

LENAWEE-LIVINGSTON-MONROE-WASHTENAW
OVERSIGHT POLICY BOARD

VISION

"We envision that our communities have both an awareness of the impact of substance abuse and use, and the ability to embrace wellness, recovery and strive for a greater quality of life."

AGENDA

January 23, 2020

3005 Boardwalk, Suite 200, Ann Arbor

Patrick Barrie Conference Room

9:30 a.m. – 11:30 a.m.

1. Introductions & Welcome Board Members– 5 minutes
2. Approval of Agenda (**Board Action**) – 2 minutes
3. Approval of December 5, 2019 OPB Minutes {Att. #1} (**Board Action**) – 5 minutes
4. Audience Participation – 3 minutes per person
5. Old Business –
 - a. Finance Report {Att. #2} (Discussion) - 10 minutes
6. New Business –
 - a. Presentation of SUD Prevention Programming – Jane Goerge and Katie Postmus (Discussion) – 20 minutes
 - b. Request for Approval for Funding for Peer Recovery Supports Training for FY 20 {Att. #3} (**Board Action**) – 10 minutes
 - c. Mini Grant from LCCA {Att. #4} (Discussion) – 5 minutes
 - d. RFP Process and Updates (Discussion) – 10 minutes
7. Report from Regional Board {Att. #5} (Discussion) – 10 minutes
8. SUD Director Updates (Discussion) – 10 minutes

Next meeting: February 27, 2019

Location 3005 Boardwalk, Suite 200; Patrick Barrie Room

Parking Lot:

Appointments to OPB

Regional Board Representation

**LENAWEE-LIVINGSTON-MONROE-WASHTENAW
OVERSIGHT POLICY BOARD
December 5, 2019 meeting
705 N. Zeeb Road
Ann Arbor, MI 48103**

Members Present: Mark Cochran, William Green, John Lapham, David Oblak, Dave O'Dell, Ralph Tillotson, Tom Waldecker, Monique Uzelac

Members Absent: Charles Coleman, Kim Comerzan, Amy Fullerton, Ricky Jefferson, Dianne McCormick

Guests: Elizabeth Adeleye, Washtenaw County Health Department

Staff Present: Stephannie Weary, James Colaianne, Nicole Adelman, Dana Darrow, Alyssa Tumolo, Jackie Bradley

D. Oblak called the meeting to order at 9:35 a.m.

1. Introductions
2. Approval of the agenda

**Motion by M. Cochran, supported by T. Waldecker, to approve the agenda
Motion carried**

3. Approval of the October 24, 2019 Oversight Policy Board minutes

**Motion by W. Green, supported by J. Lapham, to approve the October 24, 2019
Oversight Policy Board minutes
Motion carried**

Correction:

) Page 4, J. Bradley noted that she should be listed as being from Lenawee, not Livingston.

4. Audience Participation
) None

5. Presentation – Opioid Media Campaign

) E. Adeleye shared a Power Point presentation of the Washtenaw Opioid Media Campaign.

) N. Adelman provided an overview of the grant that is funding the campaign, which will include fliers, door hangers and web site.

) Next steps will be to share drafted materials with stakeholders. The materials will then be finalized and disseminated.

) The campaign was approved by MDHHS.

) T. Waldecker noted that omitting the word “pain” misses an entire population.

) Literature will be sent to the other counties for them to customize and distribute.

) D. O'Dell noted that the State Police isn't listed as a medication disposal site.

- J The Livingston County Coalition supported the effort, as did Washtenaw. Next month the presentation will go to the Monroe and Lenawee Coalitions.
- J D. Oblak expressed concern that the campaign includes a poster that shares someone's first and last name on a poster, because if something were to happen to that person's sobriety it could be associated with the campaign, possibly could end the campaign. E. Adeleye agreed to just use first name.

