

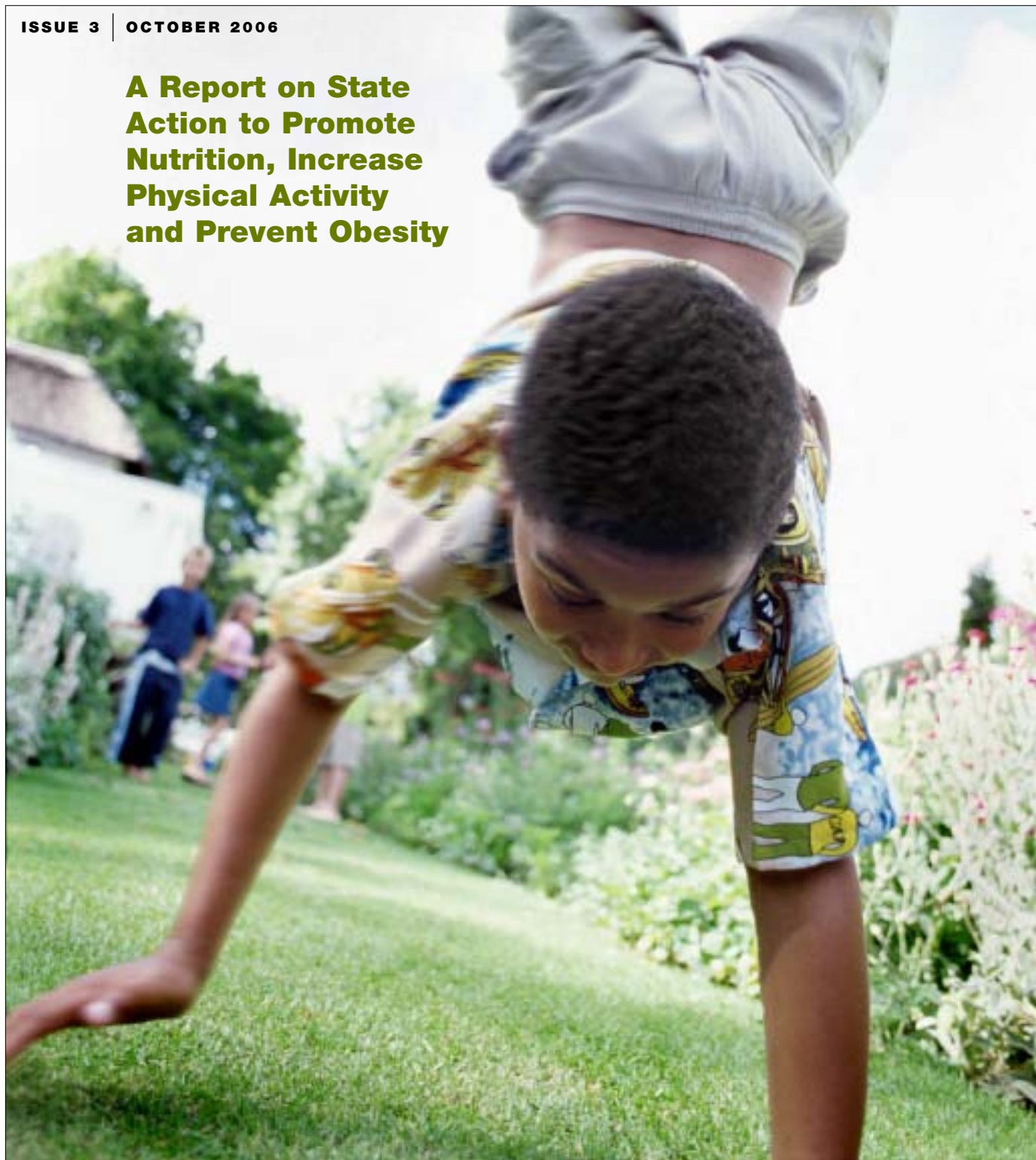


Robert Wood Johnson Foundation

BALANCE

ISSUE 3 | OCTOBER 2006

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



Produced by Health Policy Tracking Service, a service of Thomson West.

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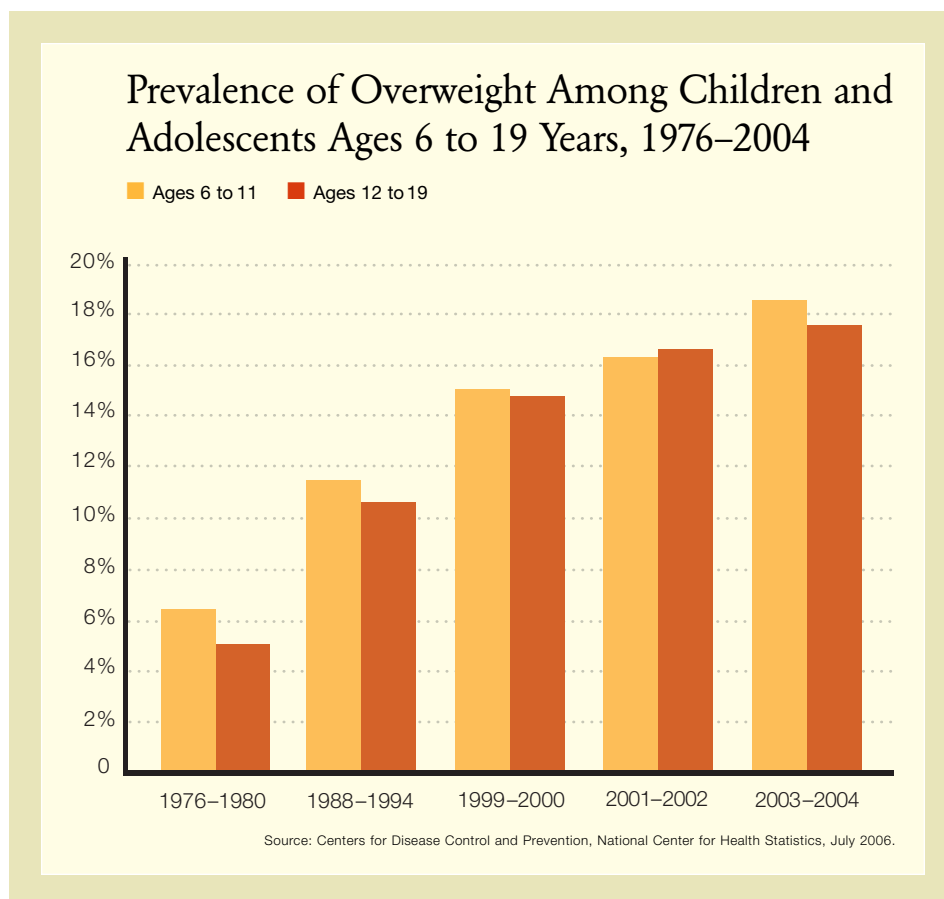
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Overview

During the past three months—July through September 2006—the majority of state legislatures were either in recess or adjourned for the year; therefore, the level of activity on legislation and regulations was at a minimum. During the first six months of 2006 the main focus of state legislation and policies was on nutrition and physical education in schools, as it has been since 2003. The Health Policy Tracking Service (HPTS) noted that the legislation introduced and acted upon in 2006 moved toward more comprehensive, multidimensional strategies, in line with the recommendations of public health advocates. While 2005 was a sentinel year for state initiatives targeting childhood obesity, 2006 has been a year for industry and local initiatives.

