

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1208

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Dietetics and Nutrition

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1208 revises the Dietetics and Nutrition Practice Act. Specifically the bill:

- Authorizes certain registered or certified individuals to use specified titles and designations including, certified nutrition specialist and diplomates of the American Clinical Board of Nutrition;
- Requires the Board of Medicine to waive the licensure examination requirement for certain specified applicants; and
- Provides that a licensed dietitian/nutritionist treating a patient who is under the active care of a licensed physician or licensed chiropractor is not precluded from ordering a therapeutic diet if otherwise authorized to order such a diet.

II. Present Situation:

According to the U.S. Bureau of Labor Statistics dietitians and nutritionists plan and conduct food service or nutritional programs to assist in the promotion of health and control disease. Individuals in this occupation may also supervise activities of a dietetic department providing quality food service, counsel individuals, or conduct nutritional research.¹

¹ United States Department of Labor, Bureau of Labor Statistics, *Occupational Employment and Wages, May 2014 for Dietitians and Nutritionists*, available at <http://www.bls.gov/oes/current/oes291031.htm> (last visited April 3, 2015).

Dietetics and Nutrition Credentialing Organizations

Academy of Nutrition and Dietetics

The Academy of Nutrition and Dietetics (Academy) is an organization of food and nutrition professionals with over 75,000 members committed to advancing the profession through research, education, and advocacy.² The Accreditation Council for Education in Nutrition and Dietetics (ACEND) is the Academy's accrediting agency for education programs. The Commission on Dietetic Registration (Commission) administers the Agency's credentialing programs. The Commission grants seven separate and distinct credentials, including a Registered Dietitian and Registered Dietitian Nutritionist.³

To receive the certification of Registered Dietitian or Registered Dietitian Nutritionist from the Commission, an individual must:

- Complete the minimum of a bachelor's degree granted by a United States regionally accredited college or university, or foreign equivalent;
- Meet the current minimum academic requirements as approved by the ACEND;
- Complete a supervised practice program accredited by the ACEND;
- Pass the registration examination for dietitians;
- Remit the annual registration fee (\$60);
- Comply with the Professional Development Portfolio recertification requirements.⁴

Florida requires licensure applicants to pass the Commission's licensure exam as part of the state licensure requirement.⁵

Board for Certification of Nutrition Specialists

The Board for Certification of Nutrition Specialists is a credentialing body for nutrition care professionals with advanced degrees and training in nutrition science.⁶ A Certified Nutrition Specialist (CNS) provides individual nutrition assessment, evaluation, intervention, and monitoring to prevent and improve health conditions.⁷

The CNS credential requires an individual to have:

- An advanced degree (master's or doctorate) in the field of nutrition or a doctoral level degree in a clinical health field;

² Academy of Nutrition and Dietetics, *About Us*, available at <http://www.eatrightpro.org/resources/about-us> (last visited April 3, 2015).

³ 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. Commission on Dietetic Registration, *About CDR*, available at <http://www.cdrnet.org/about> (last visited April 2, 2015).

⁴ Commission on Dietetic Registration, *Who is a Registered Dietitian (RD) or Registered Dietitian Nutritionist (RDN)?*, available at <http://www.cdrnet.org/about/who-is-a-registered-dietitian-rd> (last visited April 3, 2015).

⁵ See Florida Department of Health, *Licensing*, available at <http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/licensing/index.html> (last visited April 2, 2015).

⁶ Board for Certification of Nutrition Specialists, *Setting the Standard for Advanced Nutrition Professionals*, available at <http://cbns.org/> (last visited April 3, 2015).

⁷ Id.

- Minimum coursework of 15 credit hours in nutrition and metabolism (including 6 in biochemistry) and 15 credit hours in clinical or life sciences (including 3 in anatomy/physiology);
- At least 1,000 hours of supervised practice experience;
- Successfully passed the board's Certifying Examination in clinical nutrition science; and
- Continuing education requirements of at least 75 credits every 5 years.⁸

Currently, the CNS credential offered by the Board for Certification of Nutrition Specialists is not a recognized as an avenue for licensure in Florida.⁹

American Clinical Board of Nutrition

The American Clinical Board of Nutrition (ACBN) is a credentialing agency for nutrition specialists.¹⁰ The ACBN is the only nutrition credentialing agency to offer diplomate status to health care professionals beyond the doctorate level in the United States and internationally.¹¹

The ACBN accepts all professionals beyond the doctorate level who qualify to sit for the nutrition examination. To qualify to sit for the examination a candidate must have achieved the following:

- A doctoral degree from an accredited education program holding status with the U.S. Department of Education;
- Three hundred hours of nutrition education from an accredited education program;
- Two years practice experience in nutrition; and
- Written an article acceptable by the ACBN for publication in approved journals.¹²

Candidates who successfully pass the two-part examination are designated as Diplomates of the American Clinical Board of Nutrition. Currently, the Diplomate of the American Clinical Board of Nutrition credential is not recognized as an avenue for licensure in Florida.¹³

Dietetics and Nutrition Practice in Florida

The 1988 Legislature enacted part X, of ch. 468, F.S., the "Dietetics and Nutrition Practice Act" (act), to ensure that every person who practices dietetics and nutrition or nutrition counseling meets the minimum requirements for safe practice.¹⁴ The dietetics and nutrition practice includes:

- Assessing nutrition needs and status using appropriate data;

⁸ Board for Certification of Nutrition Specialists, *Now is the Time to Transform*, available at http://cbns.org/wp-content/uploads/2010/08/CNSBrochure_web.pdf (last visited April 3, 2015).

