

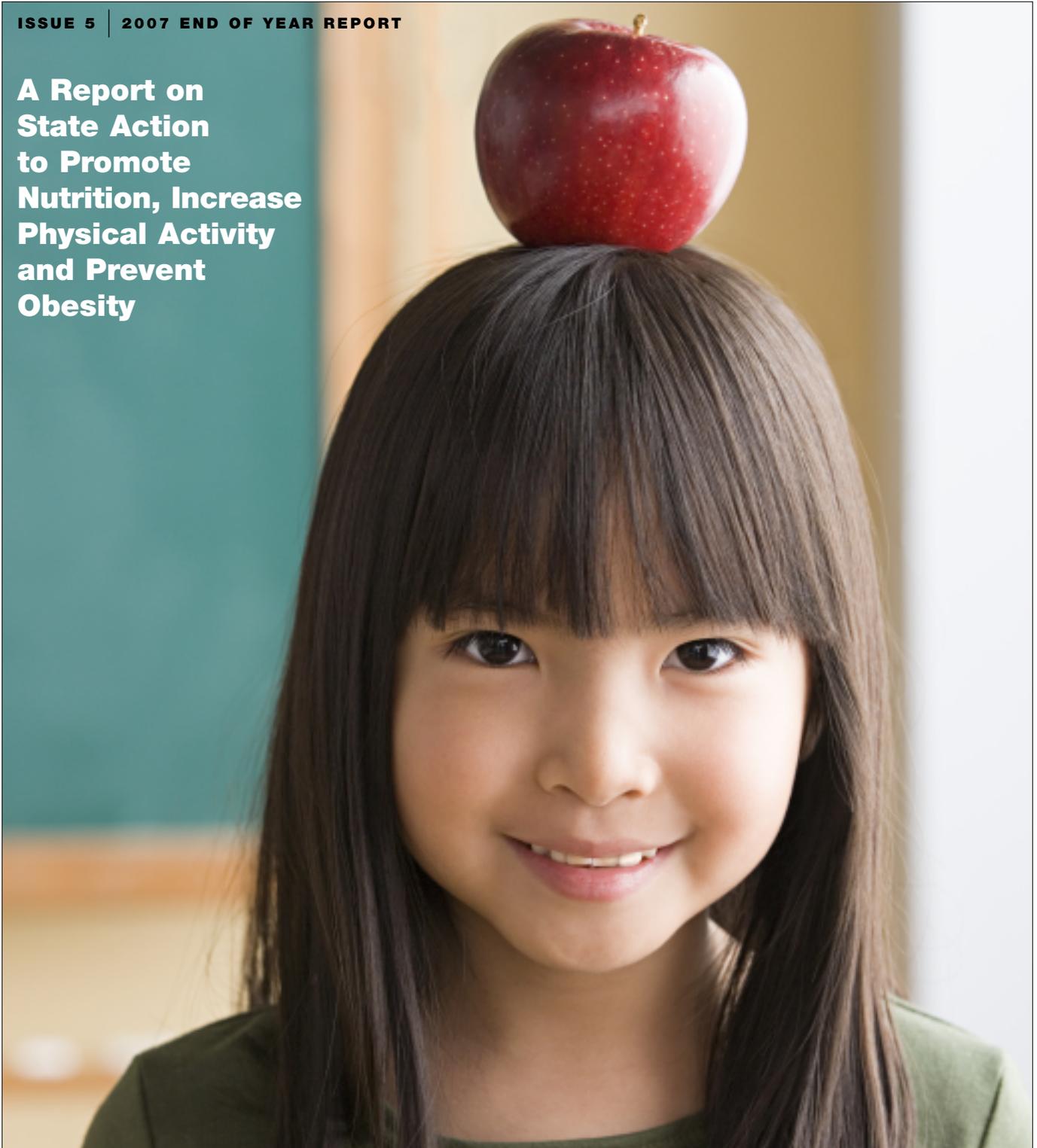


Robert Wood Johnson Foundation

# BALANCE

ISSUE 5 | 2007 END OF YEAR REPORT

**A Report on  
State Action  
to Promote  
Nutrition, Increase  
Physical Activity  
and Prevent  
Obesity**



Produced by Albemarle State Policy Center (ASPC).

## **CREDITS**

### **Albemarle State Policy Center (ASPC)**

Lee Dixon, M.P.A., *director*

Cathryn Henze, M.P.H., *senior policy analyst*

### **Robert Wood Johnson Foundation**

C. Tracy Orleans, Ph.D., *RWJF Distinguished Fellow  
and senior scientist*

Kathryn Thomas, M.J., *senior communications officer*

Joan Barlow, *design manager*

### **Design and Layout**

Landesberg Design  
Pittsburgh, Pennsylvania

Copyright 2008 Robert Wood Johnson Foundation

## **ACKNOWLEDGMENTS**

This report was prepared for the Robert Wood Johnson Foundation by Lee Dixon and Cathryn Henze. Funding for this report was provided by the Robert Wood Johnson Foundation.



Robert Wood Johnson Foundation

Route One and College Road East  
P.O. Box 2316  
Princeton, NJ 08543-2316

This publication is available for downloading  
from the Foundation's Web site at

[www.rwjf.org/pdf/Balance122007.pdf](http://www.rwjf.org/pdf/Balance122007.pdf)

The findings and views contained in this  
report do not necessarily reflect those of the  
Robert Wood Johnson Foundation.



# BALANCE

ISSUE 5 | 2007 END OF YEAR REPORT

## A Report on State Action to Promote Nutrition, Increase Physical Activity and Prevent Obesity

Produced by Albemarle State Policy Center (ASPC).

### CONTENTS

<b>3</b>	<b>INTRODUCTION</b>	48	Menu Labeling
<b>7</b>	<b>CHAPTER 1 Policy Actions and Planning</b>	52	Trans Fat Restrictions
8	Commissions, Councils and Task Forces	58	Biotechnology: Genetic Engineering of Foods
14	State Initiatives and Pilot Programs	<b>61</b>	<b>CHAPTER 4 Active Living and Community Design</b>
19	Insurance Coverage for Obesity Treatment	63	Pedestrian and Recreational Safety
22	Medicaid Benefits and Services to Treat Overweight and Obese Individuals	67	Bicycle and Walking Paths, Parks and Trails
22	Snack and Soda Taxes	67	Community Design and Land Use
26	Calendar of Task Force Reports and Program and Regulation Implementation	70	Transportation Infrastructure
<b>29</b>	<b>CHAPTER 2 Community Access to Nutritious Foods</b>	<b>73</b>	<b>CHAPTER 5 Children's Access to Nutritious Foods</b>
30	Commodity Price and Support Policies	74	Surveys and Findings
30	Farmers' Markets	76	School Wellness Programs
32	Grocery Stores and Supermarkets	78	Junk Foods and Sales of Foods Outside of School
<b>37</b>	<b>CHAPTER 3 Food and Beverage Industry</b>	79	School Personnel
38	Food and Beverage Industry Liability	81	À la Carte Offerings
39	Advertising and Marketing Restrictions	83	Spending on School Lunches and à la Carte Offerings
45	Product Nutritional Labeling	84	Vending Machines
		86	Cost of Nutrition Programs
		87	Revenues and Participation

87	State Activity	42	Pledges of Participating Companies in the Children's Food and Beverage Advertising Initiative
95	School Access to Farm Products	54	Enacted Legislation on Trans Fat
95	School à la Carte Food and Vending Machine Policies	55	Local Regulations on the Use of Trans Fat
95	Federal Actions	57	Companies and Restaurants Restricting the Use of Trans Fat
95	Administrative Actions	65	2007 Enacted Legislation to Promote Pedestrian and Recreational Safety
100	Fiscal Year 2008 USDA Appropriations	78	Percentage of Districts That Required Schools to Prohibit Offering Junk Foods in Various School Settings
102	The 2007 Farm Bill	79	Percentage of Schools in Which Organizations Sold Specific Foods or Beverages for Fund Raising
105	Childhood Nutrition	80	Percentage of School Districts Implementing Healthier Food Preparation Practices
105	Food Stamps	81	Implementation of Nutrition Standards for Foods and Beverages Available Through School Nutrition Programs
107	Special Supplemental Nutrition Program for Women, Infants and Children	82	Percentage of Schools That Offered Low-Fat, à la Carte Foods
108	Child and Adult Care Food Program	82	Percentage of Schools That Offered Selected à la Carte Foods, By School Level
109	Child-Care Centers	85	Percentage of Schools Offering the Following Foods From Vending Machines, School Stores, Canteens or Snack Bars
109	Day Care Homes	90	2007 Enacted Legislation on School Breakfast and Lunch
109	After-School Care Programs	96	2007 Enacted Legislation on School Access to Farm Products
<b>111</b>	<b>CHAPTER 6</b>	98	2007 Enacted Legislation on Competitive Foods and Vending Machines
	<b>Students' Physical Activity, BMI and Fitness Levels</b>	101	Potential Expansion States for Simplified Summer Food Program
112	Physical Education	103	Harkin Amendment—Nutrition Standards for Foods and Beverages Sold in Schools
121	BMI and Physical Fitness Assessments	115	2007 Legislation on Physical Education in Schools
121	Health and Physical Education Curriculum	122	2007 Enacted Legislation on BMI and Fitness Testing
125	School-Based Recess Programs		

**TABLES**

9	States Establishing Task Forces, Commissions or Study Groups in 2007
15	Healthy Kids, Healthy America State Initiatives
21	2007 Enacted Legislation Mandating Health Insurance Coverage of Morbid Obesity
23	Adopted Policies Concerning Medicaid and Morbid Obesity
24	Enacted Legislation on Food, Snack and Beverage Taxes
25	State Taxes on Soda and Snacks
27	Calendar of Task Force Reports and Program and Regulation Implementation
33	2007 Enacted Legislation on Farmers' Markets

**FIGURES**

18	2007 State Commissions, Healthy Kids Grants and Pilot Programs
75	State Legislation Affecting School Nutrition—2007
113	States Enacting Student Physical Activity and Fitness Laws or Policies

## Introduction

### Childhood Obesity is a Public Health Crisis

**O**besity is widely recognized as one of the most pressing health threats to children and adults across the country. Today, more than two-thirds of U.S. adults<sup>1</sup> and one-third of American youth are either obese or overweight.<sup>2, 3, 4</sup> The acceleration of the epidemic among children is especially alarming. During the past four decades, the obesity rate for children ages 6 to 11 has jumped almost fivefold (from 4 percent to 19 percent) and has more than tripled for adolescents ages 12 to 19 (from 5 percent to 17 percent).<sup>5, 6, 7</sup>

This trend foreshadows the greater rates of disease, disability and higher health care costs our nation will face as the current generation of children—the most overweight in U.S. history—grows into adulthood. Overweight and obese children are at a greater risk for a host of serious illnesses, including heart disease, stroke, type 2 diabetes, hypertension, asthma and certain types of cancer. Some experts predict that, unless the epidemic of childhood obesity is reversed, the current generation of children may be the first in U.S. history to live sicker and die younger than their parents' generation.<sup>8</sup> The severity of the epidemic requires a comprehensive approach to creating healthier environments and promoting good health. Stakeholders from all sectors, including community activists, school administrators, parents, business leaders and policy-makers are working together to address this critical public health threat.

<sup>1</sup> *National Health and Nutrition Examination Survey, 2003-2004.* Hyattsville, MD: National Center for Health Statistics, 2007. (No authors given).

<sup>2</sup> Government agencies, foundations and researchers often use different terms to describe obesity in children and adolescents. The Robert Wood Johnson Foundation uses the term "obese" for children and adolescents who have a body mass index (BMI) at or above the 95th percentile for their gender and age. We use the term "overweight" for children and adolescents with a BMI at or above the 85th percentile but below the 95th. The Institute of Medicine also uses the term "obese" to describe children and adolescents at or above the 95th percentile but uses the term "at risk for obesity" to describe those with BMI at or above the 85th percentile but below the 95th. The Centers for Disease Control and Prevention uses the term "overweight" for those at or above the 95th percentile and "at risk of overweight" for children and adolescents at or above the 85th percentile but below the 95th percentile. Resident Population Projections by Sex and Age 2005 to 2050." *U.S. Census Bureau, Statistical Abstract of the United States, 2006.* Table 12. <http://www.census.gov/prod/2005pubs/06statab/pop.pdf>.

<sup>3</sup> Resident Population Projections by Sex and Age 2005 to 2050." *U.S. Census Bureau, Statistical*

## States, the Federal Government and Industry Are Taking Action

The alarming progression of the obesity epidemic began to capture the attention of state policy-makers in 2002. The severity of the problem and its impact at the state and national level inspired lawmakers to take action. By 2005 many state legislatures were enacting policies to improve the food and physical activity environments in schools, including establishing nutritional standards for lunches and food in vending machines; increasing the amount of time spent on physical activity; and monitoring student's risk for weight-related health problems through body mass index (BMI) assessments.

Many of these initiatives continued through 2006, but industry and the federal government also began to address the problem. *The Alliance for a Healthier Generation*—a joint initiative of the William J. Clinton Foundation and the American Heart Association—signed a Memorandum of Understanding with the American Beverage Association, Cadbury Schweppes, Coca Cola and PepsiCo to establish a new, nationwide school beverage policy in May 2006. The Alliance reached an agreement with Campbell Soup Co.; the Dannon Co., Inc; Kraft Food Global, Inc.; Masterfoods USA (a division of Mars, Inc.); and Pepsico, Inc. in October 2006 to establish new guidelines for competitive foods sold in schools.

As the 2006–2007 school year began, schools and local education agencies across the country began to implement the wellness plans called for in the Federal Child Nutrition and Women, Infants, and Children Reauthorization Act of 2004. This effort captured the innovation, enthusiasm and commitment of school administrators, nutritionists, teachers and parents to develop comprehensive wellness plans in the nation's school systems.

## Growing Momentum in 2007

The year began with public health leaders applauding the enactment of New York City's ban on the use of trans fats in restaurants. The success and notoriety of the effort led to the introduction of similar legislation in as many as 20 state legislatures. Although eliminating trans fat will not prevent or reduce obesity, it is critical to improving heart and vascular health. The approach, therefore, has captured the attention of policy-makers and advocates and is fueling increased discussion about the roles government and industry can play in promoting good health. For example, the *F as in Fat: How Obesity Policies are Failing in America* report released by Trust for America's Health in August 2007 found that 85 percent of Americans believe obesity is an epidemic, and 81 percent think government should play a role in addressing the epidemic.

*Abstract of the United States, 2006.* Table 12. <http://www.census.gov/prod/2005pubs/06statab/pop.pdf>.

4 Ogden CL, Carroll MD, Curtin LR, McDowell MA, Tabak CJ and Flegal KM. 2006. "Prevalence of Overweight and Obesity in the United States, 1999–2004." *Journal of the American Medical Association*, 295 (13):1549–1555.

5 Ibid

6 Ogden CL, Flegal KM, Carroll MD and Johnson CL. 2002. "Prevalence and Trends in Overweight Among US Children and Adolescents, 1999–2000." *Journal of the American Medical Association*, 288 (14):1728–1732.

7 CDC. 2005b. "QuickStats: Prevalence of Overweight Among Children and Teenagers, by Age Group and Selected Period—United States, 1963–2002." *Morbidity and Mortality Weekly Report*, 54(8):203. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5408a6.htm>.

8 Olshansky S. Jay, Passaro Douglas J., Hershov Ronald C, et al. "A Potential Decline in Life Expectancy in the United States in the 21st Century." *New England Journal of Medicine*, 2005, 352: 1138–1145.

State lawmakers seem to agree. In 2007 policy-makers across the country made a significant effort to address obesity.

- Twenty-five states launched a pilot project or created a task force, council or commission to improve the nutrition and physical activity environments for children or prevent obesity.
- Lawmakers in 16 states enacted legislation to increase farm-to-school programs or to improve the nutritional quality of school breakfasts, lunches, à la carte selections or vending machine offerings.
- Seven states enacted legislation to promote farmers' markets—and a growing number of states also are working to increase access to fresh affordable foods through grocery stores.
- Some states are considering policies that would require restaurants to provide nutritional information for the foods they offer, and nine states or localities enacted legislation to regulate the use of trans fat.
- Policy-makers in 20 states considered legislation to promote safe physical activity, pedestrian and bicycle transportation and/or efforts to design communities that support physical activity.
- Sixteen states supported policies to strengthen physical education classes or physical activity programs in schools.
- Eleven states enacted laws concerning student BMI measures and/or physical fitness assessments.

Still, many challenges remain at all levels, and further efforts are necessary to increase children's access to healthy foods and opportunities for physical activity and to reverse the childhood obesity epidemic. This end-of-year edition of *BALANCE* summarizes the key legislative and non-legislative actions and trends of 2007.

**BALANCE Report Methodology**

This year's *BALANCE* report uses new methodology to ensure the identification, monitoring and analysis of the various spheres of action and opportunity to prevent childhood obesity. The goal is to ensure that the various centers of activity affecting nutrition, physical activity, community design and industry do not operate in isolation, but instead intersect within this report.

Readers of the *BALANCE* End of Year 2007 report will note its expanded content from previous editions. Employing a comprehensive electronic database of state and federal legislation, the report now identifies, monitors and reports on state and federal legislation across 28 topics.

## Chapter 1: Policy Actions and Planning

### **Overview**

**T**his chapter describes actions initiated or conducted by the executive branch of state government that aim to prevent obesity. For example, during the last year, 25 states launched pilot projects or initiated task forces, councils or commissions that have the potential to spark a new policy or program to improve nutrition and increase physical activity among children. Also included in this chapter is an overview of actions considered by the state legislative branch, including snack and soda taxes and health insurance coverage for obesity treatment. While neither Medicaid nor private health insurance plans offered new coverage, a few states did reinforce treatment benefits with new Medicaid policies and health insurance mandates. This chapter also details state legislators' continued reluctance to increase taxes on either snack foods or sodas. Completion dates for studies, task forces and commissions and planned implementation dates for laws and regulations that aim to prevent obesity are presented in a calendar at the end of the chapter.

### **Commissions, Councils and Task Forces**

Before adopting or even recommending a new policy, state lawmakers and governors often call for the establishment of a council, commission or task force to study the issue and report findings and policy recommendations. By doing so, state legislatures and executive agencies seek to tap into the advice and experience of a wide array of health care providers and researchers, school administrators, community planners, parents and citizens.

Concurrently, organizations such as the National Governors Association (NGA), Alliance for a Healthier Generation and the U.S. Centers for Disease Control and Prevention (CDC) underwrite time-limited initiatives and pilot programs to test innovative approaches. Often these initiatives are the precursor to state policies, run concurrent to a state's consideration of new statewide policies or occur as a result of task force or commission recommendations.

Whichever scenario occurs, the increase in activity related to childhood obesity prevention initiatives is a sign that state policy-makers are giving more attention to the issue, and in some cases are beginning to take action. Twenty-five states established a task force, study group or pilot program in 2007, which is especially encouraging because these initial actions often serve as precursors to new legislation, regulations, programs or policies that may help prevent childhood obesity.

As detailed in the table below, 14 states established commissions, task forces or study groups to develop recommendations for future interventions aimed at preventing childhood obesity or restricting trans fats. Most of these efforts are scheduled to report their findings during the first six months of 2008.

## States Establishing Task Forces, Commissions or Study Groups in 2007

### ARKANSAS

#### AR SB 861

- ✓ The new law revises the membership and amends the duties of the Health Advisory Committee. The committee is charged with examining the progress of the Coordinated School Health Program and making recommendations to the Department of Education and the Division of Health in the Department of Health and Human Services concerning the implementation of the program.

### DELAWARE

#### DE SB 289

- ✓ The new law establishes a statewide Health Advisory Council to provide advice to the Department of Education on current and future physical education and physical activity programs in public schools. The council must publish an annual strategic plan and report on fitness levels and childhood obesity.

### FLORIDA

#### FL EO 2007-52

- ✓ The executive order establishes the Governor's Council on Physical Fitness to develop a state plan to increase physical fitness through regular exercise and sound nutritional practices and to reduce the number of people who suffer from chronic diseases resulting from obesity within the next 10 years. In addition, the council will review the implementation of other newly enacted legislation affecting daily physical education courses for K-5 students and the feasibility of providing similar physical education courses for grades 6 through 12 by 2012.

### GEORGIA

#### GA HB 826

- ✓ The new law establishes the House Study Committee on Trans Fat Alternatives for the Georgia Food Industry. The committee will study the current use of trans fat in the state's food industry and public school system. The committee also will examine the feasibility of statewide restrictions on the use of trans fat and other similar products in schools and restaurants. The committee was mandated to report its findings and recommendations, with any suggestions for proposed legislation, on or before December 31, 2007.

#### MEASURE STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## INDIANA

## IN DHSP

- ✓ The Indiana Health Department issued a blueprint to combat obesity with the following goals:
  - Reduce the number of overweight adults by 1 percent or more each year
  - Increase the number of preteens and teenagers who have a healthy BMI by 10 percent (by 2015)
  - Increase the percentage of youths who eat breakfast by 2 percent or more each year
  - Decrease the number of times adults who buy meals from fast-food restaurants by 2 percent or more each year
  - Train general education teachers to incorporate physical activity into their lesson plans
  - Train restaurant workers to help customers make healthy choices
  - Support land acquisition and construction of bike and walking paths

## MINNESOTA

## MN HB 1078

- ✓ The new law directs the commissioner of health to develop a plan to fund and implement an ongoing, comprehensive health promotion program that uses proven public health strategies to promote healthy lifestyles and a sustainable, long-term strategy for reducing preventable disabilities, chronic health conditions and disease. The focus will be on community-based initiatives that address obesity among children and adults, improved activity levels among senior citizens and other lifestyle issues that impact health and health care costs. Community (county) health boards now are authorized to work with schools, health care providers and other entities to coordinate health and wellness programs.

## NEVADA

## NV SCR 27

- According to the concurrent resolution, state agencies, school districts and organizations will provide nutrition education, especially to new and expectant parents and early childhood caregivers. In addition, these entities are encouraged to develop a collaboration to provide appropriate nutrition education to Nevadans to reduce obesity and promote other healthy lifestyle choices.

MEASURE  
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## NEW JERSEY

**NJ DHSSSP**

- ✓ The Department of Health and Senior Services created a new Office of Nutrition and Fitness to oversee nutrition and fitness programs and implement the New Jersey Obesity Prevention Task Force's recommendations outlined in its 2006 report, *The New Jersey Obesity Prevention Action Plan*. The new office also will coordinate the department's existing obesity prevention programs, including those aimed at providing fresh fruits and vegetables to eligible women, children and seniors, as well as programs that promote breastfeeding, sports, physical activity and fruit and vegetable consumption.

The task force also outlined a series of goals and action steps to help involve the following five groups in supporting healthy behaviors that may help reduce obesity: federal, state and local governments; local organizations and neighborhoods; public and nonpublic schools; workplaces; and health care systems and health professionals. Special efforts were identified to target groups at high risk for obesity, including African Americans, Latinos and residents living in low-income communities.

## NEW MEXICO

**NM HJM 10**

- ✓ The measure directs the governor to appoint a Food Gap Task Force within the Department of Agriculture that will be charged with preparing a report for the governor and legislature about the barriers New Mexicans face regarding adequate access to healthy, affordable and culturally appropriate foods. The report will include recommendations and steps for public and private sectors working to improve the issue.

The task force also will investigate the following: economic incentives and finance options that the state could provide to assist grocery store owners; methods of improving transportation and distribution services; potential partnerships between the state and private entities; and ways to improve coordination among existing food programs, health initiatives and rural economic development programs to rebuild the infrastructure of New Mexico's food and farming systems.

The task force was mandated to report to the governor and to the appropriate interim legislative committees by October 30, 2007.

**NM HM 87**

- ✓ The measure directs the state's Environmental Improvement Board to join with the New Mexico Restaurant Association to study ways to identify the trans fat content in restaurant food and to convey this information to customers. The board also is directed to develop workable guidelines to help the restaurant industry eliminate trans fat and/or recommend limits for trans fat content.

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## OREGON

**OR SB 931**

- ✓ The new law establishes the Comprehensive Obesity Prevention Initiative task force, which has the following objectives: prevent obesity and associated disorders; promote good nutrition and physical fitness; address health issues in minority populations; and assess the state's current built environment. To accomplish its objectives, the task force will 1) study obesity prevention and treatment, as well as ways to decrease the number of cases of obesity in the state, and 2) use current research to develop a plan for implementing and funding initiatives that will decrease rates of obesity and obesity-related disease in the state.

The task force will submit a report, and may include recommendations for legislation, to the appropriate interim committees related to health care and health policy no later than October 1, 2008.

## PENNSYLVANIA

**PA HB 185**

- ✓ The new law calls for the establishment of an interagency coordinating council for child health, nutrition and physical education that will offer recommendations on physical education curricula.

## RHODE ISLAND

**RI HB 5900**

- ✓ The new law establishes healthy weight pilot programs in several communities that encourage and promote healthy weight and weight management in children. The programs will combine exercise and nutrition activities, including walking, jogging and offering information on healthy food choices. Funding for the pilot programs will come from federal grants and state funds allocated for combating obesity.

## TEXAS

**TX SB 556**

- ✓ The new law establishes an Interagency Obesity Council involving the commissioners of Agriculture, Health Services and Education. The Council is charged with discussing the status of each agency's programs that promote better health and nutrition and prevent obesity among children and adults; and considering the feasibility of tax incentives for employers who promote activities designed to reduce obesity in the workforce.

Not later than January 15 of each odd-numbered year (beginning in 2009), the council shall submit a report on its activities during the preceding two calendar years. The report must include a list of programs in each agency designed to promote better health and nutrition; an assessment of the steps taken and the progress made by each program during the preceding two-year period; an assessment of the areas of improvement needed in each program; and a list of recommendations for future goals or legislation.

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## VIRGINIA

**VA HJR 637**

- The resolution establishes a joint legislative subcommittee to review methods of combating childhood obesity in Virginia public schools and to examine the relationship among the health and physical education curricula; public health policies; social, economic and cultural influences; media; and the incidence of overweight and obese students in the public schools.

The joint subcommittee must provide opportunities for the participation of the Virginia Chapter of the American Academy of Pediatrics, the Medical Society of Virginia, the Old Dominion Medical Society, the School Nutrition Association of Virginia, parents, students, the education community, business and industry and other interested parties to share perspectives on the issues, problems and solutions related to childhood obesity.

The joint subcommittee was mandated to have completed its meetings by November 30, 2007, and to submit its findings and recommendations by the first day of the 2008 Regular Session of the General Assembly.

MEASURE  
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

### **State Initiatives and Pilot Programs**

In addition to creating commissions, task forces or study groups, six of the states included in the table above (**Georgia, Indiana, Minnesota, New Mexico, Rhode Island** and **Virginia**) also established pilot programs to explore the adoption of statewide initiatives aimed at preventing childhood obesity. Currently, a total of 18 states have statewide initiatives in place; 15 of these states are supported by the NGA's Healthy Kids, Healthy America initiative, and three are supported by NGA's Healthy States Program.

