LIMITING TOBACCO SALES IN RURAL NEW YORK COMMUNITIES

Commercial tobacco[1] use is more common in rural communities than in urban communities,[2] leading to a disproportionate burden of tobacco-related disease and deaths in rural communities.

Tobacco-related health harms in rural areas are compounded by lower incomes, lower levels of education, and less access to health care.[3] In 2020, an estimated 1.4 million New Yorkers (7 percent of the state's total population) lived in 24 counties.[4]

This fact sheet describes tobacco use in rural areas of New York State, the health harms caused by tobacco use, policy options for local communities in New York seeking to regulate tobacco sales, and special policy considerations for rural communities.

Adult Tobacco Use

Adults who live in rural areas of New York are more likely to smoke cigarettes and to have tried e-cigarettes than their urban counterparts.[5] Adult smoking rates in New York State have

decreased over the past several decades, but these decreases have not been consistent across the state. In 2018, 12.8 percent of all New York State adults smoked cigarettes.[6] In contrast, smoking rates in the 24 most rural counties averaged 18.7 percent (counties ranged from 15.9 percent to 23.3 percent) (Figure 1).[7] As a result, in New York's 24 most rural counties almost one of every five adults smoked cigarettes.[8]

Youth Tobacco Use

Statewide, youth tobacco use in New York remains high with 1 in 4 (25.6 percent) high school students surveyed in 2020 reporting commercial tobacco use.[9] Electronic cigarettes were the most commonly used products (22.5 percent of youth), followed by other tobacco products (e.g., cigars, smokeless tobacco, pipe tobacco, and hookah) (6.1 percent) and cigarettes (2.4 percent).[10]

Nationally, tobacco use by youth who live in rural areas is higher than urban youth.[11] High rates of adult tobacco use directly impact children who live in rural areas because they are more likely to be exposed to secondhand smoke and tobacco products in the home.[12] Children who live in rural areas are exposed to pervasive tobacco advertising. Tobacco industry influence in New York State continues to drive commercial tobacco-related disparities and inequities: annually the tobacco industry spends $9.1 billion (almost $1 million every hour) to market and promote its deadly and addictive products and of that total, an estimated $177.3 million is spent in New York State marketing each year.[13] A study of tobacco advertising in New York State found that tobacco retailers outside New York City frequently displayed indoor ads for brand name products with appeal to youth (e.g., Newport Green [29.5 percent] and Marlboro Red [40.5 percent]).[14] Youth who live in rural communities are especially vulnerable to indoor tobacco retailer advertising because studies show they visit stores that sell tobacco more frequently than youth who live in urban areas.[15]

Health Impacts of Increased Tobacco Use

In general, rural residents have higher rates of overall disease prevalence and shorter lifespans than urban residents.[16] These health disparities are compounded by increased tobacco use that causes a greater incidence of tobacco-related disease and death among this population. For example, in New York State, lung and bronchus cancers occur at a rate of 57.6 cases per 100,000 people annually.[17] In New York State's 24 most rural counties, lung and bronchus cancers occur at a much higher rate of 74.1 cases per 100,000 people (Figure 1).[18] Disparities in life expectancy between people living in metro and non-metro areas have increased nationwide, in part because smoking rates have declined faster in metro areas than non-metro areas. A national study of life

expectancy after the age of 50 found that between 1990 and 2019, men living in metro areas lived 2.17 years longer than men living in non-metro areas, and women living in metro areas lived 2.77 years longer than women living in non-metro areas.[19] The study found that smoking-related deaths were a significant factor in this geographic disparity in life expectancy.[20] Tobacco control policies that decrease overall tobacco use in rural areas have been identified as a key strategy to reduce tobacco-related health disparities.[21]

Tobacco Product Sales Policies

Rural communities suffer the most tobacco-related health harms while benefiting the least from local tobacco control policies.[22] The New York State Health Department's Prevention Agenda for 2019-2024 aims to reduce tobacco use, in part, through the adoption of local tobacco control policies.[23] Local governments in New York have broad authority to regulate tobacco sales.[24] Effective policies reflect the tobacco sales environment in rural communities. The most prevalent tobacco retailers in rural areas are convenience stores and discount stores.[25] As a result, targeting these types of retailers could help reduce tobacco retailer density and also address health equities.[26]

Tobacco sales can be restricted through local tobacco retailer licensing policies. Tobacco retailer licensing can be self-funding through licensing fees so as not to place a financial burden on limited local resources.[27] For example, the Town of Bethlehem, NY (pop. 34,924) charges an annual tobacco retailer licensing application fee of $130 and a license issuance fee of $140.[28] Tobacco licensing laws in rural areas have been enforced by a county health de-

