

**Attorney General's**  
**Vermont Healthy Weight Initiative**



**Report of**  
**Vermont Attorney General**  
**William H. Sorrell**

**November 2010**

## ACKNOWLEDGEMENTS

Over the past year, dozens of Vermonters have donated their time, energy and expertise to lay out the complicated web of causes and costs of obesity in Vermont and to recommend a myriad of steps to get Vermonters to a healthy weight. Some steps have been taken over the course of this initiative, others are being worked on as this report is being released, and still others will have to wait until we have the wherewithal to tackle them. The value of this report lies not only in the recommendations that are within our ability to implement in the near future, but also in the vision and choices it presents for us to consider long-term.

I and my staff gratefully acknowledge the creative and enthusiastic contributions of numerous dedicated participants in this initiative. They represented many public and private agencies and organizations, bringing their experience and concerns to the table. We asked them to commit to six months of working on this topic, but most worked far beyond that time. To each of them, our sincerest thanks and appreciation.

I personally wish to recognize the three members of my staff who together led this initiative: Wendy Morgan, Chief of the Public Protection Division, as well as Elliot Burg and Christy Mihaly, Assistant Attorney Generals in the division. We all thank staff members, Jessica Mishaan and Raegan Pembroke, and interns Lauren Hibbert, Samantha Marshall, Elena Mihaly and Jason Powell for their invaluable contributions and assistance in completing this project.

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William H. Sorrell  
Vermont Attorney General

# Table of Contents

I. Executive Summary – Attorney General’s Findings and Recommendations .....	1
A. Summary Findings .....	1
B. Cost and Spending Issues .....	1
C. Legislative Recommendations .....	2
II. Introduction – A Personal Note from the Attorney General .....	4
III. The Process .....	6
IV. The Facts.....	8
A. Rates of Obesity, Consumption, and Physical Activity .....	8
B. Causes and Health Effects of Overweight and Obesity .....	9
C. Costs of Overweight and Obesity.....	11
D. Vermont Efforts to Promote Healthy Nutrition and Physical Activity.....	12
V. Attorney General’s Priorities .....	14
A. Legislative Priorities .....	14
B. Other Priorities of the Attorney General .....	18
C. Other Recommendations .....	20
VI. Recommendations for Potential Additional Distribution of Resources .....	20

[Exhibit 1 – Vermont Healthy Weight Initiative Participant List](#)

[Exhibit 2 – Vermont Healthy Weight Initiative Recommendations](#)

[Exhibit 3 – Examples of Activities to Promote Healthy Weight in Vermont](#)

# **Report of Attorney General William H. Sorrell on the Vermont Healthy Weight Initiative: Recommendations and Plan of Action**

## **I. EXECUTIVE SUMMARY -- Attorney General's Findings and Recommendations**

### **A. SUMMARY FINDINGS**

1. Public health experts predict that our youth will be the first generation of Americans less healthy than their parents.
2. Obesity is rapidly approaching tobacco addiction as the leading preventable public health problem facing Vermonters.
3. Related to obesity are skyrocketing diabetes rates. It is estimated that without significant lifestyle and nutritional changes, one third of Americans could be diabetic by the middle of this century.
4. The total cost of obesity, for the State of Vermont, its employers, and private citizens, is estimated to be over \$615 million per year.
5. Our rates of obesity and overweight result primarily from lifestyles that are too sedentary and diets too laden with foods high in sugar and fat.
6. A major contributor to our obesity and overweight problems is the consumption of sugar sweetened beverages (SSBs), with the average adult Vermonter annually consuming approximately 50 gallons of SSBs.
7. A one cent per ounce excise tax on SSBs would generate approximately \$30 million per year and reduce consumption approximately 20%.

### **B. COST AND SPENDING ISSUES**

The problem of increasing rates of obesity and overweight in Vermont is much on the minds of legislators. After learning of our initiative and its potential value, the legislature, in lieu of mandating a summer study committee, directed this office to report our findings and recommendations for possible legislative action in January, 2011. (Act 128 (2009 Adj. Session), Sec. 38.)

Included in the legislature's directive is a requirement that the Attorney General's Office, if revenue is to be generated as a consequence of any of our recommendations, suggest how such revenue should be expended. Being mindful that for Vermont to take more aggressive steps to combat obesity and overweight, there will need to be additional expenditures of public dollars, we do recommend the raising of revenues, and lay out in this report how such revenues might best be expended to address the problems considered in this initiative.

In this report, we first and foremost make recommendations for expenditures that fund additional efforts to address obesity and overweight in the short and longer terms. Our recommendations are conservative in amount, in order to allow for error in the revenue estimation process and to allow funding of more of the many worthwhile ideas generated by the initiative's participants, which appear at the end of this report.

### **C. LEGISLATIVE RECOMMENDATIONS**

1. An excise tax of not less than \$.01 per ounce of SSB should be imposed to generate revenues for healthy weight initiatives and to substantially reduce the consumption of SSBs.
2. At an estimated annual cost of \$7,306,000, the state should subsidize the purchase of fruits and vegetables by WIC and 3SquaresVT (formerly food stamp) recipients.
3. In order to make more fresh foods (especially produce) available in smaller retail shops throughout the state, \$600,000 should be devoted to creating and replenishing a revolving loan fund to facilitate the purchase of modern energy efficient refrigeration equipment by food retailers.
4. An expenditure of \$210,000 would cover the provision of Electronic Benefits Transfer (EBT) terminals at all Vermont farmers' markets as well as technical assistance, promotional support and reimbursement to farmers' markets for transaction costs for three seasons.
5. At an annual cost of \$140,000, two positions should be created, one to staff of the Vermont Department of Health's Healthy Retailer Program, and one dedicated to working on wellness in communities and workplaces.
6. At an annual estimated cost of \$450,000, Vermont should subsidize school meals for low-income Vermonters, increasing participation in the school lunch program and leveraging over \$1.9 million in federal aid.
7. At an annual cost of \$231,000, three staff persons should be added at the Vermont Department of Education (DOE) to provide greater support for improvements in school wellness and nutrition.