In 2007 the NGA launched its Healthy Kids, Healthy America initiative, which encourages governors and state leaders across the country to support increased physical activity and healthy eating among children. The NGA awarded 15 states up to \$110,000 each for programs that focus on changing policies and environments to prevent childhood obesity.<sup>9</sup> The grant program began in September and will continue through the fall of 2008. A description of each state's activities is provided in the table on the next page.

<sup>9</sup> National Governor's Association Center for Best Practices, *Healthy Kids, Healthy America* (2007), available at: <http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=a5b1bac351071110VgnVCM1000001a01010aRCRD>

## Healthy Kids, Healthy America State Initiatives

### INDIANA

Indiana is establishing a multiyear, statewide program to increase fruit and vegetable intake and physical activity among children.

### KENTUCKY

Kentucky is developing activity zones in day care facilities for preschool-aged children to promote physical activity and healthy eating habits throughout the state.

### LOUISIANA

Louisiana is creating an action plan to implement the Wellness Policy in public elementary and middle school settings.

### MICHIGAN

Michigan will expand current childhood obesity prevention initiatives and create a five-year policy agenda to increase access to healthy foods and physical activity among children.

### MINNESOTA

Minnesota will test school wellness policies through mini-grants targeting children who are at a high risk for obesity in school districts that have a high percentage of free and reduced-price lunch.

### MISSISSIPPI

Mississippi is creating healthy school environments through the MS Preventing Obesity with Every Resource (POWER) Project.

### NEW MEXICO

New Mexico plans to create healthy environments for low-income children in schools, homes and the health care and food systems by supporting access, opportunities and resources that aim to increase nutrition and physical activity.

### NEW YORK

New York is collaborating with groups such as the YMCA and the Alliance of Boys and Girls Club to promote better nutrition and physical activity policies in after-school settings.

### RHODE ISLAND

Rhode Island is restructuring its school environments to promote healthy nutrition and physical activity and is creating safe routes to schools in low-income communities.

Source: National Governor's Association

#### SOUTH DAKOTA

South Dakota is providing grants to schools and after-school programs that have high rates of overweight students and Native American populations to promote healthy eating and physical activity.

#### TENNESSEE

Tennessee will establish the “Gold Sneaker Initiative” to promote healthy eating and physical activity among children and youth in public and private child care facilities.

#### UTAH

Utah is working with schools to increase opportunities for children to participate in physical activity and to limit foods used at school for rewards and parties.

#### VIRGINIA

Virginia is using the Governor’s Nutrition and Physical Activity Scorecard to assess schools’ childhood obesity prevention policies and incorporating the Virginia Wellness Related Fitness Test (VWRFT).

#### WEST VIRGINIA

West Virginia is requiring a HealthCheck exam for all public school students in kindergarten, third, sixth and ninth grades.

#### WISCONSIN

Wisconsin plans to use the Governor’s School Health Award, which will recognize schools that improve their nutrition and physical activity environments, as a pilot program to determine if this is an effective method for policy and environmental change.

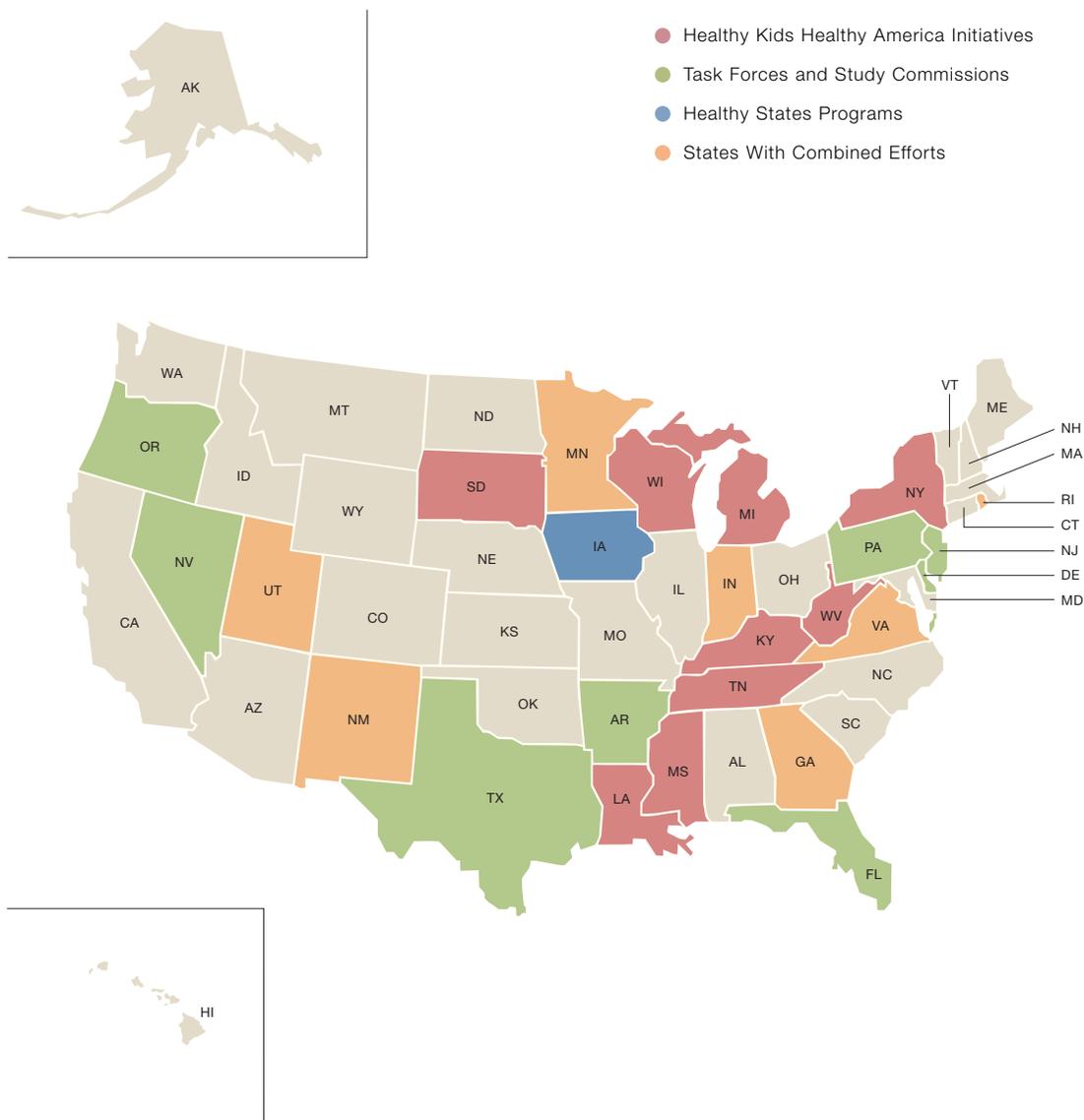
Source: National Governor’s Association

The NGA's Healthy States initiative awarded 13 grants of up to \$100,000 to states for community and workplace wellness efforts. Of the 13 states, the following three states have pilot programs focused on school or community access to nutritious foods.

- **Georgia** is promoting school employees as healthy role models and developing a school community culture that supports health. The program is part of a public-private partnership with United Healthcare and will be piloted in two communities chosen from Live Healthy GA target areas, which include Albany, Atlanta, Gainesville, Macon, Rome and Savannah.<sup>10</sup>
- **Iowa** is promoting the health and economic benefits for communities to increase fruit and vegetable consumption among its residents.
- **Utah** is working with Wasatch Community Gardens to launch a mini-grant program to develop gardens in low-income communities.

<sup>10</sup> National Governors Association, Center for Best Practices, Healthy States Grant Program, available at: <http://www.nga.org/Files/pdf/0703HEALTHYSTATESGA.PDF>

## 2007 State Commissions and Pilot Programs to Prevent Childhood Obesity



Source: Albemarle State Policy Center, January 2008

## Insurance Coverage for Obesity Treatment

State lawmakers continue to debate measures mandating that health insurance companies provide coverage for obesity treatment, specifically for surgery to treat morbid obesity. As with all mandates for health care benefits, proponents contend that these requirements are needed to ensure adequate health care for consumers by providing necessary treatment for a specific disease or condition. Proponents also maintain that the long-term health and economic benefits of obesity treatment outweigh the short-term costs. Opponents of the mandated benefits believe that any additional requirement placed on insurers contributes to the rising costs of health insurance.

As shown in the table on page 21, five state legislatures addressed the issue of health insurance and obesity in 2007. However, only two considered the treatment of morbid obesity, and those states sought only to study the issue.

While few in number, the legislative actions seem to reflect a growing trend occurring within the health insurance industry: health insurance companies are recognizing the threat obesity poses to the health of their enrollees and their own financial health. In fact, a growing number of insurers are launching their own obesity prevention and wellness efforts, as well as supporting broader community efforts, including:

- According to proposed changes in their labor contract, **New Jersey** state employees who currently receive free health insurance benefits will be required to pay 1.5 percent of the cost of their health benefit, but the cost will be waived if workers sign up for a health wellness program.
- Beginning in 2009, Clarion Health Partners, in **Indiana**, will charge employees \$30 every two weeks unless they meet weight, cholesterol and blood pressure guidelines.<sup>11</sup>
- United Healthcare, a national insurer, introduced a low-cost health insurance plan in July that reduces the \$5,000 annual deductible for family plans to \$1,000, if the enrollee is not obese and does not smoke.<sup>12</sup>

<sup>11</sup> Celizic, M. "Company to workers: Shape up or pay up; Indiana employer defends plan to charge employees who smoke, overeat." *Today Show*, Aug. 10, 2007, available at: <http://www.msnbc.msn.com/id/20212332/>

<sup>12</sup> Press Release, United Healthcare, *Vital Measures Helps Reduce Health Care Expenses*, (July 11, 2007), available at: [http://www.uhc.com/news\\_room/news\\_release\\_archive/vital\\_measures\\_helps\\_reduce\\_health\\_care\\_expenses.htm](http://www.uhc.com/news_room/news_release_archive/vital_measures_helps_reduce_health_care_expenses.htm)

- The **California** insurer WellPoint announced that it will link 5 percent of its employees' bonuses to an index that will track 20 different clinical areas, including weight and physical activity, to measure patient care improvement.<sup>13</sup>
- **Louisiana** Blue Cross and Blue Shield partnered with Louisiana State University's Agriculture Center to develop the Smart Bodies program, which integrates classroom activities with hands-on learning to teach elementary school students how to build strong bodies and active minds.<sup>14</sup> As of August 2007, the program has been implemented in 52 of the state's 64 parishes, and nearly 91,000 youth are participating. The goal is to implement the program in all parishes by 2010.

In an effort to control the cost of health insurance benefits and reduce incidence of chronic disease, an increasing number of employers are adopting weight loss programs and rewarding winners with cash prizes. The concept is becoming more popular as workplaces realize the economic cost of obesity.<sup>15</sup> Employees in such programs potentially become role models for their own family members and also for other employees. For example, IBM plans to launch a program to combat childhood obesity among its employees' children. The company will pay employees \$150 to sign up for a 12-week fitness and exercise program. Approximately 128,000 employees have enrolled in the company's annual program, and IBM estimates that employee wellness programs save the company \$100 to \$130 million per year. *The Wall Street Journal* recently stated, "Companies have been involved in tobacco prevention programs for a long time, obesity with its impact on chronic disease is the logical next step."<sup>16</sup>

<sup>13</sup> Reuters. "WellPoint ties member's health to employee bonuses." Apr. 3, 2007, available at: <http://www.insurancebroadcasting.com/040407.htm#2>

<sup>14</sup> Blue Cross and Blue Shield of Louisiana Foundation, *Smart Bodies: A Louisiana youth program for healthy bodies and active minds* (2007), available at: Reuters. "WellPoint ties member's health to employee bonuses." Apr. 3, 2007, available at: <http://www.insurancebroadcasting.com/040407.htm#2>

<sup>15</sup> Associated Press. "Employees compete to be 'biggest loser' at work; Inspired by NBC show, weight-loss contests are catching on in offices" July 24, 2007, available at: <http://www.msnbc.msn.com/id/19935671/>

<sup>16</sup> Bulkeley, WM. "IBM to Help Pay for Plans to Curb Childhood Obesity." *Wall Street Journal*, Oct. 24 2007, available at: [http://online.wsj.com/article\\_print/SB119318852724069337.html](http://online.wsj.com/article_print/SB119318852724069337.html) [Registration required]

## 2007 Enacted Legislation Mandating Health Insurance Coverage of Morbid Obesity

### ALABAMA

#### AL SB 565

- ✓ The new law establishes the 2007 Legislative Task Force on Morbid Obesity, which will study the feasibility of implementing a pilot program to reduce the financial and clinical burden of morbid obesity on the citizens of Alabama. The task force also will study the long-term cost of coverage for morbid obesity versus the cost of bariatric surgery. If a pilot program is deemed feasible, a report of the findings and recommendations shall be prepared by the fifth day the Legislature is in session in 2008.

### ILLINOIS

#### IL SB 144

- ✓ The new law requires health insurers to reimburse any expense or charge for weight loss programs, exercise equipment or treatment of obesity when certified by a physician as required in the treatment of morbid obesity (defined by the state as at least two times normal body weight).

### MARYLAND

#### MD HB 339

- ✓ The new law allows a health insurer to offer a small employer a discount (not to exceed 20 percent) if the covered employees participate in a wellness program that covers topics such as weight reduction, nutrition education and tobacco cessation.

### UTAH

#### UT HJR 14

- ✓ The measure directs the state insurance commissioner to study the potential of adopting administrative rules directing health insurance carriers to offer health insurance for morbid obesity.

### WASHINGTON

#### WA SB 5930

- ✓ The new law expands access to health insurance for low-income children by assigning children to primary care physicians who serve as medical homes to monitor children's health status, including improving nutrition and increasing physical activity.

#### MEASURE STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

### **Medicaid Benefits and Services to Treat Overweight and Obese Individuals**

The federal government does not require states to cover obesity treatment under Medicaid. However, 17 states offer coverage for weight loss drugs if a patient meets the criteria for being diagnosed with type 2 diabetes, hyperlipidemia (a high level of fats in the blood) or morbid obesity. The Centers for Medicare and Medicaid (CMS) highlighted its position on the issue last May when it published a clarification of a previous notice in the *Federal Register*.<sup>17</sup> The clarification noted that despite CMS's initial instructions that certain drugs will not be reimbursed for the treatment of anorexia, weight loss or weight gain, it did not mean to imply that these drugs could not be used to treat morbid obesity. In addition to reimbursement for medications, more than 40 state Medicaid programs reimburse for weight loss surgery in the case of morbid obesity. The table on page 23 describes the policies regarding Medicaid and morbid obesity adopted by four states in 2007.

### **Snack and Soda Taxes**

Policy-makers have debated the merits of taxes on snack foods and soda for the past two decades. According to the Grocery Manufacturer's Association (GMA), several states and jurisdictions implemented new snack taxes in the early 1990s. However, due to the complexity involved in the collection and administration of the tax, the measures were repealed, and the number of states placing a tax on snacks remains at six. Opponents like GMA argue that taxing snack foods leads to consumer and retailer confusion, establishes government-imposed preferences and creates competitive disadvantages for retailers whose businesses operate near state borders. Proponents advocate that snack taxes could deter the purchase of foods of minimal nutritional value, while generating revenue for obesity prevention programs.

No new snack or soda tax legislation has been enacted in the past three years. However, **Louisiana, Rhode Island** and **South Carolina** did enact tax legislation involving the purchase of nutritious foods for school breakfasts and lunches. The state legislatures sought to support school districts' and farmers' efforts to provide students with fruits and vegetables. The table on page 24 describes the legislation enacted by these three states in 2007.

The table on page 25 provides information about the taxes on sodas and snacks that currently exist in 17 states and the **District of Columbia**.

<sup>17</sup> Federal Register, Vol. 72, May 25, 2007, page 29403.

## Adopted Policies Concerning Medicaid and Morbid Obesity

### MEASURE STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

### ARIZONA

-  The Arizona Health Care Cost Containment System has begun implementing the Childhood Obesity Prevention Program. The program includes four tiers of education and intervention. Each tier is progressively more aggressive in addressing obesity—from prevention and assessment to aggressive intervention.

### NEBRASKA

-  The state Medicaid agency offers Health Check to all enrollees age 20 or younger. The Health Check screening, diagnostic tests and treatment now include nutrition counseling and weight management clinics.

### TENNESSEE

-  The state Medicaid agency is offering enrollees an opportunity to enroll in a 12-week Weight Watchers program. To qualify for the program, recipients must pay a \$1 co-pay for each meeting, attend at least 10 of the 12 weekly meetings and achieve the targeted weight loss in the 12-week period.

### WEST VIRGINIA

-  The state Medicaid agency is now offering enrollees an extended benefits package in an effort to promote healthier living among the Medicaid population. As of January 2007, the state began offering Medicaid recipients enrolled in UniCare (a Medicaid managed care plan) the opportunity to enroll in a free 16-week Weight Watchers class.

Unicare, the largest Medicaid managed care provider in the state, is equipping doctors with BMI calculators and providing training in obesity prevention and use of the calculators. While most doctors are aware of the obesity epidemic, the state agency believes it is important to encourage physicians to incorporate BMI calculations into routine primary care.

Source: Albemarle State Policy Center, January 2008

## 2007 Enacted Legislation on Food, Snack and Beverage Taxes

### LOUISIANA

#### LA HB 241

- ✓ The new law establishes that nonpublic elementary and secondary schools that participate in the National School Lunch and Breakfast Programs or nonprofit entities that serve students in nonpublic schools and participate in the National School Lunch and Breakfast Programs are exempt from having a sales or use tax imposed on them.

### RHODE ISLAND

#### RI HB 1500

- ✓ A provision in the state FY 2008 appropriations act gives farmers a 5 percent income tax credit for the cost of farm products grown or produced in the state and sold to local education agencies in Rhode Island.

### SOUTH CAROLINA

#### SC SB 656

- ✓ The new law reduces the sales and use tax on the gross proceeds of sales or the sale price of unprepared food purchased with USDA food coupons to 3 percent.

#### MEASURE STATUS:

- ✓ Enacted
- ⊖ Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## State Taxes on Soda and Snacks

State	Soda Tax	Snack Tax	Revenue Purpose
Arkansas	\$.21/gallon liquid soft drink; \$2/gallon soft drink syrup		Arkansas Medicaid Program Trust Fund
California	7.25 percent		General Fund
District of Columbia	9 percent		General Fund
Illinois	6.25 percent		General Fund
Indiana	6 percent		General Fund
Kentucky	6 percent		General Fund
Maine	7 percent		General Fund
Minnesota	6.5 percent	6.5 percent; bakery products exempt	General Fund
Missouri	\$.003/gallon of soft drinks produced (excise)		
New Jersey	6 percent	6 percent	General Fund (excise) Local Government (sales)
New York	4.25 percent	4.25 percent	General Fund
North Dakota	5 percent	5 percent	General Fund
Rhode Island	\$.04/case of soft drinks (excise)	6 percent	General Fund (excise) Local Government (sales)
Tennessee	1.9 percent of gross soft drinks and soft drink ingredients, paid by manufacturers and bottlers	6 percent	General Fund Soft Drink Tax for highway litter control
Texas	6.25 percent	6.25 percent	General Fund
Virginia	"small" excise tax on wholesalers and distributors based on total sales of carbonated soft drinks		Litter control and recycling
Washington	\$1/gallon on syrup		Violence prevention and drug enforcement
West Virginia	\$.01/half-liter of carbonated and non-carbonated soft drinks; \$.80/gallon of syrups paid by manufacturers and wholesalers		West Virginia University medical, dental, and nursing schools

Source: Albemarle State Policy Center, January 2008

### **Calendar of Task Force Reports and Program and Regulation Implementation**

The calendar on pages 27–28 contains completion dates for some of the studies, task forces and commissions described above. It also includes planned implementation dates for several laws and regulations that aim to prevent obesity. When available, the descriptions include the Web site containing the task force's or commission's full findings and recommendations. Future editions of the *BALANCE* report will describe these findings and the action taken by state and local legislatures in response. The *BALANCE* report also may expand this section to explain the completion and follow-up of the many pilot programs currently operating in states.

### **Conclusion**

State legislators and policy-makers continue to take a cautious approach in expanding public and private health insurance to cover obesity prevention and treatment benefits. An analysis of legislative action during 2007 also indicates that lawmakers are reluctant to propose any new snack or soda taxes. However, there is considerable excitement among policy-makers about the number of state task forces and pilot projects established to address the obesity epidemic. The level of activity is an indication that the issues surrounding nutrition, physical activity and obesity prevention, especially among children, are being addressed at the state level. Nearly all these task forces and pilot projects will report their findings in 2008, and monitoring and reporting on these activities will be important to track progress in the field. As these task forces and pilot projects issue their findings, recommendations or accomplishments, the *BALANCE* report will track their efforts to determine which recommendations become permanent policies or the basis for future legislation.

## Calendar of Task Force Reports and Program and Regulation Implementation

State	Date	Description
<b>OCTOBER 2007</b>		
New Mexico	10/30/07	The Food Gap Task Force prepared a report about the nature and scope of barriers to healthy, affordable and culturally appropriate food.
<b>NOVEMBER 2007</b>		
Virginia	11/30/07	A joint legislative committee reviewed the methods of combating childhood obesity in public schools and examined the relationship between the health and physical education curriculum; public health policies; social, economic and cultural influences; advertising and the incidence of overweight and obese students. The Joint Legislative Committee's report can be found at the URL below. There also will be a final report published later in 2008. A resolution was introduced in the 2008 legislative session to continue the study, but it did not pass.  <i><a href="http://leg2.state.va.us/DLS/h&amp;sdocs.nsf/5c7ff392dd0ce64d85256ec400674ecb/66df68118026ec99852572b5004e2dc1?OpenDocument">http://leg2.state.va.us/DLS/h&amp;sdocs.nsf/5c7ff392dd0ce64d85256ec400674ecb/66df68118026ec99852572b5004e2dc1?OpenDocument</a></i>
<b>DECEMBER 2007</b>		
Georgia	12/31/07	House Study on Trans Fat Alternatives for the Georgia Food Industry.
<b>JANUARY 2008</b>		
Federal	1/31/08	Comments were due on FDA Notice of Proposed Rule Making on "Food Labeling: Revision of Reference Values and Mandatory Nutrients."
<b>FEBRUARY 2008</b>		
Alabama	2/12/08	The Legislative Task Force on Morbid Obesity is studying the feasibility of implementing a pilot program to increase the funding formula in the State Employees' Health Plan for morbid obesity.
<b>MARCH 2008</b>		
New York	3/31/08	The New York City Regulation Menu Labeling Information was to go into effect.
<b>JULY 2008</b>		
	7/1/08	The New York City ban on the use of trans fat for all other foods will go into effect. The regulation with respect to cooking oils, shortening and margarines went into effect 7/1/07.
<b>OCTOBER 2008</b>		
Oregon	10/1/08	The Comprehensive Obesity Prevention Initiative Task Force will complete the following studies: – Study the ways to decrease the number of cases of obesity. – Develop a plan to implement and fund initiatives that will decrease obesity and obesity-related diseases.

Source: Albemarle State Policy Center, January 2008

<b>State</b>	<b>Date</b>	<b>Description</b>
<b>DECEMBER 2008</b>		
Federal	12/1/08	The USDA will report on the department's progress to reduce trans fats in all school meals and nutrition programs. The report also must include the initiatives, proposals and programs that the USDA is currently conducting or planning. Finally, the department must list recommendations for legislative action to assist in reducing trans fats in school meals.
<b>JANUARY 2009</b>		
Texas	1/15/09	The Interagency Obesity Council is to submit a report that includes the following: <ul style="list-style-type: none"> <li>– A list of programs in each state agency designed to promote better health and nutrition.</li> <li>– An assessment of the steps taken and the progress made by each program during the preceding two-year period.</li> <li>– An assessment of the areas of improvement needed in each program.</li> <li>– A list of recommendations for future goals or legislation.</li> </ul>

Source: Albemarle State Policy Center, January 2008

## Chapter 2: Community Access to Nutritious Foods

### Overview

**A** diet rich in nutritious foods can promote health, prevent disease and reduce the risk of overweight and obesity. However, many low-income and urban populations lack adequate access to nutritious foods. According to the Food Research and Action Center, food insecurity occurs whenever the availability of or access to nutritionally adequate and safe food is limited or uncertain.<sup>18</sup> The U.S. Department of Agriculture (USDA) reported that approximately 11 percent of Americans experienced food insecurity in 2006—a percentage that has not improved since 2005.<sup>19</sup>

Research has demonstrated a correlation between food insecurity and obesity. Households in urban and low-income areas are more likely to experience food insecurity. Obesity rates also are highest among those in low-income neighborhoods. This paradoxical overlap of food insecurity and obesity is the result of two factors: low-income households have fewer resources to purchase nutritious foods and energy-dense foods (i.e., foods high in refined carbohydrates, added sugars and fats) tend to be less expensive than more nutritious options. As a result, low-income households may sacrifice quality for quantity. The less expensive, energy-dense options can result in higher caloric intakes. All of these factors create an unhealthy cycle for people in low-income neighborhoods: They have limited resources for food, which causes decreased food expenditures and a lower quality diet, which leads to higher fat and caloric intake, resulting in overweight and obesity.<sup>20</sup>

18 Food Research Action Center. *The Paradox of Hunger and Obesity in America* (July 2003), available at <http://www.frac.org/pdf/hungerandobesity.pdf>.

19 United States Department of Agriculture, Economic Research Service, *Food Security in the United States* (2007), available at <http://www.ers.usda.gov/Briefing/FoodSecurity/>.

20 Adam Drewnowski, SE Specter, *Poverty and Obesity: The Role of Energy Density and Energy Costs*, 79 *Am. J. Clin. Nutr.* 6–16 (2004).

Initiatives throughout the country strive to improve access to nutritious foods in low-income, urban communities. Several federal programs work toward this goal—the Food Stamp Program, the National School Breakfast and Lunch Programs, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Many households that experience food insecurity rely on these federal programs. The following sections summarize the efforts in 2007 to enhance nutrition through commodity price supports, improve access to grocery stores and supermarkets, and establish and promote farmers' markets.

### **Commodity Price and Support Policies**

Historically the government has subsidized certain commodities produced by farmers, which makes the commodity less expensive at the retail level and increases its use and consumption by consumers. Commodity subsidies affect the availability, accessibility and affordability of farm-produced products, such as grains, potatoes, fruits and vegetables. Participants in the federal food program tend to purchase subsidized commodities in mass quantities because they are the most affordable options. However, the farm products that receive commodity subsidies, and therefore are more affordable, are dairy, grains, sugars and oilseed products—less nutritious options compared with other agricultural products such as fruits and vegetables.<sup>21</sup>

Because commodities are subsidized—and therefore legislated and regulated—at the federal level, no states enacted commodity legislation in 2007. However, commodities will be highly controversial as the final version of the Farm Bill, a reauthorization and expansion of the 2002 Farm Bill, continues to be debated in Congress. It is important to note that both the House and Senate versions of the Farm Bill expand the Fresh Fruit and Vegetable Program to all 50 states, enabling schools to offer free fresh fruit and vegetables to students.

