

# Welcome

Please stand by. We will begin shortly.

## To Hire or Not to Hire: Smokers and the Workplace

Thursday, October 3, 2013 · 1pm Eastern Time (90 minutes)



## Moderator



### Catherine Saucedo

- Deputy Director,  
Smoking Cessation Leadership  
Center, University of California, San  
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## Agenda

- **Welcome**
  - Catherine Saucedo, Deputy Director, SCLC
- **Special Introduction**
  - Steven A. Schroeder, MD
- **“Tobacco users need not apply”**
  - David A. Asch, MD, MBA
- **“The ethics of not hiring smokers”**
  - Harald Schmidt, PhD
- **Questions and Answers**
- **Closing Remarks**

## To Hire or Not to Hire: Smokers and the Workplace

### Webinar objectives

- Learn two opposing perspectives on the issue of not hiring smokers
- Describe existing health care organizations' policies on not hiring smokers
- Examine the ethical considerations on not hiring smokers and why certain populations are affected the most by this policy

Disclosure: Faculty speaker, moderator, and planning committee members have disclosed no financial interest/arrangement or affiliation with any commercial companies who have provided products or services relating to their presentation or commercial support for this continuing medical education activity.

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- All participants will be in **listen only mode**.
- Please **make sure your speakers are on** and adjust the volume accordingly.
- If you do not have speakers, please request the dial-in via the chat box.
- **This webinar is being recorded** and will be available on the SCLC website, along with the slides.
- **Send questions to the chat box** at any time for the presenters.

## Today's speaker



### David A. Asch, MD, MBA

- Professor, Perelman School of Medicine and the Wharton School, University of Pennsylvania
- Executive Director, Penn Medicine Center for Health Care Innovation, Director, Robert Wood Johnson Foundation Health & Society Scholars Program
- Director, Robert Wood Johnson Foundation Clinical Scholars Program, Center for Health Equity Research and Promotion, Philadelphia VA Medical Center

## Today's speaker



 **Penn** DEPARTMENT of  
MEDICAL ETHICS & HEALTH POLICY

### Harald Schmidt, PhD

- Assistant Professor, Department of Medical Ethics and Health Policy
- Research Associate, Center for Health Incentives and Behavioral Economics, Perelman School of Medicine, University of Pennsylvania

## Special Introduction



### Steven A. Schroeder, MD

- Director, Smoking Cessation Leadership Center
- Distinguished Professor of Health and Health Care, Department of Medicine, UCSF

# To Hire or Not?

## The Ethics of Not Hiring Smokers

Harald Schmidt, Ph.D., Kristin Voigt, Ph.D., and Ezekiel J. Emanuel, M.D., Ph.D.

Finding employment is becoming increasingly difficult for smokers. Twenty-nine U.S. states have passed legislation prohibiting employers from refusing to hire job candidates because they smoke,

but 21 states have no such restrictions. Many health care organizations, such as the Cleveland Clinic and Taylor Health Care System, and some large non-health care employers, including Scotts Miracle-Gro, Union Pacific Railroad, and Alaska Airlines, now have a policy of not hiring smokers — a practice opposed by 65% of Americans, according to a 2012 poll by Harris International. We agree with those polled, believing that categorically refusing to hire smokers is unethical: it results in a failure to care for people, places an additional burden on already-disadvantaged populations, and preempts interventions that more effectively promote smoking cessation.

sequences of their smoking, such as higher costs for health insurance claims, higher rates of absenteeism, and lower productivity. These costs amount to an estimated additional \$4,000 annually for each smoking employee.

One justification for not employing smokers, used primarily by health care organizations, is symbolic. When the World Health Organization introduced a “non-smoker-only” hiring policy in 2008, it cited its commitment to tobacco control and the importance of “denormalizing” tobacco use. Health care organizations with similar policies have argued that their employees must serve as role models for patients and that only nonsmokers can do so. A second, more general, argument is that employees must take personal responsibility for actions that impose financial or other burdens on employers or fellow employees. Accordingly, smokers should be responsible for the consequences of their smoking, such as higher costs for health insurance claims, higher rates of absenteeism, and lower productivity. These costs amount to an estimated additional \$4,000 annually for each smoking employee.

