

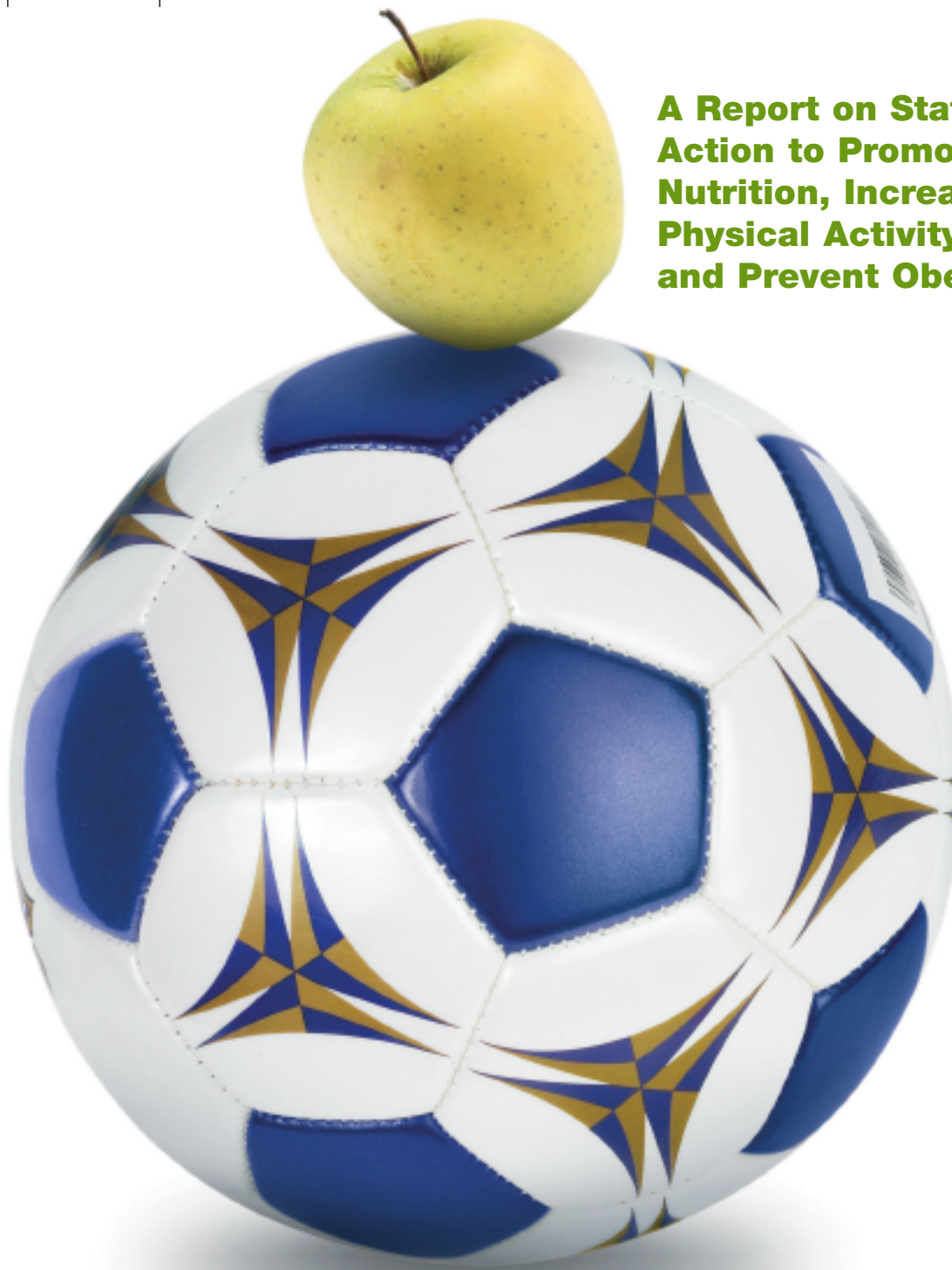


Robert Wood Johnson Foundation

BALANCE

ISSUE 2 | JULY 2006 | A MID-YEAR OVERVIEW

**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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Overview

Along with overall health concerns of the U.S. population, the economic effect of rising obesity rates and associated costs to treat overweight and obese individuals has ignited government intervention on the state and federal level over the past four years. The prevalence of overweight and obesity among adults and children has surged in the past 30 years. The Centers for Disease Control and Prevention (CDC) estimate that 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 of 6 to 11 nearly tripled and the percentage of overweight adolescents ages 12 to 19 more than tripled (see figure on page 5).¹

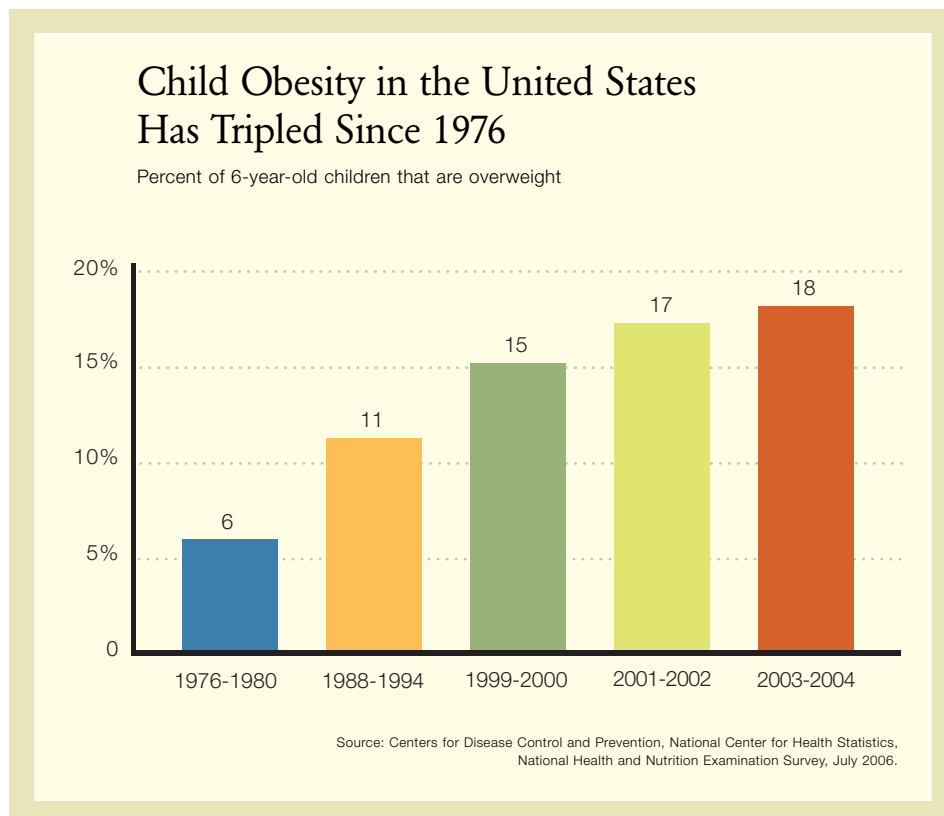
Some worry that the childhood obesity epidemic could further contribute to rising health care costs. Estimates indicate that providing medical treatment to obese Americans has cost the country \$75 billion, of which taxpayers pay more than half through the nation's Medicare and Medicaid programs.² A federal study paints a similar picture:³

- The annual hospital costs related to treat childhood obesity from 1979 to 1981 were \$35 million, calculated in 2001 dollars. That number increased to \$127 million from 1997 through 1999.

¹ Centers for Disease Control and Prevention, Prevalence of Overweight and Obesity Among Adults: United States, 1999–2002. Available at <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/obese/obse99.htm>.

² Eric A. Finkelstein, Ian C. Fiebelkorn and Guijing Wang, *State-Level Estimates of Annual Medical Expenditures Attributable to Obesity*, 12 OBESITY RESEARCH, 18–24 (2004).

³ 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 (Revised July 2005). Available at <http://www.cdc.gov/nccdphp/publications/factsheets/Prevention/obesity.htm>.



- The total cost of obesity in the United States in 2000 was estimated at \$117 billion. This amount includes \$61 billion for direct medical costs and \$56 billion for indirect costs such as loss of productivity, absenteeism and income lost due to related morbidity or premature mortality.
- Annually, \$33 billion in medical costs and \$9 billion in lost productivity due to heart disease, cancer, stroke and diabetes are attributed to diet.

Creating Healthy, Active School Environments

Federal, state and local leaders continue to press forward in their crusade to curb obesity rates, particularly among children. Similar to past years, the main focus for both federal and state lawmakers remains within the school system. Because overweight children and adolescents are 70 to 80 percent more likely to become heavyset adults,⁴ lawmakers believe that mandating or recommending nutritional and physical education guidelines for schools will encourage children to make healthier choices in the future and maintain healthy weights.

⁴ Office of the Surgeon General, The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity (2001). Available at http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_adolescents.htm.

Although most school nutrition and physical activity mandates are made at the state and local levels, federal lawmakers have introduced and enacted legislation to address the increasing rates of childhood obesity across the country. Two years ago, Congress and President George W. Bush (R) enacted “The Child Nutrition and WIC Reauthorization Act of 2004.”⁵ The law required every school district that participates in the National School Lunch Program to adopt a local school wellness policy that promotes healthy nutrition and physical activity by June 30, 2006.⁶ Each school district must establish a committee representing parents, students, food service personnel, the school board, school administrators and the community to develop the policies, which must address goals for nutrition and nutrition education.

Introduced this session, two federal bills, FD HB 5167 and FD SB 2592, would amend the “Child Nutrition Act of 1966” to improve the nutrition and health of schoolchildren by charging the USDA secretary with redefining “foods of minimal nutritional value,” commonly referred to as FMNVs, to conform to current nutrition science. As the USDA prohibits schools participating in the national school breakfast and lunch programs from selling FMNV in competition with school meal programs and in food service areas, such a bill would impact what foods and beverages schools may sell.

Another pair of federal bills, FD HB 4860 and FD SB 1324, would reduce and prevent childhood obesity by encouraging schools and school districts to develop and implement local school-based programs designed to reduce and prevent childhood obesity, promote increased physical activity and improve nutritional choices. All four bills are under consideration in committees in their houses of origin.

In addition to legislative efforts, the federal agencies have continued to sponsor initiatives to combat obesity. U.S. Surgeon General Richard Carmona recently spoke on his office’s strong position on obesity by putting it into the context of national security:

⁵ Child Nutrition and WIC Reauthorization Act of 2004, PL 108–265, 2004 S 2507, June 30, 2004.

⁶ 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/hr3873cnupdate.html>.

“Obesity is the terror within. Unless we do something about it, the magnitude of the dilemma will dwarf 9-11 or any other terrorist attempt. Where will our soldiers and sailors and airmen come from? Where will our policemen and firemen come from if the youngsters today are on a trajectory that says they will be obese, laden with cardiovascular disease, increased cancers and a host of other diseases when they reach adulthood?”⁷

HHS Secretary Mike Leavitt also has identified obesity prevention as a key priority. The department was one of several sponsors of the National Obesity Action Forum in June. The forum convened federal, state and local health officials, leaders of community organizations and advocacy groups and nutrition and fitness professionals to build upon obesity prevention action plans. The forum also focused upon changes at the family and community level and highlighted successful community strategies.⁸

Governors Continue to Advocate Healthy Behaviors

At the beginning of this year’s legislative sessions, governors in five states—**Indiana, Kentucky, Maryland, New Mexico** and **Ohio**—emphasized initiatives to reduce obesity rates in their State of the State addresses. Citing the state’s levels of obesity and alcohol and tobacco use, **Indiana** Gov. Mitch Daniels (R) called for increasing health awareness through the existing *InShape Indiana* program. InShape Indiana serves to connect state residents with programs that emphasize healthy living.

Kentucky Gov. Ernie Fletcher (R) promised to initiate the governor’s fitness program this year to reduce rates of obesity and promote wellness and physical activity programs in an effort to improve the health of all Kentuckians. With the enactment of HB 646, the governor was able to deliver on his promise. The measure establishes the Governor’s Wellness and Physical Activity Initiative, which will be overseen by the executive-level Governor’s Council on Wellness and Fitness. Among its responsibilities, the council is charged with developing a Web site that will provide state residents with access to “...useful health, lifestyle and physical activity information and tools.”⁹ Funding in the

⁷ Katrina A. Jackson, *Surgeon General: Obesity ‘Terror Within,’* THE BOSTON GLOBE, March 1, 2006.

⁸ Press Release, U.S. Department of Health and Human Services, HHS to Sponsor National Obesity Action Forum (May 31, 2006). Available at <http://www.hhs.gov/news/press/2006pres/20060531.html>.

⁹ Press Release, Governor Ernie Fletcher’s Communication Office, *Governor Fletcher Signs Governor’s Fitness Initiative*, (April 27, 2006).

amount of \$1 million for FY 2007 and \$1.5 million for FY 2008 was provided in the budget. To further support physical activity, 34 projects received funding to assist in the development or renovation of recreational trails.¹⁰ In addition, the state's Medicaid program is set to undergo comprehensive reform. Among the changes, the new KYHealth Choices program will include incentives for Medicaid beneficiaries to lead healthy lifestyles. Because of legislation enacted last year that set nutrition guidelines for schools, the Center for Science in the Public Interest (CPSI), a recognized advocacy organization who seeks to provide individuals with information on nutrition and health, ranked the state as having the strictest school nutrition requirements in the nation.¹¹

Gov. Bob Erlich (R) of **Maryland** asked legislators to invest in senior nutrition programs. In addition, lawmakers in both chambers introduced two competing bills—HB 1418 and SB 457—that would have established a blue ribbon panel responsible for developing an action plan to reduce obesity rates in the state. The bills passed both chambers of origin; however, the two chambers did not concur on the differing bill versions. Lawmakers determined that it was in the best interest of the state to study this issue for another year. The measures died upon adjournment of the General Assembly.

In **New Mexico**, as part of his “Year of the Child Agenda,” Gov. Bill Richardson (D) highlighted the connection between children's health and physical education and nutrition in schools. In his State of the State speech, the governor called for daily physical education classes in elementary schools, the hiring of 200 more physical education teachers, more before—and after—school activities and healthier food and drink in cafeterias, including the removal of carbonated beverages. In January, the governor's administration released rules that regulate the type of products that may be sold to children through school vending machines.

And in **Ohio**, in his State of the State address, Gov. Bob Taft (R) announced his plan to expand the school breakfast and lunch program to increase pupils' access to nutritious meals. The approved budget reappropriations and corrections bill, HB 530, provided additional funding to accomplish the governor's goal.

In addition, **Mississippi** Gov. Haley Barbor (R) convened the state's first “Healthy Mississippi Summit,” in June. The summit served as a launching point for the governor's *Healthy Mississippi Initiative*. The goal of the initiative is to reduce the chronic disease burden in the state by focusing on health issues of children, state employees, adults in the workplace and community and minority populations.¹¹

¹⁰ Press Release, Governor Ernie Fletcher's Communication Office, *Governor Fletcher Presents Funding for 34 Recreational Trails Grants*, (July 11, 2006).

¹¹ Center for Science in the Public Interest, *School Foods Report Card*, (June 20, 2006). Available at <http://www.cspinet.org/new/200606201.html>

One governor in particular, **Arkansas'** Mike Huckabee (R), current chairman of the National Governors Association (NGA), has spearheaded efforts in his state and nationwide to encourage state lawmakers to develop strategies and adopt policies that promote healthy behaviors. Last year, Gov. Huckabee launched *Healthy America: Wellness Where We Live, Work and Learn*, a yearlong initiative. The Healthy America Task Force, a bipartisan group comprised 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. NGA released the *Creating for Healthy States: Actions for Governors* report, which offers ideas to create "a culture of wellness." Additionally, NGA declared the week of May 1–5 *Healthy America* week.

Legislators Persistent in the Fight Against Obesity

The main focus for state lawmakers remains within the school system. The leading policy initiatives to improve the health of children include the following objectives:

- Establishing nutritional standards for foods and beverages sold in schools.
- Restricting access to and sales of competitive foods and beverages.
- Setting physical education and activity requirements.
- Educating children about nutrition and active living.
- Monitoring and reporting students' body mass index (BMI).

Lawmakers, parents, school officials and students tend to be divided on the role state lawmakers should have in setting statewide nutrition and physical education requirements for elementary, middle school and high school students. Some argue that decisions should remain with local school administrators, school boards and parents. Others maintain that the state government, which incurs a significant portion of the rising health care costs, should facilitate healthy school environments. However, the costs of such mandates are often the sticking point. Facing annual budget constraints and pressure to meet academic standards, state and local officials and school administrators and educators often express concern about legislative mandates that cut off additional sources of revenue or impose additional curricula requirements.

Despite the push back from some local governments, state legislators continue to take action on measures that improve the health environment and education of children. Of the 44 states that held a legislative session this year:

- 34 states considered health and physical education legislation;
- 31 states considered legislation that sets or recommends nutritional standards;
- 15 states considered BMI reporting legislation.

Health and Physical Education

Of the 34 states that considered health and physical education legislation this year:

- Lawmakers in **Florida, Indiana** and **Tennessee** set specific requirements for physical education classes.
- Lawmakers in four states—**Florida, Indiana, Mississippi, and Oklahoma**—adopted legislation providing guidance for the development of local school wellness policies.
- Lawmakers in **Connecticut, Florida** and **Kansas** adopted measures that encourage, not mandate, school districts or boards of education to set physical education policies.
- A measure was vetoed in **Colorado** that would have required licensure requirements for physical education teachers.

New trends in legislation identified by the Health Policy Tracking Service (HPTS) include the following initiatives:

- Bills in **California, Georgia** and **Virginia** set out to require additional licensure or educational requirements for physical education teachers or superintendents.
- Measures in **Iowa** established grant programs to provide funding to schools.
- Measures in **California, Illinois** and **Vermont** sought to remove certain physical education exemptions for students.

Nutritional Standards

Of the 31 states that considered school nutrition legislation this year:

- Lawmakers in three states—**Indiana**, **Connecticut** and **Rhode Island**—adopted legislation setting specific standards for food and/or beverage items sold on school grounds.
- Lawmakers in four states—**Florida**, **Indiana**, **Mississippi**, and **Oklahoma**—adopted legislation providing guidance for the development of local school wellness policies.
- Lawmakers in three states—**Colorado**, **Oklahoma**, and **Vermont**—adopted legislation to increase access to fresh produce in schools.
- A measure was vetoed in **Colorado** that would have set a threshold for the percentage of nutritional items made available for purchase in vending machines.

New trends in legislation identified by the HPTS include the following initiatives:

- Measures in **Arizona**, **California**, **Colorado**, **Connecticut**, **Iowa**, **Oklahoma** and **Vermont** increased access to or promoted fruit and vegetable consumption through farm-to-school or school garden programs.
- Bills in **Arizona** and **Connecticut** offered schools financial incentives for providing healthy items or adopting nutritional standards.
- Measures in **Massachusetts**, **Missouri** and **Virginia** established education requirements for certain school personnel involved in menu planning.
- **Mississippi** and **Virginia** lawmakers, who have not made this issue a priority in the past, considered measures that would have set statewide standards.

The Departments of Education in **Arizona** and **New Mexico** released their respective final rules on school nutrition, while the **Illinois** Legislature blocked the release of regulations by their state department.

BMI Reporting: To monitor childhood obesity rates and eventually assess the impact of policies targeting schools, lawmakers are turning to legislation that tracks children's and teenagers' BMI measurements. BMI legislation gained national attention in 2003 when Gov. Huckabee required **Arkansas** schools to measure each student's BMI and send health report cards to parents. **Illinois, New York, Pennsylvania, Tennessee** and **West Virginia** also are monitoring students' BMIs.

Creating Healthy, Active Communities

Although lawmakers primarily focus their efforts to address childhood obesity, HPTS is witnessing an increase in legislative activity that curbs the problem outside of classrooms.

Promotion of Farmers' Markets

To provide access to fresh produce, legislators in several states continue to support the federal WIC and Seniors Farmers' Market Nutrition Program (FMNP). This program provides recipients with coupons that allow them to purchase produce at state-certified farmers' markets. The program is primarily funded through federal dollars; however, states can appropriate general fund dollars to supplement the benefit level. For FY 2006, Congress appropriated \$19.8 million for the WIC FMNP program. For the Senior FMNP program, Congress authorized \$15 million through FY 2007. Similar to last year, most of the farmers' market legislation introduced provided additional funding for the programs. In addition, lawmakers in **Connecticut, New Mexico, New York** and **Pennsylvania** considered measures to promote the development of farmers' markets.

Support for Recreation

Increasing access to opportunities for daily physical activity has become a focus for lawmakers. This year, lawmakers in at least 16 states have considered bills to address improving access to walking, biking or recreation. Of those states, **Hawaii, Kentucky, Massachusetts, Washington** and **West Virginia** have enacted related measures ranging from appropriating funds for pedestrian walkways and bikeways to studying the public health impacts of the state's bicycling and pedestrian transportation activities.

Businesses Join in the Fight Against Obesity

In May 2006, 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 American Beverages, The Coca-Cola Company and PepsiCo, Inc. to set a new school beverage policy nationwide. Last year, the ABA announced a new voluntary school vending policy aimed at providing healthier beverages. The industry guidelines released in May are stricter than those released last year; 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 beverage industry will strive to implement the new guidelines in 75 percent of schools by the 2008–2009 school year and in all schools by the 2009–2010 school year, provided bottlers, independent distributors and school districts agree to amend existing contracts or sign new agreements.^{12, 13}

¹² William J. Clinton Foundation, School Beverage Policy (2006), available at <http://www.clintonfoundation.org/cf-pgm-hs-hk-work1.htm>.

¹³ Press Release, 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 (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>.

The reactions to this new policy have varied but have been mostly positive and adaptive. The agreement will further drive the trend to develop and promote alternatives to soft drinks (e.g. waters, fruit drinks, sports drinks). Although nutrition and health advocates have said the guidelines are a step in the right direction, they have expressed concern over sports drinks, which contain high sugar content.

Aside from the agreement with beverage distributors, the National Automatic Vending Merchandising Association launched a Web site to educate students, schools and vendor operators about nutritional alternatives in hopes of improving the nutritional content of snack items made available for purchase. The association is working with state legislators to ensure that the additional funding streams received by schools from vending contracts are protected.

In addition to a shift in food and beverage industry offerings, the Federal Trade Commission and HHS issued a report urging the food marketing industry to take specific steps to change its marketing to children to help the fight against childhood obesity.¹⁴ And in May, The Keystone Center, a nonprofit policy and dispute resolution organization, released a report, *Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, which gathered input from various stakeholders involved in food-related businesses. Because a growing segment of the population is consuming more of their meals away from their homes, the FDA sought the assistance of the Center to develop recommendations that can be used by restaurants, grocery stores and other businesses that advertise and sell full meals and ready-to-eat items to assist consumers in making better-informed nutritional decisions. Since consumer advertising and marketing is generally regulated at the federal level, state legislative activity regulating this issue has been limited.

As the retail food industry continues to make healthier options available to adults and children, state lawmakers continue to push restaurants to post nutritional information on their menus or menu boards to better inform consumers about the nutritional content of meals consumed outside the home. Although none of the introduced bills have been enacted, the mere introduction of these measures provides a public forum for debate and development of future public policy affecting the restaurant industry. Lawmakers in nine states plus the **District of Columbia** considered menu labeling legislation this year.

¹⁴ 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>.

Lawmakers also continue to introduce legislation to prohibit individuals from suing food-related businesses for damages resulting from weight gain, obesity or obesity-related conditions. To date, 23 states have laws on the books that prohibit these lawsuits from being filed. Lawmakers in 16 states considered legislation in 2006.

Workplace Wellness

Hopping on board with governments, schools, health advocates and health insurers, employers have been taking actions to emphasize the direct and indirect benefits of having healthy, fit employees. Overweight and obese employees tend to be less productive, have more absences due to illness and disability and have greater health care costs.

The **Montana** Council on Worklife Wellness hosted a conference in May to help business owners, chief executive officers, human resource directors, benefits managers, health and wellness professionals and school administrators design effective employee wellness programs. Several states including **Arkansas** and **Virginia** promote healthy behaviors and offer wellness benefits to their state employees as part of larger statewide initiatives.

In addition to employer initiatives, HPTS notes an upward trend in introduced legislation aimed at encouraging employers to provide wellness programs or benefits for their employees. As the working population spends a majority of their time in the workplace, legislators see the workplace as an effective outlet to promote healthy behaviors and to reduce and prevent obesity.

Coverage for Obesity Treatment

In response to the high prevalence of obesity and in an attempt to improve the lives of overweight individuals, both private and public health care plans have begun to cover obesity-related treatments and procedures. Earlier this year, Medicare announced that it would begin covering additional surgical procedures for morbidly obese beneficiaries.

Although the federal government does not require states to provide Medicaid benefits for obesity treatment, lawmakers in several states are taking the lead in providing treatment and incentives to lose weight. Last year, governors in **Colorado** and **Iowa** signed measures to provide some degree of treatment for overweight or obese patients. In **Michigan**, a federal waiver

has been filed that will reduce copayments for those Medicaid beneficiaries who engage in healthy behaviors. This year, lawmakers in **Massachusetts, Minnesota, Missouri, New York** and **Virginia** discussed various options. **Idaho, Kentucky, Rhode Island, South Carolina** and **West Virginia** set plans in motion to promote healthy behaviors as their respective Medicaid programs are overhauled.

On the private side, four states—**Georgia, Indiana, Maryland** and **Virginia**—require insurers to provide or offer coverage for gastric bypass surgery. This year, lawmakers in **Connecticut, Georgia, Louisiana, Missouri, New Jersey, Oklahoma, South Carolina** and **Virginia** introduced legislation addressing health insurance coverage for morbid obesity treatment. Measures in **Alaska** and **Tennessee** were carried over from 2005. **Louisiana** and **South Carolina** have adopted resolutions to study the issue.

Moving Forward

Poor nutrition and obesity play a contributing, if not a major, role in the onset, severity and exacerbation of chronic health problems. It comes as no surprise that states continue to address the issue of obesity prevention through state-sponsored initiatives and legislative action. HPTS continues to see significant legislative activity intended to improve the diets and overall health of Americans. Lawmakers across the country now have realized the severity of the problem and are continuing to put forth initiatives that improve the health of their constituents—both young and old—by working with various stakeholders to develop sound policy. HPTS anticipates that state lawmakers will continue to develop policies to promote nutrition, increase physical activity and encourage their constituents to lead healthier lives.



