

Summer 2009

# Assessing Legal Competencies for Obesity Prevention and Control

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## Recommended Citation

Wendy Collins Perdue et al., *Assessing Legal Competencies for Obesity Prevention and Control*, J.L., Med. & Ethics at 37 (Summer Supp. 2009).

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# Assessing Competencies for Obesity Prevention and Control

*Wendy Collins Perdue, Alice Ammerman, and Sheila Fleischhacker*

Obesity is the result of people consistently consuming more calories than they expend.<sup>1</sup> A complex interaction of social and environmental conditions affects both energy consumption and physical activity levels.<sup>2</sup> These conditions include, but are not limited to the following factors: the availability of affordable and healthy food;<sup>3</sup> price disparities between healthy and less healthy foods;<sup>4</sup> access to or perceived safety of recreation facilities;<sup>5</sup> and the conduciveness of the physical environment to active modes of transportation, such as walking and biking.<sup>6</sup> As outlined in the “Assessing Laws and Legal Authorities for Obesity Prevention and Control” paper in this supplement issue, laws and government policies in the United States influence nearly all of these social and environmental factors.

Some, but by no means all, of the social and environmental factors related to obesity are presented in Table 1 along with examples of corresponding laws impacting each factor. Even in this incomplete list, it is evident that the range of laws with potential impact on factors related to obesity is very broad. Moreover, many of the relevant laws are not primarily “public health” laws or even laws that are immediately identifiable as having public health effects. In fact, a number

of these laws may be virtually “invisible” to and beyond the control of the average public health official. As a result, health professionals who understand the social and environmental factors related to obesity risk may find it challenging to identify, understand, or develop a strategy to improve the vast array of laws that play a role in shaping our environment and behaviors.

The flip side of this problem is that those who are intimately familiar with the types of laws listed in Table 1 may have little understanding of the extent to which these laws impact public health in general or obesity in particular. Planners, school superintendents, and transportation officials without expertise in public health will find it challenging to see the connection between their decisions and health.<sup>7</sup> Agricultural policy experts may focus on encouraging production and lower prices of a few bulk commodities rather than on nutrition.<sup>8</sup> Even officials — whose roles cause them to consider some aspects of health, such as traffic engineers focused on reducing motor vehicle crashes and other traffic incidents — may not have occasion to consider broader impacts on public health or obesity. Designing streets with the lowest possible risk of traffic accidents is an important aspect of public health, but equally important is the broader recogni-

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Table 1

**Examples of Conditions That Affect Obesity and Corresponding Laws***Selected factors that may impact obesity → Possible corresponding laws*

<b>Health Lifestyle</b>	
Relative costs of high nutrition versus high calorie foods	Agriculture support laws; food stamp Program; "snack taxes"
Portion size	Nutrition labeling or direct regulation
Food and beverage selection	Laws regarding food and beverage advertising
Nutrition information	Menu labeling requirements
Perceptions of safety in public parks	Design standards; policing policies
<b>Healthy Places</b>	
Ease or difficulty of access to healthy food versus less healthy food	Zoning and land use policies that affect location of full service grocery stores, farmers' markets, fast-food restaurants, and stores offering a prevalence of energy dense foods
School meal nutrition	Laws and regulations regarding school meal and competitive foods
Pedestrian and bike facilities	Government funding priorities; state and local "road codes"
Neighborhood compactness and "walkability"	Zoning and land use requirements
Suburban "sprawl" development patterns	Building codes that discourage reuse of old buildings; large minimum lot sizes
Schools and libraries easily accessible to pedestrians	Policies concerning location and size of public facilities
Location and accessibility of public parks and recreation facilities	Funding policies and priorities
Facilities for active recreation	Risk management and tort liability laws
Availability of gyms or private recreation facilities	Zoning laws that require recreation facilities
<b>Healthy Societies</b>	
Access to services for overweight and obese people	Antidiscrimination laws

tion of how street design impacts the "walkability" of a community and thereby promotes or inhibits physical activity. Similarly, recreation officials may not consider the need for activities likely to appeal to populations at high risk for obesity.<sup>9</sup>