Figure 1: Adult Smoking Rates and Prevalence of Lung Cancer in the 24 Rural Counties of New York State

County	Percent of Adult Current Smokers (2018)[a]	Annual Lung & Bronchus Cancer Incidence Per 100,000 (2015-2019)[b]
Allegany	17.9	72.3
Cattaraugus	20.7	70.4
Cayuga	18.3	81.2
Chautauqua	20.9	72.8
Chenango	15.9	73.4
Clinton	19.9	97.7
Columbia	16.2	67.5
Cortland	19.8	86.9
Delaware	16.8	65
Essex	16.4	71.9
Franklin	20.6	83.1
Fulton	23.3	80.7
Genesee	20.5	75.1
Greene	18.5	79.6
Hamilton	--*	74.7
Lewis	18.3	57.5
Montgomery	15.9	84.6
Otsego	16.5	58.6
Schuyler	16.9	77.1
Seneca	19.5	74.9
St. Lawrence	18.5	72.8
Steuben	19.9	69.6
Sullivan	21	65
Wyoming	19.6	66.7
Average:	18.77*	74.12

*Adult smoking data is not available for Hamilton County. The average presented is an average of the 23 counties with adult smoking data available.

a N.Y. STATE DEPT. OF HEALTH, BUREAU OF TOBACCO CONTROL, PREVALENCE OF CURRENT SMOKING AMONG ADULTS IN NEW YORK STATE BY COUNTY, NYS BRFSS 2018 (Aug. 2021).

b N.Y. STATE DEPT. OF HEALTH, NEW YORK STATE CANCER REGISTRY CANCER INCIDENCE AND MORTALITY BY COUNTY AND GENDER, 2015-2019 (2021).

partment, a local police department, a village administration, and a local planning department.[29]

Tobacco Retailer Density

A study of tobacco retailer density in New York State found that the state's rural communities have a high density of tobacco retailers and that these communities should be prioritized in efforts to reduce tobacco use.[30] Rural communities can reduce the total number of tobacco retailers by capping the number of licenses issued, and gradually reducing the number of licenses available in the community by retiring licenses if they are not renewed.[31] For example, the Town of Bethlehem, NY's (pop. 34,924) adopted a tobacco retailer licensing policy that took effect at the beginning of 2021.[32] In 2022, there were fourteen tobacco retailers in the Town.[33] The policy seeks to gradually reduce the number of tobacco retailers in the community. The policy states that the Town can issue only one new license for every two not renewed until a floor of seven tobacco retailers is reached, at which point the Town is limited to issuing seven tobacco retail licenses per year.[34]

Tobacco retailer licensing can restrict the types of businesses that sell tobacco products. For example, various local governments in New York State restricted tobacco sales in pharmacies before New York's statewide law in 2020 prohibited tobacco sales in pharmacies.[35] Rural communities seeking to limit youth access to e-cigarettes and all flavored tobacco products could restrict their sales to specialty shops, such as smoke shops, that only permit in-person sales to those who are 21 or older.[36]

Rural communities also can regulate the location of tobacco retailers. One approach has been to create buffer zones around schools and healthcare facilities where new tobacco licenses cannot be issued.[37] School buffer zones range from 100 feet (e.g., Cayuga County, NY [pop. 75,880]) to 1,000 feet (e.g., Village of Dolgeville, NY [pop. 2,206]).[38] Interestingly, research has found that restricting the location of tobacco retailers in rural areas may be less effective than in urban areas.[39] This is because youth who live in rural areas are more likely to visit stores that sell tobacco than youth who live in urban areas even when youth who live in rural areas have fewer tobacco retailers between home and school.[40]

Tobacco Products Offered for Sale

Local policy can limit the types of tobacco products that can be sold.[41] For example, the Town of Manheim, NY (pop. 3,069) passed an ordinance to prohibit the sale of all flavored tobacco products, although it repealed the ordinance after the threat of a legal challenge.[42]

Another approach to reducing access to flavored tobacco products is to enact local tobacco retailer licensing policies that require compliance with applicable tobacco control laws. For example, New York State law prohibits sales of flavored vapor products.[43] Local licensing can enhance enforcement of this policy by requiring that tobacco retailers comply with all applicable tobacco control laws or else risk losing their local tobacco retailer license.[44] For instance, Cayuga County's tobacco retailer licensing policy states that tobacco retailers that violate state, local, or federal laws pertaining to the sale of tobacco products, including New York State's prohibition of sales of flavored vapor products, will have their license to sell tobacco products suspended for three months for a first offense, six months for a second offense, and revoked altogether for a third offense.[45]

