

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1822

SPONSOR: Senator Gutman

SUBJECT: Dietetics and Nutrition Practice

DATE: April 17, 1999

REVISED: 4/21/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1822 provides for the separate practice of clinical nutrition and creates the Clinical Nutrition Practice Council under the jurisdiction of the Board of Medicine. The bill provides definitions; establishes licensure requirements for the practice of clinical nutrition; provides exemptions and other licensure requirements; authorizes at least four members of the newly created council to concur with the Board of Medicine to revoke or suspend a license; and makes revisions to the existing Dietetics and Nutrition Practice Act, to conform to changes recognizing the practice of clinical nutrition as a separate profession.

This bill amends sections 468.501, 468.502, 468.503, 468.504, 468.508, 468.509, 468.51, 468.511, 468.512, 468.514, 468.515, 468.517, 501.0573, 501.0575, 627.6408, and 627.65745, Florida Statutes.

This bill reenacts section 468.507, Florida Statutes, 1998 Supplement, without amendment.

This bill amends sections 468.505, 468.506, 468.513, 468.518, and 20.43, 1998 Supplement, Florida Statutes.

This bill creates sections 468.5115 and 468.5135, Florida Statutes.

II. Present Situation:

The 1988 Legislature enacted the Dietetics and Nutrition Practice Act for the purpose of protecting the public from unskilled and incompetent practitioners by setting forth a minimum competency standard to assure that every person who practices dietetics and nutrition in this state meets minimum requirements for safe practice. The minimum competency standard set by the Legislature, codified in part X, chapter 468, Florida Statutes, includes: possession of a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition or

dietetics from an accredited school or program; completion of a preprofessional experience component; and successful completion of the licensure examination.

The 1988 law authorized certain persons not meeting the minimum competency requirements for dietitian/nutritionists to be classified as “nutrition counselors”. In order to be licensed as a nutrition counselor, an individual had to have been employed as a nutrition counselor on or before April 1, 1988.

Nutrition counselors are regulated under part X, ch. 468, F.S., the Nutrition Practice Act and are regulated by the 5-member Dietetics and Nutrition Practice Council under the Board of Medicine within the Department of Health. The council consists of four licensed members and one consumer who is 60 years of age or over. Part X, ch. 468, F.S., authorizes the board to delegate regulatory powers and duties to the council to implement its provisions. The part defines “dietetics and nutrition practice” to mean the assessment of nutritional needs and status using appropriate data; the recommendation of appropriate dietary regimens, nutrition support, and nutrient intake; the improvement of health status through nutrition research, counseling, and education; and the implementation and management of nutritional care systems.

Part X, ch. 468, F.S., defines “nutrition counseling” to mean advising and assisting individuals or groups on appropriate nutrition intake by integrating information from the nutrition assessment. “Dietetics and nutrition practice” is defined to include assessing nutrition needs and status using appropriate data; recommending appropriate dietary regimens, nutrition support, and nutrient intake; improving health status through nutrition research, counseling, and education; and developing, implementing, and managing nutrition care systems, which includes maintaining appropriate standards of high quality in food and nutrition care services.

Part X, ch. 468, F.S., provides exemptions to the licensing requirements for dietetics and nutrition practice, including: licensed acupuncturists, medical physicians, osteopathic physicians, chiropractic physicians, podiatrists, naturopaths, optometrists, nurses, pharmacists, dentists, massage therapists, clinical social workers, marriage and family therapists, mental health counselors, and psychologists, and persons employed by and under the supervision of the licensed professional when providing services within the scope of the licensed professional’s scope of practice; government employees; employed cooperative extension home economists; students pursuing a degree in dietetics and nutrition; dietitians or nutritionists from another state whose practice is incidental to a course of study or part of teaching a postgraduate course, if the dietitian or nutritionist is licensed or holds a faculty position at an accredited school; persons who market or distribute food, food materials, or dietary supplements or persons who explain the use and benefits of those products for no fee or who are employed in a pharmacy; educators performing duties that are part of their employment; persons who provide weight control services or related weight control products, if the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval by a Florida licensed dietitian/nutritionist, or a dietitian or nutritionist licensed in another state that has licensure requirements considered by the council to be at least as stringent as Florida’s requirements; dietetic technicians; and employees of nursing facilities and hospitals which rely exclusively on spiritual means to heal, care, or treat persons. The part exempts persons employed by a licensed hospital, nursing home, assisted living facility, or continuing care facility, if the person employed

is in compliance with the laws and rules adopted for the operation of the facility's dietetic department.

