



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 – Laura Herrera Scott, MD, MPH, Acting Secretary

January 20, 2015

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 - 2014 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 2013 through August 2014.

The overall impact of the Clean Indoor Air Act has been positive in Maryland. Regulated establishments and advocates are 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,

Laura Herrera Scott, M.D., M.P.H.
Acting Secretary

Enclosure

cc: Michelle Spencer, Director, Prevention and Health Promotion Administration
Allison Taylor, Director, Office of Governmental Affairs
Sarah Albert, MSAR #6090



THE MARYLAND CLEAN INDOOR AIR ACT OF 2007
2014 Annual Report
Health-General Article §24-507(b)

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Laura Herrera Scott, MD, MPH
Acting Secretary
Department of Health and Mental Hygiene

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Introduction

In 1964, the Surgeon General's *Report on the Dangers of Smoking Affecting our Health* was published. This landmark document set the stage for much of the work that is done today to protect individuals against the harmful effects of tobacco smoke. Fifty years have passed since the publication of this report, and during this time there has been measured progress toward reducing tobacco use and the disease and death caused by smoking.

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."¹ 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, from September 2013 through August 2014, to eliminate environmental tobacco smoke in indoor areas open to the public.

Implementation and Enforcement Efforts

Today, seven years after its establishment, the CIAA has successfully ensured Maryland businesses and public indoor areas open to the public are smoke-free. However, there are ongoing challenges in implementation of the CIAA, primarily related to electronic cigarettes (e-cigarettes) and enforcement of smoking in venues that are self-identified as tobacco retailers.

Resources for Marylanders

The Department has provided a number of resources to citizens, businesses, and others related to the CIAA. The Maryland Tobacco Quitline (1-800-QUIT-NOW) (Quitline) is available to individuals who wish to quit smoking. Additionally, the Department operates a toll-free Environmental Health Helpline (1-866-703-3266) that is available to anyone with questions or concerns about environmental health or the CIAA.

Maryland Tobacco Quitline: 1-800-QUIT-NOW

For State Fiscal Year (SFY) 2014, the Quitline received over 23,000 calls with over 9,700 callers registering for cessation services. Thirty-seven percent (37%) of the callers were Medicaid participants, and 19% were uninsured. In terms of disposition and services, a total of 852 were referred to additional local health department resources, and a total of 6,248 shipments of nicotine patches and nicotine gum were provided to Maryland residents in SFY 2014 through the Quitline.

¹ Health-General § 24-503, Md. Annotated Code.

Toll-Free Environmental Health Helpline

The Department continues to operate its toll-free Environmental Health Helpline (1-866-703-3266) to assist business owners, employees, news media, elected officials, and the public with implementation of the CIAA. In SFY 2014, individual complaints and inquiries from businesses regarding implementation and the scope of the CIAA were received at the rate of about one per week. The most frequent questions concerned inquiries on how to prevent smoke intrusion from adjoining residential units. These callers included parents with asthmatic children, senior citizens in subsidized housing, and working adults. Other common topics included questions about smoking in company vehicles, smoking in offices, and concerns about people smoking outside of building entrances.

The Department of Labor, Licensing, and Regulation (DLLR)

The Department continues to work closely with DLLR and its Maryland Occupational Safety and Health (MOSH) program, which has responsibility for implementation of the CIAA in workplaces not open to the public. In SFY 2014, MOSH continued to be active in investigating worker-related complaints of smoking in the workplace. MOSH issued 30 letters of reprimand during SFY 2014, resulting in 31 investigations and one citation for a repeat offender (there was no fine associated with this citation).

Local Health Departments

The Department works closely with local health departments on CIAA enforcement issues. These issues include smoke intruding in living and working spaces from outside the regulated space, as well as consistency of enforcement between jurisdictions. New local ordinances and county rules addressing smoking at playgrounds, public parks, beaches, and college campuses have also been enacted in the past year. For example, Charles County updated the Charles County Parks Park Rules to prohibit smoking and all tobacco use on county property and specifically in county parks; Baltimore County Council passed Bill No. 4-14, which prohibits smoking at recreation and parks facilities; and Baltimore City implemented Ordinance 14-212, which prohibits smoking within 50 feet of playgrounds, schoolyards, athletic facilities, and public swimming pools. Additionally, there are concerns about “alternate-smoking establishments” such as hookah lounges for tobacco, and vapor lounges for e-cigarettes. With the emergence of e-cigarettes, which are not addressed by the CIAA, many jurisdictions in Maryland have been proactive in ensuring that not only are communities smoke-free and tobacco-free, but also e-cigarette free. E-cigarettes are discussed in more detail below.

