

Tobacco 21 Laws Leave Many Pharmacies Confused About Sales Age of *Nicotine Replacement Therapies*

BY REENA CAPLASH, ELIJAH M. GOLDBERG, MATTHEW QUICK, SCOTT MCINTOSH, MOLLY MCNULTY

In November 2019, New York State passed the Adolescent Tobacco Prevention Use Act (ATPUA). This act raised the minimum age to purchase tobacco products from 18 to 21 years old. In December 2019, the federal government followed suit, and these laws are referred to as T21 laws.

Nicotine Replacement Therapies (NRT) can be purchased over-the-counter (OTC) or via prescription. According to the U.S. Food and Drug Administration ("FDA"), NRT's are not "tobacco products," and are instead one FDA approved method of smoking cessation. However, once the T21 laws were passed, many pharmacies mistakenly believed that the increase in age to purchase tobacco products meant that a necessary consequence was with a correlative increase in the age to purchase NRT's. This is an implementation error: in fact, OTC NRT are legally available for purchase to anyone who is over 18 years old.

A study conducted in January 2020 by the University of Rochester Medical Center's Tobacco Cessation and Prevention Research Program immediately following the enactment of the T21 laws, contacted 48 chain pharmacy stores and 17 independent pharmacies to inquire about their sales age of OTC NRT. They found that 18 of 31 (56%) chain stores and two of 13 independent stores that sell NRT over the counter (15%) associated the T21 laws with an increase in age to purchase OTC NRT's.

A follow-up study was conducted in summer 2020. The purpose of the follow-up study was to identify where, in the policymaking cycle, communication had broken down between policymakers and the subjects of the regulation. In our inquiry, a random number generator was used to select two

of each of the following chain pharmacies to call in Monroe County, NY: Wegmans, CVS, Walgreens, Tops and Rite Aid. Six independent pharmacies were also called. These stores were asked which age they sell OTC NRT to, if the T21 laws had any effect on sales age, if they have frequent contact with their district managers, and whether or not people purchasing OTC NRT ask for pharmacist guidance in using the NRT. The district managers for the chain pharmacies were contacted via email or phone and were asked a series of questions about their sales practices.

The findings were partially consistent with the previous study from January 2020. Of the ten chain stores, seven reported that they only sell OTC NRT's to individuals over 21, and of those seven, three reported that the age is due to the T21 laws. All six independent pharmacies reported that they generally do not carry NRT's over the counter, as most of their NRT sales are through prescription. No district managers responded with answers to our questions, so no conclusions could be drawn regarding the management level of pharmacies. However, seven chain stores reported that they do have frequent contact with their district managers, and of those, four sell to over 21, which could mean that the information received at the management level is incorrect.

This miscommunication between well-meaning health policy makers and pharmacy staff is part of an implementation flaw that contributes to rather than alleviates a crucial problem in public health. Independent pharmacies not carrying NRT's over the counter could create a barrier to NRT access. The Healthy People 2030 goal is to reduce illness, disability, and death related to

tobacco use and secondhand smoke. To achieve that goal, all pharmacies need to sell OTC NRT to individuals over 18, because many 18 to 20 year olds who are addicted to nicotine are being denied the necessary and effective cessation tools.

Future steps include raising awareness among physicians that NRT are still available despite the change in the tobacco regulations, educating the state and local health departments to inform them of this issue, and informing district managers that their stores can legally sell NRT to individuals over 18 to minimize this access problem. New York City has an exemplary flyer to pharmacists specifying that NRT are not “tobacco products” within the meaning of the statute, and could be used as a template.



Reena Caplash – University of Rochester undergraduate Public Health Major, B.S. candidate 2022

Elijah M. Goldberg – Williams College, undergraduate Biology major, B.A. candidate 2021

Matthew Quick - University of Rochester undergraduate Political Science/ International Relations major, B.A. candidate 2021

Scott McIntosh – University of Rochester Associate Professor of Public Health Sciences

Molly McNulty – University of Rochester Assistant Professor of Public Health Law & Policy