

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/HB 951	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health Quality Subcommittee; Magar and others	115 Y's	0 N's
COMPANION BILLS:	CS/SB 1208	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 951 passed the House on April 9, 2015, and subsequently passed the Senate on April 22, 2015.

Dietician/nutritionists (DNs) are regulated under Part X of Ch. 468, F.S., the Dietetics and Nutrition Practice Act (Act), and by the Board of Medicine under the Department of Health's (Department) Division of Medical Quality Assurance.

The bill revises the definition of "dietetics and nutrition practice" to include the ordering of therapeutic diets and states that the Act does not preclude a licensed dietician/nutritionist (DN) from independently ordering a therapeutic diet if otherwise authorized to order such a diet in Florida.

Additionally, the bill allows DNs to become licensed without an examination when applicants for such licensure meet all the licensure requirements under s. 468.509, F.S., and are:

- Registered with the Commission on Dietetic Registration (Commission);
- Certified as nutrition specialists by the Certification Board for Nutrition Specialists; or
- Diplomates of the American Clinical Board of Nutrition.

The bill provides title protection for certain qualified individuals. Specifically, the bill authorizes only individuals who are:

- Registered with the Commission as a DN to use the title "Registered Dietician/Nutritionist" and the title acronym "R.D.N.";
- Certified by the Certification Board for Nutrition Specialists to use the title "Certified Nutrition Specialist" and the title acronym "CNS"; and
- Certified by the American Clinical Board of Nutrition to use the title "Diplomate of the American Clinical Board of Nutrition" and the title acronym "DACBN."

The bill has an insignificant negative fiscal impact on the Department and no fiscal impact on local government.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Dietetics and Nutrition Practice in Florida

Section 468.503(3), F.S., defines dietetics as the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, and management and from the behavioral and social sciences to achieve and maintain a person's health throughout the person's life. It is an integral part of preventive, diagnostic, curative, and restorative health care of individuals, groups, or both.¹ Dietetics and nutrition practice includes:

- 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, but is not limited to, evaluating, modifying, and maintaining appropriate standards of high quality in food and nutrition care services.²

Dietetics and nutrition practitioners work in health care systems, home health care, foodservice, research and educational organizations, as well as in private practice. They provide medical nutrition therapy in settings such as hospitals and nursing facilities and use specific nutrition services to treat chronic conditions, illnesses, or injuries. Community-based dietetics practitioners provide health promotion, disease prevention, and wellness services.³

The Dietetics and Nutrition Practice Council

The Dietetics and Nutrition Practice Council (Council) is an advisory council under the supervision of the Board of Medicine (Board) within the Department of Health's Division of Medical Quality Assurance and was established to ensure that every dietitian, nutritionist, or nutrition counselor practicing in this state meets minimum requirements for safe practice. The Council is responsible for licensing, monitoring, disciplining and educating dietitians/nutritionists and nutrition counselors to assure competency and safety to practice in Florida.⁴

The Council is comprised of five members appointed by the Board, three are licensed dietitians, one is a nutrition counselor, and one is a consumer member who is 60 years of age or older. Members are appointed to 4-year staggered terms. To be eligible for appointment, each licensed member must have been a licensee under this part for at least 3 years prior to his or her appointment. No council member shall serve more than two successive terms.⁵

Licensure

There are variations of licensure and credentialing for this profession. Two licensed professionals exist under Florida law, a "licensed dietitian/nutritionist" (DN) and a "licensed nutrition counselor."

To be licensed as a DN one must pass the licensure examination, show the successful completion of 900 hours of pre-professional planned and continuous supervised practice in dietetics or nutrition,⁶

¹ Section 468.503(3), F.S.

² Section 468.503(4), F.S.

³ Academy of Nutrition and Dietetics, *About Us*, available at <http://www.eatrightpro.org/resources/about-us> (last visited May 5, 2015).

⁴ Florida Dep't of Health, *Dietetics and Nutrition Council*, available at <http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/council/index.html> (last visited May 5, 2015).

⁵ Section 468.506, F.S.

