

Licensure

HOD Backgrounder

House of Delegates

Fall 2011

The topic of health reform was discussed during the Fall 2009 House of Delegates Meeting and continued through the Fall 2011 meeting. It became clear from the outcomes of these sessions that collaborative efforts with external stakeholders were needed both at the federal and affiliate level in order for the profession of dietetics to be identified as the preferred and qualified provider of nutrition services. Licensing of dietitians protects the public health by establishing minimum educational and experience criteria for those individuals who hold themselves out to be experts in food and nutrition.

For these reasons, as well as its recent identification as a Mega Issue at the Spring 2011 House of Delegates, the House Leadership Team selected the topic of licensure initiatives for discussion at the Fall 2011 House of Delegates Meeting (September 23-24).

Mega Issues Questions:

What is needed to create greater understanding among RDs/DTRs of the value of licensure and the importance of active engagement to the long term future of the profession?

Expected Outcomes:

1. Delegates will develop awareness and understanding of the value of licensure to the future of the profession.
2. Strategies will be identified that individual members can undertake to support the efforts of their states' establishment or maintenance of licensure. Delegates will provide input on messages and resources that can be used by PIA to support state establishment, strengthening and maintenance of licensure.
3. Engage delegates, in creating a plan for working with their affiliate boards and Public Policy Panels to promote licensure to ensure the safety of the public.

Backgrounders for the House of Delegates inform the readers on the mega issue and provide answers to the following questions throughout the document:

1. What do we know about the needs, wants and expectations of members, customers and other stakeholders related to this issue?
2. What do we know about the current realities and evolving dynamics of our members, marketplace, industry, profession, which is relevant to this decision?
3. What do we know about the capacity and strategic position of ADA in terms of its ability to address this issue?
4. What ethical/legal implications, if any, surround the issue?

To prepare the HOD for the discussions on licensure initiatives, this Backgrounder provides information in relation to the four questions throughout the backgrounder and is framed by Licensure Initiative Report prepared by the Policy Initiative and Advocacy Team provided during the ADA Board of Directors Retreat, June 7-9, 2011.

Knowledge-based Strategic Governance is a mechanism for consultative leadership. It recognizes that “strategy” is the necessary and appropriate link in the Board's role to govern the organization, the House's role to govern the profession and the staff's role to manage implementation. To assist you in thinking about the issue to be addressed, four key background areas are presented as standard questions used for each Mega Issue. These questions create an environment of awareness of what we know and what is unknown. A wide range of resources have been used to provide you with what is known.

There is a proliferation of nutrition-related titles and credentials available to individuals seeking a foothold in the field; the academic and experiential requirements for them and the objective value of the credentials vary widely. There are essentially two categories of non-CDR credentialed nutrition practitioners: (1) holistic nutrition practitioners with varying qualifications and education and (2) recipients of Bachelors of Science, professional, or advanced degrees (in fields related to nutrition) who desire nutrition credentialing to work in the field. These “nutrition professionals” are in the process of unifying their credential and academic standards under a new professional organization with the specific purpose of developing new professional opportunities, such as seeking future reimbursements from health insurers and pursuing available preventative care and wellness resources. Many aggressively challenge the notion that dietitians should have practice exclusivity outside of the clinical setting, and they continue pushing legislative initiatives that allow use of the “nutritionist” title and permit them to perform holistic and other nutritional counseling.

Registered dietitians presently face competition for the provision of certain dietetic services from an array of competitors, and should expect broad, varied competition to continue in the future. As government funding for preventative care and wellness increases and private insurers continue expanding clinical coverage to include visits to nutrition professionals, there will likely be a concomitant growth in the number of competitor health care professionals willing to provide some form of nutritional counseling. Competition for RDs may be from professions with fewer academic and experiential requirements, including non-CDR credentialed nutrition professionals. Although dietitians have often been successful in convincing legislatures to enact licensing schemes with practice exclusivity, the increasingly competitive relationship between nurse practitioners and physicians over scopes of practice shows that strict licensing schemes are sometimes insufficient on their own to guarantee exclusivity when there are too few practitioners able to exclusively provide those tasks.

State affiliates have experienced organized opposition to licensure in all states in which current laws have been proposed. Grassroot opposition has been focused on the American Dietetic Association and has included arguments that dietitians lack preparation to deliver wellness and nutrition care outside of the hospital setting, that licensure creates a monopoly and restricts freedom of choice of provider by the public, creates job loss for non-RDs providers (such as WIC and alternative providers) and that licensure requires those who practice to be members of ADA (Appendix A). Rather than respond individually to these media campaigns, ADA can achieve a position of strength by developing and executing an initiative that supports licensure and the dietetics profession while adding member value.

The professional standards set by dietetics licensure are important to the profession and it positions the registered dietitian as recognized providers in state and third-party payer systems. Licensure benefits the public by establishing standards for public awareness on health provider standards and services.

Market Place Relevance Regulatory and Competitive Environment of Dietetic Services

Registered Dietitians and Dietetic Technicians, Registered (DTRs) face a significant competitive threat in the provision of various dietetic and nutrition services. Dynamic changes in the expected demand for

nutrition-related services offer both exceptional opportunities and significant challenges for those willing and able to supply them. RDs and DTRs must be aware that existing legal and regulatory constraints on practice are unlikely to prevent robust, broad competition in these growth areas.

