



Legal Update

Tobacco Use as a

HEALTH EQUITY

Issue

Despite a decline in tobacco use among U.S. adults over the past several decades, tobacco-related health disparities in both cigarette smoking and exposure to secondhand smoke have increased. As just one example, tobacco use exerts a huge toll on persons with behavioral health and substance use disorders, who smoke at least 40 percent of all cigarettes smoked in the U.S. each year and account for approximately 200,000 of the nation's annual 443,000 tobacco-related deaths. Moreover, in 2015, approximately 26 percent of adults who lived below the poverty level smoked cigarettes, compared to

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SPRING 2017

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Health Policy

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13.9 percent of the general U.S. adult population. With the higher rate of tobacco use among these populations comes a disturbing increase in tobacco-related illnesses, health care costs, and premature deaths.

This *Legal Update* highlights the disproportionate impact of tobacco use on vulnerable populations, including individuals suffering from behavioral health and substance use disorders, low socio-economic populations, and other groups. We include news on an exciting behavioral health and tobacco use summit; salute a national public health

champion; showcase several publications and resources that address tobacco use policies and interventions among marginalized and underserved populations; profile organizations that focus on addressing tobacco-related health inequities; and feature an "Ask A Lawyer" column on addressing reasonable accommodation issues in public housing, where many individuals with disabilities reside and where one third of the adults smoke. We also include other tobacco-related items of interest to the public health community.

8 Ways Tobacco Affects Vulnerable People

Tobacco use is

71%

HIGHER among adults with mental illness



- National Council for Behavioral Health



Tobacco use is OVER

50% **HIGHER** among LGBT adults

- LGBT HealthLink

Tobacco use is

35%

HIGHER among American Indian and Alaskan Native

- National Native Network

Asian American men smoke at a

215%

HIGHER rate than Asian American women



- The RAISE Network

1.5 TIMES

as many Hispanic middle school students report using tobacco compared to other middle school students

- Nuestras Voces



African Americans smoke menthol-flavored cigarettes at nearly

3 TIMES

the rate of Whites, and are more likely to die from smoking-related illness.

- National African American Tobacco Prevention Network

22.4%

of people in remote areas smoke

- Geographic Health Equity Alliance

14.7%

of their urban counterparts smoke

VS

Tobacco use is **310%**

HIGHER among homeless adults compared to the general population

- SelfMade Health Network



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LGBT HEALTHLINK

THE NETWORK FOR HEALTH EQUITY

A PROGRAM OF CENTERLINK

This Legal Update feature showcases individuals and organizations with distinguished records of accomplishments in public health law and policy. In this issue, we salute a medical professional and national leader in tobacco control — Dr. Steven Schroeder.

Dr. Steven Schroeder: A National Leader in Tobacco Control

Dr. Steven Schroeder has devoted a large part of his long and impressive career to addressing the devastating harm caused by tobacco use. A Distinguished Professor of Health and Health Care at the University of California, San Francisco (UCSF), he also heads the [Smoking Cessation Leadership Center](#) (see related article). Between 1990 and 2002, Dr. Schroeder was President and CEO of the Robert Wood Johnson Foundation. During that time the Foundation made grant expenditures of almost \$4 billion in pursuit of its mission of improving the health and health care of all Americans. It developed new programs in substance abuse prevention and treatment, care at the end of life, and health insurance expansion for children, among others.

Dr. Schroeder graduated with honors from Stanford University and Harvard Medical School, and trained in internal medicine at the Harvard Medical Service of Boston City Hospital and in epidemiology as an EIS Officer of the Centers for Disease Control and Prevention. He held faculty appointments at Harvard, George Washington, and UCSF. At both George Washington and UCSF he was the founding medical director of a university-sponsored HMO, and at UCSF he founded its division of general internal medicine.

