	0	0	N/A
Dorchester	1	1	1
Frederick	3	3	3
Garrett	2	2	2
Harford	5	5	5
Howard	5	10 (repeat visits)	5
Kent	0	0	N/A
Montgomery	3	3	3
Prince George's	7	7	7
Queen Anne's	1	1	1
Saint Mary's	0	0	N/A
Somerset	0	0	0
Talbot	0	0	0
Washington	0	0	0
Wicomico	0	0	N/A
Worcester	1	1	1
<b>Total:</b>	<b>74</b>	<b>79</b>	<b>74</b>

\*Baltimore City issued 6 violation notices and 2 citations.

## **OUTREACH**

The Department and local health departments have generally found that most businesses are now familiar with the provisions of the CIAA, even without a continued outreach campaign. However, there continue to be concerns about specific provisions that have been the source of most disputes, particularly the definition of eligibility for the tobacco retailer's exemption. This is true for establishments advertising themselves as "hookah bars" and for certain other establishments. The Department continues to respond to periodic inquiries regarding this issue from business owners, local health departments, and private citizens, seeking clarification on the specific definition of a tobacco retailer under the provisions of the CIAA.

## **CHALLENGES AND INITIATIVES**

### **Challenges**

In the 2012 CIAA Annual Report the Department noted that the implementation of the CIAA had been successful across the State as a whole, but some challenges remained such as:

- 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 ongoing changes to federal and international law related to tobacco for the CIAA.

The Department reports updates on the following in this report: hookah bars and the tobacco retailer exemption and measurements of outcomes related to the CIAA.

### *Hookah Bars and the Tobacco Retailer Exemption*

The Department does not collect statistical data exclusively on these establishments under the CIAA since hookah bars are regulated like other establishments. If the business's primary purpose is the retail sale of tobacco and tobacco-related products and the sale of other products is incidental, it is considered to be exempt from the CIAA. If, however, the establishment's sales of other items (such as food or alcohol) is not incidental, then the establishment is subject to all of the provisions of the CIAA and may not allow the use of tobacco products (including "hookah," "narghile," or "shisha") within the establishment. The issue of hookah bars and the tobacco retailer exemption is discussed more fully in the Five Years of Progress: 2008 – 2013 section of this report.

### *Measurement of Outcomes Related to the CIAA – September 2012 – August 2013*

There have been several positive outcomes related to the CIAA over the past year. For example:

- As of July 1, 2013, the University of Maryland Baltimore County (UMBC) joined the list of other Maryland college campuses that are completely smoke-free.

- The Maryland Stadium Authority banned smoking in all areas of Camden Yards, as well as M&T Bank Stadium. Camden Yards' smoking ban went into effect on opening day, 2013.
- The University System of Maryland established campus-wide smoking bans that included "no designated smoking areas."
- Montgomery County approved a smoking ban on all county-owned property.
- Worcester County instituted a number of actions, including making the Worcester County Health Department offices smoke-free, and invited both the Atlantic General Hospital and the Berlin-nursing home to take part in the smoke-free initiative. Worcester County Parks and Recreation Departments also became smoke-free, creating a no tobacco policy in restrooms, spectator and concession areas, and playgrounds. Finally, on October 1, 2013 drifting tobacco smoke in multi-dwelling buildings will be considered a "nuisance" and residents may bring an action to abate.
- 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.

### **Initiatives**

#### *Initiative on Smoke-Free Housing*

The Department's Center for Tobacco Prevention and Control (CTPC), in conjunction with the Center for Chronic Disease Prevention and Control (CCDPC), continues to make progress with smoke-free multi-unit housing efforts through interagency collaboration at the State level, as well as providing support for local health departments and community organizations. In September 2011, the Department was awarded a federal Community Transformation Implementation Grant by the Centers for Disease Control and Prevention (CDC). The grant provides funding to address tobacco free living, physical activity and nutrition initiatives in all but the five largest counties in Maryland. Smoke-free multi-unit housing is a priority issue and key evaluation measure for this grant.

The CTPC and CCDPC have continued working together with the University of Maryland School of Law Legal Resource Center for Tobacco Regulation, Litigation, and Advocacy to leverage and align resources to provide technical assistance to local health departments, organizations, property owners, and residents on the benefits of and ability to establish smoke-free properties. Six regional meetings were held for local health departments between September 2012 and January 2013, providing detailed information regarding smoke-free multi-unit housing. The Legal Resource Center's website, [www.mdsmokefreeapartments.org](http://www.mdsmokefreeapartments.org), continues to be a resource for landlords, property owners and tenants. In December 2012, the Department developed and distributed materials promoting the website to local health departments and property managers.

