

96-04

STATEMENT OF POLICY

Local Tobacco and Vaping Control Regulations

Policy

The National Association of County and City Health Officials advocates for the inclusion of language in all state legislation to preserve local government autonomy and eliminate potential conflicts regarding the following:

- More restrictive tobacco and vaping control ordinances and regulations, including those governing smoke-free or vape-free indoor air;
- Increasing tobacco product taxes;
- Regulating the sales and retail environments to reduce use of tobacco and vaping products through product placement and elimination of advertising,
- Increasing the minimum age for sale.
- NACCHO urges state legislatures to enact such legislation. NACCHO encourages local public health officials to work to see that all preemptive state tobacco/vaping control legislation be repealed.

With the recent rise in use of e-cigarettes, NACCHO also urges local health departments to support legislation and policy efforts that do the following:

- Require the Food and Drug Administration (FDA) to provide full disclosure of all chemicals included in new tobacco products.
- Ban the distribution of free samples of emerging tobacco products and new nicotine delivery devices.
- Continue to use broad defining language to include cigarettes, nicotine delivery products, tobacco products, smokeless tobacco, and e-cigarettes in all new smoke-free legislation for indoor and outdoor environments.
- Restrict flavored tobacco sales, including vaping products and all products with menthol.

Unless further research shows that they are safe and effective as a cessation product, NACCHO suggests that e-cigarettes along with other emerging tobacco products are regulated to the extent that the law allows for tobacco products.

Justification

For the purpose of this policy, “tobacco products” include any product that contains tobacco, is derived from tobacco, or contains nicotine, which is intended for human consumption, or is likely to be consumed, whether smoked, heated, vaporized, chewed, absorbed, dissolved, or



ingested by any other means. The term “tobacco products” includes e-cigarettes, other electronic smoking devices, and any other future products that are deemed tobacco products, but does not include any cessation product approved by the FDA for use as a medical treatment to reduce and eliminate nicotine or tobacco dependence.

Tobacco use is the leading preventable cause of premature death, disability and disease in the United States. Each year, an estimated 480,000 people die from cigarette smoking in the United States where 41,000 of these deaths are related to secondhand smoke.¹ Based on 2018 data, about 34 million US adults smoke cigarettes.² Each day, more than 2,000 young people under 18 years of age smoke their first cigarette, and more than 300 youth under age 18 become daily cigarette smokers.³ If cigarette smoking continues at the current rate among youth in this country, 5.6 million of today’s Americans younger than 18 (1 in 13) will die early from a smoking-related illness.⁴

An estimated 58 million nonsmoking Americans, including 41% of children aged 3–11 years, are exposed to secondhand smoke. Secondhand smoke exposure causes serious disease and death, including heart disease and lung cancer in nonsmoking adults and sudden infant death syndrome, acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children. The Centers for Disease Control and Prevention (CDC) estimates that secondhand smoke causes nearly 34,000 premature deaths from heart disease each year in the United States among nonsmokers.⁵

The rising use of e-cigarettes or vaping products has created a major public health concern. The rapid growth within a few years contributing to associated illness and deaths. In 2019, CDC identified a newly named illness, E-cigarette Vaping Associated Lung Illness (EVALI) to refer to the severe and life-threatening respiratory illness associated with e-cigarettes. As of January 2020, over 2,500 patients have been diagnosed with EVALI.⁶ This rise in e-cigarette use and illness is especially concerning because the number of middle and high school students using e-cigarettes rose from 3.6 million in 2018 to 5.3 million in 2019.⁷ These products have limited regulation and in many cases may be excluded from typical tobacco control laws. NACCHO recognizes the importance of finding additional tools and policies to help smokers, including supporting cessation programs and services such as quitlines. Currently, little scientific evidence exists to show that e-cigarettes and other nicotine delivery devices are effective cessation devices.

Local governments must be permitted to institute ordinances to include vaping products in clean indoor air laws and regulate sales of vaping products and their accessories. Preemptive legislation at the state level prohibits localities from enacting laws that vary from or are more stringent than state law. In the case of tobacco/vaping legislation, state preemption language prevents local governments from passing stronger, more comprehensive regulations regarding smoke or vape-free indoor air, increasing tobacco product taxes, regulating the sales and retail environments to reduce use of tobacco and vaping products, and increasing the minimum age for sale.

The tobacco industry has historically supported preemptive state laws as a way to reverse existing local tobacco control ordinances and prevent future enactment of such ordinances.⁸ In fact, the tobacco industry's leading legislative strategy against local tobacco control laws has been preemptive state laws.⁹

For many years, the Federal Cigarette Labeling and Advertising Act (FCLAA) preempted states from taking any action for health purposes to restrict cigarette advertising or promotion. However, the Family Smoking Prevention and Tobacco Control Act, signed into law June 22, 2009, changes this by allowing states or local communities to restrict or regulate the time, place, and manner (but not the content) of any cigarette advertising or promotions.¹⁰ Given that federal law can no longer preempt state law, state laws should not preempt local laws.

The U.S. Department of Health and Human Services made the elimination of preemption in tobacco control a national goal in Healthy People 2020, with the following objective: *Eliminate State laws that preempt stronger local tobacco control laws*. This includes preemption on smoke-free indoor air, preemption on advertising, and preemption on youth access.¹¹

Between 2004 and 2019, seven states repealed provisions that preempt local tobacco control law. As of September 30, 2018, 22 states have laws preempting local ordinances related to youth access to tobacco; 20 states preempt local restrictions on selling tobacco products to young people, and 19 states preempt local restriction on distributing tobacco products to youth.

Seven states preempt all types of local tobacco advertising restrictions and 11 states have laws preempting localities from passing ordinances related to licensure of tobacco products.¹²

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Record of Action

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