



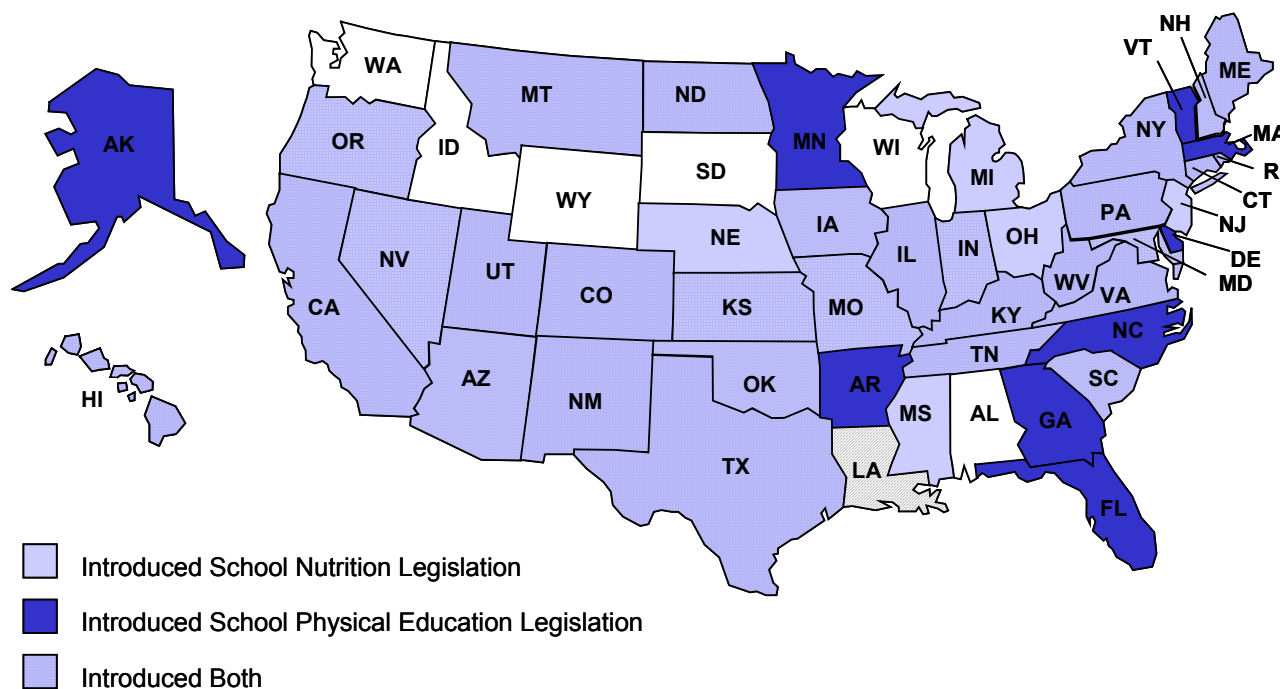
SCHOOL NUTRITION & PHYSICAL EDUCATION LEGISLATION: AN OVERVIEW OF 2005 STATE ACTIVITY

By: Carla I. Plaza,
with the assistance of Catherine Henze

Obesity rates among children and adults have risen continuously since 1960. The media, food and beverage industry, public health advocates and both federal and state policymakers have devoted significant attention to this escalating American health problem and its associated risk factors during the past four years. In 2004, the Health Policy Tracking Service noted a considerable increase in the amount of legislation introduced and the issue continues to receive attention in state houses across the country in 2005.

State legislators continue to focus their efforts on encouraging and/or enhancing the nutrition and physical education efforts of state public school systems in efforts to curb the rising prevalence of overweight and obese children. To date, 43 of the 50 states, as highlighted in the map below, have introduced such measures. (Please note that with the exception of Louisiana, all states have convened for the year. Five states—Kentucky, New Mexico, South Dakota, Utah, Virginia, and Wyoming—have already adjourned and Arkansas, Maryland, Mississippi and West Virginia are expected to adjourn in the next two weeks).

2005 School Nutrition and Physical Education Legislation



Source: NETSCAN's Health Policy Tracking Service, April 2005

Based on HPTS analyses, school nutrition legislation continues to focus on:

- Setting nutritional standards for all food and beverage items made available in schools
- Restricting certain food and beverage items from being sold in schools
- Banning or limiting access to food and beverage products sold through vending machines

Physical education measures center on setting class standards, in terms of duration and frequency. However, rather than mandating the implementation of statewide standards for school nutrition and physical education classes, HPTS analysts have noticed an increase number of bills introduced that give local school districts authority to establish such policies. Additionally, HPTS has identified several measures that set forth credentialing requirements for school food service personnel.