N ENGL J MED 368:15 NEJM.ORG APRIL 11, 2013

1369

Source: Schmidt H, Voigt K, Emanuel EJ. The Ethics of Not Hiring Smokers. *N Engl J Med* 2013; 368:1369-1371.

## Conflicts and Compromises in Not Hiring Smokers

David A. Asch, M.D., M.B.A., Ralph W. Muller, M.A., and Kevin G. Volpp, M.D., Ph.D.

Tobacco use is responsible for approximately 440,000 deaths in the United States each year — about one death out of every five. This number is more than the annual number of deaths caused by HIV infection, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined<sup>1</sup> and more than the number of American servicemen who died during World War II.

A small but increasing number of employers — including health care systems such as the

Cleveland Clinic, Geisinger, Kaylor, and the University of Pennsylvania Health System — have established policies of no longer hiring tobacco users. These employers might justify such hiring policies in many ways — arguing, for instance, that they’re taking a stand against a habit that causes death and disability, that they’re sending an important message to young people and others within their communities about the harms of smoking, or that they’re reducing their future costs, given

that smokers, on average, cost employers several thousand dollars more each year than nonsmokers in health care expenses and lost productivity.

These policies engender controversy, and we recognize that they risk creating or perpetuating injustices. One set of concerns arises from the fact that tobacco use is more concentrated in groups with lower socioeconomic status. Hospitals do better than most institutions at creating employment and advancement op-

N ENGL J MED 368:15 NEJM.ORG APRIL 11, 2013

1371

Source: Asch DA, Muller RW, Volpp KG. Conflicts and Compromises in Not Hiring Smokers. *N Engl J Med* 2013; 368:1371-1373.

# Tobacco users need not apply



David A Asch, MD, MBA  
University of Pennsylvania  
Department of Veterans Affairs

The opinions expressed do not reflect those of the Department of Veterans Affairs

## The issue

- An estimated 6,000 employers have establishing policies of no longer hiring tobacco users.
- Some of these employers are health systems:
  - » Cleveland Clinic
  - » Geisinger Clinic
  - » Baylor
  - » The University of Pennsylvania Health System

1. Is this OK?
2. Is this better or worse if you are a health system?

## Is that really legal?

- Apparently this is legal in 21 states. In the other 29 states, smokers are protected.
- In 1998, the American Civil Liberties Union (ACLU) developed model legislation against such hiring bans.
- Ironically, the ACLU partnered with US Tobacco interests in promoting such legislation.

### Legal or not, doesn't this sound like a bad idea?

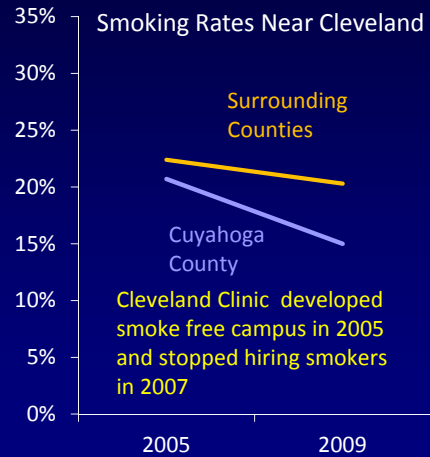
1. Isn't this intrusive? I can see why an employer might have a say in whether I smoke on the job, but shouldn't I be beyond the reach of my employer on my own time?
2. Tobacco use is concentrated in groups with lower socioeconomic status. Increasing employment barriers to these groups seems regressive. (And health systems ought to be even more supportive.)
3. Tobacco is heavily marketed and highly addictive. Hiring bans effectively penalize people for something that is not under their control.

### What reasons support this idea?

1. It will likely save money for the employers who adopt such policies.
    - » Smokers have much higher health care costs.
      - Some of that may reflect tobacco use.
      - Some of that may reflect behaviors associated with tobacco use.
    - » Smokers may have spouses who smoke.
    - » Smokers may be less productive because of breaks.
- These reasons don't reflect increases in overall social welfare, but reflect the self-interest of firms.