Local health departments reported on the resources they devoted to enforcement of the CIAA from September 1, 2013 through August 31, 2014. Table 1 shows that there continues to be a need for active enforcement of the CIAA across the State. While some jurisdictions did not record any complaints, many jurisdictions had a significant number of complaints that resulted in investigations. Additionally, the Department and local health departments worked closely with several businesses to provide assistance with designing and building facilities that comply with the CIAA, thereby averting potential violations.

Table 1: CIAA Enforcement Activity by Jurisdiction, 9/1/2013-8/31/2014

County	Number of Complaints	Number of Investigations	Number of Complaints Successfully Resolved
Allegany	0	0	0
Anne Arundel	4	4	4
Baltimore City*	15	12	12
Baltimore	3	3	3
Calvert	0	0	0
Caroline	3	3	3
Carroll	0	0	0
Cecil	1	1	1
Charles	0	0	0
Dorchester	0	0	0
Frederick	0	0	0
Garrett	0	0	0
Harford	3	3	3
Howard	3	3	3
Kent	0	0	0
Montgomery	6	6	6
Prince George's	0	0	0
Queen Anne's	0	0	0
Saint Mary's	0	0	0
Somerset	1	1	1
Talbot	0	0	0
Washington	0	0	0
Wicomico	1	1	1
Worcester	2	2	2
Total:	42	39	39

***Baltimore City:** Two complaints received were duplicates and immediately closed; therefore an inspection was not conducted. One complaint received was located in and investigated by Baltimore County.

In general, the Department and local health departments have found that most businesses are now familiar with the provisions of the CIAA, even without a continued outreach campaign. However, continuing concerns about specific provisions of the law that have been the source of most disputes, particularly the definition of eligibility for the tobacco retailer exemption in the CIAA. This exemption requires two elements: (1) the purpose of the business must be primarily related to the sale of tobacco products and accessories; and (2) the sale of other products is incidental.² Establishments advertising themselves as “hookah bars” have stated they are eligible

² Health-General § 24-505, Md. Annotated Code.

for this exemption. According to the Legal Resource Center for Public Health Policy at the University of Maryland Francis King Carey School of Law (the Legal Resource Center), Maryland is home to 43 hookah lounges and 31 vapor lounges. In Baltimore County, there are nine hookah lounges and seven vapor lounges. The Department responds to calls on inquiries relating to hookah and vapor lounges periodically throughout the year.

Electronic Cigarettes

Maryland law, while prohibiting the sale of e-cigarettes to persons less than 18 years of age, does not impose a licensing requirement for vendors that sell e-cigarettes. The Department encourages local jurisdictions to enforce age restrictions related to the sale of e-cigarettes at the local level. In addition, Maryland continues to track developments in policy and the science-base for vapor products. The U.S. Food and Drug Administration (FDA) has issued a proposed rule that would extend the FDA's regulatory authority over additional products, including e-cigarettes, but the exact nature of this proposed policy is unknown at this time. For more information visit the FDA's website on extending tobacco products at <http://www.fda.gov/TobaccoProducts/Labeling/ucm388395.htm>.

Other CIAA-Related Updates

The Department reports the following updates since the last reporting period:

- Queen Anne's County Public School System amended their smoking policy to include the ban of e-cigarette use in Board of Education-owned or leased buildings, vehicles, and grounds in February 2014.
- The Baltimore County Council initiated a study to determine whether hookah lounges should be regulated "in a manner consistent with the public health, safety, and welfare of the citizens of Baltimore County" after numerous complaints were received regarding the lounges. As of May 2014, the County Planning Board began a 6–12 month study of the issue.
- The Hagerstown City Council approved a resolution allowing designated auxiliary police officers to enforce the smoking ban in the city's parks.
- The University of Maryland Medical Center implemented a more stringent tobacco-free policy earlier this year, which includes management of non-compliant patients and visitors.
- As of April 2014, Harford and Howard Counties established smoke-free public parks.
- As of April 1, 2014, four municipalities (Kensington, Montgomery County, Rockville, and Takoma Park) created smoke-free outdoor public transit waiting areas laws.
- As of April 1, 2014, La Plata, Maryland requires all local private clubs to be smoke-free.

