Addressing Tobacco Use in Residential Care: Policies & Priorities

June 30, 2016
How to Use Webex

If you can hear us through your computer, you do not need to dial into the call. Just adjust your computer speakers as needed.

If you need technical assistance, call Webex Technical Support at 1-866-863-3904.

All participants are muted. Type a question into the Q & A panel for our panelists to answer. Send your questions in at any time.

This webinar is being recorded. If you arrive late, miss details or would like to share it, we will send you a link to this recording after the session has ended.
What Does the Public Health Law Center Do?

- Legal Research
- Policy Development
- Publications
- Trainings
- Direct Representation
- Lobby
Tobacco Control Legal Consortium

Attorneys supporting tobacco control policy change.
Moderator / Presenter

Kerry Cork
Staff Attorney
Public Health Law Center
Presenter

Pat McKone
Regional Senior Director
American Lung Association of the Upper Midwest
Tobacco Control Programs & Policy
Presenter

Jenn Beidemann
Policy & Research Associate
Finger Lakes Health Systems Agency
Addressing Tobacco Use in Residential Care Settings: Policies and Priorities

Pat McKone, Regional Senior Director
American Lung Association of the Upper Midwest
Tobacco Control Programs and Policy
Adult Tobacco Use in the United States, 2013

Minnesota: 18.0%

Nationwide: 19.0%
Cigarette Use among Adults with Any Mental Illness

Source: National Survey on Drug Use and Health, 2009-2011, Adults ages 18 or older
**Source: National Survey on Drug Use and Health, 2009-2011, Adults ages 25 or older
Current Smoking among Adults Aged 18 or Older, by Past Month Serious Psychological Distress Status: NHIS, 1997 to 2011

* Difference between estimate and estimate for 2011 is statistically significant at the .05 level.
Persons with a mental health disorder or substance use disorder purchase & consume 30-44% of cigarettes sold in the U.S.

3 in 10

About 3 of every 10 cigarettes (31%) smoked by adults are smoked by adults with mental illness.

Sources: NCS; Lasser, 2000; NESARC; Grant, 2004; NSDUH; MMWR, 2013
Three fourths of people that smoke have a past or present problem with mental illness or addiction.
Disparities in tobacco use related to mental health status among adults in Minnesota
Recent data from several states have found that people with SMI die, on average, 25 years earlier than the general population.

*National Association of State Mental Health Program Directors Medical Directors Council, July 2006; Miller et al., 2006*
Tobacco, Serious Mental Illness and Death

The percentage of deaths due to tobacco were **2.7 times greater** among adults with serious mental illness (SMI) than those without SMI.

Among adults with SMI, adults with a tobacco-related diagnosis had a median age at death **14 years earlier** than those without a tobacco-related diagnosis.

Adults with SMI and a tobacco-related diagnosis had a median age at death **32 years earlier** than adults without SMI and without a tobacco-related diagnosis.

### Minnesota Health Care Programs (MHCP) Clients Who Were 18 and over at time of Death During 2008-2012

By Whether they had Tobacco/Nicotine or Serious Mental Illness (SMI) Diagnosis during 3 years prior to death

<table>
<thead>
<tr>
<th>Gender</th>
<th>Tobacco or Nicotine Related Diagnosis</th>
<th>MHCP Non-SMI vs SMI population</th>
<th>Percent of Deaths</th>
<th>Median Age at Death</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No Tobacco Related Diagnosis</td>
<td>Tobacco related diagnosis</td>
<td>Difference (Negative indicates Tobacco impact)</td>
<td>Difference (Negative indicates Tobacco impact)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>Adults without Serious Mental Illness</td>
<td>Male</td>
<td>84%</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>16%</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>69%</td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>Adults without Serious Mental Illness</td>
<td>Male</td>
<td>70%</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>30%</td>
<td>61</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>39%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>Adults without Serious Mental Illness</td>
<td>Male</td>
<td>79%</td>
<td>86</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>21%</td>
<td>63</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>58%</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>Adults with Serious Mental Illness</td>
<td>Male</td>
<td>49%</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>51%</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-2%</td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>Adults with Serious Mental Illness</td>
<td>Male</td>
<td>36%</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>64%</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-27%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>Adults with Serious Mental Illness</td>
<td>Male</td>
<td>43%</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>57%</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-14%</td>
<td></td>
</tr>
</tbody>
</table>

