

Free our world from the manipulation, deception and addiction...

Free our culture from tactics of unbridled corporate greed...

Free children and nonsmokers from forced poisoning...

tobacco freedom.org

Scott Goold, Director

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September 1999

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The Attorneys General Master Settlement Agreement: A Comprehensive Policy Analysis

Presented to the New Mexico Tobacco Settlement Committee

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New Mexico's Attorney General Master Settlement Agreement



Friday, November 20, 1998

Tom Udall talks with Action 7 News reporter, Jon Leiberman.

Udall announces New Mexico will sign the landmark settlement with the tobacco industry.

Terms of the agreement focus on the 25 year, \$1.2 billion dollar tobacco industry payments to the state.

It appears to be a great day for New Mexico...

Our organization asked the attorney general to postpone signing the proposed settlement. We have been highly concerned about this deal for a number of reasons. These include, but are not limited, to:

1. The terms of the settlement allowed officials and the public only one week to review the proposal.
 2. New Mexicans not of the legal age to vote, those under 18, were not represented in the political process. They and their children will be forced to live under the terms of the settlement.
 3. We are fully aware of the tobacco industry's history of manipulation and deceptive practices.
 4. The settlement did not resolve how the money should be spent.
 5. Once the various states signed the pact, tobacco stock prices immediately increased on Wall Street.
- This is a great deal for the tobacco industry. Is it a great deal for New Mexico?

One major provision in the settlement was the prohibition of tobacco billboard advertisements.



While the settlement ended billboard advertising, it allows other forms of advertising and promotional activities. Our organization recently uncovered a 1994 CONFIDENTIAL R.J. Reynolds document that introduces a new marketing plan. From that document, we learned that tobacco companies had already planned to move away from billboard advertising. They did not believe the medium was effective with the modern consumer, specifically Gen Xers.

The Human Side of the Master Settlement Agreement

There has been a tremendous amount of attention directed to the financial aspects of this agreement. Most New Mexicans perceive the tobacco industry will pay the state approximately \$1.2 billion over 25 years. We hear little about the human issues associated with the agreement.

I have often wondered how many people died as a result of the fact that medical and public health professionals were misled by the tobacco industry... (C. Everett Koop)

Historical Perspective

Since 1964, when U.S. Surgeon General Luther Terry officially announced tobacco was hazardous to health, we estimate there have been a minimum of 15 million deaths due to tobacco-related illnesses and disease.

Recently made public internal tobacco industry documents demonstrate conclusively the tobacco industry knew of the associated health risks from smoking prior to the surgeon general's announcement. The documents illustrate how the tobacco industry conspired to deceive the public and obfuscate the scientific evidence about cigarette smoking and second-hand cigarette smoke. These documents derive from various civil actions against the tobacco industry.

Current Perspective

Today, one American dies every minute due to illnesses attributable to smoking, tobacco use or second-hand smoke from cigarettes.

This means we lose approximately 1,370 Americans each day from smoking-related causes. We are fully aware that smoking kills more Americans than AIDS, alcohol, car accidents, murders, suicides, illegal drugs and fires *combined*. The use of tobacco products is our nation's deadliest addiction.



The Future

Each day, 3,000 young people begin smoking. The majority of these new tobacco industry recruits (89%) are under the legal smoking age of 18. One-third will eventually die from illnesses and disease arising from their addiction to smoking.

Based on current smoking trends, through the first 25 years of the tobacco settlement, an estimated 12,500,000 Americans will die from smoking-related illnesses and disease. Closer to home, an estimated 75,000 New Mexicans will die prematurely from smoking-related illnesses and disease by the 25th year of the tobacco settlement.

It is inconceivable we tolerate the political and social policies related to tobacco use, smoking and second-hand smoke.



Enforcement Limitations of the Master Settlement Agreement

In June 1999, Brown & Williamson violated the Master Settlement Agreement by posting a tiled billboard tobacco advertisement. The infraction occurred in a major population corridor in Albuquerque. The advertisement ran an estimated six weeks. The illustration below highlights the actual billboard advertisement. The message here is readily apparent. Smoking is about attitude. Smoking is *kool*. This is an effective message with youth.



