

Updating the Child Nutrition Act – A Chance to Create a Healthier Lifestyle

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The Child Nutrition Act¹ (the “Act”) was signed into law on October 11, 1966, by President Lyndon B. Johnson, who remarked that “good nutrition is essential to good learning.”² The Act, and the various nutritional programs subsequently provided for under it, was set to expire on September 30, 2009; however, Congress passed a continuing resolution extending the Act through October 31, 2009.³ The reauthorization of the Act, currently known as the Child Nutrition and WIC Reauthorization Act of 2004,⁴ presents a perfect opportunity to update the original nutritional standards from the 1960s, when Congress was more concerned about dental decay and nutritional deficiencies than today’s focus on healthier eating and childhood obesity.

The Congressional debates have also given Texas the opportunity to highlight changes in its school lunch program and physical activity requirements, and to showcase the State’s commitment to the health of its citizens.

Background

The Act authorizes numerous permanent and non-permanent programs that greatly enhance the daily nutritional needs of millions of children.⁵ With the exception of the National School Breakfast and Lunch Programs,⁶ all the nutritional programs under the Act must be renewed every five years. The widespread need for these programs is evidenced by the following statistics:

- In fiscal year 2008, almost 10 million children were fed daily by the National School Breakfast Program, and almost 31 million children were fed daily by the National School Lunch Program;⁷
- In July 2007, almost 3 million children received meals through the Summer Food Service Program (SFSP);⁸ and

¹ 42 U.S.C. § 1771 *et seq.* (West 2009).

² Pres. Lyndon B. Johnson, *Remarks at the Signing of the Child Nutrition Act of 1966*, in THE AMERICAN PRESIDENCY PROJECT, PUBLIC PAPERS OF THE PRESIDENTS (John Woolley & Gerhard Peters eds., 1999), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=27913>.

³ H.R. 2918, 111th Cong. (2009) (enacted as Pub. L. No. 111-68 (2009)).

⁴ Pub. L. No. 108-265 108th Cong. (2004). Full text of the legislation may be found at http://www.fns.usda.gov/cnd/Governance/Legislation/Historical/PL_108-265.pdf.

⁵ Woolley & Peters, *supra* note 2.

⁶ Gordon W. Gunderson, *The National School Lunch Program: Background and Development* (1971), <http://www.fns.usda.gov/cnd/Lunch/AboutLunch/NSLP-Program%20History.pdf>; National School Lunch Act, Pub. L. No. 396, 60 Stat. 231 (1946); U.S. Dep’t. of Agriculture, Food & Nutrition Service, *School Breakfast Program*, (Aug. 2009), <http://www.fns.usda.gov/cnd/Breakfast/AboutBfast/SBPFactSheet.pdf>.

⁷ Food Research and Action Ctr., *FRAC 101 – Child Nutrition and WIC Reauthorization Act*, available at http://www.frac.org/pdf/frac101_child_wic_actprimer.pdf (last accessed Nov. 10, 2009).

⁸ *Id.*

- Almost 9 million people participated in the Special Supplemental Feeding Program for Women, Infants and Children (WIC) in 2007.⁹

Legislation Pending

Both the United States Senate and House of Representatives have introduced legislation¹⁰ to amend the dated Child Nutrition Act “to improve the nutrition and health of schoolchildren and protect the Federal investment in the national school lunch and breakfast programs by updating the national school nutritional standards for foods and beverages sold outside of school meals to conform to current nutrition science.”¹¹

Not only would the legislation provide the Secretary of Agriculture the authority to regulate the sale of foods outside of the federal school nutritional programs, but would also update the definition of “Foods of Minimal Nutritional Value” to correspond with current nutrition science.¹² The fact that foods and beverages that do not comply with federal school lunch and breakfast programs are currently allowed to be sold on school campuses during the day has also been an issue that has hampered the ability of schools to promote and implement healthier eating habits for children. A prohibition on the sale of these other foods to students on school campus, regardless of the school’s participation in federal programs, would greatly enhance the effectiveness of the forthcoming nutritional standards.

