

A National Approach to Restaurant Menu Labeling: The Patient Protection and Affordable Health Care Act, Section 4205

As health care professionals and researchers continue their efforts to determine effective ways of addressing the continuing national struggle with overweight and obesity, legislators, too, have sought to do their part.

In some cases, the purpose for using the law to affect the desirability of foods of low nutritive value is financial. “Sin taxes” on processed snack foods and high-sugar beverages have been proposed in several cities as a means for funding health care reform or filling municipal coffers in tough economic times. In some cases, the point isn’t necessarily to dissuade the public from purchasing said items, although it’s frequently marketed as a positive side effect. Regardless, these legislative efforts, while attaining interest vocalized by politicians around the country, are not always successful. Despite a Kaiser Family Foundation poll that noted an increase in public support for such taxes, New York’s governor recently had suggested an 18% increase in taxes on these food and beverage items, as researchers identified this tax threshold as effective in substantially reducing intake, but public opposition led him to withdraw the proposal (1,2).

At the same time, in the stated interest of providing consumers with tools to make informed, healthful choices regarding the foods they consume (3-5), various states and municipalities have already implemented menu labeling laws (or have attempted to do so) that mandate onsite

disclosure of nutrient values for certain offerings in fast-food chains and other establishments. These laws, though not without controversy, have not met with the same level of resistance as the sin taxes and have received general legislative acceptance in the states as a means for combating the national trend of excessive consumption of unhealthful foods in place of a balanced diet.

Now, with the passage of H.R. 3590, the Patient Protection and Affordable Health Care Act, in March 2010, menu calorie labeling has become a national platform. Section 4205 of H.R. 3590 addresses menu labeling provisions on a federal level by mandating that restaurants and food vendors with more than 20 locations disclose calorie information for some items in their franchises and make other nutrient composition data available to consumers.

The impact of this legislation on addressing consumer behavior remains to be seen, as the details still must be determined. But at this time, the major outcome is that, “This firmly establishes the government’s role in improving the nation’s nutrition,” according to Kelly Brownell, PhD, Director of the Yale University Rudd Center for Food Policy and Obesity (6).

The American Dietetic Association (ADA) supports the federal legislative menu labeling initiative. In the June 2009 statement issued by ADA President Jessie M. Pavlinac, RD, which followed a press conference to announce that menu labeling would be included in health care reform, it was noted that (7):

People need scientifically valid and understandable nutrition information to make healthful choices in all venues, including restaurants. Providing good, accurate, and tested information to a consumer educated in nutrition basics can have a pow-

erful effect on food selection at the point of sale. Over time, the act of millions of people making healthful choices can impact the health of the nation and improve the food supply by consumer demand.

Because this law may directly affect the work of registered dietitians—as it reflects a need for their knowledge and expertise—and may lead to professional opportunities, it is important that ADA’s members know the background of this legislative endeavor.

EARLY ITERATIONS OF CALORIE POSTING LAWS

Federal

In 2009, before the health care reform bill passed, there were a handful of proposals on the table regarding federal requirements for menu labeling proposed or reintroduced in Congress. These suggestions would have applied to fast-food and sit-down restaurants with 20 or more outlets of the same name and included the following (8):

- Affordable Health Choices Act: Standardized items displayed on indoor and drive-thru menus and menu boards would have to include calorie information, and the restaurants would have to provide additional nutrition information upon consumer request. This recommendation would have been applied nationwide and would have preempted all state and municipal label laws.
- Labeling Education and Nutrition Act, or LEAN: Signage next to the menu board or in the customer line, the menus themselves, or inserts would indicate the calorie data for standardized menu items, and details regarding 11 other nutrients would have to be available upon consumer request. The LEAN law would have established a national standard for labeling requirements.

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The ADA Gets Involved^a

The issue of restaurant menu labeling is a standing priority of the American Dietetic Association (ADA), as labels are an important tool for registered dietitians. Several years ago, the ADA recognized restaurant menu labeling as an emerging issue and, when the topic grew in professional and public popularity in the late 2000s, convened the Task Force on Restaurant Nutrition Labeling Research.^b

The overarching goal was to determine what type of approach to menu labeling upholds the ADA's values and mission. To be consistent with the ADA's "reliance on science, accountability to members and the public, and a long-term approach for shaping solutions that work for the public," the task force set forth that a mandatory restaurant menu labeling policy should receive ADA support "when [the initiatives] are supported by legitimate research and include nutrition education and policy evaluation."^b

The task force concluded that, in general, the nutrient information should be presented at the point of purchase to ensure it is seen by the public. At the same time, the task force recognized that nutrient data alone—in the absence of posted information and complementary nutrition education as to *how* to use the information—will not combat obesity.

