Robert Wood Johnson Foundation

Published: August 2, 2012
Grant ID: 59340, 63588, 64495 in PAD

Targeting Commercial Tobacco in the Navajo Nation

As a multi-funder effort to advance a commercial tobacco-free policy falls short, advocates continue to fight for the health of Navajo people

Commercial tobacco refers to all the branded tobacco products[1]—including chewing tobacco, cigarettes, cigars, and other products— sold by tobacco corporations for profit. Navajo people use commercial tobacco at a significantly higher rate than the overall U.S. population.

Tobacco use begins young. One-fifth of Navajo youth in grades 5 and 6 chew smokeless tobacco. By grades 9 and 10, that share rises to 56 percent.

Some 28 percent of Navajo men aged 15 to 24 smoke cigarettes daily. About 37 percent of Navajo men and 31 percent of Navajo women aged 20 to 39 chew smokeless tobacco.

According to the fundamental laws of the Navajo, the air we breathe, the water we drink, everything around us, is sacred. If the tobacco industry comes up with products that we know are harmful to our health, why should we allow people to be exposed to them?

Patricia Nez Henderson, MD
Navajo Nation coalition leader

With funding from *Tobacco Policy Change*, a national program of the Robert Wood Johnson Foundation (RWJF), [2] the Centers for Disease Control and Prevention (CDC), and other funders, the Southwest Navajo Tobacco Education Prevention Project spearheaded an ambitious effort to curb the use of commercial tobacco and exposure to secondhand smoke in the Navajo Nation.

Patricia Nez Henderson, MD, a Yale-trained physician and Navajo who directs the Black Hills Center for American Indian Health in Rapid City, S.D, led the effort. The Black Hills Center created the prevention project.

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[1] Marlboro, Lucky Strike, Camel, Winston, to name a few

[2] Grant ID#s 64495, 63588, and 59340. No RWJF funding was used for lobbying.

Traditional vs. Commercial Tobacco

Commercial tobacco refers to regular, daily use of tobacco products. Traditional tobacco refers to tobacco used in ceremonies only. For many tribes, traditional tobacco has a historic and cultural importance in tribal life—and is sacred. Traditional Navajo healers emphasize the difference between the tobacco used for ceremonial purposes and commercial tobacco.

"According to the fundamental laws of the Navajo, the air we breathe, the water we drink, everything around us is sacred," Henderson says. "If the tobacco industry comes up with products that we know are harmful to our health, why should we allow people to be exposed to them?"

The 330,000-member Navajo Nation occupies some 27,425 square miles of territory in Arizona, New Mexico, and Utah. Though these states have strong tobacco-control laws, they do not extend to tribal lands because they are sovereign nations with their own governments, laws, and jurisdictions. Of 564 federally recognized tribes, only a few, including the Black Feet and the Fort Peck Nation, have passed laws controlling commercial tobacco.

With the support of an array of outside experts, funders, and consultants, the Southwest Navajo Tobacco Education Prevention Project proposed legislation that would prohibit the use of commercial tobacco in all public places and workplaces within the Navajo Nation. [3] The measure did not apply to traditional tobacco used in tribal ceremonies.

"Since our policy was very comprehensive and involved many organizations and departments within the Navajo Nation, we had to make sure all these organizations were involved in every step," the project staff reported.

The tobacco-control coalition won the support of five Navajo Nation Agency Councils—a prerequisite to presenting the legislation to the Navajo Nation Council. The coalition then won support from four council subcommittees, received letters of support from two tribal groups that promote health, and provided a training session for delegates to the council before introducing the bill in summer 2008.

On July 25, 2008, the Navajo Nation Council voted 42–27 in favor of the Commercial Tobacco-Free Act of 2008. The advocates expected the president of the Navajo Nation to sign the legislation into law, as he had been supportive throughout the process. Once passed, this would be the strongest tobacco control legislation in the United States.

[3] No RWJF funds were used to draft or lobby for the proposed legislation.

