Pennsylvania Clean Indoor Air Act

2009 Annual Legislative Report

Background

Senate Bill 246, Pennsylvania's Clean Indoor Air Act (CIAA), was passed on June 10, 2008 and became effective on September 11, 2008. This legislation named the Department of Health (DOH) the lead agency for implementation of the CIAA. Eliminating exposure to secondhand smoke (SHS) and promoting cessation are two evidence-based strategies cited by the U.S. Centers for Disease Control and Prevention (CDC) that can contribute to a reduction in disease, disability and death related to tobacco use and SHS exposure. Many reports and studies consistently document reductions in tobacco use following the implementation of smoke-free laws and policies.

The CIAA legislation requires that an Annual Report to the Legislature be submitted by December 1 of each year. The 2009 report presents a full year of CIAA data for the period December 1, 2008 to November 30, 2009.

CIAA Anniversary: Pennsylvania Celebrates One Year Smoke Free

Pennsylvanians are enjoying cleaner, healthier indoor air as they mark the first anniversary of the statewide smoking ban. In the year since the CIAA was passed, workers and hospitality-industry employees statewide, including those in restaurants and some bars, find themselves benefiting from not having to breathe in SHS. By shielding workers and patrons from SHS, the CIAA is expected to save Pennsylvania taxpayers millions of dollars in healthcare costs. Diseases resulting from tobacco cost Pennsylvania $5.2 billion annually in healthcare dollars, according to the Campaign for Tobacco Free Kids, as well as additional millions in lost productivity and other tobacco-related expenses.

From October 2008 to June 2009, the Department's Bureau of Health Statistics partnered with Public Health Management Corporation (PHMC) to conduct a study among bars and restaurants across the state to determine CIAA compliance. A systematic observation strategy examined CIAA requirements (e.g., appropriate signage and the absence of indoor smoking) inside 161 hospitality venues in 19 counties. Six months after the CIAA, the vast majority of study venues were smoke-free as legally required (94.3 percent overall and 92.4 percent completely smoke-free).

Better air quality is another benefit of the CIAA. Another recent study, commissioned by the Pennsylvania Alliance to Control Tobacco (PACT) and completed by PHMC in partnership with Repace Associates, Inc., found 94 percent of indoor public places affected by the Clean Indoor Air Act are smoke-free as required by the law, and that air pollution in Pennsylvania's hospitality venues has dropped by an average of 87 percent. The study investigated air quality indoors in Pennsylvania's hospitality industry before and after the CIAA in eight Pennsylvania locations in Erie, Harrisburg, Mechanicsburg, Montgomery County, Philadelphia, Pittsburgh, Scranton, State College and Wilkes-Barre. Pre-CIAA air pollution levels measured in 26 smoking venues ranged from unhealthy to hazardous. These high air pollution levels from SHS produced an estimated SHS dose for hospitality workers averaging nine times that of average U.S. adults.

Pre-CIAA, the threshold for SHS irritation was exceeded by five to 70 fold, while the adverse odor threshold was exceeded by 20 to 300 times in various venues, discouraging patronage by the nonsmoking majority. Post-CIAA, indoor air pollution levels in smoke-free venues declined by nearly

90 percent. This indicates smoke-free air will save an estimated 52 hospitality workers' lives annually and create healthy indoor air for patrons.

Exceptions

The CIAA has numerous exceptions, five of which require review and approval by DOH. Exceptions include two types of drinking establishments (referred to in the CIAA as Type I drinking establishments and Type II drinking establishments), two types of cigar bars (referred to in the CIAA as Type I cigar bars and Type II cigar bars) and tobacco shops. The total number of bars and bar/restaurants in Pennsylvania eligible for a CIAA exception is 14,365. To date, the DOH has received 3,790 applications for exception from drinking establishments (including hotel liquor license holders), cigar bars and tobacco shops; 3,139 approvals have been issued. During this report period, the DOH received 566 applications for exception and issued 1,412 approvals. See Attachment 1 for more detailed exception information.

The CIAA also provides for a number of exceptions: up to 50 percent of gaming floors of casinos and up to 25 percent of hotel and motel rooms; designated quarters within full service truck stops; tobacco manufacturer cigar exhibitions, non-profit fund raisers (which feature tobacco products) and private clubs, including fire, ambulance and rescue companies. These exceptions are part of the CIAA and do not require review and approval by the DOH.

Under the CIAA, establishments that have been denied an exception have the right to request reconsideration of that decision. DOH staff follow current Departmental policy and work closely with the Office of Legal Counsel to conduct an internal review of requests for reconsideration and make final determinations.