While the task force was crafting its recommendations in 2008, the two bills at the national level—LEAN, which addressed concerns of the restaurant industry, and MENU, which was supported by consumer advocacy groups—were in competition for congressional adoption. ADA did not endorse either bill, focusing instead on the strong principles that had to be addressed. This neutrality put the organization in a prominent position for mediation when the two factions began to negotiate a compromise.

While the two bills were being sorted out, ADA representatives worked with congressional staff members and other key stakeholders as members of Congress crafted the portion of the bill that ultimately became Section 4205, which is presented in language that ADA supports.

ADA also supports the inclusion of the national restaurant menu labeling provision in the health care reform bill, because it shows that this effort is not just a stand-alone mandate but rather an important component of comprehensive health care. This national requirement provides consistency in information delivered to consumers, which, in turn, will facilitate how the information is used.

Whether these provisions actually change consumer behavior will be seen. However, once the FDA has posted its proposals for implementation in the Federal Register, ADA will submit comments, as it has done with other labeling requirement proposals, and will likely also weigh in on methodology for evaluating the success of the programs.

But ADA's current and long-term interest is in the tremendous opportunities this legislation provides for registered dietitians, as it reflects their unique expertise in: 1) understanding the science behind nutrient analysis, 2) understanding management of total diet, and 3) communicating with the public and private sector (restaurant owners, corporate headquarters). ADA members are poised to become leaders in the push to offer information on more-healthful items at restaurants, to analyze and revise the nutrient information required of standard menu items, and to provide quality assurance that the posted information is accurate, as well as the likely future need of clients in understanding how to use this nutrient information in determining their daily dietary needs and making the most of what the law intends.

ADA will continue to provide members with requisite information as the regulatory process continues. Look to e-mails from *On the Pulse*, the ADA Policy Initiatives and Advocacy Report, as well as the ADA Web site's Public Policy section for updated information.

^aInformation presented herein was provided by ADA's Manager of National Nutrition Policy in Washington, DC (personal communication, April 27, 2010).

^bThe group ultimately published a report with recommendations, the *Task Force Report on Restaurant Nutrition Labeling Research*, available on the Health Literacy and Nutrition Advancement page of the Public Policy section of ADA's Web site (<http://www.eatright.org/Members/content.aspx?id=11331>).

- Menu Education and Labeling Act, or MENU: Calories, saturated fat, *trans* fat, carbohydrates, and sodium would be required on menus, whereas only calorie information would be required on menu boards and food display tags. The MENU laws would have had national application but would not preempt existing state and local laws.

At the time the health care reform legislation passed, however, the only

enacted law related to menu labeling was the Nutrition Labeling and Education Act—a provision since 1996 requiring only that restaurants making a claim regarding nutrient content or health benefit had to provide specific supportive information verbally or in writing if requested (8).

States and Localities

By the late 2000s, several states and municipalities had passed laws re-

lated to calorie posting. These represented a hodgepodge of regulations across 30-plus states and localities, many of them similar but very few identical, as these laws varied in which information restaurants were legally expected to post and where to make it available to consumers (8).

For example, New York City, the first municipality to pass calorie-posting legislation, began to enforce its law in July 2008. Health Code 81.50 requires that calorie information for

standardized menu items be posted (on the menus/menu boards themselves) at the point of purchase at chain restaurants, defined as having at least 15 national outlets, including one in New York. The New York State Restaurant Association brought multiple lawsuits to prevent enactment of this code but was unsuccessful (3).

The State of Oregon implemented its own law, House Bill 2726, for chain restaurants—defined as having 15 or more locations in the United States, including Oregon; offering at least 80% of standardized menu selections in at least 14 restaurants; and operating under the same name as affiliates—to be executed in two phases (9):

- Phase 1: As of January 2010, chain restaurants had to provide in writing (in the form of a supplemental menu or a brochure, pamphlet, or menu insert), at the point of purchase, the nutrient values total calories; total grams of saturated fat, *trans* fat, and carbohydrate; and milligrams of sodium. Restaurants were discouraged from making a customer who requested the information revisit the establishment at a later time to obtain it.
- Phase 2: By January 2011, restaurant chains would be expected to post calorie information “in a conspicuous place in a font size no smaller than the price, or the least prominent font size of the description of the item” and provide two statements: one that notes that more nutrition information is available upon request, and another that provides the daily intake amounts for calories, saturated fat, and sodium.