8. A new position for an Agricultural Development Coordinator for CSAs at the Agency of Agriculture, Food & Markets, to promote and implement workplace CSAs, should be created and funded, at an annual cost of approximately \$70,000.
9. The CHAMPPs grant programs should receive \$2 million to provide grants to communities seeking to plan, build or improve local facilities and programs targeting nutrition, disease prevention, and physical activity.
10. Create a new \$1 million fund for Municipal and Regional Planning to assist communities that have obtained state designations as growth centers or designated downtowns to implement “walkability” improvements, bicycle facilities, and similar infrastructure projects.
11. At least \$2 million per year for at least 5 years should be dedicated to create and fund a self-sustaining, perpetual Fund for the Promotion of Healthy Weight, to support programs to combat obesity and overweight.
12. \$500,000 per year should be dedicated to rigorous surveillance and evaluation of state programs addressing obesity, to determine which approaches or combination of approaches are most cost effective.
13. State law related to land use development, and liability, should be amended to better integrate consideration of the public health in land use planning and development, and to increase community access to local recreational facilities and community gardens.

## **II. INTRODUCTION – A Personal Note from the Attorney General**

As Attorney General, I have been the moving force behind several public health initiatives. My office has conducted studies leading to policy and legislative changes related to lead in the environment, particularly in housing and consumer products; end-of-life care and health-care decision-making; and pain management for those who are dying or suffering from disease and other painful physical conditions. We have a track record of bringing diverse groups of stakeholders together, in an open and non-partisan manner, and generating new ideas and new energy for addressing ongoing problems. Approximately one year ago, it became clear to me that it was time for another such initiative.

Public health experts predict that our youth will be the first generation of Americans to be less healthy than their parents' generation. Major bases for this prediction are the skyrocketing increases in rates of obesity and overweight. Vermont is not immune to these national trends.

Obesity is defined by reference to body mass index or BMI, a measure of body fat based on height and weight. A BMI of 30 or above is considered obese – a healthy BMI is between 18.5 and 24.9. By way of example, a 5'9" person would be considered overweight at 169 pounds and obese at 202 pounds. In 1990, no state had an obesity rate above 15%. By 2008, no state had an obesity rate below 15% and only one state, Colorado, had a rate of less than 20%. Between 1990 and 2008, Vermont went from an obesity rate of between 10 and 14% to one between 20 and 24%. A recent Harvard University and MIT study predicted that by 2050, national obesity rates could easily top 42% of the population.

You cannot read the newspapers or listen to the news without being struck by the scope of the obesity epidemic. As average weights have increased, diabetes rates have followed the same course. Due to the exploding numbers of childhood diabetes, Type 2 diabetes is no longer called "adult onset diabetes." Public health organizations seeking to prevent heart disease, cancer, and other diseases have identified obesity prevention as a top priority. More and more of our public and private health care dollars are going to address chronic diseases related to obesity.

In my work on tobacco, I learned the important role a state attorney general can play in addressing a major public health concern. More than a decade ago, I joined with attorneys general from around the nation to investigate, litigate, and ultimately enter into a permanent settlement with the major tobacco companies. Our work has done much to bring about a decrease in smoking rates and to change forever the face of marketing, advertising, and sales of tobacco in the United States.

My hope is that this initiative will be similarly effective: raising issues for broad-based discussion, formulating legislation for consideration during the new legislative biennium, and

identifying funding priorities for programs to address the causes of obesity and to move Vermont toward a healthy weight. At the end of this collaborative process, our goal is a series of actions that enjoy broad support from a wide range of stakeholders.

The Vermont legislature is poised to take action to address obesity. In 2010, the legislature directed the Attorney General to report to specified legislative committees and the Commission on Health Care Reform the results of our obesity initiative – now called the Vermont Healthy Weight Initiative. The Legislature explicitly asked me to report on the actions the stakeholder groups identified and developed related to obesity prevention, the collective recommendations for addressing obesity, opportunities identified to generate revenue and recommendations on how such revenue should be spent. (Act 128 (2009 Adj. Session), Sec. 38.) This report and the reports of the three working groups are the first steps to fulfilling that obligation.

Many Vermonters have put in countless hours of work on the Initiative's working groups to identify the issues, explore the options, and formulate specific obesity-prevention recommendations in the areas of support for children and families, the retail environment, and land use and transportation planning. I believe the working groups' reports and recommendations will move Vermont forward in our efforts to address the causes and consequences of obesity in our state.

In this, the Attorney General's Report, I have identified both a shorter list of recommended legislative changes and a set of priorities to which I am committing the resources of the Attorney General's Office, including recommendations for which I am pledging my support. My selection of this subset of recommendations should be seen, not as a lack of support for other recommendations, but rather as a reflection of the limitations each of us has in authority, time and resources. Moreover, while many working group recommendations are outside the purview of the attorney general, I hope that entities with relevant authority and resources will consider pursuing those recommendations.

There is no compelling reason why Vermont does not lead the country in addressing the problem of obesity and overweight. The time to act is now. Working together, our health care providers, educators, government officials, businesses and community members can adopt healthy weight as a statewide goal. We can commit the time, energy and resources to the effort to make Vermonters, present and future, the healthiest of Americans.



### III. THE PROCESS

In early 2010, the Attorney General invited Vermonters to join him in an initiative to address the rising rates and costs of obesity and overweight in Vermont. More than 140 individuals, representing 75 organizations, participated in this initiative. Many came from state agencies, including the Department of Health; Department of Education; Agency of Agriculture, Food & Markets; Agency of Transportation; and Department of Forests, Parks & Recreation. Many came from organizations and institutions with a mission of enhancing the health of Vermont and Vermonters, including AARP Vermont, SmartGrowth Vermont, Vermont Campaign to End Childhood Hunger, Vermont FEED, American Heart Association, American Cancer Society, the Intervale Center, Rutland Area Physical Activity Coalition, YMCAs, and individual health care providers and hospitals. Others represented entities that would likely be affected by changes in policy, such as school personnel, the Vermont Grocers' Association, Vermont Retailers Association, and the Beverage Association of Vermont. The list of participants appears in Exhibit 1 to this report.

On February 17, 2010, over 70 interested participants came together in Montpelier to hear presentations from experts in the field:<sup>1</sup>

- Kelly D. Brownell, an advocate for change in food policy from Yale University's Rudd Center on Food Policy and Obesity, presented national and state statistics on rising obesity rates and the costs associated with obesity and overweight, described the nation's nutritional "toxic environment," and spoke on the role of governments in addressing this epidemic.
- Susan Coburn, Nutrition and Physical Activity Chief at the Vermont Department of Health (VDH), reported on obesity prevention efforts in Vermont, and Vermont's "Fit & Healthy Vermonters" obesity prevention plan, including the many partnerships and projects of the Department of Health and new initiatives and opportunities.
- Laurie Colgan, Director of Child Nutrition Programs at the Vermont Department of Education (DOE), outlined research on the importance of good nutrition for learning, and described existing school nutrition programs.
- Lindsay Simpson, Physical Education Consultant with the Vermont Department of Education described research on how exercise prepares the brain to learn, and the requirements and recommendations for physical education and physical activity in Vermont schools.

