

# Public Health Law 101



A CDC Foundational Course for  
Public Health Practitioners



Public Health Law Program  
<http://www.cdc.gov/phlp>



# PUBLIC HEALTH LAW 101

## A CDC Foundational Course for Public Health Practitioners

- Unit 1: Key Concepts of U.S. Law in Public Health Practice
- Unit 2: Ethics and the Law
- Unit 3: Administrative Law
- Unit 4: Role of the Legal Counsel
- Unit 5: Law of Public Health Surveillance, Investigations, and Emergencies
- Unit 6: Privacy and Confidentiality
- Unit 7: Infectious Diseases
- Unit 8: Chronic Diseases and Birth Defects
- Unit 9: Prevention and Control of Obesity



# **PUBLIC HEALTH LAW 101**

*A CDC Course for  
Practitioners – Law in the Prevention  
and Control of Obesity*

Developed by:  
Public Health Law Program  
Centers for Disease Control and Prevention  
Atlanta, Georgia  
[www.cdc.gov/phlp](http://www.cdc.gov/phlp)



# Disclaimer

The contents of this presentation have not been formally disseminated by the Centers for Disease Control and Prevention and should not be construed to represent any agency determination or policy. These course materials are for instructional use only and are not intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



## Unit 9 Objectives

*By the end of this unit, you should be able to:*

1. Discuss selected, existing laws that influence obesity through nutrition and discuss innovative laws to improve nutrition.
2. Discuss selected, existing laws that influence physical activity and innovative laws to increase physical activity.
3. Describe crosscutting and controversial legal issues in the use of law to prevent and control obesity.



# Hypothetical Scenario

- School children in your state have higher rates of obesity than elsewhere in the U.S.
  - Can the state health officer establish BMI reporting requirements for students? Can city health officers mandate that BMI data be included in students' report cards?
  - Can health officers set up surveys to monitor students' eating and exercise habits?
- Schools in your state are not required to provide recess and students often get lunch from vending machines and fast-food restaurants
  - Can city health officials or school boards require recess without approval by the state legislature?
  - Who can city health officials work with to reduce students' access to fast food restaurants?



# Obesity is an Urgent Public Health Threat

- 30% of U.S. adults are obese and 33% are overweight
- 16% of U.S. children and adolescents are obese.
- Trends suggest growing numbers of obese adults, adolescents and children in the next decade
- Medical costs associated with obesity estimated \$147 billion in 2008\*



# Co-morbidities related to obesity

- Coronary heart disease
- Type 2 diabetes
- Endometrial, breast and cervical cancers
- High blood pressure
- High total cholesterol
- High triglyceride levels
- Stroke
- Liver and gallbladder disease
- Sleep apnea
- Respiratory problems
- Osteoarthritis





# CDC Evidence-Based Target Areas for Obesity Prevention and Control

- Reduce consumption of high-calorie foods
- Reduce consumption of sugar-sweetened beverages
- Reduce TV viewing and video game play
- Increase consumption of fruits and vegetables
- Increase physical activity across the lifespan
- Increase initiation and duration of breastfeeding



# CDC Priority Settings to Address Obesity

- Schools
- Daycare
- Worksite
- Healthcare
- Community



# Examples of Agencies that May Impact Obesity

- **Federal Agencies**
  - USDA: The “Farm Bill”, food labeling, inspections, National School Meals Program
  - FDA: Food Safety, supplements, information
  - CDC: Nutrition and physical activity for public health
  - DOT: Roads and public transportation (walkable infrastructure)
- **State and Local Agencies**
  - Health: Nutrition and obesity programs
  - Transportation : Public transportation
  - Planning: Land use and parks
  - Education: School breakfast & lunch, nutrition education, exercise



## Basic Sources of U.S. Law

- Constitutions
- Treaties
- Statutes
- Regulations
- Common law



# Constitutions

- U.S. Constitution is the source of all legal authority for the federal government
- Both state and federal constitutions are sources of legal authority for the states
- State constitutions differ in significant ways, producing different styles of government in the states