Councils, Commissions and Task Forces

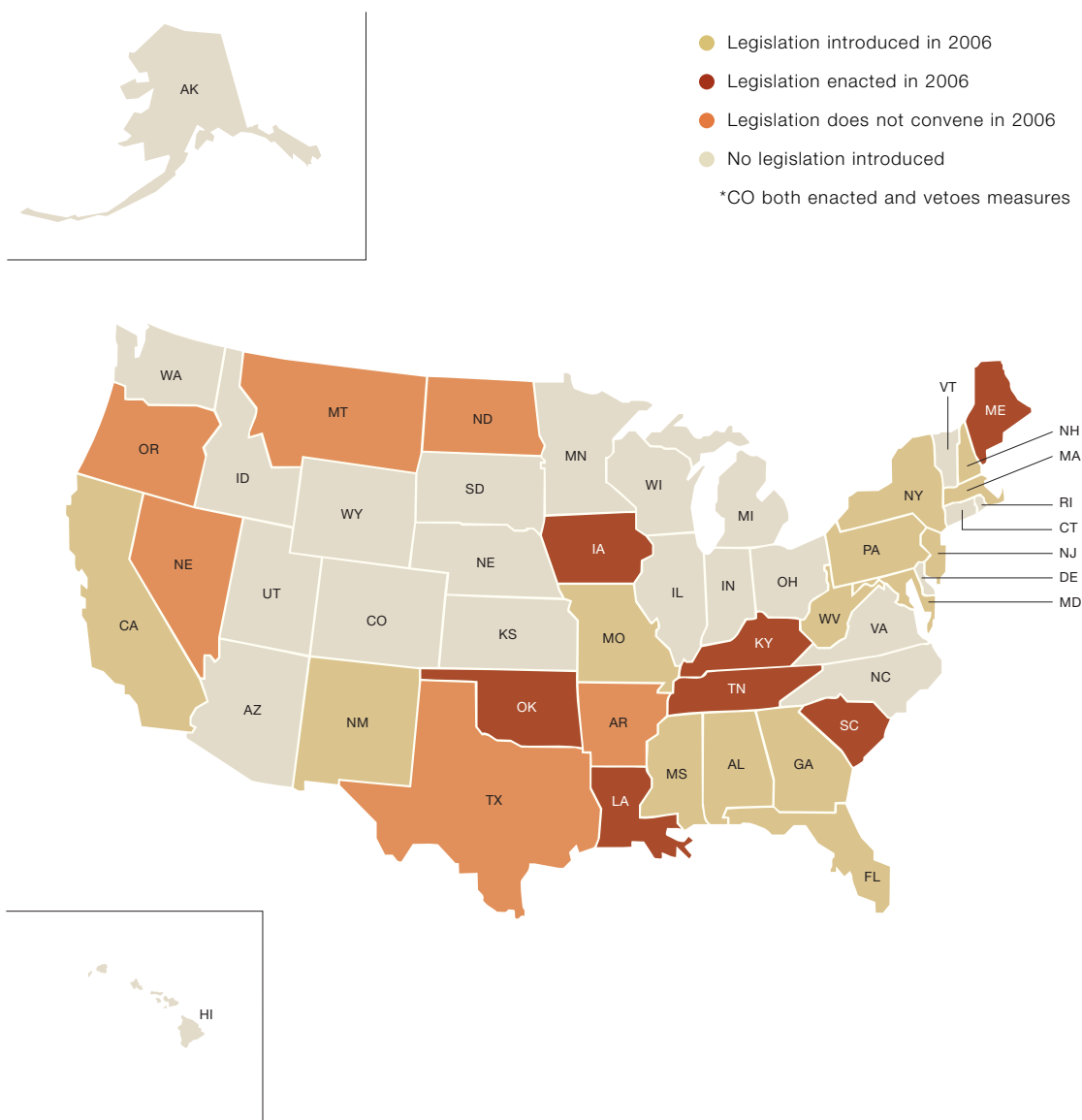
Before recommending or adopting a new policy, lawmakers often call for the establishment of a council, commission or task force to study the issue and to report findings and policy recommendations. Increasing rates of overweight and obese individuals have spurred states to evaluate contributing factors and examine how to resolve the negative trend. In 2006, 18 states have considered legislation calling for studies and policy recommendations pertaining to obesity, nutrition and physical activity. Measures in eight states have been enacted into law. The map on page 18 highlights the 2006 legislative activity.

2006 State Legislative Activity

Improving Physical Activity and Nutrition

Earlier this year, **Kentucky** Gov. Ernie Fletcher (R) enacted a resolution, S.C.R. 98, directing the Legislative Research Commission to study the economic and public health impacts of the state's bicycling and pedestrian transportation activities. The commission also will examine options for addressing the state's obesity crisis. The commission report must include an analysis of public and private programs that improve physical exercise opportunities through biking and walking, focusing on model programs that educate residents about healthy

2006 Councils, Commissions and Task Forces Legislation



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

lifestyles, are conducted at minimal cost and have a positive impact on communities. The report also must contain an analysis of bicycle safety and suggest methods to improve safety. The report must be completed by Oct. 1, 2006.

With the enactment of Kentucky HB 646, the Governor's Wellness and Physical Activity Initiative was established. The Governor's Council on Wellness and Fitness will oversee the implementation of the initiative. Among its responsibilities, the council is charged with developing a Web site that will provide state residents with access to "...useful health, lifestyle and physical activity information and tools."¹ Funding in the amount of \$1 million for FY 2007 and \$1.5 million for FY 2008 was provided in the budget.

Maine HB 1497, enacted May 1, establishes the Maine Food Policy Council. The 11-member council must develop a food policy for the state that recognizes the importance of the availability of an adequate supply of safe, wholesome and nutritious food to state residents and a strategic plan for implementing the policy. To support the implementation of the state food policy, the measure also includes the following requirements:

- Advise state lawmakers, agencies and the public on programs to increase food self-sufficiency and enhance agriculture in the state.
- Study issues of state significance relating to food production, distribution and consumption.
- Review state programs, practices and systems affecting the food supply system and make recommendations to improve the efficiency, safety and productivity of the state's food system and to increase consumer access to food.
- Coordinate collaborative relationships and efforts to ensure consistency with the state food policy.

The council must submit a report to the Legislature by December 15 every two years.

The **Oklahoma** Wellness Council, a council within the Oklahoma State Employee Benefits Council, was scheduled to sunset July 1, 2006. Enacted bill HB 2149 repealed the sunset and recreated the Wellness Council through July 1, 2012.

¹ Press Release, Governor Ernie Fletcher's Communication Office, *Governor Fletcher Signs Governor's Fitness Initiative*, (April 27, 2006).

Focus on Children

Last year, **Delaware** established a Physical Activity and Education Task Force to examine current physical activity and physical education policies and programs and to develop recommendations to improve or create high-quality physical education in the state. Its recommendations included the creation of a Statewide Health Advisory Council, as proposed by SB 289 introduced this year. The measure, enacted June 20, codifies the 17-member council and holds it responsible for providing ongoing guidance to the state Department of Education regarding current and future physical education and physical activity programs in public schools. The council will convene four times each year and sunset in 2011.

In **Iowa**, Gov. Thomas Vilsack (D) signed SB 2251, directing the departments of Education and Public Health to establish a 24-member healthy children task force. The task force will assess current policies affecting the health of children, particularly those pertaining to physical activity and nutrition, and will develop and submit policy recommendations by Jan. 1, 2007.

Oklahoma lawmakers approved HB 2655 calling for a 15-member Farm-to-School Task Force to study the barriers of implementing a Farm-to-School Program and to recommend resolutions in a report to state lawmakers by Dec. 31, 2006.

In June, **Tennessee** lawmakers enacted a carry-over measure, the “Child Nutrition and Wellness Act of 2005.” The law directs the Commissioner of Health to appoint an advisory council to advise him and the Office of Child Nutrition and Wellness on child nutrition and wellness issues. The council will meet quarterly and holds the following responsibilities:

- Advocating for the wellness of children and recommending forums, programs and initiatives to educate the public regarding child nutrition and wellness.
- Developing nutrition and physical activity standards for children.
- Gathering data on child nutrition and wellness.
- Developing a comprehensive long-term strategy to promote child nutrition and wellness in various settings, including schools, child care centers, health care facilities and community settings.

Studying Coverage for Obesity

Louisiana and **South Carolina** adopted resolutions pertaining to studying obesity treatment.

Louisiana SR 120 requests the Senate Committee on Insurance to study the feasibility of requiring insurance companies to cover surgical treatment for morbid obesity and to report its findings to the Legislature prior to the 2007 session. Similarly, S.C.R. 101 requests the state's Office of Group Benefits to conduct a second phase of ongoing study for gastric bypass surgery. The study, which began two years ago, pays for the surgery for selected eligible state employees and tracks the patients for several years to determine whether the surgery reduces obesity-related health problems and health care costs.

In South Carolina, S.C.R. 1379 requests the state's departments of Health and Human Services and Insurance to jointly study the treatment of obesity. The bill states that the study should include an analysis of short and long-term complications and mortality rates of bariatric surgeries as well as recommendations on the use of bariatric surgery as a cost-effective treatment of morbid obesity. The measure also requests the study and recommendations be submitted to the General Assembly before January 16, 2011.

Pending Legislation

In **California**, lawmakers are considering S.C.R. 73, providing for the California Task Force on Youth and Workplace Wellness to continue to promote health and fitness in schools and workplaces. The bill passed the Senate and awaits action in the House. Another resolution in California, H.C.R. 114, would urge the establishment of a Legislative Task Force on Diabetes and Obesity to study the factors contributing to the high rates of diabetes and obesity in Latinos, African-Americans, Asian Pacific Islanders and Native Americans. The measure would request the task force submit a report with recommendations for reducing the incidence of diabetes and obesity in the specified ethnic groups.

Pennsylvania HB 185 contains a provision for the establishment of an interagency coordinating council for child health and nutrition to annually review and revise the state's nutrition and activity plan to prevent obesity and related chronic diseases. The plan would include recommendations regarding physical education and nutrition guidelines for food and beverages sold in schools. The bill also calls for the Secretary of Education to establish an advisory committee to offer recommendations to the council. The bill has been passed by both chambers and was sent to the governor for approval on July 5.

TABLE

Councils: 2006 Legislative Activity

ALABAMA

AL SB 324

Under existing law every public school is required to carry out a system of physical education the character of which shall conform to the program outlined by the State Department of Education. Also under existing law elective courses in physical education are to be available to all students as determined by the local board of education. This bill would require over a specified time that each public school student in grades K to 12 inclusive participate in physical education instruction each school day or a variety of physical education activities. This bill would also create the Public School Physical Education Task Force to study and report to the Legislature and the State Board of Education regarding the implementation of the physical education requirement. The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

STATUS: 01/19/2006—Read for the first time and referred to the Senate Committee on Education.

CALIFORNIA

CA HB 1888

An Act to add Chapter 4.5 (commencing with Section 104250) to Part 1 of Division 103 of the Health and Safety Code relating to public health.

STATUS: 05/25/2006—(H) In committee: Set second hearing; Held under submission.

CA HCR 114

Relative to a Legislative Task Force on Diabetes and Obesity.

STATUS: 06/21/2006—(S) Re-referred to Committee on Health.

CA SCR 73

Relative to the California Task Force on Youth and Workplace Wellness.

STATUS: 06/29/2006—(H) From committee: Be adopted (Ayes 5 / Noes 3).

DELAWARE

DE SB 289

The purpose of the Health Advisory Council as recommended by the Physical Education Task Force created by HCR 37 of the 143rd General Assembly is to provide advice and guidance to the Department of Education (D.O.E.) regarding current and future physical education and physical activity programs in Delaware schools.

STATUS: 06/30/2006—Signed.

MEASURE
STATUS:

Enacted

Pending

Carried Over

Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

FLORIDA

FL HB 783

Wellness Program for State Employees; defines termaged-based and gender-based benefits for purposes of state group insurance program; creates Florida State Employee Wellness Council within DMS; provides for membership; provides for reimbursement of per diem and travel expenses; provides purpose and duties of council. Amends 110.123. Effective date: 07/01/2006.

STATUS: 05/05/2006—(H) Died in fiscal council link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 1324 (Ch. 2006-269).

FL SB 382

Wellness Programs for State Employees; defines termaged-based and gender-based benefits for purposes of state group insurance program; creates Florida State Employees Wellness Council within DMS; provides for membership; provides for reimbursement of per diem and travel expenses; provides purpose and duties of council. Amends 110.123. Effective date: 07/01/2006.

STATUS: 05/05/2006—(H) Died in fiscal council link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 1324 (Ch. 2006-269).

GEORGIA

GA HR 1159

Urging and requesting the Department of Community Health the Department of Human Resources and the Insurance Department to jointly undertake a study of health insurance coverage for the treatment of obesity including the compilation of data on the treatment of severe or morbid obesity through bariatric surgery.

STATUS: 02/21/2006—(H) Committee favorably reported.

IOWA

IA SB 2251

✓ An Act directing the department of education and the iowa department of public health to convene a healthy children task force and providing an effective date.

STATUS: 04/26/2006—(S) Signed by Governor. SJ 991.

KENTUCKY

KY HCR 195

Direct the Legislative Research Commission to study the feasibility of establishing a wellness program for state employees and Medicaid recipients; establish a 14 member task force; and require the task force to report its findings and recommendations to the Legislative Research Commission no later than November 1, 2006.

STATUS: 03/15/2006—(S) To Health and Welfare (S).

KY SCR 98

✓ Direct the Legislative Research Commission to study Kentucky's bicycling and pedestrian activities and options for increasing tourism related opportunities and improving public health through bicycling and pedestrian activity.

STATUS: 03/30/2006—Signed by Governor (Acts Ch. 91).

MEASURE
STATUS:

- ✓ Enacted
- ⏸ Pending
- ➡ Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

LOUISIANA

LA SR 120

A resolution to urge and request the Senate Committee on Insurance to meet and to study the feasibility of requiring insurance companies to cover surgical treatment for morbid obesity and to report its findings to the legislature prior to the beginning of the 2007 Regular Session of the Louisiana Legislature.

STATUS: 06/19/2006—(S) Enrolled Signed by the President of the Senate and sent to the Secretary of State on 06/20.

LA SCR 101

A concurrent resolution to urge and request the office of group benefits to conduct a second phase of study for gastric bypass surgery.

STATUS: 06/05/2006—(S) Sent to the Secretary of State on 6/2.

MAINE

ME HB 1497

This Bill is submitted by the Joint Standing Committee on Agriculture Conservation and Forestry pursuant to Public Law 2005 Chapter 382 Part C Section 6. It establishes the Maine Food Policy Council and charges the council with developing and implementing a strategic plan to support a food supply system for Maine. The council is directed to build on the report of the food policy working group convened by the Commissioner of Agriculture Food and Rural Resources in 2005. This bill also moves 2 sections in the Maine Revised Statutes Title 7 relating to food policy into the new subchapter on food policy proposed in this legislation.

STATUS: 05/01/2006—Signed—Public Law Chapter 614.

MARYLAND

MD HB 1418

Requiring county boards of education to provide diabetes screening tests and body mass index calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/08/2006—(H) Delegates Bozman Heller and Gilleland.

MD SB 436

Establishing the Maryland Obesity Awareness and Prevention Task Force in the Department of Health and Mental Hygiene; providing for the purpose of the Task Force; providing for the membership chair and staff of the Task Force; providing that a member of the Task Force may receive specified reimbursement as provided in the State budget; providing for the duties of the Task Force; requiring the Task Force to submit specified reports to the Governor and the General Assembly on or before specified dates; etc.

STATUS: 03/27/2006—(S) Unfavorable report by Education Health and Environmental Affairs.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MD SB 457

Requiring county boards of education to provide diabetes screening tests and body mass index calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/10/2006—(H) Favorable with Amendments Report by Ways and Means.

MASSACHUSETTS

MA SB 2373

Directs the board of education in consultation with the department of public health to establish certification requirements and criteria for food service directors and managers in public schools; regulates the sale of food and beverages in the Massachusetts public schools; excludes meals provided through the national school lunch and breakfast programs from said provisions; regulates beverage types contents and sizes; mandates the sale of fruit and non-fried vegetables; mandates the availability of nutritional information; directs said departments to review reported cases of obesity and eating disorders; directs the department of public health to establish an annual public service campaign regarding pediatric overweight; prohibits the sale of the articulated food and beverages including but not limited to beverages with added or artificial sweeteners in public schools; establishes and regulates the membership and operation of a special commission charged with analyzing childhood obesity nutrition physical activity education and wellness.

STATUS: 06/01/2006—(S) Postponed until June 29, 2006.

MISSISSIPPI

MS HB 783

An Act to creates the Mississippi council on obesity prevention and management to extend the date of repeal; and for related purposes.

STATUS: 02/28/2006—(S) Died Insurance Committee.

MS SB 2934

An Act to extend the automatic repealer on the Mississippi Council on Obesity Prevention and Management; and for related purposes.

STATUS: 01/31/2006—(S) Died Insurance Committee.

MISSOURI

MO HB 1856

To amend Chapter 192 RSMo by adding thereto one new section relating to obesity with an emergency clause.

STATUS: 03/29/2006—(H) Referred: Health Care Policy.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

NEW MEXICO

NM SB 217

An Act relating to nutrition; creating a nutrition council; providing duties; requiring studies; making an appropriation.

STATUS: 01/31/2006—(7) Senate Finance Committee-Senate Public Affairs Committee.

NEW YORK

NY HB 10221

- Establishes a task force on occupational wellness; such task force shall be within the department of health and shall consist of 13 members.

STATUS: 03/08/2006—(H) Introduced and referred to Committee on Assembly Health.

NY HB 10461

- 277 Exec L—Establishes the New York state council on food policy; authorizes the establishment of an advisory board to assist the council; enumerates the powers and duties of the council and board which include developing comprehensive coordinated state food policies.

STATUS: 03/27/2006—(H) Introduced and referred to Committee on Assembly Governmental Operations.

NY HB 11160

- 267 Pub Health L; add S95-g St Fin L—Creates the New York state governor's council on physical fitness sports and health; establishes the membership of such council; creates the New York state governor's council on physical fitness sports and health fund.

STATUS: 05/03/2006—(H) Introduced and referred to Committee on Assembly Health.

NY SB 4606

- Establishes a task force on occupational wellness; such task force shall be within the department of health and shall consist of 13 members.

STATUS: 01/04/2006—(S) Referred to Senate Health.

NY SB 7618

- An Act to amend the executive law in relation to the creation of a New York state council on food policy.

STATUS: 04/25/2006—(S) Introduced and Referred to Committee on Senate Finance.

NY SB 7854

- 267 Pub Health L; add S95-g St Fin L—Creates the New York state governor's council on physical fitness sports and health; establishes the membership of such council; creates the New York state governor's council on physical fitness sports and health fund.

STATUS: 05/04/2006—(S) Introduced and Referred to Committee on Senate Finance.

OKLAHOMA

OK HB 2149

- ✓ An Act relating to sunset; amending 74 O.S. 2001 Section 1382 which relates to the Wellness Council; re-creating the Council; and modifying termination date.

STATUS: 04/17/2006—(H) Approved by Governor 04/17/2006.

MEASURE
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

OK HB 2655

- ✓ An Act relating to agriculture; creating the Oklahoma Farm to School Program Act; providing short title; stating intent purposes and goals; recognizing need for collaboration; creating the Oklahoma Farm to School Program; designating the Oklahoma Department of Agriculture Food and Forestry as lead agency; providing for employment of a director; providing for staffing; stating duties of the director; requiring establishment of Web site; requiring a link to the Web site on certain home pages; stating purpose of the Web site; authorizing the Department to promulgate rules; providing for codification; and providing an effective date.

STATUS: 05/26/2006—(H) Approved by Governor 06/07/2006.

OK HB 2875

An Act relating to state government; transferring the powers and duties of the Oklahoma State Employees Benefits Council to the State and Education Employees Group Insurance Board; amending 74 O.S. 2001 Sections 1306 which relate to the State and Education Employees Group Insurance Act; deleting certain responsibilities of the Council; deleting references to the Council; amending 74 O.S. 2001 Sections 1363 Section 10 Chapter 439 O.S.L. 2002 1370 which relate to the Oklahoma State Employees Benefits Act; amending 74 O.S. 2001 Sections 1382, 1383 and 1384 which relate to the Wellness Program Act; transferring the Wellness Council and responsibilities related to the Council from the Oklahoma State Employees Benefits Council to the Office of Personnel Management; changing certain responsibilities relating to the Wellness Council and State Government Wellness Coordinator to the Office of Personnel Management; deleting references to the Oklahoma State Employees Benefits Council; repealing 74 O.S. 2001 Sections 1361, 1362, 1364 and 1365 which relate to the Oklahoma State Employees Benefits Act; providing for codification; providing for recodification; and providing an effective date.

STATUS: 03/22/2006—(S) Second reading referred to Retirement and Group Health.

OK HJR 1037

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to Health and Human Services.

OK HJR 1039

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to Rules.

SOUTH CAROLINA

SC SCR 1379

- ✓ Urging and requesting the South Carolina Department of Health and Human Services and the South Carolina Department of Insurance to jointly undertake a study of the treatment of obesity including the compilation of data on the treatment of obesity through bariatric surgery performed at facilities certified by the American Society for Bariatric Surgery as certified Bariatric Surgery Centers of Excellence compared to facilities not certified by the American Society for Bariatric Surgery.

STATUS: 05/18/2006—Scrivener's error corrected.

MEASURE
STATUS:

- ✓ Enacted
 — Pending
 → Carried Over
 ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

TENNESSEE

TN HB 2055

An Act to amend Tennessee Code annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 06/23/2006—Companion became Public Chapter 886.

TN SB 2038

An Act to amend Tennessee Code annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 06/23/2006—Public Chapter 886.

WEST VIRGINIA

WV SCR 9

Requesting the Joint Committee on Government and Finance direct the Legislative Oversight Commission on Health and Human Resources Accountability study the obesity epidemic in West Virginia by monitoring ongoing state activities to curtail obesity.

STATUS: 01/12/2006—To Rules.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

School Nutrition

Because of nutrition's proven impact on weight, health and academics, many lawmakers continue to focus on instilling lifelong healthy behaviors in children through encouraging or mandating improved nutrition in state public school systems. Studies show that soft drink and fat consumption among adolescents has increased since the 1970s. Advocates contend that this is due in part to an increase in the availability in schools of competitive foods and beverages, which tend to be high in fat and added sugar and low in nutrients. They stress that the availability of such products also contradicts health and nutrition education classes.¹ Studies demonstrate that the presence of à la carte foods and vending machines in schools, common venues for competitive foods and foods of minimal nutritional value (FMNV), are associated inversely with fruit and vegetable consumption.^{2,3} As students spend a great amount of time in school, advocates emphasize the important role of schools in promoting, facilitating and teaching lifelong healthy eating habits. Although the American Dietetic Association promotes a balanced healthy diet that includes eating all foods in moderation, they also advocate school nutrition integrity, defined as “a guaranteed level of performance that ensures that all foods available and consumed by children in schools are consistent with the Recommended Daily Allowances (RDA) and the Dietary Guidelines for Americans, and contribute to the development of lifelong eating habits.”¹

¹ American Dietetic Association, Local Support for Nutrition Integrity in Schools (2000), available at http://www.eatright.org/cps/rde/xchg/ada/hs.xsl/advocacy_3779_ENU_HTML.htm

² Martha Y. Kubik, Leslie A. Lytle, Peter J. Hannan, Cheryl L. Perry, Mary Story, *The Association of the School Food Environment with Dietary Behaviors of Young Adolescents*, 93(7) Am. J. Public Health, 1168-73 (2003).

³ Marie-Pierre St-Onge, Kathleen L. Keller, Steven B. Heymsfield, *Changes in Childhood Food Consumption Patterns: A Cause for Concern in Light of Increasing Body Weights*, 78 Am. J. Clin. Nutr. 1068-73 (2003).

The food and beverage industries historically have opposed state school nutrition legislation that restricts access to or the sale of certain foods and beverages, emphasizing that a healthy diet can include all foods and beverages in moderation. However, in the past year, due in part to the growing number of school nutrition regulations, some associations and companies have altered their positions and taken initiatives of their own to prevent obesity. In 2005, the American Beverage Association adopted a new voluntary school vending policy aimed at providing healthier beverages in schools.⁴ Industry leaders and local school officials maintain that school nutrition decisions should be made at the local- not state-level. Without the additional revenue generated from partnerships between food and beverage companies and schools, funding for certain school activities such as physical education, athletics, art and music classes, may be in jeopardy.

Some lawmakers argue that school nutrition is a local issue to be overseen by local school administrators, school boards and parents. Others maintain that the government, which incurs a significant portion of the rising health care costs, should intervene in the obesity crisis and facilitate healthy lifestyles, particularly in schools where children may not make nutritious food choices. Despite the controversial debate over school nutrition, HPTS has seen much federal and state activity in the past several years.

Since 2003, at least 18 states—**Arizona, Arkansas, California, Connecticut, Indiana, Kansas, Kentucky, Louisiana, Maine, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas and West Virginia**—have adopted school nutrition guidelines beyond those required by the USDA through legislative bills, executive orders, rules and regulations.

The leading policy initiatives to improve nutrition among children include the following elements:

- Establishing nutritional standards for foods and beverages sold in schools.
- Restricting access to and sales of competitive foods and beverages.
- Increasing and promoting access to fresh produce in schools.
- Developing model policies and programs.
- Establishing school wellness committees, councils or task forces.
- Encouraging state and local education officials to take action.

⁴ American Beverage Association, School Partnerships: Beverage Industry School Vending Policy (2005), available at http://www.ameribev.org/schools/vending_policy.asp.

With the June 30 deadline for school districts to comply with the requirements of the “Child Nutrition and WIC Reauthorization Act of 2004” and to submit their local school wellness policies having passed and with the new beverage industry guidelines in place, more and more school districts across the country will find themselves restricting the sales of less nutritious food and beverage items and replacing them with healthier options.

2006 State Legislative Activity

A frenzy of school nutrition legislative activity continued in the 2006 legislative sessions, with many states following trends of recent years as well as preparing to comply with the provisions of the “Child Nutrition and WIC Reauthorization Act of 2004,” which requires the establishment of local school wellness councils and policies. As of July 5, at least 31 states have introduced or carried over school nutrition legislation. Of those, at least nine states have adopted legislation, six states have passed measures through at least one legislative chamber and one state has vetoed legislation (see map on page 32).

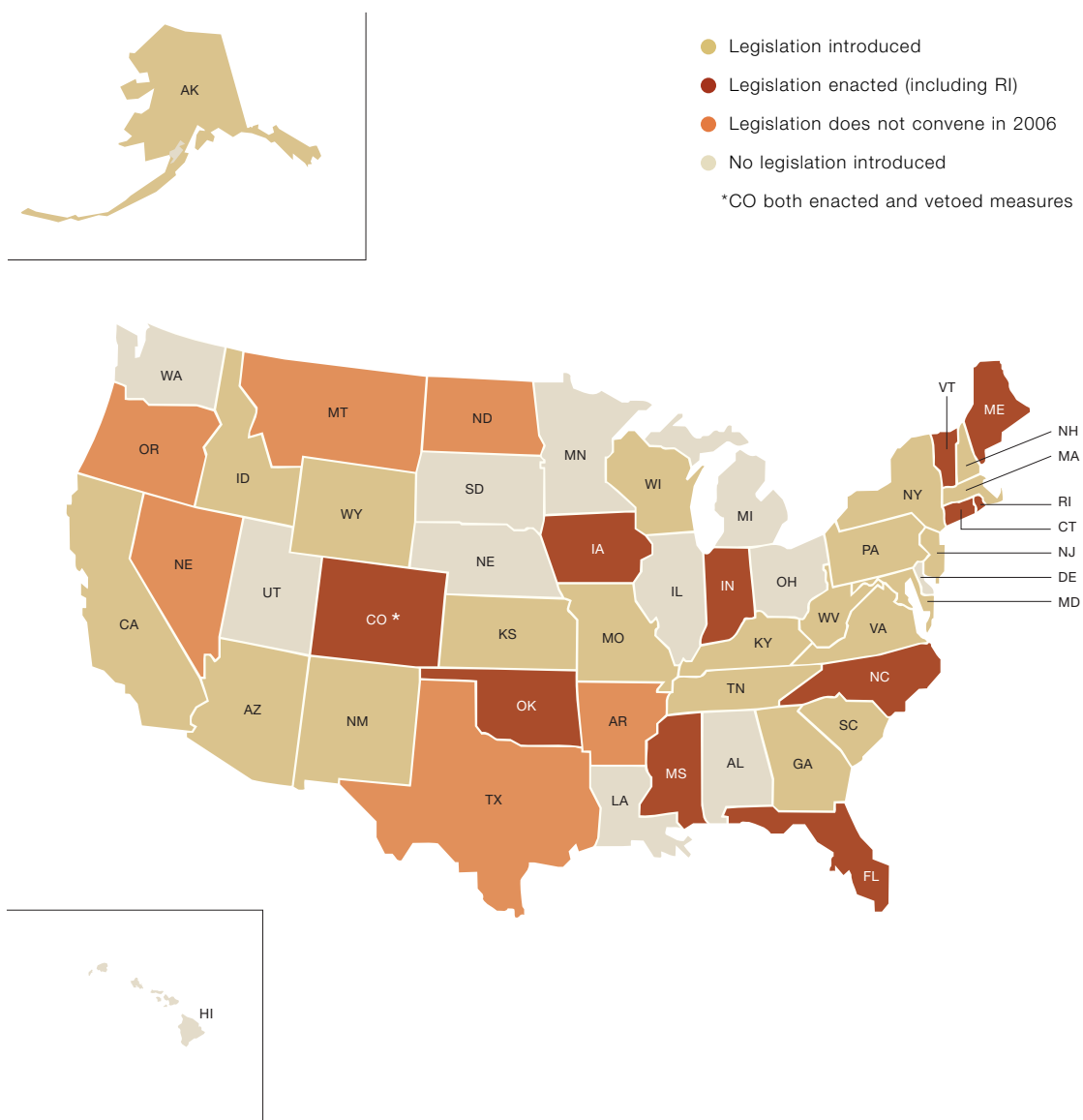
Setting Nutrition Standards

Of the 31 states, at least 23 have introduced or carried over legislation that would establish or amend school nutrition standards. The states include **Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, Pennsylvania, New York, Rhode Island, Vermont, Virginia, West Virginia** and **Wisconsin**.