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<sup>1</sup> The PowerPoint and audio presentations for each are available on the Attorney General's website, [www.atg.state.vt.us](http://www.atg.state.vt.us).

Based upon the ideas generated by the participants, three working groups were formed to meet for approximately six months and formulate recommendations in three major areas: children and families, land use, and retail environments. The three working groups identified policy goals and formulated recommendations which are compiled in Exhibit 2 to this report. The working groups' recommendations, along with background information and a rationale for those recommendations, are set out in the working group reports which are available on the Attorney General's website, [www.atg.state.vt.us](http://www.atg.state.vt.us).

Members of the working groups participated in this initiative by attending meetings, commenting on draft recommendations, or monitoring the work. The process was open, with participants involved at whatever level and for however long they desired. The fact that any individual is listed as a participant does not mean that he or she agrees with the recommendations or their rationale.

### **Themes**

A number of themes, which set the stage for this report, run through the recommendations of the three working groups.

***Complexity:*** The economic, social, and physiological factors contributing to the rapid rise in obesity and overweight in this country and in Vermont are complex, and our efforts to reduce or prevent obesity and overweight need to be well-informed and similarly multi-faceted.

***Costs:*** The costs of reducing and preventing obesity and overweight will be very substantial – but the costs of not doing so even greater.

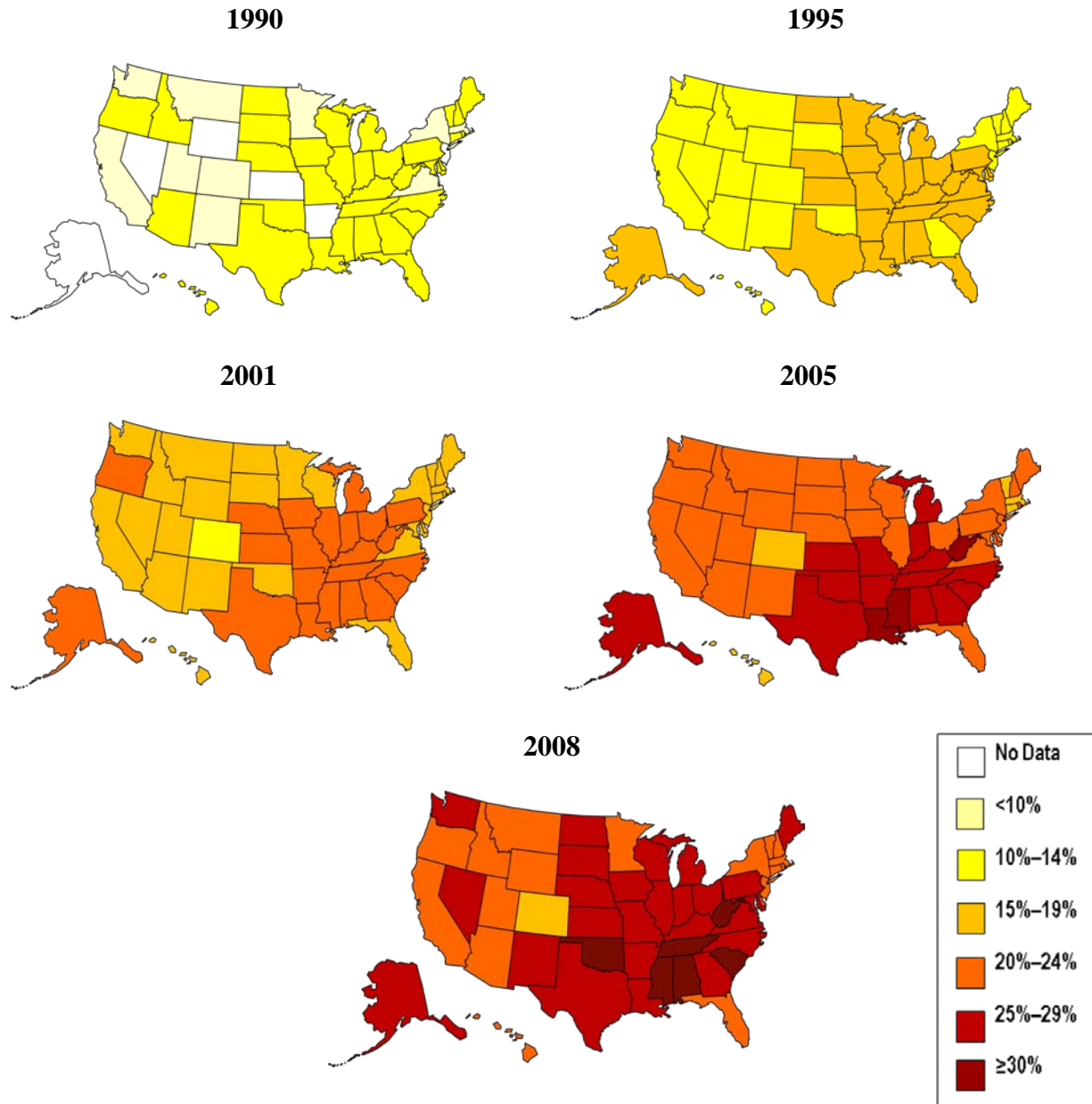
***Collaboration:*** Many players from many arenas must come together to combat the rising trends: legislators, educators, physicians and public health personnel, planners, town select boards, retailers, employers, and insurers – to name but a few. Many of these players are already working—and working together—on this issue, but more must join together to change the course of the obesity epidemic in Vermont.

## IV. THE FACTS

### A. RATES OF OBESITY, CONSUMPTION, AND PHYSICAL ACTIVITY

This series of maps tells the recent history of obesity in the United States:

#### Obesity Rates Among U.S. Adults



Obese = Body Mass Index  $\geq 30$ , or  $\sim 30$  lbs. overweight for 5' 4" person.

Source: CDC Behavioral Risk Factor Surveillance System.<sup>2</sup>

<sup>2</sup> [http://apps.nccd.cdc.gov/gisbrfss/select\\_question.aspx](http://apps.nccd.cdc.gov/gisbrfss/select_question.aspx)

While Vermont has a lower prevalence of obesity than most states, we cannot pause for accolades. More than 22% of Vermont adults are obese, and more than half (59%) are either overweight or obese. Thus, 280,000 Vermonters are above a healthy weight, including approximately 100,000 weighing more than 30 pounds above a healthy weight. The prevalence of obesity among Vermont adults doubled between 1990 and 2007.<sup>3</sup>

Obesity and overweight affect Vermonters of all age groups. Many Vermont students in grades eight through 12 are failing to eat healthy meals and maintain healthy levels of physical activity: only 43% eat breakfast every day; 9% never eat breakfast; only 25% eat the recommended number of fruits and vegetables daily or exercise the recommended time for physical activity.

