



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0257/23
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RMNR
insert
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 440

SA Inserts

Thurs.
in 3/4/10 4:18 pm

Wanted mon.
3/8/10 pm or sooner if possible

1 AN ACT *to repeal* 146.89 (1) (r) 2., 448.72 (1) (a) and (b), 448.72 (1) (d), 448.72 (1)
2 (f), 448.72 (2), 448.74 (1), 448.78 (3) (c) and 448.78 (4) (a), (b) and (c); *to*
3 *renumber and amend* 448.70 (1), 448.70 (1m), 448.72 (1) (c), 448.72 (1) (e),
4 448.72 (3), 448.72 (4), 448.72 (5), 448.72 (6), 448.76, 448.78 (4) (intro.) and
5 448.82; *to consolidate, renumber and amend* 448.72 (intro.) and (1) (intro.)
6 and 448.74 (intro.) and (2); *to amend* 15.406 (2) (intro.), 15.406 (2) (a), 48.981
7 (2) (a) 24., 146.81 (1) (em), 146.89 (1) (r) 1., 146.997 (1) (d) 6., 180.1901 (1m) (br),
8 251.06 (3) (e) 2., 252.14 (1) (ar) 4m., 440.03 (13) (b) 23., 440.08 (2) (a) 27m.,
9 446.02 (6m), subchapter V (title) of chapter 448 [precedes 448.70], 448.70 (2),
10 448.70 (3), 448.78 (intro.), 448.78 (1), 448.78 (3) (a), 448.78 (3) (b), 448.78 (5),
11 448.80, 448.84 (1), 448.84 (2), 448.86 (title) and (1), 448.86 (2), 448.87 (2) (intro.)
12 and (a), 448.87 (2) (b), 448.87 (2) (e), 448.87 (2) (g), 450.10 (3) (a) 5m., 632.895

1 (1) (b) 5. b. and 655.45 (1m); and **to create** 448.70 (1d), 448.70 (2m), 448.70 (4g),
2 448.70 (4r), 448.70 (6) to (9), 448.71, 448.72 (7), 448.72 (8), 448.72 (11), 448.72
3 (12), 448.76 (7), 448.82 (1), 448.86 (3) and 448.865 of the statutes; **relating to:**
4 licensure of dietitian nutritionists and requiring the exercise of rule-making
5 authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 15.406 (2) (intro.) of the statutes is amended to read:

7 15.406 (2) ~~DIETITIANS~~ DIETETIC NUTRITION CARE SERVICES AFFILIATED
8 CREDENTIALING BOARD. (intro.) There is created in the department of regulation and
9 licensing, attached to the medical examining board, a ~~dietitians~~ dietetic nutrition
10 care services affiliated credentialing board consisting of the following members
11 appointed for 4-year terms:

12 **SECTION 2.** 15.406 (2) (a) of the statutes is amended to read:

13 15.406 (2) (a) Three ~~dietitians~~ individuals who are ~~certified~~ licensed as a
14 dietitian nutritionist under subch. V of ch. 448.

15 **SECTION 3.** 48.981 (2) (a) 24. of the statutes is amended to read:

16 48.981 (2) (a) 24. A dietitian nutritionist.

17 **SECTION 4.** 146.81 (1) (em) of the statutes is amended to read:

18 146.81 (1) (em) ~~A dietitian certified~~ An individual licensed as a dietitian
19 nutritionist under subch. V of ch. 448.

20 **SECTION 5.** 146.89 (1) (r) 1. of the statutes, as affected by 2009 Wisconsin Act
21 93, is amended to read:

22 146.89 (1) (r) 1. Licensed as a physician under ch. 448, a dentist or dental
23 hygienist under ch. 447, a registered nurse, practical nurse, or nurse-midwife under

1 ch. 441, an optometrist under ch. 449, a physician assistant under ch. 448, a dietitian
2 nutritionist under subch. V of ch. 448, a pharmacist under ch. 450, a chiropractor
3 under ch. 446, a podiatrist under subch. IV of ch. 448, or a physical therapist under
4 subch. III of ch. 448.

5 **SECTION 6.** 146.89 (1) (r) 2. of the statutes, as affected by 2009 Wisconsin Act
6 93, is repealed.

7 **SECTION 7.** 146.997 (1) (d) 6. of the statutes is amended to read:

8 146.997 (1) (d) 6. ~~A dietitian certified~~ An individual licensed as a dietitian
9 nutritionist under subch. V of ch. 448.

10 **SECTION 8.** 180.1901 (1m) (br) of the statutes is amended to read:

11 180.1901 (1m) (br) ~~Dietitians~~ Dietetic nutrition care services affiliated
12 credentialing board under subch. V of ch. 448.

13 **SECTION 9.** 251.06 (3) (e) 2. of the statutes is amended to read:

14 251.06 (3) (e) 2. A public health nutritionist, who is a ~~certified~~ licensed dietitian
15 nutritionist, as defined in s. 448.70 (1m) (5), is credentialed as a registered dietitian
16 by the Commission on Dietetic Registration, and meets qualifications that the
17 department shall specify by rule.

18 **SECTION 10.** 252.14 (1) (ar) 4m. of the statutes is amended to read:

19 252.14 (1) (ar) 4m. ~~A dietitian certified~~ An individual licensed as a dietitian
20 nutritionist under subch. V of ch. 448.

21 **SECTION 11.** 440.03 (13) (b) 23. of the statutes is amended to read:

22 440.03 (13) (b) 23. Dietitian nutritionist.

23 **SECTION 12.** 440.08 (2) (a) 27m. of the statutes is amended to read:

24 440.08 (2) (a) 27m. Dietitian nutritionist: November 1 of each even-numbered
25 year.

1 **SECTION 13.** 446.02 (6m) of the statutes is amended to read:

2 446.02 (**6m**) No chiropractor may provide counsel, direction, guidance, advice,
3 or a recommendation to a patient regarding the health effects of vitamins, herbs, or
4 nutritional supplements unless the chiropractor has been issued a certificate under
5 sub. (2) (c). This subsection does not apply to a chiropractor licensed under this
6 chapter who is ~~certified~~ licensed as a ~~dietician~~ dietitian nutritionist under subch. V
7 of ch. 448.

8 **SECTION 14.** Subchapter V (title) of chapter 448 [precedes 448.70] of the
9 statutes is amended to read:

10 **CHAPTER 448**

11 **SUBCHAPTER V**

12 **DIETITIANS DIETETIC NUTRITION**

13 **CARE SERVICES AFFILIATED**

14 **CREDENTIALING BOARD**

15 **SECTION 15.** 448.70 (1) of the statutes is renumbered 448.70 (1g) and amended
16 to read:

17 448.70 (**1g**) “Affiliated credentialing board” means the ~~dietitians~~ dietetic
18 nutrition care services affiliated credentialing board.

