

PHAI

THE PUBLIC HEALTH ADVOCACY INSTITUTE

A TIME FOR ACTION:

AN OBESITY AGENDA FOR THE
TRANSITION TEAM

POLICY RECOMMENDATIONS
FROM PHAI'S FIFTH
CONFERENCE ON PUBLIC
HEALTH, LAW, AND OBESITY

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Fifth Conference on Public Health, Law, and Obesity **A TIME FOR ACTION: Federal Policy Recommendations**

Background

Two thirds of adults and one third of all children in the United States are currently overweight or obese.¹ Moreover, researchers have found that “this trend has persisted for the last decade and shows no signs of abatement.”² According to the CDC, over one third of U.S. children born in the year 2000 are on track to develop diabetes.³

The economic and health consequences of the obesity epidemic are staggering. “[I]f the current trend continues, obesity will account for more than \$860 billion, or more than 16% of health care expenditures in the United States by 2030.”⁴ The current generation of American children and adolescents may experience disability and death at earlier ages than their parents, reversing a pattern of generational improvement in health, productivity and quality of life that Americans have come to expect. This outcome is neither acceptable nor inevitable.

Throughout the weekend of September 19-21, 2008, in anticipation of the U.S. presidential election, the Public Health Advocacy Institute and Public Health Law & Policy sponsored a **working conference** at Northeastern University School of Law in Boston to convene experts in obesity public health policy and law. The Public Health Advocacy Institute (PHAI) is a legal research center focused on public health law. PHAI’s goal is to support and enhance a commitment to public health in individuals, communities and institutions that shape public policy through law. PHAI conducts research in public health law, public policy development, legal technical assistance and collaborative work at the intersection of law and public health. Currently PHAI’s primary areas of focus are obesity and tobacco control.

Conference co-sponsor, Public Health Law & Policy (PHLP), advances public health goals by building the capacity of partners to create healthier communities. PHLP provides in-depth research and analysis on legal and policy questions, and translates complex information into practical tools such as fact sheets, toolkits, and model policies. It works with advocates, local public health and planning departments, schools, government attorneys, elected officials, and others to advance their public health goals through policy change

¹ Huang, Terry T.K., Glass, Thomas A., Transforming Research Strategies for Understanding and Preventing Obesity, *JAMA*. 2008; 300:15, 1811-1813.

² *Id.* at 1811.

³ Diabetes: Disabling Disease to Double by 2050, *Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion*, Sept. 17, 2008 (www.cdc.gov/nccdphp).

⁴ Huang, Terry T.K., Glass, Thomas A., Transforming Research Strategies for Understanding and Preventing Obesity, *JAMA*. 2008 300: 15, 1811.

A TIME FOR ACTION: Federal Policy Recommendations

strategies. PHLP was a proud co-sponsor of this conference to provide a forum for the exchange of innovative ideas and strategies to address the epidemic.

The purpose of the conference was to develop a specific action agenda for the incoming presidential team and Congress. Thus, the resulting recommendations identify action the federal government – particularly the President – should take during this transformational time in U.S. history to effectively address the obesity epidemic.

During the two day PHAI/PHLP conference over 40 policy recommendations emerged in seven key areas, including (1) the economic and social aspects of dietary behavior (i.e., cultural norms, pricing strategies), (2) enhancing the quality of and access to federal food and nutrition programs, (3) legal strategies to regulate food marketing, especially to children, (4) increasing physical activity throughout the population through transportation policy, (5) developing and evaluating menu labeling laws and strategies, (6) integrating policy approaches to childhood and adult obesity and (7) eliminating racial, ethnic and socioeconomic disparities limiting equal access to health food and opportunities for physical activity.

PHAI's recommended approach is multifaceted, recognizing that many complex factors contribute to the obesity epidemic, which in turn spawns multiple adverse outcomes for individuals, families, communities and the U.S. health care system. Consistent with fundamental public health principles, the recommendations aim to improve the environments for healthy eating and physical activity from a population perspective.

The Obama administration, poised for change and ready for action, can take steps to slow, stop, and ultimately reverse the obesity epidemic by considering and implementing the following set of federal policy recommendations to create and sustain healthy, affordable food choices and increased access to safe environments for active living for all Americans.

Recommendations

We urge President-elect Obama and Congress to take the following actions to make prevention and reversal of the obesity epidemic a national public health and economic priority:

Disparities – Ensuring Equal Access to Healthy Food and Opportunities for Physical Activity

- 1) **Recommendation** – President-elect Obama should issue an Executive Order directing all executive branch agencies to expressly consider the impact of all major federal legislation on the obesity epidemic, similar to Environmental Justice Executive Order 12898 issued in 1994.
- 2) **Recommendation:** Develop and support an array of federal policies to increase access to healthy food at the state and local levels, including: an Innovations Fund to

A TIME FOR ACTION: Federal Policy Recommendations

support grocery store development, new cooperatives, local entrepreneurship, and requirements for electronic payment access in all retail food environments, including farmers markets.

