

Proposed Menu Labeling Regulation in Nashville, Tennessee: Informational Session Response to Public Comments

Background:

October 2008: In response to the growing epidemic of obesity, the Metro Public Health Department of Nashville, Tennessee (MPHD) proposed a local regulation requiring menu labeling in Nashville restaurants. 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.

During the last week of October, MPHD leadership hosted two well attended informational sessions with industry stakeholders. Upon request, Dr. Paul, Director of Health, as well as other MPHD leaders met individually with industry stakeholders. Based on these conversations, several revisions were made to the proposed regulation.

On Thursday, November 6, 2008, a public hearing was held. During this hearing, 28 people addressed the Board of Health. 11 spoke in favor of the proposed menu labeling regulation. 17 spoke in opposition of the regulation.

Following the public hearing, a 30-day written comment period was open to the public. During this comment period, 56 public comments were received. 37 were written in favor of the proposed regulation, while 19 were in opposition. The comments in favor of the proposed regulation came from 35 community members and two organizations including the American Heart Association. The comments in opposition were from two citizens and 17 industry organizations or their representatives.

Additionally, MPHD Health Promotion staff conducted eight focus groups with Nashville community members between June and December 2008. These focus groups were assembled to develop a citywide community message for healthy eating and active living. During five of the focus group sessions, community members state that menu labeling for chain restaurants was needed in Nashville. At the other three focus group sessions, community members stated that better nutrition choices should be made available at restaurants and that information should be made available for the foods served.

MPHD is currently undertaking additional research to determine customer preference relative to the proposed regulation. It is anticipated that the findings of this research will be available within the next two months.

Upon review, several recurring themes or categories of opposition to the proposed regulation emerged. These themes, along with suggested responses, are included in the following chart.

Issue	Response
<p>Board of Health authority</p> <ul style="list-style-type: none"> ▪ The BOH does not have the legal authority to enact this regulation? ▪ The scope of authority vested in MPHD does not include this type of regulation. 	<p>The BOH and MPHD may exercise their ‘police powers’ to protect the health of the public.</p> <p>Written opinion was received on December 23, 2008 supporting the BOH’s authority to enact the regulation.</p>
<p>Unnecessary regulation</p> <ul style="list-style-type: none"> • Caloric information is already available in multiple formats and in a variety of locations • Possible negligible impact of local regulation • One size fits all regulation 	<p>Consumers are more likely to act/change behavior when information is available prior to or at the point of decision (Nutrition Education Approaches: Public Information Supply, found at www.ers.usda.gov/publications/ah715/ah715b.pdf retrieved on 12/31/2008).</p> <p>Consumers are less likely to access or use nutrition information if it is on a website, tray liner, or sign in a back hall or on a separate wall.</p> <p>Accessing information is time consuming and, at times, tedious. Consumers are less likely to actively seek information that requires additional resources in time and energy.</p> <p>Available information is not standardized, increasing the difficulty for consumers to readily access information. Standardizing access to caloric content in Nashville will increase consumer access to valuable decision-making information.</p> <p><i>Local research pending.</i></p> <p>Evidence:</p> <ul style="list-style-type: none"> ▪ Burton S, Creyer EH, et al. Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. <i>Am J Pub Health</i>. 2006;96(9):1669-1675.
<p>Consumer preference</p> <ul style="list-style-type: none"> • Some consumers do not want the information • Those that want the information can/will 	<p>Public opinion polls indicate that the majority of Americans want chain restaurants to post nutrition information on menus and menu boards. (Harvard Forums on Health. “Obesity as a Public Health Issue: A Look at Solutions.” National poll by Lake Snell Perry & Associates, June 2003; Global Strategy Group. Nationally representative poll commissioned by the Center for Science in the Public Interest. Washington,</p>