### **Farmers' Markets**

Farmers' markets, community gardens and food cooperatives provide the opportunity for residents to grow fruits and vegetables themselves or to purchase produce, grains and other nutritious foods directly from local farmers. Each of these strategies has the potential to benefit local farmers, consumers and the community directly, especially in low-income urban areas.

Legislation and programs throughout the country have sought to establish or promote farmers' markets, community gardens and food cooperatives because of their potential to increase community access to locally grown, nutritious foods. Every two years the USDA reports on the number of local farmers' markets—which has grown from 1,755 in 1994 to 4,385 in 2006.<sup>22</sup>

<sup>21</sup> Rob Hotakainen, *Doctors Tell Lawmakers to Subsidize Fruit, Not Fat*, *The News & Observer*, Oct. 29, 2007.

<sup>22</sup> United States Department of Agriculture, Agricultural Marketing Service, AMS Farmers Markets (2007), available at <http://www.ams.usda.gov/farmersmarkets/>.

The farmers' market legislation introduced in states usually distributes general fund dollars in support of the WIC Farmers' Market Nutrition Program (FMNP) or the Seniors Farmers' Market Nutrition Program (SFMNP). The FMNP is a federal/state partnership in which the USDA Food and Nutrition Service (FNS) provides cash grants to state agencies, such as the state agriculture department, which then distribute FMNP coupons to its eligible WIC recipients. The FMNP coupons can be used to purchase fresh fruits, vegetables and herbs directly from state-approved farmers, farmers' markets or roadside stands. The farmers, farmers' markets and roadside stands then submit the coupons to the bank or state agency for reimbursement.<sup>23</sup> Participating state agencies also provide nutrition education to FMNP recipients.

Federal guidelines set the benefit level for FMNP recipients at no less than \$10 and no more than \$30 per year per recipient. However, a state may supplement the benefit level. The FMNP program is funded primarily through federal dollars, including 100 percent of the food costs. However, participating states must match at least 30 percent of the total administrative costs of the program. Congress appropriated \$19.8 million for the program in both fiscal year 2005 and fiscal year 2006, not taking inflation into account.

Thirty-seven states and the District of Columbia operate an FMNP:

**Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin.**

According to the most recent USDA statistics, in fiscal year 2005 more than 2.6 million WIC recipients received farmers' market benefits, and 14,323 farmers, 2,715 farmers' markets, and 1,999 roadside stands were approved to accept FMNP coupons, which resulted in more than \$23.4 million in revenue for farmers.

<sup>23</sup> United States Department of Agriculture, Food and Nutrition Service, WIC Farmers' Market Nutrition Program (2007), available at <http://www.fns.usda.gov/wic/FMNP/FMNPfaq.htm>.

The USDA FNS operates the SFMNP similarly to the FMNP. The SFMNP awards grants to states to provide low-income seniors, defined as those who are at least 60 years of age with household incomes at or below 185 percent of the federal poverty level, with coupons to purchase fresh, unprepared fruits, vegetables and herbs from authorized farmers, farmers' markets and roadside stands. However, one difference is that SFMNP benefits are available to eligible recipients only during the harvest season, which can be relatively short in certain areas of the country. The states must use most of the grant funds for food costs, but up to 10 percent may be used to cover administrative costs. Congress authorized \$15 million for the SFMNP in 2007.<sup>24</sup>

In 2007 seven states enacted legislation to promote farmers' market initiatives (see table on the following page).

Looking beyond legislative initiatives, in November 2007, the Central California Regional Obesity Prevention Program announced a regional plan for promoting policy changes designed to increase residents' access to healthy foods and safe environments for physical activity.<sup>25</sup> One element of the program will be to advocate for the development of farmers' markets and community gardens within six central **California** counties.

### **Grocery Stores and Supermarkets**

A lack of grocery stores and supermarkets in a community contributes to poor access to nutritious foods throughout the year. Legislative and nonlegislative programs have sought to promote the establishment, re-establishment or expansion of grocery stores and supermarkets in low-income urban areas in order to increase access to a variety of nutritious foods. The methods of promotion may include economic development programs, business enterprise zones, tax incentives and support of small business development.

**Nevada** was the only state to enact legislation promoting the establishment of grocery stores in low-income urban areas. Specifically, Nevada S.B. 352 builds on prior legislation, which provided a temporary tax incentive for locating or expanding businesses that are, or are willing to become, grocery stores within the Southern Nevada Enterprise Community. It allows developers to apply for a partial abatement of the taxes imposed on necessary capital equipment.

<sup>24</sup> United States Department of Agriculture, Food and Nutrition Service, Senior Farmers' Market Nutrition Program (2007), available at <http://www.fns.usda.gov/wic/SeniorFMNP/SFMNPmenu.htm>.

<sup>25</sup> Montanez F, "Obesity Plan Looks at Where We Reside," *Fresno Bee*, Nov. 14, 2007.

## 2007 Enacted Legislation on Farmers' Markets

### ARKANSAS

#### AR SB 504

- ✓ The law appropriates \$750,000 for the construction and general improvement of farmers' markets across the state.

### CONNECTICUT

#### CT HB 7163

- ✓ The law allows farmers' markets to sell fresh produce directly to food service establishments. The farmer or person selling the fresh produce will provide the food service establishment with an invoice that indicates the source of the fresh produce and the day and time of the sale.

### KENTUCKY

#### KY HB 120

- ✓ The new law seeks to enhance the safety and operations of farmers' markets and provide a specific definition of a market and its time and duration of operation. A farmers' market is a temporary food service establishment operated by a farmer among a larger collection of farm vendors registered with the state Department of Agriculture, for the direct-to-consumer marketing of Kentucky-grown farm products. It is to operate for a period of time not to exceed two days per week for six consecutive months per calendar year. It further requires vendors at farmers' markets to apply for an annual permit, which requires them to document successful completion of an approved food safety training program prior to selling their products at farmers' markets.

#### KY SB 25

- ✓ The new law creates the Kentucky Farmers' Market Nutrition Program within the state Department of Agriculture to enhance citizens' nutrition. The program services may include the provision of fresh, locally grown produce to low-income citizens, including seniors and participants in the WIC program. The department may collaborate with the USDA, the University of Kentucky College of Agriculture Cooperative Extension, local area agencies on aging, community agencies, foundations, philanthropic organizations and farmers to identify funding sources, establish services, market the program, and develop strategies to introduce fresh, locally grown fruits and vegetables into school food programs.

### LOUISIANA

#### LA HB 1

- ✓ The law appropriates \$284,644 to strengthen the state's Seniors' Farmers' Market Nutrition Program.

#### MEASURE STATUS:

✓ Enacted

— Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## MISSISSIPPI

**MS SB 3137**

- ✓ The law appropriates \$30,000 for the Mississippi Senior Farmers' Market Nutrition Pilot Program.

## NEW MEXICO

**NM SB 611**

- ✓ The law appropriates \$25,000 to expand the programming and revenue for the Santa Fe farmers' market and \$64,000 to provide teaching, research and extension services to small agriculture farmers.

**NM SB 827**

- ✓ The law appropriates \$125,000 to plan, design, construct and equip a new facility for the farmers' market in Santa Fe at the rail yard.

## UTAH

**UT HB 145**

- ✓ The new law seeks to enhance and facilitate the operation of farmers' markets by exempting markets from the definition of "food establishment" and exempting a producer selling food at a farmers' market from the definition of "food handler." It also allows counties and municipalities to operate a farmers' market on a county- or municipality-owned property in order to promote economic development and to indemnify a food producer participating in the farmers' market.

MEASURE  
STATUS:

- ✓ Enacted
- ⊖ Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

Although the amount of legislation has been limited, efforts spearheaded by The Food Trust in **Pennsylvania** to increase access to affordable, nutritious food throughout the state have become a model for the rest of the nation. In 2001 The Food Trust released a report, *The Need for More Supermarkets*, which led to the establishment of a Food Marketing Task Force. In 2004 the Food Marketing Task Force released a report, *Stimulating Supermarket Development: A New Day for Philadelphia*, which included recommendations for policy changes. That same year, Pennsylvania lawmakers enacted a bill that set aside \$100 million for the establishment of new supermarkets in Philadelphia. This measure, along with the Food Marketing Task Force and the leadership of Rep. Dwight Evans, D-PA, led to the creation of the Pennsylvania Fresh Food Financing Initiative (FFFI) within The Food Trust.<sup>26</sup>

FFFI is an award-winning program that works to increase the number of supermarkets and grocery stores in underserved communities throughout Pennsylvania. The program provides financing to supermarket operators who plan to locate in underserved areas where infrastructure and credit needs cannot be met through conventional means. A public-private partnership between The Food Trust, The Reinvestment Fund (TRF), and the Greater Philadelphia Urban Affairs Coalition formed to support FFFI. State lawmakers appropriated \$20 million and TRF committed \$60 million to create an \$80 million fund for the FFFI. Since 2004 FFFI has committed \$26 million in grants and loans to 32 supermarket projects throughout Pennsylvania. These projects are expected to result in the creation of approximately 2,645 jobs and more than 889,750 square feet of new retail space. In 2006 Harvard University's Ash Institute for Democratic Governance and Innovation named FFFI as one of its Top 50 Government Innovations for 2006. FFFI also has been recognized as an innovative model program for promoting healthy living and smart growth by both the National Governors Association Center for Best Practices and the Environmental Protection Agency.

Other cities and states across the country are working to bring supermarkets and grocery stores to their low-income urban and rural communities. In addition to creating farmers' markets and community gardens, the Central California Regional Obesity Prevention Program announced in 2007 that the program would strive to increase residents' access to grocery stores and minimize reliance on fast-food restaurants and convenience stores.<sup>27</sup>

<sup>26</sup> The Food Trust, *Supermarket Campaign* (2007), available at: <http://www.thefoodtrust.org/php/programs/super.market.campaign.php>

<sup>27</sup> Montanez F, "Obesity Plan Looks at Where We Reside," *The Fresno Bee*, Nov. 14, 2007.

**Conclusion**

Policy-makers believe that a decrease in the price supports for traditional crops such as grains, rice and corn, and an increase in the support for new ones such as fruits and vegetables, is warranted.

Public health advocates are pleased with the expansion of the Fresh Fruits and Vegetables program in the House and Senate versions of the federal farm bill pending before Congress. But they also believe more can be done to adjust subsidies in an effort to make fruits and vegetables more accessible and an alternative to cheap, energy-dense foods. While far too many urban minority families have limited or no access to quality foods and fresh produce in their neighborhoods, there were a few bright spots concerning new grocery stores and supermarkets. One true success is the growing number of farmers' markets and the increasing consumer demand for them. And while increasing the availability of farmers' markets is becoming a promising way to increase fruit and vegetable consumption among low-income families, limited transportation alternatives in some urban areas may still hinder many families' ability to access farmers' markets.

## Chapter 3: Food and Beverage Industry

### Overview

**A**mericans are voicing their concerns about obesity and are recognizing the important role the food environment and public policies related to it play in helping them make healthy choices. Policy-makers and the food and beverage industry have become more attentive and are pursuing ways to be responsive to growing consumer awareness and demand. In 2007 consumer demand persuaded the food and beverage industries to improve the nutritional quality of their products.

The food and beverage industry has faced increasing criticism for advertising and marketing directed to children. Public health advocates claim the advertisements and marketing strategies are contributing to the rising rate of obesity in children and adolescents, and parents are concerned about their children's exposure to junk food. More and more Americans want to know the nutritional content of what their families are eating and how it may impact their health. Whether food is purchased from the farm, the grocery store or their favorite restaurant, Americans are asking for better and easier-to-interpret nutritional information.

As the food and beverage industry responds to consumer concerns and accounts for its' marketing strategies, it is extremely wary of assuming liability for the health consequences many consumers face because of a poor diet. As a result the industry frequently emphasizes the importance of individual choice and responsibility.

This chapter outlines the issues and activity concerning food and beverage industry liability, advertising and marketing restrictions, product nutrition labeling, menu nutrition labeling, trans fats and biotechnology as it relates to genetically engineered foods.

### **Food and Beverage Industry Liability**

Between 2003 and 2006, 23 states enacted legislation limiting an individual's ability to sue food and beverage companies. Commonly referred to as the "Commonsense Consumption Act," these measures limit the civil liability of manufacturers, distributors, advertisers, trade associations, sellers or retailers of food or beverages for damages resulting from weight gain, obesity or obesity-related conditions.

During the past two years the interest in such legislation has waned. In 2007 12 states—**Alabama, Connecticut, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina** and **Pennsylvania**—considered legislation. None of the measures were enacted.

The controversial nature of such legislation may in part explain why 27 states have acted at all. There are numerous and large interest groups on both sides of the legislative issue. Food and beverage manufacturers and the National Restaurant Association supported these bills while the American Heart Association and the National Trial Lawyers Association opposed them.

The food industry and public health advocates both have several key points regarding why they support or do not support such legislation.

#### **Industry's Perspective**

- Lawsuits blaming the restaurant industry for obesity in America deny the role that personal responsibility plays in dietary choices individuals make on a daily basis.
- Healthy eating and physical activity should be promoted through education, not lawsuits.
- The food and restaurant industries need protection from abusive, frivolous litigation.

#### **Public Health's Perspective**

- Keeping the option of litigation open does not deny the role of individual dietary decisions and choices; it merely represents one potential tool to address the problem.
- Courts can dismiss cases they deem frivolous by way of Rule 11, a federal act that sanctions attorneys who bring such cases to court. Protection from frivolous lawsuits should not be a legitimate concern.

The U.S. Congress has considered related federal legislation in both the House and the Senate. The House passed its version of the bill in 2005, Personal Responsibility in Food Consumption Act. Those in favor of limiting such lawsuits lobbied for the U.S. Senate to pass the Commonsense Consumption Act of 2005. However, the Senate did not act before Congress adjourned. The legislation has not since been reintroduced.

### **Advertising and Marketing Restrictions**

Policy-makers and the food, beverage and advertising industries have responded to the growing concern about the effect of food and beverage advertising on children. Because consumer advertising and marketing is regulated at the federal level, state legislators introduce very few bills limiting it.

**Maine** was the only state legislature to enact such a bill in 2007. S.B. 67 prohibits brand-specific advertising of foods or beverages in school buildings or on school grounds except for food and beverages meeting standards for sale or distribution on school grounds. The provision excludes advertising via broadcast and print media, clothing with brand images worn on school grounds and advertising on product packaging.

Although the federal and state governments had been reluctant to place mandates on the advertising industry, in 2005 the Institute of Medicine (IOM) released a report on the effect of food and beverage marketing on children and urged the federal government to take action. Since the release of that report, the federal government has urged the food, beverage and advertising industries to change their marketing strategy to children.

In 2006 the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) issued a report, *Perspectives on Marketing, Self-Regulation, and Childhood Obesity*, urging the food marketing industry to take specific steps to change its marketing to children to help address childhood obesity. The report included the following recommendations:

- Food companies should develop new products and reformulate existing products to make them more nutritious and appealing to children, and to help control portion sizes and intakes.
- Food companies should create labels that make it easier to identify healthier choices.
- Food companies should revise their marketing practices to improve the nutritional profile of foods marketed to children and in schools.

- Media and entertainment companies should review their licensing of children’s television and movie characters to promote more nutritious foods.
- All involved parties should continue to improve efforts to educate consumers on nutrition and fitness.
- The industry should consider improving self-regulatory efforts, particularly through the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB).<sup>28</sup>

In July 2007 the FTC and HHS followed up on their promise to closely monitor the implementation of the recommendations by hosting a forum entitled “Weighing In: A Check-up on Marketing, Self-Regulation, and Childhood Obesity.” The forum allowed members of the food and media industries and self-regulatory groups to report on their progress in implementing the recommendations in the 2006 report. The forum also provided an opportunity for stakeholders to consider future steps.<sup>29</sup>

At the forum, the CBBB reported that it was responding to the IOM recommendations with two approaches.<sup>30</sup> In November 2006 the CBBB and the National Advertising Review Council (NARC) announced revisions to the Self-Regulatory Guidelines for Children’s Advertising. The revisions broaden and strengthen the role of CARU in providing guidance and oversight to all industries advertising to children under 12. The revised guidelines authorize CARU to take the following steps:

- Act on advertising targeted to children that is considered unfair or misleading.
- Address advertising that obscures the line between editorial content and advertising messages. (A new provision, which applies across all media, prohibits advertising that “blurs the distinction between advertising and program/editorial content in ways that would be misleading to children.”)
- Address the use of advertising in interactive games, referred to as advergaming. (The revised guidelines require advertisers that integrate a commercial message into a game or activity to clearly specify to the audience that it is an advertisement.)
- Provide guidance to food and beverage advertisers. (For example, advertising to children should not discourage healthy lifestyle choices.)

<sup>28</sup> Press Release, Federal Trade Commission, FTC, HHS Release Report on Food Marketing and Childhood Obesity (May 2, 2006), available at: <http://www.ftc.gov/opa/2006/05/childhoodobesity.htm>.

<sup>29</sup> Federal Trade Commission, Weighing In: A Check-Up on Marketing, Self-Regulation, and Childhood Obesity (2007), available at: <http://www.ftc.gov/bcp/workshops/childobesity/index.shtml>.

<sup>30</sup> Press Release, Better Business Bureau, New Food, Beverage Initiative to Focus Kids’ Ads on Health Choices; Revised Guidelines Strengthen CARU’s Guidance to Food Advertisers (Nov. 14, 2006), available at: <http://www.bbb.org/alerts/article.asp?ID=728>.

The CBBB also established in November 2006 the Children's Food and Beverage Advertising Initiative to provide companies that advertise foods and beverages to children with a voluntary advertising self-regulation program.<sup>31</sup> Participating companies agree to the following conditions:

- Devote at least 50 percent of their advertising directed to children under 12 to promote healthier dietary choices, good nutrition and/or healthy lifestyles.
- Include healthier dietary choices that incorporate the company's food or beverage products.
- Refrain from food and beverage product placement in editorial and entertainment content.
- Require advertisers to use third-party licensed characters for products that meet better-for-you criteria in a manner that is consistent with the characters' original purposes. This condition would extend to Web sites promoting healthy lifestyles.
- Refrain from advertising food or beverage products in elementary schools.
- Prepare an individual pledge detailing the company's commitment and submit the pledge for approval with the Children's Food and Beverage Advertising Initiative.

Perhaps the most progressive action of 2007 occurred at the forum with the CBBB's announcement that 11 food and beverage companies had been approved to participate in the Children's Food and Beverage Advertising Initiative: Cadbury Adams, USA, LLC; Campbell Soup Company; The Coca-Cola Company; General Mills, Inc.; The Hershey Company; Kellogg Company; Kraft Foods Inc.; Mars, Inc.; McDonald's, USA, LLC; PepsiCo, Inc. and Unilever.<sup>32, 33</sup> Burger King Corp. and ConAgra Foods, Inc. joined the initiative in September and October, respectively, bringing the number of participating companies to 13.<sup>34, 35</sup>

Several of the companies had already implemented internal, voluntary nutrition and advertising standards. For example, Kraft had limited its Oreo and Kool-Aid advertising campaigns to children over the age of 12, and PepsiCo ceased advertising soft drinks to children under 12. However, the initiative provides a high and uniform standard for advertising and self-regulation. Each company's pledge is tailored uniquely to its practices but meets or exceeds the minimum criteria of the initiative. The table that follows details each company's pledge.

<sup>31</sup> Better Business Bureau, Children's Food and Beverage Advertising Initiative (2007), available at: <http://www.usbbb.org/WWWRoot/SitePage.aspx?site=113&id=b712b7a7-fcd5-479c-af49-8649107a4b02>.

<sup>32</sup> Press Release, Better Business Bureau, Better Business Bureau Announces Food and Beverage Advertising Commitments from 11 Industry Leaders, (July 17, 2007), available at: <http://www.bbb.org/alerts/article.asp?ID=779>.

<sup>33</sup> Howard T, "Major Brands to Revamp Ads Aimed at Kids," *USA Today*, July 17, 2007.

<sup>34</sup> Press Release, Better Business Bureau, ConAgra Foods Joins BBB Children's Food and Beverage Advertising Initiative: ConAgra Foods to Develop Children's Advertising Pledge in Consultation with BBB, (Oct. 5, 2007), available at: <http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=21affde1-a81b-4559-87fe-9ab3ccde0d93&art=1232>.

<sup>35</sup> Press Release, Better Business Bureau, BBB Announces Burger King Corp. Joins Children's Food and Beverage Advertising Initiative (Sept. 12, 2007), available at: <http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=21affde1-a81b-4559-87fe-9ab3ccde0d93&art=971>.

## Pledges of Participating Companies in the Children's Food and Beverage Advertising Initiative

Company	Pledge
<b>Burger King Corp.</b>	Effective December 31, 2008, all of its advertising directed primarily at children under 12 will be for Kids Meals that meet Burger King's newly adopted Nutrition Criteria—no more than 560 calories per meal, fewer than 30 percent of calories from fat, fewer than 10 percent of calories from saturated fat, no added trans fats and no more than 10 percent of calories from added sugars.
<b>Cadbury Adams, USA, LLC</b>	By March 2008, the company will either no longer advertise Bubblicious to children under 12, or it will devote at least 50 percent of such advertising to a product that offers a healthier dietary option under the initiative's healthier food criteria. Bubblicious is the only product the company advertises to children under 12.
<b>Campbell Soup Company</b>	The company has committed to making sure that their advertising primarily directed to children under 12 features products that are lower in sodium and are consistent with U.S. Dietary Guideline recommendations.
<b>Coca-Cola Co.</b>	The company publicly committed to continue its long-standing practice in the United States of refraining from advertising its beverages during programming primarily directed to children under 12.
<b>ConAgra Foods, Inc.</b>	A specific pledge is expected in January 2008.
<b>General Mills, Inc.</b>	<p>The company has pledged that any product advertised to children under 12 must meet or exceed its nutrition guidelines for Healthy Dietary Choices, which are based on FDA standards and U.S. Dietary Guideline recommendations, and include limits on calories, fat, sodium and trans fat. General Mills will no longer advertise foods containing more than 12 grams of sugar per serving to children. All products will meet these requirements by the end of 2008, or they will no longer be advertised to children under 12.</p> <p>General Mills also plans to use licensed characters on packaging for a new line of frozen vegetables.</p>
<b>Hershey Company</b>	The company has committed to its policy of not advertising in media primarily directed to children under 12.
<b>Kellogg Company</b>	<p>The company's pledge reflects nutritional standards announced in June that include limits on calories, fat and sodium, as well as a 12 gram-per-serving sugar limitation, which are derived from FDA and IOM standards. The nutrient criteria affects nearly 50 percent of Kellogg's products currently marketed to children worldwide. By the end of 2008, the company will either reformulate products to meet its criteria or it will stop advertising them to children ages 6 to 11.</p> <p>Kellogg's limitations on the use of licensed characters will apply to packaging as well as advertising.</p>

Source: Albemarle State Policy Center, January 2008

Company	Pledge
<b>Kraft Foods Inc.</b>	<p>For children, the company pledges to advertise only products meeting its Sensible Solution criteria, based on the U.S. Dietary Guidelines. A product must meet one of two criteria to qualify as a Sensible Solution product: 1) provides beneficial nutrients such as protein, calcium, fiber or whole grain at nutritionally meaningful levels, or delivers a functional benefit such as heart health or hydration, while staying within specific limits on calories, fat (including saturated and trans fat), sodium and sugar; or 2) meets specifications for “reduced,” “low” or “free” in calories, fat, saturated fat, sugar or sodium.</p> <p>All of the cereals it advertises to children contain less than 12 grams of sugar and include either whole grains or a good source of fiber.</p>
<b>Mars, Inc.</b>	<p>The company's pledge reflects its global policy to stop advertising its traditional candy and snack products to children under 12. In the United States, advertising primarily directed to children under 12 has ceased for candy and snack products. The nutrition standards Mars uses for its line of better-for-you snack products are consistent with U.S. Dietary Guidelines and are fortified with nutrients that the IOM has identified as nutritional shortfalls in children's diets.</p> <p>Mars also pledged not to use third-party licensed characters in any of its advertising primarily directed at children under 12.</p>
<b>McDonald's, USA, LLC</b>	<p>All advertising primarily directed to children under 12 will be for meals that meet specified caloric, fat, saturated fat and sugar limitations consistent with the U.S. Dietary Guidelines and other government standards. Advertising will feature the 375-calorie Happy Meal consisting of four chicken McNuggets made with white meat, apple slices, low-fat caramel dip and 1 percent low-fat white milk.</p>
<b>PepsiCo, Inc.</b>	<p>By January 2008, the company's advertising to children will be restricted to products that meet the company's existing Smart Spot nutrition criteria or provide other functional benefits based on consensus science. The only products PepsiCo will advertise to children under 12 are Baked Cheetos, a reduced-fat snack, and Gatorade. Advertisements for Gatorade will feature children engaging in sports or other vigorous activity.</p>
<b>Unilever</b>	<p>The company has adopted a new Eat Smart/Drink Smart Logo program based on U.S. Dietary Guidelines and International Dietary Guidelines. Only products that qualify for the logo are included in advertising that is primarily directed to children ages 6 to 12. Currently, the only Unilever brands that are featured in advertising primarily directed to children ages 6 to 12 are Skippy Peanut Butter (via Web site advertising) and Popsicle products that meet the logo program criteria for sugar content and contain fewer than 100 calories.</p>

Source: Albemarle State Policy Center, January 2008

Taking an unprecedented step, the participating companies also agreed to open their commitments to the CBBB's independent compliance monitoring and reporting. The initiative will monitor compliance and issue periodic reports. If the companies do not adhere to their commitments, they may face repercussions at the hand of the FTC.

Speaking at the July 2007 FTC/HHS forum, Elaine D. Kolish, director of the CBBB's initiative said, "Collectively these pledges will improve the mix of foods advertised to children under 12 and reduce the number of food advertisements run by participating companies."

"The goal of the initiative is to engage as many advertisers as possible to make a significant, collective impact in shifting the mix of products advertised to children. Today's announcement represents a beginning, not an end," said C. Lee Peeler, CBBB executive vice president for national advertising, and president and CEO of NARC. Mr. Peeler added, "The market for healthier products is increasingly competitive, and we are seeing more and more companies move to reformulate or create new products in response to growing consumer demand. We expect to see these commitments continue to evolve as we gain experience with the program, and we hope the number of participating companies will increase."

Food and beverage companies are not alone in industry efforts to redress the advertising of foods and beverages to children. Media companies such as Nickelodeon, Warner Brothers and Walt Disney Co., began innovative approaches in 2006 to promote good nutrition habits in children by signing licensing agreements with produce growers and distributors to promote fruits and vegetables using their characters. These actions follow recent recommendations to use television and movie characters to market nutritious foods.<sup>36, 37</sup>

Disney implemented a policy under which it will use its name and characters only on kid-focused products that meet specific nutritional guidelines, including a cap on calories for child-sized portions and restrictions on total and saturated fats and added sugar. The company will reduce the percentage of special occasion sweets in its licensed portfolio to 15 percent by 2010. Disney planned to eliminate added trans fat from food served at its U.S. parks and resorts by the end of 2007 and from its licensing and promotional products by the end of 2008, while phasing in healthier options.

