

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Medical Nutrition
Therapist

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Medical Nutrition Therapist

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Medical Nutritional Therapy provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Medical Nutrition Therapists assess the nutritional status of patients and recommend treatments ranging from diet modification to specialized nutrition support. They determine nutrient needs for enteral and parenteral nutrition, and monitor and evaluate patient response to such treatment. Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care. The practice of medical nutrition therapy must be performed under the consultation of a physician. State licensure provides additional credibility and trust in the public eye. It also ensures specific criteria and guidelines are met and followed when providing care, treatment, or service. It also ensures accountability for the licensed profession.

Per Nebraska Revised Statute, section [38-1802](#), “The unregulated practice of medical nutrition therapy can clearly harm or endanger the health,

safety, and welfare of the public. The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability, and the public cannot be effectively protected by a less cost-effective means than state regulation of the practice of Medical Nutrition Therapy.” The Legislature also found that “Medical Nutrition Therapists must exercise independent judgment and that professional education, training, and experience are required to make such judgment.”

IV. Number of Regulated Professionals in Nebraska

- A) There are 647 licensed Medical Nutrition Therapists in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

I. Number of Members

- A) There are five members of the Board of Medical Nutritional Therapy.

II. Who Appoints Members of the Board / Is Legislative Approval Required?

- A) The State Board of Health appoints members of the Board of Medical Nutritional Therapy. Legislative approval is not required.

III. Term Length

- A) The length of term for service on the Board of Medical Nutritional Therapy is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

- A) Qualification for membership of the Board of Medical Nutritional Therapy may be found in the Nebraska Revised Statutes, section [38-1811](#). The board shall consist of three professional members, one physician, and one public member appointed pursuant to section [38-158](#). The members shall meet the requirements of sections [38-164](#) and [38-165](#). The professional Medical Nutrition Therapists and physician shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member.

V. The Number of Meetings Required Per Year / Meetings Actually Held

- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 1.
B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 0.
C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 0.
D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 1.
E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 2.

VI. Annual Budget Information for the Previous Five Years

- A) The Board of Medical Nutritional Therapy is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
- B) For FY 2014-2015: \$3,152
- C) For FY 2015-2016: \$918
- D) For FY 2016-2017: \$28,285
- E) For FY 2017-2018: \$29,809
- F) For FY 2018-2019: \$32,440

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Vice-Chair of the Board of Medical Nutrition Therapy stated that rules and regulations “Provide defined scope of service for licensed professional practices within. Regulations result in professional accountability.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Medical Nutrition Therapist occupation may be found in the Nebraska Revised Statutes, sections [38-1801](#) to [38-1816](#), which may be cited as the Medical Nutrition Therapy Practice Act. For text of the Nebraska statutes relating to the Medical Nutrition Therapist occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the Medical Nutrition Therapist occupation may be found in the Nebraska Administrative Code Title [172](#), [Chapter 61](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 297 Medical Nutrition Therapist licenses issues in the past five years.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There was one Medical Nutrition Therapist license denied in the past five years.

- B) This individual did not meet the education requirements.
- III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years
- A) There were no Medical Nutrition Therapist licenses revoked in the past five years.
- IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years
- A) There were no Medical Nutrition Therapist licenses penalized in the past five years.
- V. Comparison of How Other States Regulate This Occupation
- A) The majority of states either regulate dietitians or nutritionists with similar scopes of practice and similar requirements. Nebraska provides multiple education options to obtain the Medical Nutrition Therapist license whereas other states do not. Two states do not license or certify the practice. Nebraska does not license dietitians.
- VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?
- A) If the Medical Nutritional Therapist occupation was no longer licensed, certified, or regulated, there would be a harmful risk to the public. There would also be decreased levels of clinical education and professional scope parameters required or mandated when practicing Medical Nutrition Therapy. Without governing licensure, the practitioner would not have the education or training to be aware of disease states, which would result in improper implementation of medical nutrition therapy. Improper implementation of medical nutrition therapy can result in negative clinical impacts or outcomes, negative interactions with other medical treatments, and reduced resolution of nutritional problems or etiologies. There would also be reduced professional accountability.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Medical Nutritional Therapy and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Medical Nutrition Therapist occupation by licensure is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE MEDICAL NUTRITION THERAPY PRACTICE ACT

38-1801. Act, how cited.

Sections 38-1801 to 38-1816 shall be known and may be cited as the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 623.

38-1802. Legislative findings.

(1) The Legislature finds that:

(a) The unregulated practice of medical nutrition therapy can clearly harm or endanger the health, safety, and welfare of the public;

(b) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by a less cost-effective means than state regulation of the practice of medical nutrition therapy. The Legislature also finds that medical nutrition therapists must exercise independent judgment and that professional education, training, and experience are required to make such judgment.

(2) The Legislature further finds that the practice of medical nutrition therapy in the State of Nebraska is not sufficiently regulated for the protection of the health, safety, and welfare of the public. It declares that this is a matter of statewide concern and it shall be the policy of the State of Nebraska to promote high standards of professional performance by those persons representing themselves as licensed medical nutrition therapists.

