



# MARYLAND Department of Health

*Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary*

February 13, 2018

The Honorable Edward J. Kasemeyer  
Chair  
Senate Budget and Taxation Committee  
3 West Miller Senate Office Building  
Annapolis, MD 21401-1991

The Honorable Maggie McIntosh  
Chair  
House Appropriations Committee  
121 House Office Building  
Annapolis, MD 21401-1991

**RE: 2017 Joint Chairmen's Report, Page 79-80, M00L01.01– Report on Limiting the Availability of Tobacco Products to Minors**

Dear Chair Kasemeyer and Chair McIntosh:

Pursuant to page 79-80 of the Joint Chairmen's Report of 2017, the Maryland Department of Health respectfully submits this report on Limiting the Availability of Tobacco Products to Minors. Specifically, it was requested that the report include: (1) an evaluation of existing enforcement strategies intended to limit a minor's access to tobacco products and recommendations of new strategies as appropriate; (2) an evaluation of any current training and assistance offered to tobacco retailers to enforce compliance with existing laws intended to limit a minor's access to tobacco and recommendations of ways to improve that training and assistance if considered necessary; (3) the number of licensed tobacco retailers and minors who have committed violations of current laws related to access to and illegal possession of tobacco products in fiscal years 2015 and 2016, including any prior violations and subsequent actions taken against each violator; and (4) for each action taken, the number of violations committed by the violator.

I hope this information is useful. If you have any questions regarding this report, please contact Mr. Webster Ye, Deputy Chief of Staff, Office of the Secretary, 410-767-6480 or [webster.ye@maryland.gov](mailto:webster.ye@maryland.gov).

Sincerely,

Robert R. Neall  
Secretary

Enclosure

cc: Webster Ye, J.D., Deputy Chief of Staff, Office of the Secretary  
Jinlene Chan, M.D., M.P.H., F.A.A.P., Acting Deputy Secretary, Public Health Services  
Donna Gugel, M.H.S., Director, Prevention and Health Promotion Administration  
Anna McCreery, M.P.H., Director, Cancer and Chronic Disease Bureau  
Dawn Berkowitz, M.P.H., C.H.E.S., Director, Center for Tobacco Prevention and Control

**Report on Limiting the Availability of Tobacco Products to Minors  
As required by the 2017 Joint Chairmen's Report, Pages 79-80, M00L01.01**

**Maryland Department of Health  
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Governor**

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## **Introduction**

This report complies with the 2017 Joint Chairmen's Committee request for information on limiting the availability of tobacco products to minors. The report describes the success of existing strategies and the development of new strategies to limit the availability of tobacco products to minors implemented through the Maryland Department of Health (MDH), Office of the Comptroller (the Comptroller), local health departments, law enforcement, and community partners. Specifically, the report details:

1. The success of existing enforcement strategies intended to limit youth access to tobacco products and recommendations of new strategies as appropriate;
2. The success of current training and assistance offered to tobacco retailers to enforce compliance with existing laws intended to limit youth access to tobacco and recommendations of ways to improve that training and assistance as necessary;
3. The number of licensed tobacco retailers and minors who have committed violations of current laws related to youth access to tobacco products in state fiscal year (SFY) 2015 and 2016, including any prior violations and subsequent actions taken against each violator; and
4. For each action taken, the number of violations committed by the violator.

Information contained in the report was compiled from the above entities, however, MDH and the Comptroller focus on retailer compliance, rather than youth possession violations. Therefore, there is no data available on minors committing violations, other than the number of minors referred to local health departments for cessation services or education upon being found in possession of tobacco products by a school or other agency. Similarly, for both #3 and #4 above, neither MDH, local health departments, nor the Comptroller currently track the number of violations by each violator and subsequent actions taken. Since retailers cannot be referred to the Comptroller without having multiple violations, any retailer referred is assumed to have at least two documented violations.

## **Background**

Enforcement, education, and training related to federal, state, and local laws to restrict youth access to tobacco products is conducted through three complementary efforts:

- The MDH Prevention and Health Promotion Administration's Center for Tobacco Prevention and Control (CTPC) provides retailer outreach, education, training, and local inspections through local health departments;
- The MDH Behavioral Health Administration (BHA) conducts federal Food and Drug Administration (FDA) inspections and federal Substance Abuse and Mental Health Services Administration (SAMHSA) Synar Program state inspections;

- The Comptroller conducts hearings of repeat violators and issues warnings and license suspensions and revocations.

