

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Dietitian Nutritionist Practice Act

March 22, 2022

**To the Honorable JB Pritzker
Governor of Illinois**

Governor Pritzker:

The Governor's Office of Management and Budget (GOMB), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Dietitian Nutritionist Practice Act (225 ILCS 30), which is scheduled to sunset on January 1, 2023. As a result of this review, GOMB makes the following recommendation:

The Dietitian Nutritionist Practice Act (225 ILCS 30) should be continued with the following modifications to its existing statutory and administrative rule framework:

- Require licensees to provide an email address of record with the Department (225 ILCS 30/10)
- Repeal the making of licensee rosters, including name and address, available upon request and payment (225 ILCS 30/90). Roster information, such as personal addresses, exceeds the information available under a Freedom of Information Act request
- Allow for a notice of hearing to be served by mail or email rather than by registered or certified mail (225 ILCS 30/105)

GOMB's examination of this Act was conducted considering the nine factors set out in Section 6 of the Illinois Regulatory Sunset Act. The following report details the criteria and data utilized to come to the above recommendation.

Very sincerely and respectfully,

Alexis Sturm
Director
Governor's Office of Management and Budget

Criteria (1) “The extent to which the agency or program has permitted qualified applicants to serve the public.”

As of July 2021, there are 4,389 licensed Dietitian Nutritionists in Illinois.

Table 1: Total Number of Licensees FY17 - Present

License Type	2016	2017	2018	2019	2020	2021
Licensed Dietitian Nutritionist	3850	4138	3924	4245	4012	4389
Dietitian/Nutritionist Continuing Education Sponsor	12	13	13	14	11	11

Table 2: New Licenses Issued (based on first effective date within each fiscal year)

Fiscal Year	FY17	FY18	FY19	FY20	FY21
New Dietetic and Nutrition Licenses Issued	290	297	322	312	373

Dietitian Nutritionists have the following licensure fee structure:

Table 3: Dietitian Nutritionist Licensure Fee Structure

License Type	Fee Amount
Initial Application	\$100.00
Renewal Fee	\$50.00/ year
Restoration after Lapse	\$20.00 fee, plus all lapsed renewal fees

Applicants are required to have a baccalaureate degree or post-baccalaureate degree in human nutrition, foods and nutrition, dietetics, food systems management, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutrition and integrative health, or equivalent major course of study from an accredited school. Applicants must also complete 900 hours of directly supervised practice experience in dietetics or nutrition. Over a dozen Illinois colleges and universities, located throughout the state, offer bachelor’s level degrees in dietetics or nutrition which meet the educational requirements set forth under the Act.

Professional examinations include those given through four organizations: The Commission on Dietetic Registration; the American Clinical Board of Nutrition; the Board for Certification of Nutrition Specialists; and the Clinical Nutrition Certification Board.

The regulation of dietitians and nutritionists varies from state to state. There are three common levels of regulation: licensure, simple title protection, and regulated title protection. Licensure is where only individuals licensed by the state may practice the profession. Simple Title Protection is where only individuals who are registered with the state may hold themselves out to be dietitians and/or nutritionists along with use of the terms “licensed,” “certified,” and/or “registered.” Regulated Title Protection functions in the same manner, but those individuals must adhere to the state’s established standards of practice. Illinois is one of 29 states, plus DC and Puerto Rico, which fully license such professionals. Fifteen states have some form of regulated title protection.

California, New York, Colorado, and Virginia offer simple title protection. Arizona and Michigan have no regulation of dietitians and nutritionists.

Among the 48 states which have some form of regulation, all recognize a level of licensure which requires, at minimum, a bachelor's degree. These practitioners are most frequently referred to as dietitians by statute. Illinois is among several states which refer to these practitioners as dietitian nutritionists. Montana uses the term 'nutritionist', and Nebraska uses the term 'medical nutrition therapist'.

Nine states additionally recognize a level of licensure which requires, at minimum, a master's degree. These practitioners are referred to as 'nutritionist' by statute. Seven of these states fully license such individuals while Alaska and Washington have regulated title protection, akin to their regulated title protection for bachelors-level dietitians.

Criteria (2) "The extent to which the trade, business, profession, occupation, or industry being regulated is being administered in a nondiscriminatory manner both in terms of employment and rendering of services."

IDFPR does not collect information on the gender, race, or ethnicity of licensees. IDFPR has received no complaints citing discrimination in the licensing process nor have external sources published any information regarding discriminatory practices in licensure. IDFPR has not received any complaints alleging discrimination by dietitian nutritionists.

Criteria (3) "The extent to which the regulatory agency or program has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of any other department of state government, and any other circumstances, including budgetary resources, and personnel matters."

IDFPR is tasked with processing applications for licenses and renewal licenses for over one million professionals practicing in the State of Illinois. The Department has adopted internal policies, sought legislative and administrative rule changes, and developed enhanced licensing processes to maintain efficiency and efficacy. Implementation of online, paperless licensing is one example of such a policy that has proved to be successful. While some procedures, such as the disciplinary process for licensees, can be lengthy, this is done to ensure thoroughness and proper due process for complaints against regulated professionals.

Criteria (4) "The extent to which the agency running the program has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons it regulates."

