

STORAGE NAME: h4185a.hcs

DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4185

RELATING TO: Dietetics and Nutrition Practice

SPONSOR(S): Rep. Lacasa

COMPANION BILL(S):

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

- (1) HEALTH CARE SERVICES YEAS 3 NAYS 9
 - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

In 1988, the Dietetics and Nutrition Practice Act was enacted 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.” The act included minimum competency standards for dietitians and nutritionists, and provided a grandfather clause for those persons not meeting the minimum competency requirements, classifying them as “nutrition counselors”. In 1996 the grandfather clause was repealed leaving no licensure avenue available for nutrition counselors.

Dietitians/nutritionists and nutrition counselors differ in philosophy, methodology, and academic training. Dietitians/nutritionists practice more traditional, well-established methods, while nutrition counselors practice alternative methods of treatment and often use experimental therapies. Since the Dietetics and Nutrition Practice Act was enacted in 1988, the Nutrition Counselors Association has felt that the Act has not properly represented the interests of the nutrition counselors. HB 4185 addresses some of these concerns.

HB 4185 does the following:

- Provides for the licensure of nutrition counselors;
- Sets education, experience, and examination requirements for licensure;
- Redefines the qualifications of a nutrition counselor; and
- Requires changes in the composition and appointment of the Dietetics and Nutrition Practice Council.

According to the Department of Health, the fiscal impact of this bill will include expenditures of \$107,311 for FY 1998-99, and \$164,816 for FY 1999-2000.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1988, the Florida Legislature enacted the Dietetics and Nutrition Practice Act (s. 468.501, F.S.) 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." The act included minimum competency standards for dietitians and nutritionists, and provided a grandfather clause for those persons not meeting the minimum competency requirements, classifying them as "nutrition counselors". In 1996, legislation was passed repealing the existing grandfather clause, and in its place another clause was included providing for license renewal for individuals who were licensed between April 1, 1988 and April 1, 1997. As a result there is now no licensure avenue available for nutrition counselors. Currently in Florida, there are approximately 2,700 licensed dietitians/nutritionists compared to approximately 300 licensed nutrition counselors.

Dietitians/nutritionists and nutrition counselors are regulated by the Dietetics and Nutrition Practice Council under the Board of Medicine. The Council consists of five members which include four licensed members and one consumer age 60 or over.

Dietitians/nutritionists believe that there is little difference between dietitians and nutritionists. They claim that dietitians work in a clinical or hospital setting and nutritionists work in a community setting. Academic training for both dietitians and nutritionists is the same in Florida and throughout the nation.

Both nutritionists and dietitians, however, differ greatly in philosophy, education, and practice from nutrition counselors. Since the Dietetics and Nutrition Practice Act was created, controversy has reigned between the dietitians/nutritionists and the nutrition counselors. First, and foremost, nutrition counselors believe that there is a significant difference between dietitians and nutritionists, and they argue that individuals currently considered dietitians and nutritionists under Florida law actually should only be considered dietitians. Nutrition counselors argue that up until the Dietetics and Nutrition Practice Act was created in 1988, they were considered nutritionists. Nutrition counselors believe that current dietitians/nutritionists practice dietetics, which is significantly different from the practice of nutrition counselors whose goals are to maintain, preserve, and restore nutritional health through wholesome nutrition, herbs, vitamins, and minerals where appropriate and the avoidance of some foods believed to be harmful.

Education requirements differ greatly between dietitian/nutritionists and nutrition counselors. Under Florida law, a licensed dietitian or nutritionist must possess a bachelor's of science degree in nutrition or in an approved related field, have 900 hours of supervised experience, and pass a state licensing exam. In addition to state licensing, many dietitians/nutritionists are also registered through the national Commission of Dietetic Registration, which requires taking an exam and education courses that have been approved by the American Dietetic Association. Florida law has no education requirement provisions for nutrition counselors, and because existing nutrition counselors were licensed through the repealed grandfather clause, the counselors did not have to take an exam or meet educational requirements. As a result,

dietitians/nutritionists are often perceived to have superior educational backgrounds and more experience than nutrition counselors. Nutrition counselors believe that this perception is unfair and argue that most counselors hold advanced degrees and are better trained than many registered dietitians. Nutrition counselors believe specific education requirements need to be set out in statute, separate from those required for dietitians/nutritionists, so that nutrition counselors will not be limited to taking classes that may be designed for dietitians/nutritionists and that may conflict with the philosophy of nutrition counseling. Dietitians/nutritionists, however, feel that separate education course requirements are not necessary because education requirements and appropriate provisions for licensure are already set out in statute.

Dietitians/nutritionists and nutrition counselors differ in methodology as well. Dietitians/nutritionists use conservative and well-established scientific methods and believe that the nutrients humans need can be gotten from a balanced diet. They conduct nutrition screenings by assessment of dietary intake, anthropometric measurements, reviewing medical history and medications to assess for drug nutrient interactions, and reviewing demographic factors that would affect nutritional status. Traditionally, dietitians/nutritionists sanction supplements only if one's diet is unbalanced and if the supplements contain no more than 100% of the recommended daily allowance.