As a condition of the SAMHSA Substance Abuse and Prevention Block Grant, BHA must comply with the federal Synar Amendment, adopted in 1992. The Synar Amendment requires states to enact and enforce laws prohibiting the sale or distribution of tobacco products to minors. To comply with this amendment, BHA conducts annual, random, and unannounced inspections of tobacco outlets and vending machines to ensure adherence to Maryland's prohibition of the sale of tobacco products to minors and then reports the findings to SAMHSA. States must maintain a retailer violation rate (RVR) of 20 percent or less or be penalized by losing up to 40 percent of their block grant funds (equaling over \$13,500,000 for Maryland).

Maryland's RVR in federal fiscal year (FFY) 2014 was 24.1 percent, exceeding the allowable threshold of 20 percent. SAMHSA offered the State an alternative penalty to the reduction in funding: the full Substance Abuse and Prevention Block Grant funding would be maintained if the State allocated an additional \$1,387,390 in new State funds for retailer education and enforcement activities in SFY 2015. The RVR increased again FFY 2015 to 31.4 percent, requiring another alternative penalty of an additional \$3,860,126.41 in State funds spent on retailer education and enforcement in SFY 2016.

Due to coordinated enforcement and training efforts by MDH and the Comptroller, Maryland's RVR fell to 13.8 percent in FFY 2016, and dropped further to 10.8 percent in FFY 2017, which put Maryland back in compliance with federal Synar regulations for two consecutive years. The sustained reduction in RVR demonstrates the effectiveness of MDH and Comptroller enforcement strategies, training and assistance to retailers, and local enforcement efforts outlined in this report. The reduction also reinforces the need for programmatic sustainability to avoid noncompliant RVRs in Maryland in the future.

To sustain the success of the past two years, and to avoid costly penalties that could jeopardize state substance abuse treatment dollars, Governor Hogan created a Tobacco Enforcement line item in the Cigarette Restitution Fund budget beginning in SFY 2017, dedicating funds for CTPC to continue enforcement efforts.

### **1. Success of Existing Enforcement Strategies**

MDH follows evidence-based recommendations for reducing youth access to tobacco and youth tobacco use, outlined in "Centers for Disease Control and Prevention Best Practices for Comprehensive Tobacco Control Programs – 2014." These recommendations include: "Conducting mass-media education campaigns, in combination with other community interventions"; and mobilizing "The community to restrict minors' access to tobacco products, in combination with additional interventions (stronger local laws directed at retailers, active

enforcement of retailer sales laws, and retailer education with reinforcement).”<sup>1</sup> MDH and the Comptroller have worked collaboratively to enforce existing laws, educate retailers, and sanction repeat violators of the law through the efforts below.

*A. Maryland Department of Health, Center for Tobacco Prevention and Control*

Beginning in SFY 2015, CTPC conducted a review of licensed tobacco retailers across Maryland. With over 6,000 retailers in the state, CTPC organized licenses by jurisdiction and reviewed past Synar violation rates. Based on the review, which is completed annually, CTPC provides funding to each local health department to conduct enforcement of State criminal and local civil youth access to tobacco laws. Local health departments work with community partners, youth, law enforcement when applicable, and local courts to conduct compliance checks and cite retailers that violate these laws. Local health departments conducted 3,798 compliance checks in SFY 2015, 10,419 compliance checks in SFY 2016, and 6,498 compliance checks in SFY 2017. Resulting violations, citations, and referrals to the Comptroller for sanctions against repeat violators are detailed later in this report.

*B. Maryland Department of Health, Behavioral Health Administration*

As noted in the overview, BHA conducts annual, random, and unannounced inspections of tobacco outlets and vending machines to ensure adherence to Maryland’s prohibition of the sale of tobacco products to minors, and reports the findings to SAMHSA each FFY.

