

LICENSURE OF DIETITIAN NUTRITIONISTS

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House Bill 4608 as reported from committee

Sponsor: Rep. Laurie Pohutsky

Committee: Health Policy

Complete to 9-2-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4608 would add Part 183A (Dietetics and Nutrition) to Article 15 (Occupations) of the Public Health Code, to establish a licensure framework for dietitian nutritionists, describe a scope of practice, set license fees, create the Michigan Board of Dietetics and Nutrition in the Department of Licensing and Regulatory Affairs (LARA), and require LARA to develop and issue rules governing specified aspects of licensure.

The bill would define a *dietitian nutritionist* as an individual who is licensed or otherwise authorized to engage in the *practice of medical nutrition therapy* under Article 15.

Practice of medical nutrition therapy would mean the provision of *nutrition care services* for the treatment or management of diseases or medical conditions.

Nutrition care services would mean any part or all of the following services within a systematic process:

- Assessing and evaluating the nutritional needs of individuals and groups and determining resources and constraints in the practice setting, including ordering laboratory tests to check and track nutrition status, creating dietary plans and orders, and monitoring their effectiveness.
- Interpreting anthropometric, biochemical, clinical, and dietary data in acute and chronic disease states and recommending or ordering nutrient needs based on dietary data, including enteral and parenteral nutrition.
- Establishing priorities, goals, and objectives that meet nutritional needs and that are consistent with available resources and constraints.
- Providing *nutrition counseling* in health and disease, including food and nutrient counseling and counseling on food and prescription drug interactions.
- Developing, implementing, and managing nutrition care systems.
- Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.
- Ordering *therapeutic diets*.

Nutrition counseling would mean a supportive process, characterized by a collaborative counselor-patient or counselor-client relationship with individuals or groups, to establish food and nutrition priorities, goals, and individualized action plans and general physical activity guidance that acknowledge and foster responsibility for self-care to treat or manage an existing disease or medical condition or to promote health and wellness.

Therapeutic diet would mean a diet intervention prescribed by a physician, or another health professional licensed under Article 15, that provides food or nutrients via oral, enteral, and parenteral routes as part of treatment of a disease or clinical condition to modify, eliminate, decrease, or increase identified micronutrients and macronutrients in the diet or to provide mechanically altered food when indicated.

Requirement of licensure

Beginning 18 months after the effective date of the initial rules promulgated by LARA under the bill (see below), an individual could not engage in the practice of medical nutrition therapy without being licensed or otherwise authorized under Article 15. In addition, only a dietitian nutritionist could use the words, titles, or letters *licensed dietitian nutritionist*, *dietitian nutritionist*, *dietitian*, *dietician*, *nutritionist*, or *l.d.n.* (or a combination of them), regardless of whether they are used with qualifying words or phrases.

However, an individual, including a ***registered dietitian nutritionist***, could use any lawfully earned federally trademarked title and the words, titles, or letters *registered dietitian*, *registered dietitian nutritionist*, *r.d.*, or *r.d.n.*

Registered dietitian nutritionist would mean an individual who is credentialed by the Commission on Dietetic Registration or its successor organization as a registered dietitian or registered dietitian nutritionist.

In addition, notwithstanding the above restrictions, the following would apply:

A physician or another individual licensed under any other part or any other act could perform activities that are considered the practice of medical nutrition therapy as long as those activities are within their scope of practice and they do not use the protected titles described above.

An individual could do any of the following as long as, while doing so, they do not engage in the practice of medical nutrition therapy and do not use the protected titles described above:

- Furnish ***general nonmedical nutrition information***.
- Provide evaluation, guidance, information, and education on the use of food, food materials, or dietary supplements.
- Provide explanations to individuals or groups about food or food products, including dietary supplements.

General nonmedical nutrition information would mean information on any of the following:

- Principles of human nutrition and food preparation.
- Principles of self-care and a healthy relationship with food.
- The essential nutrients needed by the human body and their recommended amounts.
- The actions of nutrients in the human body.
- The effects of deficiencies or excesses of nutrients in the human body.
- Foods, herbs, and dietary supplements that are good sources of essential nutrients in the human body.

