



PUBLIC HEALTH AUTHORITY Fact Sheet

Public Health Authority in Maryland

Background

Nationwide, despite existing and long-standing public health authority, the COVID-19 pandemic and accompanying public health response have triggered significant backlash in state legislatures. Particularly during the 2021 and 2022 legislative sessions, state governing bodies considered an unprecedented number of bills aimed at curbing state and local public health authority. Maryland was and remains no exception to these attacks on public health. During the 2022 legislative session, the Maryland General Assembly considered at least 13 bills attempting to drastically curb public health authority at the state and local levels of the executive branch of government. Many of these bills misconstrued critical definitions, legal concepts, and sources of law while also conflating the roles of the branches of government.

In response, the Network for Public Health Law's Eastern Region identified the need to provide accurate definitions of legal concepts, clarifying information of the roles of certain government officials, including an explanation of the limitations placed on officials acting in a public health capacity. Specifically, this resource includes an explanation of

- public health law generally; and
- the source and breadth of public health authority granted to the County Health Officers and local Boards of Health in Maryland.

This resource may be used to:

- provide legal technical assistance by defining the scope of County Health Officer and local Board of Health authority; and/or
- educate state and local decisionmakers on the meaning of public health authority and the complexities that exist, including the extensive limitations that restrict existing public health authority.



Public Health Law: An Introduction

Public health law focuses on issues involving the government's legal authority and duty "to ensure the conditions for people to be healthy"¹ while also taking into consideration the "individual rights to autonomy, privacy, liberty, property and other legally protected interests."² Through the 10th Amendment, the U.S. Constitution reserves the power to regulate health, safety, and welfare for the common good, known as the police power, to the states.³ Police powers may be used by states to promote laws in the interests of the general welfare and health of the community; this is the quintessential and plenary power to regulate for the public health. Thus, the sources of legal authority to regulate public health comes from state constitutions, local charters, state and local legislation, state regulations, and case law.

Examples of the use of police power to promote public health include laws authorizing: (1) isolation and quarantine; (2) community vaccination; (3) licensure of medical professionals; and (4) response to public health emergencies, such as bioterrorism or infectious disease outbreaks. Though broad, police powers may be limited by fundamental constitutional rights such as the right to liberty and freedom of speech, subject to a balancing of community and individual interests.⁴

In Maryland, local governments possess police power as delegated to them by the state government, including power given to health officers and boards of health. Likewise, power is given to local executives (county executives and mayors) and local legislatures (county councils or commissioners).

Local Government: Structure and Authority


There are three types of counties in Maryland with varying degrees of local public health power. Charter Counties are permitted through Art. XI-A of the Maryland Constitution and Code Home Rule Counties through Art. XI-F; Commission Counties are of statutory creation (Maryland Local Government Article, Titles 9, 12 and 13). The Maryland General Assembly has established the scope of powers for each type of county consistent with the state constitution.

A Charter government separates the executive branch from the legislative and usually consists of a county executive and a county council, authorized to legislate on behalf of the county. Charter counties enjoy expansive public health power shared by the executive and legislative branches. Anne Arundel, Baltimore County, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico operate as charter counties. Maryland Local Government Article, Title 10, Subtitles 2 and 3.

In Code Home Rule local government, counties are afforded broad public health powers, exercised legislatively through their Board of County Commissioners. Allegany, Caroline, Charles, Kent, Queen Anne's, and Worcester operate as Code Home Rule counties. Maryland Local Government Article, Title 10, Subtitle 3.

Lacking a charter or code home rule, Commission Counties function legislatively through a board of county commissioners with limited power only as explicitly authorized by state law. Six counties operate as so-called commissioner counties: St. Mary's, Calvert, Garrett, Carroll, Somerset, and Washington. Maryland Constitution, Article 5, §3.

Baltimore City technically operates as a municipal government because it was chartered prior to the ratification of the Maryland Constitution, though the Constitution speaks to the City's powers (Art XI). The breadth of



public health power for Baltimore City is consistent with that of charter counties. That power is shared by the Mayor, City Council, and the Health Commissioner.