### Serious Mental Illness (SMI) includes the diagnoses of Schizophrenia, Schizoaffective or Bi-Polar disorders.

### Note:
- MHCP non-SMI populative included 56,227 adults who died during the 5 year period.
- The MHCP SMI population included 2,326 adults who died during the 5 year period.

Source: Adult Mental Health Division, MN DHS
Confronting a Mentality

- **Indifference**
  - Low priority
  - Don’t see a relationship to treatment
  - Unaware of the data

- **Reluctance**
  - Too difficult
  - Consumer unwillingness

- **Resistance**
  - Embrace and encourage tobacco use
Thank you!
Behind Closed Doors:
Addressing Tobacco Use in Assisted Living Residences

Kerry Cork, J.D.
June 30, 2016

Any legal information provided in this presentation does not constitute legal advice or legal representation.
Research Goals

• Explore barriers to reducing tobacco use & secondhand smoke exposure in assisted living residences.

• Identify effective strategies for ensuring a tobacco-free environment in assisted living residences.
“Adult foster care” . . . Huh?

“A licensed living arrangement that provides mentally or physically impaired or ailing adults around the clock support, including food, lodging, supervision and household services.”
Wrangling with Terms

- Adult family homes
- Comprehensive living facilities
- Family care homes
- Supportive care homes
- Long-term services and support
- Homes plus
- Family respite care
Residential arrangements (including adult foster care) that provide impaired, elderly or ailing adults 24-hour support, including food, lodging, supervision and household services.
National Advisory Panel

- Experts in elder law / smoke-free housing law
- Experts in tobacco use among vulnerable groups
- Adult foster care experts / social service administrators
Legal Analysis & Research

- Collected & analyzed data
  - 50-state survey of all state laws, rules & policies regulating smoking in assisted living residences
  - Reviewed and categorized requirements
Legal Analysis & Research

• Interviewed key informants in 6 states (AK, MI, MN, MT, NJ, OR)
  – Obstacles in adopting, implementing & enforcing smoke-free measures in assisted living settings
  – Lessons learned
Key Informants

PANEL OF EXPERTS

Below is a snapshot of the U.S. landscape of state smoke-free regulations in adult foster care homes and similar assisted living residences as of January 2016. This information was based on a 50-state (plus Washington, D.C.) survey of current state statutes and administrative rules and regulations pertaining to the use of tobacco products in adult foster care homes and related assisted living residences. Because states vary in the terms they use for these homes and facilities, efforts were made to include those assisted living residences that most resemble adult foster care—licensed living arrangements that provide mentally or physically impaired, elderly or ailing adults around-the-clock support, including food, lodging, supervision and household services, both in corporate adult foster care facilities and in private residences. Whenever possible, hyperlinks to free online resources containing the cited authority are included. Please click on a state to see regulations in place as of January 2016.

Download Complete Data Set [PDF]
Assisted Living Residences – District of Columbia

Regulations current as of January 2016

Does the state’s smoke-free or clean indoor air law prohibit smoking in “adult foster care” (or similar assisted living residences for vulnerable adults)?

No. D.C. Code Ann. tit. 7 § 7-741 to 7-747 (2011) Note: Smoking is prohibited in “adult day care.”

How does the state define “adult foster care”? What population is served?

