

Retail Food Inspection and Grading Case Study: Louisville, Kentucky



This case study describes Louisville Metro Public Health and Wellness's (LMPHW's) ABC Placards system. The study is based on interviews NACCHO conducted with representatives from LMPHW's Environmental Health and Emergency Preparedness Division and a member of the Louisville food industry.

Background

LMPHW serves an estimated population of 1.3 million and includes all of Jefferson County, which covers 399 square miles. At the time of the 2014 Census, the Jefferson County population was 73.4% White, 21.5% African American, 2.5% Asian, 0.2% American Indian, 0.1% Pacific Islander, and 2.2% of two or more races. Of the total population, 4.8% were Hispanic or Latino of any race.¹

LMPHW's Environmental Health and Emergency Preparedness Division includes the following programs:

- Food Safety and Protection;
- Swimming Pools;
- Tattoos and Body Art;
- Lifeguard and Pool Attendants;
- Mosquito Control;
- Hazardous Materials;
- Wastewater Management and Engineering (Private Sewage Systems);
- Childhood Lead Poisoning Prevention;
- Indoor Air Quality;
- Rabies Control;
- Emergency and Hospital Preparedness;
- Syndromic Surveillance;
- Medical Needs Registry; and
- Cities Readiness Initiative.

The Food Safety and Protection Program team ensures the safety of residents by educating regulated establishments on the

nuances of the 2005 Food and Drug Administration (FDA) Food Code and mandating compliance with the regulation. Acting as the subject matter experts on food safety throughout the community, staff from the Food Safety and Protection Program provide educational materials and courses, in-service trainings, routine inspections, and informational presentations to ensure Louisville's permitted food service establishments follow safe and sanitary food handling practices. LMPHW regulates food service establishments, temporary food service operations, restricted concessions, retail food establishments, mobile food units, and farmer's market operations. The health department currently bases its retail food regulations on the 2005 FDA Food Code and derives its regulatory authority from the *Kentucky Revised Statute 217.005–217.992 Kentucky Food Drug and Cosmetic Act* and the *902 Kentucky Administrative Regulations 45:005 Kentucky Food Establishment Act and State Retail Food Code*.

There are 3,985 state-permitted retail establishments that operate within the Louisville metropolitan area. The Food Safety and Protection Program divides the area into 12 inspection areas containing approximately 330 retail food establishments per area. Some areas are larger than other in terms of square miles. Because of the increased travel time in larger areas, inspectors may inspect fewer establishments per day compared to inspectors assigned to smaller areas.

LMPHW uses a risk-based approach, based on the 2005 FDA Food Code Annex 5 to determine the number of routine inspections a licensed retail food facility should receive.² LMPHW inspects retail food establishments that prepare food every six months and inspects facilities that sell only pre-packaged food

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once a year. The health department inspects restricted food concessions, such as stands that sell only “Time and Temperature Control for Safety” foods, once a year. Depending on a facility’s inspection history, LMPHW may increase the frequency of routine inspections.

The Food Safety and Protection Program employs approximately 14 full-time employees (FTEs). When fully staffed, 17 FTE inspectors conduct routine inspections of licensed retail food facilities, special events, vendors, and temporary food events. On average, one FTE inspector is responsible for 290 licensed retail food facilities. Each FTE conducts approximately 543 total inspections of licensed retail food facilities per year. Inspectors are also responsible for establishments with night, weekend, and special hours such as clubs, bars, and concession stands.

The Louisville metropolitan area is governed by a city council, the Louisville Metro Council. In January 2003, the council was established upon the merger of the former City of Louisville with Jefferson County. The Metro Council is made up of 26 seats and has the power to enact ordinances, review and appropriate budgets, adopt budget ordinances, levy taxes, establish standing and temporary committees, and make independent audits and investigations.³ Internally, LMPHW is overseen by the Louisville Board of Health (BOH). The BOH “acts as an independent voice to promote and protect equitable physical, mental, and environmental health in the Louisville community through advocacy, education, regulation, and collaboration with public and private entities.”⁴ The BOH consists of eight members and five ex-officio members.

