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REGISTER DIETITIANS

House Bill 4296 as enrolled (Vetoed)
Sponsor: Rep. Beverly Hammerstrom

House Committee: Health Policy
**Senate Committee: Economic Development,
International Trade and Regulatory
Affairs**

Second Analysis (1-13-99)

THE APPARENT PROBLEM:

Dietitians provide nutritional counseling and medical nutrition therapy to individuals with a variety of medical conditions such as diabetes, kidney disease, and obesity. The Commission on Dietetic Registration, the national credentialing body for the industry, provides a voluntary system of credentialing for dietitians who complete a bachelor's degree or higher from an accredited college with a nutrition major, completion of a preprofessional internship, and a passing score on a national exam administered by the American Dietetics Association.

Dietitians work in hospitals, nursing homes, and other health care facilities. Many physician practices employ dietitians to provide nutritional counseling to their patients, especially in the area of prenatal nutrition and managing diabetes through diet and exercise. Dietitians play an important role on a health care team by helping patients manage serious and chronic diseases and by monitoring the special dietary needs of those recovering from surgery, cancer treatments, strokes, or patients on feeding tubes.

All but a handful of states currently regulate dietitians through statute. Thirty-nine states require licensure, and a few require either certification or registration. Michigan is one of the few states that provides no regulation for the profession of dietetics and nutrition. However, many people believe that the boom in the food supplement and weight loss industries, coupled with the lack of state regulation, makes it confusing or nearly impossible for consumers to identify or verify the educational background of those individuals claiming to be nutritionists. Though many in the food supplement, health food, and weight loss industries do not promote themselves as dietitians, reportedly some do. This can be misleading for those consumers who want the approach to nutrition taken by dietitians, as

some of the products marketed by undertrained persons can react dangerously with prescribed and over-the-counter medications, and some products (such as colloidal minerals) have been found to have toxic effects. An example of how dietitians can be of benefit to the health and safety of patients was provided in testimony submitted at a committee hearing by a dietitian who wrote of a patient living in an assisted living center who had a feeding tube inserted during a hospital stay. When the patient returned to the center, his feedings were monitored by a nurse and an aide, both of whom reportedly had little knowledge or experience in working with patients on feeding tubes. When the tube became slightly dislodged in the man's stomach, the nurse at the center contacted the dietitian at the hospital who had been on the man's health care team for advice. The dietitian recommended immediate hospitalization and an x-ray. However, the physician allowed continued feeding, and the man died of aspiration pneumonia. Some believe that facilities such as assisted living centers and home care companies would have nationally registered dietitians on staff if the services were covered under insurance plans, and, that tragedies like this one could be averted if dietitians were required to be part of the health care team for those patients needing their services.

In addition, data has shown that in those hospitals, nursing homes, clinics, and physician practices that employ dietitians to provide appropriate nutritional counseling to patients, the counseling speeds recovery, prevents secondary problems (e.g., weight loss for obese patients can reduce the likelihood of stroke, high blood pressure, or heart attack), and improves the quality and length of life. Reportedly, some health maintenance organizations (HMOs) have explored using dietetic services as a way to hold down

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escalating health care costs. Currently, health insurance providers in at least 12 states reimburse for services provided by dietitians. However, each of those states regulates the profession of dietitians, and third party reimbursements are made only for services provided by dietitians regulated under the state law. Reportedly, insurance companies are hesitant to designate a credentialing agency for an industry, and prefer to let the state set educational and competency standards through licensing, certification, or registration. Therefore, health insurance reimbursement for dietitian services is unlikely to be offered in the few states that do not regulate the dietetic profession.

In an attempt to address the concerns raised, legislation has been proposed to create a system of registration that would establish minimum education and competency standards for dietitians and restrict use of the title "Registered Dietitian and Nutritionist" to those individuals registered by the state.