Rates of healthy eating and physical activity among Vermont adults are somewhat higher: nearly 30% eat the recommended number of fruits and vegetables each day, and nearly 60% engage in moderate physical activity for 30 minutes five times a week or vigorous activity for 20 minutes three times a week as recommended by the Centers for Disease Control and Prevention (CDC). However, the Rudd Center for Food Policy & Obesity at Yale University estimates the average annual adult consumption of soft drinks and fruit drinks in Vermont to be 72.2 gallons, including 48.8 gallons of sugar sweetened beverages.<sup>4</sup>

While weights are increasing, hunger and food insecurity are also on the rise. The USDA reports that 12.1% of Vermonters are classified as “food insecure” (an increase from 10% in 2007).<sup>5</sup> A food insecure household lacks sufficient income to provide safe and nutritious food for an active and healthy life. How can people be both overweight and hungry? The least expensive foods are high in calories, fat and starch, but low in essential vitamins. Enough calories to put on unhealthy weight are not necessarily enough to stave off hunger.

## **B. CAUSES AND HEALTH EFFECTS OF OVERWEIGHT AND OBESITY**

Obesity and overweight can be attributed to a wide range of causes. Among these are: dietary changes, including increased access to greater amounts of food, especially more calorically dense foods; reduced physical activity, due in part to more leisure time and sedentary

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<sup>3</sup> Ibid. <http://healthvermont.gov/fitandhealthy.aspx>

<sup>4</sup> Rudd Center for Food Policy & Obesity, *Obesity Related Facts for Vermont* (Feb. 2010), <http://www.atg.state.vt.us/assets/files/2010%20AG%20Vermont%20Report%20Yale%20Rudd%20Center.pdf> (accessed July 9, 2010).

<sup>5</sup> Nord, M., Andrews, M. & Carlson, S. (2009) *Household Food Security in the United States, 2008*. USDA, ERS: Economic Research Report No. 83; abstract posted at: [www.ers.usda.gov/Publications/ERR83/ERR83fm.pdf](http://www.ers.usda.gov/Publications/ERR83/ERR83fm.pdf), cited in Schattman, R., Nickerson, V., Berlin, L., *Dissolving the Double Bind: Strategies for Expanding Food Access and Developing Vermont's Local Food System* (2010), p. 4, posted as final draft at: [www.vsjf.org/assets/files/Agriculture/Strat\\_Plan/Appendix\\_D\\_Dissolving\\_the\\_Double\\_Bind.pdf](http://www.vsjf.org/assets/files/Agriculture/Strat_Plan/Appendix_D_Dissolving_the_Double_Bind.pdf).

activities; changing development patterns with increases in suburbanization and decreases in walkable neighborhoods; changes in work structure and technology; socioeconomic factors; and food industry advertising.<sup>6</sup>

The Vermont Department of Health has identified several “societal trends” that contribute to increasing obesity, such as “a tendency to eat meals away from home, increased soda consumption, large portion sizes, eating fewer fruits and vegetables, driving more than walking or biking, increased time spent in front of the television, and fewer opportunities for physical activity.”<sup>7</sup>

The adverse health effects of obesity and overweight can be devastating. The Vermont Department of Health has concluded that people who are obese or overweight have shorter life expectancy and increased risk of premature death.<sup>8</sup> Diseases and conditions associated with obesity include heart disease, stroke, type 2 diabetes, high blood pressure, respiratory problems, arthritis, gallbladder disease, depression, and some kinds of cancer.<sup>9</sup> As noted by the CDC, the risk for these conditions increases as weight increases.<sup>10</sup> It is believed that one in three children born today will suffer from type 2 diabetes at some point in their lives.<sup>11</sup>

Our children are especially affected, as they are most vulnerable to the psychosocial ramifications of overweight and obesity.<sup>12</sup> As First Lady Michelle Obama has stated, in launching her “Let’s Move” campaign to address childhood obesity, ““The physical and

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<sup>6</sup> UVM James M. Jeffords Vermont Legislative Research Service report, *The Causes of Obesity*, posted at <http://www.uvm.edu/~vlrs/Health/soda%20tax%20and%20obesity.pdf>, and authorities cited therein.

<sup>7</sup> VDH website, <http://healthvermont.gov/fitandhealthy.aspx#what>. “Obesity – Facts and Effects.” (accessed Nov.9. 2010).

<sup>8</sup> VDH, *Fit & Healthy Vermonters: Preventing Obesity in Vermont* (April 2006): A Statewide Plan Engaging Individuals, Organizations, Communities, Government & Industry, p. 10.

<sup>9</sup> <http://www.cdc.gov/obesity/causes/health.html>; VDH, *Fit & Healthy Vermonters: Preventing Obesity in Vermont* (April 2006): A Statewide Plan Engaging Individuals, Organizations, Communities, Government & Industry, p. 10. [http://healthvermont.gov/family/fit/documents/Obesity\\_Plan.pdf](http://healthvermont.gov/family/fit/documents/Obesity_Plan.pdf); Categories of weight are often defined by reference to body mass index (BMI) which is a measure of body fat based on height and weight that applies to adult men and women. BMI of less than 18.5 is considered underweight, 18.5-24.9 normal weight, 25-29.9 overweight, and 30 or greater obese. A 5’2” person is obese if 165 lbs and overweight if 140 lbs; a 5’10” person is obese if 210 lbs and overweight if 175 lbs. United States Department of Health, “Overweight, Obesity, and Weight Loss, 2009.” <http://womenshealth.gov/faq/overweight-weight-loss.cfm> (accessed April 28, 2010).

<sup>10</sup> <http://www.cdc.gov/obesity/causes/health.html>.