Nature of LMPHW’s Scoring and Grading Policy

Key Elements of Policy

The Louisville & Jefferson County Board of Health Sanitary Code, Chapter 400 – Food Service Inspection Results Placard requires the health inspector to issue an inspection results placard at the time of each retail food establishment inspection. The placard, approximately 8.5 inches by 11 inches in size, displays the name and address of the food service establishment and contains the summary results of the most recent inspection report and the rating score given to the establishment. The code requires that the food service establishment post the placard inside of the establishment in a conspicuous location. It is against the regulation to move, remove, alter, deface, or conceal from the public view the placard.⁵

The LMPHW uses letter grades and color graphics to communicate the results of an inspection. The retail food establishment (facility) scores include the following:

- “A” placard – Green: An A placard indicates that the facility acknowledges safe food handling practices and meets the

requirements of The Kentucky State Food Code. The A placard shall remain posted until the next routine inspection. This placard signifies that no critical violations were cited during the facility’s most recent inspection and that the facility received a score of 85–100% on its most recent inspection.

- “B” placard – Blue: A B placard indicates that the facility has not shown due regard for public health. The B placard shall remain posted until the facility passes their next regular inspection. This placard indicates one or more of the following:

The facility has failed two consecutive inspections prior to passing the most recent follow-up; in order to pass the follow-up inspection, there must be no critical violations observed during the inspection. A facility that fails two consecutive regular inspections will be under administrative review.

The facility failed a follow-up inspection; in order to pass the follow-up inspection, there must be no critical violations observed during the inspection.

The facility was recently closed due to imminent public health violations, then re-inspected and opened after passing a follow-up inspection. In order to pass the follow-up inspection, there must be no critical violations observed during the inspection.

- “C” placard – Red: A C placard indicates that a food service facility has failed to meet minimum requirements of The Kentucky State Food Code upon its most recent inspection. This includes an inspection during which one or more critical violations are observed. The C placard shall be placed for a minimum of seven days and not more than 10 days. A follow-up inspection must be conducted and the applicable placard posted.⁶

The department uses the Kentucky State Food Code and the state inspection form. The state inspection form assigns point values for each violation. Kentucky uses the 2005 FDA Food Code to determine which violations are critical or non-critical. Non-critical violations are assigned one or two points and critical violations are assigned three to five points, with the increasing score indicating the severity of the violation. Violations that are corrected onsite are identified as corrected on the inspection form, however, points for the violation are deducted and factored into the scoring

Policy Enforcement

LMPHW requires facilities to pay an annual state permit fee, which starts at \$60 and may increase depending on the number of seats available at the facility. The routine inspection is one of several items that is covered under the state fee. There is

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no extra fee for re-inspections. The department does not issue tickets or civil penalties to retail food facilities when violations are observed. Though there are no monetary penalties associated with violations, the Kentucky state regulation allows LMPHW to suspend or revoke a permit and issue a daily fine to repeat offenders if permitted by the court. In lieu of these measures, the department prefers to hold administrative conferences with retail food facilities. Administrative conferences are scheduled for the following reasons:

- Facility has failed two consecutive regular inspections;
- Facility is closed due to an imminent health hazard;
- Facility has failed to comply with Certified Food Manager Ordinance;
- Facility has failed to comply with Chapter 118 placard ordinance;
- Facility has received a regular inspection score of a 69 or below;
- Facility has failed to comply with enforcement documents; and
- Facility has failed follow-up inspection.

The conferences are held before conducting a follow-up inspection for a failed regular inspection.⁷ The number of administrative conferences conducted varies yearly. At the time of the interview, LMPHW had not evaluated the relationship between the scoring system and the number of administrative conferences it conducted.

LMPHW will close a facility when an imminent health risk is found or if a facility's inspection score is 59 or below. Other enforcement policies include requiring any facility that moves, removes, alter, defaces, or conceals the placard from public view to post the placard for an additional 10. LMPHW also requires a facility that is closed for imminent health violations, regardless of the numerical score, to post a B placard after passing the follow-up inspection. The B placard must be displayed until the next routine inspection. The department also requires mobile food service establishments to provide it with an operational schedule for the 10 days following the date of failure, if they fail a regular inspection or a follow-up inspection.

Re-Scoring and Appeal Process

Food facility operators can request a re-inspection by submitting a written request to the department.

Operators can also appeal inspection findings if they disagree with the results of the final inspection summary report. Operators must submit a written request for appeal within two weeks from the date of the inspection. The appeal submission must include the violations that were recorded, their corrective plan of action, and a brief narrative explaining why the facility should receive a new inspection. After the appeal request is received, the department evaluates the facility's inspection history, critical violations, food manager/food safety certifications, corrective plan of action submitted by the facility, and inspector testimony.