He has published extensively in the fields of clinical medicine, health care financing and organization, prevention, public health, the work force, and tobacco control. He currently serves as a director of the James Irvine Foundation, the

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Dr. Steven Schroeder

“I do believe that progress is possible and will occur. Recent survey data show a two-step decline in smoking among those with behavioral health conditions. The prevalence is declining, according to National Survey on Drug Use and Health data, and even more rapidly than in the general population, although starting from a much higher level.” — DR. STEVEN SCHROEDER

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Lucille Packard Foundation for Children’s Health, and the Robina Foundation. He formerly chaired the American Legacy Foundation (now Truth Initiative), was a member of the editorial board of the New England Journal of Medicine, Council member of the Institute of Medicine, an Overseer of Harvard, and President of the Harvard Medical Alumni Association. He has won numerous awards, including six honorary doctoral degrees and the Gustav O. Leinhard Award from the National Academy of Medicine. He and his wife Sally live in Tiburon, California, and have two physician sons and four grandchildren.

Below are some thoughts Dr. Schroeder shared with us recently on tobacco control, including the impact of tobacco on vulnerable populations:

Q: Dr. Schroeder, what first drew you to the field of tobacco control?

Dr. Schroeder: It was a combination of my knowledge of the public health toll exerted by tobacco use, plus the fact that I lost several patients from smoking-related deaths way before their prime.

Q: Why do you believe tobacco control is a social justice issue?

Dr. Schroeder: Because, in contrast to several decades ago, smoking is now concentrated among vulnerable population groups: the poor and those with low educational levels; persons with mental illnesses and/or substance use disorders; the homeless; persons who are incarcerated; and the LGBT community. As a result, the issue seems less salient for those in powerful governmental or industry positions. Consequently, tobacco control does not receive its fair share of resources.

Q: What in your view has been the most significant tobacco control accomplishment over the last 25 years?

Dr. Schroeder: The impressive drop in smoking prevalence among both adults and youth.

Q: What has surprised you the most in tobacco control — or public health in general — over the years?

Dr. Schroeder: That in spite of the impressive progress, there is so much dissension among tobacco control advocates, often taking a very personal tone. I suspect this is a legacy of the pernicious industry influence that co-opted or tried to co-opt scientists, public health leaders, and not-for-profit groups. The result has been to suspect ulterior motives among those who take opposing stands on controversial issues such as harm reduction.

Q: Do you believe that tobacco use among vulnerable populations in the U.S. can be significantly reduced in the next 5 to 10 years? If so, why?

Dr. Schroeder: Yes, I do believe that progress is possible and will occur. Recent survey data show a two-step decline in smoking among those with behavioral health conditions. The prevalence is declining, according to National Survey on Drug Use and Health data, and even more rapidly than in the general population, although starting from a much higher level. And among those who continue to smoke, they are smoking fewer daily cigarettes. So there is a real change from the previous misconceptions that persons with behavioral health conditions did not want to stop smoking and were unable to do so even if they tried.

HEALTH EQUITY

Issue



Select Consortium Resources

The Consortium has several resources related to policy options for addressing commercial tobacco use among vulnerable populations, all located on our website at www.publichealthlawcenter.org.

Homeless Populations

- [*Underserved & Overlooked: Tobacco Addiction Among the Homeless Population*](#). Policy brief that examines the challenges in addressing tobacco use among homeless individuals, as well as promising tobacco control policies and cessation interventions for this population.
- [*Tobacco Use Among the Homeless Population: Frequently Asked Questions*](#). Answers to several common questions about tobacco use among members of the homeless population.

American Indians/Native Alaskans

- [*Drafting Tribal Public Health Laws and Policies*](#). Resource designed to assist Tribal leaders, health departments, public health advocates, and community members in thinking about how to draft written public health laws or policies for their Tribes.

Menthol and Priority Populations

- [*Menthol Toolkit*](#): Menthol tobacco products are consumed at disproportionately high rates by African Americans, the LGBT population, and other minority groups, as well as youth. Our menthol toolkit contains a collection of resources on policy options for regulating menthol tobacco products, including fact sheets, guides, archived webinars, a bibliography, a case study, sample language, and related materials.