19 **SECTION 16.** 448.70 (1d) of the statutes is created to read:

20 448.70 (**1d**) “Accreditation commission” means the commission on
21 accreditation for dietetics education of the American Dietetic Association or its
22 successor.

23 **SECTION 17.** 448.70 (1m) of the statutes is renumbered 448.70 (5) and amended
24 to read:

1 448.70 (5) "~~Certified Licensed~~ dietitian nutritionist" means an individual who
2 is ~~certified licensed~~ as a dietitian nutritionist under this subchapter.

3 SECTION 18. 448.70 (2) of the statutes is amended to read:

4 448.70 (2) "~~Dietetics~~ Dietetic nutrition care services" means the integration
5 and application of principles of ~~nutritional science, biochemistry, derived from the~~
6 sciences of food science, ~~physiology, food systems, nutrition,~~ management,
7 ~~behavioral science~~ communication, biology, physiology, behavior, and the social
8 ~~science in order~~ sciences to achieve or and maintain the optimal human health of an
9 individual or group of individuals. "~~Dietetics~~" includes ~~assessing the nutritional~~
10 ~~needs of an individual or group of individuals and determining available resources~~
11 ~~and constraints in meeting those nutritional needs; establishing priorities, goals and~~
12 ~~objectives that meet those nutritional needs and are consistent with available~~
13 ~~resources and constraints; providing nutrition counseling; or developing,~~
14 ~~implementing and managing nutritional care systems.~~

15 SECTION 19. 448.70 (2m) of the statutes is created to read:

16 448.70 (2m) "Dietetic nutrition therapy" means a specific application of
17 dietetic nutrition care services and the nutrition care process for the management
18 of disease or the treatment or rehabilitation of an injury. Dietetic nutrition therapy
19 may be applied to an individual or to a group of individuals and may include the use
20 of a medically prescribed diet, meal plans, and specialized ^{of nutrition} intravenous or oral
21 solutions provided enterally, parenterally, or orally

22 SECTION 20. 448.70 (3) of the statutes is amended to read:

23 448.70 (3) "Dietitian nutritionist" means an individual who ~~practices dietetics~~
24 engages in the practice of dietetic nutrition care services.

25 SECTION 21. 448.70 (4g) of the statutes is created to read:

1 448.70 (4g) "Differential diagnosis" means the distinguishing of a disease or
2 condition from others presenting similar symptoms.

3 SECTION 22. 448.70 (4r) of the statutes is created to read:

4 448.70 (4r) "General nonmedical nutrition information" means information
5 about any of the following:

6 (a) Principles of good nutrition and food preparation.

7 (b) Foods to be included in a normal daily diet.

8 (c) Essential nutrients.

9 (d) Sources of essential nutrients, including food and supplements.

10 (e) Recommended amounts of essential nutrients.

11 (f) The actions of nutrients in the body.

12 (g) The effects of an excess or deficiency of a nutrient.

13 SECTION 23. 448.70 (6) to (9) of the statutes are created to read:

14 448.70 (6) "Medically prescribed diet" means a diet prescribed to an individual
15 by or in consultation with a physician, as defined in s. 448.01 (5), a registered nurse
16 licensed under s. 441.06 or permitted under s. 441.08, an advanced practice nurse
17 prescriber certified under s. 441.16, or a physician assistant licensed under subch.
18 II of ch. 448.

****NOTE: Do any of the following have authority to prescribe a medically prescribed diet such that they should be added to this definition: respiratory care practitioners certified under subch. II of ch. 448, podiatrists licensed under subch. IV of ch. 448, or nurse midwives licensed under s. 441.15?

19 (7) "Nutrition care process" means an integrated and systematic
20 problem-solving method used to analyze and address nutrition-related problems of
21 an individual or a group and provide safe, quality, and effective nutrition care to that
22 individual or group. "Nutrition care process" includes the following 4 distinct but
23 interrelated and connected steps:

Insert 6 - 15

identify

↑

No. of the extent and cause of nutritional problems and recommend enteral, parenteral, and oral nutrition interventions.

- 1 (a) ~~Evaluating~~ the nutritional needs of ~~the~~ individual or group based upon
- 2 biochemical, anthropometric, physical, and dietary information about the individual
- 3 or group to determine nutrient needs of and recommend appropriate nutrition
- 4 intake, including enteral and parenteral nutrition, by the individual or group.

***NOTE: I was instructed in our meeting on February 17 to use the language provided to me on that day for the four steps of the "nutrition care process." I have the following questions about the language in this paragraph:

Your drafting instructions included the phrase "evaluation of the nutrition needs of the individual ... to determine nutrient needs." How does evaluating the nutrition needs of the individual assist the dietitian nutritionist in determining the nutrient needs of the individual? This seems circular.

Your drafting instructions used the phrase "nutrition intake"; but is nutrition something that you intake? Or is the appropriate phrase "nutrient intake"?

What is "enteral and parenteral nutrition"? I had left this phrase out of the earlier draft, so we did not discuss it at our meeting on the 17th. It is included in your drafting instructions after nutrition intake. Is "enteral nutrition" something you intake? Or is it a method of introducing nutrients into a body (for example by a tube)? What about "parenteral nutrition"? Regardless of what these words mean, is it appropriate to include these terms in this first, assessment phase of the nutrition care process (NCP)? Or is it more appropriately placed in the implementation phase of the NCP [under par. (c)]?

- 5 (b) ~~Identifying~~ and ~~labeling~~ each nutrition-related problem of the individual
- 6 or group to be treated independently.

***NOTE: What does "treated independently" mean? Is it important that each nutrition-related problem will be treated independently, or is it enough to say that each nutrition-related problem will be treated?

Insert 7-7

- 7 (c) Purposefully planned actions intended to positively change a
- 8 nutrition-related behavior or environmental condition or an aspect of the health
- 9 status of the individual, group, or the community at large.

***NOTE: Is the dietitian nutritionist taking the "purposefully planned action" or recommending that the client take the "purposefully planned action"?

***NOTE: What does "change ... [an] aspect of the health status" mean? "Health status" is not a defined term. Previously, the definition of NCP has referred to "nutrition-related problems." Is "change ... [an] aspect of the health status" different from resolving or treating or improving a nutrition-related problem? That is, may I substitute "resolve or improve the nutrition-related problems identified under par. (b)" for "change ... [an] aspect of the health status...?"