Blindsided by the Gaming Industry

The gaming industry has been an impediment to tribal tobacco-control laws. Many tribes derive significant income from casinos, and the industry has blocked tobacco regulations by claiming that they will have a negative impact on business.[4]

When tobacco-control advocates began their work in the Navajo Nation, in 2005, the reservation had no casinos. "People in three different locations had voted down referendums to pass gaming as source of revenue for the tribe," Henderson said.

But that was about to change—much to the dismay of the Navajo tobacco-control advocates.

What the advocates didn't know was that the gaming industry had been working behind the scenes to bring casinos to the Navajo Nation. Front-page headlines of a Navajo newspaper declared that casino revenue would drop by 40 percent if the tobacco legislation went into effect. "'What the heck?'" Henderson recalled. "Gaming had not even started in Navajo Nation yet. But within two weeks, gaming became a powerful force and convinced our leader to veto smoke-free legislation."

An attempt to override the president's veto fell short. The ordinance was dead. But not for long.

If at First You Don't Succeed…

By the next legislative session, in 2009, the gaming industry had erected a casino and begun earning revenue for the Navajo Nation. The tobacco-control advocates presented new legislation, "but we were very concerned because by this time gaming was doing a lot of lobbying with the folks we had been working very closely with," Henderson recalled.

As the bill worked its way through council committees, delegates weakened it by adding amendments to exempt gaming. As a final blow, moments before the bill was introduced on the council floor, a representative of the gaming industry presented a check for $5 million to the Navajo Nation.

"I turned to one of the legislators and said, 'We have to kill this bill. This is not going to work,'" Henderson recalled. "As a coalition we all agreed that this [a law with exemptions for gaming facilities] would kill all the work we were doing. We were successful in killing the bill. It died on the floor."

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[4] More information on the gaming industry and smoking bans is available online.

"This Is Not Health Policy"

By 2010, the gaming industry had built a couple more casinos—all allowing smoking. However, the Navajo Nation had also elected a new president, Ben Shelly, who vowed to create a smoke-free reservation.[5] He drew up an executive order to that effect. However the nation's attorney general advised that it would have no legal authority. The tobacco-control effort would require legislation.

In June 2011, the coalition was ready to introduce yet another commercial tobacco-free bill. This time, "gaming beat us to the punch with their own legislation," Henderson said. The industry's bill exempted casinos, of course, and the tobacco-control advocates again found themselves organizing to kill the legislation.

"We know that in states that have exempted gaming, it takes 13 to 14 years to repeal that," Henderson said. "If it takes six years to pass our comprehensive bill, we would rather do that than have it take 13 years."

The industry-sponsored bill passed the legislature, but when it came to the president's desk, Shelly vetoed it, saying, "This is not a health policy. This will not protect *all* people on Navajo Nation."

Taking a Stand

Despite the setbacks, Henderson and her team have no intention of giving up. A comprehensive tobacco-control bill will pass, she believes. "We look at how long it took to get to where we are, and we are optimistic that, in time, we will get there," she said.

Henderson and her team have not won universal support for their efforts. An elected leader recently advised Henderson to "butt out" of matters best left to tribal leaders. "I was totally blown away by that," Henderson said. "Our native leaders are putting policies in place to basically slowly kill people."

"That is why I am butting in," she said. "Who else? It is up to us to take a stand and build a healthier environment for our own people."

Next Steps

The tobacco-control coalition expects to introduce a new bill during the 2012 legislative session. Meanwhile, with funding from the final round of *Tobacco Policy Change*, the advocates broadened their efforts to another policy arena: employee wellness.

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[5] Shelly has received widespread recognition for his outspoken tobacco-control advocacy. In May 2011, he accepted an award at the National Smokefree Gaming Symposium in Las Vegas, Nev. In July 2011, the Indian Health Service gave Shelley the Director's Special Recognition Award for Public Health Leadership—the first time an elected official had received the award.

Working with the tribal housing authority, the coalition pushed for a policy that provides an hour during the workday for Navajo employees to exercise. With the new policy now in effect at the housing authority, Henderson hopes it will be a model for the 12 other departments of Navajo Nation.

"With high rates of obesity and diabetes in the Navajo Nation," Henderson said, "this is an important issue for us."

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Grant ID # PAD, 59340, 63588 and 64495
Program area: Public Health