The state licenses assisted living residents and community residence facilities. There is a separate license for adult foster care. Assisted living residence is an entity, whether public or private, that combines housing, health services, and personal assistance — in accordance with individually developed service plans — for the support of individuals who are unrelated to the owner or operator of the entity. A community residence facility is a residence that provides safe, hygienic, sheltered living arrangements for one or more individuals 18 years of age or older who are not related by blood or marriage to the residence director, and who are ambulatory and able to perform activities of daily living with minimal assistance. These facilities cover the elderly and physically disabled and group homes for persons with intellectual disabilities that provide a sheltered living arrangement for persons who desire or require supervision or assistance within a protective environment because of physical, mental, familial or social circumstances, or intellectual disability. D.C. Assisted Living Residences Regulation. D.C. Stat. §§ 44-101.01 et seq. (2015)

Do other state laws or regulations prohibit all smoking in “adult foster care” or similar assisted living residences?

Not specified. District of Columbia Municipal Regulations. Title 22, Chap. 31: Licensing of Health Care and Community Residence Facilities

What administrative body regulates adult foster care or similar assisted living residences in the state?

Washington, D.C. Department of Health, Health Regulation and Licensing Administration

Additional information

Note: D.C. specifies that community-based services and residential facilities least restrictive to the personal liberty of the individual should be established for persons with intellectual disabilities at each stage of life development; the use of institutionalization should be abated to the greatest extent possible, whenever care in an institution or residential facility is required, it
Lessons Learned
Common Myths

• People with mental illness or other cognitive disabilities are less motivated and able to quit than others.

• Tobacco addiction is a less urgent substance abuse issue than more “problematic” alcohol and drug addictions.

• Tobacco cessation treatment dangerously interferes with other medical treatments & jeopardizes / compromises recovery or stability.
Realities

• People with mental illness or disorders are as motivated as the general population to quit smoking.

• Tobacco is INEFFECTIVE as a treatment for mental disorders. Psychiatric disease makes the brain more susceptible to addiction.
Realities

• Smoking cessation does NOT exacerbate depression or PTSD symptoms or lead to psychiatric hospitalization or increased use of alcohol or illicit drugs

• People with mental illness are far more likely to die from tobacco-related diseases than from mental illness.
Public Health Issue

• Tobacco use & secondhand smoke exposure can have a disproportionately adverse health effect on assisted living residents

• Tobacco-free environment denormalizes smoking & promotes cessation
Public Health & Safety Issue

Tobacco-free environments reduce the risk of fire, particularly when cognitively impaired or disabled adults smoke surreptitiously.
Social Justice Issue

Tobacco industry targets vulnerable populations with –

- Predatory marketing tactics
- Price discounting practices
Social Justice Issue

Tobacco use stigmatizes groups already marginalized, resulting in –

– Limited employment opportunities
– Restricted housing options
Barriers & Unintended Consequences

• Cultural Norm
  – High number of staff smoke (attendants, personal caregivers, administrators)
  – Smoking is a socialization activity of residents – an emotional coping mechanism
Barriers & Unintended Consequences

• Burden on Providers
  – Limited resources & staff make it hard to monitor residents (fear of “elopements”)
  – Need to accommodate special challenges for life-long smokers in quitting
Barriers & Unintended Consequences

- Burden on Providers
  - Concern that enabling non-ambulatory or infirm residents to smoke outside, etc. will increase likelihood of accidents & legal liability
  - Concern about adverse impact on recruitment & retention of staff or residents
New Regulatory Challenges

• Use of e-cigarettes or similar devices by residents and staff
New Regulatory Challenges

• Smoking of marijuana in assisted living residences in states where medical or recreational use has been legalized
Recommendations - State/Community Leaders

- Promote comprehensive state smoke-free laws
- Include smoke-free environment as licensing requirement
- Encourage mental health, substance use & primary care providers to integrate tobacco cessation services w/ their services
Recommendations - State/Community Leaders

- Encourage social service workers to work with tobacco control professionals.

