

Legislative Analysis



REPEAL LICENSURE OF DIETICIANS & NUTRITIONISTS

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House Bill 4688 (as reported from committee without amendment)

Sponsor: Rep. Ed McBroom
Committee: Regulatory Reform

(Enacted as Public Act 267 of 2014)

First Analysis (11-11-13)

BRIEF SUMMARY: The bill would repeal Part 183a of the Public Health Code, which provides for the licensure of dietitians and nutritionists. Licensure of these professions was enacted in 2006, but to date, no one has been licensed as a dietitian or nutritionist in the state.

Generally, Part 183a prohibits individuals from engaging in the practice of dietetics and nutrition, providing or offering to provide dietetics and nutrition care services, or from using certain titles (registered dietitian, licensed dietitian, dietitian or licensed nutritionist) unless licensed through LARA.

On February 17, 2012, the Office of Regulatory Reinvention (ORR) recommended the dissolution of the Board of Dietetics and Nutrition and the deregulation of dietitians and nutritionists due to an asserted lack of clear public health and safety benefits and allegedly unresolved discussions pertaining to the establishment of acceptable credentialing and education requirements and multiple national credentialing bodies for nutritionists.

FISCAL IMPACT: House Bill 4688 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) since no individuals have been licensed as dietitians or nutritionists by the Bureau of Health Care Services (BHCS) within LARA.

2006 PA 333 established Part 183a of the Public Health Code, regulating the occupations of dietitians and nutritionists, and the Michigan Board of Dietetics and Nutrition (Board). Members of the Board were appointed in 2007. Since that time, LARA and the Board have worked to promulgate rules under 2006 PA 333 establishing the educational, examination, experience, and licensure requirements for dietitians and nutritionists. On May 14, 2013, LARA proposed draft rules, which have yet to be certified and approved under the Administrative Procedures Act, 1969 PA 306.

While LARA and the Board have worked on the promulgation of administrative rules, the BHCS has yet to license or otherwise regulate the occupations of dietitians and nutritionists. Thus, the BHCS has not made any expenditures for examination, licensure, or enforcement under 2006 PA 333, nor collected any fees from individuals seeking licensure. Indeterminate, yet nominal, expenditures have been made to reimburse Board members for their travel expenses, provide administrative support to the Board, and draft

proposed administrative rules. These expenditures have already been made and would be unaffected by House Bill 4688.

THE APPARENT PROBLEM:

In 2006, dietitians sought licensure as a profession because, as they argued at the time, the lack of statutory regulation over the profession of dietetics and nutrition endangered the public health and well-being. According to testimony, individuals face a number of adverse health risks when acting upon inaccurate nutritional advice, and many believe that nutrition therapy should only be provided by highly trained individuals—registered dietitian nutritionists. In addition to licensing the dietetics profession and codifying its scope of practice, Public Act 333 of 2006 also included licensure of nutritionists. As originally enacted, Public Act 333 of 2006 was intended to license registered dietitians and established a dietitian-focused scope of practice.

Under Public Act 333 of 2006 (enacted as Part 183a of the Public Health Code), individuals must be licensed in order to engage in the practice of dietetics or nutrition or to offer or provide to offer dietetics and nutrition care services. Individuals also must be licensed in order to use the titles of "registered dietitian," "licensed dietitian," "dietitian," "licensed nutritionist," and "nutritionist." Additionally, under Part 183a, individuals registered as dietitians by the Commission on Dietetic Registration and having met the clinical practice guidelines issued by the American Dietetic Association would have been granted licensure when 2006 PA 333 took effect.

Although the practice of nutrition and the practice of dietetics are generally viewed as separate, although with some overlapping functions, they appear to be treated in the same manner under Part 183a. Individuals licensed under Part 183a would be able to engage in the practice of dietetics and nutrition care services and the act does not make a clear distinction between a nutritionist and dietitian or what the scope of practice is for each of them. Additionally, the act does not appear to include specific educational requirements for each separate profession.

Applicants for a dietitian and nutritionist license must meet the same minimum education standards under MCL 333.18358, including at least a baccalaureate degree from a LARA-approved college or university with a major course of study in human nutrition, nutrition education, foods and nutrition, dietetics, or food systems management, or a LARA-approved equivalent course of study; at least 900 hours of supervised post-college or planned continuous pre-professional experience as provided for through administrative rules; and successfully passing a LARA-approved examination.

