

Social Determinants of Inequities in Obesity Prevention and Control: the Role of Civil Rights Laws and Policies in Improving Health and Equity

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- Background
- Questions to Address
 - What is the role of law in achieving health equity and addressing legal barriers?
 - How have civil rights laws in the past addressed health inequities/medical discrimination? What has been the impact of these laws?
 - Can current civil rights laws address health inequities? What are the limits of such solutions?
- Potential role for legal and policy solutions to address obesity and reduce health inequities

- Provides a strategic framework for a **national prevention agenda** that communicates a vision for improving health and achieving health equity
- Identifies science-based, **measurable objectives with targets** to be achieved by the end of the decade
- Requires tracking of **data-driven outcomes** to monitor progress and to motivate, guide, and focus action
- Offers model for **program planning** international, state, and local



Healthy People 2020: Mission, Vision and Overarching Goals

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Vision

- A society in which **all people** live long, healthy lives.

Mission

- Healthy People 2020 strives to:
 - Identify nationwide health improvement priorities.
 - **Increase public awareness and understanding of the determinants of health, disease, and disability and the opportunities for progress.**
 - Provide measurable objectives and goals that are applicable at the national, State, and local levels.
 - **Engage multiple sectors** to take actions to **strengthen policies** and **improve practices** that are driven by the best available evidence and knowledge.
 - Identify critical research, evaluation, and data collection needs.

Overarching Goals

- Attain high-quality, longer lives free of preventable disease, disability, injury, and premature death.
- **Achieve health equity, eliminate disparities, and improve the health of all groups.**
- Create social and physical environments that promote good health for all.
- Promote quality of life, healthy development, and healthy behaviors across all life stages.



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Healthy People 2020's Social Determinants of Health Organizing Framework: 5 Key Domains



What is the role of law in achieving health equity and addressing legal barriers?

Why Focus on Law and Policy?

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Law can be used as a lever to protect and promote health

- Create societal norms and influence behaviors
- Give authority and flexibility to governments to act on community needs
- Effective application and implementation of law is essential to protecting and promoting health



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Authority to Act

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Federal	State/Local	Tribal
<ul style="list-style-type: none">• U.S. Constitution• Statutes• Regulations• Policies• Case law	<ul style="list-style-type: none">• 10th Amendment, which provides police powers• State constitutions• Statutes/ordinances• Regulations• Policies• Case law	<ul style="list-style-type: none">• Sovereign Nations• Treaties – U.S. Constitution – <i>Art. 1, Sec. 8</i>, federal government has authority “[t]o regulate Commerce with foreign Nations,..., and with the Indian Tribes”• Statutes• Regulations• Tribal courts



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Law and Legal Policy are Critical Determinants of Health

Direct responses to health-harming social conditions and deficiencies

Perpetuate social conditions that can be harmful to health and well-being

Selective application based on biases that affect distributions of health and well-being

Laws are hollow in the absence of implementing regulations, funding, and effective enforcement

Laws and policies can affect health and well-being based on ways in which they are interpreted by the courts

Civil Rights Laws and Protections



Civil Rights

are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc."

- Black's Law Dictionary (Garner, 2004)

Selected Civil Rights Laws and Opinions

Law or Opinion	Year (ratified)	Purpose or Holding
US Constitution <ul style="list-style-type: none">• 13th Amendment• 14th Amendment• 15th Amendment	1865 1868 1870	Abolished Slavery Due process and equal protection for all Prohibits discrimination in voting on “race, color, or previous condition of servitude.”
Civil Rights Act of 1866	1866	Citizenship for all born in U.S. (except American Indians).
19 th Amendment	1920	Granted women the right to vote
Indian Citizenship Act	1924	Citizenship for American Indians born in the U.S.
Brown v. Board of Education	1954	Desegregated the US public school system
<i>Simkins v. Moses H. Cone Memorial Hospital</i> (4 th Circuit)	1963	Provisions of Hill-Burton around “separate but equal” hospital and health care facilities unconstitutional.

