

# Virtual Mentor

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## HEALTH LAW

### Obesity-Related Legislation Meets American Individualism

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America: the nation where “more is better.” This phrase has long described Americans’ preferences in the square footage of houses and the horsepower in cars, but seems increasingly applicable to the American waistline. Recent statistics show that more than 60 percent of American adults are overweight [1]. In response to such a pervasive public health threat, state legislatures and the federal government have stepped in, using law in an attempt to alter health-related behaviors. In a country that has historically valued independence and abhorred paternalism, resistance is predictable. Difficulty in winning the battle of the bulge is compounded by the connection between obesity and food and the fact that weight is an emotionally charged matter in U.S. culture. Oppositional forces—ranging from lobbyists representing the major players in the food and hospitality industries to the American tradition of individualism—have impeded the implementation of obesity-related legislation. What follows is an overview of legislative efforts to combat obesity, as well as some important considerations that should guide the strategy for future measures.

Public health legislation to control obesity can be divided into two predominant categories: those aimed at improving the built environment and physical activity and those that attempt to curtail the creation and consumption of unhealthy food and promote better food choices.

Built environment efforts involve infrastructural accommodations, such as creating pedestrian passageways to facilitate walking and biking or providing recreational areas, such as parks [2]. For instance, Chicago’s Complete Streets program mandates that the safety of and usefulness to pedestrians must be considered in all transportation projects [3]. Another example is the concept of joint-use agreements, whereby schools and other local government-owned facilities are made available to the public when they are not being used for their primary purpose [4]. These efforts encourage physical activity in ways that are unintrusive, expanding the scope of individual choice.

In contrast, state and federal efforts to regulate the nutritional content of the food supply have at times been quite contentious because they often involve the commission of cardinal American sins: interfering with the market economy and encroaching on individual autonomy by narrowing the range of available options. Recent examples include state bans on the use of harmful trans fats and mandated menu labeling for restaurant chains [5]. Mirroring the economic disincentive

approach used to reduce rates of smoking by taxing cigarettes, many states have also taxed or considered taxing foods that can have deleterious health consequences, such as salty foods that contribute to hypertension or sugary foods and drinks that can add weight and contribute to diabetes [6]. Though some consumers might take umbrage at such regulation, empirical evidence demonstrates its effectiveness for reducing obesity [7]. All told, it is unclear whether such measures will have a substantial long-term effect, absent more concerted individual efforts to increase physical activity and reduce caloric intake [8].

Some legislative approaches to food have focused on increasing consumer choice and information. A new type of food-focused policy combines the notions of facilitating more healthful choices, expanding individual options, and increasing the environmental sustainability of the food economy by creating consumer incentives to buy locally grown fresh fruits and vegetables. New York City has created the Health Bucks Program, which brings otherwise unavailable foods to socioeconomically depressed areas (“food deserts”) and doubles the value of food stamps when they are used to purchase from farmers’ markets [9]. Boston has a similar program, called Boston Bounty Bucks, which gives vouchers that double the value of food stamps at several area farmers’ markets [10]. Hartford, Maryland, has a coupon program that promotes new farmers’ markets and encourages participants in the Women, Infants and Children (WIC) program to purchase locally grown fruits and vegetables [11].

The existent programs theoretically help the problem by supplementing local food economies, but the desire for fresh produce is something that must be cultivated. Individuals who eat a highly processed diet tend to disfavor healthier options in favor of those they perceive as having more robust flavors from sugar, sodium and fat [12]. Thus, it is unclear whether merely removing physical and economic barriers to healthful foods will be sufficient. Nutrition education and exposure to fresh foods from early in life may prove to be crucial preconditions for maximizing the benefit of these types of programs.

Some of the least controversial and most effective measures for reducing obesity are those directed at children. State legislatures have a great deal of control over educational content and institutional practices in their public school systems. As of 2009, 49 states had legislation mandating certain physical fitness requirements—physical education classes for some grade levels or fitness tests for public school students [13]. Research demonstrates that providing proper health education related to physical fitness and nutrition in childhood is effective in ingraining positive lifelong health behaviors [14]. The converse is also true. Advertising that markets high-sugar foods to children has been wildly successful in driving the sale of those products [15]. Consequently, many states have limited the amount of television advertising allowable per hour and the informational content permitted for such commercials [16]. An additional benefit of focusing on children is that the resentment typically accompanying perceived paternalistic governmental intervention is muted when the measures pertain to children [17]. Based on the effectiveness of early education and the prevailing opinion that children are the

appropriate subjects of protective legislation, additional legislative measures for combating obesity in youth would be worthwhile.

Public health efforts to facilitate behavior change run the risk of being ignored if they are not either mandatory or perceived as attractive alternatives. Because of a dearth of public support for compulsory measures, informing consumers and enhancing available choices for positive health-related behaviors seem to be the most politically palatable approaches. As noted above, however, the attractiveness of health-promoting options is dependent on whether the intended consumers place a high social value on those options. Consequently, health education, especially when started early in life, appears to be a powerful tool in the attempt to trim America's waistlines. In the culture of "more is better," more education about better health behaviors might be the answer.

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