<sup>36</sup> Adelman J, "Entertainment Firms Cultivate Healthy Images," *Bucks County Courier Times*, Sept. 5, 2006.

<sup>37</sup> Press Release, The Walt Disney Company, The Walt Disney Company Introduces New Food Guidelines to Promote Healthier Kids' Diets (Oct. 16, 2006), available at: [http://corporate.disney.go.com/news/corporate/2006/2006\\_1016\\_food\\_guidelines.html](http://corporate.disney.go.com/news/corporate/2006/2006_1016_food_guidelines.html)

The joint task force on “Media and Childhood Obesity: Today and Tomorrow,” which was established in September 2006, met throughout the year to examine the impact of media on childhood obesity and develop recommendations.<sup>38</sup> U.S. Senators Sam Brownback (R-Kan.) and Tom Harkin (D-Iowa), Federal Communications Commission (FCC) Chairman Kevin J. Martin and FCC Commissioners Deborah Taylor Tate and Michael Copps spearheaded the effort.<sup>39</sup> The task force convenes representatives from the FCC, Congress, consumer advocacy groups, the food and beverage industry, media companies, advertisers and health experts. They expected to release their report in September 2007 but have not yet done so.

Despite progress in examining and restricting food marketing to children, some health advocates say much remains to be done. They have suggested expanding the restrictions to apply to advertising to adolescents as well as advertisements through other mediums such as the Internet, video games and cell phones. Health advocates also have encouraged mandating the restrictions through laws and regulations, rather than voluntary programs.<sup>40</sup>

### **Product Nutritional Labeling**

Education plays an important role in the choices consumers make. Providing consumers with the nutritional content of food and beverage products increases their awareness and may encourage them to opt for more nutritious selections. Public health advocates have pushed for policies that require nutritional labels on food and/or provide additional content information on existing nutritional labels. Because the federal Food and Drug Administration (FDA) has the authority to regulate nutritional information on food products state lawmakers rarely introduce measures to further regulate the nutritional labels of food and beverage products.

<sup>38</sup> Federal Communications Commission, Task Force on Media and Childhood Obesity (2007), available at: <http://www.fcc.gov/obesity/Welcome.html>.

<sup>39</sup> Press Release, Federal Communications Commission, FCC Announces List of Participants on Task Force on “Media and Childhood Obesity: Today and Tomorrow” (Jan. 23, 2007), available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269715A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269715A1.pdf).

<sup>40</sup> Science Daily, “Food Industry Limits Ads to Kids, Expert Pushes for More Change” (July 2007), available at: <http://www.sciencedaily.com/releases/2007/07/070721153554.htm>.

The federal government has taken initial steps in the regulation of nutritional labels in recent years. In 2005 the FDA released sodium standards for items claiming to be “healthy.” According to the final rules issued, an item can bear the “healthy” claim if the individual serving size does not contain more than 480 milligrams of sodium. The same year, the FDA sought public comment on food label changes, including proposed rules for:

1. voluntary nutrition labeling of raw fruits, vegetables and fish;
2. the prominence of calories on food labels;
3. serving sizes of products reasonably consumed at one time;
4. updating the reference amounts typically consumed; and
5. approaches for recommending smaller portion sizes.

Earlier, in 2003, federal rules were issued that required the inclusion of trans fat information on all packaged products. However, November 2007 brought the most sweeping action in nutritional content labels since 1995 with the FDA’s advance notice of proposed rulemaking, “Food Labeling: Revision of Reference Values and Mandatory Nutrients.”<sup>41, 42</sup> The FDA plans to revise the reference values, which are used to calculate the percent daily value (DV) in the Nutrition Facts and Supplement Facts labels, and the mandatory nutrients that should be listed in the Nutrition Facts and Supplement Facts labels. The FDA has not updated these values since 1995. The advance notice seeks comments on the following considerations:

- The approach to updating or setting new DVs.
- The populations for which the DVs are intended.
- The labeling of individual nutrients, including calories, calories from fat, calories from saturated fat, total fat, saturated fat, trans fat, polyunsaturated fat, monounsaturated fat, cholesterol, carbohydrates, dietary fiber (soluble and insoluble), sugar alcohols, protein, sodium, chloride, and vitamins and minerals.
- Improvements to the Nutrition Facts label to meet the needs and comprehension-level of the consumer.

<sup>41</sup> Food and Drug Administration, “Food Labeling: Revision of Reference Values and Mandatory Nutrients ; Advance Notice of Proposed Rulemaking,” 72 Federal Register 212 (Nov. 2, 2007), pp. 62149-62175, available at: <http://www.cfsan.fda.gov/~lrd/fr071102.html>.

<sup>42</sup> School Nutrition Association, *FDA Publishes Advance Notice of Proposed Rulemaking for Revision of the Food Label* (Nov. 16, 2007), available at: <http://www.schoolnutrition.org/Index.aspx?id=2637>.

Scientific justifications must be given to support the comments.

The comments on the considerations were collected by January 31, 2008.

Two specific considerations that the FDA may take into account are:

1. providing the nutritional content information for the entire product, in addition to suggested serving size; and
2. identifying products that are considered high in sodium.

While the FDA seeks public comments and advice on nutrition labels, academic researchers and health care providers continue to study the use and content of nutrition labels. The additional research can only enhance the goal of better informing consumers. A 2006 study conducted by Vanderbilt University found that when reading nutrition labels, Americans often fail to account for serving size and underestimate their food intake. In this study, only a third of participants accurately estimated the grams of carbohydrates in a 20-ounce soft drink, which contains two and a half servings. Because of this common misperception, consumer and public health advocates have suggested that nutrition labels include information for the entire product in addition to serving size.<sup>43</sup>

In 2006 and 2007 the American Medical Association (AMA) urged policy-makers to specifically address the labeling of sodium in products. At its 2006 annual meeting, the AMA voted to ask the federal government to require companies to add warning labels for high-sodium products, defined as those that contain more than 480 milligrams of sodium per serving.<sup>44</sup> The FDA held a hearing in November 2007 on the regulation of sodium in foods and food labeling. The AMA testified and urged the FDA to improve food labeling to assist consumers in understanding the amount of sodium contained in processed food products and to develop label markings and warnings for high-sodium products.<sup>45</sup>

In addition to the federal labeling system, several groups, primarily in academia, have developed nutritional rating systems for grocers to use, with the goal of helping consumers easily and quickly identify and comprehend the overall nutritional value of a product. However, consumer and public health advocates are concerned that rating systems, particularly competing rating systems, may confuse rather than help consumers.

<sup>43</sup> Choi C, "Food Labels Confuse Americans, Study Finds Serving Sizes Often Unnoticed or Miscalculated," *Journal-Gazette*, Sept. 28, 2006.

<sup>44</sup> Press Release, American Medical Association, AMA Calls for Measures to Reduce Sodium Intake in U.S. Diet (June 13, 2006), available at: <http://www.ama-assn.org/ama/pub/category/16461.html>.

<sup>45</sup> Press Release, American Medical Association, AMA Urges Immediate FDA Action to Reduce Excess Salt in Food (Nov. 29, 2007), available at: <http://www.ama-assn.org/ama/pub/category/18178.html>.

For example, the Yale-Griffin Prevention Research Center in Connecticut developed the Overall Nutritional Quality Index (ONQI), which rates foods on a 1–100 scale, with 100 being the most nutritious. Topco Associates, a grocer cooperative representing approximately 13,000 stores nationwide, will have access to the ONQI system in 2008, and some grocers plan to begin using it as early as summer 2008.<sup>46</sup>

Additionally, the Hannaford Brothers Company, a grocery chain in Maine, implemented its “Guiding Stars” rating system in 2006. Developed by a group of academic researchers, the system rates food on a scale of 0–3 stars; 3 stars indicating that a food is among the most nutritious. According to Hannaford, the higher-rated goods are selling more than lower-rated ones. Hannaford plans to license the system to other grocery chains beginning in 2008.

Adam Drewnowski, a nutritionist at the University of Washington, is developing a nutritional rating system that will account for both negative (e.g., salt, fat and sugar) and positive (e.g., vitamins and minerals) nutritional attributes. This system will allow consumers to compare the nutritional value of food products that are not intuitively comparable. While the ONQI and “Guiding Stars” systems are proprietary and must be licensed, Dr. Drewnowski’s system will be published in academic journals.

These systems will compete with each other and with already existing logos used by food and beverage companies, such as Kraft’s Sensible Solution, Pepsi’s Smart Spot, and Unilever’s Eat Smart/Drink Smart. While the systems and their creators have good intentions, in practice they have the potential to add to consumer confusion rather than help consumers easily identify and compare nutritious food products.

### **Menu Labeling**

Although consumers can find nutritional content on food product labels in grocery stores, this information is not as readily available in restaurants. In an attempt to educate consumers on their food selections and in response to growing consumer demand for nutritional information, there has been a push for restaurants to provide nutritional information on their menus. The Keystone Center, a nonprofit policy and dispute resolution organization, released a report in 2006, *Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, to provide recommendations to the food and beverage industry, government, health professionals, consumer representatives and others on reducing obesity, informing consumers purchasing foods away from home and improving their health.

<sup>46</sup> Martin A, “Is It Healthy? Food Rating Systems Battle It Out,” *The New York Times*, Dec. 1, 2007.

The Keystone report was funded by the FDA in response to the growing percentage of meals being consumed outside of the home, which accounts for 32 percent of calories consumed by Americans. In light of this statistic, it is increasingly important that consumers be able to identify and understand easily the nutritional value of their food selections in restaurants. The report includes the following recommendations:

- Food establishments should provide consumers with caloric information in a standard, easily accessible and understandable format.
- Food establishments should increase the availability of lower-calorie menu items.
- Research should be conducted on how consumers use nutritional information for away-from-home foods, how this information affects their caloric intake, and how nutritional information affects restaurant managers.

The Keystone Center acknowledged that nutritional information is voluntarily provided to consumers by at least 150 of the country's 300 largest chain restaurants through many mediums, including on menus, Web sites and kiosks. However, the lack of a standard format can make this information confusing or hard to find.

The decision to provide nutritional information and the type of information provided varies from business to business. Regardless, the Keystone Center points to four national polls indicating that consumers would like to see nutritional information posted on menus or menu boards at the points of purchase. Unfortunately, not enough data are currently available to determine how consumers process this information, and if it indeed affects an individual's decision on what to order.<sup>47, 48</sup>

Providing nutritional content to consumers in restaurants is not currently required under any federal or state laws; doing so is voluntary. State lawmakers have considered legislation requiring food service establishments to provide nutritional information since 2003, when menu labeling legislation was first introduced in Maine. In 2007 lawmakers at federal, state and local levels all worked to mandate restaurants to post nutritional information on menus or menu boards.

<sup>47</sup> The Keystone Center, *The Keystone Forum On Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, May 2006, available at: [http://www.keystone.org/spp/documents/Forum\\_Report\\_FINAL\\_5-30-06.pdf](http://www.keystone.org/spp/documents/Forum_Report_FINAL_5-30-06.pdf).

<sup>48</sup> Press Release, U.S. Food and Drug Administration, FDA Receives Keystone Forum Report on Away-From-Home Foods (June 2, 2006), available at <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01379.html>.

In October 2007 U.S. Rep. Rosa DeLauro (D-Conn.) introduced the Menu Education and Labeling (MEAL) Act, H.R. 3895, in the U.S. House of Representatives. The bill would require fast-food and major chain restaurants nationwide to post certain nutritional information for standard items on menus and/or menu boards. Local chains and neighborhood restaurants would be excluded. The bill was referred to the House Committee on Energy and Commerce, but was not brought up for consideration and is not expected to be enacted. Similar bills were introduced and defeated in earlier sessions of Congress.

In 2007 the **District of Columbia** and 14 states—**Arizona, California, Connecticut, Hawaii, Illinois, Maine, Massachusetts, Michigan, New Jersey, New Mexico, New York, Pennsylvania, Tennessee** and **Vermont**—considered statewide legislation regarding menu-labeling. None of the measures were enacted in 2007; however, the measures will carry over in the District of Columbia, Hawaii, Massachusetts, Michigan, New York and Pennsylvania.

Although **California** S.B. 120 passed both chambers, Gov. Arnold Schwarzenegger (R-Calif.) vetoed it on October 14, 2007. In his veto message Gov. Schwarzenegger stated: “While I support providing people information to help them make healthy choices, this bill is impractical. As written, S.B. 120 would place burdens and costs upon some restaurant owners while imposing no burdens or costs on others. In addition, this bill provides restaurants with little flexibility for how they will provide consumers with nutritional information.” From brochures to tray liners, many restaurants are responding to consumer demand by providing nutritional information to their customers in a variety of ways. More and more companies are making detailed information available online, allowing consumers to compare one restaurant’s healthy dining options to another.

Most menu-labeling legislative activity in 2007 occurred at the local level. King County, Washington, and Montgomery County, Md., both enacted and implemented menu-labeling legislation. Other localities to consider such legislation include Santa Clara County, Calif.; Chicago, Ill.; Westchester County, N.Y.; Nassau County, N.Y.; New York, N.Y.; and Philadelphia, Pa. All measures except the one in Nassau County remain pending.<sup>49</sup>

<sup>49</sup> Center for Science in the Public Interest, *Nutrition Labeling in Chain Restaurants* (2007), available at: [http://www.cspinet.org/nutritionpolicy/summary\\_bills2007.pdf](http://www.cspinet.org/nutritionpolicy/summary_bills2007.pdf).

In December 2006 the New York City Board of Health passed a regulation to require restaurants that already voluntarily post calorie information in some form, such as on their Web site, to do so on menus and menu boards as of March 1, 2007. Approximately 10 percent of the city's restaurants would have been affected. The New York State Restaurant Association filed a lawsuit arguing that the regulation unfairly targeted certain restaurants. In September 2007 Judge Richard J. Holwell of the United States District Court in Manhattan ruled in favor of the New York State Restaurant Association, determining that the regulation, as written, was pre-empted by the federal Nutrition Labeling and Education Act of 1990.<sup>50</sup> The judge, however, affirmed that the city has the authority to mandate the posting of nutritional information. He stated the regulation would comply with federal law if it applied to all chain restaurants with a certain number of locations.

Following the judge's advice, the board developed and introduced a new version of the regulation. The proposed measure still calls for specified restaurants to display calorie information on their menus and menu boards. However, the new version would apply to chain restaurants with 15 or more locations nationwide and with menus or menu items standardized for content and portion size.<sup>51</sup> A public hearing was held on November 27, and the Board of Health was expected to approve the regulation in January 2008. If approved, the regulation will go into effect March 31, 2008.

One reason for a lack of state legislation enacted on this issue is that restaurants typically are federally regulated. Most of the menu labeling bills introduced target chain restaurants and franchises. It proves difficult to apply state and local regulations to nationally operated chain and franchise restaurants. Such bills face major opposition from the National Restaurant Association and restaurant or franchise owners claiming that nutritional information already is available to the consumer via other means, such as the Internet or brochures. For individual restaurant and franchise owners, such a legislative mandate on a local or state level would be burdensome and expensive, potentially requiring small business owners to pass additional costs to consumers, who in turn may take their business elsewhere.

As an independent effort to promote healthy messages to consumers the National Restaurant Association and the Healthy Dining Program in 2006 launched a new Web site, Healthy Dining Finder, to help consumers identify healthier restaurant options. The free resource allows consumers to search for restaurants based on specific criteria and for nutrition information on each menu item. The Healthy Dining Program will market the Web site and participating restaurants to health and fitness professionals, employers and consumers.<sup>52</sup>

<sup>50</sup> Caruso DB, "NYC Tries Again to Get Calories on Menus," *USA Today*, Oct. 24, 2007.

<sup>51</sup> Press Release, The New York City Department of Health and Mental Hygiene, *Board of Health Votes to Invite Public Comment on New Calorie Listing Proposal for Chain Restaurants* (Oct. 24, 2007), available at: <http://www.nyc.gov/html/doh/html/pr2007/pr089-07.shtml>.

<sup>52</sup> Press Release, National Restaurant Association, *National Restaurant Association Joins Healthy Dining in Promoting Healthful Menu Choices to Americans* (July 17, 2006), available at: <http://www.restaurant.org/pressroom/pressrelease.cfm?ID=1284>.

### **Trans Fat Restrictions**

Restricting the use of trans fats took center stage in a heated nutrition policy debate in New York City in the latter half of 2006. Eliminating the use of trans fat in cooking is critical to improving heart and vascular health, and it is frequently associated with preventing obesity. Still, banning trans fat should not supersede a comprehensive strategy to prevent obesity, which should include efforts to increase opportunities for more physical activity and access to nutritious foods.

Trans fat is a monounsaturated fat that occurs naturally in milk and beef, but also is created artificially when hydrogen is added to vegetable oil, forming partially hydrogenated vegetable oil.<sup>53,54</sup> Until recently, trans fats could be found in any of the more than 40,000 foods that contain or are cooked in partially hydrogenated vegetable oil, including cookies, margarine, crackers, icings, pastries and deep-fried foods. Researchers have recently found that trans fats are far more dangerous than typical monounsaturated fats, and possibly more so than saturated fat as well. Trans fat raises levels of LDL, or “bad cholesterol,” while decreasing levels of HDL, or “good cholesterol,” in the blood, which increases the risk of heart disease. The IOM determined in 2002 that there is no safe level of trans fat in a diet.

Since the IOM ruling, the FDA instituted a regulation that nutrition labels must list trans fat on labels. This measure was intended to inform consumers about their trans fat intake and to motivate the food and restaurant industries to begin reducing or eliminating trans fats from their products. In recent years, consumers have become increasingly aware of and concerned about their intake of trans fats, while health advocates have urged restaurants and food manufacturers to reduce or eliminate artificial trans fat in their foods and food preparation. Some restaurants and companies have worked to reduce or eliminate artificial trans fat from their products, while lawmakers have considered legislation banning trans fats completely.

<sup>53</sup> Center for Science in the Public Interest, *About Trans Fats*, available at: <http://www.cspinet.org/transfat/about.html>.

<sup>54</sup> Center for Science in the Public Interest, *Questions and Answers*, available at: <http://www.cspinet.org/transfat/qanda.html>.

In 2006 state legislators in **New Jersey** took the unprecedented initiative of introducing a bill banning the use of artificial trans fats in all restaurants. Chicago and New York City proposed similar local bans. In December 2006 New York City became the first city in the country to enact a ban on trans fat. The regulation bans the use of artificial trans fat in food service establishments, except when food is served directly to patrons in a manufacturer's original sealed package. The regulation went into effect July 1, 2007, with respect to cooking oils, shortening and margarines, and it will go into effect for all other foods on July 1, 2008.

In 2007 20 states—**Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, South Carolina, Tennessee, Vermont** and **Virginia**—considered legislation that would reduce or eliminate trans fats from foods and food preparation.

**Oregon** enacted a measure, H.B. 2650, limiting any snack item sold in schools with grades K through 12 to 0.5 grams of trans fat or less per serving. Though none of the other measures were enacted those in California, Hawaii, Illinois, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, South Carolina, Tennessee and Vermont will carry-over.

Two other states, **New Mexico** and **Texas**, adopted legislation calling for studies or discouraging the use of trans fat in foods.

At least 22 local governments followed the lead of New York City and sought restrictions on the use of trans fat. Of the 22 proposed local bans, six were enacted, including Montgomery County, Md.; Brookline, Mass.; Nassau County, N.Y.; Albany County, N.Y.; Philadelphia, Pa.; and King County, Wash. The following tables summarize enacted trans fat restrictions and local measures to ban trans fats.<sup>55</sup>

Some state and local lawmakers already have expressed their intent to pursue trans fat legislation or regulation in 2008, including those in Ohio; Miami, Fla.; and Arlington County, Va.

<sup>55</sup> National Restaurant Association, *Trans Fat Legislation* (2007), available at: [http://www.restaurant.org/government/state/nutrition/bills\\_trans\\_fat.cfm](http://www.restaurant.org/government/state/nutrition/bills_trans_fat.cfm).

## Enacted Legislation on Trans Fat

### NEW MEXICO

#### NM HM 87

- ✓ The law requests the Environmental Improvement Board to collaborate with the New Mexico Restaurant Association to study ways to identify the trans fat content in restaurant foods, to convey this information to customers, and to develop guidelines on recommended trans fat limits and on eliminating trans fat from foods.

### TEXAS

#### TX HB 3560

- ✓ The law authorizes state agencies making food purchases for a public cafeteria to give preference to contractors who provide foods that do not contain trans fats.

#### TX HB 4062

- ✓ The new law requires the state Department of Agriculture to conduct a trans fat study. The department must develop a report on the progress of the department and the USDA to reduce trans fats from all school meals and nutrition programs. The report also must include the initiatives, proposals and programs that the department and the USDA currently are conducting or planning. Finally, the department must list recommendations for legislative action to assist in reducing trans fats from school meals. The department must submit the report to state lawmakers by December 1, 2008.

#### MEASURE STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## Local Regulations on the Use of Trans Fat

City or County	Summary of Regulation
<b>Montgomery County, Md.</b> 	Bans trans fat in any eating or drinking establishment including restaurants, coffee shops, retail markets, cafeterias, short-order cafes, luncheonettes, taverns, sandwich stands, soda fountains and any food service facility in an industry, institution, hospital, club, school, church, catering kitchen or camp, except when food is served to patrons in the manufacturer's original, sealed package. As of January 1, 2008, the ban will apply to oils, shortening and margarines used for frying or in spreads. For oils or shortenings used for deep frying of yeast dough or cake batter and all other foods, the ban will be in effect by January 1, 2009.
<b>Brookline, Mass.</b> 	Bans artificial trans fat in restaurants and schools effective November 2008 with respect to oils, shortenings and margarines used for frying or in spreads, and on April 30, 2009, in effect for all other uses of foods.
<b>Albany, N.Y.</b> 	Requests that the Albany County Board of Health and the Health Commissioner develop a practical plan to phase out artificial trans fat at all Albany County restaurants and food service establishments.
<b>Nassau County, N.Y.</b> 	Bans artificial trans fat in food service establishments, except when food is served directly to patrons in a manufacturer's original sealed package. Effective April 1, 2008, with respect to oils, shortenings and margarines used for frying or in spreads and April 1, 2009, for oils or shortenings used in deep frying of yeast dough or cake batter and all other foods.
<b>Philadelphia, Pa.</b> 	Bans artificial trans fat in food service establishments, including restaurants, grills, diners, sandwich shops, hotel dining rooms, coffee shops, cafeterias, market stalls, vending carts and vending vehicles and other similar places. An exception is made for food served directly to patrons in a manufacturer's original sealed package. Effective September 1, 2007, with respect to oils, shortenings and margarines used for frying or in spreads and September 1, 2008, for all other uses of foods.
<b>King County, Wash.</b> 	Bans artificial trans fat in food establishments, except when food is served directly to patrons in a manufacturer's original sealed package or any food served in a school. Effective May 1, 2008, with respect to oils and shortenings used for frying or in spreads and February 1, 2009, with regard to margarines, oils or shortenings used for deep frying of yeast dough or cake batter and all other foods.

### MEASURE STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Albemarle State Policy Center, January 2008

Feeling the pressure, more and more companies and restaurants in the United States are acting voluntarily to reduce or eliminate artificial trans fat or partially hydrogenated oils from their food and food preparation.<sup>56,57</sup> The table below shows a list of such companies and restaurants, a list which grows almost daily. The Center for Science in the Public Interest (CSPI) and other watchdogs closely monitor the companies and restaurants to ensure they follow through on their public claims to reduce or eliminate trans fat. They threaten lawsuits against companies found guilty of not complying with their promises.

On May 16, 2007 CSPI filed a lawsuit against Burger King for continuing to use artificial trans fat except in those cities that now specifically prohibit the use of trans fat.<sup>58</sup> Although Burger King claims to be testing alternative oils, unlike its competitors, it has yet to announce a firm plan to eliminate artificial trans fat and implement a safer, alternative oil. CSPI filed the lawsuit with a District of Columbia Superior Court. The suit claims that Burger King is in violation of the District of Columbia's Consumer Protection Procedures Act by selling foods containing trans fat without informing consumers, potentially misleading consumers that the products are safe. CSPI is requesting that the court either order Burger King to cease using artificial trans fat or to post warning notices on restaurant menu boards. CSPI initiated a similar lawsuit against Kentucky Fried Chicken (KFC) in 2006, but subsequently dropped it after KFC announced that it planned a transition in all of its restaurants to use soybean oil in place of partially hydrogenated oils by April 2007.<sup>59</sup>

<sup>56</sup> Jargon J, "Out With the Trans Fats, In With a Whole Lot of Others," *The Wall Street Journal*, Nov. 6, 2007.

<sup>57</sup> Ban Trans Fats: The Campaign to Ban Partially Hydrogenated Oils, *Trans Fat News*, available at: <http://bantransfats.com/transfatnews.html>.

<sup>58</sup> Press Release, Center for Science in the Public Interest, *Burger King Hit with Trans Fat Lawsuit* (May 16, 2007), available at: <http://www.cspinet.org/new/200610301.html>.

<sup>59</sup> Press Release, Center for Science in the Public Interest, *CSPI Withdraws from Lawsuit After KFC Cuts Trans Fat* (October 20, 2006), available at: <http://www.cspinet.org/new/200610301.html>.

## Companies and Restaurants Restricting the Use of Trans Fat

---

Applebee's	Eat'n Park	McDonald's
Aramark	Fatz Cafe	Newick Seafood Restaurants
Arby's	Fazoli's	Olive Garden
Au Bon Pain	Frito Lay	Panera Breads
Bennigan's	General Mills	Pei Wei Asian Diner
Bobby Van's Steakhouse	Governor's Restaurant & Baker	Quiznos
Boston Pizza	Hardee's	Romano's Macaroni Grill
Burger King	Jason's Deli	Red Lobster
California Pizza	Jet Blue	Ruby Tuesday
Charleston Crab House	Johnny Rockets	Sara Lee
Chili's Bar & Grill	KFC	Skipper's Seafood House
Clean Plate Club Restaurants	Kraft Foods	Souper Salad
ConAgra Foods	Kroger Co.	Starbucks
Crab Shell	Leeann Chin and Chin's Asia	Subway
Crisco	Legal Seafood	Taco Bell
Culver's	Loew's Hotels	The Cheesecake Factory
Denny's	Longhorn Steakhouses	TGI Friday's
Dunkin' Donuts		Universal Studios
		Uno's
		Walt Disney Co.
		Wendy's

Source: Center for Science in the Public Interest

### **Biotechnology: Genetic Engineering of Foods**

Biotechnology involves the genetic engineering (GE) of plants, animals or other organisms. Genetic engineering began in the 1990s and involves isolating specific genes from an organism, such as a virus or bacterium, and adding the gene(s) to the genetic profile of a different organism, such as corn.<sup>60</sup> Genetic engineering yields agricultural benefits, such as decreasing the adverse effects of environmental factors, increasing crop yields, improving the taste and quality of such crops and improving sustainable agriculture, especially in developing countries. However, it also raises health and food safety concerns, including the introduction or increase of food allergens or toxins.

