

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1217 (Delegates Valderrama and Pena-Melnyk)
Health and Government Operations

Food Service Facilities - Letter Grading

This bill requires the Department of Health and Mental Hygiene (DHMH) to establish and implement a system for grading and classifying inspection results for a food service facility (including a full-service restaurant or a mobile food service facility), using letters to identify and represent a facility's degree of compliance with State and local laws requiring a facility to operate in a sanitary manner to protect public health. DHMH must conduct a second inspection of a food service facility that receives a grade lower than grade "A" upon initial inspection. A food service facility may request a hearing before DHMH to contest a letter grade lower than grade "A" received after a second inspection.

Fiscal Summary

State Effect: DHMH can likely use existing budgeted resources to establish the grading system and develop the required letter grading card and signage. However, staff time is likely diverted temporarily from other activities in the department's food protection program.

Local Effect: Local health department (LHD) expenditures increase significantly, as discussed below, to hire additional staff to conduct follow-up inspections and conduct any requested hearings. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Because food service facilities are already inspected to ensure compliance with sanitation laws, any overall impact to small food service facilities is expected to be minimal. However, any such facilities that are required to post a relatively low letter grade under the bill may experience a meaningful loss of business.

Analysis

Bill Summary: Unless DMHM orders the closing of a food service facility, the department must provide each inspected facility with a letter grade card indicating the facility's inspection grade (the letter "A" representing the highest degree of compliance). A food service facility must conspicuously post a letter grade card so that it is visible to the public and to patrons before the patrons enter the facility. A letter grade card may not be defaced, marred, camouflaged, or hidden from view.

For any food service facility receiving an "A" grade, DHMH must provide a letter grade card at the conclusion of the inspection during which the letter grade is determined. The facility is required to immediately post the letter grade card.

For a food service facility receiving a lower letter grade, DHMH must (1) advise the facility of its inspection grade and the findings on which the grade was based; (2) conduct a subsequent inspection of the food service facility within seven days after the first inspection; and (3) at the conclusion of the second inspection, provide the facility with a letter grade card indicating the inspection grade that the facility received on the inspection. The facility is then required, unless it requests a hearing, to immediately post the letter grade card.

If a facility requests a hearing (to be conducted before DHMH) to contest the letter grade, the facility may defer posting the letter grade card until 72 hours after the hearing – in which case the facility is required to remove any letter grade card that is currently posted and to conspicuously post a sign (provided by DHMH) so that it is visible to the public and to patrons before the patrons enter the food service facility. The sign must inform the public that (1) the facility's inspection results are under review and (2) the results of the inspection may be obtained from DHMH.

Within 72 hours after the hearing, DHMH must re-grade the inspection results, taking into account any subsequent inspection of the facility that results in a finding that the food service facility complies with State and local health laws. If a re-grading changes the inspection grade, DHMH is required to issue the facility a new letter grade card (which the facility must immediately post). If, however, re-grading does not change the inspection grade, the facility is required to immediately post the letter grade card issued after the second inspection.

Current Law: A food establishment (including a food service facility or a food processing plant) must be licensed by DHMH and is subject to inspections. If DHMH finds that a food establishment has violated the Maryland Food, Drug, and Cosmetic Act, or any regulation adopted under the Act, the licensee must be notified of the specific findings and the specific, reasonable date by which the licensee must correct the

violations or deficiencies. If corrections are not made by the specified date, DHMH may suspend or revoke the food establishment's license.

Food establishment licensees that violate any laws regulating the industry are guilty of a misdemeanor and on conviction are subject to fines of up to \$1,000 and/or up to 90 days imprisonment for a first violation. For a second violation, the maximum penalty is a \$2,500 fine and/or one year imprisonment. In addition, violators are subject to civil penalties of up to \$5,000, collected by the District Court for any county, and may be enjoined from continuing the violation.

LHDs license and inspect food service facilities.

Background: A number of states (including Mississippi, North Carolina, and Tennessee) and local jurisdictions (including New York City and Los Angeles County) require the results of restaurant inspections to be graded and publicly posted.

A proposal to require inspection grades for restaurants in Baltimore City is currently pending before the city council.

Local Expenditures: The Maryland Association of County Health Officers (MACHO) estimates that statewide expenditures for local jurisdictions increase by up to \$12 million on an annualized basis under the bill. This estimate assumes that the equivalent of 5 additional full-time sanitarians are needed in smaller LHDs; 7.5 are needed in medium-sized LHDs; and 10 are needed in large LHDs. Further, the estimate assumes that one office clerk is needed in each jurisdiction and that one part-time (50%) sanitarian supervisor is needed in each jurisdiction for every five sanitarians. MACHO's estimate also includes travel costs, supplies, and educational materials.

The Department of Legislative Services (DLS) concurs with MACHO that LHD expenditures increase significantly under the bill for each jurisdiction to hire additional permanent staff to conduct any necessary follow-up inspections and any requested hearings. (It is assumed, for purposes of this estimate, that any hearings are held at the local, rather than State, level.) However, the number of facilities that are likely to require re-inspections and/or request hearings under the bill is unknown. Similarly, the number of follow-up inspections that are already conducted by current LHD staff is unknown. Thus, DLS advises that LHD expenditures, while likely significant, cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Association of Counties, Maryland Association of County Health Officers, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2013
mc/ljm

Analysis by: Jennifer A. Ellick

Direct Inquiries to:
(410) 946-5510
(301) 970-5510