



NATIONAL MENTHOL STRATEGY

2025



THE CENTER FOR
BLACK HEALTH & EQUITY

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INTRODUCTION

The purpose of the National Menthol Strategy is to provide direction and guidance on menthol-related issues impacting African Americans and other communities of color. This document provides appropriate federal and local strategies and policy recommendations. Although the information in this document is not exhaustive, it does highlight approaches that, when implemented correctly, can reduce commercial tobacco health disparities in these communities. Using this guide as intended provides resources for public health professionals seeking to reduce the harm of mentholated tobacco products.



NATIONAL MENTHOL STRATEGY PARTNERS

- [Action on Smoking & Health \(ASH\)](#)
- [African American Tobacco Control Leadership Council \(AATCLC\)](#)
- [American Indian Cancer Foundation \(AICF\)](#)
- [American Nonsmokers Rights Foundation \(ANRF\)](#)
- [Asian Pacific Partners for Empowerment, Advocacy and Leadership \(APPEAL\)](#)
- [Colorado Black Health Collaborative \(CBHC\)](#)
- [Lou Moerner Consulting, American Indian Advocacy/Research/Training](#)
- [Making it Count Community Development Corporation](#)
- [Mills, Sarah D., PhD, Assistant Professor, Department of Health Behavior, University of North Carolina at Chapel Hill](#)
- [National LGBT Cancer Network](#)
- [National Alliance for Hispanic Health](#)
- [Public Health Law Center \(PHLC\)](#)
- [The Center for Black Health & Equity](#)
- [University of Arkansas for Medical Sciences](#)
- [Virginia Commonwealth University, Department of African American Studies](#)
- [Yerger, Valerie, ND, Professor, University of California, San Francisco; Founding Member of the AATCLC](#)

OVERVIEW

Tobacco-related health disparities have a devastating impact on individuals, families, communities, the environment, and the economy. The result is alarmingly high rates of illness and death from cancers, cardiovascular, lung, and oral diseases, and a diminished quality of life. While the reasons for tobacco use are multifaceted, there is one common risk factor that ties it all together: stress. Stress increases the risk of smoking cigarettes.¹ Studies show that various factors in our society, environment, and personal lives make people more likely to smoke when stressed.² African Americans and other communities of color have been documented as having higher levels of stress based on these factors.

Establishing an environment where smoking is strongly discouraged is crucial to advancing health equity. An essential step is to educate communities on the importance of restricting the sale of menthol and other flavored tobacco products, as these starter products are used by those most vulnerable, including youth and people from marginalized communities such as low-income communities and the military. In addition to those living in poverty, those in the military experience higher levels of stress and have higher rates of cigarette use.^{3,4} As such, the development of culturally tailored smoking cessation protocols is vital to addressing the risk factors associated with smoking (especially menthol) and enhancing the likelihood of successful tobacco cessation and maintenance.

Smoking serves as an unhealthy and affordable means for individuals to self-medicate and cope with stressors; therefore, supporting individuals trying to quit commercial tobacco use is of utmost importance. To further refine targeted smoking treatment programs and effectively assist menthol smokers in quitting, it is imperative to address the unique challenges posed by stress in communities of color, which may heighten vulnerability to ongoing smoking or relapse, particularly among African Americans. Each year, over 58% of African Americans attempt to quit, and only 3.3% are successful. Addressing menthol use, the preferred tobacco product of African Americans becomes a critical aspect of successfully addressing these challenges.⁵

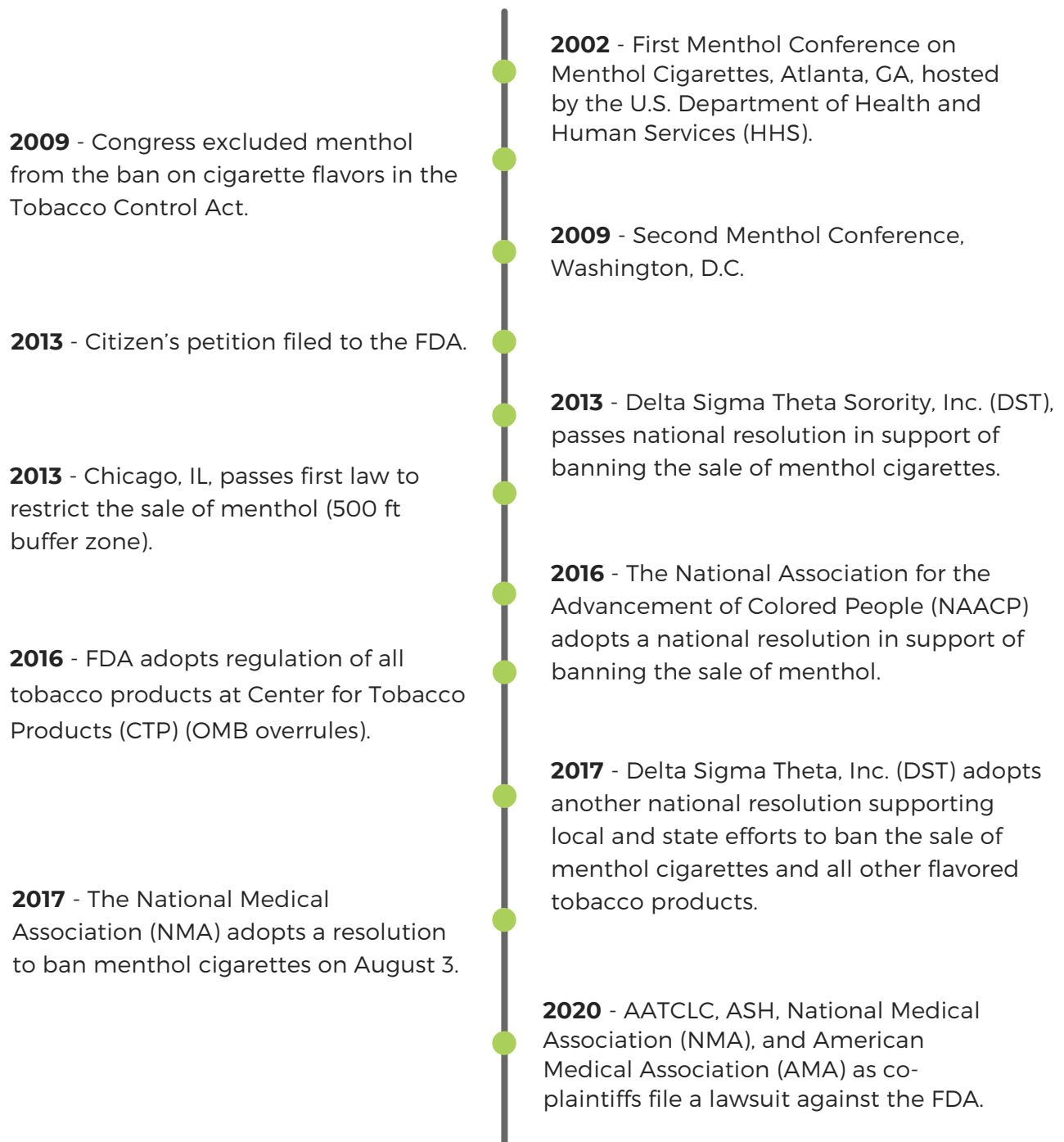
“Smoking provides a way for people to self-medicate and to cope in ways that don’t force them to deal with their issues directly.” - Excerpt from a female community leader and participant in a qualitative study on Tobacco Use Among African Americans in Minneapolis, MN.