Selected Civil Rights Laws and Opinions (Cont'd)

Law or Opinion	Year (ratified)	Purpose or Holding
Civil Rights Act <ul style="list-style-type: none">Title ITitle IITitle VI	1964	<ul style="list-style-type: none">- Prohibits unequal voter registration requirements- Bans discrimination based on “race, color, religion or national origin” in public establishments- Prohibits discrimination by programs/activities receiving government funds
Social Security Act Amendments	1965	Created Medicare and Medicaid programs
Voting Rights Act	1965	Prohibits discrimination in voting
Equal Employment Opportunity Act	1972	Title VII of Civil Rights Act, Prohibits employment discrimination; EEOC covers public and private employers with ≥15 employees
Title IX of Education Amendments	1972	Prohibits discrimination due to sex in any federal funded education activity
Section 504 of Rehabilitation Act	1973	People with disabilities (PWD) not to be excluded from participation, denied benefits, or discriminated against in federally funded programs/activities

Selected Civil Rights Laws and Opinions (Cont'd)

Law or Opinion	Year (ratified)	Purpose or Holding
Age Discrimination Act	1975	Prohibits discrimination based on age in programs and activities receiving federal funding
Americans with Disabilities Act	1990	Prohibits discrimination based on disability, requires reasonable accommodations for employees, and accessibility for public accommodations
Olmstead v. L.C.	1999	Publicly funded entities must serve people with disabilities in the least restrictive, most integrated setting possible
Patient Protection & Affordability Act	2010	-Health law requires new coverage options and includes Community Health Needs Assessment (CHNA)
- §1557	2015	- §1557 - Bans discrimination due to race, color, national origin, sex, age, or disability for federally funded health programs/activities
Obergefell v. Hodges	2015	Fundamental right to marry for same sex couples

Healthy People SDOH Critical Components/Key Issues

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Each of these five determinant areas reflects a number of critical components/key issues that make up the underlying factors in the arena of social determinants of health.

Economic stability

- Poverty
- Employment
- Food security
- Housing stability

Education

- High school graduation
- Enrollment in higher education
- Language and literacy
- Early childhood education and development

Social and community context

- Social cohesion
- Civic participation
- Perceptions of discrimination and equity
- Incarceration/institutionalization

Health and health care

- Access to health care
- Access to primary care
- Health literacy

Neighborhood and built environment

- Access to healthy foods
- Quality of housing
- Crime and violence
- Environmental conditions



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Graphic: Annu. Rev. Public Health 2016.37:185-204.

- Civil rights laws integral to improving access to health care (services and facilities) and addressing barriers (LEP, Disabilities)
- **Access to Health Care:**
 - Law and federal funding helped desegregate health care facilities
 - Hill-Burton Act (1946). Stated prohibition of discrimination, required free care, but allowed for “separate but equal” facilities.
 - *Simkins vs. Moses H. Cone Memorial Hospital*, 232 F. 2d 959 (1963).
 - “Separate but equal” provision of Hill-Burton unconstitutional
 - Supreme Court let stand in March 1964, 3 months before Civil Rights Act and Title VI (held federal funding should be spent without discrimination).
 - Civil Rights Act of 1964 (Title VI) and Medicare (1966) prohibited discrimination and tied federal funds to non-discrimination and segregation
 - Health benefits from desegregation. Research shows improvements in both infant mortality and childbearing outcomes of adult daughters after Civil Rights Act

Addressing Additional Barriers - Civil Rights Protections

- §1557 of ACA (2010)– provides no discrimination based on: race, color, national origin, sex, age or disability.
- Final Rule (2016) - Nondiscrimination in Health Programs and Activities
 - 1st federal civil rights law to prohibit discrimination due to sex in health care
 - Protections extended: HHS programs, health plans, insurance marketplace

