

Menu Labelling Protocol, 2020

Ministry of Health
Effective: January 1, 2018
March 2020

Preamble

The Ontario Public Health Standards: Requirements for Programs, Services, and Accountability (Standards) are published by the Minister of Health under the authority of section 7 of the *Health Protection and Promotion Act* (HPPA) to specify the mandatory health programs and services provided by boards of health.^{1,2} The Standards identify the minimum expectations for public health programs and services. Boards of health are accountable for implementing the Standards including the protocols and guidelines that are referenced in the Standards. Protocols are program and topic-specific documents incorporated into the Standards which provide direction on how boards of health shall operationalize specific requirement(s) identified in the Standards.

Purpose

The purpose of this protocol is to provide direction to boards of health to support the enforcement of the *Healthy Menu Choices Act, 2015* and its Regulation 50/16 (HMCA) including requirements with respect to:

- 1) The display of calorie information for standard food items that are sold or offered for sale (as those standard food items are defined in the HMCA) on menus and tags/labels at the regulated food service premises and on menus that are distributed outside the premises; and
- 2) The display of:
 - a) The contextual statement regarding average daily caloric requirements on signs and menus;
 - b) Calorie information on signs where food and drink items are self-serve; and
 - c) Calorie information for alcoholic beverages on signs and menus.^{3,4}

Regulations which are relevant to this protocol include Ontario Regulation 50/16 (General) made under the HMCA.⁴

Reference to the Standards

This section identifies the standard and requirement to which this protocol relates.

Chronic Disease Prevention and Well-Being

Requirement 4. The board of health shall enforce the *Healthy Menu Choices Act, 2015*, in accordance with the *Menu Labelling Protocol, 2018* (or as current).

Operational Roles and Responsibilities

Inspection

All regulated food service premises to which the HMCA applies are subject to an inspection by Minister of Health (Minister)-appointed inspectors (“inspector(s)”) under the HMCA. Boards of health shall enforce the HMCA at all regulated food service premises, including, but not limited to: grocery stores, movie theatres, restaurants, cafeterias, quick service restaurants, and convenience stores with 20 or more locations in Ontario.³

- 1) The board of health shall:
 - a) Have inspectors conduct an inspection for each existing regulated food service premises within the public health unit by the end of 2017. If the inspection of the regulated food service premises reveals compliance concerns with the HMCA, additional compliance re-inspections must be undertaken until such time as the inspector is satisfied that the premises is in full compliance with the HMCA. All re-inspections shall be conducted as necessary within a timeframe not to exceed one year, to address compliance concerns that were identified during the initial inspection. If the regulated food service premises remains non-compliant after re-inspection, charges should be considered as appropriate under the *Provincial Offences Act*.⁵
 - b) Have inspectors conduct an inspection for each new regulated food service premises within one year of opening. If the inspection reveals compliance concerns with the HMCA, additional compliance re-inspections must be undertaken until such time as the inspector is satisfied that the premises is in full compliance with the HMCA. All re-inspections shall be conducted as necessary within a timeframe not to exceed one year, to address compliance concerns that were identified during the initial inspection. If the regulated food service premises remains non-compliant after re-inspection, charges should be considered as appropriate under the *Provincial Offences Act*.⁵
 - c) Once the criteria in paragraphs (a) or (b) are satisfied and the regulated food service premises is in compliance with the HMCA, have inspectors respond within 10 business days to all complaints in relation to the HMCA and take appropriate action to ensure that compliance is achieved.
 - d) If requirements of the HMCA change and should the Ministry of Health (“ministry”) instruct boards of health to do so, have inspectors conduct inspections as required to ensure compliance with the requirements of the HMCA that have changed.

Enforcement with respect to online menus, menu applications, and menus that are distributed outside the regulated food service premises shall be complaints driven.

- 2) The board of health shall, with respect to online menus, menu applications, and menus distributed outside the regulated food service premises, respond to all

complaints within a reasonable timeframe, not to exceed one year, and take appropriate action until compliance is achieved or consider charges under the *Provincial Offences Act* if it is not possible to achieve compliance.⁵

Information to be Displayed

- 3) As part of each inspection, the board of health shall:
 - a) Inspect for compliance with the requirements to display calorie information and the contextual statement on menus and, in respect of calorie information, on labels or tags; and
 - b) Inspect for compliance with the requirements to post calorie information on signs.