THE FACTS: HISTORICAL RELATIONSHIP WITH MENTHOL IN THE BLACK COMMUNITY

- African Americans who smoke cigarettes are nearly 11 times more likely to use menthol cigarettes than their white counterparts.⁶
- Approximately 88.5% or 9 in 10 African American smokers ages 12 and older use mentholated cigarettes as a result of relentless targeted marketing efforts.⁷
- Tobacco companies have integrated promotional strategies to target African Americans using channels such as point-of-sale product placement, television advertising, magazine advertisements, community philanthropy, festival sponsorships, and cigarette sampling vans. Tobacco companies sway elected officials and prominent community leaders with financial support, offer discounted menthol products in Black neighborhoods, and place abundant advertising in stores frequented by Black communities.⁸
- A 2007 study found 2.6 times more tobacco advertisements per person in areas with an African American majority than in white-majority areas (NIH). As a result, African Americans carry the heaviest burden of morbidity and mortality due to smoking.
- African Americans who smoke are less likely to quit than other populations due to their neighborhoods being inundated with ads.⁹
- 70% of African Americans who smoke want to quit but find it difficult. Menthol makes smoking easier to start and harder to quit. Disparities in access to smoking cessation treatments and the everyday stressors of the conditions in which some Black people live, learn, and work contribute to the struggle with smoking cessation. Socioeconomic status is one of the greatest predictors of smoking.¹⁰

FOOD AND DRUG ADMINISTRATION (FDA) MENTHOL TIMELINE

The timeline below notates important moments in efforts to remove menthol:



FOOD AND DRUG ADMINISTRATION (FDA) MENTHOL TIMELINE

The timeline below notates important moments in efforts to remove menthol:

2022 - FDA announces proposed rule to ban menthol in April.

2023 - 100 Black Men of America, Alpha Phi Alpha, Inc. (APA) adopts national resolutions supporting the ban of menthol cigarettes and all other flavored tobacco products. This is a shift as an increasing number of organizations take a stand against these products.

2023 - Between April 2022 and October 2023, there is no action from the FDA on the proposed rule. In October, a favorable or acceptable response to the lawsuit proposing the rule to ban menthol cigarettes and flavored cigars/cigarillos is sent for final review to the White House Office of Management and Budget (OMB).

2021 - The FDA announces a menthol ban.

2022 - Third Menthol Conference, Washington D.C.

2023 - CDC funds eight (8) organizations, "Building Capacity to Reduce The Burden of Menthol and Other Flavored Products," to advance health equity through strategic partnerships and community engagement by addressing disparities caused by menthol and other flavored tobacco products marketing and use.

- The funding recipients include the American Heart Association, Inc.; Chicago Department of Public Health; Inter-Tribal Council of Michigan, Inc.; Leadership Council for Healthy Communities, Inc.; Learn to Grow, Inc.; Oregon Health Authority; Public Health Division; Rhode Island Department of Health; and University of Kentucky Research Foundation.

2023 - In December, The White House Office of Management and Budget (OMB) delays the action to ban menthol cigarettes and flavored cigars/cigarillos.

FEDERAL/NATIONAL

BACKGROUND

The federal government has a documented history of failing the American people as evidenced based commercial tobacco control policies have struggled to effectively regulate and curb tobacco advertising and marketing targeted at African Americans. Despite efforts restricting tobacco advertising and promotion, there are weaker policies on mentholated flavored tobacco than other commercial tobacco products. The commercial tobacco industry has enjoyed locating the loopholes in these policies and continues to evade them with creative marketing and strategies that invite new customers to their products while rummaging through the financial pockets of longtime consumers. The success of Big Tobacco has hindered the goal of reducing tobacco use among adolescents and young adults.

PROBLEM

An organized federal strategy does not exist to eliminate all flavors, including mint/menthol and all other products beyond the FDA recommendations for cigars, cigarettes, and cigarillos, and not including electronic cigarettes or vaping. Historically, national partners, including the ones listed in this document, and public health advocates have not agreed on a common/coordinated approach to address menthol restrictions at the federal level.