ENACTED SCHOOL NUTRITION AND PHYSICAL EDUCATION LEGISLATION

Kentucky enacted the most expansive piece of school nutrition and physical education legislation to date in 2005. After four years of attempts and lengthy negotiations in conference committee, the Kentucky House and Senate passed S.B. 172 and Gov. Ernie Fletcher (R) signed it into law on March 16. The Act includes the following school nutrition provisions:

- Requires the Board of Education to issue regulations that set minimum nutritional standards for all food and beverage programs that are sold outside the Nutritional School Breakfast and National School lunch programs.
- Bans the sale of competitive foods and beverages from the arrival of the first student at the school building until 30 minutes after the last lunch period. Affected items are defined as any food or beverage item sold in competition with the National School Breakfast and Lunch programs except those sold a la carte.
- Allows only "school-day-approved beverages," defined as water, 100 percent fruit juice, low-fat milk and any other beverage containing no more than 10 grams of sugar per serving, to be sold in elementary school vending machines, school stores, canteens or fundraisers during the school day

The bill calls for penalties to be assessed if any school violates the above requirements, in the following manner:

- For the first violation, a fine of no less than one week's revenue from the sale of competitive food
- For subsequent violations, a fine of at least one month's revenue from the sale of competitive food
- For "habitual violations", defined as more than 5 violations within a six month period, a six month ban on competitive food sales

Money collected from these fines will be transferred to the local school district's food service fund.

In addition, beginning with the 2006-2007 academic year each school must limit the sale of retail fast foods in cafeterias to one day per week

Regarding physical activity, the bill calls for each public school containing grades K through 5 to develop and implement a wellness policy that includes moderate to vigorous physical activity. Senate Bill 172 states that the school policy may permit that physical activity be part of the instructional day but should not exceed 30 minutes per day or 150 minutes per week.

The bill also sets requirements for food service personnel. The act requires each district to appoint a credentialed "school food service and nutrition specialist" within three years of the effective date of the bill. This individual, along with school cafeteria managers, must receive continuing education in nutrition and healthy meal planning.

Furthermore, the measure calls for each school district to annually assess their nutrition and physical activity environment. Specifically school food service directors must evaluate and report on:

- The compliance with the National School Breakfast and School Lunch Programs
- Contracts with fast foods sold through commercial vendors
- Access to foods and beverages sold in competition with the national breakfast and lunch programs
- A list of foods and beverages made available to the students, including the nutritional value of the items
- Recommendations for improving the school nutrition environment

The Kentucky Board of Education will develop an assessment tool that school districts may use to report on their physical activity environments. School districts are required to compile a summary of their findings and submit the information to the state board of education on an annual basis.

Virginia recently adopted two measures relating to health and physical education. House Joint Resolution 260 urges school divisions to provide age-appropriate and culturally sensitive health, nutrition and physical education so students can maintain healthy eating habits and physically active lifestyles. Senate Bill 1130 requires elementary schools’ physical education classes to include cardiovascular, muscle building, or stretching exercise activities, as appropriate.

Utah also adopted a measure that encourages the development of comprehensive wellness policies to help prevent and reduce the prevalence of overweight children and adolescents.

In an effort to get kids more physically active, **North Dakota** HCR 3034 encourages schools districts to provide a midmorning and midafternoon recess of at least 10 minutes to all students in grades K-6.

In February, the **Pennsylvania** House unanimously passed HR 57 declaring May 1-7 “National Physical Education and Sports Week” and declaring the entire month of May as “National Physical Education and Sports Month.”

BILLS THAT PASSED BOTH CHAMBERS

Colorado, Kansas, Montana, New Mexico and **Oklahoma** passed measures that address school nutrition and/or physical education. Highlights of the bills’ provisions are provided in the table below.

2005 School Nutrition and Physical Education Bills that Passed Both Chambers		
CO H.B. 1237	4/6 – House considering Senate amendments	<ul style="list-style-type: none"> • Establishes a statewide quality physical education recognition program to recognize and reward public schools and phys ed teachers • Establishes a fund to accept gifts, grants and donations • Repeals this act if at least \$50,000 is not collected in the fund by June 1, 2006
CO S.B. 81	4/6 – Sent to Governor	<ul style="list-style-type: none"> • Encourages local school district boards to adopt polices that: <ul style="list-style-type: none"> – Gives pupils access to healthful food choices throughout the school day – Gives pupils and legal guardians information on the nutritional content food and beverage items made available throughout the school day (including information on competitive foods) – Ensures every student has access to age-appropriate daily physical activity – Provides age-appropriate instruction to teach lifelong healthy eating habits and physical activity – Ensuring that pupils have access to a sufficient number of functioning water fountains • Encourages local school district boards to adopt a local wellness policy as provided in the federal “Child Nutrition and WIC