According to CSPI, approximately 40 percent of all field corn and 80 percent of soybeans farmed in the United States were genetically engineered in 2003.<sup>61</sup> Farmers also grow a small percentage of GE papayas, squash and sweet corn. While most GE corn and soybeans are used primarily for livestock feed, a small percentage is used to make corn meal, high fructose corn syrup, corn oil and soybean oil, which are all used in cooking. However, the production of corn syrup and oils eliminates most of the engineered gene and its product; therefore, Americans consume very little of it.

Studies have not yet identified any adverse outcomes from the practice or consumption of GE crops. Concern remains, though, that there are latent, long-term consequences. There is no formal monitoring of GE food consumption or required labeling of foods that contain GE products. Certified organic products, however, cannot contain any products that are genetically engineered.

Legislation in this area generally seeks to regulate GE food products or to require labeling them as such. There has been little state activity, however, because the health effects are unknown and the FDA is responsible for regulating food safety and labeling. However, in recent years some states have enacted relevant legislation. In 2003 **Vermont** became the first state to require the labeling of GE seeds, and in 2005 **Alaska** lawmakers enacted a bill requiring the labeling of GE fish and fish products.

<sup>60</sup> Center for Science in the Public Interest, *Biotechnology Project*, available at: <http://www.cspinet.org/biotech/>.

<sup>61</sup> August 14, 2001 Letter from Center for Science in the Public Interest, Washington, DC to Food and Drug Administration, Rockville, MD.

In 2007 at least two states—**California** and **Hawaii**—considered legislation regarding genetic engineering. The California General Assembly passed a bill, S.B. 63, to require every livestock producer who sells or transfers any cloned animal or its progeny to disclose to the buyer or transferee that the animal is cloned or is the progeny of a cloned animal. It also would have required any food derived from a cloned animal or its progeny to be labeled as such before it could be provided for human consumption. The goal of the legislation was to enable consumers to make knowledgeable decisions about their food consumption. Gov. Schwarzenegger vetoed the legislation saying, “While I support access to information that helps inform consumer choices, I cannot sign this bill as it is pre-empted by federal law. Federal law prohibits states from enacting labeling requirements for meat and poultry that are in addition to those federally established. Further, I am concerned that this bill would require tracking and labeling requirements that could be unworkable, costly, and unenforceable.”

The bill in **Hawaii**, S.B. 178, which proposes to fund the University of Hawaii to assess the long-term health and environmental effects of allowing genetic engineering to occur in the state, will carry over to 2008.

Although the FDA regulates the safety of foods, they currently do not have the authority to regulate GE crops for safe consumption in the food supply. The only regulation the FDA does have is a voluntary notification process, where a GE crop producer can submit proof that the GE crop is equivalent to the traditional crop and the FDA notifies the producer of any food safety concerns. CSPI has advocated for the federal government to amend the Federal Food, Drug, and Cosmetic Act to require a mandatory approval process, administered by the FDA. Senator Richard Durbin (D-Ill.) introduced such legislation in 2002, but the bill was never considered. CSPI will continue to push for FDA regulation.

**Conclusion**

American children are bombarded with poor nutritional messages everyday. While some public health advocates may believe that the food and beverage industry should and must do more to prevent childhood obesity, it is notable that some companies are taking the initial steps to regulate themselves. So far, 13 food and beverage companies have agreed to participate in the Children's Food and Beverage Advertising Initiative and their commitment to adjust some of their advertising and marketing strategies for children by the end of 2008 is a significant step.

Public health advocates and nutritionists eagerly await the FDA's next step following its issuance of the proposed rulemaking, "Food Labeling: Revision of Reference Values and Mandatory Nutrients."

Across the country, the effort to ban trans fat was a rallying cry for the public and received a significant amount of attention. The effort to ban trans fat was most successful at the municipal level where the political process is more simple and focused, as opposed to the state level. However, the food industry appears to be responding to public demand and is eliminating trans fat from restaurant foods and grocery store items on its own.

The other rallying point in 2007 was the desire for restaurants to publish the nutritional content of the foods they offer. No state laws were enacted, but a growing number of national restaurants are recognizing the public's demand for such information. There is still concern, however, about the lack of a standard regarding how restaurants should publish the information.

## Chapter 4: Active Living and Community Design

### Overview

**P**hysical inactivity has contributed significantly to the obesity crisis in this country. According to the U. S. Centers for Disease Control and Prevention (CDC), 61.5 percent of children ages 9 to 13 do not participate in any organized physical activity outside of school, and 22.6 percent do not engage in any physical activity during their free time.<sup>62</sup> Similarly, more than one-third of children in grades 9 to 12 do not regularly engage in vigorous physical activity.<sup>63</sup> This trend continues into adulthood, as more than 50 percent of adults do not get enough physical activity to produce health benefits, and 24 percent do not participate in any leisure-time physical activity.<sup>64, 65</sup>

Research shows that a lack of physical activity can lead to unhealthy weight gain, chronic disease and increased dependency on health care services. In 2000 more than \$76 billion of direct healthcare costs were associated with physical inactivity. Regular physical activity, on the other hand, is linked to many short- and long-term health benefits, including weight control, lower blood pressure, improved cardio-respiratory function, a stronger musculoskeletal system and enhanced psychological well-being.<sup>66</sup>

One reason for the decline in physical activity among adults and children is that sedentary forms of entertainment such as video games, television and the Internet, are replacing more physically active forms of leisure activity.<sup>67</sup>

<sup>62</sup> Centers for Disease Control and Prevention, *Physical Activity Levels among Children Aged 9 to 13 years—United States, 2002* (August 2003), MMWR, available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5233a1.htm>.

<sup>63</sup> National Center for Chronic Disease Prevention and Health Promotion, *Preventing Chronic Diseases: Investing Wisely in Health and Preventing Obesity and Chronic Diseases through Good Nutrition and Physical Activity* (August 2003), available at: <http://www.cdc.gov/nccdphp/publications/factsheets/Prevention/obesity.htm>.

<sup>64</sup> National Center for Chronic Disease Prevention and Health Promotion, *Physical Activity and Good Nutrition: Essential Elements to Prevent Chronic Disease and Obesity* (2005), available at: <http://www.cdc.gov/nccdphp/publications/aag/dnpa.htm>.

<sup>65</sup> Centers for Disease Control and Prevention, *Prevalence of Regular Physical Activity Among Adults — United States, 2001 and 2005* (Nov. 23, 2007), MMWR, available at: [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5646a1.htm?s\\_cid=mm5646a1\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5646a1.htm?s_cid=mm5646a1_e).

<sup>66</sup> National Center for Chronic Disease Prevention and Health Promotion, *Physical Activity and Health: A Report to the Surgeon General* (Nov. 17, 1999), available at: <http://www.cdc.gov/nccdphp/sgr/sgr.htm>.

<sup>67</sup> American Academy of Pediatrics, *Policy Statement: Prevention of Pediatric Overweight and Obesity* (August 2003), available at: <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/2/424>

In addition, sprawling development and increasing reliance on automobile transit have resulted in fewer parks and paths for walking and bicycling, as well as less recreational space. Traffic and crime raise safety concerns, which discourage adults and children from walking, biking or being physically active outdoors.

Health advocates, community leaders and some policy-makers are supporting policy and environmental changes to develop and enhance communities that provide residents with opportunities for safe, easily accessible physical activity. This approach attempts to remove barriers within communities that may prevent children and adults from engaging in physical activity, such as limited access to safe parks or streets that lack pedestrian-friendly features.

The CDC has acted as a driving force in this area through their Active Community Environments Initiative (ACES), which encourages environmental and policy interventions that promote access to walking, bicycling and recreation facilities to increase physical activity. The initiative includes the following activities:<sup>68</sup>

- the Kids Walk-to-School campaign, which encourages kids to walk and bicycle to and from school;
- an ACES guidebook for public health professionals and transportation and city planners, which promotes close-to-home walking, bicycling and recreational facilities;
- a partnership with the National Park Services Rivers, Trails and Conservation Assistance Program that promotes the development and use of parks and recreational facilities;
- a study on the relationships among land use, transportation, air quality and physical activity;
- a survey and study with the Environmental Protection Agency on the public's attitudes toward the environment, walking and biking.

<sup>68</sup> Centers for Disease Control and Prevention, ACES—Active Community Environments Initiative (2007), available at: [http://www.cdc.gov/nccdphp/dnpa/physical/health\\_professionals/active\\_environments/aces.htm](http://www.cdc.gov/nccdphp/dnpa/physical/health_professionals/active_environments/aces.htm).

In 2007 environmental and public health experts including the CDC, Johns Hopkins School of Public Health, the American Public Health Association and the International Association for Ecology and Health made an effort to inform the public about how initiatives aimed at increasing physical activity may also benefit the environment.<sup>69</sup> For example, developing and enhancing trails, parks, green space, recreational space and walking and bike paths in communities across the country not only has a strong potential to increase physical activity, these efforts also will reduce oil consumption and carbon dioxide emissions.

Twenty states—**California, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Minnesota, Montana, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Vermont**—considered legislation in 2007 to promote safe physical activity and encourage active transportation. This section outlines the legislative and nonlegislative initiatives related to the issues of promoting pedestrian, bicycle and recreational safety; establishing or refurbishing walkable communities, walking paths, bicycle paths and bicycle lanes; designing communities and land use to promote active lifestyles; and improving transportation systems to promote alternatives to automobile transportation. These issues intersect and overlap to form a comprehensive approach to promoting physical activity and healthier lifestyles.

### **Pedestrian and Recreational Safety**

A study published in the *American Journal of Preventive Medicine* in 2007 demonstrated a significant decrease in the number of children who walk or bike to school over the past few decades.<sup>70</sup> Research indicates that in 2004 only 48 percent of children who lived within a mile of school walked or biked to school, compared to 90 percent in 1969—and the researchers concluded that safety concerns have played a significant role in the decline.

The Safe Routes to School Program (SRTS) has become the largest-scale nationwide initiative working to ensure that children can walk and bike safely to school.<sup>71</sup> In 1997 SRTS began as a small pilot program in Bronx, New York, and has expanded to support improvements such as providing sidewalks and bicycle paths in neighborhoods across the country. In 2005 federal lawmakers enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which authorized \$612 million over five years to support SRTS initiatives. SAFETEA-LU funds are distributed to each state department of transportation. The Federal Highway Administration regulates the program and offers guidance to SRTS programs.<sup>72</sup>

<sup>69</sup> Borenstein S, "A Slim Chance to Combat Global Warming," *USA Today*, Nov. 12, 2007.

<sup>70</sup> Martin SL, Lee S and Lowery R. "National Prevalence and Correlates of Walking and Bicycling to School." *American Journal of Preventive Medicine*, 33(2): 98–105, 2007.

<sup>71</sup> National Center for Safe Routes to School, *History of Safe Routes to School*, available at: [http://www.saferoutesinfo.org/about/history\\_of\\_srts.cfm](http://www.saferoutesinfo.org/about/history_of_srts.cfm).

<sup>72</sup> National Center for Safe Routes to School, *Funding and Legislation*, available at: [http://www.saferoutesinfo.org/legislation\\_funding/](http://www.saferoutesinfo.org/legislation_funding/).

Each state receives at least \$1 million in federal SRTS funds annually, based on their student enrollment. The state Department of Transportation or Department of Health administers the program within the state. The funds may be used for both infrastructure (e.g., capital improvements) and non-infrastructure (e.g., program activities) projects. SRTS programs operate at the state and local level and, therefore, most of the programs rely on funding from federal, state and local sources. As SRTS programs continue to grow, so will the demand for resources. The Safe Routes to School National Partnership, which represents more than 300 organizations and government agencies, was created to remove policy barriers to walking and biking to school, to support state and local agencies and to ensure effective use of federal SRTS funds.

The table below summarizes legislative actions to promote pedestrian, bicycle and recreational safety that were achieved in five states during 2007.

Another relevant initiative launched in 2007 was the Central California Regional Obesity Prevention Program, which will implement a regional plan for promoting policy changes designed to increase residents' access to healthy foods and safe environments for physical activity. To improve the safety of outdoor spaces for physical activity, the plan calls for the creation of neighborhood watch programs and crime prevention interventions.

## 2007 Enacted Legislation to Promote Pedestrian and Recreational Safety

### CALIFORNIA

#### CA HB 57

- Existing law requires that until January 1, 2008, the California Department of Transportation will establish and administer a Safe Routes to School construction program, and will use federal transportation funds for bicycle and pedestrian safety and traffic calming projects.

This bill extends indefinitely the department's authority to establish and administer that program, without reference to federal law or federal funding, but requires any federal funding received for Safe Routes to School projects to be distributed under the competitive grant process. The bill requires any annual budget allocation to fund grants under the Safe Routes to School construction program to be in addition to any federal funding received by the state for projects under the program. The bill also authorizes the department to administer the competitive grant program.

### HAWAII

#### HI HB 497

- The bill earmarks a certain percentage of federally eligible moneys from the state highway fund to establish multiuse paths, bicycle paths and bicycle lanes, and to install signage and safety devices along bikeways. The bill provides that planning for any mass transit system include appropriate accommodation for bicycle lanes, bikeways and bicycle routes, including bicycle racks on mass transit vehicles, to enable mass transit users to connect conveniently by bicycle to transit stations and bus stops.

### ILLINOIS

#### IL SB 314

- The bill mandates that bicycle and pedestrian ways be given full consideration in the planning and development of transportation facilities, including their incorporation into state plans and programs.

In or within one mile of an urban area, bicycle and pedestrian ways must be established in conjunction with the construction, reconstruction or other change of any state transportation facility. The only exceptions include pavement resurfacing projects that do not widen the existing traveled way or do not provide stabilized shoulders; or where approved by the secretary of transportation based upon documented safety issues, excessive cost or absence of need. Bicycle and pedestrian ways may be included in pavement resurfacing projects when local support is evident or bicycling and walking accommodations can be added within the overall scope of the original roadwork.

The bill requires the Illinois Department of Transportation to establish design and construction standards for bicycle and pedestrian ways. Beginning July 1, 2007, the bill applies for planning and training purposes, and beginning July 1, 2008, it will apply to construction projects.

#### MEASURE STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Albemarle State Policy Center, January 2008

## OREGON

**OR SB 242**

- ✓ This bill requires school districts to consider including the funding of safety improvements to provide safer alternative routes to schools that may include improvements for pedestrians, bicycles and motor vehicles as part of the funding of large construction projects.

## TENNESSEE

**TN SB 2252**

- ✓ Requires the commissioner of the Tennessee Department of Transportation to develop and implement a comprehensive, multimodal, statewide transportation plan consistent with requirements of the United States Department of Transportation. It must include the development of a long-range statewide transportation plan, including consideration of highway, rail, mass transit, waterway, aviation, pedestrian and bicycle facilities; operations and maintenance of those facilities; and a review of projected costs and anticipated revenues.

MEASURE  
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

### **Bicycle and Walking Paths, Parks and Trails**

In order to promote safe opportunities for physical activity, a community must first provide access to such opportunities through establishing new, or improving existing bicycle and walking paths, bicycle lanes, parks and trails. While local governments and developers typically address this issue, state lawmakers often consider legislation that encourages communities to do so or that earmarks funds for such initiatives. This year, six states—**California, Hawaii, Illinois, North Carolina, Oregon** and **Tennessee**—enacted relevant legislation.

In addition to those bills, lawmakers in **North Carolina** enacted S.B. 1383 to allow a state agency or any other entity that has purchased or leased land with state funds, to provide access to bicyclists, unless such use of the land is prohibited by another law or would damage the land or environment. The bill also allows the public to use those lands for hiking or walking.

Other relevant legislation was enacted by **Oregon** lawmakers, in an effort to promote bicycle and pedestrian safety, as well as to provide indirect funds for two programs that promote bicycling. S.B. 789 directs the Oregon Department of Transportation to issue Share the Road registration plates, on which a surcharge will be imposed. The bill directs the net proceeds collected from the surcharges to accounts for the Bicycle Transportation Alliance and Cycle Oregon.

### **Community Design and Land Use**

Many initiatives to establish or improve bicycle and walking paths, bike lanes, parks and trails result from changing community design and land use plans. In recent decades, urban and suburban land use has been oriented around the automobile, which influences the distance between home, work and other daily destinations; accommodation for bicyclists and pedestrians; and the presence of parks, trails and outdoor recreational space. This orientation discourages physical activity and alternative forms of transportation. This section examines these issues.

*Active Living by Design*, a national program office of the Robert Wood Johnson Foundation which aims to increase physical activity by influencing public policy, reports findings from several studies that show the association between community design and physical activity:<sup>73, 74</sup>

- People who live in sprawling, low-density counties walk less, weigh more and are more likely to be obese or have hypertension than people who live in more compact counties.
- Residents of highly walkable neighborhoods report more than twice as many walking trips per week as do residents of low-walkable neighborhoods.
- Residents in a highly walkable neighborhood engage in about 70 more minutes per week of moderate and vigorous physical activity than do residents in a low-walkable neighborhood.
- People with access to neighborhood parks are nearly twice as likely to be physically active as those without access to parks.
- People who report having access to walking or jogging trails are 55 percent more likely to be physically active.

Thus, careful planning and construction of communities can promote more physical activity. Planners involved in community design and land use who are working to increase opportunities for physical activity and decrease the need for automobile trips may consider more compact, mixed land use; access to public transportation; bicycle and walking paths; trails; and parks. In addition to promoting physical activity, communities that provide parks, trails, green spaces and walk and bike paths have the potential to improve the aesthetic quality of the neighborhood, which will attract residents, businesses and investments.

At the federal level, Senator Tom Harkin (D-Iowa) introduced the “Promoting Lifelong Active Communities Every Day (PLAY Every Day)” bill, S.B. 651, in February 2007.<sup>75</sup> The legislation would require federal agencies to support the development of a measurement tool that would help communities identify the strengths and gaps in their policies and programs related to physical activity for youth. The bill would authorize federal agencies to fund model communities to develop action plans that promote increased opportunities for physical activity among children at the local, state and national levels. Sen. Harkin has worked on this initiative with the Partnership for Play Every Day, a public-private collaboration to engage communities in comprehensive action to promote physical activity among children.

<sup>73</sup> Active Living by Design, *Land Use FactSheet*, available at: [http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/LandUse\\_Factsheet.pdf](http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/LandUse_Factsheet.pdf).

<sup>74</sup> Active Living by Design, *Parks, Trails, and Greenways Factsheet*, available at: [http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/PTG\\_Factsheet.pdf](http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/PTG_Factsheet.pdf).

<sup>75</sup> Press Release, *Partnership for Play Every Day, Partnership for Play Calls on Nation to Increase the Voices, Spaces, and Quality of Play* (Feb. 15, 2007), available at: <http://www.playeveryday.org/news/021507.html>.

In a press release, Senator Harkin described the current lack of aggressive legislative and policy action aimed at increasing physical activity: “Unfortunately, when it comes to promoting physical activity in our communities, we’re not only stuck in neutral, we’re asleep at the wheel. It’s time that we get serious and truly focus on the problem. The ‘Play Every Day’ bill lays the groundwork for communities everywhere to enhance opportunities for active living.”

H.R. 2045, a companion bill to PLAY Every Day, was introduced in the House of Representatives by Rep. Mark Udall (D-Colo.). Both bills were referred to committees, where they have remained.

While the legislation highlighted in the first two sections of this chapter addresses key individual elements of community design and land use, no state legislation specific to community design and land use was enacted in 2007. Because individual communities are most impacted by such changes, the majority of activity occurs at the local government level through policies and ballot referenda.

Active Living by Design offers information and suggestions for improving community design and land use to promote physical activity. The following list highlights a few of their many recommendations:

- Update zoning ordinances, building codes and approval processes to encourage compact community design and a tighter mixture of activities.
- Ensure funding for pedestrian- and cycling-oriented capital improvements and public transit.
- Build accessible parks, trails and other recreational spaces.
- Locate schools, parks, work sites and shopping areas near residential zones to encourage routine walking and biking.
- Design neighborhoods to be self-policing to lessen the cost of law enforcement, build shared courtyards to encourage neighbors to watch out for each other and enhance lighting and windows on the street for security.
- Create grassroots support that encourages public officials to increase funding through bonds, grants and other mechanisms.
- Link parks, trails and greenways to local destinations of interest to ensure that walking trips are at least as convenient and expedient as using a car.
- Design parks, trails and greenways to deter crime and enhance safety.

### Transportation Infrastructure

In addition to community and land use design, transportation infrastructure also has a significant impact on physical activity. For example, current transportation systems often favor automobile transportation. More balanced infrastructure has the potential to reduce the need for automobile transit while promoting physical activity and transportation alternatives. The connection between transportation systems and physical activity has been well-documented:<sup>76</sup>

- Between 1977 and 1995, walking trips declined by 40 percent for both children and adults, while driving trips increased to almost 90 percent of the total.
- Between 1998 and 2001, the average annual amount spent on pedestrian and bicycle projects was 87 cents per person, while the average annual amount spent for roads and bridges was more than \$50 per person.
- People with access to sidewalks are more likely to walk—and to meet the Surgeon General’s recommendations for physical activity, which suggest that people of all ages engage in a minimum of 30 minutes of moderately intense physical activity most days of the week.

The state Departments of Transportation regulate the state highway and transportation systems. Some state lawmakers have pushed for legislation that increases resources directed at accessible, affordable public transit including walking and bicycling paths, bike lanes, light rails and subway transportation, commuter buses and van and shuttle services that facilitate travel to grocery stores and other common destinations.

In addition to those bills, **Virginia** lawmakers enacted S.B. 1199 to direct the Office of Intermodal Planning and Investment to provide for solutions that link existing systems; reduce congestion; improve safety, mobility and accessibility; and provide for greater travel options. The bill also provides for the accommodation of pedestrian and bicycle transportation.

<sup>76</sup> Active Living by Design, *Transportation Factsheet*, available at: [http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation\\_Factsheet.pdf](http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation_Factsheet.pdf).

In addition to recommendations on community design and land use, Active Living by Design also suggests action steps to improve existing transportation systems and develop transportation plans to accommodate public transportation and physical activity. The recommended action steps include:

- Organize walking clubs.
- Create commuter programs and other workplace incentive programs that promote the use of public transit, ride sharing and non-motorized forms of travel.
- Start Safe Routes to Schools programs to encourage children to bicycle or walk to school.
- Promote and support accessibility initiatives for people with disabilities.
- Promote the use of trails for routine transportation.
- Establish a close and consistent link between land use and transportation plans and priorities.
- Improve funding for pedestrian- and cycling-oriented capital improvements and public transit.
- Build facilities such as sidewalks, trails, and bike lanes, which encourage walking and biking.
- Increase the availability of high-quality transit services with stops within walking distance of residential, work, and shopping areas.
- Remove one or two lanes from four-lane arterials where possible and reallocate the extra pavement to bike lanes, sidewalks, parking strips, or center turn lanes.
- Bulb out curbs, improve crosswalks, and install landscaped medians to slow down traffic and better protect pedestrians.
- Design narrower streets with shorter blocks, mid-block alleys and paths.
- Enhance street lighting and surveillance for security.
- Include street trees and public art to make walks more beautiful, comfortable and interesting.
- Incorporate areas for secure bicycle storage in building designs.

The recommendations also highlight the shared impact and overlap of all of the issues—safety; existence of bike paths, walk paths and other recreational facilities; community design and land use; and transportation systems—on the daily physical activity opportunities for the public.

### **Conclusion**

Poor community design, lack of recreation facilities, parks and pathways, daunting traffic patterns and pedestrian crossing, and personal safety concerns are barriers that inhibit physical activity. There has not been a strong push for action among federal and state policy-makers to support initiatives that aim to increase physical activity. Without addressing these issues, it will be difficult for communities to create opportunities for children and adults to be more active. While there has been a lack of action at the state and federal level, individual community leaders at the municipal level, including citizen coalitions, parents' groups and local community organizations, are beginning to address policies and laws that will facilitate and increase residents' physical activity. With federal and state support, many of these community efforts could be enhanced and replicated in other communities across the nation.

## Chapter 5: Children's Access to Nutritious Foods

### **Overview**

Federal, state and local leaders continue their efforts to improve children's nutrition and access to healthy foods. As in past years, the main focus for both federal and state lawmakers remains the school system. At least 16 state legislatures enacted new laws dealing with school breakfasts and lunches, à la carte selections, vending machine offerings or access to farm products. Congress played a key role in 2007 as it debated various provisions affecting children's nutrition in the 2007 Farm Bill and the fiscal year 2008 budget for the U.S. Department of Agriculture (USDA).

Among the key issues in the state and federal legislation was the development of nutrition standards for foods served outside the school breakfast and lunch programs, often known as competitive foods. The nutritional content of foods offered as à la carte selections, through vending machines, in school stores or at extracurricular activities has received more scrutiny. Lawmakers in several states deferred implementation of nutrition guidelines or scaled back childhood nutrition activities due to either the increased cost of programs or a shortfall in state general funds. The shortfall in general funds bears watching as state governments continue to experience a decline in state revenue.<sup>77</sup>

<sup>77</sup> National Conference of State Legislatures, *State Budget Update: November 2007* (2007), available at: <http://www.ncsl.org/programs/fiscal/sbu200711.htm>.

In Washington, D.C., both the U.S. Congress and the USDA took significant action involving the Food Stamp Program; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); and National School Lunch Program. The action in the U.S. Senate to establish a national standard for foods and beverages offered as à la carte items and in vending machines created concern and controversy among advocates for better nutrition for children in school. Some advocates believed that the proposed federal standards improved upon most state standards and that consistent, nationwide standards would make it easier for schools and states to negotiate with food and beverage companies. Other advocates were concerned because the proposed federal standards would pre-empt stronger standards already in existence in some states. At the same time, Congress sought to enhance the WIC and food stamp programs that are critical to the nutrition of preschool children.

Several national surveys and reports released in the fall of 2007 provide state and federal policy-makers with important information concerning the current school nutrition environment. A review of some of the key findings places the legislation enacted this year into context and possibly sets out an agenda for future legislative efforts.

### Surveys and Findings

During the first months of the 2007–2008 school year, several organizations released information from nationwide studies. The findings in these reports place the state and federal actions taken in 2007 into context and identify issues that need to be addressed in the campaign for nutritious foods in schools:

The Trust for America's Health released its annual report, *F as in Fat: How Obesity Policies are Failing in America*.<sup>78</sup> The report found that adult obesity rates rose in 31 states. No states experienced a decrease. The report also highlighted key results of public opinion surveys. Among them: 85 percent of Americans believe obesity is an epidemic, and nearly the same number (81 percent) think government should play a role in addressing the epidemic.

The School Nutrition Association (SNA) released its *2007 Trends Report* in October 2007. The annual report is based on a survey of 200 school districts nationwide. The report found that schools are offering healthier options for students. For example, 81 percent of school districts are increasing the availability of healthier beverages in vending machines, and 74 percent of schools are limiting the fat content of items available in vending machines and à la carte lines. Eighty-five percent of the school districts report increased food, labor and transportation costs.<sup>79</sup>

<sup>78</sup> Trust for America's Health, *F as in Fat: How Obesity Policies are Failing in America, 2007* (2007), available at: <http://healthyamericans.org/reports/obesity2007/>.