Conclusion

Rural communities in New York State suffer disproportionate health harms from tobacco. Adult tobacco use still consists mainly of cigarette smoking, whereas e-cigarettes are most popular with youth. Local policies tailored to the tobacco sales environment in rural communities can be implemented to support adults who want to quit tobacco or to reduce their consumption, and to prevent future generations from becoming addicted to e-cigarettes and other tobacco products. Tobacco retailer licensing is a promising strategy for rural communities that want to bolster compliance with existing tobacco control laws and control the number and location of tobacco retailers in the community.

Contact us for assistance! If you're working on New York State commercial tobacco control issues and need assistance, contact the Public Health Law Center at (651) 290-7506 or publichealthlawcenter@mitchellhamline.edu.

This fact sheet was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible by a contract from the New York State Department of Health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

Endnotes

1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. In comparison, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit http://www.keepitsacred.itcmi.org. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.

2 N.J. Doogan et al., A Growing Geographic Disparity: Rural and Urban Cigarette Smoking Trends in the United States, 104 Preventive Med. 79 (2017).

3 See Jean A. Talbot et al., Nat'l Network of Pub. Health Institutes, Advancing Tobacco Prevention and Control in Rural America (2019), https://nnphi.org/wp-content/uploads/2019/02/AdvancingTobaccoPreventionControlRuralAmerica.pdf.

4 Rural Health Information Hub, New York (Mar. 24, 2021), https://www.ruralhealthinfo.org/states/new-york (last visited Jan. 30, 2023) (classifying the following counties as "non-metro": Allegany, Cattaraugus, Cayuga, Chautauqua, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Lewis, Montgomery, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Wyoming). For purposes of this fact sheet, a measure for rurality calculated at the county level is used to align with available public health data for tobacco use and tobacco-related disease. For a detailed discussion of the implications of how "rural" is defined, see Megan E. Roberts et al., How Should We Define "Rural" When Investigating Rural Tobacco Use in the United States?, 42 Substance Abuse 788 (2021).

5 Elizabeth A. Mumford et al., Regional Rural-Urban Differences in E-Cigarette Use and Reasons for Use in the United States, 35 J. of Rural Health 395 (2019).

6 N.Y. State Dept. of Health, Bureau of Tobacco Control, Prevalence of Current Smoking Among Adults in New York State by County, NYS BRFSS 2018 (Aug. 2021), https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume14/n2_prevalence_of_current_smoking.pdf.

7 Id. (Adult smoking data is not available for Hamilton County. The average presented is an average of the 23 counties with adult smoking data available.)

8 Id.

9 N.Y. State Dept. of Health, Bureau of Tobacco Control, Milestones in Tobacco Control: Youth Tobacco Use Declines Across All Product Types in 2020, Lowest Youth Smoking Rate on Record (Sept. 2021), https://health.ny.gov/prevention/tobacco_control/reports/statshots/volume14/n3_milestones_in_tobacco_control.pdf.

10 Id.

11 Jean A. Talbot et al., Nat'l Network of Pub. Health Institutes, Advancing Tobacco Prevention and Control in Rural America 9 (2019), https://nnphi.org/wp-content/uploads/2019/02/AdvancingTobaccoPreventionControlRuralAmerica.pdf (noting that between 2014 and 2016, the odds of adolescents living in rural areas smoking were 54 percent higher than youth living in urban areas); Melissa D. Blank et al., Geographic Isolation Predicts Tobacco Product Use Among Youth: A Latent Class Analysis, 38 J. of Rural Health 373 (2022).

12 Rural Healthy People 2020 129 (Jane N. Bolin et al., eds. 2015), https://srhrc.tamhsc.edu/docs/rhp2020-volume-1.pdf (reporting higher rates of children in rural communities living in households with a person who smokes than children who live in urban communities).

13 Campaign for Tobacco-Free Kids, The Toll of Tobacco in NY (last updated Jan. 2023), https://www.tobaccofreekids.org/problem/toll-us/new_york; see also RTI Int'l, 2020 Independent Evaluation Report of the New York Tobacco Control Program 5 (Dec. 2021), https://health.ny.gov/prevention/tobacco_control/docs/2020_independent_evaluation_report.pdf.

