

## Preemption Checklist

### Be prepared

- Expect preemption to become part of any proposed public health legislation at the federal or state levels even if it's not part of the original bill -- it may be added later
- Know your bottom line in advance. All major stakeholders should be informed about preemption and agree on a position before entering the legislative process.
- Make sure that proposed federal or state legislation includes a well-drafted "savings clause" that preserves the authority of lower jurisdictions to adopt stronger health protections. Then ensure that this anti-preemption clause is not replaced or weakened.

### Who is at the table?

*Preemption can interfere with the work of organizations, agencies, grassroots advocates, and community members working at the state, regional and local levels. Make sure that those who will be most impacted by preemption are represented in the decision-making process. These may include:*

- Parents, young people, seniors, diverse representatives of impacted communities, and grassroots advocates who support public health policies.
- Local and state officials.
- Community-based groups, including social justice and faith-based organizations.
- Foundations and other funders that support state or local prevention campaigns.

### Know (and learn from) your opposition

- Make sure to identify the supporters of preemption to understand why they want to eliminate state or local authority. Because preemption can be unpopular, its proponents may work behind the scenes. Be prepared to "shine a light" on the industry lobbyists who are the most common supporters of preemption.
- Learn from observing lobbyists for industries that support preemption. They may have closer relationships with elected officials and legislative assistants than public health advocates, and therefore more accurate and timely information about amendments and the legislative process.
- If vested interests oppose *any* legislation unless it includes preemption, ask: Why do they want preemption so badly? If they represent an industry that believes it benefits from weak health or safety regulations, what do they hope to gain by halting progress at the local and/or state level(s)?

- The supporters of preemption take the long view, so carefully consider the long-term opportunities for progress that may be lost due to preemption, including potential damage to a grassroots public health movement.

### **Consider both the short- and long-term consequences of preemption**

- Is a single standard best for public health, or is flexibility needed to address diverse local or state needs?
- Will preemption interfere with local or state innovation in solving public health problems?
- Is it likely that science and social norms surrounding a particular public health issue will evolve in the future?
- Will preemption have a negative impact on the public education and social norms change that can accompany grassroots public health movements?
- Who will ensure compliance with the law? If a state or federal law is preemptive, does that level of government have the practical capacity and resources to enforce the law?

### **Will preemption hinder a grassroots public health movement?**

- Have local, regional, or state organizations advocated for policy changes on the same topic at lower levels?
- Has legislation on the same topic been adopted or considered in lower jurisdictions?
- Have community members promoted policy changes on the same topic in schools, neighborhoods or other community settings?

### **Negotiating preemption**

- Have all major stakeholders, including those at the state or local levels, agreed on a position regarding preemption *before* legislative negotiations?
- Do those who are negotiating on behalf of the public health field have the relevant experience and expertise to appreciate the impact of preemption on public health initiatives at lower levels?
- Remember the bottom line: Will preemption improve the public's health, today and into the future?

*Sources: Pertschuk M, Pomeranz JL, Aoki JR, Larkin MA, Paloma M. Assessing the Impact of Federal and State Preemption in Public Health: A Framework for Decision Makers. Journal of Public Health Management and Practice. 2013; Institute of Medicine. For the Public's Health: Revitalizing Law and Policy to Meet New Challenges. Washington, DC: The National Academies Press, 2011.*

#### **Grassroots Change**

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