Public Health Authority

County Health Officers: General Powers

There is a Health Officer for each county. Health Officers are nominated by the county and appointed by the Maryland Secretary of Health.⁵ Their salaries are provided for in the state budget.⁶ The governing body for each county, meaning the county council or board of county commissioners, establishes the process by which the county nominates the health officer. In addition to the following qualifications, the Secretary may also promulgate qualifications by rule or regulation. Each health officer must have a master's degree in public health and at least 2 years' work experience in public health OR if no master's degree, the health officer must have 5 years' work experience in public health. The health officer need not be a physician so long as the health officer has a deputy who is a physician.⁷ If the health officer or deputy is a physician, they may practice medicine with the approval of the county's governing body.⁸

The governing body for each county and the Secretary each establish a process by which they evaluate the health officer. At least annually, the health officer must be evaluated in writing by both the Secretary and the county governing body.⁹


A health officer may be removed from office with the concurrence of the governing body of that county and the Secretary. The Secretary and governing body must provide written notice to the health officer that includes:

- the basis of removal;
- documentation supporting the removal;
- and notice of the opportunity to request a hearing with the Secretary within 10 days after the written notification.

If the health officer requests a hearing, it must be held within 30 days after the Secretary sends the notice of removal. The Secretary must make a final decision within 10 days of the hearing. The health officer has an opportunity to appeal to the Circuit Court for their county within 30 days of the Secretary's decision.¹⁰

The health officer sits as the executive officer and secretary of the county board of health. Their general powers and duties are as follows:

- may obtain food or drug samples for analysis;
- shall appoint the staff for the local health department (except in Montgomery county);
- must have an accessible office in the county;
- must enforce the following throughout the county:
 - under the direction of the Secretary, state health laws, policies, rules, and regulations; and
 - under the direction of the county board of health, the rules and regulations that the county board of health adopts;

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- must enforce in each municipality or special taxing district, the county board of health's rules and regulations;
 - must perform any investigation directed by the Secretary of board of health and submit reports to them.
 - may enter into a contract or written agreement to assist in or participate in the delivery of health care services, only with the consent of the governing body and the written approval of the Secretary;
 - may authorize the county health department to retain all collections received from fees authorized under Maryland Health General Article, Title 3 and Title 16, Subtitle 2 as well as the Environment Article, with limited exception.

The Secretary may delegate other duties, powers, and functions to a health officer to administer and enforce health and environment laws.¹¹

Although in many ways, Baltimore City functions like a Charter County, there are significant differences with respect to the Baltimore City Health Department. By Charter, Baltimore City created a Department of Health, led by the Health Commissioner. Baltimore City Charter Article VII, §54. The Health Commissioner is appointed by the Mayor, confirmed by the City Council, and must have at least 5 years of experience in public health. Baltimore City Charter Article VII, §55; Article IV, §6. All aspects of the hiring, removal, employment, and power of the Health Commissioner are established by Baltimore City.

The following chart reflects a thorough examination of Maryland statutes related to the scope and breadth of the powers and duties of local health officers. On many issues, there are clarifying regulations and likely informal guidance or policy that impacts interpretation and implementation of the statutes. We do not include here reference to any regulations or informal policy. Should you have questions about a particular power or duty, please contact the Network for Public Health Law for technical assistance.

County Health Officers: Specific Powers

Action	Law	Comments
Right of Inspection: Private Homes and Businesses	MD HEALTH GEN § 3-307	-Health officers, in the performance of their duties, may enter any place of business. -Health officers, in the performance of their duties, may enter a private home with consent, a warrant, or in the case of exigent circumstances, without either.
Registrar of Vital Records	MD HEALTH GEN § 4-202	-The County Health Officer serves as the registrar of vital records for the county.
Disinterment and reinterment permits	MD HEALTH GEN § 4-215	-The Secretary of Health or a county health officer shall issue the permit after receipt of an application, so long as the requirements at law are met.
Control of Dead Body	MD HEALTH GEN § 5-506	-A county health officer may take control of a dead body if it endangers others and three individuals or a physician have requested the county health officer intervene.
Enforcement of Local Ordinances/Regulations Relating to Massage Establishments	MD HEALTH OCCUP § 6-405	-May enforce provisions of local ordinances/regulations relating to massage establishments
Tobacco Product Underage Sales Violations	MD LOCAL GOVT § 1-1204	-A county health officer or designee may issue a citation to a retailer who sells a tobacco product to a person under age 21.
Maryland Emergency Management Act	MD PUBLIC SAFETY § 14-113	-Each health officer must execute and enforce the orders, rules, and regulations made by the Governor pursuant to the Maryland Emergency Management Act, in the event of a threat or actual occurrence of an enemy attack, act of terrorism, or public health catastrophe.
Permits for Promoters of Outdoor Music Festivals	MD BUS REG § 17-1404 MD BUS REG § 17-1405	-Health officer has the authority to issue a health permit; -Health officer determines the amount of cash bond that must be posted with the