An individual could provide *medical weight control* for prediabetes or obesity to individuals under a program of instruction approved in writing by either of the following:

- A dietitian nutritionist.
- A health professional licensed under this Article 15 whose scope of practice otherwise authorizes them to provide nutrition care services for the treatment or management of the applicable disease or medical condition.

Medical weight control means the practice of medical nutrition therapy for the purpose of reducing, maintaining, or gaining weight.

An individual could provide medical weight control services delegated under a plan of care overseen by a health professional licensed under Article 15 whose scope of practice otherwise authorizes them to provide and delegate nutrition care services for the treatment or management of the applicable disease or medical condition.

Subject to provisions of the code governing the delegation of tasks, an employee or other individual who is assisting a dietitian nutritionist and is under the dietitian nutritionist's appropriate supervision could perform activities or functions that are delegated by the dietitian nutritionist, that are not discretionary, that do not require the exercise of professional judgment for their performance, and that are within the dietitian nutritionist's authority to perform.

An individual could provide general nonmedical nutrition information, guidance, encouragement, individualized nutrition recommendations for wellness or primary prevention of chronic disease, behavior change management, coaching, assessments, services for weight management, or other nutrition care services as long as the following apply:

- The services do not constitute the practice of medical nutrition therapy.
- The individual does not use the protected titles described above or otherwise hold themselves out as a dietitian nutritionist or a provider who engages in the practice of medical nutrition therapy.
- The individual does not otherwise violate the act.

An individual who is pursuing the educational requirements for licensure as a dietitian nutritionist could engage in the practice of medical nutrition therapy as long as all of the following apply:

- The individual is doing so as part of a course of study.
- The individual does not engage in the *unrestricted practice of medical nutrition therapy*.
- The individual is under the appropriate supervision of a *qualified supervisor* (see below) who assumes full professional responsibility for the work of the individual by verifying, directing, and authorizing the work.
- The individual is designated by a title that clearly indicates the individual's status as a student, trainee, or supervisee.

Unrestricted practice of medical nutrition therapy would mean the application of dietetics and nutrition knowledge and skills by an individual who regulates and is responsible for the individual's own practice or treatment procedures.

An individual could fulfill supervised practice experience requirements for licensure as a dietitian nutritionist as long as all of the following apply:

- The individual is engaging in the practice of medical nutrition therapy as part of a planned, continuous supervised practice experience.
- The individual does not engage in the unrestricted practice of medical nutrition therapy.
- The individual is appropriately supervised by a qualified supervisor who agrees to assume full professional responsibility for the work of the individual by verifying, directing, and authorizing the work.
- The individual is designated by a title that clearly indicates the individual's status as a student, trainee, or supervisee.

An individual could do either of the following:

- Provide verbal nutrition information as an operator or employee of a health food store or business that sells health products such as dietary supplements, food, herbs, or food materials.
- Disseminate written nutrition information in connection with the marketing and distribution of the products described above, or discussing their use, including explanations of their federally regulated label claims, any known drug-nutrient interactions, their role in various diets, or suggestions as to how best use and combine them.

Licensure

Subject to the rules promulgated under the bill, a person seeking licensure as a dietitian nutritionist would have to meet all of the following requirements:

- The individual must hold either of the following:
 - A baccalaureate, master's, or doctoral degree from a college or university in the United States that, at the time of graduation, was accredited in good standing by a United States institutional accrediting body for higher education recognized by the United States Department of Education and that is approved by LARA. (In consultation with the Michigan Board of Dietetics and Nutrition, LARA would have to automatically approve an academic program that is accredited by the Accreditation Council for Education in Nutrition and Dietetics or its successor organization.)
 - An academic degree from a foreign educational institution, which degree is validated as equivalent by a credential evaluation agency recognized by the United States Department of Education and is approved by LARA in consultation with the Michigan Board of Dietetics and Nutrition.
- The individual must have successfully completed a didactic program in dietetics accredited by the Accreditation Council for Education in Nutrition and Dietetics.
- The individual must have successfully completed a planned, documented supervised practice experience in the *practice of dietetics and nutrition* fulfilling the competency requirements of a program in dietetics that is accredited by the Accreditation Council for Education in Nutrition and Dietetics or its successor organization. The practice experience would have to include at least 1,000 hours under the supervision of a dietitian nutritionist or a registered dietitian nutritionist, and any supervised practice experience undertaken after the effective date of the initial rules promulgated by LARA under the bill would have to be under the supervision of a qualified supervisor. (In

