

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1288/P1dn
TKK:kjf:rs

March 28, 2007

Senator Carpenter:

Please review this draft carefully to ensure that it accomplishes your intent. Although I referenced the materials provided by Joan Pleuss to create this draft, in some cases I retained the language of the current statutes or drafted alternative language where doing so enhanced clarity or conformed to drafting conventions.

I have several comments and questions for your consideration.

1. License required. I added proposed s. 448.71 (1), which prohibits the practice of dietetics without a license. Please let me know if it was your intent to leave this provision out.

2. Use of terms.

a. *Dietitian/nutritionist*. The background materials submitted by Joan Pleuss for this draft use the compound term, dietitian/nutritionist. Are these two separate classifications, or are the terms synonyms? If the terms are synonyms, I recommend using dietitian alone, to simplify subch. V of ch. 448 and any cross-references to dietitians found throughout the statutes. If necessary, we could add the term, "nutritionist" to the definition of dietitian.

If a nutritionist is not the same as a dietitian because the requirements or training of the two differ, I recommend that we define nutritionist separately and outline the licensure requirements separately. As drafted, I used the simple term, dietitian, which is recognized by the ADA.

b. *Nutrition care services*. Similarly, the materials submitted by Joan Pleuss used the term "nutrition care services" both in conjunction with dietetics (as in "A person pursuing a supervised course of study, including internships, leading to a degree or certificate in dietetics and nutrition care services. . .") and as an alternative to dietetics (as in the "[p]ractice of dietetics or nutrition care services includes. . ."). Are the terms synonyms, or do they mean two different things? If they mean two different things, I recommend defining them separately. As drafted, I used the medically recognized term, dietetics, alone throughout the draft in order to avoid confusion. Please let me know if this is a problem.

c. *Nutrition care systems*. Within the definition of dietetics, current s. 448.70 (2) uses the term, "nutrition care systems," and it is incorporated into proposed s.

448.70 (7) (c). This term is not defined. Does it differ from performing nutrition assessment and counseling (at proposed s. 448.70 (7) (a) and (b))? If yes, would it be appropriate to define this term? If it does not differ from performing nutrition assessment and counseling, perhaps we could eliminate proposed s. 448.70 (7) (c)?

d. *Herbs*. The background materials requested the addition of the term “herbs” to s. 448.72 (1) (f). How do herbs differ from dietary or food supplements? I recommend defining the term to avoid confusion.

3. Practice protection. I have several questions on this topic:

a. The proposed changes to s. 448.72 (1) (a) and (b) eliminate the right of certain persons to incorporate dietetics into their professional practice without obtaining a license issued under subch. V of ch. 448.

Under current s. 448.72 (1) (a) and (b), the following persons need not be certified as a dietitian to practice dietetics within the scope of their license, permit, or certificate, so long as the person does not claim to be a dietitian or certified or licensed in a nutrition-related field: persons practicing nursing (ch. 441), chiropractic (ch. 446), or dentistry (ch. 447); all persons licensed under ch. 448; persons practicing optometry (ch. 449), pharmacy (ch. 450), or acupuncture (ch. 451); and nursing home administrators (ch. 456) and persons to whom a practice or procedure is delegated by any of the above.

The proposed draft makes this exception **only** for physicians defined under s. 448.01 (5). Is that your intent?

b. Under current law, dietetic technicians or assistants need not be certified if they are working under the supervision of a certified dietitian. Neither term is defined. Is that acceptable? Are these individuals generally working towards licensure or do they require any formalized training? Does the logic of supervision under the certification scheme apply under the licensing scheme?

c. Is it your intent to allow any of the persons enumerated under s. 448.72 (2) through (6) to practice dietetics without a license? If so, I will need to amend the applicable paragraphs.

d. The minimal changes to s. 448.72 (1) (f) potentially create, perhaps inadvertently, a broad exception to the licensing requirements of subch. V of ch. 448. This paragraph made sense when subch. V of ch. 448 served primarily title-protection purposes. However, as amended by the bill, this paragraph would allow persons who are arguably engaging in the practice of dietetics (see, specifically, that portion of the paragraph allowing a person to explain the use, benefits, and preparation of food, to provide nutritional information about food, and to disseminate literature) to avoid the licensing requirements of this subchapter so long as they do not use certain titles. Is that your intent?

e. Proposed s. 448.72 (1) (g) exempts from licensing requirements persons who provide weight control services so long as the persons providing the services take guidance from certain individuals enumerated at subds. 1. through 3. Persons under subd. 3. are not themselves required to be licensed; is that your intent?

f. *Inconsistent significance of registration with the commission on dietetic registration?*

(1) Under s. 448.80, as amended by the bill, persons who hold a registration with the commission, submit an application form with the department, and pay a fee may be granted a temporary license without meeting any other licensure requirements under s. 448.78 (valid for up to nine months plus one renewal period).

(2) Under s. 448.82 (1), as created by the bill, persons who hold a registration with the registration commission, submit an application form with the department, and pay a fee may be granted a reciprocal license without meeting any other licensure requirements under s. 448.78 (valid for a two-year term).

Do you wish to make any changes to either of these sections?

5. Educational requirements. Please confirm that you want to delete any reference to the subject of the degree a candidate for licensure must receive from an accredited college or university as affected with the changes to s. 448.78 (3) (a).

Similarly, please confirm that you wish to eliminate the qualifications applicable to the *supervisor* of a candidate for licensure under current law. See s. 448.78 (4) (a) to (c), which are repealed by the bill.

6. Compensation as an element of the practice of dietetics. Do you wish to include compensation as an element of the definition of the practice of dietetics? See, for example, s. 453.02 (6) governing the practice of veterinary medicine. If compensation is included as part of the definition, persons who provide gratuitous dietetic services would not fall under the purview of the affiliated credentialing board's regulatory authority.

I look forward to talking with you after you have had an opportunity to review the draft.

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