Regulations Restricting Competition

The Center for Medicaid and Medicare Services (CMS) regulations specify that, “For Medicare Part B coverage of MNT, only a Registered Dietitian or nutrition professional may provide [nutrition] services.” Elsewhere the regulations use the term “qualified dietitian.” While the regulation defines “Registered dietitian or nutrition professional” as having minimum educational and experiential requirements mirroring those of Registered Dietitians, there are exceptions that allow non-RDs) to qualify as “nutrition professionals.” Some states may specify certain qualifications or duties beyond those detailed in the federal regulations. Regulations can either close avenues of competition, or open opportunities for competitors with skills and training.

Government Classification: Dietetics vs. Nutrition

The Office of Personnel Management’s (OPM’s) 1980 Position Classification Standard for Dietitian and Nutritionist Series, remains its most recent professional classification. Governments more strictly regulate the work of and qualifications for dietitians than it does for nutritionists. An array of competitors is working to exploit this distinction between dietetics/nutrition and is already providing would-be clients with personalized health education and nutritional counseling in growth areas such as prevention and wellness and in private practice careers.

Competitors Organizing through National Association of Nutrition Professionals

The National Association of Nutrition Professionals (NANP) describes itself as “a non-profit business league of nutrition . . . [that] represents holistically trained nutrition professionals.” It focuses on two priorities: (1) enhancing the credibility of holistic nutrition and its practitioners and (2) advocating for greater acceptance of holistic nutrition in state law, health insurance regulations, and among the general public. NANP’s board declared that the first step in creating consistency and credibility for the profession was registration of professionals based on meeting educational standards, specifically requiring proficiency in certain post-secondary subjects clearly within the dietitian’s scope of practice, including nutritional supplementation, nutrition assessment, and nutritional counseling.

The current status of state regulation is:

- 35 states or territories-- licensure
- 7 states -- certification (4 are seeking licensure)
- 3 states-- title protection
- 3 states -- no statute (2 are seeking licensure)
- 4 states -- pending licensure

Role of State Licensure

Most of this competition is legal, either because (1) competitor professions’ scopes of practice often explicitly or implicitly permit those professions to provide the nutrition care services, or (2) states lack the authority to prevent the unlicensed practice of dietetics because the state (often consciously) neglected to include a practice exclusivity clause (providing that only individuals whom the state has properly licensed may engage in activities falling within the regulated profession’s scope of practice) in its dietetics practice act.

There are different levels of professional regulation including licensing, certification, and title protection programs.

- Licensing is the most restrictive legislative regulation, other than outright prohibition of professional practice, and usually requires specific educational attainment and passage of a competency examination. Licensing programs often include (1) title protection for licensees, meaning that only those the state has properly licensed may use a particular title or hold themselves out as members of a particular profession, and (2) practice exclusivity, meaning only those the state has properly licensed may engage in activities falling within the regulated profession's scope of practice. States with practice exclusivity generally have multiple legislative exemptions, allowing specific groups (notably members of another profession operating within the scope of their profession) to engage in the otherwise protected practice.
- State certification programs provide a lower level of protection for state consumers, and generally require a lower level of educational attainment. Most often, state certification requires that an individual obtain a private credential from a specified non-governmental professional entity, usually includes title protection, and can include practice exclusivity.
- Title protection programs offer one of the lowest levels of regulation, in which there is no practice exclusivity, but in which only those individuals who meet the specified requirements are permitted to use a particular title or hold themselves out as a member of that profession. Unlike licensing and certification programs, title protection programs generally do not provide a mechanism for removing harmful practitioners from practice.

Key elements of dietetics licensure statutes include: title protection, scope of practice, practice exclusivity clause, operations of licensure board, educational standards, and exam standards.

States with practice exclusivity generally have multiple legislative exemptions, allowing specific groups (notably members of another licensed profession operating within the scope of their profession) to engage in the otherwise protected practice. A troubling pattern exists when looking at practice exclusivity and title protection in the most populous states, particularly with regard to non-licensed practitioners' use of the title "Nutritionist." There is simply no legal recourse for a significant portion of the U.S. population who encounter unqualified individuals holding themselves out as dietitians or nutritionists.

State licensing boards provide oversight for the administration of the state licensure laws, including:

- Reviewing qualifications and applications of licensure applicants
- Investigating and implementing discipline for reports of harm (violations to licensure statutes)
- Providing oversight of licensee requirements, including ethical and professional standards

Importance of Enforcement

Registered dietitians have a professional responsibility to report incidents of harm to their state licensing board. If harm is not reported, licensing boards cannot do their job of investigating violations. States do not enforce professional regulations in a uniform process, or with similar zeal. Few of the representative states sampled by the author actually receive significant numbers of complaints alleging practice violations; even fewer aggressively pursue the violations they receive. Some states have dietetics-dedicated boards tasked with enforcement; others rely on less specialized boards of health professionals, boards of medicine, departments of professional regulations, or the state attorney general.

States generally require that someone file a complaint before an investigation into a violation can be opened; the complaint process is integral to aggressive enforcement of dietitian licensing acts. Because all too often state dietetics boards receive few (or no) complaints alleging violations, one is led to conclude either that (a) few, if any, violations are occurring in these states and licensing is not necessary or (b) violations are occurring, but are not being reported. If the latter scenario is accurate, dietitians and others benefitting from licensure must be more vigilant in identifying and reporting violations. In fact, many state dietitian licensure laws *require* that dietitians “report alleged violations” and provide penalties for the failure to comply with that and other standards of professional performance.

Competitive Landscape Summary

As government funding for preventive care and wellness increases and private insurers continue expanding coverage to include visits to nutrition professionals, there will likely be a concomitant growth in the number of health care professionals willing to provide nutritional counseling. A shortage of providers and their desire and willingness to provide health care services formerly provided by physicians means that RDs are more likely to face enhanced competition from so-called “nutrition professionals” with less rigorous academic and experiential credentials.