The MSA specifies outdoor advertising may not exceed 14 square feet. It mandates that ads less than this size not be placed in proximity to each other as to form a mosaic or larger image. This practice is referred to as tiling.

Our organization asked New Mexico's attorney general office to require Brown & Williamson to compensate the community for their violation. We suggested an appropriate community service penalty. Brown & Williamson should allow and finance a counter-tobacco advertisement in its place. We ask the counter ad be maintained two days for every day of the violation. The MSA has no penalty provision, our attorney general could not require restitution.

In the six week's time Brown & Williamson continued efforts to attract New Mexico's kids, teens and youth to tobacco addiction, an additional 57,000 Americans died from tobacco-related illnesses and disease. This number approximates the number of American soldiers and service personnel lost during the entire Vietnam conflict. We dedicated a memorial in Washington, D.C. to honor and remember our veterans.

What are we really doing for the victims of tobacco?

It is inconceivable we tolerate the political and social policies related to tobacco use, smoking and second-hand smoke.

Promotional Allowances within the Master Settlement Agreement

Although the Master Settlement Agreement prohibits outdoor billboard advertisements larger than 14 square feet, it allows many other kinds of tobacco and smoking advertisements as well as promotional activities. Many of these activities can be conducted around children, teens and youth.



There are a number of tobacco retailers near schools in Albuquerque.

This store in the picture to the left, Tobacco Road, is across the street from Manzano high school.

This outlet maintains a convenient drive up window as well as a well-stocked inventory. The windows actively display the tobacco propaganda and messaging.

In the image to the right, we see a large sign with many advertisements and promotions. These include general smoking, multiple pack, snuff (chew tobacco), Camel, Winston and Marlboro enticements.

The sign approximates a billboard in size and nature. Yet, there are a number of tobacco-related messages. This is another way the tobacco industry finds loopholes within the settlement. We feel this is another form of tiling. Tiling is prohibited under the terms of the settlement.

Convenience stores are blanketed with tobacco advertising near the check stand. These counter level promotions are eye-level for children, teens and youth. The messaging is overwhelming.

It is inconceivable we allow such political and social action relative to tobacco use, smoking and second-hand smoke.



The Promotion of Poisons in Our Communities

Due to a 1997 law, cigarette manufacturers must disclose to state health departments the ingredients in their products. In February 1999, State of Minnesota health officials released reports from R.J. Reynolds that documents R.J. Reynold's Camel and Winston cigarettes contain numerous poisonous chemicals.

The list of deadly compounds includes arsenic, cadmium, ammonia, lead and formaldehyde. Although public health experts have sounded alarms for years, policy makers and the public have generally missed their warnings. Cigarettes contain over 4,000 different chemicals and substances. In general, the concentration of the dangerous and toxic chemicals is significantly higher in second-hand smoke.



There is no question the public is uninformed about the toxicity and hazards to health of many of these ingredients.

Although Winston cigarettes are advertised as “no additive,” the report revealed that both of R.J. Reynold's brands, Camel and Winston, contained all five listed poisons.

The image to the left demonstrates how retailers force children, teens and the rest of society to look at this propaganda.

Below is another example of the marketing in retail outlets. The public needs to understand that when someone is smoking a cigarette or breathing second-hand smoke, they are not just inhaling nicotine. It is inconceivable we allow the aggressive marketing of these poisonous products.



Trend Influence Marketing

The public is generally unaware of a new marketing strategy used by the tobacco industry. Tobacco companies conduct these operations surreptitiously. Representatives of the tobacco industry hire trend-conscious individuals to infiltrate concerts, restaurants and bars, and other cultural events. They train these *moles* to be hip, fit in with the crowd and look like one of the guys -- or gals. They give away tobacco products and samples, promotional items and other high-quality gifts.

This tactic is referred to as Trend Influence Marketing or TIM. The public is relatively unaware of this promotional strategy. TIM abandons standard advertising campaigns and moves directly into the arena of trying to set trends.

R.J. Reynolds utilizes TIM to increase the popularity of Camel cigarettes. We believe Philip Morris conducts a similar campaign for their Marlboro product.

We found this example of TIM personnel recruitment in Albuquerque's *Weekly Alibi*. KBA Lifestyle Marketing works closely with tobacco companies.