***NOTE: Why is "the community at large" included here? The remainder of the definition for NCP relates to the steps for assessing, diagnosing, intervening on the behalf of, and monitoring an individual or group. How does a dietitian nutritionist undertake the NCP on behalf of the community?

- 1 Identify and evaluate
- 2 (d) Identifying for the individual or group nutrition-related goals and outcomes for each
- 3 nutrition-related problem diagnosed under par. (b) and intervention plans and goals monitor and modify, as necessary, the interventions developed under para. (c)

****NOTE: I substituted "individual or group" for "client," as there was no previous reference to a client and there has been consistent reference to "individual or group." Okay?

****NOTE: This is the first reference to both "nutrition-related outcomes" and "intervention plans and goals." Should I also include these aspects of the NCP in par. (c)?

LPS: please switch these paragraphs

- 4 (8) "Practice of dietetic nutrition care services" includes each of the following
- 5 but does not include making a differential diagnosis:
- 6 (b) (a) The nutrition care process.
- 7 (a) (b) Dietetic nutrition therapy.

8 (9) "Registration commission" means the commission on dietetic registration

9 of the American Dietetic Association or its successor.

10 SECTION 24. 448.71 of the statutes is created to read:

11 **448.71 License required.** Except as provided in s. 448.72, no individual may

12 engage in the practice of dietetic nutrition care services unless the individual is

13 licensed under this subchapter.

14 SECTION 25. 448.72 (intro.) and (1) (intro.) of the statutes are consolidated,

15 renumbered 448.72 (intro.) and amended to read:

16 **448.72 Applicability.** (intro.) This No license is required under this

17 subchapter does not do any of the following: (1) (intro.) Require a certificate under

18 this subchapter for any of the following:

19 SECTION 26. 448.72 (1) (a) and (b) of the statutes are repealed.

20 SECTION 27. 448.72 (1) (c) of the statutes is renumbered 448.72 (9) and

21 amended to read:

1 448.72 (9) A ~~person pursuing a supervised course of study, including~~
2 ~~internships, leading to a degree or certificate~~ student enrolled in a dietetics from an
3 educational program that is accredited educational program or an educational
4 program approved by the affiliated credentialing board accreditation commission if
5 the student's enrollment is for the purpose of meeting eligibility requirements to take
6 the examination for dietitians established by the registration commission.

7 **SECTION 28.** 448.72 (1) (d) of the statutes is repealed.

8 **SECTION 29.** 448.72 (1) (e) of the statutes is renumbered 448.72 (10) and
9 amended to read:

10 448.72 (10) A dietitian nutritionist who is serving in the U.S. armed forces, as
11 defined in s. 40.02 (57m), or in the commissioned corps of the federal public health
12 service or is employed by the U.S. veterans administration, and who is engaged in
13 the practice of dietetics dietetic nutrition care services as part of that service or
14 employment.

15 **SECTION 30.** 448.72 (1) (f) of the statutes is repealed.

16 **SECTION 31.** 448.72 (2) of the statutes is repealed.

17 **SECTION 32.** 448.72 (3) of the statutes is renumbered 448.76 (3) and amended
18 to read:

19 448.76 (3) ~~Prohibit an~~ An individual described in sub. (1) (e) ~~from using s.~~
20 448.72 (10) may use the title "dietitian nutritionist" or any letters or designation that
21 represents or may tend to represent the individual as a dietitian nutritionist, if the
22 title, letters, or designation is used only in the course of the individual's service or
23 employment.

24 **SECTION 33.** 448.72 (4) of the statutes is renumbered 448.76 (4) and amended
25 to read:

1 448.76 (4) ~~Prohibit an~~ An individual who is registered as a dietitian with the
2 registration commission on dietetic registration of the American Dietetic Association
3 ~~from using~~ may use the title “dietitian” or “registered dietitian” or the initials, “R.D.”.

4 **SECTION 34.** 448.72 (5) of the statutes is renumbered 448.76 (5) and amended
5 to read:

6 448.76 (5) ~~Prohibit an~~ An individual who is registered as a dietetic technician
7 with the registration commission on dietetic registration of the American Dietetic
8 Association from using may use the title “dietetic technician” ~~or,~~ “dietetic technician
9 registered” registered, or the initials, “D.T.R.”.

10 **SECTION 35.** 448.72 (6) of the statutes is renumbered 448.76 (6) and amended
11 to read:

12 448.76 (6) ~~Prohibit an~~ An individual ~~from using~~ may use the title “dietitian”,
13 “dietitian nutritionist,” “licensed dietitian” or, “licensed dietitian nutritionist,”
14 “certified dietitian,” or certified dietitian nutritionist” if the ~~person~~ individual is
15 licensed or certified as a dietitian or dietitian nutritionist under the laws of another
16 state which has licensure or certification requirements that the affiliated
17 credentialing board determines to be substantially equivalent to the requirements
18 under s. 448.78.

19 **SECTION 36.** 448.72 (7) of the statutes is created to read:

20 448.72 (7) An individual who is lawfully practicing within the scope of a license
21 or certificate granted under subch. XII of ch. 440, chs. 441, 446, or 447, subchs. I to
22 IV, VI, and VII of ch. 448, or chs. 449 to 451.

23 **SECTION 37.** 448.72 (8) of the statutes is created to read:

24 448.72 (8) A retailer that sells food, food materials, dietary supplements, and
25 other goods at the retailer’s establishment or a similar establishment and that

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1 furnishes oral or written general nonmedical nutrition information related to the
2 sale, marketing, and distribution of the food, food materials, dietary supplements,
3 or other goods.

4 SECTION 38. 448.72 (11) of the statutes is created to read:

5 448.72 (11) (a) An individual who provides weight control services to a client
6 or group of clients through a program of instruction that has been reviewed and
7 approved in writing by one of the following:

- 8 1. An individual licensed under this subchapter.
- 9 2. A physician as defined in s. 448.01 (5).
- 10 3. An individual who is licensed or certified as a dietitian or dietitian
11 nutritionist under the laws of another state that has licensure or certification
12 requirements that the affiliated credentialing board determines to be substantially
13 equivalent to the licensure requirements under s. 448.78.
- 14 4. An individual who is registered as a dietitian with the registration
15 commission.

16 (b) An individual who provides weight control services as provided under par.
17 (a) may not initiate changes to the program of instruction until the changes have
18 been reviewed and approved in writing by the individual who reviewed and approved
19 the program of instruction under par. (a).