Generally, a dietitian is someone who has completed an accredited course of study in nutrition, human nutrition, or dietetics and is credentialed through the Commission on Dietetic Registration. According to the American Academy of Nutrition and Dietetics, the term "nutritionist" does not have a uniform definition and is generally defined in statute in states that regulate the practice. For the purposes of House Bill 4688, those opposing the bill and using the title of "nutritionist" generally refer to "non-dietitian

nutrition service providers," although some of those individuals may also be credentialed as registered dietitians. Additionally, according to testimony, there is no functional difference between someone who uses the titles of "registered dietitian" and "registered dietitian-nutritionist."

Since enactment of the licensure law in 2006, the Department of Licensing and Regulatory Affairs and the Board of Dietetics and Nutrition have worked to promulgate rules to establish the educational, examination, experience, and licensure requirements for dietitians and nutritionists. On May 14, 2013, LARA proposed draft rules which have yet to be certified and approved under the Administrative Procedures Act. To date, the Bureau of Health Care Services has yet to license or otherwise regulate the occupations of dietitians and nutritionists.

In 2012, the Office of Regulatory Reinvention recommended the dissolution of the Board of Dietetics and Nutrition and the deregulation of dietitians and nutritionists, claiming there is a lack of clear public health and safety benefits to such regulation, and citing allegedly unresolved discussions regarding the establishment of acceptable credentialing and education requirements and the existence of multiple national credentialing bodies for nutritionists. According to testimony, dietitians are generally credentialed by the Academy of Nutrition and Dietetics Commission on Dietetic Registration, which serves as the sole national credentialing organization for dietitians. However, according to testimony, the practice of nutrition does not have a sole national credentialing organization, and the Board of Dietetics and Nutrition appears to have been unable to settle on the appropriate credential and education requirements for nutritionists.

Based on the testimony and information submitted for consideration to the committee, the issue at hand appears to be who can practice under the title of "nutritionist" and what types of functions they may perform. Generally, practicing dietitians are registered through the Academy of Nutrition and Dietetics and have met established professional and educational standards. However, according to testimony, practicing nutritionists do not have a generally accepted and established scope of practice; rather, they practice in a range of settings—including in private health and fitness clubs and in private practice—and offer a variety of nutrition-based services. Because they lack a single credentialing body, individuals practicing in the nutrition field are not required to meet a uniform set of professional and educational standards. Therefore, these individuals may face additional challenges in meeting the education and supervised post-degree or planned continuous pre-professional experience required under the state statute.

House Bill 4688 seeks to repeal the dietitian and nutritionist licensing law. Supporters of the bill believe the scope of practice and licensure requirements unduly restrict competition in the marketplace. Additionally, Part 183a provides for a scope of practice for dietitians and nutritionists that some believe is "RD-focused" (meaning that it was defined to encompass the practice of dietetics and not the broader field of nutrition services offered by non-dietitians) could severely limit or prohibit certain individuals from continuing to operate their businesses, especially individuals whose activities could be interpreted as the "practice of dietetics and nutrition care services."

THE CONTENT OF THE BILL:

The bill would repeal Part 183a (Dietetics and Nutrition) of the Public Health Code, which provides for the licensure of dietitians and nutritionists, and establishes the Board of Dietetics and Nutrition within the Department of Licensing and Regulatory Affairs (LARA).

The bill would also repeal Section 16346 of the Public Health Code, which establishes application and licensing fees for individuals seeking licensure as a dietitian or nutritionist.

[See below for an overview of the licensure requirements for dietitians and nutritionists under Part 183a.]

BACKGROUND INFORMATION:

Scope of practice

Under Part 183a, dietitian and nutritionists are defined as individuals engaged in the practice of dietetics and nutrition, who are responsible for providing dietetics and nutrition care services, and who are licensed under Article 15 of the Public Health Code as a dietitian or nutritionist.

"Dietetics and nutrition care services" are currently defined as 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 such services includes:

- Assessing the nutrition needs of an individual or group of individuals based on biochemical, anthropometric, physical, and dietary data, determining the resources and constraints to meet the nutrition needs of that individual or group of individuals, and recommending proper nutrition intake to satisfy those needs.
- Establishing priorities, goals, and objectives to meet the nutrition needs of the individual or group of individuals based on available resources and constraints.
- Providing nutrition counseling regarding health or 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.