		Reauthorization Act of 2004.”
KS S.B. 154	4/1 – Sent to Governor	<ul style="list-style-type: none"> Amends existing statute that requires the state board of education to develop nutrition guidelines for all food and beverages made available to Kansas public school children. The measure calls for the board to consult with other state agencies, private foundations and other private entities and adds that physical activities and wellness education should be incorporated into the guidelines.
MT H.J.R. 17	3/14 – Senate returned bill to House with amendments	<ul style="list-style-type: none"> Asks the Board of Education to consider the benefits of increasing health enhancement in schools for all students. Previous versions of the bill requested that the board consider requiring four years of physical education for all high school students.
NM H.B. 61	3/14 – House concurred with Senate amendments	<ul style="list-style-type: none"> Requires that all first, second and third grade classes provide instruction that meet content and performance standards for physical and health education Requires that all fourth through eight graders should also receive instruction in health education (already required for physical education) Requires that in ninth through twelfth grades, instruction be provided that meets academic content and performance standards in health education
OK S.B. 312	4/6 – Signed by Governor	<ul style="list-style-type: none"> Requires state board of education to mandate school districts, as a condition of accreditation, to provide all students with physical education programs beginning with the 2006-2007 academic year Requires state board of education to mandate, as a condition of accreditation, that public elementary schools (grades one through 5 and full-day kindergarten) provide physical education or exercise programs for a minimum of 60 minutes per week Requires state board to strongly encourage districts to provide physical education instruction to students in grades sixth through twelve Requires school districts to strongly encourage high school students to complete two units of physical and health education prior to graduating

Source: NETSCAN’s Health Policy Tracking Service, April 7, 2005

The **North Carolina** State Board of Education has adopted new rules requiring students in kindergarten through eighth grade to get at least 30 minutes of physical activity each school day. Currently, schools are expected only to provide students with appropriate amounts of physical activity, which can range from little to none. The action by the Board was prompted by legislation now pending before the state General Assembly and the recent report and recommendations issued by the N.C. Health and Wellness Trust Fund. The state has a Web-based collection of 80 activities for use by teachers in providing fitness time for students.

OTHER STATE ACTIVITY

Highlights of other state activity addressing the obesity issue in this country are provided below.

States Look to Require Nutritional Information on Menus

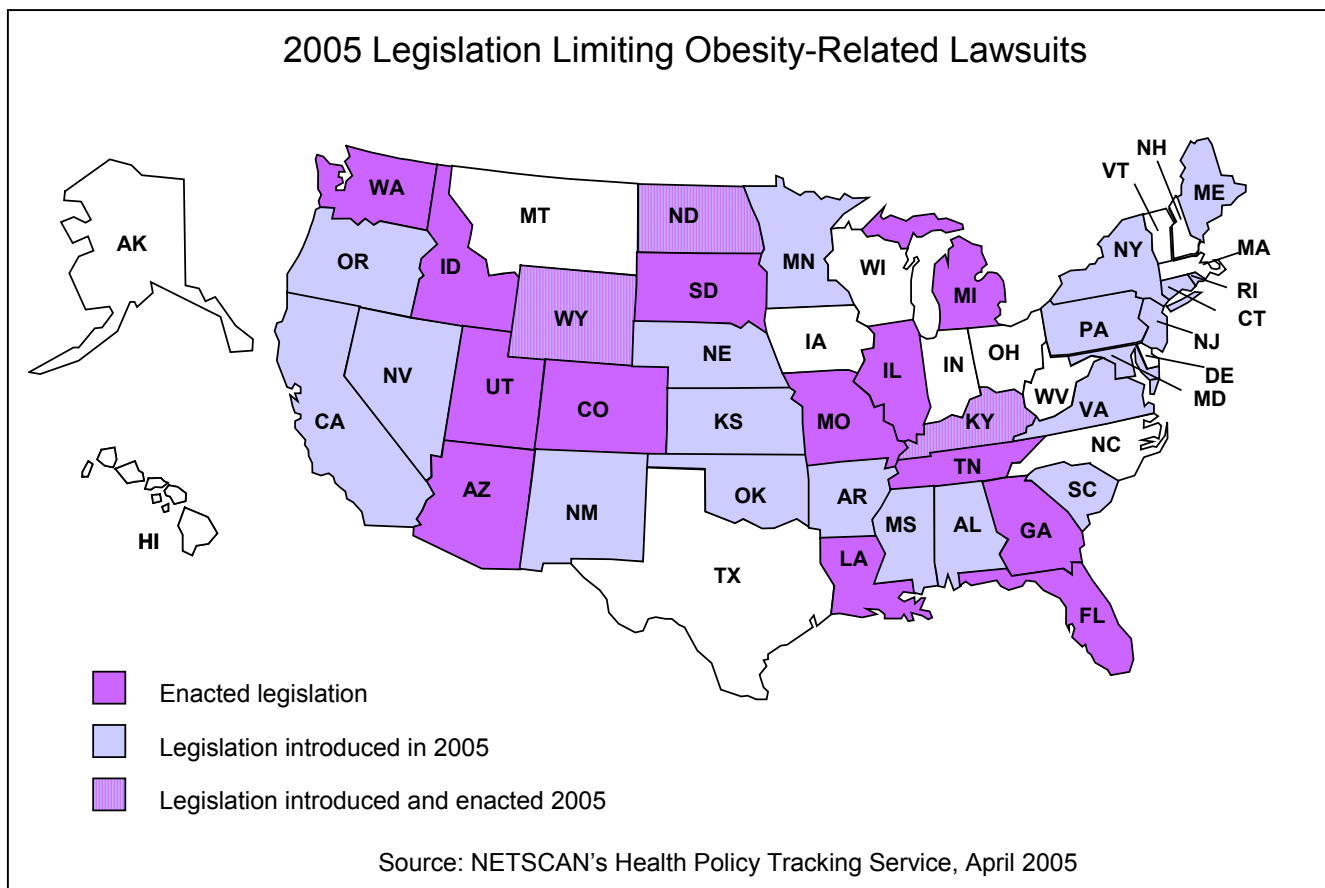
So far, eight states –**Connecticut, Hawaii, Illinois, Maine, Massachusetts, New York, Pennsylvania** and **Utah**—have introduced legislation requiring restaurants to provide nutritional information on the food and/or beverage items made available. Recently, Maine’s efforts failed to gain support in the Legislature. House Bill 86 would have required any restaurant chain with more than 20 locations to provide customers with caloric information on menus and/or a menu board as of Jan. 1, 2006. According to the *Portland Press Herald*, the bill was supported by a state commission that studied