The requirements with respect to information to be displayed on menus, labels, or tags are set out in section 2 of the Act, and further specified in s. 6 and 7 of the regulation in respect of calorie information and section 9 in respect of the contextual statement.^{3,4}

The requirements in respect of information to be displayed on signs are set out in subsection 2(6) of the Act and further specified in s. 8 of the regulation in respect of calorie information.^{3,4}

Inspection and Enforcement Activity

For the purposes of inspection of the HMCA, the board of health shall adhere to the following enforcement requirements:

- 4) The board of health shall employ an effective compliance strategy which includes a balance of education, inspection, and progressive enforcement. “Progressive enforcement” means the use of more stringent enforcement options to reflect the frequency and severity of the level of non-compliance.

Compliance monitoring and enforcement activities include education visits, inspections, inquiries into complaints, issuing warnings, and laying charges under the HMCA.

- 5) The board of health shall inspect all the chains of regulated food service premises (“chains”), as specified in the ministry’s annual “List of Chains of Food Service Premises to Which the HMCA May Apply” (“List”), that have locations in their jurisdiction, and inform the ministry of any considerations that would impact the determination of whether a chain is captured under the HMCA.⁶ The decision to remove a chain from the List is solely that of the ministry.
- 6) In responding to inquiries from regulated food service premises regarding implementation of the HMCA, the board of health shall consider engaging colleagues in other boards of health prior to responding to the inquiry in order to increase consistency in implementation across jurisdictions.
- 7) In cases where an initial inspection at a regulated food service premises demonstrates that there are no standard food items being sold or offered for sale, the board of health shall re-inspect the regulated food service premises if they

become aware (either through a complaint, ministry notification, or by some other notification process or inspection) that the premises may now be selling standard food items.

- 8) When an owner or operator of a regulated food service premises has provided calorie information, but an inspector has indicated that additional changes are required to a menu in order to comply with the HMCA, the board of health shall provide the owner or operator with a timeframe to apply changes by the premises' next menu print run, ideally not to exceed a 6 month timeframe, but recognizing that there may be instances where a longer timeframe, may, be reasonable.
- 9) When conducting inspections of regulated food service premises that are grocery stores, the board of health shall limit inspections to the food service section(s) of the store (for example, clerk served hot food counter, clerk served café, self-serve salad bar). The sections that meet the definition of traditional section(s) of the grocery store (for example, produce section, prepackaged food aisles) shall not be inspected, and are not in scope for the purposes of inspections under the HMCA.
“traditional section(s)” is generally understood to mean a section of the grocery store outside the food service section(s) where the food and drink items that are sold or offered for sale are primarily unprepared items, and can include, but may not be limited to, sections selling primarily:
 - a) Unprepared fresh produce;
 - b) Household products;
 - c) Frozen foods;
 - d) Unprepared fish or meat items;
 - e) Bulk nuts or bulk spices;
 - f) Unprepared deli meats or cheeses;
 - g) Baked goods usually sold in bulk or in multi-packs; and
 - h) Prepackaged items that already have a Nutrition Facts table as per the definition of the *Food and Drug Regulations* made under the *Food and Drugs Act* (Canada).
- 10) The board of health shall limit inspections within hotels to the following types of premises:
 - a) Food service premises that operate inside the hotel and are part of a chain of 20 or more food service premises in Ontario operating under the same or substantially the same name; and
 - b) Cafeteria-style food service premises that sell food to the general public and that are owned or operated by a person that owns or operates 20 or more cafeteria-style food service premises in Ontario.

Room service run by the hotel or under the hotel name shall not be inspected and is not in scope for the purposes of inspection. Similarly, items that are provided for free (e.g. free breakfast with the room booking or free coffee) are not considered to be standard food items.

