Briefing Sheet: Tobacco Sales Bans in Health Care Institutions (Pharmacies)

HISTORY AND STATEWIDE STATUS

In 2009, the Boston Public Health Commission implemented a ban on tobacco sales in “health care institutions”. This term includes pharmacies. That particular amendment to the city’s youth access regulation also included a ban on the sale of blunt wraps and a ban on tobacco sales in “educational institutions” (includes colleges and universities). The tobacco sales ban for both health care institutions and educational institutions went into effect on February 11, 2009.

Since the Boston policy went into effect, a number of municipal officials approached the Massachusetts Department of Public Health (DPH) wanting to move forward with their own tobacco sales ban in health care institutions. A few cities also moved forward on the policy when their local DPH-funded tobacco youth group approached decision makers requesting action on this issue.

To date, 25 cities and towns have enacted bans on the sale of tobacco products in health care institutions. All have been enacted as health regulations except for four city ordinances and one town bylaw. These municipalities represent 26% of the state’s population. Approximately 261 pharmacies no longer sell tobacco. To date, there have been no lawsuits, no compliance problems, and no penalties have been issued.

Municipalities have been encouraged to closely follow the language used by the city of Boston including the reason to move on this issue, which reads “…and whereas the sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication.”

The definition set forth by the City of Boston for Health Care Institution reads: “An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. ch. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.” The definition does not extend to convenience stores, for example, that sell over-the-counter medications, because these retailers are not licensed with the state as a “health care institution.” A practical method of determining who is covered by this definition is to ask if an establishment provides medical advice to their customers/clients. This policy does extend to pharmacies located within a larger establishment, such as one found in a supermarket.

At this time, there are about a dozen municipalities in the process of enacting this policy. The estimated population of these cities and towns is 470,000.

PUBLIC HEALTH REASONS

Beyond the justification cited above, other reasons for banning tobacco sales in health care institutions are:
Pharmacies are part of the health care delivery system that provide medical advice and therefore shouldn’t sell tobacco.

Fewer locations selling cigarettes reduce the number of retailers from which young people can attempt to buy tobacco.

Pharmacies selling tobacco give the imprimatur that tobacco is not dangerous.

The American Medical Association and the American Pharmacists Association both oppose the sale of tobacco in pharmacies.

The Massachusetts Medical Society has made banning the sale of tobacco in pharmacies a legislative priority. They have been actively supporting current statewide legislation. In addition, individual MMS members have been actively promoting local regulations in their own communities.

**ECONOMICS**

A tobacco sales ban in health care institutions does remove a whole product line from a retailer’s inventory. It is assumed through other licensure requirements and social denormalization that hospitals, clinics, doctors and dentists do not sell tobacco and therefore are not economically impacted by a tobacco sales ban. However, banning tobacco sales in pharmacies does result in some level of income reduction; according to the 2007 Massachusetts economic census, tobacco products accounted for 1.9% of pharmacy sales.

All 25 municipalities held public hearings to accept testimony prior to enacting the tobacco sales ban. Almost all of these cities and towns sent letters to every pharmacy in their jurisdiction announcing the hearing and the proposed tobacco sales ban. The mailing was based on that municipality’s list of pharmacies that sell tobacco, cross-checked with the state’s searchable database for current “Retail Drug Store Permits” found at HHS’s Health Professions Licensure License Verification Site.

To date, there have been no written statements from any pharmacies detailing income loss or any job loss resulting from a tobacco sales ban. No corporate level company representatives have testified to how a tobacco sales ban would, or has, adversely affected sales. The closest evidence we have about sales loss involves Costco and Rite-Aid.

In Everett, Costco is both a wholesaler and a retailer of tobacco products. This dual classification by the Massachusetts Department of Revenue only occurs in a few instances statewide, all involving Costco. Costco management and their lawyers met with the Everett mayor, and with technical assistance from DPH, the group crafted a narrow exception that permits Costco members who are legitimate tobacco vendors the ability to purchase cartons of cigarettes for resale. Sales of tobacco are prohibited to Costco members who are not licensed tobacco retailers.

Local Rite-Aid managers have testified in three different communities against the ban stating that they would lose money. None provided any further detailed accounting or any written testimony that would project actual losses. The three municipalities did enact the tobacco sales
ban in health institutions. Rite Aid has not come forward with any concerns about profit loss since the bans’ enactment.

There is no indication that new tobacco retailers are opening near pharmacies to capture their former tobacco sales business. Boston’s tobacco control program tracks the number of tobacco sales permits it issues and the data indicates a continued citywide reduction of tobacco vendors regardless of the tobacco sales ban in health care institutions and educational institutions. There is no evidence that any pharmacy has chosen to stop selling pharmaceuticals in favor of keeping their tobacco sales permit. Nor has there been any indication that a pharmacy has gone out of business due to a tobacco sales ban.

ORGANIZED OPPOSITION

Retailers Association of Massachusetts

The Retailers Association of Massachusetts (RAM) has sent the same form letter to many of those local governmental bodies that have entertained the enactment of the policy. It appears that RAM only changes the date, address and salutation of their letter. Their letter to cities and towns stresses the loss of business, that the tobacco ban is discriminatory as it only affects a certain type of retailer and the tobacco sales ban will not affect tobacco consumption. On January 23, 2012, RAM submitted a very similar letter to the Attorney General’s office in opposition to the Brookline town meeting vote to ban tobacco sales in both educational institutions and health care institutions. Brookline is the only town thus far to have enacted the policy as a town bylaw which requires Attorney General approval before it can go into effect.

Massachusetts Food Association

The Massachusetts Food Association has also sent the same form letter to many of the same local governmental bodies that RAM has. The MFA letter of opposition echoes the same topics that RAM uses in their letters.

Chambers of Commerce

Two local chambers of commerce have testified regarding tobacco sales bans in pharmacies. In Fall River, the chamber of commerce opposed the effort as an unwarranted infringement on local business by the city. In Worcester, the chamber of commerce testified in favor of the tobacco sales ban in pharmacies believing it would move tobacco sales business from national pharmacy chains to smaller “mom and pop” establishments that would more likely be independent and therefore owned by local Worcester residents.

No one at MTCP, and to our knowledge, no local official has met with either the Retailers Association of Massachusetts or the Massachusetts Food Association to discuss this policy effort. There has been no indication that these organizations have outreached to any other voluntary association (ACS, ALA, AHA, Mass Medical Society) that tobacco control usually works with or to any member of the Massachusetts Legislature.