

July 11, 2019

SUBMITTED VIA EMAIL

Rules Review Commission
rrc.comments@oah.nc.gov

Re: Proposed Rules of Board of Dietetics/Nutrition

The following objections are submitted pursuant to 26 NAC 05 .0103. For each rule, the document identifies the objectionable portion of the proposed rule and the reasons the RRC should object to it.

I. Proposed 21 NCAC 17 .0101, Definitions and Acronyms.

Objectionable Changes. – Definitions of “Dietician/nutritionist,” “health care practitioner,” “nutrition assessment,” and “nutrition counseling.”

Reasons for Objections. – The proposed changes exceed the agency’s authority, in violation of G.S. 150B-21.9(a)(1), and make the rules confusing, in violation of the clear and unambiguous standard in G.S. 150B-21(a)(2). S.L. 2018-91 extensively revised Article 25 of Chapter 90 and specifies that:

- Providing medical nutrition therapy triggers the requirement to be licensed under the Act. G.S. 90-365(a)(1a).
- An individual who gives nutrition advice or recommendations that do not constitute medical nutrition therapy is not required to be licensed under the Act. G.S. 90-368(12).
- “Medical nutrition therapy” means providing nutrition care services for the purpose of managing or treating a medical condition. G.S. 90-352(3a).
- Dietetics and nutrition can overlap with medical nutrition therapy, but they are not co-extensive. G.S. 90-352(2) and (3b). Except for the overlap, the Act does not regulate those engaged in those endeavors.

None of these proposed definitions reflect the limitation of licensure to medical nutrition therapy. Instead, they focus on dietetics or nutrition.

The proposed definitions of “nutrition assessment” and “nutrition counseling” also create definitions that are counter to the common understanding of the terms and imply that an assessment or counseling can only be done by a licensed dietitian/nutritionist or nutritionist. As long as the assessments and counseling do not provide medical nutrition therapy, a license is not required.

The term “nutrition counseling” is not unique to licensed dietitians or nutritionists. The 2018 law changes make this clear by limiting the scope of licensure to medical nutrition therapy. Furthermore, ordering a laboratory test or a therapeutic diet is a listed nutrition care service under G.S. 90-352(4) and there is no need to add these items to either the definition of “nutrition assessment” or “nutrition counseling.”

Solution. -- Definitional changes that do not have these problems are set out below. These changes were submitted as comments to the agency and rejected. The changes that resolve the problems are shown in red with underlines and strikethroughs. The underlines and strikethroughs in black are the changes proposed by the Board

...

~~(5)~~ (8) “Dietitian/nutritionist” or “nutritionist” means ~~one~~ an individual who is engaged in ~~dietetics/nutrition dietetics or nutrition practice. providing medical nutrition therapy in the course or practicing dietetics, nutrition, or both.~~

...

~~(6)~~ (10) “Health care practitioner” includes any individual who is licensed under G.S. 90 and whose licensed scope of practice includes ~~dietetics or nutrition providing medical nutrition therapy.~~

~~(7)~~ (11) “Nutrition assessment” ~~means:~~

~~(A)~~ means the evaluation of the nutrition needs of individuals and groups based upon biochemical, anthropometric, nutrigenomic, physical, and food and diet history data to determine nutritional ~~needs and recommend appropriate nutritional intake order therapeutic diets, including, including enteral and parenteral nutrition. nutrition; and~~

~~(B)~~ the ordering laboratory tests related to the practice of nutrition and dietetics. needs.

~~(8)~~ (12) “Nutrition counseling” means ~~the advice and assistance provided by licensed dietitians/nutritionists and licensed nutritionists to giving advice or assistance to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with therapeutic needs and cultural background, which shall include ethnicity, race, language, religious and spiritual beliefs, education, and socioeconomic status status, and therapeutic needs. intake.~~

II. Proposed 21 NCAC 17 .0101, Applications

Objectionable Changes. – Failure to include all relevant credentials as a means of recognizing qualification for licensure. The rule as proposed allows applicants who have a current registration from the national Commission on Dietetic Registration as a Registered Dietitian Nutritionist to be licensed under the Act without extensive review and analysis of the applicant’s qualifications. It does not provide the same treatment to those who have current registrations under the more rigorous programs of the national Board for Certification of Nutrition Specialists or American Clinical Board of Nutrition as a Certified Nutrition Specialist or a Diplomate, respectively.

Reasons for Objections. – The proposed changes exceed the agency’s authority, in violation of G.S. 150B-21.9(a)(1), and violate the reasonably necessary standard in G.S. 150B-21.9(a)(3) by discriminating against and creating unnecessary barriers to licensure for applicants seeking the “nutritionist” licensure pathway, as opposed to the “nutritionist/dietician” pathway.

