

Policy changes to reduce unhealthy food and beverage marketing to children in 2016 and 2017

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Summary

Extensive marketing of unhealthy food and drinks to young people ages 2 to 17 remains a major public health concern. On TV alone, children and teens viewed on average 11 to 12 food ads per day in 2016, almost exclusively for fast food and other restaurants, sugary cereals, candy, snacks, and sugar-sweetened beverages.¹ In total, the food industry spends almost \$2 billion annually on all forms of marketing targeted to young people, including promotions in stores and schools; marketing on the internet, mobile apps, and social media; product packaging; and celebrity endorsements, events, and sponsorships.² Furthermore, food and beverage companies disproportionately target advertising for many of their least nutritious brands to Black and Hispanic youth. Black children and teens view almost twice as many ads for candy, sugary drinks, and snacks on TV compared with White children and teens; and two-thirds of the food ads on Spanish-language TV promote fast food, candy, sugary drinks, and snacks.³

Parents are concerned and want the food marketing environment to change. In a Rudd Center survey of parents with children ages 2 to 17, 85% agreed that food companies should reduce unhealthy food marketing to children. On average, more than 60% of parents surveyed supported a broad array of public policies that would promote healthy eating habits for their children in the media, schools, and communities.⁴

This brief provides an overview of industry voluntary policies, legislation and guidance, legal action and public-private partnerships proposed and/or enacted in 2016 and 2017 to reduce unhealthy food and beverage marketing to children.

To address the negative impact of unhealthy food marketing on children's diets and health, policy makers, health advocates, and food and beverage companies are pursuing a variety of policy-driven strategies. This brief is not exhaustive, but provides an overview of policy actions designed to reduce unhealthy food and beverage marketing to youth and improve the food environment that surrounds children and teens where they live, learn, and play. We define marketing broadly, using the American Marketing Association definition.¹ Therefore, we include policies related to pricing, retail strategies, product formulation, and product claims, as well as advertising and other media-related practices.

¹ As defined by the American Marketing Association, marketing includes any "activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers." <https://www.ama.org/AboutAMA/Pages/Definition-of-Marketing.aspx>



Industry voluntary policies

The most comprehensive food industry self-regulatory programs to address food marketing to children in the U.S. include the Council of Better Business Bureaus' (CBBB) Children's Food and Beverage Advertising Initiative (CFBAI), the American Beverage Association's (ABA) Guidelines on Marketing to Children, and the National Restaurant Association's Kids LiveWell program.

The CFBAI was established in 2006, and currently [18 food and beverage companies](#) have voluntarily pledged to promote only healthier dietary choices in [child-directed advertising](#).ⁱⁱ Through ABA Guidelines released in 2008 and updated in 2015, [ABA member companies](#) have pledged to only advertise 100% fruit juice, water, and milk-based products in child-directed advertising in broadcast, print and digital media, and cinema, as well as in primary schools.⁵ Kids LiveWell, launched in 2011, has secured commitments from over [100 restaurant chains](#) to offer at least one healthy children's menu choice.⁶

The CFBAI and Kids LiveWell both implemented enhancements in 2016 and 2017.

- In March 2016, the CBBB established the Children's Confection Advertising Initiative, modeled after the CFBAI. As of December 31, 2017, [nine candy companies](#) pledged not to engage in advertising primarily directed to children under age 12 or to advertise their candy in school to children from pre-kindergarten through 6th grade.⁷
- In April 2016, the National Restaurant Association announced a partnership with the U.S. Air Force to provide children's menu options that meet the Kids LiveWell guidelines at food service establishments on U.S. Air Force installations nationwide.⁸
- In 2016 and 2017, Arby's and Jack-in-the-Box joined Applebee's, Burger King, Dairy Queen, McDonald's, and Wendy's in pledging to remove all sugary drinks from their kids' meal menus.⁹

Government legislation and regulation

Concerned policy makers at the federal, state, and local levels proposed a variety of actions to improve unhealthy food and beverage marketing to youth in 2016 and 2017. In addition, a number of marketing-related policies were enacted, including a notable number of policies at the local level.