Enforcement

If a public place is subject to licensure by the commonwealth, the CIAA directs the DOH to refer the complaint to the appropriate licensing agency for investigation and enforcement. DOH has coordinated implementation, enforcement and reporting protocols with all of the state agencies involved in the administration of the CIAA. If there is not a state licensing agency with jurisdiction over the potential violator, the complaint is handled by the DOH.

Upon receipt of a first complaint, the DOH notifies the establishment of the complaint, with a copy of the DOH notification of alleged violation letter sent to the appropriate state licensing agency and the DOH regional Primary Contractor. The Primary Contractor provides additional education and resources as a follow-up to the letter.

In addition to the DOH, there are two primary agencies involved in enforcement. The Bureau of Liquor Code Enforcement (BLCE) handles complaints filed against drinking establishments, cigar bars, bar/restaurants, bar/private clubs and bar/bowling alleys. The Pennsylvania Gaming Control Board (PGCB) has responsibility relating to the investigation and enforcement of complaints against licensed casinos.

During this report period, the Department received 3,201 complaints of alleged violations and sent out 1,212 warning/education letters.[1] Of the total number of complaints received, 211 were invalid complaints[2], 20 were related to establishments currently under appeal, which prohibited the DOH

[1] Prior to May 2009, the DOH sent one warning letter per establishment, even if multiple violations were received. To strengthen enforcement, the DOH started sending one warning letter per alleged violation instead in May 2009.

[2] Invalid complaints are those that do not indicate a violation of the CIAA (i.e., complaints against establishments that Have an exception or complaints against outdoor areas).

from sending additional warning letters to those establishments, and 1,387 were either related to casinos, which were referred to the Pennsylvania Gaming Control Board, or duplicate complaints. See Attachment 2 for more detailed information on complaints.

If an establishment not licensed by the BLCE has been determined to be in violation of the CIAA, the DOH will issue an order to show cause which lists the violation(s) and fine(s) to be assessed. During this report period, the DOH issued eight orders to show cause, two of which have been resolved by paying fines of $250 and $500 and six of which are still under investigation.

The Department of Public Welfare (DPW) continues to notify the DOH of licensing action it has taken against personal care homes. Three of DPW's personal care home regulations directly address the CIAA. DPW tracks the number of homes which fail to comply with the CIAA and submits a report to the Department on a quarterly basis. Upon receipt of the report, CIAA staff send warning letters and toolkits to homes on the list to educate them about the CIAA and encourage compliance. After letters are sent, the DOH notifies DPW that warning letters have been sent to the homes. During this report period, the DOH sent warning letters to 57 DPW facilities not in compliance with the CIAA.

Administration

The DOH has developed an online CIAA database that is used to store data and information, run custom reports and enable Division staff to track applications and sanctions and provide reports.

Coordination of Resources

The DOH continues to partner with the following agencies to coordinate and enforce the CIAA.

- Department of Aging
- Department of Agriculture
- Department of General Services
- Department of Public Welfare
- Department of Revenue
- Office of Administration, Bureau of Labor Relations
- Office of General Counsel
- Pennsylvania Gaming Control Board
- Pennsylvania State Police
- Pennsylvania Liquor Control Board (PLCB)
- Bureau of Liquor Code Enforcement (BLCE)

<u>Collaboration with the BLCE and PLCB</u>

Within the past year, the DOH has established valuable working relationships with the BLCE and PLCB. Staff from these offices have been very responsive to CIAA-related needs and have played a vital role in CIAA enforcement. Complaints of violations for establishments with liquor licenses are investigated promptly, and findings, including citation information, are reported back to Department in a timely manner. BLCE has implemented an internal communication protocol that ensures field office staff are immediately updated of new policies or procedures regarding the CIAA.

<u>DOH Regional Primary Contractors</u>

The eight DOH regional Primary Contractors are responsible for providing tobacco use prevention and cessation services throughout the commonwealth, including services relating to the implementation of the CIAA. All Primary Contractors have received CIAA training, provide technical assistance to affected establishments and assist the DOH in the verification of exception requests.

Some types of CIAA exceptions require a site visit to the establishment to check for structural compliance to the CIAA. The regional Primary Contractors are diligent in conducting these on-site reviews and submitting results to the DOH.

Education

The DOH implemented the CIAA in cooperation with PACT with a focus on providing information and tools to all businesses affected by the CIAA. The Business Toolkit, which explains the law, provides guidance on talking to the public and employees and on the placement of signage. It also provides local contacts for additional technical assistance, having been distributed to over 1,000 businesses impacted by the CIAA in the hospitality industry. The DOH continues to distribute toolkits through the Regional Primary Contractors, at conferences and trainings and as attachments to all warning letters. The toll-free CIAA helpline (1-877-835-9535) activated in June 2008 accepts complaints and allows the DOH to respond to requests for information. To date, 3,235 calls to the helpline have been received. The DOH also offers the following CIAA resources on the web site www.health.state.pa.us/tobacco:

- Frequently asked questions
- Guidance for public places and workplaces
- Exception request formats
- Specific guidance related to private clubs
- Reports of violations
- Business toolkit
- Listing by county of establishments that have been approved for an exception

To date, DOH staff have responded to 1,914 web inquiries.

