

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:35 p.m. on March 18, 2010, in Room 546-S of the Capitol.

All members were present.

Conferees attending:

Dr. Jason Eberhart-Phillips, Kansas Department of Health and Environment, State Health Officer

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes
Renaë Jefferies, Office of the Revisor of Statutes
Iraida Orr, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Jan Lunn, Committee Assistant

Senator Barnett indicated today's meeting would be dedicated to hearing information on state and federal issues related to menu labeling and to receive an update on **SB 525 - Hospitals; charges for health care goods and services.**

Senator Barnett summarized the hearing on February 15 concerning **SB 525** in which no action was taken. Subsequently, proponents and opponents were asked to work together to investigate what compromises could be made to produce beneficial results to all parties and consumers.

Corrie Edwards, Kansas Health Consumer Coalition, and Chad Austin, Kansas Hospital Association, have worked together in the past weeks to focus on financial disclosure and available financial assistance for self-pay patients. Currently the Kansas Hospital Association is surveying member hospitals concerning financial assistance language/policies incorporated into billing statements and data is being collected on patient notification processes. Both individuals expressed optimism that through discussions, some type of language can be developed for inclusion in the patient rights section of the regulatory portions of Kansas Department of Health and Environment's rules and regulations that addresses patient notification of financial assistance policies.

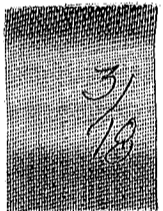
Senators asked if the goal was to develop language for insertion into rules and regulations rather than pursuing legislation concerning medical debt. Ms. Edwards and Mr. Austin confirmed that is the goal at this time. Senator Barnett, on behalf of the committee, expressed appreciation for this collaborative effort.

Informational Hearing on Federal and State Issues - Menu Labeling

Dr. Jason Eberhart - Phillips, provided information related to reducing obesity in Kansas. He indicated that in 1990, the Nutrition Labeling and Education Act was passed into federal law requiring most foods regulated by the Food and Drug Administration to carry labeling with nutritional information; however, restaurants were exempt from the act. Dr. Eberhart-Phillips suggested that the passage of legislation mandating restaurants label their menu/menu board with nutritional information would facilitate an informed choice when dining out of the home (Attachment 1). He cited statistics related to healthcare and productivity costs stemming from obesity as well as various studies conducted by communities/states who have implemented such legislation.

Don Saylor, Chief Executive Officer, Kansas Restaurant and Hospitality Association, spoke in favor of federal legislation that imposes a menu labeling requirement on restaurants nationally. However, he indicated that he would not support state and local labeling mandates (new governmental regulatory oversight with inspections) that would increase costs to members or the industry, particularly, when healthcare reform (federal) could include a national menu labeling standard (Attachment 2).

Senator Barnett indicated that written testimony was submitted by Stephanie Becker, RD, LD as well as Cynthia Hutson, RD, LD (Attachments 3 and 4), who both supported truth in labeling in more



CONTINUATION SHEET

Minutes of the Senate Public Health and Welfare Committee at 1:30 p.m. on March 18, 2010, in Room 546-S of the Capitol.

understandable language.

Since this was the last scheduled meeting of the Public Health and Welfare Committee during the 2010 session, Senator Barnett thanked all Senators and staff members for their service and participation.

The meeting was adjourned at 2:19 p.m.



Mark Parkinson, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Public Health Impact of Menu Labeling

**Presented to
Senate Public Health and Welfare Committee**

**By
Dr. Jason Eberhart-Phillips, MD, MPH, State Health Officer and
Director, Division of Health
Kansas Department of Health and Environment**

March 18, 2010

Chairman Barnett and members of the committee, I am Dr. Jason Eberhart-Phillips, State Health Officer and Director of the Division of Health for the Kansas Department of Health and Environment. Thank you for the opportunity to discuss menu labeling as a policy strategy for addressing obesity in Kansas.

Menu labeling is a policy strategy that has been used successfully at the state and local levels to enhance public health efforts to impact obesity by empowering consumers to make decisions based on knowledge. For people trying to watch their weight, eating out presents a challenge. For them, each item on the menu amounts to a guessing game: How many calories does this meal I'm considering contain? How much of my daily budget of allowed caloric intake will that delicious item on the menu cost me?

Imagine a menu without prices, where diners have no idea how much their food costs until they have to pay. That's just how it feels for weight-conscious diners trying to keep track of how much their restaurant meals are costing their health.