Competency in the use of laws and legal authorities is one of the four core elements of public health legal preparedness.<sup>10</sup> Legal competency<sup>11</sup> is a particularly important component of a comprehensive strategy to prevent and control obesity because law is so pervasive in affecting the social and physical conditions that impact obesity. Public health practitioners, legal counsel, health care providers, and others need to be able to assess current and proposed laws on obesity risk factors and make effective use of laws as specific obe-

sity prevention and control tools. This paper assesses public health legal competency from two sides: (1) the ability of public health and setting-specific actors to understand and apply relevant laws including knowledge of the consequences of action and inaction; and (2) the ability of policymakers and legal counsel to understand and take into account the potential obesogenic effects of their decisions. The assessment includes the identification of critical gaps in those competencies, which are addressed in the companion action paper. Our assessment starts by identifying the main setting-specific actors who should master public health legal competencies and then describes the five basic types of relevant competencies.

*Setting-Specific Actors Requiring Legal Competencies*

The Centers for Disease Control and Prevention (CDC) uses a setting-specific framework to address the programmatic issues associated with obesity prevention and control. The settings communities, medical care, schools including daycare, and workplaces. In the discussion set forth in this paper, the competencies we consider relate to the professionals who are found in each of these settings. However, we will base our discussions on staff competencies in the public health and medical care settings compared to those professionals who are not in the traditional public health occupation, but have the capacity to play a supporting role.

Setting-specific actors within the public health and medical care communities, include, but are not limited to, those working within:

- federal, state, local, and tribal public health agencies;
- hospitals;
- academic and research centers; and
- public health advocacy groups.

Because the range of laws that impact social and environmental factors related to obesity risk factors is so large, the number of settings outside the traditional public health community that need to be targeted is also large and includes public officials and administrators operating within:

- schools;
- land use planning;
- road and highway departments;
- public transportation;
- parks and recreation;
- agriculture;
- public facilities planning;
- economic development;
- consumer protection;
- food and beverage industry; and
- health insurance.

With respect to competencies among policymakers and legal counsel, the focus must extend beyond the lawyers and general counsel who work within the relevant agencies. While some of the legal issues and decisions relevant to obesity, such as regulating advertising or banning certain foods, will be high-visibility policy decisions with extensive engagement of lawyers and high-level policymakers, many other day-to-day decisions concerning public facilities, recreation, transportation, and locations of grocery stores will be made by those working at the staff level. For these day-to-day matters, general counsel and managerial-level

personnel need sufficient competency to authorize and empower appropriate staff engagement. Staff will also need the skills to understand the public health obesity issues and to implement strategies to use laws as a relevant tool within their authority.

### **Five Categories of Legal Competency for Obesity Prevention and Control**

The framework for enhancing legal competencies which we develop in this article has five basic parts: (1) understanding and explaining obesity's connection to physical, environmental, and social conditions; (2) identifying laws and policies that affect relevant conditions; (3) identifying and engaging all relevant stakeholders; (4) understanding the process by which laws are developed; and (5) identifying and addressing gaps in the current legal framework. The five categories of legal competencies can be further refined into frameworks of basic knowledge and skills. Tables 2 and 3 set forth two such frameworks — one focused on the health professional, the other on legal and policy decision makers and program administrators whose decisions may impact health and obesity.

#### *(1) Understanding and Explaining Obesity's Connection to Physical and Social, Environmental Conditions*

The critical first step in developing competency in public health legal preparedness for obesity prevention and control is to be capable of articulating the connection between obesity and particular physical and social aspects of our environment that play a role. Important research relating to the effects of the physical and social environments on obesity is under way, though clearly more work needs to be done. The work conducted thus far, however, falls outside the usual expertise and focus of government health officials, lawyers, and policymakers because it extends from land use to school construction to economic development. As a result, an essential element of increasing legal competency will be the process of educating non-health professionals about the health consequences of their decisions. Therefore, competencies for health care and public health professionals include the ability to present legally relevant information to the appropriate decision makers in a form that is likely to be understood by a non-health professional.

