February 25, 2019


Thank you for the opportunity to submit testimony on Proposed Int. No. 1064-A.

I am an Assistant Professor at New York University’s College of Global Public Health and an expert on food law and policy for public health. I am also a member of the New York City Department of Health and Mental Hygiene (Department of Health) Advisory Council and a member of the New York City Food Service Establishment Advisory Board, having been appointed by the mayor to both positions in 2016.

Summary of Position

I applaud the City Council Members and the Committee on Health’s interest in improving the food environment especially for children in New York City. Many cities and the state of California have enacted healthy default standards and the evidence seems to support healthy defaults for drinks, which is the focus of the proposal. However, the evidence does not support the definition of healthy beverages in the proposed legislation and thus I urge you to amend the definition. Specifically, the default beverage should not include flavored milk/milk substitute but rather should include plain unflavored and unsweetened milk/milk substitute of any milk fat percentage. Only through an evidence-based definition of the healthy default beverage, can this bill actually help improve children’s health. In addition, I urge the council to include an evaluation component, especially as related to juice.

Default Beverage Definition

The bill defines the default— and therefore “healthy” beverage— as including the following:

1. Water, sparkling water or flavored water, with no added natural or artificial sweeteners;

2. Flavored or unflavored nonfat or one percent fat dairy milk or non-dairy beverage that is nutritionally equivalent to fluid milk in a serving size of eight ounces or less; or
3. One hundred percent fruit or vegetable juice, or fruit or vegetable juice combined with water or carbonated water, or fruit and vegetable juice combined with water or carbonated water, with no added natural or artificial sweeteners, in a serving size of eight ounces or less.

**The Milk/Milk Substitute Definition is Not Evidence-Based**

My testimony will focus on the definition’s inclusion of: “flavored or unflavored nonfat or one percent fat dairy milk or non-dairy beverage that is nutritionally equivalent to fluid milk” in the definition of healthy because it is not evidence-based. I will refer to the other two parts below.

*The Problem with Flavored Milk/Milk Substitute*

Americans of all ages consume too much added sugar. The Dietary Guidelines for Americans defines sugar-sweetened beverage as “liquids that are sweetened with various forms of added sugars.”\(^4\) Flavored milk falls within this definition. The American Heart Association (AHA) recommends that children should drink *no more than one 8-ounce sugar-sweetened beverage per week.*\(^5\) AHA also recommends that children should not consume more than 6 teaspoons of added sugar per day.\(^6\) An 8 ounce carton of flavored milk typically has 4 teaspoons of added sugar (but can have more) and that would be more than half of children’s added sugar for the day in a drink that is supposed to be a default healthy option. Given that children have access to foods and beverages with added sugar throughout the day—every day, designating flavored milk as a healthy default runs contrary to these recommendations.

Flavored milk should not be included in the definition of healthy default. In addition to loads of added sugar, flavored milk often also contains added sodium, artificial colors, flavors, and sweeteners, which are all ingredients of concern for parents.\(^6\) Federal nutrition programs, including the Child and Adult Care Food Program (CACFP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) do not reimburse for flavored milk for children less than 5 years old. This is because it is not inherently nutritious. WIC regulations define “supplemental foods” to include those “foods containing nutrients determined by nutritional research to be lacking in the diets of … children and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant *nutrition science, public health concerns*, and cultural eating patterns.”\(^7\)

Flavored milk is more similar to a sugary beverage than a healthy alternative. Flavored milk should be treated similar to the other beverages the healthy default definition excludes: sugar-sweetened fruit drinks and sugar-sweetened water.\(^8\) The definition of healthy default should not include sweetened or flavored milk, but it should include plain whole or 2% milk.

*Plain Whole or 2% Milk Is Healthy*

In general, dairy product consumption is associated with a decreased risk of obesity and this association may be of public health significance.\(^9\) However, there seems to be differences based on fat content that are contrary to the definition in the bill. Studies suggest that over time, “children who habitually drink *low-fat milk gain more weight*, and those who drink whole-fat

\(^4\) Similarly, the World Health Organization suggests that we should be consuming no more than 5% of our daily calories in added sugar.
milk gain less weight.” For adults, longitudinal studies suggest that dairy fat from whole-fat milk has potential benefits for diabetes and does not increase the risk of obesity, diabetes, or cardiovascular disease. People who switch to low-fat dairy products might be compensating by increasing consumption of carbohydrates and in particular added sugar when in the form of flavored milk.

The days of suggesting low-fat diets and low-fat milk are behind us. As noted by leading nutrition experts: “Traditional dietary recommendations on dairy derive mostly from theoretical considerations about isolated nutrients … rather than empiric evidence on actual mechanistic and clinical effects of milk.”