The Oregon law was initially challenged by the Oregon Restaurant Association, but the two sides managed to come to an agreement regarding the state law’s preemption of municipal laws (9).

Per the requirements established by California’s S.B. 1420, beginning in January 2009, chain restaurants—identified as those with at least 20 locations—were expected to provide customers with brochures that listed calorie content or other nutrient information at the point of sale and at drive-through windows. And as of January 2011, these same restaurants would be required to post calo-

rie information on menus and indoor menu boards (4).

In Massachusetts, where food establishments subject to menu-labeling requirements were defined as having 20 or more locations with the same menu within the state, menu-labeling laws require only the posting of calorie information next to the name or price of food items on menus, menu boards, and food tags or placards (5); however, there was a requirement that calorie counts be verified by a licensed dietitian or nutritionist (10). Compliance was expected by November 2010 (5), but because the federal menu posting law supersedes any state law, compliance obligations will be delayed until the federal requirements are established (10).

In Connecticut, the House of Representatives had voted in favor of such laws as well, but it was ultimately vetoed by the governor, who argued that nutrition labeling in chain restaurants was the wrong path to addressing the impact of poor diets on health, positing instead that individuals should employ good eating habits and common sense and adding, “Does it come as a surprise to anyone that a vegetable salad is healthier and more nutritious than a bacon cheeseburger?” (11).

Other states that had considered enacting menu-labeling laws include Oklahoma, Indiana, Florida, Hawaii, Kentucky, Minnesota, New York, and South Carolina (12).

THE NEW LAW: SECTION 4205

Section 4205 of H.R. 3590 creates a national standard for posting calorie data on menus in chain restaurants and on vending machines. These laws preempt any state, city, or county law. With regard to nutrient values disclosed by chain restaurants, in short, Section 4205 provides for the following (13):

Requires chains with 20 or more outlets to post calories on menus, menu boards (including drive-through) and food display tags, with additional information (fat, saturated fat, carbohydrates, sodium, protein, and fiber) available in writing upon request. Requires national uniformity, so there is consistency in information. States and localities would not be able to require additional nutrient information on menus.

(See the box on pages 1288 and 1289 for an extended excerpt of the specific text for Section 4205.)

A more specific definition of the chain restaurants is that the 20-plus nationwide locations all operate under the same trade name—regardless of whether they are franchises or managed by independent owners—and the menus offered at each site are considerably similar (14). The calorie posting requirements apply to standardized menu items that are offered at least 60 calendar days out of the year. Restaurants are not expected to post calorie contents for condiments, custom orders, daily specials, or test-marketing offerings (15).

Retail food establishments, though at present undefined, are also subject to the new rules. The National Restaurant Association (NRA) has predicted that these enterprises will likely also be defined as any establishment with at least 20 sites operated under the same trade name and where food is served for immediate consumption, such as school and hospital foodservice companies, convenience stores that sell fresh food items, and mobile carts (14).

Calorie posting requirements will also apply to vending machines managed by companies that operate at least 20 machines.

Now that the bill has been signed into law, the regulatory agency with jurisdiction over the program—the US Food and Drug Administration (FDA)—must begin the process of determining how these rules will ultimately be implemented. For example, because menu offerings are frequently listed as a single item that comes in multiple combinations or flavor varieties, the FDA must determine the regulations for how the nutrition information will be presented, whether as ranges or averages or some other approach (14); the agency will also have to establish the type size and font required on vending machine displays and whether operators can post one menu that includes a variety of offerings that may be sold in the machines, rather than an individual label posted for each item, which would require an update each time the selection changes (16,17).

According to H.R. 4872, the reconciliation bill for H.R. 3590, FDA has 1 year to submit its proposals (13)—they are due March 23, 2011. Once regulations are set forth, it is expected that restaurant owners will have 6 months to come into compliance (14).