## What reasons support this idea?

2. These policies may encourage people to quit or provide additional reasons for youth not to start.
3. These policies may help further denormalize smoking.



## What reasons support this idea?

4. Perhaps health systems are able to take a stronger position because of their mission.
  - » Are such policies mission-consistent or mission-inconsistent?

In model legislation proposed by the ACLU against hiring bans, the ACLU included an exception for personal behavior that is incompatible with the fundamental objectives of the organization (e.g., the American Lung Association ought to be able to deny employment to smokers.)



## Questions that make people uncomfortable

- Can you really say with a straight face: “We’re not hiring you for your own good”?
- How do you actually do this? Do you biochemically verify?
- Today you won’t hire tobacco users. What’s next? Are you not going to hire people who are overweight?

## Social norms change

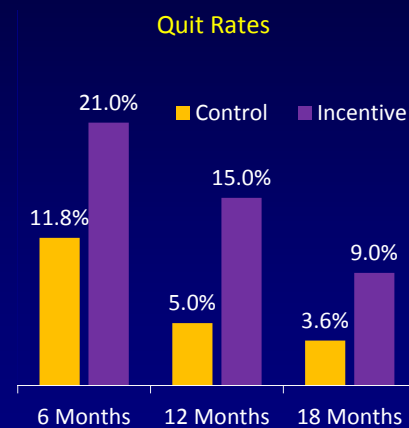
- It wasn’t too long ago that there were smoking sections on airplanes.
- It is common in European restaurants for people at the table next to you to be smoking.
- While there is opposition to some of New York Mayor Michael Bloomberg’s health initiatives about large sugar-sweetened beverages, there is also considerable support.

## New stakeholders

- In the current era, we seem to tolerate a larger range of stakeholders involving themselves in what were previously thought of as personal health decisions.
  - » Employers
  - » Cities
- These stakeholders may not have a responsibility or even a social license to take an active role in these decisions, but they have an ability to do so.
  - » Is this civic contribution or officious meddling?

## Incentives for long term quit rates

- 878 Subjects from 85 General Electric worksites throughout US
- Randomized controlled trial: Information about smoking cessation programs vs. information plus incentives
  - \$100 for completion of program, \$250 for short-term cessation, \$400 for 6 month cessation
  - Incentives discontinued after 12 months



Volpp et al, NEJM. 2009; 360(7): 699-709.

## A ladder of interventions

1. Eliminate choice: Make tobacco use illegal
2. Restrict choice: Fire smokers
3. Guide choice through disincentives: financially penalize smokers or refuse to hire them
4. Guide choice through incentives: financially reward not smoking
5. Guide choices through default policy: auto-enroll smokers in smoking-cessation programs
6. Enable Choice: Make smoking-cessation programs more accessible
7. Provide information: Educate people about the benefits of quitting
8. Do nothing or simply monitor

Adapted from Nuffield Council 2007

## The ethics of not hiring smokers

Harald Schmidt (Kristin Voigt, Zeke Emanuel)  
Department of Medical Ethics and Health Policy,  
Center for Health Incentives and Behavioral Economics



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CENTER for HEALTH INCENTIVES and BEHAVIORAL ECONOMICS  
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## Overview<sup>1</sup>

Why it is wrong not to hire smokers:

- Overly optimistic assumptions about personal responsibility
- Promotes and exacerbates socio-economic disparities
- Wrong concept of employers' role in public health
- Ignores availability of less intrusive alternatives

<sup>1</sup>The presentation draws centrally on, but also expands: Schmidt, H. Voigt, K., Emanuel, E. 2013. The ethics of not hiring smokers. *New England Journal of Medicine* 368(15), 1369-1371



## A few preliminary notes

- Smoking kills, costs, and is unpleasant to many people
- The tobacco industry's past marketing strategies and current activities in developing countries are obscene
- **A world without commercial tobacco would be a better one**
- The argument here is not about libertarianism or nervousness around paternalistic interventions



## Legal context

- 28 states and Washington DC offer some form of employment protection for smokers
- Rationales:
  - Avoid discrimination (17)
  - Avoid segregation (1)
  - Protect privacy (24)
  - **Protect employment opportunities (1)**

Patel, R. Schmidt, H. [forthcoming] Preventing employers from not hiring smokers: legal and ethical rationales.