- 3) **Recommendation:** Amend the federal No Child Left Behind (NCLB) Act in the 2009 reauthorization to require physical education (PE) as a core subject, while increasing support of current core subjects.
- 4) **Recommendation:** Include a program and funding for affordable transit oriented development (TOD) in the 2009 reauthorization of the Transportation Bill.
- 5) **Recommendation:** Prioritize TOD development in all housing programs and ensure that eligibility criteria include affordability of home/rent prices; siting in low-income, underserved communities; community design features that promote safety and safe walking and biking and mixed use development.
- 6) **Recommendation:** Restore civil rights protections under Title VI and its regulations to permit disparate discriminatory impact lawsuits against the recipients of federal funds (i.e., schools and parks) to increase the availability of and access to safe settings for physical exercise in low-income and minority communities.
- 7) **Recommendation:** Create and use a federal mechanism (i.e., funding) to require enforcement of state physical education laws.
- 8) **Recommendation** - Authorize the use of Food Stamp Nutrition Funds to promote strategies that will increase access to healthy foods and physical activity in low-income communities.

Economic and Social Aspects of Dietary Behavior – Adjusting Social Norms about Food Choice and Consumption Through Changing Cultural Norms and Pricing Strategies

- 9) **Recommendation:** President-elect Obama should issue an Executive Order requiring federal procurement contracts to include obesity-prevention language to insure that all public (e.g., veterans hospitals) and private (e.g., defense research companies) entities receiving federal contract funds purchase healthy foods for the populations they serve.
- 10) **Recommendation:** Impose federal taxes (sales or excise) on purchases of unhealthy foods and beverages and earmark the revenue for obesity programs.
- 11) **Recommendation:** Develop a cultural program featuring popular personalities to elevate the social value of tasty, healthy food.
- 12) **Recommendation:** Promote and fund innovative farm-to-school and farm-to-community programs across the nation to support local farmers and increase access to locally grown food.

A TIME FOR ACTION: Federal Policy Recommendations

- 13) **Recommendation:** Initiate a mediated public dialogue – including consumers, nutrition experts and the food industry – about reduced portion sizes as a tool for reducing caloric intake of the population.
- 14) **Recommendation:** Include and facilitate opportunities and mechanisms for daily physical activity (i.e., walking, bicycling) in all built environment projects.
- 15) **Recommendation:** Prohibit and remove all commercial promotion of food in all schools and educational settings receiving federal funds.
- 16) **Recommendation:** Eliminate all “competitive foods” from schools; restrict food sold and served in schools to the National School Lunch and School Breakfast Programs.
- 17) **Recommendation:** Establish and implement financial incentives for schools (e.g., Connecticut Health Food Certification model) to improve and promote enhanced nutrition standards in the National School Lunch and Breakfast Programs, and the Child and Adult Care Food Program.
- 18) **Recommendation:** Require the Child and Adult Care Feeding Program to adopt the nutrition standards of Head Start for child care sites and to develop best feeding practices consistent with the American Academy of Pediatrics’ recommendations.
- 19) **Recommendation:** Shift jurisdiction and authority over federal meal programs (i.e., National School Breakfast/Lunch Programs) from the U.S. Department of Agriculture to the U.S. Department of Health and Human Services. **Recommendation:** Provide federal funding for obesity prevention and public health initiatives to achieve parity with federal funding for clinical and bench science.

Improve the Quality of and Access to Federal Food and Nutrition Programs

- 21) **Recommendation:** Require federal food programs to align with the U.S. Dietary Guidelines and provide the necessary federal resources (i.e., reimbursement, commodities and incentives) to achieve alignment.
- 22) **Recommendation:** Expand the reach of federal food programs by automatically enrolling low-income individuals and families already means-tested and found eligible for other public assistance programs.
- 23) **Recommendation:** Increase the cost-effectiveness of federal food programs by streamlining and simplifying their administration (e.g., developing paperless eligibility for free and reduced-price school meals).
- 24) **Recommendation:** Improve school food by legislating national standards for all food and beverages in schools based on U.S. Dietary Guidelines and production standards consistent with sustainable farming methods in the 2009 reauthorization of the federal Child Nutrition Bill.
- 25) **Recommendation:** Increase funding in the 2009 reauthorization of the federal Child Nutrition Bill to increase: (a) the amount and quality of fruits and vegetables provided

A TIME FOR ACTION: Federal Policy Recommendations

in schools; (b) school-based fruit and vegetable snack programs; (c) student food and nutrition education; and (d) school staff nutrition training.

