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Restaurant Association of Maryland Position Statement on Montgomery County Menu Labeling Legislation

(Columbia, Maryland) The Restaurant Association of Maryland issued the following statement today regarding Montgomery County's proposed menu labeling legislation.

"As an industry, we support disclosing nutrition information at chain restaurants. Our customers ask for it and we want to provide it. In fact, many chain restaurants already provide such information through product packaging, brochures, posters, kiosks and other formats available at the point of sale.

"We believe that menu labeling laws and regulations are best handled at the federal level. For this reason, we oppose all state and local menu labeling proposals and will focus our efforts on passing federal legislation. Menu labeling language is currently moving through Congress as part of healthcare reform legislation.

"It is difficult for chain restaurants to comply with a growing patchwork of state and local menu labeling regulations. There is already a precedent for a federal approach to nutrition labeling for packaged foods. Imagine the logistical nightmare for food manufacturers if state and local jurisdictions had different regulations for packaged food labels. Chain restaurants and their customers deserve the same nationwide uniformity.

"We strongly support bi-partisan, federal legislation that reflects a negotiated compromise between representatives from both sides of this debate. The National Restaurant Association (NRA) and the Center for Science in the Public Interest (CSPI) worked hard to reach a compromise that, if passed, would require restaurant chains with 20 or more locations nationwide (regardless of ownership) to display total calories next to each item on a menu board or printed menu. Additional nutrition information must be made available to customers upon request. Grocery stores, convenience stores, movie theaters, vending machine operators and other chain foodservice providers would also be required to comply. The federal legislation also allows appropriate time for drafting enforcement regulations and soliciting public/industry comment before all provisions of the legislation take full effect.

"We are pleased that this menu labeling language was included in the recently-passed House version of healthcare reform legislation (H.R. 3962). This language will be included in the Senate version of healthcare reform legislation as well.

"The Restaurant Association of Maryland strongly supports this compromise because it will allow chain restaurants to provide nutrition information to customers while ensuring nationwide uniformity, liability protection and flexibility in how additional nutrition information is provided. Another key part of the compromise is that it protects small businesses with fewer than 20 locations by allowing them to voluntarily comply with federal labeling rules, which means that they cannot be forced to comply with inconsistent state and local regulations that apply to restaurants with fewer than 20 locations. Ultimately, federal menu labeling law would pre-empt all existing and new state or local labeling regulations for restaurants with 20 or more locations, and for restaurants with fewer than 20 locations that wish to voluntarily comply with federal law. This pre-emption becomes effective immediately upon enactment of the law.

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“Considering that successful federal legislation would require the Secretary of Health and Human Services to promulgate regulations, it is impossible for the Montgomery County Council to craft legislation that mirrors federal rules that have yet to be created. The federal legislation defers to the Secretary to develop regulations regarding menu statements concerning suggested daily caloric intake, standards for disclosing nutrient content for menu items that come in different flavors, varieties or combinations, and disclosure of additional nutrients beyond those covered in the law.

“According to Behavioral Risk Factor Surveillance Survey data (the most recognized and respected source for nationwide obesity statistics), Montgomery County has the lowest obesity rate statewide. With an obesity rate of only 16 percent, Montgomery County rates lower than the state of Colorado (17 percent), which is the slimmest state in the nation. We see no compelling reason why Montgomery County needs to rush to pass this legislation before the federal legislation moves through Congress.

“Despite the optimistic predictions of Washington insiders, the effects of the recession are far from over. Many businesses in our industry have yet to see their customer traffic or check averages return to pre-recession levels. Those businesses that have managed to keep their doors open have done so by reducing costs and finding new ways to attract customers.

“According to data from the Maryland Comptroller, January through August restaurant sales in Montgomery County are down by \$11 million, or -1.1 percent, over the same period in the previous year. Normally, year over year sales increases average about 8 percent. Because most chain restaurants are owned by individual franchisees, these small business owners are responsible for all operating costs. The additional costs of nutritional analysis, designing and printing new menu boards and menus would be an unnecessary burden on individual franchisees before federal legislation takes effect.

“According to the results of recent studies, New York City’s menu labeling law has had mixed success. In one study, customers in poorer neighborhoods, where obesity rates are typically higher, actually consumed more calories than they consumed before the law took effect. In another citywide study, customers consumed just 106 fewer calories, on average. When asked about the dismal impact of the law on customer eating habits, a spokesperson for the New York City Department of Health told The New York Times, ‘dietary changes come slowly’ and ‘we were not expecting to see miracles.’ It is highly unlikely that customer eating habits in Montgomery County would change any faster. Consequently, there is no reason to pass such legislation in Montgomery County before the federal legislation moves through Congress. “

For your information, a summary of the federal menu labeling compromise is attached.