⁶ At least 200 hours must be performed in a clinical nutrition setting, such as hospital and 200 hours must be performed in a community nutrition setting, such as a public health program. Rule 64B8-42.002, F.A.C.

complete a 2-hour course relating to prevention of medical errors, pay the licensure fee, and possess the following:⁷

- At least a bachelor's degree with a major course of study in human nutrition, food and nutrition, dietetics, or food management or an equivalent major,⁸ as determined by the Council, from an accredited Council approved program; or
- An academic degree with a major course of study in human nutrition, food and nutrition, dietetics, or food management from a foreign country, provided that degree has been validated by an accrediting agency approved by the U.S. Department of Education as equivalent to the baccalaureate or post baccalaureate degree conferred by a regionally accredited college or university in the United States.

The licensure examination requirement is waived for individuals who present the Board proof of a registered dietitian credential from the Commission on Dietetic Registration.⁹

A DN license must be renewed every 2 years upon receipt of a renewal application, fee, and proof of the successful completion of continuing education requirements as determined by the Board.¹⁰

Therapeutic Diets

Dietetic and nutrition specialists, such as Registered Dietitians (RDs) and Registered Dietician Nutritionists (RDNs),¹¹ provide a wide range of services related to food and nutrition including ordering or developing plans for therapeutic diets. Therapeutic diets are a diet intervention ordered by a health care practitioner as part of the treatment for a disease or clinical condition creating an altered nutritional status, to eliminate, decrease, or increase certain substances in a person's diet such as, sodium or calcium.¹² Therapeutic diets are often implemented in a hospital setting as route and type of nutrition are an important part of the patient recovery process. Therapeutic diets often involve changing the texture of foods or replacing food with enteral or parenteral nutrition feedings¹³ when a patient is not able to orally intake food. Such diets and associated nutritional therapy may also include the ordering of lab tests to monitor the effectiveness of dietary plans and orders.¹⁴

Section 468.516(1)(a), F.S., prohibits DNs from implementing a dietary plan (also referred to as a therapeutic diet) for a patient who is under the active care of a physician licensed under ch. 458 or ch. 459 F.S., or a chiropractor licensed under ch. 460, F.S., without the oral or written dietary order of the referring physician or chiropractor. However, if the DN is unable to obtain authorization or a consultation from the active treating physician or chiropractor, the DN may provide nutrition services, such as providing a nutritional assessment or nutrition education, until the order of the dietary plan is obtained from the physician.

Until recently, federal and state laws have not recognized RDs or RDNs as primary practitioners responsible for patient care and have not granted them authority to prescribe or order patient therapeutic diets. The Federal Centers for Medicare and Medicaid Services (CMS) now recognize these practitioners as the most qualified practitioners to assess a patient's nutritional status and to

⁷ *Id.* and Section 468.509, F.S.

⁸ *Id.* An equivalent major must be a course of study specially designed to prepare an individual to integrate and apply principles of nutrition. Any major must include at least 30 semester hours covering human nutrition, nutrition in health and disease, nutrition education and counseling, food science, nutrition in the community, and administration of food service or nutrition programs.

⁹ Section 468.509(3), F.S.

¹⁰ Section 468.514, F.S.

¹¹ The titles of RDs and RDNs vary by state, in Florida these licensed practitioners use the title dietitian/nutritionist or title acronym DN.

¹² Therapeutic diets are not defined by what is provided to the patient but why the diet is needed. Academy of Nutrition and Dietetics, Definition of Terms List, available at [http://www.eatright.org/uploadedFiles/Members/1\(1\).pdf](http://www.eatright.org/uploadedFiles/Members/1(1).pdf). (last visited May 6, 2015).

¹³ Enteral nutrition generally refers to any method of feeding that uses the gastrointestinal tract to deliver part or all of a person's caloric requirements. Parenteral nutrition refers to the delivery of calories and nutrients into a vein. American College of Gastroenterology, Enteral and Parenteral Nutrition, available at <http://patients.gi.org/topics/enteral-and-parenteral-nutrition/> (last visited May 6, 2015).