[see image at right]

Tobacco companies believe that shoving products in the face of the consumer is no longer a successful way to infiltrate the market. They believe young consumers are most influenced by what they see in the hands of friends, not by some stiff riding a horse in a magazine advertisement.

For this program to be executed properly, the marketing company must remain almost invisible. They work to ensure that none of their actions appear sales-oriented. They strive to ensure everything they do will be perceived as cool. Their ultimate objective is to have "hipsters" feel as though smoking is their idea, and that they started the trend.

It is inconceivable we tolerate unethical advertising and deceptive promotional activities.



A comprehensive review of Trend Influence Marketing, illustrating the scope of the deceptive practices, is located at: <http://www.unm.edu/~sgould/ccaa/education/features/alibi>

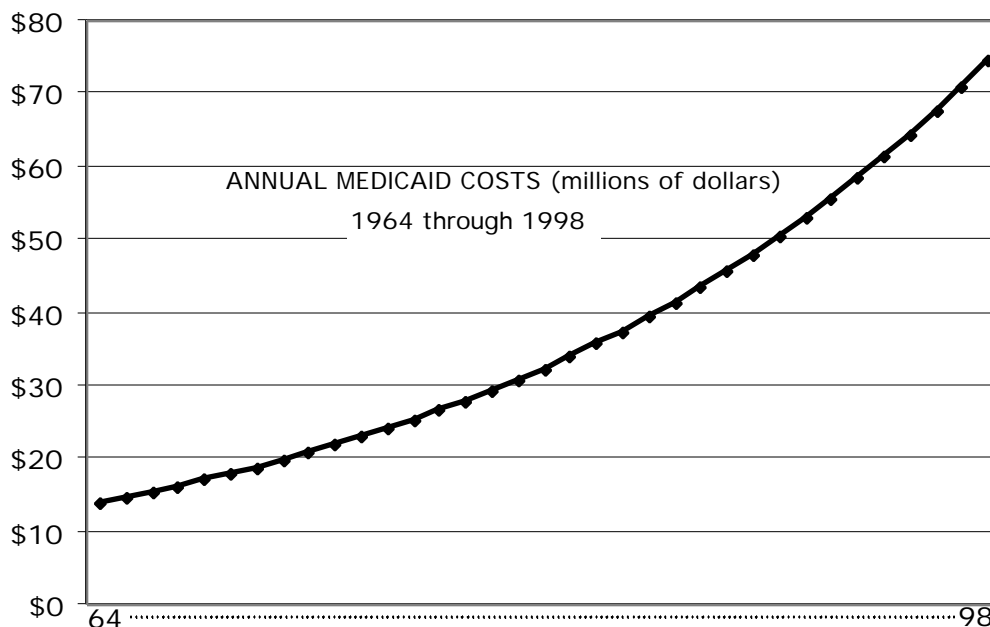
Financial Aspects of Tobacco Poisoning and Smoking

There are numerous costs to society attributable to the poisonous effects from tobacco use and smoking. Yet, it is difficult to calculate the dollar amount for the human costs of tobacco-related illnesses and disease. The suffering of patients and families resulting from tobacco-related morbidity and mortality is unquantifiable. Economists can estimate lost productivity and health care expenditures, but this is only part of the picture.

Irregardless of the complexities of complete economic analysis, expected lifetime medical expenditures of the average smoker exceeds those of the average smoker by 28% for men and 21% for women¹. In addition, each year more than a million young people become regular smokers. These decisions commit the health care system to \$8.2 billion in extra medical expenditures over their lifetimes².

We estimate that 1998 costs to the State of New Mexico for Medicaid support payments approximates \$75 million. We note that the federal government picks up slightly over half these costs. Yet, New Mexico citizens subsidize these costs either through their state or federal taxes.

Based on this 1998 figure, we graphically illustrate the support New Mexicans have provided Medicaid since 1964. We use 1964 as our baseline year as it is the point the federal government officially recognized the health affects attributable to smoking. The estimates assume a 5% annual cost of living increase. We recognize health cost have increased more rapidly than other costs. Therefore, we conclude these estimates are conservative.