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The Restaurant Association of Maryland (RAM) has remained relevant to restaurateurs for over 80 years by maintaining core principles born out of the first national financial crisis. In 1927 a small group of Baltimore area restaurateurs met to deal with some of the challenges facing the economy and the Foodservice Industry. Today, RAM is a 2,000 member strong statewide trade association operated for the purpose of promoting, protecting and improving the foodservice industry in the State of Maryland. Since the very beginning, the Association has been run by restaurateurs and suppliers working not only for the benefit of dues paying members, but also for the restaurant industry as a whole. For more information about the restaurant industry in Maryland please visit our website at www.marylandrestaurants.com.

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PROPOSED FEDERAL MENU LABELING LAW

Requirements -

- Establishments in a chain of 20 or more locations under the same trade name
- Standard menu items offered for sale at least 60 days per calendar year
 - Does not include (e.g., condiments), daily specials, custom orders, and customary test marketing (i.e., on the menu less than 90 days).
- On menu, menu board or drive thru board:
 - Number of calories per standard menu item;
 - Succinct statement concerning suggested daily caloric intake; and
 - Referral statement regarding the availability of additional nutrition information.
- Additional written information available upon request includes –
 - Calories, calories from fat, total fat, saturated fat, cholesterol, sodium, carbohydrates, sugars, dietary fiber and protein. Also, FDA is expected to require trans fat.
- Implementation deadline to be set by regulations, probably 20 to 30 months from enactment

Voluntary Menu Labeling -

- Available to non-chain restaurants, as well as chain restaurants before mandatory program becomes effective
- Register with FDA and meet the mandatory program requirements
- Provides the same uniformity protection as the mandatory menu labeling program

Protections -

- Nutrition information determined by “reasonable basis” (e.g., nutrient databases, cookbooks, laboratory analyses, or other reasonable means).
- Regulations must consider “reasonable variation” in serving size and formulation of menu items
- National uniformity for nutrient content disclosures of the type chain restaurants would be required to provide:
 - Preempts all State and local menu labeling requirements in effect today
 - Protection from frivolous litigation over accuracy of nutrient content disclosures

Below is an overview of the negotiated agreement, including how key provisions compare to the LEAN Act (supported by the NRA) and the MEAL Act (supported by CSPI, opposed by the NRA):

National Uniformity

- **LEAN Act:** Would achieve a national, uniform standard by barring state and local governments from adopting any nutrition labeling requirements different from the federal requirements. This uniformity provision is based on the uniformity standards provided for packaged foods under the Nutrition Labeling and Education Act of 1990 (NLEA).
- **MEAL Act (opposed by NRA):** The industry-opposed MEAL Act offers no national uniformity standard. It would instead set a federal “floor” of nutrition-disclosure requirements and allow state and local governments to add additional requirements.
- **NEGOTIATED AGREEMENT:** The agreement follows the LEAN Act in that it provides uniformity for nutrition labeling in restaurants similar to that provided for packaged foods under the NLEA. It would bar state and local requirements for nutrition labeling of the type required under the negotiated agreement.

Liability Protection

- **LEAN Act:** Restaurants could use a “reasonable basis” to determine nutrition disclosure information. Reasonable basis would include the use of nutrient databases, cookbook analysis, laboratory analysis as well as additional means determined by the Food and Drug Administration.
- **MEAL Act:** Restaurants would be required to obtain a nutrient analysis, which could be interpreted to require a chemical analysis of menu items.
- **NEGOTIATED AGREEMENT:** Mirrors the language in the NRA-supported LEAN Act. This provision provides a defense against frivolous lawsuits on nutrient disclosure.

Small Business Protection

- **LEAN Act:** Independent restaurants and chains with fewer than 20 units under the same brand would be exempt from the requirements to disclose nutrition information. The LEAN Act would bar state and local nutrition labeling requirements for non-chain restaurants.
- **MEAL Act:** Independent restaurants and chains with fewer than 20 units under the same brand would be exempt from the requirements to disclose nutrition information. The measure would provide no incentive or protection for small business to voluntarily participate in the federal program.
- **NEGOTIATED AGREEMENT:** Would exempt restaurants with fewer than 20 units under the same brand from mandatory menu labeling and provides federal preemption of any state or local requirements that would otherwise apply to non-chain restaurants that voluntarily participate in the federal program.

Flexibility

- **LEAN Act:** Covered restaurants would be provided some degree of flexibility on how they disclose calories. Calorie disclosure could be on the menu/menu board, on a sign, on a separate insert in a menu, or a separate appendix to the menu. Additionally, restaurants would be required to make available upon request additional nutrition data in writing.
- **MEAL Act:** Covered restaurants MUST list calories, saturated fat plus trans fat, sodium and carbohydrates on the menu; no other means of disclosure are available. Calorie counts must be on the menu board.
- **NEGOTIATED AGREEMENT:** In the negotiated agreement, only calories must be listed on the menu/menu board for covered restaurants. Consistent with the LEAN Act, covered operations would be required to make additional nutrition information (e.g., fat, carbohydrates, sodium) available upon request. The calories-on-the-menu provision was a top priority for Sen. Harkin and critical to obtaining agreement on national uniformity, liability protection and small business protection.