Earlier this year, **Indiana** Gov. Mitch Daniels (R) signed a school wellness bill, SB 111. The measure prohibits elementary school students from having access to vending machines and requires that at least 50 percent of competitive foods and beverages sold at schools qualify as “better choice foods” and “better choice beverages,” as defined in the bill language, by Sept. 1, 2007.

Last year, **Connecticut** Gov. M. Jodi Rell (R) vetoed a controversial bill with sweeping school nutrition and physical activity mandates, citing her strong support for local control of schools and parental participation. After a yearlong debate, the governor, the state Senate and the state Department of Education (DOE) reached an agreement in February on a legislative proposal for school nutrition, SB 373. In May, Gov. Rell signed the bill, “An Act Concerning Healthy Food and Beverages in Schools.”

2006 School Nutrition Legislation



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

The new law contains the following beverage provisions, which will be among the country's most stringent because it applies the same guidelines to all school levels:

- Restricts beverage sales to students from any source (e.g., school stores, cafeterias, vending machines or fundraising activities on school premises) to only low- and nonfat milk, nondairy milk, 100 percent fruit and vegetable juices and water.
- Allows local boards of education to permit the sale of other beverages to students as long as the sale takes place at after-school or weekend school-sponsored events.

Lawmakers will continue to allow for local control over food sold in schools. However, they provide a unique financial incentive for schools to offer healthy foods. The state DOE must publish nutrition standards for food items by Aug. 1, 2006. School districts participating in the National School Lunch Program must decide and report to the DOE 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 5 cents per lunch. The law went into effect July 1, 2006.

In **Rhode Island**, Gov. Donald Carcieri (R) signed two identical bills to establish school nutrition guidelines on food and beverages, SB 2696 and HB 6968. The new law requires all state elementary, middle and junior high schools that sell or distribute beverages and snacks on school grounds to offer healthier beverages, effective Jan. 1, 2007, and healthier snacks, effective Jan. 1, 2008. The new law defines healthier beverages as the following:

- Water, including carbonated water, flavored or sweetened with 100 percent fruit juice and containing no added sweetener.
- Low- and nonfat milk and milk alternatives with no more than four grams of sugar per ounce.
- 100 percent fruit juice and fruit- and vegetable-based drinks with no less than 50 percent fruit or vegetable juice and no added sweetener.

Healthier snacks are defined as the following:

- Individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried and legumes.

- Individually sold portions of low-fat yogurt with not more than four grams of total carbohydrates (natural and added) per ounce and reduced fat or low-fat cheese packaged for individual sale.
- Individually sold enriched grain products or whole grain food items that contain no more than 30 percent of total calories from fat, no more than 10 percent of total calories from saturated fat and no more than seven grams of total sugar per ounce.

The standards will not apply to items sold by students at least one hour after the end of the school day or off school grounds or items sold during a school-sponsored activity after school.

Among its many provisions, **Pennsylvania** HB 185 would impose restrictions on competitive food and beverage contracts and require every local education agency that participates in the National School Lunch Program to review the nutritional value of and adopt nutritional guidelines for all foods and beverages available during the school day. HB 185 passed both chambers and the two chambers agreed upon final bill language in conference committee. The bill was sent to Gov. Edward Rendell (D) on July 5 for his approval.

The **California** Senate continues to consider HB 469, a bill to require the state DOE to maintain the existing nutritional guidelines for all schools and to add guidelines for sugar and sodium. Meanwhile, a bill to codify the **New Jersey** Department of Agriculture's model school nutrition policy, SB 1218, passed the Senate and remains in the House for further consideration.

Lawmakers in other states attempted, but did not succeed, in passing school nutrition guidelines. Current law in **Colorado** encourages school districts to ensure that at least 50 percent of items available for sale in school vending machines meet acceptable nutritional standards. HB 1056 would have mandated the 50 percent threshold for vending machine items. However, Gov. Bill Owens (R) vetoed the bill, saying, "Though I am in favor of efforts to improve the physical and nutritional lifestyles of Colorado's children, I cannot support legislation that micromanages school districts and their policies. Currently 12 percent of school districts have already voluntarily adopted those recommendations. As current contracts for vending machine contents expire, I trust that school boards will continue to provide increased healthy options to students. It is, however, a decision that is best left to local school districts to make."

As introduced, two **Maryland** bills, HB 1418 and SB 457, would have established nutritional standards. Lawmakers, however, determined that it was in the best interest of the state to spend another year studying the obesity issue and amended the bills to establish a panel to develop obesity prevention and awareness recommendations targeting students and parents.⁵ Although each bill passed both chambers, the chambers were unable to concur on a final bill version before the Legislature adjourned.

Last year, **Arizona** lawmakers passed a law prohibiting FMNV and sugared and carbonated beverages from being sold at elementary, middle and junior high schools. This year, Rep. Mark Anderson (R) and State Superintendent Tom Horne pushed for a bill, HB 2557, that would have made the standards mandatory for high schools. However, the bill received strong opposition. Despite amending it to only require the state DOE to develop separate standards for high schools and to establish a pilot program to provide financial incentives for the first 50 high schools to adopt the standards, Rep. Anderson was unable to garner enough support this session.⁶

The **Virginia** Legislature, which has been reluctant to make such decisions at a state level, continued to 2007 two identical bills that would have established school nutrition guidelines.

Developing Local Wellness Policies

As the federal “Child Nutrition and WIC Reauthorization Act of 2004” requires local school wellness policies to be in place by the beginning of the 2006-2007 school year, many states have considered legislation in the past two years to help guide school districts in their efforts to comply. Some states have 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**—have introduced legislation to assist or set requirements for school districts in establishing wellness councils and policies, which should include goals for nutrition and nutrition education. The table on page 36 details the bills that have passed at least one chamber.

Establishing Committees, Councils and Task Forces

Instead of mandating school nutrition standards, several states have considered legislation to appoint statewide or local committees, councils or task forces to study the issues and formulate recommendations. This year, at least 10 states—**California, Iowa, Maryland, Massachusetts, Missouri, New Hampshire, New Mexico, Oklahoma, Pennsylvania** and **Tennessee**—introduced or carried over





⁵ Kristen Wyatt, *Maryland Lawmakers Reject Plans to Weigh Schoolchildren*, THE ASSOCIATED PRESS, March 29, 2006.

⁶ Anne Ryman, *High school junk-food ban in the trash*, THE ARIZONA REPUBLIC, Feb. 23, 2006.

TABLE


2006 Legislation to Develop Local School Wellness Policies

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

FLORIDA

FL SB 772


-  Requires each school district to submit to the Department of Education (DOE) a copy of its school wellness policy and its physical education policy by Sept. 1, 2006.

Requires the DOE to post Web site links to each district's policies by Dec. 1, 2006.

Requires the DOE to provide Web site links to examples of school wellness policies.

STATUS: 06/26/06—Signed by governor.


FL SB 2602

-  Identical to SB 772 in regard to school wellness requirements.

STATUS: 05/05/06—Defeated/died with adjournment of the legislature.

GEORGIA


FL SB 474

-  Would have called for each local board of education to establish a school health advisory council to develop, implement and monitor a health, physical education and nutrition policy.

STATUS: 03/30/06—Defeated/died with adjournment of legislature.

INDIANA

IN SB 111


-  Requires each school board to establish a coordinated school advisory council to develop a local wellness policy that complies with federal requirements.

Directs the DOE to provide information concerning health, nutrition and physical activity to the councils.

STATUS: 03/15/06—Signed by governor.

MISSOURI

IN HB 319

-  Directs local school districts to establish local school health councils and wellness policies in accordance with the federal requirements.

STATUS: 03/15/06—Signed by governor.

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

OKLAHOMA

OK SB 1459

- ✓ Requires 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.

04/24/06—Signed by governor.

PENNSYLVANIA

PA HB 185

- ⊖ Would require each local education agency to establish a local wellness policy by June 30, 2006.
- Would establish 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 disease. The plan must include recommendations regarding local wellness policies.
- Would establish local advisory health councils to provide recommendations on the development of local wellness policies.

07/05/06-Sent to the governor.

MEASURE
STATUS:

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

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

such legislation. For further information on state activity, please refer to the Councils, Commissions and Task Forces chapter.

Creating Model Policies and Programs

Another policy trend of recent years is the development of model policies and programs for state and local education officials to use as guidelines in developing their own initiatives. This year, **Florida, Georgia, Iowa** and **New Hampshire** introduced such measures; however, none of the measures were adopted. The **New Hampshire** bill, SB 290, would have charged the commissioners of education and health and human services with developing a model school fitness and nutrition policy; however, the bill was defeated in the Senate. The measures in **Florida, Georgia** and **Iowa** died upon adjournment.

Increasing Access to Fresh Produce

Becoming a bigger trend in 2006 compared to recent years are bills that increase or promote access to fresh fruits and vegetables in schools, rather than restricting access to certain foods. At least seven states have introduced related legislation, including **Arizona, California, Colorado, Connecticut, Iowa, Oklahoma** and **Vermont**. Colorado Gov. Bill Owens (R) signed a bill in May to implement a pilot program to increase students' access to fresh fruits and vegetables in participating schools. Vermont and Oklahoma lawmakers enacted bills that create farm-to-school programs to support farms and to promote healthy eating and nutrition education in schools. The table on page 39 highlights related legislation in 2006.

Promoting School Nutrition

Rather than mandating action, lawmakers in several states—**Connecticut, Florida, Hawaii, Massachusetts** and **New Hampshire**—introduced legislation to encourage local or state education officials to establish policies or promote school nutrition.

As part of enacted **Connecticut** bill SB 373, instead of mandating schools to offer healthy foods, the state will provide a financial incentive for school districts that choose to offer only food items that meet the state DOE's nutrition guidelines.

Florida lawmakers approved HR 9095, designating the 2006-2007 school year as "Healthy School Lunch Year." The bill urges all school districts and parents of schoolchildren to emphasize the importance of and provide daily diets consisting of fruits, vegetables, whole grains and legumes.

TABLE

2006 Legislation to Increase Access to Fresh Produce

ARIZONA

HB 2565

Would have established an instructional school garden program.

STATUS: 06/21/06—Defeated/died with adjournment of the legislature.

CALIFORNIA

HB 1381

Would amend the law on the Instructional School Gardens Program.

STATUS: 06/26/06—Re-referred to Senate Committee on Education.

HB 2121

Would encourage statewide implementation of farm-to-school programs.

STATUS: 05/25/06—In House Committee.

COLORADO

SB 127

Creates a pilot program to make free fruits and vegetables available to students throughout the school day in participating schools.

STATUS: 05/25/06—Signed by Governor.

CONNECTICUT

SB 375

Would have established farm-to-school programs within the departments of Education and Agriculture
Would have created the “Connecticut-Grown for Connecticut Kids Week.”

STATUS: 05/03/06—Defeated/died with adjournment of the legislature.

IOWA

HB 2061

Would have established a fresh fruits and vegetables pilot program for schools.

STATUS: 05/04/06—Defeated/died with adjournment of the legislature.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

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

OKLAHOMA

HB 2655

- ✓ Establishes the “Oklahoma Farm-to-School Program Act.”

STATUS: 05/26/06—Signed by Governor.

SB 1515

- ✗ Identical to OK HB 2655.

STATUS: 05/26/06—Defeated/died with adjournment of the legislature.

VERMONT

HB 456

- ✓ Establishes a mini-grant program for schools to develop farm-to-school connections and to teach nutrition education.

STATUS: 05/15/06—Signed by Governor.

SB 272

- ✗ Would have awarded grants to schools to develop farm-to-school connections and to teach nutrition education.

Would have provided incentives to increase the use of locally grown foods in public schools and state agencies.

STATUS: 05/11/06—Defeated/died with adjournment of the legislature.

MEASURE
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

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

Other School Nutrition Legislation

This year, at least 14 states—**Alaska, California, Connecticut, Florida, Hawaii, Iowa, Maryland, Massachusetts, Missouri, New Mexico, Oklahoma, Rhode Island, Virginia** and **Wyoming**—have introduced or carried over legislation that does not fit into the specific sub-topics.

Iowa lawmakers have enacted a bill that establishes a nutrition and physical activity community obesity prevention grant program. SB 2124 will strive to increase fruit and vegetable consumption and physical activity among elementary schoolchildren. The Department of Public Health will award grants to six communities in each of six regions; however, the grant program is contingent on funding.

In **Oklahoma**, Gov. Brad Henry (D) signed SB 1459, requiring the state Education and Health departments 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 and preventing diet-related chronic diseases.

Similarly, two bills in **Florida**, SB 772 and SB 2602, proposed that the state DOE provide Web site links to wellness information. The links would include information regarding classroom instruction on exercise, healthful eating and tobacco use and exposure; the components of the coordinated school health program; the core measures for school health and wellness; nutritional content of foods and beverages; examples of school wellness policies; and examples of wellness classes for teachers and school staff. Gov. Jeb Bush (R) enacted SB 772 June 26. SB 2602 passed the Senate, but it died in the House.

California measure HB 569 would require nutritional content information to be provided in schools. The bill has passed the House and awaits further action in Senate committees.

Two identical and innovative bills in **Virginia**, HB 1593 and SB 206, that would have required all superintendents to receive instruction on the causes, consequences, prevention and reduction of childhood obesity were continued to 2007.

Rules and Regulations

In addition to legislative initiatives, **Arizona's** and **New Mexico's** departments of Education finalized their school nutrition rules, while the **Illinois** Legislature blocked the state Board of Education's adopted rules. In accordance with the law passed last year, the **Arizona** DOE released the finalized version of "The Arizona Nutrition Standards," which include restrictions on the fat, sugar and caloric content of foods; beverages available for sale; and maximum portion sizes for food and beverage items.

New Mexico Gov. Bill Richardson (D) approved the final version of school nutrition and wellness rules, proposed by himself and the Public Education Department as part of his "Healthy Kids" initiative. The final nutrition rules prohibit food vending machines in elementary schools, set strict nutritional content standards for food vending machines and fundraisers in middle and high schools, limit à la carte food items and establish stringent beverage regulations for all school levels.

Despite a defeated proposal in the 2004 legislative session, **Illinois** Gov. Rod Blagojevich (D) renewed his efforts in late 2005 to restrict the sale of unhealthy foods and beverages in schools by urging the state Board of Education to take action. In March, the board adopted rules to ban junk food and soft drinks during the school day in elementary and middle schools effective for the 2006-2007 school year. However, upon receiving notice of the adopted rules, the state's Joint Committee on Administrative Rules took the unusual action of blocking the plan. The legislative committee explained that they support the proposal but that the rules should address the nutrition of cafeteria items and meals, not just that of competitive foods and beverages. The board hopes to revise and adopt a new proposal in time for the 2006-2007 school year.^{7,8}

Meanwhile, in **South Carolina**, the Legislature considered H.J.R. 5023, a bill to approve the state Board of Education's proposed regulations relating to nutrition standards for elementary schools. The resolution passed the House, but it died in the Senate upon adjournment.





⁷ The Associated Press, Legislators Block Illinois Junk Food Ban from Taking Effect, THE WASHINGTON POST, April 11, 2006.

⁸ Press Release, Illinois State Board of Education, ISBE Adopts Gov. Blagojevich's Proposal to Ban Junk Food in Illinois Elementary and Middle Schools (Mar. 16, 2006), available at <http://www.isbe.net/news/2006/mar16a.htm>.

TABLE

School Nutrition: 2006 Legislative Activity

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

ARKANSAS

AK SB 162

An Act relating to monitoring and reporting of student discipline and safety of student health pertaining to height nutrition and physical activity of the percentage of the legislative body with a body mass index that exceeds 25.0 and of state capitol vending machine profits; requiring schools to report school health status and policy the percentage of students that are overweight and at risk of being overweight and profits from vending machines; and requiring the evaluation of health education programs on the basis of health reports and screening.

STATUS: 03/01/2006. (S) Bill hearing canceled.

AK SB 199

An Act relating to public school funding for a prohibition on the sale of food and beverages of minimal nutritional value in schools and for placing restrictions on the use of vending machines in public schools; and providing for an effective date.

STATUS: 03/01/2006. (S) Minute (Health Education and Social Services).

ARIZONA

AZ HB 2557

An Act amending Section 15-242 Arizona Revised Statutes; relating to the DOE.

STATUS: 01/31/2006. Second read.

AZ HB 2565

An Act amending Title 3 Chapter 1 Article 1 Arizona Revised Statutes by adding section 3-109.03; relating to the Department of Agriculture.

STATUS: 01/23/2006. Second read.

CALIFORNIA

CA HB 469

An Act to add Section 14109.8 to the Welfare and Institutions Code relating to Medi-Cal. Medi-Cal: supportive housing.

STATUS: 06/29/2006. (S) From committee: do pass and re-refer to committee on appropriations re-referred. (Ayes 10 / Noes 0)


CA HB 569

An Act to add Section 49550.2 to the Education Code relating to school meals and declaring the urgency thereof to take effect immediately.

STATUS: 06/28/2006. (S) Re-referred to committee on education.


Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

CA HB 1381

-  An Act to amend Section 35400 of and to add and repeal Chapter 5 (commencing with Section 35900) of Part 21 of the Education Code relating to school district governance.

STATUS: 06/26/2006. (S) From committee chair with author's amendments: amend and re-refer to committee. Read second time amended and re-referred to committee on education.

CA HB 2121

-  An Act to add Chapter 2.5 (commencing with Section 104700) to Part 3 of Division 103 of the Health and Safety Code relating to child nutrition.

STATUS: 05/25/2006. (H) In committee: set second hearing. Held under submission.


CA SCR 73

-  Relative to the California Task Force on Youth and Workplace Wellness.

STATUS: 06/29/2006. (H) From committee: be adopted. (Ayes 5 / Noes 3)


COLORADO

CO HB 1056

-  Concerning the provision of health nutrition alternatives in public schools.

STATUS: 04/11/2006. Governor action—vetoed.

CO SB 127

-  Creates a program to make free fruits and vegetables available to students in public schools (“program”). Requires that a certain percentage of the public schools participating in the program are schools that are eligible for free or reduced-cost lunch under the “National School Lunch Act.” Sets requirements with regard to the application process for schools that wish to participate in the program. Requires that Colorado produce be used in the program to the maximum extent practicable. Requires the DOE to use a portion of the funds that may be appropriated for school breakfast programs to implement the program.

STATUS: 05/25/2006. Governor action—signed.


CONNECTICUT

CT SB 202

To establish a pilot program to provide in-classroom school breakfast and to require severe need schools with grades eight or under to participate in the existing school breakfast program.

STATUS: 05/03/2006. Senate recommitted to children.

CT SB 373

-  An Act concerning healthy food and beverages in schools.





STATUS: 05/19/2006. Signed by the Governor.

CT SB 375

To establish farm to school programs within the departments of Education and Agriculture to facilitate and promote the purchase of Connecticut-grown products by schools from Connecticut farmers and to establish the Connecticut-Grown for Connecticut Kids Week to promote Connecticut agriculture and foods to children through school meals and classroom programs at farms farmers’ markets and other locations in the community.

STATUS: 05/01/2006. Senate recommitted to education.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

CT SB 381

To limit the distribution of unhealthy beverages and encourage the distribution of healthy foods and beverages to students in schools and to make minor changes to the school lunch program.

STATUS: 03/31/2006. Appropriations committee motion failed. JF

FLORIDA

FL HB 629

School Food Service Program/Fructose; requires district school board plans to eliminate sale or use of products containing high-fructose corn syrup from school food service programs and on school grounds; requires DOE approval of plans monitoring of plan implementation and reporting. Amends 1006.06. Effective Date: Upon becoming law.

STATUS: 05/05/2006. (H) Died in Committee on Health Care General (HFC).

FL HB 679

Schools/Health-Related Education; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; requires DOE to provide Web site links to certain resources and prescribes types of info. Those resources must provide; encourages said districts to provide physical education for specified amount of time; requires schools to annually provide certain information to students' parents and guardians etc. Amends FS. Effective Date: 07/01/2006.

STATUS: 05/05/2006. (H) Died on calendar link/identical/similar/compare passed refer to committee substitute/committee substitute/sb 772 (ch. 2006-301).

FL HB 7203

Wellness Programs; requires Department of Health to collaborate with other state agencies in developing policies and strategies to prevent and treat obesity which shall be incorporated into agency programs; requires dept. to advise health care practitioners re morbidity mortality and costs associated with condition of being overweight or obese; creates Florida State Employee Wellness Council within DMS; provides purpose and duties of council etc. Amends 381.0054 110.123. Effective Date: 07/01/2006.

STATUS: 05/04/2006. (H) Substituted committee substitute/committee substitute/sb 1324; laid on table link/identical/similar/compare passed refer to committee substitute/committee substitute/sb 1324 (ch. 2006-269)-House Journal (H.J.) 01245.

FL HR 9095

Healthy School Lunch Year; designates the 2006-2007 school year as "Healthy School Lunch Year" in Florida.

STATUS: 04/25/2006. (H) Placed on ceremonial resolutions calendar—publication only; read second time—H.J. 00626; adopted—H.J. 00627.

FL SB 772

Schools; clarifies applicability of salary formula and certification programs to elected district school superintendents; provides that students who have attained 16 years of age and have not graduated are subject to compulsory school attendance under certain circumstances; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; amends "School Health Services Act" etc. Amends FS. Effective Date: 07/01/2006.

STATUS: 06/26/2006. Approved by Governor; Chapter No. 2006-301.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

FL SB 2414

School Food Service Program/Fructose; requires district school board plans to eliminate sale or use of products containing high-fructose corn syrup from school food service programs and on school grounds; requires DOE approval of plans monitoring of plan implementation and reporting. Amends 1006.06. Effective Date: Upon becoming law.

STATUS: 05/01/2006. (S) Withdrawn from education; health care; education appropriations; withdrawn from further consideration.

FL SB 2602

Schools/Health-related Education; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; requires DOE to provide Web site links to certain resources and prescribes types of info. Those resources must provide; encourages said districts to provide physical education for specified amount of time; requires schools to annually provide certain information to students' parents and guardians etc. Amends FS. Effective Date: 07/01/2006.

STATUS: 05/05/2006. (H) Died in messages link/identical/similar/compare passed refer to committee substitute/committee substitute/sb 772 (ch. 2006-301).

GEORGIA

GA HB 967

To amend Article 4A of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to community involvement in education so as to provide for development of a wellness plan for each school by the school council; to provide for reporting; to amend Part 3 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to health of students so as to require implementation of a wellness plan for each school; to repeal conflicting laws; and for other purposes.

STATUS: 01/12/2006. (H) Second readers.

GA SB 474

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to elementary and secondary education so as to establish school health advisory councils to serve as advisory bodies to local boards of education on health physical education and nutrition policy; to provide for a short title; to provide certain requirements for physical education instruction for students in kindergarten and grades one through eight; to encourage a wide range of supplemental health physical activity and nutrition programs that may be provided on school property beyond the confines of the traditional school day; to require local boards of education to adopt and implement a coordinated school health program; to provide for a state office to promote student health and physical fitness; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

STATUS: 02/28/2006. (H) Second readers.





HAWAII

HI HB 377

Establishes public school nutrition standards and food service manager nutrition training requirements. Requires the DOE to encourage schools to provide culturally appropriate nutrition education and farm-to-table education programs. (HB377 HD1)

STATUS: 12/02/2005. (D) Carried over to 2006 regular session.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

HI SB 493

Establishes public school nutrition standards and food service manager nutrition training requirements. Requires the DOE to encourage schools to provide culturally appropriate nutrition education and farm-to-table education programs.

STATUS: 12/02/2005. (D) Carried over to 2006 regular session.

IDAHO

ID HB 681

Relating to public schools; Amending Chapter 1 Title 33 Idaho Code by the addition of a new section 33-131 Idaho Code to restrict vending machines and vending machine products in public schools to define terms and to limit application.

STATUS: 02/15/2006. (H) Reported printed—to education.

INDIANA

IN HB 1167

Requires school boards to establish a coordinated school health advisory council to develop a local wellness policy that complies with certain federal requirements. Requires the DOE to provide information concerning health nutrition and physical activity. Establishes requirements applying to food and beverage items that are available for sale to students outside the federal school meal programs including a requirement that a certain percentage of the food and beverage items qualify as better choices. Provides that the requirements do not apply after school hours or to fundraisers. Requires daily physical activity for elementary school students in public schools with certain exceptions. Allows a school to continue a vending machine contract in existence before the passage of this bill. (The introduced version of this bill was prepared by the health finance commission.)

STATUS: 01/09/2006. (H) First reading: referred to committee on public health.

IN SB 111

Lowens the percentage in the definition of qualifying school building; from 25 percent to 15 percent beginning July 1, 2007 for purposes of the school breakfast and lunch programs. Requires school boards to establish a coordinated school health advisory council to develop a local wellness policy that complies with certain federal requirements. Requires the DOE to provide information concerning health nutrition and physical activity. Establishes requirements applying to food and beverage items that are available for sale to students outside the federal school meal programs including a requirement that a certain percentage of the food and beverage items qualify as better choices. Provides that the requirements do not apply after school hours or to fundraisers. Requires daily physical activity for elementary school students in public schools with certain exceptions. Allows a school to continue a vending machine contract in existence before the passage of this bill. (The introduced version of this bill was prepared by the health finance commission.)

STATUS: 03/15/2006. (S) Signed by the Governor.

IN SB 358

Establishes minimum requirements for the beverages that are offered in vending machines in public schools.

STATUS: 01/10/2006. (S) First reading: referred to committee on commerce and transportation.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

IOWA

IA HB 2061

This Bill establishes a fresh fruits and vegetables pilot program for schools to be administered by the DOE and appropriates \$1.4 million to the department for the program. The department is directed to encourage public school districts to provide fruits and vegetables to students to supplement other fruits and vegetables that are available to students and to promote the consumption of fresh fruits and vegetables by schoolage children. Fruits and vegetables provided under the program are to be free of charge to a student and provided during the school day but not during regularly scheduled lunch periods. School districts and charter schools may apply to the department for reimbursement of 10 cents per meal to supplement but not supplant a school breakfast program. To be eligible for the pilot program a school district or charter school must provide one to two servings of nutritious fruits or vegetables or both at breakfast and give priority to serving fresh fruits and vegetables; spend at least 90 percent of the funding received for the direct purchase of nutritious fruits and vegetables; not spend any of the funding for the purchase of juice; and provide data for evaluation of the program.