6. Old Business

a. Finance Report

- J N. Adelman advised that there will not be a formal finance report this month. D. Darrow is off-site at a training.
- J N. Adelman advised that everything is on track financially.

b. Request for PA2 Funding for STR Project ASSERT Programming

- J STR funding ends at the end of April 2020.
- J Project ASSRT is in Livingston, Washtenaw and Monroe. The request is for funding through the end of FY20.
- J A. Tumolo provided an overview of the project. Total PA2 request is \$80,650. PA2 funds for each county will come from that county's PA2 bank.

Motion by T. Waldecker, supported by M. Cochran, to approve PA2 funding for Project ASSERT through the end of FY20 for the total amount of \$80,650
Motion carried

c. Organizational Chart Review

- J OPB reviewed the CMHPSM organizational chart.

d. RFP Chart Review

- J N. Adelman shared the timeline for the RFPs that are planned. The RFPs will be staggered.

7. New Business

- a. Policy Updates – Welcoming, SUD Residential Treatment Services, Individual Treatment and Planning, SUD Recipient Rights, Women's Specialty
- J There were formatting and minor language updates, not significant changes.

Motion by T. Waldecker, supported by J. Lapham, to approve the updated policies as presented
Motion carried

b. Request for Approval for Revised CCSEM Engagement Center Budget for FY 20

- J The budget that was originally approved by OPB needs to be increased to allow for increased staffing due to the success of the engagement center.
- J D. O'Dell advised that this place is doing fantastic.
- J D. Oblak noted that the per person cost is good.

Motion by D. O'Dell, supported by W. Green, to approve the revised CCSEM Engagement Center budget for FY20, for the new amount of \$395,449, an increase of \$110,436 from the original contract for \$285,013.
Motion carried

c. ProMedica Mini Grant Request

- J N. Adelman shared the Promedica mini grant request, which falls under her purview for approval.

) D. O'Dell reported that the event turned out well, provided awareness for SUD.

8. Report from Regional Board

) R. Tillotson provided a brief update from the Regional Board.

) The November Regional Board draft minutes are not available yet.

9. SUD Director Updates

) Today's meeting is the last meeting at the Zeeb location.

) The PIHP has 4 open positions.

) MDHHS Director Gordon announcement his intention to revamp the public mental health/SUD system. Planning is in the early stages. As of now its effect on the PIHPs and SUD is unknown.

10. Adjournment

Motion by T. Waldecker, supported by M. Cochran, to adjourn the meeting

Motion carried

) Meeting adjourned at 10:15 a.m.

Community Mental Health Partnership Of Southeast Michigan
SUD SUMMARY OF REVENUE AND EXPENSE BY FUND
 November 2019 FY20

Summary Of Revenue & Expense	Funding Source							Total Funding Sources
	Medicaid	Healthy Michigan	SUD - Block Grant	SUD - SOR	SUD - STR	Gambling Prev	SUD-COBO/PA2	
Revenues								
Funding From MDCH	55,590	988,059	549,357	116,849	106,395	8,499		\$ 1,824,749
PA2/COBO Tax Funding Current Year	-	-	-	-	-	-	307,350	\$ 307,350
PA2/COBO Reserve Utilization	-	-	-	-	-	-	130,369	\$ 130,369
Other	-	-	-	-	-	-	-	\$ -
Total Revenues	<u>\$ 55,590</u>	<u>\$ 988,059</u>	<u>\$ 549,357</u>	<u>\$ 116,849</u>	<u>\$ 106,395</u>	<u>\$ 8,499</u>	<u>\$ 437,719</u>	<u>\$ 2,262,468</u>
Expenses								
<u>Funding for County SUD Programs</u>								
CMHPSM				116,849	100,944	8,064		225,857
Lenawee	76,080	146,724	48,908				28,163	299,875
Livingston	50,148	92,582	50,148				49,698	242,576
Monroe	63,296	146,035	164,291				24,591	398,212
Washtenaw	205,919	342,337	239,947				77,159	865,361
Total SUD Expenses	<u>\$ 395,442</u>	<u>\$ 727,677</u>	<u>\$ 503,294</u>	<u>\$ 116,849</u>	<u>\$ 100,944</u>	<u>\$ 8,064</u>	<u>\$ 179,612</u>	<u>\$ 2,031,882</u>
Administrative Cost Allocation	13,948	25,670	46,062	-	5,451	435	-	\$ 91,566
Total Expenses	<u>\$ 409,390</u>	<u>\$ 753,347</u>	<u>\$ 549,356</u>	<u>\$ 116,849</u>	<u>\$ 106,395</u>	<u>\$ 8,500</u>	<u>\$ 179,612</u>	<u>\$ 2,123,449</u>
Revenues Over/(Under) Expenses	<u>\$ (353,800)</u>	<u>\$ 234,712</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 258,107</u>	<u>\$ 139,019</u>

