Regulating Pharmacy Tobacco Sales: Massachusetts

Innovative Point-of-Sale Policies: Case Study #2

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State and Community Tobacco Control Research

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Introduction

Tobacco companies spend the overwhelming majority of their annual marketing budget at the point of sale (POS), an area in which they have enjoyed the greatest freedom from regulation. The POS refers to any location where tobacco products are advertised, displayed, and purchased. The POS encompasses not only the final point of purchase (i.e., the register) but also indoor and outdoor advertising at retail locations, product placement, and price.

Tobacco companies use the retail environment to attract and retain customers by promoting their brands, increasing the likelihood of impulse product purchases and establishing the presence of tobacco products as commonplace in everyday life. Exposure to tobacco products and price discounts at the POS encourages initiation and discourages cessation.[1-3]

Finding solutions to POS issues is recognized as the fifth core strategy of tobacco control programming, along with: (1) raising cigarette excise taxes, (2) establishing smoke-free policies, (3) encouraging cessation, and (4) launching hard-hitting countermarketing campaigns.[4] Since the 2009 passage of the Family Smoking Prevention and Tobacco Control Act (FSPTCA),[5] many states and communities are more actively considering policies in the retail environment.

This report is the second in a series of case studies to highlight states and communities that are implementing innovative POS policies. The case studies are intended to provide tobacco control advocates with practical, real-world examples that may be used to inform future policy efforts. To learn about the processes, facilitators, and challenges of implementing and enforcing POS policies, we conducted in-depth interviews with key stakeholders. We also reviewed relevant literature, legal documents, and news articles.

This case study focuses on prohibiting the sale of tobacco in health care institutions, including pharmacies, and highlights the 80 municipalities in Massachusetts that have successfully adopted such policies. In addition to describing Massachusetts' efforts, the study provides a short background on tobacco-free pharmacy laws, legal considerations, and impacts on public health. States and communities considering similar policies can learn from Massachusetts' experience and take away practical next steps to put an end to the practice of selling tobacco in pharmacies and other health care institutions.

Tobacco product display in a pharmacy

Policy Background

TOBACCO IN PHARMACIES

A Contradictory Practice

Pharmacies serve a key role in the health care system by providing clinical and preventative health services, including tobacco cessation products and advice.[6,7] Similar to hospitals and other health care institutions, pharmacies are licensed by the state to dispense health advice and health services.[8] This distinguishes pharmacies from other tobacco retail locations (e.g., convenience stores and liquor stores).

Australia, the United Kingdom, and most Canadian jurisdictions have eliminated the sale of tobacco products in pharmacies.[9-13] In the U.S., pharmacists have opposed the sale of tobacco in pharmacies for the last 40 years.[14] In 2010, the American Pharmacists Association adopted a resolution that urged state pharmacy boards to stop issuing and renewing licenses of pharmacies that sell tobacco.[15] Recently, CVS, the second largest pharmacy chain in the U.S., announced it will stop selling tobacco products by October 1st, 2014, because the practice is contradictory to its mission of improving health.[16]

Just as most pharmacists are opposed to the sale of tobacco products in pharmacies, so are consumers. A national consumer survey in 2013 found high levels of support for policies that would end the practice.[17] Consumer surveys at the state and local level found similar levels of support.[18,19]

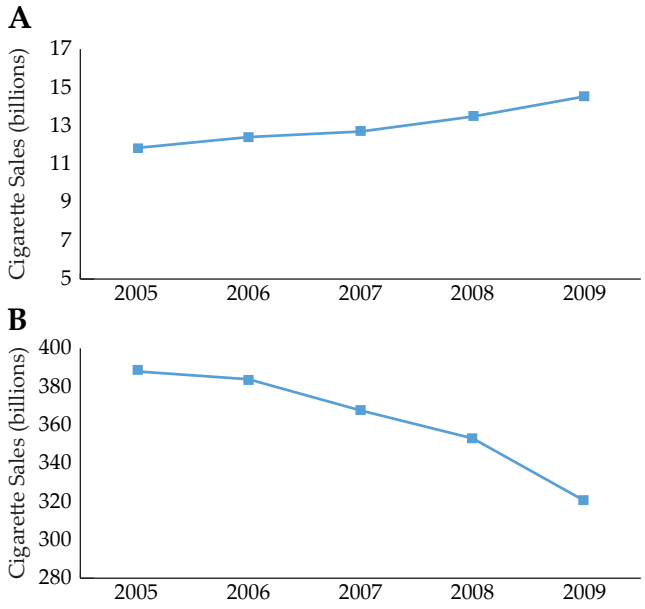
Despite opposition from pharmacists and consumers, many U.S. pharmacies continue to promote and sell tobacco products. In addition to the 16,000 free-standing pharmacies currently selling tobacco products in the U.S.[20] there are numerous retailers containing pharmacies (e.g., grocery stores, warehouse clubs, and big box stores) that also sell tobacco products. Over half of U.S. pharmacies sell cigarettes and 35% sell smokeless tobacco products.[21] Between 2005 and 2009, U.S. cigarette sales declined by 17% overall but sales in pharmacies increased by 23%.[22]

Pharmacies actively promote tobacco products through marketing and price promotions. A national study found that the quantity of tobacco marketing materials in pharmacies made them look a lot like supermarkets and liquor stores.[23] On average, pharmacies had more pieces (16) of tobacco marketing materials inside their stores than supermarkets (15) and liquor stores (12).[23] The study also found that a greater percentage of pharmacies (86%) offered price promotions on tobacco products than did tobacco stores (80%).[23] Additionally, a study of tobacco marketing in California found that over time, cigarette prices increased more slowly in pharmacies than in all other store types.[24]

Impact on Vulnerable Populations

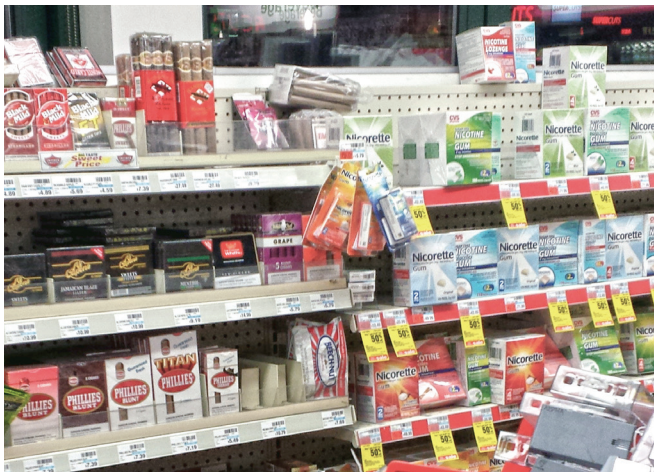
While tobacco sales in pharmacies can affect all consumers, research has shown that former tobacco users are particularly vulnerable to the