In 1990, the Nutrition Labeling and Education Act (NLEA) was passed into Federal law (Public Law 101-535) which required most foods regulated by the Food and Drug Administration to carry a label with nutrition information, however, restaurants were exempt from this act. Many studies around the United States continue to verify that consumers want and use nutrition information. According to the *Healthy People 2000* Final Review, three out of four American adults use food labels on packaged foods and 73% of Americans say that they look at the calorie information on the Nutrition Facts Panel.¹ After the New York City Health Department approved regulations requiring fast-food restaurants to directly post caloric information on the menu

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Senate Public Health & Welfare

Date:

Attachment:

03/18/10

boards, more than 8 in 10 New Yorkers reported that they were changing their fast-food choices by choosing lower-calorie foods.ⁱⁱ

As you are likely aware, two-thirds of all Kansas adults and a quarter of youth are overweight or obese, accounting for more than \$650 million in health care costs in Kansas and driving the continued escalation of medical costs due to chronic disease.^{iii,iv,v} It is estimated that physical inactivity and poor nutrition contribute to 15.2% of deaths (3,700 people) per year in Kansas (KDHE, BHP, Health Risk Studies Program, 2008).

The percent of food consumed away from the home is constantly increasing and those foods are typically served in large portion sizes and are higher in calories compared to foods eaten at home. Research has found a positive association between eating out and body weight/percentage of body fat.^{vi} Children consistently consume nearly double the calories when eating at a restaurant compared to eating at home. A study by Burton et al. found that 9 out of 10 people underestimated the number of calories of less-healthy menu items by an average of more than 600 calories.^{vii} If patrons consumed 600 more calories than they realized for only 1 restaurant meal per week, an extra 30,000 calories a year would be added to their diets. These extra calories could cause a weight gain of approximately 9 pounds annually.

The majority of chain restaurants have nutrition information available for standard menu items, however, this information is not usually made available at the point-of-sale.^{viii} Five states and 15 cities across the country have already passed policies requiring chain restaurants to display caloric content adjacent to the name and/or price of the menu item. Twenty three more states and 14 more localities have introduced such a policy.^{ix} See attached map.

It is sometimes argued that the potential cost to including caloric information on the menu board would be an added expense to business owners. According to a July 2008 feature article on the QSR (quick service restaurant) web site, a chain restaurant's corporate office is likely to cover the design costs of a new menu board. Furthermore, it is noted that digital menu boards used in QSRs would incur no additional cost to post readily available nutrition information.

A health impact assessment conducted in 2008 in Los Angeles County, California, determined that simply posting calorie information on menu boards resulted in customers selecting food items with an average of 100 fewer calories per meal.^x It was estimated that if only 10% of the city's fast food patrons reduced their intake by just 100 calories each time they ate out, that annual community weight gain would be cut by 38 percent.

A more recently published study in the American Journal of Public Health estimates the calorie savings to be even greater.^{xi} In this study, conducted in New Haven, Connecticut, posting calorie information along with a sign that referenced an average daily calorie amount of 2000, prompted customers to consume 250 fewer calories with no compensatory increase in other food consumption during and after the meal tested. Similarly, a study in the February 2010 Journal of Pediatrics reports that parents in Seattle, Washington, ordered meals with about 102 fewer calories for their children when calorie information was posted on the menu board at a national fast food restaurant.

What can Kansas expect in terms of the impact of menu labeling on obesity and health care expenses? Based on the experiences of states and cities that have implemented and studied the

effects of menu labeling, we could expect at least 10% of fast food patrons will choose meals with 100 fewer calories, averting 38% of the average annual weight gain in persons aged 5 years and older. This reduction in weight gain could potentially prevent 10,000 new cases of diabetes in Kansas during the next 5 years, a disease that is currently costing Kansans an estimated \$1.5 billion dollars in health care costs to treat.^{xii}

Of course, menu labeling cannot reverse the obesity epidemic by itself. But it is an important step that will make a welcome difference in our struggle with obesity. Costing almost nothing, it offers one of the lowest-cost obesity prevention measures currently available, empowering people to take responsibility for their health and the health of their families.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.

ⁱ US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics. *Healthy People 2000* Final Review. 2001.

ⁱⁱ Bassett MT, Dumanovsky T, Huang C, Sillver LD, et al. Purchasing behavior and calorie information at fast-food chains in New York City, 2007. *Am J Public Health* 2008; 98: 1457-9.

ⁱⁱⁱ 2008 Kansas Behavioral Risk Factor Surveillance System, KDHE

^{iv} 2007 Kansas Youth Risk Behavior Survey

^v Finkelstein, 2004

^{vi} Wootan M, Osborn M (2006) Availability of nutrition information from chain restaurants in the United States. *American Journal of Preventive Medicine* 30: 266-8.

^{vii} Burton S, Creyer EH, et al. Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. *Am J Pub Health* 2006; 96(9): 1669-1675.

^{viii} RWJF. Menu Labeling: Does Providing Nutrition Information at the Point of Purchase Affect Consumer Behavior? A research synthesis created June 2009. Accessed on July 12, 2009 at: <http://www.rwjf.org/files/research/20090630hermenulabeling.pdf>

^{ix} CSPI, 2009. Fact sheet accessed from <http://www.cspinet.org/menulabeling/> on July 16, 2009.

^x Simon, P., et al. Menu Labeling as a Potential Strategy for Combating the Obesity Epidemic: A Health Impact Assessement. Los Angeles County Dept. of Public Health, 2008.

