

Public Comment of the Center for Nutrition Advocacy on Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability

The Center for Nutrition Advocacy (CNA) appreciates the opportunity to submit this comment to the Federal Trade Commission for consideration in its July 27, 2017 public roundtable “Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability”. CNA’s mission is to advance nutrition providers’ pivotal role in healthcare through effective public and private policy. An initiative of the Board for Certification of Nutrition SpecialistsSM (BCNSSM), the Center works toward a healthcare system that promotes science-based nutrition care, supports all nutrition providers practicing to the level of their training, and gives consumers access to an array of nutrition practitioners.

Nutrition is increasingly recognized as a central component in human health. Dietary intervention has strong supporting evidence for its utility in preventing and managing many chronic diseases. Earlier age of onset and epidemic growth of diseases such as diabetes, obesity and cardiovascular disease underscore the need for expanded nutrition care availability throughout the life cycle. Preventive nutrition education and counseling can:

- avert disease
- provide significant cost savings to employers, governments and individuals
- improve the health and quality of life for all but especially vulnerable and underserved populations

The healthcare system is expanding opportunities for nutrition to play a vital role in our nation’s approach to health but the regulatory framework of the profession poses an extreme impediment to capitalizing on those opportunities.

One private association, the Academy of Nutrition and Dietetics (AND), formerly the American Dietetic Association, has historically engaged in actions that have resulted in diminished competition in nutrition care services through laws that often effectively allow state recognition of only their credentialeds, Registered Dietitians[®] (RD[®]) and frequently criminalizes the provision of nutrition services by many others. The result of these lobbying activities has been and continues to be decreased supply, accessibility, quality and innovation in nutrition care services, and increased cost through limitation of provider supply. A patchwork of state laws exist, the majority of which do not reflect growth and innovation in the nutrition profession or in the widespread recognition that many healthcare professions appropriately incorporate the use of nutrition knowledge and skills. These regulations remain effectively under the control of one private association through its state affiliates and statutorily defined board composition that often provides a majority RD membership. Although AND, in some states, in recent years has acknowledged the need to work with BCNS, very little has changed in state laws and access to state recognition by non-dietitians remains extremely limited. Thus the problems of mobility in this profession are tightly linked to severe limitations in competition enacted through prohibitions on entry in most states.

Background on the Field of Nutrition Services Providers

There are a variety of healthcare professionals that provide nutrition services. One subset is Registered Dietitians, holders of a private credential associated with AND.

There are several other professional bodies offering private credentials in nutrition, including the Board for Certification of Nutrition Specialists which offers the Certified Nutrition Specialist® (CNS®) credential to those who meet rigorous academic, practice and exam requirements. The level of academic preparation, the concentration of areas within academic programs, and patterns of occupational settings between dietitians and credentialed, advanced nutrition professionals training outside of dietetics have some overlap, but also key points of variation. The RD is an entry-level baccalaureate credential with a generalist approach to nutrition and a significant focus on food service management. The Certified Nutrition Specialist® credential awarded by the BCNS requires a masters or doctoral degree for entry with more dedicated focus on nutrition science and it's application to nutrition therapy. The National Commission for Certifying Agencies (NCCA) recognizes both credentials and both are also identified in the Bureau of Labor Statistics' "Occupational Outlook Handbook".

There is also significant innovation in training programs occurring in private institutions that focus on nutrition-based health promotion and disease prevention through the training of health and wellness coaches and nutrition educators.

Nutrition affects all systems and functions of the body. Therefore many other health professionals appropriately serve their patients and clients by incorporating nutrition advice into their professional practice. In addition to RDs and clinical nutritionists; those additional professionals include medical doctors, nurses, chiropractors, naturopathic physicians, acupuncturists, pharmacists, physical therapists and others. Thus, it is much more problematic to reduce nutrition to a uniform regulatory scheme than it is for a discrete profession, such as nursing.

Existing Barriers to Entry and Mobility in the Nutrition Profession

Currently, a patchwork of regulation exists for the practice of dietetics and/or nutrition in which the only consistency is that Registered Dietitians qualify for licensure or certification in all states (except four that have no regulations and one that provides registration for only RDs). In other words, within a diverse profession there is only one, private credential whose association has controlled entry in most states and whose credential holders have complete portability in all states that have a regulation.