Cigarette sales increasing in pharmacies (A), decreasing overall (B)



Source: Seidenberg, 2012[22]

presence of tobacco products in pharmacies.[25] These individuals visit pharmacies to purchase their cessation products.[25,26] There they are met with rows of tobacco products and promotions, which are often stocked directly beside cessation products.[26,27] Tobacco sales in pharmacies can compromise a former user's efforts to remain tobacco-free in a context where they are seeking cessation support. Exposure to tobacco products and promotions stimulates cravings and emotional ties to smoking and may also undermine current users' intentions and attempts to quit.[3,28] A recent study found that the likelihood of lapsing increased as exposure to tobacco at the POS increased.[29]



Tobacco sold next to cessation aids in a pharmacy

Youth are also vulnerable to tobacco industry influence in pharmacies. Tobacco's presence in a health care setting conveys a message that its use is typical and supported by health care providers.[30] The presence of tobacco products stocked among other retail goods normalizes tobacco, creating the impression that its use is socially acceptable and increasing the likelihood that youth will smoke.[31-34]

Policy Options

Following the passage of the FSPTCA, states and localities began to consider more options to reduce the tobacco industry's influence in the retail environment. While the FSPTCA prohibits the U.S. Food and Drug Administration (FDA) from adopting a federal ban on tobacco sales in pharmacies, it does not limit state and local authority to pass such laws.[5] The Institute of Medicine (IOM) recommends that states and localities implement tobacco-free pharmacy laws as part of a comprehensive strategy to reduce tobacco use among young people.[35] A ban on the sale of tobacco in pharmacies would remove accompanying tobacco promotions and decrease the normalization of tobacco products.[25] Tobacco-free pharmacy laws send a clear message that pharmacies do not promote tobacco use.[36]

The IOM also recommends adopting long-term strategies for reducing the number of retailers licensed to sell tobacco products.[35] A tobacco-free pharmacy law is one means of reducing the number and density of tobacco retailers in a community.[36,37] Because higher tobacco retailer density and tobacco advertising are associated with more positive beliefs about smoking and higher rates of youth smoking,[2,38] tobacco-free pharmacies may complement other smoking prevention efforts.

Economic Impact

Several studies have assessed the economic impact of tobacco-control efforts on retail outlets.[39-42] These studies show that POS tobacco-control measures do not pose negative long-term effects to the overall retail economy.[42] One often-voiced concern about a pharmacy sales ban is whether it will hurt the profitability of pharmacies because customers would have less reason to shop at these retailers.[43] A survey found that 76% of consumers in San Francisco said their city's ban made no difference as to whether they shopped at pharmacies and 12% said they would shop there more.[19,44] Locations with tobacco-free pharmacy laws continue to see the number of pharmacies grow despite no longer having the ability to sell tobacco.[43,45] Although tobacco products are prominently displayed and commonly sold in U.S. pharmacies, they do not significantly contribute to pharmacies' revenue.[20] In fact, tobacco products make up only a small percentage of pharmacies' total sales (1.8%).[46]

Legal Considerations

While the FSPTCA clarifies the authority states and communities have, they may still encounter legal challenges when attempting to adopt tobacco-free pharmacy laws. One potential challenge to consider is preemption. Preemption is a legal principle that, in essence, indicates where there is a hierarchy of laws.[47] If preemption exists at the federal level, that means a federal law on a certain topic supersedes or "trumps" a state law on that same topic. Additionally, state laws may preempt local laws. If preemption is in place at the state level, local laws cannot go beyond the state law on that issue. Although there is no federal preemption of state or local tobacco-free pharmacy laws, the tobacco industry will often argue that a higher level of law preempts a state or community's attempt to pass these and other innovative tobacco control policies.[48]

Other potential arguments by the industry to challenge the passage and implementation of tobacco-free pharmacy laws relates to the U.S. constitution's First Amendment (free speech) and Fourteenth Amendment (equal protection).

In 2008, San Francisco passed the first tobacco-free pharmacy law in the U.S. and lawsuits were filed to challenge the law.[49] San Francisco's pharmacy ban was first challenged by Philip Morris, which contended that the law violated its freedom of speech by restricting the advertisement of tobacco products in pharmacies.[50] The lawsuit failed; the court held that there was no First Amendment violation.[50]

In 2009, San Francisco's pharmacy ban faced its second lawsuit, this time by Walgreens, who argued that the law's exemption of supermarkets and big box stores containing pharmacies from the ban violated the Equal Protection Clause of the Fourteenth Amendment.[51] San Francisco faced difficulties justifying why the law differentiated by retailer type.[51] As a result, San Francisco amended the law to eliminate the exemptions for supermarkets and big box stores.[49] The court's decisions in these cases demonstrate that laws like these, if written well, do not violate freedom of speech and that laws banning the sale of tobacco in pharmacies should treat equally all retailers that contain pharmacies.[52]

'Cigarettes & Pharmacies Don't Mix': A public service campaign in San Francisco[53]

Policy Change in Massachusetts

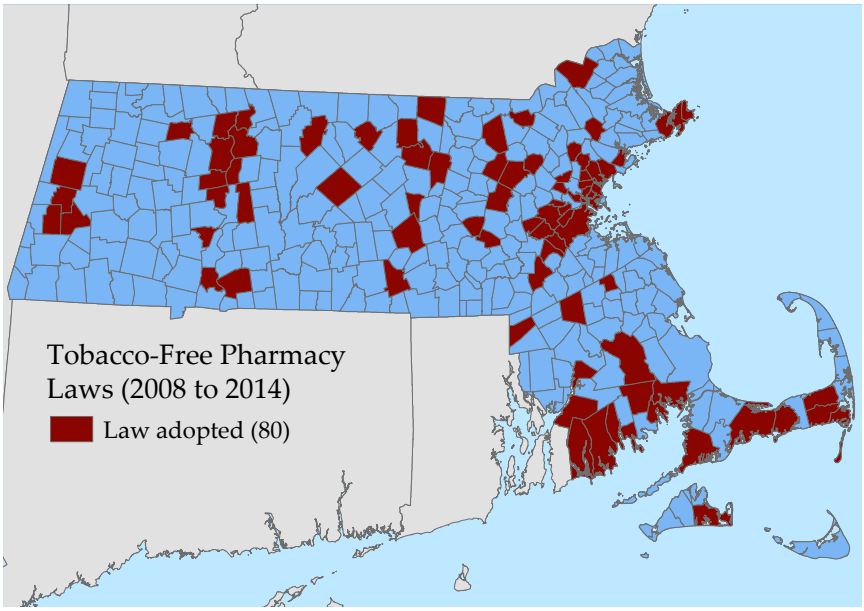
As of February 2014, 80 cities and towns in Massachusetts have adopted tobacco-free pharmacy policies, eliminating tobacco sales in 505 pharmacies and protecting 46% of people living in Massachusetts.[54] The following pages outline the development of local tobacco-free pharmacy policies in Massachusetts, challenges encountered, and lessons learned along the way.