<u>Current fiscal year utilization of PA2</u>			Revenues Over/(Under) Expenses
<u>PA2 by County</u>	<u>Revenues</u>	<u>Expenditures</u>	
Lenawee	35,088	28,163	6,925
Livingston	105,680	49,698	55,982
Monroe	77,346	24,591	52,755
Washtenaw	219,605	77,159	142,446
Totals	<u>\$ 437,719</u>	<u>\$ 179,612</u>	<u>\$ 258,107</u>

<u>Unallocated PA2</u>	<u>FY 20 Beginning Balance</u>	<u>FY20 Projected Utilization</u>	<u>FY21 Projected Utilization</u>	<u>FY21 Projected Ending Balance</u>
Lenawee	912,004	(222,723)	(222,723)	466,557
Livingston	3,354,112	(613,133)	(613,133)	2,127,846
Monroe	767,762	(164,037)	(164,037)	439,688
Washtenaw	2,898,376	(598,506)	(598,506)	1,701,365
Total	<u>\$ 7,932,254</u>	<u>\$ (1,598,399)</u>	<u>\$ (1,598,399)</u>	<u>\$ 4,735,456</u>

CMHPSM SUD OVERSIGHT POLICY BOARD

ACTION REQUEST

Board Meeting Date: January 23, 2020

Action Requested: Training for peers is required for individuals who are working in the coaching capacity with our provider organizations, CMH's and projects related to treatment and prevention in our region. Having a Certified Recovery Coach enables these services to be covered through Medicaid and Block grant funding. The CMHPSM has supported these large trainings around the region over the years. Many of these individuals go on to further their education and careers as clinicians, case managers and leaders. This training will be made available to those within our region.

Two trainings are being planned:

1. CCAR Peer Recovery Coach Training is a five-day intensive training and is planned to occur in April for a maximum of 40 peer participants. This five-day training was successfully held last year with 33 participants. The estimated cost for this training is \$15,500 and includes venue, food and training materials.
2. Medication Assisted Recovery Services (MARS) Training will consist of two one-day trainings for a maximum of 15 peers at each training. The majority of funding for this training will come from the SOR grant. However, food cannot be covered by SOR. The estimated food cost is \$500 per training, for a total of \$1,000.

If any funding remains from these two trainings, it may be utilized to send individual peers to other trainings such as state certification training for Peer Recovery Coaches.

Connection to PIHP/MDCH Contract, Regional Strategic Plan or Shared Governance Model:

Workforce development is a strategic objective for the SUD system, CMHSP and state. Expansion of qualified peers to fill positions region wide is necessary as state and federal expansion grants rely heavily on recovery coaches.