<sup>11</sup> VDH, *Fit & Healthy Vermonters: Preventing Obesity in Vermont* (April 2006): A Statewide Plan Engaging Individuals, Organizations, Communities, Government & Industry, p. 10. [http://healthvermont.gov/family/fit/documents/Obesity\\_Plan.pdf](http://healthvermont.gov/family/fit/documents/Obesity_Plan.pdf);

<sup>12</sup> CDC website, <http://www.cdc.gov/obesity/childhood/consequences.html>.

emotional health of an entire generation and the economic health and security of our nation is at stake."<sup>13</sup>

### C. COSTS OF OVERWEIGHT AND OBESITY<sup>14</sup>

According to the Centers for Disease Control and Prevention (CDC) and Research Triangle Institute (RTI), Americans are spending \$147 billion dollars per year on health care costs related to obesity, including Medicare, Medicaid, and private insurance payments. Those costs increased from 6.5% of the total health care dollars spent in 1998, to 9.1% in 2006. In 2006, obese Americans incurred health care costs an average of \$1,429 more per person than normal weight patients. Considering inpatient services, outpatient services and prescription drugs, the CDC/RTI study found, when comparing the costs of coverage for obese beneficiaries with the costs for normal weight beneficiaries, that Medicare pays \$1,723 more, Medicaid pays \$1,021 more, and private insurers pay \$1,140 more on average for each obese beneficiary.

A recent analysis by the University of Vermont’s James M. Jeffords Vermont Legislative Research Service estimated the total cost of obesity for the State of Vermont, its employers and private citizens at over \$615 million per year.

Table 1: Estimated Total Annual Direct and Indirect Costs of Obesity for the State of Vermont, Employers, Private Citizens (In 2010 dollars)

Total Annual Costs (in millions):	
Medicare	\$43.3
Medicaid (Vermont’s share)	\$12.8
Private Insurance	\$31.4
Absenteeism & Presenteeism	\$188.0
Short Term Disability	\$27.9
Disability Pension Insurance	\$5.5
Premature Mortality	\$294.9
Life Insurance	\$9.7
Gasoline Expenditure	\$1.7
<b>Estimated Total Costs</b>	<b>\$615.2</b>

Besides direct health care costs, studies show that obesity and overweight impose additional indirect costs. Indirect costs include the costs of reduced workplace productivity

<sup>13</sup> <http://www.letsmove.gov/learnthefacts.php>.

<sup>14</sup> Unless otherwise noted, the sources of information here in this section are contained in James Jeffords Vermont Legislative Research Service, *The Overall Costs of Obesity* (<http://www.uvm.edu/~vlrs/Health/Overall%20costs%20of%20obesity.pdf>)

because of greater absenteeism (absence from work due to illness, doctor's or hospital visits), and presenteeism (on-the-job productivity losses). One study calculated the annual loss of productivity for obese men ranged from \$391 to \$3,792, and for obese women \$797 to \$6,694. The total cost of obesity in the workplace in 2010 is estimated at \$73.1 billion nationally.

There is a correlation as well between weight and workplace injury. According to studies cited in the Scandinavian Journal of Work, overweight employees had lower-back injuries and non-back musculoskeletal injuries at 1.42 and 1.53 times the rate for normal weight workers, respectively; overweight workers were twice as likely to have carpal tunnel syndrome as the general population; women with carpal tunnel syndrome were twice as likely to be obese as the general population; acute conditions were almost twice as likely to become chronic in obese workers.

Other areas of increased individual, employer or taxpayer expenditures related to obesity include:

- Short Term Disability – salary continuation benefit for employees off work due to illness
- Disability Pension Insurance – pension benefits paid to employees due to inability to work
- Premature Mortality – value of years of life measured by the dollar value of a quality of life year
- Life insurance – hourly wage measured by medical care and indemnity costs received annually
- Gasoline expenditure – additional gasoline consumed due to additional weight

#### **D. VERMONT EFFORTS TO PROMOTE HEALTHY NUTRITION AND PHYSICAL ACTIVITY**

The reports of the three working groups reflect the tremendous effort Vermont state agencies, individuals, non-profits, businesses and communities have undertaken to prevent and reduce obesity and overweight through healthy nutrition and physical activity. An illustrative list of those activities is provided, in chart form, at Exhibit 3.

Major players and programs in State government include:

- Vermont Department of Health (VDH) implements many programs including the Fit & Healthy Vermonters obesity prevention plan; Women, Infants and Children (WIC) program; prevention “tool kits” for pediatricians and family practitioners, Coordinated Health Activity, Motivation and Prevention Programs (CHAMPPs) grants; and the Joint School Health Committee. VDH frequently facilitates partnerships among state agencies and other stakeholders in developing and administering these programs, and identifying barriers and working with partners to eliminate or overcome them.

- Vermont Department of Education (DOE) supports school nutrition and physical activity educators and programs, model health and physical education curricula, and wellness policies.
- Vermont Department of Children and Families regulates child care providers and administers the STARS rating system for child care programs.
- Vermont Department of Agriculture provides technical and other support to Vermont farmers and has worked to promote food crops, support CSA programs, review and improve state food purchasing programs; supports Farm to School programs, providing grants for agricultural and nutrition education activities in schools.
- Vermont Sustainable Jobs Fund, with other stakeholders, is developing a 10-year strategic plan to strengthen Vermont's farm and food sector, in the Farm to Plate Initiative.
- Vermont Housing and Conservation Board preserves agricultural lands and assists farmers in maintaining economic viability.
- Vermont Department of Transportation employs a state bicycle and pedestrian coordinator, and works to integrate facilities for walking and biking in the state's transportation system.
- Vermont Department of Forests, Parks & Recreation administers the Vermont Recreation Trails program, providing opportunities for healthy physical activity.
- Vermont Department of Economic, Housing & Community Development promotes development policies that maintain Vermont's compact walkable villages.

Important work is also being done by many in the non-profit sector, health care professionals and medical institutions, local schools and towns, and volunteers throughout Vermont. Examples of this work include:

- Hospitals conduct classes in cooking and food tasting for diabetics and their families, nutrition classes and instruction in food shopping, and exercise programs.
- Intervale Center, Food Works, Northeast Organic Farming Association (NOFA) and others provide food education, work to improve local food systems, and collaborate with communities and schools to raise awareness about healthy food and the role of farmers.
- Vermont Chapters of the American Cancer Society and the American Heart Association provide legislative advocacy on issues relating to health and obesity.
- Meeting Waters YMCA sponsors afterschool programs that offer healthy snacks and provide 30 minutes of moderate to vigorous activity every day, and family events involving healthy eating and physical activity.
- National Dairy Council and partners sponsor Fuel Up to Play 60, promoting physical activity and nutrition education for elementary and middle school students.
- Vermont Association for Health, Physical Education, Recreation, and Dance, AARP, Vermont Mountain Bike Association, and others promote policies and programs to support healthy physical activity.