## U.S. Constitutional Design: Implications for Public Health

- Most public health activities are carried out by state and local governments
- Federal government role in public health carried out through regulatory (e.g., FDA) and non-regulatory (e.g., CDC) agencies
- Federal government also shapes state and local public health through funding



## Statutes

- Statutes are enacted by Congress and state legislatures
- Statutes give specific legal authorities to executive branch agencies, such as health departments



## Administrative Regulations

- Legislatures can authorize agencies to adopt regulations that have the same force as statutes
- Regulations allow agencies to establish implementation procedures and respond to new challenges; they can be promulgated and amended more quickly than statutes, and can address highly technical issues
- Federal and state laws require agencies to allow the public to participate in rule making





## The Courts: Judicial Review

- Courts make law by ruling on disputes between aggrieved parties.
- In general, lower courts must follow decisions of higher courts.
- State courts review the state's laws for consistency with state or federal constitutions and with other laws.
- Federal courts review the constitutionality of state and federal laws.
- U.S. Supreme Court decisions bind all state and federal courts.



## Key Legal Concept: *Federalism* in the U.S. Constitutional System

- Definition: Relationship and distribution of power between the individual states and national government\*
- Impact under U.S. Constitution: Each state possesses substantial independent legal authority but is subject to federal laws that overlap state laws<sup>†</sup>
- Federalism shapes the system in which laws apply to public health practice



## Key Legal Concept: *Police Powers*

- Definition:
  - Powers exercised by the states to protect the public health, welfare, and morals, and to promote the common good.
- Examples relating to obesity:
  - Banning trans fat in prepared foods
  - Mandating physical education for K-12 students
  - Banning food and beverage marketing in schools



## Constitutional Safeguards: 5<sup>th</sup> & 14<sup>th</sup> Amendment Due Process Protections

- Many government actions can affect an individual's life, liberty (self determination), or property (economic interests)
- 5<sup>th</sup> & 14<sup>th</sup> Amendments: Federal and state government cannot deprive individuals of life, liberty, or property without *due process* of law
- Due process: Involves fairness and reasonableness of government actions



## Other Key Legal Concepts

- The following key legal concepts will be discussed later in this presentation:
  - Preemption
  - Dormant Commerce Clause
  - Commercial Speech
  - Takings



## Objective 9.1

Discuss existing and innovative laws that influence obesity through nutrition.



## Law and Nutrition

- Examples of existing laws that influence obesity through nutrition
  - School food programs
    - West Virginia (HB 2816) implemented the IOM Nutrition Standards for foods in schools
    - California (SB 19/56) set nutritional standards for all foods and beverages sold in schools
  - Food labeling
  - Crop subsidies
  - Supplemental nutrition programs



# School Breakfast Program

- Federal grants to states for nonprofit breakfast programs in public and private schools
- Established in 1966; reauthorized in 2004 (PL 108-265)
- Administered by the USDA and state education agencies
- Requires school breakfasts meet guidelines:
  - No more than 30% of calories from fat, < 10% saturated
  - Must provide ¼ daily recommendation for protein, calcium, iron, vitamins A & C, and calories.





# School Lunch Program

- Federal program provides nutritionally balanced, low-cost or free lunches in public and private schools
- Established in 1946; reauthorized in 2004 (PL108-265)
- Administered by the USDA and state education agencies
  - Schools decide on food offered
- Requires lunches meet guidelines:
  - No more than 30% of calories from fat, < 10% saturated
  - Must provide 1/3 daily recommendation for protein, calcium, iron, vitamins A&C, and calories
- USDA gives incentives to use locally produced foods



## Competitive Foods in Schools

- Definition: Foods and drinks sold a la carte in cafeterias or vending machines and not reimbursable by the National School Breakfast or Lunch Program
- USDA only regulates “foods of minimal nutritional value”
- Some state and school district policies are more restrictive than USDA competitive foods regulations



## Competitive Foods in School Vending Machines

- Many jurisdictions restrict vending machine competitive foods in schools
- Examples
  - Arkansas (HB 1583, Act 1220) bans elementary school student access to vending machines
  - Colorado (SB 103, Chapter No. 166) encourages 50% of all vending machine items be healthful
  - Tennessee (HB 2783, Chapter No. 708) requires the State Board of Education to consult with the Department of Health to establish minimal nutritional standards.