As noted previously, restaurant groups have opposed state legislative efforts to mandate calorie posting. The New York State Restaurant Association's claims included that a calorie mandate posting violated restaurants' First Amendment rights and that the FDA's laws preempted the city's laws (3). In other legal arguments, restaurants have noted that consumers can access this information—voluntarily provided by many chain restaurants—via the Internet, printed brochures, and posters displayed in stores (18).

Despite the previous challenges to

the state and municipal laws, the NRA has voiced its support for the provisions of Section 4205. These nutrition disclosure provisions earned the NRA's backing particularly because, as noted by NRA president and chief executive officer Dawn Sweeney, this national law "replace[s] a growing patchwork of varying state and local regulations with one consistent national standard that helps consumers make choices that are best for themselves and their families" (19).

DOES POSTING CALORIES AFFECT CONSUMER BEHAVIOR?

Several researchers have taken various approaches to determine whether posted calorie information has any impact on consumer food choices. Some of the studies have been designed as follows:

- Roberto and colleagues conducted a study dinner in which participants (aged 18 years and older, in the New Haven, CT, community) were randomly assigned to order their meal off one of three menus that offered the same items from two restaurants: one that listed the offered items only, one with items plus calorie information, or one with calorie information *and* a statement regarding the recommended daily intake (2,000 kcal) for the average adult. Participants were asked questions regarding dining preferences and completed a questionnaire; selected a dinner from the menu; ate the meal (plate waste was collected afterward to measure total calories consumed); and the next day completed a multiple-pass dietary recall, in which they were asked to report all foods consumed in the evening hours following the study (18).

- Elbel and colleagues compared survey responses and receipts collected from adult customers during the lunch and dinner hours in four fast-food restaurant chains in low-income neighborhoods in New York—before and after menu labeling laws had been implemented—as well as a sample in Newark, NJ, where no labeling laws were on the books. Using the nutrition data published on the restaurants' Web sites, researchers calculated the amount of calories, saturated fat, sodium, and sugar in the items participants purchased (20).
- In studies conducted in hotel conference rooms or an urban church basement, self-reported frequent consumers of fast food, both adolescent and adult, were asked by Harnack and colleagues to select a fast-food meal from one of four randomly assigned menus that varied in presentation of value pricing and calorie information (both, one or the other, or neither) for each item. Participants responded to a survey while waiting for the food they had ordered (retrieved from a fast-food restaurant nearby), and after the meal, they completed an exit interview where they answered several questions regarding nutrition knowledge and beliefs; self-reported height and weight; and, once they were informed of the purpose of the study after completing these questions, perception of the menu from which the food was ordered (21).
- Using a year's worth of transaction data provided by multiple Starbucks (Seattle, WA) establishments in New York, Boston, and Philadelphia, Bollinger and colleagues evaluated for consumer behavior changes that occurred after calorie posting became mandatory in New York (there were no calorie posting laws in Boston and Philadelphia at that time) (22).

Like other investigations of the same issue, the results of these studies were mixed. In the study by Harnack and colleagues (21), for example, providing calorie information on a fast-food menu at the point of purchase had no discernible impact on the food selected and consumed by teens and adults who are frequent customers at fast-food establish-

ments; in fact, fewer than one fifth of participants reported even noticing the posted calorie information. Roberto and colleagues (18) found different results in their study (though it must be noted that the two investigations were not identical, as, for example, self-described fast-food consumption was not a factor in this investigation): "Calorie information on restaurant menus reduced the total amount of calories people ordered and consumed for a meal, improved their ability to estimate calories consumed, and, perhaps most important, affected their eating later in the day."

The studies that compared the before and after of New York's calorie labeling law also showed different outcomes. For instance, in examining the transaction data from Starbucks, Bollinger and colleagues (22) observed a 6% reduction in calories per customer purchase in New York after the labeling law went into effect; this effect lasted at least 10 months after Starbucks began posting its calorie information. Of note is that coffee sales remained largely unchanged; food selections, however, experienced a dip in total sales but an increase in purchase of lower-calorie offerings. However, this study was limited in that it didn't describe the economic environment or trend outside of this chain, or marketing efforts that might have affected consumer behavior. When Elbel and colleagues (20) reviewed purchasing data onsite at a fast-food restaurant, there was an increase in the number of people who noticed the calorie labeling after the New York law went into effect—and although these individuals reported that seeing the calorie information influenced their purchase, the actual calorie content of purchased meals did not noticeably change.