Nutrition counselors, on the other hand, practice alternative methods of treatment and often use experimental therapies, which include the recommendation of supplements and megavitamin therapies. Representatives of the Nutrition Counselors Association indicate their profession has three categories of members: 1) Professional -- consisting of those licensed to practice in Florida as nutrition counselors and whose primary practice is in that field; 2) Associate -- Other practitioners, such as medical, chiropractic and osteopathic physicians, licensed massage therapists, and licensed acupuncturists who use nutrition counseling as an adjunct to their primary practice; and 3) Supporting -- Health food store owners and others involved in nutrition science, products, and information, as well as members of the public. Nutrition counseling places emphasis on "the three S's": "sampling", testing of blood, hair, urine, and saliva; "sensitivity", determining from sampling certain foods to which an individual might be sensitive; and "supplements", using vitamins, minerals, and herbs to maintain, preserve, and restore nutritional health.

Critics of nutrition counseling claim that nutrition counselors face a conflict of interest when they benefit financially from vitamins they prescribe. Counselors who practice controversial methods such as iridology and cytotoxic testing have also received criticism. Iridology is a belief that diseases of the body can be reflected by the colors in the eyeball. Cytotoxic testing claims that food allergies can be diagnosed by the extent to which a sample of a suspect food kills a person's white blood cells. Such methods are seen to the more conservative dietitians/nutritionists as lacking scientific substance and bordering on "quackery".

Nutrition counselors, on the other hand, feel that mainstream dietitians/nutritionists are the ones who face a conflict of interest. Nutrition counselors feel that dietitians/nutritionists are too closely tied to the food industry and are manipulated by corporate benefactors. Counselors are critical of the American Dietetic Association's endorsement of the safety of artificial sweeteners and its passive attitude toward fast food and refined foods. Nutrition counselors also feel that claims that their methods are

“quackery” are unfounded. They argue that the mainstream medical industry is now beginning to promote methods that nutrition counselors have believed in for years and that methods such as iridology and cytotoxic testing are refined specialties and are only done by individuals who know how to do them.

Since the Dietetics and Nutrition Practice Act was enacted in 1988, the Nutrition Counselors Association has felt that the Act has not properly represented the interests of nutrition counselors. During the 1993 and 1994 legislative sessions, members of the Nutrition Counselors Association attempted to have nutrition counselors removed from the auspices of the Dietetics and Nutrition Practice Council and proposed the creation of a Nutrition Counselors Practice Council under the jurisdiction of the Board of Medicine. These proposals were defeated.

Thirty-seven states, including Florida, have some form of regulation of the profession of dietetics/nutrition. Florida’s legislation has been seen as a model for other states and was used as the prototype for Illinois and North Carolina.

In 1996, legislation was passed transferring the functions of the Division of Medical Quality Assurance from the Agency for Health Care Administration to the Department of Health. The Board of Medicine is one of the boards under the Division of Medical Quality Assurance.

B. EFFECT OF PROPOSED CHANGES:

The definition of “nutrition counseling” will be expanded to include educating as part of the defined duties and to specify the use of food supplements. A person practicing as a dietitian must be supervised by a licensed dietitian/nutritionist, and a person practicing as a nutrition counselor must be supervised by a licensed nutrition counselor, a clinical nutritionist, or a physician licensed under chapters 458, 459, or 460 F.S., who is trained in clinical nutrition.

The Board of Medicine will be required to elicit names from each professional association composed of persons licensed under this part and must appoint the council members from those recommendations.

Education, experience, and examination requirements for the licensure of nutrition counselors will be provided. The department will be required to create an examination for persons applying to become licensed nutrition counselors. Education requirements for the licensure of nutrition counselors will be more stringent than currently imposed on dietitians/nutritionists. A “clinical nutritionist” will qualify as a supervisor under which the preprofessional experience component of 900 hours may be completed. The Board of Medicine will be required to review the education programs submitted in lieu of a degree in human nutrition by an applicant for licensure as a nutrition counselor, and the Board will also be required to appoint an advisory committee of licensed nutrition counselors to recommend additional training to bring an applicant’s education up to the equivalent of a baccalaureate degree in human nutrition.

Temporary permits may be permitted to nutrition counselors who meet specific requirements.

Licensed nutrition counselors will be able to use the term "licensed clinical nutritionist" to denote licensure as a nutrition counselor.

The department will be able to certify applicants as qualified for licensure by endorsement if the applicant presents evidence to the Board that he or she is a registered nutrition counselor.

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?

Yes, additional rule-making authority is given to the department and licensure of nutrition counselors will be regulated by the state.

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

Yes, an advisory committee will be created to development an exam for licensing nutrition counselors, an advisory committee will be created to review the education of applicants, and all professional associations will be required to submit names to fill vacancies on the Dietetics and Nutrition Practice Council.

(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?

The bill does not authorize a fee, but one may be necessary to pay for the costs associated with licensing nutrition counselors, including the costs of developing a new exam and reviewing applicants' credentials.