¹⁴ Academy of Nutrition and Dietetics, FAQs - CMS Final Rule Related to Therapeutic Diet Orders, available at <http://www.eatrightpro.org/resource/advocacy/quality-health-care/consumer-protection-and-licensure/faqs-cms-final-rule-related-to-therapeutic-diet-orders> (last visited May 6, 2015).

design and implement a nutritional treatment plan in consultation with the patient's interdisciplinary care team. Allowing RDs and RDNs more independent authority to order and implement patients' therapeutic diets gives patients greater access to timely nutritional care and increases medical staff efficiency.¹⁵

A CMS rule¹⁶ change in 2014 permits RDNs and RDs to order patient therapeutic diets independently in a hospital setting instead of under the direction and supervision of a health care practitioner, allowing hospitals to maintain Medicaid and Medicare reimbursement for such services by these practitioners. This change allows physicians and other health care practitioners more time to care for patients and allows RDs and RDNs to better provide timely, cost-effective, and evidence-based nutrition services, as the recognized nutrition experts on a hospital interdisciplinary team.¹⁷ CMS expects this Rule change to save up to \$459 million in annual hospital costs.¹⁸

Dietetics and Nutrition Credentialing Organizations

The Academy of Nutrition and Dietetics

The Academy of Nutrition and Dietetics (Academy) was founded in 1917 to help the government conserve food and improve the public's health and nutrition. The Academy has over 75,000 members from various food and nutrition professions.¹⁹ The Academy's goal is to improve the nation's health and advance dietetics through research, education, and advocacy.

The Commission on Dietetic Registration (Commission) is an arm of the Academy that administers credentialing programs. The Commission has 11 members, including 9 with three-year terms elected by credentialed practitioners, one public representative appointed for a five-year term, and one newly credentialed Registered Dietician Nutritionist or Registered Dietician appointed for a one-year term.²⁰

The Commission grants seven separate and distinct credentials including a Registered Dietitian Nutritionist (RDN) and Registered Dietitian (RD) credential.²¹ This credential is granted for individuals who have:

- Completed the minimum of a Baccalaureate degree granted by a U.S. regionally accredited college or university, or foreign equivalent;
- Met current minimum academic requirements (Didactic Program in Dietetics) as approved by the Accreditation Council for Education in Nutrition and Dietetics (ACEND) of the Academy of Nutrition and Dietetics;
- Completed a supervised practice program accredited by the ACEND of the Academy of Nutrition and Dietetics;
- Successfully completed the Registration Examination for Dietitians;
- Remitted the annual registration fee; and
- Complied with the Professional Development Portfolio recertification requirements.²²

¹⁵ Federal Register, *Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II*, available at <https://www.federalregister.gov/articles/2014/05/12/2014-10687/medicare-and-medicaid-programs-regulatory-provisions-to-promote-program-efficiency-transparency-and-h-22> (last visited May 6, 2015).

¹⁶ 42 C.F.R. §482.28(b)(1) addresses criteria that hospitals must meet to be eligible to participate in Medicaid and Medicare, specifically hospitals' food and dietetic services.

¹⁷ *Supra* fn 14.

¹⁸ *Supra* fn 15. (See 3.Summary of Costs and Benefits, b. Section by Section Economic Impact Estimates).

¹⁹ *Supra* fn. 3.

²⁰ Commission on Dietetic Registration, *About DCR*, available at <http://www.cdrnet.org/about> (last visited March 1, 2015).

²¹ *Id.* As of 2013, the Commission has granted credentials to a total of 89,385 RDs. The other credentials issued by the Commission are: Nutrition and Dietetics Technician, Registered / Dietetic Technician, Registered, Board Certified Specialist in Renal Nutrition, Board Certified Specialist in Pediatric Nutrition, Board Certified Specialist in Sports Dietetics, Board Certified Specialist in Gerontological Nutrition, and Board Certified Specialist in Oncology Nutrition.

²² Commission on Dietetic Registration, *Who Is a Registered Dietician or Registered Dietician Nutritionist*, available at <http://www.cdrnet.org/about/who-is-a-registered-dietitian-rd> (last visited May 6, 2015).

Some states, including Florida, require licensure applicants to pass the Commission's licensure exam as part of state licensure requirements.