THE CONTENT OF THE BILL:

The bill would amend Article 15 of the Public Health Code to create a registration framework for dietitians and nutritionists, set registration fees, describe a scope of practice, and create the Michigan Board of Dietetics and Nutrition. The bill would establish the duties of a nutritionist and dietitian as integrating and applying scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences to achieve and maintain the health of individuals through the provision of nutrition care services, administrative services, counseling services, educational services, food services, food safety services, informational services, nutrition therapy services, management services, and safety and sanitation services. A person would be prohibited from using the title R.D.N. unless registered under the bill. The bill would also restrict the use of specified titles for the professions of respiratory therapist, therapeutic recreator, athletic trainer, and social worker. (Titles for registered social workers would still be protected under the Occupational Code, MCL 339.1601 et al.) The bill would specify that an R.D.N. would not include an individual who provided weight control services or who furnished general information on foods, food products, or dietary supplements in connection with the marketing or distribution of foods, food products, or dietary

supplements as long as he or she did not hold himself or herself out as a registered nutritionist and dietitian.

The Michigan Board of Dietetics and Nutrition would be created in the Department of Consumer and Industry Services (CIS). Membership would consist of seven members -- two representing the general public and five with a background in dietetics and nutrition as specified in the bill. Fees would be \$20 for a registration application and \$25 a year for the registration.

Registration requirements would include having a baccalaureate degree from a department-approved college or university with a major course of study in human nutrition, nutrition education, foods and nutrition, dietetics, or food systems management; at least 900 hours of experience as prescribed by rule; and passing a department-approved exam. Beginning with the second renewal period after the bill's enactment, a registrant would have to complete 12 clock-hours in related continuing education units in order to renew a registration. Further, the bill would specify that it would not mandate new or additional third party reimbursement for services rendered by an R.D.N.

The bill is tie-barred to House Bills 5736 and 5737. House Bill 5736 would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1502 and 550.1502a), which regulates Blue Cross and Blue Shield of Michigan, and House Bill 5737 would amend the Worker's Disability Compensation Act of 1969 (MCL 418.315), respectively, to specify that a health care corporation or an employer would not be required to reimburse for services performed by a member of a health care profession that became a licensed or registered profession after January 1, 1998.

MCL 333.16131 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the application and registration fees that would be authorized by the bill would increase revenues to the Department of Consumer and Industry Services, but would be offset by the cost associated with implementing and administering a new program. Without knowing the number of individuals who would be regulated under the bill, the exact amount of revenue would be indeterminate. (12-3-98)

ARGUMENTS:**For:**

The bill would allow a dietitian to be registered with the state as a Registered Dietitian and Nutritionist (R.D.N.). Only those individuals with the required education, supervised internship experience, and passage of an approved exam could use the title R.D.N. Further, the required continuing education classes as a prerequisite to registration renewal could ensure that R.D.N.s are up-to-date with the latest nutritional findings and protocol. In addition, state regulation would benefit the consumer in several ways.

First, though the tie-barred legislation would clarify that state regulation did not mandate third-party reimbursement, including dietitians in the Public Health Code could encourage health insurance companies and HMOs to offer services rendered by an R.D.N. as a covered benefit. The type of nutritional advice given by dietitians has been proven to help patients better manage many types of diseases and illnesses, especially diabetes, kidney disease, and obesity. Better management of diseases and quicker recovery after injury or illness saves health dollars by reducing hospital stays, reducing or eliminating the need for costly medications, and preventing secondary illnesses such as strokes, heart disease, and blindness that can result from a poorly managed condition.

Secondly, for those consumers who wish to secure the services of a registered dietitian, the bill would provide a greater assurance that only those duly qualified to use the title R.D.N. would be holding themselves out as registered dietitians and nutritionists. Thus, a consumer seeking out an R.D.N. would know that the person had at least a bachelor's degree in a nutrition related major and was staying abreast of developments in the field through continuing education classes.

Against:

In his veto message to the legislature, the governor wrote that "[i]t has not been demonstrated that the public's health, safety or welfare is at risk." He also gave as a reason for the veto that the national organization for dietitians is already doing "an excellent job of assuring that their practitioners meet the highest professional standards." Therefore, enactment of the bill could "cause confusion to the

public or lead to unnecessary regulation." Further, the governor expressed the view that licensure alone does not necessarily bring with it safety for consumers.

Against:

Just because a person is not a registered dietitian does not mean that he or she is incompetent or is giving out nutritionally unsound advice. Naturopaths and other herbal and natural foods enthusiasts may spend an enormous amount of time researching their field. They also can provide helpful information to consumers on alternative approaches to symptom management, weight loss, and products to enhance one's overall health. The bill could be used by some to mislead consumers into thinking that only individuals registered under the bill would be qualified to offer nutritional guidance. Thus, the bill could encroach on the health food and food supplement industries, as well as weight loss clinics.