Recommendation:

Approval of maximum \$16,500 PA2 Funds for trainings for Peer Recovery Supports

COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEAST MICHIGAN

Serving Lenawee, Livingston, Monroe, and Washtenaw Counties



<i>Request for MINI GRANT Funds</i>	
<i>Mini-Grants: A specific amount of funds per county set aside annually for small initiatives that arise during the fiscal year in the amount not to exceed \$1000. There is a limit of \$5000 per county each fiscal year. Mini-Grants may only be awarded for special activities or initiatives related to substance use disorders education, awareness, community activities and events, etc., and not be used for staffing purposes. The applicant must identify a source of other matching funds or in-kind effort to receive the grant. Once an award is made, the applicant will not be eligible to receive other mini-grant funding for any additional project during the fiscal year.</i>	
Date:	1/6/2020
Contact Person: (Name, email, phone)	Megan Palmer/Julie Arnold
Requestor:	LCCA – Megan Palmer/Julie Arnold
Amount of Request:	\$1,000.00
Type of Request:	<input checked="" type="checkbox"/> Community event <input type="checkbox"/> Other: __ <input type="checkbox"/> Staff Training <input type="checkbox"/> Coalition Support Attach information as needed.
Describe Program Request:	<p>Youth Summit: The youth-lead prevention workgroup members from Livingston County are planning and organizing a youth summit for a large group of their peers for our youth led prevention initiative. The monies being requested will be used towards the cost of food for the youth summit planning sessions, incidentals and the youth summit itself. The teens are looking at hosting the event at Church 2/42 in Brighton.</p> <p>The youth summit planning sessions would include snacks for 2 evening planning sessions (chips, soda/water, vegetable tray, paper products). Our 4 Saturday planning sessions which will consist of a longer day, we are looking at providing breakfast, lunch and snacks for the teens while being cognizant of special diets (gluten and vegetarian etc.). It is anticipated that there will be 15 or more teens planning the event and 3 to 4 adults.</p> <p>Breakfast would consist of bagels, cream cheese and various pastries at \$40.00 per session x 4 = \$160.00.</p> <p>If pizza is ordered for lunch, we would need 6 large pizza's at each meeting. If an average pizza is \$12.50 x 6 = \$75.00 for one planning session x 4 = \$300.00.</p> <p>To maintain a healthy diet for our teens, a Salad/veggies will be provided. We would order 4 salads at 5.99 each = \$23.96 x 4 = \$95.84; 2 orders of bread sticks at \$3.99 = \$7.98 x 4 = \$31.92, 3 soda's at \$2.00 = \$6.00 x 4 = \$24.00 and paper products at approximately \$20.00 for plates, silverware, cups and napkins. Afternoon snacks would run about \$15.00 x 4 = \$60.00.</p>

	<p>On May 7, 2020 during the Summit, Breakfast items (bagels, pastries), lunch (pizza, salad, breadsticks) and snacks will be needed. The plan is for up to 100 teens participating. The monies being requested help cover the cost of food, paper products, soda/water and any incidentals.</p> <p>With a large order, the cost of the pizza will decrease to \$10.99 per 1 topping pizza. It is anticipated that 33 pizzas will be ordered (33 x 10.99 = \$363.00) for pizza only. 11 orders breadsticks at \$3.99 = \$43.89, 18 large salads at \$5.99 = \$107.82 and soda/water would be around \$30.00. Paper products for the event would cost approximately \$70.00.</p> <p>Our goal is to be sensible to how the money is being spend and assuring that our teens are provided a meal and have some healthy choices for them.</p> <p>With an understanding of teens, the youth summit planning could take some twists and turns. However, at present, the youth plan to have a keynote speaker which will address issues of substance use. They also plan to have several break-out sessions with topics that aid in the reduction of substance use by addressing teen issues such as mental health (anxiety reduction), mindfulness, bullying, etc.. These topics will assist the teens in improving coping skills which may lead to less substance use as a coping mechanism. There is a possibility of not having a key note speaker and only having break-out sessions.</p>
Targeted Community:	(Geographic area) Livingston County
Describe how and where matching funds will be applied. If in-kind, describe:	The matching funds will be from the volunteer work of the students and all of the individuals who put time in to the planning and organizing of the event. This includes the use of facilities.
Identify Key People, Coalitions, and/or Community Partners involved in program:	<p>Livingston County Community Alliance, and teens from Local school districts(youth-lead prevention workgroup) are the key persons. The Livingston County Community Alliance prevention team will be overseeing the event and guiding and instructing the teens throughout. The prevention team will be hands on with the teens and encourage the development of their leadership skills.</p> <p>The teens that represent each high school within district with Livingston county (Howell, Fowlerville, Pinckney, Brighton, Hartland). Approximately 25 teens from each school district will be invited to attend.</p>
<p><u>Please note:</u> All programming must be consistent with the implementation of Recovery-Oriented Systems of Care (ROSC). <i>Recovery-oriented systems support person-centered and self-directed approaches to care that build on the strengths and resilience of individuals, families, and communities to take responsibility for their sustained health, wellness and recovery from alcohol and drug problems</i> (Center for Substance Abuse Treatment, 2005).</p>	
CMHPSM Office Use Only	
Amount Recommended	Click or tap here to enter text.

