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TESTIMONY OF MICHAEL A. MADDEN, MD

**BEFORE THE MINNESOTA HOUSE
PREVENTIVE HEALTH POLICY DIVISION**

REGARDING HF1721

I. Introduction

My name is Dr. Michael Madden, and I've been a family physician for 39 years. I speak in opposition to the portion of HF1721 that increases what is already the highest tax in the nation on electronic nicotine delivery systems and other nicotine vapor products, and I urge you to reflect science-backed tobacco harm reduction in the state's tobacco taxation structure. Your committee should balance the need to limit youth access to these products with the enormous opportunity non-combustible products present for tobacco harm reduction among the State's adult smoking population.

Importantly, you should know that, while RAI Services Company. has compensated me for my time in preparing this testimony, the opinions expressed are my own.

In my roles as a family physician, as President of the Board of Allies for Health + Wellbeing (Southwest Pennsylvania's largest provider of services and care for individuals with or at risk for HIV), and as former Chief Medical Officer of Gateway Health (a multi-state managed care company serving Medicare and Medicaid populations), I have worked in clinical and administrative settings to address harm reduction in a variety of public health crises, including the opioid epidemic, HIV/AIDS, and smoking. I have also taught evidence-based literature review extensively to physicians, residents, and medical students.

II. What is Harm Reduction?

Harm reduction is a key principle we public-health professionals employ to mitigate deadly health risks. You are, no doubt, familiar with harm-reduction methods or techniques used to address a variety of public health ills, such as methadone, needle-exchange programs, and naloxone for people addicted to opioids. Additionally, condoms and PrEP (preexposure prophylaxis) are harm reduction tools used to decrease the chance of HIV transmission in sexually active adults, while helmet and seatbelt laws have long been commonplace methods for reducing death and serious injury in motor vehicle accidents.

While neither methadone, nor condoms, nor seatbelts entirely reduce an individual's risk of death from drug overdose, HIV, or a car accident, respectively, all of these harm reduction techniques are substantially safer than the conditions they address.

In the case of smoking, which claims 1,300 lives per day in the United State and is the country's leading cause of preventable death, tobacco harm reduction equals a broad array of non-combustible tobacco products that are both available and acceptable to current cigarette smokers. A body of evidence from leading health authorities indicates that vapor products are 90 to 95 percent less harmful than combustible cigarettes. Your Committee has the opportunity to leverage the state's tax structure to encourage, rather than discourage, smokers of traditional, combustible cigarettes to switch to these less harmful products.

III. What is Tobacco Harm Reduction?

Smokers die prematurely not because they consume nicotine – which is not a carcinogen – but because of **how** they consume it: in the combustible form of a cigarette. According to the FDA, switching completely from cigarettes to a “potentially less harmful nicotine delivery system,” could “significantly reduce the risk of tobacco-related death and disease.”¹ Further, the National Academies of Sciences, Engineering, and Medicine has found that “[t]here is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.”²

And beyond simple substitution of products, recent studies reveal that use of e-cigarettes may actually help adult smokers quit using combustible tobacco products. According to Public Health England, a leading public health organization in the U.K., “vaping carries a small fraction of the risk of smoking” and “[u]sing a nicotine-containing e-cigarette makes it much more likely someone will quit successfully than relying on willpower alone.”³

In fact, a study recently published in the New England Journal of Medicine found that cigarettes smokers who used e-cigarettes while quitting smoking were nearly twice as likely to be smoke free one year later.⁴ While 9.9 percent of the smokers who did not use e-cigarettes were smoke free at the end of the year, 18 percent of the smokers utilizing e-cigarettes were no longer using combustible cigarettes at the end of the study period.

In 2009, when the FDA began regulating the tobacco industry, it established a procedure through which a tobacco product could be approved for marketing as a “modified risk tobacco product,” or MRTP. Products approved for MRTP marketing have been determined by the FDA to be “appropriate for the protection of public health.”⁵ Since that time, a dozen non-combustible tobacco products have been approved by the FDA as modified-risk tobacco products, and at least one state has already altered its tobacco taxation structure to reflect this

¹ 83 Fed. Reg. at 11824.

² <http://nationalacademies.org/hmd/reports/2018/public-health-consequences-of-e-cigarettes.aspx>

³ <https://publichealthmatters.blog.gov.uk/2019/10/29/vaping-and-lung-disease-in-the-us-phis-advice/>

⁴ Hajek, et al., “A Randomized Trial of E-cigarettes versus Nicotine-Replacement Therapy,” NEJM, 380:7, Feb. 14, 2019.

⁵ <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-marketing-orders>

tobacco harm reduction policy: in Connecticut, products approved by the FDA for marketing as modified risk products are taxed at 50 percent of the rate of other tobacco products.⁶

Additionally, manufacturers of “new” tobacco products, including vapor products, were required to submit safety and public health benefit data to the FDA by September 9, 2020, or have their products removed from the market. This process (referred to as a Pre-Market Tobacco Application or PMTA) requires manufacturers to provide extensive and persuasive evidence that their products will provide tobacco harm-reduction benefits for existing adult smokers, while limiting their appeal to and access by youth – the exact combination of policy objectives you hope to achieve here. Only those products that meet the FDA’s definition of “appropriate for the protection of public health” will be approved for continued sale in the United States.

IV. What Role Do Taxes Play in Tobacco Harm Reduction?

Minnesota today has the nation’s highest tax on vapor products. Research funded by the National Institutes of Health and published in 2020 by the National Bureau of Economic Research indicates that as e-cigarette prices rise, combustible cigarette sales rise along with them.⁷ The study’s authors estimate that for every e-cigarette cartridge not purchased because of an increase in the tax on e-cigarettes, more than *six packs* of cigarettes are purchased.⁸

Further raising the nation-leading tax on vapor products and the tax on all tobacco products that are substantially less harmful than combustible cigarettes disincentivizes Minnesota’s cigarette smokers to switch from the highest risk tobacco product to a product that is significantly less harmful. If you determine increasing taxes on vapor and other products important for tobacco harm reduction is the correct course for Minnesota, I urge you to consider amending the proposed bill to cut taxes on tobacco products that have or will receive MRTTP approval from the FDA and on those that receive PMTA approval.

V. Conclusion

You can reconsider this proposed tax structure in a way that would support smokers to reduce their health risks. Using your taxing power to encourage cigarette smokers to use these lower risk products instead of more expensive and more harmful products can drive a decrease in

⁶ <https://vaporproductstax.com/connecticut-will-apply-a-discount-when-taxing-modified-risk-tobacco-products/#:~:text=Legislators%20in%20the%20State%20of,%E2%80%9Cmodified%20risk%20tobacco%20product%E2%80%9D>

⁷ <https://www.forbes.com/sites/kellyphillipsrb/2020/02/10/new-study-suggests-raising-taxes-on-e-cigarettes-could-encourage-traditional-smoking/?sh=220f433d57bf>

⁸ Cotti, et al., The Effects of E-Cigarette Taxes on E-Cigarette Prices and Tobacco Product Sales: Evidence from Retail Panel Data. NBER Working Paper Series, Working Paper 26724, <http://www.nber.org/papers/w26724>.

Minnesota's smoking rate and the associated healthcare and societal costs resulting from smoking-related illnesses.