- BHA uses the Comptroller’s list of licensed tobacco outlets to obtain a random sample of 10 percent of the outlets for each jurisdiction, ensuring that jurisdictions with a small number of outlets are included.
- To take advantage of youth inspector availability, inspections take place from April through September and include over-the-counter purchases as well as purchases from vending machines that are accessible to minors. All Synar inspections must be completed by September 30<sup>th</sup> of each year.
- Youth inspectors (16-17 years of age) go out with adult inspectors to conduct Synar inspections.
- Maryland uses a consummated buy attempt process, in which the youth inspector pays for the tobacco product(s) and then exits the store. During the Synar inspection process, youth inspectors have immunity from youth tobacco purchase laws.
- Once the inspection is completed, adult and youth inspectors fill out inspection forms, which are given to the BHA Synar Coordinator for analysis. After the analysis is completed, a letter, which includes a link to CTPC’s website: [www.NoTobaccoSalestoMinors.com](http://www.NoTobaccoSalestoMinors.com), is sent to the tobacco outlet(s) regarding their compliance status. Copies of the letters are also sent to local health officers, local health department tobacco coordinators, and CTPC.

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<sup>1</sup>“Centers for Disease Control and Prevention, Best Practices for Comprehensive Tobacco Control Programs — 2014,” US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014, accessed 2 October 2017 [https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/index.htm](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm).



- Inspection data are uploaded into the Synar Survey Estimation System, which automatically generates the RVR. This rate is included in the mandated annual Synar Report which must be submitted to SAMHSA by December 30<sup>th</sup> of each year.

Following the completion of the statewide Synar compliance inspection cycle, adult inspectors revisit noncompliant tobacco outlets to provide one-on-one training and educational materials. This activity was initiated in calendar year 2015 to address rising RVRs and to enhance compliance with youth access laws.

Additionally, since calendar year 2010, BHA has had a contract with FDA to conduct undercover buys, advertising and labeling inspections, and other directed inspections on behalf of the FDA to ensure that Maryland licensed tobacco retailers comply with the federal Family Smoking Prevention and Tobacco Control Act of 2009.<sup>2</sup> BHA staff that perform these inspections are FDA Commissioned Officers and perform inspections statewide. Inspections completed under this contract are submitted to FDA for final review and enforcement action. Violations may lead to warning letters, civil money penalties, and other enforcement actions. Since FDA regulates all tobacco products, including e-cigarettes, hookah tobacco, and cigars, retailers selling tobacco products must comply with all applicable federal laws and regulations in addition to State laws.

#### *C. Maryland Office of the Comptroller*

The Comptroller provides current tobacco licensee information to CTPC and BHA on an annual basis. This list is used to conduct compliance checks and to provide education to retail outlets via face-to-face interactions and through the distribution of educational materials. Additionally, representatives from the Field Enforcement Division attend select regional trainings and reach out directly to local health department staff and local law enforcement personnel, and acting as a liaison between MDH and the Maryland Court's e-license system to ensure the accuracy of tobacco products license information.

The Field Enforcement Division works with local jurisdictions that have evidence of multiple convictions or civil liabilities against licensed tobacco retailers for illegally selling tobacco products to minors, and holds hearings with licensees or owners that are in violation of youth access laws. By law, the Comptroller has discretion to suspend, revoke, or refuse to renew a license as a result of these violations. Information highlighting the number of referrals from local health departments and related sanctions is provided later in this report.

#### *D. Legislation and Regulations in Support of Tobacco Enforcement Efforts*

House Bill 489: Electronic Cigarettes – Sale to Minors – Components, Supplies, and Enforcement (2015): This bill amends the State's prohibition against selling electronic cigarettes to a minor. The law, effective beginning October 1, 2015, continues to ban the sale of electronic cigarettes to a minor, while making the following improvements: (1)

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<sup>2</sup> 21 Code of Federal Regulations (CFR) Part 1140.

expanding the scope of the ban to include refillable containers of liquid nicotine and other component parts; (2) authorizing the local health officer or their designee to cite violators; (3) allowing violators to pay a fine in lieu of electing to stand trial; and (4) exempting products sold as FDA-approved tobacco cessation devices.

