



WASHINGTON REPORT

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Well, it is that time of the year here in Washington, D.C. The summer Congressional recess and these hot, muggy days lead to a mass exodus from the Capital with meaningful activity postponed until fall. President Obama and his family are vacationing at Martha's Vineyard and Congressmen have hurried back to their states and districts to try and persuade the electorate to vote for them in November.

It truly is a ghost town. But that does not mean that there are not important things going on. Even with Congress and the President gone, important government stuff happens. That is why I maintain an office in Bethesda, Md. From there, I can keep an eye on all those invisible federal agencies that call this area home, including the National Institutes of Health (NIH) and the Food and Drug Administration (FDA). From these agencies pour reams of information every day that impact the practices of physicians and the health of their patients.

And that includes pounds of new regulations that were buried in the massive new health care legislation signed into law in March by President Obama that affect all Americans. Case in point is the new federal menu labeling rules mandated in the new law for restaurants, other food establishments and vending machines. The FDA just this week issued a draft rule outlining the requirements.

The impact of the new requirements hit me as I walked into my local Starbucks to get a cold Caramel Frappuccino. There on the menu board was the calorie contents of each drink. Needless to say, I took my time and pondered my options as an enlightened consumer.

The new nutrition disclosure provisions must be followed by chain restaurants and similar retail food establishments with 20 or more locations. The regulations also apply to vending machine owners with 20 or more locations. The rules state all standard menu items offered for sale at least 60 days per calendar year must follow the guidelines. Not covered are alcoholic beverages, daily specials, custom orders and items on the menu less than 90 days.

Required to be on the menu board or drive thru board are:

- Number of calories per standard menu item.
- Succinct statement concerning suggested daily caloric intake.
- 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.

The new standards in the law were supported by the National Restaurant Association and more than 77 health and consumer groups, including the American Heart Association and American Dietetic Association. Restaurant chains generally were supportive of the changes because the new federal law preempts the differing laws emerging in states across the country.

They also were supportive because the federal law contains language that establishes a "reasonable basis" standard for operators to use in developing nutrient-content data for standard menu items. The standard helps

protect restaurants from unreasonable litigation because it recognizes the variability that occurs in the preparation and service of food in restaurants. Through the reasonable-basis standard, the law gives restaurant owners flexibility by allowing them to base their calculations of nutrition data on any reasonable basis, including through nutrient databases, cookbooks and laboratory analyses.

There is an advantage for food establishments and restaurants that are not covered under the federal law because they have less than 20 locations to voluntarily comply. If they do so, under the federal law, they are shielded from other state and local requirements that are not identical to the federal legislation.

FDA will not enforce the new law until it completes a process that includes receiving comments from the public and restaurant industry. A final rule must be in place by March 2011 but much more refinement and thought will be necessary. For instance, the new law permits the FDA to add additional nutrients if the agency decides it would help consumers maintain healthful diets. Consequently, FDA is expected to require covered restaurants to include trans-fat data at some point.

Furthermore, the law directs the agency to look at all the factors that could cause variations in restaurant nutrient content. Factors FDA must consider in determining restaurant compliance include:

- Reasonable variation in serving size and formulation of menu items
- Standardization of recipes and preparation methods
- Inadvertent human error
- Employee training
- Ingredient variations

So what we have here is a work in progress with the goal to help the consumer make good choices.

Oh, by the way, back to that Caramel Frappuccino. After close scrutiny, and a serious bout of guilt, I gave up on my first choice—a venti-size at 490 calories—and traded down to a light tall version at 130 calories!

The Physicians Foundation is pleased to share the **Washington Report**, written by long-time friend to physicians, Lee Stillwell. Earlier this year, the Foundation engaged Mr. Stillwell to monitor and provide regular updates to the Foundation's board on the healthcare reform debates in Washington DC.

Lee Stillwell is founder and CEO of [The Stillwell Group](#), a full-service global public affairs company with a strong life sciences practice. Lee worked on both sides of the aisle in the U.S. Senate as a key aide first for an eastern Democrat and later in his career for a western Republican. For more than 18 years, Lee was the chief advocate for the American Medical Association (AMA). As senior vice president of the AMA Advocacy Group, he managed a staff of more than 120 employees in Chicago and Washington, D.C.

The information contained in the Washington Report is provided by Lee Stillwell of The Stillwell Group and is not intended to reflect the views or position of The Physicians Foundation or its board members. For more information about The Physicians Foundation, please visit our website: www.physiciansfoundation.org