Summary

We conclude that since 1964, New Mexicans have supported Medicaid payments attributable to smoking-related illnesses and disease totaling approximately \$1.3 billion.

¹Lynch, Barbara S. and Richard J. Bonnie, Editors, *Growing Up Tobacco Free*, National Academy Press, 1994.

²Hodgson, Thomas A., "Cigarette Smoking and Lifetime Medical Expenditures," *The Milbank Quarterly* 70:1 (1992): 110-113.

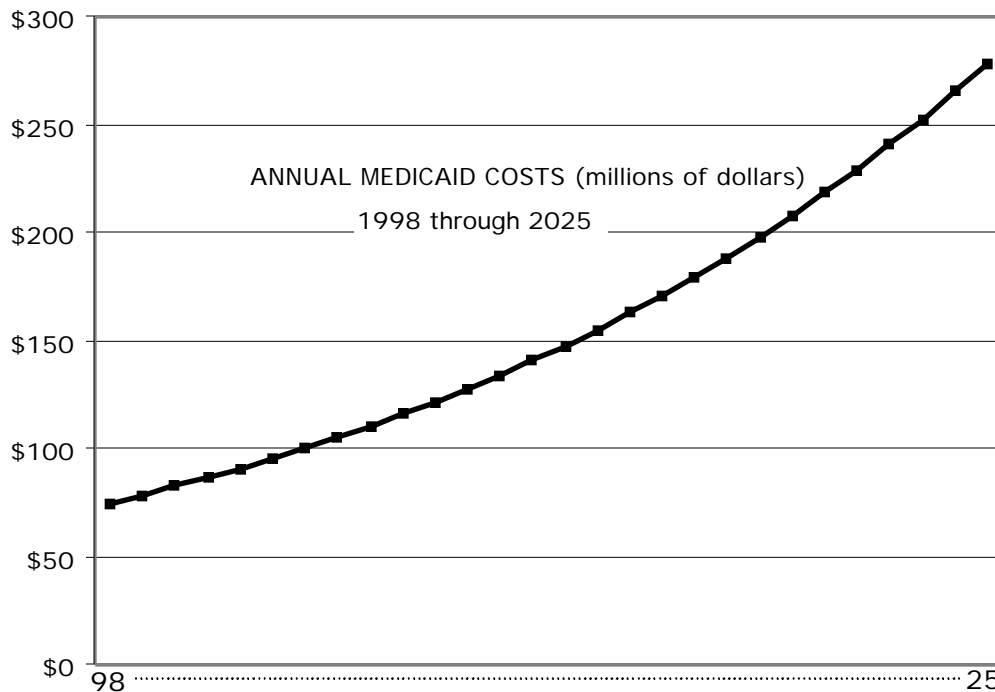
Future Costs of Tobacco Poisoning and Smoking

Since 1964, when the surgeon general called our attention to the health hazards of cigarettes, the prevalence of smoking has declined substantially. In 1965, 40.4% of the adult population smoked. By 1991, this rate had dropped to 25.7%¹. The trend actually accelerated between 1987 and 1990. During this period, the rate of smoking dropped by 1.1% per year. This was more than double the rate of decrease in the preceding 20 years².

While these are impressive statistics, the national progress toward eliminating tobacco-related disease is again in jeopardy. The estimated prevalence of smoking among adults appears to have leveled off in 1990 at the national mark of 26%³. Alarming, the *Monitoring the Futures* project released data recently showing teen smoking skyrocketed over the past five years.

In 1993, 19% of high school seniors considered themselves smokers. By 1998, this rate exploded to nearly 40%. Smoking among high school seniors is at a 19-year high⁴. In 1997, 22.7% of African American high school students were smokers -- up from 12.6% only six years earlier⁵. Smoking among Hispanic high school students increased from 25.3% in 1991 to 34.0% in 1997⁶.

These trends suggest Medicaid costs may accelerate even faster than we anticipate. We estimated future costs based on a 5% annual growth rate in health costs. We believe these projections are conservative. Nevertheless, through 2025, New Mexicans will pay over \$4.3 billion in taxes to support Medicaid payments due to tobacco-related illnesses and disease.



¹Lynch, Barbara S. and Richard J. Bonnie, Editors, *Growing Up Tobacco Free*, National Academy Press, 1994.