House Bill 185: Department of Health and Mental Hygiene - Distribution of Tobacco Products to Minors - Prohibition and Enforcement (2017): The law, passed by the Maryland General Assembly in 2017 and effective October 1, 2017, establishes civil money penalties for persons or businesses that distribute tobacco products, tobacco paraphernalia, or coupons redeemable for tobacco products to minors. Currently, a person or business that distributes tobacco products to a minor is guilty of a criminal misdemeanor, and is subject to escalating fines. HB 185 supplements, but does not replace, the existing criminal provisions with a civil enforcement framework. The law also permits non-law enforcement personnel to issue the civil money penalties and establishes certain reporting requirements for MDH and the Comptroller.

House Bill 523/Senate Bill 119: Electronic Nicotine Delivery Systems and Vaping Liquid – Licensing: This law became effective October 1, 2017, and requires all businesses that mix or sell electronic nicotine delivery systems (ENDS) or vaping liquids to secure a special license. This includes manufacturers, wholesalers, storage warehouses, retailers, and vape shop vendors. Retailers holding a cigarette or other tobacco products (OTP) license are subject to the ENDS license provisions, but not required to obtain an additional license. The ENDS licenses are issued by the Clerk of the Circuit Court in each jurisdiction. The Comptroller may suspend or revoke a license for unlicensed transactions, including illegal sale of ENDS or vaping liquid to minors. Businesses are required to obtain a license, regardless of whether their vaping products contain nicotine. Any business operating without an appropriate license is guilty of a criminal misdemeanor and subject to a fine of up to \$1,000 and imprisonment of up to 30 days, or both.

FDA Deeming Regulation:<sup>3</sup> As of August 8, 2016, FDA extended its authority to regulate all tobacco products, including ENDS, all cigars, hookah, pipe tobacco, nicotine gels, and dissolvables that did not previously fall under the FDA's authority. The new rule restricts youth access to these newly regulated tobacco products by: (1) not allowing products to be sold to minors and requiring age verification via photo identification; and (2) not allowing tobacco products to be sold in vending machines unless the machine is in an adult-only facility. The rule requires health warnings on roll-your-own tobacco, cigarette tobacco, and certain newly regulated tobacco products, and bans distribution of free samples. In addition, manufacturers of newly regulated tobacco products placed on the market after February 15, 2007, will have to show that products meet the applicable public health standards set by the law and manufacturers must receive marketing authorization from

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<sup>3</sup> US Food and Drug Administration, The Facts on the FDA's New Tobacco Rule, accessed 2 October 2017 <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm506676.htm>.

FDA. This federal rule complements and reinforces existing Maryland youth access to tobacco products laws.

## 2. Success of Current Training and Assistance Offered to Tobacco Retailers

Statewide efforts to reduce the rate of illegal tobacco sales to minors and to limit the availability of tobacco products to minors include CTPC's direct outreach to retailers and the general public, media development and placement, and trainings and technical assistance to local health departments, retailers, and partners.

### A. *Maryland Department of Health, Center for Tobacco Prevention and Control: Responsible Retailer Campaign*

In SFY 2015, CTPC developed toolkits, quick reference guides, and ancillary materials to enhance tobacco retailer education. These materials contain information and resources retailers need to remain in compliance with tobacco sales laws. Materials were sent to all licensed tobacco retailers in Maryland and to local health departments. CTPC also developed radio, billboard, and transit advertisements and placed them throughout the State. Messaging stressed responsible retailing, reinforced laws to not sell tobacco products to minors, and emphasized checking the identification of all individuals who appear to be under 27 years of age. CTPC also created a corresponding website:

[www.NoTobaccoSalesToMinors.com](http://www.NoTobaccoSalesToMinors.com) that contains electronic versions of the retailer guide and ancillary materials, along with an interactive online training presentation and quiz.

In order to ensure consistent messaging from media aired in SFY 2015, CTPC continued communication activities throughout SFY 2016. Focus groups with retailers helped identify barriers and challenges that owners, clerks, distributors, and others face in remaining compliant with federal, state, and local youth access laws; determine the needs, receptivity, and successes of licensed tobacco retailers with compliance with all youth access laws; assess the effectiveness of current campaign materials; and aid in the development of new materials. Using results from the focus groups as a guide, CTPC developed new advertisements to complement media aired in SFY 2015 and placed the advertisements in strategic locations statewide. Free toolkits and ancillary items were updated and placed on the website, and were mailed to all licensed tobacco retailers, local health departments, and partners. Materials were translated and printed in nine additional languages.