SOLUTION

Develop a strategic, coordinated menthol advocacy approach to be adopted by all national partners and public health advocates working to eliminate menthol and other flavored tobacco products.

Reach consensus among national partners and public health advocates (See list of National Menthol Strategy partners on page 2) on the ultimate objectives regarding menthol and other flavors that would produce the greatest benefit to the public's health.

- Ensure that the FDA menthol ban will prohibit the manufacture and retail distribution of menthol cigarettes.
- Ensure that enforcement of the ban will only target retailers and manufacturers.
- Ensure that there are culturally appropriate opportunities for cessation, financially supported by the FDA or HHS, for people who want to quit mentholated tobacco products.
- Develop litigation strategies.
- Determine research priorities.

STRATEGIES

1. Establish a national “ban on menthol collaborative” and identify individuals and organizations to advocate for the collaborative’s interest to federal agencies.
 - a. Gain support for the collaborative from national partners and public health practitioners.
 - b. Identify up to two (2) representatives from each participating organization.
 - c. Establish meeting times for the collaborative.
 - d. Establish check-in times with the FDA CTP.
 - e. Determine the best mechanisms for funding the national ban on menthol collaborative.
2. Develop a national educational campaign highlighting the social injustices of menthol targeting priority populations.
3. Develop end-game outcomes for all mentholated tobacco products.
4. Implement a strategy to remove menthol as an additive/ingredient in all tobacco products. The list below provides examples of the addictive properties of menthol:
 - a. Even at low or subliminal levels and still acting as a cooling or anesthetic agent, menthol masks the harshness of tobacco and alleviates the irritation associated with nicotine.
 - b. According to Philip Morris scientists, menthol has a “very interesting” interaction with nicotine.
 - c. Impact, perceived by the smoker as a ‘kick’ or ‘grab’ in the back of the mouth and throat when inhaling a cigarette, is crucial in providing much of the immediate satisfaction gained from smoking.¹¹
 - d. Industry in-house studies produced prototype cigarettes containing low levels of nicotine (think below “addictive levels”) that would produce a “perceived impact” for a smoker if menthol was also present. “Specifically, the perceived impact seems to vary as a function of the delivery levels of menthol and/or nicotine in smoke. It seems that the menthol level almost exclusively determines the degree of impact. In low nicotine delivery cigarettes, it appears that nicotine and menthol combine in an additive manner to determine the degree of impact.”¹²
 - e. Because menthol is added to all tobacco products, and not just those marketed as mentholated, ensure that the FDA indicates that menthol cannot be included as an additive or ingredient in cigarettes and all other tobacco products and accessories currently or subsequently available on the market.
5. Conduct research and implement strategies to remove synthetic cooling agents that serve the same initiation and impact purpose as menthol as additional forms of “non-menthol” mentholated product. The list below provides examples of research needed of “non-menthol” mentholated products:
 - In recent years, the tobacco industry has introduced “non-menthol” products that contain a synthetic cooling agent, WS-3, to serve the same purpose as menthol for activation and impact.¹³
 - Initial studies of this substance conclude that measured WS-3 in these products “is sufficient to elicit cooling sensations in smokers, similar to menthol, that facilitate smoking initiation and act as a reinforcing cue.”¹³
6. Advocate and reenact the lawsuit against the FDA that was initially filed on June 17, 2020, requesting the courts to protect public health and remove menthol.
7. Advocate toward repealing preemption as it discriminates against African Americans and other communities of color from protecting themselves.

RESOURCES AND MODEL POLICIES

Model policies developed by public affairs and public health officials support efforts to implement laws and policies that protect people from the harms of menthol cigarettes. These model policies guide decision-makers about the language they can use to craft new laws and rules.

- [Why menthol bans protect African Americans - PMC \(nih.gov\)](#)
- [FDA National Ban on Menthol](#)
- [Regulating Menthol Tobacco Products \(PHLC\)](#)
- [Restricting the Sale of Flavored Tobacco Products \(PHLC\)](#)
- [Americans for Nonsmokers' Rights Model Ordinance Prohibiting Smoking in All Workplaces and Public Places](#)
- [African-American smokers and cancers of the lung and of the upper respiratory and digestive tracts. Is menthol part of the puzzle?](#)
- [tobaccocontrol41970 29..36 \(bmj.com\)](#)



STATE & LOCAL LEVEL

BACKGROUND

State and local governments are not immune to the challenges of addressing commercial tobacco use. Preemption is a legal doctrine that allows a higher level of government to limit or even eliminate the power of a lower level of government to regulate a specific issue. Many states still preempt local laws, and the immense pressure to roll back preemption has failed due to the successful influence of the tobacco industry. Preemption prevents local communities from fighting for themselves through capacity-building efforts of grassroots and local coalitions. Inconsistent regulations regarding tobacco control vary widely from state to state, including the limited funding of state governments and state tobacco quitlines. Addressing these challenges requires a combination of Community mobilization, funding, consistent policies, public education campaigns, and efforts to counter industry influence. Tobacco industry interference at the local level mainly exposes itself at the point of sale.

PROBLEM

Preemption removes regulatory power from lower levels of government. It ignores local and state variances by taking power from the people who are impacted by the pervasive problem of commercial tobacco by tying the hands of local officials. Preemption can also prevent communities from enacting smoke-free air protections. A coordinated comprehensive plan is needed for addressing preemption at the local level and mobilizing communities to fight for themselves through capacity building, infrastructure strengthening, and resource development.



STRATEGIES

Prevent tobacco use and initiation based on population history, culture, context, and geography as outlined in the Community Development Model. The FDA and preemption are preventing the public from being protected. Stronger local laws improve the health of the public by normalizing communities to enhance their understanding of commercial tobacco health illnesses and protections from secondhand smoke exposure.

