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**Key Findings of the GAO Report
“Synar Amendment Implementation:
Quality of State Data on Reducing Youth Access to Tobacco Could Be Improved”**

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A new General Accounting Office (GAO) report requested by Rep. Henry A. Waxman shows that the existing federal program to prevent children from purchasing cigarettes is deeply flawed. According to the report, states frequently fail to conduct valid inspections of tobacco sellers and often use young teens who can easily be identified as underage. In addition, fifteen states do not enforce restrictions on selling cigarettes to children with penalties or sanctions.

Enacted in 1992, the current federal program requires that states prohibit tobacco sales to children, randomly inspect tobacco retailers to estimate compliance, and report the results of the inspections to the Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services. Tobacco companies have cited the program as evidence of strong government action to prevent cigarette sales to minors.¹

The GAO report is the first comprehensive congressional assessment of the SAMHSA program. Contrary to the assertions of the tobacco industry, the GAO report demonstrates that the SAMHSA program is not an effective means of preventing cigarette sales to minors. It is clear that regulation by the Food and Drug Administration (FDA) is needed to stop tens of thousands of youths from becoming addicted to deadly tobacco products each year.

I. BACKGROUND

The SAMHSA program was established by the Synar Amendment, named after the late Rep. Mike Synar of Oklahoma. Rep. Synar’s goal was to provide states with incentives to block children’s access to cigarettes.

The GAO report was designed to assess SAMHSA’s implementation of the Synar Amendment. In particular, GAO sought to determine (1) whether states submit valid data to SAMHSA regarding youth access to tobacco products; and (2) whether states are using penalties to improve compliance with youth access laws. As part of its efforts, GAO reviewed SAMHSA guidance to states on sample design procedures and protocols for inspections, reviewed each state’s submission to SAMHSA as part of block grants in fiscal years 1998 and 1999, and interviewed federal researchers and officials.

¹See, e.g., R.J. Reynolds Tobacco Company, *Sales to Minors*, www.rjrt.com/TI/Pages/TIminAge.asp (accessed December 3, 2001).

II. GAO FINDINGS

A. Quality of Data Submitted by States

GAO determined the data submitted by states to SAMHSA on youth access to cigarettes often are flawed. As a result, the inspection rates cited by states may not be accurate, and comparisons between state violation rates are suspect. Specific data problems noted by GAO include:

- **Use of young teens for inspection programs.** One technique that can be used by states to report high rates of compliance with youth access laws is to use young teens to conduct the inspections. In fiscal year 1999, 43 states reported using 14- and 15-year olds as inspectors. Sixteen of these states used young teens in more than 50% of inspections. In North Carolina, 94% of inspections were conducted by 14- and 15- year olds. Using these young teens can have a significant impact on the rates of compliance that states report to SAMHSA. GAO reviewed available evidence and found that retailers will sell cigarettes to 14- or 15-year-olds less than half as frequently as they will to 16- or 17-year olds.
- **Use of potentially inaccurate and incomplete lists of tobacco retailers.** Forty states based their inspection protocols on lists of tobacco retailers but reported to SAMHSA that they did not know whether the lists were accurate. Without accurate lists, random inspection programs cannot be designed in a statistically valid way. The violation rates reported by these states are therefore suspect.
- **Failure to keep track of tobacco vending machines.** Despite evidence that middle school students often purchase cigarettes from vending machines, 11 states could not tell SAMHSA how many vending machines were accessible to youth within their borders. According to GAO, “some states have had difficulty developing accurate and complete lists of vending machine outlets, in particular, because many of these machines are privately owned and their portability makes them difficult to track.” Without such knowledge, states cannot design appropriate inspection surveys.

B. Enforcement of Youth Access Laws

While all states have laws authorizing the use of penalties, GAO found that just over half of states in fiscal year 1999 enforced restrictions on youth access to tobacco products with fines or suspension of the license to sell such products. Fifteen states took no enforcement action of any kind against businesses that sold tobacco products to minors.

C. Other Findings

GAO also found problems with SAMHSA’s management of the tobacco-control program. For example, GAO found that the agency inappropriately accepted flawed data from some states without requiring that states comply with the relevant legal standards. GAO further

found that SAMHSA relied on states to validate their own data rather than conducting independent oversight. Because states have a financial incentive to report low violation rates, GAO considered this system inadequate.

III. IMPLICATIONS FOR TOBACCO CONTROL LEGISLATION

GAO's findings highlight the need for comprehensive legislation establishing FDA jurisdiction over tobacco products. Such legislation would allow FDA to set and enforce a clear national policy to prevent tobacco products from reaching children. The policy could be designed to avoid the inspection problems found by GAO and could be enforced with a consistent system of penalties around the nation.

Indeed, prior to the Supreme Court's decision striking FDA tobacco rules, the agency had made progress in enforcing a national youth access program. GAO reported the view of federal and state officials that in the absence of FDA regulation, "some tobacco retailers will become more lax and sales to minors will increase."