²*Ibid.*

³*Ibid.*

⁴Institute for Social Research. University of Michigan. *Monitoring the Future Study, 1998.*

⁵*Youth Risk Behavior Surveillance - U.S. 1993 and 1997.*

Financial Illusions in the Master Settlement Agreement

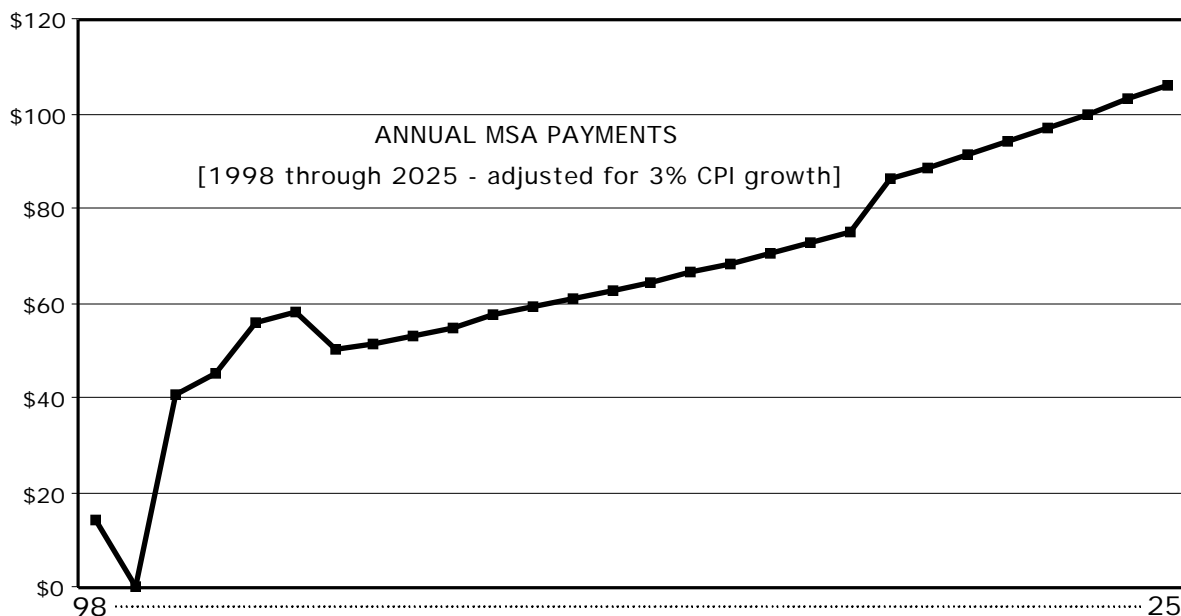
The stated purpose of the Attorneys General Master Settlement Agreement was to compensate participating states for tobacco-related Medicaid costs. Our analysis suggest that New Mexico will be a big loser in this deal. It is important to point out that the baseline payments to the state vary over time. The initial figures are listed as follows:

1998	\$14.3 million
1999	\$ 0.0 million
2000	\$38.2 million
2001	\$41.3 million
2002	\$49.6 million
2003	\$50.0 million
2004-2007	\$41.8 million
2008-2017	\$42.6 million
2018-2025	\$47.7 million

MSA Adjustments

Few people understand these baseline payment figures are subject to numerous annual adjustments that will most certainly result in actual payments far less than the listed amounts. Besides inflation, the baseline figures are subject to a Volume Adjustment, Non Participating Manufacturers Adjustment, Non Settling States Adjustment, Federal Tobacco Legislation Offset, Litigating Releasing Parties Offset, miscalculations and disputed payments¹. We cannot assume New Mexico will receive the payments as listed.

The MSA specifies that baseline payments will be adjusted upward to compensate for inflation. At a minimum, payments increase 3% annually. It is virtually impossible to model changes to payments using the other listed adjustments. We assume these adjustments will result in decreased payments to New Mexico. We use this simple inflationary-only model to demonstrate a “best case” scenario for payments².



¹ “Calculating State Settlement Revenues,” research by Bill Godshall, June 11, 1999. Complete analysis located at <http://www.unm.edu/~sgoold/ccaa/settlement/calculations.html>.