		<p>permit and keeps it until 30 days after the music festival;</p> <ul style="list-style-type: none">-Health officer may use bond to remove trash and repair damage;-Claims may be submitted against the bond and the health officer determines the amount necessary to settle the claim
Emergency Order Reporting for HIV Testing	MD CRIM PROC § 11-110.1	<p>If a judge orders a person to be tested for HIV, the sample may be delivered to a health officer who will also be required to provide the results to a victim/victim's representative and the person from whom the sample was taken.</p>
Notification of Request for HIV Testing	MD CRIM PROC § 11-113	<ul style="list-style-type: none">-After a conviction or finding of prohibited HIV exposure, or granting of probation before judgment, a health officer must be notified by the State's Attorney's office, of the victim's request or victim's representative's request for testing;-Health officer must request the sample for testing within seven days then test the sample;-Health officer must comply with notification and counseling requirements
Certificate of Health (Tuberculosis-free)	MD EDUC § 7-406	<ul style="list-style-type: none">-Health officer may require an employee at a public, private, or parochial school to furnish certification that an employee is free of tuberculosis at a communicable stage
Environment Code: Health Officer's Right to Inspect	MD ENVIR § 10-201	<ul style="list-style-type: none">-Health officer may investigate conditions in the county dangerous to human health;-Health officer must investigate and report on sanitary conditions in schools, places of business, and places of employment;-Health officer shall immediately investigate any complaint, if received by a physician and at least two people claiming to be impacted, any condition dangerous to human health;



		<p>-If health officer finds that a condition is injurious to the life or health of a person, and the place or thing is in a state of nuisance, they may order a person to abate the nuisance within a specified time;</p> <p>-Secretary of the Environment will address questions that arise relating to the jurisdiction or duties of a health officer</p>
Health Officer as Subordinate to Secretary of Environment	MD ENVIR § 1-301	-Secretary of the Environment may delegate duties, powers, and functions to a health officer to administer and enforce environmental laws
Controlled Hazardous Substance Facility Inspections	MD ENVIR § 7-245 MD ENVIR § 7-246	<p>-Secretary of the Environment may delegate to a health officer, its inspection authority for controlled hazardous substance facilities;</p> <p>-If a health officer receives a complaint of a violation, they must inspect the facility immediately and comply with all other enumerated procedures.</p>
Water, Ice, and Sanitary Facilities: Health Officer Duties	MD ENVIR § 9-102	-Health officer shall inspect and report on the sanitary conditions of streams, sources of public water supply, and sewerage facilities
Water Supply Systems, Sewerage Systems, and Refuse Disposal Systems: Inspections	MD ENVIR § 9-221	-Secretary of the Environment may authorize a health officer to investigate refuse disposal systems and enforce any Department of the Environment regulation concerning refuse disposal systems
County Advisory Committees: Staff Services	MD HEALTH GEN § 10-311	-Health officer shall provide staff services for county advisory and intercounty advisory committees
Community Mental Health Services: Duties of Health Officer	MD HEALTH GEN § 10-904	-Health officer is responsible for the mental health services programs in a county and supervising the mental health services and facilities that the county health department supports



Therapeutic Group Home Placement for Children/Adolescents	MD HEALTH GEN § 10-923	- Health officer or Director of the Behavioral Health Administration may approve or deny an application for placement of a child or adolescent in a private therapeutic group home
Evaluation of Group Homes	MD HEALTH GEN § 10-926	-Health officer in conjunction with the Director of the Behavioral Health Administration must provide an annual evaluation of each private therapeutic group home
Local Public Health Tobacco Grants	MD HEALTH GEN § 13-1008 MD HEALTH GEN § 13-1009 MD HEALTH GEN § 13-1010 MD HEALTH GEN § 13-1011 MD HEALTH GEN § 13-1012	-Health officer may apply to the Department of Health for a Local Public Health Department Grant so long as they comply with the requisite duties prior to submission; -Health officer must submit a comprehensive plan to the Department of Health; -Health officers from two or more counties may submit a joint application; -Health officer establishes membership of the Community Health Coalition
Local Public Health Cancer Grant	MD HEALTH GEN § 13-1109 MD HEALTH GEN § 13-1110 MD HEALTH GEN § 13-1111 MD HEALTH GEN § 13-1112	-Health officer may apply to the Department of Health for a Local Public Health Cancer Grant so long as they comply with the requisite duties prior to submission; - Health officer must submit a comprehensive plan to the Department of Health; -Health officers from two or more counties may submit a joint application; - Health officer establishes membership of the Community Health Coalition