## Why not to hire: helping people to help themselves

Tangible present benefit of employment can:

- Help to counterbalance the immediate costs of quitting
- Help secure more distant health benefits

Asch, D, Muller, R, Volpp, K. 2013. Conflicts and Compromises in Not Hiring Smokers. NEJM. DOI:10.1056/NEJMp1303632



## Why not to hire: cost

Compared to non-smokers, smokers have:

- Higher healthcare cost
- Higher rates of absenteeism
- Lower productivity

Estimate: around \$4,000 p.a.

Berman, Micah, et al. "Estimating the cost of a smoking employee." *Tobacco control* (2013).



## Why not to hire: signaling

“WHO is at the forefront of the global campaign to curb the tobacco epidemic. The Organization has a responsibility to ensure that this is **reflected in all its work**, including in its recruitment practices **and in the image projected** by the Organization and its staff members.”

WHO 2008. WHO Policy on non-recruitment of smokers or other tobacco users.



## Why not to hire: personal responsibility

[t]he cost of sloth, gluttony, alcoholic intemperance, reckless driving, sexual frenzy, and smoking is now a national, and not an individual, responsibility. This is justified as individual freedom—but one man's freedom is another man's shackle in taxes and insurance premiums. I believe the idea of a 'right' to health should be replaced by the idea of an individual moral obligation to preserve one's own health—a public duty if you will. The individual then has the 'right' to expect help with information, accessible services of good quality, and minimal financial barriers.

Knowles, J. 1977. *Daedalus*



## Against cost: consistency

Higher cost, absenteeism and lower productivity: smokers, you are not alone!



Source: Burd, S. 2009. Healthcare Solutions that Work. Academy Health presentation, available at: <http://www.academyhealth.org/files/nhpc/2009/Burd.pdf>



## An economic analysis agrees...

“Think of other behaviors that society would like to discourage teenage pregnancy, committing a felony -- should good jobs be closed to young mothers and felons who served their time? There is probably some Benthamite calculus that can rationalize discrimination here, but it is distinctly unlovely -- and there must be better and more effective ways to change behavior than this.”

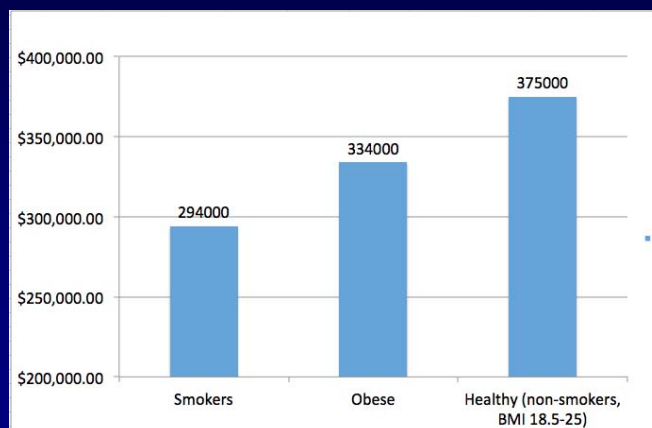
“The most fundamental message is one you might expect from an economist: whatever your ethical goals, it is better to achieve them by adjusting wages and prices than by rules about who gets a job.”

Pauly, M. 2013. Hospitals' Smoker Non-Hiring Debate: An Economic Perspective. Penn LDI Blog, 6 Aug 2013, available at: <http://tinyurl.com/kr37qu7>



## Against cost: whose cost? What timeframe?

Lifetime healthcare cost from age 20:



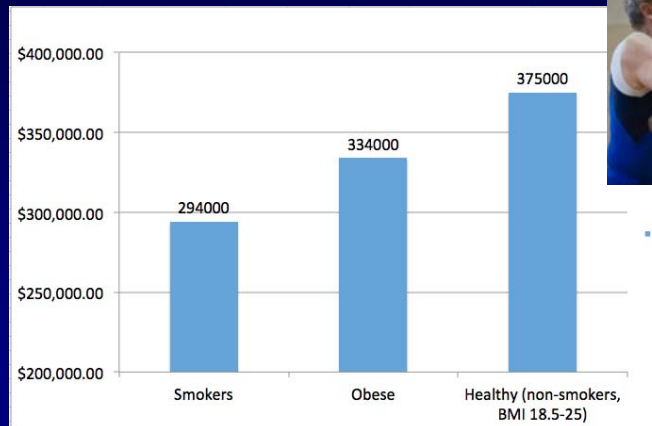
Van Baal, Pieter HM, et al. "Lifetime medical costs of obesity: prevention no cure for increasing health expenditure." *PLoS medicine* 5.2 (2008): e29





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## Against personal responsibility: lack of control

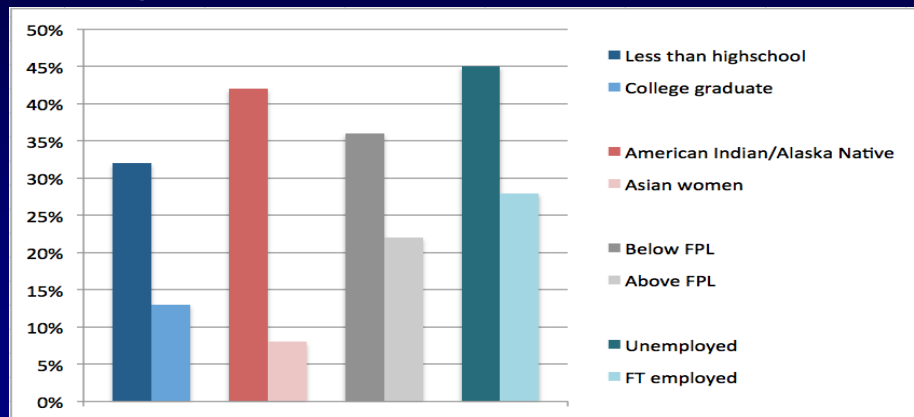
'Ought implies can'. But smoking is not fully under an individual's control:

- 88% began smoking < 18 years.
- 7 in 10 smokers want to quit. But only 3-5 out of 100 succeed unaided.

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## Against personal responsibility: disparities

Smoking is distributed unequally:



See citations in: Schmidt, H, Voigt, K., Emanuel, E. 2013. The ethics of not hiring smokers. *New England Journal of Medicine* 368(15), 1369-1371

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## Against signaling and benevolent paternalism: proper CSR, alternatives

- Public health mission (Institute of Medicine): “fulfill[ing] society’s interest in assuring conditions in which people can be healthy.” Employers need to play their part, and not shun responsibility.
- Healthcare organizations care for all, irrespective of reasons of need. Paradoxical to single out smokers when it comes to employment.
- Moving up the intervention ladder is premature: explore other levels and types of (carrot) incentives

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## Against signaling and benevolent paternalism: proper CSR, alternatives

Wellness incentives: from 2014, penalties of up to 50% of cost of coverage permissible. At least evaluate these first.



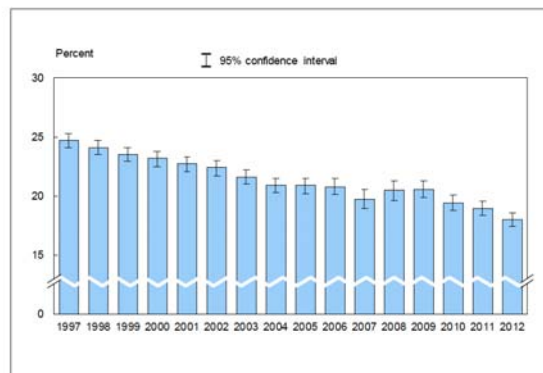
Annual surcharges:

- Home Depot: \$240
- PepsiCo: \$600
- Walmart: \$2,000



## Smoking rates are still in decline...

**Figure 8.1. Prevalence of current smoking among adults aged 18 and over: United States, 1997-2012**



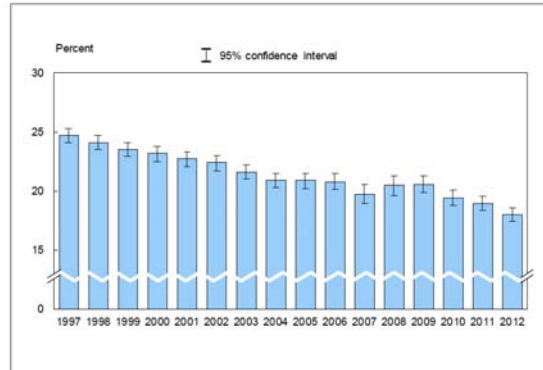
DATA SOURCE: CDC/NCHS, National Health Interview Survey, 1997-2012, Sample Adult Core component.