STATUS: 01/17/2006. (H) Subcommittee Chambers Bukta and Dolecheck. H.J. 80.

IA HB 2321

This Bill establishes a nutrition and physical activity community obesity prevention grant program in the event that a sufficient amount of funding for the program is received by the Iowa department of public health. The bill specifies that the goal of the program shall be to expand an existing community intervention plan for preventing obesity with nutrition and physical activity approved by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. The bill states that the program's purpose shall be to increase the physical activity and fruit and vegetable consumption of targeted youth of elementary school age with a long-term objective of developing a model program that will support and sustain such healthy behavior and incorporate 60 minutes of physical activity per day for replication by other communities. The bill provides that the department shall distribute the grants on a competitive basis to six communities on a regional basis who are not currently participating in the existing intervention plan and shall provide technical assistance.

STATUS: 03/14/2006. (H) Explanation of vote. H.J. 668.

IA SB 2124

An Act providing for the establishment of a nutrition and physical activity community obesity prevention grant program and providing a contingent effective date.

STATUS: 03/21/2006. (S) Signed by Governor. Senate Journal (S.J.) 620.

IA SB 2190

This Bill directs the DOE in cooperation with the Iowa Department of Public Health to convene a healthy kids task force to study and recommend measures to reduce the level of obesity in Iowa's student population. The DOE in cooperation with the Iowa Department of Public Health is to provide staffing and administrative support to the task force. The task force is directed to study the current level of health nutrition and physical fitness prevalent among students and to develop a model policy regarding access to nutritious foods opportunities for physical activity and accurate education related to these topics. The policy is to include a minimum standard for the nutritional content of foods and beverages sold or provided throughout the school day or sold in competition with the federal school food programs. The task force must submit the model policy and its findings and recommendations to the Governor and the general assembly by July 1, 2008 and the DOE must post the model policy on its Web site by Aug. 1, 2008.

STATUS: 02/15/2006. (S) Amendment S-5006 filed. S.J. 281.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

IA SB 2251

An Act directing the DOE and the Iowa Department of Public Health to convene a healthy children task force and providing an effective date.

STATUS: 04/26/2006. (S) Signed by Governor. S.J. 991.

KANSAS**KS HB 2738**

An Act concerning schools; relating to healthy food choices in vending machines.

STATUS: 01/27/2006. (H) Referred to Health and Human Services. H.J. 1135

KS HB 2870

An Act relating to schools; relating to nutritional food in school.

STATUS: 02/10/2006. (H) Referred to Health and Human Services. H.J. 1198

KENTUCKY**KY HB 252**

Amend KRS 158.854 to prohibit vending machines used for the sale of competitive foods or beverages in public schools; require the General Assembly to appropriate funds annually to replace revenue lost to schools; require the Kentucky DOE to calculate the amount to be distributed to schools based on the average annual revenue generated by vending machine sales from the 2002-2003, 2003-2004 and 2004-2005 school years; make an annual appropriation of \$5,200,000 for fiscal years 2006-2007 and 2007-2008; establish the means by which funds shall be allocated to schools if appropriated funds are insufficient.

STATUS: 01/10/2006. (H) Posted in committee.

MARYLAND**MD HB 1418**

Requiring county boards of education to provide diabetes screening tests and body mass index calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/08/2006. (H) Delegates Bozman Heller and Gilleland.

MD SB 436

Establishing the Maryland Obesity Awareness and Prevention Task Force in the Department of Health and Mental Hygiene; providing for the purpose of the Task Force; providing for the membership chair and staff of the Task Force; providing that a member of the Task Force may receive specified reimbursement as provided in the State budget; providing for the duties of the Task Force; requiring the Task Force to submit specified reports to the Governor and the General Assembly on or before specified dates; etc.

STATUS: 03/27/2006. (S) Unfavorable report by Education Health and Environmental Affairs.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MD SB 457

Requiring county boards of education to provide diabetes screening tests and body mass index calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/10/2006. (H) Favorable with Amendments Report by Ways and Means.

MASSACHUSETTS

MA HB 4636

Relative to requiring school districts to convene child nutrition and physical activity advisory committees.

STATUS: 04/04/2006. (S) Senate concurred in committee referral.

MA SB 107

An Act promoting healthy alternatives in public school food programs.

STATUS: 04/03/2006. (H) House concurred in committee referral.

MA SB 2373

Moore: Directs the Department of Public Health in consultation with the DOE to establish regulations and guidelines relative to the training of school nurses in behavioral health and treatment for eating disorders continuing professional education guidelines for said nurses and guidelines for referral programs for children in need of outside medical services; directs the board of education in consultation with the Department of Public Health to establish certification requirements and criteria for food service directors and managers in public schools; regulates the sale of food and beverages in public schools; excludes meals provided through the national school lunch and breakfast programs from said provisions; mandates the sale of fruit and non-fried vegetables; mandates the availability of nutritional information; directs said departments to review reported cases of obesity and eating disorders; directs the Department of Public Health to establish an annual public service campaign regarding pediatric overweight; establishes a special commission charged with analyzing childhood obesity nutrition, physical activity education and wellness.

STATUS: 06/01/2006. (S) Postponed until June 29, 2006.

MISSISSIPPI

MS HB 297

An Act to require that in kindergarten through grade 12 schools with vending machines. Only milk, water, 100% natural juices, fresh or dried fruits and vegetables and whole-grain snacks may be sold in those machines; and for related purposes.

STATUS: 01/31/2006. (H) Died Insurance Committee.

MS HB 319

An Act to direct local school districts to establish local school health councils by November 1, 2006 in conformity with federal requirements; to provide that this section does not prohibit sales of food through school fund-raisers held off the school campus; and for related purposes.

STATUS: 03/15/2006. Approved by Governor.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MS HB 941

An Act to limit the products that may be sold through certain vending machines on public school campuses to milk, water, 100% natural juices, fresh or dried fruits and vegetables and whole-grain snacks; to exempt school districts under contract for vending services from such requirements until the date the vending contract expires; and for related purposes.

STATUS: 01/31/2006. (H) Died Insurance Committee.

MS SB 2152

An Act to require that in kindergarten through grade 12 schools with vending machines. Only milk, water, 100% natural juices, fresh or dried fruits, and vegetables and whole-grain snacks may be sold in those machines; to direct the state board of education to promulgate rules that delineate a nutrition integrity policy for public schools; to direct the state DOE to monitor school compliance and submit reports to the legislature; and for related purposes.

STATUS: 01/31/2006. (S) Died Insurance Committee.

MS SB 2753

An Act to direct the state board of education to promulgate rules that delineate a nutrition integrity policy for public schools; to specify that competitive foods shall not be available in elementary or middle schools until one-half hour after the last lunch period of each day; to direct the state DOE to monitor school compliance and submit reports to the legislature; and for related purposes.

STATUS: 01/31/2006. (S) Died Insurance Committee.

MISSOURI

MO HB 1417

To amend Chapter 167 RSMo by adding thereto one new section relating to the healthy drinks for Healthy Children Act.

STATUS: 05/12/2006. (H) Referred: Elementary and Secondary Education.

MO HB 1829

To amend Chapter 168 RSMo by adding thereto one new section relating to school food services.

STATUS: 05/12/2006. (H) Referred: Elementary and Secondary Education.

MO HB 1852

To repeal section 161.102 RSMo and to enact in lieu thereof one new section relating to the coordination of school health programs.

STATUS: 03/29/2006. (H) Referred: Elementary and Secondary Education.

MO HB 1856

To amend Chapter 192 RSMo by adding thereto one new section relating to obesity with an emergency clause.

STATUS: 03/29/2006. (H) Referred: Health Care Policy.


NEW HAMPSHIRE


NH SB 290


This Bill establishes a wellness program in New Hampshire schools that combines education about nutrition with physical exercise.

STATUS: 02/23/2006. (S) Inexpedient to legislate motion adopted voice vote. Bill killed; S.J. 6 pg. 117

MEASURE
STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

NEW JERSEY

NJ HB 883

- An Act establishing certain restrictions concerning foods and beverages sold, served or given away to pupils at public and certain nonpublic schools and supplementing Chapter 33 of Title 18A of the New Jersey Statutes.

STATUS: 01/26/2006. Reported out of Assembly Committee 2nd reading.

NJ HB 984

- An Act concerning pupil health and supplementing Chapter 33 of Title 18A of the New Jersey Statutes.

STATUS: 01/10/2006. Introduced referred to Assembly Education Committee.

NJ HB 1971

- An Act concerning food and beverages sold in vending machines in public school districts and supplementing Chapter 33 of Title 18A of the New Jersey Statutes.

STATUS: 01/10/2006. Introduced referred to Assembly Education Committee.

NJ SB 1218

- An Act establishing certain restrictions concerning foods and beverages sold, served or given away to pupils at public and certain nonpublic schools and supplementing Chapter 33 of Title 18A of the New Jersey Statutes.

STATUS: 02/27/2006. received in the assembly without reference 2nd reading.

NJ SB 1363

- An Act concerning food and beverages sold in vending machines in public school districts and supplementing Chapter 33 of Title 18A of the New Jersey Statutes.

STATUS: 02/09/2006. Introduced in the Senate referred to Senate Education Committee.

NEW MEXICO

NM HB 231

An Act making an appropriation to support food banks statewide and provide food for public schoolchildren.

STATUS: 02/01/2006. (11) Do pass as amended committee report adopted—House Appropriations and Finance Committee.

NM HB 330

An Act making an appropriation for an anti-obesity, nutrition, education, self-esteem, and fitness dance program for low-income at-risk children in public schools.

STATUS: 02/08/2006. (16) Do pass committee report adopted—House Appropriations and Finance Committee.

NM SB 217

An Act relating to nutrition; creating a nutrition council; providing duties; requiring studies; making an appropriation.

STATUS: 01/31/2006. (7) Senate Finance Committee—Senate Public Affairs Committee.


MEASURE
STATUS:

- ✓ Enacted
— Pending
→ Carried Over
✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006


NEW YORK

NY HB 10729

-  An Act to amend the education law in relation to providing for the sale availability and distribution of healthy foods and beverages on school property and at school-sponsored functions.

STATUS: 06/13/2006. (H) Held for consideration in Assembly Education.


NY SB 7367

-  An Act to amend the education law in relation to providing for the sale availability and distribution of healthy foods and beverages on school property and at school-sponsored functions.

STATUS: 04/20/2006. (S) Introduced and referred to Committee on Senate Education.

OKLAHOMA

OK HB 2655

-  An Act relating to agriculture; creating the Oklahoma Farm to School Program Act; providing short title; stating intent purposes and goals; recognizing need for collaboration; creating the Oklahoma Farm to School Program; designating the Oklahoma Department of Agriculture Food and Forestry as lead agency; providing for employment of a director; providing for staffing; stating duties of the director; requiring establishment of Web site; requiring a link to the Web site on certain home pages; stating purpose of the Web site; authorizing the department to promulgate rules; providing for codification; and providing an effective date.

STATUS: 05/26/2006. (H) Approved by Governor 06/07/2006.

OK HJR 1037

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.


STATUS: 02/07/2006. (H) Second reading referred to Health and Human Services.

OK HJR 1039

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006. (H) Second reading referred to rules.

OK SB 1459

-  An Act relating to schools; directing State DOE in consultation with State Department of Health to make certain information and assistance available to schools; encouraging use of certain program assessment instruments; directing involvement of certain committee in implementation of certain requirement; providing for codification; and providing an effective date.





STATUS: 04/24/2006. (S) Approved by Governor 04/24/2006.

OK SB 1515

Agriculture—Oklahoma Farm to School Program Act—Codification—Effective date.

STATUS: 03/20/2006. (H) Second reading referred to Appropriations and Budget.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

PENNSYLVANIA

PA HB 185

- Amending the Act of March 10, 1949 (P.L.30 No.14) entitled “An Act relating to the public school system including certain provisions applicable as well to private and parochial schools; amending revising consolidating and changing the laws relating thereto” providing for school district notification of residential development and for contracts for competitive food or beverage contracts; further providing for funding for charter schools for cyber charter school requirements and prohibitions and for enrollment and notification; and providing for free and reduced-price school lunches for certain students. Competitive food or beverage contracts and for nutritional guidelines for food and beverage sales in schools; further providing for certain health services and for advisory health councils; providing for local wellness policies for an interagency coordinating council for child health and nutrition for duties of the DOE and for physical education; and further providing for physiology and hygiene.

STATUS: 07/05/2006. Presented to the Governor.

RHODE ISLAND

RI HB 6968

- ✓ An Act relating to school committees and superintendents.

STATUS: 06/28/2006. Signed by Governor.

RI HB 7065

This Act would establish a pilot program to encourage physical exercise and promote healthy weight levels in children. This Act would take effect upon passage.

STATUS: 04/26/2006. Continued.

RI HB 7459

This Act would prohibit the sale or distribution of carbonated soda beverages containing added sweeteners and high-fat or high-sugar snacks in all elementary middle junior and senior high schools. This Act would take effect on January 1, 2007.

STATUS: 03/15/2006. Committee recommended measure be held for further study.

RI HB 7614

This Act would prohibit the sale and distribution of certain beverages and food items in all Rhode Island elementary middle junior and high schools. This Act would take effect January 1, 2007.

STATUS: 03/22/2006. Committee recommended measure be held for further study.

RI SB 2495

This Act would prohibit the sale or distribution of carbonated soda beverages containing added sweeteners and high-fat or high-sugar snacks in all elementary middle junior and senior high schools. This Act would take effect on January 1, 2007.

STATUS: 03/15/2006. Committee recommended measure be held for further study.

RI SB 2696

- ✓ An Act relating to education.

STATUS: 06/28/2006. Signed by Governor.

MEASURE
STATUS:

- ✓ Enacted
— Pending
→ Carried Over
✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

SOUTH CAROLINA

SC HJR 5023

To approve regulations of the Board of Education relating to nutrition standards for elementary (K–5) school food service meals and competitive foods designated as Regulation Document Number 3027 pursuant to the provisions of Article 1 Chapter 23 Title 1 of the 1976 code.

STATUS: 04/26/2006. Senate referred to Committee on Education. S.J. 19

TENNESSEE

TN HB 2522

An Act to amend Tennessee Code annotated Title 49 Chapter 50 to enact the Tennessee Student Health Act.

STATUS: 03/01/2006. Taken off notice for calendar in: Government operations committee.

TN HB 2910

An Act to amend Tennessee Code annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 03/30/2006. Withdrawn.

TN SB 2494

An Act to amend Tennessee Code annotated Title 49 Chapter 50 to enact the Tennessee Student Health Act.

STATUS: 02/27/2006. Withdrawn.

TN SB 2839

An Act to amend Tennessee Code annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 03/23/2006. Withdrawn.

VERMONT

VT HB 456

Education; schools; education fund; Vermont food products; nutrition education. This bill proposes to direct the commissioner of education to award small grants from the education fund to schools that use Vermont products in their food services programs and provide nutrition education to their students.

STATUS: 05/15/2006. Governor's action: signed. Act No: 0145. Effective date:

VT SB 272

Education; agriculture; food service programs; appropriation. This bill proposes to establish a mini-grant program to help schools obtain resources to increase their use of local foods and to educate schoolchildren about nutrition and farming; direct the secretary of agriculture food and markets to help farmers find local markets for their products and to fund a project that will help Vermont farmers to process their products; direct the commissioner of education to expand training for school food service personnel; create a legislative committee on expanding markets for Vermont farmers; and appropriate funds therefor.

STATUS: 01/10/2006. (S) In education.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

VT SB 273

Education; sale of food and beverages on school grounds; nutritional standards. This bill proposes to establish nutritional standards for food and beverages sold on school grounds and to prohibit between one-half hour before the start of the school day and one-half hour after the end of the school day the sale of food and beverages which do not meet the standards.

STATUS: 02/22/2006. (S) In Agriculture.

VIRGINIA

VA HB 1593

Childhood obesity. Prevention and reduction in public schools.

STATUS: 01/30/2006. (H) Continued to 2007 in Education.

VA SB 206

Childhood obesity. Requires the Board of Education to promulgate in cooperation with the State Health Department regulations establishing standards to facilitate the prevention and reduction of childhood obesity in the public schools. This bill also requires division superintendents to complete instruction concerning the causes and consequences of overweight and obese students and the relationship between nutrition health and learning by July 1, 2008. The requirement for instruction may be satisfied by attendance at conferences seminars or in-service training.

STATUS: 01/26/2006. (S) Continued to 2007 in Education and Health (12-y 2-n).

WEST VIRGINIA

WV HB 4548

A bill to amend and reenact 18-2-6A of the Code of West Virginia 1931 as amended relating to prohibiting sale or serving of soft drinks during school day in elementary middle and junior high schools in areas accessible to students; prohibiting sale or serving of soft drinks during breakfast and lunch periods in high schools and requiring equally accessible healthy beverages if soft drinks are offered for sale at other times during school day; correcting references; and conforming disposition of profits from healthy beverage sales and prohibition of sales of competitive food and beverages during food service periods to federal program regulations.

STATUS: 02/14/2006. To House Education.

WISCONSIN

WI HB 1133

An Act to renumber 118.12 (4); and to create 118.12 (4) (b) of the statutes; relating to: contracts for the sale of soft drinks in middle schools and high schools.

STATUS: 05/11/2006. (H) Failed to pass pursuant to Senate Joint Resolution 1.

WYOMING

WY HB 72

An Act relating to education; creating the healthy living-healthy learning program account as specified; providing for grants to school districts from the account; providing criteria for healthy living-healthy learning grants; establishing a maximum grant level; establishing a healthy living-healthy learning panel as specified; granting rulemaking authority; and providing for an effective date.

STATUS: 02/14/2006. (H) Failed introduction.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Health and Physical Education

Because research demonstrates that physical activity has an impact on weight, health and academics, lawmakers have focused on introducing legislation addressing health and physical education in state public school systems. Leading health advocates, including the Centers for Disease Control and Prevention, Action for Healthy Kids and the National Association of State Boards of Education, recommend providing all children from pre-kindergarten through grade 12 with daily physical activity in schools and co-curricular physical activity programs.^{1,2,3} In addition to enhancing physical education instruction, some lawmakers have sought to ensure that health education curricula includes nutrition and physical education instruction and teaches the importance of lifelong healthy eating habits and physical fitness.

Although most states require health and physical education to be provided as part of the public school curriculum, student participation may not be required, and enforcement of education requirements often remains at a local level. Facing annual budget constraints and pressure to meet academic standards, local and state education officials, school administrators and educators often express concern with legislative measures containing health and physical education mandates. Such bills often do not provide for the increased funding needed to support the proposed enhancements, making them unpopular unfunded mandates. School administrators and teachers also express concern

¹ National Center for Chronic Disease Prevention and Health Promotion, Overweight and Obesity: Contributing Factors (March 2006), available at http://www.cdc.gov/nccdphp/dnp/a/obesity/contributing_factors.htm.

² Action for Healthy Kids, An Action for Healthy Kids Report: Criteria for Evaluating School-Based Approaches to Increasing Good Nutrition and Physical Activity (Fall 2004), available at http://www.actionforhealthykids.org/pdf/report_small.pdf.

³ National Association of State Boards of Education, Sample Policies to Encourage Physical Activity, available at http://www.nasbe.org/HealthySchools/Sample_Policies/physical_activity.html.

that allotting more time for physical education and activity takes away from the time spent teaching the core academic subjects. On the other hand, students and parents tend to support opportunities for increased physical education and activity requirements in schools. On occasion, students have lobbied state lawmakers in support of such measures.

Because the food and beverage industries, including the Grocery Manufacturers of America and the American Beverage Association, have been impacted by school nutrition legislation, they strongly support initiatives that focus on physical activity in effort to reduce childhood obesity.^{4,5}

During the past several years, lawmakers have presented an increasing number of legislative proposals and actions regarding childhood obesity and physical education. With the deadline for school districts to comply with the requirements of the “Child Nutrition and WIC Reauthorization Act of 2004” approaching, more and more school districts across the country will find themselves enhancing physical education and opportunities for physical activity in schools.

2006 State Legislative Activity

Lawmakers continue to introduce legislation that set standards for health and physical education. As of July 5, at least 34 states have introduced or carried over legislation. Of those, 11 states have adopted legislation and one state has vetoed legislation (see map on page 59).

Setting Health and Physical Education Standards

Of the 34 states that introduced measures, at least 19 states have considered legislation that sets health and physical education or physical activity standards in schools to help prevent obesity and improve child fitness and wellness.

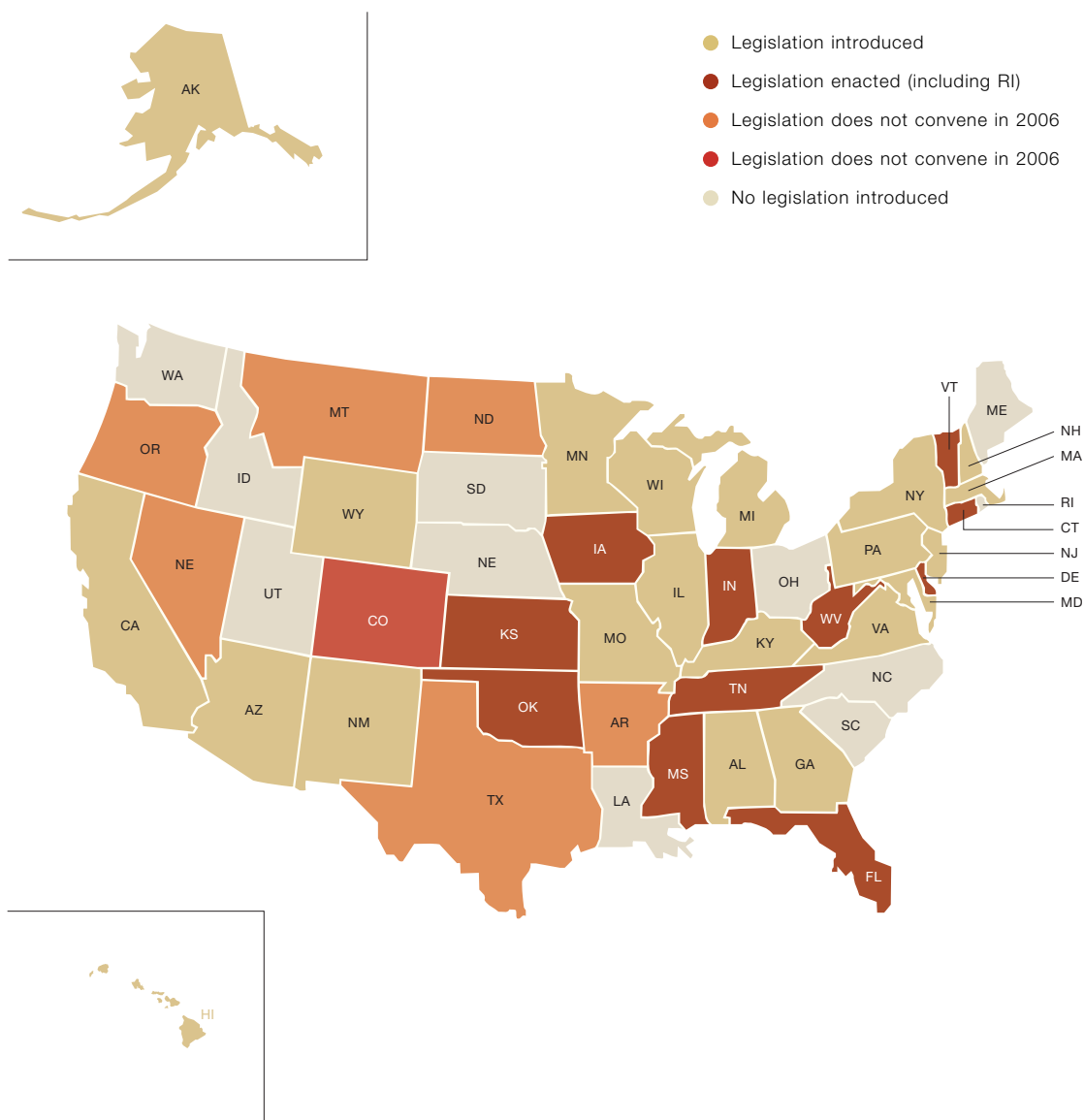
The states include **Alabama, California, Connecticut, Florida, Georgia, Hawaii, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New York, Oklahoma, Rhode Island, Tennessee and Virginia**. The proposed standards, however, vary significantly. While some of the legislation calls for specific duration, frequency and intensity requirements, other bills leave some control and flexibility to state or local education agencies.

Earlier this year, **Indiana** Gov. Mitch Daniels (R) enacted a school wellness bill, SB 111, requiring school districts to provide daily physical activity opportunities for elementary school students.

⁴ Grocery Manufacturers of America, Public Policy Priority Programs: Obesity, available at <http://www.gmabrands.com/publicpolicy/obesity.cfm>.

⁵ American Beverage Association, School Partnerships: Are there Health Concerns?, available at <http://www.ameribev.org/schools/health.asp>.

2006 Health and Physical Education Legislation



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

Florida Gov. Jeb Bush (R) also signed a bill, HB 7087, to enhance health and physical education requirements. The new law requires students to fulfill one credit of health and physical education to graduate from high school.

In **Tennessee**, lawmakers enacted HB 3750, a bill that requires each local education agency to integrate 90 minutes of physical activity per week into the school day for elementary and secondary school students. The bill also authorizes each agency to implement a coordinated school health program by the 2007-2008 school year and creates within the Department of Education (DOE) the positions of school health coordinator and physical education specialist to assist with coordinated school health programs. Gov. Phil Bredesen (D) signed the measure on June 27.

In **West Virginia**, SB 785 and HB 4848 proposed minor amendments to the “West Virginia Healthy Act of 2005” which set physical education and fitness requirements for public school students by grade levels. The companion bills proposed that the physical education grouping requirements be amended to programmatic levels (e.g., elementary, middle and high school), rather than grade levels in order to accommodate any variance in grade levels within each school. Gov. Joe Manchin III (D) signed SB 785 into law April 4, mandating the following physical education participation requirements:

- **Elementary school students**—At least 30 minutes of physical education, including physical exercise, at least 3 days a week.
- **Middle school students**—At least one full period of physical education, including physical exercise, every day for one semester of the academic year.
- **High school students**—At least one full course of physical education, including physical exercise, for high school graduation and the opportunity to enroll in an elective lifetime physical education course.

California lawmakers continue to consider SB 362 which contains three key physical education components. One would define physical education as a class in which pupils are required to actively participate, while another provision would establish the Physical Education Professional Development Program for physical education teachers. The measure also would remove certain physical education exemptions for students. The bill passed the Senate in January and remains in the House Committee on Education.

Lawmakers in other states attempted but failed to enhance health and physical education and physical activity in schools. **Georgia** SB 474 included a provision that would have mandated at least 150 minutes of physical education

per week for elementary school students as well as mandated a plan to provide 225 minutes of physical education per week for middle school students. The bill also would have required the state Board of Education to establish an office to promote student health and physical fitness and to establish standards for physical education teachers. While the measure passed the Senate, it died in the House.

Maryland lawmakers considered a bill, SB 611, requiring that students in kindergarten through grade 5 be provided a specified minimum level of physical education each week and that the minimum level of physical education increase over a period of four school years. The bill succeeded in passing the Senate; however, it received an unfavorable report in the House and died upon adjournment.

Last year, **Oklahoma** enacted a law to require schools to provide to all students in kindergarten through grade 5 physical education or exercise programs for at least an average of 60 minutes per week. This year, lawmakers considered a bill, SB 1387, to extend the physical education requirement to students in grades 6 through 8. The Senate passed the bill after amending it to recommend, not require, that all students in grades 6 through 8 participate in physical education or exercise programs for at least an average of 60 minutes per week. The bill, however, died in the House upon adjournment.

