

STORAGE NAME: H1387.hcr

DATE: April 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1387

RELATING TO: Dietetics and Nutrition Practice

SPONSOR(S): Representatives Flanagan, Fasano and Wise

STATUTE(S) AFFECTED: Section 468.505, F.S.

COMPANION BILL(S): SB 1390 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE STANDARDS & REGULATORY REFORM

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill repeals an exemption from licensure under the Dietetics and Nutrition Practice Act for persons employed by a hospital licensed under chapter 395, F.S., or by a nursing home or assisted living facility licensed under part II or part III of chapter 400, F.S., or by a continuing care facility certified under chapter 651, F.S.

The bill allows person who are employed in the facilities on the effective date of the repeal to remain exempt from licensure until the termination of employment with that facility.

The bill provides an effective date of the repeal.

The Department of Health indicates that there is a fiscal impact to the department. There is no fiscal impact to local government or the private sector.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Dietitians/nutritionists and nutrition counselors are currently regulated by chapter 468, part X, F.S. Licensure of nutritionists was first proposed to the Legislature in 1985, when the president of the New York Council Against Health Fraud estimated that over sixty percent of all health fraud enters the health care arena through the avenue of nutrition. The 1988 Legislature enacted the Dietetics and Nutrition Practice Act (ch. 88-236, L.O.F.) for the purpose of protecting the public from unskilled and incompetent practitioners by setting forth minimum competency standards to assure that every person who practices dietetics and nutrition in this state meets minimum requirements for safe practice. In addition to paying the application and examination fees, the minimum competency standards set by this act include:

- ▶ possession of a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, food management, or dietetics from an accredited school or program;
- ▶ completion of a preprofessional experience component of not less than 900 hours; and
- ▶ successful completion of the licensure exam.

The 1988 law “grandfathered” those persons not meeting the minimum competency requirements, and classified them as “nutrition counselors”. In order to be “grandfathered”, an individual had to have been employed as a nutrition counselor on or before April 1, 1988. Since the inception of this clause, approximately 585 licenses have been issued.

Presently, nutrition counselors are included in the Dietetics and Nutrition Practice Act and are regulated by the Board of Medicine with the advice of a 5-member council. The council consists of four licensed members and one consumer member age 60 or over. There is no existing avenue for additional persons to become licensed unless they meet the requirements for dietitians and nutritionists. The training needed for the practice of nutrition counseling is different than the training required for licensure as a dietitian.

Currently, there are two defined categories of licensure: dietitians/nutritionists and nutrition counselors. Dietitians/nutritionists conduct nutrition screenings by assessment of dietary intake, anthropometric measurements, reviewing and recommending clinical lab tests, reviewing medical history and medications to assess for drug nutrient interactions, and reviewing demographic factors that would affect nutritional status. Some dietitians/nutritionists consult with collegiate athletic teams as well as professional teams to discuss nutrition as it relates to athletic performance. Many others are public health nutritionists and work in well baby clinics and prenatal care.

As previously mentioned, nutrition counselors are those individuals who obtained licensure as a result of the grandfather clause, which provided that requirements for licensure are “proof of having practiced nutrition counseling on or before April 1, 1988.”

At this time, there are thirteen exemptions in the practice act, which include persons employed by a hospital, nursing home or adult congregate living facility and persons who are employed in a nursing facility. Public health nutritionists employed in the state are not exempt and are required to be licensed. These public health employees have the same educational requirements as the exempted individuals listed and perform similar professional duties. According to the Dietetics and Nutrition Practice Council, inclusion of the hospital licensure exemption in the originating licensure of dietitians/nutritionists was intended to preclude any such persons from losing their employment when the new law took effect.

Federal Medicare and Medicaid requirements mandate that nursing homes either employ or obtain the consultation of a qualified dietitian, which is a person registered with the American Dietetic Association (ADA). Registration with the ADA requires a baccalaureate degree (or greater) in human nutrition and completion of at least 900 hours of practical experience. Requirements for registration parallel state licensure requirements.

Assisted living facilities are considered to be an individual's home and are required by Florida Administrative Code (58A-5.020) to have all menus reviewed by licensed dietitians and to employ a licensed consultant if problems are identified by the Agency for Health Care Administration.

