I

111TH CONGRESS
1ST SESSION

H. R. 4053

To establish the Office of Childhood Overweight and Obesity Prevention and Treatment within the Office of Public Health and Science of the Department of Health and Human Services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2009

Mr. MORAN of Virginia (for himself and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To establish the Office of Childhood Overweight and Obesity Prevention and Treatment within the Office of Public Health and Science of the Department of Health and Human Services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Healthy Kids Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Over the past 3 decades, the rate of obesity has more than doubled for children aged 2 to 11 years and more than tripled for adolescents aged 12 to 19 years according to the Centers for Disease Control and Prevention.

(2) Current data from the Centers for Disease Control and Prevention shows that 32 percent of children are overweight, 16 percent are obese, and 11 percent are extremely obese.

(3) In low-income populations, some racial and ethnic groups, and among recent immigrants, the rates of obesity among children and youth are alarmingly high.

(4) Overweight and obese children are at much greater risk of developing diabetes, heart disease, high blood pressure, asthma, and other diseases than their non-obese peers, and many are subjected to ridicule and bullying that damages their emotional well-being.

(5) Overweight and obese children are at risk of growing into adults who do not participate fully in the workforce because of employment discrimination, lost productivity due to illness and disability, and premature death.

(6) In 2008, national health care expenditures associated with adult overweight and obesity exceeded $100,000,000,000.

(7) Many factors contribute to the childhood obesity epidemic, including eating patterns, family dynamics, economic situations, levels of physical activity, and the influence of media messages.

(8) Research shows that current food and beverage marketing practices influence children and youth to make choices that are not in keeping with healthful diets, and agreement on effective voluntary industry standards has not been reached.

(9) Family plays an important role in society and is widely recognized as important in shaping and establishing children's attitudes and behaviors about nutrition.

(10) Family and consumer sciences education programs can address nutrition, fitness, and positive lifestyle choices as an integral part of the curriculum. Positive health attitudes and habits are the foundation for successful management of daily living and therefore prepare young people to manage the multiple roles of family member, wage earner, and community leader.

(11) Existing State immunization and health registries present a unique opportunity to create State and national childhood body mass index surveillance systems. Because all 50 States currently maintain childhood immunization tracking systems, using such systems to track childhood obesity data is an effective, efficient basis for building a national childhood obesity surveillance system.

(12) Health screenings under the Medicaid and SCHIP programs are important tools for preventing overweight and obesity, and follow-up counseling and treatment must be available to children suffering from or at risk for these conditions.

(13) Childhood obesity is a public health crisis that will not be solved without the full support of the Government.

(14) To address this crisis, it is necessary to coordinate the budgets, policies, programs, and research efforts of Federal agencies and to establish effective interdepartmental collaboration and priorities for action, paying particular attention to the unique needs of diverse groups and high-risk populations.

SEC. 3. FTC REVIEW OF ADVERTISING AND MARKETING OF UNHEALTHY FOODS AND BEVERAGES.

(a) DETERMINATION.—Not later than 3 years after the issuance of guidelines by the Office of Childhood Overweight and Obesity Prevention and Treatment described in section 1711(b)(7) of the Public Health Service Act, the Federal Trade Commission shall—

(1) promulgate rules that define advertising, promoting, and marketing directed at children and youth including—

(A) the age of the intended audience; and

(B) the medium used to convey such advertising, promoting, or marketing; and

(2) promulgate rules under section 553 of title 5, United States Code, consistent with the guidelines issued by the Office of Childhood Overweight and Obesity Prevention and Treatment described in section 1711(b)(7) of the Public Health Service Act, specifying categories of foods and beverages for or about which any advertisement, promotion, or marketing directed at children and youth shall be an abusive, unfair, or deceptive act or practice in or affecting commerce.

(b) VIOLATION.—A violation of a rule promulgated under subsection (a)(2) shall be treated as a violation of a rule defining an unfair or deceptive act or practice pre-

scribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this section.

(c) REPEAL.—Section 18(h) of the Federal Trade Commission Act (15 U.S.C. 57a(h)) is repealed.

(d) CONFORMING AMENDMENTS.—Subsections (i) and (j) of section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) are redesignated as subsections (h) and (i), respectively.

SEC. 4. FCC LIMITS ON ADVERTISING UNHEALTHY FOODS AND BEVERAGES DURING CHILDREN'S PROGRAMMING.