#### *(2) Identifying Laws and Policies That Affect Relevant Conditions*

The next step in assessing and enhancing legal competency is to identify laws that influence conditions and factors associated with obesity. Creating such an inventory is challenging because the range

Table 2

**Legal Competencies for Obesity and Public Health Professionals**

<p><b>A. IDENTIFIES AND UNDERSTANDS RELEVANT LAWS, POLICIES, AND GOVERNMENT PRACTICES</b></p> <ol style="list-style-type: none"> <li>1. Appreciates the role of law, policies, and government practices in promoting obesogenic or health promoting conditions</li> <li>2. Identifies laws and policies that promote obesogenic or health-promoting conditions — this process entails a process of moving from broad categories of laws to the specific provisions that are implicated       <ol style="list-style-type: none"> <li>i. Recognizes the broad area of law that may be implicated, e.g., land use and zoning, agriculture support policy, school meal program, labeling requirements</li> <li>ii. Identifies the most salient rules and policies within the broad area, e.g., parking and set back requirements, rules on competitive foods in schools, liability and immunity standards relevant to community use of school facilities, road code</li> <li>iii. Understands the interactions among laws from different areas, e.g., community use of schools and potential tort law liability</li> </ol> </li> <li>3. Identifies laws and policies that may disproportionately impact or discriminate against those who are overweight or obese and against minorities or those with low socio-economic indicators</li> <li>4. Identifies the appropriate level of government (federal, state, local) whose rules or policies are most salient to the situation, and has authority (“pre-emption”)</li> <li>5. Understands the basic function of the relevant laws and how they are made, implemented and enforced</li> </ol>
<p><b>B. EXPLAINS HEALTH AND RELATED NON-HEALTH CONSEQUENCES TO DECISION MAKERS AND STAKEHOLDERS</b></p> <ol style="list-style-type: none"> <li>1. Understands what information is considered legally relevant, for example, under local law, does construction of a fast food restaurant require a finding that it is “in the public interest,” and if so, has this standard been interpreted to allow consideration of public health concerns?</li> <li>2. Understands and considers non-legal factors that may be of concern to decision makers and stakeholders, e.g., economic concerns, educational quality, energy usage, crime control</li> <li>3. Collects relevant data, including data on effectiveness of different programs or strategies</li> <li>4. Compiles and presents research and information in a form that is likely to be understood and appreciated by the particular audience</li> <li>5. Identifies opportunities systematically to incorporate public health considerations into decision process, e.g., creating an on-going institutional public health presence in processes such as asking health officials to comment on master plans or projects, or incorporating health data into planning processes</li> </ol>
<p><b>C. IDENTIFIES AND ENGAGES ALL RELEVANT STAKEHOLDERS</b></p> <ol style="list-style-type: none"> <li>1. Identifies relevant stakeholders both inside and outside of government, e.g., medical providers, school-focused groups, environmental groups</li> <li>2. Identifies and highlights non-health benefits of interest to particular stakeholders that may flow from health promoting practices, e.g., more walking may reduce fuel consumption, and encourage collaboration among stakeholders on promoting these practices</li> <li>3. Identifies and understands the full range of concerns, including political, economic and social concerns that may be important to stakeholders or decision makers</li> </ol>
<p><b>D. ENGAGES LEGAL OR POLICY DECISION MAKERS WHERE APPROPRIATE — ENGAGEMENT INCLUDES EVERYTHING FROM REPORTING A VIOLATION OF LAW TO THE ENFORCING AGENCY TO GETTING INVOLVED IN AN ON-GOING DECISION PROCESS</b></p> <ol style="list-style-type: none"> <li>1. Determines whether any intervention is appropriate       <ol style="list-style-type: none"> <li>i. Determines whether there are limits on agency authority which would restrict intervention</li> <li>ii. Determines whether legal advice is necessary in order to make a decision about intervention</li> </ol> </li> <li>2. Determines the appropriate agency or decision maker with whom to intervene</li> <li>3. Determines what intervention is appropriate, e.g., report a violation, testify at a hearing, participate through more informal mechanisms</li> <li>4. Determines the most appropriate time to intervene, e.g., wait for formal process such as public hearing or act immediately</li> </ol>
<p><b>E. IDENTIFIES AND ADDRESSES GAPS IN CURRENT LAWS OR LEGAL PROCESSES</b></p> <ol style="list-style-type: none"> <li>1. Monitors areas of particular concern to see how laws are being applied and what results are occurring</li> <li>2. Identifies conditions or situations that have sufficient health relevance to warrant legal reform</li> <li>3. Collaborates with lawyers and policy makers to craft legal remedies       <ol style="list-style-type: none"> <li>i. Provides relevant data to support legal change</li> <li>ii. Assists in analyzing costs and benefits of alternative legal approaches</li> </ol> </li> <li>4. Identifies “targets of opportunity” to improve the legal framework, e.g., reauthorization of an existing program</li> </ol>

