



National Association of County & City Health Officials

The National Connection for Local Public Health

COMMENTS OF THE NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH OFFICIALS

On the Request for Comments, Data and Information on

Disclosure of Nutrient Content Information for Standard Menu Items Offered for Sale at Chain Restaurants or Similar Retail Food Establishments and for Articles of Food Sold From Vending Machines

Docket No. FDA-2010-N-0298

September 7, 2010

The National Association of County and City Health Officials (NACCHO) is pleased to submit the following comments on the Food and Drug Administration's request for comments on nutrition labeling for chain restaurant menus and vending machines.

NACCHO represents the nation's 2800 local health departments. These city, county, metropolitan, district and tribal departments work every day to ensure the conditions that promote health and equity, combat diseases, and improve the quality and length of all lives for all people in their communities through public health policies and services. Local health departments in particular have unique roles and responsibilities in the larger health system and within every community. They are the only local entities that focus on the health and well being of every person in their communities. They work from a population-wide perspective. They have statutory powers that enable their role and enshrine a duty to serve every person and household in their jurisdiction.

Local health departments have long experience in the regulation of retail food service establishments. The purpose of these comments is to call the attention of FDA to measures it might take that would mitigate foreseeable problems in implementation of the rules to be proposed and that would foster compliance and effectiveness.

A. CLEARLY COMMUNICATE FEDERAL RESPONSIBILITIES FOR IMPLEMENTATION AND ENFORCEMENT AND ESTABLISH MECHANISMS FOR SHARING INFORMATION WITH LOCAL AUTHORITIES AND CONSUMERS

Uniform national requirements for menu labeling will be superimposed upon, and often replace, a multitude of existing practices at the local level. Therefore, the potential for confusion among stakeholders is high. Menu labeling has become an increasingly frequent preventive intervention over the past several years in states and municipalities across the country. While some municipalities have developed regulations that require menu labeling at food retail establishments, others have passed ordinances requiring menu labeling. Some states, like Ohio and California, have enacted statutes that limit or preempt local ordinances. These statutes, however, have not deterred many local health departments (LHDs) from promoting voluntary menu labeling among food establishments. The new national menu labeling law preempts

several local ordinances that are far more comprehensive with respect to the nutrition information that must be posted at the point of decision-making.

Although a majority of the nation's nearly 2,800 LHDs have not been actively involved in promoting menu labeling, many were closely monitoring the experience of other LHDs who were implementing and enforcing menu labeling regulations and ordinances. Like tobacco smoking bans, many LHDs anticipated utilizing the experience of early adopters of the new policy in planning their own policies, thereby improving the success of implementation and public health impact.

LHDs are the government body responsible for food safety in restaurants in many areas of the country. State and local menu labeling regulations, ordinances, and statutes have assumed LHD enforcement. For example, in some cases, menu labeling enforcement was integrated with enforcement of existing tobacco control ordinances. In other cases, menu labeling enforcement would take place during routine food safety assessments or inspections.

Because menu labeling has been conceptualized as a policy that was locally enforced (including those mandated by the state), many LHDs are skeptical about the FDA's ability to effectively enforce the new national menu labeling law. NACCHO members' experience at implementing menu labeling and other ordinances and regulations involving food establishments (e.g., tobacco smoking and trans fats bans) suggests that **there is a potential for a great deal of confusion during FDA implementation of the new national menu labeling law.** The confusion is likely to be compounded in municipalities where existing menu labeling regulations, statutes, and ordinances are in place or where LHDs were spearheading voluntary efforts.

LHD food policy experts are concerned that the FDA's enforcement of the new national menu labeling law will be unequal and inadequate. Moreover, the LHD food policy experts fear that implementation of the law will interfere with public health operations, which will be exacerbated by recent cutbacks in LHD staff due to a poor economy. Despite the FDA's responsibility for enforcement, because the public looks to their LHD for information on food safety, we anticipate a surge of calls to LHD switchboards by both the general public as well as food establishments.

To limit the potential for confusion and disrupted LHD operations, we recommend the following:

1. The FDA should hold forums for state and local health departments that spell out clearly what role state and local government would have during implementation. FDA needs to be clear about its role in enforcement and develop protocols to ensure that their enforcement activities do not impact local operations.

2. During implementation, the FDA should provide LHDs with information about the menu labeling law and provide local health departments with contact information (mail, phone, and web) for those who would like to report a chain restaurant in noncompliance. This could be as specific as a script for municipal switchboard operators (for example, city 311 operators) or a blurb for LHD web pages.