Virginia lawmakers continued to 2007 three introduced bills that would have set standards for physical education or physical activity in schools.

Developing Local Wellness Policies

As the federal government requires local school wellness policies to be in place by the beginning of the 2006-2007 school year, many states have considered legislation in the past two years to help guide school districts in their efforts to comply. Some states have considered legislation to add state requirements in conjunction with the federal requirements. This year, lawmakers in at least eight states—**Connecticut, Florida, Georgia, Indiana, Massachusetts, Mississippi, Oklahoma** and **Pennsylvania**—have introduced legislation to assist school districts in establishing wellness councils and policies, which should include goals for physical education and physical activities. The table on page 62 highlights the bills that have passed at least one chamber.

While the **New Mexico** Legislature did not consider such legislation, Gov. Bill Richardson (D) approved the final version of school nutrition and wellness rules. The adopted school wellness rules included guidelines for local school wellness policies as well as health and physical education performance standards.

TABLE

Health and Physical Education: 2006 Legislative Activity

FLORIDA

FL SB 772

- ✓ Requires each school district to submit to the Department of Education (DOE) a copy of its school wellness policy and its physical education policy by Sept. 1, 2006.
- Requires the DOE to post Web site links to each district's policies by Dec. 1, 2006 Requires the DOE to provide Web site links to examples of school wellness policies.
- STATUS: 06/26/06—Signed by Governor.

FL SB 2602

- ✗ Identical to SB 772 in regard to school wellness requirements.
- STATUS: 05/05/06—Defeated/Died with adjournment of the legislature.

GEORGIA

GA SB 474

- ✗ Would have called for each local board of education to establish a school health advisory council to develop, implement and monitor health, physical education and nutrition policies.
- STATUS: 03/30/06—Defeated/Died with adjournment of the legislature.

INDIANA

IN SB 111

- ✓ Requires each school board to establish a coordinated school advisory council to develop a local wellness policy that complies with federal requirements.
- Requires the DOE to provide information concerning health, nutrition and physical activity to the councils.
- STATUS: 03/15/06—Signed by Governor.

MISSISSIPPI

MS HB 319

- ✓ Directs local school districts to establish local school health councils and wellness policies in accordance with federal requirements.
- STATUS: 03/15/06—Signed by Governor.

MEASURE STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

OKLAHOMA

OK SB 1459

- ✓ Requires 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.

STATUS: 04/24/06—Signed by Governor.

PENNSYLVANIA

PA HB 185

- ⊖ Would require each local education agency to establish a local wellness policy by June 30, 2006.
- Would establish 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 disease, which must include recommendations regarding local wellness policies.
- Would establish local advisory health councils to provide recommendations on the development of local wellness policies.

STATUS: 07/05/06—Sent to Governor.

MEASURE
STATUS:

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

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Creating Model Policies and Programs

Another policy trend of recent years is the development of model policies and programs for state and local education officials to use as guidelines in developing their own policies or programs. This year, lawmakers in **Florida, Georgia, Iowa** and **New Hampshire** introduced such measures; however, all of the measures were defeated or died upon adjournment.





Promoting Physical Activity

Legislators wishing to increase physical activity in schools without imposing mandates have pushed measures encouraging state and local education officials to take action to enhance physical education in schools. Eight states have introduced such measures this year—**Connecticut, Florida, Georgia, Hawaii, Kansas, Massachusetts, Missouri** and **Tennessee**. The table on page 65 details the bills that have passed at least one chamber.

TABLE


Promoting Physical Activity: 2006 Legislative Activity

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

CONNECTICUT

CT SB 204

-  Requires the state DOE to develop guidelines to address the physical health of students and provide them to local boards of education by Jan. 1, 2007.


The guidelines must include plans for promoting daily physical exercise before, during and after school hours.

Local boards of education may establish and implement, based on the guidelines, plans to address physical health of students by the 2007-2008 school year.

STATUS: 05/08/06—Signed by Governor.

FLORIDA


FL SB 772

-  Encourages each school district to provide 150 minutes of physical education each week for students in kindergarten through grade 5 and 225 minutes each week for students in grades 6 through 8.

STATUS: 06/26/06—Signed by Governor.

GEORGIA


GA SB 474

-  Would have strongly encouraged local school boards to provide meaningful physical education to students in grades 6 through 8 in the interim before plans to provide 225 minutes per week would have gone into effect for the 2007-2008 school year.

STATUS: 03/30/06—Defeated/Died with adjournment of the legislature.

KANSAS

KS HR 6011-6

-  Urges the state Board of Education to require some type of physical education instruction for students in kindergarten through grade 12.

STATUS: 03/10/06—Signed by Governor.

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Establishing Committees, Councils and Task Forces

Instead of mandating physical education and activity standards, several states are considering legislation to appoint statewide or local committees, councils or task forces to study the issues and formulate recommendations. This year, lawmakers in at least 10 states—**California, Delaware, Iowa, Maryland, Massachusetts, Missouri, New Hampshire, Oklahoma, Pennsylvania and Tennessee**—have introduced or carried over such legislation.

For further information on state activity, please refer to the Councils, Commissions and Task Forces chapter.

Other Approaches

This year, at least 14 states—**Arizona, California, Colorado, Delaware, Florida, Illinois, Iowa, Maryland, Mississippi, Missouri, New York, Oklahoma, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming**—have considered legislation that does not fit into the key trends. The following section details bills that either have passed a house or are innovative in nature.

Iowa lawmakers have enacted a bill that establishes a nutrition and physical activity community obesity prevention grant program. SB 2124 strives to increase fruit and vegetable consumption and raise physical activity to up to 60 minutes per day among elementary schoolchildren. The grant program, however, is contingent on funding.

A proposed measure in **Delaware**, HB 372, would require that each school district assess the physical fitness of each student at least once at given elementary school, middle school and high school levels, with all results reported to parents and guardians. The intent is to provide baseline and follow-up fitness results to students and their parents in an effort to raise awareness of obesity and related chronic illnesses. Another **Delaware** bill, HB 471, proposes a physical education/physical activity pilot program to provide at least 150 minutes of physical education and physical activity for each student in at least six schools. Each bill has passed both chambers.

Two similar and interesting bills in **Florida**, SB 772 and SB 2602, proposed directing the state DOE to provide Web site links to information regarding classroom instruction on exercise, healthful eating and tobacco use and exposure; the components of the coordinated school health program; the core measures for school health and wellness; nutritional content of foods and beverages; examples of school wellness policies; and examples of wellness classes for teachers and school staff. While SB 2602 died in the House, SB 772 was enacted on June 26, giving the public access to a wealth of school wellness information.

A bill in **Colorado** to establish qualification standards for physical education teachers, HB 1021, passed both chambers, but was vetoed by Gov. Bill Owens (R). He expressed in his veto message that he saw no evidence that current licensure requirements or physical education instruction are inadequate. He also stated that local school districts have the authority to impose stricter hiring standards and that he does not want to impose barriers for current or aspiring physical education teachers. This marked the third time since 2005 the Governor exercised veto powers over school wellness bills. Earlier in 2006, he vetoed a school nutrition bill, and in 2005 he vetoed a bill to establish a physical education recognition program.

Oklahoma SB 1461 would have called on the state Board of Education to develop a fitness assessment software program to measure and track components of fitness, including body mass index (BMI), endurance, strength and flexibility. The bill passed the Senate but died in the House upon adjournment.

A unique bill, SB 3143, in **Tennessee** 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 DOE on the actions taken and the effectiveness of the programs. However, the bill died upon adjournment. Two identical and innovative bills, HB 1593 and SB 206, in Virginia that would have required all superintendents to receive instruction on the causes, consequences, prevention and reduction of childhood obesity were continued to 2007.

Ballot Initiatives

In a unique, unprecedented move, the **Nevada** Association for Health, Physical Education, Recreation and Dance filed a petition in 2005 for a state constitutional amendment requiring public schools to provide daily physical education to be placed on the 2006 ballot. 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.

TABLE

Health and Physical Education: 2006 Legislative Activity

ALABAMA

AL HB 400

Under existing law public school students in grades K-12 are required to receive at least 10 minutes of comprehensive character instruction each school day. This bill would authorize local boards of education to devote those 10 minutes to health and nutrition education or physical activity in addition to or in lieu of character education pursuant to rules or regulations adopted by the State Board of Education. Amendment 621 of the Constitution of Alabama of 1901 prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds or provides a local source of revenue to the entity for the purpose. The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of Amendment 621. However the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in Amendment 621.

STATUS: 01/17/2006—Read for the first time and referred to the House of Representatives Committee on Education.

AL SB 209

This Bill makes appropriations for the support maintenance and development of public education in Alabama for debt service and for capital outlay for the fiscal year ending September.


STATUS: 04/06/2006—Indefinitely postponed.


AL SB 324


Under existing law every public school is required to carry out a system of physical education the character of which shall conform to the program outlined by the State D.O.E.. Also under existing law elective courses in physical education are to be available to all students as determined by the local board of education. This bill would require over a specified time that each public school student in grades K to 12 inclusive participate in physical education instruction each school day or a variety of physical education activities. This bill would require the State Board of Education to adopt necessary rules and methods to implement this requirement. This bill would also create the Public School Physical Education Task Force to study and report to the Legislature and the State Board of Education regarding the implementation of the physical education requirement.

STATUS: 01/19/2006—Read for the first time and referred to the Senate Committee on Education.

MEASURE STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

ARKANSAS

AK SB 162

An Act relating to monitoring and reporting of student discipline and safety of student health pertaining to height nutrition and physical activity of the percentage of the legislative body with a body mass index that exceeds 25.0 and of state capitol vending machine profits; requiring schools to report school health status and policy the percentage of students that are overweight and at risk of being overweight and profits from vending machines; and requiring the evaluation of health education programs on the basis of health reports and screening.

STATUS: 03/01/2006—(S) Bill hearing cancelled.

ARIZONA

AZ HB 2778

An Act establishing a pilot program for physical education; making an appropriation.

STATUS: 02/06/2006—Second read.

CALIFORNIA

CA HB 1779

An Act to amend Sections 51210 51210.1 51210.2 and 51223 of the Education Code and to amend Section 3543.2 of the Government Code relating to physical education.

STATUS: 05/25/2006—(H) In committee: set second hearing. Held under submission.

CA HB 1845

An Act to amend Sections 51222 and 51241 as amended by Section 2 of Chapter 459 of the Statutes of 2003 of and to repeal Section 51241 as added by Section 3 of Chapter 459 of the Statutes of 2003 of the Education Code relating to physical education.

STATUS: 05/03/2006—(H) In Committee: set first hearing. Hearing canceled at the request of author.

CA SB 362

An Act to amend Sections 33352 51222 and 51241 of and to add Article 3.5 (commencing with Section 33355) to Chapter 3 of Part 20 of and to add Article 9.5 (commencing with Section 44620) to Chapter 3 of Part 25 of the Education Code relating to physical education.

STATUS: 06/26/2006—(H) Read second time. Amended. Re-referred to Committee on Appropriations.

CA SCR 73

Relative to the California Task Force on Youth and Workplace Wellness.

STATUS: 06/29/2006—(H) From Committee: be adopted (Ayes 5 / Noes 3)

COLORADO

CO HB 1021

Prohibits a school district from employing as a physical education teacher a person who does not hold a physical education endorsement on his or her teacher license or who is not highly qualified as determined by the school district.

STATUS: 05/04/2006—Governor Action-Vetoed.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

CONNECTICUT

CT HB 5252

To encourage exercise in school by (1) requiring local boards of education to provide students an opportunity to engage in twenty minutes of exercise during the school day and (2) allowing such boards to establish wellness committees to promote physical education and exercise.

STATUS: 02/17/2006—Public Hearing 02/23.

CT SB 204

✓ An Act promoting the physical health needs of students.

STATUS: 05/08/2006—Signed by the Governor.

DELAWARE

DE HB 372

This Bill requires the DOE to develop a regulation requiring each local school district and charter school to assess the physical fitness of each student at least once at the elementary middle and high school level. The regulation would also outline the grades at which the assessment will be given. The assessment results are to be provided to the parent guardian or relative caregiver. The intent is to provide baseline and periodic updates for each student and his or her parent guardian or relative caregiver sharing in the knowledge of obesity and other chronic illnesses.

STATUS: 07/01/2006—Senate passed.

DE HB 471

This Act provides for a physical education/physical activity pilot program in at least six (6) of Delaware's elementary middle or high schools. The Department would be required to provide technical assistance in the development and any training related to implementation. The Department could also work with an outside entity such as the Nemours Health and Prevention Services to conduct an evaluation. This Act would be effective upon funding provided by either the General Assembly and/or outside entity.

STATUS: 07/01/2006—Senate passed.

DE SB 289

✓ The purpose of the Health Advisory Council as recommended by the Physical Education Task Force created by HCR 37 of the 143rd General Assembly is to provide advice and guidance to the DOE regarding current and future physical education and physical activity programs in Delaware schools.

STATUS: 06/30/2006—Signed.

MEASURE
STATUS:

- ✓ Enacted
- ⏸ Pending
- ➡ Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

FLORIDA

FL HB 679

Schools/Health-related Education; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; requires DOE to provide Web site links to certain resources and prescribes types of information those resources must provide; encourages said districts to provide physical education for specified amount of time; requires schools to annually provide certain information to students' parents and guardians etc. Amends FS. Effective date: 07/01/2006.

STATUS: 05/05/2006—(H) Died on calendar link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 772 (CH. 2006-301).

FL HB 7087

- ✓ Education; establishes Accountability Research and Measurement Division in DOE; repeals provision regarding Jobs for Florida's Graduates Act; specifies that mission of state's K-20 education system is to provide rigorous and relevant learning opportunities for students; requires that each teacher assigned to any classroom be included in calculation for compliance with constitutional class-size limits etc. Amends FS. Effective date: 06/05/2006.

STATUS: 06/05/2006—Approved by Governor; Chapter no. 2006-74; see also committee substitute/committee substitute/SB 772 (CH. 2006-301).

FL HB 7203

Wellness Programs; requires Department of Health to collaborate with other state agencies in developing policies and strategies to prevent and treat obesity which shall be incorporated into agency programs; requires department to advise health care practitioners regarding morbidity mortality and costs associated with condition of being overweight or obese; creates Florida State Employee Wellness Council within DMS; provides purpose and duties of council etc. Amends 381.0054 110.123. Effective date: 07/01/2006.

STATUS: 05/04/2006—(H) Substituted committee substitute/committee substitute/sb 1324; laid on table link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 1324 (CH. 2006-269) HJ 01245.

FL SB 772

- ✓ Schools; clarifies applicability of salary formula and certification programs to elected district school superintendents; provides that students who have attained 16 years of age and have not graduated are subject to compulsory school attendance under certain circumstances; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; amends School Health Services Act etc. Amends FS. Effective date: 07/01/2006.

STATUS: 06/26/2006—Approved by Governor; Chapter No. 2006-301.

FL SB 2602

Schools/Health-Related Education; requires each school district to submit to DOE by specified deadline copies of district's school wellness policy and physical education policy; requires DOE to provide Web site links to certain resources and prescribes types of information those resources must provide; encourages said districts to provide physical education for specified amount of time; requires schools to annually provide certain information to students' parents and guardians etc. Amends FS. Effective date: 07/01/2006.

STATUS: 05/05/2006—(H) Died in messages link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 772 (CH. 2006-301).

MEASURE
STATUS:

- ✓ Enacted
- ⏸ Pending
- ➡ Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

GEORGIA

GA HB 967

To amend Article 4A of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to community involvement in education so as to provide for development of a wellness plan for each school by the school council; to provide for reporting; to amend Part 3 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to health of students so as to require implementation of a wellness plan for each school; to repeal conflicting laws; and for other purposes.

STATUS: 01/12/2006—(H) Second readers.

GA SB 474

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to elementary and secondary education so as to establish school health advisory councils to serve as advisory bodies to local boards of education on health physical education and nutrition policy; to provide for a short title; to provide certain requirements for physical education instruction for students in kindergarten and grades 1 through 8; to encourage a wide range of supplemental health physical activity and nutrition programs that may be provided on school property beyond the confines of the traditional school day; to require local boards of education to adopt and implement a coordinated school health program; to provide for a state office to promote student health and physical fitness; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

STATUS: 02/28/2006—(H) Second readers.

GA SB 647

To amend Part 15 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated relating to miscellaneous provisions relative to the “Quality Basic Education Act” so as to require that students in kindergarten through grade 12 participate in physical activity health instruction or a combination of both for a minimum of 15 minutes each day; to repeal conflicting laws; and for other purposes.

STATUS: 03/06/2006—(S) Read and referred.

HAWAII

HI HB 2085

Requires the course of study for all elementary and middle schools include instruction in physical education for not less than 200 minutes every 10 school days; makes an appropriation to support the curriculum changes.

STATUS: 01/23/2006—(H) Referred to House Education House Finance Referral Sheet 2.

HI HB 2086

Requires all elementary and middle schools to include in their curriculum at least 200 minutes of physical activities every 10 school days. Makes an appropriation.





STATUS: 01/30/2006—(H) The committees on house health recommend that the measure be held. The votes were as follows: 7 Ayes: Representative(s) Arakaki Green Cabanilla Hale Nishimoto Sonson Halford; Ayes with reservations: none; 0 Noes: none; and 0 Excused: None.

HI SB 2167

Requires all elementary and middle schools to include in their curriculum at least 200 minutes of physical activities every 10 school days. Makes an appropriation.

STATUS: 01/27/2006—(S) Referred to Senate Education and Military Affairs Senate Ways and Means.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

HI SB 2168

Requires the course of study for all elementary and middle schools include instruction in physical education for not less than 200 minutes every 10 school days; makes an appropriation to support the curriculum changes.

01/27/2006—(S) Referred to Senate Education and Military Affairs Senate Ways and Means.

HI SB 2859

Establishes interscholastic athletic program at public intermediate schools. Appropriates funds for program.

STATUS: 02/13/2006—(S) The Committee on Senate Education and Military Affairs deferred the measure.

ILLINOIS

IL HB 4533

Amends the School Code. Provides that a school board may excuse pupils in grades 4 (instead of 9) through 12 from the requirement that they engage daily in physical education if they must utilize the time set aside for physical education to receive special education support and services. Effective July 1, 2006.

STATUS: 02/01/2006—(H) Tabled By Sponsor Rep. Robert Rita.

IL SB 2600

Amends the School Code. Provides that a school board may excuse pupils in grades 9 through 12 from engaging in physical education courses if the pupil is getting substantial physical activity from participating in athletic training and competition in a sport under the auspices of a national governing board that is recognized by and affiliated with an international sports federation and the parent or guardian has provided documentation of such training and recognition. Effective July 1 2006.

STATUS: 01/20/2006—(S) Referred to Rules.

IL SB 2762

Amends the School Code. With respect to a pupil whom a school board has exempted from the requirement that the pupil engage daily in physical education because he or she must utilize the time set aside for physical education to receive special education support and services provides that the pupil's individualized education program team makes the determination that the pupil must utilize the time set aside for physical education to receive special education support and services. Effective immediately.

STATUS: 06/04/2006—(S) Pursuant to Senate Rule 3-9(B) / Referred to Rules.


INDIANA


IN HB 1167


Requires school boards to establish a coordinated school health advisory council to develop a local wellness policy that complies with certain federal requirements. Requires the DOE to provide information concerning health nutrition and physical activity. Establishes requirements applying to food and beverage items that are available for sale to students outside the federal school meal programs including a requirement that a certain percentage of the food and beverage items qualify as better choices. Provides that the requirements do not apply after school hours or to fundraisers. Requires daily physical activity for elementary school students in public schools with certain exceptions. Allows a school to continue a vending machine contract in existence before the passage of this bill. (The introduced version of this bill was prepared by the health finance commission.)

STATUS: 01/09/2006—(H) First reading: Referred to Committee on Public Health.

MEASURE
STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

IN SB 111

- ✓ Lowers the percentage in the definition of “qualifying school building” from 25 percent to 15 percent beginning July 1, 2007 for purposes of the school breakfast and lunch programs. Requires school boards to establish a coordinated school health advisory council to develop a local wellness policy that complies with certain federal requirements. Requires the DOE to provide information concerning health nutrition and physical activity. Establishes requirements applying to food and beverage items that are available for sale to students outside the federal school meal programs including a requirement that a certain percentage of the food and beverage items qualify as better choices. Provides that the requirements do not apply after school hours or to fundraisers. Requires daily physical activity for elementary school students in public schools with certain exceptions. Allows a school to continue a vending machine contract in existence before the passage of this bill. (The introduced version of this bill was prepared by the Health Finance Commission.)

STATUS: 03/15/2006—(S) Signed by the Governor.

IOWA**IA HB 2321**

This Bill establishes a nutrition and physical activity community obesity prevention grant program in the event that a sufficient amount of funding for the program is received by the Iowa Department of Public Health. The bill specifies that the goal of the program shall be to expand an existing community intervention plan for preventing obesity with nutrition and physical activity approved by the centers for disease control and prevention of the United States Department of Health and Human Services. The bill states that the program’s purpose shall be to increase the physical activity and fruit and vegetable consumption of targeted youth of elementary school age with a long-term objective of developing a model program that will support and sustain such healthy behavior and incorporate 60 minutes of physical activity per day for replication by other communities. The bill provides that the department shall distribute the grants on a competitive basis to six communities on a regional basis who are not currently participating in the existing intervention plan and shall provide technical assistance regarding program administration to successful applicants. The bill states that applicants may include a local board of health community organization or city that has an elementary building or a coalition of local boards of health care providers and community and private organizations. The bill provides a list of possible grant criteria involving community and school involvement in specified health-oriented programs campaigns or endeavors. The bill provides a contingent effective date relating to the receipt by the department of funding.

STATUS: 03/14/2006—(H) Explanation of vote. HJ 668.

IA SB 2124

- ✓ An Act providing for the establishment of a nutrition and physical activity community obesity prevention grant program and providing a contingent effective date.

STATUS: 03/21/2006—(S) Signed by Governor. SJ 620.

MEASURE
STATUS:

- ✓ Enacted
- ⏸ Pending
- ➡ Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

IA SB 2190

This Bill directs the DOE in cooperation with the Iowa department of public health to convene a healthy kids task force to study and recommend measures to reduce the level of obesity in Iowa's student population. The DOE in cooperation with the Iowa department of public health is to provide staffing and administrative support to the task force. The task force is directed to study Iowa's physical education standards and requirements practitioner preparation programs for physical education instructors and the licensure standards for physical education practitioners; to consider the benefits and disadvantages of establishing a statewide physical education curriculum; and to investigate current literature and recommendations for best practices in physical education instruction. The task force is also directed to study the current level of health nutrition and physical fitness prevalent among students and to develop a model policy regarding access to nutritious foods opportunities for physical activity and accurate education related to these topics. The task force must submit the model policy and its findings and recommendations to the governor and the general assembly by July 1, 2008 and the DOE must post the model policy on its website by August 1, 2008.

STATUS: 02/15/2006—(S) Amendment S-5006 filed. SJ 281.

IA SB 2251

An act directing the DOE and the Iowa Department of Public Health to convene a healthy children task force and providing an effective date.

STATUS: 04/26/2006—(S) Signed by Governor. SJ 991.

KANSAS**KS HR 6011-6**

A resolution concerning physical education instruction in public schools.

STATUS: 03/10/2006—(H) Enrolled. HJ 1378.

KENTUCKY**KY HB 610**

Amend KRS 156.160 to require 30 minutes physical activity per day or 150 minutes per week for all students in kindergarten through twelfth grade; require the time be included as instructional time; amend KRS 160.345 to conform; include noncodified language that the provisions of this Act shall not be interpreted to mean that additional physical education teachers are required nor that new classrooms buildings or other facilities are required.

STATUS: 02/21/2006—(H) To Education.

MARYLAND**MD SB 436**

Establishing the Maryland Obesity Awareness and Prevention Task Force in the Department of Health and Mental Hygiene; providing for the purpose of the Task Force; providing for the membership chair and staff of the Task Force; providing that a member of the Task Force may receive specified reimbursement as provided in the State budget; providing for the duties of the Task Force; requiring the Task Force to submit specified reports to the Governor and the General Assembly on or before specified dates; etc.

STATUS: 03/27/2006—(S) Unfavorable Report by Education Health and Environmental Affairs.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

MD SB 457

Requiring county boards of education to provide diabetes screening tests and body mass index calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/10/2006—(H) Favorable with Amendments Report by Ways and Means.

MD SB 611

Requiring that public school students in kindergarten through grade 5 be provided a specified minimum level of a program of physical education each week; requiring an increasing minimum level of a program of physical education over a period of four school years; requiring that the program of physical education be consistent with a student's Individualized Education Plan if applicable; requiring that students be regularly assessed for the attainment of specified objectives; etc.

STATUS: 04/08/2006—(H) Unfavorable Report by Ways and Means.

MASSACHUSETTS

MA HB 4636

Relative to requiring school districts to convene child nutrition and physical activity advisory committees.

STATUS: 04/04/2006—(S) Senate concurred in Committee referral.

MA HB 4737

Relative to improving quality physical education.

STATUS: 05/30/2006—(H) Accompanied study order see HB4994.

MA SB 107

An Act promoting healthy alternatives in public school food programs.

STATUS: 04/03/2006—(H) House Concurred in Committee referral.

MA SB 2373

Directs the department of public health in consultation with the DOE to establish regulations and guidelines relative to the training of school nurses in behavioral health and treatment for eating disorders continuing professional education guidelines for said nurses and guidelines for referral programs for children in need of outside medical services; directs the board of education in consultation with the department of public health to establish certification requirements and criteria for food service directors and managers in public schools; regulates the sale of food and beverages in public schools; excludes meals provided through the national school lunch and breakfast programs from said provisions; mandates the sale of fruit and non-fried vegetables; mandates the availability of nutritional information; directs said departments to review reported cases of obesity and eating disorders; directs the department of public health to establish an annual public service campaign regarding pediatric overweight; establishes a special commission charged with analyzing childhood obesity nutrition physical activity education and wellness.

STATUS: 06/01/2006—(S) Postponed until June 29, 2006.

MEASURE
STATUS:

Enacted



Pending



Carried Over




Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MICHIGAN

MI SB 981

-  A Bill to amend 1976 PA 451 entitled “The Revised School Code” by amending Section 1502 (MCL 380.1502) as amended by 1993 PA 335.

STATUS: 01/24/2006—(S) Referred to Committee on Health Policy.

MINNESOTA

MN HB 3016

A Bill for an Act relating to education; clarifying elements of the kindergarten through grade 12 physical education standard.

STATUS: 03/01/2006—(H) Introduction and first reading referred to Education Policy and Reform.

MN HB 3260

A Bill for an Act relating to education; providing for health and physical education requirements.

STATUS: 04/05/2006—(H) Author added-Fritz.

MN SB 2585

A Bill for an Act relating to education; providing for health and physical education requirements.

STATUS: 03/20/2006—(S) See also-SF2994 Art. 2.


MISSISSIPPI

MS HB 18

-  An Act making an appropriation to the state DOE for the purpose of reinstating physical education programs statewide for the fiscal year 2007.


STATUS: 02/22/2006—(H) Died Insurance Committee.

MS HB 101

-  An Act to require all public high schools to teach physical education daily; and for related purposes.


STATUS: 01/31/2006—(H) Died Insurance Committee.

MS HB 319

-  An Act to direct local school districts to establish local school health councils by November 1, 2006 in conformity with federal requirements; to provide that this section DOEs not prohibit sales of food through school fundraisers held off the school campus; and for related purposes.