^{xi} Roberto, et al. Evaluating the Impact of Menu Labeling on Food Choices and Intake. *Am J Public Health*. 2010;100:312-318

^{xii} ADA, (2008) Economic Costs of Diabetes in the US *Diabetes, Care* 31(3): 1-20

**Testimony Re: SB 505 - Menu Labeling
Senate Public Health and Welfare Committee
On behalf of
Kansas Restaurant and Hospitality Association
March 18, 2010**

Chairman Barnett and Members of the Committee:

My name is Don Saylor, and I am the CEO for the Kansas Restaurant & Hospitality Association (KRHA). The Kansas Restaurant & Hospitality Association is the leading business association for restaurants, hotels, motels, country clubs and allied business in Kansas. Along with the Kansas Restaurant & Hospitality Association Educational Foundation, the association works to represent, educate and promote the industry of hospitality in Kansas.

KRHA would not oppose federal legislation which imposes a menu labeling requirement on restaurants in the nation, if such legislation meets the other requirements set out in the bill the National Restaurant Association has endorsed. NRA's position, which we concur, is that menu labeling should be dealt with on a national basis. If states act independently, our members are faced with the same patchwork problem we have experienced with smoking bans.

Legislation which has been introduced in Kansas would not meet our requirements, and therefore we would oppose the bill introduced this year, as well as any state menu-labeling bill. We are concerned about any bill which establishes a new form of regulatory oversight, including inspections, which would further drive up costs to our members and industry and this bill does not contain any provisions for funding any regulatory provisions. Additionally, this bill does not offer any protection from unreasonable litigation over accuracy of nutrient content as set out in the national model.

Our national position has not changed - the industry does NOT support the enactment of state and local labeling mandates on the restaurant industry. The industry continues to convey that there is not a need for a state or local regulation as the federal agreement is still very much in play on this issue.

The federal agreement cannot be enacted at a state or local level as numerous components of the proposal are yet to be defined through the regulatory process for implementation. A state or locality cannot anticipate the details of the final regulations of a federal law.

It is likely that a national menu labeling standard will be enacted, as this issue is a high priority for the National Restaurant Association. Although the national bill has been included in the health care reform legislation, since the health legislation faces an uncertain future, it is likely that the NRA will seek other avenues for enacting this legislation.



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The national legislation has bipartisan support, getting it unanimously adopted in the relevant authorizing committees as it was contained in both the House and Senate versions. In addition, as a part of the original agreement, all stakeholders (congressional sponsors, health and consumer advocates and NRA/CRNI) agreed to work together to find another vehicle for moving it forward.

Thank you very much for permitting me to testify and I will be happy to yield to questions.

Jan Lunn

From: Stephanie Becker [sbecker@prmc.org]
Sent: Thursday, March 18, 2010 10:26 AM
To: Jan Lunn
Subject: label reading

Good morning! I am a dietitian in the Pratt area and have been in practice for 28 years. I do quite a bit of diabetes education and weight loss consulting. Over these years I have noticed some patterns of confusion when people try to read food labels. 1) The % of daily value confuses more people than it helps. Few adults need to get 2500 calories a day – it would be better to have a 1600 or 1800 calorie comparison. 2) Sugars is a broad category – I often find clients who avoid dairy products like yogurt because of lactose in milk. I place more emphasis on total carbohydrates. 3) Dietitians often teach that the ingredient label is by descending order of weight of those ingredients- but some ingredients like sugars, starches or fats are often listed throughout the label instead of grouped together by actual total weight - very misleading for the public! Should restaurants have labels? I think it needs to be kept simple - list only the grams of fats, protein, carbs, calories and sodium, and any common allergens in the foods. Forget the %DV and ingredient label. The Nutrition facts label IS BETTER than it was 20 years ago- I just think we could make it more user friendly. Thanks for listening - Stephanie Becker RD,LD

Jan Lunn

From: Cynthia Hutson [Cynthia.Hutson@osh.ks.gov]
Sent: Thursday, March 18, 2010 10:37 AM
To: Jan Lunn
Subject: Nutrition Labeling

I am a Registered and Licensed Dietitian in the State of Kansas. I work with patients in the Psychiatric population who often take medication which stimulates their appetite. The majority of my patients also suffer from Obesity, Type II Diabetes, Metabolic Disorder, and other diet related complications. Recent research shows these patients often have a shorter life span from these complications. In addition I have family members who are intolerant to MSG(Monosodium Glutamate) and suffer severe headaches from ingesting high amounts of this common flavor enhancer. A review of studies on pub.med reveals that MSG is also used to induce obesity in mice. I try to encourage my patients to avoid foods labeled to include MSG to help them with appetite control. Unfortunately, this is a difficult task because of the many different words used in labels to describe MSG. It is confusing to the public and I ask that you help to get more truth in labeling in stores and restaurants so people can make educated decisions that affect their health.

Thank you,

Cynthia Hutson, RD, LD.
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