⁹ Florida Department of Health, *Senate Bill 1208 Analysis* (February 26, 2015), p.5, (on file with the Senate Committee on Health Policy).

¹⁰ American Clinical Board of Nutrition, *Welcome to the ACBN*, available at <http://www.acbn.org/index.html> (last visited April 2, 2015).

¹¹ Id.

¹² American Clinical Board of Nutrition, *Authorization to Test*, available at <http://www.acbn.org/handbook.html> (last visited April 2, 2015).

¹³ Florida Department of Health, *Senate Bill 1208 Analysis* (February 26, 2015), p.5, (on file with the Senate Committee on Health Policy).

¹⁴ Section 468.502, F.S.

- 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.¹⁵

Florida recognizes the titles “Licensed Dietitian/Nutritionist,” “Licensed Nutrition Counselor,” “Dietetic Technician,” and “Registered Dietitian.”¹⁶ Under Florida law, individuals registered by the Commission have the right to use the title “Registered Dietitian,” and the designation “R.D.”¹⁷

A person may not knowingly engage in the practice of dietetics and nutrition for money unless the individual is licensed¹⁸ or qualifies for one of the statutory exemptions.¹⁹ The act protects the use of certain titles, abbreviations, and insignia that indicate that an individual is a dietitian, nutritionist, or nutrition counselor. Persons that hold themselves out to be licensed as someone else, give false or forged evidence, use a license that has been revoked or suspended, employ unlicensed individuals, or conceal information commit a misdemeanor of the first degree, which is punishable in s. 775.082, F.S. or s. 775.083, F.S.²⁰

The Dietetics and Nutrition Practice Council

The Dietetic and Nutrition Practice Council of the Florida Department of Health is responsible for licensing, monitoring, disciplining, and educating dietitians, nutritionists, and nutrition counselors to ensure competency and safe practice in Florida.²¹ The Board of Medicine (BOM) delegates specific powers and duties to the Council such as approval/denial of licensure applications.²² However, the BOM disciplines licensees and has final authority over the Council.

Licensure

Two licensees are recognized under Florida law, a “licensed dietitian/nutritionists” and a “licensed nutrition counselor.”²³ Licenses are no longer issued for nutrition counselors in Florida. Any individual who was previously certified as a nutrition counselor from July 1, 1988, through March 30, 1997, however, may continue to renew his or her license under s. 468.514, F.S.²⁴

Individuals are eligible for licensure in Florida as dietitian/nutritionist either by examination or endorsement. The minimum requirements for initial licensure are:

- Submission of an application and required fees to the Department of Health;
- 900 hours of approved pre-professional experience or equivalent experience or education;
- A passing score on the Commission’s licensure examination;

¹⁵ Section 468.503(4), F.S.

¹⁶ Section 468.503(5), (6), (7) and (11), F.S.

¹⁷ Section 468.505(4), F.S.

¹⁸ See s. 468.504, F.S.

¹⁹ See s. 468.505, F.S.

²⁰ Section 468.517, F.S. A first degree misdemeanor conviction under s. 775.082(4), F.S., is punishable by a definite term of imprisonment not to exceed 1 year. Under s. 775.083, F.S., a first degree misdemeanor conviction is punishable by a fine not to exceed \$1,000, in addition to any punishment under s. 775.082, F.S.

²¹ Section 20.43(1)(g) and 468.506, F.S.

²² Rule 64B-40.003, F.A.C.

²³ Section 468.503, F.S.

²⁴ Section 468.51, F.S.

- A bachelor's degree with a major in human nutrition, food and nutrition, dietetics, or food management, or equivalent from an accredited program or school; or
- A degree from a foreign country that has been validated by the United States Department of Education as equivalent to the degree conferred in the United States; and
- Completion of a 2-hour course relating to the prevention of medical errors which is required of all licensed health care professionals.²⁵

The Board may waive the examination requirement for individuals who show proof of a registered dietitian credential from the Commission.²⁶

According to the department's 2013-14 Medical Quality Assurance Annual Report, there were 4,072 active licensees in Florida.²⁷

Type	In-State Active	Out of State Active	Military Active	Total Active
Dietitian/Nutritionist	3,628	316	12	3,956
Nutrition Counselors	98	18	0	116
Total	3,726	334	12	4,072

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 to eliminate, decrease, or increase certain substances in the diet. A therapeutic diet is a component of a treatment program for an individual whose health status is impaired or at risk.²⁸

In Florida, dietetic and nutrition licensees are not authorized to implement a dietary plan for any condition for which the patient is under a physician's active care without the physician's written or oral dietary order.²⁹ If, after a good faith effort, the licensee is unable to receive authorization from the physician, the licensee is permitted to use his or her professional discretion in providing nutrition services until authorization can be received.³⁰

Federal Regulation of Therapeutic Diets

On January 30, 2015, the U.S. Department of Health and Human Services revised rules relating to food and dietetic services to permit qualified dietitians or qualified nutrition professionals to order therapeutic diets, if authorized by the medical staff and in accordance with state law governing dietitians and nutrition professionals. Previously, federal regulations restricted the

²⁵ Sections 456.013(7), 468.509, and 468.508, F.S., and Rule 64B8-42.005, F.A.C.