1. Litigation strategies (PHLC)

- The court system can be a friend or an adversary regarding tobacco litigation. The litigation to defend tobacco sales restrictions and flavor bans has, so far, been upheld in courts, and the courts have also delivered blows to tobacco control policy.
- For public health officials, proactive litigation may be an option to explore when wanting to secure a court order upholding a specific policy, seeking financial damages as restitution to those who have been harmed by tobacco, and shining a light on harmful tobacco industry practices.
- Localities must also be prepared to defend their actions in court against the tobacco industry. Overall, using the court system can be advantageous to eliminating menthol and promoting commercial tobacco control, but the costs and benefits must be weighed.

2. Model policies (PHLC)

- Enacted model policies at the state and local levels continue to make inroads in decreasing the availability of flavored tobacco products on the market. As localities look to implement sales restrictions, they must also develop an enforcement strategy to combat ways the tobacco industry will fight or get around updated restrictions. Model policies provide language that can be adapted to the localities' needs and their efforts to fight back against the tobacco industry. These policies also include equitable access and availability of high-quality cessation services.
- The end goal is to have all local municipalities pass laws.

3. Dealbreakers

- Lawmakers may attempt to weaken the language of a proposed law, so closely scrutinizing the text of any proposed amendments will prevent changes that could undermine the goal of eliminating menthol and other flavors. To ensure success, discuss potential amendments with your partners early in the campaign and document your decisions in writing. As a group, determine where to draw the line on exemptions and amendments. Strong language is essential—aim to fully protect the community with no exceptions, as the science on the dangers of menthol and all flavors and all types is indisputable. Be prepared to walk away from any law that includes loopholes or exemptions that could hinder future efforts to strengthen it. For instance, allowing exceptions such as the sale of commercial tobacco products in adult-only environments such as bars and clubs could make it nearly impossible to achieve comprehensive menthol restrictions, including other flavors policies later. In such cases, it is better to have no law at all, than to settle for one that compromises the ultimate goal.

RESOURCES AND MODEL POLICIES

- [Litigation 101: Tobacco Policy \(PHLC\)](#)
- [U.S. Sales Restrictions on Flavored Tobacco \(PHLC\)](#)
- [Flavored Tobacco Sales Prohibitions: Enforcement Options \(PHLC\)](#)
- [Flavored Tobacco Toolkit \(PHLC\)](#)
- [Restrictions on sales of tobacco products](#)
- [Smoke-free Policies in Multi-Unit Housing](#)
- [Smokefree Air Laws](#)
- [TRL-Enforcement-Guide.pdf \(publichealthlawcenter.org\)](#)
- [What is Public Health Law 280 and where does it apply?](#)
- [ChangeLab: California Comprehensive Tobacco Retailer Licensing Model ordinance, checklist & supplemental plug-ins](#)
- [ChangeLab Solutions: Point of Sale Playbook](#)
- [PUPinSmoke_FINAL_2019-04-17.pdf \(changelabsolutions.org\)](#)



TRIBAL

BACKGROUND

The majority of American Indians/Alaska Natives live outside of tribal sovereign lands/territories and live in urban areas. In 1978, the U.S. passed laws banning American Indian/Alaska Natives from cultural practices, including the traditional use of tobacco. Some groups decided to use commercial tobacco to continue their cultural practices.

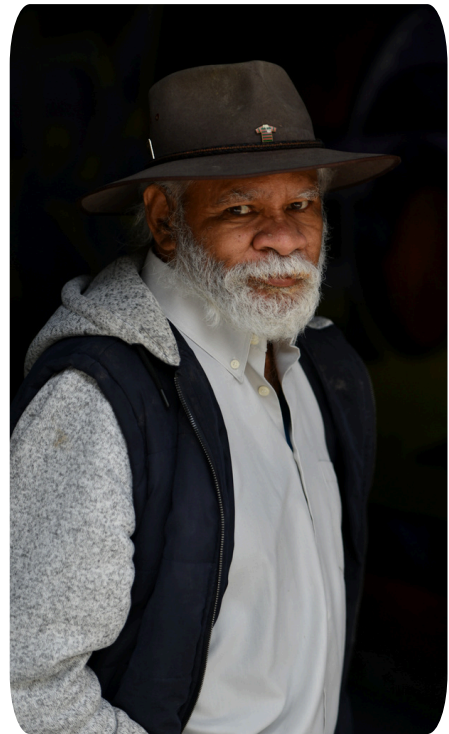
PROBLEM

Commercial tobacco prevention strategies designed for Western educational systems are less likely to work or be equitably implemented in American Indian/Alaska Native communities. These commercial tobacco best practices lack cultural awareness and, therefore, are not inclusive of American Indian/Alaska Native communities. Big Tobacco has also implemented targeted marketing strategies that impact American Indian/Alaska Native communities at increased rates, such as sponsoring community gatherings and sporting events. Big Tobacco uses appropriation of American Indian icons for packaging on commercial products that are in no way beneficial to tribal communities (i.e., Natural American Spirit cigarettes), even branding the packaging with the word “natural.” This is misleading and promotes misinformation, stereotypes, and addiction. No traditional tobacco would come with a barcode.



STRATEGIES

- Promote the implementation of smoke-free policies that limit or eliminate commercial tobacco abuse on sovereign lands.
- Increase funding for, and access to, high quality, culturally appropriate cessation resources and direct services (e.g., counseling, telehealth) regardless of insurance type for American Indian/Alaska Natives.
- Address marketing (symbols, images) and/or commercial tobacco products that target and exploit American Indian/Alaska Native communities.
- Address and promote traditional/sacred tobacco for American Indian/Alaska Native communities who practice culturally.
- Promote smoke-free tribal casinos while recognizing that tribal sovereignty supports essential infrastructure such as education, clinics, and businesses, including casinos.



