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U.S. COMMERCIAL TOBACCO POLICY AND ENFORCEMENT DURING COVID-19 SHUTDOWNS
LEGAL TECHNICAL ASSISTANCE

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

Topic: U.S. Commercial Tobacco Policy and Enforcement During COVID-19 Shutdowns

2. COVID-19 Responses: State Executive Orders, Authority to Respond, and Enforcement in the Commercial Tobacco Control Context
3. Policy Implications for the Future: Commercial Tobacco Control Challenges and Opportunities in the COVID-19 Era
4. Resources
5. Q & A
A Public Health Crisis Within a Public Health Crisis: The COVID-19 Pandemic and Racism
“Racism is detrimental to health in all its forms.”

American Medical Association, May 29, 2020

### RACISM: A SOCIAL DETERMINANT OF HEALTH

<table>
<thead>
<tr>
<th>Economic Stability</th>
<th>Neighborhood and Physical Environment</th>
<th>Education</th>
<th>Food</th>
<th>Community and Social Context</th>
<th>Health Care System</th>
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<td>Hunger</td>
<td>Social integration</td>
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### Health Outcomes
- Mortality, Morbidity, Life Expectancy, Health Care Expenditures, Health Status, Functional Limitations
COVID-19 RACIAL DISPARITIES
UNITED STATES

COVID-19 DEATHS PER 100,000 PEOPLE OF EACH GROUP, THROUGH JUNE 9, 2020

Source: APM Research Lab (https://www.apmresearchlab.org/covid/deaths-by-race)
COVID-19 Responses: State Executive Orders, Authority to Respond, and Enforcement in the Commercial Tobacco Control Context
STATE, TRIBAL, AND LOCAL RESPONSES

• **States**
  – Executive Orders
  – Declaration of State of Emergency
  – Declaration of Public Health Emergency
  – Administrative Orders
  – Stay at Home Orders
  – Directive
  – Guidance

• **Sovereign Tribal Nations**
  – Many have taken their own actions to protect the public health in their jurisdictions

• **Local jurisdictions**
  – Many have taken their own steps (within their power) to protect public health

PUBLIC HEALTH LAW CENTER
at Mitchell Hamline School of Law
STATEWIDE STAY AT HOME ORDERS
AS OF JUNE 23, 2020

Statewide Stay at Home Orders

- Yes - stay at home order
- Yes - stay at home guidance
- Yes - stay at home guidance for vulnerable populations
- No

Source: National Governors Association (June 23, 2020)
Navajo Nation declares Public Health State of Emergency for COVID-19 coronavirus

What is Navajo Department of Health doing?

The Navajo Department of Health (NDOH) is authorized through Navajo Nation enabling legislation CD-10-34 to ensure that quality comprehensive and culturally relevant health care and public health services are provided on the Navajo Nation. The NDOH is part of the Navajo Nation Executive Branch.

On February 3, 2020, the Navajo Department of Health drafted the Incident Objectives

Source: Navajo-Hopi Observer (March 13, 2020)
AUTHORITY AND LIMITATIONS

• Authority for Executive Action
  – Limited by legislature
  – Limited in duration

• Limitations on Local Action (or preemption)
  – Most states set a floor—allowing local jurisdictions to be more protective
  – A handful attempted to set a ceiling and were met with opposition
Wisconsin Supreme Court Strikes Down Stay-at-Home Order

The decision, by a 4-to-3 majority, was a high-profile challenge of the emergency authority of a statewide official during the coronavirus pandemic.
EXECUTIVE ORDERS
GENERAL COMPONENTS

• Defined **essential vs. non-essential businesses, services, and workers**
  – Most states followed the general guidance of the US Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency’s (CISA) “Guidance on the Essential Critical Infrastructure Workforce”
  – CISA guidance was expanded upon in the order and definitions refined in subsequent orders or guidance interpreting the order

• Defined **which activities are allowed or not allowed**
  – Businesses: Complete closures, remote work, allowing “minimum basic operations,” allowing delivery/curbside pick-up/shipping
  – Travel
TOBACCO SHOPS: ESSENTIAL VS. NON-ESSENTIAL (IOWA)

A retail establishment that may be directly accessed from outside the mall is not required to close by this paragraph.

B. Tobacco or vaping stores: All tobacco, cigarette, cigar, or vaping stores shall be closed.
TOBACCO SHOPS: ESSENTIAL VS. NON-ESSENTIAL (NORTH CAROLINA)

OPEN FOR BUSINESS?

N.C. Department of Revenue approved nearly all requests to remain open during the pandemic.

Data from 3/27 through 4/7
Chart: Gavin Off • Source: NC Department of Revenue • Get the data
Tobacco Shops: Essential vs. Non-Essential (Kansas)

Are vape and smoke shops considered essential functions?

- Answer: Yes, nicotine and CBD sales are permissible under KEFF 400.6 and 300.20 respectively.
EXECUTIVE ORDERS
GENERAL COMPONENTS

Enforcement provisions

• Lack of clarity
  – who is required to enforce the orders?
  – how are the orders to be enforced?
  – what exactly are they enforcing?