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?

The issue of fees is not addressed in the bill language.

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?

N/A

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. STATUTE(S) AFFECTED:

Sections 468.503, 468.506, 468.51, 468.511, 468.512, 468.513, and 468.516, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 486.503, F.S., to revise definitions for “dietetic and nutrition practice”, “nutrition counseling”, and “preprofessional experience component”.

Section 2. Amends s. 486.506, F.S., relating to the Dietetic and Nutrition Practice Council, to require that two of the licensed members the Council be practicing dietitians/nutritionists and the other two licensed members be practicing nutrition counselors, and that the consumer member must be knowledgeable about nutrition. This section also requires that a vacancy on the council be filled by a person from recommendation lists from each professional association composed of persons licensed under this part.

Section 3. Amends s. 468.51, F.S., relating to nutrition counselors and renewal of licensure, to establish qualifications to be met by applicants for a license as a nutrition counselor.

Section 4. Amends s. 468.511, F.S., relating to temporary permits, to allow for temporary permits for nutrition counselors with requirements similar to those already established for dietitians/nutritionists temporary permits.

Section 5. Amends s. 486.512, F.S., relating to display of licenses, to include “licensed clinical nutritionist” in the list of titles a licensed nutrition counselor may use to denote licensure under this part.

Section 6. Amends s. 468.513, F.S., relating to licensure by endorsement, to outline the requirements for licensure of nutrition counselors by endorsement.

Section 7. Amends s. 468.516, F.S., relating to practice requirements and referral by other practitioners, to require physicians to refer patients to a licensed dietician or nutrition counselor at the patient’s request.

Section 8. References s. 468.506, F.S., to specify that the new requirements for membership on the council will be phased in as the terms of current members expire.

Section 9. References s. 468.51(2), F.S., to require that an examination for licensure of a nutrition counselor will be developed by the Agency for Health Care Administration in

conjunction with an approved advisory committee of nutrition counselors licensed and practicing in this state and will be implemented within one year after the effective date of the act.

Section 10. Provides an effective date of October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	<u>1998-99</u>	<u>1999-2000</u>
Set-Up Expenses:	\$ 2,387	
OCO:	\$ 4,177	
Exam Development:	\$45,000	
TOTAL NON-RECURRING:	\$51,564	
2. <u>Recurring Effects:</u>		
Recurring or Annualized Continuation Effects:		
Bd. Office, 1 FTE (Regulatory Specialist 1, PG 15)		
1st year 9 months:	\$23,027	\$31,624
Expenses:	\$4,988	\$4,988
Exam Administration	\$12,000	\$12,000
Advisory Committee	\$15,732	\$16,204
TOTAL RECURRING COSTS	\$ 55,747	\$64,816
3. <u>Long Run Effects Other Than Normal Growth:</u>		
N/A		
4. <u>Total Revenues and Expenditures:</u>		
Total Expenditures:	\$107,311	\$64,816
Total Revenue	\$68,000	
(Based on 180 licenses at \$350 and 20 licenses by endorsement at \$250)		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:
N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Publicly owned facilities that hire nutrition counselors may incur additional costs to hire licensed professionals.

2. Direct Private Sector Benefits:

The profession of nutrition counseling will be regulated by the state, which may protect individuals from being victims of unskilled or incompetent practitioners.

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

The additional education and training requirements may require some individuals now working as nutrition counselors to receive additional education and training in order to continue working in their present jobs. Facilities that hire these individuals may incur additional costs to hire licensed professionals. Dietitians and nutritionists may receive more competition from nutrition counselors as a result of their new licensed status.

D. **FISCAL COMMENTS:**

This bill creates and provides for education, experience, and examination requirements for the licensure of nutrition counselors. Because the bill does not make any provisions to cover the additional costs to the Department of Health in creating and administering an examination for nutrition counseling, it is unclear from where the funding should come.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This 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:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

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

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

V. COMMENTS:

Currently, there are 2,700 licensed dietitians/nutritionists compared to 300 nutrition counselors. This bill requires that the Council consist of two licensed nutritionists/dietitians and two nutrition counselors, and as a result, the Council will no longer be proportional to the number of licensees' regulated in each of the professions.

Licensed nutrition counselors will be able to use the term "licensed clinical nutritionist" to denote licensure as a nutrition counselor; however, this may cause some confusion because "licensed clinical nutritionist" is left undefined.

The department will be able to certify applicant as qualified for licensure by endorsement if the applicant presents evidence to the Board that he or she is a registered nutrition counselor. Endorsement in this manner may prove to be problematic because "registered nutrition counselor" is not defined.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1998, the Committee on Health Care Services adopted several technical amendments to this bill to change references from the Agency for Health Care Administration to the Department of Health, which has the actual authority over the Board of Medicine. The committee also adopted an amendment to remove the term "registered" and insert the term "certified" to clarify references used for licensure by endorsement for nutrition counselors, and another amendment to remove "including food supplements" from the definition of nutrition counseling.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

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