Certification Board for Nutrition Specialists

The Certification Board for Nutrition Specialists (CBNS) is a credentialing body for nutrition care professionals with advanced degrees and training in nutrition science. The CBNS supports scientific training and the participation of professional nutritionists in independent evaluations of scientific data.²³

The Certified Nutrition Specialist (CNS) credential, offered by the CBNS, is granted to individuals who have:

- Completed a master's or doctoral degree in the field of nutrition or a doctoral degree in a field of clinical health care from a U.S. accredited education program or its foreign equivalent. The academic requirement also includes specific coursework requirements in the fields of:
 - Nutrition,
 - Biochemistry,
 - Physiology, and
 - Clinical or life sciences;
- Completed 1,000 hours of documented supervised practice experience in nutrition; and
- Successfully completed the CBNS certifying examination.²⁴

To maintain the CNS credential, the individual must be re-certified every five years with payment of the required fee and completion of 75 continuing nutrition education credits.²⁵

American Clinical Board of Nutrition

The American Clinical Board of Nutrition (ACBN) is a credentialing body for nutrition specialists. The ACBN was founded in 1986 and is the first and only nutrition certifying agency to offer Diplomate status to health care providers beyond the doctoral level in the U.S. and internationally. The ACBN provides an examination that evaluates the competency of all types of qualified doctoral-level health care providers and ensures a standard level of knowledge in the field of clinical nutrition.²⁶

The ACBN's Diplomate credential is offered to individuals who have submitted the required application and fee and who have:

- Earned a doctoral degree from an accredited education program holding status with the U.S. Department of Education;
- Completed a minimum of 300 hours of nutrition education from an accredited education program;
- Completed a minimum of two years practice experience in nutrition;
- Submitted a published article or paper on some aspect of nutrition; and
- Successfully completed the two-part examination which includes a section on case histories²⁷ and 150 examination questions.²⁸

The ACBN requires Diplomates to be re-certified annually with submission of a fee and proof of 12 hours at ACBN approved nutritional educational seminars or submission of the following:

²³ Certification Board for Nutrition Specialists, *About the BCNS*, available at <http://cbns.org/about/> (last visited May 6, 2015).

²⁴ Certification Board for Nutrition Specialists, *Eligibility Requirements for the CNS Credential*, available at http://cbns.org/?page_id=238&preview=true (last visited May 6, 2015).

²⁵ *Id.*

²⁶ American Clinical Board of Nutrition, *Welcome to the ACBN*, available at <http://www.acbn.org/index.html> (last visited May 6, 2015).

²⁷ A case history is a written narrative showing all aspects of a health care provider's care of an actual patient, from medical history documenting to follow-up and release from care. American Clinical Board of Nutrition, *Candidates Handbook*, available at <http://www.acbn.org/handbook.html> (last visited May 6, 2015).

²⁸ *Id.*

- Proof of engagement in nutrition education at a college, university, foundation, or agency having status with the U.S. Department of Education, or an agency having a reciprocal agreement with the recognized agency;
- A paper on nutrition for publication with a minimum of ten references; or
- At least two case histories suitable for publication.²⁹

Effect of Proposed Changes

CS/HB 951 amends part X of ch. 468, F.S., the Dietetics and Nutrition Practice Act (Act).

Currently DNs are only authorized to implement a therapeutic diet that is ordered by a patient's treating physician or chiropractor.³⁰ The bill revises the definition of "dietetics and nutrition practice" to include the ordering of therapeutic diets and states that the Act does not preclude a licensed DN from independently ordering a therapeutic diet if otherwise authorized to order such a diet in Florida.

Additionally, the bill allows licensure as a DN without an examination when applicants meet all the requirements of s. 468.509, F.S., and are:

- Registered with the Commission;
- Certified as nutrition specialists by the CBNS; or
- Diplomates of the ACBN.³¹

The bill provides title protection for certain qualified individuals. Specifically, the bill authorizes only individuals who are:

- Registered with the Commission as a DN to use the title "Registered Dietician/Nutritionist" and the title acronym "R.D.N.";
- Certified by the CBNS to use the title "Certified Nutrition Specialist" and the title acronym "CNS"; and
- Certified by the ACBN to use the title "Diplomate of the American Clinical Board of Nutrition" and the title acronym "DACBN."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on the Department associated with enforcing the additional title protections provided in the bill and associated with amending any rules to conform to changes made by the bill.

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁹ *Id.*

³⁰ Section 468.516, F.S.

³¹ The Commission, the CBNS, and the ACBN are all accredited by the National Commission for Certifying Agencies.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may result in cost savings to Florida hospitals related to the new authority for DNs to order therapeutic diets. Cost savings and efficiencies could result from allowing DNs to autonomously plan, order, monitor, and modify services as needed.