Data Collection and Reporting

- 11) The board of health shall maintain an up-to-date inventory of all food service premises, which includes:
 - a) Name of the food service premises;
 - b) Name of owner/operator;
 - c) Premises address; and
 - d) Premises type.
- 12) The board of health shall provide to the ministry annually the inventory of all food service premises in an Excel format. The ministry will collate the data and share the List of Chains of Food Service Premises to Which the HMCA May Apply with boards of health for each calendar year.⁶
- 13) The board of health shall collect and maintain up-to-date inspection and enforcement data, which should be recorded after each visit and provided to the ministry upon request. Inspection and enforcement data means a record of every enforcement activity conducted for the purpose of determining compliance with HMCA, including:
 - a) Education visits;
 - b) Inspections;
 - c) Warnings issued; and
 - d) Charges laid.³

Authority of an Inspector

The Minister of Health appoints inspectors for the purposes of HMCA (s.3 (1) of the Act).³ Medical officers of health have discretion to select and nominate staff to be designated as inspectors under the HMCA (e.g., public health inspectors, public health nurses, dietitians, etc.).³ Nominated inspectors must be trained according to the requirements established in the *Menu Labelling Protocol, 2018* (or as current) by the time of their appointments.

An inspector may, during regular business hours, enter a regulated food service premises or business premises of a company that owns, operates, franchises or licenses one or more regulated food service premises to determine whether the owner or operator is in compliance with the HMCA, and for this purpose, may conduct an inspection in accordance with section 3(7) of the HMCA.³

Any person who contravenes any provision of the HMCA or its regulations, including those who hinder, obstruct or otherwise interfere with an inspector in the conduct of

* Note that the ministry does not consider students for designation as inspectors under the HMCA. However, the value of this learning experience is recognized. Students are encouraged to accompany designated inspectors during enforcement of the HMCA, if they wish to do so.

his/her duties is guilty of an offence. Warnings or tickets can be issued where an inspector finds a violation of the HMCA or its regulations.³

For a comprehensive list of inspector authority and powers refer to Section 3 of the HMCA.³

Education and Training

- 14) The board of health shall ensure that the inspectors designated under the HMCA are trained in accordance with ministry-sanctioned training and have reviewed up-to-date implementation materials prior to conducting inspection and/or enforcement activities. Ministry-developed implementation materials include:
- a) “A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario” (2019, or as current);⁷
 - b) All sector-specific fact sheets;⁸
 - c) All Questions and Answers documents; and
 - d) Any other ministry-developed training and/or implementation materials that the ministry may specify from time to time in writing.

Glossary

Chain of Food Service Premises: means 20 or more food service premises in Ontario that operate under the same or substantially the same name, regardless of ownership, and that offer the same or substantially the same standard food items.

Inspection: means an inspection conducted by a person appointed as an inspector pursuant to section 3 of the HMCA.

Inspector: means a person appointed as an inspector by the Minister of Health pursuant to section 3 of the HMCA.

Progressive Enforcement: means the use of more stringent enforcement options to reflect the frequency and severity of the level of non-compliance.

Regulated Food Service Premises: means

- 1) A food service premises that is part of a chain of food service premises, and
- 2) Any other food service premises that may be provided for in the HCMA regulations.

References

1. Ontario. Ministry of Health. Ontario public health standards: requirements for programs, services, and accountability, 2018. Toronto, ON: Queen's Printer for Ontario; 2018. Available from: URL address.
2. *Health Protection and Promotion Act*, RSO 1990, c H.7. Available from: <https://www.ontario.ca/laws/statute/90h07>

3. *Healthy Menu Choices Act*, SO 2015, c 7, Sched. 1. Available from: <https://www.ontario.ca/laws/statute/15h07>
4. O Reg, 50/16 (General). Available from: <https://www.ontario.ca/laws/regulation/160050>
5. *Provincial Offences Act*, RSO 1990, c P.33. Available from: <https://www.ontario.ca/laws/statute/90p33>
6. Ontario. Ministry of Health. List of Chains of Food Service Premises to Which the HMCA May Apply. Available upon request.
7. A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario, 2016. Available from: <https://www.ontario.ca/document/guide-menu-labelling-requirements>
8. Sector-specific fact sheets: Application of the Act to Advertisements and Promotional Flyers; Application of the Act in Cafeteria-Style Food Service Premises; Application of the Act in Convenience Stores; Application of the Act in Grocery Stores in Movie Theatres; Application of the Act in Quick Service Restaurants; Application of the Act in Restaurants; Application of the Act for Self-Serve Items; and any other applicable fact sheet. Available from: <https://www.ontario.ca/page/calories-menus-information-businesses>

ISBN 978-1-4868-0759-8 PDF Queen's Printer of Ontario