LMPHW estimates that it receives less than one appeal request per month. Operators usually only appeal if they receive a "B" grade, which requires the operator to post the placard for six months.

Communication of Food Inspection Summary to the Public

Inspection summary reports are available to the general public through several different venues. These venues include LMPHW's website,⁸ by submitting an open records request to the department by e-mail or phone, at the establishment's entry point and drive-thru windows, and through the mobile application Yelp (<http://www.yelp.com>). The collaboration with Yelp started in 2013; LMPHW gives the company access to their inspection data table. On Yelp, users are able to see the violations that were cited, which is not provided on the department's website. LMPHW staff noted that partnering with Yelp has been beneficial because the open sharing of data provides consumers with more information.

Policy Formation & Implementation

The original placard system was implemented in 1996, but the catalyst was not known to the interviewees. The original system used a word-based placarding system that stated that the facility exceeded standards. Louisville's current scoring and grading ordinance using letter grades was first implemented in 2002.

The ordinance had to be approved first internally by LMPHW's Board of Health and then through both the county and city commissioners because the merger of the governments had yet to occur. Once the merger took place, the ordinance had to be re-approved by the Metro Council.

In 2013, LMPHW required mobile food units to receive and post letter grades due to the increasing growth of units in the jurisdiction. The department had already been discussing a process to inspect mobile food units when the units first started to arrive. When negative media attention spotlighted the issue, the local food truck associations lobbied to have mobile food units receive letter grades. The willingness and support of the local food trucks to have their units inspected and included in the grading process has facilitated smooth implementation of the grading system for mobile food units.

LMPHW was the first local health department (LHD) in the state to use the letter grade system. Since implementing the system, other locals in the state have implemented their own version of the letter grade system. LMPHW also researched the use of the letter grade system in other jurisdictions such as South Carolina and Los Angeles.

To implement the system and educate their retail food inspectors, LMPHW involved their inspectors in the process of shaping and formalizing the letter grade system. The department does not have a formal training program for inspectors on the scoring and grading system. However, the department's quality assurance process identifies any inspectors who have issues implementing the system. All health inspectors are required to attend several trainings a year to ensure continued education on conducting inspections. The department also provides trainings such as Hazard Analysis and Critical Control Point (HACCP) classes or asks the FDA to provide trainings on topics such as risk-based inspections. At the time of the interview, LMPHW was in the process of standardizing its inspectors at approximately

two inspectors per month and providing additional standardizing procedures with standardized staff on a yearly basis.

Barriers and Facilitators in Implementing the System

LMPHW does not have information about barriers and facilitators when the system was first implemented. However, the biggest challenge that LMPHW faces now is staff buy-in. The interviewee noted that the diverse personalities of their inspectors can pose challenges for gaining staff support of the system. Inspectors who prefer to avoid conflict may find it more difficult than other inspectors to issue a "B" or "C" placard to facilities. LMPHW refers to the letter grade policy as a living document. If program leaders find that an element of the policy creates unintended consequences, they will make the appropriate changes. The LMPHW representative stated that the current letter grade policy needs some modifications, which may assist with more staff buy-in. At the time of the interview, the modifications that LMPHW intend to make were not official so they could not be shared publicly. However, the interviewee believed that modifying the system with staff input will promote ownership of the system, continued enforcement, and buy-in.

Another challenge that LMPHW faces is implementing the twice-per-year unannounced inspections of mobile units. This is a challenge because most mobile units do not operate year round. A follow-up inspection is often difficult because their operating locations are generally unknown and constantly change.

Acceptance of the system is facilitated by the current political climate in the Louisville Metro government, which supports transparency. The administration has been supportive of anything that provides information to the public.

Controversial Policy Elements

According to LMPHW staff, the letter grade system was accepted overall by industry members and the current letter grade system is understood and executed by each of their inspectors. However, the system is controversial with a small number of health inspectors who may find it stressful to post the letter grades in highly visible areas of the facilities. The LMPHW representative believed that these inspectors were outliers and did not reflect the overall sentiments of their staff.

Additional Resources, Technical Assistance, or Guidance to Implement Policy

The initial implementation of the scoring and grading system required extra time and resources to conduct educational outreach to food facility operators. To educate industry members on the system, LMPHW disseminated fact sheets to operators during inspections, through mailings, and on the department's website. The department also had to account for placard printing costs and costs to improve its IT system to enable inspections



to be uploaded to the public website daily. The department lowered the cost and expedited the process of printing placards by switching to in-house printing services. LMPHW educated the public on the new letter grade system through media releases and interviews.

