

**MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**September 12, 2019
Science & Technology Park Rotunda
University of New Mexico
801 University Boulevard SE
Albuquerque**

The joint meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) and the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Gerald Ortiz y Pino, chair, LHHS, at 9:21 a.m. on September 12, 2019 at the University of New Mexico Science & Technology Park Rotunda in Albuquerque.

Present

Sen. Gabriel Ramos, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary

Absent

Sen. Candace Gould
Rep. Gregg Schmedes
Sen. John Arthur Smith

Advisory Members

Rep. Gail Chasey
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Sen. Sander Rue
Rep. Jim R. Trujillo

Staff

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)
Lenaya Montoya, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Andrea Lazarow, Bill Drafter, LCS
Sabina Gaynor, Bill Drafter, LCS
Karen Wells, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, September 12 — Joint Meeting with the LHHS

Welcome and Introductions

Representative Thomson, co-chair, TSROC, welcomed members of the committees, staff and the audience. Committee members and staff introduced themselves.

Epidemiologic Trends, Tobacco Cessation Efforts and Policy Recommendations

Karin Rhodes, M.D., M.S., director, Public Health Division, Department of Health (DOH), David Tompkins, manager, Community Health Initiatives, Tobacco Use Prevention and Control (TUPAC), DOH, and Abinash Achrekar, M.D., deputy secretary, DOH, addressed epidemiologic trends, tobacco cessation efforts and policy recommendations.

Dr. Rhodes shared data regarding vaping, especially among youth. She stated that vaping is on the rise among non-tobacco smokers. She described the structure of an e-cigarette and noted that the contents of e-cigarettes are highly variable and include nicotine, flavors, volatile organic compounds and heavy metals. She said that youth and young adults are the demographic with the highest use of e-cigarettes. Dr. Rhodes identified concerns about e-cigarettes and noted that they are highly addictive. She reported that 12 New Mexicans have been hospitalized as a result of e-cigarette use. The federal Centers for Disease Control and Prevention (CDC) is advising people to avoid e-cigarette use.

Mr. Tompkins explained current TUPAC efforts to control tobacco use. He identified the four goals of TUPAC as follows: to prevent initiation of tobacco use; to promote quitting of tobacco use; to eliminate exposure to secondhand smoke; and to identify and eliminate tobacco-related disparities among population groups. He offered specific examples of initiatives to meet those goals and described TUPAC's online resources.

Dr. Achrekar explained that reduced tobacco use has resulted in reduced incidence of cardiac disease. The use of nicotine, however, still contributes to the incidence of cardiac disease. He identified Tobacco Settlement Program Fund appropriations to the DOH, the Medicaid program, the Indian Affairs Department and the University of New Mexico and said that funding to the DOH has declined since 2011. Dr. Achrekar identified United States surgeon general recommendations that could be implemented or enhanced in New Mexico. He described Tobacco 21, a proposal to ban the sale of tobacco products, e-cigarettes and nicotine liquid to any person under the age of 21 and to provide enforcement and retail licensing. Dr. Achrekar highlighted the importance of the point of sale for alcohol and vaping products among youth. He asserted that there are more than 1,000 retailers that sell e-cigarettes and that New Mexico is one of only seven states that do not license tobacco or e-cigarette retailers. Legislation is needed to establish licensing for e-cigarette retailers, he said, emphasizing that during 2017 and 2018, e-cigarette use among high school students in the United States increased by 78 percent.

Questions and comments from committee members included the following:

- a comment that bills were introduced in the last legislative session to eliminate nicotine flavoring and to ban the sale of cigarettes and e-cigarettes to individuals under the age of 21;
- a statement that it is important to hear all sides of the issues regarding e-cigarettes;
- a discussion of the importance of the sale of tobacco products for small community businesses and the revenue derived from those sales;
- a discussion of taxation of cigarettes on tribal lands, including a clarification that cigarettes are taxed on tribal lands but at a reduced rate;
- an observation that increased tobacco-related taxes are often intended to reduce tobacco use, especially among youth;
- a question as to whether e-cigarettes help adults to quit smoking and a response from a presenter indicating that the CDC has found that there is some potential toward this end, but the answer is not definitive;
- a question regarding the effectiveness of advertising to prevent smoking among youth;
- a question as to whether tobacco cessation programs are being offered to public health providers and Medicaid contractors and an affirmative response by a presenter;
- a discussion of news reports about potentially dire health effects of vaping on youth, including some deaths;
- a request for clarification regarding the age span of those who have become ill from vaping and a response from a presenter indicating that ages have ranged from 18 to 46, with over 500 cases overall, including six deaths;
- a statement regarding lack of treatment for vaping-related illnesses;
- a request for clarification of the amount of money that would be needed to restore lost funding for tobacco use prevention and a response estimating that \$23 million would be needed;
- statements that the prevalence of vaping could disrupt tobacco cessation efforts;
- recognition that in 2009, appropriations from the General Fund for tobacco cessation were reduced by \$9 million;
- a request for clarification regarding efforts to promote tobacco cessation in schools and a response by a presenter from the DOH indicating that the DOH's efforts are focused on training teachers and staff;
- recognition that states are taking steps to address the potential dangers stemming from flavoring in e-cigarettes;
- a request for clarification regarding how social media is being used to educate youth on health hazards related to vaping and comments from presenters expressing that additional social media initiatives are needed;
- a discussion of the use of youth focus groups in presentation campaigns;
- a question regarding whether penalties exist for a child providing an e-cigarette to another child and a response indicating that such penalties are lacking because e-cigarette products are not currently regulated;