BACKGROUND

Massachusetts has a population of 6.6 million people spread across 351 cities and towns.[55,56] The state's public health department works in partnership with a network of local and regional health departments to implement health initiatives.[57] Despite coordinated health initiatives, each year more than 8,000 Massachusetts residents die from the effects of smoking and an estimated 1,000 more die from the effects of secondhand smoke.[58,59]

Massachusetts's tobacco control efforts are led by the Massachusetts Department of Public Health's Tobacco Cessation and Prevention Program. This program works to reduce the state's tobacco disease burden by funding Tobacco-Free Community Partnerships, municipal boards of health, and youth organizations. Together these three groups educate and mobilize communities to spur change in the local tobacco retail environment.[60]

One role of community partnerships is to generate earned media to increase public support of tobacco prevention initiatives, while the municipal boards of health work with local government to pass and enforce regulations and collect data.[60] Supporting this work are the Massachusetts Municipal Association (MMA), and the Massachusetts Association of Health Boards (MAHB).[60] MMA is a statewide nonprofit that advocates before the Massachusetts legislature on behalf of its members, which includes mayors, city councils, and other local officials. Through a Department of Public Health grant, MMA runs a technical assistance program that provides advocacy, training, and technical assistance to local officials developing tobacco-control policies. MMA and the MAHB provide local officials with educational resources and technical assistance to facilitate policy implementation.[61]



Tobacco-free pharmacy policies have passed in every state senate district[62,63]

Tobacco Control Success

Massachusetts has long been a leader in implementing effective tobacco-control policies and has lower-than-average adult and youth smoking rates.[59] In 2004, Massachusetts passed a strong statewide smoke-free policy.[64] Smoking is prohibited in most public places and workplaces with some exceptions (e.g., designated smoking rooms in hotels, tobacco retail outlets, and smoking bars).[64] The state passed a $1.00 increase in the cigarette excise tax in July 2013, and now has the second highest in the nation at $3.51. The cigar and smoking tobacco tax was also increased from 30% to 40% of the wholesale price, and the tax on chewing tobacco products increased from 90% to 210% of the wholesale price.[65] Massachusetts provides its Medicaid enrollees with comprehensive coverage of all seven recommended tobacco-cessation medications as well as individual, phone, and group cessation counseling.

Funding and Retail-Licensing Structure

Despite having a high tobacco tax, the Massachusetts tobacco control program budget has suffered repeated cuts.[66] Down from its highest level of over 50% of the CDC recommended funding level in fiscal year 2000, the program is currently funded at just 4.4% of CDC recommended funding levels.[67]

While most states require tobacco retailers to obtain a tobacco retail license or registration, the strength of these laws and fees associated with them vary greatly. Massachusetts requires a two-year tobacco retail license for a fee of $50.[68] Massachusetts localities have the authority to implement additional licensing laws at the local level and these often require fees in addition to the state license fees.[69] Currently, 280 localities have taken advantage of this authority and require a local tobacco sales permit.[62]

POLICY DEVELOPMENT

Early Efforts Lay Groundwork

Efforts to ban the sale of tobacco products in pharmacies began in the early 2000s with the youth-led group, Breath of Life Dorchester or BOLD-Teens. Four young teenagers formed BOLD-Teens after one was motivated by the loss of her grandparents to tobacco-related illness. The group soon grew into a collection of Boston-area high school students committed to improving the health and safety of their community by educating residents and advocating for change.

According to co-founder Cynthia Loesch, the group had originally planned to focus on banning the sale of tobacco products in their zip code, but instead decided to address the issue of tobacco sales in pharmacies.[70] Loesch explained that the idea grew from the common sense that pharmacies should not be selling tobacco products because pharmacists are health professionals and they understand the true dangers. "You should not be going to an establishment to get better and then also have a product [available] that's guaranteed to kill you," she said.[70]

Over the next several years, Loesch and fellow teenagers were visible and vocal, gathering letters of support from city agencies and organizations, holding protests at pharmacies, and speaking with store owners and managers about voluntarily removing tobacco from the shelves. Their requests that stores voluntarily remove tobacco were unsuccessful. As a result, the group began exploring options for an enforceable policy.

> "You should not be going to an establishment to get better and then also have a product [available] that's guaranteed to kill you."

Initially, BOLD-Teens did not know what type of policy that they would advocate for or even who had jurisdiction to pass a policy. They went back and forth between government departments until they eventually determined that the Board of Health, (Boston Public Health Commission's governing body) had jurisdiction. Loesch emphasized, "It's really important to know who's responsible and always be watching how responsibility is shifted."[70]

Engaging the Health Department

By 2008, members of BOLD-Teens were gathering support from state and local organizations and meeting with Boston's Board of Health and the city's Tobacco Prevention and Control Program to explain the need for pharmacy regulations. Concurrently, the Board called on Boston's Tobacco Prevention and Control Program Director, Nikysha Harding, to lead a review of existing tobacco regulations and identify areas to be strengthened. Her staff supplemented the review by getting input from local pharmacy schools and independent pharmacies. These partners identified issues that would need to be addressed, such as economic concerns about the loss of foot traffic. "Independent pharmacies thought they could only afford to stop selling tobacco products if there was a level playing field," Harding said.[71] She believed that the policy would establish a level playing field.[71]

With momentum and community support, the Board decided that a policy banning tobacco sales in Boston's pharmacies was both feasible and necessary to protect the public's health.[71] The attorneys for the city of Boston (General Counsel) performed background research, drafted a policy, and went before the Board. Harding said, "The General Counsel gave a number of presentations to the Board. The Board requested additional research and the General Counsel was very helpful in that process and of course, in drafting the policy."[71]

BOLD-Teens working with Boston Public Health Commission's Board of Health in 2008

Passage and Implementation

Later that year, the Board passed the policy, making it the first tobacco-free pharmacy law in Massachusetts and the second tobacco-free pharmacy law in the U.S.[72] The policy banned the sale of tobacco products in health care institutions and in all retailers containing health care institutions (e.g., grocery stores, warehouse clubs, and big box stores). There was no formal opposition to the policy.[71] The tobacco industry watched closely as this and Boston's other tobacco-control policies were developed. In that same year, the tobacco industry challenged Boston's proposed ban on the sale of blunt wraps in all tobacco retail stores (the ban ultimately prevailed in the state's highest court).[73] However, the tobacco-free pharmacy law received no legal challenges, enabling Boston to begin implementation without delay.[62]

