Public Health Law Center
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HEALTHY CHICAGO
CHICAGO DEPARTMENT OF PUBLIC HEALTH

Using Local Authority to Create Healthier Child Care Settings: Chicago

Over the past 30 years, the obesity rate among children ages 2-19 years old has more than tripled in the United States.[1] Contributing causes include advertising that promotes unhealthy foods, lack of easy access to healthy foods, increased portion sizes, and lack of opportunities to be physically active.[2] Other factors, including sex, race, ethnicity, and socioeconomic status, place some groups of children at greater risk for obesity. For example, a national report noted that according to 2010 data, 14.4% of low-income children between the ages of two and five are obese, which is almost 20% higher than the national average of 12.1% for all children of similar age.[3] Children in certain racial or ethnic groups have even higher rates of obesity compared to the national average—21.1% for American Indian and Alaskan Native children, and 17.6% for Latino children.[4]

Unhealthy weights come with significant health consequences. Children who are obese are more likely to be obese as adults, and are at risk for developing serious, life-shortening chronic diseases, including cardiovascular disease, type-2 diabetes, and several types of cancer.[5] The earlier children can learn healthy eating and physical activity habits, the better for their long-term health.

The Public Health Law Center and the Child Care Law Center have created this series of fact sheets to highlight ways that local governments are enhancing and supporting child care providers' efforts to provide healthy environments for children to learn and grow. This fact sheet focuses on a resolution passed by the Chicago Board of Health which establishes standards for physical activity, nutrition, and screen time in child care centers designed to promote good health in young children. Chicago's approach offers a helpful model to inform similar efforts in other jurisdictions.

Because over half of all infants and young children regularly spend much of their time in non-parental child care,[6] child care settings provide a unique and important opportunity to address the childhood obesity epidemic.[7] Child care providers are well positioned to intervene and help decrease the risk of childhood obesity by cultivating environments that promote healthy eating and positive exercise habits at young ages.[8]

Child Care Regulation in Illinois

The Illinois Child Care Act of 1969 directs the state's Department of Children and Family Services (DCFS) to set minimum standards for child care centers and family child care homes in Illinois.[9] Local jurisdictions that have home rule authority also may regulate child care settings. Home rule jurisdictions have broad authority to regulate their own affairs, "including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare."[10] Counties in Illinois with an elected chief executive and municipalities with populations of over 25,000 have home rule authority (unless waived by referendum).[11]

What is preemption?

Preemption is a legal concept where state (or federal) law restricts or eliminates local authority over an area, such as child care regulation. Preemption can be express or implied. With express preemption, the legislature has included phrases or a provision that explicitly states its intention to preempt local authority. With implied preemption, a court finds that a law is preemptive even though there is no explicit statement of preemption, after examining the legal landscape and/or the legislative history of the law.

The DCFS regulations state that local child care regulations must be "reasonable, consistent with uniform state (i.e. [DCFS]) standards and accomplish and execute the full purposes and objectives of the Illinois legislature to provide services to children and their families as described in the Department of Children and Family Services Enabling Act . . . and in the Child Care Act."[12]

In non-home-rule jurisdictions, DCFS states that its regulations "take precedence" over local regulations.[13] In other words, these regulations assert preemption of local authority over child care providers in non-home-rule jurisdictions. The Illinois Supreme Court has ruled that a non-home rule jurisdiction's zoning law that made it impossible for family child care home providers to operate was impliedly preempted by the state's Child Care Act and regulations.[14] This legal context suggests that it may be difficult for non-home-rule jurisdictions in Illinois to enact child care regulations that go beyond state law.