- *Only fifteen* states plus the District of Columbia provide for certification or licensure for non-dietitian nutritionists
- Of the fifteen, seven are "exclusive scope of practice" criminalizing nutrition practice by qualified providers of nutrition advice not eligible for state recognition; eight are "title protection only" and do not criminalize but have limitations on title use which often limits the ability of these professionals to market themselves.
- Fifteen states license only RDs and criminalize practice by most others.

- Eighteen states certify only RDs and practice by others is not prohibited.
- In total thirty-two states deny recognition to non-RD nutrition care providers
- The practice prohibitions in exclusive scope states may even apply to some health care providers whose primary profession is not nutrition and whose professions are not exempt under the dietetics laws, even if the professional has additional nutrition qualifications.
- Whether or not practice is prohibited, without state recognition the marketing, employment opportunities and the insurance benefits (affecting both provider and consumer) that are typically tied to state recognition are only available to the RDs in 32 states where others are precluded from certification or licensure.

The prohibitions many nutrition professionals face for authorization and state recognition are extremely problematic in any one state with such limitations, but are compounded when providers seek either to relocate, work across state borders or to engage in telehealth practice. Some states' telehealth provisions require licensure in both the provider's and the client's state. This not only limits business opportunity under current structures but limits consumers' ability to work with the provider of their choice who may best fit their needs. Military families and others who need to relocate frequently often discover their profession is taken away from them when they have moved. Any person choosing to be a nutrition professional but not an RD who lives in a state where one must be an RD to practice or obtain benefits of state recognition, must decide between giving up their home state or their professional aspiration under the current patchwork of regulations, which are at once anti-competitive and inconsistent.

The increase in an online model of education has expanded training options tremendously in the nutrition profession. Students can advance their education and prepare for a career in nutrition from anywhere, only to find that they may live in a state that prohibits their ability to work or even to find an appropriate supervisor to complete the required supervised practice experience. No career should be off-limits to anyone simply because the law prohibits opportunity in their state by mandating licensure for only one particular private credential.

Methods of Streamlining Licensure

Interstate Compacts

Interstate compacts are time and resource intensive to create and would not provide any near-term solution for the dietetics and nutrition professions. Additionally, there currently does not exist a collaborative professional board association to formulate a compact. In fact a concern would be that in this case, the fox would guard the hen house given the overwhelming control the state and national dietetic organizations currently exert in states across the country. One element of an interstate compact is the need for stakeholders to cooperate. Although the Center for Nutrition Advocacy and the Board for Certification of Nutrition Specialists have had some measure of success in intervening in states on behalf of non-dietitian nutrition professionals to prevent *further* erosion of practice rights, the groundwork for a successful interstate compact is far from being laid.

With such a significant disparity in state laws and in the needs of the various stakeholders, particularly those who have no recognition to practice to the level of their training, an interstate compact is not a viable solution to the current challenges of the nutrition profession.

Model Laws

Model laws are a potential viable option. However, without more of a leveling influence over the process of creating such a bill, the result could be to increase access to licensure or certification for some, with many still excluded from state recognition. There is still much work to be done to ensure a model law would rectify rather than ossify current inequities and limited access.

There is yet little incentive or movement in those states where the market is controlled by RDs for the state dietetic associations to cede or share control over who can enter the market. Many legislators are clearly not aware of the uneven access to the nutrition market that exists in most states and the anti-competitive impacts that result.

A model law, if one could be collaboratively written to allow instead of block competition, would likely have profound effects on increasing licensure or certification, portability and access to the broad diversity of nutrition professionals much to the benefit of the public and to health care costs.

Reducing Restrictiveness of Licensure

Nutrition *is* a healthcare profession. Advances in nutrition science make clear that nutrition intervention can have a profound effect on preventing, slowing and reversing disease. At the same time, unlike many healthcare professions, nutrition advising is non-invasive and involves no controlled substances. Eating is a behavior most people engage in multiple times daily, at will, with access to abundant nutrition information, qualified or not. We assert that more harm is done from *lack* of access to trained providers of nutrition advice than from unqualified advisors.