- Support comprehensive insurance coverage for tobacco cessation treatment.
Recommendations – Assisted Living Providers

- Effective initial assessment of resident (& staff) tobacco dependency
- Develop a careful implementation plan
- Allow sufficient time to educate the staff, residents, family members/caretakers, and community, and to establish procedures before policy takes place
Recommendations – Assisted Living Providers

- Disclose & discuss policy in resident preadmission screening, house rules & regulations, employee interviews & staff policy manuals.
- Place signage in conspicuous areas on the premises
Recommendations – Assisted Living Providers

- Ensure that all staff, residents & visitors comply with tobacco-free policies, and that policies are enforced fairly and consistently.

- Give staff & residents tobacco cessation & quitline referral information & (if possible) easy access to NRT products or resources.
HUD’s Pending Smoke-free Rule

Rule requires more than 3,100 public housing agencies across the U.S. to prohibit lit tobacco products in all living units, indoor common areas, administrative offices, and all outdoor areas within 25 feet of housing and administrative office buildings.
www.publichealthlawcenter.org
Tobacco-Free Assisted Living Resources (2016)

Since the end of the 20th century, both the U.S. and Canada have seen large increases in smoke- and tobacco-free environments, including public places, workplaces, multi-unit apartment buildings, and affordable housing. State and local tobacco control laws often exempt residential care settings, including assisted living, adult foster care, nursing homes, and similar environments, where many of the most vulnerable members of society live and where a disproportionate number of residents (and staff) either use tobacco products or are exposed to secondhand smoke. This collection of resources presents the legal landscape of state regulations and provides the public health rationale for reducing tobacco use and secondhand smoke exposure in assisted living and long-term care settings.


A snapshot of the U.S. landscape of state smoke-free regulations in adult foster care homes and similar assisted living residences as of January 2016.

View the 50 State Review

Addressing Tobacco Use in Residential Care Settings: Policies & Priorities (2016)

This webinar discusses the public health rationale for reducing tobacco use and secondhand smoke exposure in assisted living and long-term care settings. Presenters describe the current tobacco control landscape in these environments and several regulatory options to address tobacco use in this population.

View the Webinar

Checklist for Implementing Tobacco Policies in Assisted Living Residences (2016)

This checklist contains guidelines to consider when drafting policies for addressing tobacco use and nicotine addiction in assisted living residences (including adult foster care).

View the Resource

Behind Closed Doors: The Hidden Epidemic of Nicotine Addiction In Assisted Living Residences (2016)

Poster summarizing findings from the Public Health Law Center's ClearWay Minnesota research grant exploring strategies for reducing tobacco use and secondhand smoke exposure in assisted living residences.

View the Poster
An Examination of Policies Addressing Resident Smoking in Nursing Homes

Jessica Kulak, MPH, MS
Adjunct Lecturer, SUNY
Smoking among older adults

Cancers
- Oropharynx
- Larynx
- Esophagus
- Trachea, bronchus, and lung
- Acute myeloid leukemia
- Stomach
- Liver
- Pancreas
- Kidney and ureter
- Cervix
- Bladder
- Colorectal

Chronic Diseases
- Stroke
- Blindness, cataracts, age-related macular degeneration
- Congenital defects–maternal smoking: orofacial clefts
- Periodontitis
- Aortic aneurysm, early abdominal aortic atherosclerosis in young adults
- Coronary heart disease
- Pneumonia
- Atherosclerotic peripheral vascular disease
- Chronic obstructive pulmonary disease, tuberculosis, asthma, and other respiratory effects
- Diabetes
- Reproductive effects in women (including reduced fertility)
- Hip fractures
- Ectopic pregnancy
- Male sexual function–erectile dysfunction
- Rheumatoid arthritis
- Immune function
- Overall diminished health

Source: www.cdc.gov
Percent of current smokers, age 65+ years, United States, 1999-2014

Source: U.S. National Health Interview Surveys, 1999-2014
An Examination of Policies Addressing Resident Smoking in Nursing Homes

Celia A. Watt, PhD, Jill W. Lassiter, EdD, Jennifer R. Boyle, PhD, Jessica A. Kulak, MS, and Deborah Ossip-Klein, PhD

Objectives: To report findings of a nationwide project that examined nursing homes’ tobacco policies for residents.

