

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 366
Ways and Means

(Delegate Conaway)

Public Schools - Wellness Policy - School Meals

This bill requires each local board of education to add to its federally mandated wellness policy a plan for reducing students' added sugar intake per school meal based on recommendations from the U.S Department of Agriculture (USDA) by August 1, 2018.

Fiscal Summary

State Effect: None. The bill is directed at local boards of education.

Local Effect: Local school system expenditures may increase minimally to add to their federally mandated wellness policies a plan for reducing students' added sugar intake. Depending on the locally developed plans for reducing added sugar intake and local school system choices on food items offered, local school system revenues per school meal may decrease due to fewer students purchasing school meals.

Small Business Effect: None.

Analysis

Current Law:

Federal Food and Nutrition Programs

Local school systems are subject to federal law and regulations through participation in federal food and nutrition programs administered by USDA, including (among others) the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and other programs for students who are eligible for free and reduced-price meals and free milk in

schools. The Maryland State Department of Education (MSDE) monitors local school compliance with federal law regarding school food and nutrition programs. The Code of Maryland Regulations indicates that local school systems are subject to administrative review by MSDE and/or the USDA for the purpose of evaluating the administration of a food and nutrition program.

Each local school system that participates in the NSLP or other federal child nutrition programs is required to establish a local school wellness policy for all schools under its jurisdiction by the 2006-2007 school year. The federal Healthy, Hunger-Free Kids Act of 2010 added new provisions for wellness policies related to implementation, evaluation, and public reporting. The final rule for the wellness policies, published on July 21, 2016, requires a local school system to begin developing a revised local school wellness policy during the 2016-2017 school year and fully comply with the requirements of the final rule by June 30, 2017. All local school systems must assess their wellness policy at least once every three years on the extent to which schools are in compliance with the district policy, the extent to which the local wellness policy compares to model local school wellness policies, and the progress made in attaining the goals of the local wellness policy. Local school systems are required by federal law to allow parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, review, and update of the local wellness policy and make the policy assessment available to the public.

NSLP requires schools to provide nutritious and well-balanced meals to all the children they serve. The federal Healthy, Hunger-Free Kids Act of 2010 requires schools to offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health. Children age five and older must be offered lunches that meet the following nutrition standards for their age/grade group: specified food components and food quantities; zero grams of trans fat per serving or a minimal amount of naturally occurring trans fat; less than 10% of total calories from saturated fat; reduced amount of sodium; and follow the applicable recommendations from the *2010 Dietary Guidelines for Americans*.

The *2015-2020 Dietary Guidelines for Americans* written by the U.S. Department of Health and Human Services and USDA recommend that less than 10% of the calories consumed by Americans per day come from added sugars. The guidelines are designed for professionals to help all individuals age two years and older and their families to consume a healthy, nutritionally adequate diet.

The federal Food and Drug Administration (FDA) is a federal agency of the U.S. Department of Health and Human Services. On May 20, 2016, FDA announced a new Nutrition Facts label for packaged foods which includes “added sugars.” FDA

published final rules in the Federal Register on May 27, 2016. Most manufacturers will need to use the new label by July 26, 2018; however, manufacturers with less than \$10 million in annual food sales will have an additional year to comply.

FDA has defined “added sugars” to include sugars that are either added during the processing of foods, or are packaged as such, and include sugars (free, mono-, and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100% fruit or vegetable juice of the same type. The definition excludes fruit or vegetable juice concentrated from 100% fruit juice that is sold to consumers (*e.g.*, frozen 100% fruit juice concentrate) as well as some sugars found in fruit and vegetable juices, jellies, jams, preserves, and fruit spreads. The full definition of “added sugars” can be found in the Code of Federal Regulations ([21 CFR 101.9\(c\)\(6\)\(iii\)](#)).

Nutrition Standards for Food Served or Sold in Schools

School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that lunches must offer depend on the menu planning approach used and the ages/grades served.

Schools must keep production and menu records for the meals they produce. These records must show how the meals contribute to the required food components, food items, or menu items every day. In addition, for lunches, these records must show how the lunches contribute to the nutrition standards and the appropriate calorie and nutrient levels for the ages or grades of the children in the school over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, (1) nutrition standards and (2) the nutrient and calorie levels for children for each age or grade group served. Local schools are encouraged but not required to inform students, parents, and the public about efforts they are making to meet the nutrition standards for school lunches.

USDA prohibits schools from selling foods of minimal nutritional value (FMNV) during meal periods anywhere reimbursable meals are sold or eaten. Chapter 312 of 2005, the Student Health Promotion Act of 2005, requires Maryland public school vending machines that sell FMNV to have and use timing devices that automatically prohibit or allow access to vending machines in accordance with policies established by local boards of education. Also, one semester of health education is among the high school graduation requirements for Maryland students.

According to the Maryland Nutrition Standards for All Foods Sold in Schools adopted by the State Board of Education on June 27, 2014, and effective July 1, 2014, all foods and beverages sold to students on the school campus, including cafeteria a la carte items,

vending machines, school stores, and fundraising activities, from 12:01 a.m. until 30 minutes after the end of the official school day, must meet the nutrition standards described below.

