

Issue Brief

Tobacco Product Control

Overview

Tobacco use is the leading preventable cause of death and illness in the United States, claiming more than 440,000 lives each year. Most adult tobacco users start before they are 18 years of age, and use is often instigated by exposure to parental and peer smoking, smoking in movies and other media, and advertising that targets children and adolescents. The connection between children and tobacco use is so strong that the Commissioner of the US Food and Drug Administration (FDA) declared smoking a “pediatric disease” in 1995.

Through the creation and enforcement of laws that prevent minors from gaining access to tobacco, states can reduce not only teen tobacco use rates, but over time, adult tobacco use rates. State tobacco product control legislation can take many different forms and includes counteradvertising, bans on tobacco industry sponsorship and promotions, restrictions on the sale of tobacco products, tobacco excise taxes (which have been proven to reduce tobacco use), and restrictions on sales of tobacco products through mechanisms designed to circumvent state tobacco laws.

AAP Recommendations

- According to the AAP Policy Statement – [Tobacco Use: A Pediatric Disease](#), sales and distribution of tobacco to youth should be strictly prohibited. Venues for unsupervised purchase of tobacco products, such as vending machines and online merchants, should be eliminated. All tobacco products should be placed behind sales counters to reduce shoplifting.
- Provision of tobacco products to youth by adults should be made illegal, with significant consequences for

noncompliance. Sales of tobacco products should be eliminated from schools, including secondary schools; health care facilities; military bases; and other sites that serve youth and young adults. The promotional distribution of tobacco products should be prohibited.

- All tobacco products should be labeled to warn users of the health hazards of tobacco use. Warnings should use clear wording, in the strongest possible terminology, and should be prominently displayed on packaging (occupying more than 50% of the front), on advertisements, and on displays at tobacco sales facilities. These messages should be rotated to present a new warning on a regular basis.
- Advertising of tobacco products should be banned from all media, events, and venues, including the Internet. Products such as t-shirts, sports equipment, and other items should not bear messages or images that depict tobacco products or promote tobacco use. All forms of advertising and media, especially advertising and media aimed at children, adolescents, and young adults, should not contain messages that promote tobacco use or images of tobacco or tobacco use.
- Sales of candy cigarettes, cigars, and other products that imitate tobacco products or smoking should be banned. These products have been shown to promote tobacco use by children and youth. The sale or dispensing of electronic or e-cigarettes, which imitate smoking while delivering nicotine to the user, should also be banned.
- Exposure to and depiction of tobacco use should be reduced in films, videos, DVDs, and television programs. The evidence is very strong that depiction of tobacco use in films, videos, DVDs, and television programs is a significant factor in the uptake of tobacco use by children and youth.

Any new film that shows or implies tobacco use should be given a Motion Picture Association of America rating of R. The only exceptions should be when the presentation of tobacco clearly and unambiguously reflects the risks and consequence of tobacco use or the depicted tobacco use is necessary to represent that of a real historical figure who actually used tobacco. It should be certified that no one working on or associated with the production received anything of value (money, gifts, publicity, loans, or anything else) in exchange for using or displaying tobacco products. The closing credits of every film depicting tobacco use or displaying images of tobacco products should contain such a declaration.

- Local, state, and federal tax policies should support tobacco control. Higher taxes have been shown to deter the purchase and use of tobacco and prompt cessation attempts; accordingly, local, state, and federal taxes on tobacco products should be implemented and/or increased. The revenue from these taxes can be used to support evidence-based tobacco control programs.
- Tax deductions for advertising tobacco products and tobacco farming price supports and subsidies should be eliminated. Alternative revenue sources should be developed for and promoted to tobacco farmers.

Evidence Based Pricing Strategies

In a number of studies, increases in the unit price of tobacco products have been shown to decrease consumption among diverse populations. Increasing tobacco excise taxes is an effective means to reduce tobacco use and increase cessation among youth. Specifically, increasing excise taxes on tobacco products makes tobacco use less attractive to youth who have limited amounts of money to spend. Revenues from these taxes can then be used to fund prevention and cessation programs.

Media and Advertising Restrictions

In 1998, the Master Settlement Agreement (MSA) imposed specific bans and restrictions on the tobacco industry's ability to advertise tobacco products. Specifically, the MSA banned the use of cartoons in advertising, promotion, or packaging of tobacco products; banned youth-targeted advertising or marketing; banned most outdoor advertising and restricted advertising outside retail establishments; banned the distribution and sale of brand-name apparel and merchandise; limited brand name sponsorships; restricted gifts with purchases and free samples to minors; and, limited the minimum cigarette pack size to 20 cigarettes.

The Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, strengthened restrictions under the MSA and imposed new restrictions on tobacco advertising and marketing. Along with sponsorship prohibitions, the FSPTCA authorizes state and local lawmakers to impose specific bans or restrictions on the time, place, and manner, but not the content, of cigarette advertising. States may not regulate content because commercial speech is protected under the First Amendment, which requires that any restrictions on commercial speech must directly advance the government's substantial interest in reducing youth and adult tobacco use; must not be more extensive than necessary to promote these governmental interests; and will allow tobacco companies to reasonably communicate with legal tobacco product customers. Under the FSPTCA, the US Food and Drug Administration (FDA) plans to contract with states to actively promote state level enforcement, inspect manufacturers, retailers, and distributors to identify violations of the law's restrictions and bans.

Counteradvertising and Tobacco "Prevention" by the Tobacco Industry

One way to combat the tobacco industry's powerful influence is to implement counteradvertising programs, which may include prevention and cessation themes as well as programs that discourage tobacco use. Developing message content through formative research and using brief, recurring messages to inform and motivate individuals to remain tobacco free can be an effective approach in mass media campaigns. For instance, advertising campaigns that reflect the health consequences of tobacco use (eg, depictions of real people that have suffered from tobacco use, displays of graphic pictures of diseased organs, and/or messages about the tobacco industry's tactics) have been shown to be more effective than humorous or emotionally neutral campaigns. When combined with evidence-based curricula in schools, counter-advertising media campaigns can further influence youth to avoid tobacco use.

In developing a countermarketing program, it is crucial to be aware of initiatives devised by the tobacco industry. Prevention programs established by tobacco companies generally still maintain access to minors as potential consumers. These programs have been shown to be ineffective and more harmful than beneficial. Often, tobacco industry prevention programs communicate that smoking is an "adult choice," emphasize that youth smoking is against the law; target parents rather than youth; focus on peer pressure as a cause of smoking; and target the younger teens rather than older teens (who are at a much higher risk for smoking initiation). Studies from both the

American Journal of Public Health and Tobacco Control examining the effect of tobacco industry-sponsored ads have determined that there is no evidence such strategies are effective in preventing youth from smoking or in persuading youth to stop smoking. A study from the *American Journal of Public Health* and a report from the National Cancer Institute even concluded that tobacco industry prevention ads may have caused youth to smoke.

States play an important role in counteracting the effects of tobacco advertising. Specifically, states may use authority granted by the FSPTCA. As mentioned previously, states may regulate the time, place, and manner of cigarette advertising, provided they do not regulate the content of cigarette advertising. Accordingly, states may restrict commercial displays in retail outlets, with the exception of text-only informational displays (eg, price related product characteristics) within regulatory constraints. States should require retailers carrying tobacco products to display and distribute warnings about the health consequences of tobacco use, information regarding products and services for cessation, and corrective messages to offset misstatements about the health effects of tobacco use. States could also require retailers to allocate a proportionate amount of space to cessation aids and nicotine replacement products approved by the FDA or state health agency.

States should also support local governments in establishing ways to relay effective antitobacco messages and should ensure that countermarketing strategies use evidence-based approaches. Additionally, any statewide program should be evaluated to ensure that tobacco companies have not contributed money or content to the program prior to implementation.

Brand-Name Sponsorships

The MSA bans tobacco company sponsorship of team sports, events with a large youth audience, and events with underage participants. Now, under the Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents (FSPTCA Regulations), whether or not underage participants are present, brand name sponsorship of any athletic, musical, or other social or cultural event, or sponsorship of any team or other entries involved in those events is prohibited. While the FSPTCA Regulations strengthen the MSA restrictions on sponsorship, the FSPTCA Regulations allow tobacco manufacturers, retailers, and distributors to sponsor such events under the tobacco manufacturer's corporate name, provided that: (1) the corporate name existed before January 1, 1995; and (2) that the corporate name does

not include any brand name, logo, or identifiable aspect associated with the brand.

Promotional Items, Samples, and Point of Sale Restrictions

The FSPTCA Regulations also provide for restrictions, with some limitations and/or exceptions, on tobacco promotional items and prizes, free samples, labeling, and point of sale advertising (subject to commercial speech limitations under the First Amendment). Free samples of smokeless tobacco may only be distributed in qualified adult-only facilities, where each person present in the facility must present a government issued, photo identification to a law enforcement officer or security guard.

