

# Local Sales Practices of Over-the-Counter (OTC) Nicotine Replacement Therapies (NRTs) in Monroe County, NY

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## BACKGROUND

- In November 2019, New York Governor Cuomo announced a new Adolescent Tobacco Use Prevention Act (ATUPA), raising the legal age of purchasing tobacco products from 18 to 21.<sup>1</sup>
- In December, the federal government prohibited the sale of tobacco products including e-cigarettes to anyone under the age of 21 nationally.<sup>2</sup>
- As the ATUPA and federal laws ban the sale of “tobacco products” to those under the age of 21, variability was observed in how local Monroe County pharmacies responded to the Act in relation to OTC (over the counter) nicotine replacement therapies (NRTs).

## RESEARCH QUESTION

What is the response of Monroe County pharmacies on the minimum legal sales age of OTC Nicotine Replacement Therapies (NRTs) after the Adolescent Tobacco Use Prevention Act raised the minimum legal sales age of tobacco products to 21?

## REFERENCES

1. The Official Website of New York State. *Governor Cuomo Announces New York's Law to Raise Tobacco and E-Cigarette Sales Age from 18 to 21 Goes into Effect* November 13; 2019. Available at: <https://www.governor.ny.gov/news/governor-cuomo-announces-new-yorks-law-raise-tobacco-and-e-cigarette-sales-age-18-21-goes>
2. US Food and Drug Administration. *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*; US Food and Drug Administration: Silver Spring, MD, USA, 2020. Available at: <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>
3. Laws of New York, Public Health s 1399-aa-5 Definitions; s 1399-cc-2 Sale of Tobacco Products.

## MEHTODS



- A main concern for Public Health is that the tobacco product sales law removes the ability of adults between the ages of 18 and 21 to purchase cessation medications and young adults who became addicted to nicotine under the previous law can no longer legally access OTC products that would assist them with cessation.
- To address this concern, during January and February of 2020, 48 pharmacies in Monroe County were contacted via phone to identify their sale age for NRTs.
- Pharmacy representatives were asked if their store carries OTC NRTs and what their purchasing age was. Representatives who responded that the sale age is 21, were further asked about when the date of minimum legal sales age changed for OTC NRTs.
- Each pharmacy was classified as either a national/large chain or and independent/local chain pharmacy.

**Table 1**  
**NYS Department of Health ATUPA Amendments Description**

**Adolescent Tobacco Use Prevention Act (ATUPA)**

Effective November 13, 2019, the minimum legal sale age for tobacco products and electronic cigarettes is 21. Previously enacted in 1992 and funded at \$2.5 million in 1997, Article 13-F of the NYS Public Health Law prohibited the sale of tobacco products to minors. Amendments to ATUPA have clarified and expanded the definition of tobacco products, which include cigarettes, loose cigarettes, cigars, bidis, gutka, chewing tobacco, powdered tobacco, nicotine water, herbal cigarettes, shisha, smoking paraphernalia, liquid nicotine, and e-cigarettes and similar devices. Penalties for illegal sales to minors include fines, loss of license to sell lottery tickets, and loss of license to sell tobacco products. Every licensed tobacco retailer is assessed annually for compliance with this law. Municipalities may establish a higher minimum age of sale.

**Tobacco Retailers:** Section 1399-ee of the Public Health Law allows tobacco retailers a reduced penalty for a sale-to-minor violation if the clerk who made the sale previously attended a State Certified Tobacco Sales Training course and holds a valid certificate of completion. Learn more at [NYS Certified Tobacco Sales Training Programs](#).



**Table 2**  
**Nicotine Replacement Therapies (NRTs)**



## RESULTS

- Of the 48 pharmacies, 31 were big chain (18 of which only sell to 21 and older (58.06%)) and 17 were independent pharmacies (4 of which do not carry OTC NRTs, and 13 of which do carry but only 2 sell to 21 and older (15.38%)).
- Of the total 20 (big and independent) who stated they will sell only to 21 and above, 17 (85%) explicitly stated the change occurred due to the tobacco legal sale age change.
- Some pharmacies have increased the minimum legal sales age of NRTs to 21, with most of them citing that the change coincided with the change in sale age for tobacco products.
- CVS, Walgreens, Wegmans, and Rite Aid responded this way the most often, stating they now only sell OTC NRTs to 21 and over.
- Some smaller pharmacies still sell NRTs to 18-21 year-olds.

## DISCUSSION

- The present study was unable to identify any legislation that includes NRTs as part of the sales age change
- The New York State DOH Tobacco Control Program confirmed that none of the legislative changes includes the sales age of NRTs.
- Independent pharmacies in the area were less likely to state that their sales age for OTC NRTs has changed.
- Next steps: advocacy for dissemination of these discrepancies and proposals to state and county governments to harmonize regulations and maximize access to evidence-based cessation medication.