September 2010 Newsletter

CENTER FOR PUBLIC HEALTH & TOBACCO POLICY

NEW ENGLAND LAW BOSTON

Last Chance to Register!

The Center for Public Health & Tobacco Policy's Point-of-Sale Summit will be held **Thursday, October 21** at the Hilton Garden Inn Albany Medical Center. Attendance is required for NYTCP Reality Check and Community Partnership contractors. Registration information was sent out by email in early September, and the deadline to register is **Thursday, September 30**.

Confirmed speakers for the event include:

- Kurt Ribisl, Ph.D., UNC Gillings School of Public Health
- La Tanisha Wright, National African American Tobacco Prevention Network
- Alyonik Hrushow, M.P.H., San Francisco Department of Public Health
- Cynthia Callard, Physicians for a Smoke-Free Canada
- Jess Alderman, M.D., J.D., University at Buffalo, SUNY, School of Public Health and Health Professions
- Tom Merrill, J.D., New York City Department of Health and Mental Hygiene
- David Schaibley, J.D., Tobacco Control Legal Consortium
- Russ Sciandra, M.A., Center for a Tobacco-Free New York
- Lisa Currin, L.M.S.W., Center for a Tobacco-Free New York

NYTCP staff, Reality Check and Community Partnership contractors will have a working day on **Friday, October 22** at the same location.

Inside this issue:

Tax Collection on NY Native American Cigarette Sales Temporarily Halted

Although a New York State court found that New York was justified in its efforts to collect taxes on cigarettes sold by Native American tribes to individuals outside the tribe, a United States District Court judge granted the Seneca and Cayuga Nations, the two largest Indian tobacco retailers, a temporary restraining order enjoining the state from collecting the tax through October 15. While the tribes are appealing the state court decision, the state appellate court declined to grant a restraining order halting the collection of the tax. A hearing for a preliminary injunction in the federal matter was held on September 13, but no ruling has been made.

New York expects to receive approximately $110 million this year and $200 million a year in subsequent years by collecting taxes from wholesalers that sell cigarettes to the tribes. State officials had opted not to collect the tax on Indian tobacco sales ever since 1997, when efforts to do so prompted protests on Indian reservations. With New York facing a $9.2 billion budget shortfall as a result of the recession, lawmakers voted to begin collecting the tax. Cigarette companies sold 24 million cartons of cigarettes to nine different New York tribes in 2009, 10.2 million of which where purchased by the Senecas, the largest Native American tobacco retailer in the country. Native American tribes also sell millions of cartons of cigarettes manufactured on tribal lands.

Tobacco Advertising Still a Problem in Lower Income Neighborhoods

A recent Boston Globe story confirms that storefront tobacco advertising is still prevalent, particularly in working class and minority neighborhoods. The article cites independent research and academic studies that show how failure to deal with this issue has resulted in continued heavy marketing of cigarettes in disadvantaged areas. The City of Boston has been trying to reduce tobacco retail advertising since at least twelve years ago, when it attempted to ban storefront tobacco ads within 1,000 feet of schools and playgrounds. This rule was struck down by the courts because of concern for the First Amendment's right to free speech.

The article found that convenience store and gas station windows in poor neighborhoods such as Dorchester and Roxbury often feature large, stylized signs advertising the availability and low price of cigarettes. Store owners said that tobacco companies supplied the signs and replaced them every few months. The manufacturers provide these signs for free, and the owners are often contractually obligated to display them. A study by Sociedad Latina found that, out of all the ads for tobacco, junk food, and alcohol, 65 percent of ads that children could see at eye level were for tobacco. In some cases tobacco company employees have even come to the neighborhoods and put the signs up themselves.

This high density of tobacco advertising contrasts with nearby Brookline, a town with an average family income nearly three times that of Dorchester. In a 2007 study, Harvard School of Public Health researchers found that Brookline convenience stores had fewer and smaller signs, that the signs were less likely to feature the price, and that the prices were higher. Brookline had a smoking rate one third that of Dorchester. These differences between Brookline and Dorchester illustrates the tobacco industry's greater focus on poor and minority areas.

Efforts to combat point-of-sale tobacco marketing are gaining momentum across the country. New York City recently enacted legislation that requires convenience stores to place anti-smoking messages near the counter. This legislation is currently being challenged in court and the City of Boston and others are awaiting the outcome of this challenge before moving forward with their own proposals.