Maureen Doran, RD—a consultant in St Paul, MN, who has worked on corporate nutrition strategies and menu labeling issues with restaurant chains such as Red Lobster (Orlando, FL), Caribou Coffee (Brooklyn Center, MN), and Olive Garden (Orlando, FL)—favors use of data regarding how consumers use Nutrition Facts labels to understand how they might use calorie data posted on menus. And at this time, as studies show that the Nutrition Facts labels are not widely used, it should be somewhat expected that not all consumers will

use calorie information in making fast-food choices. The International Food Information Council Foundation (IFIC), for example, in its Food Label Consumer Research Project (23), noted that the consumers more likely to use Nutrition Facts labels in grocery store decision-making include the following:

- Individuals with specific health concerns
- Individuals who are generally health conscious
- Parents shopping for children
- Individuals who are currently dieting

Consumers are less likely to read nutrition labels when purchasing routine or discount items, however (24).

Because fast-food restaurants' standard fare is generally well known by the public and is frequently subject to value pricing—coupled with the IFIC finding that when individuals do check the Nutrition Facts label, they very often scrutinize the macronutrients, such as fiber, sugar, and fat, whereas they only somewhat often consider the product's serving size and calories (23)—it is not out of bounds to predict that some consumers may not pay mind to the calorie labeling when H.R. 3590, Section 4205, is first implemented.

For this reason, many groups, including ADA (7), have emphasized that *education* is an essential component that must be included in any menu labeling efforts.

CONSUMERS AND CALORIES: HOW THE INFORMATION IS USED

It is unknown at the time of this writing what, specifically, the FDA will propose is the best means for delivering nutrient information in chain restaurants. But if consumers don't understand how to use the information, the specifications regarding font, how big the type size should be, and where in restaurants the information should appear are not likely to make any kind of impact on healthful eating behaviors.

Doran notes that the driving intention or thought behind a food choice often has nothing to do with numbers of nutrients or what a person 'should' choose. "Until we really address the thought process that triggers a food decision, added nutrient information will have limited impact."

Simply put, many consumers are not well-versed in how to use nutrient information. Among the 649 adults in a community sample who participated in a telephone survey conducted in Vermont, one third reported that they generally do not look at food labels; 31% said that they use the Nutrition Facts label to discern calorie information; and only 5% looked to it for serving size guidance (24). Furthermore, “External cues and emotional drivers often override rational thought when it comes to food consumption,” and health has not ranked as high as taste and price in studies of what drives consumer selections in restaurants (25). In fact, Jodie Worrall, MS, RD, Senior Nutrition Consultant at Chick-fil-A, Inc, in Atlanta, GA, believes that consumers may initially change their eating behaviors once the calorie information is posted but that they may also ultimately return to their regular purchasing habits. And, she notes, there will be some who will not care about nutritional content information. “Customers buy based on taste and will continue to do so,” she says. “Our challenge is to make the more healthful choices taste just as good as the ‘bad’ choices so that customers won’t feel cheated when they purchase them.”

Some critics of the labeling provision thus have argued that this is not an issue that most consumers care about (26), and others have expressed concern regarding its usefulness if only a small segment of the population is actually using the nutrient data to inform food choices (24). However, Brownell argues that the labeling “would affect the decisions of enough people to create a public health benefit” (6).

This lack of interest may stem from a lack of comprehension. In the IFIC study, focus group participants noted that serving size information caused them confusion—they “almost universally believed the serving size information is inaccurate and sometimes unintuitive” and did not consider how foods and beverages individually factored into their daily dietary intake; furthermore, some members of the study group misunderstood that percentage of Daily Value represented the product composition rather than contribution to overall daily diet (23).

In a survey in which consumers were asked to estimate the calorie,

fat, and saturated fat content of typical restaurant meals, researchers found that most consumers substantially underestimated the nutrient content of less-healthful menu offerings (27). Subway’s (Milford, CT) corporate dietitian, Lanette Kovachi, MS, RD, in a *Restaurant and Institutions* article about the menu labeling laws, observed that, “A lot of people still don’t understand what is the right calorie level for them and why some calories might be better. . . . They don’t understand that getting 300 calories from a beverage might not be as good as 300 calories from a sandwich” (26).