Another portion of the proposed reauthorization of the Act addresses updating the nutrition standards of the U.S. Department of Agriculture to make them consistent with the most recent Dietary Guidelines for Americans.¹³ To date, three meetings have taken place for the purposes of updating the 2005 Dietary Guidelines for Americans in order to create a 2010 version.¹⁴ As part of that evaluation process, the Institute of Medicine of the National Academies released a report entitled “School Meals: Building Blocks for Healthy Children” on October 20, 2009.¹⁵ The report included key recommendations for the Food and Nutrition Service of the USDA. Those recommendations also impact specific areas of the Act including:

⁹ *Id.*

¹⁰ See The Child Nutrition Promotion and School Lunch Protection Act of 2009, S. 934, 111th Cong. (2009), *text available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s934is.txt.pdf; *see also* The Child Nutrition Promotion and School Lunch Protection Act of 2009, H.R. 1324, 111th Cong. (2009), *text available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1324ih.txt.pdf.

¹¹ *Id.* See also School Nutrition Ass’n, *Current Legislation: Congressional Legislation Details*, <http://capwiz.com/asfsa/issues/bills/?bill=13261846&size=full> (last accessed Nov. 10, 2009); H.R. 1324, <http://capwiz.com/asfsa/issues/bills/?bill=12879556&size=full>.

¹² School Nutrition Ass’n, *SNA Applauds Competitive Foods Nutrition Standards Bill Introduced in the Senate*, Apr. 30, 2009, <http://www.schoolnutrition.org/Blog.aspx?id=12358&blogid=622>.

¹³ *Id.*

¹⁴ U.S. Dep’t of Agriculture, Center for Nutrition Policy & Promotion, *Dietary Guidelines for Americans*, (Oct. 15, 2009), <http://www.cnpp.usda.gov/dietaryguidelines.htm>.

¹⁵ See The Institute of Medicine, Report Brief, *School Meals: Building Blocks for Healthy Children* (Oct. 2009), *available at* <http://www.nap.edu/catalog/12751.html>.

1. Adoption of “Nutrient Targets”, which encompass 24 nutrients and other dietary components, as guidelines to determine the amount and type of food groups to be offered to students. These Nutrient Targets are not intended to be used as specific requirements for menu planning or to monitor menus, as is the case with the current “Nutrition Standards” (a complex set of 14 year old regulations which specify the amount of nutrients that must be provided in meals);
2. Adoption of guidelines and standards to increase the amount of fruits, vegetables, and whole grains included in school meals, monitor caloric levels, and reduce levels of saturated fat and sodium;
3. Analyzing strengths and weaknesses of setting standards to preserve the nutritional integrity of school meals while reducing waste;
4. Allowing the Food and Nutrition Service, working in conjunction with state and local agencies, to provide support services to school meal operators and organizers who must adhere to changing guidelines such as food ordering, menu lists, cost containment measures, etc.;
5. Providing a mechanism to allow the USDA to work with the U.S. Department of Health and Human Services (HHS), the food industry, state agencies, and other groups to develop strategies to reduce the sodium content of prepared foods; and
6. Recommending that the USDA and other relevant federal departments conduct research studies related to the implementation of the new Meal Requirements including children’s acceptance of and participation in school meal programs and resulting changes (if any) in children’s health.¹⁶

With these proposed changes, opportunities exist elsewhere to change the eating habits of kids before they get hooked on snack foods and other high fat, low nutritional value products.

Childhood Obesity Rates

The prevalence of childhood obesity has doubled for children and tripled for adolescents since the early 1970s, with recent estimates indicating that 17 percent of U.S. children between the ages of 2 and 19 are considered to be obese.¹⁷ It has been shown that children’s educational achievement, nutrition, and overall health improves when their nutritional needs are met.¹⁸

Given the current economic crisis, the healthcare debate, and the healthcare and medical costs associated with the skyrocketing rates of childhood obesity, Federal and State

¹⁶ *Id.* See also Institute of Medicine, *Report Brief: Report Recommendations*, (Oct. 20, 2009), available at <http://www.iom.edu/Reports/2009/School-Meals-Building-Blocks-for-Healthy-Children/Report-Recommendations-School-Meals.aspx?page=1>.