Part X, ch. 486, F.S., prohibits any person from engaging in dietetics and nutrition practice for remuneration or holding themselves out as a practitioner of dietetics and nutrition practice unless they are licensed. The part provides prohibitions and penalties relating to the practice of dietetics and nutrition practice. The Board of Medicine has adopted administrative rules relating to standards of practice for dietetics and nutrition practice (64B-44.007, F.A.C.) and a rule (64B-44.009, F.A.C.) specifying what constitutes unauthorized treatment by any person licensed under part X, chapter 468, F.S.

Several provisions within the Board of Medicine's administrative rules relating to the practice of nutrition counseling, as amended by the board, have been subject to administrative challenges. The amended provisions of the administrative rules would: require licensed nutrition practitioners to practice dietetics and nutrition counseling based on generally accepted scientific principles and current information; prohibit licensed practitioners from advertising any questionable methods of assessment or treatment when the treatment is experimental or without generally accepted scientific validation; and prohibit licensed nutrition practitioners from using any nutrition counseling assessment methods or treatments that were not taught in regular college curricula or that have not received generally accepted scientific validation. On appeal by the Florida Nutrition Counselors Association from a final order of a hearing officer entered after an evidentiary hearing on a rule challenge, the First District Court of Appeal found no lawful basis for the amended rule provisions adopted by the board in the order or the record which effectively forbid and penalize all nutrition counseling assessment methods or treatments except those taught in regular college curricula or that have received generally accepted scientific validation. Florida Nutrition Counselors Association v. Department of Business and Professional Regulation, Board of Medicine, Dietetics and Nutrition Practice Council 667 So.2d 218 (Fla.1st DCA 1995).

Since the Dietetics and Nutrition Practice Act was enacted in 1988, concerns have been voiced regarding perceived inequities in the act. Such concerns relate to clarification in the definition of the three regulated professions (dietitian/nutritionists and nutrition counselors), academic requirements for licensure, inequities caused by the mandated makeup of the Dietetics and Nutrition Practice Council, the large number of exemptions allowed by existing law, and examination and licensure requirements.

III. Effect of Proposed Changes:

Section 1. Amends s. 468.501, F.S., to revise the title of the practice act from Dietetics and Nutrition Practice to "Dietetics/Nutrition and Clinical Nutrition Practices Act."

Section 2. Amends s. 468.502, F.S., to revise the purpose and intent of the practice, to conform to the bill's changes to recognize the separate practice of clinical nutrition practice.

Section 3. Amends s. 468.503, F.S., relating to definitions, to revise terminology and define terms including: "certified clinical nutritionist" to mean an individual certified by the Clinical Nutrition Certification Board, or its successor; "certified nutritionist" to mean an individual certified by the Certified Nutritionists International Board of Standards; "certified nutrition

specialists” to mean an individual certified by the Certification Board of Nutrition Specialists, or its successor; “certified specialist in human nutrition” to mean an individual certified by the American Board of Nutrition, or its successor; and “clinical nutrition” to mean the application of the principles of nutrition, biochemistry, physiology, and behavioral and social sciences to achieve, maintain, and restore optimal development and functioning of the human body and to prevent diet-linked illnesses throughout the life cycle for individuals, groups, or both and is based on the concept of biochemical individuality. “Clinical nutrition practice” is defined to include assessing an individual’s wellness status as it relates to his or her individual metabolic-biochemical, psychosocial, and physiological responses to the environment; maintaining the supply to the body of all the nutrients required for optimal health and prevention of disease; utilizing laboratory tests and other relevant information to assess nutritional deficiencies and excesses; and recommending food, food products, and nutrients to optimize health and prevent disease. “Council” means the Dietetics/Nutrition Practice Council or the Clinical Nutrition Practice Council, as the context requires. “Licensed nutrition counselor” means a person licensed as such during the period from July 1, 1988 to March 30, 1997. “Preprofessional experience component” is defined to require clinical nutritionists to be supervised by licensed clinical nutritionists or by other health professionals approved by the Clinical Nutrition Practice Council who have practiced clinical nutrition for at least 3 of the 5 years immediately preceding such supervision.