Staff from the city's Tobacco Prevention and Control Program opened lines of communication with retailers. Immediately after the policy was adopted and two months prior to enforcement, letters were sent to retailers notifying them of the new policy and its implementation date (Appendix A). This ensured retailers had ample time to sell or distribute their inventory. In earlier conversations, independent pharmacies had requested signage to help communicate the change to their customers. Staff also provided

retailers with non-mandatory brochures and signs. The brochures featured the benefits of smoking cessation and resources for assistance while the signs explained why tobacco products could no longer be sold in health care institutions (Appendix B). Since the policy's implementation in February 2009, BOLD-Teens and tobacco control staff have conducted store visits and found no major issues with retailer compliance.[71]

Partners Facilitate Policy Adoption

Following Boston's successful ban and the resulting media attention, towns throughout Massachusetts became interested in adopting similar policies. Local officials contacted Boston policymakers to learn from their experience and requested technical assistance from statewide organizations such as MMA and MAHB. D.J. Wilson, MMA's Tobacco Control Director was supportive. Wilson said, "The next cities to adopt this policy were often led by anti-tobacco youth groups or local elected officials who brought the policy to the attention of their local boards of health or city councils."[62] He met their needs for technical assistance by serving as an outside policy expert, attending and speaking at local policy meetings and public hearings.

After a town adopted a policy, officials from neighboring towns would often inquire about its success, and learn about MMA's support. "This process kept the policy rolling from town to town," Wilson said.[62] Soon, MMA realized a model policy would make the process more efficient and worked with Massachusetts' Department of Public Health (MDPH) and state lawyers to develop one using Boston's policy as a foundation. Other communities could now use this model policy as a starting point for drafting their own local regulations.

> "The next cities to adopt this policy were often led by anti-tobacco youth groups or local elected officials who brought the policy to the attention of their local boards of health or city councils."

The policy was further spread by partners at the Massachusetts Medical Society (MMS), a professional association for physicians and medical students. MMS emailed its members and other statewide organizations about the upcoming public hearings in towns across the state.[62] Statewide organizations, including the American Lung Association, American Heart Association, and the American Cancer Society, reached out to local doctors and invited them to testify.[62] Their testimony gave the boards of health a new perspective on the local burden of tobacco-related illness, which according to Wilson, carried "a lot of weight."[62]

Strong communication at the local level ensured that the community and pharmacies were aware of the public hearings on tobacco-free pharmacy laws. A network of existing community partnerships notified engaged citizens of opportunities to provide testimony. Municipalities sent letters to pharmacies, notifying them of the newly proposed policy and inviting them to attend public hearings or send letters of concern.[74]

Partners Develop Educational Materials

MDPH developed educational materials for the public and talking points for advocates. One such document (Appendix C) contained bulleted facts, including the following key points:

- Tobacco-product displays stimulate impulse purchases and tempt those trying to quit;[3]
- Tobacco-product displays in pharmacies send the wrong message to our youth;[75]
- Published studies consistently show that tobacco promotion increases the likelihood that adolescents will start to smoke; [76,77] and

- There is no evidence of an adverse economic impact on pharmacies when the sale of tobacco products is banned.[9]

Such educational materials were also used by community-based partners and youth programs to increase awareness of tobacco industry influence and the need for tobacco-free pharmacies.

The Department of Public Health and Municipal Association created maps and summary reports to monitor the policy's dissemination. MMA developed a one page report summarizing the number of cities and towns that had passed a tobacco-free pharmacy policy, the sizes of their populations, and the types of regulations they passed (Appendix D). This report was given to local officials. It was short and concise but important, because it featured local towns and was easy for policymakers to review and digest. Wilson explained, "They all want to know what the neighboring towns have done, or what towns that look like them have done. So once they see this, they're much more attuned to it… it just feels more comfortable for them."

Involving Youth

Youth played a vocal role in supporting pharmacy regulations. Across Massachusetts, youth group initiatives have long been involved in tobacco issues by collecting data and leading store audits to assess the tobacco retail environment. One such initiative is The 84, named after the 84% of youth who did not smoke when the initiative began. This youth advocacy group involves hundreds of students in more than 80 chapters across the state.[78]

Hye Won Lee, Program Associate with The 84, explained why youth are involved. "Once youth are aware of how they are being targeted, they are very energized and want to do something about it."[79] Youth groups gave middle and high-school aged students the opportunity to help with policy efforts by offering them presentation and message-development training. Youth were key presenters at public hearings on tobacco-free pharmacy laws. Lee explained that because youth are one of the main targets of the industry, they are able to draw from personal experience with tobacco and deliver authentic and compelling testimony. "To have them as a partner is very beneficial to move this forward," she said.[79]

Members of The 84 youth group demonstrate at the Massachusetts State Capitol

> "Once youth are aware of how they are being targeted, they are very energized and want to do something about it."

Patricia Henley, Tobacco Control Director at MDPH, credits youth in the town of Everett with really swaying decision makers: "The Board of Health in Everett was not planning on moving forward with a tobacco-free pharmacy law. A youth group in Everett that was part of The 84 presented and held their feet to the fire. When a big box store voiced strong opposition the youth group was credited with adding pressure to the Everett Board of Health - which ultimately passed the policy."[63]

Local Successes

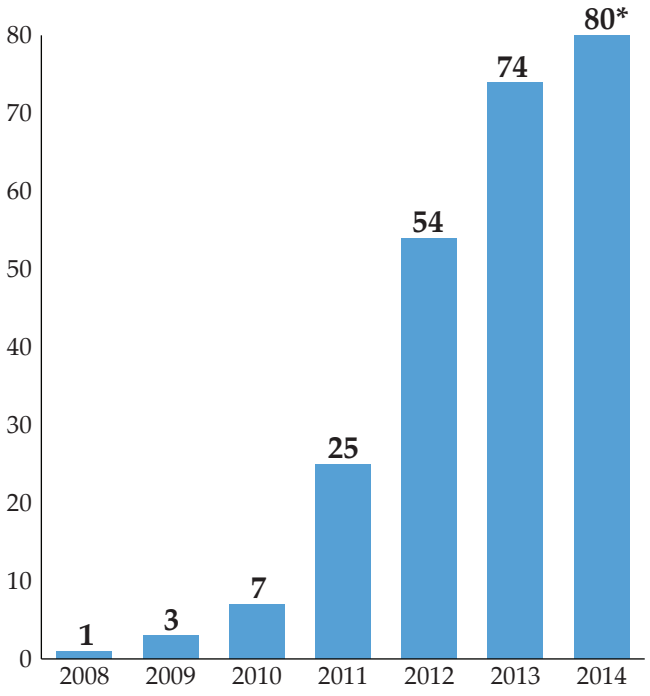
Over the past six years, 80 cities and towns in Massachusetts have adopted tobacco-free pharmacy policies, affecting 505 pharmacies and covering 46% of the state's population.[54] This remarkable momentum has been met with light opposition from the tobacco industry, retailers, and the public. Most of the opposition has come from retailer associations in the form of 'letters of concern' sent to boards of health or city councils. Less frequently, chain retailers sent local store managers to observe public hearings or testify that a ban would be bad for business and result in cuts to workers' hours. Jennifer Robertson, Policy Analyst with MDPH, said, "In Boston, where the policy has been implemented the longest, there is no evidence that a business has closed because of this policy; in fact, new pharmacies have opened since the policy."[80]