Other key partners with the DOH to provide statewide and local education include the Pennsylvania Restaurant Association, the Pennsylvania Tavern Association, as well as the Commanders of the Pennsylvania Veterans of Foreign Wars and the American Legion. Primary contractors work steadily with local establishments to provide education and business toolkits to promote compliance with the CIAA.

Clean Indoor Air Act Exception Data as of 11/30/09

Exception Type	Number of Applications Received	Number Approved	Number Denied	Number in Appeal Status	Number in Pending Status	Number in Closed Status	Number in Hold Status	Number in Other Status	Number in Request for Information Status	Number in Revoked Status	Number in Site Visit Requested Status
Drinking Establishment Type I	2,871	2,619	120	6	4	78	6	18	5	15	0
Drinking Establishment Type II	715	332	191	53	0	28	6	1	0	2	102
Tobacco Shop, Cigar Bar Type I, Cigar Bar Type II	204	188	2	1	0	10	3	0	0	0	0
Totals	**3,790**	**3,139**	**313**	**60**	**4**	**116**	**15**	**19**	**5**	**17**	**102**

Definitions of Status Types

Pending - An application is in this status if it has been submitted and is under review.

Closed - An application is in this status if an applicant failed to submit missing information within the requested timeframe or is a duplicate application.

Hold - An application is in this status if it is pending but contingent upon a decision to be made by the Department. For example, Department staff often need to consult with the Office of Legal Counsel about the CIAA if it is unclear if an establishment fits into one of the five exception categories.

Other - These are casino applications that are in the process of being reviewed.

Request for Information - An application is in this status if it was submitted without all of the required information. In such cases, Department staff notifies applicants via letter of the missing information and asks them to supply the information to the Department within 10 days.

Revoked - An application in this status has been revoked due to an inactive liquor license as reported by PLCB or not meeting annual renewal criteria (active liquor license status, food sales not exceeding 20%, or structural criteria).

Site Visit Requested - An application is in this status if Department staff requested that an on site visit be conducted by a Regional Primary Contractor to assess the establishment's structural compliance with the CIAA. This status applies only to Drinking Establishment Type II and Cigar Bar Type I applications.

Number of Complaints Reported to the Department of Health
December 1, 2008 to November 30, 2009

County	Total	# Valid	# Invalid
Adams	12	12	0
Allegheny	608	573	35
Armstrong	22	22	0
Beaver	97	84	13
Bedford	11	11	0
Berks	218	211	7
Blair	13	13	0
Bradford	4	2	2
Bucks	52	47	5
Butler	71	69	2
Cambria	15	14	1
Cameron	1	1	0
Carbon	33	31	2
Centre	13	11	2
Chester	26	26	0
Clarion	12	12	0
Clearfield	13	11	2
Clinton	8	7	1
Columbia	17	16	1
Crawford	29	29	0
Cumberland	84	77	7
Dauphin	141	134	7
Delaware	36	35	1
Elk	2	2	0
Erie	153	134	19
Fayette	113	111	2
Forest	2	2	0
Franklin	11	9	2
Fulton	1	1	0
Greene	6	6	0
Huntingdon	3	3	0
Indiana	7	6	1
Jefferson	9	4	5
Juniata	1	1	0
Lackawanna	67	59	8
Lancaster	70	66	4
Lawrence	46	44	2
Lebanon	16	12	4
Lehigh	75	73	2

County	Total	# Valid	# Invalid
Luzerne	170	159	11
Lycoming	48	46	2
McKean	1	1	0
Mercer	61	57	4
Mifflin	2	2	0
Monroe	18	16	2
Montgomery	68	65	3
Montour	4	4	0
Northampton	90	79	11
Northumberland	41	36	5
Perry	10	10	0
Philadelphia	28	28	0
Pike	6	5	1
Potter	5	4	1
Schuylkill	40	36	4
Snyder	21	19	2
Somerset	36	24	12
Sullivan	0	0	0
Susquehanna	6	6	0
Tioga	3	3	0
Union	3	3	0
Venango	4	4	0
Warren	5	5	0
Washington	92	86	6
Wayne	28	23	5
Westmoreland	99	95	4
Wyoming	99	99	0
York	95	94	1
Total	**3201**	**2990**	**211**