Missouri Foundation for Health
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Tobacco Master Settlement Agreement Factsheet
Current Impact on Missouri

Background

In 1998, 46 states and territories reached a Master Settlement Agreement (MSA) with four major cigarette manufactures in the United States. The purpose of the MSA was to settle numerous lawsuits filed by states against the tobacco industry to recoup medical costs for tobacco-related conditions. In exchange for dismissing the pending lawsuits, the MSA requires the participating manufacturers (PMs) to make annual multi-billion dollar payments to states for the associated health care costs resulting from tobacco use; permanently restricts PMs from targeting advertising at youth; and required PMs to make a one-time contribution of $1.5 billion toward public education and counter advertising against cigarette use. Of the annual disbursements, 2.27 percent of the payments are allocated to the State of Missouri. This percentage is known as Missouri's allocable share. This amount stays the same and does not vary by cigarette sales. The Settlement payments contribute an estimated $130 million to Missouri's treasury each year.

Another element of the MSA required each state to enact a model escrow statute that would compel non-participating manufacturers (NPMs) to contribute annual escrow deposits at an amount almost equal to the PMs' payments. The rationale behind this provision is to ensure that funding exists to satisfy future judgments the states may have against NPMs and to certify NPMs are not able to undercut the public health benefits resulting from the MSA by selling discounted cigarettes. Hypothetically, those NPMs who are not bound by the MSA could adjust their pricing to be more competitive than PMs (who have had to raise prices to reflect these payments) and undermine the positive effects of the MSA.

One caveat of the MSA is that PMs are able to reduce their payment obligations to states if the MSA is deemed to be a significant factor contributing to a national market share loss for the PMs. The payment obligation adjustments are assessed depending on each state's allocable share of the payments. Nevertheless, the MSA allows states to avoid these payment reductions if they "diligently enforce" their model escrow statutes. This provision serves as an incentive, because it allocates the losses that would otherwise be assessed to all states to only those states not diligently enforcing their escrow statutes. Therefore, the fewer states that fail to diligently enforce their statutes, the greater loss each non-diligent state must bear.[i]

Issue

In 2006, tobacco manufacturers filed to compel arbitration, pursuant to the MSA, against states they claim had failed to diligently enforce their escrow statutes for 2003. In September of 2013, the arbitration panel found that Missouri and five other states had failed to diligently enforce the statutes as required by the MSA, and as a result would lose $70 million of its expected 2014 payment. The State of Missouri appealed this arbitration decision to the St. Louis City Circuit Court, which ordered the PMs to refund approximately $50 million after finding that the arbitration panel improperly adjusted the payments. In September 2015, the Missouri Court of Appeals reversed this decision and transferred the case to the Missouri Supreme Court. Simultaneously, the Missouri Attorney General, Chris Koster worked with the tobacco industry to settle the $50 million dispute. In February 2016, Attorney General Koster announced that he had negotiated a settlement to reinstate the $50 million in funding. The agreement would also protect against future losses related to payments for 2004 through 2014. This arrangement, however, was contingent upon the enactment of certain policy changes by the Missouri General Assembly.

After signing the MSA, Missouri and several other states discovered issues with the model escrow statute that inhibited diligent enforcement. To address these issues, states developed proposed legislation that would improve enforcement mechanisms. The first of these is a requirement that NPMs obtain prior approval from states before they are allowed to sell cigarettes within the state. The second proposed legislative change would be to repeal what is known as the "Allocable Share Release" (ASR) in the model statute. This provision allows NPMs to avoid the full scale of escrow obligations to states by selling products in only a few states. The remaining 45 states involved in the MSA have enacted this legislation. These legislative changes were necessary to reach the new settlement with the tobacco industries. To receive the payments for 2016, the legislative change had to be enacted by April 15, 2016 (the deadline for tobacco manufacturers to pay their annual deposits). Despite the April deadline, Missouri could still receive the funds for 2017 if the legislative change was signed by the Governor by June 3. Unfortunately, neither of those deadlines were met as the proposed bill never passed out of the first Chamber.

The issue that arises is that the pending litigation only relates to the diligent enforcement of the model escrow statute for 2003. There could theoretically be challenges to the MSA payments made between 2004 and 2014, unless these policy changes are made pursuant to the settlement. In fact, the PMs have already begun initiating arbitration relating to Missouri's lack of diligent enforcement in 2004. This could lead to unfavorable arbitration rulings for not only 2004, but each subsequent year.[ii]

Current Updates

The Governor of Missouri is responsible for maintaining a balanced state budget. In October of 2015, Missouri Governor Jay Nixon chose to withhold $46.1 million of the state's budget. The administration relied on the refund of the $50 million in tobacco settlement payments to balance Missouri's Fiscal Year 2016 budget. Governor Nixon made the decision to withhold these funds in September 2015 when the Court of Appeals reversed the lower court's decision and found in favor of the PMs. Of the amount withheld, more than $35 million was taken away from the Department of Mental Health, the Department of Health and Senior Services and the Department of Social Services, with the latter experiencing the largest funding cut. Reimbursement for Medicaid providers and programs such as Asthma Services and the Community Health Access Program are among those that experienced funding reductions through the withholds. Without resolution of this issue the state will continue to experience negative payment adjustments, which would significantly affect the state budget and compel the Governor to withhold funds from necessary services.

Endnotes

[i] National Association of Attorneys General, "ABCs of the Tobacco Master Settlement Agreement", November 6, 2007. http://www.naag.org/publications/naagazette/volume_1_number_2/the_abcs_of_the_tobacco_master_settlement_agreement.php?searched=american+legacy&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1+ajaxSearch_highlight2; *See also*, The National Association of State Budget Officers, "Update on the Tobacco Master Settlement Agreement and Its Impact on States", December 20, 2013. http://www.nasbo.org/sites/default/files/Master%20Settlement%20Agreement.pdf.

[ii] Letter from Missouri Attorney General Chris Koster to President Pro Tem Richard, February 8, 2016. http://ago.mo.gov/docs/default-source/press-releases/2016/20160208tobaccoletter_richard.pdf?sfvrsn=4.