Federal policies

At the federal level, the United States Department of Agriculture (USDA) required compliance with standards for food marketing in schools and school fundraising.

- The USDA released the final rule for local school wellness policies in July 2016. All districts participating in the federal school meals programs were required to update their school wellness policies to address unhealthy food marketing to students in schools by June 30, 2017.¹⁰ At a minimum, districts must prohibit marketing of food and drinks that do not meet [Smart Snacks in School nutritional standards](#) on school property during the school day. The USDA also provided school districts the discretion to go beyond the minimum requirements and implement stronger standards including restricting brand marketing and copycat or look-alike products.¹¹
- The USDA Smarts Snacks in School final rule, also released in July 2016, upheld changes to school fundraising standards included in the Healthy, Hunger-Free Kids Act of 2010. Under these guidelines, food and beverage fundraisers offered on the school campus during the school day must meet the Smart Snacks nutritional standards. However, states maintain the authority to exempt a limited number of fundraisers from the nutrition guidelines.¹²

Federal policy makers proposed additional legislation and regulatory action that did not pass.

- In 2016, U.S. Representative Rosa DeLauro (D, CT) introduced H.R. 5232 also known as the Stop Subsidizing Childhood Obesity Act. This legislation would have denied a tax deduction to companies that market foods of poor nutritional quality or a brand primarily associated with food of poor nutritional quality to children age 14 or under.¹³

ⁱⁱ As defined by companies, child-directed media is "media where children under 12 make up 35 percent or more of the audience on television, radio, print, or third-party websites."

- The U.S. Food and Drug Administration (FDA) issued draft voluntary guidance to industry to ensure that structure function claims on infant formula labels (i.e., claims that link product ingredients with benefits to the body) are substantiated by high-quality scientific evidence.¹⁴ Currently, these claims frequently promote the benefits of infant formula for babies' development and position formula as superior to breast milk.¹⁵ At the request of infant formula manufacturers, the FDA extended the comment period for the draft guidance until February 2017, but the FDA has not yet issued final guidance on this issue as of January 25, 2018.

State policies

States introduced a variety of bills in 2016 and 2017 legislative sessions to address unhealthy food and beverage marketing to youth in schools, healthier products in vending machines, and healthier kids' meals in restaurants.

Although California and Louisiana were the only states to enact food marketing policy changes during this time, the number of policies proposed at the state level indicate an increasing interest in addressing unhealthy food marketing, especially for children.

Unhealthy food and beverage marketing in schools

- In October 2017, [California](#) passed legislation prohibiting schools from advertising unhealthy food or beverages during the school day, including through corporate incentive programs that reward pupils with free or discounted foods or beverages that do not comply with Smart Snacks in School nutritional standards.
- Rhode Island introduced two bills related to food marketing in schools in [2016](#) and [2017](#) state legislative sessions, but neither bill ultimately passed. The 2016 bill would have gone beyond the USDA local wellness policy standard on food marketing in schools and also restricted the marketing of a corporate brand unless every food and beverage in the brand met USDA Smart Snacks nutrition guidelines.

Healthy vending

- In June 2017, the Louisiana governor issued an [executive order](#) for healthy vending requiring that all snacks and beverages sold in machines on state-owned or leased property meet nutrition standardsⁱⁱⁱ by July 2018.
- A handful of states (Connecticut, Maryland, Massachusetts, New York, Texas, and Vermont) introduced healthy vending bills in 2016 and 2017 that did not pass. For example, legislation introduced in the [General Assembly of Maryland](#) would have required that 75% of packaged food and beverages offered in vending machines located on property owned or managed by the state of Maryland meet nutrition standards based on the [American Heart Association's healthy workplace food and beverage guidelines](#).^{iv}

Healthier restaurant kids' meals

- A 2016 [Vermont](#) bill would have required that restaurants licensed by the health department serve only children's meals that meet [healthier restaurant meals guidelines](#).
- A 2017 bill in [New York](#) would have set nutrition standards for restaurant kids' meals with incentives aimed at children.
- Legislation introduced in [Massachusetts](#) in 2017 would have not only prohibited the marketing of sugary drinks in schools, but also required warning labels on certain sugary drink advertisements and allowed chain restaurants to sell kids' meals only if they provide water, milk, or 100% fruit juice as the default beverage.^v



ⁱⁱⁱ Nutrition standards must be stronger or consistent with standards developed by the American Heart Association, or by the U.S. Department of Health and Human Services/General Services Administration, or by the National Alliance for Nutrition Activity.