STATUS: 03/15/2006—Approved by Governor.

MS HB 444

-  An Act to provide an income tax credit for taxpayers who contribute funds to public schools or public school districts to assist the schools or school districts in providing physical fitness programs or other health improvement programs for students; in conformity thereto; and for related purposes.





02/22/2006—(H) Died Insurance Committee.

MS HB 461

-  An Act to require all secondary public schools to teach physical education; and for related purposes.


STATUS: 01/31/2006—(H) Died Insurance Committee.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MS HB 862

-  An Act to require each public school to include within its physical education classes not less than twelve weeks each school year of health instruction which must include instruction on significant aspects of bioterrorism; and for related purposes.


STATUS: 01/31/2006—(H) Died Insurance Committee.

MS HB 867

-  An Act to be known as the Mississippi Save Our Children Act; to require failing school districts to implement certain programs in order to improve student performance; and for related purposes.


STATUS: 01/31/2006—(H) Died Insurance Committee.

MS HB 912

-  An Act to require each public school to include within its physical education classes not less than twelve weeks each school year of health instruction which must include instruction on significant aspects of bioterrorism; and for related purposes.

STATUS: 01/31/2006—(H) Died Insurance Committee.

MS SB 2008

-  An Act to direct local school districts to establish local school health councils by November 1, 2006 in conformity with federal requirements; and for related purposes.

STATUS: 03/08/2006—(H) Died on calendar.

MISSOURI

MO HB 1852

To repeal Section 161.102 RSMo and to enact in lieu thereof one new section relating to the coordination of school health programs.

STATUS: 03/29/2006—(H) Referred: Elementary and secondary education.

MO HB 1856

To amend Chapter 192 RSMo by adding thereto one new section relating to obesity with an emergency clause.

STATUS: 03/29/2006—(H) Referred: Health Care Policy.

MO HB 2099

To amend Chapter 170 RSMo by adding thereto one new section relating to physical education classes.

STATUS: 05/12/2006—(H) Referred: Professional Registration and Licensing.





NEW HAMPSHIRE

NH SB 290

This Act establishes a wellness program in New Hampshire schools that combines education about nutrition with physical exercise.


STATUS: 02/23/2006—(S) Inexpedient to legislate motion adopted voice vote-bill killed; SJ 6 Pg. 117.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed


NEW JERSEY

NJ HB 2732

-  An Act concerning obesity education in public school districts and supplementing Chapter 35 of Title 18A of the New Jersey Statutes.

STATUS: 03/02/2006—Introduced referred to Assembly Education Committee.

NJ HB 3020

-  An Act concerning physical education instruction in the public high schools and supplementing Chapter 35 of Title 18A of the New Jersey Statutes.

STATUS: 05/15/2006—Introduced referred to Assembly Education Committee.

NEW MEXICO

NM HB 330

An Act making an appropriation for an anti-obesity nutrition education self-esteem and fitness dance program for low-income at-risk children in public schools.

STATUS: 02/08/2006—(16) Do pass Committee Report adopted-House Appropriations and Finance Committee.

NM HB 349

An Act making an appropriation to provide and stimulate sports activities for the city of Las Vegas and the Las Vegas public school districts.

STATUS: 02/08/2006—(16) Do pass Committee Report adopted-House Appropriations and Finance Committee.


NM SB 248

An Act making an appropriation to fight obesity and promote physical fitness in schoolchildren.

STATUS: 01/19/2006—(2) Senate Finance Committee-Senate Committees Committee-Germane-Senate Finance Committee.

NEW YORK

NY SB 3708

-  Provides for required instruction in physical education in elementary and secondary schools; requires that the regents shall include in its rules that students in elementary schools shall participate in physical education for a minimum of one hundred fifty minutes during each school week and that students in secondary schools shall participate for at least two hundred twenty-five minutes per week.

STATUS: 06/17/2006—(S) Print Number S 3708 A.





OKLAHOMA

OK HJR 1037

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to Health and Human Services.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

OK HJR 1039

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to rules.

OK SB 1387

Schools; Physical Education; Effective Date

STATUS: 03/28/2006—(H) Committee report; Do pass amended by Committee Substitute Common Education Committee.

OK SB 1459

An Act relating to schools; directing State DOE in consultation with State Department of Health to make certain information and assistance available to schools; encouraging use of certain program assessment instruments; directing involvement of certain committee in implementation of certain requirement; providing for codification; and providing an effective date.

STATUS: 04/24/2006—(S) Approved by Governor 04/24/2006.

OK SB 1461

An Act relating to schools; amending Section 1 Chapter 45 O.S.L. 2005 (70 O.S. Supp. 2005 Section 5-147) which relates to access to foods of minimal nutritional value; providing an exception for the sale of food for the purposes of a fundraiser; directing the State Board of Education to facilitate development of a physical fitness assessment software program; specifying capabilities of program; directing Board to select certain pilot sites to test program during certain school year; directing each school district to annually administer physical fitness assessment to certain students beginning in certain school year; providing for codification; and providing an effective date.

STATUS: 04/19/2006—(H) Title restored.

PENNSYLVANIA

PA HB 185

Amending the Act of March 10, 1949 (P.L. 30 No.14) entitled an Act relating to the public school system including certain provisions applicable as well to private and parochial schools; amending revising consolidating and changing the laws relating thereto providing for school district notification of residential development and for contracts for competitive food or beverage contracts; further providing for funding for charter schools for cyber charter school requirements and prohibitions and for enrollment and notification; and providing for free and reduced-price school lunches for certain students. Competitive food or beverage contracts and for nutritional guidelines for food and beverage sales in schools; further providing for certain health services and for advisory health councils; providing for local wellness policies for an interagency coordinating council for child health and nutrition for duties of the DOE and for physical education; and further providing for physiology and hygiene.

STATUS: 07/05/2006—Presented to the Governor.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

RHODE ISLAND

RI HB 7065

This Act would establish a pilot program to encourage physical exercise and promote healthy weight levels in children. This act would take effect upon passage.

STATUS: 04/26/2006—Continued.

RI HB 7561

This Act would expand municipal school health programs by requiring such programs to include policies dealing with physical education. This act would take effect upon passage.

STATUS: 02/16/2006—Introduced referred to House H.E.W.

RI HB 7747

This Act would increase the minimum amount of physical education instruction at the elementary level to 150 minutes per week and at the middle and high school levels to 225 minutes per week. This act would take effect upon passage.

STATUS: 02/28/2006—Introduced referred to House H.E.W.

RI SB 2492

This Act would increase the minimum amount of physical education instruction at the elementary level to 150 minutes per week and at the middle and high school levels to 225 minutes per week. This act would take effect upon passage.

STATUS: 03/15/2006—Continued.

TENNESSEE

TN HB 2522

An Act to amend Tennessee Code Annotated Title 49 Chapter 50 to enact the Tennessee Student Health Act.

STATUS: 03/01/2006—Taken off notice for calendar; In: Government Operations Committee.

TN HB 2910

An Act to amend Tennessee Code Annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 03/30/2006—Withdrawn.

TN HB 3750

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to elementary and secondary school pupils.

STATUS: 06/27/2006—Signed by Governor.

TN HB 4042

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to health and physical education curriculum and instructional programs.

STATUS: 03/08/2006—Assigned to Subcommittee K-12 of Education.

TN SB 2494

An Act to amend Tennessee Code Annotated Title 49 Chapter 50 to enact the Tennessee Student Health Act.

STATUS: 02/27/2006—Withdrawn.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

TN SB 2839

An Act to amend Tennessee Code Annotated Title 4 Chapter 29 and Title 68 Chapter 1 relative to child nutrition and wellness.

STATUS: 03/23/2006—Withdrawn.

TN SB 3143

An Act to amend Tennessee Code Annotated Title 49 relative to education.

STATUS: 03/23/2006—Received from Senate held on House Desk.

TN SB 3921

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to health and physical education curriculum and instructional programs.

STATUS: 03/27/2006—Assigned to Gen. Sub of Education Committee.

TN SB 3991

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to elementary and secondary school pupils.

STATUS: 05/26/2006 AM—Withdrawn (Amendment 1-SA1246).

VERMONT

VT HB 862

Education; home study programs. This bill proposes to direct that the commissioner of education specify the content of a report by a licensed teacher of progress made by a student enrolled in a home study program; to specify and authorize use of certain standardized achievement tests to evaluate the progress of a home study student; to exempt a home study student who is 13 years of age or older from the requirements to study physical education comprehensive health education and the fine arts; and to stipulate that a home study program which has successfully completed two consecutive years of home study is not required to submit an annual curriculum narrative.

STATUS: 04/12/2006—Governor's Action: Signed-Act No: 0107.

VIRGINIA

VA HB 1593

Childhood obesity. Prevention and reduction in public schools.

STATUS: 01/30/2006—(H) Continued to 2007 in Education.

VA SB 206

Childhood obesity. Requires the Board of Education to promulgate in cooperation with the State Health Department regulations establishing standards to facilitate the prevention and reduction of childhood obesity in the public schools. This bill also requires division superintendents to complete instruction concerning the causes and consequences of overweight and obese students and the relationship between nutrition health and learning by July 1, 2008. The requirement for instruction may be satisfied by attendance at conferences seminars or in-service training.

STATUS: 01/26/2006—(S) Continued to 2007 in Education and Health (12-Y / 2-N).

MEASURE
STATUS:

Enacted

Pending

Carried Over

Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

VA SB 599

Physical education. Requires school boards to implement a requirement for physical education to be taught in grades kindergarten through 12.

STATUS: 02/09/2006—(S) Continued to 2007 in Education and Health (15-Y / 0-N).

WEST VIRGINIA**WV HB 4848**

A Bill to amend and reenact Bill Title #167; 18-2-7a of the code of West Virginia 1931 as amended relating to Title Language requirements for physical education in the public schools; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection use and reporting body mass index data.

STATUS: 03/02/2006—To Education.

WV SB 785

An Act to amend and reenact #167; 18-2-7a of the Code of West Virginia 1931 as amended relating to requirements for physical education in public schools; additional condition authorizing development of alternative programs to meet requirements; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection use and reporting body mass index data.

STATUS: 04/04/2006—Approved by Governor 4/4/06

WISCONSIN**WI HB 1080**

An Act to create 118.33 (1) (e) of the statutes; relating to: granting high school credit for extracurricular sports.

STATUS: 05/11/2006—(H) Failed to pass pursuant to Senate Joint Resolution 1.

WYOMING**WY HB 72**

An Act relating to education; creating the healthy living–healthy learning program account as specified; providing for grants to school districts from the account; providing criteria for healthy living–healthy learning grants; establishing a maximum grant level; establishing a healthy living–healthy learning panel as specified; granting rulemaking authority; and providing for an effective date.

STATUS: 02/14/2006—(H) Failed introduction.

MEASURE
STATUS:

Enacted



Pending



Carried Over



Vetoed

Body Mass Index Monitoring and Indexing

Body mass index (BMI) measures an individual's weight in proportion to his or her height and is a simple, widely used measurement in determining if one's weight is healthy or puts them at risk for obesity. For children and adolescents, their BMI measurements are compared with age- and gender-specific charts developed by the Centers for Disease Control and Prevention (CDC), commonly referred to as BMI-for-age growth charts. These charts help health care professionals determine whether a child or adolescent is underweight, at a healthy weight, at risk for overweight or overweight (see chart below).

BMI for Age Interpretation

BMI percentile	Child is considered:
Under 5th percentile	Underweight
Between 5th and 15th percentile	At risk for being underweight
Between 15th and 85th percentile	At a healthy weight
Between 85th and 95th percentile	At risk for being overweight
Over 95th percentile	Overweight

Source: Centers for Disease Control and Prevention, July 2006

To assess the prevalence of obesity, evaluate the effects of policies intended to curb obesity rates in children and adolescents and educate parents, state lawmakers have turned to legislation that measures children's and teenager's BMI. In addition, some lawmakers have supported issuing "health report cards" to increase parental awareness of their child's health status. Despite the good intent behind BMI reporting bills, they evoke controversy.

Many parents feel the assessments are intrusive and could hurt students' self-esteem levels. Recently, researchers in the United Kingdom concluded that the potential psychological damage could outweigh the benefits. However, other studies consistently demonstrate that most parents of overweight children fail to identify their children as such. Health advocates contend that if parents do not perceive a problem, they will not make the necessary lifestyle changes.

Another argument is that BMI does not always provide a reliable measure of a person's health status. A healthy, athletic child may be classified as at-risk for being overweight or obese because he or she has a high muscle mass weight while a sedentary, thinner child may be classified as having a healthy weight. While BMI can help to determine whether a person is overweight or obese, because it is based on a formula using height and weight and does not consider muscle mass, body fat content, cardiorespiratory fitness or other health measures, it serves as more of a guideline than a determinant.

In 2003, **Arkansas** was the first state to require schools to send annual health report cards with information about each student's BMI to parents. Schools also were required to aggregate the data to give school officials and policy-makers a school-by-school assessment on the overall health status of the pupils. In September 2004, the Arkansas Center for Health Improvement (ACHI) released its first report, which showed that 38 percent of Arkansas' public school students were overweight or at risk for being overweight. Subsequent reports indicate that the overall obesity rate in the state has not decreased. However, the good news is that obesity rate in Arkansas has not increased. ACHI is responsible for managing the statewide collection of BMI results and will continue to generate the health reports and track obesity trends.

In 2004, the **Illinois** Department of Health was required by the legislature to collect data measuring obesity as part of the mandatory health examination required for students to attend public schools. The **Pennsylvania** Department of Health also instituted a system to monitor childhood obesity. The Growth Screening program requires schools to measure students' height and weight in kindergarten through grade 4 and plot the measurements against growth charts developed by the CDC. The department is expanding the program in three additional grades each year until all grade levels are reporting students' BMI

measurements. The department also has provided guidance on how schools should inform parents of the results.

In 2005, three states—**New York, Tennessee** and **West Virginia**—joined the ranks of those using BMI to monitor childhood obesity.

In June 2005, Gov. George Pataki (R) launched Activ8Kids!¹ **New York's** child obesity prevention program. Through the enactment of SB 3668, the state's public health appropriations bill, the Legislature required the state program to develop a BMI-for-age screening program for children between the ages of 2 and 18. As part of the screening program, parents will be notified of their child's BMI measurement and will be offered an explanation of their child's results as well as any necessary recommendations for improving the health of their child.

In **Tennessee**, local education agencies (LEAs) were asked to implement a program that identifies children who are at risk of becoming obese. School systems that decide to implement such a program must ensure that the following conditions are met:

- A sufficient number of school staff has been properly trained to measure BMI.
- Trained staff complete a BMI-for-age screening for each child whose parents have not requested exclusion from testing.
- Parents and guardians receive a confidential health report card that provides the result of their child's BMI screening and the relevance of the results.
- The results of each student's test are transmitted to the Department of Health.

The Department of Health, with the assistance of the Department of Education (DOE), offers guidance for LEAs to implement a monitoring system. The guidelines must provide standard practices for maintaining confidentiality and proper testing procedures. The Department of Health also must develop and disseminate a form for schools to report the students' results and develop a model health report card to be distributed to parents. Due to budgetary constraints, LEAs are not mandated to implement BMI screening programs.

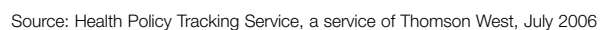
¹ Press Release, Blue Cross of California, Blue Cross of California Launches BMI Training and Promotion Program to Make Childhood Obesity Screening a Statewide Standard (June 26, 2006), available at http://www.bluecrossca.com/wps/portal/chp/footer?content_path=shared/noapplication/pressroom/wlp/nosecondary/notertiary/pw_a086897.htm.

West Virginia requires schools to report BMI measurements in an effort to monitor the effect of requiring each child to participate in physical education classes. The law required BMI measurements to be included in kindergarten screening procedures and mandated that students in grades 4 through 12 have their BMI measurements taken through routine fitness testing procedures. However, a bill adopted this year allows assessments only for a scientifically random sample of students. School personnel responsible for taking the BMI measurements must undergo training. Data will be reported by each school to the State DOE and the department then will disseminate the data, in the aggregate, to the governor, State Board of Education, Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resources Accountability.

Blue Cross of **California** recently initiated a program, “Taking Measures for Their Future,” a statewide BMI training and promotion program for clinicians to screen for childhood obesity. The program, part of a 3-year, \$9-million statewide childhood obesity initiative, will train clinical staff from approximately 9,000 physician offices on BMI screening and their role in fighting childhood obesity. John Monahan, President of Blue Cross State Sponsored Business, said in a press release, “Training thousands of clinical staff on how to identify children at risk for overweight and obesity early is a vital step in the fight against childhood obesity, which is a growing epidemic in our state. Providing the training and resources needed to build obesity screening into regular pediatric care will help foster a medical community more equipped to empower California families and help children lead healthier lives.”

2006 State Legislative Activity

Lawmakers continue to introduce legislation to encourage, require or amend guidelines for schools to monitor and report students’ BMI. In 2006, lawmakers in 15 states—**Alaska, California, Florida, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Virginia** and **West Virginia**—have introduced or carried over measures that address BMI measuring and reporting in schools.



Identical bills, HB 4848 and SB 785, in **West Virginia** proposed additional guidance on the BMI measuring and reporting requirements enacted in 2005 by directing the state Board of Education to adopt a rule governing the process and requiring that only a scientifically random sample of students be assessed. Gov. Joe Manchin (D) signed SB 785 in April.

While **Pennsylvania** law already requires schoolchildren to have their height and weight measured by a school nurse or teacher as part of established school health tests, HB 185 would require that information to be used to generate a weight-to-height ratio. The bill was sent to the governor July 5 for his approval.

Oklahoma bill SB 1461 would have required the state Board of Education to develop a fitness assessment software program to measure and track components of fitness, including BMI, endurance, strength and flexibility. The software program also would have created confidential reports for parents that include explanations of the results and suggestions on ways to improve students' health. The program would have begun as a pilot program in elementary schools in the 2006-2007 school year. Although the bill passed the Senate, it died in the House upon adjournment.

Initially, two **Maryland** bills, HB 1418 and SB 457, would have required county school boards to assess students' BMI measurements and provide health report cards to parents. However, lawmakers determined that it was in the best interest of the state to spend another year studying the obesity issue and stripped away the BMI provisions. The bills passed both chambers; however, they died upon adjournment.

TABLE

Body Mass Index: 2006 Legislative Activity

ARKANSAS

AK SB 162

An Act relating to monitoring and reporting of student discipline and safety of student health pertaining to height nutrition and physical activity of the percentage of the legislative body with a body mass index (BMI) that exceeds 25.0 and of state capitol vending machine profits; requiring schools to report school health status and policy the percentage of students that are overweight and at risk of being overweight and profits from vending machines; and requiring the evaluation of health education programs on the basis of health reports and screening.

STATUS: 03/01/2006—(S) Bill hearing canceled

CALIFORNIA

CA HB 864

An Act to add Chapter 2.5 (commencing with Section 104700) to Part 3 of Division 103 of the Health and Safety Code relating to physical fitness—California Council on Physical Fitness and Sports.

STATUS: 01/31/2006—(H) From Committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV Sec. 10(C) of the Constitution.

FLORIDA

FL HB 7203

Wellness Programs; requires Department of Health to collaborate with other state agencies in developing policies and strategies to prevent and treat obesity which shall be incorporated into agency programs; requires department to advise health care practitioners regarding morbidity mortality and costs associated with condition of being overweight or obese; creates Fla. State Employee Wellness Council within DMS; provides purpose and duties of council etc. Amends 381.0054 110.123. Effective date: 07/01/2006.

STATUS: 05/04/2006—(H) Substituted committee substitute/committee substitute/SB 1324; laid on table link/identical/similar/compare passed refer to committee substitute/committee substitute/SB 1324 (CH. 2006-269) HJ 01245.





MARYLAND

MD HB 1418

Requiring county boards of education to provide diabetes screening tests and BMI calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/08/2006—(H) Delegates Bozman Heller and Gilleland.

MEASURE STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

MD SB 329

Requiring schools enrolling students in the first, third, fifth or eighth grade to complete a BMI for age measurement on students within 90 days of the beginning of the school year except in specified circumstances; requiring schools to send the parents or guardians of students who were measured for BMI for age by the school a confidential health report card including specified information in a specified mailing; etc.

STATUS: 03/27/2006—(S) Unfavorable report by Education Health and Environmental Affairs.

MD SB 457

Requiring county boards of education to provide diabetes screening tests and BMI calculations for each student in each public school at a specified time; requiring county boards of education to establish a food service program to prohibit the sale of specified foods and beverages during specified hours to make specified limitations on foods and beverages sold in elementary schools to adopt specified nutrition and wellness policies for high schools and to form nutrition integrity teams; etc.

STATUS: 04/10/2006—(H) Favorable with amendments report by Ways and Means.

MASSACHUSETTS

MA SB 108

By Richard T. Moore, John J. Binienda, et al. Authorizes schools to examine students with BMIs in the 95th percentile for diabetes; articulates reporting requirements relative to children found to be at risk for said disease.

STATUS: 04/13/2006—(S) Accompanied study order. See SB 2490.

MICHIGAN

MI HB 5265

A Bill to amend 1976 PA 451 entitled "The Revised School Code" (MCL 380.1 to 380.1852) by adding Section 1503.

STATUS: 10/06/2005—(H) Referred to Committee on Education.

MISSOURI

MO HB 2099

To amend Chapter 170 RSMo by adding thereto one new section relating to physical education classes.

STATUS: 05/12/2006—(H) Referred: Professional Registration & Licensing.

NEW HAMPSHIRE

NH SB 290

This Bill establishes a wellness program in New Hampshire schools that combines education about nutrition with physical exercise.

STATUS: 02/23/2006—(S) Inexpedient to Legislate motion adopted voice vote. Bill killed; SJ 6 PG. 117.

MEASURE
STATUS:

Enacted


Pending

Carried Over

Vetoed

NEW JERSEY


NJ HB 446

-  An Act concerning pupil health and supplementing Chapter 40 of Title 18A of the New Jersey Statutes.

STATUS: 01/10/2006—Introduced referred to Assembly Education Committee.

NEW YORK

NY SB 472

-  Requires BMI percentile screenings as part of the school medical screenings for vision hearing and scoliosis within six months of initial entry to school and during the first, third, seventh and tenth grade years.

STATUS: 05/30/2006—(S) Print number S 472 A.

OKLAHOMA

OK HJR 1037

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to Health and Human Services.

OK HJR 1039

A Joint Resolution establishing the Task Force on Childhood Obesity; specifying membership and duties of task force; specifying scope of study; specifying reimbursement for expenses of members; requiring report; providing for noncodification; and declaring an emergency.

STATUS: 02/07/2006—(H) Second reading referred to Rules.

OK SB 1461

An Act relating to schools; amending Section 1 Chapter 45 O.S.L. 2005 (70 O.S. Supp. 2005 Section 5-147) which relates to access to foods of minimal nutritional value; providing an exception for the sale of food for the purposes of a fundraiser; directing the State Board of Education to facilitate development of a physical fitness assessment software program; specifying capabilities of program; directing Board to select certain pilot sites to test program during certain school year; directing each school district to annually administer physical fitness assessment to certain students beginning in certain school year; providing for codification; and providing an effective date.


STATUS: 04/19/2006—(H) Title restored.


OK SB 1986

An Act relating to schools; requiring State Board of Education to develop fitness testing system; specifying certain component of system; providing for codification; providing an effective date; and declaring an emergency.

STATUS: 02/07/2006—(S) Second reading referred to Appropriations.

MEASURE
STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

PENNSYLVANIA

PA HB 185

- Amending the Act of March 10 1949 (P.L.30 No.14) entitled an act relating to the public school system including certain provisions applicable as well to private and parochial schools; amending revising consolidating and changing the laws relating thereto providing for school district notification of residential development and for contracts for competitive food or beverage contracts; further providing for funding for charter schools for cyber charter school requirements and prohibitions and for enrollment and notification; and providing for free and reduced-price school lunches for certain students. Competitive food or beverage contracts and for nutritional guidelines for food and beverage sales in schools; further providing for certain health services and for advisory health councils; providing for local wellness policies for an interagency coordinating council for child health and nutrition for duties of the Department of Education (DOE) and for physical education; and further providing for physiology and hygiene.

STATUS: 07/05/2006—Presented to the Governor.

TENNESSEE

TN HB 3522

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to completion of a health report card on all public schoolchildren in Tennessee.

STATUS: 04/25/2006—Taken off notice for calendar in subcommittee K-12 of education of Education Committee.

TN SB 3143

An Act to amend Tennessee Code annotated title 49 relative to education.

STATUS: 03/23/2006—Received from Senate held on House Desk.

TN SB 3375

An Act to amend Tennessee Code Annotated Title 49 Chapter 6 relative to completion of a health report card on all public schoolchildren in Tennessee.

STATUS: 04/05/2006—Assigned to Gen. Sub of Senate Education Committee.

VIRGINIA

VA HB 338

Annual BMI assessments required for public school students. Requires the principal of each school pursuant to regulations adopted by the Board of Education in consultation with the State Health Commissioner to: (i) provide an annual assessment of the BMI of each student in the school; (ii) notify the parent or guardian in writing of the annual BMI percentile by age for the relevant student; and (iii) provide the parent or guardian of the relevant student with information explaining the use of BMI in identifying underweight and overweight in children and the potential health risks of various growth patterns.

STATUS: 01/18/2006—(H) Passed by indefinitely in Education.

MEASURE
STATUS:

- ✓ Enacted
— Pending
→ Carried Over
✗ Vetoed

WEST VIRGINIA

WV HB 4848

A Bill to amend and reenact 18-2-7A of the code of West Virginia 1931 as amended relating to Title Language requirements for physical education in the public schools; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection use and reporting BMI data.

STATUS: 03/02/2006—To Education.

WV SB 785

- ✓ An Act to amend and reenact 18-2-7A of the Code of West Virginia 1931 as amended relating to requirements for physical education in public schools; additional condition authorizing development of alternative programs to meet requirements; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection use and reporting BMI data.

STATUS: 04/04/2006—Approved by Governor.

MEASURE
STATUS:

- ✓ Enacted
- Pending
- Carried Over
- ✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Advertising and Marketing Restrictions

The food and beverage industry is facing growing criticism from public health advocates who claim their advertisements and marketing strategies are contributing to the rising rate of obesity in children and adolescents. Public health advocates cite as examples the companies that have developed Internet games and commercials that specifically market their cereal, candy, kids' meals or other foods to youth. According to the Kaiser Family Foundation, children see about 40,000 TV ads a year, the majority of which are related to food.

In response to critics, some companies voluntarily have reduced the advertising of certain products to children and developed campaigns that foster healthy eating habits. In 2005, Kraft announced that the company will curb its Oreo and Kool-Aid advertising campaigns to children under the age of 12. PepsiCo no longer advertises its soft drinks to children under 12, and Frito-Lay, PepsiCo's snack unit, no longer advertises Cheetos to children under 8. The American Beverage Association has begun a \$10-million print marketing campaign advertising the beverages the industry will continue to offer to schools based on the new industry agreement.

Reports

However, the federal government wants the food, beverage and advertising industries to take further action. In May, the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) issued a report urging the food marketing industry to take specific steps to change its marketing to children to help the fight against childhood obesity. The recommendations resulted from a workshop held by the FTC and HHS in July 2005 to examine the role of the private sector in rising obesity rates. The report includes 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.

The FTC and HHS plan to monitor the implementation of the recommendations and to issue a follow-up progress report on the industry. In an FTC press release, Chairman Deborah Platt Majoras said, "Responsible, industry-generated action and effective self-regulation are critical to addressing the national problem of childhood obesity. The FTC plans to monitor industry efforts closely, and we expect to see real improvements." The FTC also is conducting a study on the nature and extent of food marketing techniques directed at children and adolescents. In 2005, the Institute of Medicine released a report on the effect of food and beverage marketing to children and urged the federal government to mandate action.¹

¹ 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>.

