

FDA Law Update

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Restaurants, Too?

As the Senate works toward health-care reform legislation, the Senate HELP Committee has released the 615 page bill that Senator Chris Dodd (D-Conn.) will soon introduce on behalf of Senator Edward Kennedy (D-MA), *The Affordable Health Choices Act*. The Senate's HELP and Judiciary committees expect to begin the markup process this month.

Included with a plan to cover millions of uninsured, the bill aims to lower health-care spending by mandating various preventive measures. One of these: A requirement to disclose nutrition facts for menu items served in America's chain restaurants.

Rationale? A hope that American diners will make wiser nutritive choices if provided with details about caloric content and recommended daily calorie intake. Calories are the current focus of the nutrition information disclosure, but the legislation empowers the Secretary to promulgate regulations requiring disclosures of additional nutrition facts.

Subjected to the disclosure requirements are all "standard menu items" offered by any restaurant with 20 or more locations. To be considered a chain, the same business name suffices; varying ownership arrangements has no effect. Similar disclosure requirements apply to any owner of 20 or more vending machines.

Requirements:

- **On the menu, adjacent to the menu item's name**, a clear and conspicuous nutrition information statement listing the number of calories in the item as usually prepared;
- **Prominently on the menu**, a succinct statement about suggested daily calorie intake;
- **Prominently on the menu**, a statement that the nutrition information is available in another written form by patron request;
- **Prominently on the menu board (including drive-through board)**, a succinct statement about suggested daily calorie intake, a statement that the nutrition information is also available in written form by patron request, and adjacent to each item a clear and conspicuous nutrition information statement listing the number of calories in each item as usually prepared;

- **Elsewhere on the restaurant premises** (for patron request), in written form, the nutrition information and recommended caloric intake statements included on the menu and/or menu board;
- **At buffets, salad bars, and other self-serve facilities**, adjacent to the food or beverage item, a sign that lists calories per item/serving; and
- **On vending machines**, if the machine does not permit purchasers to examine an item's Nutrition Facts Panel prior to purchase, a sign placed in close proximity to the item listing calorie content.

Under the HELP bill, restaurants would not be required to provide information on items not listed on the menu or menu board, such as daily specials, temporary items (available < 60 days/year), and market test-items (< 90 days/year). Nutrient content disclosures must derive from some reasonable basis, whether laboratory analysis, nutrient database, cookbook, or other means.

It remains to be seen whether these provisions, or even something similar, will make it into the healthcare reform legislation that is ultimately enacted. With the increased emphasis being given to preventative measures such as these as another tool to reduce healthcare costs, it seem highly likely.

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