^{iv} The Maryland Healthy Vending Machine Act was co-filed in 2016 by both the Maryland House of Representative (H.1498) and the State Senate (S.602).

^v An Act to Protect Youth from the Health Risks of Sugary Drinks was co-filed in 2017 by both the Massachusetts House of Representatives (H.B. 2858) and the State Senate (S.B. 1220).

Local policies

Policy makers at the local level have the greatest flexibility in designing policies to improve the health of children in their communities. In 2016 and 2017, several municipalities introduced and enacted policies that directly address food and beverage marketing for children.

- Over 15 local and county governments passed healthy vending policies in 2016 and 2017.^{vi} These ordinances and executive orders require that a certain percentage of food and beverage products sold in vending machines on municipal property meet the [American Heart Association's healthy workplace food and beverage guidelines](#) or [Food Service Guidelines for Federal Facilities](#), which include sodium and trans fat limits.

Some of these ordinances also address the placement of products in vending machines (e.g., healthy products stocked in positions with the highest selling potential where children can see them) and require that healthy products are comparatively priced or less expensive than unhealthy options. These policies build on ordinances and commitments enacted by over 50 U.S. cities and counties in the past five years to provide healthier options in vending machines located on government property.¹⁶

- Eight municipalities have enacted local laws pertaining to sugary drinks in restaurant kids' meals. In 2016 and 2017, Lafayette, CO and Berkeley, Cathedral City, City of Long Beach, Perris, Santa Clara County, and Stockton, CA all passed ordinances making water, milk, and milk alternatives the default beverage options for restaurant kids' meals.^{vii} Previously, Davis, CA had passed an ordinance in 2015.¹⁷
- Six U.S. municipalities (Albany, Oakland, and San Francisco, CA; Boulder, CO; Philadelphia, PA; and Seattle, WA) enacted excise taxes ranging from 1-cent to 2-cents per ounce on sugary drinks in 2016 and 2017.^{viii} Excise taxes on sugary drinks, designed to be paid by the wholesale distributor based on the volume of product sold, increase the shelf price of sugary drinks and encourage consumption of untaxed,

healthier alternatives such as plain water. Thus, excise taxes limit manufacturers' and retailers' ability to price sugary drinks at an attractively low price, which is a key marketing strategy, especially when appealing to youth, who are more price sensitive than adults.¹⁸ Prior to 2016, Berkeley, CA had been the only U.S. municipality to adopt a sugary drink tax, while the Navajo Nation was the only jurisdiction to tax junk food, including sugary drinks.

- In 2016, U.S. District Court for the Northern District of California upheld a San Francisco law requiring warning notices on certain soda advertisements and found the statement "WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay" to be "factual and accurate." However, in September 2017, the 9th Circuit Court of Appeals reversed the district court's decision on grounds that the warning statement may "offend" the First Amendment and was "unduly burdensome" to the plaintiffs in the case, primarily the American Beverage Association. Just one month later, the San Francisco City Attorney filed a petition for rehearing in front of the entire 9th Circuit Court of Appeals, but that petition had not yet been granted or denied as of January 25, 2018.¹⁹

Public-private partnerships

Public health partnerships with the private sector designed to increase the appeal of healthy choices, such as fruits, vegetables, and water, were introduced, tested, or continued in 2016 and 2017.