Multidisciplinary and Multiagency Maternal Mortality Review Team	MD HEALTH GEN § 13-1207	-If a multidisciplinary and multiagency maternal mortality review team is established in a county, the health officer is responsible for convening the team and may designate its representatives.
Duty of Laboratory to Report Infectious or Contagious Disease	MD HEALTH GEN § 18-205	<p>-Medical laboratories must submit reports of infectious or contagious diseases designated by the Secretary of Health, to health officers;</p> <p>-Health officer shall comply with other notice requirements, including notifying the Secretary of the result;</p> <p>-Health officer may communicate with attending physician treating the patient;</p> <p>-Health officer may inspect medical laboratory</p>
Health Officer Duties Concerning Diseases	MD HEALTH GEN § 18-208 MD HEALTH GEN § 18-209 MD HEALTH GEN § 18-210 MD HEALTH GEN § 18-211 MD HEALTH GEN § 18-212	<p>-A health officer must report immediately to the board of health when they believe that a disease endangers public health. Health officer must investigate the disease and act to prevent its spread, when given approval by the board of health;</p> <p>-A health officer, when notified of an infectious or contagious disease, must act immediately to prevent the spread, provide notice to the Secretary of Health, and cooperate with the Secretary to prevent the spread;</p> <p>-A health officer must provide notice to the Secretary when they know of an unusual disease or mortality. If uncertainty as to contagious, they must notify the Secretary;</p> <p>-A health officer must give written notice to a county board of education if they receive notice of an infectious or contagious disease</p>



		<p>likely to endanger the health of school children;</p> <p>-To prevent the spread of an infectious or contagious disease, a health officer may have any part of a house or article in a house destroyed if it was exposed. The county shall cover this expense and compensate the owner;</p> <p>-A health officer may have an infected person who endangers the public health moved to a suitable place for the reception of the sick in limited circumstances</p>
Statewide System to Control Rabies	<p>MD HEALTH GEN § 18-313 MD HEALTH GEN § 18-316 MD HEALTH GEN § 18-320</p>	<p>-Secretary of Health shall grant authority to the health officer pertaining to the disposition of animals that bite or expose rabies to an individual;</p> <p>-Health officer may issue an order requiring the surrender of an animal with rabies;</p> <p>-Health officer or public health veterinarian may order the location and duration of an animal's quarantine, may order the animal to be monitored for rabies during quarantine, may order the destruction of the animal in limited circumstances</p>
Examination, Care, and Medical Quarantine of Patients with Tuberculosis	<p>MD HEALTH GEN § 18-324</p>	<p>-Secretary of Health or health officer may have an individual examined if they know or have been notified by a physician that a person is suspected of having Tuberculosis;</p> <p>-After examination, the Secretary or health officer may order appropriate medical treatment if that individual endangers or could endanger the public health;</p> <p>-Secretary or health officer may order a medical quarantine if the person doesn't comply with treatment;</p> <p>-Secretary or health officer may not restrict the right of the person to select the treatment method if they rely on prayer for</p>



		healing and comply with the other laws relating to sanitation and quarantine
Notice of Positive HIV Result	MD HEALTH GEN § 18-337	-When a health officer is notified that a person with HIV won't notify sexual partners or people whom they've shared needles with, the health officer shall enforce provisions §§ 18-208 through 18-213.1 of Health General; -Health officer shall refer the infected person and sexual partners and needle-sharers for appropriate services
Investigation of Actual or Potential Exposure to Deadly Agents	MD HEALTH GEN § 18-905	-In investigating actual or potential exposures to deadly agents, the Secretary of Health may coordinate efforts with the health officer;
Group Home Inspections	MD HEALTH GEN § 21-323	-Health officer shall inspect group homes intended or no more than 14 residents
Investigation of Suspected Nuisance	MD HEALTH GEN § 20-302 MD HEALTH GEN § 20-305 MD HEALTH GEN § 20-306 MD HEALTH GEN § 20-308	-The Secretary of Health or health officer may investigate a suspected nuisance and devise means for the control of the nuisance; -Health officer may issue a notice to abate the nuisance and take action for failure to comply
Bed and Breakfast Inspections	MD HEALTH GEN § 21-323.1	-Health officer shall inspect each bed and breakfast establishment that intends to serve hot meals to renters for compliance with food safety and contamination regulations
Sale of Tobacco Products to Underage Individuals	MD HEALTH GEN § 24-305 MD HEALTH GEN § 24-307	-Health officer or designee may issue citations to retailers who sell, distribute, or offer to sell tobacco products to underage individuals