Section 4. Amends s. 468.504, F.S., to establish the licensure requirement for dietetics/nutrition practice or clinical nutrition practice, to conform to the bill’s changes to recognize the separate practice of clinical nutrition practice.

Section 5. Amends s. 468.505, F.S., 1998 Supp., to provide exemptions from the revised Dietetics/Nutrition and Clinical Nutrition Practices Act. A nutrition counselor or clinical nutritionist from another state practicing clinical nutrition incidental to a course of study when taking or giving a postgraduate course in this state, provided such nutrition counselor or clinical nutritionist is licensed in another jurisdiction is exempt from the licensing requirements. Other professionals doing work of a clinical nutrition nature consistent with the accepted standards of their respective professions are exempt from the practice act, provided they do not use a protected title limited to professionals regulated under the Dietetics/Nutrition and Clinical Nutrition Practices Act.

Section 6. Amends s. 468. 506, F.S., 1998 Supp., to rename the Dietetics and Nutrition Practice Council as the Dietetics/Nutrition Practice Council and create the Clinical Nutrition Practice Council under the jurisdiction of the Board of Medicine. Five-member councils must be appointed by the Board of Medicine based on nominations from the respective professional associations. The terms of initial Clinical Nutrition Practice Council members are staggered. Beginning October 1, 2003, council members must be licensed at least 3 years immediately prior to appointment in order to be eligible for appointment. The requirements to stagger the terms and to require council members to be licensed is repealed October 1, 2004.

Section 7. Reenacts s. 468.507, F.S., 1998 Supp., relating to the Board of Medicine rulemaking authority for the regulation of dietetics and nutrition practice.

Section 8. Amends s. 468.508, F.S., to allow the Board of Medicine to adopt by rule fees for the renewal of temporary permits for dietetics and nutrition practice and clinical nutrition practice.

Section 9. Amends s. 468.509, F.S., relating to licensure requirements for dietitian/nutritionists, to make changes in the terminology, to conform to the bill's recognition of the separate practice of clinical nutrition.

Section 10. Amends. s. 468.51, F.S., relating to nutrition counselor licensure renewal requirements, to provide requirements for licensure as a clinical nutritionist and for relicensure of nutrition counselors as clinical nutritionists. Applicants are required to apply to the Department of Health to take the licensure examination and pay application and examination fees. The department must examine applicants who possess a baccalaureate or postbaccalaureate degree with a minimum of 15 semester hours in science and a minimum of 15 semester hours in human nutrition, as approved by the American Council on Education, from a school or program accredited by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation and the United States Department of Education. Applicants must also complete any of the following experience requirements: a preprofessional experience component of not less than 900 hours under the supervision of a licensed clinical nutritionist or a licensed nutrition counselor who has practiced for at least 3 of the 5 years immediately preceding such supervision; at least 2 years of postbaccalaureate paid professional experience in clinical nutrition; at least 1 year of post-master's degree or postdoctoral degree in clinical nutrition; or comparable experience to the satisfaction of the Board of Medicine. An alternate licensure pathway is provided for a clinical nutritionist to sit for the licensure examination which requires receipt of an academic degree from another state or foreign country which has been validated by an accrediting agency approved by the United States Department of Education as equivalent to degrees conferred by a United States accredited college or university; has completed a course of study substantially equivalent to the course of study required for a degree; and has completed a preprofessional experience component of not less than 900 hours with a licensed clinical nutritionist, licensed nutrition counselor, an unlicensed clinical nutritionist, a medical physician, osteopathic physician, chiropractic physician or other comparably trained person; or has education or experience determined by the board to be equivalent. Any person previously certified as a nutrition counselor is authorized to renew his or her license as a clinical nutritionist or apply for a license as a clinical nutritionist.