- Introduced in 2014, the [eat brighter!](#) initiative, a collaboration between the Partnership for a Healthier America (PHA), Sesame Workshop, and the Produce Marketing Association, continued to utilize well-known Sesame Street characters on in-store advertisements and produce packaging to encourage young children and their families to eat more fresh fruits and vegetables.²⁰ As of August 2016, 91 produce suppliers or retailers had made requests to promote 156 varieties of fresh fruits and vegetables using 9 different Sesame Street characters.²¹

^{vi} Albuquerque, NM; Columbia, SC; Fayetteville, AR; Jackson, MS; Jefferson Parish, LA; Little Rock, AR; Louisville, KY; New Orleans, LA; Oklahoma City, OK; Prince George's County, MD; Roger, AR; San Francisco, CA; Savannah, GA; Springdale, AR; St. Louis, MO; and St. Petersburg, FL.

^{vii} Perris and Long Beach, CA also allow 100% fruit juice as a beverage option, in addition to water, milk, and milk alternatives.

^{viii} Cook County, IL passed a sweetened drink tax in 2016, but the tax was repealed by the County Board of Supervisors in October 2017. The tax was in effect from August-December 2017.

- PHA's [Drink Up](#) campaign, introduced in 2013, continued to encourage youth and adults to drink more plain water.²² Through partnerships with over 75 companies, the Drink Up campaign amplifies its message on product packaging and in retail locations as well as through celebrity endorsements. In 2016, PHA's [FNV](#) campaign, an initiative that uses promotional and marketing activities in addition to celebrity endorsements to inspire young people to eat their fruits and vegetables, announced 11 new partners.²³
- The Alliance for a Healthier Generation (AHG) and PHA have also worked with fast food restaurants on voluntary commitments to provide and promote healthier products.²⁴ With support from AHG, McDonald's Corporation announced a [global commitment](#) in 2013, ongoing through 2020, to increase access to healthier sides and beverages in restaurant kids' meals.²⁵ In 2014, through a partnership with PHA, [Subway](#) pledged, over the course of three years, to offer only items on its kids' menu that meet nutritional standards informed by federal guidelines for the National School Lunch Program. In addition, Subway committed to promoting healthier choices to kids in an effort to increase consumption of fruits and vegetables.²⁶
- In 2014, AHG, the American Beverage Association, The Coca-Cola Company, Dr Pepper Snapple Group, and PepsiCo announced a commitment to help reduce beverage calories in the American diet nationally by reducing per person calorie consumption by 20% by 2025 and locally through investments in eight to ten select U.S. communities. In 2016, the initiative released a [baseline report](#) in order to track progress on the commitment.

Grassroots and community-based initiatives

In 2016 and 2017, there were also numerous initiatives across the United States to raise awareness and encourage action to reduce unhealthy food marketing to youth. Grassroots campaigns bolstered support for sugary drink tax proposals and healthy beverages in restaurant kids' meals. Public health departments in Colorado adopted policy statements on the dangers of overconsumption of sugary drinks by children.²⁷ In addition, consumer and teacher advocacy campaigns led to the implementation of Smart Snacks nutrition standards for food and beverages advertised on [Channel](#)

[One news](#) in schools and banning McTeachers' Night fundraisers, where teachers work behind the counter at a local McDonald's restaurant, in [Los Angeles Unified School District](#). A growing number of initiatives also attempt to counteract unhealthy food and beverage marketing messages by engaging youth in policy change efforts. For example:

- In the California Bay Area, [The Bigger Picture](#) empowers youth to contribute their voices to change social norms around food marketing through writing workshops and film-making in order to end Type 2 diabetes in young people.
- [Youth Empowered Solutions Real Food, Active Living](#) in North Carolina supports a youth-driven movement focused on systemic and policy-related changes in order to create healthier schools and communities.
- In New York City, the [Youth Food Educators \(YOFE\) program](#), a project of the CUNY Urban Food Policy Institute, engages youth in developing counter marketing campaigns, advocacy and public speaking skills, and original artwork for campaigns to reduce demand for unhealthy food.

International policies

In 2016, the World Health Organization (WHO) concluded that radical changes in the obesogenic food marketing surrounding children are required to reduce the childhood obesity crisis.²⁸

Countries outside the United States have pioneered policies to limit unhealthy food and beverage marketing to youth.