The Work Group on Licensure, Scope of Practice and Competition

The Work Group on Licensure, Scope of Practice and Competition (WGLSC) provided a report to the Board of Directors in January 2010. The major focus of the WGLSC was to develop a Model Practice Act (Appendix B) to assist members seeking licensure.

Dietetics Practice Acts are laws designed to protect public health, safety, and welfare enacted in state statute. Their purpose is not to increase reimbursement. They define the scope of dietetics practice and help assure that the public is protected from incompetent, unqualified and unskilled practitioners. State dietetics statutes establish state boards, define the scope of practice, and establish disciplinary procedures to regulate the profession. In most cases, the boards also have the legal authority to write the regulations that implement the law. This, these boards have the responsibility to protect the public by determining who is competent to practice dietetics under the specified statute. The dietetics practice acts are important statutes and must be protected.

The WGLSC decided to put forth a Model Practice Act that could be used by ADA to assist affiliates in their licensure efforts for 2010 and beyond. The Model Practice Act will provide a foundation for affiliates as they seek to lobby for their licensure bills. While the individual licensure bills will continue to vary, the affiliate leadership will be encouraged to work with a bill that is as close as possible to the Model Practice Act. Affiliate licensure leaders will work closely with the ADA Director of State Government Relations to receive training on effective lobbying strategies. They will work together on finalizing an ADA approved bill that will incorporate the guidelines and tenets in the Model Practice Act. Affiliates will be encouraged to begin with a position of strength and compromise on certain elements only if absolutely necessary, in the final phase of negotiations.

Recommendations for essential components in licensure bills:

As ADA state affiliates plan and manage licensure efforts, the Work Group on Licensure, Scope of Practice and Competition considers the following as essential components for licensure bills:

- Commission on Dietetic Registration (CDR) guidelines for licensure.

- Language includes a scope of practice and title protection language similar to the Model Practice Act.
- Language includes the following definition of dietetics.

“Dietetics” is the integration and application of principles derived from the sciences of food, nutrition, management, communication, and biological, physiological, behavioral, and social sciences to achieve and maintain optimal human health.

Managing Competition

Even though the majority of state affiliates already have a practice act, it is important to continue to scan the environment for potential “scope creep”. It is also important that newer members of ADA understand the value and importance of a practice act. To achieve this, the WGLSC recommends to affiliates these approaches for managing competition:

- a. Affiliates need to develop and increase collaborative relationships with state medical associations, hospital associations and other key groups who will advocate for dietitian licensure.
- b. Investigate and know the scope of practice for other professions.
- c. Research and submit case reports on evidence of harm in states without licensure and track incidence of harm in those states with licensure.
- d. Affiliate leaders should work with ADA staff to ensure essential requirements to licensure statutes are met, including:
 - Applicant qualifications consistent with the CDR Guidelines for licensure;
 - Statute terminology consistent with the Model Practice Act.

Training of the Practitioners

To assure that members have the knowledge needed, the WGLSC recommends education and training initiatives that would include:

- a. Undergraduate dietetics and dietetic technician education programs should include a basic introduction on licensure and scope of practice and this should be a required component of dietetic internship and coordinated programs.
- b. ADA should develop Webinar presentations on the following topics;
 - Licensure and competition; why licensure is important?
 - Ethics training;
 - Understanding your legal scope of practice;
- c. Develop licensure leader experts to be invited as speakers on ADA Webinars and affiliate annual meetings.
- d. Increase the use of *ADA Times* for education on licensure and scope of practice issues.

Although dietitians have been successful at getting legislatures to enact licensing schemes with practice exclusivity, strict licensing schemes are insufficient to guarantee exclusivity when there are too few practitioners able to exclusively provide those tasks. Lastly, we must recognize the importance of licensure’s role as a protective barrier preventing unqualified competitors from performing nutrition care services, and increase our vigilance in reporting unlicensed competition.

States purport to regulate professions to protect their citizens from incompetent practitioners, generally by establishing minimum educational and competency requirements for entry and continued participation in a given profession. The purpose of licensure is to protect the health, safety, and welfare of the public. Because professional regulations act as a barrier to entry and usually provide a mechanism

for removing harmful practitioners from practicing within the state, they effectively restrict the supply of practitioners and often lead to an increase in the cost of services.

Licensure Summary of Statutes to follow

State	Nature of Statute
Alabama	Licensure of dietitian, nutritionist
Alaska	Licensure of dietitian, nutritionist
Arizona	No statute
Arkansas	Licensure of dietitian
California	Title protection for dietitian, RD, and DTR
Colorado	No statute except deceptive advertising
Connecticut	Certification of dietitian
Delaware	Licensure of dietitian, nutritionist
District of Columbia	Licensure of dietitian, nutritionist
Florida	Licensure of dietitian, nutritionist, nutrition counselor
Georgia	Licensure of dietitian
Hawaii	Pending status: Licensure of dietitian approved by state legislature in 1999; regulations and licensure board administration still pending
Idaho	Licensure of dietitian
Illinois	Licensure of dietitian nutritionist
Indiana	Certification of dietitian
Iowa	Licensure of dietitian
Kansas	Licensure of dietitian
Kentucky	Licensure of dietitian; Certification of nutritionist
Louisiana	Licensure of dietitian
Maine	Licensure of dietitian, DTR
Maryland	Licensure of dietitian, nutritionist
Massachusetts	Licensure of dietitian, nutritionist
Michigan	Pending status: Licensure of dietitian, nutritionist approved by state leg., 2008; regulations & licensure board administration still pending
Minnesota	Licensure of dietitian, nutritionist
Mississippi	Licensure of dietitian; Title protection for nutritionist
Missouri	Licensing of dietitian
Montana	Licensure of nutritionist; Title protection for dietitian
Nebraska	Licensure of medical nutrition therapist
Nevada	Title protection for dietitian, LD, and RD
New Hampshire	Licensure of dietitian
New Jersey	None
New Mexico	Licensure of dietitian, nutritionist, nutrition associate
New York	Certification of dietitian, nutritionist
North Carolina	Licensure of dietitian, nutritionist
North Dakota	Licensure of dietitian, nutritionist, RD
Ohio	Licensure of dietitian
Oklahoma	Licensure of dietitian
Oregon	Licensure of dietitian

