STATE AND TRIBAL RESPONSES TO THE VAPING-RELATED HEALTH CRISIS
LEGAL TECHNICAL ASSISTANCE

- Legal Research
- Policy Development, Implementation, Defense
- Publications
- Trainings
- Direct Representation
- Lobby
AGENDA

• Overview of Current Vaping-Related Health Crisis

• State and Tribal Actions in Response

• Litigation Challenging State Action

• Considerations and Best Practices Moving Forward to Address Vaping-Related Health Crisis
VAPING-RELATED LUNG INJURIES AND DEATH*

• **1,604 cases of vaping-related lung injuries** reported to CDC
  – Including in 49 states (no reports from Alaska), the District of Colombia, and one U.S. territory

• **34 vaping-related deaths** have been confirmed in 24 states

• Median age of deceased patients is 49 years and ranges from 17 to 75 years

• Investigation still underway and exact cause unknown

* Information current as of October 22, 2019
YOUTH E-CIGARETTE EPIDEMIC (2011 – 2018)

FIGURE 2. Estimated percentage of high school students who currently use any tobacco product, any combustible tobacco product, ≥2 tobacco product types, and selected tobacco products — National Youth Tobacco Survey, 2011-2018.
Emergency rules by the Michigan Department of Health and Human Services

- **Coverage**
  - Flavored tobacco vaping products, including menthol
  - Sale (online and retail), offer for sale, giving, transportation, and distribution

- **Duration**
  - Six months, with potential extension of six months

- **Status**
  - Not in effect due to ongoing litigation
NEW YORK

• Emergency regulations by vote of New York Public Health and Health Planning Council
  – Coverage
    • Sale of flavored vaping products, including menthol
  – Status
    • Not in effect due to ongoing litigation
MASSACHUSETTS

- Emergency regulations by the Massachusetts Department of Public Health
  - Coverage
    - Flavored and non-flavored vapor products, including menthol
    - Tobacco, THC, and CBD
    - Online and retail sales
  - Duration
    - Three months
  - Status
    - Currently in effect but subject to ongoing litigation
RHODE ISLAND

• Emergency regulations by the Rhode Island Department of Health
  – Coverage
    • Flavored tobacco vaping products, including menthol
    • Manufacture, distribution, sale, and offer for sale
  – Duration
    • Up to 120 days, with a potential extension of 60 days
  – Status
    • Currently in effect but subject to ongoing litigation
WASHINGTON

- Emergency rules by the Washington Board of Health
  - Coverage
    - Flavored vaping products, including menthol
    - Tobacco and marijuana
    - Online and retail sales
  - Duration
    - Up to 120 days
  - Status
    - Currently in effect but subject to ongoing litigation
• Emergency rules by the Utah Department of Health
  – **Coverage**
    • Sale of flavored vaping products, including menthol
    • Applies only to general tobacco retailers
  – **Duration**
    • Up to 120 days
  – **Status**
    • Not in effect due to ongoing litigation
• Temporary rules by the Oregon Health Authority and the Oregon Liquor Control Commission
  – Coverage
    • Flavored vaping products, including menthol
    • Tobacco and marijuana
    • Online and retail sales
  – Duration
    • 180 days
  – Status
    • OHA rules not in effect due to ongoing litigation; OLCC rules in effect
MONTANA

• Emergency rules by the Montana Department of Public Health and Human Services
  – Coverage
    • Flavored vapor products, including menthol
    • Tobacco, THC, and CBD
    • Sale (online and retail), offer for sale, giving, distribution, and transportation
  – Duration
    • 120 days
  – Status
    • Not in effect due to ongoing litigation
LITIGATION CHALLENGING STATE ACTION

- At least 12 lawsuits

- At least one lawsuit in each state pursuing emergency or temporary vaping product bans

- Claims include violations of the commerce clause, First Amendment, federal preemption, improper procedure, and others

- Only vaping product bans currently in effect are those in Massachusetts, Rhode Island, and Washington; other states have temporary restraining orders or preliminary injunctions in place
No emergency rules enacted
Governor issued executive order to:
- Initiate a $20 million digital and social media campaign regarding vaping health harms
- Develop recommendations to decrease youth access to vaping products
OGLALA SIOUX TRIBE

• Ordinance by Oglala Sioux Tribal Council
  – Coverage
    • All vaping products
    • Manufacture, sale, distribution, purchase, possession, and use
  – Duration
    • Permanent
MOVING FORWARD IN ADDRESSING THE VAPING-RELATED HEALTH CRISIS

• Disadvantages of temporary or emergency action
  – Not permanent
  – Litigation challenges

• Disadvantages of piecemeal flavor bans
  – Youth moving to other flavored products

• Best practices
  – Inclusion of menthol in flavor bans
  – Avoiding preemption to give local jurisdictions power to enact health-focused and community-focused policies beyond state law
States and Tribes Stepping in to Protect Communities from the Dangers of E-cigarettes: Actions and Options (2019)

In the wake of recent alarming reports of vaping-related lung injuries, resulting in at least 34 confirmed deaths in the U.S., the nation’s public health community and government authorities have reacted with concern and a variety of measures.

Given that this crisis coincides with an unprecedented increase in youth e-cigarette use in the United States and a recent declaration by the Surgeon General that youth use of e-cigarettes has become an “epidemic,” states and Tribes are stepping in to protect the health of youth and the broader community against e-cigarettes. A recent report found that a majority of youth who use e-cigarettes prefer flavored products. Some of the many risks of youth e-cigarette use include harm to brain development and increased likelihood of addiction. In recent months, various states and Tribes have taken bold action, primarily against flavored products, to protect youth against the harms of e-cigarettes.

State Action
QUESTIONS
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