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More Information About Tobacco Use as a Health Equity Issue

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Low Socioeconomic Populations

- [Smoke-Free Public Housing: Reasonable Accommodations](#). Background information to help housing authorities field reasonable accommodation requests in smoke-free public housing.
- [HUD's Rule to Restrict Smoking in Public Housing: An Overview](#). Overview of the U.S. Department of Housing and Urban Development's rule restricting smoking in public housing.
- [Home is Where the Health Is: HUD's Rule Restricting Smoking in Public Housing Archived webinar](#). December 21, 2016. Staff from the U.S. Department of Housing and Urban Development (HUD), the National Association of Housing and Redevelopment Officials (NAHRO), and the Public Health Law Center discuss the contents of HUD's new smoke-free rule, tips for effectively implementing the rule, and ways public housing authorities can go beyond the requirements of the rule to protect public health.
- [Smoke-free public and subsidized housing resources](#)

Incarcerated Adults & Detained Youth

- [Tobacco Behind Bars: Policy Options for the Adult Correctional Population — A Policy Options Brief](#). Examination of the current state of tobacco control policies in local and state prisons and jails in the U.S., the health care cost of tobacco use among the correctional population, regulatory challenges with correctional tobacco-and smoke-free policies, and policy options and opportunities.
- [Tobacco in Adult Correctional Facilities: A Policy Overview](#)
- [Tobacco and Juvenile Offenders: Breaking the Cycle — A Policy Options Brief](#). Exploration of tobacco control policies in juvenile residential correctional facilities and detention centers, the prevalence

of tobacco use among juvenile offenders, challenges with tobacco cessation services in the juvenile justice system, and policy options and opportunities.

- [Tobacco in Juvenile Facilities: A Policy Overview](#).

Assisted Living Residents

- State and local tobacco control laws often exempt residential care settings, including assisted living, adult foster care, nursing homes and similar environments, where many of the most vulnerable members of society live and where a disproportionate number of residents (and staff) either use tobacco products or are exposed to secondhand smoke. Our [Tobacco-Free Assisted Living Resources web page](#) contains several resources related to tobacco use among this vulnerable population, including a 50-state survey, state-specific web pages with links to legislation and policies, frequently asked questions, guidelines for implementing tobacco policies in assisted living residences, an archived webinar, and other materials.

Blue Collar Workers

- [Tobacco Cessation Toolkit for Taft-Hartley Funds](#). This WorkSHIFTS toolkit includes 21 fact sheets that provide user-friendly information about best practices for providing and promoting cessation benefits for blue-collar workers in Taft-Hartley Health and Welfare Funds.

Other Materials

- [The Mental Health Parity and Addiction Equity Act and the Affordable Care Act: Implications for Coverage of Tobacco Cessation Benefits \(2015\)](#)
- [STRIDE toward Health Equity: Findings and Recommendations for Advancing Health Equity through Multisector Collaborations](#)

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A Brief Look at the Smoking Cessation Leadership Center

The [Smoking Cessation Leadership Center](#), funded by the Robert Wood Johnson Foundation and the Truth Initiative, works with leaders of more than 80 American health professional organizations and health care institutions to increase the cessation rate for smokers. It has expanded the types of clinician groups that support cessation, developed an alternative cessation message (Ask, Advise, Refer), created new ways to market toll-free telephone quit lines, and engaged the mental health and addictions treatment community for the first time. The Center's current work is focused on how to reduce the huge health burden from smoking that falls on those with mental illnesses and substance use disorders. The Center collaborates with the [Substance Abuse & Mental Health Services Administration](#), the [Health Resources & Services Administration](#), the [Centers for Disease Control & Prevention](#), and multiple health professional groups in providing technical assistance to help strengthen smoking cessation capabilities. The Center has also facilitated summit meetings involving 18 states that conduct tobacco cessation conferences to achieve targeted reductions in smoking rates among behavioral health populations.