Sales Restrictions

Under the FSPTCA Regulations, a retailer bears the responsibility to comply with the following:

- Not sell cigarettes to anyone younger than the age of 18;
- Verify age through photo identification (but no verification is required for individuals older than the age of 26);
- Not sell cigarettes in packages of less than 20; and
- Sell tobacco in only a direct face-to-face manner, with some exceptions.
- Prohibit the sale of cigarettes and smokeless tobacco products via vending machines and self-service displays, except in facilities where minors younger than the age of 18 are not present or permitted to enter at any time.

While the FSPTCA regulations specify that cigarettes and smokeless tobacco products may not be sold through vending machines and self-service displays unless minors younger than the age of 18 are not present or permitted to enter, the regulations fail to address how this provision will be enforced. It is unclear whether proof of age is verified upon a customer's entry into the store or whether those who enforce the provision actively monitor the self-service displays and vending machines.

State Activity

Taxing Tobacco Products

States, looking for ways to increase revenue during an economic downturn, have found that tobacco taxes play the dual role of decreasing smoking rates while increasing state revenue. Since January 2002, over 90% of states have raised their state tobacco excise taxes at least once. Currently, the average state cigarette excise tax is \$1.45 per pack, and ranges from \$0.17 per pack in **Missouri** to \$4.35 per pack in **New York**. In 2010, 6 states (**Hawaii, New Mexico, New York, South Carolina, Utah, and Washington**) raised their cigarette taxes. These tax

increases ranged from \$0.40 to \$1.60 per pack, with **New York** implementing the greatest increase of \$1.60 per pack.

In 2011, a number of states have introduced legislation to increase tobacco product taxes. These states include **Alabama, California, Colorado, Connecticut, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New York, North Carolina, Oklahoma, Oregon, Texas, Utah, Vermont, Virginia, and West Virginia**. None of these taxes were enacted.

Other states in 2011 have introduced legislation to tax tobacco products that are not currently taxed under existing laws. Except for **Utah's** bill, these bills were not enacted.

- A **Connecticut** and **Minnesota** bill would impose a tax on snuff tobacco products.
- **Oklahoma** bill seeks to impose a tax on rolling papers.
- Legislators in **Maryland** and **Nevada** have introduced a bill to expand the definition of "cigarette" to encompass more tobacco products for tax purposes.
- **Illinois, Mississippi, and Utah** lawmakers have introduced legislation to tax "little cigars" (**Utah's** bill was enacted on March 22, 2011).

Sales Restrictions - Electronic Cigarettes, Flavored Tobacco, and Other Tobacco Products

With the introduction of a wide variety of tobacco products over the years, states have recognized that minors are at an even greater risk of acquiring an addiction to tobacco. Banning the sale of electronic cigarettes and flavored tobacco to minors is one mechanism states may use to prevent children and teenagers from smoking and using other tobacco products. Flavored cigarettes and smokeless tobacco products are especially attractive to children because they come in a variety of fruit and/or candy flavors. Tobacco companies are notorious for deliberately marketing such products to a younger population so that they may develop a lifelong addiction at an early age.

In 2011, states introduced legislation to strengthen existing tobacco retail sales laws and legislation to target nontraditional forms of tobacco and tobacco-like products to further eliminate sales to minors. **Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin** have all initiated legislation to make electronic cigarettes, flavored tobacco, rolling paper, dissolvable products, and other tobacco

products inaccessible to minors. The **Arkansas, Colorado, and Indiana** bills were enacted, while the remaining bills failed. **Arkansas** law now prohibits the sale of herbal snuff to minors younger than the age of 18; the **Colorado** law includes electronic cigarettes in its ban on sales of tobacco products to minors; and the **Indiana** law prohibits retailers from selling dissolvable tobacco products to minors.

Federal Activity

In 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Prevention Control Act, which gives the Food and Drug Administration (FDA) authority over the regulation of tobacco products. This new law also:

- Bans candy and fruit-flavored cigarettes, other than menthol
- Requires larger, more effective health warnings on tobacco products.
- Requires tobacco companies to disclose the contents of tobacco products, as well as changes in products and research about their health effects.
- Bans terms such as "light" and "low-tar" that mislead consumers into believing that certain cigarettes are safer.
- Strictly regulates all health-related claims about tobacco products to ensure they are scientifically proven and do not discourage current tobacco users from quitting or encourage new users to start.
- Empowers the FDA authority to require changes in tobacco products, such as the removal or reduction of harmful ingredients.