RESOURCES AND MODEL POLICIES

- [American Indians/Native Alaskans - American Nonsmokers' Rights Foundation | no-smoke.org](https://www.american-nonsmokers.org/american-indians-native-alaskans).
- [Copy of NNN Onesheet Brief VF \(itcmi.org\)](https://www.itcmi.org/copy-of-NNN-Onesheet-Brief-VF).
- <https://www.cdc.gov/tobacco/health-equity/aian/unfair-and-unjust.html>



PUBLIC LAW 280

Public Law 280, enacted in 1953, significantly impacted American Indian tribes in the United States. This law granted certain states jurisdiction over criminal and civil matters within Indian country. Before Public Law 280, the federal government had exclusive jurisdiction over crimes committed by or against Native Americans on tribal land. The impact of Public Law 280 has been complex and has varied across different tribal communities and states. Some of the effects include:

- Loss of sovereignty: Public Law 280 significantly diminished tribal sovereignty by allowing states to assert criminal and civil jurisdiction over tribal lands and members. This undermined the ability of tribal governments to govern their communities according to their customs and traditions.
- Legal confusion and challenges: The law created a complex jurisdictional landscape which led to conflicts between tribal, state, and federal authorities over legal authority, resulting in difficulties in law enforcement and the administration of justice.
- Impact on tribal governance and culture: Public Law 280 has impacted the ability of tribal governments to maintain and enforce their own legal codes and cultural practices. This has had implications for the preservation of tribal customs, traditions, and self-determination.
- Increased law enforcement pressures: The law led to increased pressure on tribal law enforcement agencies, as they were required to work more closely with state authorities, sometimes leading to strained relationships and conflicts over legal authority.
- Calls for reversal or amendment: Over the years, there have been calls for the amendment or reversal of Public Law 280 by various tribal leaders, legal experts, and advocates for Native American rights. Many argue that the law has had detrimental effects on tribal communities and their ability to govern themselves.

Efforts have been made to address some of these concerns through subsequent legislation and court decisions, including the Indian Civil Rights Act of 1968, which provided some protections for tribal members. Nonetheless, the impact of Public Law 280 on American Indian tribes has been far-reaching and continues to be a topic of discussion and debate within the legal and sovereign American Indian communities.

<https://www.bia.gov/faqs/what-public-law-280-and-where-does-it-apply>

<https://www.publichealthlawcenter.org/sites/default/files/resources/tribal-model-e-cigarette-resolution.pdf> <https://www.ncai.org/policy-issues/tribal-governance>

CESSATION

BACKGROUND

Cessation involves creating an appropriate environment and mindset to slow the process of disease, death, and immense cost due to commercial tobacco use. Cessation interventions are critical in tobacco control programs. Nationally free cessation counseling and nicotine replacement therapy (NRT) are provided by state quitlines, but it is not enough for states to provide these resources. There is a growing trend to train individuals to become tobacco treatment specialists (TTS). These individuals are skilled in counseling, NRT, and strategies to assist individuals on a commercial tobacco-free journey. However, the educational systems for training lack culturally competent cessation treatment specialists, and those that do exist are often underpaid and under-reimbursed.

PROBLEM

There is a critical lack of culturally appropriate cessation services nationwide for African Americans. There are few evidence-based cessation programs in African American communities as well as issues with cost and availability. Inefficient educational campaigns exist about current cessation services and how they can help one quit, and there is a lack of education by clinical staff on evidence-based cessation strategies. Additionally, there are not enough referral services by clinicians to Quitlines and a lack of clinical and community understanding of how counseling and pharmacological interventions work toward promoting sustained quit attempts.



STRATEGIES

- Build the evidence base to aid in assisting people who use menthol-flavored tobacco to quit.
- Build the evidence base for how the social determinants of health contribute to tobacco use.
- Create awareness, demand, and participation in cessation services and coverage options among priority populations experiencing tobacco-related disparities.
- Create awareness and gather data on stress overload as a driver of the use of tobacco.
- Increase opportunities for African Americans to receive culturally relevant and culturally sensitive cessation.
- Increase the availability of opt-out approaches to treatment.
- Increase city/state support and funding to state Quitline programs for all cessation services and counseling.
- Increase the cultural relevance of the Quitlines by recruiting counselors from the communities that are impacted the most from tobacco-related illness.
- Allow for the provision of healthcare services by pharmacists to increase public health care access, similar to the Colorado statewide protocol where smoking cessation is included in the protocol.
- Tailor cessation support and services to racial/ethnic populations.
- Increase awareness of cessation treatments and support the reduction of language and cost barriers.
- Develop targeted outreach to increase Quitlines reach to racial/ethnic populations.
- Promote telephone cessation services along with text messaging interventions for quitting support.
- Support the training of Quitline staff in cultural proficiency.
- Promote equitable cessation to patients who are not ready to make a quit attempt; add another R for Race to the 5 R's (relevance, risks, rewards, roadblocks, repetition).



ELECTRONIC CIGARETTES & NEW PRODUCTS

BACKGROUND

Electronic cigarettes, also known as e-cigarettes or vapes, have raised concerns about their potential health risks. While they are generally considered less harmful than traditional tobacco cigarettes due to the absence of combustion and tar, they are not without risks. E-cigarettes typically contain nicotine, including menthol, which is addictive and has negative effects on the cardiovascular system. Additionally, there have been cases of e-cigarette users developing lung injuries called e-cigarette, or vaping, product use-associated lung injury (EVALI). EVALI is often associated with the use of black-market products or improper usage. The long-term effects of e-cigarette use are still being studied, but some research suggests that they could have adverse effects on lung health and may serve as a gateway to smoking traditional cigarettes, especially among young people. Regulations and findings continue to evolve as research progresses.

