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A Prescription for Health: Tobacco Free Pharmacies

Pharmacies are where people go for medicine and health care advice. But most pharmacies in this country also sell cigarettes – items that, when used as directed, kill more than 400,000 Americans every year.¹ Given the enormous burden of tobacco use, many health advocates want to see the sale of tobacco products banned in pharmacies.² This fact sheet outlines the health concerns associated with allowing tobacco sales at pharmacies and shows what local policymakers can do in their communities.



There are many reasons why health advocates oppose the sale of tobacco in pharmacies:

Sends a mixed message

Pharmacists are perceived by many as among the most trusted of health care professionals.³ By selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke.^{4,5} Children and young people are particularly influenced by cues suggesting that smoking is acceptable.⁶

Makes it harder for smokers to quit

Smokers attempting to quit are more successful when they turn to cessation aids such as nicotine replacement gum and “the patch”⁷— items often found side-by-side with tobacco products at the pharmacy checkout (see photo below). Research shows that exposure to tobacco products and marketing often frustrates efforts to quit by stimulating physical cravings and emotional ties to smoking.⁸ Pharmacy tobacco sales can compromise the ability of smokers to quit right at the moment when they are seeking out the help they need.

Creates a conflict of interest

Pharmacies that sell tobacco products also sell medicines to treat asthma, emphysema, heart disease, and cancer—illnesses caused or made worse by tobacco use.⁹ The sale of both tobacco products and the medicines used to treat tobacco-related illnesses presents a troubling conflict of interest.



Pharmacy vs. Drugstore

Although tobacco is rarely sold from behind a pharmacy counter these days, the term pharmacy here refers to all types of stores that contain a licensed pharmacy on the premises. This might include drugstores, grocery stores, warehouse stores, and more. Note: a California court has held that prohibiting tobacco sales in drugstores (but not in grocery or big box stores) is illegal, finding that all stores that contain a pharmacy must be treated similarly by the law.¹⁰

Economic Impact of Tobacco-Free Pharmacies

Nearly 90 percent of California's tobacco-free independent pharmacies have reported either no change or an increase in business since they stopped selling tobacco products.¹³ Likewise, more than 95 percent of consumers have said they would continue shopping at stores that became tobacco-free as much or more often.¹⁴

In 1994, the sale of tobacco products was banned in Ontario, Canada. The restriction had no significant impact on business for drugstores.¹⁵ In fact, the year following the ban saw 120 new drugstore openings in Ontario.¹⁶ As of May 31, 2013, only one of Canada's ten provinces allows tobacco sales in pharmacies.¹⁷



What Can Communities Do to Reduce Pharmacy Tobacco Sales?

Push for Voluntary Action

A first step is to call upon local pharmacies to voluntarily stop the sale of tobacco products. For example, in the early 1970s, various health organizations launched a campaign calling for the voluntary removal of tobacco from pharmacies in San Francisco. By 2003 more than 65 percent of the city's independent pharmacies had become tobacco-free retailers.¹¹ Although a campaign calling for voluntary action may be a successful approach for small, pharmacist-owned stores, the majority of U.S. pharmacies are chain drugstores with corporate ownership,¹² which are unlikely to voluntarily stop selling tobacco.

Enact a Law

The American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for state and local laws prohibiting tobacco sales in drugstores and pharmacies¹⁸ because they believe that doing so supports the public health and social welfare of the communities in which they practice.¹⁹ Several localities have done just that.

In 2008, San Francisco passed a law prohibiting the sale of tobacco products in most types of pharmacies; the law was later amended to include all pharmacies. In 2009, Boston prohibited the sale of tobacco products by a variety of health care institutions and retailers that operate as health care institutions, including pharmacies. A number of communities across the country have since enacted similar tobacco-free pharmacy laws. (See sidebar on page 3.)

Local laws prohibiting tobacco sales in pharmacies have survived several lawsuits, including constitutional challenges based on the First Amendment and Equal Protection guarantees.²⁰ The court decisions in these cases have held that that local governments have the legal authority to prohibit tobacco sales in pharmacies.²¹

Communities with Tobacco-Free Pharmacy Laws*

California

Currently, three jurisdictions in California prohibit tobacco sales in pharmacies:²⁵

Richmond

San Francisco

Santa Clara County

Massachusetts

More than 50 cities, towns, and counties in Massachusetts have enacted tobacco-free legislation and regulations.^{26, 27}

A partial list includes:

Boston

Everett

Fall River

Lancaster

Newton

Pittsfield

Southborough

Walpole

Worcester

*Current as of April 2013.

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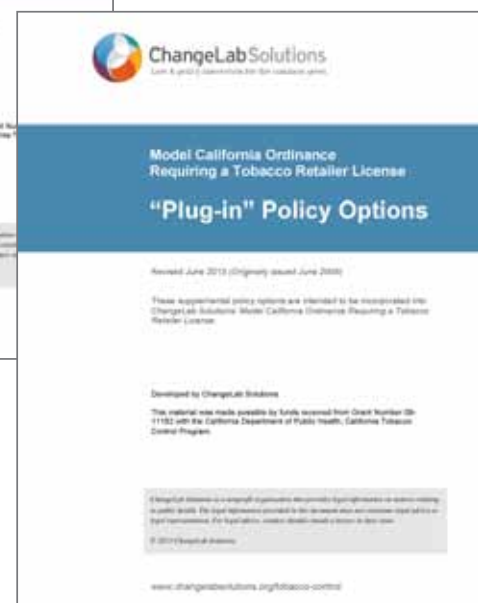
Impact on Tobacco Retailer Density

More than 90 percent of Americans live within five miles of a pharmacy.²² A high density of tobacco retailers has been associated with increased smoking rates, particularly among youth²³ – and tobacco retailer density is highest in low-income communities and communities of color, which are already at greater risk of many health problems.²⁴ Removing tobacco from pharmacies instantly reduces the number of tobacco retailers in a community.