In the investigation, where participants were randomly assigned to a menu that provided no calorie information, calorie information, or calorie information plus a statement regarding the 2,000-kcal recommended daily intake for adults, the individuals who ordered from the “calorie information plus statement” menu fared better in calories consumed not just at the fast-food meal itself but for the rest of the

day as well: “Total daily caloric intake for the combination of the study meal and food consumed later was 1,630 calories, 1,625 calories, and 1,380 calories for the no calorie labels, calorie labels only, and calorie labels plus information conditions, respectively” (18). Similarly, once participants were made aware of the calorie content of less-healthful items in another study, if the actual number of calories was higher than estimated, their preference for these foods was lessened (27).

But how consumers use this calorie information really depends on the motivation of the individual, Doran says, and looking at the whole decision-making process, rather than just the total numbers, is essential when working with the public.

In an official statement, while acknowledging that there is currently no conclusive proof that consumer behaviors change when calorie information is made available on restaurant menus, the American Heart Association (AHA) (28) noted its support for both the provision of calorie informa-

tion on restaurant menus and menu boards at the point-of-purchase and “the development and implementation and a consumer education campaign to help people ‘know their energy needs’ for recommended daily calorie intake and food and beverage serving sizes.” AHA cites the increase in dining out—consumers spent 46% of total food budget on eating outside the home in 2004, compared with 26% in 1976—and the likelihood that these meals will be larger in portion size and higher in energy density as among the main reasons that consumers must know the nutrient data of what they are consuming at the time the food is ordered. But the lack of public awareness drives the need for a complementary educational program—a campaign similar to the Nutrition Facts label educational programs, including a Web site and brochures, jointly offered by the Center for Food Safety and Applied Nutrition and the US Department of Health and Human Services, has been identified as a potential model for consumer educational efforts regarding menu labeling (28).

In its own position statement regarding communicating food and nutrition information, the ADA acknowledges the power of the media when it comes to food choices in the United States, referring to the \$11 billion spent on advertising food and beverage products and restaurants in 2004 alone (29). By way of promoting repeated, positive nutrition messages, the media can have a potent influence on how consumers respond to the nutrition information these new restaurant menu labels will present.

According to ADA, these educational programs “must emphasize the importance of considering a food or meal in terms of its contributions to the total diet” (29)—a methodology that, as noted, had the biggest impact on calories consumed in one study (18). Furthermore, given that some consumers do not want to feel as though they are being told what they should or should not eat, an approach that “focus[es] on positive ways to make healthful food choices over time, rather than individual foods to be avoided” (29), may be more effective in gaining acceptance from individuals and groups who are reluctant to support this legislation.

Although the average Chick-fil-A

customer may be more health conscious than typically expected of fast-food consumers, Worrell says, the majority of sales do come from breaded chicken sandwiches, french fries, and regular soda purchases. Comparable to the ADA’s interest in promotion of total diet, she believes in individual choice and notes that as a dietitian, although she herself prefers to eat more-healthful fare at fast-food establishments, she still does want french fries on occasion.

“The problem comes when those who want fries ‘on occasion’ think that every time they eat out is an occasion. Customers need to learn moderation now that they are eating out more than ever and realize that they can’t have fries, soda, and dessert every time they dine out,” she says.

Worrell agrees that educational efforts are needed: Chick-fil-A has always made its nutrition information available online and in brochures, and packaged goods have included nutrient labeling for years, yet the general population continues to gain weight. “I think the US Department of Agriculture’s MyPyramid is a great resource, if we can get people to use and understand it,” she says. “Though it may be expecting a lot for consumers to think this way, they need to know what calorie level is good for them and then learn how to make choices that don’t repeatedly go over that level.”

“One challenge for consumers lies in the accuracy of the information,” says Jeanne Blankenship, MS, RD, CLE, ADA’s vice president of Policy Initiatives and Advocacy. “At this point, the qualifications of those who perform nutrition analysis on the menus are unknown and there is a lack of oversight to determine whether the information provided is, in fact, correct. Individual variation on menus for chain restaurants can occur during the preparation and the delivery phases. If the information is analyzed at the corporate level, there is no guarantee that it will be applicable at the local level unless the chain itself develops a mechanism for monitoring and evaluating the process. For example, if the menu analysis allows for a teaspoon of butter to be served with pancakes and a server provides two tablespoons, the caloric difference would be significant.”