Opioid-Associated Disease Prevention and Outreach Program	MD HEALTH GEN § 24-902 MD HEALTH GEN § 24-903 MD HEALTH GEN § 24-905	-A local health department and health officer will authorize the establishment of these programs upon application; -Procedures, plans, and protocols must be approved by the health officer; -The Department of Health shall consult with the health officers when issuing regulations
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Boards of Health: General Powers

County boards of health are creatures of state law and are required to exercise the duties imposed by law. Each county board of health may adopt and enforce rules and regulations on any nuisance or cause of disease in the county. The board is also permitted to set fees or charge for services in connection with their rules or regulations. If the fee or charge is provided at least in part with state or federal funds administered by the Maryland Department of Health, it must be approved by the Secretary of Health.¹²

County boards of health are required to meet twice a year in addition to all other times the board considers necessary, coordinate its activities with the Department, and report to the Maryland Department of Health on sanitary conditions in the county when the board finds it necessary and important to do so.¹³

In a Charter and Code Home Rule Counties, the governing body is ex officio the board of health, unless the county has passed legislation altering the composition of the board.¹⁴ By default, the County Council and the County Executive comprise the board of health in a Charter County. In Code Home Rule counties, the Board of County Commissioners is the governing body that by default serves as the board of health. In Commission Counties, the Board of County Commissioners is the ex officio board of health for the county; these counties lack power to alter the composition of their boards of health. In all counties, the health officer is the executive officer and secretary of the board of health.¹⁵

Baltimore City does not have a board of health or an equivalent entity due to its governmental structure. Municipalities may appoint a board of health and establish its powers and duties consistent with this grant of power. MD Code, Local Government, § 5-209.

Specific Powers

Action	Law	Comments
Radiation Rules/Ordinances/Regulations	MD ENVIR § 8-107	-May only adopt rules, ordinances, or regulations consistent with the State's Environment Code
Well Inspection Program	MD ENVIR § 9-1305 MD ENVIR § 9-1306 MD ENVIR, § 9-1307	-State Department of the Environment may delegate to a County Board of Health, the authority to implement a well inspection program, which includes well drilling permit fee
Health Officer Approval to Investigate and Act to Prevent Spread of Disease	MD Code, Health - General, § 18-208	-A health officer must obtain board of health approval to investigate and act to prevent the spread of disease

This document was developed by Brooke Torton, Senior Staff Attorney at the Network for Public Health Law's Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

January 2024

SUPPORTERS

Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.



Robert Wood Johnson Foundation

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- ³ CDC Public Health Law Program [Internet]. Atlanta: Public Health 101. [cited 2012 Dec. 1]. Available from: <http://www.cdc.gov/php/docs/PHL101/PHL101-Unit%201%20-%2016Jan09-Secure.pdf>.
- ⁴ 8 Gostin LO. Public Health Law: Power, Duty, Restraint. 2nd ed. Berkeley, CA: University of California Press; 2008: 141.
- ⁵ MD Code, Health - General, § 3-302
- ⁶ MD Code, Health - General, § 3-304
- ⁷ MD Code, Health - General, § 3-302
- ⁸ MD Code, Health - General, § 3-303
- ⁹ MD Code, Health - General, § 3-305
- ¹⁰ MD Code, Health - General, § 3-302
- ¹¹ MD Code, Health - General, § 3-306
- ¹² MD Code, Health-General, §3-202
- ¹³ MD Code, Health-General, §3-202
- ¹⁴ MD Code, Health-General, §3-201 and MD Code, Local Government, §10-327
- ¹⁵ MD Code, Health-General, §3-306