- 26) **Recommendation:** Add funding to the 2009 reauthorization of the federal Child Nutrition bill to expand the reach of federal meals programs to all students.
- 27) **Recommendation:** Provide funding through the 2009 reauthorization of the federal Child Nutrition bill to establish a garden in every school.
- 28) **Recommendation:** Include reimbursement for preventive care related to obesity, such as nutrition therapy, in the Medicaid program as a structured benefit or through a disease management program for obesity.
- 29) **Recommendation:** Increase food stamp benefits sufficiently to insure that low-income beneficiaries have adequate resources to purchase healthy food.
- 30) **Recommendation:** Reimburse after school programs through federal food programs for nutritious meals served after lunch when child care extends into the late afternoon or evening hours.
- 31) **Recommendation:** Provide federal funds for schools to significantly expand School Breakfast Program participation by students, including by serving breakfast daily in the classroom.

Enhance National and Global Strategies and Tools to Regulate Food Marketing, Especially to Children

- 32) **Recommendation:** Establish strict federal regulations limiting food and beverage advertising to children, including the Internet.
- 33) **Recommendation:** Adopt a children’s rights approach to food marketing regulations at the national and global levels by ratifying the UN Convention on the Rights of the Child, including recognition of the right of the child to enjoyment of the highest attainable standard of health.
- 34) **Recommendation:** Support a United Nations (World Health Organization) code upholding the right to protection from commercial exploitation of children’s susceptibility through marketing and promotion of products that may undermine efforts to address obesity.

Develop and Apply Effective Menu Labeling Laws and Strategies

- 35) **Recommendation:** Amend federal law to clarify that factual information about calories or nutrients provided to consumers by restaurants are not “claims” subject to preemption by the Nutrition Labeling and Education Act (NLEA).
- 36) **Recommendation:** Support adoption of a federal law requiring disclosure of calories on menus, menu boards and item tags **ONLY IF (a)** more stringent state and local laws

A TIME FOR ACTION: Federal Policy Recommendations

are not preempted; **(b)** alternative placement of calorie information (beyond menus, menu boards and item tags) is not permitted and **(c)** drive through eateries and food chains with 10 or more outlets are included.

- 37) **Recommendation:** Provide federal support in the form of funding, technical assistance and public and food industry education to implement and evaluate state and local menu labeling laws.

Increase Physical Activity by Adults and Children through Transportation Policy

- 38) **Recommendation:** Maintain and expand federal support for projects that make routine walking and bicycling easier and more visible forms of transportation, especially in underserved areas.
- 39) **Recommendation:** Build support for increasing physical activity through transportation policy by making the links between public health goals and transportation funding guidelines more explicit.
- 40) **Recommendation:** Improve data tracking and monitoring systems - including access - for federally funded transportation programs that support walking and bicycling to facilitate transparent assessment of how federal transportation dollars support public health goals.

Pursue an Integrated Public Health Policy Approach to Childhood and Adult Obesity

- 41) **Recommendation:** Evaluate obesity policy proposals to ensure they will improve the conditions that give rise to and sustain obesity related disease in both children and adults.
- 42) **Recommendation:** Enact policies that create health-promoting environments for children and adults to improve the environments in which they live, study, play and work in order to support healthy eating and active living.
- 43) **Recommendation:** Increase federal National Institutes of Health funding for nutrition research.
- 44) **Recommendation:** Adopt an integrative, family-based approach to obesity treatment and prevention (i.e., focus on encouraging active family living throughout the day rather than simply promoting individual exercise).
- 45) **Recommendation:** Provide Centers for Disease Control federal funding to support obesity health policy development, lead health education efforts and strengthen the U.S. Public Health Service Commissioned Corps.

A TIME FOR ACTION: Federal Policy Recommendations

- 46) **Recommendation:** Create mechanisms for legal sharing of public health information and data between state agencies that protects security, privacy and confidentiality of information while advancing public health goals (i.e., add a carefully tailored exception for public health data collection to the Family Education Rights and Privacy Act (FERPA) to facilitate obesity prevention programs in schools).
- 47) **Recommendation:** Encourage states and localities to continue to develop and test innovative strategies to prevent and reverse the obesity epidemic; hence avoid including preemption provisions in federal laws that could impact the obesity epidemic.

The Public Health Advocacy Institute (PHAI) is eager to work with President-elect Obama, the Obama Transition Team, agency staff and members of Congress to help move the obesity public health agenda forward. The need is urgent and the time for action is now.

To view the power point slides presented by speakers at the 2008 PHAI/PHLP obesity law and policy conference please visit the Public Health Advocacy Institute web site at <http://www.phaionline.org/conferences>.

DISCLAIMER: While PHAI's recommendations emerged from conference proceedings, this set of final recommendations has not been endorsed by conference speakers or attendees in their individual or organizational capacities.

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