Table 3

**Legal Competencies for Legal and Policy and Decision Makers**

<p><b>A. RECOGNIZES PHYSICAL/ENVIRONMENTAL/SOCIAL CONDITIONS RELEVANT TO OBESITY</b></p> <ol style="list-style-type: none"> <li>1. Recognizes physical/environmental/social conditions that may be either obesogenic or health-promoting               <ol style="list-style-type: none"> <li>i. different categories of conditions, e.g., those affecting access to food, and those affecting physical activity</li> <li>ii. in different settings, e.g., schools, workplace, transportation systems, recreation facilities</li> </ol> </li> <li>2. Recognizes situations of potential discrimination against the obese, e.g., access to health care, access to public facilities</li> </ol>
<p><b>B. RECOGNIZES WHEN LAWS, POLICIES AND GOVERNMENT PRACTICES ARE RELEVANT TO OBESITY</b></p> <ol style="list-style-type: none"> <li>1. Examines whether its legal or policy decisions may produce obesogenic or health-promoting conditions               <ol style="list-style-type: none"> <li>i. considers the likely intended and unintended effects of decisions in critical areas such as nutrition and physical activity</li> <li>ii. consider how significant those effects are likely to be with respect to obesity or health-promotion</li> </ol> </li> <li>2. Examines whether its legal or policy decisions may disproportionately impact obese people</li> </ol>
<p><b>C. CONSIDERS INTERESTS OF AND CONSULTS STAKEHOLDERS</b></p> <ol style="list-style-type: none"> <li>1. Identifies stakeholders with relevant interests</li> <li>2. Identifies opportunities that have multiple benefits including non-health benefits, e.g., more walking may reduce fuel consumption, and encourage collaboration among stakeholders on promoting these practices</li> </ol>
<p><b>D. USES EXISTING LEGAL AUTHORITY IN A MANNER THAT IS SENSITIVE TO CONCERNS ABOUT OBESITY</b></p> <ol style="list-style-type: none"> <li>1. Understands scope of legal authority and legal responsibility to consider health-promotion</li> <li>2. Integrates health and obesity data into decision process and consults health professionals</li> <li>3. Evaluates health impact of decisions and considers this in decision making</li> <li>4. Understands legal obligations towards those who are obese</li> <li>5. Identifies opportunities systematically to incorporate public health considerations into decision process, e.g., creating an ongoing institutional public health presence in processes such as asking health officials to comment on master plans or projects, or incorporating health data into planning processes</li> </ol>
<p><b>E. ADDRESSES GAPS IN CURRENT LAWS OR LEGAL PROCESSES</b></p> <ol style="list-style-type: none"> <li>1. Monitors effects of decisions</li> <li>2. Identifies conditions or situations that have sufficient health relevance to warrant legal reform</li> <li>3. Collaborates with health professionals to craft legal remedies               <ol style="list-style-type: none"> <li>i. Identifies the data that would be useful or necessary to support legal change</li> <li>ii. Assists in analyzing costs and benefits of alternative legal approaches</li> </ol> </li> <li>4. Identifies "targets of opportunity" to improve the legal framework, e.g., reauthorization of an existing program</li> </ol>

of obesogenic, socioenvironmental factors is very broad. In addition, the web of laws that impact each of these socioenvironmental factors is complex and includes laws and legal authorities at every level of government.

Further complicating matters is the fact that many of the laws that influence the obesogenic nature of the environment may not on their face appear to have anything to do with health. For example, sprawl development patterns that discourage walking may in part be an unintended consequence of such diverse laws as the federal highway building program, the federal income tax home mortgage deduction, local building codes that discourage reuse of buildings in older neighborhoods, and local zoning ordinances.<sup>12</sup>

The process of identifying relevant laws requires collaboration among health care and public health experts, who understand the programmatic issues,

and legal experts, who understand the law. Together they must probe to identify laws and legal authorities that may contribute to obesity as a public health problem. For example, in exploring why some communities are underserved by grocery stores, a simplistic answer may be that grocers are reluctant to build in poor communities. Yet this answer is clearly incomplete; poor people need to buy food, so it is not at all obvious why supermarket chains would not want to build stores where there is demand for their product. In the case of urban supermarkets, researchers point to deterrents such as more demanding regulatory framework typical of central cities, environmental cleanup costs, and a lack of urban development financing.<sup>13</sup> What is important from a public health legal competency standpoint is that health care professionals, public health practitioners, and legal counsel must continue to recognize common ground while addressing the

issue to complete a full analysis that goes below surface explanations.