The pause in activity by state legislatures permits this second edition of the *BALANCE* report to review the recent reports by the Centers for Disease Control and Prevention (CDC) and the Institute of Medicine (IOM). In addition, the report reviews recent food and beverage industry actions and marketing strategies. This hiatus in legislation has allowed HPTS to identify new and innovative legislation and initiatives proposed in 2006, though they may not have been enacted.



HPTS believes that advocates' efforts for childhood nutrition and increased physical activity were focused at the local level as they worked to help their local school districts implement the provisions of the federal WIC legislation. The *BALANCE* report attempts to capture some of the richness of this activity in its final section.

Reports to Date

The most recent data from the CDC indicates that an estimated 66 percent of adults are either overweight or obese and more than 17 percent of children and adolescents ages 6 to 19 years are overweight. Since 1976, the percentage of overweight children ages 6 to 11 has nearly tripled and the percentage of overweight adolescents ages 12 to 19 has more than tripled (see figure above).^{1,2}

Overweight and obesity increases the risk of chronic diseases and associated health care costs. The health and economic impact of the rapidly rising rates have ignited government intervention on the state and federal level during the past four years.

¹ National Center for Health Statistics. *Prevalence of Overweight and Obesity Among Adults: United States, 2003–2004* (2006), available at http://www.cdc.gov/nchs/products/pubs/pubd/hestats/obese03_04/overwght_adult_03.htm.

² National Center for Health Statistics. *Prevalence of Overweight among Children and Adolescents: United States, 2003–2004* (2006), available at http://www.cdc.gov/nchs/products/pubs/pubd/hestats/obese03_04/overwght_child_03.htm.

Are We Making Progress?

In 2004, the IOM released, *Preventing Childhood Obesity: Health in the Balance*, a report with recommendations and an action plan to reduce the prevalence of overweight children and adolescents. In September, the IOM released its most recent progress report, *Progress in Preventing Childhood Obesity: How Do We Measure Up?* The IOM reported that while recognition of childhood obesity as a public health epidemic with substantial economic consequences has increased, the public and private sectors are not doing enough to address the problem, particularly compared to their investments in other key public health concerns such as bioterrorism. The IOM's key recommendations for all stakeholders are as follows:

- Lead and commit to childhood obesity prevention.
- Evaluate policies and programs.
- Monitor progress.
- Disseminate promising practices.

The report also listed specific recommendations for the government, industry and media, communities, schools and households.

Trust for America's Health (TFAH) released in August its third annual *F as in Fat* report. This year's report, *F as in Fat: How Obesity Policies are Failing in America, 2006*, focused on obesity rates and policies and offers a 20-step action plan for addressing obesity. TFAH reported that adult obesity rates rose in 31 states during the past year despite increased government intervention. Mississippi had the highest rate of adult obesity (29.5 percent) while Colorado had the lowest rate (16.9 percent). Similar to the IOM's recommendations, TFAH recommends a comprehensive approach involving all stakeholders—families, communities, schools, employers, food and beverage industry, health professionals and state and federal governments. Some of the key recommendations included the following:^{3, 4}

³ Trust for America's Health. *F as in Fat: How Obesity Policies are Failing in America, 2006* (Aug. 2006), available at [http://healthy.americans.org/reports/obesity 2006/Obesity 2006Report.pdf](http://healthy.americans.org/reports/obesity%2006/Obesity%2006Report.pdf).

⁴ Trust for America's Health. "America's Obesity Epidemic Getting Worse: New Report Finds Adult Obesity Rates up in 31 States; The South is the 'Biggest Belt'" (Press Release, Aug. 29, 2006), available at <http://healthy.americans.org/newsroom/releases/release082906.pdf>.

- Fully-funded, long-term solutions.
- Fast-track research to identify effective evidence-based interventions and best practices.
- Better indicators to measure success and progress (i.e., measures of physical fitness and nutrition, rather than weight and BMI).
- Community-based efforts to increase access to healthy foods and opportunities for physical activity.
- School-based efforts to enhance physical education and the nutritional content of foods and beverages offered.
- Employer-based programs to offer employees wellness programs and benefits and opportunities to be physically active.
- Food, beverage and marketing industry initiatives to encourage healthier options and better inform consumers.
- Federal government revisions to the USDA school meal program standards.

While the recent findings of the CDC, IOM and TFAH demonstrate little to no improvement, recent analysis of Arkansas school children suggests that state policies on school nutrition, physical activity and health report cards have had a positive impact. Arkansas' BMI data show that the rate of children who are overweight or at risk of overweight plateaued while the nationwide rate has continued to increase. Although Arkansas' rate of overweight children is higher than the national average, the CDC has praised the state for its efforts.



Food and Beverage Industry

Memorandum of Understanding

In May, the Alliance for a Healthier Generation—a joint initiative of the William J. Clinton Foundation and the American Heart Association—reached a monumental agreement, the Memorandum of Understanding (MOU), with the American Beverage Association (ABA), Cadbury Schweppes Americas Beverages, The Coca-Cola Company and PepsiCo, Inc., to set a new school beverage policy nationwide.

The policy strives to provide school children with nutritious and low-calorie beverages. However, the implementation of the new policy relies on bottlers and independent members of the beverage industry to adopt it and to amend their existing contracts or sign new agreements with schools and school districts. Bottlers and members of the beverage industry who adopt the policy agree to sell to schools only beverages as follows:

- **Elementary schools:** Only bottled water, low- and nonfat milk and milk alternatives (not to exceed 150 calories per 8-ounce serving) and 100 percent juice with no added sweeteners (not to exceed 120 calories per 8-ounce serving).
- **Middle schools:** Same guidelines as elementary schools except serving sizes must not exceed 10 ounces.

- **High schools:** Bottled water, no- or low-calorie beverages (not to exceed 10 calories per 8-ounce serving), low- and nonfat milk and milk alternatives (not to exceed 150 calories per 8-ounce serving), 100 percent juice with no added sweeteners (not to exceed 120 calories per 8-ounce serving) and light juices and sports drinks (with no more than 66 calories per 8-ounce serving); serving sizes for milk, juices and sports drinks must not exceed 12 ounces, and at least 50 percent of beverages available for sale must be water and no- or low-calorie options.

The policy is intended to apply to all beverages sold on school grounds during the regular and extended school day. However, it does not apply to school-related events where parents and adults are a significant part of the audience or are selling beverages as boosters during intermission or immediately before or after such school-related events (e.g., sporting events, school plays and band concerts).^{5,6}

The goal of the MOU is for implementation of the policy in 75 percent of schools by the 2008–2009 school year and in all schools by the 2009–2010 school year. To achieve this, the ABA and the three beverage companies are encouraging their bottlers to adopt the policy in all new contracts. The parties also are working with schools and school districts to amend existing contracts to comply with the beverage policy. Because some school beverages are supplied by independent food and beverage distributors or purchased by schools at retail locations or through food service contracts, the parties will encourage the independent companies to adopt the policy within three years and schools' food service personnel within one year. According to the ABA, other milestones to full implementation include developing new containers, when necessary, to meet the portion size requirements; configuring vending machines for the smaller containers; and delivering new training to sales teams to help explain the new policy to schools.

To spread the word and encourage compliance, the ABA launched a \$10-million advertising campaign, funded by the three beverage companies. The 12-week campaign began in September and features print and online ads in national and state newspapers, magazines, and professional publications in the education, health and public policy fields.