CDC/NCHS, available at: <http://tinyurl.com/qb43ew6>



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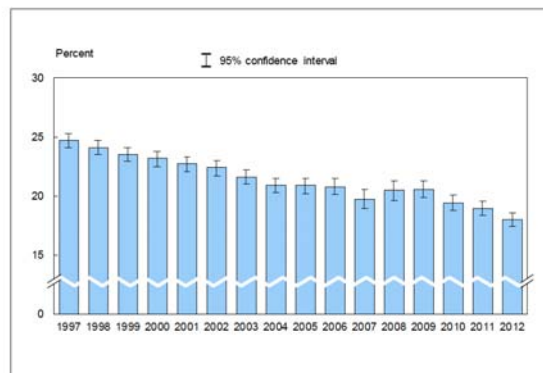


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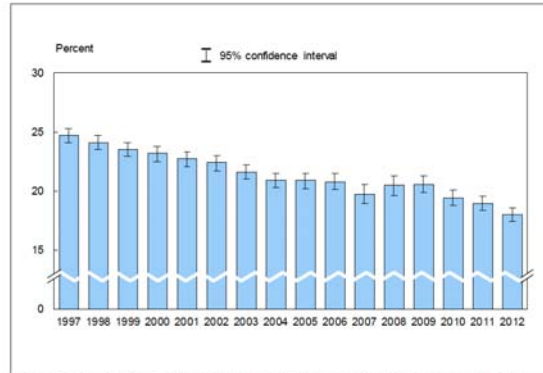


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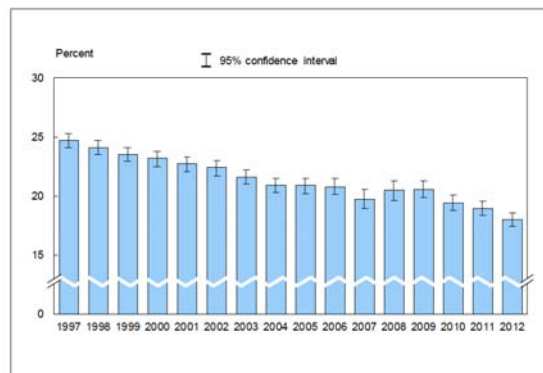
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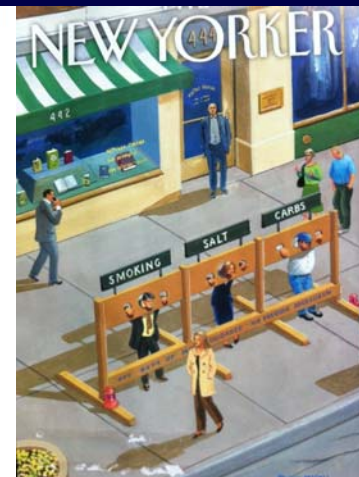
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## Conclusions

Cherry-picking “low-risk” employees by not hiring smokers:

- Overplays voluntariness of smoking, underplays addictiveness.
- Disproportionately penalizes poorer and unemployed people.
- Fails to take seriously employers’ public health responsibility.
- Assumes that we are at the end of the road, but ignores that other, less intrusive policy options exist.

## Conclusions

Instead:

- Reduce smoking through action at the population level
- Support quitting with evidence-based interventions

Many thanks!

For questions and comments:  
schmidth@mail.med.upenn.edu



## Questions and answers



- Feel free to submit questions via the **chat box**

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- 1-877-509-3786



## Closing remarks

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- Thank you for your continued efforts to combat tobacco.
- Stay tuned for the next SCLC webinar!