The educational and experience requirements in G.S. 90-357.5(c)(1) and (c)(2) are the current requirements for these topics set by the BCNS and were inserted into the statute for that reason. The educational requirements and experience requirements in those statutes are more rigorous and demanding than those set in G.S. 90-357.5(a). Having a credential from the BCNS or the ACBN is conclusive evidence that the applicant meets the requirements for licensure as a nutritionist.

Laws are not to be interpreted in a manner that leads to an absurd result. The scope of practice is the same under the Act for both a licensed dietitian/nutritionist and a licensed nutritionist. The education requirements, practice experience, and exams for the two groups are different. Allowing “automatic” licensure for less educated and less experienced applicants who have a credential as a registered dietitian while denying the same treatment to applicants who have a more rigorous credential defies common sense.

Solution. -- The following proposal is a substitute for what the Board proposes. This proposal was submitted in comments to the agency and rejected. If this were accepted, small conforming changes may be needed in other parts of the proposed rule.

Any of the following current credentials establish that an applicant for licensure meets the requirements set in the Act. An applicant who has one of these listed credentials shall submit either a copy of an identification card issued by the credentialing entity or a certificate from the entity certifying the applicant’s status:

- (1) A credential as a Registered Dietitian Nutritionist issued by the CDR.
- (2) A credential as a Certified Nutrition Specialist issued by the BCNS.
- (3) A credential as a Diplomate of the American Clinical Board of Nutrition issued by the ACBN.

III. Proposed 21 NCAC 17 .0303, Supervision

Objectionable Change: The conflicting requirements for supervision and the requirement that all supervisors be licensed in this State.

Reasons for Objections: The proposed rule violates the standards in G.S. 150B-21.9 (a)(1) and (a)(2). The rule exceeds the agency's statutory authority because it fails to apply the defined term "medical nutrition therapy" and conflicts with the plain language of G.S. 90-357.5. The rule is not clear and unambiguous because it is internally inconsistent.

subdivision (4) conflicts with subdivisions (2) and (3) of the rule. It also conflicts with the law. Subdivision (2) states that the supervising practitioner must be available for consultation and that availability can be by electronic means. Subdivision (3) requires the supervisor to be available to render assistance but allows the supervisor to get another individual to serve in the supervisor's place. Subdivision (4), however, requires personal observation of all activities, which can be construed to mean physical presence.

The license requirement applies only to medical nutrition therapy. The term is defined in G.S. 90-352(3a) as the "provision of nutrition care services for the purpose of managing or treating a medical condition." The relevant supervision is supervision of medical nutrition therapy, not nutrition care services whose purpose is something other than managing or treating a medical condition. The rule is overly broad in using the term "nutrition services" or "nutrition care services" instead of "medical nutrition therapy."

G.S. 90-357.5 is very specific about who can supervise a practice experience. The statute specifically requires some, but not all, of the listed individuals to have a license. Imposing a license requirement on all supervisors conflicts with the language of the law and creates an impossible situation for many seeking a license under the new nutritionist pathway. There is no ready supply of licensed nutritionists. The lists in G.S. 90-357.5(a)(1)b. and (c)(2) include the following:

1. A Certified Nutrition Specialist.
2. A Diplomate of the American Clinical Board of Nutrition.
3. A Registered Dietitian Nutritionist.
4. A licensed dietitian/nutritionist.
5. A licensed nutritionist.
6. A State-licensed health care practitioner whose licensed scope of practice includes dietetics or nutrition.
7. An individual with a doctor's degree whose education meets the statutory description.

G.S. 90-375.5 requires supervision of a practice experience and not "direct" supervision.

Solution: Make the changes set out in the following proposal.

(a) For purposes of G.S. ~~90-368(2), “direct supervision”~~ 90-357.5(a)(1)b. and (c)(2), “supervision” means the supervising practitioner:

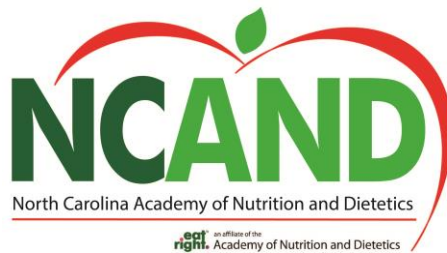
- (1) discusses and recommends, with the student or trainee, ~~nutrition care~~ medical nutrition therapy services undertaken by the student or trainee, which are appropriate to the level of ~~nutrition~~ care;
- (2) Is available for consultation on ~~nutrition care~~ medical nutrition therapy activities being performed by the student or trainee, either through on-site or through electronic communication;
- (3) is available to render assistance when requested by the student or trainee or the patient or client, or has arranged for another practitioner to be available in the absence of the supervising practitioner;
- (4) ~~personally observes, evaluates, and approves the acts or functions~~ evaluates and approves the medical nutrition therapy activities of the student or trainee supervised; and
- (5) shall maintain responsibility for the ~~nutrition care~~ medical nutrition therapy activities performed by the student or trainee. ~~For patients or clients receiving medical nutrition therapy in NC, the supervising practitioner shall be licensed in the State to provide the medical nutrition therapy he or she is supervising. For patients or clients outside of NC, the supervising practitioner shall be lawfully allowed to provide the nutrition care activities in the state where the patient or clients are located.~~