The licensure requirements of Part 183a do not apply to the following individuals:

- An individual licensed under another part or act that performs activities or services that are considered dietetics and nutrition care services if those services are within the individual's scope of practice and the individual does not use protected titles (nutritionist or dietitian).

- An individual who furnishes any kind of nutrition information on foods, food materials, or dietary supplements - or provides explanations about foods or food materials in connection with the marketing and distribution of the products - as long as the individual does not represent himself or herself as a nutritionist or dietitian.
- An individual who provides weight control services under a program approved by a dietitian or nutritionist licensed or registered under the Public Health Code or licensed by another state or under a program approved by a chiropractor or licensed physician.

Fees

Annual license and temporary license fees for dietitians and nutritionists are currently \$75. There is also a \$20 application processing fee.

License requirements

Individuals are prohibited under Part 183a from engaging in the practice of dietetics and nutrition or providing or offering to provide dietetics and nutrition care services unless first licensed through LARA.

At a minimum, individuals are required to have a baccalaureate degree from a LARA-approved college or university with a major course of study in human nutrition, nutrition education, foods and nutrition, dietetics, or food systems management, or a LARA-approved equivalent course of study; at least 900 hours of supervised postcollege or planned continuous preprofessional experience as provided for through administrative rules (although proposed administrative rules for the implementation of Part 183a have not yet been certified and approved); and successfully pass a LARA-approved examination.

Under 2006 PA 333, individuals that were registered as dietitians by the Commission on Dietetic Registration and had met the standards contained in the American Dietetic Association's clinical practice guidelines at the time of enactment would be granted a license, but would have to apply for licensure under Part 183a within two years of the promulgated rules for the part taking effect.

Proposed administrative rules

For the proposed administrative rules pertaining to dietetics and nutrition licensing, see: http://www7.dleg.state.mi.us/orr/Files/ORR/967_2011-005LR_orr-draft.pdf

ARGUMENTS:

For:

Currently, individuals are free to seek out nutrition advice from any source, including from a registered dietitian or from a number of non-dietician providers. According to testimony, consumers tend to seek out nutrition advice that is freely available from a number of online publications and other electronic sources based on a number of personal considerations. Registered dietitians should be one of the available options for

individuals seeking this information but they should not be the only available source. There is concern that if the licensure law is allowed to be fully implemented, the scope of practice established in the act would preclude many non-dietitians from maintaining their nutrition-based businesses. The current marketplace provides individuals with a freedom to choose where to get nutrition advice and that should be maintained.

For:

When it was enacted in 2008, Part 183a was intended as a licensure framework for dietitians. As a result, the scope of practice established in the act is generally seen as "RD-focused," meaning that it was defined to encompass the practice of dietetics and not the broader field of nutrition services offered by non-dietitians. Supporters of House Bill 4688 believe the scope of practice and education requirements for licensure are too centered on dietetics and should either be broadened, or preferably, repealed to ensure that others can continue to provide nutrition-based services. According to testimony, a wide range of nutrition services are offered by individuals that could overlap or be encompassed by the scope of practice in the act. However, not all of the individuals providing nutrition based services are registered dietitians and they would not currently qualify for licensure under Part 183a without additional educational training. In some instances, these individuals can be highly educated and have nutrition certification(s); however, the current law does not recognize this as adequate training in order to qualify for a dietitian and nutritionist license.

Additionally, the act currently would grant licensure to anyone currently registered by the Commission on Dietetic Registration as a dietitian. Some believe it is unfair to single out one credential for automatic licensure and argue that the statute should have included other credentials. Supporters believe the current licensure law has created a de facto monopoly on who can provide nutrition based services and that the "RD-focused" scope of practice favors dietitians over all other providers.

For:

Repeal of the dietitian and nutritionist licensing law would maintain the status quo as no one has yet been licensed and the law hasn't been fully implemented. According to the Michigan Academy of Nutrition and Dietetics, there are approximately 4,400 registered dietitians practicing in the state in a variety of clinical, medical, and private settings. According to testimony, the limited number of available registered dietitians can make it difficult for individuals without a serious medical condition to obtain an appointment. Deregulating the field and allowing others to continue operating their nutrition-based services will provide those that cannot get into see a registered dietitian an opportunity to seek an alternative path. Additionally, it ensures individuals can continue to freely express their opinions regarding nutrition and healthy living.