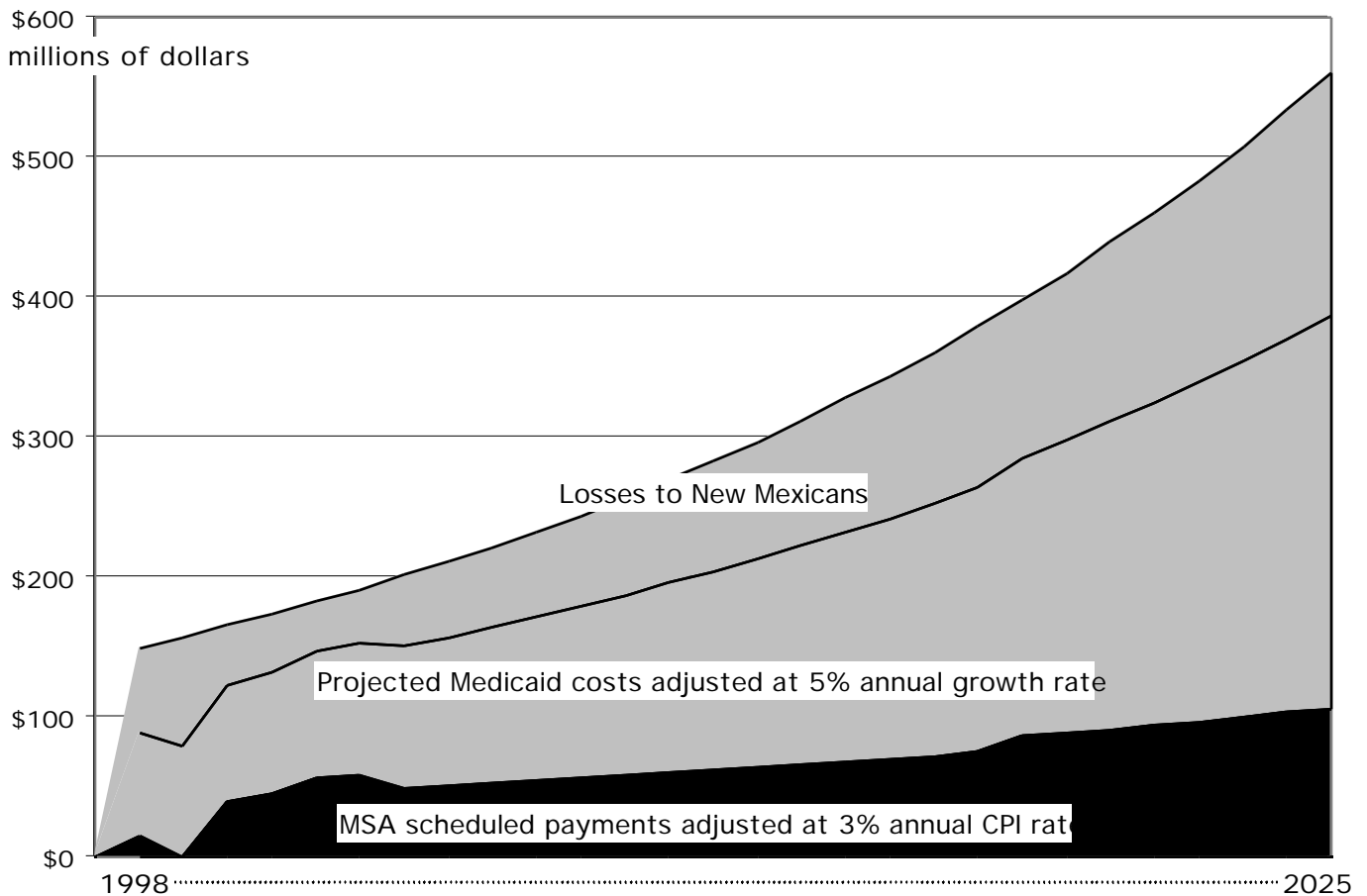
² “Analysis of New Mexico’s Master Settlement Agreement,” research by Scott Goold, August 16, 1999. Complete analysis located at <http://www.unm.edu/~sgoold/ccaa/settlement/calculations2.html>.