Adding to the local momentum is the model policy that cities and towns have adapted to fit their communities. In Everett, Costco is licensed as both a wholesaler and retailer of cigarettes, allowing it to sell cigarettes to both businesses and individuals.[25] When developing a policy, the city crafted an exemption for wholesalers.[25] This allowed Costco to continue to sell cartons of cigarettes wholesale to licensed tobacco retailers but barred it from selling tobacco directly to individuals.[25] Unlike a general exemption for grocery and big box retailers, this narrow exemption acknowledges a legitimate difference between wholesale and retail sales.[25] Several other communities recognized the rapidly changing landscape and took the policy further by including language banning the sale of e-cigarettes and nicotine delivery products in pharmacies.[54,81]

Policy Enforcement

MDPH cited no major issues with enforcement for the municipalities that have implemented tobacco-free pharmacy policies, leading them to conclude that it is straightforward and simple to enforce.[63] Compliance with the law simply requires the removal of a product, so enforcement is not resource intensive.[63,80] Some communities have conducted store visits or audits but enforcement is largely complaint based. "Anyone

Cumulative number of locales in Massachusetts that have adopted tobacco-free pharmacy laws (2008-2014)



*Source: Municipal Tobacco Control Technical Assistance Program, 2013[54] *Current as of February 20, 2014*

who knows the law and walks into the store can see it and make a complaint," Robertson said.[80] To facilitate compliance, retailers were notified ahead of the law's implementation date, which made it easier to remove any remaining tobacco products before the ban took effect.[63] Wilson recommended that communities think strategically about the timing of implementing the ban. "Aligning the policy's effective date to coincide with the expiration date of the pharmacy's tobacco-retail license or permits will make enforcement even easier," he said.[62]

Policy Evaluation

Over the past few years, MMA reported a reduction in the number of tobacco retail licenses issued throughout Massachusetts. Wilson explained the results with a bit of historical context. "The first large reduction followed smoke-free laws when restaurants gave up their cigarette vending machines, and now a second reduction is occurring as pharmacies cease the sale of tobacco products."[62] According to Wilson and an MDPH-funded evaluation, new tobacco vendors have not emerged where tobacco-free pharmacy laws have been implemented.[37,62]

In 2011, the independent research firm Market Street Research evaluated the tobacco-free pharmacy laws' overall impact in a handful of cities.[37] Interviews with a small sample of pharmacy managers found that the law had a minimal impact on their pharmacies. One interviewee was now "able to transfer frequently shoplifted items to the behind-the-counter space previously used for tobacco products."[37]

Wilson remarked, "In a lot of instances that space where the tobacco products were stocked gets replaced by Nicorette and other tobacco cessation products."[62] The evaluation also found that the tobacco-free pharmacy laws had directly reduced the number of tobacco retailers (between 4% and 21% per city) and the density of tobacco retailers.[37]

"In a lot of instances that space where the tobacco products were gets replaced by Nicorette and other tobacco cessation products."

Statewide Policy Efforts

By 2013, at least one tobacco-free pharmacy law had been enacted in every Massachusetts state senate district. This indicator of success was viewed as a "tipping point" and sparked conversation of implementing a statewide tobacco-free pharmacy policy.[63] Such a policy would eliminate 1 in 10 tobacco retailers in Massachusetts.[10] With support from Massachusetts' statewide advocacy coalition, Tobacco Free Mass, MMA and the State's Public Health Council drafted and submitted a statewide policy. Since 2010, a statewide tobacco-free pharmacy law has been presented to the state legislature three times, and although heavily supported, has died in committee due to competing legislative priorities.[63]

Despite challenges, supporters continue to push for a statewide policy, and municipalities continue to implement policies at the local level. A statewide policy is currently being heard in the Joint Committee on Public Health, and hopes are high. Mark Paskowsky, Director of Evaluation at the Tobacco Control Program said, "I think that it will move forward. We're optimistic."[82]

Lessons for Future Efforts

What can other states and communities learn from Massachusetts' experience?

Involve youth to strengthen policy efforts

The tobacco industry spends millions of dollars every day targeting youth to create its next generation of smokers.[83] However, youth can combat these marketing schemes and play a critical role in policy development and advocacy.[83-85] Massachusetts' first efforts towards banning tobacco sales in pharmacies were initiated by Boston youth who wanted to make a difference. Following Boston's efforts, youth groups across the state got involved and provided the energy necessary to maintain policy momentum. Youth spoke with pharmacy store owners, gathered letters of support from community organizations, and delivered compelling testimony to local boards of health. States or communities interested in replicating Massachusetts' success should involve youth advocates in their policy efforts.

In states and communities that have already had success passing other tobacco-control policies (e.g., smoke-free policies), a youth infrastructure may already be in place and looking for a new area to focus its energies. After identifying young people interested in helping, it is important for leaders to invest in educating and training them about tobacco control and policy advocacy.[84] Training should provide an overview of how the tobacco industry targets youth, tobacco use statistics, a background on tobacco-control policy issues, and hands-on practice in how to approach local leaders, business owners, and community members.[84] For example, members of The 84 received presentation and message-development training and were given opportunities to practice their presentation skills.

Understand your policy and legal landscape

Legal landscapes will differ across states; while a board of health or local health department will be able to pass a health regulation in some communities, others will require city council approval. Boston's BOLD-Teens spent valuable time going back and forth between various government departments until they determined who had the authority to pass a tobacco-free pharmacy policy. Consult local policymakers and legal staff during initial planning to clarify the appropriate channels for policy approval.

Communities should also be aware of potential challenges related to preemption. If preemption is in place at the state level, local laws cannot go beyond the state law on an issue.[86] Those involved with Massachusetts' tobacco-free pharmacy laws used legal technical assistance from MMA and the MAHB to determine that the local boards of health were not preempted by state or federal law.[61] Preemption questions can be complicated. Consult with local legal counsel to determine how preemption may impact your policy development efforts.[86] The Tobacco Control Legal Consortium and its affiliated legal centers have developed several resources that provide a more detailed explanation of preemption (See Additional Resources).