We suggest the following factors should be part of the analysis in determining an appropriate level of regulation for this diverse profession:

1. Does excessive regulation cause harm?

It is CNA's position that lack of access to individualized advice on how to navigate the world of abundant but also abundantly unhealthy food choices are the biggest threat to health. More people die from or are harmed by diseases related to poor nutrition than from bad nutrition advice. For this reason, unfettered access to providers with training in guiding people in implementing healthy dietary behaviors and choices that prevent poor health is essential. Overly restrictive regulation reduces the supply of trained providers and thus increases cost and decreases points of access to care. Increased costs due to a restricted supply of providers and the financial burdens of poor health, which may well have been avoided, were access to care available, imposes financial harm.

2. What level of restriction is needed for the public to be protected from harm?

Reported and *substantiated* incidences of harm are very rare. Twenty-eight states have no prohibition on practice and still, documented harm is all but non-existent. Could it exist? Of course, but licensure in any profession rarely prevents instances of harm by bad actors. Legislating on the theoretical risk

rather than the actual, when the risks of *no* care are so high, does not yield good public policy. Laws that are *not* exclusive scope of practice, which also provide state recognition for a broad and diverse range of trained providers would adequately serve both the profession and the public. Tort law and consumer fraud laws provide adequate protection in the rare instances of harm.

3. Does the profession include multiple provider stakeholders and do all have access to state recognition where it exists for the profession?

Early entrants to any profession typically have first access to legislators and easily put forth the case for why they are the most and perhaps the only qualified professionals. Legislators rarely look into the validity of those claims or seek other stakeholders out who may be unaware of the existence of the potential or active legislation. A key for analyzing whether a profession is overly restrictive in its regulation is to evaluate how many of its stakeholders participated in the regulatory process and have access to state recognition. In dietetics and nutrition the data speaks for itself; Registered Dietitians have access to state recognitions in every state, make up the majority of rule-making bodies in almost every state with a regulation, while less than a third of those states recognize other nutrition professionals. When the fox guards the henhouse, no one but the fox is deemed qualified enough to deserve state recognition.

4. Are there variations among levels and kinds of training in the profession and would regulation serve the purpose of educating the public, helping them make distinctions and informed choices based on personal preference, needs, finances, and point of access?

We believe this is a reasonable function of regulation for this profession. There are levels of training that can be distinguished and different types of training serve different needs. Broadly those can be defined as:

- 1) those who have specialized nutrition science training to advise based on a person's known nutrient imbalances and health conditions assessed via health history, physical exam, subjective client report, team collaboration and nutrition-related laboratory tests; and
- 2) those who have less nutrition science training but have specific training to help individuals in the more practical aspects of identifying and setting health goals, menu planning, food preparation and understanding how various foods and nutrients may positively or negatively affect health.

Laws that protect title without restricting access to nutrition providers have proven to be effective at allowing increased choice and access for consumers and increased economic opportunity for providers. The Center for Nutrition Advocacy supports laws that expand access to state recognition that do not overly restrict professional title usage to the extent that some providers cannot advertise themselves in a way that is recognizable to the public. (For example, an overly protective title protection law that prohibits the use of the word "nutrition".)

Summary

Nutrition is a broad and diverse profession that has a vastly underutilized capacity to improve health, healthcare and reduce the extraordinary health care costs saddling our country at every level. However its regulatory structures for the profession are a key factor in keeping consumers from



capitalizing on these opportunities, and keeping nutrition professionals from being able to access opportunities for job growth and flexibility to move between states, work across state borders and provide telehealth services.

Lack of competition is currently a key feature of most state laws. Interstate compacts are extremely expensive and require years to implement, and the nutrition profession does not have the cohesion or the infrastructure needed to accomplish this in a way that will address the existing competitive disadvantages in a timely way. We believe that a model law that is inclusive of a diverse range of trained providers, and that does not prohibit practice by those who choose not to seek licensure serves both the health and economic interests of the country.

We appreciate the consideration of these comments and the opportunity to participate in the process.

Sincerely,

A simple, handwritten signature in black ink, appearing to be "Judy Stone".

Judy Stone

Director of Policy and Advocacy

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