THE BILL’S IMPACT ON DIETETICS

The introduction of Section 4205 in the Patient Protection and Affordable Health Care Act opens opportunities for restaurant chains to reconsider their offerings. According to Doran, this may involve improving the restaurant’s nutrition profile—an occurrence she sees frequently in her consulting work—or to revise their portion sizes, such as value-priced meals for individuals who want to eat, and pay, less.

When asked what she saw as the first impact of the legislation that a majority of ADA members would notice, and how it might impact their practice plans, Blankenship shared the following thoughts:

“Members may begin to see clients and patients who have seen the information on restaurant menus, but don’t know how to use the information to make healthier choices. This is an opportunity for registered dietitians (RDs) and dietetic technicians, registered (DTRs), to help consumers as they struggle to achieve a healthy lifestyle. In states that have already adopted menu labeling, RDs and DTRs have already incorporated key messages into delivering nutrition education.”

The new legislation could also lead to a windfall of professional opportunities for RDs. For more information on this topic, see “Next on the Menu: Labeling Law Could Mean New Career Opportunities for RDs” by Tony Peregrin, in the August 2010 issue of the *Journal*.

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Excerpt of Section 4205^a of H.R. 3590: The Patient Protection and Affordable Health Care Act^b

Because of the wealth of information—and misinformation—available regarding H.R. 3590, many citizens of the United States are confused about how exactly their health care plans and options will change once the law is enacted. In fact, many physicians have reported an increase in patients seeking out information about the legislation, with some even having to add office hours to their daily operations to accommodate these individuals and help them better understand the provisions of the bill.^c

Similarly, registered dietitians may be asked by clients to explain the implications of Section 4205 and how consumers might most effectively use the information that will now appear on chain restaurant menus. Toward this end, a substantial excerpt of the text of Section 4205 is provided below.

(H) Restaurants, Retail Food Establishments, and Vending Machines

(i) GENERAL REQUIREMENTS FOR RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS—

Except for food described in subclause (vii), in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subclauses (ii) and (iii).

(ii) INFORMATION REQUIRED TO BE DISCLOSED BY RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS—Except as provided in subclause (vii), the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner—

(I) (aa) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu listing the item for sale, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(bb) a succinct statement concerning suggested daily caloric intake, as specified by the Secretary by regulation and posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu;

(II) (aa) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(bb) a succinct statement concerning suggested daily caloric intake, as specified by the Secretary by regulation and posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board;

(III) in a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the nutrition information required under clauses (C) and (D) of subparagraph (1); and

(IV) on the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in item (III).

(iii) SELF-SERVICE FOOD AND FOOD ON DISPLAY—Except as provided in subclause (vii), in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

(iv) REASONABLE BASIS—For the purposes of this clause, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in section 101.10 of title 21, Code of Federal Regulations (or any successor regulation) or in a related guidance of the Food and Drug Administration.

(v) MENU VARIABILITY AND COMBINATION MEALS—The Secretary shall establish by regulation standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children’s combination meals, through means determined by the Secretary, including ranges, averages, or other methods.

(vi) ADDITIONAL INFORMATION—If the Secretary determines that a nutrient, other than a nutrient required under subclause (ii)(III), should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the Secretary may require, by regulation, disclosure of such nutrient in the written form required under subclause (ii)(III).

(vii) NONAPPLICABILITY TO CERTAIN FOOD

(I) IN GENERAL—Subclauses (i) through (vi) do not apply to—

(aa) items that are not listed on a menu or menu board (such as condiments and other items placed on the table or counter for general use);

(bb) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders; or

(cc) such other food that is part of a customary market test appearing on the menu for less than 90 days, under terms and conditions established by the Secretary.

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(viii) VENDING MACHINES

(I) IN GENERAL—In the case of an article of food sold from a vending machine that—

(aa) does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article or does not otherwise provide visible nutrition information at the point of purchase; and

(bb) is operated by a person who is engaged in the business of owning or operating 20 or more vending machines—the vending machine operator shall provide a sign in close proximity to each article of food or the selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the article.

^aThis section of the legislation amends Section 403(q)(5) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 343(q)(5)].

^bThe full text of the legislation is available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf.

^cSource: Leland J. Doctors hear many questions about health law. *New York Times*. April 19, 2010. Available at: <http://www.nytimes.com/2010/04/19/health/policy/19doctors.html>. Accessed April 20, 2010.