- Baltimore County prohibited the use of e-cigarettes in all government buildings and county vehicles on May 18, 2014.
- McCready Foundation and Three Lower Counties Community Services, Inc. site in Somerset County updated their indoor smoke free policy to include the ban of electronic cigarettes as of June 2014.
- As of July 1, 2014, the Maryland Zoo in Baltimore City banned the use of all tobacco products, as well as alternative smoking products or other smoking devices including e-cigarettes, on zoo grounds.
- Cumberland, Maryland, placed smoking restrictions on all public affordable housing.
- Allegany, Garrett and Wicomico County Health Department's prohibits the use of e-cigarette use.
- As of July 1, 2014, the Baltimore County Council voted to curb the hours of operation for hookah and/or vapor lounges (which sell electric cigarettes) to midnight (previously open until 2 AM).
- As of August 2014, Cecil College is a tobacco-free campus.
- As of November 8, 2014, Morgan State University is a smoke-free and e-cigarette-free campus.
- Coppin State University, Cecil College (2 campuses), Harford Community College, and Prince George's Community College (4 campuses) are e-cigarette-free campuses.
- Anne Arundel Medical Center has banned the use of tobacco products (including e-cigarettes) at hospital facilities.

Initiative on Smoke-Free Housing

According to a report recently published by the Centers for Disease Control and Prevention (CDC), prohibiting smoking in all government subsidized housing in the United States, including public housing, would save an estimated \$497 million per year in health care and housing-related costs. The total cost saved comprises about \$310 million in secondhand smoke-related health care, \$134 million in renovation expenses, and \$53 million in smoking-attributable fire losses. The analysis found that prohibiting smoking in public housing either owned or operated by a public housing authority could result in average annual savings of approximately \$497 million. Cost savings range from \$580,000 in Wyoming to nearly \$125 million in New York.³ These findings underscore the potential impact of smoke-free policies for protecting multiunit housing

³ Brian King et al., "National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States," 2 October 2014, the Centers for Disease Control and Prevention, 6 October 2014, <http://www.cdc.gov/pcd/issues/2014/pdf/14_0222.pdf>.

residents, visitors, and employees from this health hazard, as well as generating substantial societal cost savings at the national and state levels.⁴

In February 2014, the Department and the Department of Housing and Community Development (DHCD) jointly sent a letter (Appendix A) to executive directors of public housing authorities across the State, encouraging them “to provide healthier atmospheres for their residents, by eliminating smoking on their properties, including within individual units.” This was a very important step in preventing secondhand smoke from migrating between units in multifamily housing, and helping to stop respiratory illness, heart disease, cancer, and other adverse health effects for those living in neighboring residences.

According to the U.S. Department of Housing and Urban Development, as of January 2014, more than 350 public housing authorities managing hundreds of thousands of units in more than 30 states (including Maryland) have adopted smoke-free policies. The implementation of smoke-free units was suggested in the memorandum, while recognizing that smoking is an extremely addictive activity. Therefore, public housing authorities were encouraged to promote cessation resources that are available through the Quitline when doing outreach to residents. Currently, six public housing authorities have finalized the smoke-free policies: Annapolis, Cumberland, Frederick City, Elkton, Howard County, and Montgomery County. Baltimore City and Prince George’s County requested educational materials from the Legal Resource Center, regarding how to develop smoke-free policies in public housing, including resources on smoking cessation as well as prohibiting smoking in occupied areas, and plan to move forward with implementing the smoke-free initiative. The Legal Resource Center is also working on a statewide survey of rental-property owners, asking what they know about the smoke-free rental program, and what interest they might have in pursuing this program.

Community Transformation Grant – Progress Summary

The Department’s Center for Tobacco Prevention and Control (CTPC), in conjunction with the Department’s Center for Chronic Disease Prevention and Control (CCDPC), continue 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. As part of the Department’s Community Transformation Grant, smoke-free multi-unit housing is a priority issue and key evaluation measure. Local health departments engage housing authorities to reduce secondhand smoke exposure in multi-unit housing and disseminate cessation resources and educational materials to community partners and residents. These partnerships have resulted in over 2,100 new housing units becoming smoke-free to date since the launch of the Community Transformation Grant. Additionally, May 2014 marked the start of a Statewide smoke-free multi-unit housing evaluation that will assess secondhand smoke exposure in multi-unit housing. This evaluation includes data collection of both rental property owners and the residents of those properties. Local health departments and their partners were trained by the Department to ensure consistent data collection. Data analysis will occur in partnership with the University of Maryland College Park, and will inform future Statewide efforts.