consultation with the Michigan Board of Dietetics and Nutrition, LARA would have to automatically approve an applicant's supervised practice experience that is accredited by the Accreditation Council for Education in Nutrition and Dietetics or its successor organization.)

- The individual must have successfully completed the registration examination for dietitian nutritionists administered by the Commission on Dietetic Registration or its successor organization.
- The individual must be a registered dietitian nutritionist.

Practice of dietetics and nutrition would mean the integration and application of scientific principles derived from the study of food, nutrition, biochemistry, metabolism, nutrigenomics, physiology, food systems and management, and from behavioral and social sciences in achieving and maintaining health throughout the lifespan and in providing nutrition care services, including the practice of medical nutrition therapy, for the prevention, management, and treatment of diseases or medical conditions. Practice of dietetics and nutrition would not include the medical differential diagnosis of the health status of an individual, but it would include the following:

- ***Nutrition assessment.***
 - Nutrition diagnosis.
 - Nutrition support.
 - Dietary and nutrition counseling and education.
- ***Nutrition intervention.***
- ***Nutrition monitoring and evaluation.***
 - Development and administration of nutrition care standards and systems.

Nutrition assessment would mean the ongoing, dynamic, and systematic process of obtaining, verifying, and interpreting biochemical, anthropometric, physical, nutrigenomic, and dietary data to make decisions about the nature and cause of nutrition-related problems and making recommendations, including recommendations on enteral and parenteral nutrition. The collection of data would not, by itself, constitute nutrition assessment.

Nutrition intervention would mean purposefully planned actions and nutrition counseling intended to positively change a nutrition-related behavior, risk factor, environmental condition, or aspect of the health status for an individual.

Nutrition monitoring and evaluation would mean identifying patient outcomes relevant to a ***nutrition diagnosis*** and comparing the outcomes with the patient's previous health status, intervention goals, or reference standards to determine the progress made in achieving desired outcomes of nutrition care and whether nutrition intervention should be continued or revised.

Nutrition diagnosis would mean identifying and labeling nutritional problems managed and treated by a dietitian nutritionist. Nutrition diagnosis would not include the medical differential diagnosis of the health status of an individual.

Registered dietitian nutritionists

In addition to the above requirements for licensure as a dietitian nutritionist, an individual who, on the day before the effective date of the bill, has and continues to be a registered dietitian nutritionist in good standing would be eligible for licensure. An individual seeking licensure under these provisions who maintains the credential conferred by the Commission on Dietetic Registration or a successor credential conferred by its successor organization would have to first apply for a license on or before the expiration of two years after the effective date of the initial rules promulgated under the bill. Subject to license renewal requirements under the act and to the continuing education requirements under the bill, an individual who obtains a license under these provisions would be eligible for renewal of that license if the individual continues to meet the requirements of these provisions.

License fees

Fees for an individual licensed or seeking licensure as a dietitian nutritionist would be as follows:

- Application processing fee: \$75.
- License fee: \$55 annually.
- Temporary license fee: \$55.

Dietitian nutritionist

A dietitian nutritionist would have to provide nutrition care services using systematic, evidence-based problem solving methods of the nutrition care process to critically think and make decisions to address nutrition-related problems and provide safe, effective, quality dietetic and nutrition services for individuals in clinical and community settings.

A dietitian nutritionist would be prohibited from prescribing or initiating drug treatment, except as otherwise provided below, or from performing an act, task, or function in the practice of dietetics and nutrition that they are not competent to perform.