- a discussion of training available in public health offices and school-based health centers;
- a request for clarification regarding how tetrahydrocannabinol (THC) is incorporated in e-cigarettes and a response indicating that THC is not routinely added, but additions may occur at the point of sale or by end users;
- a statement that inhaled e-cigarette contents go to the brain in exponentially higher concentrations than contents inhaled through conventional cigarettes;
- a discussion regarding the unknown effects of secondhand vaping;
- a discussion of the difficulties of studying the effects of vaping when vaping products are not regulated;
- a suggestion to ban nicotine delivery devices that resemble asthma inhalers;
- observations that pediatric addiction to e-cigarettes is prevalent and of the necessity for teacher and parental awareness of this issue;
- a question about the return on investment on TUPAC initiatives and a response by presenters from the DOH indicating that the information will be provided;
- recognition of the importance of meaningful penalties for manufacturers and vendors; and
- a question as to whether there is a connection between the effects of smoking and productivity.

Public Comment

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, stated that it is important to focus on both tobacco and e-cigarette use mitigation to ensure that progress continues to be made on all fronts. She also requested that funding for smoking prevention and cessation not be reduced.

Bill Jordan, government relations officer, New Mexico Voices for Children, requested that funding be restored for peer-led programs. He asserted that Medicaid enrollees use tobacco products at twice the rate of the general population, and he requested that funding for tobacco cessation efforts targeted to Medicaid recipients be continued. He spoke in support of raising taxes to deter use of tobacco and e-cigarettes.

Distributor Panel

During a panel discussion, the following individuals addressed the committees: Kane R. Oueis, chief executive officer (CEO), Oasis Vape; Brian James Gage, CEO, Firebrand American Vapor; David Morris, Trace/Verify; and Vanessa Alarid, Vapor Technology Association.

Mr. Gage stated that he believes there is widespread agreement that action is needed to regulate the e-cigarette and vaping industry, including harm reduction and keeping e-cigarette and vaping products away from children. He asserted that the goals of the vape industry differ from those of the tobacco industry. The goal of the vape industry is to provide a safe and effective way to quit smoking, he said, and he described his personal experience of using e-cigarettes to quit smoking after failing to quit by other methods.

Mr. Gage stated his belief that the deaths and illnesses that have recently been reported are the result of lipid-based materials that have been added to e-liquids, which, upon vaporization, deliver highly toxic ingredients. He stated that these ingredients are the result of black market production of e-cigarettes and asserted that the products his company and certain other businesses produce do not contain these ingredients. Mr. Gage offered to share data regarding the success of certain e-cigarette products in helping smokers to quit smoking. Mr. Gage stated that he is interested in working to develop rules or legislation to improve product safety.

Mr. Oueis provided information about Oasis Vape and described his own experience in quitting cigarettes through vaping. He stated that the mission of Oasis Vape is to keep e-cigarettes away from children and that the company has rigorous procedures to ensure that its products are not sold to minors. He described a product that his company routinely uses, which would have the ability to track every purchase of e-cigarettes to ensure legal use of products and to prevent use by children.

Ms. Alarid presented legislation from the 2019 session to provide for the licensure and imposition of fees relating to the manufacture, distribution and sale of e-cigarettes and nicotine liquid.

A discussion among committee members and panelists included the following questions and comments:

- in response to a question from a committee member, a comment that tobacco products were not included in the 2019 proposed legislation due to a belief that a separate approach to licensing and regulation of tobacco products would be needed;
- a discussion of different approaches in the house and senate versions of the 2019 legislation to address e-cigarette and nicotine use by certain age groups;
- a question as to why the 2019 legislation proposed having e-cigarettes available for sale through vending machines while tobacco product sales are not allowed through vending machines and a response from a panelist that the legislation was intended only to permit such vending machine sales of e-cigarettes at locations where children are not allowed;
- an assertion that the United States Food and Drug Administration (FDA) does not currently permit the sale of e-cigarettes in vending machines;
- an assertion that properly manufactured e-cigarettes are not toxic;
- a discussion about whether the appropriation proposed in the legislation would be sufficient;
- a question about whether the proposed legislation would regulate online sales, to which a panelist answered affirmatively;
- a question about the number of people who have started vaping without previously smoking tobacco and a response noting that while specific numbers are unknown, such cases have existed among young people;