Source: Laws 1988, LB 557, § 1; Laws 1995, LB 406, § 20; R.S.1943, (2003), § 71-1,285; Laws 2007, LB463, § 624.

38-1803. Definitions, where found.

For purposes of the Medical Nutrition Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1804 to 38-1810 apply.

Source: Laws 1988, LB 557, § 2; Laws 1995, LB 406, § 21; Laws 1999, LB 828, § 146; R.S.1943, (2003), § 71-1,286; Laws 2007, LB463, § 625.

38-1804. Assessment, defined.

Assessment means the process of evaluating the nutritional status of patients. The assessment includes review and analysis of medical and diet histories, biochemical lab values, and anthropometric measurements to determine nutritional status and appropriate nutritional treatment.

Source: Laws 2007, LB463, § 626.

38-1805. Board, defined.

Board means the Board of Medical Nutrition Therapy.

Source: Laws 2007, LB463, § 627.

38-1806. Consultation, defined.

Consultation means conferring with a physician regarding the activities of the licensed medical nutrition therapist.

Source: Laws 2007, LB463, § 628.

38-1807. General nutrition services.

General nutrition services includes, but is not limited to:

- (1) Identifying the nutritional needs of individuals and groups in relation to normal nutritional requirements; and
- (2) Planning, implementing, and evaluating nutrition education programs for individuals and groups in the selection of food to meet normal nutritional needs throughout the life cycle.

Source: Laws 2007, LB463, § 629.

38-1808. Licensed medical nutrition therapist, defined.

Licensed medical nutrition therapist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the department pursuant to the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 630.

38-1809. Medical nutrition therapy, defined.

Medical nutrition therapy means the assessment of the nutritional status of patients. Medical nutrition therapy involves the assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment.

Source: Laws 2007, LB463, § 631.

38-1810. Patient, defined.

Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care.

Source: Laws 2007, LB463, § 632.

38-1811. Board; membership; qualifications.

The board shall consist of three professional members, one physician, and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

Source: Laws 2007, LB463, § 633.

38-1812. License required; activities not subject to act.

No person shall practice medical nutrition therapy unless he or she is licensed for such purpose pursuant to the Uniform Credentialing Act. The practice of medical nutrition therapy shall not include:

- (1) Any person credentialed in this state pursuant to the Uniform Credentialing Act and engaging in such profession or occupation for which he or she is credentialed;
- (2) Any student engaged in an academic program under the supervision of a licensed medical nutrition therapist as part of a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board, and who is designated with a title which clearly indicates the person's status as a student or trainee;
- (3) Persons practicing medical nutrition therapy who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;
- (4) Persons practicing medical nutrition therapy who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree, and are in this state for the purpose of:
 - (a) Consultation if the practice in this state is limited to consultation; or
 - (b) Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board;
- (5) Persons performing general nutrition services incidental to the practice of the profession insofar as it does not exceed the scope of their education and training;
- (6) Persons who market or distribute food, food materials, or dietary supplements, including persons employed in health food stores, or persons engaged in the advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet general nutrition needs;

- (7) Persons conducting classes or disseminating information related to general nutrition services;
- (8) Persons who care for the sick in accordance with the tenets and practices of any bona fide church or religious denomination;
- (9) Persons who provide information and instructions regarding food intake or exercise as a part of a weight control program; and
- (10) Persons with advanced postgraduate degrees involved in academic teaching or research.

Source: Laws 1988, LB 557, § 3; Laws 1995, LB 406, § 22; R.S.1943, (2003), § 71-1,287; Laws 2007, LB463, § 634.

38-1813. Licensed medical nutrition therapist; qualifications.

A person shall be qualified to be a licensed medical nutrition therapist if such person furnishes evidence that he or she:

- (1) Has met the requirements for and is a registered dietitian by the American Dietetic Association or an equivalent entity recognized by the board;
- (2)(a) Has satisfactorily passed an examination approved by the board;
- (b) Has received a baccalaureate degree from an accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the board; and
- (c) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than nine hundred hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of this section; or
- (3)(a) Has satisfactorily passed an examination approved by the board; and
- (b)(i) Has received a master's or doctorate degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition or in an equivalent major course of study approved by the board; or
- (ii) Has received a master's or doctorate degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study shall consist of not less than a combined two hundred hours of biochemistry and physiology and not less than seventy-five hours in human nutrition.

For purposes of this section, accredited college or university means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories shall have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States regionally accredited college or university.

The practice of medical nutrition therapy shall be performed under the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635.

38-1814. Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 636; Laws 2017, LB88, § 59.

38-1815. Fees.

The department shall establish and collect fees for credentialing under the Medical Nutrition Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 637.

38-1816. Act, how construed.

Nothing in the Medical Nutrition Therapy Practice Act shall be construed to permit a licensed medical nutrition therapist to practice any other profession regulated under the Uniform Credentialing Act.

Source: Laws 1988, LB 557, § 9; Laws 1994, LB 853, § 1; Laws 1995, LB 406, § 29; R.S.1943, (2003), § 71-1,293; Laws 2007, LB463, § 638.