



July 11, 2019

Garth K. Dunklin
Chairman
Rules Review Commission
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Raleigh, North Carolina 27699-6700

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Re: Notice of Proposed Rulemaking by North Carolina Board of Dietetics/Nutrition for Rules 21 NAC 17. 0101; .0104; .0105; .0107; .0109; and .0303.

Dear Chairman Dunklin:

The Academy of Nutrition and Dietetics (the “Academy”) appreciates the opportunity to submit comments to the North Carolina Rules Review Commission (the RRC) related to the April 15, 2019 proposed rulemaking by the North Carolina Board of Dietetics/Nutrition (the NCBDN) amending 21 NAC 17. 0101; .0104; .0105; .0107; .0109; and .0303 (the “proposed rules”). Representing more than 108,000 registered dietitian nutritionists (RDNs),¹ nutrition and dietetic technicians, registered (NDTRs), and advanced-degree nutritionists, the Academy is the largest association of nutrition and dietetic professionals in the United States. Our members provide various medical and professional services in the clinical and community settings, including the oversight of government-sponsored nutrition programs and the provision of medical nutrition therapy for North Carolinians through the lifecycle.

The proposed rulemaking comply with procedural requirements, are clear and unambiguous, are reasonably necessary to fulfill a duty delegated to the agency by the General Assembly, and is within the authority delegated to the agency by the General Assembly. Criticisms of and opposition to the proposed rules reflect commenters’ fundamental misunderstanding of the Dietetics/Nutrition Practice Act and ignore the unambiguous plain language of the statute.

Purpose and Effect of the Statute

The North Carolina Dietetics/Nutrition Practice Act’s (the “Act”) explicit purpose is “to safeguard the public health, safety and welfare and to protect the public from being harmed by unqualified persons by providing for the ***licensure and regulation of persons engaged in the practice of dietetics or nutrition*** and by the establishment of educational standards for those persons.” N.C. Gen. Stat. § 90-351. (Emphasis added.) The Act sets educational and experiential requirements for individuals seeking recognition by the state of their qualification to practice dietetics and nutrition, which includes the provision of nutrition care services. N.C. Gen. Stat. § 90-352. Notably, a license is not mandatory in North Carolina to provide all nutrition care services; **a license is only required when one**

¹ The Academy approved the optional use of the credential “registered dietitian nutritionist (RDN)” by “registered dietitians (RDs)” to more accurately convey who they are and what they do as the nation’s food and nutrition experts. The RD and RDN credentials have identical meanings and legal trademark definitions.

provides “medical nutrition therapy,” which is a subset of nutrition care services for the treatment or management of a disease or medical condition. *Id.*

As a result, it is possible (and common) to provide healthy individuals with less potentially harmful general nutrition counseling or individualized nutrition recommendations without being licensed. In addition, many dietitian/nutritionists who never provide medical nutrition therapy nevertheless choose to become licensed to obtain the associated recognition of one’s qualifications and provide their clients with the assurance that they are trusted health care professionals.

Comments in opposition to the proposed rules fundamentally misapprehend the nature of the statute in claiming that the Act only regulates medical nutrition therapy, when in fact it (1) regulates the practice of dietetics and nutrition, (2) regulates the use of certain titles, and (3) provides licensees with the exclusive authority to practice medical nutrition therapy while exempting certain specific classes of individuals from this requirement. N.C. Gen. Stat. § 90-365.

Statutory Construction

As the North Carolina Supreme Court held in *Fowler v. Valencourt*, 334 N.C. 345, 348 (N.C. 1993),

In construing a statute, the Court must first ascertain the legislative intent to assure that the purpose and intent of the legislation are carried out. *Electric Supply Co. v. Swain Electrical Co.*, [328 N.C. 651, 656, 403 S.E.2d 291, 294 \(1991\)](#). To make this determination, we look first to the language of the statute itself. *Id.* If the language used is clear and unambiguous, the Court does not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language. *Utilities Comm. v. Edmisten, Atty. General*, [291 N.C. 451, 465, 232 S.E.2d 184, 192 \(1977\)](#).

Here, the statute itself is clear and unambiguous that “It shall be unlawful for any person who is not currently licensed under this Article to . . . : “(1a) Provide medical nutrition therapy” within North Carolina or to an individual in North Carolina. N.C. Gen. Stat. § 90-365. The legislature also clearly and unambiguously created twelve (12) specific exemptions from the requirement to be licensed in § 90-368. None of the exemptions apply to a supervisor, evidencing the legislature had no intention of allowing a person directly supervising the provision of medical nutrition therapy by a trainee to escape the licensure mandate. The General Assembly clearly knew how to exempt a class of people, and it clearly chose not to do so for supervisors of trainees.

Nor would such an exemption make practical sense. A trainee is merely that—they are being trained to provide services for which they are not yet qualified. It would be perverse to require a qualified individual to become licensed to provide potentially harmful medical nutrition therapy services to patients in hospitals or residents in nursing homes, while

allowing someone without the same level of qualifications to have free reign. Thus, trainees are specifically exempted when working under the direct supervision of a qualified supervisor who is ultimately responsible and liable for the care jointly provided by the two of them.

Comments in opposition to the proposed rulemaking would seek to discern the legislative intent through a tortured reading of the statute reliant upon multiple implied premises, but more significantly, the commenters simply ignore the plain language of the statute requiring an individual to be licensed to provide medical nutrition therapy.

Thus, the requirement in proposed 21 NCAC 17 .0303 (“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.”) is specifically “within the authority delegated to the agency by the General Assembly.” G.S. 150B-21.9(a)(1). Furthermore, this proposed rule add clarity and removes purported ambiguity evident in some comments arising from their misreading of the Act, consistent with G.S. 150B-21.9(a)(2). The fact that some individuals in North Carolina are seeking to evade the licensure requirement for supervisors manifests the fact that the proposed rule is “necessary to fulfill a duty delegated to the agency by the General Assembly.” G.S. 150B-21.9(a)(3). Finally, it is clear that the NCBDN “has complied with the procedural requirements for enacting those rules.” (G.S. 150B-21.9(a)(4).

The other proposed rules (Rules 21 NAC 17. 0101; .0104; .0105; .0107; and .0109) are being promulgated to achieve the General Assembly’s intent of adding a new pathway for licensure, are clear and unambiguous, and are a necessary and proper use of delegated authority.

In short, each of the rules proposed by the NCBDN meet the statutory requirements in G.S. 150B-21.9, and should be reviewed and published as valid rules by the RRC.

The Academy appreciates the opportunity to comment on the proposed rulemaking to the North Carolina Dietetics/Nutrition Practice Act related to licensed nutritionists. Please contact Pepin Tuma at 202-775-8277 ext. 6001 or by email at ptuma@eatright.org with any questions or requests for additional information.

Sincerely,



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