State	Nature of Statute
Pennsylvania	Licensure of dietitian-nutritionist
Puerto Rico	Licensure of dietitian, nutritionist
Rhode Island	Licensure of dietitian, nutritionist
South Carolina	Licensure of dietitian
South Dakota	Licensure of dietitian, nutritionist
Tennessee	Licensure of dietitian, nutritionist
Texas	Title protection for dietitian
Utah	Certification of dietitian
Vermont	Certification of dietitian
Virginia	Title protection for dietitian, nutritionist
Washington	Certification of dietitian, nutritionist
West Virginia	Licensure of dietitian
Wisconsin	Certification of dietitian
Wyoming	Pending Status: Licensure of dietitian approved by state legislature in 2011, regulations & licensure board administrations pending

Key

Licensure: Yellow

Alabama, Alaska, Arkansas, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island South Carolina, South Dakota, Tennessee, West Virginia

Certification: Green

Connecticut, Indiana, New York, Utah, Vermont, Washington, Wisconsin

Title Protection: Red

California, Texas, Virginia

No Statute: Gray

Arizona, Colorado, New Jersey

Pending Status: Pink

Hawaii, Michigan, Wyoming, Nevada

Note: Nevada’s licensure bill became law in 2011, but currently their statute includes amendment language that restricts their statute to a Title Protection statute. Plans are underway to work with ADA to gain approval of revised language to be submitted in 2013

State affiliates have experienced organized opposition to licensure in all states in which licensure laws have been proposed. Among the arguments uses by those who oppose dietetics licensure are:

- Dietitians lack preparation to delivery wellness and nutrition care outside of the hospital setting
- Licensure creates a monopoly and restricts freedom of choice of provider by the public
- Licensure creates job loss for non-RDs providers (such alternative providers)
- Licensure requires those who practice to be members of ADA

ADA can achieve a position of strength by developing and executing an initiative that supports licensure and the dietetics profession while adding member value.

Proposed Licensure Initiative Goals:

Goal 1:

- **Improve understanding of value of dietetics licensure and the value of the RD for target audiences**
 - Target audiences include public, partners/collaborators, members, elected officials, media
- Possible strategies may include:
- Messaging/Communication plan
 - Need specific messaging and tactics for member apathy
 - Training

Goal 2:

- **Members take ownership of maintaining the professional standards of dietetics**
- Possible strategies may include:
- Mobilize members to report harm (governance/quality management)
 - Licensure boards
 - Scope creep/ scope of practice

Goal 3:

- **Increase the level of confidence affiliates have in ADA as they face licensure opposition (Appendix J)**
- Possible strategies may include:
- Provide dedicated staff
 - Integrated quality assurance

Board of Directors:

In considering this initiative, the BOD is asked to review the goals to determine if they are appropriate and comprehensive. The BOD is asked to consider the broad vision of the organization as it relates licensure goals (Appendix C).

Questions:

- *Are there goals that are not identified?*
- *What other strategies help us achieve these goals?*

Overview of Licensure Status

Certification

Indiana's certification board has been proposed for elimination by the governor. A hearing is scheduled for September and the Indiana Dietetic Association and ADA are collaborating on efforts to retain Indiana's certification. The Indiana Dietetic Association plans to submit a licensure bill in January 2012. New York, Washington, and Wisconsin are all seeking licensure.

Title protection

California and Virginia will submit a licensure bill in January 2012. Texas plans to submit a licensure bill in 2013.

No Statute

Arizona plans a future licensure effort in 2013 (depending on funding challenges). Colorado will submit a licensure bill in January 2013. New Jersey submitted a licensure bill in 2011 and action was stalled due to the governor's opposition to establishing additional licensing boards. Negotiations are underway with the NJ Department of Consumer Affairs for alternative licensing board/committee status.

Pending

Michigan has developed their rules and regulations which will be considered at a public hearing in 2012. Wyoming has begun the process of developing their rules and regulations. Hawaii's efforts to achieve licensure status have been stalled for ten years, due to administration opposition to administering their statute and finalizing their regulations. Current plans are to connect with their new governor to seek a solution to the agency/board administration questions.

Nevada dietetics licensure became law in 2011, but there are challenges with amendment language. Work has begun on drafting new language to be submitted in the next Nevada legislative session in 2013.

Status of Licensure Efforts with States Seeking Licensure

New York :NYSDA has mobilized their grassroots and have been successful in gaining increased support from state representatives to commit as bill sponsors. This was especially important due to the fact that their Assembly sponsor has indicated that he wants broad support from other potential Assembly sponsors prior to introducing the bill in the assembly. Currently, NYSDA and ADA are working collaboratively to revise the bill language in consideration of both the NY Department of Education standards and Model Practice Act language in coordination with ADA and CDR Guidelines for licensure.

