Decriminalizing Commercial Tobacco Control and Creating Equity-based Policy

APPEAL Power in Unity Conference
EQUITY AND INCLUSION AT EVERY STAGE
TODAY’S AGENDA

– **Getting on the same page**: health equity
– **Overview**: effective public health law and policy is based in equity.
– How public health law/policy is impacted by a lack of:
  • Consideration of equity and health equity
  • Intention and commitment to reduce disparities
  • Representation, community engagement
  • Advancement & protection of interests of those most marginalized
  • Cultural competency
– **Specific example: Penalties in commercial tobacco laws and policies; decriminalization**
LEGAL TECHNICAL ASSISTANCE

- Legal Research
- Policy Development, Implementation, Defense
- Publications
- Trainings

**Not Available:**
- Direct Representation
- Lobby
LEGAL TECHNICAL ASSISTANCE

Tribal  Federal  State  Local
Health inequity is the result of avoidable, inequitable social, economic, and environmental conditions that result in disparate health and life outcomes.

So we should pay attention to inequity generally if we care to address public health.
## WHAT ARE WE TALKING ABOUT?

**HEALTH EQUITY, DISPARITIES**

### Social Determinants 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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<tbody>
<tr>
<td>Employment</td>
<td>Housing</td>
<td>Literacy</td>
<td>Hunger</td>
<td>Social integration</td>
<td>Health coverage</td>
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<td>Income</td>
<td>Transportation</td>
<td>Language</td>
<td>Access to healthy options</td>
<td>Support systems</td>
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<td>Expenses</td>
<td>Safety</td>
<td>Early childhood education</td>
<td>Social integration</td>
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<td>Debt</td>
<td>Parks</td>
<td>Vocational training</td>
<td>Support systems</td>
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<td>Medical bills</td>
<td>Playgrounds</td>
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<td>Community engagement</td>
<td>Stress</td>
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<td>Support</td>
<td>Walkability</td>
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<td>Discrimination</td>
<td>Quality of care</td>
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<td>Zip code / geography</td>
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### Health Outcomes
- Mortality
- Morbidity
- Life Expectancy
- Health Care Expenditures
- Health Status
- Functional Limitations

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*Figure 1: Social Determinants of Health*
WHAT’S LAW AND POLICY GOT TO DO WITH IT?
HEALTH EQUITY

• Generally, an essential tool
  – Statutes, ordinances, administrative or agency rules, case law, policies
  – Compliance, enforcement, guidance—power of government and other decision-makers
  – Reflect, reinforce, and change norms and community

  Can and has led to inequity, poor SDOH outcomes
WHAT'S LAW AND POLICY GOT TO DO WITH IT?
EFFECTIVE PUBLIC HEALTH LAW & POLICY

• Law and policy impact our health and our opportunities to lead healthy lives in multi-layered ways.
• Law and policy are essential tools for improving public health and addressing the social determinants of health.
• We can’t look at public health laws and policies in a vacuum.
• Public health law and policy should be grounded in advancing health equity and incorporate equity and inclusion at all steps of the law and policymaking process.
WHAT'S LAW AND POLICY GOT TO DO WITH IT?
EQUITY IN GOVERNANCE, LAW & POLICYMAKING

Standard: Law and policy that intentionally advances health equity.

Minimum: Do no further harm.
To address health disparities, law and policy should consider the social determinants of health and other equity issues at all stages:

- **Research, evidence, and expertise:** culturally-competent, representative
- **Identifying solutions:** assuring those most impacted have decision-making power for legal solutions
- **Drafting and scope:** culturally competent, considers consequences on marginalized communities
- **Advocacy:** compromises are not done at the expense of most-impacted
- **Implementation and education:** those most effected receive support
- **Enforcement and evaluation:** identifying effectiveness in all communities, troubleshooting and correcting unintended consequences

*Consider equity/inclusion at all levels for funding, programming, hiring, etc.*
The intention of the solution is clear and consistent throughout the language.
  – If intention is to advance public health, any policy that contributes to inequity will be ineffective/contrary to intention. (e.g., penalties)

Scope of policy—what is included in the language?
  – Policies are effective if they advance equity.
  – Do no further harm.

Words matter.
1. Repeal and resist purchase, use, and possession penalties against youth in state and local policy.

- Criminalization of PUP contributes to school-to-prison pipeline.

- If removing PUP absolutely impossible, consider including exclusive penalties: non-monetary, non-criminal alternative penalties. Consider also enforcement discretion.

- Remember: no federal PUP penalties, focus is on sales

Focus on the tobacco industry
STAGES OF PUBLIC HEALTH LAW & POLICY

**PENALTIES**

• When faced with proponents of PUP, ask for proof of effectiveness
  – Available evidence shows that counseling, education, and reducing/eliminating youth access through policy are the most effective means of treating nicotine addiction and youth use.

• Evaluate the implementation and enforcement of policy with focus on the effect on communities most-impacted.
2. Eliminate harsh penalties against private individuals aged 21+ for unlawful sales.
   – Criminalization → mass incarceration
   – High fines → health inequity & incarceration

3. Hold retailers accountable. Penalties against store clerk may stack up
   – Hourly wage gas station employee makes illegal sale:
     • Administrative fine +
     • Wage garnishing +
     • Suspension / Termination
     = Greater penalties than retailer

Focus on the tobacco industry
STAGES OF PUBLIC HEALTH LAW & POLICY

4. Commercial tobacco-free worksite policy

- Focus on protection of employees, patrons, and visitors.

- Provide sufficient education and support to employees (including cessation support)

- Equal Protection and equity concerns when penalizing “smokers” when considering tobacco-related health disparities. Focus instead on use in certain work settings
5. Smoke-free housing policy

– Eviction a concern, especially during COVID-19 pandemic.

– Enforcement can reflect community values & not contribute to systemic oppression:
  – Graduated enforcement
  – Restorative justice
  – Culture as prevention
  – Continued community partnerships and enforcement
  – Language consideration– signage
6. Enforcement authority: public health, non-police officials (including in schools)
   - Fund a shift the enforcement of commercial tobacco control laws to entities other than local police officers.
     - Current trend across U.S.
     - Funding from tobacco revenue (local licensing fees, state/local taxes)
   - Develop guidance for local jurisdictions with limited capacity/resources to enforce without police.
   - Work with other groups to reform police conduct protocols in general, restrict in tobacco laws.
   - If any involvement of police: enforcement limited to only most serious offenses
7. Penalties in K-12 settings:
   – Reject suspension, expulsion, or police involvement as response to student PUP in schools
   – Consider holistic, whole-child responses:
     • Education on health harms, social and environmental justice components
     • Counseling and cessation support
     • Restorative justice practices
     • Education from school nurse, local public health department or organizations (ALA INDEPTH program and others)
     • Parent/guardian and community support

Richardson ISD confiscated 200 e-cigs, expelled 23 students in vaping cases last school year
WFAA reached out to 20 school districts in North Texas about vaping data. Seven are keeping numbers readily on hand.

In the Arrowhead district in Wisconsin, for example, even the threat of being suspended from school sports did not prevent athletes from vaping on campus.
STAGES OF PUBLIC HEALTH LAW & POLICY
ENFORCEMENT AND EVALUATION

• What’s working? What’s not working?
  – Without creating more burden for impacted community members, evaluate and monitor how the policy is affecting health equity and other equity goals.
  – Relevant factors for understanding impact on the causes of inequity
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