Build strong and diverse partnerships

Working with a variety of tobacco control partners allows communities to engage more people through coordinated efforts.[87] Advocates interested in passing tobacco-free pharmacy laws should establish partnerships from a variety of sectors to provide complementary perspectives.[87] In addition to strong involvement from state and

local health departments, community partners, and youth groups, MMA played a critical role in policy development and implementation. The MMA provided communities with technical assistance and offered model language for regulations. Support from pharmacy students, doctors, and other health professionals was also crucial to reinforce the message that tobacco-product sales in pharmacies are incompatible with the purpose of health care institutions. Members of the Massachusetts Medical Society actively promoted local pharmacy policies and provided testimony at public hearings in their communities.

Advocates interested in passing tobacco-free pharmacy laws should enlist the support of youth and medical professionals, and establish partnerships at the local, state, and national levels. State municipal leagues or organizations similar to the MMA can be found in every state except Hawaii.[88] Investigating options for coordinating with your state's league may provide a ready-made infrastructure for offering advocacy, training, and technical assistance to city officials developing tobacco-control policies.

Reduce overall tobacco retailer density using tobacco-free pharmacy laws as a first step

Banning tobacco-product sales in pharmacies not only sends a strong message that tobacco products are incompatible with health, but is also a recommended first step towards reducing tobacco retailer density.[35] It is estimated that more than 90% of Americans live within five miles of a community pharmacy.[89,90] By removing tobacco products from pharmacies, the overall number of tobacco retailers in a community is reduced.[90] In Boston and other early adoption cities, Massachusetts' tobacco-free pharmacy laws resulted in a slight, but immediate decrease in the number and overall density of tobacco retailers.[37] The tobacco-free pharmacy laws were also described as being less controversial and resource intensive compared with other tobacco-control policy options.[80] Most Massachusetts municipalities that have approved tobacco-free pharmacy laws have not encountered opposition at public hearings.[91] In addition, no major compliance problems have been reported post-implementation.[91]

Craft policies using a proactive approach

Non-cigarette tobacco products are continually introduced to the marketplace. In the U.S., use of e-cigarettes has increased significantly in recent years.[92,93] In 2011, about 1 in 5 adult cigarette smokers had tried an e-cigarette and the total number of adults who had ever used e-cigarettes nearly doubled from 2010.[92] Use has also increased among youth, with the percentage of high school students who reported ever using e-cigarettes more than doubling from 4.7% in 2011 to 10% in 2012.[93] With more than 250 e-cigarette brands on the market and sales predicted to reach over $2.5 billion in 2013, tobacco control advocates should consider these products when developing new point-of-sale policies.[94,95] On the advice of national organizations, some Massachusetts municipalities have amended their tobacco-free pharmacy policies to include e-cigarettes.[54] This can be accomplished by expanding the definition of 'tobacco products' to include e-cigarettes.[61] Communities in other states should consult with attorneys to make sure that their policies use language that will include current and future innovations in non-cigarette tobacco products.

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Additional Resources

GENERAL POINT-OF-SALE ASSISTANCE

CounterTobacco.Org

CounterTobacco.Org is a comprehensive resource for local, state, and federal organizations working to counteract tobacco product sales and marketing at the point of sale. The website provides policy solutions, advocacy materials, news updates, and an image gallery exposing tobacco industry tactics at the point of sale. For more information: **http://www.countertobacco.org**

LEGAL ASSISTANCE

Tobacco Control Legal Consortium (TCLC)

The TCLC is a national legal network for tobacco-control policy. Drawing on experts in its seven affiliated legal centers, the Consortium works to assist communities with tobacco law-related issues, including point-of-sale policies. Its team of legal and policy specialists provides legislative drafting and policy assistance to community leaders and public health organizations. For more information: **http://publichealthlawcenter.org/content/programs**

ChangeLab Solutions

ChangeLab Solutions, the California TCLC affiliate, has worked on tobacco-control policy for more than 15 years. Its website contains model policies, how-to guides, fact sheets, and general information about tobacco-related legal issues. For more information: **http://changelabsolutions.org/tobacco-control**

The Center for Public Health and Tobacco Policy

The Center for Public Health & Tobacco Policy is a resource for the public health communities of New York and Vermont. The Center works to develop and support policy initiatives that will reduce tobacco related morbidity and mortality. Services include research, policy development, technical assistance, and educational programming. For more information: **http://tobaccopolicycenter.org/**

REPORTS & TOOLKITS

Tobacco-Free Pharmacies Toolkit

CounterTobacco.Org's Tobacco Free Pharmacies Action Guide is a complete toolkit for practitioners and advocates alike. It provides step by step recommendations for states and communities that are developing tobacco-free pharmacy policies. Available at: **http://countertobacco.org/tobacco-free-pharmacies**

A Prescription for Health

ChangeLab's tobacco-free pharmacies factsheet outlines the health concerns associated with allowing tobacco sales in pharmacies and provides actions to combat the contradictory practice. Available at: **http://changelabsolutions.org/sites/default/files/A_Prescription_for_Health-FINAL_20130712_1.pdf**

Model Tobacco Retailer Licensing (TRL) Policy and Tobacco-Free Pharmacy Plug-in

This model TRL policy and tobacco-free pharmacy plug-in provides guidance for developing a local TRL ordinance prohibiting the sale of tobacco in pharmacies. Fact sheets, policy language, a TRL checklist, as well as a FAQ page are available at: **http://changelabsolutions.org/publications/model-TRL-Ordinance**

Prohibiting the Sale of Tobacco Products in Pharmacies

This TCLC technical assistance guide reviews policy options for restricting tobacco sales in pharmacies, and covers some related legal implications and some possible challenges to such policies. Available at: **http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-prohibiting-tobacco-pharmacies-2012.pdf**