& Comments:

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**COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEAST MICHIGAN
REGULAR BOARD MEETING MINUTES
December 11, 2019**



- Members Present:** Greg Adams, Susan Fortney, Roxanne Garber, Gary McIntosh, Sharon Slaton, Caroline Richardson, Ralph Tillotson
- Members Absent:** Judy Ackley, Charles Coleman, Bob King, Sandra Libstorff, Charles Londo, Katie Scott
- Staff Present:** Kathryn Szewczuk, Stephannie Weary, Lisa Jennings, James Colaianne, Connie Conklin, Dana Darrow, Nicole Adelman
- Others Present:** Lori Lutomski, John Lapham

- I. Call to Order
Meeting called to order at 6:06 p.m. by Board Chair S. Slaton.
- II. Roll Call
J A quorum of members present was confirmed at 6:10, when R. Garber joined the meeting by telephone.
- III. Consideration to Adopt the Agenda as Presented

**Motion by R. Tillotson, supported by G. Adams, to approve the agenda
Motion carried**

- J Addition to New Business: CEO review.

- IV. Consideration to Approve the Minutes of the November 13, 2019 Regular Meeting and Waive the Reading Thereof

**Motion by S. Fortney, supported by G. Adams, to approve the minutes of the November 13, 2019 regular meeting and waive the reading thereof
Motion carried**

- V. Audience Participation
None

- VI. Old Business
- a. November Revised Finance Report
J J. Colaianne presented.
J This revised report provides a correction to an error with formulas that was in last month's report.
- b. December Finance Report
J J. Colaianne presented. Discussion followed.

- VII. New Business

CMHPSM Mission Statement

Through effective partnerships, the CMHPSM shall ensure and support the provision of quality integrated care that focuses on improving the health and wellness of people living in our region.

- a. Consideration to approve the CEO to execute the presented contracts/amendments
Motion by C. Richardson, supported by G. McIntosh, to approve the CEO to execute the presented contracts/amendments
Motion carried

- b. Contracts Executed Within CEO Authority
 -) J. Colaianne shared an overview of the FUSE Technology contract that was executed within the CEO's authority.
- c. Proclamations for Five Years of Service at the CMHPSM for Lynda Wood, Katie Postmus, Joelen Kersten (December)

Motion by C. Richardson, supported by S. Fortney, to recognize Lynda Wood, Katie Postmus, and Joelen Kersten for five years of service at the CMHPSM
Motion carried

- d. CEO Review
 -) The Board will conduct a 6-month CEO performance evaluation.
 -) Board Chair S. Slaton named the following to the CEO Performance Evaluation subcommittee:
 - C. Richardson (Subcommittee Chair)
 - S. Slaton
 - S. Fortney
 -) S. Weary will follow up with C. Richardson regarding the tool that was used for the last 360-degree review that was conducted earlier this year.

VIII. Reports to the CMHPSM Board

- a. Report from the SUD Oversight Policy Board (OPB)
 -) The OPB met last week, combining the November and December OPB meetings. The minutes and finance report will be submitted in the January Regional Board packet.
- b. CEO Report to the Board
 -) J. Colaianne provided an overview of the state's proposed system redesign, staffing updates, and more. See the CEO Report in the Regional Board meeting packet for more highlights and details.
- c. Move Update
 -) The targeted move dates for CMHPSM are December 12 and December 13. See the CEO Report in the Regional Board meeting packet for more highlights and details.