3. The FDA should provide funds for a mass media campaign to educate the public about menu labeling, their rights under the law, the establishments covered under the law, and what citizens should do if the nutrition information is not available. LHDs should be offered funds to conduct education campaigns in their area, and funding eligibility and levels should be based on the concentration of covered food establishments in the area.

4. The FDA should create and maintain an accurate and up-to-date list of food establishments covered under the law. LHDs often lack such data, and state data often are not up-to-date. The FDA should share these data with LHDs who are interested in monitoring compliance in their jurisdictions.

5. The FDA should also establish a toll-free telephone number for local health inspectors or the general public to call in the event of non-compliance. The FDA should keep a record of enforcement activities vis-à-vis covered food establishments and share that data with the LHDs in whose jurisdiction the food establishment is located.

6. In jurisdictions where LHD's have responsibility for restaurant food safety and are willing to undertake assessments of compliance with the new federal nutrition labeling requirements for chain restaurants and/or vending machines, FDA should establish a mechanism for entering into contracts that fairly reimburse LHDs for the costs of such assessments, as well as the costs of providing training or educational materials on the regulations to noncompliant restaurants or vendors. Continued non-compliance would then be referred to FDA.

B. SUPPORT VOLUNTARY MENU LABELING EFFORTS

There is concern that the new national menu labeling law will slow activities promoting voluntary menu labeling, and LHDs recommend that the FDA compensate for that risk by offering technical and other assistance to make it easier to promote voluntary menu labeling. LHDs have identified two key determinants of the effectiveness of voluntary menu labeling: 1) the importance of positive incentives; and 2) the need for technical assistance on food analysis. In order to overcome these barriers, we recommend the following:

1. The FDA should offer free software and training to determine nutrition content based on ingredients. FDA could potentially provide training to LHD staff on ingredient analysis and related software and offer grants to LHDs promoting voluntary menu labeling.

2. The FDA should work with LHDs to create a standard system of awards for voluntary menu labeling, including seals of merit or recognition awards. These awards should be made by the LHD, so that awards are made only to restaurants who are complying with local food safety regulations and ordinances.

3. The FDA should fund a study to determine the impact of the menu labeling law on voluntary efforts and special menus. The study should also identify ways to improve the success of such voluntary efforts.

C. DISPLAY NUTRITION INFORMATION AT THE POINT OF DECISION-MAKING

LHD food policy experts have identified the following critical issues to consider in implementing and enforcing the national menu labeling law:

1. Displaying information at the point of decision-making in a way that is visible and understandable is of primary concern. For example, information about food items at salad bars, buffets, and similar self-service food lines should be available for standard food portions at the point of decision-making rather than at the point of purchase. Otherwise, customers will be unable to make a healthy choice based on the information. Thus, information could be placed at the beginning of the buffet line.

2. Nutrition information for food items that come in varieties (e.g., pizza) should use ranges instead of point estimates for nutrition information.

D. NON-CALORIC INFORMATION SHOULD BE MORE READABLE

While the national menu labeling law requires information about non-calorie nutrition information to be available upon request, the nutrition content guides currently available at fast food restaurants can be ineffective. In addition to concerns that the information often is unavailable (e.g., the food establishment ran out of nutrition content guides), the format of these nutrition content guides raises serious concerns. Many of these nutrition content guides are simply inscrutable. Too much information in a very small font makes it very difficult for older people, particularly those with visual impairments, and people on special diets to pick out the information they need.

In addition to calorie information, sodium, carbohydrates, and fat content are critical nutrition information for people with chronic diseases. For example, people with diabetes need information on carbohydrates and calories to make healthier decisions. Those with hypertension and heart disease need information on sodium content and fats, including trans fats. This information, however, may be hidden amidst a wide variety of other extraneous information. In addition, current law does not require disclosure of trans fats, which increases low density lipoproteins (the bad cholesterol) while reducing high density lipoproteins (the good cholesterol).

To address the need for easy access to nutrition information for people with chronic diseases, FDA should revise regulations governing non-calorie information to require a separate “healthy choices” quick guide as a companion to the non-calorie information retail food establishments already are required to provide under the new national menu labeling law. The quick guide should have very specific information including calories, milligrams of sodium, grams of carbohydrates, and grams of total fats, including a separate line for trans fats.

E. VENDING MACHINES

Menu labeling on vending machines presents complex issues for labeling and enforcement. We recommend the development and use of a color code (red, orange, and yellow, green) to indicate different kinds of beverages and other food items. The visibility of this nutrition information is a critical issue. It should be displayed on the front of the vending machine or an adjacent wall.