## V. ATTORNEY GENERAL'S PRIORITIES

### A. LEGISLATIVE PRIORITIES

1. **Promote an excise tax of 1¢ per ounce on sugar sweetened beverages.** There is a significant correlation between the consumption of sugar-sweetened beverages (SSBs) and heightened risk of obesity and other negative health consequences. SSBs lack nutritional value and do not produce a feeling of satiety, leading to greater caloric intake. In addition, consumption of SSBs is responsive to significant increases in price, as from an excise tax of one cent per ounce. An excise tax on SSBs would have two aims: to reduce consumption and to generate tax revenue of approximately \$30 million a year which would offset the substantial costs associated with obesity. The U.S. Department of Agriculture estimates that a 20% increase in the price of SSBs could cause an average reduction of 3.8 pounds of body weight per year for adults, and 4.5 pounds per year for children. (If soda in a 2-liter bottle and in a 12-pack of 12-ounce cans retailed for \$1.25 and \$3.99 each, and the entirety of a penny-per-ounce excise tax were charged to consumers, the taxed prices of those products would be \$1.93 and \$5.43, respectively, representing increases in price of 54.5% and 36.1%.)
2. **Expand WIC and 3SquaresVT benefits (formerly Food Stamps) to provide greater access to healthy foods.** Low income families have difficulty purchasing sufficient healthy foods because healthy foods are often more expensive than processed foods high in calories, sugar and fat. Fresh fruits and vegetables can be particularly expensive. For example, in October, a pound of beans at a local supermarket cost \$1.99 fresh, \$1.25 frozen (in a 2 lb bag), and \$0.651 canned. We need a system that enables families receiving WIC or 3SquaresVT benefits greater access to healthy foods, particularly fresh fruits and vegetables.

The WIC program currently provides monthly produce benefits of \$6 per child and \$10 per woman. Increasing the amount of the monthly WIC produce benefits to \$18 for children and \$30 per woman, for the approximately 10,000 children and 3,400 women receiving WIC produce benefits, would cost Vermont an additional \$2,256,000 per year.

3SquaresVT benefits (formerly Food Stamps, and called SNAP benefits in federal law) are distributed through an Electronic Benefits Transfer (EBT) card. The card works similarly to a debit card: it is loaded with the value of the recipients' benefits. When purchasing food the recipient swipes the card in the EBT terminal and inputs a PIN number, and the purchase amount is automatically deducted from the card. A recipient is not charged for the use of the card and is not restricted in the number of times it may be used per month.

Doubling 3SquaresVT benefits spent at farmers' markets would benefit Vermont farmers as well as recipients and would be simple to administer. At farmers' markets, credit, debit and 3SquaresVT card users may swipe their cards to receive tokens or bonus coupons for purchases from the vendors. The benefits used by a 3SquaresVT recipient could be doubled simply by the recipient receiving \$2 in farmers' market tokens or coupons for each \$1 charged against the EBT card's value. At the present time, Vermonters are spending

approximately \$50,000 in 3SquaresVT benefits at farmers' markets. Doubling that benefit would cost Vermont an additional \$50,000.

A more significant measure to encourage families to eat more fruits and vegetables can be made by providing a similar bonus for produce purchased at grocery stores. Because milk is so much more expensive than other drinks Vermonters buy, the bonus should be extended to milk as well as produce. Providing a bonus for milk and produce at grocery stores could be accomplished in a manner similar to how the WIC produce benefits are administered: At check out, milk and produce would be rung up first, half would be charged to the EBT card and half to the State for payment to the grocery store, and the remainder of the purchases would be rung up. Putting \$5 million towards providing a milk and produce bonus in 3SquaresVT benefits would help Vermonters as well as grocers.

The total of these benefits to Vermonters, farmers and grocers is \$7,306,000.

3. **Fund technology to increase access to healthy foods at farmers' markets.** Only 40 of 73 farmers' markets now have EBT terminals. It would cost \$210,000 to expand access to 3SquaresVT benefits available at all farmers' markets.

The 40 farmers' markets in Vermont with EBT terminals obtained them through grants from the Northeast Organic Farming Association of Vermont (NOFA). At \$1,200 per machine, \$48,000 would cover equipment for the remaining farmers' markets to facilitate purchases of fresh fruits and vegetables with 3SquaresVT benefits. An additional \$162,000 would provide for technical assistance, promotional support and coverage of transaction costs for three seasons.

4. **Create revolving loan fund for equipment for retailers.** In order to make more fresh foods available in smaller retail shops throughout the state, \$600,000 should be expended to create and replenish a revolving loan fund to facilitate the purchase of modern energy efficient refrigeration equipment. Small coolers to display produce cost between \$6,000 and \$10,000. Smaller retailers in particular need help in order to make such an investment. A fund of \$600,000 would allow approximately 75 retailers to buy equipment costing an average of \$8,000 to store and display fresh produce; having the fund be a revolving loan fund would allow retailers in the future to obtain the same benefit.
5. **VDH Positions for Healthy Retailer and Workplace Wellness Programs:** Two additional positions at VDH would cost approximately \$140,000 per year, covering salary, fringe and overhead.

At the present time, the Healthy Retailer Program is staffed by the Nutrition and Physical Activity Chief who is responsible for a large number of programs. One additional staff person at VDH could increase support for retailers and restaurants by, for example, providing outreach and training on best practices, consultations on healthy product placement practices and portion sizes; by administering the revolving loan fund described above and providing technical assistance for storage equipment, refrigeration and displays; developing a program for a state "healthy retailer" designation, and determining the feasibility of a counter advertising campaign.

Similarly, Vermont employers and communities would benefit from additional funding for a VDH position dedicated to working on wellness in communities. For example, there is no dedicated person within VDH whose sole job is to work on workplace wellness, even though evidence shows that by providing support to businesses, especially small businesses, to improve the health of their workers, businesses would improve productivity and thus the health of the business as well as the health of its employees.

6. **Provide free school lunch for low-income students:** Vermont has approximately 7,500 low-income students. Schools report that reduced-price eligible children often do not have the \$.40 needed to pay for lunch. An appropriation of \$450,000 would leverage over \$1.9 million for lunches and would increase participation in the school lunch program.
7. **DOE positions for School Wellness and School Nutrition:** At an annual cost of \$231,000, staff should be added at the Vermont Department of Education (DOE) to provide greater resources to improve school wellness and nutrition. At the present time, no staff person is charged with auditing schools' implementation of their wellness policies or helping schools identify and overcome barriers to implementation of those policies. The staff in the school wellness group has been cut over the last several years to one person focused on physical education, one on health education, and two on prevention of HIV and tobacco use. Two positions added to that team, with DOE determining the best use of their time, would improve school wellness statewide.