Health Literacy - HHS and S.Ct - “national origin” includes language

- Discrimination not allowed due to Limited English Proficiency (LEP)
- Must address language barriers to provide quality patient care
- Executive Order 13166 (2000) federal agencies must issue guidance on making programs more accessible (e.g., interpreters and translations)

Protecting People with Disabilities

- §504 of Rehabilitation Act (federal funds) and ADA (state/local government programs and activities, public accommodations)
- *Olmstead v. L.C.* (1999) – ADA requires publicly funded entities to serve PWD in least restrictive, most integrated manner possible
- Note: Obesity covered by ADA only if “physical impairment” limiting activity and “affecting 1 or more body systems” (*Morriss v. BNSF Ry.*)

- Education has important impact on health
 - Attainment improves life expectancy, obesity, and morbidity (Woolf)
 - High-school completion linked to improved health, health equity and less chance of incarceration (Community Preventive Services Task Force)
- Federal funding supports public education and ensures equal access for all children to prepare for active community engagement
 - Applies to school programs and activities (nutrition programs, facilities)
- *Brown v. Board of Education* (1954) – education is “perhaps the most important function of state and local governments”
 - Required school desegregation
 - Study - Integration orders increased educational outcomes (graduation) and funds (≈\$1000/student in majority Black districts)
- Title IX of Education Amendments (1972) - Prohibits discrimination due to sex in education programs and activities

- Inequities – low income communities often have low-performing schools with greater use of suspension and expulsion
 - Can lead to “school to prison pipeline” and unsafe environments
 - Disproportionate use of punitive and exclusionary policies (e.g., zero-tolerance policies) on children of color, LGBTQ, and children with disabilities.
- Federal agencies responsible for implementing, monitoring, and enforcing civil rights laws.
- Potential tools and resources for collaboration:
 - Department of Education - Civil Rights Data Collection
<https://ocrdata.ed.gov/>
 - Includes: enrollment, expenditures, discipline information, and special reports - including educational equity report (below)

District of Columbia Public Schools | Washington, DC

NCES ID: 1100030 (Survey Year: 2015)

Home

Special Reports

Report Home

Educational Equity Report

District Characteristics

Number of Schools: 115

Receives Title I Funds: 86

Classified as Charter Schools: 0

Classified as Magnet Schools: 6

Student Enrollment: 48,775

American Indian or Alaska Native: 0.2%

Asian: 1.9%

Black or African American: 64.4%

Hispanic or Latino of any race: 18.2%

Native Hawaiian/Other Pacific Islander: 0.2%

Two or More Races: 2.1%

White: 13.0%

Female: 49.0%

Male: 51.0%

Students with Disabilities (IDEA): 13.8%

Students with Disabilities (Section 504 Only): 1.3%

Students with Limited English Proficiency (LEP): 13.6%

Additional District Characteristics

Schools offering grade 7 and/or 8: 33

Schools offering grade 10 or 11: 22

Schools offering AP and/or IB: 15

Schools offering Calculus: 9

Schools offering Physics: 19

Certified Teachers: 87.7%

First and Second Year Teachers: 11.7%

Chronically Absent Teachers: 44.3%

Additional Characteristics

Role of Civil Rights Laws in Addressing Health Inequities



Recommendations for Policies to Support Community Solutions:

- **Conclusion 6-1:** In the committee's judgment, civil rights approaches have helped mitigate the negative impacts of many forms of social and health discrimination. Continuing this work is needed to overcome discrimination and the structural barriers that affect health.
- **Conclusion 6-2:** The committee concludes that using civil rights approaches in devising and implementing community solutions to promote health equity can guard against unjustified and unnecessary discriminatory impacts, as well as against intentional discrimination in programs that affect health. For example, those implementing community solutions can employ methods and data in ways that include full and fair participation by diverse communities

Communities in Action: Pathways to Health Equity (2017)

Committee on Community-Based Solutions to Promote Health Equity in the United States, National Academies of Sciences, Engineering and Medicine.