IX. Adjournment

Motion by R. Tillotson, supported by R. Garber, to adjourn the meeting
Motion carried

Meeting adjourned at 7:05 p.m.

Judy Ackley, CMHPSM Board Secretary

CMHPSM Mission Statement

Through effective partnerships, the CMHPSM shall ensure and support the provision of quality integrated care that focuses on improving the health and wellness of people living in our region.



FEDERAL TOBACCO 21: THE LAW OF LAND

In December 2019, Congress passed, and the President signed, a \$1.37 trillion spending bill that included a provision to raise the minimum legal sales age for all tobacco products from 18 to 21 nationwide. Upon the President's signature, the age change became effective immediately.

The Preventing Tobacco Addiction Foundation/Tobacco 21 is gratified that this common-sense prevention policy is in place at the federal level; however, there is continued opportunity to help strengthen enforcement on a local, state, and national level.

Fast Facts:

- It is now a violation of federal law for any retailer to sell any nicotine or tobacco products to anyone under the age of 21.
- FDA will oversee enforcement of the minimum legal sales age at 21. (Due to the dramatic increase in e-cigarette use by middle and high school age youth since 2016, there is an opportunity to strengthen local and state level enforcement measures around all tobacco and nicotine products to supplement the FDA's national efforts.)
- There are no exemptions for sales to members of the military who are under 21.
- The law does not phase-in age restrictions (i.e., there is no "grandfathering") of those who are currently 18, 19 or 20.
- The law does not preempt states, counties or cities from passing and enforcing their own age restriction laws and does not preempt Tobacco 21 laws already in place in cities, counties and states, except that no military or grandfathering exemptions are granted.
- The law penalizes retailers for selling tobacco products to youth, not those attempting to purchase, although many states and cities retain purchase, use and possession (PUP) laws.
- The law does not require that states pass laws to raise their sales age to 21, but it does require states to demonstrate that their retailers are complying with the law. If not, the state eventually risks losing some portion of their federal substance abuse grant funding.
- This law does not address flavored tobacco or nicotine products in any way, although on January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes: <https://www.fda.gov/media/133880/download>

Federal Tobacco 21 Law FAQ

1. What was the Tobacco 21 landscape prior to the Federal Legislation?

Over 540 local jurisdictions and 19 states had passed a Tobacco 21 law.

2. Where can I find the Federal Tobacco 21 Legislation?

The bill is available at the link provided below and the Tobacco 21 provisions begin on page 1492:

<https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-RCP116-44.PDF>

3. What does the Federal Tobacco 21 bill do?

- Amends the Federal, Drug, and Cosmetic Act 906(d) to include a new subsection, 906(d)(5), which states: “Minimum Age of Sale – It shall be unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age.”

Note: This amendment makes it clear that the retailer is responsible, rather than the sales clerk or youth purchaser.

- Amends Federal, Drug and Cosmetic Act 906(d)(3)(ii) to restrict the FDA from establishing a minimum legal sales age above age 21.
- FDA will continue to enforce the minimum legal sales age. The law does not increase fines/penalties for violations.
- Amends the Public Health Services Act Sec. 1926 (42 U.S.C. 300x-26) (the Synar Amendment) with respect to grant monies, enforcement, implementation, and compliance rates (discussed more in depth in Question 5).
- Enables the Secretary of Health and Human Services to promulgate regulations for tobacco product sales to increase the minimum age of sale from 18 to 21 and update the ID verification age from 27 to 30.
- The law provides grant funding to the states to assist in obtaining retailer compliance, but federal funds are meant to “supplement” state-funded tobacco control efforts not “supplant” state funding to that effect.
- Health and Human Services will provide technical assistance to the states.
- No exemptions or phase in were included, including no military exemption or grandfathering of age groups.
- The law does not preempt states or localities from passing their own age restriction laws.
- Congress appropriated \$18.5 million in grant money available to support states in their transition, with a sunset period until September, 2024.