One additional person in the School Nutrition Program at DOE would assist schools in maximizing all potential opportunities for federal funding of school meal programs, implementing changes in federal programs, administering newly-created grants program to encourage schools to adopt best practices which boost participation, simplifying and improving the food procurement process for schools, and providing training, support, and outreach to schools and communities.

8. **Support Workplace CSAs.** Community Supported Agriculture is a system whereby individuals purchase "shares" in the output of a local farm and receive a certain amount of product on a weekly basis. A share can be a box of fresh vegetables each week during the growing season, or can include other products such as bread, eggs, or yogurt. CSAs give farmers greater financial security, and local families ready access to locally produced, healthy foods. Vermonters (and the environment) would benefit if the CSA system were more readily available through workplaces. The Centers for Disease Control and Prevention (CDC) determined that CSA delivery to workplace can be an effective means of increasing consumption of healthy foods.

Create and fund a new position of Agricultural Development Coordinator for CSAs at the Agency of Agriculture, Food & Markets. This coordinator would provide support in promoting and implementing workplace CSAs, e.g., by developing a matching program between farmers and businesses for employers seeking to provide CSAs to employees, and monitor progress and evaluate success. The position would cost \$70,000. Consider, in addition, funding for employer subsidies for workplace CSAs.

9. **Reinstate Past Funding for CHAMPPs Grants:** The VDH CHAMPPs (coordinated healthy activity, motivation and prevention programs) grant program was established by the legislature in 2007 to support community-based health and wellness projects. The program has awarded comprehensive, substantial multi-year grants to communities, municipalities, coalitions, and non-profits to implement evidence based, policy, systems, and environmental health and wellness projects for chronic disease prevention. Between 2008 and 2010, the amounts granted have fluctuated between \$300,000 and \$650,000. The appropriation of \$2 million in the next year for CHAMPPs grant funding would allow many more communities to implement local programs to assess and address local needs for physical activity and nutrition. Grants could fund community food assessments, allow communities to conduct health impact assessments as part of planning development projects, improve access and infrastructure for pedestrians and bicyclists, provide additional or shared-use trails or other recreational facilities, offer cooking classes, or community cooking or food processing facilities, and other evidence based measures, at the local level.
10. **Fund for Municipal and Regional Planning:** State law encourages Vermont municipalities to plan their land use development consistent with principals of “smart growth”: compact community design, walkable communities with diverse transportation options, public access to open space land, and other “livable community” elements. However, towns find that obtaining funding for smart growth infrastructure, such as pedestrian improvements, is challenging. Appropriate \$1 million for a fund to assist communities that have obtained state designations as growth centers or designated downtowns to implement improvements for pedestrian and bicycle access and similar projects.
11. **Fund for the Promotion of Healthy Weight:** In 1999, the Vermont legislature established the tobacco trust fund, as a separate fund “for the purposes of creating a self-sustaining, perpetual fund for tobacco cessation and prevention which is not dependent upon tobacco sales volume.” 18 V.S.A. § 9502. The Legislature directed that a little over \$10 million be deposited in the trust account from the first settlement payment in 1999. A comparable fund should be created to support programs to combat obesity and overweight. Over at least five years, deposit at least \$2 million per year into the fund, to create a long-term source of funding for state programs to support healthy weight.
12. **Rigorous evaluation program:** Public health experts recommend as standard practice that 10% of expenditures for public health programs be devoted to surveillance and evaluation. This is important as an ongoing matter to enable the state to monitor the effectiveness of programs, and make adjustments as appropriate to maximize impact and optimize the use of funds. Appropriate \$500,000 per year for evaluation and surveillance.
13. **Change state land use development and liability statutes to support healthy lifestyles.** Obesity prevention and public health should be an acknowledged, articulated priority in state and local land use and development planning. Add a statutory goal for public health in the land use planning law, by revising Title 24, Chapter 117 to add a goal of community health and wellness in state and local planning: *“To ensure the availability, to all Vermonters, of*

*nutritious and affordable food, and the opportunity, for all Vermonters, to engage in safe, healthy and accessible physical activity.”* In addition, we should address, by legislative amendment if necessary, liability issues that have been identified as discouraging school districts, towns, and other property owners from making their open space, sports fields, playgrounds, and other facilities widely available to the community for recreation, community gardens, and other healthy activities.

## **B. OTHER PRIORITIES OF THE ATTORNEY GENERAL**

In addition to the legislative priorities outlined above, I have identified the following working group recommendations for my office to pursue over the next several months and years.

1. **Support the creation of a coalition of organizations that advocates for policies to increase healthy nutrition and physical activity.** The Coalition for a Tobacco Free Vermont promotes, and assists in the implementation of policies and programs at the state, local, and national levels to reduce tobacco use and its impact on the health and economic well being of Vermonters. With the support of more than a hundred local, regional, and statewide organizations, non-profits, government entities, health care providers, schools, concerned businesses, and others, the Vermont chapters of the American Heart Association, American Cancer Society, and American Lung Association have spearheaded that effort. Now, given the relevance of overweight and obesity to heart disease and cancer rates, the Coalition has begun to consider expanding its mission to include the promotion of healthy nutrition and physical activity and prevention of obesity. The Attorney General applauds this approach, and will support it in whatever ways his office is able, including supporting grant-writing to increase paid staff for an expansion of the Coalition, and participating in policy and strategy discussions (as his office does with the Coalition for a Tobacco Free Vermont).
2. **Comment on proposed national legislation and regulation.** The Attorney General will, in appropriate circumstances and consistent with this initiative, provide comments on relevant proposals being considered by Congress or federal agencies, such as the Food and Drug Administration and the Federal Trade Commission.
3. **Appoint Attorney General Office staff to identify legislative or other changes needed to promote healthy nutrition and healthy levels of physical activity.** A number of recommendations cannot be implemented without further focused attention to formulate legislation or other changes. The Attorney General will appoint one or more staff to be responsible for follow-up on the following topics:
  - a. Transportation: Discuss potential for legislative action to foster physical activity through transportation planning requirements. Work with Agency of Transportation and other concerned parties to review the integration of bicycle and pedestrian safety