14 Elizabeth Needham Waddell, Point of Sale Tobacco Marketing to Youth in New York State, 59 J. Adolescent Health 365 (2016).

15 Montgomery L. Burgoon et al., Exposures to the Tobacco Retail Environment Among Adolescent Boys in Urban and Rural Environments, 45 Am. J. Drug & Alcohol Abuse 217 (2019).

16 Kelly Buettner-Schmidt et al., Disparities in Rural Tobacco Use, Smoke-Free Policies, and Tobacco Taxes, 41 Western J. of Nursing Res. 1184 (2019).

17 N.Y. State Dept. of Health, New York State Cancer Registry Cancer Incidence and Mortality by County and Gender, 2015-2019 (2021), https://www.health.ny.gov/statistics/cancer/registry/pdf/volume1.pdf.

18 Id.

19 Arun S. Hendi & Jessica Ho, Smoking and the Widening Inequality in Life Expectancy Between Metropolitan and Nonmetropolitan Areas of the United States, 10 Frontiers in Pub. Health 942842 (2022).

20 Id.

21 Id.

22 Kelly Buettner-Schmidt et al., supra note 16.

23 N.Y. State Dept. of Health, Prevention Agenda 2019-2024: Prevent Chronic Diseases Action Plan (Sept. 2019), https://www.health.ny.gov/prevention/prevention_agenda/2019-2024/chr.htm#FA3.

24 E.g., N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12).

25 Claire Jenkins et al., Variations in Tobacco Retailer Type Across Community Characteristics: Place Matters, 19 Preventing Chronic Disease E49 (2022).

26 Id.

27 Public Health Law Center., Location, Location, Location; Tobacco & E-Cig Point of Sale: Regulating Retailers for Public Health (2019), https://www.publichealthlawcenter.org/sites/default/files/resources/Location-Tobacco-Ecig-Point-Of-Sale-2019.pdf; see also Public Health Law Center, Tobacco Retail Licensing Calculator, https://www.publichealthlawcenter.org/resources/tobacco-retail-licensing-calculator.

28 Town of Bethlehem, Albany County, New York, Tobacco Retail License for 2023: Frequently Asked Questions, https://www.townofbethlehem.org/DocumentCenter/View/13053/FAQ-Tobacco-Retail-License-for-2022-Final?bidId=.

29 Pub. Health & Tobacco Pol'y Ctr., Ways & Means: Point of Sale Policy: New York Communities Taking Action (2020), https://tobaccopolicycenter.org/documents/posProgress.pdf.

30 Amani Alharthy et al., Association Between Tobacco Retailer Density and Smoking Among Adults with Diabetes and Serious Mental Illness in New York State, 19 Preventing Chronic Disease E01 (2022).

31 Public Health Law Center, supra note 27.

32 Town of Bethlehem, supra note 28.

33 Id.

34 Town of Bethlehem, N.Y., Town Code § 114-9 (2020), https://ecode360.com/36414885.

35 Pub. Health & Tobacco Pol'y Ctr., supra note 29; N.Y. Pub. Health Law § 1399-mm-2.

36 Alharthy et al., supra note 30.

37 Public Health Law Center, supra note 27.

38 County of Cayuga, N.Y., Local Law 5 of 2013, https://www.cayugacounty.us/DocumentCenter/View/2190/Local-Law-Number-5For-The-Year2013---Tobacco-Retail-Licensing-Ordinance-PDF; Village of Dolgeville, NY, Local Law 2 of 2019, https://static1.squarespace.com/static/5cc5a2cce8ba44a89b6e5a85/t/5cd1e7338165f5cf8481a374/1557260089383/Local+Law+%23+2-2019+-+Local+Law+Establishing+Tobacco+Retail+Lice.pdf

39 Burgoon et al., supra note 15.

40 Id.

41 Public Health Law Center., supra note 27.

42 RTI Int'l, supra note 13, at 23.

43 N.Y. Pub. Health Law § 1399-mm-1.

44 Marnie Eisenstadt, A Kid-Saving NY Law Almost No One Enforces: How the Flavored Vape Ban Went Up in Smoke, Syracuse.com (Sep. 26, 2022), https://www.syracuse.com/news/2022/09/a-ny-law-no-one-follows-how-the-flavored-vape-ban-went-up-in-smoke.html (discussing the need for better enforcement of state tobacco control policy).

45 County of Cayuga, N.Y., Local Law 5 of 2013, https://www.cayugacounty.us/DocumentCenter/View/2190/Local-Law-Number-5For-The-Year2013---Tobacco-Retail-Licensing-Ordinance-PDF.