- Civil Rights laws provide legal protections from discrimination for protected classes – race, color, national origin, age, disability, or sex.
- Limitations include:
 - Individual actions are limited since *Alexander v. Sandoval* (2001)
 - Federal agencies responsible for monitoring, compliance, and enforcement
 - Difficult to prove discriminatory intent
 - Questions about “disparate impact” or discriminatory impact lawsuits
 - *TX Dep’t of Housing & Community Affairs v. the Inclusive Communities Project* (2015): S.Ct. intentional discrimination not required for Fair Housing Act can use disparate impact standard
 - Government enforcement and lawsuits take time and resources
 - Purpose is to stop discrimination – not necessarily to find “best” solution for community or group. Other laws and policies might be the better choice.
- Worth considering other legal options
 - Legislation is only one means and often difficult to pass in Congress or state.
 - Voluntary compliance and working together to plan, implement and monitor laws and policies better option?
 - Implementation and enforcement of laws are crucial.

Potential Role for Law and Policy to Address Obesity and Health Inequities



Tools and Resources to Utilize with Civil Rights Approaches

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- Monitoring and collecting data on disparities, health status and environment
 - Data and tools collected to monitor and enforce civil rights:
 - Federal Civil Rights Data Collection (ED), EJSCREEN – EPA Environmental Justice Screening and Mapping Tool
 - Health Disparities tools - Healthy People - Data disparities tools (age, race/ethnicity, education, disability, if possible)
 - GIS and mapping tools, local data sources
- Legal and policy tools –
 - Legal epidemiology and policy surveillance
 - Health Equity and Law Resources – CDC Public Health Law Program, ChangeLab Solutions, Network for Public Health Law, NACCHO, NCSL The City Project, Health Impact Project, National Equity Atlas
- Helpful Assessments and Tools:
 - Health in All Policies Approach and Health Impact Assessments
 - Health equity assessments: focusing on eliminating disparities.



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Potential Roles for Law and Policy to Address Obesity and Health Inequities

- Civil Rights laws prohibit discrimination and protect rights, but not always the best tool:
 - Individual lawsuits on disparate impact not allowed (Alexander v. Sandoval).
 - Recent cases –Fisher v. University of TX at Austin, allowed schools to look at race/ethnicity and to value diversity in order to ensure that federal funding is being used as well as possible and to ensure public benefits are being used to improve racial justice, human dignity and diversity.
- Look at opportunities for other types of laws and policies to assist
 - Targeting kids through advertising (Rudd Report)
 - Regulations, licensing and voluntary policies and practices
 - Community benefits requirements (CHNAs, CHIPs)
 - Zoning: empowerment zones, addressing unhealthy foods and environments (healthy food financing, alcohol, environmental hazards, urban farming, fast foods)
- Work with partners:
 - Examples of using civil rights tools in LA to focus on physical activity in schools and also green space and parks. Citizen engagement crucial.
 - Complete Streets policies – bring together physical activity, disability, aging, planning, and others
 - Medical-Legal Partnerships – address structural problems at the root of many health inequities. Help individuals receive needed benefits and protections

Equality vs. Equity

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Equality



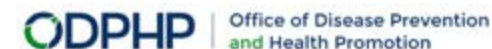
Equity



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Reports and Related Products

- Reports and community “Bright Spots”



Webinar Series

- Focused on specific HP2020 topics
- Shares community examples of innovative uses of law and policy to improve health outcomes



Supporting the Development of Healthy People 2030 (HP2030)

- HP2030 Listening Session: 2018 Public Health Law Conference



For more information:

www.healthypeople.gov/2020/law-and-health-policy



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For more information:

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Thanks to Robert Hahn, CDC, for his input.

Please go to www.HealthyPeople.gov for information about Healthy People 2020 or the development of Healthy People 2030, including public comment.

For more about the Law and Health Policy Project please see:
<https://www.healthypeople.gov/2020/law-and-health-policy>

For other questions, please feel free to contact:

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