A dietitian nutritionist could do any of the following:

- Accept or transmit orders related to the practice of medical nutrition therapy from a referring health professional licensed under Article 15, as established in rules promulgated by LARA in consultation with the Michigan Board of Dietetics and Nutrition.
- Accept or transmit verbal, delegated, or electronically transmitted orders from a referring health professional licensed under Article 15 consistent with applicable laws and rules and any controlling facility or employer protocols established to implement the practice of medical nutrition therapy.
- Order patient diets, including oral therapeutic diets, and enteral and parenteral nutrition therapy of specialized intravenous solutions and associated nutrition-related services, including placing nasogastric and nasoenteric feeding tubes, as part of a therapeutic diet. (Enteral describes nutrition delivered into the digestive system, and parenteral describes nutrition delivered elsewhere, for example intravenously. Nasogastric tubes pass through the nose to the stomach, and nasoenteric tubes pass through the nose to the intestines.)
- Conduct swallow screens and order medical laboratory tests related to a nutritional therapeutic treatment as provided by law.

- Implement prescription drug dose adjustments for specific disease treatment protocols within the limits of the dietitian nutritionist's knowledge, skills, judgment, and informed clinical practice guidelines as indicated in a facility, medical staff, or medical director approved protocol and as approved by and under the delegation of a prescriber.
- In an outpatient setting, implement prescription drug dose adjustments for specific disease treatment protocols within the limits of the dietitian nutritionist's knowledge, skills, and judgment and as approved by and under the delegation of a prescriber.
- Recommend or order dietary supplements or the discontinuance of unnecessary dietary supplements, consistent with any existing controlling protocols.
- Develop and manage food service operations for the management or treatment of diseases or medical conditions, including operations with the primary function of nutrition care or recommending, ordering, or providing therapeutic diets.
- Coordinate nutrition care services between health facilities or agencies, including monitoring, documenting, and deciding how and when to address weight changes and nutrition issues.
- Oversee the nutritional aspects of patient care within a health facility or agency.

Temporary license

The board could grant a temporary license to an applicant who meets all requirements for licensure except an examination or other evaluation procedure. A temporary license would be automatically void if the applicant fails the examination or other evaluation procedure.

The holder of a temporary license would have to practice under the supervision of a licensee who holds a license that is not a limited or temporary license.

The holder of a temporary license issued would be subject to Part 183A and the rules promulgated under it, except for the requirements for licensure. LARA could automatically void the temporary license if the applicant violates this provision.

A temporary license would be valid for one year and would not be renewable. An individual could be granted only one temporary license.

Rules

The bill would require LARA, in consultation with the Michigan Board of Dietetics and Nutrition, to promulgate initial rules to implement the bill for individuals seeking licensure as a dietitian nutritionist, as well as rules to establish a code of ethics for licensees.

The bill also would require LARA, in consultation with the Michigan Board of Dietetics and Nutrition, to prescribe by rule continuing education requirements as a condition of license renewal. The board would have to accept, at a minimum, continuing education approved by, or provided by entities approved by, the Commission on Dietetic Registration or its successor organization and any other organization approved by the board. LARA, in consultation with the board, could adopt any updates or amendments to these standards by rule. In addition, LARA, in consultation with the board, would have to promulgate rules requiring each applicant for license renewal to complete an appropriate number of hours or courses in pain and symptom management as part of the required continuing education.

Finally, LARA, in consultation with the Michigan Board of Dietetics and Nutrition, could promulgate rules to supplement the requirements for licensure as a dietitian nutritionist, including adopting updated standards of the Commission on Dietetic Registration or the Accreditation Council for Education in Nutrition and Dietetics or their successor organizations.

Michigan Board of Dietetics and Nutrition

The bill would create the Michigan Board of Dietetics and Nutrition in the Department of Licensing and Regulatory Affairs. The board would consist of the following voting members, each of whom would have meet the requirements of Part 161 of the code:¹

- Nine dietitian nutritionists.
- One allopathic or osteopathic physician.
- Three public members.