STRATEGIES

- Implement comprehensive and evidenced-based youth education programs that aim to provide accurate information, increase awareness of risks, and build skills to resist the temptation of using e-cigarettes.
- Counter tobacco industry marketing to current smokers by highlighting the role of parents and local community-based organizations as advocates for smoke-free schools and flavor restrictions.
- Support the development of cessation resources tailored to youth.
- Reduce young people's exposure to e-cigarettes by limiting music, TV, and images that depict e-cigarette use.

RESOURCES AND MODEL POLICIES

- [Policy Playbook for E-Cigarettes Version 2.0 \(PHLC\)](#)
- [E-Cigarette Regulations - 50 State Review \(PHLC\)](#)
- [Stanford Medicine Tobacco Prevention Toolkit](#)
- [Flavors Hook Kids](#)
- [Helping Teens Quit](#)
- [Know the Risks: E-Cigarettes & Young People](#)
- [Forgotten but Not Gone: EVALI Epidemic Continues \(medscape.com\)](#)

MENTHOL 2.0

BACKGROUND

California enacted a policy in December 2022 that prohibited the sale of most flavored tobacco products including menthol cigarettes.¹⁴ In response, the tobacco industry marketed several varieties of “non-menthol” cigarettes with cooling features.¹⁴ These “non-menthol” cigarettes are marketed as replacement products for menthol cigarette smokers (“the non-menthol for menthol smokers”).¹⁴ The new cigarette packs use colors (i.e., green, blue) and wording (e.g., crisp, fresh) typically associated with menthol cigarette packs.¹⁴

While menthol has not been found in a sample of “non-menthol” cigarettes in California, a synthetic cooling chemical has been detected in the product that gives the same cooling effect as traditional menthol cigarettes.¹⁵⁻¹⁶ The tobacco industry’s response to the flavored tobacco products ban in California signals how the industry may react to a national flavored tobacco product ban and a flavor ban in other localities and states.

Sales of such synthetic, cooling cigarettes have rapidly risen in California.¹⁶ Trends in sales indicate this product will replace close to half of the state’s menthol cigarette sales for the prior year.¹⁶ In a sample of retailers surveyed in California, the most common brands of cooling “non-menthol” cigarettes were Newport and Camel, both manufactured by RJ Reynolds.¹⁴ RJ Reynolds manufactures Newport menthol cigarettes, the most popular menthol cigarette brand in the United States.¹⁷ The Attorney General in California has issued letters to RJ Reynolds warning that their “non-menthol” cigarettes violate CA law.

All large-chain retailers surveyed in California offered multiple varieties of cooling “non-menthol” cigarettes within two months of the flavor ban policy.¹⁴ These “non-menthol” cigarettes were offered at discounted prices and additional promotions were also available (e.g., “buy 2 and save”).¹⁴ Replacement products for menthol cigarette smokers also emerged after the flavored tobacco product ban in Canada.¹⁸⁻¹⁹ In a study conducted in Alberta, Canada, the majority (87.3%) of the new “non-menthol” replacement packs had a cellophane wrapper that stated, “smooth taste without menthol.”¹⁸

After the flavor ban in the European Union, new products, such as cigarillos with menthol capsules and menthol accessories that provide menthol flavor if inserted into cigarettes, came to the market.²⁰⁻²² Like traditional menthol cigarette packs, packs for replacement products also use green as the prominent color.¹⁸

STRATEGIES

Counter industry interference with a policy that:

- Incorporates language that is clear that bans encompass both tobacco products currently on the market and products that may emerge after policy implementation;
- Specifies that cigarettes, or any of its components, may not contain a characterizing flavor and define the factors that determine product flavor; and
- Indicates the government agents of enforcement.

States and localities should plan a response to potential tobacco industry tactics to circumvent flavor bans such as rebranded cooling “non-menthol” cigarettes. In addition, the policy should indicate the government agents of enforcement such as the local/state health departments.

The Food and Drug Administration (FDA) *Proposed Tobacco Product Standard for Menthol in Cigarettes* provides model policy language about determining characterizing flavors in tobacco products.²³ The *Proposed Tobacco Product Standard for Menthol in Cigarettes* indicates the following in determining a characterizing flavor:

- 1) Presence and amount of ingredients or additives;
- 2) The sensory experience of flavor when using the product; and
- 3) Implicit or explicit flavor representations in the labeling or marketing of the product.²³

In addition, the Public Health Law Center updated its flavored tobacco product definition to ensure it captures the new cooling and numbing sensation now marketed by the tobacco industry. This definition can be included in model policies and ordinances in states and localities looking to curb the industry as it continues to promote menthol-flavored tobacco products.

RESOURCES AND MODEL POLICIES

- [Resources and Model Policies](#)
- [Big Tobacco Creates New “Sensation” With Same Old Playbook](#)
- [R.J. Reynolds Pivots to New Cigarette Pitches as Flavor Ban Takes Effect](#)
- [RJR uses California as a test market for Skirting Upcoming National Menthol Cigarette Ban](#)
- [Tobacco Product Standard for Menthol in Cigarettes](#)

CIGARS

BACKGROUND

Although menthol cigarettes are the only remaining flavored cigarette on the market in the United States,²⁴ cigars still come in a variety of flavors, including menthol.²⁵ A policy that prohibits the sale of menthol cigarettes will be undermined if flavored cigars remain accessible. The three major types of cigar products sold in the U.S. are little cigars, cigarillos, and large or premium cigars.²⁶ Little cigars and cigarillos are similar to cigarettes in size and are perceived by consumers as substitutes for cigarettes.²⁷ Little cigars and cigarillos make up the majority (97%) of cigar sales in the U.S.²⁸ Approximately half of little cigars and cigarillos sold are flavored, while an estimated 13-17% of large cigars sold in the U.S. are flavored.²⁸

PROBLEM

As with cigarettes, flavors in cigars increase their appeal by improving taste and reducing the harshness of smoke on the throat.²⁶ Approximately half of Black and Hispanic cigar users use flavored cigars as compared to 31% of white cigar users.²⁹ In addition, more lower-income individuals who smoke (48%) use flavored cigars compared to higher-income smokers (20%),²⁹ due in part to the targeted marketing of cigar products by the tobacco industry to racial/ethnic minorities and lower-income communities.³⁰⁻³¹ Such discriminatory marketing makes regulation of cigars a social justice issue.