The National Behavioral Health Summit for Tobacco-Free Recovery

Despite great strides in lowering the rate of tobacco use and its devastating health consequences, certain groups have not benefitted from this progress. Chief among them have been persons with mental illness and/or substance use disorders, collectively known as the behavioral health population. Until recently, health professionals as well as relevant governmental agencies and advocacy groups have not formally recognized this population as a disparity group or priority population. However, this vulnerable population group warrants special focus since their smoking prevalence is two to three times higher than the national average. Additionally, these individuals die ten to 25 years earlier, mainly from smoking-related disorders such as lung cancer, heart disease, stroke, and emphysema. Tragically, until very recently health professionals as well as relevant governmental agencies and advocacy groups have not responded to this "hidden epidemic."

Because this is such an important health issue, especially given the link between smoking and most types of cancer, the American Cancer Society (ACS) and the Smoking Cessation Leadership Center (SCLC) hosted an historic multi-sectorial summit at the

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Reducing the burden from smoking among persons with mental illness and substance use disorders.

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ACS Atlanta headquarters on October 13-14, 2016. In attendance were senior representatives of health professional groups, federal governmental agencies, not-for-profit health agencies, and leading experts in behavioral health and tobacco control. The group established a goal to reduce smoking prevalence in the United States among persons with behavioral health issues from 34% in 2015 to 30% by the year 2020. This progress would prevent over a million premature deaths and would prevent many millions of persons from suffering with smoking-induced diseases. To reach this target, the participating

organizations developed a set of strategies, including provider education, peer education, tobacco control and cessation policies, health systems change, and data/research. To provide a home for these continuing activities, the ACS and SCLC will establish a Round Table process to coordinate these activities and will consider adding additional partners.

If this effort is successful, it will greatly improve the health of the American public. To learn more about the initiative, please access the [summit webpage](#) for the full action plan, participating organizations, and opportunities for collaboration.

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- [Achieving Health Equity in Tobacco Control](#). Joint publication of consortium of organizations outlining policy approaches to achieve health equity in populations most impacted by tobacco use.

Select Organizations with Tobacco Health Equity Resources

- [American Cancer Society](#): Cancer facts and statistics
- [American Heart Association](#): Tobacco resources, facts and figures
- [American Lung Association](#): Tobacco & lung disease disparities reports
- [Asian Pacific Partners for Empowerment, Advocacy & Leadership](#): Fact sheets, tobacco resources, research and data, RAISE (Reaching Asian American Pacific Islanders through Innovative Strategies to Achieve Equity in Tobacco Control and Cancer Prevention)
- [Campaign for Tobacco-Free Kids](#): Fact sheets on toll of tobacco on specific populations
- [Centers for Disease Control and Prevention, Best Practices User Guide: Health Equity in Tobacco Prevention & Control](#). Guide for tobacco control program staff and partners to achieve health equity when planning, implementing, and enforcing tobacco control policies
- [Counter Tobacco](#): Resources about identification and elimination of disparities in point of sale advertising and retailer density, youth targeting and advertising
- [Geographic Health Equity Alliance](#): Tobacco, cancer and geographic disparities resources, news and scholarly articles
- [LGBT Health Link](#): Surveillance and surveys, tobacco marketing and counter-marketing, newsletters, research and literature, resources and tools
- [National African American Tobacco Prevention Network](#): Info on how the tobacco industry targets African Americans
- [National Behavioral Health Network for Tobacco and Cancer Control](#): Health equity, data tools, and statistics

Please Welcome Our Two New Staff Attorneys

The Public Health Law Center and Consortium were fortunate to have two new staff attorneys join our tobacco team in late 2016 and early 2017. Welcome, Natasha Phelps and Andrew Twinamatsiko!

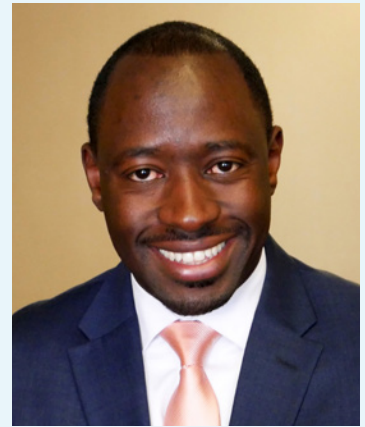
Natasha Phelps

Natasha Phelps, who joined the Public Health Law Center in late 2016, provides legal technical assistance on tobacco control issues to public health professionals and organizations, legal professionals, and advocates throughout the United States. Natasha received her Bachelor's Degree from the University of Wisconsin - Madison and her law degree from Mitchell Hamline School of Law.