⁵ William J. Clinton Foundation, School Beverage Policy (2006), available at <http://www.clintonfoundation.org/cf-pgm-hs-hk-work1.htm>.

⁶ William J. Clinton Foundation, Alliance for a Healthier Generation—"Clinton Foundation and American Heart Association—and Industry Leaders Set Healthy School Beverage Guidelines for U.S. Schools" (Press Release, May 3, 2006), available at <http://www.clintonfoundation.org/050306-nr-cf-hs-hk-usa-pr-healthy-school-beverage-guidelines-set-for-united-states-schools.htm>.

In a press release, Susan K. Neely, president and CEO of the ABA, said, “The advertising campaign will educate school officials, policy-makers and parents about the new School Beverage Guidelines. Our industry stepped up to do its part to strengthen school wellness and is working with schools to implement the guidelines. Raising awareness about the guidelines will make it easier to accomplish this.”⁷

To monitor the progress in implementing the policy, an independent third party will conduct an annual analysis beginning in August 2007. The annual report will include analyses of all beverage sales to students and the percentages of school and school district contracts that comply with the policy.

The majority of the reactions to these efforts has been positive and supportive. Both the IOM and the CDC lauded the parties for their efforts and for developing sound evaluation procedures.⁸ Although the policy cannot be mandated and relies on bottlers and schools to jump on board, HPTS expects nationwide implementation of and compliance with the MOU. Already many school districts have put into place stringent beverage guidelines as a result of statewide policies or the federally mandated local school wellness policies. The strong partnership between leading public health advocates and the beverage industry and their efforts to get bottlers, independent companies and schools to comply will be a significant factor in the drive for schools to provide healthier beverage options for children. The agreement also has motivated further the food and beverage industry to develop and promote new, healthier beverage alternatives to soft drinks (e.g., flavored waters, fruit drinks, sports drinks). Nutrition advocates have said the guidelines are a step in the right direction, but expressed concern over sports drinks, which contain high sugar content.

⁷ American Beverage Association. “Beverage Industry Launches Print and Online Advertising Campaign to Raise Awareness of New School Beverage Guidelines” (Press Release, Sept. 7, 2006), available at <http://www.ameribev.org/newsdetail/index.aspx?id=67>.

⁸ Alliance for a Healthier Generation, Centers for Disease Control and Prevention. “Statement on Action by U.S. Beverage Distributors to Restrict Soft Drink Marketing in Schools” (Press Release, May 3, 2006), available at http://www.healthiergeneration.org/docs/afhg_cdc_beverage_press_release_05-03-06.pdf.

Advertising and Marketing

In addition to reexamining the products they sell in schools, the food and beverage industry has faced growing criticism for their advertising and marketing to children. Public health advocates claim their advertisements and marketing strategies are contributing to the rising rate of obesity in children and adolescents. In 2005, the IOM released a report on the effect of food and beverage marketing on children and urged the federal government to take action. This year, the federal government has all but mandated the food, beverage and advertising industries to change their marketing to children.

The Reports

In May, 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 in the fight against 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 food 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).

The FTC and HHS plan to closely monitor the implementation of the recommendations and to issue a follow-up progress report on the industry. The FTC also is conducting a study on the nature and extent of food marketing techniques directed at children and adolescents.⁹

Also released in May, a report funded by the FDA, *Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, provided valuable recommendations for industry, government, health professionals, consumer representatives and others to help reduce obesity and improve the health of consumers purchasing foods away from home. Several recommendations pertained to consumer marketing and education, especially away-from-home foods:^{10,11}

- Shift marketing focus to increase the marketing of lower-calorie and less-calorie-dense foods while decreasing the marketing of higher-calorie and calorie-dense foods and large portions.
- Conduct market research to determine how to best market low-calorie and less-calorie-dense menu options and more appropriate portion sizes to different populations and how to shift the prevailing value proposition away from large portions.
- Review and update standards for marketing to children, including the marketing of away-from-home foods.
- Strengthen and create education and promotion programs regarding away-from-home foods that promote the consumption of fruits, vegetables, low- and nonfat milk and milk products, whole grains and foods low in fat.
- Use social marketing campaigns and consumer education programs to provide healthy lifestyle education to help individuals eat more healthfully in today's food environment.

⁹ Federal Trade Commission. "FTC, HHS Release Report on Food Marketing and Childhood Obesity" (Press Release, May 2, 2006), available at <http://www.ftc.gov/opa/2006/05/childhoodobesity.htm>.

¹⁰ The Keystone Center. *The Keystone Forum On Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, May 2006, available at www.keystone.org/spp/documents/Forum_Report_FINAL_5-30-06.pdf.

¹¹ U.S. Food and Drug Administration. "FDA Receives Keystone Forum Report on Away-From-Home Foods" (Press Release, June 2, 2006), available at <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01379.html>.

While several agencies including the FTC and IOM have focused mainly on print and television advertising, in July, the Kaiser Family Foundation released the first study concentrating on online food advertising, *It's Child's Play: Advergaming and the Online Marketing of Food to Children*.¹² The study analyzed 77 Web sites, which received more than 12.2-million visits from children ages 2 to 12 in the second quarter of 2005, according to Nielsen NetRatings.

The report listed the following key findings:

- Eighty-five percent of the top food brands that target children through television advertising also use Web sites to market to children.
- Seventy-three percent of the Web sites feature “advergaming,” online games featuring a company’s product or brand characters (e.g., Chips Ahoy Soccer Shootout, the M&M’s Trivia Game and the Pop-Tart Slalom).
- Sixty-four percent of the Web sites featured viral marketing, a marketing tactic where the children are encouraged to contact their peers about a company’s Web site or product.

Whereas print and television advertising generally is limited in space and time, online advertising provides the opportunity for an unlimited amount of marketing to the consumer. The study concluded that future research efforts should examine how children respond to such online marketing messages.

Vicky Rideout, vice president and director of Kaiser’s Program for the Study of Entertainment Media and Health, said in a press release, “Online advertising’s reach isn’t as broad as that of television, but it’s much deeper. Without good information about what this new world of advertising really looks like, there can’t be effective oversight or policy-making, whether by the industry or by government.”¹³

¹² Kaiser Family Foundation. “It’s Child’s Play: Advergaming and the Online Marketing of Food to Children,” July 2006, available at <http://www.kff.org/entmedia/upload/7536.pdf>.

¹³ Kaiser Family Foundation. “First Analysis of Online Food Advertising Targeting Children” (Press Release, July 19, 2006), available at <http://www.kff.org/entmedia/entmedia071906nr.cfm>.

The Response

In response to the FTC and HHS report, the National Advertising Review Council (NARC), the agency that oversees the Council of Better Business Bureaus's (CBBB) National Advertising Division and the Children's Advertising Review Unit (CARU), underscored the strides CARU has made in achieving several of the recommendations. The CBBB and CARU, which issues and enforces the Self-Regulatory Guidelines for Children's Advertising, established a project to revise the current guidelines and is considering each recommendation of the report.¹⁴ In the near future, the advertising industry is expected to release voluntary guidelines for online marketing to children.

Some companies voluntarily have reduced the advertising of certain products to children and developed products and campaigns that foster healthy eating habits. Throughout the remainder of this year, Kraft Food, Inc. will continue to implement changes to its advertising in television, radio and print media with a target audience of children ages 6 to 11. The company is phasing in advertising of products that meet its Sensible Solution criteria and phasing out advertising of products that do not meet the criteria. The 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.
- 2 Meets specifications for "reduced," "low" or "free" in calories, fat, saturated fat, sugar or sodium.