The flavor ban policy in Ontario, Canada, prohibited menthol cigarettes but provided exemptions for flavored e-cigarettes and certain flavors of cigars.³² A study conducted one month after the flavored tobacco products ban in Ontario found that 29.1% of pre-ban menthol cigarette smokers had switched to e-cigarettes or other flavored tobacco products such as flavored cigars.³³

Such research suggests that a policy that covers all flavored tobacco products would help minimize the substitution of menthol cigarettes with other flavored tobacco products.

STRATEGIES

Create policies that prohibit the sale of **all** flavored tobacco products, regardless of the product type (cigarettes, cigars, vapes, etc.). See page eight for the Federal/National Model Policies and Resources and page ten for State & Local Level Model Policies and Resources.

MEDIA, COMMUNICATIONS, AND COMMUNITY OUTREACH

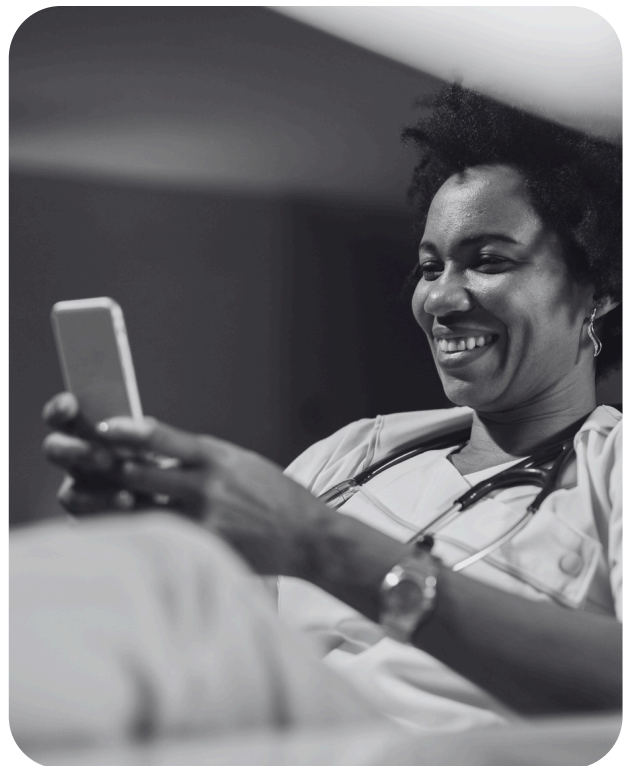
BACKGROUND

Media has the power to reach large and diverse audiences, including tobacco users and non-tobacco users, across various demographics and geographic areas. The effectiveness of media in tobacco control programs influences the behavior of advocates and contributes to positively impacting public health outcomes.

Effective communication and outreach to the community play a vital role in commercial tobacco control efforts. Public health wins have been experienced all over the country due to the success of positive targeted messaging, including public awareness campaigns such as TIPS from Former Smokers, national cessation promotions such as 1-800-Quit-Now, and increased culturally competent messaging during national health observations and federal holidays.

PROBLEM

Historically, media, marketing, and community outreach have been used by tobacco companies to specifically target African American communities. Through advertisements, cultural events, and free giveaways aimed at African Americans, marketing tactics have been a purveyor of tobacco-related dependency. These well-funded industry tactics are continuously reinvented to stay relevant to various audiences and new generations. Public health groups, including those with lobbying arms, have contributed to the problem due to the pervasive lack of unity among organizations that have made history improving the lives of African Americans and other communities of color.



STRATEGIES

1. Increase hard-hitting media campaigns marketed toward African Americans and other communities of color that will improve the motivation to quit commercial tobacco products.
 - Earmark funding from the federal government, to include federally recognized tribes, to tailor messaging with tribal imagery educating people on the harms and dangers of commercial tobacco.
 - Enhance the visibility of churches and faith-based organizations that participate in No Menthol Sunday (NMS), The Center for Black Health & Equity's annual faith-based menthol cessation event.
 - Develop culturally and linguistically appropriate content that includes videos, images, articles, and infographics of African Americans and other communities of color.
 - Create national earned, social media, and paid education campaigns, similar to the CDC's Tips From Former Smokers (TIPS) campaign, to provide people who use commercial tobacco and even those who do not use tobacco with cessation services to increase quit attempts and reduce youth tobacco initiation.
 - Create campaigns aimed at eliminating predatory marketing practices toward African Americans and other communities of color (e.g., advertising, discounts, and e-cigarette sampling in these communities).
 - Extend outreach strategies to include spaces such as barbershops, beauty salons, and clinics, and connect with local houses of worship and schools.
 - Tailor media campaigns and media buys to reach specific audience segments within general-population campaigns. Over time, the expectation is to see a decrease in the number of communities that are experiencing predatory marketing of tobacco products aimed at African Americans and other communities of color.
 - Create and implement state counter-marketing campaigns highlighting the tobacco industry's marketing tactics promoting tobacco products.

