

LICENSE DIETITIANS AND NUTRITIONISTS

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Senate Bill 403 (Substitute H-2)

Sponsor: Sen. Laura M. Toy

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (6-28-06)

BRIEF SUMMARY: The bill would establish a licensure framework for dietitians and nutritionists, establish minimum educational standards, set license fees, describe a scope of practice, and create the Michigan Board of Dietetics and Nutrition.

FISCAL IMPACT: The bill will create state costs to develop and administer the licensing, regulation, and complaint review related to the licensure of the profession of dietitian and nutritionist, and to support a state licensing board. This may require one or more additional Department of Community Health staff. See *Fiscal Information* below for more details.

THE APPARENT PROBLEM:

Michigan is one of the few states that does not regulate the profession of dietetics and nutrition; forty-four states either license, register, or certify dietitians and nutritionists. Dietitians provide nutritional counseling and medical nutrition therapy to individuals with a variety of medical conditions such as diabetes, kidney disease, and obesity. Dietitians work in hospitals, nursing homes, and other health care facilities. Many physician practices employ dietitians to provide nutritional counseling to their patients, especially in the area of prenatal nutrition and managing diabetes through diet and exercise. Dietitians play an important role on a health care team by helping patients manage serious and chronic diseases and by monitoring the special dietary needs of those recovering from surgery, cancer treatments, strokes, or of patients on feeding tubes.

When dietitians are part of a patient's health care team, research has shown overall health care costs per patient are reduced. Data has shown that in those hospitals, nursing homes, clinics, and physician practices that nutritional counseling provided by qualified dietitians speeds recovery, prevents secondary problems, and improves the patient's quality and length of life. In 2000, Congress approved medical nutrition therapy for kidney and diabetes patients provided by dietitians and nutritionists as a covered benefit under Medicare.

Many believe, however, that lack of statutory regulation over the profession of dietetics and nutrition endangers the public health and well-being. Currently, anyone can legally call himself or herself a nutritionist and offer advice on diets and food supplements. Documentation supports the contention that inappropriate advice can lead to drug/supplement interactions, the improper management of feeding tubes (which can

cause pneumonia and death), imbalances in minerals and vitamins that can exacerbate an existing disease condition, and increased hospitalizations. Licensure would identify those individuals who have obtained the education and training necessary to provide appropriate nutritional information, thus alleviating consumer confusion when seeking services from a qualified professional. It would also provide oversight of the profession and give state regulators a way to sanction or remove unqualified practitioners.

In an attempt to address the concerns raised, legislation has been proposed to create a system of licensure that would establish minimum education and competency standards for dietitians and nutritionists and restrict use of the title “Registered Dietitian and Nutritionist” to those individuals licensed by the state.

THE CONTENT OF THE BILL:

The bill would amend Article 15 of the Public Health Code to create Part 183A, entitled “Dietetics and Nutrition.” establish a licensure framework for dietitians and nutritionists, set license fees, describe a scope of practice, and create the Michigan Board of Dietetics and Nutrition. A person would be prohibited from using certain titles unless licensed under the bill. The bill would take effect July 1, 2007.

License fees. The annual license fee would be \$75. There also would be an application processing fee of \$20 and a temporary license fee of \$75 per year.

Definitions and scope of practice. “Dietitian” and “nutritionist” would be defined as a person engaged in the practice of dietetics and nutrition, who was responsible for providing dietetics and nutrition care services, and who was licensed under the bill as a dietitian or nutritionist.

The bill would specify that “dietitian” and “nutritionist” would not include an individual who provided weight control services under a program approved by a dietitian or nutritionist licensed or registered under the health code or licensed by another state. The term would also not include a person who furnished general information on foods, food products, or dietary supplements – or provided explanations to individuals about foods or food products in connection with the marketing or distribution of those products – as long as he or she did not hold himself or herself out as a nutritionist or dietitian.