20 SECTION 39. 448.72 (12) of the statutes is created to read:

21 448.72 (12) An individual practicing under the disciplines, tenets, or traditions
22 of a recognized religious organization and providing information and services to
23 other individuals who are adherents to or members of the same recognized religious
24 organization if the individual complies with s. 448.865 (1) (b) 2.

1 **SECTION 40.** 448.74 (intro.) and (2) of the statutes are consolidated,
2 renumbered 448.74 and amended to read:

3 **448.74 Duties of affiliated credentialing board.** The affiliated
4 credentialing board shall ~~promulgate rules that do all of the following:~~ **(2) Establish**
5 ~~a code of ethics~~ establish by rule standards of practice to govern the professional
6 conduct of ~~certified dietitians~~ an individual licensed as a dietitian nutritionist,
7 including a code of ethics, and may promulgate rules necessary for the
8 administration and enforcement of this subchapter.

9 **SECTION 41.** 448.74 (1) of the statutes is repealed.

10 **SECTION 42.** 448.76 of the statutes is renumbered 448.76 (1) and amended to
11 read:

12 448.76 (1) Except as provided in s. 448.72 (1) (e) and (2) subs. (3) to (6), a person
13 (7), an individual who is not ~~a certified~~ licensed as a dietitian nutritionist may not
14 designate himself or herself as a dietitian, ~~claim to provide dietetic services~~
15 nutritionist; use or assume the title “dietitian,” “certified dietitian,” “licensed
16 dietitian,” “certified nutritionist,” “licensed nutritionist,” “dietitian nutritionist,”
17 “certified dietitian nutritionist,” or “licensed dietitian nutritionist”; append to the
18 individual’s name the letters “L.D.,” “L.N.,” or “L.D.N.”; or use any title or initials
19 that represent or may tend to represent the ~~person~~ individual as certified or licensed
20 as a dietitian nutritionist or as certified or licensed in a nutrition-related field.

21 **SECTION 43.** 448.76 (7) of the statutes is created to read:

22 448.76 (7) An individual with a temporary license under s. 448.80 shall use the
23 title “registry eligible dietitian,” which title shall not be abbreviated or capitalized.

24 **SECTION 44.** 448.78 (intro.) of the statutes is amended to read:

1 **448.78 ~~Certification of dietitians~~ Licensure as a dietitian nutritionist.**

2 (intro.) The affiliated credentialing board shall grant a ~~certificate~~ license as a
3 dietitian nutritionist to an individual who does all of the following:

4 **SECTION 45.** 448.78 (1) of the statutes is amended to read:

5 448.78 (1) Submits an application for the ~~certificate~~ license to the department
6 on a form provided by the department.

7 **SECTION 46.** 448.78 (3) (a) of the statutes is amended to read:

8 448.78 (3) (a) ~~Received~~ Possesses a bachelor's, master's, or doctoral degree in
9 ~~human nutrition, nutrition education, food and nutrition, dietetics or food systems~~
10 ~~management from a program at~~ granted by a United States regionally accredited
11 ~~college or university that is regionally accredited, as determined by the affiliated~~
12 ~~credentialing board, and that is located in a state or territory of the United States~~
13 and successfully completes a didactic program in dietetics accredited by the
14 accreditation commission.

15 **SECTION 47.** 448.78 (3) (b) of the statutes is amended to read:

16 448.78 (3) (b) ~~Received~~ Possesses a bachelor's, master's, or doctoral degree in
17 ~~human nutrition, nutrition education, food and nutrition, dietetics or food systems~~
18 ~~management from a program at~~ granted by a college or university that is not located
19 ~~in a state or territory of the United States if~~ an independent agency approved by the
20 ~~affiliated credentialing board determines~~ registration commission has determined
21 that the ~~program~~ degree is substantially equivalent to a ~~program~~ degree described
22 under par. (a).

23 **SECTION 48.** 448.78 (3) (c) of the statutes is repealed.

24 **SECTION 49.** 448.78 (4) (intro.) of the statutes is renumbered 448.78 (4) and
25 amended to read:

1 448.78 (4) Submits evidence satisfactory to the affiliated credentialing board
2 that he or she has completed a supervised practice program accredited by the
3 accreditation commission with at least 900 supervised practice hours of ~~dietetics~~
4 ~~practice in any state or territory of the United States under the supervision of any~~
5 ~~of the following.~~

6 **SECTION 50.** 448.78 (4) (a), (b) and (c) of the statutes are repealed.

7 **SECTION 51.** 448.78 (5) of the statutes is amended to read:

8 448.78 (5) Passes the registration examination for dietitians established by the
9 registration commission ~~on dietetic registration of the American dietetic association,~~
10 ~~or passes an equivalent examination approved by the affiliated credentialing board,~~
11 ~~and held under s. 448.84, to determine fitness to practice dietetics.~~

12 **SECTION 52.** 448.80 of the statutes is amended to read:

13 **448.80 Temporary certificate license.** Upon application and payment of
14 the fee specified in s. 440.05 (6), the affiliated credentialing board may grant a
15 temporary ~~dietitian certificate~~ license to an individual who satisfies the
16 requirements under s. 448.78 (1) to (4) and ~~has submitted an application to take the~~
17 ~~next available examination under s. 448.84~~ submits a letter from the registration
18 commission verifying registration eligibility status. A temporary ~~certificate~~ license
19 granted under this section is valid for a period designated by the affiliated
20 credentialing board, not to exceed ~~9~~ 6 months, and may be renewed once by the
21 affiliated credentialing board.

22 **SECTION 53.** 448.82 of the statutes is renumbered 448.82 (intro.) and amended
23 to read:

1 **448.82 Reciprocal ~~certificate~~ license.** (intro.) Upon application and
2 payment of the fee specified in s. 440.05 (2), the affiliated credentialing board shall
3 grant a ~~dietitian certificate~~ license to ~~an~~ the following:

4 **(2)** An individual who holds a ~~similar~~ certificate or license ~~in~~ issued by another
5 state or territory of the United States if the affiliated credentialing board determines
6 that the requirements for receiving the certificate or license in the other state or
7 territory are substantially equivalent to the requirements under s. 448.78.

8 **SECTION 54.** 448.82 (1) of the statutes is created to read:

9 448.82 (1) An individual who is registered with the registration commission.

10 **SECTION 55.** 448.84 (1) of the statutes is amended to read:

11 448.84 (1) The affiliated credentialing board shall conduct or ~~arrange~~ contract
12 for administration of examinations for dietitian ~~certification~~ nutritionist licensure
13 at least semiannually ~~and at times and places determined by the affiliated~~
14 ~~credentialing board,~~ locations within this state and shall provide public notice of
15 each examination at least 90 days before the date of the examination.