New Mexico's Medicaid Compensation Gap

Our conservative estimates for Medicaid support incurred in New Mexico between 1964 and 1997 suggest costs totalling \$1.2 billion. We projected future Medicaid support costs to New Mexico applying a 5% annual growth rate. These costs (1998-2025) to New Mexico sum to over \$4.3 billion.

The Master Settlement Agreement does not come close to compensating New Mexicans for the public medical costs attributable to tobacco-related illnesses and disease. In the best case, the state will receive \$1.2 billion (in 1998 dollars) over the next 25 years due to the settlement. Current indicators suggest it is unlikely New Mexico will ever receive this amount of money¹. Due to the recent increases in youth smoking, we assume it unlikely smoking will decrease significantly over the next 25 years.

The graphic below compares adjusted baseline payments (black) to projected Medicaid costs (gray) for the years 1998 to 2025. The striped area shows the losses per year. Settlement payments never fully reimburse the state for Medicaid support costs. Further, over the 25 years, the gap continually widens. We conclude the Master Settlement Agreement will cost New Mexicans approximately \$2.5 billion in the first 25 years of the deal. We point out that the MSA continues indefinitely, and likely, so will the losses.



MSA Will Cost New Mexicans Approximately \$2.5 Billion Over First 25 Years

¹ Although youth smoking has risen dramatically in recent years, we believe overall tobacco consumption will continue to decrease. The MSA specifies adjustments to be made using average figures. We assume New Mexico will continue trail national performance figures.

Options

After careful deliberation, study and analysis, we believe there are three viable options for New Mexico at this time. These include:

Rescinding the Master Settlement Agreement, Taking a “One-Time, Lump Sum” Payment, and Implementing a CDC-Plus Program
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Option 1: Rescinding the Master Settlement Agreement

Without a doubt, we believe this option presents New Mexico the best solution. The lure of “big” money makes this a politically unpopular request. We ask representatives of New Mexico to demonstrate courage, resolve and leadership by sending an important message to the tobacco industry and the remaining states in the country. This is not about money -- it is about people. The MSA does not protect people.

The tobacco industry needs this settlement. They will accept the deal we offer. If they fail to reach a compromise, their corporate futures are in jeopardy. The people of New Mexico maintain the upper hand in this transaction.

The attorney general’s office claims New Mexico does not have the resources to undertake this fight alone. We now are aware legal firms would aggressively compete for the opportunity to represent our great state. There is little doubt we would receive a favorable settlement. The firm, or partner firms, would be amply compensated for their efforts and risk. New Mexico should negotiate a better deal for the people.

The current settlement allows the tobacco industry to continue marketing practices that influence New Mexico’s kids and teens. Health practitioners cannot effectively reduce youth smoking, protect nonsmokers, nor provide efficient cessation programs under the existing terms in the settlement. We should not have to use settlement money to protect New Mexico’s youth from the tobacco industry.

The MSA does not compensate New Mexico’s tax payers for previous Medicaid costs. It will not fully reimburse New Mexico for future tobacco-related costs. New Mexico’s settlement with the tobacco industry must mandate full compensation for the previous costs attributable to smoking and the tobacco epidemic. New Mexico’s settlement with the tobacco industry must include provisions that adjust future payments by the tobacco industry in accordance with future costs incurred by the state.

The conditions of the current settlement do not allow future generations the opportunity to correct shortcomings in the present agreement. We have unfairly committed our children, our children’s children and subsequent generations to the terms of this resolution. This report illustrates many limitations and flaws in the present proposal. We should not sign away our children’s right to build a better world. We should not handicap their idealism by establishing policies and rules that may not address their needs and concerns.

We maintain an Internet archive that provides instruction how to rescind the Master Settlement Agreement. These materials are located at:

<http://www.unm.edu/~sgould/cca/settlement/archive.html>

Option 2

Taking a “One-Time, Lump Sum” Payment

Earlier in this report, we listed various financial adjustments that likely will affect New Mexico’s share of the financial payments from Master Settlement Agreement. These adjustments follow national performance figures and events that likely will be outside the control of the New Mexico people. Historically, New Mexico trails the nation on many key social and economic indicators. We assume New Mexico’s future will follow this pattern. We therefore believe New Mexico will be affected more negatively by adjustments in the tobacco payments than will be other states participating in the deal.