²⁶ 468.509(3), F.S.

²⁷ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2013-2014*, p.13, <http://mqawebteam.com/annualreports/1314/> (last visited April 6, 2015).

²⁸ 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 April 6, 2015).

²⁹ Sections 468.516(1)(a) and (2)(a), F.S.

³⁰ *Id.*

ordering of diets to physicians and non-physician practitioners such as nurse practitioners and physician assistants.³¹

III. Effect of Proposed Changes:

Section 1 amends definitions related to the Dietetics and Nutrition Act.

The bill defines “commission” to mean the Commission on Dietetic Registration, which is the credentialing agency for the Academy of Nutrition and Dietetics.

The current definition for “dietetics and nutrition practice” is modified to include ordering therapeutic diets. The modification aligns state law with the federal rule change allowing qualified dietitians or qualified nutrition professionals to order therapeutic diets.

The definition for “registered dietitian” is revised to “registered dietitian” or “registered dietitian/nutritionist” which mean an individual licensed with the commission. This aligns the Florida definition with the recognized occupational term with similar educational and training requirements by the Commission.

Section 2 amends s. 468.505, F.S., to expand the titles and designations individuals may use who are registered with the commission or other credentialing entity:

Titles\Designations - CS/SB 1208		Certification\Credentials	Current Florida Law
Title	Designation	Examining Agency	Licensure Required
Registered Dietitian	R.D.	Commission (RD)	Yes - Dietitian\Nutritionist
Registered Dietitian\Nutritionist	R.D.N.	Commission (RDN)	Yes - Dietitian\Nutritionist
Certified Nutrition Specialist	C.N.S.	Certification Board for Nutrition Specialists	Not available
Diplomate of the American Clinical Board	D.A.C.B.N.	American Clinical Board of Nutrition	Not available

Section 3 amends s. 468.509, F.S., relating to qualifications for waiver of the examination requirement by the Board of Medicine. The bill waives the examination requirement for certain registered dietitian/nutritionists and individuals credentialed by the Certification Board for Nutrition Specialists or the American Board of Nutrition.

Section 4 amends s. 468.516, F.S., relating to practice requirements. Section 468.516(1)(a), F.S., requires a licensee to have a written or oral dietary order of a referring physician licensed under ch. 458, F.S., or ch. 459, F.S., before implementing a dietary plan for a condition for which a patient is under the active care of physician. The bill clarifies that the other provisions of this section would not preclude a licensed dietitian/nutritionist from independently ordering a

³¹ U.S. Department of Health and Human Services, Center for Clinical Standards and Quality/Survey & Certification Group, *Letter to State Survey Agency Directors* (January 30, 2015), p. 2, available at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-15-22.pdf> (last visited April 2, 2015).

therapeutic diet, if otherwise authorized to order such a diet in this state. The newly added subsection does not appear to grant any new authority to the licensee.

Section 5 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides another pathway for licensure for a registered dietitian, registered dietitian/nutritionist, and certified nutritional specialist by exempting these applicants from an examination.

C. Government Sector Impact:

The department indicates it will incur expenses in workload to update rules which can be absorbed within existing resources.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Health will need to amend its rules governing dietetics and nutrition to conform to the changes in the bill, including the professional name changes, inclusion of additional designations, and examination waivers.

³² Florida Department of Health, *CS/HB 951 Analysis* (March 19, 2015), p.4, (on file with the Senate Fiscal Policy Committee).

Under s. 464.015(5), F.S., clinical nurse specialists have the right to use the abbreviation “C.N.S.” and under the bill, certified nutrition specialists have the right to use the same abbreviation. A person who uses either abbreviation and does not have the appropriate license for that designation is guilty of a misdemeanor of the first degree, as provided under ss. 775.082 or 775.083, F.S.³³ According to the Florida Board of Nursing, Florida does not have many licensed certified nurse specialists, but they could exist in hospital settings and there could be confusion if the similar credential is used for certified nutrition specialists.³⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.503, 468.505, 468.509, and 468.516.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Senate Health Policy Committee on March 17, 2015:

The committee substitute:

- Removes many changes to terminology and practice guidelines for dietetics and nutrition;
- Reinstates recognition of the profession by registered dietitian/nutritionist, rather than inserting an “or” in the title; and
- Reinstates the council rather than creating a board.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³³ *Supra* note 20.

³⁴ Emails from Lucy Gee, Allen Hall, and Joe Baker, Jr., Department of Health (March 16, 2015) (on file with Senate Committee on Health Policy).