Response:

In no way would the bill encroach on the health food industry or those selling food supplements. It would only prohibit such persons from claiming to be registered dietitians and nutritionists. People would still have a choice as to whose services to seek out.

Against:

There is no legitimate need to provide state regulation for dietitians and nutritionists. Members of the medical community are not crying out for this legislation, nor are consumers; it is promoted primarily by members of the industry as a ploy to force insurance companies to offer dietetic and nutrition services as a covered benefit. Doing so would surely result in increased premiums. Also, it should be noted that the industry already regulates itself quite well by establishing education and experience standards and an examination for national registration. Besides, it is the responsibility of a physician or health care facility hiring or contracting for services by a registered dietitian to verify the person's qualifications and education, not the state's. In addition, as the Department of Consumer and Industry Services reports that it has not received any complaints involving registered dietitians, there simply is no documented need for state regulation. Apart

from proof that a threat to the public health and well-being exists, state regulation through licensing or registration is an unnecessary intrusion by the government and typically serves only as a barrier to restrict entry into a profession.

Response:

This type of argument may be true in some cases, but not this one. Thirty-nine other states currently license, certify, or register dietitians. In at least 12 states the services performed by dietitians are reimbursed by third party payers. In short, the majority of the state legislatures have recognized that there exists reasons to regulate the profession. Data from the Nutrition Screening Initiative, which conducted national surveys in 1993 and 1996, revealed that malnourished patients take 40 percent longer to recover from illnesses, have two to three times the number of complications, have hospital stays that are 90 percent longer and \$5,000 more expensive for medical patients and \$10,000 more expensive for surgical patients, and malnourished patients are readmitted for hospitalization more frequently.

Other data show that hospital costs for the care of patients at nutritional risk are four times higher than costs for patients who are well-nourished. The average treatment costs for patients undergoing pancreatic or liver surgery who were given medical foods early in the course of their treatment as compared to patients who did not receive nutritional therapy were decreased from \$17,000 to \$6,600. The Oxford Health Plan, which covers members in New York, New Jersey, and Connecticut, recently began an initiative to assess the nutritional needs of its 160,000 Medicare members. The health plan had previously conducted a similar pilot program in Brooklyn, New York that saved \$10 for every \$1 spent in providing a nutritional program in which at-risk individuals received nutritional services from a dietitian. Oxford Health Plan representatives reported a drop in claims of 34.6 percent per month just seven months into the program. Data such as these support the contention that dietitians serve to lower health care costs and increase the quality of care by providing nutritional counseling that speeds recovery, prevents other illnesses, and enables people to better manage their health problems.

Further, the claim that a public health threat does not exist is not valid. The fact that at least one death in the state may have been averted if a registered dietitian had been a part of the patient's health team

underscores the potential threat. Also, it is impossible to measure the effect on the health of those citizens who are not able to obtain the services of a dietitian or nutritionist to manage a chronic health condition because they cannot afford to pay and such services are not covered by their insurance policies. If dietitians were legally recognized by the state through registration, perhaps insurance companies and HMOs operating in the state would follow the example set in other states and begin to cover dietitians' services. If so, the savings in health dollars could be significant. The bill would not mandate such coverage, but if an insurance company or HMO wanted to cut costs by providing covered services, then it could choose to do so. The bill would merely give providers a choice.

As to the department's statement that it has not received any complaints pertaining to dietitians and nutritionists, it is important to note that the department only handles complaints for the professions that are regulated by the state. As the department has no jurisdiction over unregulated professions, a complaint would most likely not even be taken or recorded.

In addition, the media abounds with stories of products hawked by persons claiming to be dietitians or nutritionists. Though many herbal and health food products are safe and helpful, proper research into herbs and food supplements should be done before products are recommended to the public. State regulation of dietitians could at least ensure that those holding themselves out to be registered in the state actually were so registered, and would aid and protect consumers since a person could easily contact the Michigan Board of Dietetics and Nutrition to check on an individual's credentials.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.