Kraft also has curbed its Oreo and Kool-Aid advertising campaigns to children under the age of 12. PepsiCo ceased advertising its soft drinks to children under 12, and Frito-Lay, PepsiCo's snack unit, no longer advertises Cheetos to children under 8.

¹⁴ National Advertising Review Council. Prepared Statement of James R. Gunthrie, President and CEO, National Advertising Review Council, in response to the joint report of the Federal Trade Commission and Department of Health and Human Services: "Perspectives on Marketing, Self-Regulation and Childhood Obesity" (Press Release, May 2, 2006), available at <http://www.caru.org/news/2006/NARCrelease.pdf>.

Kraft and its divisions have worked to develop and promote more nutritious products that also appeal to children, including Digorno Harvest Wheat Crust pizzas, Supermac and Cheese pasta and sauce, and a new line of 100 percent whole-grain snacks. In response to the MOU and the growing demand for healthier options, beverage companies have been working and competing to develop new alternatives to soft drinks. The alternatives include a wide array of flavored waters, flavored milks and milk alternatives, new fruit juices and juice smoothies, no calorie, nutrient-enhanced soft drinks, sports drinks, energy drinks, teas and coffees.¹⁵

With an innovative approach to promoting nutrition in children, companies such as Nickelodeon, Warner Brothers, and Walt Disney Co. have signed licensing agreements with produce growers and distributors to help promote fruits and vegetables to parents and children. Walt Disney Co. has partnered with Imagination Farms L.L.C., an Indianapolis-based produce distributor, to create a Disney Garden brand featuring Disney cartoon characters on the packaging of fruits and vegetables (e.g., peaches with Goofy stickers, grapes packaged in Mickey Mouse boxes) sold in supermarket chains. At least 100 different Disney Garden produce items are expected in supermarkets by the end of the year and another 100 by the end of 2007. Nickelodeon and Warner Brothers have signed similar agreements to market fruits and vegetables using their characters, including SpongeBob Square Pants spinach, Dora the Explorer oranges, Tweety Bird grapes and Tasmanian Devil apples. These actions go along with the IOM's and federal government's recommendations to use television and movie characters to market nutritious foods.¹⁶

¹⁵ Karen Herzog. Drink!: New Beverages Join the Coke-Pepsi Wars, *Milwaukee Journal Sentinel*, June 7, 2006.

¹⁶ Jacob Adelman. Entertainment Firms Cultivate Healthy Images, *Bucks County Courier Times*, Sept. 5, 2006.

Because the FDA report focused on away-from-home foods, many of the recommendations targeted the restaurant industry. The restaurant industry reacted defensively to the report. The National Restaurant Association issued a statement that it would not formally support the final report, believing that it unfairly targeted the restaurant industry and that many of the recommendations already are in place: “We believe our industry has made great strides to promote nutrition and healthy lifestyles to our guests and to educate them on the foods that we offer. Efforts to restrict or place mandates on our industry are not solutions. In fact, they risk setting up additional roadblocks for consumers to enjoy the foods they wish to consume. The restaurant industry seeks to provide a wide variety of food options to accommodate the diverse dietary needs of consumers. Restaurants will continue to help consumers meet those needs through consistent positive messages that promote healthier thinking and balanced lifestyles.”¹⁷

Showcasing their independent efforts to promote healthy messages to consumers, in August, the National Restaurant Association and the Healthy Dining Program partnered to launch a new Web site, Healthy Dining Finder, for consumers to identify healthier restaurant options. The free resource provides consumers to search for restaurants based on specific criteria and for nutrition information on each menu item. The Healthy Dining Program will market heavily the Web site and participating restaurants to health and fitness professionals, employers and consumers.¹⁸

Since consumer advertising and marketing is generally regulated at the federal level, state legislative activity regulating this issue has been limited. At least three federal bills proposing greater regulation of the food and beverage marketing industry were introduced but no action was taken on them:

- **Children's Health Federal Trade Commission Authority Restoration Act, FD HB 5737.**

- Introduced June 2006.
- Restores the authority of the FTC to issue regulations that restrict the marketing or advertising of foods and beverages to children under the age of 18 years if there is evidence that consumption of certain foods and beverages is detrimental to the health of children.

¹⁷ National Restaurant Association. “Statement in Response to FDA Report on Away-From-Home Foods” (Press Release, June 2, 2006), available at <http://www.restaurant.org/pressroom/pressrelease.cfm?ID=1273>.

¹⁸ National Restaurant Association. “National Restaurant Association Joins Healthy Dining in Promoting Healthful Menu Choices to Americans” (Press Release, July 17, 2006), available at <http://www.restaurant.org/pressroom/pressrelease.cfm?ID=1284>.

- **Prevention of Childhood Obesity Act, FD SB 799.**

- Introduced in April 2005.
- Directs the Institute of Medicine to conduct a study and make recommendations on guidelines for nutritional food and physical activity advertising and marketing to prevent childhood obesity.
- Establishes a Federal Leadership Commission to Prevent Childhood Obesity and requires the commission to hold a National Summit to Implement Food and Physical Activity Advertising and Marketing Guidelines to Prevent Childhood Obesity.
- Authorizes the FTC to issue regulations and monitor compliance with those regulations, for advertising and marketing of nutritional foods and physical activity directed at children and youth, as recommended by the summit.
- Prohibits advertisements and marketing in schools and on school grounds for foods of poor or minimal nutritional value such as fast foods, soft drinks and candy.

- **Healthy Lifestyles and Prevention America Act, FD SB 1074.**

- Introduced May 2005.
- Restores the authority of the FTC to issue regulations that restrict the marketing or advertising of foods and beverages to children under the age of 18 years if the FTC determines that there is evidence that consumption of certain foods and beverages is detrimental to the health of children.
- Allows the Secretary to prohibit the advertising of food in schools if the Secretary determines that consumption of the advertised food has a detrimental effect on the diets or health of children.



State Actions

New and Innovative Legislation

In the past several years, state legislators have introduced hundreds of bills to stem the rise in obesity and promote nutrition, physical activity and wellness. While most of the bills are similar in nature, in each session a few measures will stick out from the rest due to the creativity, innovation or stringency of their provisions. Some of the more innovative measures introduced in the 2006 session include the following.

Connecticut SB 373, “An Act Concerning Healthy Food and Beverages in Schools,” continues to allow for local control over food in schools, but provides a unique financial incentive for schools to offer healthy foods. The state Department of Education must publish nutrition standards for food items by August 1, 2006. School districts participating in the National School Lunch Program must decide and report to the Department each year whether they will offer only food items that meet the new standards. Districts that do so will receive from the state an additional 10 cents per lunch—a substantial increase from the current rate of five cents per lunch. The law went into effect July 1, 2006.

Iowa lawmakers enacted a bill to establish a nutrition and physical activity community obesity prevention grant program. Senate Bill 2124 strives to increase fruit and vegetable consumption and raise physical activity to up to 60 minutes per day among elementary school children. What differentiates this bill from other bills establishing nutrition and physical activity pilot programs is the community, rather than school, focus. The Department of Public Health will award grants to six communities in each of six regions.