Section 102 of the Children's Television Act of 1990 (47 U.S.C. 303a) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d) LIMITATION ON ADVERTISING FOODS AND BEVERAGES OF LOW NUTRITIONAL VALUE TO CHILDREN.—

''(1) IN GENERAL.—Not later than 30 days after the issuance of guidelines by the Office of Childhood Overweight and Obesity Prevention and Treatment as required by section 1711(b)(7) of the Public Health Service Act, the Commission shall initiate a proceeding to revise its regulations with respect to commercial matter in children's television programming for the purpose of limiting the amount of time devoted to advertising foods and beverages of low nutritional value.

''(2) RULE CONTENTS.—In carrying out the proceeding under paragraph (1), the Commission shall, at a minimum—

''(A) prohibit the showing of any advertisements during or adjacent to children's television programming for foods or beverages classified as Tier 3 under guidelines issued under such section;

''(B) limit the amount of time devoted to advertisements during or adjacent to children's television programming for foods or beverages classified as Tier 2 under such guidelines to 2 minutes per hour on weekends and 3 minutes per hour on weekdays; and

''(C) apply such prohibitions and limitations to commercial television broadcast licensees and to direct broadcast satellite (DBS) providers, as defined in section 25.701(a) of the Commission's rules (47 CFR 25.701(a)).

''(3) DEADLINE.—The Commission shall take all actions necessary to complete the proceeding required under paragraph (1) within 120 days after the initiation of such proceeding.''.

SEC. 5. OFFICE OF CHILDHOOD OVERWEIGHT AND OBESITY PREVENTION AND TREATMENT.

Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended by adding at the end the following new section:

''SEC. 1711. OFFICE OF CHILDHOOD OVERWEIGHT AND OBESITY PREVENTION AND TREATMENT.

''(a) ESTABLISHMENT.—There is established within the Office of Public Health and Science of the Department of Health and Human Services an office to be known as the Office of Childhood Overweight and Obesity Prevention and Treatment (in this section referred to as the 'Office'), which shall be headed by a director appointed by the Secretary (in this section referred to as the 'Director').

''(b) DUTIES.—The Secretary, acting through the Director, shall carry out the following:

''(1) Evaluate the policies, programs, and actions of each Federal agency to identify—

''(A) existing evidence-based policies, programs, and actions that are effective in preventing childhood obesity; and

''(B) opportunities for each Federal agency to develop new age- and developmentally-appropriate evidence-based policies, programs, and actions to prevent childhood obesity.

''(2) Expand Federal data collection and surveillance systems to monitor—

''(A) the prevalence of childhood obesity and co-morbidities;

''(B) dietary behaviors, physical activity levels, and sedentary behaviors of children and youth; and

''(C) the effectiveness of existing public and private sector policies, programs, and actions in preventing childhood obesity, including local wellness policies under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1751 note).

''(3) Implement Federal support measures, including grants, to increase the capacity of State, tribal, and territorial health departments to—

''(A) provide leadership and technical assistance in preventing and treating childhood obesity;

''(B) enhance surveillance efforts, including support for the development of health registries, immunization information systems, or other child health information systems that may be used to monitor local rates of childhood obesity and co-morbidities; and

''(C) implement obesity prevention and treatment programs and evaluate such programs to establish best practices.

''(4) Implement a coordinated, comprehensive, long-term, and national multimedia public education campaign focused on preventing childhood obesity and evaluate the effectiveness of such public education campaign.

''(5) Promote the adoption of and describe and evaluate barriers to the implementation of Federal standards and guidelines for age-appropriate nutrition and wellness practices and physical activity programs for all students.

''(6) Evaluate the effectiveness of Federal agricultural policies (including agricultural subsidies, commodity programs, and programs to promote

farmers markets and community food projects in areas with limited access to affordable and nutritious food) at making a diet consistent with the Dietary Guidelines for Americans published jointly by the Department of Health and Human Services and the Department of Agriculture affordable and available to Americans at all economic levels.

''(7) Within 2 years after the date of the enactment of this section, for purposes of encouraging healthful eating patterns in children and adolescents and improving children's and adolescents' understanding of their nutritional needs—

''(A) in consultation with the Secretary of Agriculture, and with reference to recommendations by the Institute of Medicine of the National Academies, identify the following categories of foods and beverages—

''(i) Tier 1 foods and beverages, which are healthful for children and adolescents and the consumption of which is encouraged;

''(ii) Tier 2 foods and beverages, which do not exceed levels of total, saturated, and trans fat, sugars, and sodium

that are acceptable in a healthful diet for children and adolescents; and

"(iii) Tier 3 foods and beverages, which do not contribute to a healthful diet for children and adolescents and the consumption of which is discouraged; and

"(B) in consultation with the Chairman of the Federal Trade Commission and the Chairman of the Federal Communications Commission, for each category of foods and beverages described in subparagraph (A), develop and publish guidelines applicable to the marketing, advertising, or promoting of such foods and beverages to children and adolescents that support the purposes of this paragraph, taking into account—

"(i) the emotional vulnerability of children and adolescents and their cognitive ability to distinguish between commercial and non-commercial content; and

"(ii) society's interest in protecting the health and well-being of its children and the long-term health and well-being of its population.