In the meantime, NYSDA has been organizing grassroots systems for increased engagement at the local level. At their annual meeting they held a "Town Hall" meeting on licensure as a way to educate and mobilize their members. ADA staff is providing resources and training on suggested lobbying strategies as they move forward. Next steps include continued efforts to gain the support of outside organizations; with the assistance of ADA staff.

Once bill language is finalized, NYSDA plans to submit their bill in January 2012.

New Jersey: The NJ bill has been stalled in committee due to strong political opposition, particularly from legislators who support the NJ governor's opposition to increasing regulation and any proposals that potentially increase state budget requests in NJ. The Governor is publicly opposed to any new licensure boards.

The New Jersey Dietetic Association is continuing negotiations with the Department of Consumer Affairs. The DCA proposed an alternative that would provide for certification with oversight by DCA, with no individual certification board. DCA would have the authority to act with duties as a certification board. Currently ADA staff is working with NJ leaders to review this DCA proposal and revised bill language.

Nevada: Nevada's licensure bill was signed by the governor and became law in 2011. There are significant challenges with the statute language due to a late amendment accepted on the Senate floor. ADA and the Nevada Dietetic Association are collaboratively working to negotiate regulatory language

and to develop a legislative amendment to their statute to be introduced during the next legislative session in 2013.

Wisconsin: Wisconsin has successfully coordinated extensive structured grassroots support and outside group support. ADA has been working with WI for 3 years on bill language, licensure messaging, Web site development, affiliate testimony, lobbyist negotiations, and key issues regarding bill sponsors.

This year the WI licensure bill was stalled due to the budget battles in the WI legislature. The Wisconsin Dietetic Association continues lobbying and messaging development prior to submitting its bill in January 2012. ADA continues to work closely with WI on lobbying strategies, messaging and gaining support.

California: The California Dietetic Association introduced a licensure bill in February 2011, authored by the Chair of the Assembly Business and Professions Committee. The biggest challenge occurred with opposition of the bill by the CA Nurses Association just prior to the first hearing before that committee. The CA Nurses Association influenced the author to withdraw the bill although the author is still very supportive of CDA's efforts towards licensure. CDA and the CA Nurses Association plan to convene this fall to develop revised bill language acceptable to both groups for submission in January 2012.

The affiliate has made progress in mobilizing its grassroots support and the support of outside groups. CDA has worked hard to educate its own membership as well as the CA state legislators by sending monthly nutrition e-mail messages to the legislators and conducting personal visits.

Colorado: The Colorado Dietetic Association plans to submit a licensure bill in January 2013. ADA and the Colorado Dietetic Association are collaboratively working on lobbying strategies and writing the bill for submission in January 2013.

Virginia: The Virginia Dietetic Association plans to submit a bill in January, 2012. ADA staff and VDA worked collaboratively on the lobbyist selection, member surveys and education, and on drafting the bill.

Washington: As Washington prepares for a licensure move in 2012, ADA staff flew to Washington twice for licensure leadership planning meetings and to speak at the annual meeting. At the annual meeting, ADA staff met with the licensure leadership to assist them in writing their bill. Meetings were held on Board unity, timeline strategy, bill sponsors and Sunrise Review application language. ADA is working collaboratively with WSDA in preparation for submitting a licensure bill in January 2013.

Indiana: Since Indiana's certification statute is under review, IDA and ADA's collaborative efforts are focused on retaining Indiana's certification. The governor has posted dietetics certification on a list of boards that may be cancelled due to budget/administrative considerations. A hearing is planned for September to review the status of the certification board. IDA plans to submit a licensure bill in January 2012.

Previous Discussion by the House of Delegates Regarding Market Place Relevance

During the Market Place Relevance Dialogue Session that took place during the Spring 2011 Virtual House of Delegates meeting, recommendations were created on how Registered Dietitians and Dietetic Technicians, Registered could create more opportunities and be more nimble and proactive. Licensure was identified as an opportunity (Appendix D).

Licensure Resources for Affiliates/Members

ADA's Policy Initiatives & Advocacy Team has provided support and resources to affiliates needing support in regards to licensure and members with questions regarding this issue (Appendix E). Many of these resources are available ADA's website or at the request of an affiliate. Resources available by request are provided along with assistance by State Government Relations staff that has experience with licensure across the nation.

Licensure – an ADA Priority

ADA continues to work with affiliate licensure leaders to achieve success in obtaining licensure and in protecting scope of practice for existing licensure statutes. In 2009, ADA convened a Licensure Work Group to provide analysis from members with expertise on licensure issues. The Work Group developed the Model Practice Act, which is currently the model for all licensure bills. ADA has reconvened this licensure work group this year to continue the ADA's licensure goal. The Licensure Work Group Charge is to:

- Provide oversight and review of licensure bill language
- Assist PIA staff in working with affiliates on lobbying strategies
- Make recommendations to the PIA staff and the LPPC regarding licensure strategies and licensure bill language; and
- Make recommendations to the PIA staff and the LPPC regarding ADA positions on licensure related issues and bill language

This year ADA offers a monthly Licensure Forum to add to the opportunity for members' dialogue about current issues facing the states related to licensure efforts and scope of practice protection. Licensure and public policy panel leaders contribute to the discussion and offer examples of success through their best practices used in their state.