NOTE: This summary does not include every change to current law based on the Tobacco 21 provisions of the spending bill but rather serves as an overview. The bill language in full can be found in the link in Answer 2 (above).

4. When is Federal Tobacco 21 effective?

The age change became effective immediately, according to the Food and Drug Administration: *“On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21. FDA will provide additional details on this issue as they become available.”*

Retailers can visit the FDA website for guidance:

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products>

NOTE: The legislation enables the Secretary of Health and Human Services to promulgate rules to carry out the new law no later than 180 days after the date of enactment of the Act. The Secretary is required to publish the final rule to update the regulations under Chapter 9 of the Federal Food, Drug, and Cosmetic Act to carry out the amendments, to update all references to persons under 18, and to update the relevant age verification requirements to require age verification for individuals under the age of 30. This final rule will take effect no later than 90 days after the date on which the final rule is published.

5. What is ‘Synar’ and how does the Federal bill amend Synar?

The original Synar Amendment, named for the Oklahoma Senator who introduced the amendment, required, among other things, states to adopt state laws setting the tobacco sale age at 18 in order to receive their Substance Abuse Prevention and Treatment Block (SAPTB) grant money. However, that part of the Synar amendment was repealed in the new legislation, and states are not required to pass their own laws to update their tobacco sales age to 21. States will still need to demonstrate compliance with the federal age of 21 as a condition of the grant. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies.

The new law grants a 3-year grace period following enactment to come into compliance with the reporting and enforcement requirements before the Secretary may withhold any funds, with a further 2-year period for Secretary to exercise discretion in enforcement.

6. Does the Federal Tobacco 21 law include a Military Exemption?

No. The Federal Tobacco 21 law does not exempt anyone from the age requirement. It is now illegal for retailers to sell tobacco product to anyone under the age of 21.

7. What does this mean for states and localities that have a military exemption in their Tobacco 21 laws? Does this Federal law overturn all military exemptions that are currently in effect?

The Federal Tobacco 21 law does not exempt anyone or group from the age restriction requirements. States and cities that exempt members of the military from their Tobacco 21 laws are in violation of federal law. In other words, because the federal law does not have a military exemption, all such sales to persons under 21, regardless of military status, are illegal.

8. Can a law exempting the military from the new age of sale of 21 be enacted before the federal law starts to be enforced?

No. The federal law became effective when it was signed by President Trump. The law does not have a military exemption. Therefore, sales to any persons under the age of 21, including military personnel, are illegal. ***States cannot authorize something that is illegal under federal law.***

9. Does the Federal Tobacco 21 law include a phase-in period?

No. Per the FDA website, the law is effective immediately and it is illegal for a retailer to sell tobacco products to persons under the age of 21.

10. Is there more to be done? Should my state/city continue to pass Tobacco 21 laws independently?

Yes, absolutely! In many states and cities, outdated and uninformed youth access laws remain on the books. Many of these laws were written and lobbied for by the tobacco industry. These antiquated laws consistently place penalties on youth rather than the retailer who profits from sales, and many lack real enforcement mechanisms or penalties that deter bad behaviors. Even with a federal Tobacco 21 law, there is much work that needs to be done around age restriction laws at a state and local level.

The federal Tobacco 21 law does not preempt states and localities from adopting their own Tobacco 21 laws. In fact, changes to the Synar Amendment require states, as a condition of their grant funding, to demonstrate compliance with the federal age of 21. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies. ***Therefore, the federal law inherently encourages state and local action.*** Moreover, state and local enforcement will help improve the effectiveness of a Tobacco 21 law.

States and localities should continue passing policies at the local and state level to make their age restriction laws align with federal law. Effective sales regulations also include requiring a tobacco retail license, mandating a minimum number of compliance checks, and updating their penalty structure to incentivize compliance.