16 **SECTION 56.** 448.84 (2) of the statutes is amended to read:

17 448.84 (2) Examinations held under sub. (1) shall consist of written or oral
18 tests, or both, requiring applicants to demonstrate minimum competency in subjects
19 substantially related to the practice of dietetics dietetic nutrition care services.

20 **SECTION 57.** 448.86 (title) and (1) of the statutes are amended to read:

21 **448.86 (title) Issuance of certificate license; expiration and renewal.**

22 **(1)** The department shall issue a ~~certificate~~ license to each individual who is ~~certified~~
23 licensed under this subchapter.

24 **SECTION 58.** 448.86 (2) of the statutes is amended to read:

1 448.86 (2) The renewal dates for ~~certificates~~ licenses granted under this
2 subchapter, other than temporary ~~certificates~~ licenses granted under s. 448.80, are
3 specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the
4 department on a form provided by the department and shall include the renewal fee
5 determined by the department under s. 440.03 (9) (a).

6 SECTION 59. 448.86 (3) of the statutes is created to read:

7 448.86 (3) An applicant for renewal of a license granted under this subchapter
8 shall provide to the department proof of satisfactory completion of at least the
9 minimum continuing professional education credits required by the registration
10 commission and shall submit one of the following:

- 11 (a) Proof of valid registration with the registration commission.
- 12 (b) Verification from the registration commission that the applicant has
- 13 completed and accurately reported at least the minimum continuing professional
- 14 education credits required by the commission.

15 SECTION 60. 448.865 of the statutes is created to read:

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17
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~~8) upon individuals who is neither licensed nor exempt from licensure~~
 448.865. Disclosure required to provide certain services. (1) ~~(Except as~~
 provided under sub. (2) an individual who is neither licensed under this subchapter
 nor exempt from licensure under s. 448.72 (7), (9) or (10) may provide information

19 or services related to nutrition to a client or group of clients for compensation, direct
20 or indirect, or in the expectation of compensation, if the individual complies with all
21 of the following:

****NOTE: I included language permitting the exempt individuals to "provide information or services related to nutrition" for compensation. Okay? Or was it your intent that any person who recommends to the person's friends and family, in passing and without any expectation of compensation, that the friends and family should eat or avoid certain foods or add certain flakes or supplements to their diet should be required to provide a disclaimer?

>

***NOTE: As drafted, this section will apply to individuals who provide weight control services under s. 448.72 (11). Was that your intent? If so, I recommend both of the following:

- 1. Include the words, "provide weight control services" in this intro. to sub. (1).
- 2. Explicitly require these individuals to comply with this section, as you do for individuals providing information and services under the religious exemption.

***NOTE: Aside from individuals who provide weight control services, will this authorization to "provide information or services related to nutrition" apply to anyone else?

> 6

1 (a) The individual does not engage in the practice of dietetic nutrition care
2 services.

3 (b) The individual provides to the client or group of clients a written disclosure
4 that contains the following information:

5 1. The name, professional title, business address, and business telephone
6 number of the individual.

7 2. A statement that the individual is not licensed as a dietitian nutritionist in
8 this state and cannot provide dietetic nutrition therapy.

9 3. A statement that the individual may not provide a medical diagnosis or
10 recommend that the client or group of clients discontinue medically prescribed
11 treatments.

12 (c) The individual clearly posts in the individual's place of business a copy of
13 the written disclosure under par. (b).

14 (d) Prior to providing services to a client or group of clients, the individual
15 obtains from each client a signed and dated statement on which the client confirms
16 receiving and reading the disclosure required under par. (b). The individual shall
17 maintain the signed statement in the client's file for 7 years after the client has
18 ceased being a client of the individual.

19

(2) This section does not apply to any of the following:

Insert
17-19

6

1 (a) A retailer under s. 448.72 (8).

>

2 ****NOTE: Is it your intent that a retailer not be required to provide or post the disclaimer, or is it your intent that the retailer is required to provide and post the disclaimer?

3 (b) Except as provided in s. 448.72 (12), an individual practicing under the disciplines, tenets, or traditions of a recognized religious organization.

4 SECTION 61. 448.87 (2) (intro.) and (a) of the statutes are amended to read:

5 448.87 (2) (intro.) Subject to the rules promulgated under s. 440.03 (1), the

6 affiliated credentialing board may reprimand a ~~certified~~ licensed dietitian

7 nutritionist or deny, limit, suspend, or revoke a ~~certificate~~ license granted under this

8 subchapter if it finds that the applicant or ~~certified~~ licensed dietitian nutritionist has

9 done any of the following:

10 (a) Made a material misstatement in an application for a ~~certificate~~ license or

11 for renewal of a ~~certificate~~ license.

12 SECTION 62. 448.87 (2) (b) of the statutes is amended to read:

13 448.87 (2) (b) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an

14 offense the circumstances of which substantially relate to the practice of ~~dieteties~~

15 dietetic nutrition care services.

16 SECTION 63. 448.87 (2) (e) of the statutes is amended to read:

17 448.87 (2) (e) Subject to ss. 111.321, 111.322 and 111.34, ~~practiced dieteties~~

18 engaged in the practice of dietetic nutrition care services while his or her ability to

19 practice was impaired by alcohol or other drugs.

20 SECTION 64. 448.87 (2) (g) of the statutes is amended to read:

21 448.87 (2) (g) Engaged in conduct while ~~practicing dieteties~~ engaged in the

22 practice of dietetic nutrition care services which evidences a lack of knowledge or

23 ability to apply professional principles or skills.

1 **SECTION 65.** 450.10 (3) (a) 5m. of the statutes is amended to read:

2 450.10 (3) (a) 5m. ~~A dietitian certified~~ An individual licensed as a dietitian
3 nutritionist under subch. V of ch. 448.

4 **SECTION 66.** 632.895 (1) (b) 5. b. of the statutes is amended to read:

5 632.895 (1) (b) 5. b. ~~A dietitian certified~~ An individual licensed as a dietitian
6 nutritionist under subch. V of ch. 448, if the nutrition counseling is provided on or
7 after July 1, 1995.

8 **SECTION 67.** 655.45 (1m) of the statutes is amended to read:

9 655.45 (1m) For the quarter beginning on July 1, 1995, and for each quarter
10 thereafter, the director of state courts shall file reports complying with sub. (2) with
11 the dietitians dietetic nutrition care services affiliated credentialing board regarding
12 health care providers ~~certified~~ licensed by the dietitians dietetic nutrition care
13 services affiliated credentialing board.