Design: A random selection procedure was used to sample nursing homes proportional to the geographic distribution of nursing homes in the United States. Rubrics were developed to objectively describe and compare policies.

Setting: Policies were obtained from 4 types of facilities: (1) facilities that allow smoking indoors and outdoors (I/O-SFs), (2) facilities that allow residents to smoke outdoors only (O-SFs), (3) facilities that do not allow residents to smoke indoors or out of doors (NSFs), and (4) facilities in transition (TFs) from a smoking facility to an NSF.

Measures: Rubrics used to score policies had common categories: administrative/authority issues, notification, resident smoking, safety, cessation assistance/encouragement, and smoking areas. Criteria within each category varied to reflect the smoking regulations of each type of facility (eg, policies of facilities that do not allow smoking indoors were not examined for inclusion of issues related to ventilation).

Results: Facilities’ policies from geographically diverse facilities are described. Across all facilities, mean percentages reflecting policies’ overall comprehensiveness were low, and when examining specific components of the policies, few areas were consistently addressed across facilities.

Conclusions: Considerable gaps were found in written policies regarding smoking. Although nursing homes may in fact have practices that are more extensive than their policies portray, creating policies that guide practice can assist these long-term care facilities to promote an environment that aligns with their goals and desired practices to protect the health of residents and staff. (J Am Med Dir Assoc 2009; 10: 258–263)

Keywords: Smoking; policy; nursing home
Importance of policy

Well-written and well-communicated tobacco use policies have the potential to influence behaviors of residents and staff, provide protection for nonsmokers, and communicate a precedent of safety, while protecting the facility from related legal liabilities.
Methods

- A 2-stage recruitment process was conducted
  - A list of physicians was obtained from the American Medical Directors Association
  - The list was grouped into 4 geographic regions used by the U.S. Census Bureau
Rubric Development

• The Center for Social Gerontology
• The Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
• Criteria were used to broadly define what policies should include
  – Discourage the use of smoking materials
  – Provide appropriate precautions to prevent fires and protect nonsmoking patients from exposure to smoke
  – Provide smoking cessation activities
Rubric Development

Rubric Categories

• Administrative/Authority issues
• Notification
• Resident smoking
• Safety
• Cessation assistance
• Smoking areas

Facility Types

• Allowed residents to smoke indoors and outdoors (I/O)
• Allowed residents to smoke outdoors (O)
• Non-smoking facility (NSF)
Demographic Results

- Facility demographics:
  - Evenly divided among for-profit and nonprofit
  - Located in 32 states
  - Geographically representative of the density of nursing homes in the U.S.

- 89.4% allowed resident smoking
  - 48.9% (n=23) O
  - 40.4% (n=19) IO
Results

- Across all facilities:
  - Policies lacked overall comprehensiveness
  - Tobacco education or cessation assistance was not addressed in 85% of policies
  - 33% of policies thoroughly addressed smoking areas
  - Only 8% of facilities comprehensively addressed policy notification and what occurs if the policy is violated
Results

• Among smoking-allowed facilities:
  – 78.9% failed to include statements referring to employee’s rights to choose to assist residents with smoking
  – Half (51%) of policies failed to address smoking eligibility criteria
  – 67% of policies did not address the availability and use of safety accessories (such as protective aprons)
  – 88% failed to mention precautionary measures for smoking residents who use oxygen
Limitations

- Small number of non-smoking facilities
  - May be indicative of small proportion of NSF nationwide at time of data collection
- Possible sampling bias
  - Recruited from AMDA list
  - Those without a policy, or those who deemed theirs inadequate, may have been less likely to participate
- Data may now be dated and may no longer be representative of the current landscape of nursing homes’ tobacco policies in the U.S.
Discussion

- There is no national mandate regarding whether or not nursing home facilities should continue to allow residents to smoke.