In SFY 2017, CTPC continued media and advertising efforts and updated toolkits to reflect changes to FDA authority and the new Maryland driver's licenses, which look significantly different from older licenses. Postcards, toolkits, and 2017 register calendars were sent to over 6,000 licensed tobacco retailers and vape shops in Maryland, as well as all local health departments and partners.

### B. *Maryland Department of Health, Center for Tobacco Prevention and Control: Collaboration with and Funding to Partner Organizations*

- CTPC receives an updated list of tobacco retailers from the Comptroller each year and

works collaboratively with the Comptroller on training and technical assistance to local health departments for referring repeat violators to the Comptroller for hearings.

- CTPC collaborates with tobacco retailer associations to support buy-in for State efforts and to increase voluntary compliance and support from the vendor community.
- CTPC provides funding to minority outreach and technical assistance organizations and other partners to conduct store-to-store education campaigns and hold community meetings on youth access to tobacco and nicotine products. Organizations are often embedded in high-risk communities, have public health and tobacco control expertise, and are respected leaders in their jurisdictions.
- Since 2001, CTPC has provided funding for the Legal Resource Center for Public Health Policy at the University of Maryland Carey School of Law (the Legal Resource Center). Beginning in SFY 2015 CTPC began to allocate additional resources to the Legal Resource Center to deliver technical legal assistance to MDH, local health departments, and partners specifically regarding compliance with tobacco sales laws, as well as to host regional trainings across the State for local health department staff, law enforcement, community-based organizations, and partners.
  - In SFY 2015, the Legal Resource Center: (1) developed and disseminated materials on best practices for law enforcement, health, and judicial officials on implementation and enforcement of tobacco retailer compliance programs; (2) held four regional training workshops for State and local law enforcement, health, and judicial officials; and (3) responded to at least 100 technical assistance requests from State, county, and municipal officials overseeing tobacco retailer compliance programs.
  - In SFY 2016, the Legal Resource Center: (1) responded to over 200 technical assistance requests, submitted by all 24 Maryland jurisdictions; (2) hosted a statewide symposium to train local health department staff, minority outreach and technical assistance organization representatives, and law enforcement officials on best practices for enforcing youth access laws; (3) updated more than 400 stakeholders on tobacco control enforcement laws; (4) presented or conducted trainings at more than 75 local tobacco coalition, town hall, leadership, or other community events on best practices for implementing youth enforcement activities; and (5) educated retailers in at least 10 jurisdictions on youth tobacco sales laws and compliance with these laws.
  - In SFY 2017, the Legal Resource Center: (1) responded to over 50 technical assistance requests regarding compliance checks of retail establishments and the impact of federal, state, and local youth access laws on businesses and procedures for required compliance checks; (2) presented at 11 local enforcement meetings and youth trainings; (3) hosted two webinars: “FDA Deeming Rule: What Does It Mean for You?” and “Civil Money Penalties” to assist enforcement staff with compliance checks and educational efforts; and (4) hosted a statewide tobacco control conference on May 11, 2017, including a dedicated tobacco enforcement track, and ancillary meeting for local health departments.

C. *Maryland Department of Health, Center for Tobacco Prevention and Control: Funding to Local Health Departments*

CTPC provides funding to all 24 local health departments to conduct vendor education visits, local marketing and media campaigns, leadership meetings, and retailer trainings; develop educational programs for youth cited for possession of tobacco products; engage non-governmental organizations as partners to provide vendor and community education; hold town hall meetings to raise awareness of youth access laws; collaborate with schools as partners in education; engage faith-based and youth organizations to partner on youth access prevention; and reduce youth demand for tobacco products.