“Dietetics and nutrition care services” would mean the integration and application of the scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences to achieve and maintain the health of individuals. The “practice of dietetics and nutrition care services” would include, but not be limited to, the following:

- Assessing the nutrition needs of an individual or group, determining the resources and constraints of meeting those needs, and recommending proper nutrition intake to satisfy those needs.

- Establishing priorities, goals, and objectives to meet the nutrition needs of the individual or group based on available resources and constraints.
- Providing nutrition counseling regarding health and disease.
- Developing, implementing, and managing a nutrition care system.
- Evaluating, adjusting, and maintaining a standard of quality in dietetics and nutrition care services.
- Providing medical nutrition therapy.

Board of Dietetics and Nutrition. The Michigan Board of Dietetics and Nutrition would be created in the Department of Community Health. Membership would consist of seven members -- two representing the general public and five who were licensed dietitians or nutritionists as specified in the bill. Upon recommendation of the board, the director of the DCH would have to promulgate rules that would include establishing ethics, qualifications, and fitness of license applicants; a complaint process; penalties for violations of Article 15; and license requirements. Until rules were adopted, the department would have to utilize the standards contained in the clinical practice guidelines issued by the American Dietetic Association in effect on July 1, 2007, adopted by reference, as interim standards.

License requirements. A person could not engage in the practice of dietetics and nutrition, or provide or offer to provide dietetics and nutrition care services unless licensed under the bill.

At a minimum, license requirements would include having a baccalaureate degree from a department-approved college or university with a major course of study in human nutrition, nutrition education, foods and nutrition, dietetics, food systems management, or a department-approved equivalent course of study; at least 900 hours of supervised postcollege or planned continuous preprofessional experience as prescribed by rule; and passing a department-approved exam.

However, the bill would not prohibit an individual licensed under the health code or other act from performing activities or services considered dietetics and nutrition care services if those activities or services were within the individual's scope of practice and if the individual did not use the titles restricted to licensed dietitians and nutritionists.

Grandfather clause. The department would have to issue a license as a dietitian or nutritionist to an individual who was currently registered as a dietitian by the Commission on Dietetic Registration and who fulfilled the standards of the commission. Application for licensure would have to be made by July 1, 2007.

Temporary license. A temporary license could be issued to a person who did not meet all of the requirements for licensure if the applicant applied for a temporary license within one year after July 1, 2007; paid the applicable fee; and provided evidence of being registered with the Commission on Dietetic Registration or met the educational requirements for licensure and had completed the 900 hours of postcollege or

preprofessional experience and been employed as a dietitian or nutritionist for at least three of the previous ten years.

A temporary license would expire within the same time period as a nontemporary license and could be renewed; however, a person could not hold a temporary license for more than two years. Further, a person with a temporary license would be subject to the same rules and regulation as a person with a regular license.

Continuing education. Subject to Section 16204 of the code, the department would have to prescribe continuing education requirements consistent with those established by the American Dietetic Association as a condition for license renewal. The department could adopt the association's continuing education requirements.

Third-party reimbursement. The bill would specify that it would not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by a licensed dietitian and nutritionist.

MCL 333.16131 et al.

FISCAL INFORMATION:

Annual licensing fees of \$75 and application processing fees of \$20 per individual are established. The intent is that the fees will fully support the state licensing system costs for this profession, but the costs and fee revenue are dependent upon the number of persons who seek licensure. Based on information from the Michigan Dietetic Association, 2,000 to 3,000 dietitians in Michigan may seek licensure if the bill is enacted. Average annual program fee revenue from 2,000 - 3,000 licensees would be approximately \$190,000 - \$285,000.

Persons will be subject to discipline under Part 161 of the Public Health Code for dietitian and nutritionist licensure violations or unlawful practice without licensure, which may include fines.

BACKGROUND INFORMATION:

The Commission on Dietetic Registration, the national credentialing body for the industry, provides a voluntary system of credentialing for dietitians who complete a bachelor's degree or higher from an accredited college with a nutrition major, completion of a preprofessional internship, a passing score on a national exam administered by the American Dietetics Association, and completion of continuing education credits.