14 **SECTION 68. Nonstatutory provisions.**

15 (1) EXEMPTIONS FROM CERTAIN LICENSURE REQUIREMENTS.

16 (a) *Individuals certified by the dietitians affiliated credentialing board as a*
17 *dietitian on the effective date of this act.* Notwithstanding section 448.78 (3) to (5) of
18 the statutes, as affected by this act, no later than the first day of the 7th month
19 beginning after the effective date of this paragraph, the dietetic nutrition care
20 services affiliated credentialing board shall grant a license under section 448.78 of
21 the statutes, as affected by this act, to an individual who, on the the effective date
22 of this act, held a valid certificate as a dietitian granted by the dietitians affiliated
23 credentialing board.

24 (b) *Individuals registered as a registered dietitian with the American Dietetic*
25 *Association on the effective date of this act.* Notwithstanding section 448.78 (3) to (5)

1 of the statutes, as affected by this act, the dietetic nutrition care services affiliated
2 credentialing board shall grant a license under section 448.78 of the statutes, as
3 affected by this act, to an individual who no later than the first day of the 13th month
4 beginning after the effective date of this paragraph provides sufficient evidence to
5 the dietetic nutrition care services affiliated credentialing board that the individual
6 was registered as a registered dietitian with the commission on dietetic registration
7 of the American Dietetic Association on the effective date of this act.

8 **SECTION 69. Effective date.**

9 (1) This act takes effect on the first day of the 7th month beginning after
10 publication.

11 (END)

1 **Insert 6-15**

2 ^{No} any of the following:

3 (a) A physician, as defined in s. 448.01 (5), acting within the scope of practice
4 of his or her license.

5 (b) A physician assistant licensed under subch. II of ch. 448, acting within the
6 scope of practice of his or her license.

7 (c) An advanced practice nurse prescriber certified under s. 441.16, acting
8 within the scope of practice of his or her license or certificate.

9 (d) A licensed dietitian nutritionist, acting within the scope of practice of his
10 or her license and in consultation with a physician under par. (a), a physician
11 assistant under par. (b), or an advanced practice nurse prescriber under par. (c).

12 **Insert 7-7**

13 ^Q (c) Develop and implement planned interventions intended to positively
14 change a nutrition-related behavior or environmental condition with the purpose of
15 resolving or improving each nutrition-related problem identified in par. (b).

16 **Insert 17-19**

17 ^{No} Except as provided in s. 448.72 (8), a retailer that sells food, food materials,
18 dietary supplements, and other goods at the retailer's establishment or a similar
19 establishment may not provide information or services related to nutrition under
20 sub. (1).

*and that is not otherwise
licensed nor exempt from licensure
under this subchapter*

*to a client
or group of
clients for
compensation,
direct or indirect,
or in the
expectation of
compensation.*

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0257/P3ins2
TKK:.....

1 **Insert 11-3**

2 ^{NO} A retailer exempt from licensure under this section may not provide the services
3 described in s. 448.865 (1). sub

4 **Insert 17-19**

5 (2) An individual who provides information and services under s. 448.07 (12) 72
6 shall comply with the requirement under sub. (1) (b) 2.

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Wednesday, March 10, 2010 1:42 PM
To: Ludwig, Frederic
Subject: RE: ab 440
Attachments: 03.10.10 TTK response.doc

We're not quite there yet. Please see attached.

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Ludwig, Frederic
Sent: Wednesday, March 10, 2010 1:28 PM
To: Kuczenski, Tracy
Subject: ab 440

Just found out that the committee may take up 440 next Wednesday, in which case they need to send out a notice by the end of the day. Any idea when you think we can expect the chances, introducible and ready to go?

--
Fred Ludwig
Office of Representative Sandy Pasch
608.266.7671 (Office)
888.534.0022 (Toll-free)
608.282.3622 (Fax)

SECTION 22. 448.70 (6) to (9) of the statutes are created to read:

448.70 (6) "Medically prescribed diet" means a diet prescribed to an individual by any of the following:

- (a) A physician, as defined in s. 448.01 (5), acting within the scope of practice of his or her license.
- (b) A physician assistant licensed under subch. II of ch. 448, acting within the scope of practice of his or her license.
- (c) An advanced practice nurse prescriber certified under s. 441.16, acting within the scope of practice of his or her license or certificate.
- (d) A licensed dietitian nutritionist, ~~acting within the scope of practice of his or her license and~~ in consultation with a physician under par. (a), a physician assistant under par. (b), or an advanced practice nurse prescriber under par. (c).

(The definition in 448.70 only states that DNT can include the "use" of a medically prescribed diet..... and medically prescribed diet states means a diet **prescribed** to an individual by any of the following"...those are apples and oranges and thus could be limiting from what we had submitted and what WMS approved.)

RESPONSE of drafter (TKK): Okay.

(a) Evaluate the nutritional needs of an individual or group based upon biochemical, anthropometric, physical, and dietary information about the individual or group to determine the extent and cause of nutritional problems and recommend nutrition including enteral, parenteral, and oral nutrition interventions.

(By the omission of "nutrition including" it changes the meaning so needs to be added back. Nutrition= 1) The science or practice of taking in and utilizing foods. 2) A nourishing substance, such as nutritional solutions delivered to hospitalized patients via an IV or IG tube. Thus the way it was written "covers the "nourishing substance" via enteral, oral and parenteral but it does not include the recommendations of the foods themselves therefore "nutrition including" needs to be added back.)

RESPONSE of drafter (TKK):

I don't entirely understand the explanation for why nutrition needs to be repeated twice in this clause. Specifically, the first definition provided for nutrition doesn't make sense when used in this paragraph: to wit, "recommend the science or practice of taking in and utilizing food" does not make sense.

The last portion of the explanation indicates that "the way it was written covers the nourishing substance ... but does not include the recommendations of the foods themselves." What is the difference between "food" and "nourishing substance"?

As I read the current language, "recommend enteral, parenteral, and oral nutrition interventions" covers both the nourishing substances (nutrition, meaning food and

nourishment, modifies the interventions) and the manner in which the nourishing substances are recommended to be provided to the individual (enterally, parentally, orally).

Am I missing something?

Page 10

SECTION 36. 448.72 (8) of the statutes is created to read:

448.72 (8) A retailer that sells food, food materials, dietary supplements, and other goods at the retailer's establishment or a similar establishment and that furnishes oral or written general nonmedical nutrition information (do we need here "as defined in 448.70 (4m) or ok as is?. related to the sale, marketing, and distribution of the food, food materials, dietary supplements, or other goods. ~~A retailer exempt from licensure under this subsection may not provide the services described in s. 448.865 (1).~~

(Retailers do not need to do a disclosure.)