Appendix A: RETAILER NOTIFICATION

Sample Language for a Letter to Affected Pharmacies

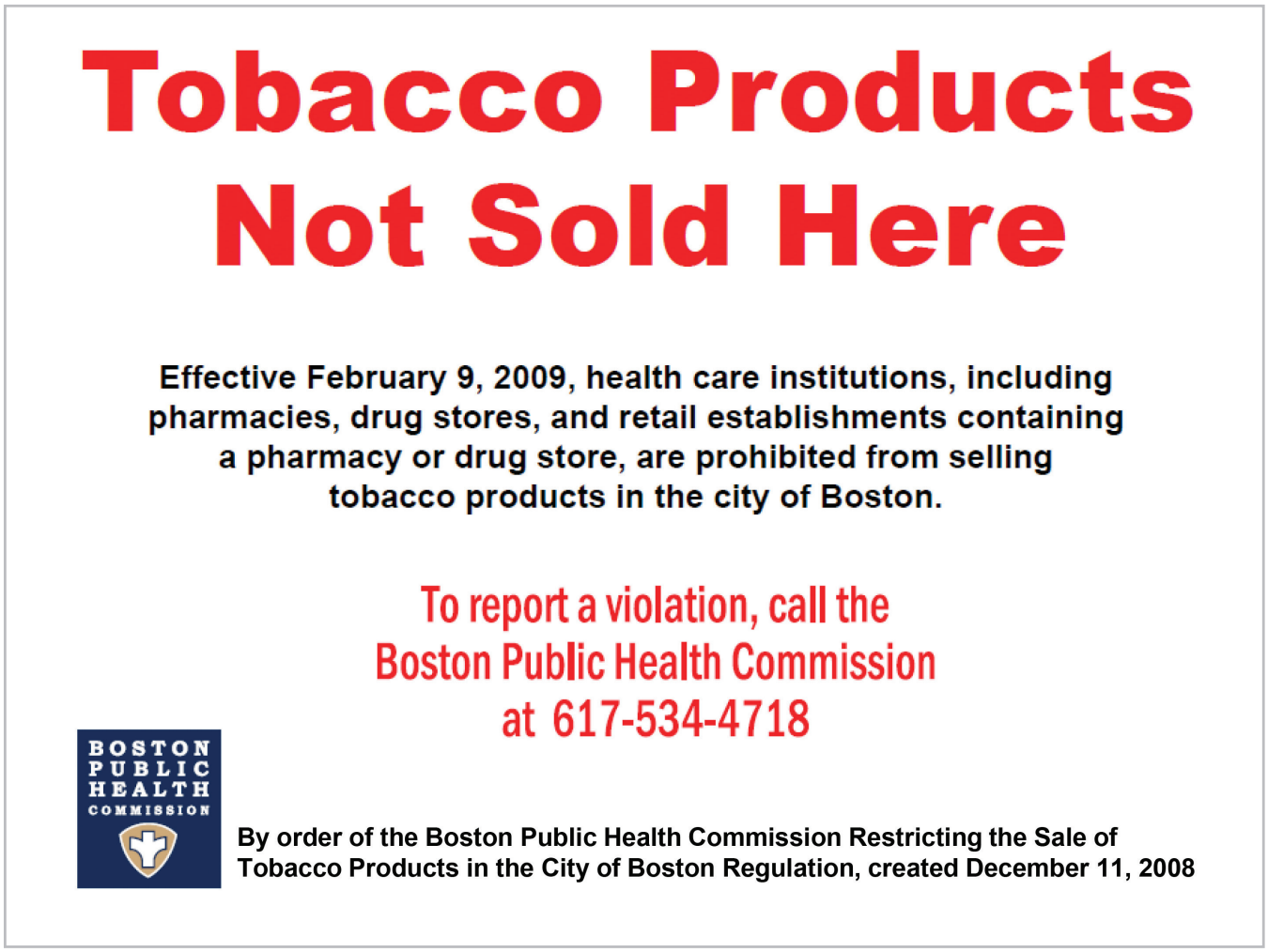
Dear Tobacco Retailer:

This letter serves to inform you that the **[city/town]** Board of Health has amended their regulation dealing with youth access to tobacco. The regulation includes the prohibition against the sale of tobacco products by Health Care Institutions (**Section ___** of the regulation). In addition, retailers that operate or have a health care institution within it, such as a pharmacy or drug store will be prohibited from selling tobacco products.

As your establishment currently holds a permit to sell tobacco products and you are a health care institution or a retailer that operates or has a health care institution within it, please ensure that starting **[DATE]** you no longer sell tobacco products and all such products are completely removed from the premises. A copy of the regulation has been included for your attention.

The **[city/town]** Board of Health will be visiting your establishment to ensure compliance with the new regulation. Please contact our office at **[BoH phone number or Tobacco Control phone number]** with any questions.

Appendix B: RETAILER POSTING



Appendix C: SAMPLE MESSAGES

Talking Points for *Banning the Sale of Tobacco Products in Pharmacies and other Health Care Settings*

The Massachusetts Tobacco Cessation and Prevention Program (MTCP) is working with interested communities across Massachusetts to ban the sale of tobacco products in pharmacies and other health care settings.

Sales of tobacco products, the only such product that if used as directed will kill you, is in direct opposition to the mission of these health care institutions.

Many people each day turn to their local pharmacy for health advice, including many who are trying to quit smoking.

Tobacco retail displays stimulate impulse purchases and tempt those trying to quit. [1]

There is no evidence of adverse economic impact on pharmacies when the sale of tobacco is banned. [2]

Selling and displaying cigarettes in pharmacies undermines the messages of other health professionals that tobacco products are uniquely dangerous. [3]

The sale of tobacco in a health care facility gives a false and dangerous credibility to cigarettes and suggests their use is compatible with health. [4]

Tobacco product displays in pharmacies sends the wrong message to our youth.

Published studies consistently show that tobacco promotion increases the likelihood that adolescents will start to smoke. [5]

Stay informed by visiting www.makesmokinghistory.org to sign up for email alerts about banning the sale of tobacco products in pharmacies and other health care settings and to find other ways you can help make smoking history.

**Always review the MTCP goal sheets for existing statistics that might help support your conversation on the topic.

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2, 3, 4: Physicians for a Smoke-Free Canada, Tobacco-Free Pharmacies, May 2010, Ottawa, Canada
5: DiFranza et al., 2006; Lovato, Linn, Stead, & Best, 2006; Pierce, Choi, Gilpin , Farkas, & Berry, 1998

Questions to think about as you share your own experiences:

Does your community ban the sale of tobacco products in pharmacies or other health care settings?

How many pharmacies are in your community? Of these, how many currently sell tobacco products?

Have you or someone you know had a personal experience with the sale of tobacco in pharmacies?

Are your local pharmacies located near youth oriented areas, such as parks, schools, malls, etc.?