- While nursing homes may have practices that are more extensive than their policies portray, creating policies that guide practice can assist these facilities in promoting environments that align with their goals and desired practices of protecting residents and staff.
A Preliminary Review of Legislation Governing Tobacco Use in Ontario, Canada Retirement Homes

Jenn Beidemann, MPA
Policy & Research Associate
Finger Lakes Health Systems Agency
Background

• 8% of the senior population live in communal residences (including nursing homes, retirement homes, and long-term care homes) in Canada

• As the Baby Boomer generation continues to age, the demand for these facilities will rise
Percent of current smokers, age 15+ years and age 55+ years, Canada, 1999-2012

Source: Government of Canada (Healthy Canada, Overview of Historical Data, 1999-2012)
Several alleged tobacco-related fires have occurred in Canada in recent years.

With growing recognition that policies and legislation may influence tobacco use, surveillance of local-level laws, especially as they pertain to smoke-free air, has been identified as a top priority for tobacco control.
Smoke Free Legislation

- Tobacco Act, 1997
- Non-Smokers’ Health Act, 1984
- Smoke Free Ontario Act, 1994
- Municipal Act, 2001
Specific Aims

• Research examining the prevalence of smoking and tobacco use policies in long-term care or nursing home facilities is limited

• The purpose of this study is to provide a descriptive analysis of legislative policies’ regulatory purview of tobacco use in retirement homes
Definitions

**Retirement Home**

Privately owned and operated residential complexes occupied by persons 65 years older & provide two care services

**Long-Term Care Home**

Provincially funded nursing homes, long-term care homes, homes for the aged and rest homes as defined by the Long-Term Care Homes Act, 2007.
Methods

Retirement homes were categorized by each Local Health Integration Network (LHIN) in the province. A stratified random selection of 686 retirement homes in Ontario, Canada was conducted, proportional to the distribution of retirement homes in Ontario.
Stratified Random Selection

- **686 retirement homes**

- **75 selected via random selection**

- **48 homes are not located in areas that do not have municipal level bylaws (therefore, excluded)**

- **27 homes are in areas with additional municipal bylaws**

- **19 homes are in areas governed by municipal legislation that include retirement facilities**

- **8 homes are in areas governed by municipal bylaws, but retirement facilities are not mentioned/exempt**
Rubric Development

• Developed to allow for independent review of bylaws
• Modeled after previous study (Watt et al., 2009) and examined similar categories

Categories

• Administrative
• Authoritative
• Resident smoking/nonsmoking

• Notification of bylaw
• Safety Concerns
• Cessation Assistance
Bylaw Assessment

Preliminary Results

• Administrative/authority issues were most commonly addressed
• < 15% discussed signage for smoking/non-smoking areas
• None of the bylaws addressed safety concerns or cessation assistance for population.
Limitations / Next Steps

Sample Size

Changes to RHRA

Pending Municipal Bylaw

Need for cross country analysis of municipal bylaws
While communities may have progressive legislation that is intended to protect smokers and nonsmokers alike, the exemption of retirement homes from these bylaws continues to marginalize the aging population.
Questions?
Contact Information

Tobacco Control Legal Consortium
(651) 290-7506

www.publichealthlawcenter.org
Contact us

Kerry Cork
kerry.cork@mitchellhamline.edu  (651) 290-7509

Pat McKone
pat.mckone@lung.org  (218) 393-4120

Jessica Kulak
jakulak@buffalo.edu  (716) 845-5546

Jenn Beideman:
Jennbeideman@flhsa.org  (585) 224-3151
Upcoming Webinar

News from the Front:
State and Local Regulation of E-Cigarettes – Legislation and Advocacy

Tuesday, July 26, 2016
12:00 PM Central

More Information at www.publichealthlawcenter.org