Policy Impact and Evaluation

Policy Impact on Nature of Inspections

The LMPHW representative believed that the scoring and grading system impacts the nature of inspections and influences inspectors. For example, some inspectors may avoid confrontation with the operator and feel pressured to mark a critical violation as non-critical if the overall facility is in a good shape because one critical violation can result in a “C” grade. The department encourages good communication between inspectors and operators and aids inspectors in assigning the deserved grade to the facilities. However, there are cases in which operators will not be happy with any inspector regardless of the type of scoring and grading system. LMPHW is currently working to increase the number of staff that are standardized. All Louisville Metro government employees are required to attend ethics trainings but such trainings are not specific to the scoring and grading system. In addition professional conferences attended by LMPHW staff often address conflict resolution.

The industry representative stated that some facility operators and managers may have an adversarial relationship with health inspectors due to the lack of mutual understanding. The industry representative was in favor of training/educational inspections where industry and health inspectors are partners and can learn from each other. In addition, the industry representative favored inspections that would focus on critical risk factors and would not be punitive unless facilities committed repeated violations or committed violations that posed an imminent health risk. However, the industry representative believed that the current grading system does not lend itself to operator education because it increases stress levels. The representative noted that facility operators feel that they will lose customers or get fired if they do not receive an “A” grade.

Policy Impact on Information Sharing with Consumers

According to LMPHW, information sharing with consumers about inspection results and the inspection process has evolved throughout the years. In the beginning, the department did not share information. It now shares information through print media (open records requests), posting of grade placards, online posting of inspection scores, mobile applications, and the use of social media (Yelp). The LMPHW representative believed that the department would continue to share information because transparency in their inspection process and results is a key component of their program.

Media Involvement and Impact

With the implementation of the letter grade system, LMPHW has received media inquiries regarding inspection reports and grades for failed facilities. A local newspaper runs reports of failed inspections quarterly and another newspaper created an online database of all facility grades that the public can view to obtain more information on violations. The information on the media’s website contains more information about failed inspections than LMPHW’s website. According to the industry representative, they have not seen an impact on their business from the addition of Louisville’s grades to Yelp.

The industry representative reported seeing little media coverage of the grading system. The most prominent media coverage on the grading system in recent years was focused on requiring food trucks to post the grade placards. The industry representative thought that the lack of media coverage about the grades was because the city is a tourist and food destination. Therefore, any bad press about the restaurants seems to be discouraged.

Impact of the Food Inspection Scoring and Grading System on Food Safety

LMPHW plans to start collecting and analyzing data to determine whether the scoring and grading system has impacted food safety in the Louisville metropolitan area. The LMPHW representative believed that the system positively impacts food safety because the majority of the operators strive to earn an “A” grade. The representative hoped in the process of earning the “A,” operators are eliminating foodborne illness risk factors.

In the first half of 2015, 2,713 facilities had earned “A’s”, 19 had earned “B’s”, and 143 had earned “C’s.” LMPHW has not conducted a thorough evaluation of the distribution of grades throughout the years. However, a cursory review of the data showed that the distribution of grades was consistent from year





to year. The typical failure rate ranged from five to six percent. In the last three to five years, LMPHW increased on-site training for facilities that have a failing history and increased their education efforts. LMPHW committed to training industry staff about the grading system to help operators achieve compliance. Prior to these trainings, the failure rate was around eight percent. Its training program emphasizes the need for both education and regulatory enforcement.

The industry representative believed that because the grading system has been in place for such a long time people do not pay much attention to the posted grades anymore. In addition, the industry representative believed that it is rare for facilities to receive anything less than an “A” grade. The representative did not think that the system is necessarily beneficial for the industry because a restaurant that does a good job in regards to food safety and a restaurant that may be performing poorly can both receive an “A.”

However, the industry representative did believe that LMPHW is doing its job well because the representative had not seen or heard of any major outbreaks of foodborne illness in Louisville. The industry representative shared that personally, he or she will dine at an “A” facility but not at a “C” facility. Therefore, the grading system may somewhat affect consumer behavior and food safety.