Health officials need to understand how laws are implemented in their particular locale. In addition, health officials will benefit from methods that help them target where and what the opportunities are in these laws and decision processes to interject health considerations. Legal competency materials for health professionals must be developed which are both reasonably specific and also address local variations. Some of this is underway. The American Planning Association (APA) began collaboration with the National Association of County and City Health Officials (NACCHO) to create a number of useful tools and sponsored numerous programs addressing issues at the intersection of public health and the built environment.<sup>14</sup>

### *(3) Identifying and Engaging All Relevant Stakeholders*

The socio-physical conditions that affect obesity implicate many sectors including schools and business, agriculture and food retailing, and transportation systems and urban design. For example, there may be environmental reasons for seeking to reduce automobile dependence, and this goal is complementary to the goal of increasing physical activity through walking and biking. With respect to each of these areas of society and issues, there are groups of stakeholders who should be consulted and engaged on issues surrounding obesity.<sup>15</sup>

Such engagement offers the opportunity to both learn and teach. First, there is much that health professionals, public health officials, and lawyers can learn about stakeholder concerns, potential complications, and potential benefits. For example, legal strategies that create safer walking routes throughout the community and implement crime prevention to keep residents safe may result in communities with more walkers, less traffic congestion on the street, and school children getting more physical activity during the day. Win-win solutions will not always be possible but the quality of legal and policy decision making will be enhanced by having a better understanding of the full range of concerns and stakeholder interests. Second, engagement offers the opportunity to "teach," i.e., to broaden the understanding of obesity, its costs, its causes, and ways to combat it. Building this broad understanding about obesity will, over the long run, enhance the quality of legal and policy decision making and build the foundational public consensus for implementing those laws and policies.

### *(4) Understanding the Law and Legal Authorities Development Process*

The next aspect of enhancing competency in legal preparedness is assuring that public health concerns are properly taken into account when legal decisions are made. This requires that those with knowledge of health effects are effectively raising health and obesity issues with legal and policy decision makers and that, where permissible, those decision makers are exercising their authority with sensitivity to the issues. Knowing when, how, and to whom information about health effects should be addressed is a challenge for health practitioners. Sometimes there are formal decision-making processes that include public hearings or formal presentations of information. In other contexts, the decision process may be more informal or less public. For example, some zoning and land use decisions may be made through a public process with relatively formal procedures. On the other hand, decisions by an economic development agency about whether to encourage construction of a much-needed grocery store may be made more informally through an internal deliberative process. A further issue that public health officials must consider is the scope of their own authority to intervene, whether formally or informally, in decision processes. For example, a formal option available to a public health official trying to affect the content of a school wellness policy includes directly addressing the school board by speaking during the public comment period of a board meeting or by being placed on the board's agenda. An informal option includes speaking one-on-one to state school board association policy staff or school employees who write the policy that the board will adopt.

A significant step for legal and policy decision makers is to understand the scope of their legal authority in order to take into account health impacts. Such an understanding may require a shift in focus. For example, planning officials may consider a lack of access to supermarkets as an "economic development issue" rather than a health-related land use issue.<sup>16</sup> Similarly, economic development officials may believe that their primary job is to strengthen the economy and as a result, they may not understand that a decision which encourages the development of a fast-food restaurant rather<sup>17</sup> than a grocery store may have negative health effects.<sup>18</sup> While the legal framework may not always allow a decision maker to take health effects into account, sometimes officials may have broader authority than they recognize. In the law and policy development process, it is important to consider integrating health data into the routine decision-making process. For example, San Francisco has developed the Healthy Development Measurement Tool. This tool identifies

a number of health-related data including neighborhood proximity to grocery stores and recreation facilities, along with basic health data such as infant birth weight and causes of death. Data collected from this tool are then mapped and made easily accessible to planners, community leaders, and policymakers.<sup>19</sup>