Last year, the U.S. Congress passed the landmark Family Smoking Prevention and Tobacco Control Act into law, which gives the Food and Drug Administration (FDA) the authority to regulate tobacco marketing. In May, the FDA issued a request for comments to assist in developing an action plan to deal with the higher levels of marketing targeting poor and minority youth. The FDA is considering options such as requiring muted colors on signs or banning advertising within a smaller radius of school zones than was attempted in Boston. The recent Globe article illustrates that any of these proposals could reduce the disparities in tobacco marketing, tobacco use, and hopefully tobacco-related health outcomes.

Progress Reducing Smoking Rate Has Stalled

The Centers for Disease Control and Prevention (CDC) recently reported that the national smoking rate has been relatively unchanged over the past five years at around 20 percent, after declining steadily over the preceding 40 years. The CDC also found that 54 percent of children between the ages of 3 and 11 were exposed to secondhand smoke, and 98 percent of children who live with a smoker were found to have toxic chemicals from cigarette smoke in their blood stream.

CDC Director Dr. Thomas Frieden cited several reasons for the lack of a decline in the smoking rate. First, states currently spend only $700 million out of the $25 billion they collect from cigarette taxes on tobacco prevention. As a result, no states fund their tobacco control programs at CDC-recommended levels, with the exception of North Dakota. California, with a smoking rate of 13 percent that is the second-lowest in the country, demonstrates the public health benefits a well-funded and comprehensive tobacco control program provides. California's smoking rate has dropped by 40 percent since 1986, and the incidence of lung cancer in California has declined four times faster than the rest of the country. Second, the tobacco industry has found new ways to avoid government regulations designed to reduce smoking. Frieden cited price discounts targeted at youth to encourage them to begin smoking, as well as flavors added to tobacco products other than cigarettes.

Among other recent findings by the CDC were the following:

- 24 percent of men in the U.S. smoke, while 18 percent of women are smokers.
- 25 percent of those without a high school diploma smoke, compared to 6 percent of those with a college degree.
- 31 percent of smokers are living below the poverty line.
- Children with parents who smoke are twice as likely to become smokers.

Medicare Rule Change Incorporates Coverage for Tobacco Cessation Counseling

A recent rule change by Medicare will dramatically increase access to tobacco cessation counseling for elderly Americans, resulting in improved health outcomes and lower incidence of several diseases.

Currently, Medicare covers three minute counseling sessions as part of regular check ups, as well as cessation counseling over ten minutes only for beneficiaries who already have a serious tobacco-related health problem or whose medications interact negatively with tobacco. As a result of the rule change, Medicare will cover up to eight tobacco cessation counseling sessions of 10 minutes or more per year for any beneficiary who smokes. The new Medicare guidelines take effect on January 2011.

The Centers for Medicare and Medicaid Services, the federal agency which administers Medicare and Medicaid, cites the 2009 Patient Protection and Affordable Care Act as providing legal authority for this change. The statute directs Medicare to cover cessation counseling for pregnant women and cover more prevention generally. The comment period for this decision began on May 28 and the final decision was announced on August 25 with no changes.

Medicare is a government health insurance program that covers most Americans 65 and older and also covers some disabled Americans below that age. The practice guidelines within the U.S. Surgeon General's "Treating Tobacco Use and Dependence: Update 2008" state that 4.5 million elderly Americans smoke and that older smokers can significantly reduce their risk of heart disease, respiratory diseases, lung cancer and even osteoporosis by quitting. Older smokers tend to be less amenable to using medications to quit, so counseling is even more valuable. The Surgeon General's meta-analysis shows that 22 percent of smokers who participate in extended counseling sessions are able to quit and that the optimal number of sessions is four to five. The Medicare guidelines are closely tailored to this data, allowing up to two tobacco cessation attempts per year, and four 10 minute sessions per quit attempt.

Disabled Americans with severe mental health problems are another large group that should benefit from this decision, as 70 percent of this group smokes.

Survey Shows No Decline in Youth Tobacco Use from 2006 to 2009

The downward trend in youth tobacco use has come to a standstill according to data from the National Youth Tobacco Survey (NYTS). NYTS monitors tobacco use by middle and high school students and is performed roughly every two years. Analysis of this data is performed by the Centers for Disease Control and Prevention (CDC) to monitor tobacco use trends among the surveyed group.