Appendix D: MMA SUMMARY

Municipal Tobacco Control Technical Assistance Program

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FAX (617) 695-1314
djwilson@mma.org

LOCAL SUMMARY ON TOBACCO SALES BANS IN PHARMACIES

MUNICIPALITY (POP. RANK)	RETAILERS AFFECTED	ENACT DATE	EFF. DATE	POLICY TYPE
1. **Boston** (1)	88	12/11/08	2/11/09	BOH
2. Needham (56)	4	7/14/09	10/1/09	BOH
3. **Newton** (11)	8	11/16/09	11/16/09	ORD
4. **Everett** (31)	5	7/19/10	8/15/10	BOH
5. Walpole* (78)	5	10/12/10	10/21/10	BOH
6. Lancaster (198)	0	12/2/10	2/1/11	BOH
7. Southboro (182)	4	12/15/10	2/13/11	BOH
8. Oxford (141)	3	2/7/11	3/1/11	BOH
9. **Fall River** (10)	22	3/22/11	4/12/11	ORD
10. Wakefield (73)	4	3/19/11	6/1/11	BOH
11. Westford (85)	3	5/9/11	7/1/11	BOH
12. **Worcester** (2)	34	5/10/11	6/24/11	ORD
13. Wellesley (65)	4	4/28/11	6/1/11	BOH
14. **Somerville** (13)	10	5/19/11	7/1/11	BOH
15. Westwood (131)	2	6/14/11	6/30/11	BOH
16. Chatham (227)	1	6/20/11	7/7/11	BOH
17. Hatfield (269)	0	3/22/11	4/1/11	BOH
18. **Lowell** (4)	12	11/2/11	1/1/12	BOH
19. **New Bedford*** (6)	20	11/3/11	1/1/12	BOH
20. Brookline (18)	8	11/15/11	4/9/12	BYL
21. Wareham (87)	5	11/30/11	1/12/12	BOH
22. No. Attleboro* (58)	7	12/6/11	1/1/12	BOH
23. **Revere** (24)	6	12/9/11	1/1/12	BOH
24. Winchester (90)	2	12/13/11	1/1/12	BOH
25. Concord* (103)	3	11/20/11	2/14/12	BOH
26. **Springfield** (3)	23	3/21/12	5/21/12	BOH
27. **Fitchburg*** (35)	7	3/28/12	6/1/12	BOH
28. **Leominster*** (34)	9	4/18/12	6/1/12	BOH
29. Lee* (231)	2	4/30/12	7/1/12	BOH
30. Lenox* (245)	2	4/30/12	7/1/12	BOH
31. Stockbridge* (290)	0	4/30/12	7/1/12	BOH
32. Bedford* (147)	3	5/7/12	7/1/12	BOH
33. Middleton* (186)	2	5/16/12	7/1/12	BOH
34. Rochester* (240)	0	5/2/12	6/612	BOH
35. Saugus* (69)	7	6/4/12	9/1/12	BOH
36. **Pittsfield*** (28)	11	6/6/12	6/6/12	BOH
37. Buckland* (291)	0	6/13/12	7/1/12	BOH
38. Middleboro* (81)	3	6/18/12	7/1/12	BOH
39. Reading* (74)	4	6/21/12	7/1/12	BOH
40. Harwich (154)	3	7/10/12	9/1/12	BOH
41. **Gardner*** (93)	7	7/16/12	9/15/12	BOH
42. Brewster (181)	0	7/17/12	7/27/12	BOH
43. Dartmouth* (45)	7	7/17/12	1/1/13	BOH
44. **Salem*** (32)	6	7/24/12	9/1/12	BOH
45. Barre* (238)	1	8/13/12	10/1/12	BOH
46. Watertown* (50)	3	8/15/12	12/1/12	BOH
47. Montague* (194)	1	8/15/12	7/1/13	BOH
48. Westport* (126)	2	8/27/12	10/1/12	BOH
49. Fairhaven* (121)	7	9/17/12	11/1/12	BOH
50. **Haverhill*** (15)	11	9/18/12	3/18/13	BOH
51. Ashland* (115)	4	11/27/12	1/1/13	BOH
52. **Melrose*** (67)	4	12/4/12	2/4/13	BOH
53. **Malden*** (17)	8	12/11/12	2/4/13	BOH
54. W Boylston* (207)	2	12/12/12	4/1/13	BOH
55. **Gloucester*** (57)	5	1/10/13	3/1/13	BOH
56. Barnstable (27)	9	1/15/13	3/15/13	BOH
57. Whately (310)	0	1/15/13	2/9/13	BOH
58. Berkley (223)	0	2/12/13	4/1/13	BOH
59. Yarmouth (79)	2	3/18/13	5/28/13	BOH
60. Easton (82)	4	3/18/13	3/27/13	BOH
61. Gill* (309)	0	3/26/13	6/1/13	BOH
62. **W Springfield** (62)	10	4/17/13	7/1/13	BOH
63. Acton* (86)	4	4/23-13	5/13	BOH
64. Falmouth* (52)	7	5/13/13	8/XX/13	BOH
65. Arlington* (30)	6	5/15/13	7/1/13	BOH
66. Athol* (160)	3	5/18/13	10/1/13	BOH
67. Amherst* (41)	4	7/31/13	10/1/13	BOH
68. Townsend* (188)	2	8/26/13	1/1/14	BOH
69. Rockport* (216)	1	9/24/13	9/24/13	BOH
70. Edgartown* (260)	1	10/22/13	12/1/13	BOH
71. Abington* (120)	4	10/7/13	12/1/13	BOH
72. **Chelsea*** (44)	5	11/12/13	1/15/14	BOH
73. Sudbury* (104)	3	10/8/13	1/1/14	BOH
74. Dedham* (76)	8	11/19/13	1/1/14	BOH
75. Deerfield* (244)	6	10/9/13	1/1/14	BOH
76. **Greenfield*** (109)	6	11/14/13	2/1/14	BOH
77. **Lynn*** (9)	12	11/2013	1/1/14	BOH
78. Sunderland* (263)	0	12/16/13	1/1/14	BOH
79. Marion* (248)	0	1/14/14	4/15/14	BOH
80. **Easthampton***(119)	2	1/13/14	5/1/14	BOH

COMPANIES AFFECTED (WITH NUMBERS OF AFFECTED LOCATIONS) - TOTAL: 505

CVS (155)	Walgreens (81)	Rite Aid/Brooks (76)	Shaws Market (8)	Star Market (2)
Stop & Shop (35)	Hannaford (5)	Big Y (8)	Price Chopper (4)	Walmart (18)
Target (15)	Kmart (3)	Costco (3)	Independent Pharmacies (92)	

NOTES: (1) * indicates that electronic cigarettes and/or Nicotine Delivery Products are included in the sales ban (47).
(2) Cities are in bold letters.
(3) BOH = health regulation (74); ORD = city ordinance (3); BYL = town bylaw (1)
(4) Some Target and Kmart stores may have pharmacies but neither company sells tobacco per company policy.
(5) In Everett and West Springfield, one pharmacy is both a retailer and wholesaler. Tobacco sales to wholesale customers only, with conditions, is permitted.
(6) **46% of state's population lives in listed municipalities. (3,009,958 out of 6,547,629 residents).**

2/26/14

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