Also released in May, a report funded by the FDA and completed by The Keystone Center, a nonprofit policy and dispute resolution organization, 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. The report, *Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, provides recommendations to understand and influence consumer behavior, increase the availability of lower-calorie food items and provide consumers with nutrition information. Several recommendations pertained to consumer marketing and education of foods, especially away-from-home foods:²

- Craft messages and education programs directed at consumers to impart the knowledge, skills and motivation consumers need to change food and activity behaviors.
- 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, no- and low-fat 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.

² The Keystone Center, *The Keystone Forum On Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, Final Report, May 2006.

Federal Legislation

While the federal government has not yet mandated action, several lawmakers have introduced bills proposing more regulation of the food and beverage marketing industry.

- Children's Health FTC 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.
- 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 to 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.

All three bills remain in committee in their chamber of origin.

2006 State Legislative Activity

Because consumer advertising and marketing is generally regulated at a federal level, state legislators have introduced very few bills limiting or regulating the advertising and marketing of foods and beverages to children. This year, **California, Illinois, Indiana, Massachusetts** and **New York** introduced or carried over legislation that pertains to food and beverage marketing and advertising to children. None of the measures have been enacted.

Massachusetts SB 1921 would prohibit school buses from displaying advertisements for fast food restaurants; beverages with added artificial or refined sweeteners including soft drinks, fruit drinks and sports drinks; candy; and foods containing more than 35 percent of its calories from fat, more than 10 percent of its calories from saturated fat or more than 35 percent sugar by weight.

In **New York**, HB 5665 would tax expenditures for television advertising for food products. Similarly in **California**, SB 118 would impose an excise tax on the purchase of advertising space for food advertisements of food products of poor nutritional quality.

The three bills are still pending action in their house of origin.

Illinois HB 1538 would have prohibited a school board from contracting for the advertising and sale of carbonated beverages until the school board allows for public comment on the contract, but died upon adjournment of the Legislature.

Industry Liability Lawsuits

A rapidly growing number of state legislatures are moving to limit an individual's ability to sue food and beverage companies. Commonly referred to as "Commonsense Consumption Acts," these measures limit the civil liability of manufacturers, distributors, advertisers, trade associations and sellers or retailers of food or beverages for damages resulting from weight gain, obesity or obesity-related conditions. **Louisiana** lawmakers were the first to limit the filing of obesity-related lawsuits. Since then, 22 states have followed suit.

Supporters of these bills, including the National Restaurant Association, believe that restaurant and food manufacturers should not be held liable for personal decisions made by individuals. However, opponents of such legislation, including the American Heart Association and the National Trial Lawyers Association, fear that these bills will encourage restaurants to continue to provide menu options that are high in fat and calories. In addition, opponents believe that these bills are unnecessary because courts can dismiss cases they deem "frivolous" by way of Rule 11, a federal Act that sanctions attorneys who bring such cases to court.

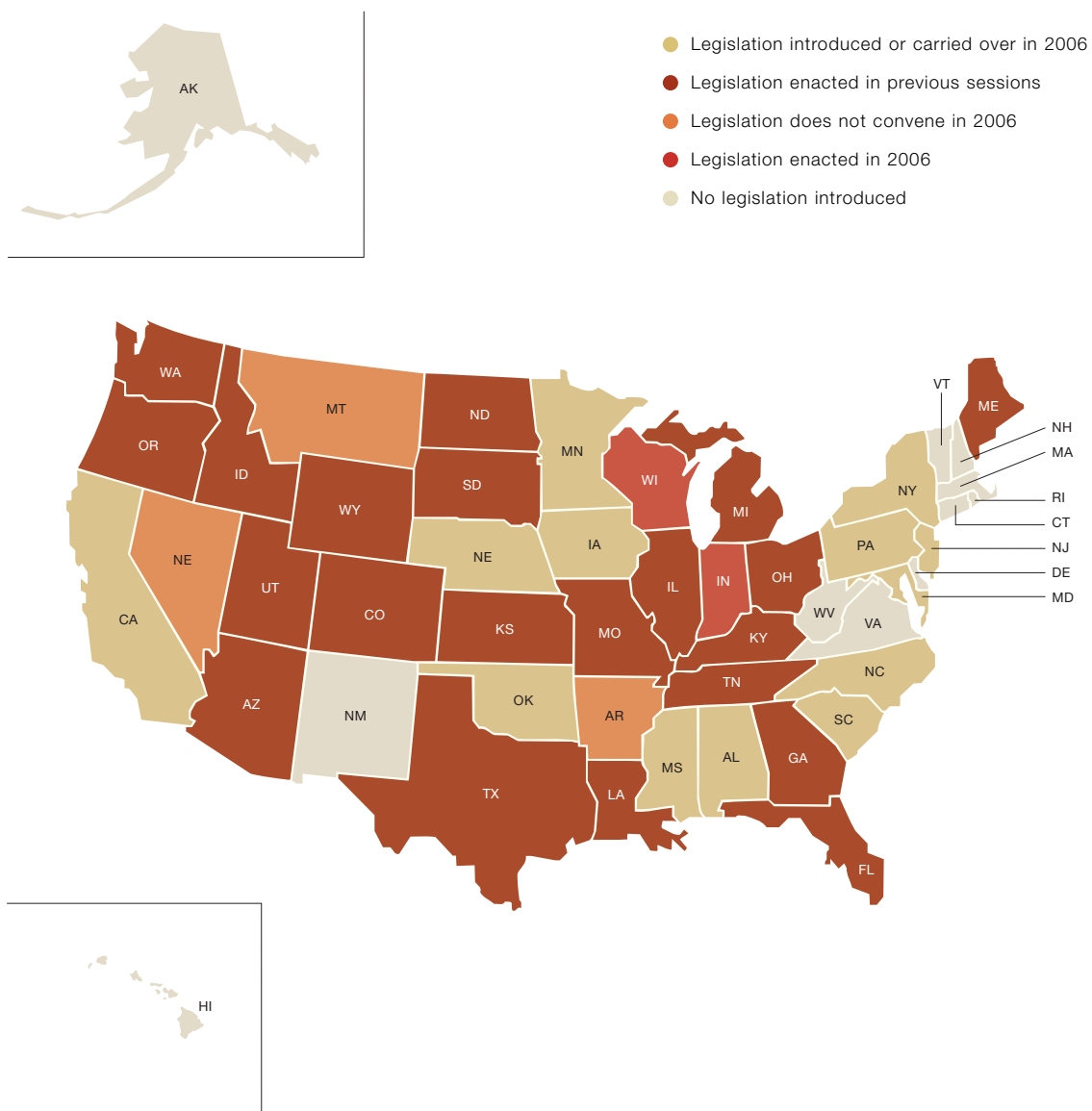
The latest legal battle pits the Center for Science in the Public Interest (CSPI) against Kentucky Fried Chicken (KFC). Filed as a class action lawsuit on June 12, 2006, in the District of Columbia Superior Court, CSPI is suing the fast food company to prohibit it from preparing food with partially

hydrogenated oils that contain trans-fatty acid. Those in favor of banning such lawsuits hope that the U.S. Senate soon passes the “Commonsense Consumption Act of 2005,” FD SB 908, currently before the Senate Committee on the Judiciary. Last year, the House passed its version of the bill, “Personal Responsibility in Food Consumption Act,” FD HB 554, by a 306-120 margin. Enactment of the legislation would “...wipe out all court cases—new and pending.”¹

Despite the lack of action in the U.S. Senate, states continue to take the lead in preventing obesity-related lawsuits from being filed in their jurisdictions. During the 2006 legislative sessions, lawmakers in two states approved such bills. **Indiana** HB 1113 was enacted in March and **Wisconsin** SB 161 was signed into law in April. Lawmakers in six other states—**Alabama, Iowa, Maryland, Mississippi, New Jersey** and **Oklahoma**—introduced liability bills this session, and measures were carried over in seven states—**California, Minnesota, Nebraska, New York, North Carolina, Pennsylvania, Rhode Island** and **South Carolina**. Legislative action is highlighted in the map on page 102.

¹ Chris Grier, Advocacy Group Files Obesity-Related Lawsuit as Senate Weighs Banning Such Actions, BESTWIRE SERVICES, June 16, 2006.

2006 Legislation Limiting Obesity-Related Lawsuits







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

TABLE

Industry Liability Lawsuit: 2006 Legislative Activity

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

ALABAMA

AL HB 63

 STATUS: Defeated/Died with adjournment of the legislature.

CALIFORNIA

CA SB 937

 STATUS: 2/6—Carried over from 2005; returned to Secretary of Senate.

INDIANA

IN HB 1113

 STATUS: 3/17—Signed by Governor.

IOWA

IA SB 2153

 STATUS: Defeated/Died with adjournment of the legislature.

MARYLAND

MD HB 28

 STATUS: Defeated/Died with adjournment of the legislature.

MINNESOTA

MN HB 118 / MN HB 3810 / MN SB 631

 STATUS: Defeated/Died with adjournment of the legislature.

MISSISSIPPI

MS HB 764

 STATUS: Defeated/Died with adjournment of the legislature.

NEBRASKA

NE LB 455

 STATUS: Defeated/Died with adjournment of the legislature.

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

NEW JERSEY

NJ HB 2902

 STATUS: 3/21—In Assembly; referred to Judiciary Committee.

NJ SB 1088

 STATUS: 1/26—In Senate; referred to Judiciary Committee.

NEW YORK

NY HB 5076

 STATUS: 1/4—Referred to Assembly Codes.

NY SB 2482

 STATUS: 1/4—Referred to Senate Codes.

NORTH CAROLINA

NC HB 1245

 STATUS: Defeated/Died with adjournment of the legislature.

OKLAHOMA

OK HB 3082 / OK HB 3120 / OK SB 1323 / OK SB 1657 / OK SB 1874

 STATUS: Defeated/Died with adjournment of the legislature.

PENNSYLVANIA

PA HB 670 / PA HB 1772 / PA SB 375

 STATUS: Carried over to 2006; no further action to report.

RHODE ISLAND

RI HB 5630

 STATUS: Carried over to 2006; no further action to report.

SOUTH CAROLINA

SC HB 3118 / SC HB 3613

 STATUS: Defeated/Died with adjournment of the legislature.

WISCONSIN


WI HB 338


 STATUS: Defeated/Died with adjournment of the legislature.


WI SB 161

 STATUS: 04/14—Signed by Governor.

MEASURE
STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Menu-Labeling Requirements for Restaurants

State legislators continue to consider legislation that would require certain food establishments to post nutritional information directly on their menus or menu boards. Public health advocates, particularly the Center for Science in the Public Interest (CSPI), fully support such measures that force establishments to shed light on the amount of calories, sodium and fat contained in food and hope that a better informed consumer will help curb rising obesity rates.

In May, The Keystone Center, a nonprofit policy and dispute resolution organization, completed a report that surveyed a variety of stakeholders in the obesity debate. Because a growing segment of the population is consuming more of their meals outside of the home, the FDA sought the assistance of the Center to develop recommendations that can be used by restaurants, grocery stores and other businesses that sell full meals and ready-to-eat items to assist consumers in making better-informed nutritional decisions. The resulting report, *Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, was released in May 2006. Among the recommendations, restaurants are asked to provide nutrition information and increase the availability of lower-calorie menu items. The report recognized that nutritional information is voluntarily provided to consumers by at least 150 of the country's 300 largest chain restaurants in many formats, including menus, Web sites and kiosks. The group, however, pointed out that there is no standard format in how this information is provided to consumers.¹

¹ The Keystone Center, *The Keystone Forum On Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*, Final Report, May 2006.

The decision to provide nutritional information and the type of information provided varies from business to business. Regardless, the report points to four national polls that indicate that consumers would like to see nutritional information posted on menu or menu boards.¹ However, not enough data is available to determine how consumers process this information and if it indeed affects an individual's decision on what to eat.

Providing nutritional content to consumers in restaurants is not required under any federal or state laws. The provision of such information is voluntary. However, to help reduce the obesity rate in this country, lawmakers in several states are debating the necessity of mandating food service establishments to provide this information. CSPI has been a force behind this movement. The majority of legislation being introduced targets chain restaurants and franchises and is modeled after CSPI's recommendations, which would require food service chains with 10 or more units to list the calorie, sodium and saturated and trans fat contents of standard menu items on their menus or menu boards. These bills face major opposition from the National Restaurant Association and restaurant owners who claim that nutritional information already is available to the consumer by request or via the Internet. Restaurant owners argue that such a legislative mandate would be very expensive, forcing small business owners to pass additional costs on to consumers.

State menu labeling legislation was first introduced in **Maine** in 2003. Since then, lawmakers in several states have introduced similar requirements, but none have been enacted into law. This year, legislators in **New Jersey, Oklahoma, Pennsylvania** and **Vermont** introduced menu labeling bills, and measures were carried over from **Hawaii, Illinois, Massachusetts, New York, Ohio, Vermont** and the **District of Columbia**. None of the measures have made it out of the chamber of origin. The table on page 107 highlights those measures that have been introduced and carried-over in 2006. Measures that are still pending are denoted by a blue dot.

TABLE

Menu Labeling: 2006 Legislative Activity

DISTRICT OF COLUMBIA

DC LB 495

 STATUS: Carried over to 2006; no further action to report.

HAWAII

HI HB 1579

 STATUS: Carried over to 2006; no further action to report.

HI SB 1098

 STATUS: Carried over to 2006; no further action to report.

ILLINOIS

IL HB 249

 STATUS: Defeated/Died with adjournment of the legislature.

IL SB 520

 STATUS: Defeated/Died with adjournment of the legislature.

MASSACHUSETTS

MA HB 3814

STATUS: Study Order for Joint Committee on Public Health.

MA SB 160

STATUS: Study Order for Joint Committee on Community Development and Small Business.

NEW JERSEY

NJ HB 1693

STATUS: 1/10—In Assembly; referred to Health and Senior Services Committee.

NEW YORK


NY HB 5664


 STATUS: 1/18—Carried over; referred to Assembly Codes.


NY SB 4551

 STATUS: 1/4—Carried over; referred to Senate Health.

MEASURE
STATUS:

 Enacted

 Pending

 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

OHIO

OH HB 423 STATUS: Carried over to 2006; no further action to report.

OKLAHOMA




OK SB 1309 STATUS: Defeated/Died with adjournment of the legislature.

PENNSYLVANIA

PA HB 375 STATUS: Carried over to 2006; no further action to report.**PA HB 1516** STATUS: Carried over to 2006; no further action to report.**PA SB 1038**

STATUS: 1/3—In Senate; referred to Consumer Protection and Professional Licensure.

VERMONT

VT HB 327 STATUS: Defeated/Died with adjournment of the legislature.**VT SB 301** STATUS: Defeated/Died with adjournment of the legislature.MEASURE
STATUS: Enacted Pending Carried Over Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Product Labeling and Claims

In a recent AP-Ipsos survey of 1,000 adults, researchers found that although most Americans read nutritional labels on food products, they usually choose to ignore the information provided. Despite knowing that a product is “unhealthy,” 46 percent of the consumers surveyed chose to purchase “unhealthy” products regardless of the data provided. The survey results, released on July 3, 2006, show that women pay closer attention to food labels than men and that young adults pay more attention to calorie information than fat content.¹ This type of consumer data allows public health advocates and policy-makers to determine which course of action must be taken to combat the country’s rising obesity rates.

Europe is also taking notice of rising obesity rates. The Confederation of the Food and Drink Industries of the European Union, a trade group more commonly referred to as CIAA, has released *voluntary guidelines* for its members regarding the provision of nutritional information on food packaging in an effort to prevent an obesity epidemic. CIAA recommends to its members that nutritional information be provided on both “front-of-pack” and “back-of-pack” packaging. The front-of-pack label would provide calorie information, as well as inform a consumer what caloric percentage of the “guideline daily amounts” they will consume by eating or drinking that particular product. Back-of-pack labeling will provide further information on sodium, fiber, sugars, etc. The CIAA is asking members to provide this information on their

¹ Libby Quid, *Label warnings often ignored: Many food shoppers check information but still go for the sugar and fat*, THE STAR LEDGER, July 3, 2006.

packaging over time. European divisions of Campbell's, Kraft, Coca-Cola and Cadbury Schweppes are members of the CIAA. The director of European Public Affairs for Coca-Cola told Dow Jones Newswires that his company would be following the recommendations.²

Because the authority for regulating nutritional information on food products lies with the federal Food and Drug Administration, legislators in only a few states are choosing to introduce measures that further regulate the nutritional labels of food and beverage products. Last year, the federal government released sodium standards for items carrying the "healthy" claim. 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. In 2003, federal rules were issued that required the inclusion of trans fat information on all packaged products.

At its 2006 annual meeting, the American Medical Association (AMA) voted to push the federal government to require companies to add warning labels for high-sodium products and will lobby the food industry to cut down on the amount of salt added to processed foods and meals purchased in restaurants by 50 percent in the next decade. The AMA defines "high-sodium" products as those that contain more than 480 milligrams of sodium per serving. According to an Associated Press article, because the AMA is well-respected in Washington, the FDA will probably consider holding hearings on sodium-label warnings.³

In 2005, lawmakers in only two states—**California** and **Connecticut**—introduced nutritional labeling legislation.

The California measure called for the state Department of Health Services to establish a voluntary food inspection program that would have awarded the "California Choice Seal" for packaged food items that meet the following nutritional standards:

- No more than 35 percent of the total calories shall be from fat, excluding nuts, seeds and nut butters.
- No more than 10 percent of the total calories from fat shall be from saturated fat.
- No more than 35 percent of the total weight of the food shall be composed of sugar, excluding fresh fruits and vegetables.

² Aoife White, *European Companies to Unveil Food Labels*, THE ASSOCIATED PRESS, July 3, 2006.

³ Lindsey Tanner, *AMA Wants Warning Labels on High-Salt Food*, THE ASSOCIATED PRESS, June 14, 2006.

To fund the program, the state would have assessed a fee on program participants. The measure was carried over to the 2006 legislative session, but it has been stripped of any provisions relating to nutritional labeling.

Connecticut SB 403 would have required alcoholic beverages to have nutritional labels similar to those on soda bottles, which provide calorie and sugar information among other nutritional facts. The bill never made it out of the Senate.

No new product labeling measures have been introduced in 2006.

Biotechnology: Labeling of Genetically Modified Products

Agriculture biotechnology, most commonly in the form of genetic modification, has sparked debate here in the United States and across the globe, but more so in Europe than anywhere else. Genetic modification technologies allow scientists to alter the genetic makeup of plants and animals in an effort to make crops and farm animals disease resistant, to increase crop yields and to increase muscle mass in animals. However, critics argue that not enough is known about this science and fear that these modifications can be harmful to humans.

Several sources point out that U.S. farmers are the largest producers of genetically modified (GM) crops. Product labeling of GM produce or meat is not federally mandated, but states are slowly taking up the issue to require the labeling of such products. **Vermont** became the first state in the nation to require the labeling of GM seeds in 2003. In 2005, **Alaska** Gov. Frank Murkowski (R) signed SB 25, requiring GM fish and fish products to be labeled as such.

According to research completed by the Pew Initiative on Food and Biotechnology, a new trend emerged in 2005 regarding biotechnology activity. Nine states introduced legislation that would preempt local and county regulations of GM products.¹

¹ Pew Initiative on Food and Biotechnology, *State Legislative Activity Related to Agricultural Biotechnology in 2005*, June 2006.

In 2006, legislators in three states deliberated legislation calling for the labeling of GM products. **Hawaii** lawmakers introduced HB 2827 a measure similar to Alaska's, which would require the labeling of GM fish and fish products. In addition, three measures—HB 1781, SB 647 and SB 1764—were carried over from last year. All these measures died with the adjournment of the legislature. **New York** HB 115 and HB 8344 would require the labeling of GM seeds and HB 3165 and SB 1637 would require labeling of GM products, in addition to **Massachusetts** HB 2667. None of these measures passed the chamber of origin.

Snack and Soda Taxes

According to a Yale study released in 2000, a 1-cent tax on soft drinks, candy, chips and other snack items could raise more than \$1.8 billion—money that public health advocates hope would be appropriated to fund obesity research and national or state anti-obesity efforts. The study estimates that the 1-cent tax would generate \$1.5 billion from soft drinks, \$70 million from candy, \$54 million from potato chips and an additional \$190 million from other snack items.

Opponents of snack and soda tax legislation, including the Grocery Manufacturers of America (GMA) and the Snack Food Association, have been successful at defeating the measures introduced in states during the past couple of years. According to the GMA, in the early 1990s, several states and jurisdictions, including **California, Maine, Maryland** and the **District of Columbia**, implemented snack taxes. However, due to the complexity involved in the collection and administration of the tax, the measures were repealed. Opponents 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. No new snack or soda tax legislation has been enacted in the past two years.

The table on page 115 highlights the states that introduced snack and soda tax legislation in 2006.

TABLE

Snack and Soda Taxes: 2006 Legislative Activity

CALIFORNIA


CA SB 1118

Would impose a 2 percent tax on carbonated beverages sold by retailers, food items purchased in drive-through restaurants and advertising space sold to market unhealthy products; the tax would fund health care coverage for children.

STATUS: 5/3—In Committee on Revenue and Taxation.

INDIANA


IN HB 1170

 Would impose an 11.5 percent tax on the retail sale of minimally nutritious foods or beverages; establishes the physical fitness grant account and deposits revenues from the tax in the account.

STATUS: Defeated/Died with adjournment of the legislature.

KANSAS


KS HB 3016

 Would impose a soda tax upon every distributor, manufacturer or wholesale dealer, to be calculated as 20 cents per gallon for each gallon of bottled soft drinks sold or offered for sale.

STATUS: Defeated/Died with adjournment of the legislature.

MARYLAND


MD HB 640

 Would authorize municipal corporation to impose an “admissions and amusement” tax on the gross receipts derived from the sale of certain food and beverages, including soft drinks and candies; the tax would not be able to did it in the exceed 1 percent.

STATUS: Defeated/Died with adjournment of the legislature.


NEW MEXICO


NM SB 228


 Would have imposed the following taxes on distributors: 3 cents for each 12 fluid ounces of soft drink sold; \$1.92 per gallon of soft drink syrup or soft drink concentrate sold; and 32 cents per gallon of soft drink that may be produced from each package or container sold of drink powder or other base product, according to the manufacturer’s directions.

STATUS: Defeated/Died with adjournment of the legislature.

MEASURE STATUS:

 Enacted

 Pending


 Carried Over

 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006





WISCONSIN

WI HB 1168

-  Imposes an excise tax on the wholesale of soft drinks sold a and creates the dental access trust fund. The tax is equal to: \$2 for each gallon of soft drink syrup sold; 21 cents for each gallon of bottled soft drinks sold; and 21 cents per gallon of soft drink that may be produced from each package or container sold of soft drink syrups, simple syrups, powders or other base products, according to the manufacturer's instructions.

STATUS: Defeated/Died with adjournment of the legislature.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Insurance Coverage for Obesity Treatment

The annual health care costs (direct and indirect) associated with overweight and obesity have put an additional strain on state and federal government budgets. The total cost of obesity in the United States in 2000 was estimated at \$117 billion. This amount includes \$61 billion for direct medical costs and \$56 billion for indirect costs such as loss of productivity, absenteeism and income lost due to related morbidity or premature mortality.^{1,2} As the prevalence of obesity and resulting health care costs continue to rise, both the state and federal governments have considered actions to treat and reduce obesity among those already affected.

State lawmakers continue to debate measures mandating health insurance companies to provide coverage for obesity treatment, specifically morbid obesity surgery. As with all mandates for health care benefits, proponents contend that these requirements are necessary to ensure adequate health care for consumers by providing needed coverage for a particular disease, treatment or service. Proponents also maintain that the long-term health and economic benefits of obesity treatment outweigh the short-term costs. Opponents of mandated benefit legislation believe that any additional requirements placed on insurers contribute to the rising costs of health insurance policies, which, in turn, is a factor in the rising number of uninsured. **Georgia, Indiana and Virginia** mandate health insurers to offer the coverage, while **Maryland** mandates health insurers to cover the treatment.

¹ National Center for Chronic Disease Prevention and Health Promotion, Overweight and Obesity: Economic Consequences (2004), available at http://www.cdc.gov/nccdphp/dnpa/obesity/economic_consequences.htm.

² 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>.

The Centers for Medicare and Medicaid Services (CMS) recently decided to expand Medicare's coverage of bariatric surgery to all Medicare beneficiaries and for three types of bariatric surgeries. Due to complications experienced by some seniors, a proposal last year recommended coverage only for beneficiaries younger than age 65. However, after reviewing findings that show that more experienced surgeons have similar outcomes with patients of all ages, CMS decided to expand the coverage to beneficiaries older than age 65. To help prevent complications among beneficiaries older than age 65, Medicare will cover the procedure only in centers certified by the American College of Surgeons and the American Society for Bariatric Surgery.

Until now, CMS has covered only one type of bariatric surgery—gastric bypass surgery. Medicare now will cover three types of surgeries, including open and laparoscopic gastric bypass, laparoscopic adjustable gastric banding and open and laparoscopic biliopancreatic diversion with duodenal switch. The procedures will be covered only for those beneficiaries who have been diagnosed with obesity as well as an obesity-related illness or disease such as hypertension, type II diabetes, heart disease, stroke, osteoarthritis or sleep apnea.³

This decision may impact the national health insurance community as private health insurers and Medicaid programs are under increased pressure to cover obesity treatment procedures. It also may encourage state lawmakers to consider further legislation for health insurance coverage for obesity treatment and prevention.

2006 State Legislative Activity

Lawmakers in **Alaska, Connecticut, Georgia, Louisiana, Missouri, New Jersey, Oklahoma, South Carolina, Tennessee** and **Virginia** introduced or carried over legislation addressing health insurance coverage for morbid obesity treatment. Thus far this year, none of the states have enacted a bill to mandate benefits for obesity treatment. However, **Louisiana** and **South Carolina** have adopted resolutions to study the issue, demonstrating states may want to see more evidence on the costs and benefits of obesity treatment before further considering legislation that mandates offering or covering such benefits. The table on page 119 highlights related legislation in 2006.


³ Centers for Medicare and Medicaid Services, Press Release: Medicare Expands National Coverage for Bariatric Surgery Procedures (Feb. 21, 2006), available at <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1786>.

TABLE

Insurance Coverage for Obesity Treatment: 2006 Legislative Activity


ARKANSAS

AK HB 10


-  Would have required health insurers to provide coverage for gastric bypass surgery when the surgery is medically necessary for the treatment of obesity.
05/09/06—Defeated/Died with adjournment of legislature.

CONNECTICUT

CT SB 552


-  Would have required individual and group health insurance policies to provide coverage for medically necessary expenses associated with the diagnosis and treatment of morbid obesity, including bariatric surgery and associated physician office visits, health and behavior assessments, nutrition education, patient self-management education and training and therapeutic exercises.
05/03/06—Defeated/Died with adjournment of legislature.

CT SB 579


-  Identical to SB 552.
05/03/06—Defeated/Died with adjournment of legislature.

GEORGIA

GA HB 43


-  Would have required that health insurers provide coverage for the treatment of morbid obesity.
03/30/06—Defeated/Died with adjournment of legislature.

GA HR 1159





-  Would have requested the Department of Community Health, the Department of Human Resources and the Insurance Department to conduct a study of health insurance coverage for the treatment of obesity, including the compilation of data on the treatment of severe and morbid obesity through bariatric surgery.
03/30/06—Defeated/Died with adjournment of legislature.