Previous legislation. The bill is similar to legislation that was passed by both chambers in 1998 but subsequently vetoed by then Governor John Engler. The bill, House Bill 4296 introduced in the 1997-1998 legislative session, sought regulation by registration rather than licensure. (For more information, see the analysis dated 1-13-99 on House

Bill 4296 prepared by the former House Legislative Analysis Section, now the Legislative Analysis Section of the House Fiscal Agency.)

Another similar bill, House Bill 5408, was passed by the House but died on the Senate floor during the closing days of the 2003-2004 legislative session.

ARGUMENTS:

For:

The bill would require a dietitian or nutritionist to be licensed with the state. Only those individuals with the required education, supervised internship experience, and passage of an approved exam could use the titles protected by the bill. State regulation would benefit the consumer in several ways.

First, though the bill would clarify that state regulation did not mandate third-party reimbursement, placing dietitians in the Public Health Code could encourage health insurance companies and HMOs to offer services rendered by licensed dietitians and nutritionists as a covered benefit. The type of nutritional advice given by dietitians has been proven to help patients better manage many types of diseases and illnesses, especially diabetes, kidney disease, and obesity. Better management of diseases and quicker recovery after injury or illness saves health dollars by reducing hospital stays, reducing or eliminating the need for costly medications, and preventing secondary illnesses such as strokes, heart disease, and blindness that can result from a poorly managed condition.

Secondly, for those consumers who wish to secure the services of a licensed dietitian or nutritionist, the bill would provide a greater assurance that only those duly qualified to use the title L.D. would be holding themselves out as licensed dietitians or nutritionists. Thus, a consumer seeking out a licensed individual would know that the person had at least a bachelor's degree in a nutrition-related major and was staying abreast of developments in the field through continuing education classes.

Response:

All dietitians are nutritionists, but not all nutritionists are dietitians. At one time, there was only one educational track to become a dietitian/nutritionist. Over the past couple of decades, an alternative program in nutrition has grown. Known as certified clinical nutritionists (CCN), these individuals have advanced degrees in nutrition and are qualified to offer nutritional advice and counseling. However, if the newly created board adopts the examination offered by the American Dietetics Association for its credentialing program as the qualifying examination for licensure, CCNs would be disadvantaged. Reportedly, approximately one-third of the ADA exam is on non-clinical subjects (i.e., food service related topics) appropriate for individuals that intend to work in institutional settings, but which is not included in the training of CCNs, who practice in non-institutional settings. If they could not pass the exam, they could not receive licensure, even though they may be competent based on their education and training. Therefore, the bill would give sole ownership of the titles "dietitian" and "nutritionist" to some individuals but exclude others who may be just as qualified.

Rebuttal:

The bill says only that the qualifications for licensure would have to include an examination approved by the Board of Dietetics and Nutrition. The board would have discretion to choose or create an appropriate examination that would ensure only competent individuals receive licensure. It is premature to assume at this time that CCNs would be disadvantaged by the board's choice. There will be time after the bill's enactment for concerned individuals to address the board and for the board to discuss if and how individuals who have taken a different track to training are included in the licensing process.

Against:

Just because a person is not a registered dietitian or nutritionist does not mean that he or she is incompetent or is giving out nutritionally unsound advice. Naturopaths and other herbal and natural foods enthusiasts may spend an enormous amount of time researching their field. They also can provide helpful information to consumers on alternative approaches to symptom management, weight loss, and products to enhance one's overall health. The bill could be used by some to mislead consumers into thinking that only individuals registered under the bill would be qualified to offer nutritional guidance. Thus, the bill could encroach on the health food and food supplement industries, as well as weight loss clinics.

Response:

The media abounds with stories of products hawked by persons claiming to be dietitians or nutritionists, but who have no science-based training. Some people even give lectures touting the benefits of certain herbs and minerals in relation to disease management, prevention, or cure.