''(8) In consultation with the National Institutes of Health, evaluate existing research and identify and initiate further research as necessary in pediatric obesity prevention by examining—

''(A) factors involved in changing dietary behaviors, physical activity levels, and sedentary behaviors, including factors to motivate changes in behavior;

''(B) factors that influence nutrition and wellness practices across an individual's life span;

''(C) strategies to reinforce and sustain improved behavior;

''(D) barriers to behavioral change;

''(E) specific ethnic and cultural influences on behavioral change;

''(F) policy, environmental, social, clinical, and behavioral interventions that focus on—

''(i) reducing and preventing an increase in obesity prevalence;

''(ii) improving dietary behaviors;

''(iii) increasing the accessibility of healthy, affordable foods in communities;

''(iv) increasing physical activity levels, including an assessment of the impact

of changes to the built environment (the man-made physical structures and infrastructure of communities) on the levels of physical activity in communities and populations; and

''(v) reducing sedentary behaviors;

''(G) the feasibility, efficacy, effectiveness, and sustainability of intervention approaches;

''(H) the ways in which the marketing of foods, beverages, and sedentary entertainment influence the attitudes and behaviors of children and youth;

''(I) whether taxation and pricing strategies can be used to promote improved dietary behaviors, more physical activity, or reduced sedentary behaviors; and

''(J) the effect of exposure to endocrine-disrupting chemicals, including exposure in utero, on the initiation or exacerbation of obesity.

''(9) Make available to local educational agencies, school food authorities, and State educational agencies information and technical assistance for use as described in section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C.

1751 note), as amended by section 6 of the Healthy Kids Act.

''(10) Subject to the availability of appropriations provided for such purpose, establish and carry out the grant program under subsection (c).

''(c) GRANT PROGRAM.—

''(1) IN GENERAL.—The Secretary, acting through the Director, may establish and carry out a matching grant program to make grants to eligible entities to—

''(A) assist the Office—

''(i) in gathering data regarding childhood obesity; and

''(ii) in implementing a coordinated, comprehensive, long-term, and national multimedia public education campaign focused on preventing childhood obesity; and

''(iii) in evaluating the effectiveness of such public education campaign; and

''(B) carry out demonstration programs to reduce the incidence of childhood obesity.

''(2) ELIGIBLE ENTITIES.—For purposes of this subsection, an 'eligible entity' means a—

''(A) State;

''(B) unit of general local government;

"(C) nonprofit organization with demonstrated experience and focus in childhood obesity issues, as determined by the Director;

"(D) a partnership between any combination of subparagraphs (A) through (C).

"(3) MATCHING REQUIREMENT.—An eligible entity that receives a grant under this subsection shall provide, from non-Federal sources, an amount equal to 25 percent of such grant award to carry out the activities under this subsection. Such non-Federal share may be provided in the form of in-kind contributions of services or materials.

"(4) REPORTS.—

"(A) REPORTS TO THE DIRECTOR.—Not later than 1 year after receipt of funds from a grant awarded under this subsection, and for each fiscal year an entity receives such funding thereafter, such entity shall submit to the Director a report on its use of grant funds received and such other information as the Director may require.

"(B) REPORTS TO CONGRESS.—Not later than 2 years after the first disbursement of funds for a grant awarded under this subsection, and annually thereafter, the Secretary,

acting through the Director, shall submit to Congress a report on the status of the grant program under this subsection.

''(5) LIMITATION ON FUNDS.—Of the amounts provided through a grant under this subsection, an eligible entity may use not more than 10 percent for administrative expenses.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the grant program under this subsection $15,000,000 for each of fiscal years 2011 to 2015.

''(d) EXISTING PROGRAMS.—The Secretary, acting through the Director, shall carry out the duties under subsection (b) in a manner that enhances existing programs that the Secretary determines are effective.

''(e) CONSULTATION.—In order to carry out the duties of the Office, the Secretary, acting through the Director, shall consult with—

''(1) experts from the public sector, including—

''(A) the Director of the Centers for Disease Control and Prevention;

''(B) the Secretary of Agriculture;

''(C) the Secretary of Education;

''(D) the Secretary of Defense;

''(E) the Secretary of Interior;

''(F) the Secretary of Transportation;

''(G) the Secretary of Housing and Urban Development;

''(H) the Chairman of the Federal Communications Commission; and

''(I) the Chairman of the Federal Trade Commission; and

''(2) experts from the private sector, including experts in pediatrics, public health, psychology, nutrition, sports medicine, or related fields, such as family and consumer services education.