## Food and Nutrition Labeling

- Food, Drug and Cosmetic Act of 1938
  - 21 U.S.C. 301
- U.S. Food and Drug Administration
  - Agency responsible for enforcement
- Nutrition labeling is required for most prepared foods
- Food labeling for raw vegetables and fish is voluntary



# FDA Food Label Requirements

- Calories
- Fats (including trans fat)
- Cholesterol
- Sodium
- Total Carbohydrates
  - Dietary Fiber
  - Sugars
- Protein
- Vitamins



# Food Label - Example

Sample label for  
Macaroni & Cheese

**Nutrition Facts**  
Serving Size 1 cup (228g)  
Servings Per Container 2

**Start Here** →

**Check Calories**

**Limit these Nutrients**

**Get Enough of these Nutrients**

**Footnote**

Amount Per Serving		Calories from Fat 110	
		<b>% Daily Value*</b>	
<b>Total Fat</b> 12g		18%	
Saturated Fat 3g		15%	
Trans Fat 3g			
<b>Cholesterol</b> 30mg		10%	
<b>Sodium</b> 470mg		20%	
<b>Total Carbohydrate</b> 31g		10%	
Dietary Fiber 0g		0%	
Sugars 5g			
<b>Protein</b> 5g			
Vitamin A	4%		
Vitamin C	2%		
Calcium	20%		
Iron	4%		

**Quick Guide to % DV**

- 5% or less is Low
- 20% or more is High

\* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories: 2,000	2,500
Total Fat	Less than 65g	80g
Sat Fat	Less than 20g	25g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g



## The “Farm Bill”

- The Food Conservation and Energy Act of 2008
- Programs managed by the USDA
- 5-year authorization; \$289 bil. appropriation
- Provides farm subsidies that affect food prices
- \$10 bil. authorized for nutrition programs
- Expanded the Fresh Fruit and Vegetable Program, providing free, fresh fruits and vegetables to low-income school children



## Supplemental Nutrition Program for Women, Infants, and Children

- The “WIC” program; established by the Child Nutrition Act of 1966
- Administered by the USDA Food and Nutrition Service and 90 WIC state agencies
- Provides supplemental nutritious foods, education, screening and counseling to approx. 8-9 million participants each year





# Supplemental Nutrition Assistance Program

- Formerly the Food Stamp Program created by the Food Stamp Act of 1964
  - Name changed by the Food Conservation and Energy Act of 2008.
- Administered by the USDA Food and Nutrition Service
- Provides food for 35 mil. people each month
- New \$20 mil. pilot project evaluates point-of-sale incentives to increase purchase of fruits, vegetables, and other healthful foods.



## Child Nutrition and WIC Reauthorization Act of 2004

- Required all school districts to adopt wellness policy by 2006
- No language on accountability; states may establish own mechanisms
  - E.g., the Conn. Dept. of Education reviewed school wellness policies in partnership with the Rudd Center for Food Policy and Obesity.



# Breastfeeding

- Many studies show breastfeeding reduces the risk for overweight and obesity\*
- Legality of breastfeeding in public:
  - Laws of 34 states: exclude breastfeeding from indecent exposure or other legal penalties; or expressly state mothers may breastfeed in public.
- Breastfeeding in the worksite:
  - 23 states and DC have laws to promote breastfeeding for working mothers, with varying provisions
  - 2010 health reform law requires “reasonable break time” (and other provisions)



## Objective 9.2

Discuss existing and innovative laws that influence obesity through physical activity.