Impacts of System on Consumer, Owner, and Inspector Behavior

Currently, the LMPHW only has anecdotal information on how the policy has impacted consumer behavior. The department representative hoped that the letter grade system impacts consumers because the point of changing the system to letter grades was to provide consumers with clearer and more information, including results of the facility’s previous inspections. LMPHW has heard from numerous community members that they would not eat a facility that does not have an “A” posted. In addition, Groupon, a website that offers discounts

to local restaurants (<http://www.groupon.com>), provides refunds to consumers who bought deals for restaurants with a “B” or “C” grade, without any questions asked.

As discussed previously, the LMPHW representative believed the system may impact the nature of inspections by putting stress on the inspectors. However, the interviewee believed that inspectors will not ignore a risk factor during inspections. LMPHW trains inspectors to conduct a risk-based inspection and ensure that a risk factor does not exist by the time they leave the facility. For example, if an inspector finds a personal drink without a lid in the kitchen but it does not pose a problem, he or she is likely to mark the violation as a non-critical violation, “personal items improperly stored,” and ask the operator to talk to their staff about personal drinks in the kitchen. However, if the inspector finds an uncovered drink next to a cutting board or food items in the prep area, the inspector will likely mark that as a critical violation. Therefore, the pressure is on the inspector to look not only for risk factors but also to evaluate each violation and how it should be marked.

Based on personal experience with their restaurants in the city of Louisville, the industry representative stated that their restaurants receive “A’s” and do a good deal of business. In addition, the representative reported having seen people bypass restaurants that have received a “B” grade. However, it is difficult to prove if the grading system impacts consumer behavior without the appropriate data.

Policy Evaluation and Revision

The process of evaluating and revising the system includes discussions with an unofficial group of advisors. The members have changed throughout the year but the core members include LMPHW’s Board of Health, the Metro Council, select industry members, and the Louisville Branch of the Kentucky Restaurant Association. Other groups that have been involved include the Louisville Originals, who represent non-chain retail food facilities, and the local food truck association.

LMPHW has revised its placard system several times since it was first implemented. One revision to their system was implemented in 2002 and involved modifying the word-based placard to letter grades. The word-based placard displayed the score and described the critical violations found during the inspection and stated whether critical violations had been corrected. The change to using letter grades was implemented because the Director of Health at the time wanted a system that the public would easily recognize and understand.

Another revision that LMPHW made was to change the system to align with foodborne illness risk factors and the type of violations found, instead of relying on a numerical score. Prior to this revision, the scores of 93 and above resulted in an "A," 85–92 resulted in a "B," and anything below 85 resulted in a "C." Any uncorrected critical violations automatically earned a facility a "B" grade. The old system allowed a facility to receive a "B" if they were cited for a few non-critical risk factors, while the current system categorizes a facility as a "C" if they were found to commit too many non-critical violations. The current "B" grade now shows that the facility was administratively reviewed and reflects how the facility has performed over time rather than just showing the public a snapshot of how the facility performed. This is important because the department wants to inform the consumer if a facility has repeatedly failed inspections. In addition, LMPHW also revised information that was displayed on the placard to include the present grade and the two previous grades the facility received.

LMPHW is currently discussing how to revise the system again. On the whole, they believe that with a few modifications to the system, they would recommend it to other jurisdictions. Revisions to the system are still being discussed and include changes that need to be made to their data collection methods and the state inspection form as they try to conform to the FDA Voluntary National Retail Food Regulatory Program Standards (Retail Program Standards).

Guidance on Forming and Implementing Scoring, Grading, or Placarding System

National guidance on forming and implementing a scoring and grading system could influence LMPHW to adopt a different system. LMPHW staff have discussed their system with other jurisdictions and are looking into updating their system to be more science-based. LMPHW staff stated that the FDA Retail Program Standards has influenced them on many levels even though they have not yet worked on all nine standards. The standards have helped them evaluate their practices related to food scoring and grading and inspections. The standards also impacted their decision to move to an electronic risk-based inspection form based on HACCP principles. They expect this move to be completed by the end of the 2016 fiscal year.

The industry representative stated that national standardized guidance on scoring and grading would be very beneficial as long as every health jurisdiction adopts the most current FDA Food Code.

Lessons Learned and Recommendations for Other Health Departments

From experience, the LMPHW recommends LHDs interested in forming and implementing a scoring and grading system consider basing the system on the top five foodborne risk factors. LMPHW also recommends gaining support for the system from inspectors, and reading case studies about other jurisdictions' systems.

The industry representative believes that a scoring and grading system would be beneficial if each type of violation is properly weighted. Emphasis and higher point values should be placed on the main foodborne risk factors and inspections should be based on HACCP principles.

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