Last year, **California** implemented a pilot program to increase access to fresh fruits and vegetables in schools. This year, lawmakers in California introduced two innovative bills to increase access to fresh produce in low-income communities. Senate Bill 1329, the “Healthy Food Retailing Initiative,” would provide grants or loans to businesses interested in developing grocery stores in such communities. This measure passed the Senate, but died upon adjournment. House Bill 2384 establishes the “Health Food Purchase Pilot Program,” to test strategies aimed at increasing the sale of fresh fruits and vegetables in low-income communities. Participants in the program will focus on developing the best approach for neighborhood grocery stores to provide fresh produce and increasing consumption of fresh fruits and vegetables among food-stamp recipients. This measure was enacted in September.

A unique bill in **Tennessee** SB 3143 would have required local education agencies to review and report on the long-term health effects of structured and intramural sports on children. The bill also would have encouraged local education agencies that have implemented or expanded physical activity programs to report to the Department of Education on the actions taken and the effectiveness of the programs. However, the bill died upon adjournment. Most physical activity bills focus on physical education programs and do not include components for researching the long-term effects.

Several bills in recent years have called for child nutrition programs and school food service personnel to receive education on nutrition and meal planning. Two identical and innovative bills in **Virginia**, HB 1593 and SB 206, took this concept one step further and would require all superintendents to receive instruction on the causes, consequences, prevention and reduction of childhood obesity. The bills were carried over to the 2007 legislative session.

Although **Nevada** was out of session and did not consider legislation this year, the Nevada Association for Health, Physical Education, Recreation and Dance continued its push for a state constitutional amendment requiring public schools to provide daily physical education to be placed on the 2006 ballot. This was a unique, unprecedented effort to enhance physical activity in schools. The association needed to collect 83,184 signatures by June 20 to be eligible for the November 2006 ballot; however, they fell short of the necessary signatures.



Summary of Legislation

Summary of 2006 School Nutrition and Health and Physical Education Legislation

Following the trend of recent years, school nutrition and health and physical education once again received much of the attention from state lawmakers. The following table provides a quantitative analysis of the activity that has occurred thus far in 2006. As of October 2, the Michigan, New Jersey, New York, Ohio and Pennsylvania legislatures are still in session with relevant bills pending. In California several bills await the governor's action.

The maps on pages 21–22 separate and showcase the state legislative activity pertaining to school nutrition and to health and physical education.

Summary of 2006 State Legislative Activity

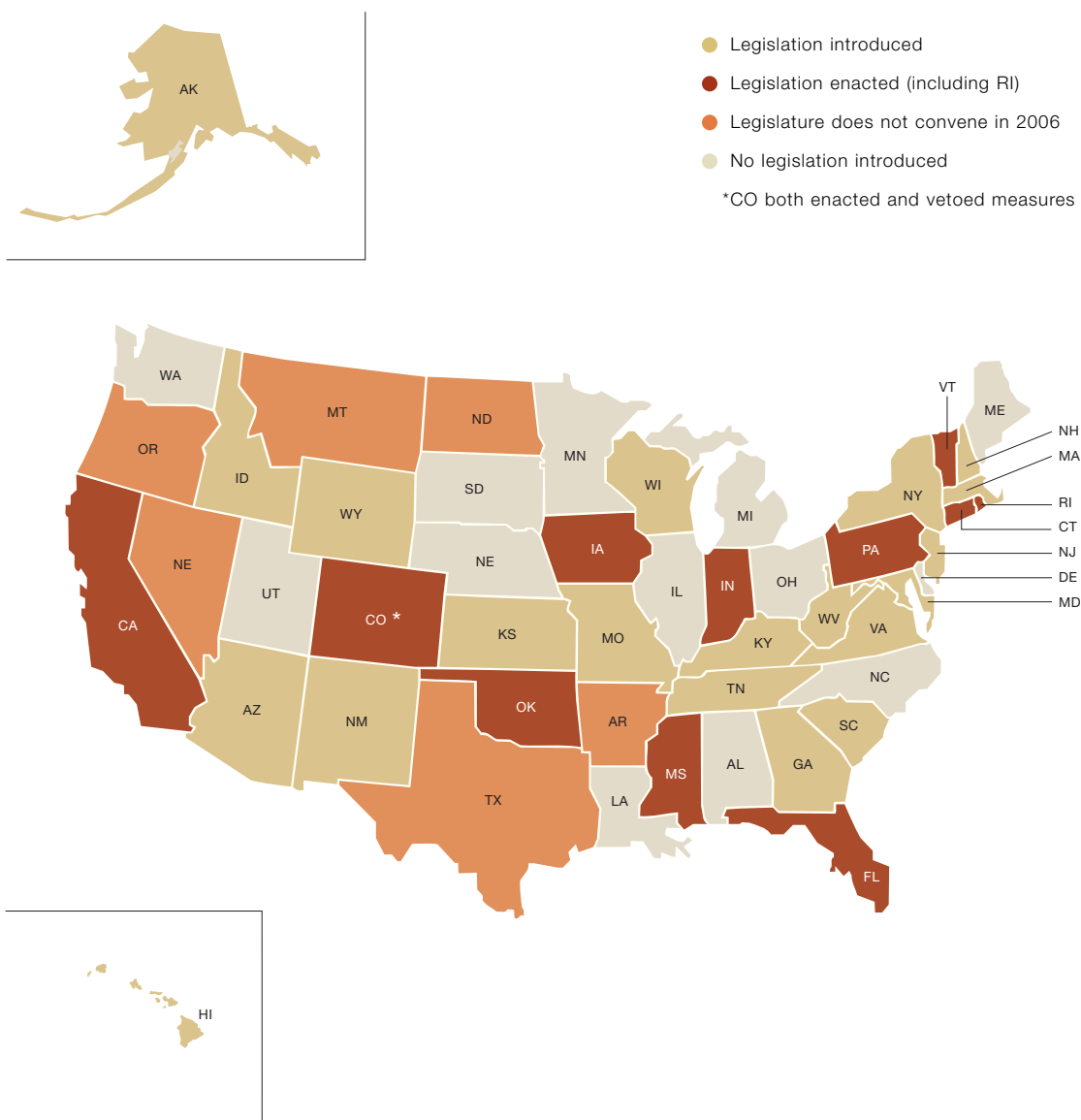
(Includes Both School Nutrition and Health and Physical Education Legislation)

NOT IN SESSION—6	NO LEGISLATION INTRODUCED—8	LEGISLATION INTRODUCED—36	LEGISLATION CONSIDERED—21	LEGISLATION ENACTED—15
Arkansas	Louisiana	Alabama	Alabama	California
Montana	Maine	Alaska	Alaska	Colorado
Nevada	Nebraska	Arizona	Arizona	Connecticut
North Dakota	North Carolina	California	Georgia	Delaware
Oregon	Ohio	Colorado	Hawaii	Florida
Texas	South Dakota	Connecticut	Idaho	Indiana
	Utah	Delaware	Illinois	Iowa
	Washington	Florida	Kentucky	Kansas
		Georgia	Maryland	Mississippi
		Hawaii	Massachusetts	Oklahoma
		Idaho	Michigan	Pennsylvania
		Illinois	Minnesota	Rhode Island
		Indiana	Montana	Tennessee
		Iowa	New Hampshire	Vermont
		Kansas	New Jersey	West Virginia
		Kentucky	New Mexico	
		Maryland	New York	
		Massachusetts	South Carolina	
		Michigan	Virginia	
		Minnesota	Wisconsin	
		Mississippi	Wyoming	
		Montana		
		New Hampshire		
		New Jersey		
		New Mexico		
		New York		
		Oklahoma		
		Pennsylvania		
		Rhode Island		
		South Carolina		
		Tennessee		
		Vermont		
		Virginia		
		West Virginia		
		Wisconsin		
		Wyoming		