# Physical Education and Activity in Schools

- As of 2010, 49 states require physical education in schools
- Requirements vary significantly
  - Many states allow exemptions
  - May not meet time or teacher standards
- Only Illinois requires daily physical education in grades K-12 (105 ILCS 5/27-5)



## Physical Education and Activity in Schools

- Although some states have cut physical education due to cost and time constraints, some have maintained time for physical activity by requiring recess



## Physical Activity in Day Care

- Physical education is usually not required, but many states require some physical activity
- Some jurisdictions require licensed day care facilities to restrict TV viewing time to encourage physical activity
  - New York City health code prohibits daycare facilities from using TV more than 1 hour per day for non-educational purposes.



## Safe Routes To School Programs

- Promote walking and cycling to school
- Grass-roots effort stimulated creation of a federal grant program
- The *Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users Act (SAFETEA-LU)* (2005).
- Administered by U.S. Dept. of Transportation





## Public Transportation

- Physical activity is more likely to increase where public transportation is available, safe, and convenient to use.
  - Often involves walking to and from transit stations.
- U.S. Dept. of Transportation funds for public transportation are dwarfed by funding for highways.



# Innovative Laws



## “Snack Taxes”

- An excise tax collected from wholesalers or a sales tax on targeted snacks.
- 17 states levy some variation of the tax, e.g., California, which has taxed soft drinks since 1933
- Analogue: Sales tax on tobacco lowers sales and generates funds for prevention programs



## Menu Labeling

- Requires chain restaurants with standardized menus to post calorie, and in some cases, other nutritional information on menus/menu boards.
- Enacted in some localities (e.g. New York City) and states (e.g., California and Massachusetts)



# Menu Labeling

- 2010 Health Reform Act:
  - Requires chains of 20+ restaurants and operators of 20+ vending machines to post calorie and other information
  - Other restaurants and vending machine operators may opt in
  - Secretary of HHS may require additional nutrient disclosure
  - Preempts stronger state and local requirements



# Trans Fat Bans

- Artificial trans fat raises LDL cholesterol
- Bans prohibit restaurants and food preparation centers from using partially hydrogenated vegetable oils, shortening, and margarine with 0.5 grams or more trans fat per serving
  - 5 states and 5 municipalities have enacted trans fat bans\*
  - Example: Section 81.08 of the New York City Health Code (2006)



## Zoning to Promote Healthy Nutrition

- Efforts to use zoning laws to promote easier access to farmers markets
- Restricting fast food restaurants within a designated distance of schools



## Zoning for Physical Activity

- Increase access to parks & green space
- Require sidewalks, bike lanes, walking paths
- Shape traffic flow & improve pedestrian safety
- “Mixed Use” zoning puts homes, schools, and businesses in close proximity
  - Promotes biking and walking over driving





# Health Impact Assessments

- Used to assess the potential effects of a new policy, program or project on the health of a population.
- Laws can require HIAs to assess impact on physical activity.
- For example, HIAs are used to promote pedestrian safety measures.



## Physical Activity in the Worksite

- Few laws have been adopted to promote worksite physical activity
- Most programs are voluntary
- Some jurisdictions offer tax incentives to promote physical activity in the worksite
  - E.g., the Indiana InShape Program's tax credits for small businesses that implement approved wellness programs



## Objective 9.3

Describe crosscutting and controversial legal issues in the use of law to prevent and control obesity .



## Preemption

- Under the Supremacy Clause of Article VI of the U.S. Constitution, if a direct conflict exists between a federal law and a state or local law, the federal law prevails.
- State laws may also preempt local laws.



# Preemption

- Examples<sup>+</sup>
  - Federal Nutrition Labeling & Education Act of 1990
    - Expressly prohibits states from regulating format of nutrition labels on packaged foods
  - California (Menu Labeling Statute, 2008)\*
    - Prohibits municipalities from regulating disclosure of nutritional information in chain restaurants



## Dormant Commerce Clause

- A state or local law is unconstitutional if it places a burden on interstate commerce.
  - Hypothetical examples\*
    - A state law banning the sale of food that has been shipped more than 100 miles
    - A local law banning all chain restaurants



## Commercial Speech

- Communication that involves only the commercial interests of the speaker and the audience\*
- May be regulated if:
  - It is deceptive or promotes illegal activities, or
  - Regulation advances a substantial government interest in a way no more extensive than necessary to achieve that interest.



