



Federal Menu Labeling Regulation Goes Into Effect

The Department of Public Health Takes Action on Two Major Restaurant Issues

BY JON B. HURST

In May of 2009, the Massachusetts Public Health Council (PHC) voted unanimously to adopt a statewide menu labeling regulation. The effective date was set to place on November 1st. In the meantime, the federal debate on menu labeling led to a compromise that was included in the federal health care bill.

THE REGULATIONS

The federal law applies to more restaurants than the MA regulation as it covers any restaurant that has 20 or more locations nationally, and the MA regulation applies only to those that have 20 or more in-state locations. The federal law also creates a reasonableness standard and gives liability protection. Thankfully, for uniformity purposes, the federal law preempts all state and local laws in requiring menu labeling.

Initially there was some confusion as to whether or not the pre-emption would be effective prior to the FDA-issuing regulations. The law specifically states that pre-emption is upon enactment, however, there was a discussion as to whether or not the Massachusetts regulation could go into effect in November and stay in effect until the federal Food and Drug Administration (FDA) issues their regulations which could take some time.

The Department of Public Health announced at the PHC meeting on June 9th that they intend to officially

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rescind the regulation. Without two separate rules to comply with, restaurants will now have one clear standard to follow once the FDA issues regulations. RAM maintained the position during the comments period for the MA regulation that one uniform national standard is the only way to fairly regulate menu labeling. The MA regulation put businesses in the Commonwealth at a disadvantage to their competitors in other states, and we are relieved that DPH is officially rescinding their regulation.

FOOD ALLERGEN DECISION

The food allergen regulation was also discussed at the PHC meeting on June 9th. The final regulation passed with a unanimous vote. DPH will not be releasing the final regulation until it is officially registered with the Secre-

tary of State. However, DPH gave a presentation at the PHC meeting outlining the key provisions of the regulation. The final regulation requires restaurants to put up a poster regarding allergens in their staff area by October 1st. This poster will be available for free on the DPH website. Restaurants, and other prepared food sellers, will also have to place a notice on menus and menu boards telling customers to inform their server if anyone in their party has a food allergy. If a restaurant chooses to do so, they can place that statement at the point of sale rather than on their menu board. Food Protection Managers will have to be certified in allergy awareness training by February 1st. In order to become certified they must watch a 30 minute training video. The certificate is good for five years. RAM will post the final regulation on our website as soon as it becomes available.

With two major restaurant issues finally resolved, we are hopeful that businesses can now move forward with a clearer understanding of the new mandates and return their focus back to their customers. ■

Jon Hurst is president of the Retailers Association of Massachusetts (RAM). As the chief executive officer of the 2,000 member statewide trade association, Hurst manages the staff, business affairs, member services, public affairs and governmental affairs of the organization. He also serves as chairman of the board of directors of the Massachusetts Retail Merchants Workers Compensation Group, Inc., a self insurance group organized by RAM in 1991.

AROUND THE NATION

CALIFORNIA: PILOT PROGRAM TO MAKE DUI OFFENDERS TAKE BREATH TESTS BEFORE DRIVING

Motorists convicted of drunk driving will have to test their breath for alcohol before they start their vehicles under a pilot program set to begin this month in Los Angeles and three other California counties. DUI offenders convicted after July 1st will be required to install an ignition-interlock device that will prevent vehicles from starting if traces of alcohol are detected after drivers blow into a tube connected to the machine. The program also goes into effect in Alameda, Sacramento and Tulare counties, and runs through 2016. Under the program, a blood-alcohol concentration of 0.03 or less will be required to start the car. The legal limit in California is 0.08. The breath test would create additional monitoring of DUI offenders at no cost to taxpayers claim bill sponsors and that the estimated cost to drivers would be \$75 to install the device and about \$50 a month to monitor their activity. Low-income offenders would pay less; first-time offenders would have to use the device for five months. A second offense would require the driver to use the device for a year.

AROUND THE STATE

CASINO LEGISLATION IS NOT A DONE DEAL

Several influential people on Beacon Hill have indicated that expanded gaming legislation is not necessarily a foregone conclusion. The House overwhelmingly approved a bill in April to legalize two casinos and slot parlors at racetracks, but it is unclear what the Senate will endorse. Senate leaders are currently meeting behind the scenes to compose a gaming bill for future debate. Differences between the two versions from the House and

Senate are inevitable, meaning that a conference committee will be necessary to reconcile a final report by the end of session, which is July 31st. Restaurant industry supporters should urge senators to ensure casinos follow the "Happy Hour Law" and the same restrictions that restaurants must adhere to in terms of the service of alcohol. The House version provided for a new category of liquor license for casinos allowing service of complimentary alcoholic beverages.

FOOD ALLERGY RESTAURANT REQUIREMENTS EFFECTIVE OCTOBER 1ST

After several months of delays the Department of Public Health has adopted the following food allergy regulations:

Poster: All restaurants will be required to display an educational poster in their employee work area by October 1st. Restaurants that do not currently have a food allergy poster are encouraged to download a copy from the Food Allergy and Anaphylaxis Network (FAAN) website: www.food-allergy.org/page/restaurant-poster

Menu Notice: All restaurants, including those with menus and menu boards, will be required to include the following statement on all menus by October 1st:

Before placing your order, please inform your server if anyone in your party has a food allergy.

All restaurants must also include the statement on all other printed materials such as take-out menus, websites and catering menus.

Training Video: Restaurant managers and persons-in-charge (PICs) will be required to receive a food allergy certification every five years. In order to receive their certificate, participants will watch a 30-minute online training video that has been developed by FAAN. The Department

of Public Health will contract up to five vendors who will host the video online. Participants will register on a website, pay a \$10 fee, view the video and print out their certificate themselves. The online training program is expected to be operable by September or October and all PIC's will have until February 1st, 2011 to receive their certification. At that point, health agents will check for the food allergy certificate as part of their regular inspections, just as they currently check for ServSafe certification. Companies that already have designed their own food allergy training programs will not be able to apply for a waiver from the above requirements; they will still have to complete the following components as a supplement to their existing practices.

More detailed information including the official regulations and FAQ's are posted online at the DPH Food Protection Program website: www.mass.gov/dph/fpp

"MEDFORD CARDS 100%" PROGRAM IN EFFECT

A local ordinance requiring all purchasers of alcohol to be carded – regardless of age – took many Medford residents by surprise, but advocates for preventing underage drinking say the rule has been received positively by many retailers and restaurateurs. The Medford Health Department and Medford License Commission held a forum recently for local liquor stores and restaurant owners to explain the ordinance, which requires customers to produce state-issued identification in order to purchase alcoholic beverages. Alcohol sales to minors continue to be a concern in Medford. Reports indicate that in the past year's compliance checks, 10 out of the 34 Medford restaurants and liquor stores examined sold alcohol to minors as young as 15 years old.