A Model Ordinance from ChangeLab Solutions

One way a community can restrict the sale of tobacco products is as part of a tobacco retailer licensing (TRL) law. Under a local TRL law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.²⁸ ChangeLab Solutions has model ordinance language restricting the sale of tobacco products in all retail stores that also contain a licensed pharmacy, which is designed to be “plugged into” a TRL ordinance. ChangeLab Solutions staff can also draft a stand-alone law for any community that wants to create this restriction outside of a licensing program.

Visit us at www.changelabsolutions.org to learn more.



Endnotes

- ¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. 2008. *Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 2000-2004*. 57(45): p. 1226-1228. www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm
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- ⁴ Katz MH. 2008. "Banning Tobacco Sales in Pharmacies: The Right Prescription." *Journal of the American Medical Association*, 300(12):1451-1453.
- ⁵ Hudmon KS, Fenlon CM, and Corelli RL. 2006. "Tobacco Sales in Pharmacies: Time to Quit." *Tobacco Control*, 15(1): 35-38.
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- ⁷ Stead LF, Perera R, Bullen C, et al. 2012. "Nicotine Replacement Therapy for Smoking Cessation." *Cochrane Database of Systematic Reviews*, 11: CD000146.
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- ⁹ Katz, *supra* note 4.
- ¹⁰ *Walgreen Co. v. City & County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (2010).
- ¹¹ Eule B, Sullivan MK, Schroeder SA, et al. 2004. "Merchandising of Cigarettes in San Francisco Pharmacies: 27 Years Later." *Tobacco Control*, 13: 429-432.
- ¹² Hudmon et al., *supra* note 5.
- ¹³ Katz, *supra* note 4.
- ¹⁴ *Id.*
- ¹⁵ Physicians for a Smoke-Free Canada. 2010. *Tobacco-Free Pharmacies*. www.smoke-free.ca/eng_home/2010/pharmacy-background-2010.pdf
- ¹⁶ Taylor MC. Physicians for a Smoke-Free Canada. *Banning Cigarettes in Pharmacies Does Not Result in Pharmacy Closures*. www.smoke-free.ca/pdf_1/pharmacy.pdf
- ¹⁷ Diego Marchese, Heart and Stroke Foundation and Scott McDonald, BC Lung Association. 2012. Letter to the Editor. "B.C. Last Holdout on Pharmacy Tobacco Sales." *Vancouver Sun*, December 5. www.vancouversun.com/last+holdout+pharmacy+tobacco+sales/7653124/story.html
- ¹⁸ Tobacco Education and Research Oversight Committee for California. 2006. *Confronting a Relentless Adversary: A Plan for Success Toward a Tobacco-Free California 2006-2008*.
- ¹⁹ Hudmon et al., *supra* note 5.
- ²⁰ *Philip Morris USA v. City and County of San Francisco*, 345 Fed. Appx. 276 (9th cir. 2009); *Walgreen Co. v. City & County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (2010); *Safeway Inc. v. City & County of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).
- ²¹ For more information on these cases, see "Is it legal to ban tobacco sales in pharmacies?" at www.changelabsolutions.org/tobacco-control/question/is-it-legal-ban-tobacco-sale
- ²² National Association of Chain Drug Stores. 2012. Statement of the National Association of Chain Drug Stores for U.S. Senate Armed Services Committee Personnel Subcommittee Hearing on FY2013 Defense Authorization. p. 2. www.nacds.org/pdfs/pr/2012/3_28_SASC_TRICARE_comments.pdf
- ²³ Henricksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventative Medicine*, (47)2: 210-214.
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- ²⁶ Municipal Tobacco Control Technical Assistance Program. 2013. *Local Summary of Tobacco Sales Bans in Pharmacies*. http://smokingcessationleadership.ucsf.edu/webinar_30_mass_muni_list_pharmacy.pdf
- ²⁷ Boston, Mass., Boston Public Health Commission Regulation Restricting the Sale of Tobacco Products in the City of Boston (Dec. 11, 2008); Everett, Mass., Regulation of the Everett Board of Health Restricting the Sale of Tobacco Products in the City of Everett (July 19, 2010); Fall River, Mass., Rev. Ordinances pt. II, ch. 34 § 34-320 (2011); Lancaster, Mass., Regulations of the Town of Lancaster Board of Health Restricting the Sale of Tobacco Products and Non-Nicotine Products not Approved by FDA (Dec. 2, 2010); Newton, Mass., Newton Code ch. 20, art. I, §20-2 (2012); Pittsfield, Mass., Board of Health Youth Access and Environmental Tobacco Smoke Regulations (June 6, 2012); Southborough, Mass., Board of Health Rules and Regulations Relative to the Restriction of Sale, Vending and Distribution of Tobacco and Tobacco Products within the Town of Southborough (Dec. 15, 2010); Walpole, Mass., Board of Health Regulations Restricting the Sale of Tobacco Products in the Town of Walpole (Oct. 21, 2010); Worcester, Mass., Rev. Ordinances pt. I, ch. 8, § 3(g)(5) (2008).
- ²⁸ In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that "[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." Cal. Bus. & Prof. Code § 22971.3.