- in response to a question from a committee member, a statement that some vaping products are free of nicotine;
- in response to a question from a committee member about whether the proposed legislation would require a listing of all ingredients in the products that are the subject of the legislation, a panelist responded that the legislation includes a reference to the ingredient listing requirements of the FDA;
- a request that a list of e-cigarette and nicotine liquid ingredients be provided to the DOH;
- a recommendation to increase vendor fees, as identified in the proposed legislation;
- a recommendation for enforcement provisions in the proposed legislation pertaining to e-cigarettes and nicotine liquid;
- a recommendation to require warnings for certain populations or situations in which vaping could be dangerous;
- a recommendation to involve the DOH in proposed legislation pertaining to e-cigarettes and nicotine liquid;
- in response to a question from a committee member, a comment that the FDA has not yet issued a statement regarding vaping;
- a recommendation that the proposed legislation be combined with legislation pertaining to tobacco;
- a discussion of the manner in which age is verified in online purchases using a product that requires uploading a copy of the purchaser's driver's license and use of the last four digits of the purchaser's social security number;
- a discussion of the differing levels of nicotine in e-cigarette and nicotine liquid products and of the products ingested when vaped, including vegetable base and flavoring;
- a request for information regarding "zero nicotine products" and a response from Mr. Oueis that he would provide that information;
- a comment that it may be premature to conclude whether properly produced vaping products are safe when the CDC has stated that it has not yet identified which factors caused recent episodes of lung disease;
- a question about the manner in which e-cigarettes sold on Native American lands would be regulated and a panelist's response that while there would be differences with respect to the regulation of e-cigarettes sold on Native American lands, the goal would be for e-cigarette regulation to be as uniform as possible;
- a discussion of the possibility of requiring verification chips prior to the sale of vaping devices;
- in response to a question from a committee member, an acknowledgment by a panelist that removing flavors in e-cigarettes could result in growth of black market production of e-cigarettes;
- a concern that e-cigarettes may be too affordable for young people;
- a request for clarification about the intent for the use of funds generated from vaping industry regulation legislation and a panelist's comment that funds would be used to cover administrative costs to develop regulations and oversee compliance; and

- a statement that once e-cigarettes and nicotine liquid products are regulated, it could be difficult to prohibit use of those products in the future, even if the products are found to be unsafe.

Health Issues Panel

Mahesh Sita, New Mexico government relations director, American Heart Association (AHA), showed a video to the committees pertaining to the possible health risks of vaping for youth.

Mr. Sita noted that the video demonstrates the issues faced by youth and families arising from e-cigarette use. He presented data developed by the National Institutes of Health that reflects the increased prevalence of e-cigarette users. He noted that a National Institute on Drug Abuse study shows that twice as many boys use e-cigarettes as girls; that teens who vape are more likely to start smoking; and that teens believe flavoring is the main ingredient in e-cigarettes. Mr. Sita stated that the mysterious lung diseases and deaths that have recently begun to affect teens are linked to vaping. He noted that vaping among young people is leading to nicotine addiction. He stated that a certain manufacturer and marketer of e-cigarettes has asserted in advertisements that its product is a smoking cessation product, despite a statement to the contrary that was made to Congress by the manufacturer's chief product officer and co-founder.

Laurel McCloskey, executive director, Chronic Disease Prevention Council, spoke about conventional cigarette use, noting that smoking causes more deaths than alcohol, drug overdoses and suicide. She noted that despite laws that prohibit it, selling to minors remains an issue, with a 15-percent violation rate. She reported on an AHA recommendation to modernize the penalty structure and to license all tobacco retailers, including e-cigarette retailers.

A video was shown of sample advertising approaches intended to discourage vaping. Ms. McCloskey concluded by saying that such advertising could be purchased with increased funding.

Committee members discussed the following with Mr. Sita and Ms. McCloskey:

- an observation that in Hawaii, 94 percent of all attempts by underage customers to purchase e-cigarettes were successful;
- possible approaches to regulate the purchase of e-cigarettes, including requiring age verification at delivery as well as at the online point of sale;
- a comment that certain e-cigarette companies have conducted "back to school, 50 percent off" sales to attract youth purchasers; and
- whether rules in other states have resulted in penalty assessment and a request for information from the AHA on the effect of those penalties.

**Executive Session: Master Settlement Agreement Pending Litigation and Arbitration
(Closed Meeting)**

On a motion made, seconded and passed, the committees went into executive session.

Adjournment

Following the executive session, there being no further business, the meeting adjourned at 4:18 p.m.