RESPONSE of drafter (TKK):

This stricken sentence does not require the retailer to include the disclosure when the retailer is furnishing oral or written general nonmedical nutrition information. (No, a definition of "general nonmedical nutrition information is not needed here as it is defined in the bill). This stricken sentence prohibits the retailer from providing "information or services related to nutrition to a client or a group of clients for compensation..." I included this sentence because s. 448.865 (1) does not define what "information or services related to nutrition" means; because the language of s. 448.865 (1) is so vague, if this stricken sentence is not included, it is possible that a court could find that a retailer will be able to provide – without a disclosure – "information or services related to nutrition to a client or a group of clients for compensation..." as "information or services related to nutrition" is not distinguishable from "general nonmedical nutrition information."

Was that your intent?

Page 10

(b) An individual who provides weight control services as provided under par. (a) may not initiate changes to the program of instruction until the changes have been reviewed and approved in writing by ~~the~~ an individual who is authorized to review and approved ~~the~~ a program of instruction under par. (a).

(The language as currently written could lead to some potential problems, as the original individual who reviewed and approved the plan may no longer be available (e.g., retirement; moving; death; etc.) to approved changes)

RESPONSE of drafter (TKK): Okay.

Kuczenski, Tracy

From: Ludwig, Frederic
Sent: Wednesday, March 10, 2010 5:30 PM
To: Kuczenski, Tracy
Subject: RE: ab 440

RESPONSE of drafter (TKK):

I don't entirely understand the explanation for why nutrition needs to be repeated twice in this clause. Specifically, the first definition provided for nutrition doesn't make sense when used in this paragraph: to wit, "recommend the science or practice of taking in and utilizing food" does not make sense.

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As I read the current language, "recommend enteral, parenteral, and oral nutrition interventions" covers both the nourishing substances (nutrition, meaning food and nourishment, modifies the interventions) and the manner in which the nourishing substances are recommended to be provided to the individual (enterally, parentally, orally).

Am I missing something?

Answer: Would the following language address the issue you describe above?:

Page 7

(a) Evaluate the nutritional needs of an individual or group based upon biochemical, anthropometric, physical, and dietary information about the individual or group to determine the extent and cause of nutritional problems and recommend **nutrition interventions, which may include enteral, parenteral, and oral solutions.**

RESPONSE of drafter (TKK):

This stricken sentence does not require the retailer to include the disclosure when the retailer is furnishing oral or written general nonmedical nutrition information. (No, a definition of "general nonmedical nutrition information is not needed here as it is defined in the bill). This stricken sentence prohibits the retailer from providing "information or services related to nutrition to a client or a group of clients for compensation..." I included this sentence because s. 448.865 (1) does not define what "information or services related to nutrition" means; because the language of s. 448.865 (1) is so vague, if this stricken sentence is not included, it is possible that a court could find that a retailer will be able to provide – without a disclosure – "information or services related to nutrition to a client or a group of clients for compensation..." as "information or services related to nutrition" is not distinguishable from "general nonmedical nutrition information."

Was that your intent?

Response: Would leaving in the proposed stricken sentence prohibit any individual that sells vitamins, food supplements, etc. from providing information or services related to nutrition to a client or a group of clients for compensation? If that's the case, and I think it is, that could be problematic. Many alternative care practitioners provide nutrition counseling/information AND sell products at retail. If they are prohibited from doing that, it would truly drive them out of business.

From: Kuczenski, Tracy
Sent: Wednesday, March 10, 2010 1:42 PM
To: Ludwig, Frederic
Subject: RE: ab 440

We're not quite there yet. Please see attached.

Tracy

Tracy K. Kuczenski

3/11/2010

*Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov*

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Sent: Wednesday, March 10, 2010 1:28 PM
To: Kuczenski, Tracy
Subject: ab 440

Just found out that the committee may take up 440 next Wednesday, in which case they need to send out a notice by the end of the day. Any idea when you think we can expect the chances, introducible and ready to go?

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Fred Ludwig
Office of Representative Sandy Pasch
608.266.7671 (Office)
888.534.0022 (Toll-free)
608.282.3622 (Fax)

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Wednesday, March 10, 2010 8:19 PM
To: Ludwig, Frederic
Subject: RE: ab 440

Hi Fred -

I am comfortable with making the change to the nutrition intervention language as suggested below, although I don't see that it is substantively any different.

As for the question about the sale of vitamins at retail, etc., I guess I just don't understand what your contacts are trying to accomplish with section 448.865. There are a couple of issues that are causing problems for me. Perhaps if I write some questions out one by one, and ask that each question be answered separately, we can straighten it out:

First, I believe I was instructed that s. 448.865 was *not* to apply to retailers. Is that right?

If yes, I take this to mean that NO PART of s. 448.865 applies to retailers. There are two pieces to s. 448.865: A. Requiring a disclosure and B. authorization to provide certain information and services. Applying this to retailers:

A. Retailers are *not* required to provide a disclosure for engaging in the activities that the retailers are permitted to engage in under s. 448.72 (8); specifically, providing general, nonmedical nutrition information in connection with the sale of food, etc. Is that right?

B. Retailers are *not* permitted to provide the information and services authorized under s. 448.865 (1). I was under the impression that the reason for excluding retailers from section 448.865 was to prohibit places like GNC from providing, for a fee, the information authorized to be provided with a disclosure under s. 448.865. Is that correct?

If B. is NOT correct, then I guess I don't understand why you would need to provide an exemption from licensure to retailers under s. 448.72 (8) *and* authorize retailers to provide the information and services described in s. 448.865 (1). If only one is needed, I would recommend eliminating the exemption at 448.72 (8).

Second, are "alternative care practitioners [that] provide nutrition counseling/information AND sell products at retail" RETAILERS? If there is any question about whether the answer is yes, then I strongly recommend defining "a retailer", particularly if the goal is to fence out some retailers from engaging in the activities authorized under s. 448.865 while at the same time authorizing OTHER retailers to engage in the same activities. Without a definition for retailer (and assuming my point in item B. is correct), I think that you CAN NOT accomplish the "fence GNC out of the activities authorized under s. 448.865" while at the same time authorizing alternative care practitioners to engage in the activities.

If I am wrong on any part of my explanation, can your contacts please provide me with a plain language explanation of what I am supposed to accomplish with s. 448.865 and how retailers/alternative care practitioners fit into that picture?

Regardless of whether any portion of my explanation above is correct, I need additional information/instruction about how to proceed.