RESOURCES AND MODEL POLICIES

- [Best Practices User Guides - Cessation in Tobacco Prevention and Control](#)
- [Media Campaign Resource Center \(MCRC\) Home \(cdc.gov\)](#)
- [Best Practices User Guides: Health Communications in Tobacco Prevention and Control \(cdc.gov\)](#)
- [No Menthol Sunday Toolkit](#)
- [No Menthol Sunday encourages Black health equity - WHY?](#)
- [Black Lives Black Lungs Documentary \(2017\)](#)
- [The Journey of a Stolen Leaf \(2023\)](#)
- [Best Practices User Guides - Cessation in Tobacco Prevention and Control](#)
- [TIPS From Former Smokers Campaign](#)
- [70% Toolkit](#)
- [1-800-Quit-Now](#)

TOBACCO “ENDGAME” POLICIES



BACKGROUND

Over the past decade, the concept of ending the tobacco epidemic altogether rather than mitigating it has spread from academic conjecture to laws in at least seven jurisdictions, six of which are in the United States. Endgame thinking has gained momentum as the U.S. public health community becomes increasingly aware of, and alarmed by, the health disparities created during half a century of tobacco control efforts. Endgame thinkers are the visionaries of the tobacco control movement and see a world where tobacco is less attractive and has stricter pricing and supply policies. Disadvantaged communities suffer disproportionately from tobacco consumption; therefore, any endgame strategy must include health equity as a top priority.

The tobacco endgame refers to commercial tobacco products, not tobacco meant for sacred or traditional purposes, and is predicated upon three pillars.

ENDGAME PILLAR ONE:

The marketing and sale of tobacco products is itself a violation of the universal right to health. The right to health is recognized in nearly every human rights treaty, including those ratified by the United States. The marketing of commercial tobacco products to specific underserved populations (for example, targeted marketing of menthol products) represents more specific human rights violations, such as those under the Convention on the Elimination of Racial Discrimination (CERD). CERD provides the basis to bind the U.S. Government to adhere to human rights laws that stop third parties from violating the rights of their populace.



ENDGAME PILLAR TWO:

The tobacco endgame shifts the focus of policy from demand-reduction to supply (i.e., from the victims of the epidemic to the perpetrators). Tobacco users are not ignored under an endgame approach, as robust cessation is a vital component of the strategy. Those addicted to nicotine should be seen as the clients of public health professionals. In terms of health and health equity, people who smoke represent tens of millions of potential lives saved, many from historically underserved communities. A focus on supply also means that laws penalizing the purchase, use, or possession (PUP) of tobacco have no place in an endgame discussion. Such laws should be repealed where they already exist. Enforcement is, therefore, focused on retailers and should be conducted by a public health authority. Endgame laws will not increase negative interactions between police and the public.



ENDGAME PILLAR THREE:

Removing products from the market that are harmful to the public is a core purpose of the government. Evidence of these types of product removal has been documented with asbestos, lead paint, gasoline, chlorofluorocarbons, and even lawn darts. From these examples, new products that are either highly addictive and/or deadly when used as intended are removed from shelves immediately and, likely, the purveyors subject to serious criminal sanctions.

PROBLEM

Broad endgame initiatives must be carefully crafted to decrease health inequities instead of increasing them. Cities with endgame laws in place are largely high socioeconomic status communities. A strategy that builds on an eventual menthol removal is necessary to further reduce tobacco harm in priority communities.

STRATEGIES

1. Increase outreach to all communities of color who are disproportionately impacted by tobacco use. Even in places that are not ready for endgame laws, long-term tobacco policy strategy should include endgame goals, a target date, and a set of intermediate actions/policies to move toward the endgame.
2. Characterize menthol bans as a necessary and significant step toward ending the tobacco epidemic.
3. Track the impact of existing endgame laws to guide other communities as they move toward the endgame.



RESOURCES AND MODEL POLICIES

- <https://endtobaccoca.ash.org/>
- <https://ash.org/sunset>
- <https://www.publichealthlawcenter.org/webinar/eliminating-commercial-tobacco-endgame-approach>
- <https://www.publichealthlawcenter.org/resources/not-sale-state-authority-end-cigarette-sales-2018>
- <https://www.phaionline.org/projects/tobacco-control/innovative-tobacco-control/tobacco-free-generation/>
- https://tobaccocontrol.bmj.com/content/22/suppl_1/i42.short
- <https://ash.org/cape-town-declaration/>
- <https://www.scielosp.org/article/rpsp/2022.v46/e118/en/>
- [Imagining things otherwise: new endgame ideas for tobacco control](#)

OUR POSITION ON THE FDA MENTHOL RULING

We applaud the FDA for proposing the rule to ban menthol in cigarettes, cigars and cigarillos. However, this is not enough to save the lives of African Americans and other communities of color. This leaves out many other commercial tobacco products that do contain flavors such as electronic delivery devices (e-cigarettes, vapes, mods), flavored smokeless products, hookah, and the latest trick by the tobacco industry, “menthol non-menthol.” The FDA is responsible for protecting the public’s health, regulating the manufacturing, marketing, and distribution of tobacco products, and reducing tobacco use by minors. If the FDA is truly invested in seeing reductions in tobacco use by minors, then 85% of the United States high school students who are current users would not prefer flavored e-cigarettes with fruit flavors followed by candy, desserts, or other sweets. Youth also prefer cigars as their most commonly combustible product. Big Tobacco’s disinformation on the science of flavored tobacco use and misrepresentation of their products has created a stronghold of experimental youth who grow up to be addicted adults.

Source. [Tobacco Product Use Among Middle and High School Students – United States, 2022](#)

ADDITIONAL TOBACCO CONTROL ADVOCATES

- [CDC-Office on Smoking and Health](#)
- [American Heart Association](#)
- [American Lung Association](#)
- [American Cancer Society Cancer Action Network](#)
- [Campaign for Tobacco Free Kids](#)

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