Except for members appointed to fill vacancies on the board, the terms of office of individual members of the board would expire on June 30 of the year the term expires.

Qualified supervisors

To qualify as a qualified supervisor for purposes of Part 183A, subject to conditions described below, an individual would have to be one of the following:

- A registered dietitian nutritionist.
- A dietitian nutritionist.
- An individual licensed or certified in another state as a dietitian, dietitian nutritionist, nutritionist, or other qualified nutrition professional who is authorized by that state to engage in the practice of medical nutrition therapy.

A qualified supervisor could supervise only a clinical activity or nutrition care service that they are qualified for and authorized to perform.

A qualified supervisor supervising an applicant engaged in the practice of medical nutrition therapy to an individual located in Michigan would have to be licensed under Article 15.

Qualified supervisors would have to do all of the following:

- Develop and carry out a program for advancing and optimizing the quality of care provided by a supervisee. The qualified supervisor and the supervisee would have to identify and document goals for the supervised practice experience described above, the assignment of clinical tasks as appropriate to the supervisee's evolving level of competence, the supervisee's relationship and access to the qualified supervisor, and an evaluation process for the supervisee's performance.
- Oversee the activities of, and accept responsibility for, the nutrition care services rendered by a supervisee, which includes reviewing charts, records, and clinical notes of a supervisee on a regular basis and maintaining responsibility for the supervisee's clinical record keeping.
- Be physically on site and present where the supervisee is providing nutrition care services or be immediately and continuously available to the supervisee by means of two-way real-time audiovisual technology that allows for the direct, contemporaneous interaction by sight and sound between the qualified supervisor and the supervisee. If

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-368-1978-15-161.pdf>

the qualified supervisor assigns a nutrition care service to a supervisee that is to be provided in a setting where the qualified supervisor is not routinely present, the qualified supervisor would have to ensure that the means and methods of supervision are adequate to ensure appropriate patient care, which could include synchronous videoconferencing or another method of communication and oversight that is appropriate to the care setting and the education and experience of the supervisee.

- Limit the assignment of nutrition care services to those services that are within the training and experience of a supervisee, are customary to the practice of the qualified supervisor, and are within the parameters of Michigan laws and rules and any standards of the facility where the qualified supervisor practices.
- Designate an alternate qualified supervisor to oversee a service provided in the event of, and during, a qualified supervisor's absence.

Other provisions

The bill would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed as a dietitian nutritionist.

MCL 333.16141 and 333.16145 and proposed MCL 333.16346 et seq.

BACKGROUND:

A similar Part 183A, providing for the licensure of nutritionists and dietitians, was added to the Public Health Code by 2006 PA 333.² It was repealed by 2014 PA 267 before licensure could be implemented.³

FISCAL IMPACT:

House Bill 4608 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would create additional costs and revenues for LARA. However, since the level of expenditures and revenues is currently indeterminate, the net fiscal impact of the bill is also indeterminate. The bill would allow the department to collect fees from individuals licensed or seeking licensure as a dietitian nutritionist, in accordance with the following schedule:

Fee Category	Fee Amount
Application Processing Fee	\$75
Annual Licensing Fee	\$55
Temporary License Fee	\$55

The revenue that would be raised by the fees would depend on the volume of licensees and applicants, which is presently indeterminate.

² <http://legislature.mi.gov/doc.aspx?2005-SB-0403>

³ <https://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4688-AC9131F3.pdf>

POSITIONS:

Representatives of the Michigan Academy of Nutrition and Dietetics testified in support of the bill. (6-15-23)

The following entities indicated support for the bill (6-15-23):

- EC Nutrition LLC
- Henry Ford Health
- Michigan Health and Hospital Association
- Michigan State Medical Society
- Nutrition Balance LLC
- Trinity Health Michigan

A representative of the American Nutrition Association testified in opposition to the bill. (6-15-23)

The Council of Holistic Health Educators indicated opposition to the bill. (6-15-23)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

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