- In June 2016, Chile began implementation of a two-pronged strategy to fundamentally change the way unhealthy food is marketed to consumers—warning labels on unhealthy foods paired with restrictions on unhealthy food marketing. Chile's policy also prohibits foods and beverages with a warning label from using licensed or brand characters on product packaging and in advertising on television or websites aimed at children under 14 years of age. In 2017, the law expanded to cover advertising airing on all television between 6 am-10 pm and in movie theaters.²⁹
- In December 2016, the United Kingdom's Committee on Advertising Practice, through the Advertising Standards

Authority, extended a ban on advertising of food and soft drink products high in fat, salt, and sugar (HFSS) to children under age 16 to encompass non-broadcast media. In 2007, OFCOM (a UK regulatory body) implemented a ban on unhealthy food marketing to children under age 16 on television. With the extended rules, advertising for HFSS products is no longer allowed in other media where children under 16 years old make up 25% or more of the audience, including print, movies, and online media, such as social media and advergames.³⁰

- In Canada, the [Child Health Protection Act](#), which would prohibit marketing of all foods aimed at children under 13, passed the Senate in September 2017. This restriction would apply to a wide range of food marketing techniques, including product labels, brand marketing, and licensed characters. Health Canada responded with its own guidance on unhealthy food marketing to kids, with even stronger restrictions and covering children up to age 17. A formal consultation period on the guidance (similar to a federal comment period in the U.S.) concluded in August 2017, and Health Canada released a report in December 2017. Advocates are awaiting final updates to Health Canada's proposed guidelines.³¹

Looking to the future

Looking ahead, there are many opportunities for continued policy-level changes to support healthier food environments and limit unhealthy food and beverage marketing to youth. Given evidence that food industry self-regulation has not substantially improved the extent of food marketing to children or the nutritional quality of child-directed food and drinks, government policies, at all levels, increasingly appear necessary.³² For example, the CFBAI has not yet enacted any of the [recommendations on responsible food marketing to children](#) proposed by a Healthy Eating Research national panel

^{ix} In January 2017, the Praxis Project and Center for Science in the Public Interest filed a lawsuit against the Coca-Cola Company and American Beverage Association to stop their misleading and deceptive advertising practices around the consumption of sugar-sweetened drinks: https://www.thepraxisproject.org/news_update/lawsuit-against-coca-cola-american-beverage-association/

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The Rudd Center for Food Policy & Obesity at the University of Connecticut is a multi-disciplinary research center dedicated to promoting solutions to childhood obesity, poor diet, and weight bias through research and policy. For more information, visit www.uconnruddcenter.org/food-marketing.

of experts in 2015.³³ As awareness grows around the updated USDA local school wellness policy guidelines, advocates expect continued movement among schools to adopt even stronger policies surrounding food and beverage marketing and fundraising.³⁴

Advocates also anticipate an increasing number of state and local policies promoting healthier restaurant kids' meals, healthy vending on government property,³⁵ and sugary drink tax and/or warning label policy campaigns (pending the outcome of court challenges to the San Francisco warning label law), spurred by growing community and youth engagement. With these policy changes comes an increased need for the evaluation of the implementation of these policies and their impact on improving the food and beverage marketing environment for youth.

Advocates have identified additional policy options to address marketing-related questions that have yet to be tested. For example, policies could address growing concerns about nutrition claims that may mislead parents and other consumers about the healthfulness of food and drinks that are high in sugar, fat, and/or salt, such as through guidance or regulatory actions from the Food and Drug Administration and/or Federal Trade Commission; complaints by state attorneys general; and even private litigation.^{ix} Advocates have also suggested limiting junk food marketing to children in communities by creating healthy food zones around schools to limit new fast food and other unhealthy food retail outlets.³⁶ Furthermore, evaluations of newly adopted regulations in other countries will provide much-needed evidence on the impact of stricter regulation of food and beverage marketing and may support further actions.

Ultimately, a concerted effort by policy makers, health advocates, and food and beverage companies is required to continue to reduce unhealthy food and beverage marketing to youth in measurable and meaningful ways and support parents' efforts to raise healthy children.

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