¹⁷ Cristina S. Barroso, Dr, P.H., *et al.*, *Senate Bill 42: Implementation and Impact of Physical Activity on Middle Schools*, 45 J. ADOLESCENT HEALTH S82 – S90 (Sept. 2009).

¹⁸ Katherine Alaimo, Ph.D., *et al.*, *Food Insufficiency and American School-Aged Children’s Cognitive, Academic, and Psychological Development*, 108 PEDIATRICS 44 (July 2001), available at <http://pediatrics.aappublications.org/cgi/reprint/108/1/44>.

intervention is warranted. For example, various groups are advocating for increased funding to expand program access and update the Federal reimbursement rates to schools. The current rate is \$2.57 for each free meal, with certain low-income children being required to pay a \$.40 fee for lunch and a \$.30 fee for breakfast.¹⁹ This discourages participation by many needy children and creates financial losses for States.

Recent Texas Legislation Action

In the last eight years, Texas has enacted substantial legislation to address the health needs of students in its schools. The following legislation has produced important advances in this regard:

- Senate Bill 19, passed in 2001, requires (i) all elementary school children to participate in 30 minutes of daily structured physical activity or a total of 135 minutes per week; (ii) school districts to form School Health Education Advisory Councils (SHAC); and (iii) coordinated school health programs designed to prevent obesity, cardiovascular disease, and type 2 diabetes;²⁰
- Senate Bill 1357, effective September 1, 2003, amended sections of the Texas Education Code requiring, in part, local control over health education instruction and decision making, establishment of the health curriculum, creation of a safe and healthy school environment, school employee wellness programs, and reporting requirements for compliance with vending machine and food service guidelines for restricting student access to vending machines;²¹
- Senate Bill 42, effective May 27, 2005, required public middle school students (grades 6 – 8) to participate in 30 minutes of daily structured physical activity and emphasized the importance of proper nutrition and exercise in the school health curriculum.²² A study published in June of 2009 showed that 94 percent of the schools had a high overall awareness of SB 42 and a significant increase in the minutes per Physical Education class;²³ and
- Senate Bill 530, effective fall 2007, amending earlier legislation to stress the need for “moderate or vigorous” daily physical activity as well as creating a new

¹⁹ School Nutrition Ass’n, *House Subcommittee Holds Hearings on Federal Child Nutrition Programs*, (May 14, 2009), available at <http://www.schoolnutrition.org/Blog.aspx?id=12526&blogid=622>.

²⁰ S.B. 19, 71st Reg. Sess. (Tex. 2001); see also Robert Wood Johnson Found., *The Impact of Texas Senate Bill 19 on Elementary School Children’s Level of Physical Activity*, <http://www.activelivingresearch.org/node/9862>.

²¹ S.B. 1357, 78th Reg. Sess. (Tex. 2001) (codified at TEX. EDUC. CODE ANN. §§ 28.04 & 38.013 (Vernon 2009)).

²² S.B. 42, 79th Reg. Sess., (Tex. 2005) (codified at TEX. EDUC. CODE ANN. §§ 28.002 & 28.004 (Vernon 2009)).

²³ Barroso, *supra* note 17.

requirement for a Physical Fitness Assessment and reporting of those results to the Commissioner of Education.²⁴

While many schools are not placing as much emphasis on child wellness due to an increased focus on education standards and testing, lack of physical education staff, and lack of facilities, Texas has at least started down the right path over the past eight years.²⁵

The nutritional crisis in our schools has required both the Federal and State governments to take action. While Texas has no current mandate for providing school lunches, all campuses having 10 percent or more of the enrollment eligible for free or reduced cost meals must participate in the breakfast program.²⁶ According to 2008 figures, 7,399 Texas schools participate in the breakfast program, and 7,423 Texas schools participate in the lunch program.²⁷ The State of Texas does not reimburse schools for uncovered lunch or breakfast costs, requiring the individual school districts to cover the cost of these meals.

