

Tobacco Protocol, 2018

Population and Public Health Division,
Ministry of Health and Long-Term Care

Effective: January 1, 2018

Preamble

The Ontario Public Health Standards: Requirements for Programs, Services, and Accountability (Standards) are published by the Minister of Health and Long-Term Care under the authority of section 7 of the *Health Protection and Promotion Act* (HPPA) to specify the mandatory health programs and services provided by boards of health.^{1,2} The Standards identify the minimum expectations for public health programs and services. Boards of health are accountable for implementing the Standards including the protocols and guidelines that are referenced in the Standards. Protocols are program and topic-specific documents incorporated into the Standards which provide direction on how boards of health shall operationalize specific requirement(s) identified within the Standards.

Purpose

The purpose of this protocol is to provide direction to each board of health. The board of health shall enforce the Smoke-Free Ontario Act (SFOA) including all the requirements with respect to the:³

- Prohibition on selling and / or supplying tobacco to persons under age 19;
- Prohibition of sale of tobacco in designated places;
- Packaging, health warnings and signs for tobacco;
- Prohibition on selling flavoured tobacco products;
- Prohibition on selling tobacco in vending machines; and
- Prohibitions on smoking tobacco.

Ontario Regulation 48/06⁴ made under the SFOA is relevant to this protocol.

The Tobacco Protocol aligns with the Ministry of Health and Long-Term Care's (the "ministry") comprehensive approach to tobacco control. More information on comprehensive tobacco control to support chronic disease prevention can be found within the *Chronic Disease Prevention Guideline, 2018* (or as current) and the *Substance Use Prevention and Harm Reduction Guideline, 2018* (or as current).^{5,6}

Reference to the Standards

This section identifies the standards and requirements to which this protocol relates.

Effective Public Health Practice

Requirement 9. The board of health shall publicly disclose results of all inspections or information in accordance with the *Electronic Cigarettes Protocol, 2018* (or as current); the *Food Safety Protocol, 2018* (or as current); the *Health Hazard Response Protocol, 2018* (or as current); the *Infection Prevention and Control Protocol, 2018* (or as current); the *Infection Prevention and Control Disclosure Protocol, 2018* (or as current); the *Infection Prevention and Control Complaint Protocol, 2018* (or as current); the

Recreational Water Protocol, 2018 (or as current); the *Safe Drinking Water and Fluoride Monitoring Protocol, 2018* (or as current); the *Tanning Beds Protocol, 2018* (or as current); and the *Tobacco Protocol, 2018* (or as current).

Substance Use and Injury Prevention

Requirement 3. The board of health shall enforce the *Smoke-Free Ontario Act* in accordance with the *Tobacco Protocol, 2018* (or as current).

Operational Roles and Responsibilities

Inspection

All enclosed workplaces, enclosed public places and other specified places that are required to be smoke-free under the SFOA³ may be subject to an inspection. The board of health shall enforce the SFOA at all places regulated under the SFOA, including tobacco retailers, schools, residential care facilities, hospitals, bars and restaurants, places of entertainment, tobacconists, and other prescribed places.

Restricting youth access to tobacco products is an integral part of the SFOA's comprehensive tobacco control program aimed at preventing children and youth from starting to smoke. The board of health shall inspect all tobacco retailers in its public health unit area to assess compliance with youth access restrictions under the SFOA. For the purpose of conducting the inspection, the board of health shall hire youth test shoppers that are less than 19 years of age to attempt a purchase of tobacco products.

The board of health shall ensure that two test shops are conducted annually on each vendor for compliance with the ban on sale to persons under 19.

The board of health shall ensure that one inspection is conducted annually on each vendor for compliance with the ban on display and promotion.

The board of health shall ensure that one inspection is conducted annually on each secondary school.

The board of health shall ensure that two inspections are conducted annually on all Controlled Smoking Areas (CSAs).

The board of health shall respond to all complaints about non-compliance with the SFOA and take compliance or enforcement action, as appropriate.

Signs

The board of health shall inspect tobacco retailers and smoke-free places for compliance with the signage requirements in the SFOA.