Dietitians in nursing homes and assisted living facilities work in controlled settings. Over 16 state agencies and ten federal agencies regulate and inspect the facilities.

During the 1995 interim, a review of the Dietetics and Nutrition Practice Act was conducted by staff of the former Committee on Business & Professional Regulation. Among certain recommendations made by staff, the recommendation to remove the exemption for hospitals, nursing homes and adult congregate living facilities was included. Information provided at that time by the Florida Dietetic Association indicated that removal of the exemption would more perfectly conform licensure requirements of the Dietetics and Nutrition Practice Act to the purpose and legislative intent set forth in s. 468.502, F.S., which is "...to ensure that every person who practices dietetics and nutrition in this state meets minimum requirements for safe practice."

It has been estimated that 90-95% of the dietitians employed in hospitals, nursing homes, and assisted living facilities have obtained licensure, thus, there would be no need for the exemption. However, no specific facts have ever been presented to uphold this information.

At the time the findings were presented following the 1995 interim review, there was such an outcry from affected individuals who opposed removing the exemption, that the Chairman of the Business & Professional Regulation Committee accepted staff's amended recommendation to not pursue removal of the exemption until such time as further study had been conducted.

B. EFFECT OF PROPOSED CHANGES:

The bill repeals s. 468.505(1)(k), F.S., eliminating the exemption from licensure of any person employed in certain health care facilities. It requires a registered dietitian on at least a part-time or consulting basis to supervise the nutritional aspects of patient care and assure the provision of quality nutritional care to patients.

It requires the dietitian employed by assisted living facilities (who reviews menus annually to ensure that meals are commensurate with the Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board--National Research Council) to be licensed.

Continuing Care Facilities must meet all of the component parts of the licensure requirements that are not regulated by the Agency for Health Care Administration. For example, the agency does not regulate the dietetic services of retirement communities for residents living in apartments. A continuing care facility may provide dietetic services that are presently exempt from chapter 468, F.S., and would now be required to employ a licensed dietitian.

The required licensure exemption expires on October 1, 1997; however, any person employed subject to the exemption of this expiration date remains exempt from licensure requirements until the termination of employment with that employer.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Individuals not already licensed would have to apply to the department, increasing the department's workload. The numbers of unlicensed personnel working in the affected facilities is undetermined.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No; the beneficiaries are the patients/residents who benefit from regulation of the professionals. The cost will be borne by the licensees.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Licensure will be required of dietitians employed in hospitals, nursing homes, assisted living facilities, or continuing care facilities.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 468.505(1)(k), F.S., striking present language exempting a dietitian employed by a hospital, nursing home, assisted living facility, or continuing care facility from licensure if the person is employed in compliance with the laws and rules adopted regarding the operation of its dietetic department.

Section 2. Adds an effective date to the amendment to s. 468.505, F. S., which requires a person employed by a hospital, nursing home, assisted living facility, or continuing care facility who is employed in compliance with the laws and rules adopted regarding the operation of its dietetic department and who was exempt from previous licensure requirements to continue to be exempt from licensure under part X of chapter 468, F.S., until termination of such employment.

Section 3. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

- 1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not Applicable.

2. Recurring Effects:

Not Applicable.

3. Long Run Effects Other Than Normal Growth:

Not Applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not Applicable.

2. Direct Private Sector Benefits:

Not Applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

Not Applicable.

D. FISCAL COMMENTS:

The Department of Health estimates that approximately 250 individuals will be affected by this bill. The initial licensure fees generated for each individual would consist of a \$150 initial licensure fee, a \$150 examination fee, and a \$50 application processing fee, for a total per individual of \$350. Total revenue expected initially would \$87,500 if all of these individuals meet eligibility requirements for licensure.

The department also indicates that if the licensee base is increased by 250, it can be expected that the 1999 renewal would generate an additional \$10,000 at \$200 per licensee.

An OPS Regulation Specialist position would be requested for one year to handle the application processing workload due to the initial influx of applications of individuals wishing to become licensed. The office would be able to handle subsequent applications within its existing resources.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Florida Health Care Association has indicated that they are opposed to this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

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