Source: Health Policy Tracking Service, a service of Thomson West, Oct. 2006

2006 School Nutrition Legislation

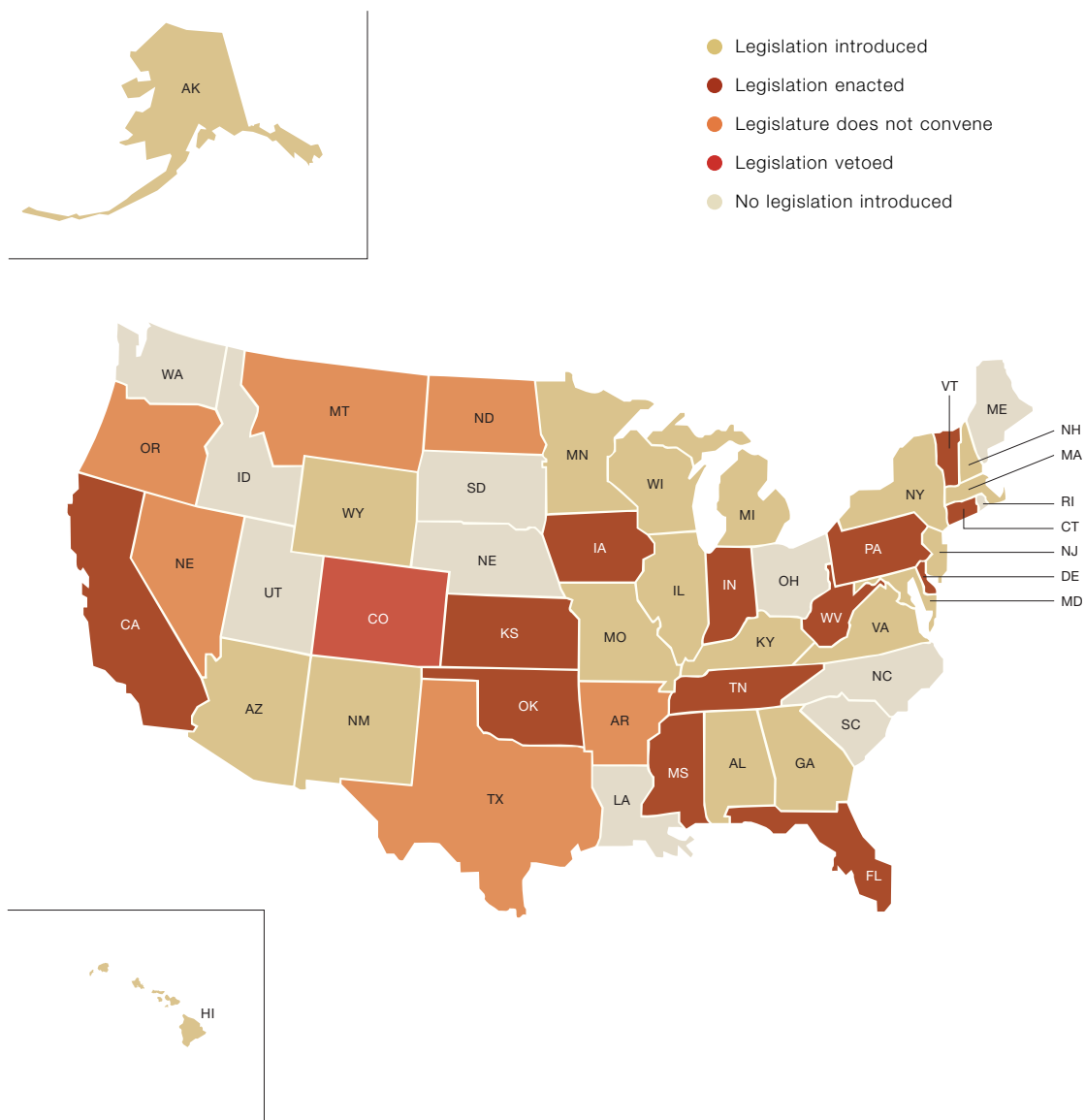
- 31 states introduced or carried over legislation
- 11 states adopted legislation
- One state vetoed legislation



SOURCE: Health Policy Tracking Service, a service of Thomson West, Oct. 2006

2006 Health and Physical Education Legislation

- 34 states introduced or carried over legislation
- 13 states adopted legislation
- One state vetoed legislation



SOURCE: Health Policy Tracking Service, a service of Thomson West, Oct. 2006

Non-Legislative Initiatives

In addition to legislative actions, many state agencies and organizations have launched statewide programs to promote healthier lifestyles and reduce obesity among state residents. The following initiatives are representative of the non-legislative initiatives of 2006.

Illinois

Gov. Rod Blagojevich (D) established a Governor's Council on Health and Physical Fitness, as part of an effort to promote healthier lifestyles. Made up of health and fitness advocates, the council will work to address obesity and encourage state residents to incorporate physical fitness and healthier lifestyles into their daily routine. Otis Wilson, a former Chicago Bear and Super Bowl Champion, will serve as Chairman of the Council. Blagojevich said in a press release, "I'm convening the Council on Health and Physical Fitness and naming Otis Wilson, one of Illinois' favorite legendary athletes, to lead the effort to encourage Illinoisans to make health and fitness personal responsibilities. My goal is to help families understand the importance of building the foundation of living healthy and active lifestyles at an early age. I'm committed to working with families across the state and help motivate and encourage them to participate in activities and services that will be offered through the Council and the Fit 4 Life program." The governor and the departments of human services and public health launched the Fit 4 Life program in 2005 to promote physical fitness through various activities including a State Agency Walking Challenge and a Hula Hoop Challenge for youth.^{19, 20}

¹⁹ Office of the Governor. "Gov. Blagojevich Convenes Council and Makes Health and Fitness Priorities for the State" (Press Release, Aug. 18, 2006), available at <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=5196>.

²⁰ Illinois State Board of Education. "State Agencies Join Gov. Blagojevich Initiative to Get Fit" (Press Release, July 13, 2005), available at http://www.isbe.net/news/2005/july13_05.htm.

Iowa

The Iowa Sports Foundation, Iowa Department of Public Health, Iowa Games and Iowa State University partnered to create the state wellness program “Lighten up Iowa (LUI): Changing the Shape of Our State.” LUI was a five-month, team-based program designed to encourage Iowans to take steps toward a healthier lifestyle, that ran from January to May. Teams were made up of two to 10 members and had the option of competing in one or both of two divisions: weight loss and minutes of activity. The weight loss division monitored progress by percentage of weight lost for each team while the minutes of activity division tracked activity minutes for each team. The program also gave participants nutrition and physical activity tracking logs, tips on physical activity and proper nutrition, free entry into the Iowa Games fitness walk, and monthly incentives and prizes. More than 31,000 Iowans registered for the program in 2006. The four entities will sponsor the program again in 2007.