⁴ Brian King et al., “National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States,” 2 October 2014, the Centers for Disease Control and Prevention, 6 October 2014, <http://www.cdc.gov/pcd/issues/2014/pdf/14_0222.pdf>.

The CTCP and the CCDPC have worked jointly with the Legal Resource Center to provide technical assistance to local health departments, organizations, property owners, and residents on establishing smoke-free properties, and the benefits of doing so. The Legal Resource Center continues to develop, update, and disseminate resource materials including fact sheets and toolkits on smoke-free housing, and to maintain the website www.mdsmokefreeapartments.org as a resource for landlords, property owners, and residents.

Additionally, through the use of Community Transformation Grant funds, local health departments have held trainings for numerous multi-unit housing communities to provide support and assistance in going smoke-free. Smoke-free signs and educational materials supporting smoke-free initiatives have been provided to numerous locations throughout the State.

Conclusion and Future Challenges

Maryland has made significant progress towards the State 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. However, some challenges remain.

As mentioned in previous annual reports, the number of hookah establishments in Maryland has grown from six in 2007 to more than 40 in 2014. In some cases, concerns have been raised that establishments claiming to be exempt under the CIAA tobacco retailer exemption do not meet the two exemption requirements (under Health-General § 24-505, Md. Annotated Code, the CIAA does not apply to a retail tobacco business in which the primary activity is the retail sale of tobacco products and accessories, and in which the sale of other products is incidental). Local jurisdictions have the option to explore and implement a variety of activities that could reduce the number of hookah establishments in their communities, including stricter enforcement of existing limitations, clarification of CIAA interpretation, assessment and revision of the penalty structure, and the utilization of signage on the harmful effects of hookah use.

A review of activities in other states indicates that several states - New York, California, Maine, New Jersey, and Montana - have issued public notice that they will be enforcing their existing ban on hookah smoking in public places as well as tightening the legal definitions of "smoking" to include hookah establishments. Local Maryland jurisdictions such as Baltimore County have begun to look more closely at the regulation of hookah establishments in Maryland.

In 2012, Maryland banned the sale of e-cigarettes to minors in Maryland (House Bill 1272, Chapter 714 of the Acts of 2012). However, the emerging technology of nicotine delivery products (i.e. e-cigarettes, vapor pens, nicotine gel, etc.) poses important questions for public health officials since these products are not yet regulated by the U.S. Food and Drug Administration. Currently, more than 30 vapor lounges are operating in Maryland. Vapor lounges may be exposing employees to harmful chemicals and these establishments make enforcement of the CIAA through inspections more difficult because the vapor mimics the appearance of smoke from combustible tobacco products.

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

Appendix A: Secretaries' Letter Encouraging Public Housing Authorities to go Smoke-Free



Maryland Department of Housing and Community Development Maryland Department of Health and Mental Hygiene

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor

Raymond A. Skinner, Secretary -- Joshua M. Sharfstein, M.D., Secretary

February 15, 2014

Dear Executive Directors:

The health and safety of those close to us is of paramount importance. In an effort to reduce the public health risks associated with tobacco use and decrease the number of Maryland residents exposed to secondhand tobacco smoke, the Department of Health and Mental Hygiene (DHMH) and the Department of Housing and Community Development (DHCD) are issuing this memorandum **encouraging Public Housing Authorities (PHAs) to provide healthier atmospheres for their residents, by eliminating smoking on their properties, including within individual units.**

DHMH AND DHCD SUPPORT SMOKE-FREE PUBLIC HOUSING

Secondhand smoke can migrate between units in multifamily housing, causing “respiratory illness, heart disease, cancer, and other adverse health effects for those living in neighboring residences.” Even advanced heating, ventilation and air conditioning systems do not remove tobacco smoke toxins from the air. According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) the “only means of effectively eliminating the health risk associated with indoor exposure to secondhand smoke is to ban smoking activity.”