## Commercial Speech

- Hypothetical examples of regulation\*:
  - A law banning advertisements with false nutritional information
  - A law prohibiting fast food chains from advertising super-sized meals





## Takings

- The Fifth Amendment prohibits government from taking private property for public use without just compensation.
- Hypothetical examples\*:
  - A city cannot create a public walking trail on private land without compensating the owner.
  - A city cannot require that certain sections of a grocery store sell only healthy food.



## Law and Crosscutting Obesity Prevention Strategies

- Some jurisdictions have adopted statutes and regulations to require specific behavior or actions intended to prevent and control obesity.
- Examples include:
  - Surveillance, e.g., BMI assessment
  - Commercial speech related to food advertising
  - Healthcare benefit design



# BMI Measurement

- The Institute of Medicine recommends school-based BMI assessments as an important obesity prevention strategy
- Examples
  - West Virginia Healthy Lifestyles Act (HB 2816) requires BMI screening of a sample of the student population.
  - Arkansas (Act 1220) requires annual assessment and confidential reporting to parents of public school students' BMI.



## Food Marketing Laws

- Approx. \$870 mil. is spent on marketing to children each year and more than \$1 bil. to adolescents.
- FTC is studying industry spending and marketing activities targeting anyone under 18.
- Legal concerns include the regulation of commercial speech and compelling commercial speech for a public health purpose.



# Health Insurance Benefit Design

- “Treating obesity-related illnesses and complications adds billions of dollars to the nation's health care costs.”\*
- In July 2004, CMS removed language from the Medicare Coverage Issues Manual stating that obesity is not an illness.
  - This change allows states to broaden Medicaid coverage for prevention and treatment.
  - E.g., West Virginia reimburses for participation in Weight Watcher programs.



## Discrimination and the Obese

- As obesity increases so does the likelihood of weight-based discrimination.
- Title VII of the Civil Rights Act of 1964 does not reference obesity as a protected condition.
- Successful claims have been made using the Americans with Disabilities Act, but federal law does not consider obesity a disability in the worksite.
- Only Michigan protects the obese against discrimination in the worksite.



## Summary: Unit 9

- The Constitutional framework authorizes broad federal and state use of law for public health purposes, including obesity prevention and control.
- Many diverse government agencies possess legal authorities relevant to obesity prevention and control.
- Practitioners and policy makers are actively exploring the use of law to support obesity prevention and control.
- CDC recommends focusing on 6 evidence-based targets and 5 priority settings to prevent and control obesity.



# Hypothetical Scenario

- School children in your state have higher rates of obesity than elsewhere in the U.S.
  - Can the state health officer establish BMI reporting requirements for students? Can city health officers mandate that BMI data be included in students' report cards?
  - Can health officers set up surveys to monitor students' eating and exercise habits?
- Schools in your state are not required to provide recess; students often get lunch from vending machines and fast-food restaurants
  - Can city health officials or school boards require recess without approval by the state legislature?
  - Who can city health officials work with to reduce students' access to fast food restaurants?





# PUBLIC HEALTH LAW 101

## A CDC Foundational Course for Public Health Practitioners

- Unit 1: Key Concepts of U.S. Law in Public Health Practice
- Unit 2: Ethics and the Law
- Unit 3: Administrative Law
- Unit 4: Role of the Legal Counsel
- Unit 5: Law of Public Health Surveillance, Investigations, and Emergencies
- Unit 6: Privacy and Confidentiality
- Unit 7: Infectious Diseases
- Unit 8: Chronic Diseases and Birth Defects
- Unit 9: Prevention and Control of Obesity



For additional information on  
public health law, please visit the  
*CDC Public Health Law Program*  
at

[www.cdc.gov/phlp](http://www.cdc.gov/phlp)