Thanks,
Tracy

-----Original Message-----

From: Ludwig, Frederic
Sent: Wed 3/10/2010 5:30 PM
To: Kuczenski, Tracy

Subject: RE: ab 440

RESPONSE of drafter (TKK):

I don't entirely understand the explanation for why nutrition needs to be repeated twice in this clause. Specifically, the first definition provided for nutrition doesn't make sense when used in this paragraph: to wit, "recommend the science or practice of taking in and utilizing food" does not make sense.

The last portion of the explanation indicates that "the way it was written covers the nourishing substance . but does not include the recommendations of the foods themselves."

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As I read the current language, "recommend enteral, parenteral, and oral nutrition interventions" covers both the nourishing substances (nutrition, meaning food and nourishment, modifies the interventions) and the manner in which the nourishing substances are recommended to be provided to the individual (enterally, parentally, orally).

Am I missing something?

Answer: Would the following language address the issue you describe above?:

Page 7

(a) Evaluate the nutritional needs of an individual or group based upon biochemical, anthropometric, physical, and dietary information about the individual or group to determine the extent and cause of nutritional problems and recommend nutrition interventions, which may include enteral, parenteral, and oral solutions.

RESPONSE of drafter (TKK):

This stricken sentence does not require the retailer to include the disclosure when the retailer is furnishing oral or written general nonmedical nutrition information. (No, a definition of "general nonmedical nutrition information is not needed here as it is defined in the bill). This stricken sentence prohibits the retailer from providing "information or services related to nutrition to a client or a group of clients for compensation." I included this sentence because s. 448.865 (1) does not define what

"information or services related to nutrition" means; because the language of s. 448.865 (1) is so vague, if this stricken sentence is not included, it is possible that a court could find that a retailer will be able to provide - without a disclosure - "information or services related to nutrition to a client or a group of clients for compensation." as "information or services related to nutrition" is not distinguishable from "general nonmedical nutrition information."

Was that your intent?

Response: Would leaving in the proposed stricken sentence prohibit any individual that sells vitamins, food supplements, etc. from providing information or services related to nutrition to a client or a group of clients for compensation? If that's the case, and I think it is, that could be problematic. Many alternative care practitioners provide nutrition counseling/information AND sell products at retail. If they are prohibited from doing that, it would truly drive them out of business.

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Sent: Wednesday, March 10, 2010 1:42 PM
To: Ludwig, Frederic
Subject: RE: ab 440

We're not quite there yet. Please see attached.

Tracy

Tracy K. Kuczenski

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From: Ludwig, Frederic
Sent: Wednesday, March 10, 2010 1:28 PM
To: Kuczenski, Tracy
Subject: ab 440

Just found out that the committee may take up 440 next Wednesday, in which case they need to send out a notice by the end of the day. Any idea when you think we can expect the chances, introducible and ready to go?

--
Fred Ludwig
Office of Representative Sandy Pasch
608.266.7671 (Office)
888.534.0022 (Toll-free)
608.282.3622 (Fax)

Mike Walsh
(608) 310-8833

Tracy: As for the question about the sale of vitamins at retail, etc., I guess I just don't understand what your contacts are trying to accomplish with section 448.865. There are a couple of issues that are causing problems for me. Perhaps if I write some questions out one by one, and ask that each question be answered separately, we can straighten it out:

First, I believe I was instructed that s. 448.865 was **not** to apply to retailers. Is that right? **Answer: Yes, that is correct.**

If yes, I take this to mean that NO PART of s. 448.865 applies to retailers. There are two pieces to s. 448.865: A. Requiring a disclosure and B. authorization to provide certain information and services. Applying this to retailers:

A. Retailers are **not** required to provide a disclosure for engaging in the activities that the retailers are permitted to engage in under s. 448.72 (8); specifically, providing general, nonmedical nutrition information in connection with the sale of food, etc. Is that right? **Answer: Yes, that is correct.**

B. Retailers are **not** permitted to provide the information and services authorized under s. 448.865 (1). I was under the impression that the reason for excluding retailers from section 448.865 was to prohibit places like GNC from providing, for a fee, the information authorized to be provided with a disclosure under s. 448.865. Is that correct? **Answer: No, this is not correct. Retailers should be able to provide information and services under s. 448.865 (1) -- if they so chose.**

If B. is NOT correct, then I guess I don't understand why you would need to provide an exemption from licensure to retailers under s. 448.72 (8) **and** authorize retailers to provide the information and services described in s. 448.865 (1). If only one is needed, I would recommend eliminating the exemption at 448.72 (8). **Statement: We agree that it makes sense to eliminate the exemption for retailers under 448.72 (8).**

Second, are "alternative care practitioners [that] provide nutrition counseling/information AND sell products at retail" RETAILERS? **Answer: Like chiropractors, many alternative nutrition care practitioners sell vitamins and other nutrition products out of their offices/clinics. So...we believe that would classify them as retailers, especially if they are following tax law and have obtained a sellers permit from DOR.**

If there is any question about whether the answer is yes, then I strongly recommend defining "a retailer", particularly if the goal is to fence out some retailers from engaging in the activities authorized under s. 448.865 while at the same time authorizing OTHER retailers to engage in the same activities. **Statement: The goal is not to fence out some retailers while allowing other retailers to engage in activities authorized under 448.865. We would like all retailers treated equally, so we do not think there is a need**

to define "retailer". Without a definition for retailer (and assuming my point in item B. is correct), I think that you CAN NOT accomplish the "fence GNC out of the activities authorized under s. 448.865" while at the same time authorizing alternative care practitioners to engage in the activities. Statement: Again, we do not want to fence out any retailers.

If I am wrong on any part of my explanation, can your contacts please provide me with a plain language explanation of what I am supposed to accomplish with s. 448.865 and how retailers/alternative care practitioners fit into that picture?

Regardless of whether any portion of my explanation above is correct, I need additional information/instruction about how to proceed. Drafting recommendation (emphasis on recommendation):

- Delete Section 36 - 448.72 (8) -- The retailer exemption
- Under 448.865, create the following language:
 - ~~(3) This section does not apply to the following: (a) A retailer that sells food, food materials, dietary supplements, and other goods at the retailer's establishment or a similar establishment and that furnishes oral or written general nonmedical nutrition information related to the sales, marketing, and distribution of the food, food materials, dietary supplements, or other goods.~~

3-11-10

T. conf. w/notes: the information & services under s. 448.865 are more than the "general nonmedical nutrition information" provided by retailer under 448.72(8).

Retailer should not be able to provide the additional information but shouldn't be required to provide a disclosure when doing what authorized to do under s. 448.72(8).