<sup>79</sup> School Nutrition Association, *SNA 2007 Trends Report* (October 2007), available at: <https://my.schoolnutrition.org/ebusiness/productcatalog/product.aspx?ID=3905>.



In September 2007 SNA released its second annual study on school wellness policies, *From Cupcakes to Carrots: Local Wellness Policies One Year Later*.<sup>80</sup> The study was devoted to the status of local education agencies' implementation of the wellness programs, and included responses from approximately 1,000 school nutrition district directors. The findings show that healthier foods are being offered in the school cafeteria, but not always throughout the school; providing more nutritious foods are more expensive; and implementation of the wellness plans has led to closer working relationships between school nutritionists and teachers.

The U.S. Centers for Disease Control and Prevention (CDC) released the results of its School Health Policies and Programs Study (SHPPS) for 2006.<sup>81</sup> The study is conducted every six years, and the most recent study shows that schools have made progress in providing healthier options and changing policies in order to improve students' nutrition. For example, the percentage of schools that offered deep-fried potatoes to students decreased from 40 percent in 2000 to 18.8 percent in 2006. In addition, in the last six years, the percentage of school districts prohibiting schools from using foods or food coupons as rewards increased from 11.3 percent to 26.1 percent.

The Center for Science in the Public Interest's *State School Foods Report Card 2007* pointed out that two-thirds of states have no or weak nutrition standards to limit junk food and soda sales from vending machines and other school venues outside of the school lunchroom.<sup>82</sup>

### *School Wellness Programs*

The nationwide implementation of school wellness programs by local education agencies, as called for by 2004 federal legislation, has provided school nutrition administrators the opportunity to become involved in their school systems' curricula for nutrition and physical education. This involvement, some of it for the first time, has raised the visibility of school nutrition programs and developed partnerships to create integrated wellness policies for schools.

During the summer of 2007, the SNA conducted a survey of school nutrition directors about school wellness policies. According to survey results, school nutritionists believe that lack of time was a significant obstacle to implementing nutrition education into classroom curricula. Integrated collaboration between school nutrition administrators and teachers appears to be evolving and may potentially overcome the time constraints.

<sup>80</sup> School Nutrition Association and School Nutrition Foundation, *From Cupcakes to Carrots: Local Wellness Policies One Year Later* (September 2007), available at: [http://www.schoolnutrition.org/uploadedFiles/ASFSA/newsroom/pressreleases/From\\_Cupcakes\\_to\\_Carrots.pdf](http://www.schoolnutrition.org/uploadedFiles/ASFSA/newsroom/pressreleases/From_Cupcakes_to_Carrots.pdf).

<sup>81</sup> Centers for Disease Control and Prevention, *SHPPS: School Health Policies and Programs Study* (2006), available at: <http://www.cdc.gov/HealthyYouth/shpps/index.htm>.

<sup>82</sup> Center for Science in the Public Interest, *State School Foods Report Card 2007* (2007), available at: <http://www.cspinet.org/2007schoolreport.pdf>.

However, the survey also indicates that more work is needed to improve school nutrition policies. School nutrition directors cited the following reasons for not implementing the nutrition education component of school wellness policies:<sup>83</sup>

- It was not a priority of teachers to fit into classroom instruction—40 percent.
- It was not a priority of administrators to fit into classroom instruction—30 percent.
- Lack of funding—30 percent.
- Lack of communication between teachers and school nutrition staff—24 percent.

Data from two SNA surveys—the 2007 Trends and School Wellness reports—demonstrate that policies covering food services under the direct control of the school nutrition directors tend to be better developed than standards for school fund raising, parties and rewards. Two factors contribute to this difference: food offerings in the school cafeteria have been controlled by state and federal guidelines for quite some time, and the cafeteria is run by one person or office. In other food-related activities, multiple people and organizations may be involved, and coordinating policy input from many groups is difficult.

<sup>83</sup> School Nutrition Association and School Nutrition Foundation, *From Cupcakes to Carrots: Local Wellness Policies One Year Later* (2007), available at: [http://www.schoolnutrition.org/uploadedFiles/ASFSA/newsroom/pressreleases/From\\_Cupcakes\\_to\\_Carrots.pdf](http://www.schoolnutrition.org/uploadedFiles/ASFSA/newsroom/pressreleases/From_Cupcakes_to_Carrots.pdf).

*Junk Foods and Sales of Foods Outside of School*

The 2006 SHPPS study indicates that the nation's schools have made substantial progress in restricting access to unhealthy foods. Despite this progress, the findings also reveal that as recently as the 2006–2007 school year, schools have not fully implemented standards for à la carte offerings, vending machines, school stores or student parties.

### Percentage of Districts that Required Schools to Prohibit Offering Junk Foods in Various School Settings

<b>School Setting</b>	<b>2000</b>	<b>2006</b>
À la carte during breakfast or lunch periods	23.1	38.9
Concession stands	1.4	5.5
School stores, canteens or snack bars	3.9	18.9
Student parties	1.4	11.5
Vending machines	4.1	29.8

Source: School Health Policies and Programs Study, 2006

The table below indicates the preference of school organizations to sell candy and baked goods, as opposed to fruits and vegetables, to raise funds. The percentages highlight the challenges that remain in selling healthier foods outside the school nutrition program at all levels, but especially in high schools.

### Percentage of Schools in Which Organizations Sold Specific Foods or Beverages for Fund Raising

<b>Food or Beverage</b>	<b>Elementary</b>	<b>Middle</b>	<b>High</b>
Chocolate candy	49.8	56.2	67.1
Baked goods not low in fat	49.1	55.8	66.6
Non-chocolate candy	40.2	42.6	64.3
Soda or fruit drinks (not 100 percent juice)	20.9	30.3	36.4
Sports drinks	11.1	24.0	31.1
Fruits and vegetables	14.6	20.7	38.6

Source: School Health Policies and Programs Study, 2006

#### *School Personnel*

Going beyond the foods offered in schools, state and local policy-makers are addressing the qualifications and training of the personnel preparing the foods. The SNA wellness program survey noted that approximately 75 percent of schools require teachers to teach nutrition and dietary behavior topics as part of the required curriculum. Such efforts resonate with public health advocates who want improvements in nutrition education. The staff most heavily involved in implementing a curriculum that includes nutrition education are (in descending order of involvement): food administrators, teachers, principals, administrators and school nurses.

In addition, at least 14 states offer district food service directors and managers the opportunity to gain state certification, licensure or endorsement as food service directors. The curricula of these programs include information about healthier choices in food preparation in an effort to enhance the quality of services and the foods served. Currently only 15.8 percent of local education agencies require newly hired district food service directors to be certified, licensed or endorsed by the state—but that percentage is growing. The table below indicates the healthy practices those personnel are performing and the progress made since 2000.

### Percentage of School Districts Implementing Healthier Food Preparation Practices

<b>Healthy Food Preparation Practices</b>	<b>2000</b>	<b>2006</b>
Used part-skim or low-fat cheese	31.0	45.9
Reduced the amount of salt called for in recipes or used low-sodium recipes	34.1	45.8
Trimmed fat from meat or used lean meat	56.2	66.4
Removed skin from poultry or used skinless poultry	40.2	56.4
Steamed or baked vegetables other than potatoes	67.0	81.9

Source: School Health Policies and Programs Study, 2006

*À la Carte Offerings*

Federal, state and local policies have a significant impact on the foods offered in school nutrition programs for breakfasts and lunches. However, students, especially those in high school, have easy access to a far different range of food choices through à la carte offerings. There is a significant drop in the implementation of local wellness nutrition policies in vending machines, school stores and even the à la carte offerings themselves.

## Implementation of Nutrition Standards for Foods and Beverages Available Through School Nutrition Programs

Sources of Foods in the School Environment	Percentage of Schools Implementing Nutrition Standards
<b>FOODS WITHIN THE PURVIEW OF THE SCHOOL NUTRITION PROGRAM</b>	
Reimbursable meals	92.2
À la carte meals	72.2
Vending machines	60.8
<b>FOODS OUTSIDE THE PURVIEW OF THE SCHOOL NUTRITION PROGRAM</b>	
Vending machines	46.3
School stores	38.1
Fund raising	29.4
Classroom parties	30.7
Foods as a reward	33.5
Foods sold after the school day	23.6

Source: School Health Policies and Programs Study, 2006

## Percentage of Schools That Offered Low-Fat, à la Carte Foods

<b>Low-Fat à la Carte Foods</b>	<b>2000</b>	<b>2006</b>
Bread sticks, rolls, bagels, pita bread or other bread products	50.8	67.1
Lettuce, vegetable or bean salads	52.6	72.8
Low-fat, salty snacks	38.2	53.2
Low-fat or non-fat yogurt	35.5	50.3
Vegetables other than potatoes	51.0	70.8

Source: School Health Policies and Programs Study, 2006

More than half of all middle and high schools continue to offer cookies, cakes, pastries and other baked goods à la carte in school lunchrooms. Concurrently, the SHPPS study reported that the number of schools in general offering such foods à la carte in their lunchrooms only decreased from 67.3 percent to 54.3 percent. These two findings underscore students' easy access to cookies, cakes, pastries and other baked goods of lower nutritious value during the school day.

## Percentage of Schools That Offered Selected à la Carte Foods, by School Level

<b>Food</b>	<b>Elementary</b>	<b>Middle</b>	<b>High</b>
Fruit	74.7	80.0	87.2
Lettuce, vegetable or bean salad	66.3	79.1	80.9
Cookies, crackers, cakes, pastries or other baked goods not low in fat	44.8	56.1	68.2
Deep-fried potatoes	9.1	21.0	41.7

Source: School Health Policies and Programs Study, 2006

### *Spending on School Lunches and à la Carte Offerings*

A majority of the school nutrition directors who responded to the SNA survey on school meals in the school trends report indicated that over the last year there had been an increase in the number of students eating breakfast and lunch at school. Many school nutrition directors also reported an increase in the number of free and reduced-price meals provided. The increase could represent a greater popularity or acceptance of the free or reduced-price meals by children who qualify for them. Or it could mean that more students are eligible to participate in the program due to economic circumstances.

The average spending on à la carte items by students shows a mixed pattern. The number of school districts reporting an increase in spending was nearly equal to those reporting a decrease, so there is no clear trend. Data from CDC's 2006 SHPPS study on school health programs and policies indicate that the offerings in the à la carte line have not changed significantly since 2000. Revenue from à la carte purchases has provided school nutrition programs with the additional funds needed to implement the guidelines for school lunch and breakfast programs. Because of the revenue provided, school nutrition administrators are very interested in à la carte purchasing trends.

Additional findings from the SNA school trends report and SHPPS surveys indicate the popularity of à la carte offerings that are in competition with the school breakfast and lunch menu:

- Pizza remains the most popular lunch entree and à la carte item among students by a wide margin. Students chose pizza 54 percent of the time as a lunch entree and 23 percent in the à la carte line.
- Brand-name fast food—Pizza Hut, Taco Bell and Subway—continues to be a popular option at elementary, middle and high schools. These brand names can be found at 12 percent, 19 percent and 24 percent of the schools, respectively.
- Breakfast sandwiches and biscuits are the most popular breakfast items, followed by cereal and breakfast pizza. Breakfast sandwiches and biscuits at 32.5 percent were nearly twice as popular as cereal at 18.3 percent, and more than twice as popular as breakfast pizza at 15.2 percent and pastries at 12.6 percent.

### *Vending Machines*

The SNA survey of trends in school nutrition programs indicated that accessibility to vending machines has remained virtually unchanged since 2004, but the SHPPS study presents a more complex picture. Between 2000 and 2006, there was a large increase in the percentage of school districts banning unhealthy foods in vending machines, from 4 percent in 2000 up to 30 percent in 2006. However, 70 percent of the nation's school districts still had not banned unhealthy foods from vending machines in 2006. The findings highlight that, while change is being made, legislation and school policies still have a long way to go.

There has been significant change in the selection of beverages offered in school vending machines. Bottled water is now the most popular beverage offered to high school students. Sports drinks, juices (with 50 percent to 100 percent juice), iced tea and reduced-fat/skim milk also are growing in popularity.

Whole milk and juices that are less than 50 percent juice are becoming less popular as more nutritious beverages, such as 100 percent juice, are being offered. Unfortunately, the more nutritious beverages are often offered in the same vending machine as sodas, and there are few data on how the two types of beverages compare in sales.

The SNA data from the *2007 Trends Report* indicates that 85.1 percent of the schools responding to its survey report the increasing availability of whole-grain products. In addition, 73.1 percent are limiting fat content in their à la carte meals and vending machines, nearly double from the 38.4 percent in 2004.

However, California education officials say that a new state law banning the sale of unhealthy foods in schools has done little to improve students' food options—food manufacturers have simply made their unhealthy snacks slightly smaller to meet the calorie restrictions. The new law requires that no more than 35 percent of calories in snacks come from fat and sugar; snacks sold at middle and high schools must have no more than 250 calories, those at elementary schools only 175 calories; and lunches can have no more than 400 calories and 4 grams of fat per 100 calories.

In response to consumer demand and criticism by public health advocates, food manufacturers revamped more than 10,000 products to reduce their calorie, sugar or fat content in 2006. The manufacturers claimed that they changed the products to make them healthier, but public health advocates contend that manufacturers have merely placed their unhealthy foods in smaller packages without changing their content. Unfortunately, many school districts feel compelled to sell the unhealthy foods to maintain revenue levels.

### Percentage of Schools Offering the Following Foods From Vending Machines, School Stores, Canteens or Snack Bars

<b>Food or Beverage</b>	<b>Elementary</b>	<b>Middle</b>	<b>High</b>
Fruit	74.7	80.0	87.2
1 percent or skim milk	4.2	12.9	20.2
2 percent or whole milk	7.1	15.4	30.6
100 percent fruit juice	16.8	41.1	64.7
Bottled water	21.9	63.2	85.8
Chocolate candy	8.7	24.7	49.6
Cookies, crackers, cakes, pastries or other baked goods not low in fat	12.0	27.6	58.3
Fruits and vegetables	4.2	8.7	17.9
Ice cream or frozen yogurt not low in fat	7.0	11.0	22.0
Low-fat cookies, crackers, cakes, pastries or other baked goods	9.7	25.5	49.3
Other candy (not chocolate)	10.8	26.2	54.2
Salty snacks low in fat	11.3	30.9	58.0
Salty snack not low in fat	11.6	30.4	61.4
Soda or fruit drinks not 100 percent juice	16.4	45.0	76.8
Sports drinks	12.4	51.7	75.0

Source: School Health Policies and Programs Study, 2006

### *Cost of Nutrition Programs*

Many of the surveys found that growing operation costs (food, labor and gasoline) are having an adverse effect on school food service programs, and this discouraging finding was replicated in several 2007 state actions. The SNA survey of school nutrition programs indicates that growing costs are impacting school food programs in several distinct ways:

- Eighty-five percent of the school nutrition administrators and 78.3 percent of local education agencies faced cost increases.
- Nearly two-thirds (63.5 percent) of school districts stated that the federal reimbursement they received for the National School Lunch Program was not sufficient to cover the cost of producing a meal.
- Indirect costs for water, electricity, waste management and administration increased modestly.
- The most acute increases in costs were a result of gasoline and transportation; virtually every responding school district (97.9 percent) listed it as a concern.
- Nearly half the school districts (49.3 percent) stated that they incurred fuel service charges in the delivery of foods.
- The effect of indirect costs centers more on inconsistent state policies for charging indirect costs and not specific increases in the services involved.
- Food and direct labor costs are more of an issue and concern for larger school districts.
- Many respondents described needing revenue from à la carte service to cover costs; large districts and districts in the Northeast were most likely to indicate an insufficient reimbursement.

The most common way schools are addressing these increases in costs are by changing the products they purchase and by raising prices of school meals, especially in school districts that have a lower percentage of students eligible for free or reduced-price meals.

Frequently, school nutrition directors identified the cost of products that meet nutrition standards and student acceptance of changes as hurdles to implementation. Ongoing monitoring of standards and finding products that meet standards also were noted as hurdles by about half the respondents.

### *Revenues and Participation*

Historically, the revenue shortfalls of school breakfast and lunch programs have been made up with revenue from à la carte and vending machine sales. However, net revenue from à la carte and vending machine sales is decreasing with the implementation of stricter nutrition standards, and these new standards have not impacted school meal participation negatively. Approximately half of the programs are experiencing decreases in à la carte revenue at the middle and high school level, and one third of the programs are experiencing a decrease at the elementary level. Revenues from à la carte meals declined in 50 percent of middle and high schools.

Thus, as we move from these findings to review the specific state and federal actions, we need to recognize the following factors highlighted by the SHPPS and SNA studies:

- The increasing cost of stricter nutritional standards and the decrease in revenue from à la carte and vending machine sales.
- The continued availability and popularity among student of foods of lesser nutritional value.
- The need for stricter nutritional standards and policies involving à la carte offerings and vending machines at the state or national level.

### **State Activity**

State legislative action to improve school nutrition environments has been as varied as the condition of those environments described above. Fourteen states enacted a broad range of legislation concerning school meals, vending machines, à la carte meals and farm produce to school programs.

Lawmakers in **Oregon, Alabama** and **Mississippi** adopted the comprehensive nutrition guidelines of the Alliance for a Healthier Generation, which exceed the federal guidelines. **Colorado, Connecticut, Iowa, Oklahoma** and **Vermont** are all now offering more fresh fruits and vegetables in school meals.

In 2007 many states recognized the compelling link between school breakfast and health and academic achievement. State policy-makers have encouraged school districts to ensure that all schools offer a breakfast program, especially those with a significant percentage of low-income students. Many states have followed through with action:

- **Colorado** established a pilot program to ensure that students will begin the school day with a nutritious breakfast.
- **Washington** provided funds to expand the free breakfast program to include children previously eligible for the reduced-price meals.
- **Pennsylvania** and **South Carolina** have programs to help local education agencies reach more students with breakfast.
- **California** State Superintendent Jack O'Connell urges each school district to send a team to regional workshops hosted by the state called "Breakfast Scores High on Closing the Achievement Gap."

Several other state education departments announced similar priorities, although the driving force for the effort may have been student test scores as opposed to better nutrition. Some of the states made changes in order to defer implementation of nutrition guidelines or scale back childhood nutrition activities, due to the increased cost of such programs or a shortfall in state general funds.

One experience in **California** makes it clear that no program, however promising, is immune to cutbacks, in light of potential state revenue shortfalls. California implemented the Fresh Start Pilot Program during the 2005–2006 school year to promote the consumption of fresh fruits and vegetables by children in the School Breakfast Program. The program received \$18.2 million in fiscal year 2006, the largest infusion of state funding into the school meal program in 30 years. Public school districts and charter schools were able to apply for a reimbursement of 10 cents per breakfast meal. The funds are to be used to supplement—not supplant—current funds and allow for a second serving of fruits and vegetables at breakfast. In 2007 the General Assembly eliminated the \$11 million Gov. Arnold Schwarzenegger had recommended for the program in fiscal year 2007–2008. This phenomenon bears watching in 2008, as both the National Governors Association and the National Conference of State Legislatures issued reports in December 2007 asserting that state governments were experiencing a decline in state revenue.

Three state legislatures—**California, New Jersey** and **Rhode Island**—enacted new laws concerning à la carte and vending machine offerings. The small number of enactments belies the concern policy-makers have for the issue and the amount of activity at the national level. State policy-makers may be waiting to see what affect the Memorandum of Understanding (MOU) signed by the major beverage companies in 2006 will have on the availability of vending machine beverages before taking further action. In the MOU, brokered by the Alliance for a Healthier Generation, the soft drink companies agreed to work toward reducing the availability of soft drinks in vending machines and replace them with healthier drinks.

In other action, the **Utah** State Board of Education defeated a proposed ban on candy and soda from school vending machines. However, several board members believed that imposing a single state standard would prevent local school districts from enacting stricter guidelines. Several districts already had enacted stricter guidelines, further justifying the board's action.

Throughout the year several public health organizations were focused on the efforts of Sen. Lisa Murkowski (R-Ala.) and Sen. Tom Harkin (D-Iowa) to forge national standards for competitive foods, à la carte offerings and vending machine policies. More information on these efforts will be discussed in the following "Federal Actions" section. The survey results reported above and the attention given to the federal efforts illustrate the broad concern for à la carte selections, vending machine offerings and foods sold through school stores or extracurricular activities.

## 2007 Enacted Legislation on School Breakfast and Lunch

### COLORADO

#### CO SB 59

- ✓ This law establishes the state's Start Smart nutrition program to ensure that each student in Colorado public schools has an opportunity to begin the day with a nutritious breakfast.

The program has the following objectives:

- Appropriate sufficient funds so that all students participating in the School Breakfast Program for reduced price would become eligible for free breakfasts.
- Increase the number of students participating in the nutritious Breakfast Program.
- Decrease statewide health care costs.
- Reduce students' risk of obesity by providing a nutritious breakfast.
- Encourage charter schools and school districts to participate in the Breakfast Program.
- Increase students' consumption of whole grains, fruits, vegetables, vitamins, calcium, protein, fiber and iron.

To make the Nutritious Breakfast Program available to underprivileged students, between \$700,000 and \$1 million is to be appropriated.

### ILLINOIS

#### IL HB 1839

- ✓ This law required that on or before February 15, 2008, school districts needed to develop a plan to have a summer breakfast or lunch (or both) food service program for those schools that have:
  - at least 50 percent of their students eligible for free or reduced-price school meals; and
  - a summer school program.

The plan must be implemented during the summer of 2008, and each summer food service program must operate for the duration of the school's summer school program.

If the school district has one or more elementary schools that qualify, the summer food service program must be operated in a manner that ensures that all eligible students receive services. If a school in which at least 50 percent of the students are eligible for free or reduced-price school meals is not open during the summer months, the school shall provide information regarding the number of children in the school who are eligible for free or reduced-price school meals upon request by a nonprofit organization that may be interested in offering the service.

#### MEASURE STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## KENTUCKY

**KY SB 25**

- ✓ This measure creates the Kentucky Farmers Market Nutrition Program within the Kentucky Department of Agriculture, in collaboration with the Cabinet for Health and Family Services, for the purpose of enhancing nutrition. The program services may include the provision of fresh, locally grown produce to low-income citizens, including recipients of WIC provided by the federal Food and Nutrition Services.

The law specifies that the department may collaborate with the USDA, the University of Kentucky College of Agriculture Cooperative Extension, local area agencies on aging, community agencies, foundations, philanthropic organizations, farmers and local fiscal courts to meet the following objectives:

- Identify funding sources.
- Establish services and a program delivery strategy.
- Market the program to citizens and farmers.
- Develop strategies to introduce fresh, locally grown fruits and vegetables into school food programs.

The law allows the department to promulgate administrative regulations to establish eligibility criteria and implement the program.

The department may accept gifts, grants, federal or state funds or any other public or private funds to develop or implement the program.

The measure creates the Kentucky Farmers Market Nutrition Program fund in the State Treasury as a trust and agency account. Moneys deposited in the fund shall be disbursed by the state treasurer upon the warrant of the commissioner of the Kentucky Department of Agriculture. This fund shall be used solely for the purpose of providing nutritious food to low-income citizens. The fund shall not lapse, and funds not expended during any fiscal year shall carry forward to the next fiscal year.

The measure requires the commissioner of the Kentucky Department of Agriculture to submit an annual report to the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Agriculture and Natural Resources, which includes but is not limited to:

- the amount of funding received for the Kentucky Farmers Market Nutrition Program;
- the economic impact of the program;
- strategies implemented to market the program and improve nutrition; and
- statistics related to the number of individuals served and farmers' markets participating in the program.

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➡ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## MARYLAND

**MD HB 1199**

- ✔ Currently, the state operates the Maryland Meals for Achievement In-Classroom Breakfast Program. The purpose of the program is to provide funding for schools that make in-classroom breakfast available to all students, and it complements federal funding.

Previously, state funding was available to schools in which 35 percent of the students were eligible for federal free or reduced-price meals. This new law raises that threshold to 40 percent.

## NORTH CAROLINA

**NC HB 1473**

- ✔ Previously, the North Carolina General Assembly had enacted legislation directing the State Board of Education to establish statewide nutrition standards for school meals, à la carte foods and beverages, and the After-School Snack Program that would promote gradual changes to increase fruits and vegetables, increase whole-grain products and decrease foods high in total fat, trans fat, saturated fat and sugar.

The new law defers the implementation of the nutritional standards in elementary schools from the 2007–2008 school year to 2008–2009. Implementation in middle schools and then high schools will occur in subsequent school years. However, the law does encourage local education agencies to take steps to implement the standards using existing funds to the extent possible.

The law directs the Child Nutrition Services Section of the Department of Public Instruction to study how state funds allocated to support the implementation of nutrition standards in elementary schools should be distributed to ensure fair and equitable distribution of available resources.

The General Assembly urges the governor to include in the proposed fiscal year 2008–2009 state budget the amount required to ensure that all kindergarten students who meet the eligibility percentage authorized by the State Board of Education receive a free breakfast.

MEASURE  
STATUS:

✔ Enacted

⊖ Pending

➔ Carried Over

✘ Vetoed

Source: Albemarle State Policy Center, January 2008

## OREGON

**OR HB 2650**

- ✓ This law directs that all food and beverage items sold in public schools for grades K through 12 must meet minimum standards as follows:

## Snacks

- May be sold only in a single-serving size
- May not have more than 35 percent of the total calories from fat (This requirement does not apply to legumes, nuts, nut butters, seeds, eggs, non-fried vegetables or cheese.)
- May not have more than 10 percent of the total calories from saturated fat (This requirement does not apply to nuts, eggs or cheese.)
- May not contain more than 35 percent sugar by weight (This requirement does not apply to fruit or vegetables.)
- May not contain more than 0.5 grams of trans fat per serving
- May not contain more than 150 total calories if sold in an elementary school
- May not contain more than 180 total calories if sold in a middle school
- May not contain more than 200 total calories if sold in a high school

## Entrees

- May not contain more than four grams of fat per 100 calories
- May not contain more than 450 calories in total

## Beverages

- Beverages sold in elementary schools are restricted to the following options:
  - Water
  - Fruit and vegetable juices in no more than 8-ounce servings that are 100 percent juice and contain no more than 120 calories
  - Fat-free or low-fat milk or the nutritional equivalent in no more than 8-ounce servings that contain no more than 150 calories
- Beverages sold in middle schools are restricted to the following options:
  - Water
  - Fruit and vegetable juices in no more than 10-ounce servings that are 100 percent juice with no added sweeteners and contain no more than 120 calories per 8 ounces
  - Fat-free or low-fat milk or the nutritional equivalent in no more than 10-ounce servings that contain no more than 150 calories per 8 ounces

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

- Beverages sold in high schools are restricted to the following options:
  - Water
  - Fruit and vegetable juices in no more than 10-ounce servings that are 100 percent juice with no added sweeteners and contain no more than 120 calories per 8 ounces
  - Fat-free or low-fat milk or the nutritional equivalent in no more than 10-ounce servings that contain no more than 150 calories per 8 ounces
  - A no-calorie or low-calorie beverage if the beverage contains no more than 10 calories per 8 ounces
  - A beverage in no more than 12-ounce servings that contains no more than 66 calories per 8 ounces

The standards apply to food and beverages sold in schools at all times during the regular and extended school day. This includes when a school is being used for activities such as clubs, band and choir practice, student government, drama rehearsals and child-care programs.