Enforcement Activity

The board of health shall use a compliance strategy that employs a balance of education, inspection, and progressive enforcement. “Progressive enforcement” means the use of warnings and graduated charging options to reflect the frequency and severity of the level of non-compliance.

Data Collection and Reporting

The board of health shall collect and maintain up-to-date inspection and enforcement data using the Tobacco Inspection System (TIS) or otherwise as directed by the ministry.⁷ A record of every enforcement activity conducted for the purpose of determining compliance with the SFOA, including education visits, inspections, warnings issued and charges laid, shall be recorded and synchronized in TIS.⁷

Administration of the Notice of Prohibition Against the Sale, Storage and Delivery of Tobacco Products (Automatic Prohibition)

The board of health shall inform the ministry that a Notice of Prohibition is required when the requisite number of tobacco sales offence convictions is obtained. The board of health shall serve and enforce the Notice of Prohibition issued by the Minister of Health and Long-Term Care (or his/her delegate).

Authority of an Inspector

The ministry administers the appointment of inspectors under the SFOA.

The board of health shall recommend the appointment of inspectors under the SFOA to the ministry.

The board of health shall ensure that inspectors comply with any restrictions set in the SFOA or their appointment.

Education and Training

The board of health shall ensure that all appointed tobacco inspectors under the SFOA are trained appropriately with ministry sanctioned training within one year of appointment.

Public Disclosure of Inspection Results

The board of health shall publicly disclose a summary report on each tobacco sale related conviction of a tobacco retailer.

The board of health shall ensure reports are posted on the board of health's website in a location that is easily located by the public within two weeks of the conviction. Reports must be posted for five years.

The format of reports can be adapted to match the visual style of the board of health's websites. Boards of health are encouraged to integrate the required content areas listed below to existing public disclosure programs

The reports shall contain:

- a) The name and address of the premises where the offence was committed (including street number, street name, city, postal code);
- b) The date of the conviction;
- c) The type of offence (e.g., SFOA Section 3(1) Sell tobacco to a person who is less than 19 years old); and
- d) Whether the conviction is eligible towards an Automatic Prohibition (AP) (yes/no).

In cases where convictions are appealed, the board of health shall revise the posted report with additional information or post a subsequent report.

The board of health shall ensure that all posted reports are compliant with relevant legislation including the *Accessibility for Ontarians with Disabilities Act* (AODA), the *French Language Services Act* (FLSA) (if applicable), and *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).⁸⁻¹⁰

References

1. Ontario. Ministry of Health and Long-Term Care. Ontario public health standards: requirements for programs, services, and accountability, 2018. Toronto, ON: Queen's Printer for Ontario; 2018. Available from: http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/default.aspx
2. *Health Protection and Promotion Act*, RSO 1990, c H.7. Available from: <https://www.ontario.ca/laws/statute/90h07>
3. *Smoke-Free Ontario Act*, SO 1994, c 10. Available from: <https://www.ontario.ca/laws/statute/94t10>
4. *GENERAL*, O Reg, 48/06. Available from: <https://www.ontario.ca/laws/regulation/060048>
5. Ontario. Ministry of Health and Long-Term Care. Chronic disease prevention guideline, 2018. Toronto, ON: Queen's Printer for Ontario; 2018. Available from:

http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/protocolsguidelines.aspx

6. Ontario. Ministry of Health and Long-Term Care. Substance use prevention and harm reduction guideline, 2018. Toronto, ON: Queen's Printer for Ontario; 2018. Available from: http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/protocolsguidelines.aspx
7. Ontario. Ministry of Health and Long-Term Care. Tobacco Inspection System (TIS) [Internet]. Toronto, ON: Queen's Printer for Ontario; [2006] [cited 2017 Nov 7]. Available from: <https://tisuat.moh.gov.on.ca/WebClient/LoginPage.aspx>
8. *Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c 11. Available from: <https://www.ontario.ca/laws/statute/05a11>
9. *French Language Services Act*, RSO 1990, c F.32. Available from: <https://www.ontario.ca/laws/statute/90f32>
10. *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56. Available from: <https://www.ontario.ca/laws/statute/90m56>