• Risk of disparate enforcement

• Bottom Line: Need for direction from state and local agencies to guide enforcement
EXECUTIVE ORDERS
Evolving Landscape as States “Open Up”

• Guiding principle should be health—what will best protect public health, which has many dimensions
  – physical health
  – preserve health care system capacity
  – mental health
  – economic health

• CDC’s guidance
Policy implications for the future: Commercial tobacco control challenges and opportunities in the Covid-19 era
CHALLENGES AND OPPORTUNITIES

Challenge 1: Point of sale restrictions not adequate to prevent access to commercial tobacco products.

• Opportunities:
  – Strengthen age verification practices/requirements
  – Compliance checks—protect safety of decoys and ensure process continues
  – Restrict or prohibit delivery/curbside pick up
  – Restrict or prohibit online sales
  – Reduce the density of tobacco retailers
  – Remove products from the market
Challenge 2: Targeting of Black, Indigenous, people of color, and LGBTQ communities by the tobacco industry

- Opportunities:
  - End flavored tobacco product sales to protect the health of populations most vulnerable to the pandemic
  - FDA: prohibit menthol in cigarettes and all other tobacco products
  - State and local: prohibit the sale of all flavored tobacco products (e.g., Massachusetts; Aspen, Oakland)
  - Develop culturally specific programs and services
**Challenge 3:** Recession and budget cuts proposed to commercial tobacco programs that will see increasing demand

- **Opportunities:**
  - Tax commercial tobacco products to help fund work
  - Even greater need to fund public health programs that protect health
  - Pandemic should trigger **BOLDER** commercial tobacco control policies
Challenge 4: Increased exposure to secondhand smoke due to stay at home orders

- Opportunities:
  - Smoke-free multiunit housing policies
  - Reopening businesses as smoke-free
  - Comprehensive, accessible, and culturally competent cessation support
Challenge 5: Industry using COVID-19 as an excuse to delay important commercial tobacco control policies due to “hardship” (graphic warning labels and flavor restriction policies)

Opportunities:

- Given the health disparities illuminated by COVID-19 and the greater risk to people who smoke and suffer from chronic diseases, this is the time to expedite and ramp up policies that protect health
CHALLENGES AND OPPORTUNITIES

Challenge 6: Industry using corporate philanthropy and racial equity statements to distract from the facts

- Opportunities:
  - Continue work to expose the practices and devastating impact of an industry that targets the very people who are most vulnerable to the worst outcomes and incidence of COVID-19

SILENCE IS NOT AN ANSWER, AND WE ARE TAKING ACTION.

From the Philip Morris USA Family:

Many smokers know our cigarette brands but are not as familiar with the company and people who make them. We live and work in Richmond, Virginia, where our headquarters and factory are located. And recently our hometown, much like many of yours across the country, has come together to stand up to the ongoing injustice occurring at a local and global level.

At Philip Morris USA, we do not stand for any form of racism, violence or inequality against the Black community. We are one community. We stand for freedom, respect and equality. We stand behind our family and are in this together to make change for the better.
CHALLENGES AND OPPORTUNITIES

**Challenge 7:** Increased commercial tobacco use from social isolation, trauma, job loss, etc.

- **Opportunities:**
  - Comprehensive, accessible, and culturally competent cessation support
Challenge 8: Schools and workplaces changing policies and practices as they adapt to the pandemic

- **Opportunities:**
  - Schools and workplaces can expand and update their commercial tobacco-free policies
  - Invest in cessation counseling/support for students and workers
  - Provide and connect students and workers with mental health support
The ongoing devastation of COVID-19 in the Black community, Indigenous community, and other underserved communities reminds us that U.S. public health laws addressing chronic disease through the regulation of commercial tobacco have always been important and are even more important now.

Now is the time to push for equitable, evidence-based, preventative commercial tobacco laws and policies that support healthy, resilient communities.
RESOURCES

Racial Justice and Health Equity Resources:
• NAATPN—Collective Response to the COVID-19 Impact on African Americans and Other Priority Populations https://www.naatpn.org/covidcollective

State Pandemic Response Resources:
• National Governors Association--https://www.nga.org/coronavirus/#glance
RESOURCES

Racial Justice and Health Equity Resources:

- **NAATPN**—Collective Response to the COVID-19 Impact on African Americans and Other Priority Populations [https://www.naatpn.org/covidcollective](https://www.naatpn.org/covidcollective)

State Pandemic Response Resources:

- National Governors Association--[https://www.nga.org/coronavirus/#glance](https://www.nga.org/coronavirus/#glance)
RESOURCES

Commercial Tobacco Control Resources:


• **PHLC**—smoke free housing web page: [https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/smoke-free-tobacco-free-places/housing](https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/smoke-free-tobacco-free-places/housing)

• **PHLC**—Model Tobacco Retail Licensing Ordinance for Minnesota Cities [https://www.publichealthlawcenter.org/sites/default/files/resources/MDH-City-Retail-Ordinance-2020.pdf](https://www.publichealthlawcenter.org/sites/default/files/resources/MDH-City-Retail-Ordinance-2020.pdf)

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Instagram @ASHorg
Info@ash.org

Recordings from previous webinars and Live Chats: ash.org/webinars

Toolkit for Advocates
Talking with government and media about the COVID-19 and tobacco use co-morbidity and policies to protect the health of everyone during the pandemic.

ash.org/covid19