- In SFY 2015, local health departments: (1) educated 3,899 retailers through face-to-face sessions at tobacco sales outlets; (2) conducted 39 group trainings for tobacco retailers; (3) facilitated 177 meetings to discuss tobacco sales compliance with partner agencies and community leaders; and (4) implemented 62 marketing or educational campaigns. Minority outreach and technical assistance organizations educated an additional 591 retailers through face-to-face sessions at tobacco sales outlets, and hosted 83 tobacco and nicotine community education meetings on youth access to tobacco and nicotine products.
- In SFY 2016, local health departments: (1) educated 9,283 retailers through face-to-face sessions at tobacco sales outlets; (2) conducted 48 group trainings for tobacco retailers with 849 attendees; (3) facilitated 81 town hall meetings on preventing youth access to tobacco with 3,047 total attendees; (4) hosted 78 leadership meetings with community partners, law enforcement, local state's attorney community action agencies, and stakeholders with 1,305 total attendees; (5) established 46 faith based collaborative events to raise awareness in the faith community about tobacco use, youth access to tobacco products, and prevention with 2,507 total attendees; (5) had 79 school-based collaborative events with 12,571 total attendees; and (6) conducted 117 youth events to promote awareness about the illegal sales of tobacco to minors with 15,322 total attendees.
- In SFY 2017, local health departments: (1) educated 6,498 retailers through face-to-face sessions at tobacco sales outlets; (2) conducted 42 group trainings for tobacco retailers with 664 total attendees; (3) facilitated 10 town hall meetings on preventing youth access to tobacco with 325 total attendees; and (4) hosted 49 leadership meetings with community partners, law enforcement, local state's attorney community action agencies, and stakeholders with 571 total attendees. Some highlights of SFY 2017 trainings include:
  - The Garrett County Health Department partnered with the Board of License Commission to host an awards luncheon. The local health department and Maryland State Police presented, and discussions included tobacco sales, conducting compliance checks, penalties associated with violations, and determining age on the new Maryland driver's licenses. As a part of an ongoing effort to recognize positive compliance, local health department staff provided acknowledgements to 41 stores with good compliance.
  - The Wicomico County Health Department held an awards luncheon to recognize responsible retailers, law enforcement, and community partners. Partners and

enforcement officers received awards for compliance checks and face-to-face vendor education. Two community partners, Perdue, Inc. and Lower Shore Friends, received leadership awards for their continual commitment to holding smoking cessation support groups for their employees and the clients they serve.

### **3. Licensed Tobacco Retailers and Minors who have Violated Youth Access and Youth Possession Laws in SFYs 2015 and 2016**

As discussed in the introduction of this report, the focus of CTPC, local health department, and BHA programs is on tobacco retailer compliance. Neither MDH nor the Comptroller tracks youth violations related to illegal access to tobacco products.

In SFYs 2015 and 2016, each local health department collected and reported data on the number of citations issued to licensed tobacco retailers; however the outcome of citations cannot be tracked by fiscal year since adjudication through the courts often spans several fiscal years.

#### *A. Maryland Department of Health, Center for Tobacco Prevention and Control: Funding to Local Health Departments*

Collectively, local health departments have conducted over 20,000 compliance checks over the past three SFYs. Retailers with repeat violations (including a combination of FDA, Synar, and local health department or law enforcement compliance check violations) are often referred to the Comptroller for further sanctions.

- In SFY 2015, out of the aforementioned 3,798 compliance checks conducted by local health departments, 545 citations were issued for illegal sales of tobacco products to minors. Additionally, 73 minors were educated in programs held by local health departments. These minors were referred for illegal possession of tobacco products by school systems, a county's Teen Court (if the county has one), or the Department of Juvenile Services. Minors referred to these programs were required to attend a tobacco education program to avoid suspension.
- In SFY 2016, out of the 10,419 compliance checks conducted by local health departments, 1,291 citations were issued for illegal sales of tobacco products to minors, and 201 referrals were to the Comptroller for multiple violations. Additionally, 785 minors participated in a tobacco education program held by local health departments.
- In SFY 2017, out of the 6,498 compliance checks conducted by local health departments, 758 citations were issued for illegal sales of tobacco products to minors, and 166 referrals were made to the Comptroller for multiple violations. Additionally, 162 minors participated in a tobacco education program held by local health departments.

#### *B. Maryland Department of Health, Behavioral Health Administration Inspections (Synar and FDA)*

The following table outlines Synar RVRs by FFY which runs from October 1<sup>st</sup> through September 30<sup>th</sup> of each year.