Before joining the Center, Natasha worked as a litigation associate at the firm of Aafedt, Forde, Gray, Monson, and Hager, where she defended clients against civil and workers' compensation lawsuits. Natasha has also worked as a student attorney at the Office of the Public Defender in Ramsey County, a judicial intern for the Honorable James A. Cunningham, Jr. of the Tenth Judicial District Court, and a state legislative intern in Wisconsin. At Mitchell Hamline, Natasha served as President of the Black Law Student Association and worked as a research assistant for the Center for Negotiation and Justice (on discriminatory voting laws) and for Community Mediation Services (on discrimination and restorative justice in school disciplinary practices). Natasha's passion for health equity and public health, her legal expertise, and her experience working with clients on complex legal issues are all in evidence as she fields tobacco-related questions from around the U.S.



Natasha Phelps, J.D.



Andrew Twinamatsiko, J.D.

Andrew Twinamatsiko

Andrew Twinamatsiko, the Public Health Law Center's newest attorney, joined us in March 2017, just in time to attend the National Conference on Tobacco or Health. Like Natasha, Andrew also provides legal technical assistance on tobacco-related issues to public health professionals and organizations, legal professionals, and advocates throughout the U.S. Andrew worked previously as an associate at a law firm in Sioux City, Iowa, where he represented municipalities and specialized in civil litigation and criminal defense in both Iowa and South Dakota.

After emigrating to the U.S. from Uganda only eight years ago, Andrew graduated from the University of South Dakota School of Law in 2013 with high honors. In law school, he served as editor of the South Dakota Law Review, was elected Secretary of the Black Law Students Association, and worked as a law clerk. He then passed state bar examinations in both Iowa and South Dakota and worked as an international compliance officer at the University of South Dakota. Andrew's remarkable versatility, strong legal background, and commitment to public service make him an excellent fit for the world of tobacco control.

Ask a Lawyer

Q “I’m working with a housing provider on a smoke-free policy, and reasonable accommodations keep coming up as a concern. Do you have any suggestions on how I can address this issue?”

A If you’re like me, your first instinct is to understand why it’s a concern for the provider and then respond in a way that addresses that concern. We’ve created a [resource](#) that breaks down this complicated area of disability discrimination law and helps smoke-free housing advocates understand the many considerations housing providers take into account when deciding how to handle reasonable accommodation requests.

Some context might also be helpful for understanding how reasonable accommodations are a tool that can both facilitate smoke-free policy and make smoke-free policy implementation more challenging. When smoke-free housing efforts began, reasonable accommodation requests came from non-smoking individuals with health conditions made worse by secondhand smoke exposure. These reasonable accommodation requests asked for smoke-free living environments and were oftentimes successful. They also remain a tool that can facilitate the adoption of smoke-free policies.

As more and more housing providers adopted smoke-free policies, though, requests shifted from accommodating non-smoking individuals to requests to accommodate people who smoke. These latter requests have been challenging, particularly for housing providers that serve vulnerable populations. Smoke-free housing advocates seek to maximize the public health benefits of smoke-free policies while housing providers seek to fulfill their legal mandate to provide fair housing.

As I’m sure you know, the U.S. Department of Housing and Urban Development (HUD) recently finalized its [smoke-free public housing rule](#), which took effect February 3, 2017. It gives public housing agencies (PHAs) until July 30, 2018 to fully implement smoke-free policies for the public housing units they administer. HUD is also the agency that, along with the U.S. Department of Justice (DOJ), enforces federal housing discrimination laws. Many state and local fair housing laws also build on HUD and DOJ enforcement efforts.

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Darlene Huang, J.D., M.P.H., is a Staff Attorney at the Public Health Law Center.

If you have a question about a tobacco law-related issue that you’d like us to address in this column, or a topic you’d like us to cover in future publications, please send us an e-mail at publichealthlawcenter@mitchellhamline.edu. Thank you!