When Rep. Woolsey introduced HR 1324 in the U.S. Congress, she declared her bill would “address the issues brought about by the current system of unhealthy, inconsistent, and out of date standards, but would still allow states to set their own stricter standards.”²⁸ This confirms that Texas is on the right track towards creating new requirements for healthier eating and increased physical education requirements.

Conflict Between the Food Service Industry and Healthy Eating

High calorie, sugar-laden processed foods coupled with sedentary lifestyles are expanding adult and children’s waistlines and contributing to serious health issues like diabetes, heart ailments, and cancer.²⁹ Over the last five years, it has become apparent that the food industry has great sway over the direction of education and healthy food choices for children under 12.³⁰

²⁴ S.B. 530, 80th Reg. Sess. (Tex. 2007) (codified at TEX. EDUC. CODE ANN. §§ 28.002, 28.004, & ch. 38, Sub. C (Vernon 2009)).

²⁵ School Nutrition Ass’n, *supra* note 12.

²⁶ Tex. Dep’t of Agriculture, School Breakfast Program, Square Meals, http://www.squaremeals.org/fn/render/channel/items/0,1249,2348_2364_0_0,00.html (last visited Nov. 10, 2009).

²⁷ School Nutrition Ass’n, *State-by-State Listing for School Meal Mandates and Reimbursements*, (2007), http://www.schoolnutrition.org/uploadedFiles/School_Nutrition/16_LegislativeAction/State_Reimbursements_2007.pdf.

²⁸ Rep. Lynn Woolsey, Testimony before the Subcommittee on Healthy Families and Communities, *Improving Child Nutrition Programs to Reduce Childhood Obesity*, May 14, 2009, available at <http://edlabor.house.gov/documents/111/pdf/testimony/20090514RepWoolseyTestimony.pdf>.

²⁹ Hungry For Change, Press Release, *About the Issues: Food, Inc.*, <http://www.foodincmovie.com/about-the-issues.php>.

³⁰ Marian Burros, *Federal Advisory Group Calls for Change in Food Marketing to Children*, N.Y. TIMES, Dec. 7, 2005, http://www.nytimes.com/2005/12/07/business/media/07kids.html?_r=1&pagewanted=print.

It is encouraging to see food companies agreeing to at least “stop advertising to children under age 12 products that do not meet certain nutritional standards.”³¹ In fact, in a study where schools implemented a change to healthier low-fat items and reduced prices in 55 vending machines, there were significant increases in low-fat snack sales while average profits per machine were not affected.³² Prior to these changes, schools were allowing the sale of higher fat, competitive foods on campus in order to bridge the shortfall in federal funding under other school meal programs.

Conclusion

Recent Federal and State efforts to improve the health of children by reducing the presence of foods of minimal nutritional value and increasing physical activity are working.³³ Some school districts have even decided to own and operate their own vending machines, or to create their own private-label healthy snacks and waters, thereby increasing their revenue, while other states have developed guidelines to help schools address nutrition concerns in vending contract negotiations.³⁴ This push towards healthy eating and a healthier lifestyle is not only good news for students, but for schools as they seek to increase revenue at the same time.

Additionally, the pending reauthorization of the Act will give the Secretary of Agriculture the additional authority to regulate all foods and beverages sold on campus throughout the day. This makes sense and will help resolve a flaw that has existed in the Act since its inception in 1966.

Finally, while Texas’ legislative action in the last few years shows the State’s strong interest in championing positive changes for its citizens; the continued federal action in this area supports the changes Texas is trying to make.

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³¹ Brooks Barnes, *Limiting Ads of Junk Food to Children*, N.Y. TIMES, July 18, 2007, <http://www.nytimes.com/2007/07/18/business/18food.html?pagewanted=print>.

³² Simone A. French, *et al.*, *Pricing and Promotion Effects on Low-Fat Vending Snack Purchases: The CHIPS Study*, 91 AM. J. OF PUBLIC HEALTH 112 (2001), available at <http://www.ajph.org/cgi/reprint/91/1/112>.

³³ Dan Peterson, *Exercise: The Best Medicine*, LIFE SCIENCE.COM, (March 5, 2009), <http://www.livescience.com/health/090305-sports-exercise-benefits.html>.

³⁴ *Id.* at 53.