**Maryland Synar Retailer Violation Rate (RVR) by Federal Fiscal Year (FFY)**

	<b>FFY 2014 (SFY 2013)</b>	<b>FFY2015 (SFY 2014)</b>	<b>FFY2016 (SFY 2015)</b>	<b>FFY2017 (SFY 2016)</b>	<b>FFY2018* (SFY 2017)</b>
<b>RVR</b>	24.1%	31.4%	13.8%	10.80%	13.9%
<b># of Outlets</b>	7,059	6,076	5,667	6,034	6,698
<b># of Inspections</b>	745	618	567	604	670
<b># of Compliant</b>	499	363	469	527	545
<b># of Incomplete*</b>	90	88	23	13	37
<b># of Noncompliant</b>	156	167	75	64	88

FFY 2018 RVR must be verified by SAMHSA and is therefore not yet official. The official RVR cannot be released until approved by SAMHSA after the submission and approval of the annual Synar report.

\*An RVR rate may be incomplete because a retailer does not sell tobacco products, is inaccessible to youth, is out of business, is a private club or private residence, or is wholesale or carton sale only.

Public FDA enforcement data for Maryland detailing retailer violations is outlined in the below table.

<b>FDA's Public Data for Maryland*</b>												
	<b>7/28/10-9/29/11</b>		<b>9/30/11-9/29/12</b>		<b>9/30/12-9/29/13</b>		<b>9/30/13-9/29/14</b>		<b>9/30/14-9/29/15</b>		<b>9/30/15-9/29/16</b>	
<b>Total Postings</b>	1477	Minor Involved	2110	Minor Involved	2135	Minor Involved	1429	Minor Involved	2986	Minor Involved	3153	Minor Involved
<b>No Tobacco Sales Orders</b>	0	0	0	0	0	0	0	0	0	0	3	3
<b>Civil Money Penalties</b>	0	0	23	23	22	22	88	88	176	176	71	71
<b>Warning Letter Issued</b>	22	16	97	95	204	187	260	258	236	229	139	135
<b>No Violation Observed</b>	1455	348	1990	418	1909	918	1081	827	2574	1549	2940	1551
*NOTE: These data are from FDA's public website: <a href="https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm">https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm</a>												
The dates do not necessarily represent the date of inspection, rather the date reflects when FDA made a decision on its inspection.												

**C. Maryland Department of Health, Center for Tobacco Prevention and Control and the Comptroller**

Since calendar year 2015, the Comptroller has been working closely with CTPC and local health departments to address the problem of tobacco sales to minors. When there is evidence of multiple violations including Synar, FDA, and local violations, local health departments and local authorities may refer the violating retailer to the Comptroller for further action. The Comptroller holds hearings on many of the cases in order to consider

action against the tobacco products retailers and has discretion to impose sanctions. Referrals to the Comptroller began in SFY 2016 and the results on hearings to date by fiscal year are as follows:

	SFY 2016	SFY 2017
<b>Referrals</b>	149	145
<b>Hearings</b>	101	41
<b>Suspensions</b>	43	3
<b>Reprimands</b>	58	61
<b>Warnings</b>	4	1
<b>No action</b>	30	16
<b>Postponed/merged/pending</b>	14 (postponed/merged)	64 (pending)

#### 4. Number of Violations Committed by the Violator

##### A. Maryland Department of Health, Behavioral Health Administration

At this time, BHA does not have a data analysis process that allows comparison of the number of repeat violators among tobacco retailers. BHA Synar Program staff is collaborating with the BHA information technology department to develop a data collection system to track repeat violators.

There were no repeat Synar violators from FFY 2017 in FFY 2018. The table below lists the three tobacco outlets that were randomly selected in the sample from the Comptroller’s Office list to be inspected in both years. However, as noted in the table, these establishments did not sell tobacco products to minors in FFY 2018.

County	Randomly Selected Vendor	Sold in FFY 2017	Sold in FFY 2018
15	Vendor A	Yes	No
18	Vendor B	Yes	No
30	Vendor C	Yes	No

##### B. Office of the Comptroller

The Comptroller has no specific information on prior violations or violations committed by minors (violations of the Criminal Law Article, § 10-108, Annotated Code of Maryland), however all referrals from local jurisdictions could be considered evidence of prior violations since evidence of at least two violations is required before a case is referred.

#### Evaluation, Recommendations, and Ensuring Future Compliance

##### Programmatic Evaluation



The reduction in retailer noncompliance rates for youth access laws suggests that the efforts outlined in this report have been successful. In order to sustain these efforts and to continue to reduce youth access to tobacco products, it is critical to maintain state funding to avoid future costly penalties that would jeopardize substance abuse treatment dollars in Maryland. Maintaining substance abuse treatment dollars is especially important now as substance use disorders and opioid addiction and treatment needs are rising.