Section 11. Amends s. 468.511, F.S., relating to the issuance of a temporary permit to practice dietetics/nutrition, to make changes in terminology to conform to the bill's recognition of the separate practice of clinical nutrition.

Section 12. Creates s. 468.5115, F.S., to provide requirements for the issuance of a temporary permit to practice as a clinical nutritionist.

Section 13. Amends s. 468.512, F.S., to authorize the use of specified titles relating to dietetics/nutrition practice and clinical nutrition practice.

Section 14. Amends s. 468.513, F.S., 1998 Supp., to provide for licensure by endorsement to practice dietetics/nutrition, to conform to the bill's recognition of the separate practice of clinical nutrition.

Section 15. Creates s. 468.5135, F.S., to provide licensure by endorsement requirements to practice clinical nutrition.

Section 16. Amends s. 468.514, F.S., relating to procedures for licensure renewal, to change references to the Department of Health.

Section 17. Amends s. 468.515, F.S., relating to the Board of Medicine's rulemaking authority for procedures to place licenses in inactive status and reactivation of licenses, to change a reference to the Department of Health.

Section 18. Amends s. 468.517, F.S., relating to prohibitions and penalties for certain acts in dietetics and nutrition practice, to make changes to conform to the bill's recognition of the separate practice of clinical nutrition.

Section 19. Amends s. 468.518, F.S., 1998 Supp., to revise existing grounds for disciplinary action against a dietetics/nutritionist and nutrition counselor, to make changes to conform to the bill's recognition of the separate practice of clinical nutrition. References to "nutrition counselor" are deleted. However, nutrition counselors have until 2004 to become licensed as a "clinical nutritionist" and until the nutrition counselor accomplishes that provision, the Board of Medicine would not have the authority to discipline nutrition counselors. The bill requires concurrence of four council members for revocation or suspension of a license which conflicts with the current provision that the Board of Medicine has jurisdiction over any disciplinary action.

Section 20. Amends s. 20.43, F.S., 1998 Supp., relating to the organization of the Department of Health, Division of Medical Quality Assurance, to make changes to conform to the bill's recognition of the separate practice of clinical nutrition.

Section 21. Amends s. 501.0573, F.S., relating to weight-loss provider consumer disclosure requirements, to correct a cross reference.

Section 22. Amends s. 501.0575, F.S., to correct a cross reference under the Weight-Loss Consumer Bill of Rights.

Sections 23. Amends s. 627.6408, F.S., relating to requirements for insurance policies covering diabetes treatment services, to provide that health insurance policies may require that nutrition counseling given in conjunction with other diabetes treatment services be provided by a licensed dietitian/nutritionist or licensed clinical nutritionist.

Section 24. Amends s.627.65745, F.S., relating to requirements for insurance policies covering diabetes treatment services, to provide that health insurance policies may require that nutrition counseling given in conjunction with other diabetes treatment services be provided by a licensed dietitian/nutritionist or licensed clinical nutritionist.

Section 25. Provides an effective date of October 1, 1999.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Costs relating to licensure would be borne by individuals desiring to practice clinical nutrition who will need to meet the new licensure requirements for clinical nutritionists under the bill.

C. Government Sector Impact:

The Department of Health estimates that it will need one position to provide administrative support to the newly-created Clinical Nutrition Practice Council and will incur costs for fiscal year 1999-2000, totaling \$161,413 and for fiscal year, 2000-2001, totaling \$82,666 which are offset by the department's collection of revenue of \$76,500 for fiscal year 1999-2000 and \$90,000 for fiscal year 2000-2001. The department estimates that 180 applications @ \$425 will be received in fiscal year 1999-2000 and 211 applications @ \$425 will be received in fiscal year 2000-2001

VI. Technical Deficiencies:

On page 9, line 11, the reference to s. 489.51(2), F.S., is unclear; ch. 489, F.S., regulates contracting.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Health, Aging and Long-Term Care:

Strikes the contents of the bill and creates a 5-member committee appointed by the Secretary of the Department of Health to study educational, experience, and training requirements for licensure as a clinical nutritionist or nutrition counselor.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