The standards do not apply to food and beverages sold during school or non-school events where parents and adults are a significant part of the audience. For example, the standards would not apply during a sporting event, or another interscholastic activity such as a play or concert.

## PENNSYLVANIA

### PA HB 842

- ✓ This law directs the Department of Education to establish a School Nutrition Incentive Program. The program shall provide a supplemental school lunch and breakfast reimbursement to any school in a local education agency that has adopted and implemented nutritional guidelines for food and beverages.

Beginning with the 2007–2008 school year, the supplemental reimbursement will be provided to schools in qualifying local education agencies as follows:

- Each school that meets the requirements of the School Lunch Program shall receive an additional reimbursement of 1 cent per lunch served.
- Each school that meets the requirements of the School Breakfast Program shall receive an additional reimbursement of 1 cent per breakfast served.
- Each school that meets the requirement of the School Lunch and Breakfast Program and serves breakfast to less than or equal to 20 percent of its student enrollment shall receive an additional reimbursement of 2 cents per lunch served.
- Each school that meets the requirement of the School Lunch and Breakfast Program and serves breakfast to more than 20 percent of its student enrollment shall receive an additional reimbursement of 3 cents per lunch served.

The School Nutrition Incentive provides additional financial support for schools investing in the long-term nutritional health of their children.

A supplemental state reimbursement is provided for each breakfast and lunch served through the National School Lunch and Breakfast Program in schools that implement the Pennsylvania Department of Education's (PDE) Nutrition Standards for Competitive Foods. Local education agencies must amend their Local Wellness Policy to include the PDE Nutritional Standards. All schools receiving the School Nutrition Incentive Reimbursement rate must implement at a minimum Year One PDE nutrition standards in the 2007–2008 school year and at a minimum Year Two PDE standards by the beginning of the 2008–2009 school year and each year thereafter.

#### MEASURE STATUS:

✓ Enacted

⊖ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

### **School Access to Farm Products**

To increase students' access to fruits and vegetables, states have enacted laws establishing farm-to-school programs that link schools with local farms to provide students with fresh foods. In addition to providing students with fresh produce, such programs promote locally grown foods and the opportunity for students to learn about the source of foods that they make take for granted at the grocery store. In 2007 the following five state legislatures enacted laws to establish farm-to-school programs.

### **School à la Carte Food and Vending Machine Policies**

Despite the concern over foods sold in vending machines or à la carte in school lunchrooms that was indicated in the surveys conducted by the School Nutrition Association and the CDC, very few states adopted legislation on the issue. Only **California, New Jersey** and **Rhode Island** enacted related legislation in 2007. Their new regulations regarding the nutritional content of à la carte and vending machine foods are described below.

### **Federal Actions**

The year came to a close with the Farm Bill pending before Congress, but the fiscal year 2008 Appropriations Bill for the USDA was enacted as part of an omnibus federal continuing resolution. The USDA appropriations legislation has several provisions affecting child and adolescent nutrition. In addition, several administrative actions taken by USDA during 2007 have the potential to affect childhood nutrition in the future.

#### *Administrative Actions*

The Child Nutrition and WIC Reauthorization Act of 2004 authorized a USDA pilot study on expanding the free school meal program to include children eligible for the reduced-price school meals program. It is estimated that raising the eligibility for free meals from 130 percent to 185 percent of the federal poverty level (FPL) (and thus eliminating the reduced-price meal program) would cost \$3.5 billion over five years. However, the pilot program has yet to be implemented. Because it would require three years to implement and evaluate, there is no longer sufficient time to initiate the pilot before the USDA Child Nutrition Programs, including the National School Lunch and Breakfast Program, are reauthorized in 2009.

## 2007 Enacted Legislation on School Access to Farm Products

### COLORADO

#### CO SB 127

- ✓ This law establishes a pilot program for the 2007–2008 school year modeled after the USDA Fruit and Vegetable Pilot Program to make free fruits and vegetables available to students from schools with not less than 50 percent of the students receiving free or reduced-price meals.

### CONNECTICUT

#### CT HB 5847

- ✓ This law establishes a farm-to-school program that promotes the sale of Connecticut-grown farm products to schools.

### IOWA

#### IA SB 601

- ✓ This measure establishes a farm-to-school program that seeks to link elementary and secondary public and non-public schools with Iowa farms to provide schools with fresh and minimally processed food for inclusion in school meals and snacks. The goal of the program is to encourage children to develop healthy eating habits and provide Iowa farmers access to consumer markets.

The farm-to-school program may include activities that provide students with hands-on learning opportunities, such as farm visits, cooking demonstrations, and school gardening and composting programs.

### OKLAHOMA

#### OK HB 2655

- ✓ The new law creates a farm-to-school program within the Department of Agriculture, Food, and Forestry to link schools and farms. The goal is to provide schools with fresh farm products in meals and snacks and helps students develop healthy eating habits.

#### MEASURE STATUS:

✓ Enacted

— Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## VERMONT

**VT HB 91**

✓ This measure establishes the Rozo McLaughlin Farm-to-School Program as a permanent program to encourage local school districts to serve food grown in Vermont. The funds from the grant program may be used to purchase equipment, resources or materials for the following objectives:

- use of local, fresh and nutritious foods;
- farm-to-school education and teacher training;
- professional development for food service personnel; and
- training sessions for public school personnel and child-care resource development specialists.

Training shall include information about strategies for purchasing, processing and serving locally grown foods, as well as information about nutrition, obesity prevention, coping with severe food allergies and food service operations.

MEASURE  
STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## 2007 Enacted Legislation on Competitive Foods and Vending Machines

### CALIFORNIA

#### CA SB 490

- ✓ The Pupil Nutrition, Health, and Achievement Act of 2001 requires schools to follow the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, or Traditional Meal Pattern or the Shaping Health as Partners in Education (SHAPE) Menu Patterns in order to qualify for reimbursement for free and reduced-price meals sold or served to pupils. The act also prescribes nutrition standards for snacks sold to pupils in middle, junior or high school with certain exceptions.

Beginning July 1, 2009, food prepared with or containing artificial trans fat will not be available to students in grades K through 12 from vending machines or school food service establishments from a half hour before until a half hour after the school day.

According to the law, a food contains artificial trans fat if it contains vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams of trans fat per serving.

The new law does not apply to food provided as part of a USDA School Lunch and Breakfast Program.

### NEW JERSEY

#### NJ SB 1218

- ✓ Effective September 2007, all snack and beverage items sold or served anywhere on school property during the school day, including à la carte; foods in vending machines, snack bars, school stores and fund-raisers; or items in the after-school snack program must meet the following standards:
  - Snacks must have no more than eight grams of total fat per serving (with the exception of seeds and nuts) and no more than two grams of saturated fat per serving.
  - All beverages other than milk must contain 2 percent or less fat and are not to exceed 12 ounce portion sizes.
  - Elementary school beverages are limited to milk, water or 100 percent fruit juices.
  - In middle and high schools at least 60 percent of all beverages offered, other than milk and water, must be 100 percent fruit or vegetable juice.
  - In middle and high schools no more than 40 percent of all ice cream and frozen desserts can exceed the above standards for sugar, fat and saturated fat.

Foods and beverages served during celebrations or during curriculum-related activities are exempt, except for Foods of Minimal Nutritional Value as defined by USDA.

Schools are to reduce the purchase of any products containing trans fat by September 1, 2007.

#### MEASURE STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## RHODE ISLAND

**RI HB 5050**

-  Previously, all elementary, middle and junior high schools that sold or distributed beverages and snacks on their premises, including those sold through vending machines, were required to offer healthier beverages effective January 1, 2007, and healthier snacks effective January 1, 2008.

The new law added high schools to that requirement by inserting the following language:

“All Rhode Island senior high schools that sell or distribute beverages and snacks on their premises, including those sold through vending machines, shall be required to offer only healthier beverages and snacks effective January 1, 2008.”

The statute continues to permit the sale of beverages and snacks that do not comply with the above paragraph as part of school fund raising in any of the following circumstances:

- The items are sold by pupils of the school and the sale of those items takes place off and away from the premises of the school.
- The items are sold by pupils of the school and the sale of those items takes place one hour or more after the end of the school day.
- The items are sold during a school-sponsored pupil activity after the end of the school day.

MEASURE  
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Albemarle State Policy Center, January 2008

The USDA's Food Nutrition Service issued a guidance concerning the use of vending machines in dispensing school meals.<sup>85</sup> The guidance noted the growing interest among school food authorities on such use of vending machines. It stated that a vending machine that provides a reimbursable school meal is subject to all program regulations and represents an extension of the school food service area. School meal vending machines are subject to the same procedures, menu planning requirements, competitive food rules and offer-versus-serve requirements that are applicable to meals offered on a service line with a cashier.

### *Fiscal Year 2008 USDA Appropriations*

Congress was unable to agree on the separate FY 2008 appropriation bills offered by the House of Representatives and Senate. Therefore, the appropriation of funds for various USDA programs was included in an omnibus Continuing Resolution enacted by the Congress in December 2007.

One of the programs funded by Continuing Resolution is the USDA Food and Nutrition Service's Team Nutrition program, which supports the Child Nutrition Programs by providing: nutrition education for children and parents, training for food service workers on making healthy meals and support for healthy eating and physical activity in schools and communities.

Team Nutrition uses the Dietary Guidelines for Americans and MyPyramid to improve the healthy eating and physical activity habits of children. To provide resources and support to schools and parents, Team Nutrition developed two Web sites:

- The Team Nutrition site provides nutrition, healthy eating and physical activity information to a broad audience, especially schools.<sup>86</sup>
- The Healthy Meals Resource System site provides technical assistance and support materials for school food service and child-care professionals to carry out their duties and responsibilities.<sup>87</sup>

Congress appropriated \$10 million to the USDA to expand the Fresh Fruit and Vegetable Program from the current 14 pilot states to all 50 states at a cost of approximately \$200,000 for each state. The program makes fresh fruits and vegetables available to elementary or secondary schools throughout the day.

<sup>85</sup> Garnett SC, U.S. Department of Agriculture, Food and Nutrition Service. "Vending Machines in the School Meal Programs" Jan. 22, 2007. Available at: [http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2007/SP\\_03-2007.pdf](http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2007/SP_03-2007.pdf).

<sup>86</sup> U.S. Department of Agriculture, Food and Nutrition Service. *Team Nutrition* (2007), available at: <http://www.fns.usda.gov/tn/>.

<sup>87</sup> U.S. Department of Agriculture, *Healthy Meals Resource System* (2007), available at: [http://healthymeals.nal.usda.gov/nal\\_display/index.php?info\\_center=14&tax\\_level=1](http://healthymeals.nal.usda.gov/nal_display/index.php?info_center=14&tax_level=1).

The Concurrent Resolution appropriating fiscal year 2008 funds to the USDA includes language expanding the Simplified Summer Food Program from 26 states to all 50 states, Puerto Rico and the District of Columbia. Major enhancements of the revised program are simplified accounting requirements and paperwork. Because the pilot program's use of simplified accounting increased participation by 43.3 percent, school nutrition professionals are eager to explore expanding the program into 22 states, which are listed in the table below.

### Potential Expansion States for Simplified Summer Food Program

Alabama	Hawaii	Nevada	South Carolina
California	Illinois	New Jersey	Utah
Connecticut	Maryland	New Mexico	Vermont
Delaware	Massachusetts	New York	Virginia
Florida	Minnesota	Pennsylvania	
Georgia	Montana	Rhode Island	

Source: Albemarle State Policy Center, January 2008

As required by federal law, the USDA sets nutrition standards in the form of meal-pattern requirements consistent with the goals of the Dietary Guidelines for Americans. Federal officials are concerned that state and local entities have altered these goals and that the changes may not be based in science. The USDA Food and Nutrition Service currently is updating the meal-pattern requirements for the National School Lunch and Breakfast Programs to reflect the 2005 Dietary Guidelines for Americans. The new requirements are expected to be published in the first half of 2008.

### *The 2007 Farm Bill*

An amendment to the 2007 Farm Bill offered by Sen. Tom Harkin (D-Iowa) and Sen. Lisa Murkowski (R-Ala.) was of major interest to child nutrition advocates, school administrators and the food and beverage industries. The language in the amendment would have given the USDA the authority to set nutrition standards for foods and beverages sold and served outside the reimbursable meal program. The amendment would create one national standard for foods and beverages sold outside the federal school meal programs, such as à la carte servings, vending machine offerings and other foods sold throughout schools, at school functions and for school fund raising.

The American Beverage Association agreed to support the Harkin Amendment to the Farm Bill. The Harkin Amendment goes beyond the voluntary guidelines of the Memorandum of Understanding (MOU) signed by the beverage industry and the Alliance for a Healthier Generation in 2006. In addition to the changes described above, sales of sport drinks would be limited to athletic areas of schools, and only bottled water, milk, juice or other drinks containing a maximum of 25 calories per 8 ounces would be allowed elsewhere in school. The soft drink makers would have five years from the time the Farm Bill becomes law to comply.

Many childhood nutrition advocates applauded the single national standard because it would limit the sale of sugary drinks and unhealthy foods in schools. The updated national nutrition standards address package sizes, calories, total fat, saturated fat, trans fat, sugars, sodium and nutrient content.

Yet, other nutrition advocates expressed concern that the Harkin Amendment was so watered down that it threatened to erase many of the efforts and victories at the local and state level to enact standards that went beyond current federal guidelines. In addition, they argued that it would impose an unfunded mandate on schools by dictating what kinds of foods and beverages schools are able to offer their students without any federal funding to offset the potential costs to school districts. Opponents of the amendment stated that it dismissed the work of local wellness committees, which in 2004 Congress required school districts to establish by the start of the 2006–2007 school year. The committees' policies are only now taking effect and several nutrition advocacy organizations believe they should be given a chance to work.

Ultimately, the Senate ruled that the Harkin Amendment was not germane to the Farm Bill and ruled it out of order. While the legislation was not acted on, the parameters it set for establishing a single standard for food and beverages outside the School Lunch and Breakfast Program need to be examined, because they soon may be debated at the state or federal level.

## Harkin Amendment—Nutrition Standards for Foods and Beverages Sold in Schools

### Standards for Foods at Elementary, Middle and High Schools

<b>Fats</b>	<ul style="list-style-type: none"> <li>No more than 35 percent of total calories from fat (nuts, nut butters and seeds are exempt from fat limits, though they must meet remaining nutrition criteria)</li> <li>No more than 10 percent of calories from saturated fat</li> <li>Trans fat-free (less than 0.5 grams per serving)</li> </ul>
<b>Sugars</b>	<ul style="list-style-type: none"> <li>No more than 35 percent sugars by weight, except fruits</li> </ul>
<b>Sodium</b>	<ul style="list-style-type: none"> <li>No more than 700 milligrams for pizza, sandwiches and main dish entrees, as of 2013</li> </ul>
<b>Nutrient Content</b>	<p>Foods served must contain one or more of the following:</p> <ul style="list-style-type: none"> <li>10 percent of the Recommend Daily Vitamins (RDV) of Vitamins A, C, or E, calcium, magnesium, potassium, iron, protein or fiber</li> <li>A quarter cup of fruits or vegetables</li> <li>51 percent or more by weight whole grain ingredients (or the first ingredient is whole grain)</li> </ul>
<b>Calories</b>	<ul style="list-style-type: none"> <li>180 calories per serving/package (as offered for sale) for elementary school and middle schools</li> <li>200 calories per serving/package (as offered for sale) for high school</li> </ul>
<b>À la carte Lunch</b>	<ul style="list-style-type: none"> <li>Sold in portion sizes no larger than entree items served under the National School entree items and Breakfast Programs</li> <li>Meet the other applicable nutrition standards pertaining to fats, saturated fats, trans fats, sugars and sodium</li> <li>No more than 230 milligrams of sodium for chips, crackers, french fries, vegetables, baked goods and other side dishes or snack items</li> <li>No more than 480 milligrams for pastas, cereals, meats and soups</li> <li>Calcium- or Vitamin D-fortified soy beverage or other milk alternative (per USDA)</li> </ul>

### Standards for Beverages at Elementary and Middle Schools

<b>Package Size</b>	<ul style="list-style-type: none"> <li>No more than 8 ounces, except for water</li> </ul>
<b>Water</b>	<ul style="list-style-type: none"> <li>No flavoring, sweeteners or carbonation</li> <li>No more than 170 calories per 8 ounces</li> </ul>
<b>Other Beverages</b>	<ul style="list-style-type: none"> <li>None allowed</li> </ul>

Source: Albemarle State Policy Center, January 2008

**Standards for Beverages at High Schools**

<b>Package Size</b>	<ul style="list-style-type: none"> <li>No more than 12 ounces, except for water and any beverage that contains no more than 10 calories per 8 ounces (20 ounces maximum)</li> </ul>
<b>Water</b>	<ul style="list-style-type: none"> <li>May not contain flavoring, non-caloric sweeteners or carbonation</li> <li>No more than 170 calories per 8 ounces</li> </ul>
<b>Other Beverages</b>	<ul style="list-style-type: none"> <li>Allowed only in high school athletic areas starting in 2013</li> </ul>
<b>Implementation</b>	<ul style="list-style-type: none"> <li>Most standards in place by 2011</li> <li>Mid-calorie drinks down to 25 calories per 8 ounces, milk down to 150 calories per 8 ounces and sports drinks moved to athletic areas by 2013</li> <li>Standards apply to extended school day</li> </ul>
<b>Milk</b>	<ul style="list-style-type: none"> <li>Only low-fat and non-fat milk</li> <li>Not more than 170 calories per 8 ounces (reduced to 160 calories in 2013)</li> </ul>
<b>Juice</b>	<ul style="list-style-type: none"> <li>May contain only juice with or without added micronutrients or natural flavors</li> <li>May contain added water or carbonated water with no added sweeteners</li> <li>No more than 66 calories per 8 ounces up through 2013, then decreases to no more than 25 calories per 8 ounces</li> </ul>

The standards pertain to foods that are for sale campus-wide, including vending machines, school stores, à la carte and other venues outside of meal programs. The exception is for school events where parents and other adults comprise a significant part of the audience.

Source: Albemarle State Policy Center, January 2008

## **Childhood Nutrition**

Eating habits are shaped early in life, and healthy habits that are formed during early childhood and carried into adulthood decrease future risk for chronic disease. Policy-makers are becoming increasingly concerned about the quality of meals provided to younger children, such as those in preschool and child-care programs. The current interest focuses on snacks and meals provided to young children in preschool and child-care programs.

The federal Food Stamp Program, WIC and the Child and Adult Care Food Program (CACFP) are three critical programs that play a role in children's access to nutritious foods. The states operate the WIC and CACFP programs with federal dollars. However, there has been a minimum of state legislative activity involving childhood obesity prevention. In 2007 Kentucky was the only state to enact legislation affecting the WIC program and access to farm products. The legislation provides increased access to fresh, locally grown produce to low-income citizens, including women, infants and children.

### *Food Stamps*

The main purpose of the Food Stamp Program is to increase the purchasing power of low-income households so they obtain a more nutritious diet. During fiscal year 2007 the program served 26 million people in an average month at a total cost of more than \$30 billion in benefits. The national food stamp participation rate—the percentage of eligible people who actually participate in the program—has been the standard for assessing the program's success for the past 25 years. The USDA budget request for fiscal year 2008 includes a performance target of 68 percent by 2010.

In 2005 approximately 65 percent of those eligible participated in the program. State participation rates vary widely. Eighteen states had higher rates than the national average, while 20 states' rates were considerably lower. Comparing regions, the Midwest had the highest average participation rate at 71 percent, while the West had the lowest rate at 57 percent. The mid-Atlantic, Southeast and Southwest regions closely mirrored the national rates at 65 percent, 67 percent and 66 percent respectively.

Past USDA research found that the Food Stamp Program increases food expenditures and stabilizes incomes of the poor. Yet, critics of the program have suggested that the program is too successful—that it has unintentionally contributed to higher rates of obesity among some low-income populations.

A recent USDA study reviewed a number of past research efforts to explore the link between participation in the Food Stamp Program and body weight. The efforts had varying conclusions. However, the results from the reviewed studies indicate that for the majority of program participants—children, nonelderly men and the elderly—use of food stamp benefits does not increase either body mass index (BMI) or the likelihood of being overweight or obese. For some subgroups, food stamp participation has a negative association with the probability of overweight. Nonelderly adult women, who account for 28 percent of the food stamp caseload, are the only group of food stamp recipients for whom multiple studies show a link between food stamp receipt and elevated BMI and obesity. According to these studies, food stamp participation over a 1- or 2-year period increases the probability of a woman's becoming obese by 2 percent to 5 percent.<sup>88</sup>

The fiscal year 2008 budget also provides a substantial increase for the overall Food Stamp Program so that the following improvements can be made:

- Increase the minimum benefit.
- Increase the standard deduction.
- Improve reporting of food stamp household's expenditures on child care.
- Exclude combat pay in calculating a military family's income and eligibility.
- Enable food stamp households to have more in savings and still be eligible by excluding education savings and retirement accounts and starting to index the \$3,500 and \$4,500 assets limits applicable to most households.

In addition, the fiscal year 2008 USDA appropriation includes \$1 million to assist the Center for Nutrition Policy and Promotion in providing of nutrition education for people eligible for the Food Stamp Program.

<sup>88</sup> Ver Ploeg M and Raiston K, U.S. Department of Agriculture, Economic Research Service, *Food Stamps & Obesity, What we know?*, Economic Information Bulletin, No. 34, March 2008.

### **Special Supplemental Nutrition Program for Women, Infants, and Children**

The WIC program provides supplemental foods, health care referrals and nutrition education at no cost to low-income, pregnant, breastfeeding and non-breastfeeding postpartum women, and to infants and children up to age 5 who have limited access to healthy foods. WIC provides an excellent opportunity to educate new mothers on nutritious diets for their infants and toddlers.

In December federal officials announced the first major overhaul to WIC since it began in 1974.<sup>89</sup> Key changes include:

- reducing the number of eggs WIC recipients can buy with their vouchers from 2.5 dozen to 1 dozen per month;
- reducing juice for children ages 1 to 4 to 128 fluid ounces from 288 fluid ounces per month;
- reducing milk to 16 quarts from 24 quarts per month; and
- allowing recipients to substitute items, such as replacing whole-wheat bread with brown rice, oatmeal, corn or whole-wheat tortillas.

Currently, WIC provides qualified low-income pregnant women and children up to age 5 with monthly vouchers worth \$37 to purchase specific food items. Unfortunately, the new regulations do not provide \$10 per month for fruits and vegetables as recommended by the Institute of Medicine; they instead offer \$8 per month for women and \$6 per month for children.

The WIC Farmers' Market Nutrition Program (FMNP) provides mothers with an opportunity to gain access to fresh fruits and vegetables. The FMNP was established by Congress in 1992 to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness and use of farmers' markets. Currently, 45 states have established an FMNP in their WIC programs. Women, infants (at least 4 months old) and children who have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the FMNP. State agencies may serve some or all of these categories.

The FMNP is administered through a federal/state partnership in which the Food and Nutrition Service (FNS) provides cash grants to state agencies. The FMNP is administered by state agencies such as state agriculture departments or health departments or Indian tribal organizations. State agencies develop plans to operate the program that are approved by FNS.

<sup>89</sup> U.S. Department of Agriculture. "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages; Interim Rule." *Federal Register*, 72(234), 2007, available at: <http://www.fns.usda.gov/wic/regspublished/wicfoodpkginterimrulepdf.pdf>.

Eligible WIC participants are issued FMNP coupons in addition to their regular WIC food instruments. These coupons can be used to buy fresh, unprepared fruits, vegetables and herbs from farmers, farmers' markets or roadside stands that have been approved by the state agency to accept FMNP coupons. The farmers, farmers' markets or roadside stands then submit the coupons to the bank or state agency for reimbursement. The federal food benefit level for FMNP recipients may not be less than \$10 and must not be more than \$30 per year, per recipient. However, state agencies may supplement the benefit level.

During the past eight months, estimates for participation and food costs have increased for WIC. USDA has reported large upward revisions in its dairy price forecasts. Because milk and cheese account for 40 percent of WIC food costs, large fluctuations in dairy prices have significant impact on WIC food costs. Because of these increases, the pending fiscal year 2008 appropriation for WIC provides \$5.6 billion, an increase of \$415.6 million over the previous fiscal year.

### *Child and Adult Care Food Program*

The Child and Adult Care Food Program (CACFP) is provided for through USDA grants to states. The program is often administered by the state educational agency, though in a few cases the state health or social services department administers it.

Oversight of child-care and preschool programs is an area that many policy-makers are concerned about because of the minimal attention given the programs. They feel that more can be done to ensure children at this age and in these facilities receive the attention they deserve by focusing on standards for providing nutritious foods and meals.

Independent centers and sponsoring organizations enter into agreements with their administering state agencies to assume administrative and financial responsibility for CACFP operations. CACFP serves nutritious meals and snacks to eligible children and adults who are enrolled at participating child-care centers, day care homes and adult day care centers. CACFP also provides meals to children residing in emergency shelters and snacks to youths participating in after-school care programs.

### *Child-Care Centers*

Eligible public or private nonprofit child-care centers, outside-school-hours care centers, Head Start programs and other institutions that are licensed or approved to provide day care services may participate in CACFP, either independently or as sponsored centers. For-profit centers must receive federal Social Services Block Grant funds through Title XX of the Social Security Act for at least 25 percent of enrolled children or licensed capacity (whichever is less), or at least 25 percent of the children in care must be eligible for free and reduced-price meals. Meals served to children are reimbursed at rates based upon a child's eligibility for free, reduced-price or paid meals.

### *Day Care Homes*

A family or group day care home must sign an agreement with a sponsoring organization to participate in CACFP. Day care homes must be licensed or approved to provide day care services. Reimbursement for meals served in day care homes is based upon two tiers of eligibility. Tier I day care homes are those that are located in low-income areas, or those in which the provider's household income is at or below 185 percent of the federal poverty level. Data on the number of children eligible for elementary school free and reduced-price meals or census block group data can be used to determine which areas are low-income.

In a Tier II home, the provider does not meet the low-income eligibility of a Tier I home. But the provider can request the sponsoring organization to identify income-eligible children in the home, so that meals served to those children who qualify for free and reduced-price school meals would be reimbursed at the higher Tier I rates.