Again, states and cities are not preempted from passing or enforcing their own Tobacco 21 laws. Therefore, in locations that already have Tobacco 21, we recommend continued enforcement. In locations that do not have a Tobacco 21 law, we recommend updating laws and enforcing the new age.

11. What are the penalties for youth who are caught trying to purchase or those who are using tobacco products?

The federal law does not place any penalties for youth who are caught attempting to purchase, purchasing, or using tobacco products. However, state and local laws often place a penalty on youth for such activity. We recommend you monitor your local and state laws for these provisions.

If your jurisdiction does place a penalty on the youth for purchase, use, or possession of tobacco products, we recommend that the jurisdiction update its laws to align with federal standards that place the penalties on the retailers, not the youth purchaser.

12. What are the penalties for selling to those under 21?

The FDA enforces the minimum legal sales age contracting with the states or a third party to conduct compliance checks at retail locations. Maximum penalties for violating regulations issued under Section 906(d) of the Food, Drug, and Cosmetic Act, including the restrictions on the sale and distribution of covered tobacco products in 21 CFR part 1140, are set forth at Section 103(q)(2) of the Tobacco Control Act and have since been adjusted for inflation. The penalty structure is available at:

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>

The first time a retailer with an approved training program violates the regulations issued under Section 906(d) of the FD&C Act, FDA will send the retailer a Warning Letter. The maximum civil money penalty amounts for such retailers range from \$292 (for a second violation within a 12-month period) to \$11,698 (for a sixth or each subsequent violation at the same retail location within a 48-month period).ⁱ

The FDA may also pursue a *No-Tobacco-Sale Order* (NTSO) against retailers that have a total of five or more repeated violations of certain restrictions within 36 months. Retailers are prohibited from selling regulated tobacco products at the specified location during the period of the NTSO.ⁱⁱ Per guidance from the FDA, “Repeated violations” is defined to mean “at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation.”ⁱⁱⁱ

In addition, states and localities may have their own age restriction enforcement mechanism. These programs vary by state and we recommend you research your own jurisdiction to learn about your state or locality’s age restriction enforcement program.

13. Did flavored e-cigarettes become illegal with this new law?

No. This legislation does not prohibit or restrict the sale of flavored products. **On January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes:** <https://www.fda.gov/media/133880/download>

Note: Prior to this legislation and under the authority granted by the Family Smoking Prevention and Tobacco Control Act, the FDA prohibited cigarettes from containing any “characterizing flavor,” including candy, fruit, and alcohol flavors. This regulation was not impacted by the new legislation. Please consult your state and local laws as some jurisdictions have prohibited the sale of (or further restricted) flavored tobacco products.

Disclaimer: *The information presented is not legal representation or advice, is not to be acted on as such, may not be current and is subject to change. This information is for educational purposes only. If you require legal advice or a legal opinion, we encourage you to consult with legal counsel.*

ⁱ The Civil Money Penalty amounts listed in this guidance reflect the amounts listed in the statute. FDA is required to update these amounts annually to reflect inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, 104 Stat. 890 (1990) (codified as amended at 28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, November 2, 2015). For the most up-to-date amounts, please see 45 CFR §102.3 or the CTP website at: <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm232109.htm>

ⁱⁱ Products, Center for Tobacco. “Tobacco Compliance & Enforcement.” *U.S. Food and Drug Administration*, FDA, <https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>.

ⁱⁱⁱ Department of Health and Human Services, Food and Drug Administration Center For Tobacco Products, “Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (Revised), Guidance for Industry.” Published Dec. 2016, available at <https://www.fda.gov/media/80888/download>, FDA understands this to mean that there is a “repeated violation” if: There are at least five violations of requirements issued under Section 906(d) of the FD&C Act at a particular outlet; Each of the five violations represents the second or subsequent violation of a particular requirement; and Each of the five violations occurs within 36 months.