Local health department, FDA, and Synar inspections will continue, maintaining a community presence of statewide enforcement efforts. Cigarette Restitution Fund Tobacco Enforcement dollars have been allocated to CTPC for SFY 2018. The funding has allowed for continuation of statewide educational messaging and activities; and for training and technical assistance to retailers and partners. Additionally, all 24 local health departments have been funded to conduct compliance checks, expand educational messaging and campaigns, and increase community partnerships to strengthen tobacco retailer sales compliance with youth access laws.

#### *Training and Assistance*

In SFY 2018, CTPC will continue to monitor and update the Responsible Tobacco Retailer campaign website: [www.notobaccosalestominors.com](http://www.notobaccosalestominors.com) and its components: the retailer guidebook and ancillary materials, and an interactive training presentation and quiz. The website and materials will be updated to reflect statute changes effective October 1, 2017 as well as other pertinent information. CTPC will also mail educational materials to all licensed tobacco retailers throughout the year: postcard mailers directing retailers to the website will be sent in Fall 2017 and Spring 2018, and packets that include 2018 calendars will be sent in December 2017. CTPC will share materials with local health departments and other partners to assist with conducting one-on-one educational visits with retailers.

The Legal Resource Center will continue to provide technical assistance to MDH, local health departments, and partners regarding compliance checks of retail establishments and the impact of federal, state, and local youth access laws on businesses and procedures for compliance checks. The Legal Resource Center will also host webinars, an enforcement focused in-person meeting with local health departments and law enforcement officials, and, in conjunction with MDH, a statewide tobacco control conference with a dedicated enforcement track.

#### *New Enforcement Strategies*

CTPC is rolling out its Point of Sale Toolkit (POST) software developed by Counter Tools. POST has an integrated mapping tool that allows stakeholders to find and display tobacco retail location data and school proximity to tobacco retail outlets, visualize how health disparities impact a community, and target resources to areas with the most need. POST also allows real-time data uploads and adjustments from authorized users.

The POST system will allow local, federal, and state inspectors and staff to enter, access, and display data within a single software product, increasing the efficiency of conducting compliance checks, providing face-to-face education, and mailing educational materials that assist retailers in remaining in compliance with youth access laws. Reporting will be notably enhanced by the ability to document violations by retailers over time and by violation type (i.e. Synar, FDA, and local or state violations), which is currently a cumbersome and time-intensive task. Though POST will be implemented incrementally and piloted with some jurisdictions over the next year, CTPC, BHA, the Comptroller, and all local health department tobacco program staff will have access to the system. Additionally, the Comptroller is exploring the possibility of giving local health department staff direct read-only access to the courts e-license system, beginning with Baltimore County, so that staff can identify the actual licensee and minimize issues that arise when ownership changes between the time the citations are issued and the associated hearing date.

### **Conclusion**

MDH and the Comptroller are committed to efforts to limit the availability of tobacco products to minors. The collaboration between the agencies to continue enforcement and education strategies as well as the ability to implement the recommendations in this report will support and encourage greater tobacco retailer compliance with youth access laws. Sustained support for these programs is key to ensuring that minors in Maryland do not have access to tobacco products and to reducing youth tobacco use.

## Acronyms

<b>BHA</b>	<b>Behavioral Health Administration</b>
<b>CTPC</b>	<b>Center for Tobacco Prevention and Control</b>
<b>ENDS</b>	<b>Electronic Nicotine Delivery Systems</b>
<b>FDA</b>	<b>Food and Drug Administration</b>
<b>FFY</b>	<b>Federal Fiscal Year</b>
<b>MDH</b>	<b>Maryland Department of Health</b>
<b>OTP</b>	<b>Other Tobacco Products</b>
<b>POST</b>	<b>Point of Sale Toolkit</b>
<b>RVR</b>	<b>Retailer Violation Rate</b>
<b>SAMHSA</b>	<b>Substance Abuse and Mental Health Services Administration</b>
<b>SFY</b>	<b>State Fiscal Year</b>