Child Care Centers in Chicago

Because Chicago is a home rule jurisdiction, it has authority to regulate child care settings within its boundaries. Chicago has opted to regulate child care centers (referred to as "day care centers" in the Chicago code) but not other child care settings, such as family child care homes, through local licensing requirements.[15] City law requires day care centers to "comply with all applicable rules, regulations and minimum standards . . . promulgated by the [Chicago] board of health or State of Illinois."[16] Thus, all child care centers in Chicago must comply with both local and state standards and requirements. The Chicago Department of Business Affairs and Consumer Protection, along with the Chicago Board of Health, are responsible for implementing and enforcing Chicago's law.[17]

The Chicago Municipal Code defines a child care center as "any institution or place, regardless of nomenclature. . . ., including, but not limited to, any day care center, where three or more children six years of age or younger, who are not of common parentage and who are apart from their parent or guardian, are cared for during all or part of the day."[18] In 2012, just over 40,000 children, covering all age groups, were estimated to be enrolled in licensed child care centers in Chicago.[19]

Nutrition, Physical Activity, and Screen Time in Chicago Child Care Centers

The City of Chicago's Inter-Departmental Task Force on Childhood Obesity, which is comprised of 11 city agencies with technical assistance from the Consortium to Lower Obesity in Chicago Children (CLOCC), was recently recognized by the National Association of County and City Health Officials with a "Model Practice Award." In 2008, the Inter-Departmental Task Force established healthier child care settings as a policy priority for the city. In 2009, to implement this priority, the Chicago Departments of Public Health (CDPH) and Family and Support Services led the effort to align the city's child care standards with national best practices for nutrition, physical activity, and screen-time. The Chicago Board of Health and CDPH passed a joint resolution recommending new obesity prevention standards for licensed child care centers in the city.[20]

The Board amended the resolution in 2011 to include additional standards relating to milk.[21] As explained below, the CDPH has supported implementation of the standards set out in the resolution by providing education and training to child care providers.

Table 1: The Chicago Resolution At a Glance

Nutrition Standards

Illinois state regulations include some requirements for food served in child care centers.[22] The Chicago resolution goes beyond these regulations as follows:

- No juice with natural or artificial added sweeteners may be served.[23]
- Only children over 12 months of age should drink 100% juice, and no more than four ounces per day.[24]
- All milk served to children ages two and over should contain no more than 1% milk fat, unless the child has a documented medical need for milk with a higher fat content.[25]

Physical Activity Standards[26]

Chicago's physical activity standards are modeled after those implemented by New York City.[27]

- The resolution states that centers should provide "a program of age and developmentally appropriate physical activity."
- Children should not be sedentary for over 60 minutes at a time, except during scheduled rest or nap times.
  - Children ages 12 months and older who are in child care for at least six hours a day should engage in at least 60 minutes of daily physical activity.
  - For children ages zero to three, physical activity sessions should be broken up into 15 minute increments.
  - For children ages three and older, at least 30 of the 60 minutes should be structured and guided activity, with the remainder being active play, learning, and movement activities.
- Children in a part-day program should engage in a proportional amount of activity.
- All children should be able to play outdoors, except in inclement weather, and be dressed appropriately for weather conditions. During poor weather, active indoor play should be encouraged.
- Structured and guided activities should be led by caregivers and promote basic movement, creative movement, motor skills development, and general coordination.
- Physical activity should be documented and included in the daily schedule. The documentation should be made available to the Department of Public Health upon request.

Screen Time Standards

The Chicago resolution also includes the following standards for screen time:

- For children under two years of age: no television, computer, and video viewing should be allowed.
- For children over two years of age and in programs for six or more hours per day, screen time should be limited to no more than 60 minutes per day and the programs should be educational or actively promote movement.
- If children attend a part-day program (less than 6 hours per day), screen time should be limited proportionally.
- Each viewing session should not exceed 30 minutes.

Lessons from Chicago – Driving Statewide Progress

Chicago's resolution addressing nutrition, physical activity, and screen time in child care centers provides a useful model for promotion of better nutrition and physical activity for young children through child care standard-setting. The standards set forth in Chicago's resolution could be enacted by local jurisdictions with authority over child care providers. In addition, even local jurisdictions without authority to regulate child care may be able to pass this kind of resolution to establish voluntary nutrition and physical standards for child care providers. However, voluntary resolutions may not have much effect without training and support for their implementation, especially if they lack enforcement mechanisms.