#### *(5) Identifying and Addressing Gaps in the Legal Framework*

The final component of legal competency is the ability to identify gaps in the legal framework and approaches to address them. As part of this process, it is necessary to consider whether proposals for change are consistent with existing laws and legal requirements, whether the benefits outweigh the costs, and whether any proposal may have unintended, adverse consequences. Finally, proposals must consider the most effective form of legal intervention — be it direct regulation such as mandates or prohibitions, indirect regulation such as tax incentives, or direct government action such as providing needed facilities or care — and the appropriate level of government to be involved, whether federal, state, local, or tribal.<sup>20</sup>

As in identifying relevant laws, the process of identifying gaps in the legal structure requires collaboration between health professionals who understand the physical, environmental, and social changes that can make the environment less obesogenic, and policymakers who understand the legal tools and constraints for bringing about these changes.

#### **Gaps in Competency for Legal Preparedness for Obesity Prevention and Control**

One of the major challenges in addressing obesity is that health practitioners and researchers, who understand the health consequences of particular physical or environmental conditions, may lack understanding of the relation between relevant laws and these conditions. Conversely, some non-health professionals who understand the laws may not understand the relationship between the laws and their health consequences. A major gap that needs to be filled is the analytic gap between understanding obesogenic conditions on one hand, and the laws or policies that cause or contribute to those conditions on the other. For example, in a 2007 survey, local government officials identified the tools and resources that would be the most helpful in addressing barriers that they faced in efforts to promote physical activity. The top three tools identified were “increased training and education,” “sample policies and programs,” and “best practices and case studies.”<sup>21</sup> A seemingly simple question such as, why are there no sidewalks in my neighborhood? can have a surprisingly complex legal answer. The process of

filling this analytic gap will be important in setting a research agenda and acting when new findings help us to better understand these relationships.

A second gap is that even with increased understanding of how laws and policies influence obesogenic conditions, there is a need for more particularized analysis that looks at the unique laws and policies of specific jurisdictions. Many of the laws that relate to obesity are state or local laws that vary throughout the United States. Demographic and environmental differences relevant to obesity prevention and control also influence the nature and effect of local laws and policies. Without an understanding of the particular laws and legal processes that are involved in a given jurisdiction, public health officials may find it difficult to be effective in important decision-making processes. The American Planning Association and the National Association of County and City Health Officials have jointly published a “Fact Sheet” of “Planning Terms for Public Health Professions.”<sup>22</sup> Likewise, the National Association of Local Boards of Health has issued a monograph entitled “Land Use Planning for Public Health: The Role of Local Boards of Health in Community Design and Development.”<sup>23</sup> Both publications are informative but quite general in nature. Thus, training materials and guidance for the different targeted sectors that is tailored for particular locations is needed. Britain provides an interesting model. As a result of a project by the Government Office for Science,<sup>24</sup> it has issued a 194-page “toolkit for developing local strategies” to address obesity with strategies that are specifically tailored to England.<sup>25</sup>

A final gap is between the legal competencies outlined in Tables 2 and 3 and the realities on the ground. Although there is no comprehensive survey of each targeted sector, anecdotal evidence suggests that many professionals in several sectors have not fully engaged with the programmatic issues surrounding obesity nor fully understand the relevant legal issues.<sup>26</sup> One community development planner whose agency was involved in low-income housing but not grocery stores observed:

We have not done anything in Milwaukee besides responding to operator’s proposals for [grocery store] development. It is an issue the community raises from time to time, but it has seen little action from the city. Is it our role? Grocery store development? Shouldn’t we let the private sector lead?<sup>27</sup>

Even communities that have been highly effective in creating obesity-combating public facilities and infrastructure have sometimes done so without any delib-



erate focus on health and, as a result, may have missed opportunities to be even more effective.<sup>28</sup>

## Conclusion

Obesity's causes and consequences implicate a broad array of laws, regulations, and government policies. While some of these laws were explicitly designed with health effects in mind, many others were designed to address other issues and are administered by people who do not see health in general or obesity in particular as a relevant focus of their work. Thus, legal competencies must be addressed both to health professionals, who with proper training can effectively interject health considerations into decision processes, and to non-health professionals so that they can better understand the health consequences of their legal and other policy choices. Together, they need to bridge the existing gaps in legal competencies to ensure that laws and legal authorities can be effective against obesogenic behaviors.

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