<p>access it now</p>	<p>D.C.; September 4-8, 2003; American Dietetic Association (ADA). "Nutrition and You: Trends 2000." <i>Journal of the American Dietetic Association</i> 2000, vol. 100, pp. 626-627).</p> <p>Three out of four American adults use food labels on packaged foods (US Department of Health and Human Services (US DHHS), Centers for Disease Control and Prevention, National Center for Health Statistics. <i>Healthy People 2000</i> Final Review. 2001).</p> <p>Almost half (48 percent) of American adults say reading the nutrition information on food labels made them change their purchasing habits. It is anticipated that this behavior will translate to the successful use of menu labeling as a tool for decision making (Levy AS, Derby BM. <i>The Impact of NLEA on Consumers: Recent Findings from FDA's Food Label and Nutrition Tracking System</i>. Washington DC: Center for Food Safety and Applied Nutrition. Food and Drug Administration. 1996).</p> <p>MPHD conducted eight community focus groups to determine a consistent message regarding healthy eating and active living in Nashville. Five of the 8 focus groups mentioned the need for menu labeling in restaurants. The other 3 noted the need for better nutrition choices and information on foods served.</p> <p><i>Local research pending.</i></p> <p>Evidence:</p> <ul style="list-style-type: none"> ▪ Bassett MT et al. Purchasing behavior and calorie information at fast-food chains in New York City, 2007. <i>Am J Pub Health</i>. 2008;98(8):1-3. ▪ International Food Information Council (IFIC) Foundation. <i>Food & Health Survey: Consumer Attitudes Toward Food, Nutr & Health</i>. Washington, DC: 2007. ▪ National Restaurant Association: http://www.restaurant.org/government/issues/issue.cfm?Issue=menulabel
<p>Cost</p> <ul style="list-style-type: none"> • Food analysis • Re-design of menus/menu boards • Increase in both management and labor cost 	<p>This is not a cost-prohibitive measure. Many chain restaurants already analyze the nutritional content of their menus.</p> <p>Analysis may be done using several validated strategies. These include use of electronic databases. This cost is similar to other contract labor cost; plumber, etc. Changing</p>

<ul style="list-style-type: none"> • Will make Nashville unattractive for business expansion-loss of jobs • Currently in a tough economy and this regulation will increase costs without benefit 	<p>menu boards is a one-time cost. The proposed regulation only applies to chains, not small “mom and pop” restaurants that do not typically have standardized menus.</p>
<p>Aesthetics</p> <ul style="list-style-type: none"> • Overcrowded menus • Calorie ranges may be confusing for customers 	<p>The posting of calories has been successfully added to menus in other locations. Overcrowding has not been identified, in the literature, as a post-implementation problem.</p>
<p>Litigation</p> <ul style="list-style-type: none"> • Potential increase in litigation against restaurants • Lack of a uniform approach for liability protection 	<p>A clause was added to the proposed regulation that prohibits use of the regulation except by Metro Government thus protecting the industry from frivolous law suits.</p>
<p>Patchwork approach to legislation/regulations</p> <ul style="list-style-type: none"> • Federal legislation is pending-LEAN vs. MEAL 	<p>See attached table for a detailed comparison.</p> <p>MEAL and LEAN are two versions of menu labeling bills proposed at the federal level. They are scheduled to be reintroduced in January 2009. Previous iterations were proposed in 2003 and 2007. They were not passed. In the event that they are enacted, it is anticipated that neither would be implemented prior to 2010 at the earliest; one year after enactment.</p> <p>Nashville is facing a rapidly growing obesity epidemic. Delaying intervention for national legislation that may or may not pass insures that consumers will not have easy access to tools for use in making informed choices.</p>
<p>Discriminatory</p> <ul style="list-style-type: none"> • There is unfair targeting of chain restaurants • Grocers/grocery stores that sell prepared food should be included • Food Service Establishments as defined is not clear. Does this definition include public schools, colleges and private school lunch 	<p>Many chain restaurants already analyze the nutritional content of their menus.</p> <p>Food service establishments are covered if they fit the defined criteria: Any food establishment in Davidson county that is 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).</p> <p>This regulation would include Metro Schools.</p>