ADA staff provides a licensure toolkit to all states seeking licensure and sometimes travels to states seeking licensure to assist with development of bill language, provide guidance on lobbying strategies and develop appropriate messaging. ADA often assists with selection of the lobbyist and provides guidance on how to effectively work with the affiliate lobbyist for licensure success.

Summary

It is important that dietetics licensure acts maximize the registered dietitian's unique skills and expertise in the scope of practice. All registered dietitians and dietetic technicians, registered need to be mindful in these competitive times that other practitioners are seeking expansion of their services, creating "scope creep".

Appendix A

The following is an excerpt from a website claiming that ADA is a "monopoly". The website continues to provide information about multiple states negatively portraying ADA and our members



The American Dietetic Association's Monopoly Continues to Grow—But You Can Stop It Cold!

April 12, 2011

New bills have been introduced in a number of states that will give the ADA a monopoly over the practice of nutritional therapy—these are the people in charge of the wonderful hospital food. Please take action in your state to stop this power grab and ensure consumer choice!

The American Dietetic Association (ADA) has sponsored legislation in over 40 states. These bills lump dietitians and nutritionists into one licensing scheme, and [require nutritionists to complete a dietitian program in order to practice nutritional therapy](#). Even if the nutritionist holds a Masters or a PhD in nutrition, the nutritionist is still required to complete registration through ADA in order to keep practicing. This is the organization that [lists among its corporate sponsors](#) soft drink giants Coca-Cola and PepsiCo, cereal manufacturers General Mills and Kellogg's, candy maker Mars, and Unilever, the multinational corporation that owns many of the world's consumer products brands in foods and beverages.

In some states, individuals are even prohibited from using the words "nutritionist" and "nutritional care." Such legislation impedes an individual's right to access highly qualified nutritional therapists of their choice, and prohibits hundreds of qualified practitioners from providing nutritional therapy.

Nutritionists and dietitians differ in important ways. In general, nutritionists are health practitioners with comprehensive knowledge of how nutrition impacts the whole body focusing on medical nutrition therapy, metabolism and biochemistry, and work primarily in private practice settings conducting one-on-one nutrition counseling. Nutritionists practice an integrative approach to medicine and concentrate on prevention and treatment of chronic disease. Dietitians, in general, are experts in what passes for nutrition science today, much of it often woefully out of date, with training focusing on institutional diets and food service management—developing diets for hospital patients, school food service programs, and nursing homes. Dietitians can provide individualized counseling on diet and disease and there can be an overlap in the type of work each profession practices.

[As we reported previously](#), the Michigan Board of Dietetic and Nutrition voted to make the ADA its sole credentialing arm. We are still watching the rule-making process to see if we can make any changes. We are hoping, at a minimum, to force the board to recognize other credentialing bodies.

And Wyoming recently passed a bill ([SF0093](#)) creating a board and licensure for dietitians. They define "dietetics" as including the nutrition care process and medical nutrition therapy, and specify the ADA as the credentialing organization.

Appendix B

Model Practice Act

(Excerpted from The Work Group on Licensure, Scope of Practice And Competition Report, Approved January 2010)

The Work Group on Licensure, Scope of Practice And Competition (WGLSC) developed a Model Practice Act to be used to assist affiliates in seeking licensure initiatives. In developing this model act, the work group reviewed an older version used in 1986 which needed updating because of changes in dietetic practice and new terminology adopted by ADA.

The WGLSC recommends the bill language contain the following components:

Definitions of key terms:

- Dietetics
- Medical nutrition therapy
- Nutrition assessment
- Direct Supervision
- General non-medical nutrition information
- Nutrition care services
- Nutrition counseling
- Nutrition care process
- Nutrition diagnosis
- Nutrition intervention
- Nutrition monitoring and evaluation

Scope of practice language:

The WGLSC agreed that the following definition of dietetics should be included in the scope of practice section of proposed licensure bills:

Dietetics is the integration and application of principles derived from the sciences of food, nutrition, management, communication, and biological, physiological, behavioral, and social sciences to achieve and maintain optimal human health.

Scope language should also include the following:

Licensed dietitian/nutritionists engage in the nutrition care process, a systematic problem-solving method that dietitians use to critically think and make decisions to address nutrition related problems and provide safe and effective quality nutrition care services and Medical Nutrition Therapy.

The Nutrition Care Process consists of four distinct, but interrelated and connected steps:

- Nutrition Assessment
- Nutrition Diagnosis
- Nutrition Intervention
- Nutrition Monitoring and Evaluation

- a. Nutrition assessment, development of nutrition-related priorities, goals, and objectives, and establishment and implementation of nutrition care plans;
- b. Provision of nutrition counseling and education as components of preventative, curative and restorative health care;
- c. Provision of medical nutrition therapy;
- d. Evaluation, education and counseling related to food-drug and drug-nutrient interactions.
- e. Development, administration, evaluation, and consultation regarding appropriate nutrition quality standards in food services and nutrition programs;
- f. Conducting independent nutrition research or collaborating in nutrition research intended to demonstrate nutrition outcomes or develop nutrition recommendations for individuals, specific groups, or the general public;
- g. Supervision of dietetic technicians, dietetic students, and dietetic interns in the provision of nutrition care services;
- h. Nutrition case management and referral to appropriate nutrition resources and programs.

Rationale/Guidance:

The scope of practice defines specifically those areas for which there is the greatest potential for public harm and need for regulation and for which the licensed persons are uniquely prepared.

Licensure Boards

Composition of licensure boards:

The majority of board members should be practicing dietitians and there should be at least one public member. The number of dietitians serving on the board should be proportional to the type of licensees.