In March 2011, the FDA's Tobacco Products Scientific Advisory Committee submitted its Congressionally mandated report on the addition of menthol flavorings to cigarettes. The committee determined that menthol in cigarettes was damaging to the public health and encouraged its removal from the market. The report detailed the impact of menthol cigarettes on youth smoking initiation. To implement this advisory committee recommendation, the FDA would need to propose a new administrative regulation.

Internet Sales of Tobacco

Internet tobacco sales provide another deterrent to decreasing the number of teens who smoke. Online tobacco shops provide an opportunity to circumvent two major tobacco control mechanisms. Smokers are able to get around paying state and local excise taxes by purchasing cigarettes over the internet and the majority of internet tobacco sales Web sites do not require age verification. Because cigarettes are often sold by the carton, youth who are able to purchase cigarettes online will sell



individual packs to friends and classmates at prices far below that they can otherwise obtain.

States have begun combating internet tobacco sales by prohibiting the shipment of tobacco products purchased through the internet to anyone other than licensed retailers or wholesalers. Though only a handful of states have enacted this type of legislation, an increased dependence on tobacco excise tax for state revenue is forcing many other states to explore ways to combat smokers trying to evade the tobacco excise tax.

The Prevent All Cigarette Trafficking Act (PACT) was enacted in 2010. PACT makes tobacco a nonmailable matter and increases the fines for any seller that makes a sale over the internet, telephone, or mail that fails to comply with the state tax law.

Advocacy Considerations

- **Tobacco addiction is a children's health issue.** Close to 90% of adult smokers smoke their first cigarette prior to age 18. Strengthening barriers to youth tobacco access is the best opportunity to decreasing tobacco use and improving health outcomes over time.
- **Encourage effective counteradvertising.** States should consider promoting programs that contribute to the prevention and decrease of tobacco use by youth, including programs that discourage tobacco use.
- **Raising tobacco taxes should be considered.** By continuing to raise tobacco excise taxes at greater rates than inflation, states can provide the dual role of reducing teen smoking and increasing tax revenues. If each state were to raise its cigarette tax by \$1.00 per pack, it is estimated that the tax would raise new state revenues by \$7.2 billion per year; save approximately \$50 billion in health care costs; prevent 2.3 million children from smoking; influence 1.2 million adults to quit; and prevent more than a million premature deaths.
- **Effective, comprehensive counter-marketing programs must:**
 - Be long term
 - Consist of integrated components
 - Be integrated into a larger tobacco control program
 - Be culturally effective
 - Be strategic
 - Be evaluated; and
 - Be adequately funded.
- **Encourage states to contract with the FDA to implement retailer inspections.** So far, 15 states have contracted with the FDA to enforce the FSPTCA. These states include **Alabama, Arizona, Arkansas, Colorado, Idaho, Illinois, Kansas, Maine, Maryland, Massachusetts, Mississippi,**

Missouri, Pennsylvania, Tennessee, and Washington. The sooner states begin enforcing FSPTCA Regulations, the sooner they can actively eliminate harmful sales and advertising directed at minors (eg, samples, point of sale advertising, and product placement).

- **Emphasize the broad public support for laws aimed at adolescent smoking prevention.** Laws aimed at preventing youth from smoking have high public opinion ratings. According to a 2008 public opinion poll by the Mellman Group, 92% of voters support restricting tobacco sales to minors and fining retailers who sell tobacco to minors.
- **Require businesses to obtain a license to sell tobacco products over the counter and/or in vending machines.** Retailers required to obtain a license in order to sell tobacco products have a strong incentive to comply with laws governing tobacco sales for fear of license suspension or revocation. License suspension or revocation can constitute a painful loss since sales from tobacco products often generate major revenues.