Exposure to secondhand smoke is among the leading causes of preventable death in the United States; responsible for an estimated 50,000 deaths in adult non-smokers each year. Even brief exposure increases the risk for acute respiratory infections, ear infections, and asthma in vulnerable populations, such as children or the elderly. In fact, the 2006 Surgeon General’s report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke* concludes there is **no risk-free level of exposure to secondhand tobacco smoke.**

In addition, smoking is among the leading causes of residential fires in multi-unit buildings and the number one cause of fire deaths in the United States. The U.S. Fire Administration estimates that lighted tobacco products cause 17,500 residential fires, 1,000 civilian deaths and more than \$500 million in direct property damage each year. Therefore, DHMH and DHCD encourage Maryland PHAs to adopt comprehensive smoke-free policies on their properties, including within individual units.

SMOKE-FREE POLICIES ARE LEGAL

There is no constitutional right to smoke. People who smoke are not protected by state or federal Fair Housing laws and the act of smoking is not protected by privacy laws. In fact, **no state or federal law prevents property owners from prohibiting smoking in individual units, on balconies and patios, and even in outdoor common areas.** Courts have recognized this, upholding numerous smoking restrictions across the country, including in Maryland.

The U.S. Department of Housing and Urban Development (HUD) also supports smoke-free policies in public housing. On May 29, 2012 HUD reissued a notice *strongly encouraging* PHAs to adopt comprehensive smoke-free policies in some or all of their public housing units. A copy of that letter is enclosed. To date, more than 350 PHAs (managing hundreds of thousands of units) across at least 30 states, including Maryland, have adopted smoke-free housing policies.

BENEFITS OF SMOKE-FREE HOUSING POLICIES

Smoke-free housing policies benefit residents and PHAs alike. These benefits include:

- ✓ Lower maintenance and repair costsⁱ
- ✓ Reduced risk of property damage due to fire
- ✓ Lower insurance premiums
- ✓ Healthier living environment for all residents, particularly children, the elderly and persons with respiratory diseases
- ✓ Elimination of resident disputes associated with tobacco smoke drift

SMOKE-FREE HOUSING POLICIES IN MARYLAND

The proliferation of smoke-free housing policies is not just a national trend; multiunit housing communities across Maryland have also adopted comprehensive no smoking policies. Hundreds of market-rate rental properties throughout the State now include no smoking policies as an amenity for residents. In addition, several public housing authorities in Maryland recently adopted comprehensive smoke-free policies for some or all of their properties, including:

- ✓ Housing Authority of the City of Annapolis
- ✓ Housing Authority of the City of Cumberland
- ✓ Elkton Housing Authority

IMPLEMENTATION

We encourage you to move forward in implementing smoke-free policies in your PHAs and want to offer you resources to assist you with implementation. The Legal Resource Center is available to provide free technical assistance on this and other tobacco control issues. Specifically, the Legal Resource Center can help draft a smoke-free policy, design implementation and enforcement strategies, discuss legal/policy issues, meet with board members or connect residents to local smoking cessation resources – all at no cost. If interested, please contact the Legal Resource Center at (410) 706-0580 or tobacco@law.umaryland.edu.

CESSATION RESOURCES

When considering implementation of policies, encourage your residents to take advantage of free services provided by DHMH prior to the policy taking effect. Smoking is an extremely addictive behavior; therefore, PHAs that adopt smoke-free policies should provide individuals with information on smoking cessation resources and programs. The Maryland Tobacco Quitline (1-800-QUIT NOW) – is a free telephone-based counseling service for Marylanders ages 13 and older who are ready to quit using tobacco. The Quitline provides comprehensive services, including phone, web, and texting components, and even will mail the nicotine patch or gum directly to the resident's home, all free of charge. The Quitline is also convenient for the smoker to call – live Quit Coaches are available 24 hours a day, seven days a week. More information about the Quitline, and order forms for promotional materials that can be ordered for free by PHAs may be found at www.smokingstopshere.com. Smokers can also consult their doctors or health care providers, or visit www.smokefree.gov and www.becomeanex.org. We have enclosed a brochure with more details about the Quitline.

For more information, please contact:

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Sincerely,



Joshua M. Sharfstein, M.D.
Secretary
**Department of Health and Mental Hygiene
Development**



Raymond A. Skinner
Secretary
Department of Housing and Community

¹ HUD estimates maintenance and turnover costs are 2 to 7 times greater in smoking units versus non-smoking units. U.S. Dep't of Housing and Urban Dev., Office of Healthy Homes and Lead Hazard Control, *Smoke-Free Housing, A Toolkit for Owners/Management Agents of Federally Assisted Public and Multi-Family Housing* (2012), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pdfowners.pdf>.