Connection between boards and affiliates:

The WGLSC agreed that appointing a board liaison may enhance the connection between the affiliate and the licensing board. The WGLSC decided to leave this option up to each affiliate.

Educational requirements:

Affiliates should consider the option of requiring a continuing education course on jurisprudence for licensed practitioners.

Professional memberships:

The WGLSC discussed membership options for dietetic licensing boards, including the Council on Licensure, Enforcement and Regulation (CLEAR) or another association for regulatory agencies. The WGLSC discussed the possible benefits for licensing boards, and there was consensus to leave the choice to the affiliates.

Essential components:

The WGLSC decided that terminology for the Model Practice Act must include, at minimum, the following elements: Applicant requirements based on CDR Guidelines (Appendix D), the ADA approved definition of dietetics, a defined scope of practice, and title protection.

Dietitian/nutritionist (LDN):

Discussion included potential consideration of licensing the dietitian/nutritionist (LDN) in order to be inclusive, while maintaining the required standards. The WGLSC also discussed the possibility of licensure statutes that would separately license dietitians and nutritionists within the same statute. The consensus was that this would be confusing to the public.

Reciprocity:

The WGLSC discussion on potential reciprocity language and issues related to telehealth concluded with a consensus that the Model Practice Act should include a reciprocity clause. The WGLSC suggested that reciprocity be provided for licensed dietitians/nutritionists from other states if the applicant is registered with CDR or has successfully completed the CDR exam.

Provisional permits:

The WGLSC had consensus to waive the exam requirement and may grant a provisional license to any applicant who has not taken the CDR dietitian registration exam but is a dietitian registered with CDR or has met the educational requirements of CDR and completed an approved dietitian practice experience.

Penalties:

The WGLSC discussed terminology for penalties and the consensus was that the Model Practice Act includes general provisions for violations of the licensure statute, as well as provisions for discipline of licensees when needed.

Appendix C

Board of Director's May 2011 Discussion on Proposed Licensure Initiative Goals Notes

In considering this initiative, the Board of Directors was asked to review the *Proposed Licensure Initiative Goals* to determine if they are appropriate and comprehensive. The BOD was asked the following questions to direct their discussion in considering the broad vision of the organization as it relates licensure goals.

Questions:

- *Are there goals that are not identified?*
- *What other strategies help us achieve these goals?*

The following notes were collected on flip charts during the BOD's discussions and are in rough format.

Goals:

- Identify unlicensed activity
- Publish malpractice situations
- Need to take ownership –lack of reporting in Code of Ethics
- Launch unlicensed activity, search & reporting campaign
 - during NNM by affiliates.
- Train State Investigators to report unlawful practice
- Develop PSA's and billboards to educate consumers
- Consider changing language to protect licensure as well
- Identify our thresholds or trade offs
- Impact of licensure regulation on practice?
- What is the value of licensure for RDs who don't practice in clinical settings?
- What are the risks of NOT maintaining licensure?
- Should we have a goal that prepares people to be experts in licensure?
- Students are taught/expected to be licensed?
 - Confusion Re: variations from State to State: LD, CD
- Should be considered an ongoing thing
 - Need to update licensure laws as practice changes
- Capture horror stories
- Feel empowered/responsible
- Talking to other Healthcare Professionals @ importance of referring to a licensed professional
- Target training on media/communication skills to high risk States
- Regular reports related to States that are high risk
- Share tactics of what worked
- Teach them how to anticipate/answer opponents' concerns
- ID opportunities to address funding issues for affiliate to pursue/maintain licensure.
- Update disseminate information regarding the implications of telehealth to licensure
- Provide regular updates related to state licensure (both at State and National level)
- Increase the number of licensed RDs to ("X") in States that have licensure
- To seek licensure for all States

- Clarify why & how

Additional Goals Needed

- Split out reporting harm (So there are set strategies and tactics)
- Training for state investigators
- Add enhance/implement/train affiliates to work/communicate with licensure boards
- Strategic Plan for State to achieve Licensure
- Identify additional organizations to advocate for dietetic licensure
- Develop strategies related to sunset.

Funding Goals:

- Grants from CDR
- Regional contracts for lobbyists
- Allocations from affiliate assets (e.g. Recommended percentage)
- Affiliate fundraising activities
- Develop fact sheets related to costs to pursue/maintain licensure (specific to each State)
- Combine roles: i.e. Exec. Director/lobbyist
- Create ADA wide funds for lobbyist/State licensure support (dues or donations)
- "Protect the Public" fund

Strategies for Goals

- Develop an ADA-wide messaging/communications plan & design for each audience
- Develop & increase training on licensure
- Develop a tactical plan for each target market
- Define (more clearly) the message of competitors
- Become active in Health Care Reform in your State
- Develop more training for members to improve the understanding of protecting licensure
- Extend the objective for a measurable outcome
- To assist affiliates to develop financial resources for licensure efforts
- Develop & communicate best practice to all affiliates

Licensure Comments

- Re: improving understanding (members') about licensure: FNCE?
- HOD dialog coming
- Suggestion: inviting Board Chairs of licensure group
- Tap into listserve folks offering articulate comments
- Other healthcare groups → How did they get to acceptance of "this is just what we do"

Post Small Groups Discussion/Comments

- Cost of doing business → reciprocity across states (clarification the law follows the patient)
- Targeting specific legislators
- Texas licensure Board not communicating even though they have the money.
- Boards might not be communicating why licensure is important –need follow up, accountability
- Telemedicine & P.H.R.S are here so crossing state lines electronically is important for our Dietitians