Limited access to registered dietitians has led to an increase in new business ventures geared toward healthy lifestyles and nutrition coaching. Some believe the educational requirements of Part 183a are not needed to perform many of the nutrition coaching services that individuals are seeking. According to testimony, aside from limited access, nutrition care from a registered dietitian can be costly and could preclude some

individuals from being able to utilize their services. Health coaches and wellness centers provide a reasonable alternative for that do not have access to or wish not to interact with a registered dietician.

Against:

Opponents of the bill argue that dietitians should remain licensed in Michigan in order to protect the public, especially individuals seeking medical nutrition therapy. Improper advice on diet and nutrition can have serious health consequences, including death. The state has an obligation to ensure that individuals with serious health conditions only receive accurate diet and nutritional information; the people most qualified to provide that information are those that can meet the established licensing requirements. Nutrition is a constantly evolving field; individuals without proper training could misinterpret nutrition research and misapply the findings. Licensure of the profession helps to ensure that only the most qualified and highly trained professionals are providing safe recommendations to the public.

Many individuals submitted written testimony describing situations in which individuals have been harmed by improper nutrition care or inaccurate nutritional advice. Deregulation of the profession could increase incidences of harm if individuals are exposed to additional misinformation. There is concern that individuals will be inundated with misinformation regarding nutritional supplements and weight loss plans that claim to be science-based but may not mix well with existing medical conditions. To the extent that individuals act upon misinformation or false claims, there may be a greater chance that individuals could experience adverse health outcomes.

Opponents of the bill believe that registered dietitians are the most qualified individuals to provide nutritional advice and counseling, especially when it comes to providing medical nutrition therapy. Rejecting the bill and maintaining licensure would ensure the public is able to seek out and identify the most qualified individuals to provide nutrition care—registered dietitians. Registered dietitians are the appropriate people to administer nutrition advice because of their established code of ethics and educational standards.

Against:

Registered dietitians play an important role on many health care teams. These practitioners work closely with physicians and other health professionals to provide nutrition expertise to patients with certain types of medical issues. The licensure of dietitians and nutritionists is seen as an important component to providing minimum standards for education and practical experience. Repealing the law and allowing for the unlicensed practice of nutrition and dietetics in the state could jeopardize the health of patients.

Against:

According to testimony, credentials provide a way for a practitioner to demonstrate a solid understanding of subject area and are commonly used to establish the qualifications individuals engaged in a profession. Licensure, on the other hand, serves as an authorization from the state for an individual to engage in certain practices. If House Bill

4688 is enacted and there is no licensing of dieticians and nutritionists, there is no way for the state to deal with bad actors and no recourse outside of the courts for individuals harmed by inaccurate nutritional information. Licensure allows the state to maintain some oversight of the profession and ensure that practitioners are meeting certain minimum standards of education and practical training.

POSITIONS:

The Office of Regulatory Reinvention supports the bill. (10-29-13)

Americans for Prosperity - Michigan supports the bill. (10-15-13)

Bay Tennis & Fitness supports the bill. (10-15-13)

Center for Holistic Medicine supports the bill. (10-29-13)

Certification Board for Nutrition Specialists supports the bill. (10-15-13)

Holistic Nutrition Center supports the bill. (10-22-13)

Metagenics supports the bill. (10-15-13)

Michigan Nutrition Association supports the bill. (10-15-13)

Michigan Retailers Association supports the bill. (10-15-13)

Nutritional Metabolic Counseling supports the bill. (10-22-13)

Michigan Academy of Family Physicians opposes the bill. (10-15-13)

Michigan Academy of Pediatrics opposes the bill. (10-15-13)

Michigan Academy of Physician Assistants opposes the bill. (10-15-13)

Michigan Association of Health Plans opposes the bill. (10-15-13)

Michigan Osteopathic Association opposes the bill. (10-15-13)

Michigan Primary Care Consortium opposes the bill. (10-15-13)

Michigan State Medical Society opposes the bill. (10-15-13)

Michigan Academy of Nutrition and Dietetics opposes the bill. (10-15-13)

Southeastern Michigan Dietetic Association opposes the bill. (10-22-13)

Employees from the following organizations indicated opposition to the bill:

Madonna University, University of Michigan Health System, Sparrow Hospital, Sparrow Health System, Henry Ford Hospital , St John Providence Hospital, St John Macomb-Oakland Hospital, Wayne State University, Ingham County Medical Care Facility, Extencicare Health Services, and Covenant Healthcare.

Students from Central Michigan University and Michigan State University indicated opposition to the bill.

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Paul Holland

■ 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.