If the honorable and good representatives of New Mexico decide not to rescind the attorney general’s agreement, we recommend the state seriously explore the option of taking a “one-time, lump-sum” settlement payment. There are a number of advantages to New Mexico associated with this decision.

A recent news account reported Colorado is considering taking their tobacco settlement in a one-time lump-sum payment¹. Colorado’s Treasurer, Michael Coffman, has proposed the state take their share of the tobacco settlement money in a single \$901 million payment. The alternative would be to incrementally receive an estimated \$2.7 billion over the next 25 years.

This example illustrates New Mexico would receive approximately one-third of the initially reported \$1.2 billion settlement figure in a one-time lump-sum amount. This would result in a \$400 million single payment to the state.

A single payment of \$400 million allows New Mexico to be free of the anticipated adjustments in the Master Settlement Agreement. It allows New Mexico to invest these resources and obtain the “best return” possible on this money.

In a simplified model, we demonstrate that by investing the \$400 million in an interest-bearing trust fund at the modest rate of 6%, these funds would return New Mexico \$24 million per year.

The state could follow the minimal tobacco control programming recommendations furthered by the Centers for Disease Control and allocate \$13 million toward reducing the addiction, illness and death associated with the tobacco epidemic. There would be a remaining \$11 million per year for reinvestment purposes or to be applied to other select public works.

Our organization maintains an Internet archive providing comprehensive information about the tobacco settlement, policy activities and deliberations of other states. These materials are located at:

<http://www.unm.edu/~sgoold/ccaa/settlement/archive.html>

¹USA TODAY, “Colorado,” August 26, 1999, p. A14.

Option 3

Implementing a CDC-Plus Program

Whether the leaders of New Mexico decide to rescind the present Master Settlement Agreement and negotiate a better deal; whether they determine to take tobacco money in a single, lump-sum payment; or whether they decide to receive incremental payments through perpetuity, it is critical the state openly and aggressively takes action to contain the epidemic of tobacco addiction, illness and death.

The settlement implies New Mexico will receive approximately \$1.2 billion over the first 25 years of the agreement. We are uncertain whether New Mexico will ever receive this money. We are confident of one thing: settlement money will be dwarfed by the tobacco industry's resources and resolve to promote tobacco use and addiction to New Mexico's children, teens and youth.

The Centers for Disease Control (CDC) recommends New Mexico allocate at least \$7.75 per person to significantly impact the epidemic of tobacco addiction and tobacco poisoning. The per person figure calculates to approximately \$11.7 million in state expenditures per year. The CDC recommends New Mexico continue this programming over a period of years. While we support the general CDC position, we take issue with their guidelines for a number of reasons.

First, the CDC recommends New Mexico allocate a significant portion of the settlement money toward the tobacco problem. The tobacco epidemic is not only a state issue. The scope is national as well as worldwide. We suggest the federal government, under the direction of the CDC, match New Mexico's contribution to the epidemic dollar for dollar.

Second, money for programming will not resolve the tobacco epidemic by itself. Individual states cannot survive a "spending war" against the tobacco industry. Tobacco is an addictive product. The tobacco companies maintain great hold over users. A single state cannot compete against collective corporate greed.

Therefore, we recommend New Mexico adopt broad and comprehensive social policy to complement the CDC proposal. To effectively reduce tobacco addiction, illness and disease, we humbly suggest New Mexico enact the following policy changes:

- a. Increase the legal age of tobacco consumption to 21 years. Our nation successfully made the transition to this position regarding alcohol consumption. We believe youth require greater maturity before being capable of making responsible decisions about alcohol. The magnitude of the tobacco epidemic suggests we follow a similar course for tobacco.
- b. Make it illegal for youth under the legal age to possess, use or distribute tobacco products. This is a symbolic adjustment in tobacco policy. Youth must accept partial responsibility in this battle.
- c. Increase the penalties for distributing to underage youth. Put teeth into tobacco control policy.
- d. Fully protect children, teens and nonsmokers from second-hand smoke. We grant smokers the privilege to smoke. Nonsmokers maintain the natural right to be free from tobacco poisons.