obesity and was opposed by the Maine Restaurant Association. House Bill 86 was one of three bills introduced to support the recommendations of the Commission to Study Public Health to address obesity in the state. Other measures supported by the commission are:

- H.B. 112: Creates the Maine Obesity Prevention Fund, funded by sources determined to be contributing to the causes of obesity, as identified by the Legislature. The bill also directs several state agencies to pursue reforms that encourages the purchase of healthy foods, increases the availability of healthy food and beverages in cafeterias, vending machines and snack bars, implementing cost-saving services for obesity prevention
- S.B. 263: Focuses on implementing statewide initiatives that target school children. Examples include: requiring schools to provide nutrition education; requiring that food and beverages sold or distributed on school grounds, that are not part of a school meal program, meet the “healthy foods and beverages” standards; requiring schools to post nutritional information; prohibit advertising of food and beverage items that do not meet the “healthy foods and beverages” standards on school grounds; and requiring elementary and middle school students to participate in 150 minutes of physical activity per week, high schools students to participate in 220 minutes of physical activity per week.

Obesity Lawsuit Bills

Wyoming was the first state in 2005 to enact a bill that limits an individual's ability to sue food and beverage companies. Specifically, Wyoming's Commonsense Consumption Act, H.B. 170, prohibits an individual from suing a manufacturer, seller, trade association, agricultural producer, wholesaler, broker or retailer of a qualified product for injury or death based on the individual's weight gain, obesity or a health condition related to weight gain or obesity. The map on the following page highlights current legislative activity.



States Look to Require Insurers to Provide Coverage for Gastric Bypass Surgery

As the nation's obesity rates continue to increase, states continue to debate the benefits of requiring insurers to provide coverage for surgical procedures used to treat morbid obesity, such as gastric bypass surgery.

Georgia was the first state to enact a coverage requirement for insurers in the form of a mandated offering law in 1999. Two states followed suit in 2000—**Indiana** and **Virginia**.

In 2001, **Maryland** enacted the nation's first mandated benefit coverage requirement. The law requires insurers, nonprofit health service plans, HMOs and managed care organizations that provide individual and group policies to provide coverage for gastric bypass surgery or any other surgical method that is recognized or approved by NIH for the treatment of morbid obesity.

Five states—**Alaska, Connecticut, Mississippi, Missouri** and **Tennessee**—have introduced legislation requiring insurers to provide or offer coverage for surgical procedures used to treat morbid obesity. **New Jersey** carried over a measure from last year, and **Georgia** and **Virginia** have introduced measures to amend their mandated offering laws to a mandated benefit requirement.

According to the American Society for Bariatric Surgery, the number of weight-loss surgeries increased from 16,200 in 1992 to 140,640 in 2004.

HPTS will continue to research, monitor, analyze and report on these state-based efforts to address this growing public health concern. For further information, please contact Lee Dixon, Vice-President of NETSCAN at lee.dixon@netscan.com.

Support for this publication was provided by The Robert Wood Johnson Foundation.