“As more and more housing providers adopted smoke-free policies, though, requests shifted from accommodating non-smoking individuals to requests to accommodate people who smoke.”

Ask A Lawyer

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In its rule, accompanying [guidance](#), and existing [fair housing guidance](#), HUD provides additional clarification about reasonable accommodations that all housing providers, including PHAs, and smoke-free housing advocates might find helpful. The highlights are:

- Residents with disabilities have the right to request reasonable accommodations, which are meant to ensure equal housing opportunities between those with disabilities and those without. Housing providers are required to assess these requests and either grant or deny them.
- Housing providers must provide reasonable accommodations, when requested, if they are necessary to afford people with disabilities an equal housing opportunity. The important nuances here are that accommodation requests must be **reasonable, necessary**, and for an individual who **qualifies as a person with a disability under the law**.
- Requests to smoke indoors cannot be granted.
- In situations where the requested accommodation is not reasonable, HUD encourages an interactive process between the housing provider and the resident to find ways to meet the needs of both parties. For example, HUD suggests that housing providers help residents with disabilities who smoke by making it easier for them to get outside and by ensuring residents understand the policy and are

connected to resources to help them change their smoking behavior.

When I respond to questions from housing providers and smoke-free housing advocates about reasonable accommodations, I acknowledge that it's a legitimate concern, especially since we know tobacco use rates and secondhand smoke exposure can be higher among populations that might request them (e.g., those with behavioral health conditions or mobility impairments). I also recognize that there is no safe level of exposure to secondhand smoke and that the only way to protect fully against the harms of secondhand smoke exposure is to eliminate smoking indoors. Finally, I remind people that fair housing laws are not at odds with the goal of smoke-free policies, which is to ensure that everyone has a safe, clean, and healthy living environment. While it can be difficult to find mutually agreeable solutions for highly addicted individuals who smoke, it will take the joint efforts of thoughtful housing providers, smoke-free advocates, and many additional partners working together to find creative ways to make the transition to smoke-free living as easy as possible for all involved. Advancing health equity is hard work, but it's important work!

For more information about HUD's smoke-free public housing rule — including fact sheets, archived webinars, and other resources — visit our public and subsidized housing [webpage](#).

Upcoming Events

Please visit the Public Health Law Center's website at www.publichealthlawcenter.org for news on upcoming Consortium webinars and archived recordings of past webinars.



National Association of County and City Health Officials

July 11-13, 2017, Pittsburgh, Pennsylvania

NACCHO's annual conference is a one-of-a-kind, learning and networking opportunity for local health officials, and their public health partners from all geographic regions of the nation to share perspectives and engage in dialogue on common key public health practice issues. This year's conference is focused on Public Health Revolution: Bridging Clinical Medicine and Population Health.

[Read more](#) about NACCHO's annual conference.

National Association of Local Boards of Health

Aug. 2-4, 2017, Cleveland, Ohio

NALBOH's annual conference celebrates innovations in local board of health governance. This year's conference commemorates the 25th anniversary of NALBOH's founding.

[Read more](#) about NALBOH's annual conference.

Upcoming Webinar

An Overlooked Addiction: Tobacco Use Among the Homeless Population

April 12, 2017 1:30 p.m. Central Time

Tobacco use is at an epidemic rate among the U.S. homeless population.

Although homeless individuals often wrestle with a host of physical, behavioral, and substance use issues, tobacco-related chronic disease remains a leading cause of death among this marginalized population. This Consortium webinar explores the many challenges in addressing nicotine addiction in homeless individuals, describes a range of tobacco control and dependency treatment approaches for state and local governments and homeless shelter providers, and discusses smoke-free public housing issues that could affect many formerly homeless individuals.

Presenters: Dr. Maya Vijayaraghavan, University of California San Francisco; Kerry Cork, J.D. and Darlene Huang, J.D., MPH, Tobacco Control Legal Consortium at the Public Health Law Center.

Please register for this webinar at the PHLC [website](#).



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Disclaimer: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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