Through these efforts, local health departments are working closely with property managers and owners in their jurisdictions to both educate and engage them on establishing smoke-free properties. Several properties have established or are working to implement smoke-free policies, which may include smoke-free outdoor common areas, residential units only, all property grounds/units, and/or designated areas only. Major accomplishments to date include:

- The Somerset County Health Department aired smoke-free multi-unit housing television advertisements and posted billboard advertisements from January 2013 through April 2013. The advertisements focused on the dangers of secondhand smoke drift and directed viewers to the [www.mdsmokefreeapartments.org](http://www.mdsmokefreeapartments.org) website.
- The Shelter Group Management Company announced that all of their properties are transitioning to smoke-free as residents renew or sign new leases. Thirty-seven senior and family properties within the following jurisdictions will be smoke-free by 2014: Anne Arundel, Baltimore City, Baltimore County, Dorchester, Harford, Howard, Montgomery, Prince George's, Somerset, Talbot, and Wicomico.
- In November 2012, residents of Pemberton Manor Apartments in Wicomico County moved to make common outdoor areas smoke-free and resident rental leases are being revised accordingly.
- In Cecil County, Elkton Housing Authority's Home for the Elderly is establishing indoor and outdoor smoke-free areas at all three of its locations. Implementation began July 1, 2013 as residents renewed leases.
- Local health departments are leveraging partnerships with county housing authorities, committees, and coalitions to utilize strategies to reduce secondhand smoke exposure in multi-unit housing. Jurisdictions are using national toolkits, such as CDC's Healthy Homes Manual and the United States Department of Housing and Urban Development's smoke-free housing toolkits to support implementation efforts. Additionally, local health departments are promoting tobacco cessation services and resources to housing authority residents and employees to support tenants and staff who may become motivated to quit as a result of the policies. Staff members are participating in health fairs at multi-unit housing complexes and distributing educational materials to housing authorities and departments.

The Department has also been engaged in discussions with the Maryland Department of Housing and Community Development (DHCD) regarding opportunities to promote smoke-free housing in DHCD programs. These efforts have already proved successful. In the most recent draft of its Multifamily Rental Financing Program Guide (the attachment to the Qualified Allocation Plan for the Allocation of Federal Low Income Housing Tax Credits), DHCD has proposed awarding a point to its criteria for Project Durability and Enhancements (Section 5.5.4) for projects that have a "non-smoking policy applicable to all interior space, including units and common areas."

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### **FIVE YEARS OF PROGRESS: 2008 – 2013**

On this fifth anniversary of the implementation of the Clean Indoor Air Act of 2007, there has been significant progress in the State towards the goal of clean indoor air and reduced exposure to environmental tobacco smoke. Most commercial establishments are now smoke-free, and Maryland residents and visitors expect and receive smoke-free environments where they dine, work, and recreate. Some challenges remain:

- **Hookah:** There has been substantial growth in so-called “hookah” establishments claiming exemption to the CIAA as tobacco retailers. Because the Department does not license or regulate hookah establishments it does not track the number of such establishments, but based calls from the public and inquiries from business owners, as well as a cursory review of online advertisements combined with personal observations by volunteers, it appears there has been a significant increase in the number of such establishments throughout the State. The Department is concerned about this apparent increase, because many of these establishments appear to cater to young people, who may believe that hookah is safer and less addictive than cigarettes. However, this is not true. The water pipe does not filter or remove toxicants in the tobacco smoke, which still contains significant carbon monoxide, numerous carcinogens, and nicotine.<sup>1</sup>

The Department believes that some of the establishments claiming exemption under the tobacco retailer provision of the CIAA do not in fact meet the requirements of the exemption, which are (Md. Code Annotated, Health-General Article §24–505):

“(3) A retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership, or other enterprise, in which:

- (i) The primary activity is the retail sale of tobacco products and accessories; and
- (ii) The sale of other products is incidental”.

A review of activities in other States indicates that a number (New York, California, Maine, New Jersey, and Montana) have issued public notice that they will be enforcing the already existing ban on hookah smoking in public places as well as tightening the legal definitions of “smoking” to include the hookah establishments. Because of the proliferation of these establishments, the lack of clarity about whether they all meet the requirements of the tobacco retailers exemption, and the continuing inquiries regarding the precise definition of “incidental”, the Department is considering a range of options to address persistent questions from the public,

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<sup>1</sup> Jacob P 3<sup>rd</sup>, Abu Raddah AH, Dembsey D, Havel C, Peng M, Yu L, Benowitz NL. Comparison of nicotine and carcinogen exposure with water pipe and cigarette smoking. *Cancer Epidemiology Biomarkers and Prevention* 2013 May; 22 (5):765 – 772. Accessed September 19, 2013, at: <http://www.ncbi.nlm.nih.gov.ezproxy.welch.jhmi.edu/pubmed/23462922>.

regulated community, and local health departments regarding the tobacco retailer exemption. Options range from outreach and education aimed at potential hookah users on the actual risks posed by hookah use, to more aggressive enforcement against those establishments where hookah is being offered, to revising the regulations related to tobacco retailers to more clearly define what is and is not considered to be an exemption under the CIAA.

- A second emerging issue concerns e-cigarettes. The use of e-cigarettes in establishments that are now smoke-free under the CIAA leads to confusion among customers and establishment staff. These devices, which are gaining in popularity, dispense an aerosolized nicotine (together with other flavorings and chemicals) that mimics tobacco smoke. The United States Food and Drug Administration is examining the issues associated with e-cigarettes, and the Department is following the issue closely.

In conclusion, while challenges remain, the Clean Indoor Air Act has successfully reduced environmental tobacco smoke exposures and improved the health of all Marylanders.