Massachusetts

Last year, state leaders kicked off a statewide public health awareness campaign to promote the benefits of exercise. “Every Body Move!” is designed to get residents of the state to be more physically active. The campaign was developed by the Massachusetts Governor’s Committee on Physical Fitness and Sports (MGCPF). In January, MGCPF and the Department of Education announced the creation of the “Every Body Move!” grant program to award 25 schools up to \$7,500 each during the 2006–2007 academic year to develop or sustain physical activity programs before, during or after school for children between the ages of 8 and 14.

Ohio

The “Best Buckeye Healthy Schools” program, a five-year-old initiative, recognizes schools that have achieved a gold, silver or bronze standard in improving the overall health of children. The program is designed to track the progress of schools’ efforts to achieve the highest standard in the area of tobacco, nutrition and physical activity education. Schools that achieve a gold standard are given a flag to fly outside their building. In February, Gov. Robert Taft, Jr. (R) announced that the program will offer a one-time \$450 award to schools that achieve the gold standard. This is a meaningful incentive to schools, where funds may be limited for physical activity programs and/or generated through sale of junk food and soft drinks.

Texas

At the start of the 2006–2007 school year, the Texas Department of Agriculture launched the Texas “Think Bright!” campaign to promote good nutrition in elementary school children. The campaign provides tri-colored wristbands to every elementary school student in the state to remind them to select colorful, nutritious fruits and vegetables. Agriculture Commissioner Susan Combs said, “If we can get these children and their families to do their shopping around thinking bright, then they’ve got a better future.”^{21,22}

Earlier in 2006, in an effort to encourage all Texans to be more physically active, Gov. Rick Perry (R) launched the third annual “Texas Round-up” challenge. The two-part program began with a six-week activity training program that led up to a variety of fitness events held on April 29. Texans of all ages had the opportunity to sign up for the online training program that included fitness schedules and an activity log. Adults were asked to complete 30 minutes of activity five days a week for six weeks, while children were encouraged to complete 60 minutes of activity five days a week for six weeks. Incentives were awarded to individual participants as well as to the family, employer and community with the highest level of participation. The events on April 29 included a 10 kilometer run/walk, 5 kilometer run/walk, family mile, health and fitness festival, health expo and post-race celebration concert.

²¹ Jacqueline Lane. *Agriculture Official Urges Healthy Eating, Activity*, The Beaumont Enterprise, Sept. 1, 2006.

²² Texas Department of Agriculture. *Think Bright Wristband Distribution* (2006), available at http://www.squaremeals.org/fn/render/parent/channel/0,1253,2348_2498_0_0,00.html.

West Virginia

The “West Virginia Healthy Act of 2005” called for sweeping changes and actions throughout the state to promote healthy lifestyles and reduce obesity. The bill created the Office of Healthy Lifestyles within the Department of Health and Human Services, established school nutrition and physical education guidelines and called for the development of a statewide voluntary private sector partnership program to work with businesses that encourage and promote healthy lifestyles among their employees and communities. As a result, the Partnership for a Healthy West Virginia was created. The group’s Web site, sponsored by the West Virginia Medical Foundation and the Healthy Lifestyle Coalition, serves as a portal for health programs throughout the state and focuses on four target populations—healthy kids and schools, healthy employees, healthy communities and healthy supports. It features a calendar of health promotion events throughout the state and showcases examples of successful programs addressing target populations. The Web site also hosts the West Virginia on the Move site, the state branch of America on the Move.²³

In addition, the West Virginia Cycling Foundation hosted its second annual “Cheat Mountain Challenge” to promote health and physical fitness for all state residents through cycling. The event, held September 24 at Snowshoe Mountain, features a 64-mile metric century ride or a 106-mile century ride. The Foundation, founded in 2005, focuses on promoting safe, enjoyable cycling and cycling routes throughout the state and focuses its programs on supporting fitness events and road and trail access and on educating the public about the benefits of cycling, use of equipment, safety, training and cycling skills.

²³ Veronica Nett. “Cycling Group Promotes Activity as Fun and Healthy,” *Charleston Gazette*, Aug. 12, 2006.



Medicaid Reform

During the past two years the states have enjoyed budget surpluses that make the fiscal crisis of 2001 through 2004 a distant memory. However, the rate of increase in state Medicaid budgets continues to outpace revenue. This has led governors and state legislatures to declare that the current structure can not be maintained. Many states are pushing forward with plans to restructure or reform their Medicaid programs. The federal and several state governments have taken new approaches to Medicaid reforms with the goal of encouraging healthy living and decreasing Medicaid expenses resulting from poor lifestyle choices.

During his tenure as chairman of the National Governors' Association, **Arkansas'** Governor Mike Huckabee (R), spearheaded efforts in his state and nationwide to encourage state lawmakers to develop strategies and adopt policies that promote healthy behaviors. Gov. Huckabee launched *Healthy America: Wellness Where We Live, Work and Learn*, a year-long initiative. The *Healthy America* Task Force, a bipartisan group composed of Huckabee and five other governors, worked with health professionals, business leaders, policy-makers and the public to identify strategies governors can use to improve the health of Americans.

As a result, many of the current and proposed state Medicaid reforms have incorporated this strategy into their reforms.

Among the reforms approved by the federal government, **Kentucky's** new plan offers enrollees special disease management programs and "Get Healthy" benefits to promote healthy behaviors and lives through such additional services as nutritional counseling, dental, vision and smoking cessation programs. The new "Get Healthy" benefits also provide incentives to enrollees practicing healthy behaviors. Enrollees may receive additional services after one year of successful participation in a disease management program.²⁴

West Virginia will offer enrollees a choice of two benefit packages: a basic plan based on the current services offered and an enhanced package that includes benefits not usually offered under Medicaid. To be eligible for the enhanced package, enrollees must sign an agreement to comply with all recommended medical treatment and wellness behaviors. The state initially will market the enhanced benefit package to healthy children and adult enrollees. The enhanced package will include tobacco cessation, nutritional education, diabetes care, and substance abuse and mental health services. The state will track medical outcomes and compliance with the agreement through several indicators including receiving screenings as directed and adherence to health improvement programs. Enrollees failing to comply with their agreements may lose access to the enhanced package.²⁵

Michigan lawmakers enacted SB 1083, requiring the state Department of Community Health to apply for a federal waiver to offer financial incentives for positive health behavior practiced by Medicaid recipients. If approved, all adult beneficiaries would have the opportunity to sign a Medicaid personal responsibility agreement that includes provisions to not smoke and to exercise regularly. The state then would provide small monetary payments into individual health accounts for those recipients who demonstrate positive changes in personal health behavior.

²⁴ United States Department of Health and Human Services. "HHS Approves Historic Medicaid Reform Plans in Kentucky" (Press Release, May 3, 2006), available at <http://www.hhs.gov/news/press/2006pres/20060503a.html>.

²⁵ United States Department of Health and Human Services. "HHS Approves Innovative Medicaid Reform in West Virginia" (Press Release, May 3, 2006), available at <http://www.hhs.gov/news/press/2006pres/20060503.html>.

Earlier this year, **Idaho** lawmakers approved the “Medicaid Simplification Act,” authorizing the director of the state Department of Health and Welfare to restructure the state’s Medicaid program. The bill established three new population groups based on participants’ health needs: 1) low-income children and working-age adults; 2) persons with disabilities or special health needs; and 3) the elderly. The shared program goal for each group is to emphasize preventive care and wellness. Although the department has received the necessary federal approval to restructure the program, it has not yet specified how it plans to emphasize preventive care and wellness in the new program.