### *After-School Care Programs*

Community-based programs that offer enrichment activities after the regular school day for troubled youth and at-risk children and teenagers can provide free snacks through CACFP. Programs must be offered in areas where at least 50 percent of the children are eligible for free and reduced-price meals based upon school data. Reimbursable suppers are also available to children in eligible after-school care programs in seven states—**Delaware, Illinois, Michigan, Missouri, New York, Oregon and Pennsylvania.**

**Conclusion**

Federal and state policy-makers continue to focus their efforts on schools because children spend so much time in the school environment. The school setting presents a large-scale opportunity to provide nutritious foods and shape lifelong healthy habits and behavior for children. In 2007 state and federal legislation addressing foods and beverages in schools focused on the à la carte line in school cafeterias, vending machines and other food and snack outlets in and around the school. In December, the nearly year-long debate to establish a nationwide standard for foods served outside the school breakfast and lunch program culminated in the debate over Sen. Tom Harkin's proposal of a nationwide standard. In addition to school-aged children and teenagers, policy-makers are becoming concerned about the nutrition standards in day care and preschool programs around the country. These facilities are not as easily regulated and monitored as public schools. Yet an ever-increasing number of young children may be affected by poor nutrition and unhealthy eating behaviors. State and federal policy-makers agree that these facilities need better scrutiny and guidelines to help them provide healthy snacks, meals and beverages.

## Chapter 6: Students' Physical Activity, BMI and Fitness Levels

### Overview

It is widely accepted that regular physical activity contributes to overall health and helps adults and children maintain a healthy body weight. Research also shows that students who are physically active may have enhanced academic performance and classroom behavior. Yet, according to national data, only 42 percent of children ages 6 to 11, and 8 percent of youth ages 12 to 19, engage in at least 60 minutes of moderate physical activity most days per week, as recommended by the U.S. Surgeon General.<sup>90</sup>

Schools present an excellent venue for children to engage in physical activity, and to learn skills that will foster active living. The U.S. Centers for Disease Control and Prevention, Action for Healthy Kids and the National Association of State Boards of Education recommend providing all children (Pre-K through grade 12) with daily physical activity in school. Although most states require health and physical education to be provided as part of the public school curriculum, student participation may not be mandatory, and local entities are typically responsible for enforcing the regulations. In addition, state legislation often mandates programs, but does not offer sufficient resources or guidance to help schools change or implement new policies. Budget constraints and balancing time spent for classroom instruction with time spent for physical activity are challenges faced by many schools that are making an effort to integrate physical activity into the school day. Despite these challenges, there is strong support among students and parents for increased physical activity and physical education programming.

<sup>90</sup> Troiano RP, Berrigan D, Dodd KW, et al. "Physical Activity in the United States Measured by Accelerometer." *Medicine and Science in Sports and Exercise*, 40(1): 181-188, 2008.

In 2007 25 states enacted laws or adopted policies to address the lack of physical activity among school-age children. This chapter provides an overview of legislative actions that aim to improve physical or health education programming or assess students' body mass index (BMI) and fitness levels within state public school systems.

### **Physical Education**

Schools across the nation report a substantial reduction in physical education programming.<sup>91</sup> Currently, the majority of states do have physical education mandates for students—36 states mandate physical education in elementary school, 33 states mandate physical education in middle or junior high school, and 42 states mandate physical education in high school. Yet estimates show that only 4 percent of elementary schools, 8 percent of middle schools and 2 percent of high schools provide daily physical education for students.<sup>92</sup>

In addition, few states set requirements for the amount of time students must participate in physical education classes. For example, only 11 states mandate minutes for elementary school, seven states mandate minutes for middle or junior high school and 10 states mandate minutes for high school. Further, at least 18 states grant exemptions or waivers for school districts regarding physical education time or credits, and 27 states allow students to substitute other activities for physical education, such as marching band, ROTC and interscholastic sports. Lastly, student assessments in physical education are required in only 15 states.<sup>93</sup>

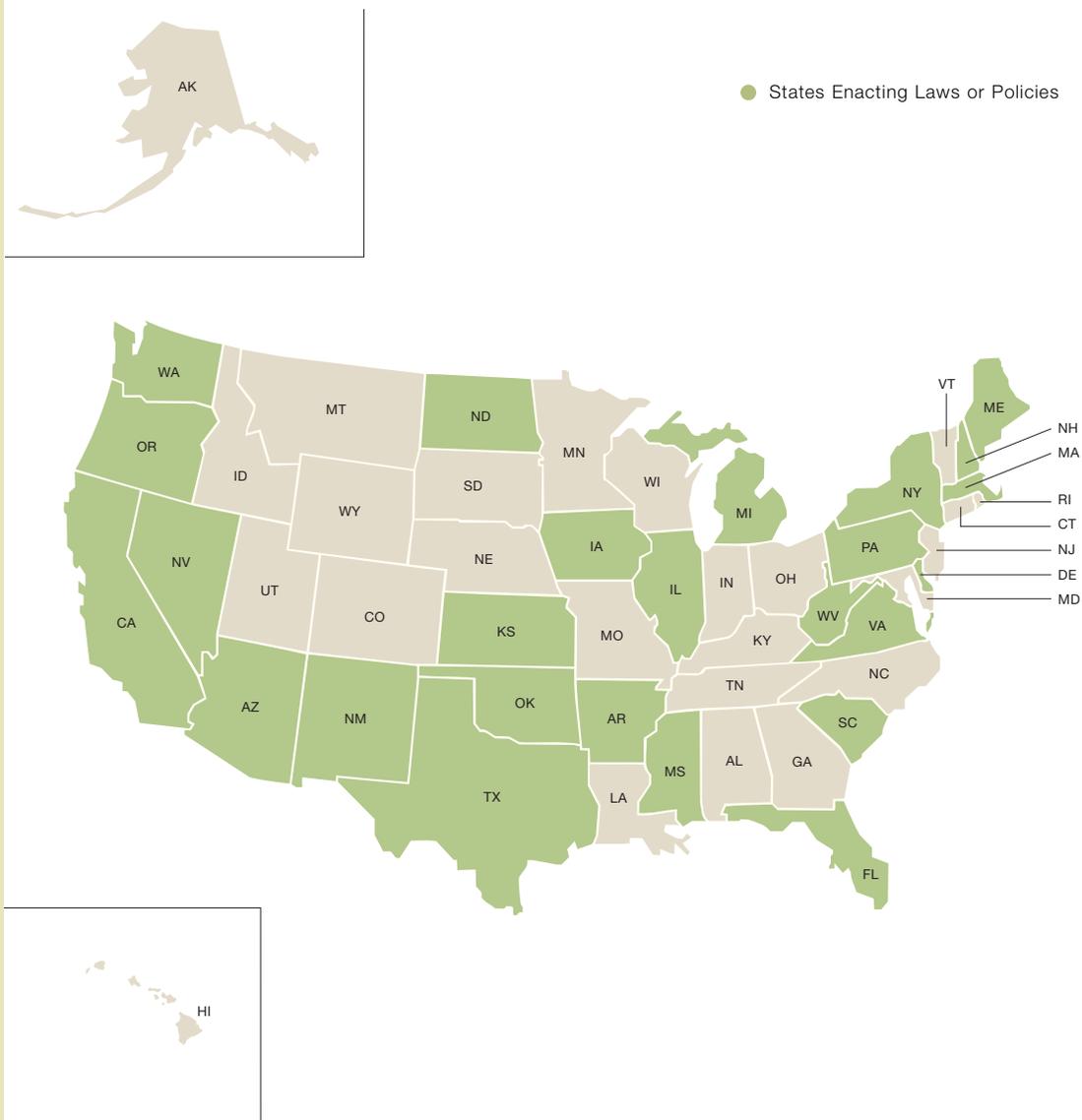
But the state of physical activity and physical education may be changing. In 2007 policy-makers demonstrated significant interest in addressing the lack of physical education offered to students in the United States. Sixteen states enacted legislation or adopted policies concerning physical activity or physical education programs in schools or for school-age children.

<sup>91</sup> National Association for Sport and Physical Education and American Heart Association. *2006 Shape of the Nation Report: Status of Physical Education in the USA*. (2006).

<sup>92</sup> Lee S, Burgeson C, Fulton J, Spain C. "Physical Education and Physical Activity: Results from the School Health Policies and Programs Study 2006." *Journal of School Health* 2007, 77: 435-463.

<sup>93</sup> National Association for Sports and Physical Education and American Heart Association. *2006 Shape of the Nation Report: Status of Physical Education in the USA*. (2006).

## States Enacting Student Physical Activity and Fitness Laws or Policies



Source: Albemarle State Policy Center, January 2008

As previously noted, many states lack resources to help schools implement the physical education programs mandated by law. States and school districts, however, can seek funding from the federal Department of Education through its Office of Safe and Drug-Free Schools. The Office's Carol M. White Physical Education Program allows states and school districts to apply for grants to initiate, expand and improve physical education programs for K-12 students.<sup>94</sup> Funds may be used to help schools meet state standards for physical education, to provide equipment for physical education activities or to support staff and teacher training. Proposals range from \$100,000 to \$500,000, and the average new grant award is approximately \$300,000. In 2007 58 new and 291 continuation grants were awarded.

As detailed in the table below, 15 of the 16 states that enacted or adopted new laws and policies in 2007 seek to enhance physical education and physical activity in the public school system, and five states specifically address the amount of time devoted to physical education each week. In the state of Washington, policy-makers approved new legislation that aims to involve students in outdoor recreation in order to increase physical activity and create a lifelong interest in being active.

<sup>94</sup> U.S. Department of Education, *Carol M. White Physical Education Program (2007)*, available at: <http://www.ed.gov/programs/whitephysed/index.html>.

## 2007 Legislation on Physical Education in Schools

### ARIZONA

#### AZ HB 2140

- ✓ The new law establishes a two-year pilot program for students in grades 1 through 12, which calls for students to participate in physical education class for at least 150 minutes per week during the 2006–2007 and 2007–2008 school years. At least 50 percent of the physical education time must be devoted to moderate to vigorous exercise. The program can consist of other physical activities, including recess.

### CONNECTICUT

#### CT SB 2004

- ✓ The new law states that by January 1, 2008, the Connecticut Department of Education must develop guidelines for addressing the physical health needs of students in a comprehensive manner that coordinates services, including those provided within the schools and by municipal parks.

### DELAWARE

#### DE SB 289

- ✓ The new law creates a statewide health advisory council to provide advice to the Delaware Department of Education on current and future physical education and physical activity programs in Delaware public schools. The council must publish an annual strategic plan and report on fitness levels and childhood obesity.

### FLORIDA

#### FL HB 967

- ✓ The new law states that each school district shall provide 150 minutes of physical education each week for students in grades K through 5 and is encouraged to provide 225 minutes for grades 6 through 8. The law specifies that physical education must include physical activities of at least a moderate intensity level and a period of time sufficient to provide a significant health benefit to students of differing capabilities.

The law also mandates that all physical education programs be reviewed by a certified physical education instructor, and supports the creation of a state council on physical fitness.

#### MEASURE STATUS:

✓ Enacted

— Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## ILLINOIS

**IL HB 1139**

- ✓ The new law provides that an approved waiver or modification to a physical education mandate may remain in effect for no longer than two school years. The waiver can be renewed, but no more than twice.

The approved waiver or modification may be changed within the two-year period by the board or regional superintendent of schools. The new provision will require school systems to periodically review the waivers put into place, as opposed to allowing them to continue without review.

## KANSAS

**KS HB 6011**

- ✓ The new law supports physical education classes for grades K through 12 and urges the Kansas State Board of Education to require some type of physical education for grades K through 12.

## MICHIGAN

**DEPARTMENT GUIDELINES**

- ⊖ The Michigan Department of Education is in the process of revising its physical education curricula for grades K through 8. The revisions were available for public comment through December 10, 2007, and implementation is expected in September 2008 for the 2008–2009 school year.

## MISSISSIPPI

**MS SB 2359**

- ✓ The new law includes the following requirements for grades K through 8: 150 minutes per week of physical activity-based instruction and 45 minutes per week of health education; and for grades 9 through 12: one semester of physical education or physical activity for high school graduation. The law also states that by March 31, 2008, the Mississippi Department of Education must adopt food preparation regulations promoting health and fitness.

In addition, beginning with the 2008–2009 school year, each school's wellness plan must promote increased physical activity, healthy eating habits and abstinence from the use of tobacco and illegal drugs through programs that incorporate healthy lifestyle choices into core subject areas that may be developed in partnership with the Institute for America's Health. Under the law, the Mississippi Department of Education is required to employ a physical activity coordinator that must present a plan to the Governor's Commission on Physical Fitness and Sports and the Mississippi Council on Obesity Prevention and Management.

MEASURE  
STATUS:

✓ Enacted

⊖ Pending

→ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## NEW MEXICO

**NM HB 208**

- ✓ The new law authorizes funding for elementary school physical education programs that serve grades K through 6 students, if those programs meet requirements for academic content and performance standards for elementary physical education programs. Funding is first provided to public schools with the highest proportion of low-income students, based on the percentage of students eligible for free or reduced-fee lunch or grade-level schools that serve an entire school district.

Under the law, if an elementary physical education program does not meet the academic content and performance standards for such programs, the New Mexico Department of Education will notify the district that it will not receive funding for the following school year.

The Department of Education shall make an annual report to the legislative education study committee and the legislature based on the program results submitted by the school districts.

To be eligible for state financial support, an elementary physical education program must provide for the physical education needs of students and have teachers with a license endorsement for physical education. As public schools become eligible for funding, they shall submit program plans to the Department of Education, including details for their elementary physical education program and evaluation component.

## NORTH DAKOTA

**ND SB 2354**

- ✓ The law requires that each high school make half a unit of physical education available to each student during the school year. It also states that once every four years the unit must be a concept-based fitness class that includes instruction in assessment, improvement and maintenance of personal fitness.

## OKLAHOMA

**OK SB 1459**

- ✓ The new law requires the Oklahoma Department of Education, in consultation with the Department of Health, to offer technical assistance to public schools on physical education programs and instruction.

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## OREGON

**OR HB 3141**

- ✓ The new law specifies that the Oregon Department of Education will establish requirements for physical education in public schools and collect data from school districts on the following:
  - The number of minutes of physical education provided to K through 8 students each school week in each public school within the district.
  - The physical capacity of public schools to provide grades K through 5 students with at least 150 minutes of physical education during each school week, and to provide students in grades 6 through 8 with at least 225 minutes of physical education during each school week.
  - The additional facilities required by public schools to provide physical education to students.

Prior to February 1 of each odd-numbered year, the Oregon Department of Education shall report to the Legislative Assembly on the data collected during the previous two years. The February 1, 2009 report will cover only one year (2007–2008).

Under the law, every K through 8 public school student shall participate in physical education for the entire school year. Students in grades K through 5 shall participate in physical education for at least 150 minutes per week, and students in grades 6 through 8 shall participate in physical education for at least 225 minutes per week.

The law also requires school districts and public charter schools to offer instruction in physical education that meets the academic content standards for physical education adopted by the state's board of education; and devote at least 50 percent of physical education class time to actual physical activity in each school week, with as much class time as possible spent in moderate physical activity. School districts and public charter schools also must periodically assess the curricula to measure whether it meets the minimum requirements for the new law.

Under the law, a student with disabilities shall have suitably adapted physical education as part of the individualized education program (IEP) developed for the student. A student who does not have an IEP, but has chronic health problems or other disabling conditions or special needs that preclude the student from participating in regular physical education, shall have suitably adapted physical education as part of an individualized health plan developed for the student by the school district or public charter school.

All teachers of physical education for public school students in grades K through 8 must be adequately prepared and regularly participate in professional development activities.

The Department of Education must award grants to school districts and public charter schools for the purpose of meeting the physical education requirements of this law. Grants may be used to hire teachers who specialize in physical education or to provide training to teachers on the academic content standards for physical education.

## PENNSYLVANIA

**PA HB 185**

- ✓ The law requires that an interagency coordinating council for child health, nutrition and physical education be established to offer recommendations on physical education curricula.

MEASURE  
STATUS:

✓ Enacted

⏸ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## TEXAS

**TX SB 530**

- ✓ The new law calls for mandatory participation for grades K through 5 students in at least 30 minutes of moderate or vigorous daily physical activity throughout the school year. The requirement can be met through participation in physical education classes or structured activity during a daily recess.

Students in grades 6 through 8 are required to participate in moderate or vigorous daily physical activity for a minimum of 30 minutes during at least four semesters. The requirement can be met through participation in physical education classes.

The law also states that if a school district determines that the requirements for grades K through 5 are impractical, the district may require students to participate in moderate or vigorous physical activity for at least 135 minutes during each school week as an alternative. Another alternative exists for school district that use block scheduling. Such districts may allow students to participate in moderate or vigorous physical activity for at least 225 minutes every two school weeks.

According to the law, school districts must provide an exemption for any student who is unable to participate in the required physical activity because of illness or disability or for a student in middle or junior high school who participates in an extracurricular activity with a physical activity component that is considered as a structured activity under rules adopted by the commissioner. The commissioner also may permit an exemption for a student who participates in a school-related activity or an activity sponsored by a private league or club if the student provides proof of participation.

## WASHINGTON

**WA HB 1677**

- ✓ The new law establishes an outdoor education and recreation program to provide a large number of underserved students with opportunities to directly experience the natural world. The program is intended to improve students' overall academic performance, self-esteem, personal responsibility, community involvement, personal health and understanding of nature.

Under the law, the program will initially focus on schools and students demonstrating the greatest needs, including students who qualify for free and reduced-price lunch, are most likely to fail academically, or are most in danger of dropping out of school.

Public agencies, private nonprofit organizations, formal school programs, non-formal after-school programs and community-based programs are eligible to receive grants. Programs that provide outdoor education opportunities to schools must be fully aligned with the state's essential academic learning requirements. Priorities and criteria are to be developed for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs.

The law also calls for the establishment of an advisory committee to assist in the development and administration of the outdoor education and recreation program.

MEASURE  
STATUS:

✓ Enacted

⊖ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## WEST VIRGINIA

**WV SB 785**

- ✓ This new law requires at least 30 minutes of physical education for at least three days per week for elementary students, and mandates at least one full period of physical education per day for one semester in middle school. The measure also requires at least one full credit of physical education in high school and that students have the opportunity to enroll in a lifetime PE course.

**DEPARTMENT DOCUMENT**

- ⊖ A partnership among the West Virginia Department of Education, the state's Public Employees Insurance Agency and West Virginia University committed to installing "Dance, Dance Revolution," a video game that involves physical activity, in 765 schools around the state.

MEASURE  
STATUS:

- ✓ Enacted
- ⊖ Pending
- Carried Over
- ✗ Vetoed

Source: Albemarle State Policy Center, January 2008

### **BMI and Physical Fitness Assessments**

The escalating rates of obesity among U.S. children and adolescents have sparked interest in school-based BMI assessments, yet this remains a controversial issue for lawmakers, school administrators, parents and students. In 2007, 11 states enacted legislation that involves student BMI measures and/or physical fitness assessments.

After considerable legislative debate, two states—**Arkansas** and **West Virginia**—mandated changes to existing statewide BMI initiatives that called for less intensive BMI measures among public school students. However, nine states established new programs to assess student BMI and/or fitness levels. For example, lawmakers in **Texas** approved a new \$20 million program that aims to assess physical health for students in grades 3 through 12. The state's new FitnessGram program will include collecting students' physical fitness test scores and BMI measures, as well as reporting each student's data to his or her parents. In Pennsylvania, school nurses will be required to conduct BMI testing as a part of students' annual checkup. The table below presents further details for each of the 11 states that passed legislation regarding BMI measures and/or physical fitness assessments for students in 2007.

### **Health and Physical Education Curriculum**

While most of the state legislation described in this chapter focuses on actions that aim to improve physical education programming or assess student BMI or fitness levels, one state did enact legislation that amends its physical and health education curriculum to include instruction on healthy lifestyles, nutrition and food preparation. In 2007 **Virginia** lawmakers passed S.B. 795, which calls for incorporating physical and health education into the elementary school curriculum. In addition, specific course work is to be developed and included in health and physical education, as components of programs in grades K through 12.

## 2007 Enacted Legislation on BMI and Fitness Testing

### MEASURE STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

### ARKANSAS

#### AR HB 1173

-  Act 1220 of 2003 mandated annual BMI screening for every Arkansas public school student. The new law calls for BMI assessments to be conducted for public school students in all even grades between Kindergarten and grade 10, and for the measures to be eliminated for students in grades 11 through 12. The law also states that any parent who provides a written notice to the school can have their child excluded from the program.

### DELAWARE

#### DE HB 372

-  The new law calls for creation of a regulation to direct schools to assess the physical fitness of each student at least once in elementary, middle and high school. The assessments will be provided to parents and must include a BMI evaluation. Currently, the assessment requirement is a pilot program.

### FLORIDA

#### FL HB 973

-  The new law requires school health service programs to test students' physical fitness levels. Evaluating students' BMI is encouraged in grades 1, 3 and 6, and is optional in grade 9.

### IOWA

#### IA SB 2124

-  The new law establishes a pilot grant program in six communities across the state to increase physical activity and consumption of fruits and vegetables. The program also calls for BMI assessments for elementary students.

### MAINE

#### ME LD 1866

-  The new law requires confidential assessments of either BMI or height and weight for all students in Kindergarten and grades 1, 3, 5, 7 and 9 in public schools and approved private schools. The law also calls for analysis and reporting of this data.

The program is to be phased in over a three-year period, beginning August 31, 2008. The Maine Department of Education, Department of Health and Human Services and the Maine Center for Disease Control and Prevention, will work together on an annual report regarding the assessments, which will be submitted to the Legislature.

Source: Albemarle State Policy Center, January 2008

## NEW YORK

**NY SB 2108**

- ✓ Currently, every student must have a health certificate which describes his or her condition and confirms that the student's health status does not preclude public school attendance. The certificate must be based on an examination that was conducted within 12 months of the commencement of the school year for which the examination is required. The new law also requires that each certificate also must include information regarding students' BMI and weight status category.

Certain schools and school districts will be selected to participate in a study using BMI data. Under the law, collection of school district data will begin on a voluntary basis at the beginning of the 2007 school year, and at the beginning of the 2008 school year, all schools chosen as part of the sampling methodology will participate. Parents may refuse to have their child's BMI and weight status included in the study.

The New York Department of Education shall utilize the collected data to develop a report card of childhood obesity and obesity-related diseases.

## PENNSYLVANIA

**DEPARTMENT DOCUMENT**

- ✓ The Pennsylvania Department of Health requires all school nurses to conduct BMI evaluations for students in grades 1 through 8, as part of annual growth screenings given to all students, beginning in the 2007–2008 school year. Parents will receive confidential letters about their child's BMI assessments, and will be encouraged to share the information with their family physician. To facilitate this program, the state's department of health developed a Web site to address frequently asked questions about BMI.

## RHODE ISLAND

**RI HB 5900**

- ✓ The new law establishes the state's healthy weight pilot program to be implemented in several cities and towns. The program will incorporate a combination of physical activity and nutrition plans that aim to encourage healthy weight and weight management in children. Funding for the program will come from federal grants, funds allocated to the state for the purpose of combating obesity and other sources deemed appropriate by the legislature.

## SOUTH CAROLINA

**SC HB 3499**

- ✓ The new law requires elementary, middle and high schools to participate in the South Carolina Physical Education Assessment program. Individual assessments of a child's physical fitness must be reported to the parents or guardians of students in grades 5 through 8.

MEASURE  
STATUS:

✓ Enacted

⊖ Pending

➔ Carried Over

✗ Vetoed

Source: Albemarle State Policy Center, January 2008

## TEXAS

**TX SB 530**

The new law includes the following provisions:

- Each school district must assess the physical fitness levels of all students in grades 3 through 12.
  - Students with a disability or other exemption by rule are excluded.

The assessment instrument used will be based on aerobic capacity, body composition and muscular strength, endurance and flexibility. The assessment will be indexed according to student age, gender and physical fitness required for good health.

- Each school district must compile the results and provide summary results aggregated by grade level and any other appropriate category to the commissioner of education. The summary results are not to include the names of students or teachers.
- The individual results of the testing are confidential and may be released only in accordance with state and federal law.

The state will review the results by school district and analyze the results with regard to student academic achievement levels, student attendance levels, student obesity, student discipline problems and school meal programs.

- Not later than September 1 of each year, the education commission shall report the findings of the analysis to the school health advisory committee to assess the effectiveness of the coordinated health programs in school districts and to develop recommendations for modifications to coordinated health programs.

## WEST VIRGINIA

**WV SB 785**

The new law requires BMI evaluations only for a scientific sample of students, and directs that they be collected confidentially. Previously, West Virginia required BMI testing for students in Kindergarten, grades 4 through 8 and those enrolled in high school physical education classes.

MEASURE  
STATUS:

Enacted

Pending

Carried Over

Vetoed

Source: Albemarle State Policy Center, January 2008

### **School-Based Recess Programs**

In addition to improving physical or health education programming and evaluating students' BMI and fitness levels, the importance of providing recess during school is gaining national attention. Recess periods not only offer an opportunity for children to engage in physical activity, they also have a positive impact on learning. For example, "Recess Rules," a recent report on elementary school recess by Sport4Kids analyzed several data sources, and included the following findings:<sup>96</sup>

- During the school year recess accounts for nearly half of a child's opportunities for physical activity.
- The children most at risk for obesity on the basis of income, location or race/ethnicity have the fewest opportunities for recess.
- Structured playtime helps kids to develop the skills they need to follow rules and resolve conflicts.
- Nationwide, children in grades 1 through 6 spend more time exercising during recess than in physical education class or after school activities: 42 percent of physical activity occurs during recess, while 32 percent of physical activity occurs during physical education class, and 26 percent of physical activity occurs after school.

In addition to support for improved physical education programming and after-school activities, funding also is needed to improve the quality of recess in schools across the country. For example, according to "Recess Rules," many principals expressed concern over logistical problems with recess, especially within urban schools that have a significant number of low-income students. The report found that staffing recess is a problem, and that volunteers or part-time staff lack appropriate training and expertise. Yet, according to a case study conducted by the Harvard Family Research Project for the report, a modest investment in recess increased productivity of both students and teachers, made physical activity more enjoyable for students, improved safety and changed the playground culture from one that was competitive to one that was more supportive. As efforts to prevent obesity among children continue, it will be important to track legislative and non-legislative actions regarding school-based recess programs.

<sup>96</sup> Robert Wood Johnson Foundation, *Recess Rules: Why the undervalued playtime may be America's best investment for healthy kids and healthy schools* (2007), available at: <http://www.rwjf.org/files/research/sports4kidsrecessreport.pdf>.

**Conclusion**

In 2007 state lawmakers took significant action to address the lack of physical activity among the nation's children and adolescents. Policy-makers in 16 states passed legislation or adopted policies that support increased opportunities for students to be active, through physical education classes or physical activity programs. In addition, 11 states enacted laws concerning student BMI measures and/or physical fitness assessments. Data collected from these state initiatives will provide insight to help stakeholders evaluate key aspects of children's health, and also may help some states assess the impact of their programs over time. It is difficult to determine if the recent legislative action in this area was inspired by research showing that physical activity promotes strong academic performance and improved classroom behavior, or if the new laws will reverse the declining trend in school-based physical education. Yet it is clear that policy-makers across the country are making an effort to provide children with more opportunities for physical activity, and that most of their attention is focused in schools.





Robert Wood Johnson Foundation

Route One and College Road East

P.O. Box 2316

Princeton, NJ 08543-2316

*[www.rwjf.org](http://www.rwjf.org)*