NYTS measures current use, experimental use, and susceptibility to use of tobacco products through a self-administered survey given to randomly selected students in a classroom setting. Susceptible students, those most likely to use tobacco in the future, are defined as having never smoked and who reported they were open to trying cigarette smoking. Tobacco users are defined as having used on at least one of the past thirty days. Experimental users are defined as having smoked fewer than 100 cigarettes.

Prevalence of tobacco use as reported in the latest survey shows that 8.2 percent of middle school students and 23.9 percent of high school students currently use tobacco products. Of the high school students using tobacco, 17.2 percent currently use cigarettes. Though this represents a reduction in youth tobacco use between 2000 to 2009, this prevalence is unchanged between 2006 and 2009. Susceptibility to cigarette use for both middle and high school students has also remained virtually unchanged for the last ten years.

The CDC report does not identify specific reasons for the current trends, however they may be linked to the fact that comprehensive tobacco control programs across the country have experienced cuts in funding. Such programs are proven effective, and the more a state spends, the greater the reduction in both youth and adult smoking rates.

Static rates for tobacco susceptibility over the last nine years indicates the need for increased efforts to counteract the tobacco industry's influence on young consumers. New U.S. Food and Drug Administration regulations designed to restrict advertising, access to samples, and prohibit tobacco sponsorship of sports and cultural events are important components to reduce youth tobacco use, but the tobacco industry's marketing expenditures vastly outstrip tobacco prevention funding.

Finland Joins List of Countries Which Ban Tobacco Product Displays

Finland's president recently signed a new law that will, among other things, prohibit retail tobacco displays and advertising. All tobacco products and trademarks must be out of the sight of customers, and upon request customers of legal age may be shown a catalog or printed list of available tobacco products. Ireland, Canada, Iceland, Norway, and Thailand are the only other nations that have implemented such legislation. The prohibition on retail tobacco displays will go into effect in January 2012. Other provisions of the act that will go into effect beginning in 2012 include prohibitions on smoking in hotel rooms, facilities used by children, common areas in apartment buildings, and at outdoor events. In 2015, tobacco vending machines will be prohibited.

Restrictions that will go into effect on October 1, 2010, include prohibitions on selling or supplying tobacco to persons under 18, punishable by fines or up to six months in prison. Selling only one cigarette to a minor, or an adult buying a pack of cigarettes on behalf of a minor, is recognized as a violation of the law. While it will be unlawful for a minor to import or buy cigarettes, their possession is not punishable.

Finland's law is the first to specify the total cessation of tobacco use as its objective. Through a series of phased steps, the act will prevent youth from taking up tobacco and make acquisition of tobacco products more difficult by smokers of all ages. Besides cigarette sales to minors, the act includes an outright ban on the retail sale of smokeless tobacco, classified as snuff. Adults will be permitted to import limited quantities for personal use, but may not distribute it for resale or as gifts.

"Of course, this would mean the end of the tobacco industry if all the countries in the world took the same kind of steps as we are," said Finland's State Secretary of Health Ilkka Oksala, who drew up the legislative framework.

Center for Public Health & Tobacco Policy

New England Law | Boston
154 Stuart St.
Boston, MA 02116

Phone: 617-368-1465
Fax: 617-368-1368
E-mail: tobacco@nesl.edu
Web: http://www.tobaccopolicycenter.org

The Center for Public Health & Tobacco Policy (Center) is a resource for the New York tobacco control community. The Center is funded by the New York State Department of Health and works with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that reduce tobacco-related morbidity and mortality in New York.

The Center is located at New England Law | Boston and is a project of the Center for Law and Social Responsibility. The Center is also affiliated with the Tobacco Control Legal Consortium.

The Center works with tobacco control advocates in New York to support the adoption of evidence-based policies that reduce the availability of tobacco products, protect non-smokers from secondhand smoke, and minimize tobacco advertising and promotion.

Please Note: The Center is funded to provide assistance to the New York State Tobacco Control Program and its contractors. At this time, the Center is unable to provide assistance to individuals or groups who are not funded by the New York State Tobacco Control Program.