(b) An individual listed in G.S. 90-357.5(a)(1)b. or (c)(2) as an individual who is qualified to supervise a practice experience is not required to be licensed under this Article unless the statute specifies that the individual must have a license.

Submitted by Cindy Schwalb. For questions or discussion, I can be reached at cindy.schwalb@gmail.com or 703-930-0426.

Cc Charla Burill

director@ncbdn.org



July 11, 2019

Dear Rules Commission,

I am writing, on behalf of the North Carolina Academy of Nutrition and Dietetics (NCAND), in response to comments submitted for Rule 17 NCAC.0303. As the organization representing Registered Dietitian Nutritionists (RDN) in the state of North Carolina, we would like to specifically comment on two key points of the rules as written. The two points include supervised practice as well as the need for programmatic accreditation prior to granting licensure by endorsement. The comments submitted do not align with the authority of the statute because a license is required to provide Medical Nutrition Therapy (MNT) in North Carolina. To the extent that comments have provided language that provides for supervisors to not require licensure, the board does not have statutory authority to exempt supervisors from their requirements that they be licensed to provide/take responsibility for MNT. Not only does the board not have authority, but to allow the least experienced practitioner to not be under the supervision of a licensed NC practitioner is not in the best interest of North Carolina's citizens.

As RDNs, we are required to complete a minimum of a bachelor's degree, from a regionally accredited school, that meets the didactic requirements of a nutrition program. We then must complete a minimum of 1200 hours of supervised practice designed and audited by a regionally accredited organization known as the Accreditation Council for Education in Nutrition and Dietetics (ACEND). Per ACEND, supervised practice requires a designated supervising preceptor to be present and employed by the organization for which you are interning. Additionally, the supervising preceptor must review and sign off on all work completed by the intern. RDNs provide MNT, which is nutrition therapy individually tailored to target a specific disease state. This therapy does allow the potential for harm, up to and including death, if administered inappropriately. One aspect of MNT is Parenteral Nutrition, which is nutrition delivered via a central venous line. Parenteral Nutrition is recognized by accrediting agencies, such as the Centers for Medicare and Medicaid Services (CMS) and The Joint Commission (TJC), as a high alert medication due to its high probability to cause harm, including death, if mixed with an inappropriate micro and macro nutrient composition. While this is only one example of why it is important to have the supervising preceptor on site and available for direct oversight of care, there are others. On behalf of NCAND, we encourage you to consider the increased potential for inadequate training should the supervising preceptor perform their duties remotely.

In North Carolina, RDNs are eligible for licensure without submitting proof of supervised practice due to the programmatic accreditation of the internship provided by ACEND. ACEND is an accredited body that sets specific guidelines and competencies all interns must complete before sitting for the RDN exam. ACEND audits all dietetic internship programs on a regular schedule, ensuring that programs are, in fact, meeting the required guidelines and competencies. Additionally, RDNs are required to complete an average of 15 continuing education credits per year, for a total of 75 credits over a 5 year period. All RDNs are required to establish a plan outlining their practice and goals to align continuing education specific to their area of practice. Proof of continuing education must be submitted to our



governing body, another accredited organization called the Commission on Dietetic Registration (CDR), for tracking and review. Due to the extensive guidelines governing our training to become an RDN, as well as the requirements to maintain our licensure, granting RDNs licensure by endorsement is warranted. While NCAND acknowledges and supports the addition of other nutrition professionals in the state, the other programs do not have the structure needed to ensure they are trained appropriately prior to gaining their credential. The other nutrition professional groups that may meet the statute requirements to become a Licensed Nutritionist do not come from a program providing all of the defined competencies and verification of appropriate application of those competencies.

Thank you in advance for reviewing the comments submitted on behalf of NCAND. Should you have further questions regarding our training requirements or our stance on Rule 17 NCAC.0303, please contact the NCAND office at 919-232-0100 or ncda@caphill.com.

Kind Regards,

Katrina Levine Perry, MPH, RDN, LDN, PMP
President, NCAND

Manju Karkare, MS, RDN, CLT, FAND
Public Policy Coordinator, NCAND