- and access in local and statewide transportation planning. Consider possibility of adopting a “level of service” standard applicable to bicyclists (to measure bike-friendliness of roadways); increasing level of funding for bicycle and pedestrian projects (as a specified percentage of transportation spending). Determine whether all state offices have bicycle facilities (racks, lockers, etc.) and encourage all to reach that goal.
- b. **Current Use:** Develop statutory requirements for reporting and monitoring of agricultural lands in the Current Use program to assure they remain in active management for agricultural use, parallel to the current requirements for management of forest lands enrolled in Current Use. This amendment should include creation and funding of adequate positions at the Agency of Agriculture to administer the new requirements.
  - c. **Insurance/Workplace wellness benefits:** Work with BISHCA, Blue Print for Health, and other stakeholders to gather and analyze information on the effectiveness of financial and other incentives for implementation of wellness programs, Weightwatchers, gym memberships, and other workplace wellness programs, to determine whether insurance coverage of these programs will result in lower overall health care costs; determine whether modifications in insurance regulations or guidance could effectively increase coverage for prevention of overweight and obesity; explore the feasibility and advisability of a Catamount Health benefit of vouchers for fresh fruit and vegetables with a handling fee for retailers; and provide tools for employers to negotiate effectively for insurance coverage which will promote healthy behaviors and for the public to compare insurance coverage based on their promotion of healthy lifestyles.
  - d. **Direct Certification of Eligibility for Free and Reduced Lunch:** While a system is in place that has improved schools’ accessibility to names of students who are eligible for free and reduced lunch, the system remains cumbersome for schools with the consequence that some students who would be eligible for the benefits do not receive, or are delayed in receiving, those benefits. Work with DOE and community advocates to improve the direct certification system.
4. **Continue to investigate and prosecute deceptive advertising.** The Attorney General’s staff will continue to investigate and review allegations of deceptive advertising by manufacturers of food products, especially as they may relate to unsupported health and nutrition claims. Litigation and out-of-court settlements will be matters of public record.

## C. OTHER RECOMMENDATIONS

As noted above, the working groups have presented numerous recommendations, many of which are neither legislative nor fall within the purview of the Attorney General. Our hope is that those agencies and other stakeholders that have the resources and jurisdiction or mission to address them, will seek to implement them in the upcoming months and years.

## VI. RECOMMENDATIONS FOR POTENTIAL ADDITIONAL DISTRIBUTION OF RESOURCES

An excise tax on sugar sweetened beverages of 1¢ per ounce is estimated to generate approximately \$30 million in its first year. The Attorney General has identified \$14,504,000 in expenditures that he believes should be appropriated to combat obesity in Vermont. Following is a list of possible distributions for the legislature's consideration which reflect additional recommendations from the working groups and others concerned with the health of Vermont and Vermonters. (The working groups' recommendations are listed in Exhibit 2.)

### *Increased Access to Healthy Foods*

\$145,000      **Farm to School Grant Program:** In 2006, the legislature appropriated \$125,000 for the Rozo McLaughlin grants and \$20,000 for technical assistance for schools. In 2010, \$75,000 was appropriated for grants and nothing for technical assistance. To be more effective, funding should be restored to at least the 2006 levels.

\$20,000      **School Meals Grants Program:** Particularly in these times of tight budgets, Vermont should adopt a grants program to encourage schools to adopt best practices which boost participation in the child nutrition programs provided in schools, such as universal breakfast and breakfast in the classroom, which have been shown to increase healthy nutrition for students.

\$100,000      **Local processing:** Develop pilot processing facilities (e.g., cannery) to process local produce for use later by schools or other local institutions.

### *Other Support for Schools*

\$30,000      **School Wellness funding/heart rate monitors:** DOE is administering a grant program to provide heart rate monitors for schools. The program uses technology which motivates students to monitor and set goals for their physical fitness. The grants cover heart rate monitors, individual straps, a laptop, and mandatory training for the Physical Education teacher. To date, funding has enabled nine schools to adopt the program. \$30,000/year would provide a class set for three new schools each year.

- \$20,000      **Monetary awards for School Wellness Programs:** At this time, DOE has \$1,000 per year from the New England Dairy Council to reward schools with good wellness programs. DOE provides awards to 2-4 schools, but the amounts are so small that it may not be enough incentive to apply. More substantial funding would provide greater incentive for more schools to apply and provide more money for schools to enhance their wellness programs.
- \$308,000      **Physical Education/Physical Activity Educators:** At present DOE has one Physical Education Consultant who provides professional development, technical assistance, resources and funding (as available) to schools for the development and implementation of standards-based curricula, instruction, and assessment. Our schools would be far better able to provide comprehensive PE/PA programs if DOE had four additional PE/PA staff (divided by region or grade level) to visit schools, provide educators with curriculum and evaluate schools' programs. Because they would be in the schools regularly, they could also be part of the team evaluating implementation of school wellness policies.
- \$ unidentified      **Health Educators in Schools:** Some schools have health curricula, but no capacity to fund positions to teach them because as budgets are trimmed, money goes to math or reading specialists. If schools could share health educators, an effective program could be designed at a relatively low cost.
- \$ unidentified      **School Health Action Committees:** School Wellness Plans are most likely to be implemented when a school has an active School Health Action Committee consisting of school personnel, including the school nurse, and members of the community, such as a local pediatrician. Unfortunately, as school budgets have shrunk, money for implementation of the plans and staffing for these committees has diminished and many schools have dropped wellness programs they had previously implemented.
- \$\$ unidentified      **School Garden Consultants:** While many schools have developed a gardening program, the programs are coordinated by classroom teachers who have little time and little training. Consultants shared by several schools could improve the programs and possibly expand them to incorporate outreach to families.

*Encouragement for Employers*

- \$20,000      **Monetary Awards for Workplace Wellness:** Awards for employers with exceptional wellness programs would provide an incentive to employers as well as an opportunity to highlight best practices in the larger community.



\$50,000

**Grants to build facilities for bicyclists at workplaces:** Bike racks alone can be provided at \$200 per two bicycles; additional facilities such as lockers are more variable.

*Prevention through Health Care Coverage*

\$14,300,000/year

**Provide more uniform access to health care:** Coverage for a number of health care programs is presently unavailable or deferred for Vermonters. For example, those in Catamount Health with pre-existing conditions, unlike those with VHAP or Dr. Dynasaur benefits, are not able to receive care at an affordable cost until the federal benefits become available; self-employed persons such as farmers and plumbers are not allowed to include depreciation in income calculations; health premiums have increased 30-60% since 2007 because of the combination of increasing premiums of our insurers and decreasing proportion paid by the state. Consequently, many Vermonters defer preventive medical care and expend scarce resources on health care, thereby foregoing alternative expenditures that might reduce or prevent unhealthy weight.