All foods (other than foods offered in the NSLP and SBP) must fall into one of the following categories:

- be whole grain-rich ($\geq 50\%$ whole grain by weight or listed as first ingredient);
- first ingredient must be a fruit, vegetable, dairy product, or protein food;
- be a combination of food that consists of $\geq \frac{1}{4}$ cup of fruit and/or vegetable; *or*
- contain at least 10% of the daily value of a nutrient of public health concern – *i.e.*, calcium, potassium, vitamin D, or dietary fiber (this criterion will expire on July 1, 2016).

Foods must also meet all of the standards shown in **Exhibit 1**.

Exhibit 1
Maryland Nutrition Standards for All Foods Sold in Schools

Calories		Sodium		Fats			Sugar
Snack/Side Dish	Entrees	Snack/Side Dish	Entrees	Total Fat	Saturated Fat	Trans Fat	Weight Sugar/Total Weight
≤ 200 calories	≤ 350 calories	230 mg (After 7/1/2016 ≤ 200 mg)	480 mg	35% of calories	$< 10\%$ of calories	Zero grams	35% of total weight from sugar

Source: Maryland State Department of Education

Beverages must also meet the standards shown in **Exhibit 2**.

Exhibit 2
Beverage Standards for Maryland Schools

	Elementary	Middle	High School
Plain water or plain carbonated water	any size	any size	any size
Low-fat milk, unflavored Nonfat milk, flavored or unflavored	≤ 8 fl. oz.	≤ 12 fl. oz.	≤ 12 fl. oz.
100% Fruit/vegetable Juice	≤ 8 fl. oz.	≤ 12 fl. oz.	≤ 12 fl. oz.
100% Fruit/vegetable Juice - diluted with water, with or without carbonation - with no added sweeteners	≤ 8 fl. oz.	≤ 12 fl. oz.	≤ 12 fl. oz.
Other flavored and/or carbonated beverages - soda is not allowed	not allowed	not allowed	if ≤ 12 fl. oz. must meet: ≤ 40 calories/8 oz. ≤ 60 calories/12 oz.
			if ≤ 20 fl. oz. must meet: ≤ 5 calories/8 oz. ≤ 10 calories/12 oz.
Caffeine, beyond naturally occurring trace amounts	not allowed	not allowed	not allowed

Source: Maryland State Department of Education

Background: There are two types of sugars in food: naturally occurring sugars (*e.g.*, fructose in fruit, lactose in milk) and added sugars (*e.g.*, white sugar, brown sugar, corn syrup). Over the past 30 years, Americans have steadily consumed more and more added sugars in their diets, which has contributed to the obesity epidemic according to the American Heart Association. Reducing the amount of added sugars can help control weight and improve heart health. The American Heart Association recommends limiting the amount of added sugars consumed to no more than half of daily discretionary calorie allowance.

According to the U.S. Centers for Disease Control and Prevention (CDC), childhood obesity has more than tripled in the past 30 years. CDC reports that childhood obesity has increased from 6.5% in 1980 to 19.6% in 2008 among children ages 6 to 11 and from 5.0% to 18.1% among children ages 12 to 19 for this time period. Obesity generally results from an imbalance between calories consumed and calories expended. Obese youth are

more likely than others to be obese or overweight in adulthood, and obesity is linked to increased risk of future cardiovascular disease, diabetes, stroke, and other serious health conditions.

Local Fiscal Effect: Local school system expenditures may increase minimally to add to their federally mandated wellness policies a *plan* for reducing students' added sugar intake. Although local school systems are required by federal law to update their wellness policies by June 30, 2017, the bill does not take effect until October 1, 2017. Thus, local school systems will need to convene additional meetings to comply with the bill, which may increase local school system expenditures minimally. Further, local school systems may face a challenge in determining the added sugar content of packaged foods until all food manufacturers are required to include "added sugars" on their nutrition labels by July 26, 2019. The Department of Legislative Services (DLS) notes that the bill requires school systems to add a *plan* by August 1, 2018, to reduce students' added sugar intake; it does not require the plan to be implemented by that date. To the extent that school systems develop plans that require them to reduce added sugar in school meals prior to July 26, 2019, when all manufacturers must include added sugars on nutrition labels, school system costs increase, potentially significantly, to determine the amount of added sugars in school meals.

Carroll County Public Schools advises that school meal revenues may decrease an estimated \$50,000 per year due to students choosing not to purchase food items without added sugar. DLS advises that in response to the new federal recommendations of lower sugar intake, food manufacturers may develop new foods with lower added sugar content that will appeal to children, thus partially mitigating this impact. The actual loss in revenues will depend partly on local choices.

Additional Information

Prior Introductions: None.

Cross File: SB 657 (Senator Young) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland State Department of Education; Maryland Association of Boards of Education; U.S. Department of Agriculture; U.S. Department of Health and Human Services; American Heart Association; U.S. Centers for Disease Control and Prevention; Carroll, Harford, and St. Mary's counties; Department of Legislative Services

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