''(f) ANNUAL REPORT.—Not later than one year after the date of the enactment of this section, and annually thereafter, the Secretary, acting through the Director, shall submit to Congress a report on the activities of the Office carried out under this section and any findings, conclusions, and recommendations based on such activities.

''(g) CONSIDERATIONS.—In carrying out this section, the Secretary, acting through the Director, shall consider the unique needs of racially and ethnically diverse groups and high-risk populations, including low-income populations and communities.''.

SEC. 6. LOCAL WELLNESS POLICY.

Subsection (b) of section 204 of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1751 note) is amended—

(1) in paragraph (1), by inserting ''and the Office of Childhood Overweight and Obesity Prevention and Treatment'' after ''the Centers for Disease Control and Prevention''; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

''(B) support schools and local educational agencies in—

''(i) communicating with parents on how nutrition, wellness, and physical activity affect the health of their child;

''(ii) implementing nutrition, wellness practices, and physical activity guidelines;

''(iii) integrating nutrition and wellness, family and consumer sciences education programs, and physical activity into the overall curriculum;

''(iv) offering professional development for faculty and staff that includes information on nutrition and wellness and physical activity issues;

''(v) improving the quality of physical education curricula and increasing the training of physical education teachers; and

''(vi) encouraging healthy eating and reducing school dependence on profits from the sale of foods with minimal nutritional value;''.

SEC. 7. REGULATIONS.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) in subsection (a), by striking '', including regulations'' and all that follows through ''School Lunch Act''; and

(2) in subsection (b)—

(A) by striking ''The regulations'' and all that follows through ''if'' and inserting ''The Secretary shall prescribe regulations relating to the service of foods and beverages in participating schools and service institutions in competition with the programs authorized under

this Act and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.). Such regulations shall require that''; and

(B) by striking the period at the end and inserting the following: ''and shall, based on the categories identified pursuant to section 1711(b)(7)(A) of the Public Health Service Act—

''(1) identify Tier 1 foods and beverages, which are healthful for children and the consumption of which is encouraged, and provide that such foods and beverages may be offered throughout the school day at all school levels;

''(2) identify Tier 2 foods and beverages, which do not exceed an acceptable level of total, saturated, and trans fat, sugars, and sodium, and provide that such foods and beverages may be made available only at limited times of the day at specified school levels; and

''(3) identify Tier 3 foods and beverages, which do not contribute to a healthful diet for children and adolescents, and provide that such foods and beverages may not be made available during the school day or at after-school activities for students, except that the local wellness policy required by section 204

of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1751 note) may allow such foods and beverages to be offered at occasional events authorized by the school, such as celebrations, special fundraising events, and after school activities.''.

SEC. 8. EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES.

(a) IN GENERAL.—Section 1905(r) of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by adding after paragraph (4) the following new paragraph:

''(5) Obesity prevention, nutritional counseling, and other services for obesity—

''(A) which are provided—

''(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care; and

''(ii) at such other intervals indicated as medically necessary; and

''(B) which shall at a minimum include nutritional counseling and treatment for obesity.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a)(2) shall apply to medical assistance furnished on or after January 1, 2010.

(2) EXCEPTION FOR STATE LEGISLATION.—In the case of a State plan under title XIX of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a)(2), the State plan shall not be regarded as failing to comply with the requirement of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

SEC. 9. REQUIRING COVERAGE OF EPSDT SERVICES UNDER SCHIP.

(a) ADDITIONAL REQUIRED SERVICES.—

(1) REQUIRED COVERAGE OF EPSDT SERVICES.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended—

(A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

(B) by inserting after paragraph (6), the following:

''(7) EPSDT OBESITY TREATMENT SERVICES.—The child health assistance provided to a targeted low-income child shall include coverage of early and periodic screening, diagnostic, and treatment services described in section 1905(r)(5) and provided in accordance with section 1902(a)(43).''.

(2) CONFORMING AMENDMENT.—Section 2103(a) (42 U.S.C. 1397cc(a)) is amended, in the matter preceding paragraph (1), by striking ''paragraphs (5), (6), and (7)'' and inserting ''paragraphs (5), (6), (7), and (8)''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a)(1)(B) shall apply to child health assistance furnished on or after January 1, 2010.

(2) EXCEPTION FOR STATE LEGISLATION.—In the case of a State child health plan under title XXI

of the Social Security Act, which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a)(1)(B), the State child health plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

SEC. 10. AUTHORIZATION AND AVAILABILITY OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

○