rooms, nursing homes, pre-schools, hospitals, cinemas, grocery and convenience stores	
<p>Calorie intake is only one piece of the puzzle</p> <ul style="list-style-type: none"> • Calorie counts on menus is not a proven strategy • Additional nutrition information is available now; this is more limiting • Ignores other factors that are a part of the obesity puzzle-personal responsibility, exercise, genetic factors 	<p>Obesity is a complex problem caused by many factors. Menu labeling can be part of the solution, giving consumers information they need at the point in time they are trying to make a purchase decision.</p> <p>The rate of obesity in TN is one of the factors that contributed to TN receiving overall ratings as 46th and 47th of the least healthy states in two recent national surveys (United Health Foundation 2007 and America's Health Rankings 2008).</p> <p>Clearly, menu labeling is not the silver bullet, but is one of many tools needed in Nashville to combat obesity.</p> <p>Evidence:</p> <ul style="list-style-type: none"> ▪ Bassett MT et al. Purchasing behavior and calorie information at fast-food chains in New York City, 2007. <i>Am J Pub Health</i>. 2008;98(8):1-3. ▪ Burton S, Creyer EH, et al. Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. <i>Am J Pub Health</i>. 2006;96(9):1669-1675. ▪ Hill JO, Wyatt HR, Reed GW, Peters JC. Obesity and the Environment: Where Do We Go from Here? <i>Science</i> 299. 2003;5608:853-855.
<p>Short timeframe for Implementation</p> <ul style="list-style-type: none"> ▪ Short time frame for restaurants to comply places an additional burden on the industry during hard economic times. 	<p>This issue was identified during meetings with industry stakeholders. As a result, the time frame for implementation was extended to December 31, 2009.</p>
<p>Cultural differences/expectations</p> <ul style="list-style-type: none"> • "That's not how we do business in Nashville." • "That is how they do it on the East coast and the West coast, but not in the heartland." 	<p>Nashville would be the first Southeastern city to enact menu labeling regulation thus taking proactive steps to address the issue of obesity in Nashville.</p> <p>Nashville should not limit its ability to protect and improve the health of the community based on perceived cultural expectations that impede progress.</p>
<p>Alcohol -</p> <ul style="list-style-type: none"> • Is alcohol covered by this regulation? 	<p>The regulation as proposed does not include alcohol.</p>

<p>Compliance</p> <ul style="list-style-type: none"> • Who is responsible for monitoring compliance? • What is the penalty for non-compliance? 	<p>Compliance would follow due process. Metro Public Health Department Food inspectors would be responsible for monitoring of menu labeling regulation.</p> <p>If it is noted that calories are not posted, a notice of violation (NOV) would be sent from Director of Health to the establishment. The establishment would have opportunity for a hearing. If NOV is not adhered to, a second NOV would be sent. If the establishment fails to comply, the Director of Health would notify Chancery Court. Further penalties would be determined by the Chancery Court Judge.</p> <p>Steps will be taken to insure that the process of establishing compliance, citing non-compliance, as well as assessing penalties will be consistent with current processes such as food inspection processes and non-smoking processes. MPHD is/will be available to partner with and assist food service establishments to come into compliance. A mass education campaign is slated to be implemented upon passing of a menu labeling regulation. Education will address the following audiences: consumers at large, restaurant industry workers, and MPHD food inspectors.</p>
<p>Need for education on nutrition</p> <ul style="list-style-type: none"> • The community at-large will need additional information regarding daily caloric needs, menu-labeling, and use of menu labeling as a tool. • Who is responsible for insuring that the community at-large receives nutrition education? 	<p>MPHD is currently planning a mass education campaign to be implemented city-wide.</p> <p>MPHD will collaborate with local and national partners to provide a culturally appropriate campaign.</p>