Resources

AAP Julius B Richmond Center of Excellence

<http://www2.aap.org/richmondcenter/>

AAP Policy Statement: Tobacco Use: A Pediatric Disease

<http://pediatrics.aappublications.org/cgi/content/abstract/peds.2009-2114v1>

AAP Technical Report: Secondhand and Prenatal Smoke Exposure

<http://pediatrics.aappublications.org/cgi/content/abstract/peds.2009-2120v1>

AAP Technical Report: Tobacco as a Substance of Abuse

<http://pediatrics.aappublications.org/cgi/content/abstract/peds.2009-2121v1>

AAP Tobacco Policy Tool

<http://www2.aap.org/richmondcenter/TobaccoPreventionPolicyTool/index.html>

American Journal of Public Health: The Rise and Fall of Tobacco Control Media Campaigns, 1967-2006

<http://ajph.aphapublications.org/cgi/content/full/97/8/1383>

American Journal of Public Health – Tobacco Industry Youth Smoking Prevention Programs: Protecting the Industry and Hurting Tobacco Control

www.medialiteracy.net/pdfs/LandmanYSP.pdf

Division of State Government Affairs

800-433-9016 x 7799

stgov@aap.org

American Academy
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American Lung Association - State Legislated Issues on Tobacco Issues (SLATI)

<http://www.lungusa2.org/slati/search.php>

American Lung Association – State of Tobacco Control

www.stateoftobaccocontrol.org/

Americans for Nonsmokers' Rights: Tobacco Industry "Prevention" Programs

<http://no-smoke.org/document.php?id=276>

Campaign for Tobacco-Free Kids – Big Surprise: Tobacco Company Prevention Campaigns Don't Work

www.tobaccofreekids.org/research/factsheets/pdf/0302.pdf

Campaign for Tobacco-Free Kids: The Impact of the New FDA Tobacco Law on State Tobacco Control Efforts

www.tobaccofreekids.org/research/factsheets/pdf/0360.pdf

Centers for Disease Control and Prevention: Best Practices for Comprehensive Tobacco Control Programs 2007

www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2007/BestPractices_Complete.pdf

Centers for Disease Control and Prevention: Designing and Implementing an Effective Tobacco Counter-marketing Campaign

www.cdc.gov/tobacco/stateandcommunity/counter_marketing/manual/pdfs/tobacco_cm_manual.pdf

Department of Health and Human Services – Ending the Tobacco Epidemic: A Tobacco Control Strategic Action Plan for the US Department of Health and Human Services

www.hhs.gov/ash/initiatives/tobacco/tobaccostrategicplan2010.pdf

Guide to Community Preventative Services – Reducing Tobacco Use Initiation: Mass Media Campaigns When Combined With Other Interventions

www.thecommunityguide.org/tobacco/initiation/massmediaeducation.html

Institute of Medicine Report – Ending the Tobacco Problem: A Blueprint for the Nation (2007)

www.iom.edu/Reports/2007/Ending-the-Tobacco-Problem-A-Blueprint-for-the-Nation.aspx

National Cancer Institute: The Role of the Media in Promoting and Reducing Tobacco Use

http://cancercontrol.cancer.gov/tcrb/monographs/19/m19_complete.pdf

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco

www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/RegRestrictingSale/default.htm

Robert Wood Johnson Foundation (RWJF) Cigarette Smoking Prevalence and Policies in the 50 States: An Era of Change (2009)

www.rwjf.org/publichealth/product.jsp?id=43928

State of California Department of Justice – Office of the Attorney General: Tobacco Master Settlement Agreement Summary

<http://ag.ca.gov/tobacco/resources/msasumm.htm>

Tobacco Control Legal Consortium: Placement of Tobacco Products

<http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-placementoftobprods-2011.pdf>

Tobacco Control Legal Consortium: Restricting Tobacco Advertising

<http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-restricttobadvert-2011.pdf>

US Department of Health and Human Services, Preventing Tobacco Use Among Young People: A Report of the Surgeon General

www.cdc.gov/tobacco/data_statistics/sgr/sgr_1994/index.htm

US Department of Health and Human Services: Reducing Tobacco Use: A report by the Surgeon General (2000)

www.cdc.gov/tobacco/data_statistics/sgr/sgr_2000/index.htm

US Department of Health and Human Services, The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General (2006)

www.surgeongeneral.gov/library/secondhandsmoke

US Food and Drug Administration – Office of Compliance & Enforcement, Center for Tobacco Products - Enforcement Action Plan for Promotion and Advertising Restrictions: October 2010

www.fda.gov/downloads/TobaccoProducts/GuidanceComplianceRegulatoryInformation/UCM227882.pdf



US Food and Drug Administration: States Awarded Tobacco
Enforcement Contracts in FY 2010
[www.fda.gov/TobaccoProducts/ResourcesforYou/ucm228914.
htm](http://www.fda.gov/TobaccoProducts/ResourcesforYou/ucm228914.htm)

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January 2012

