

## Institute of Medicine Position on Preemption

**Source: *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*<sup>1</sup>**

“States and localities play a vital and historic role in safeguarding the public’s health and safety... Consequently, unless there are compelling reasons to the contrary, **the federal government ought not preempt state and local authority in advancing the public’s health...**”

“When a federal agency is given preemptive authority to regulate in an area where local public health agencies have a greater capacity... the result is likely to be that the public health measure will not be enforced. In such instances preemption, and certainly ‘ceiling’ preemption, should be avoided...”

**Recommendation 5:** The committee recommends that when the federal government regulates state authority, and the states regulate local authority in the area of public health, their actions, wherever appropriate, should set minimum standards (floor preemption) allowing states and localities to further protect the health and safety of their inhabitants. Preemption should avoid language that hinders public health action.

“[I]n an area such as public health that is primarily the province of a state’s police power, the need for preemption and the kind of preemption that may be warranted should be closely examined on a case-by-case basis, **and the presumption should be that ‘floor’ preemption is the more appropriate option** in the area of public health...”

“Federal or state (ceiling) preemption of state and local authority can often be harmful from a public health standpoint because it can compromise the ability... to implement more stringent standards that may be important and well accepted in a local setting. Ceiling preemption also interferes with local control over local needs and with local-level accountability...”

“In a few areas of public health, federal preemption seems highly appropriate. For example... the federal ban on smoking on airplanes -- the interstate nature of airline flight makes this area ideally suited to federal preemption.”

“Ceiling preemption is appropriate in situations where national uniformity is **absolutely necessary and only after the impact on public health and enforceability has been thoroughly assessed and mitigated...**”

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<sup>1</sup> Committee on Public Health Strategies to Improve Health, National Research Council (June 21, 2011).