

Proposed Menu Labeling Regulation in Nashville, Tennessee: Informational Session Executive Summary

Tennessee, like the rest of the United States, is experiencing an epidemic of obesity. Obesity rates have tripled in Tennessee over the past 22 years. The physical, emotional, social, and financial costs associated with the epidemic are astronomical. Children born in 2000 are the first generation not expected to live as long as their parents (Katz). The potential loss of our future - our children - to the epidemic of obesity is an unacceptable societal cost necessitating urgent action.

Factors contributing to the obesity epidemic are complex and multifaceted ranging from environmental to behavioral to cultural factors. The American lifestyle has changed significantly over the past several decades. Americans are living out of balance, consuming too many calories and exercising too little (Barkin, 2008). One trend over time is that Americans are eating out more. The average family eats out four times a week, consuming a third of their calories outside the home.

There is no single, magic bullet that will halt the obesity epidemic. This complex problem requires an arsenal of solutions at all levels of society: individual, family, community, and government. No longer can we focus solely on healthcare delivery. Innovation, collaboration, and sound public policy are needed to insure that Americans successfully halt the modern epidemic of obesity (Institutes of Medicine, 2005).

In October 2008, the Metro Public Health Department of Nashville (MPHD) proposed that the Board of Health (BOH) adopt a menu labeling regulation to be enacted February 2009. The proposed regulation would require that specified food establishments post the calorie content of food items prior to the point of purchase; providing consumers with a tool to make informed health decisions. Approximately 1/3 of local restaurants would be impacted: at a minimum of 864 of 2800.

Proposal, and subsequent enactment, of said regulations is not without controversy. MPHD views itself as a leader, and a partner, in establishing conditions in which the citizens of Nashville can be healthy. It is from this position that MPHD has engaged in a process of community dialogue via focus groups, informational sessions, a public hearing, and a public comment period to insure that community interests are heard, considered, and addressed. Additionally, local research is underway to further determine community attitudes towards and access to nutritional information in restaurants. During focus group sessions community members expressed support of menu labeling as a strategy to improve healthy eating.

A public hearing was held in November followed by a 30-day public comment period: 28 people addressed the Board of Health with 11 proponents and 17 opponents speaking; 56 public comments were received with 37 written in favor and 19 in opposition. Supporters represent the community at large, health care providers, researchers, and organizations such as the American Heart Association. The majority of opposing comments have been presented by the industry or their representatives.

Upon enactment of the proposed regulation, MPHD will implement an educational campaign targeting the Nashville community, the restaurant industry, as well as MPHD staff such as food inspectors. MPHD will take steps to educate, support, and assist the industry to achieve compliance. Enforcement steps will be taken as a last resort and will adhere to due process.

The enclosed resources are respectfully submitted to the BOH in an effort to provide information to assist in the decision-making process.

Proposed Menu Labeling Regulation: Informational Session Responses to Board of Health Inquiries

Q1. At the hearing, many references were given to potential federal guidelines—I suspect that “they” are in the formative stages—but would like more info about that if anyone has updated information.

A1. The MEAL act and the LEAN act are both slated for renewed submission to Congress in January 2009. As proposed, both are expected to have final rules/regulations within 2 years of passage, 2011. No anticipated implementation dates are listed. A detailed comparison of the MEAL and LEAN are included in the binder, Additional Resources section.

Q2. I would like to know where the federal legislation is in the pipe line. What is the expected outcome of the current bill in subcommittee?

A2. Despite the fact that the menu labeling issue has been picked up by the media recently, and New York City’s and California’s bills have made headlines, it is not anticipated that menu labeling will be a priority issue within Congress. The primary reason is that the current economic crisis is expected to occupy a significant portion of time once the new session convenes in January, followed by a host of other heavy issues including the war, immigration, health care, education etc. The second reason is that the last MEAL Act which Representative DeLauro and Senator Harkin filed never made it out of committee, nor did Matheson’s and Murkowski’s LEAN Act. On the Senate side, the bills went to Health, Education, Labor and Pensions, and on the House side they went to Energy and Commerce’s subcommittee on Health. Specific reasons why neither bill made it out of committee are unknown. Perhaps, it bodes well for the bills that they weren’t actually voted against--they just died with the end of the session due to lack of activity. Nevertheless, they would have to go through the entire committee process again prior to reaching the floor of either chamber.

The third reason is that enacting menu labeling at the federal level necessitates additional education of legislators. It is fair to say that many Americans, including policy makers, still view the obesity problem as one of a lack of individual willpower, and so may not see the value of enacting policy and changing environments to promote behavior change and reduce the impact of obesity. Establishing regulations at the local level is beneficial by not only impacting health locally, but establishing an example that may serve to change the tide at the Federal level.

Q3. Can the current proposal's language be changed to exclude grocery store fliers and movie theaters?

A3. Significant attempts have been made to insure that the regulations, as proposed, have clear language. To insure clarity the following measures have been taken: a review, and subsequent drafting based upon, existing city and state regulations (New York, Seattle, California); drafting by MPH’s policy expert consistent with applicable state/local laws/ordinances; review by MPH Menu Labeling Work Group; consult, review, and opinion by Metro Legal; as well as dialogue with industry stakeholders.

Based on the aforementioned, revisions were made to the proposed regulation prior to the public hearing. Additional revisions can be made to exclude or exempt establishments as indicated.

Specifically, as currently written, grocery store fliers are not menus and would not be subjected to the regulation. Movie theaters are, however, included and subject to the regulation.

Food service establishments are covered if they fit the defined criteria: All food establishments in Davidson County that are part of a group of 15 or more food establishments operating anywhere in the U.S. with a standardized menu – this includes establishments doing business under the same name (franchise or company owned) are covered.

Q4. What is our legal authority?

A4. The BOH and MPH D may exercise their ‘police powers’ to protect the health of the public. The written legal opinion is included in the binder, Legal Opinion section.

Q5. I would also like a fact sheet of obesity rates in Davidson County with the disease states affected by obesity, especially in children.

A5. Available, relevant data is included in the Supporting Data Section of the binder.