As the Illinois Supreme Court has recognized, trying to ensure access to affordable, quality child care is good public policy.

Illinois also serves as an example of a state that allows some degree of local regulation of child care, albeit primarily in home rule cities. When local regulation of child care is being considered, tension can arise between the goals of promoting availability of care and establishing high health and safety standards for providers. As the Illinois Supreme Court has recognized, trying to ensure access to affordable, quality child care is good public policy.[28] Nonetheless, states can empower local governments to regulate in ways that both support the availability of child care *and* promote better health for children. For example, a delegation of local authority over child care settings could include limits on what unique zoning requirements a local jurisdiction could impose on child care settings, to avoid situations where family child care providers would be banned from

operating in certain neighborhoods. A state could also establish state-level nutrition and physical activity regulations specifically as a *floor* – as minimum requirements, not maximums – so that local jurisdictions could pass additional or more rigorous regulations related to these issues. Local governments then would need to take care that additional requirements were not imposed in a way that would undermine the public policy of promoting availability of affordable, quality child care.

The Chicago experience exemplifies how local authority over child care settings can complement state regulation, and lead to statewide progress. In spring 2013, a committee of the Early Learning Council, which is part of the Illinois Governor's Office of Early Childhood Development, issued a recommendation that the Illinois DCFS should incorporate the Chicago standards (and other best practices) into its state child care center regulations (Rule 407).[29,30]

The Chicago standards are serving as a catalyst and model for improving nutrition and physical activity standards in child care centers across the state.

The DCFS reportedly has incorporated the Chicago standards into the draft rule that will be issued for public comment.[31] In this way, the Chicago standards are serving as a catalyst and model for improving nutrition and physical activity standards in child care centers across the state.

Finally, Chicago provides a model for how to support child care providers in implementing new standards designed to promote children's healthy development. Complying with new standards may add expense and be time consuming for providers.[32] Chicago has mitigated these effects by providing free technical support and training to providers.[33] The CDPH partnered with Illinois Action for Children, a statewide advocacy organization focused on children's issues, Erikson Institute, a graduate school specializing in child development, and CLOCC to create a training program for child care providers.

The group designed and conducted 87 trainings for child care providers between March 2011 and February 2012.

These trainings explained why the standards were adopted, outlined the dangers of childhood obesity, and explained the role of child care providers in establishing good nutrition and physical activity habits among children. Pre- and post-training surveys show that providers attending the trainings believed that the trainings improved their understandings of health issues faced by children and ways to address these issues as child care providers. Providing this kind of support could help promote faster implementation and better compliance with new standards.

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Endnotes

1 Jeffrey Levi et al., Trust For America's Health, F as In Fat 2012: How Obesity Threatens America's Future 9 (2012), http://healthyamericans.org/assets/files/TFAH2012FasInFatFnlRv.pdf [hereinafter F as in Fat 2012].

2 Centers For Disease Control and Prevention ("Cdc"), Childhood Overweight Obesity: A Growing Problem, http://www.cdc.gov/obesity/childhood/problem.html.

3 F as in Fat 2012, *supra* note 1, at 19.

4 *Id.*

5 CDC, Childhood Obesity Facts, http://www.cdc.gov/healthyyouth/obesity/facts.htm.

6 U.S. Census Bureau, Who's Minding the Kids? Child Care Arrangements: Spring 2011, *Table 1, Preschoolers in Types of Child Care Arrangements: Spring 2011*, *available at* http://www.census.gov/prod/2013pubs/p70-135.pdf.