Under the federal “Deficit Reduction Act of 2005,” HHS will authorize 10 states to conduct demonstration programs to implement Health Opportunity Accounts that include a focus on encouraging preventive services, enabling patients to take responsibility for health outcomes and providing ongoing education activities. The Centers of Medicaid and Medicare Services is developing more specific guidelines for states to apply.

Florida, Idaho, Iowa and **South Carolina** passed bills that would establish similar personal health accounts. South Carolina plans to apply to be one of the 10 states authorized by CMS to conduct this demonstration program. The general wellness concept behind the health accounts is to reward beneficiaries with additional monies for health services for engaging in behaviors and services intended to improve their health.



Local Actions

Compared to 2005, the number of states introducing and enacting legislation in 2006 decreased. This is attributed to several factors, one being the emphasis on local control and the implementation of federally-mandated local school wellness policies.

Two years ago, Congress enacted “The Child Nutrition and WIC Reauthorization Act of 2004.” The law requires every school district that participates in the National School Lunch Program to have adopted a local school wellness policy that promotes healthy nutrition and physical activity by July 1, 2006. Each school district was required to establish a committee representing parents, students, food service personnel, the school board, school administrators and the community to develop the policies. Although the Act left much authority to the states and localities in determining what should be included in each policy, it did specify that, at a minimum, each policy must include the following:

- Goals for nutrition education, physical activity and other school-based activities designed to promote student wellness in a manner the local educational agency determines appropriate.

- Nutrition guidelines, not to be less restrictive than federal regulations, for all foods available on the school campus during the school day with the objective of promoting student health and reducing childhood obesity.
- A plan for measuring implementation of the local wellness policy, including designation of a responsible person(s).

The federal government did not mandate school districts to submit a copy of their school wellness policies; however, many states did set forth a requirement that policies must be submitted to and approved by the state.^{26,27}

In the past two years, many states considered legislation to help guide school districts in their efforts to comply. Some states considered legislation to add state requirements in conjunction with the federal requirements. This year, lawmakers in at least eight states—**Florida, Georgia, Indiana, Massachusetts, Mississippi, New York, Oklahoma** and **Pennsylvania**—introduced legislation to assist or set requirements for school districts in establishing wellness councils and policies. Florida, Indiana, Mississippi, Oklahoma and Pennsylvania enacted bills:

- **Florida SB 772** required the Department of Education to provide Web site links to examples of school wellness policies. Each school district was required to submit to the department a copy of its school wellness policy and its physical education policy by September 1, 2006. The Department was required to post Web site links to each district's policies by December 1, 2006.
- **Indiana SB 111** required each school board to establish a coordinated school advisory council to develop a local wellness policy that complies with federal requirements. It also directed the Department of Education to provide information concerning health, nutrition and physical activity to the councils.
- **Mississippi HB 319** directed local school districts to establish local school health councils and wellness policies in accordance with the federal requirements.
- **Oklahoma SB 1459** required the state departments of Education and Health to assist the Healthy and Fit School Advisory Committees by making information and technical assistance available to schools for use in establishing healthy school nutrition environments, reducing childhood obesity, developing physical education and activity programs, preventing diet-related chronic diseases and establishing school wellness policies.

²⁶ U.S. House of Representatives Committee on Education and the Workforce. "The Child Nutrition and WIC Reauthorization Act Update" (July 2004), available at <http://edworkforce.house.gov/democrats/hr3873cupdate.html>.

²⁷ USDA's Food and Nutrition Service. "Local School Wellness Policy Requirements," available at http://teamnutrition.usda.gov/Healthy/wellness_policy_requirements.html.

- **Pennsylvania HB 185** required each local education agency to establish its local wellness policy by June 30, 2006. The bill established an interagency coordinating council for child health and nutrition to annually review and revise the Pennsylvania nutrition and activity plan to prevent obesity and related chronic diseases. The plan must include recommendations regarding local wellness policies. It also established local advisory health councils to provide recommendations on the development of local wellness policies.

While the **New Mexico** Legislature did not consider such legislation, Gov. Bill Richardson (D) approved the statewide school nutrition and wellness rules that included guidelines for local school wellness policies.

In August, Action for Healthy Kids (AFHK), a non-profit organization dedicated to child wellness, conducted and released a snapshot analysis of a national sample of 112 local school wellness policies that were available and approved by July. Some of their key findings were as follows:

- Only 54 percent of sampled school districts met all the federal minimum requirements.
- 19 percent did not address implementation or evaluation.
- 18 percent did not include goals for both physical education and physical activity.
- 14 percent did not specify goals for nutrition education.
- 45 percent included nutrition standards for à la carte items and 66 percent for vending items.
- 13 percent included nutrition standards that exceeded the USDA's *Dietary Guidelines for Americans*, 2005.
- 30 percent included specified time requirements for physical education.
- 26 percent addressed marketing of foods and beverages.

AFHK expressed concern that many policies lacked timeframes for implementation and measurable objectives to evaluate.²⁸ However, Alicia Moag-Stahlberg, executive director of AFHK, said in a press release, “While we celebrate the fact that many districts are well on their way to creating healthier learning environments, this snapshot reminds us that many districts and schools need assistance so they can meet the general requirements and the spirit of the Wellness Policy mandate.”

Stahlberg also underscored AFHK’s commitment to providing resources and assistance to help school districts with their wellness policies. “Because we examined a very small percentage of districts nationwide, we do not want to overstate our learning—it is a snapshot. We feel confident, however, that there are numerous districts and schools that could benefit from our ‘Campaign for School Wellness’ resources.”²⁹

Their “Campaign for School Wellness” provides resources to schools and school districts in the process of implementing, evaluating and refining their local wellness policies and encourages supportive actions from public and private sectors, government, parents, students and communities. As part of the campaign, AFHK launched “Game On! The Ultimate Wellness Challenge,” a series of back-to-school events for fifth to eighth grade students, parents, teachers and administrators that integrate nutrition, physical activity and learning through various activity stations and that culminates with a national event on October 5 in Washington, D.C. Any and all schools, school districts and communities can and are encouraged to register to host their own Game On! event. Those with the highest participation will be announced at the national event and awarded School Wellness grants ranging from \$1000 to \$3000. The event with the highest participation will win a Youth Spring Training Camp with the National Football League.^{30,31}

²⁸ Action for Healthy Kids, *Action for Healthy Kids’ Report: A Snapshot View of Local School Wellness Policies* (Aug. 23, 2006), available at <http://www.actionforhealthykids.org/filelib/pr/Fact%20sheet%20on%20WP%20Analysis%208%2021%202006.pdf>.

²⁹ Press Release, Action for Healthy Kids, *Study Finds that Half of Local Wellness Policies Fall Short of Federally Mandated Requirements: Strong Policies Needed to Help Address Childhood Obesity Epidemic* (Aug. 21, 2006), available at <http://www.actionforhealthykids.org/filelib/pr/WP%20preview%20release%208-21-06.pdf>.

³⁰ Action for Healthy Kids, *Campaign for School Wellness* (2006), available at http://www.actionforhealthykids.org/special_CswGameon.php.

³¹ Action for Healthy Kids, *Game On! The Ultimate Wellness Challenge* (2006), available at http://www.actionforhealthykids.org/special_GameOn.php.



Upcoming

The next edition of the *BALANCE* report will be a year-end review for 2006. HPTS plans to analyze the trends and reasons behind which states introduced legislation, which ones did not and why some state legislatures were able to enact legislation while others were not.