

12-04

## STATEMENT OF POLICY

### Regulation of Electronic Cigarettes (“E-Cigarettes”)

#### Policy

The National Association of County and City Health Officials (NACCHO) urges the FDA to enact strict regulations overseeing the sale and use of e-cigarettes and to conduct research on their health impact. Until then, NACCHO encourages local health departments (LHDs) to support local legislation that includes any or all of the following measures: <sup>1,2</sup>

- Use broadly-defined language to include e-cigarettes in new smoke-free legislation for indoor and outdoor environments
- Make clear that e-cigarettes are covered by existing smoke-free laws through clarifying opinion or regulation/rule (n.b.: opening up or amending the definitions of “smoke” and “smoking” to include e-cigarettes and e-cigarette vapor may jeopardize existing laws)
- Oppose legislation at the local or state level that exempts e-cigarettes from current smoking ban policies and regulations
- Require tobacco retailer licenses to sell e-cigarettes, or add an additional fee for existing tobacco retailers to sell e-cigarettes
- Establish an ordinance limiting the number of retailers or locations where e-cigarettes can be sold
- Prohibit sales of e-cigarettes to minors
- Ban sales of e-cigarette components that may appeal to minors, such as flavored cartridges
- Advocate for state or federal regulation prohibiting sales of e-cigarettes on the internet or through the mail, especially in the case of minors
- Raise excise tax on e-cigarettes as cigarettes and other tobacco products are taxed
- Work with businesses and public locations, such as malls, to voluntarily prohibit e-cigarette sales on premises

#### Justification

In April 2011, the Food and Drug Administration (FDA) announced that it intends to develop regulations for e-cigarettes.<sup>3</sup> E-cigarettes are battery-operated products designed to deliver nicotine, flavor, and other chemicals through a vapor inhaled by the user.<sup>4</sup> Most e-cigarettes are manufactured to resemble cigarettes, cigars, and pipes<sup>5</sup>, often with an LED light at the tip that mimics the glow of a traditional cigarette.<sup>6</sup> According to a survey by the Centers for Disease Control and Prevention, the number of Americans who had ever used e-cigarettes quadrupled from 2009 to 2010, and 1.2 percent of adults, or nearly three million people, reported using e-cigarettes in the previous month.<sup>7</sup>



NACCHO recognizes the importance of finding new tools to help smokers quit. Currently, little scientific evidence exists to show that electronic cigarettes, or e-cigarettes, are effective cessation devices. Furthermore, in 2010, a federal court ruling blocked the FDA's attempts to regulate them as drugs or drug delivery devices, as nicotine gum and nicotine replacement therapy are regulated.<sup>8</sup>

Until further research shows that they are safe and effective, NACCHO suggests that e-cigarettes are regulated to the extent that the law allows. To that end, the FDA has the authority to regulate e-cigarettes as tobacco products under the Tobacco Control Act. According to the provisions of the act, state and local governments can take additional steps to regulate the sale and use of tobacco products and enact measures that are more restrictive than federal law.<sup>9</sup>

Further research is needed on the health risks of e-cigarettes, but available evidence suggests harmful effects. A recent study published in the European Respiratory Journal found that e-cigarette users get as much nicotine from e-cigarettes as smokers usually get from tobacco cigarettes.<sup>10</sup> The FDA warns users of the potential health risks posed by e-cigarettes.<sup>11, 12</sup> In addition to nicotine, an FDA laboratory analysis found that e-cigarettes contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze. Because there is little control or regulation of e-cigarette products, the amount of nicotine inhaled with each "puff" may vary substantially, and testing of sample cartridges found that some labeled as nicotine-free in fact had low levels of nicotine.<sup>13</sup> Users can refill their own cartridges with much higher doses of nicotine, and the devices can also be filled with other harmful substances. For example, instructions for filling cartridges with marijuana hash oil can be easily accessed on the Internet.<sup>14</sup>

The use of e-cigarettes makes it difficult for business owners and officials to enforce existing smoke-free air laws.<sup>15</sup> Their close resemblance to traditional cigarettes may cause confusion and lead people to believe that it is legal to smoke in smoke-free environments. Additionally, some e-cigarettes designed to look like everyday items, such as pens and USB memory sticks<sup>16</sup>, make it easy for youth to disguise these products in schools and other settings.

Public health experts have expressed concern that e-cigarettes may increase nicotine addiction and tobacco use in young people.<sup>17</sup> E-cigarettes may be particularly appealing to youth due to their high-tech design, wide array of available flavors, including candy- and fruit-flavored cartridges, and easy availability online and in shopping malls.<sup>18</sup> Because they are not taxed as tobacco products, e-cigarettes may be more easily obtained by price-sensitive youth.

There is strong public support for regulation of e-cigarettes, according to the University of Michigan C.S. Mott Children's Hospital National Poll on Children's Health. Among the findings, 85 percent of U.S. adults favored prohibiting the sale of e-cigarettes to minors, and 91 percent supported requiring manufacturers to test e-cigarettes for safety.<sup>19</sup>

Various federal, state, and local regulations are in place or are being considered to restrict e-cigarette use and sales. Amtrak has banned the use of electronic smoking devices, such as e-cigarettes, on trains, in stations, and in any area where smoking is prohibited.<sup>20</sup> In a memorandum, the Air Force Surgeon General warned about safety concerns regarding electronic cigarettes and placed them in the same category as tobacco products.<sup>21</sup> Currently, the U.S. Department of Transportation is proposing a regulation that would ban the use of e-cigarettes on aircraft by clarifying that the use of e-cigarettes is prohibited as tobacco products are

prohibited.<sup>22</sup> Several state and local government have taken steps to limit e-cigarette use in public places and prohibit the sale of e-cigarettes to minors.<sup>23</sup>

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**Record of Action**

*Submitted by Community Health Committee*

*Approved by NACCHO Board of Directors*

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