On the other hand, dietitians and nutritionists are trained in complementary care (which includes the use of herbs), although they do not practice herbal medicine. Since dietitians and nutritionists work in conjunction with physicians, the dietitian/nutritionist would speak to the patient's physician before recommending an herb. This is very important as some herbs are known to interact with prescription drugs.

However, in no way would the bill encroach on the health food industry or those selling food supplements. It would only prohibit such persons from claiming to be licensed dietitians and nutritionists. People would still have a choice as to whose services to seek out. State regulation of dietitians and nutritionists would further aid and protect consumers since a person could easily contact the Michigan Board of Dietetics and Nutrition to check on an individual's credentials.

Against:

There is no legitimate need to provide state regulation for dietitians and nutritionists. Members of the medical community are not crying out for this legislation, nor are consumers; some feel it is promoted primarily by members of the industry as a means to force insurance companies to offer dietetic and nutrition services as a covered benefit. Doing so would surely result in increased premiums. Also, it should be noted that the industry already regulates itself quite well by establishing education and experience

standards and an examination for national registration. Besides, it is the responsibility of a physician or health care facility hiring or contracting for services by a registered dietitian or nutritionist to verify the person's qualifications and education, not the state's. In addition, apart from proof that a threat to the public health and well-being exists, state regulation through licensing is an unnecessary intrusion by the government and typically serves only as a barrier to restrict entry into a profession.

Response:

This type of argument may be true in some cases, but not this one. Forty-four other states currently license, certify, or register dietitians and nutritionists. In at least 12 states the services performed by dietitians are reimbursed by third-party payers. In short, the majority of state legislatures have recognized that reasons do exist to regulate the profession.

The Michigan Dietetic Association has compiled numerous health histories of consumers whose health was compromised due to incorrect or inadequate nutritional advice given by nondietitians. At least one documented case exists of a feeding tube patient dying of aspiration pneumonia from a feeding tube that shifted and discharged into his lungs. Had a licensed dietitian or nutritionist been a part of his health care team, his death could have been averted.

Other documented cases include a quadriplegic, also on a feeding tube, who was prescribed the wrong amount of daily tube feedings by an unqualified practitioner. She gained excess weight, which increased her risk of pressure sores, and spent over \$8,000 more for the feeding tube supplement over a three-year period than if she had been prescribed the proper amount. Many other patients with chronic diseases experienced decreased quality of life due to the poor management of their nutritional needs.

Furthermore, if dietitians and nutritionists were legally recognized by the state through licensure, perhaps insurance companies and HMOs operating in the state would follow the example set in other states and begin to cover dietitians' and nutritionists' services. If so, the savings in health dollars could be significant. The bill would not mandate such coverage, but if an insurance company or HMO wanted to cut costs by providing covered services, then it could choose to do so. The bill would merely give providers a choice.

Data from various surveys and reports show that hospital costs for the care of patients at nutritional risk are four times higher than costs for patients who are well-nourished and that malnourished patients take 40 percent longer to recover from illnesses, have two to three times the number of complications, have hospital stays that are 90 percent longer, and are readmitted for hospitalization more frequently. The Oxford Health Plan, which covers members in New York, New Jersey, and Connecticut, conducted a pilot program in Brooklyn, New York that saved \$10 for every \$1 spent in providing a nutritional program in which at-risk individuals received nutritional services from a dietitian or nutritionists. Oxford Health Plan representatives reported a drop in claims of 34.6 percent per month just seven months into the program.

Such data support the contention that dietitians serve to lower health care costs and increase the quality of care by providing nutritional counseling that speeds recovery, prevents other illnesses, and enables people to better manage their health problems. Licensure would increase consumer safety by establishing minimum educational and training standards, continuing education requirements, and providing a means to sanction or remove unqualified practitioners.

POSITIONS:

The Michigan Dietetic Association supports the bill. (6-20-06)

The Michigan Osteopathic Association indicated support for the bill. (6-20-06)

The Michigan Department of Community Health is neutral on the bill. (6-20-06)

The Michigan Health and Hospital Association (MHA) is opposed to the bill. (6-20-06)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.