LOUISIANA

LA SCR 101

-  Requests the state's Office of Group Benefits to conduct a second phase of ongoing study for gastric bypass surgery. The study, which began two years ago, pays for the surgery for selected eligible state employees and tracks the patients for several years to determine whether the surgery reduces obesity-related health problems and health care costs.
06/05/06—Adopted by both chambers; sent to Secretary of State.

MEASURE STATUS:

-  Enacted
 Pending
 Carried Over
 Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

LA SR 120

- ✓ Requests the Senate Committee on Insurance to study the feasibility of requiring insurance companies to cover surgical treatment for morbid obesity and to report its findings to the Legislature prior to the 2007 session.

06/19/06—Adopted by Senate; sent to Secretary of State.

MISSOURI

MO HB 1990

- ✗ Would have required health insurers to offer coverage for the treatment of morbid obesity by surgical methods when nonsurgical treatment supervised by a physician has been unsuccessful for at least 18 months and when at least two physicians concur that surgical treatment of the morbid obesity is medically necessary.

05/12/06—Defeated/Died with adjournment of legislature.

MO SB 597

- ✗ Would have required health insurance companies to provide coverage for the treatment of morbid obesity.

05/12/06—Defeated/Died with adjournment of legislature.

NEW JERSEY

NJ HB 1613

- Would require managed care plans to cover treatment of overweight and obesity in adults on a fee-for-service basis.

01/10/06—Referred to Assembly Financial Institutions and Insurance Committee.

OKLAHOMA

OK SB 1051

- ✗ Would have required health benefit plans offered by the State and Education Employees Group Insurance Board and the Oklahoma State Employees Benefits Council to provide certain coverage for the treatment of morbid obesity.

05/26/06—Defeated/Died with adjournment of legislature.

SOUTH CAROLINA

SC SCR 1379

- ✓ Requests the state's departments of Health and Human Services and Insurance to jointly study the treatment of obesity. The study should include an analysis on short and long-term complications and mortality rates of bariatric surgeries and recommendations on the use of bariatric surgery as a cost-effective treatment of morbid obesity. The measure also requests the study and recommendations be submitted to the General Assembly before January 16, 2011.

05/18/06—Adopted by both chambers.


MEASURE
STATUS:

- ✓ Enacted
— Pending
→ Carried Over
✗ Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006


TENNESSEE

TN HB 90

-  Would have required health insurers to offer coverage for bariatric surgery for the treatment of morbid obesity.

05/27/06—Defeated/Died with adjournment of legislature.


TN SB 786

-  Identical to HB 90.

05/27/06—Defeated/Died with adjournment of legislature.





VIRGINIA

VA HB 624

-  Would have required health insurance providers to provide coverage for the treatment of morbid obesity through recognized surgical procedures.

03/11/06—Defeated/Died with adjournment of legislature.

MEASURE
STATUS:

-  Enacted
-  Pending
-  Carried Over
-  Vetoed

Source: Health Policy Tracking Service, a Thomson West Business, July 18, 2006

Medicaid Benefits and Services to Treat Overweight and Obese Individuals

According to a 2004 study published in *Obesity Research*, providing medical treatment to obese Americans cost the country \$75 billion in 2003, of which \$21 billion was paid in Medicaid dollars. The study, *State-Level Estimates of Annual Medical Expenditures Attributable to Obesity*, provides an estimate of the financial impact of obesity in each state, ranging from \$87 million in Wyoming to \$7.7 billion in California.¹ This study serves to inform state lawmakers of the economic impact obesity has on their respective budgets.

The federal government does not require states to reimburse for obesity treatment under Medicaid. However, legislators in a few states are reviewing their options and considering legislation that would encourage healthy behaviors, including weight management, in an effort to reduce overall Medicaid expenditures.

In 2006, lawmakers in **Virginia** introduced HB 229 which would require the state Medicaid program to cover services that prevent chronic conditions that result in long-term treatment. As defined in the bill, chronic conditions include obesity and diabetes. The measure was tabled in January.

Similar legislation in **Minnesota** was carried over from 2005. HB 2474 would require the state to cover prescription drugs used to treat obesity if the treatment is integral and necessary for treating obesity-related medical conditions, including hypothyroidism, Cushing's disease, hypothalamic

¹ Eric A. Finkelstein, Ian C. Fiebelkorn and Guijing Wang, *State-Level Estimates of Annual Medical Expenditures Attributable to Obesity*, 12 OBESITY RESEARCH, 18-24 (2004).

lesions, cardiac disease, respiratory disease, diabetes or hypertension. The measure died with the adjournment of the legislature.

In **New York**, HB 10712 was proposed to require Medicaid to cover medically prescribed nutrition therapy for obese children under the age of 18. As defined in the measure “medical nutrition therapy” refers to nutritional diagnostic, therapy, and counseling services delivered by a certified dietitian or certified nutritionist for the purposes of weight management. The bill also authorizes the commissioner of health to apply for federal financial participation so that the state can provide such service. The measure is currently before the Assembly Committee on Social Services.

Governors are turning to Medicaid waivers to create programs that offer incentives to Medicaid beneficiaries to lead healthier lives. **Idaho, Kentucky, Rhode Island, South Carolina** and **West Virginia** set plans in motion to promote healthy behaviors as their respective Medicaid programs are overhauled.

Near the end of 2005, former **Idaho** Gov. Dirk Kempthorne (R) began promoting a plan to reform his state’s Medicaid program that would divide Medicaid into three separate parts based on eligibility, type and health risk. Although the primary bill to enact his plan, ID HB 776, was initially met with some skepticism and disapproval in the Legislature, the “Medicaid Simplification Act” was signed into law March 31. The measure authorizes the director of the **Idaho** Department of Health and Welfare (DHW) to restructure the Idaho Medicaid program in order to achieve improved health outcomes for Medicaid participants and slow the rate of growth in Medicaid costs.

Among the reforms, **Kentucky’s** new Medicaid program will offer enrollees special disease management programs and “Get Healthy” benefits to promote healthy behaviors and lives through such additional services as dental, vision, nutritional counseling 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.²

Rhode Island Gov. Donald Carcieri (R) recently signed a package of legislation that, taken together, is designed to begin to overhaul the state’s health care system. According to a press release from the governor’s office, the health care legislation that the governor signed addressed: lowering health care costs for small business employees, promoting healthier living, and ensuring greater access to primary and preventive care.

Early in the 2006 legislative session, Gov. Sanford (R) directed the state Department of Health and Human Services to proceed with implementing his Medicaid reform plan, **South Carolina** Healthy Connections. The Governor’s

² Press Release, United States Department of Health and Human Services, HHS Approves Historic Medicaid Reform Plans in Kentucky (May 3, 2006), available at <http://www.hhs.gov/news/press/2006pres/20060503a.html>

plan will transform Medicaid from a one-size-fits-all model into one in which beneficiaries may tailor their plans to best fit their needs.

After a year's worth of debate, Gov. James Douglas (R) and the **Vermont** Legislature finally agreed on a major health care reform bill to provide health insurance coverage for 25,000 uninsured residents. The "2006 Health Care Affordability Act," VT HB 861, creates a health insurance program called Catamount Health in which everyone who has been without health insurance for 12 months will have access to—and will help pay for—the comprehensive health insurance package. One of the key aspects of the Catamount Health insurance program established by the law is that—unlike high-deductible catastrophic plans—the coverage will pay for primary and preventive care. This coverage hopefully will lower the amount of money spent on treatment for people who did not see a doctor early in their illness. The law also directs the Department of Banking Insurance Securities and Health Care Administration to adopt rules to permit health insurance companies to offer premium discounts or other incentives (Healthy Choices Discounts) to people who participate in health promotion or disease prevention programs such as smoking cessation.

In **West Virginia**, the state 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.³

In 2005, as part of the FY 2006 budget compromise, **Michigan** state officials are seeking a federal waiver to initiate an innovative program that offers incentives to Medicaid beneficiaries for engaging in healthy behaviors, such as smoking cessation, weight loss and weight management. Incentives being considered include lower monthly copayments or expanded benefits such as more robust prescription coverage or dental services.

In **Colorado**, Gov. Bill Owens (R) signed HB 1066 into law last year. The measure creates the Obesity Treatment Pilot Program designed to treat Medicaid beneficiaries through the use of behavioral modification, self-management training and medication. Eligible participants must be over the

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

age of 15, have a body mass index (BMI) equal to or greater than 30 and suffer from a coexisting medical condition, such as diabetes, hypertension or coronary heart disease. According to the fiscal report prepared by the state, 7,815 fee-for-service beneficiaries over the age of 15 have a BMI equal to or greater than 30. Of those, it is estimated that 10 percent will participate in the pilot program at a total cost of \$290,000 for the first year, which would be covered by federal funds and other revenue sources such as donations. The bill explicitly prohibits the allocation of general funds in fiscal years 2006 and 2007 to support the pilot program. If an independent study demonstrates that the program provides cost savings to the state, general funds may be appropriated to continue the program after June 30, 2007. The Obesity Treatment Pilot Program is scheduled to sunset July 1, 2010.

Iowa Gov. Tom Vilsack (D) signed HB 841 into law last year. Among the provisions of the “Medicaid Reform Act,” the bill contains language requiring the Medicaid program to develop a strategy to provide dietary counseling to child and adult Medicaid enrollees by July 1, 2006. Counseling and support services will be offered to enrollees who develop personal weight loss programs.

Although not specifically targeting obesity, **Massachusetts** Gov. Mitt Romney (R) approved legislation in 2006 that requires the state Medicaid program to develop a wellness program that will provide incentives to encourage beneficiaries to achieve desired health outcomes. If outcomes are achieved, enrollees will benefit from reductions in premiums or copayments. The provision was included in HB 4850, a comprehensive bill that requires individuals to obtain health insurance coverage by July 1, 2007.

Grocery Stores and Supermarkets

Over the past 15 years, there have been dozens of studies, articles or research papers documenting the lack of supermarkets and availability of nutritious foods in urban areas. Individuals living in low-income communities have a difficult time accessing fresh produce since most neighborhood convenience stores do not stock fruits and vegetables. Rather, these neighborhoods are flooded with fast food establishments that do not offer very healthy options.

During the past two years, very few state legislative measures have been introduced that would create incentives for locating grocery stores or supermarkets in neighborhoods that need them the most. In 2004, HPTS identified one state-initiated effort to increase access to supermarkets in low-income urban and rural areas in **Pennsylvania**. In May 2004, the Pennsylvania Legislature enacted SB 1026, a broad authorization of \$3 billion for economic development funds for the state. One section of the law set aside \$100 million for establishing 10 new supermarkets in Philadelphia during the next five years.

In 2005, HPTS only identified one bill—in Nevada—that provided a temporary tax incentive for locating or expanding grocery stores in the southern part of the state. Senate Bill 229, signed into law in April, allows for developers to submit an application for a partial abatement of one or more of the taxes imposed under state law.

This year, lawmakers in **California** introduced the “Healthy Food Retailing Initiative” that seeks to provide residents of low-income communities access to fresh produce. Senate Bill 1329 would provide grants or loans to businesses interested in developing grocery stores in such communities. This measure passed the Senate in May.

Another California measure, HB 2384, establishes the “Health Food Purchase Pilot Program.” The overall goal of this program is 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 passed the Assembly in May.

Additionally, cities across the country are working to attract grocery stores to low-income, urban communities. In February, the Chicago Planning and Development Commission held a Grocery Store Expo to attract grocery chains to the city’s urban neighborhoods. As reported in a *USA Today* article, Boston and Baltimore have invested heavily to bring supermarkets to their low-income neighborhoods.¹

¹ Charisse Jones, *Cities Bring Markets to Needy*, USA TODAY, November 9, 2005.

Farmer's Market Access and Development

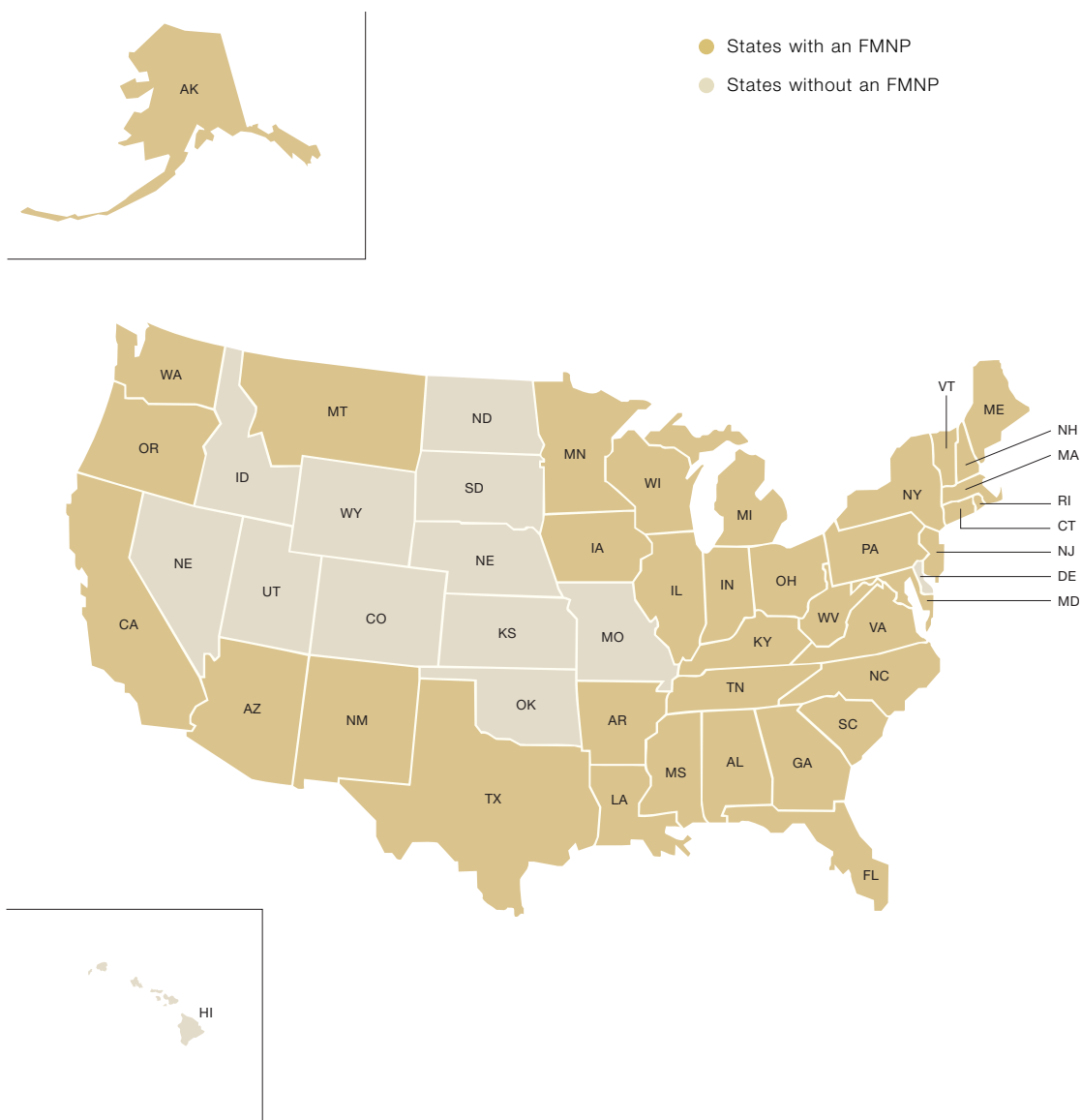
Farmers' market legislation introduced in states commonly distributes general fund dollars in support of the federal Women, Infant and Children (WIC) Farmers' Market Nutrition Program (FMNP) and the Senior Farmers' Market Nutrition Program. The WIC FMNP distributes coupons to WIC recipients that can be used to purchase fresh vegetables, fruits and herbs directly from state-approved farmers' markets. The latest statistics from the U.S. Department of Agriculture (USDA) indicate that more than 2.5 million WIC recipients received FMNP benefits and that 14,050 farmers and 2,548 farmers' markets accepted coupons in 2004, which resulted in more than \$26.9 million in revenue for farmers. Congress appropriated \$19.8 million for the program in FY 2006, the same amount provided in FY 2005.¹

The WIC program is funded primarily through federal dollars, with approximately 30 percent of the total cost of the program is supported through state matching funds. 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 with its matching funds. Authorized farmers or farmers' markets submit the WIC coupons to the designated state agency for reimbursement. Additionally, states may provide nutrition education to FMNP recipients.

According to the USDA, 37 states operate an FMNP as highlighted in the map on page 129.

¹ United States Department of Agriculture, Food and Nutrition Service, WIC Farmers' Market Nutrition Program, available at <http://www.fns.usda.gov/wic/FMNP/FMNPfaq.htm>.

States Operating a Farmer's Market Nutrition Program (FMNP)



Source: USDA; Obtained from USDA Web site July 2006

To assist seniors in purchasing fresh produce, Congress authorized \$15 million for the Senior FMNP through FY 2007. The Senior FMNP provides funding to 38 states to provide low-income seniors (who are at least 60 years of age with household incomes at or below 185 percent of the federal poverty level guidelines) with access to fresh fruits and vegetables. In February, the USDA announced the grant awards for FY 2006. The award list may be obtained directly from the USDA Web site.

Similar to last year's measures, most of the farmers' market legislation introduced in 2006 provides general fund dollars to support the state/federal programs. Of particular interest, measures in **Connecticut, Illinois, Iowa, Mississippi** and **Washington** sought to provide additional funding to support their respective senior programs. The USDA awarded Connecticut \$84,000 to support its program, and sponsors of SB 171 requested that the state provide an additional \$350,000. In Vermont, HB 685 sought to provide \$50,000 for the state's Senior FMNP. An award of \$80,000 was granted by the federal government. Neither measure was enacted.

However, in **Iowa**, lawmakers appropriated an additional \$77,000 on top of the \$511,000 awarded to the state by the federal government. Illinois lawmakers appropriated \$1.5 million in state general funds to support the federal program with the enactment of SB 1520. **Mississippi** lawmakers approved an additional \$30,000 in state funds for FY 2007 to support the Senior FMNP program. The federal government awarded the state \$64,000 in support of the Senior FMNP. And in Washington, \$377,000 in general funds were appropriated in FY 2007.

Lawmakers in **Connecticut, New Mexico, New York** and **Pennsylvania** considered measures to promote the development of farmers' markets. In **Connecticut**, SB 294 was adopted in May. The measure authorizes the expansion of farmers' markets by allowing the sale of honey, maple syrup, flowers, meat, milk and cheese—along with fresh produce—at farmer's markets that participate in the federal WIC program. To operate as a "state-certified farmers' market," as required by WIC, two vendors must offer fresh produce. The approved budget bill, HB 5846, authorizes the Commissioner of Agriculture to develop a multiyear, state-wide promotional campaign to promote Connecticut's fresh grown produce. The commissioner is charged with developing a Web site that will include a list of all the state's farmers' markets, along with other information.

In **New Mexico**, the enacted budget measure, SB 415, appropriated \$75,000 to promote and develop the state's farmers' markets and another \$75,000 was specifically appropriated to the Santa Fe farmers' market.

New York HB 10624, which recently received Senate approval, would authorize the state to provide grants to farmers' markets for "operational and promotional support" in the amount of \$5,000 or 50 percent the cost of the project, whichever is less. The state currently awards up to \$50,000 to assist in the "...construction, reconstruction, improvement, expansion or rehabilitation of farmers' markets."

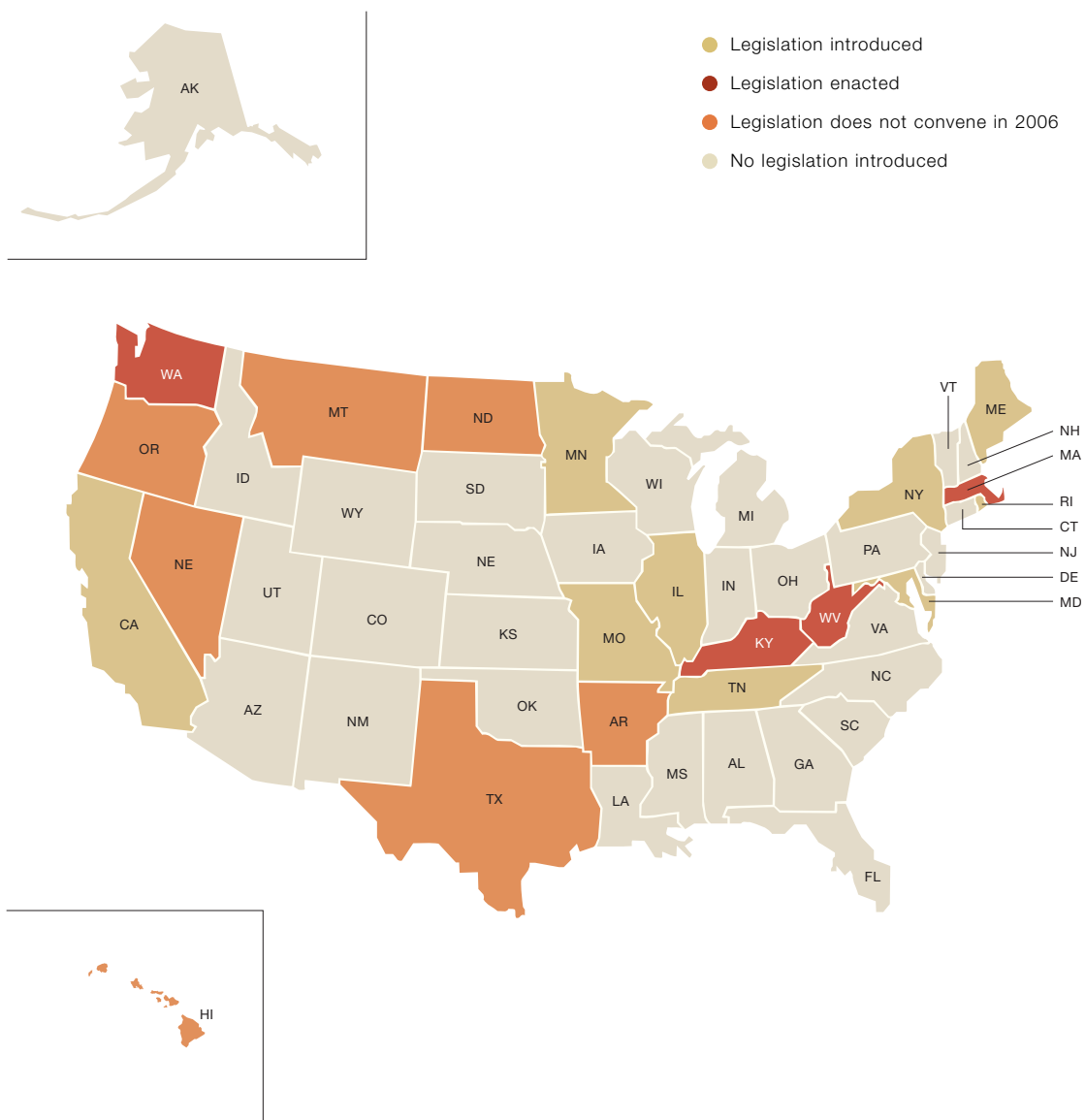
In **Pennsylvania**, lawmakers continue to deliberate on "The Farmers' Market Development Act," HB 2472, which would establish a farmers' market grant program to support the development or expansion of these markets throughout the state. The measure passed the House unanimously in May. In addition, the approved state budget, HB 2499, appropriated \$3 million in general funds to support the WIC and Senior FMNP programs.



Access to Safe Walking, Biking and Recreation

A significant factor contributing to the increasing obesity rates is the decreased opportunities for physical activity throughout the day compared to decades past. Health and community advocates are striving to develop and enhance communities that promote physical activities such as walking, biking and other forms of recreation. To promote physical fitness, reduce and prevent obesity and encourage alternative transportation, some state lawmakers have introduced legislation to create or improve access to and the safety of parks, recreational areas, walking and biking paths and routes to schools. In 2006, HPTS has identified at least 16 states considering bills that address these issues. Of those states, five have adopted a law or resolution. Although the bills vary in their proposed actions, the trend highlights the increased efforts by states to prevent and reduce obesity and to promote healthier lifestyles.

2006 Access to Safe Walking and Bike Paths Legislation



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

2006 State Legislative Activity

In March, **Kentucky** Gov. Ernie Fletcher (R) signed a resolution, S.C.R. 98, directing the Legislative Research Commission to study the economic and public health impacts of the state's bicycling and pedestrian transportation activities. The commission also will examine options for addressing the state's obesity crisis. The commission report must include an analysis of public and private programs that improve physical exercise opportunities through biking and walking. The report also must contain an analysis of bicycle safety and options to improve safety. The report must be completed by Oct. 1, 2006. To further support physical activity, Gov. Ernie Fletcher (R) funded 34 projects to assist in the development or renovation of recreational trails.¹

A bill enacted in **Washington**, SB 6241, makes several transportation-related appropriations and provisions. Under the bill, the state will appropriate \$40,000 specifically for a school bicycle and pedestrian safety account. In addition, the measure appropriates \$5 million in state funds and \$2 million in federal funds for pedestrian and bicycle safety projects and "safe routes to schools" projects. The bill also added a provision requiring the state Department of Transportation to issue a call for pedestrian safety projects and submit a list of cost-effective initiatives to the Legislature each year. The new provision states that the recommendations made to the Legislature must allocate 60 percent of available funds to bicycle and pedestrian path projects and 40 percent to safe routes to schools projects.

A bill in **Massachusetts**, HB 1283, provides that funds from the Environmental Trust Fund be used for land acquisition and construction of walking paths and bikeways around harbors and bays. Gov. Mitt Romney (R) signed the measure June 7.

Lawmakers in **Hawaii** adopted several measures this session to promote safe walking and biking. House Bill 2075 notes the importance and benefits of bicycling and earmarks 2 percent of federally allocated moneys from the state highway fund for the establishment of bikeways. House Resolution 93-06 and S.R. 66-06 request the state Department of Transportation to create a comprehensive statewide pedestrian safety action plan. Senate Resolution 47-06 urges local, state and federal governments to play an active role in creating "healthy communities." House Resolution 182-06 encourages the state Department of Transportation to apply for federal funding to establish "safe routes to school" program and to hire a full-time program coordinator.

The **West Virginia** Legislature adopted S.R. 5, a resolution promoting the West Virginia on the Move program, the state branch of America on the Move, an initiative to help individuals and communities make positive dietary and

¹ Press Release, Governor Ernie Fletcher's Communication Office, Governor Fletcher Presents Funding for 34 Recreational Trails Grants, (July 11, 2006).

physical activity changes to lead healthier lives. The goal of West Virginia on the Move is to “assist West Virginians, regardless of athletic ability, to increase the physical activity in their lifestyle and make smarter food choices in order to maintain a healthy weight.” Gov. Joe Manchin III (D), the state Senate and the House of Delegates promoted the program by participating in their own challenge to see which team could walk the most steps per person during the 2006 session. The Governor’s Office won the challenge by walking an average of 237,340 steps per person.²

Current law in **California** allows three counties and any city within those counties to establish a school pedestrian-bicyclist safety program and to increase fines for certain violations in the safety zone through January 1, 2007. House Bill 1324 would amend the existing law to extend the provisions to January 1, 2010 and to apply to San Diego and Los Angeles Counties. The measure passed the House and awaits action in the Senate. Another California measure, H.C.R. 77, recognizes the importance of local recreation and park agencies in reversing negative trends of physical inactivity, obesity, diabetes and other health problems among Californians and encourages the state to partner with local recreation and park providers to create a healthier state. Both chambers adopted the resolution.

² American on the Move, WV Leaders Walking Competition (2006), available at <http://www.americaonthemove.org/AffiliateArticle.asp?AffiliateID=8&ArticleID=81>