Appendix D

Market Place Relevance Threats and Opportunities Consolidation by HLT

Spring 2011 HOD Virtual Meeting – Saturday, April 30

Threats	Opportunities
Competition Other Nutrition Groups Other Professionals Other non-professionals	Ability to Distinguish Our Profession
Characteristics of the Profession Identity Crisis Complacent/Apathy (broadly)	Branding and Intensive Marketing Campaign
Skills Lack Of Business And Entrepreneurial	Transferring Skill Sets to New Opportunities
Technology	Technology
Regulatory Agencies	Getting RD/DTR into Federal Regulations
RD Not Present or Involved in the “decisions” Made Regarding Policy	Public Policy and Advocacy
Licensure Weak Licensure Laws	Build Skills Outside Traditional Training Model
Scope Creep	Bring Food Back into the Profession (RDs Own It)
Health Care Changes	Healthcare reform
Traditional RD Education	Education Optimization – Seamless Process From Student to Practice
Lack of Outcomes	Supporting Growth of Career Levels
EAL Limited Topics	Individual Lobbying
Capacity When RD/DTRs are Valued for Their Services	Public is Interested in Nutrition
	Multidisciplinary Team Involvement; Interdisciplinary Practice; Medical Home

Appendix E

ADA Website Resources

Dietetics Practitioner State Licensure Provisions

- Link: <http://www.eatright.org/Members/content.aspx?id=8848> > Detailed Chart: State Licensure Provisions
- Pathway: www.eatright.org > Public Policy > State Affairs > Detailed Chart: State Licensure Provisions

Questions and Answers on Professional Regulation

- Link: (<http://www.eatright.org/Members/content.aspx?id=8860>)
- Pathway: www.eatright.org > Public Policy > State Affairs > Why Professional Regulation? > Questions and answers on professional regulation

1. Why should dietitians and nutritionists be licensed?

Licensing of dietitians and nutritionists protects the public health by establishing minimum educational and experience criteria for those individuals who hold themselves out to be experts in food and nutrition. The state has an obligation to protect the health and safety of the public and licensing of dietitians and nutritionists is consistent with this obligation.

2. Why haven't states licensed dietitians in the past?

Unfortunately, the vital link between nutrition and health has only recently received the attention it deserves. In addition, science has proven that nutrition plays an important part in the prevention and treatment of many serious diseases. Dietitians and nutritionists are now more recognized as healthcare professionals because of their educational background and experience. This is indicated by the fact that since 1984, 41 states and the District of Columbia have passed laws recognizing dietitians and nutritionists as nutrition experts.

3. How has the public been harmed by states not licensing dietitians?

With the explosion of interest in healthy eating and nutrition, consumers have been faced with a dizzying array of products and information. The public deserves to know that the information being given by "experts" is based on science and is being given by individuals with appropriate education and experience. This is especially true of individuals who have medical conditions, which could be adversely affected by improper nutrition counseling. Several states have documented cases of unqualified individuals giving improper nutritional advice, which has harmed patients.

Unfortunately, many cases of healthcare fraud are never reported. A Congressional study on Quackery noted that state offices on aging ranked healthcare fraud (quackery) first as the area of abuse of most concern and with the greatest impact on seniors. The report also acknowledged that the great majority of cases are never reported. (Quackery: A \$10 Billion Scandal; US Government Printing Office Pub. # 98-135; pp.176-178)

4. What are the minimum educational requirements for a dietitian?

In order to be recognized as a dietitian or nutritionist, a person should possess a baccalaureate or higher degree in nutritional sciences, community nutrition, public health nutrition, food and nutrition, dietetics or human nutrition from a regionally accredited college or university and satisfactorily complete a program of supervised clinical experience approved by the Commission on Dietetic Accreditation of the American Dietetic Association.

5. Would licensure prohibit anyone except dietitians from giving nutritional advice?

No. Licensure would not affect anyone that simply describes the nutritional value of products nor would it affect other healthcare professionals. It would, however, provide recourse for victims of unqualified and unscrupulous individuals dispensing improper advice.

6. Aren't too many professions and occupations already licensed by states?

It is the obligation of state legislatures to determine which professions and occupations should be licensed. A compelling case can be made for licensure of dietitians and nutritionists as healthcare professionals.

7. Isn't licensure an attempt to monopolize the nutrition industry?

No. The first obligation of registered dietitians and nutritionists is to serve the public, not sell products or services. Licensure is necessary because the public deserves to know which individuals have the educational background and experience to give nutritional advice. The health food and dietary supplement industry is booming, even in states that have had licensure for many years. The key issue in licensure is accountability. The monopolization argument is a desperate attempt to obscure the real issues of licensure.

8. Will licensing reduce competition or result in costlier services?

No. Once again, licensure is not an attempt to control any market. Licensure allows the public to know which individuals are qualified by education and experience to provide nutritional services. If unqualified individuals disseminate harmful nutrition information, licensure allows the state to take action on behalf of the public against those unqualified individuals. Competition among open and honest individuals with the public's health and safety foremost in their minds will continue to grow and the public will continue to be well served by it.

9. Isn't it true that if a physician refers me to a dietitian for prevention or treatment of a disease, I am reimbursed for it regardless if the dietitian is licensed?

Many insurance companies require licensure to reimburse healthcare professionals. They require licensure so that unqualified providers dispensing questionable advice are not reimbursed. If a state doesn't license dietitians, services may not be covered regardless of whether a physician orders them.

10. Won't licensure cost the state a lot of money?

No. Fees will provide most of the revenue. Many states have approved legislation or rules to make licensure revenue neutral.