7 Karen Kaphingst et al., *Child Care as an Untapped Setting For Obesity Prevention: State Child Care Licensing Regulations Related to Nutrition, Physical Activity, and Media Use For Preschool-Aged Children in the United States,* 6 Preventing Chronic Disease: Pub. Research, Practice And Pol'y A11 (2009), *available at* www.cdc.gov/pcd/issues/2009/jan/07_0240.htm; and Nicole Larson and Sara Benjamin Neelon et al., *What Role Can Child-Care Settings Play in Obesity Prevention? A Review of the Evidence and Call for Research Efforts,* 111 J Am. Dietetic Ass'n 1343 (2011).

8 *See* Am. Acad. of Pediatrics, Am. Pub. Health Ass'n, and Nat'l Resource Ctr. For Health and Safety in Child Care and Early Educ., Preventing Childhood Obesity in Early Care and Education: Selected Standards From Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs (3rd ed. 2010), http://nrckids.org/CFOC3/PDFVersion/preventing_obesity.pdf.

9 Ill. Comp. Stat. 225 § 10/7(a) (2012).

10 Ill. Const. Art. VII §6(a).

11 *Id.* Other municipalities may also choose by referendum to become home rule jurisdictions.

12 Ill. Admin. Code tit. 89, § 329.3(c); see also § 329.3(d).

13 Ill. Admin. Code tit. 89 § 329.3(b).

14 Hawthorne v. Village of Olympia Fields *et al.,* 790 N.E.2d 832 (Ill. 2003).

15 Chicago Municipal Code Ch. 4-75. Chicago's law classifies day care centers as a type of children's services facility that is required to be licensed by the city.

16 Chicago Municipal Code Ch. 4-75-130(3).

17 Chicago Municipal Code Ch. 4-75-210.

18 Chicago Municipal Code Ch. 4-75-010.

19 Email communication with Tom Browning, Illinois Action for Children, dated July 24, 2012 (copy on file with the Public Health Law Center).

20 Chi., Ill., Joint Resolution of the City of Chicago Department of Public Health Commissioner and the Chicago Board of Health on Chicago Child Day Care Center Standards (Nov. 18, 2009) (hereinafter "2009 Chicago Joint Resolution").

21 Chi., Ill., Amendment to the Joint Resolution of the City of Chicago Department of Public Health Commissioner and the Chicago Board of Health on Chicago Child Day Care Center Standards (Jul. 20, 2011) (hereinafter "2011 Chicago Joint Resolution Amendment").

[22] *See* Ill. Admin. Code tit. 89 § 407.330.

[23] 2009 Chicago Joint Resolution, *supra* note 20.

[24] *Id.*

[25] 2011 Chicago Joint Resolution Amendment, *supra* note 21.

[26] 2009 Chicago Joint Resolution, *supra* note 20.

[27] Pub. Health Law Ctr., Using Local Authority to Create Healthier Child Care Settings: New York City's Regulations, *available at* http://www.publichealthlawcenter.org/topics/healthy-eating/child-care/resources.

[28] *See* Hawthorne, 790 N.E.2d 832, *supra* note 14.

[29] Ill. Admin. Code tit. 89 § 407.

[30] A copy of the recommendations are on file at the Public Health Law Center.

[31] Minutes for March 13, 2013 meeting of the Health Subcommittee, System Integration and Alignment Committee of the Illinois Early Learning Council, http://www2.illinois.gov/gov/OECD/Documents/Early%20Learning%20Council/Sys%20Align%20and%20Integration/Health/FINAL%20minutes%20health%20subcommittee%20meeting%203%2013%2013.pdf

[32] Pablo Monsivais and Donna B. Johnson, *Improving Nutrition in Home Child Care: Are Food Costs a Barrier?* 15 Public Health Nutrition 370 (Sept. 2011).

[33] Adam B. Becker et al., Assessing Regulation Changes In Chicago Childcare Facilities To Prevent Childhood Obesity (presentation at American Public Health Association 140th Annual Meeting, San Francisco, CA) (October 27-31, 2012).