**New York City Should Follow California and Connecticut, NOT Industry**

In addition to not being evidence-based, the milk-related definition actually aligns with the position of the American Beverage Association and statements by Burger King and Wendy’s related to what they are willing to do voluntarily. It is also substantially weaker than California’s law enacted in 2018 and Connecticut’s bill proposed just last month. Can we feel good about our law if other states are doing better and the restaurant industry is already voluntarily offering to meet our definition of “healthy”? Connecticut’s bill defined healthy beverage similar to California’s law, to only include “water, sparkling water, flavored water with no added sweeteners, unflavored milk or a nondairy milk alternative.” This is an actually evidence-based definition. At the hearing for Connecticut’s bill to prohibit the inclusion of unhealthy beverages as defaults on children’s menus, the American Beverage Association’s testimony actually argued for the New York City definition. Shouldn’t New York City— which is known as the public health capital of the country— do better for our children than to follow recommendations by the sugary beverage industry? Why might they support this definition? For one, perhaps because research suggests that early exposure to sweetened drinks predicts a preference for sweetened drinks later in life. This means that sugary beverages may “reinforce children’s preferences for sweet beverages” and help create a social norm that drinks need to contain added sugar to be suitable for children.

The American Beverage Association also argued that flavored milk should be included because it is included in the National School Lunch program and Smart Snacks in Schools. However, the offering of flavored milk in schools is at least partially due to the fact that these programs are administered by the United States Department of Agriculture (USDA). The USDA’s primary role and obligation is to support and promote American agriculture. Therefore, the inclusion of flavored milk in school food programs meets one of the actual goals of the program: which is to increase dairy consumption. This is not a goal of the healthy default standard.

**School Data Also Supports Dropping Flavored Milk**

If we were to rely on studies from the school setting, these would also suggest New York City should remove flavored milk in the definition of healthy default. Studies in the school and home setting “demonstrate that offering flavored milk can increase overall milk consumption among children and adolescents” but the majority of these studies “also suggest that flavored milk may contribute to the intake of a greater number of overall calories.” Further, if increasing milk
consumption was a goal, evaluation of the impact of also offering 100% juice is necessary. In a longitudinal study of kindergarten through grade 8 students, after the removal of flavored milk, 51.5% of students selected plain milk (and consumed 4 ounces) after one year, and at two years, 72% of students selected the plain milk and consumed 3.4 ounces per carton. Importantly, on the days when 100% fruit juice was also offered, there was a 16% decrease in milk selection. In addition, in New York City, there is a campaign by the Health Department’s Center for Health Equity which leads the Healthy Schools Initiative urging school principals to drop flavored milk due to the high added sugar content of the products. For the city’s children even slight reductions in added sugar intake could have a positive effect on weight.

Additional Issues

The first part of this definition, water with no added sweetener, is evidence-based. The third-part of this definition, which includes 100% fruit juice, raises some questions given high sugar content. The American Association of Pediatrics recommends no fruit juice for children under 1 year old; 4 ounces daily for children age 1-3 years; 4 to 6 ounces daily for children age 4-6 years; and no more than 8 ounces per day for older children. A Comprehensive Review concluded that “moderate intake of 100% juice (e.g., up to one serving/day) appears reasonable; higher intake may not be prudent due to links to long-term weight gain.” Evaluation of the amount of fruit juice consumed by New York City children at home and outside the house, and how this changes with the healthy default inclusion of 100% fruit juice is thus necessary. If the evidence suggests that fruit juice consumption is a problem for New York City children, the Council should be brave enough to amend the definition to reflect this new evidence. Regardless, an evaluation component should be included in the law and funding provided to the Department of Health to implement and evaluate the overall policy.

Summary of Position

Flavored/sweetened milk should not be included in a definition of healthy default beverages. The Committee on Health should reject the current definition of healthy default beverage and change it to include plain whole or 2% milk. In addition, an evaluation component should be built into the law which includes a specific focus on the 100% juice inclusion.

In summary, I would like to note the irony that the default healthy beverage includes sugar-sweetened drinks while the other three bills being heard today all focus on addressing added sugar and diabetes? Clearly added sugar has been determined to be a public health issue in the diets of New Yorkers by the City Council Members. A “Healthy Happy Meals” law should follow suit.

Sincerely,
References

1. Pomeranz J. Food Law for Public Health. Oxford University Press, New York. 2016. See also my published peer-reviewed work in MyBibliography:


   http://circ.ahajournals.org/content/early/2016/08/22/CIR.0000000000000439

   http://uconnruddcenter.org/files/Pdfs/Student%20Acceptance%20of%20Plain%20Milk%20study.pdf

7. 42 U.S.C. 1786

8. See also, Alaska’s Department of Health and Social Service’s Division of Public Health explains: “Sugar is in more than just soda. A lot of sugar is added to powdered mixes, sports and energy drinks, vitamin drinks, sweetened coffee and tea, chocolate and other flavored milk, and sweetened fruit-flavored drinks.” http://dhss.alaska.gov/dph/playeveryday/pages/Cutting-Back-on-Sugary-Drinks-Improves-Health.aspx


    https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5781235/

    https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5781235/


18. Written Testimony by the American Beverage Association Before the Connecticut Committee on Children H.B. 7006 - An Act Prohibiting the Inclusion of Certain Beverages on Children's Menus. February 7, 2019

    http://uconnruddcenter.org/files/Pdfs/Student%20Acceptance%20of%20Plain%20Milk%20study.pdf