P.A. 100-872 (SB 2439 Sen. Bennet/Rep. Ammons) amended various acts, including the Dietitian Nutritionist Practice Act, to remove provisions allowing or requiring licensing authorities to discipline professional licensees for defaulting on an educational loan provided by or guaranteed by the Illinois Student Assistance Commission. This proposal sought to allow a greater number of licensed professionals to continue to work while offering the public greater access licensees who have not been disciplined for any violation related to the practice of their profession.

Criteria (5) "The extent to which the agency or program has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency or the impact of the program on the public regarding improved service, economy of service, and availability of service."

IDFPR establishes rules and makes regulatory decisions through the process established by the Joint Committee on Administrative Rules (JCAR), the administrative body responsible for approving rule proposals by state agencies. This process allows for input from industry and community stakeholders impacted by the Department's proposed

changes. The Department works with lawmakers, community stakeholders and members of industry to ensure that regulations effectively protect Illinois citizens.

Criteria (6) "The extent to which persons regulated by the agency or under the program have been required to assess the problems in their industry that affect the public."

The Dietitian Nutritionist Practice Board is composed of licensees and public members and serves in an advisory capacity to the Secretary. The Board hears disciplinary matters and makes recommendations to the Secretary. The Secretary considers the recommendation of the Board on questions of standards of professional conduct, discipline, and qualifications of candidates or licensees. The Board may also recommend baccalaureate or post baccalaureate major courses of study which are acceptable for qualification for licensure.

Criteria (7) "The extent to which the agency or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates and the extent to which such rules and decisions are consistent with statutory authority."

IDFPR adheres to the guidelines and requirements established by the Joint Committee on Administrative Rules (JCAR) and the Illinois General Assembly (ILGA) for approving rule proposals, legislative changes and internal policies. In addition, the Department adheres to the requirements established in the Illinois Open Meetings Act (5 ILCS 120).

Criteria (8) "The efficiency with which formal public complaints filed with the regulatory agency or under the program concerning persons subject to regulation have been processed to completion, by the executive director of the regulatory agencies or programs, by the Attorney General and by any other applicable department of the State government."

Complaints made against licensees of IDFPR's Division of Professional Regulation may be filed via mail, email, or phone to the Division's Complaint Intake Unit. Complaints are referred to the Division's Statewide Enforcement Section.

After initial review, complaints are assigned to a lead investigator in the Section's Investigations Unit. The investigator is responsible for determining if DPR has legal jurisdiction and/or adequate evidence to proceed with any potential violation of licensing law. After developing facts in cases where there appears to be a proper legal jurisdiction and adequate evidence, the investigator refers the case to a prosecuting attorney in the Section's Prosecutions Unit. If there is insufficient evidence to indicate a violation of the licensing statute, the investigative file is closed. The investigator may also discover facts that indicate criminal activity which can lead to referral to a county State's Attorney or the Illinois Attorney General.

Complete investigations where there is evidence of a violation are forwarded to DPR's prosecuting attorneys' staff for review. After review by a prosecuting attorney, it may be determined that further investigative evidence is needed. If the staff attorney concludes that the matter has been sufficiently investigated and there is evidence supporting the complaint, formal charges are filed. Depending upon the contextual circumstances of the case, DPR and the licensee may enter into a negotiated agreement regarding the level of discipline to be imposed. Such an agreement would be reduced to writing and presented to the respective professional board or committee for its consideration. The board or committee's recommendation after a thorough review is then presented to the Director of Professional Regulation for consideration and approval.

In instances where a formal disciplinary hearing is necessary, a formal complaint is drafted and filed. The hearing is held before the respective professional board or committee and the Department's Administrative Law Judge. The

hearing is an administrative law proceeding conducted pursuant to the Illinois Civil Administrative Code and other relevant statutes and rules. After the hearing, the board or committee delivers its findings, conclusions, and recommendations to the Director of Professional Regulation.

Disciplinary action resulting from any enforcement action varies by violation and severity and can include termination of license, revocation, suspension, probation, reprimand, and censure. The license may also be ordered to remain in good standing. In addition, Illinois law allows for the imposition of fines for any of the professions regulated by the Division.

Following a final decision by the Director, the licensee has 35 days to make an appeal in circuit court under the Illinois Administrative Review Act. Investigations referred for criminal prosecution have resulted in numerous criminal convictions. Criminal violations include unlicensed practice of various professions, theft, forgery, unlawful use of weapons, diversions of controlled substances to illegal use and other related offenses.

In the past five fiscal years, 27 complaints have been received, three of which are currently open. Only two have resulted in public disciplines, both for failure to pay income taxes (one in December of 2018 and one in March of 2017). Since 2010, only 10 other disciplines have been issued, five for unlicensed practice (December 2014, July 2013, January 2013, September 2011, August 2010), one for violation of the Act (November 2014), one for continuing to work on an expired license (March 2014), two for defaulting on student loans (April 2012, July 2011), and an additional failure to pay income taxes (October 2011).

Criteria (9) “The extent to which changes are necessary in the enabling laws of the agency or program to adequately comply with the factors listed in this section.”

IDFPR recommends the sunset of the Act be extended and that statutory language be modernized in order to implement more streamlined and efficient regulation of this profession, which will ensure safety and welfare of the general public and ease the burden of regulatory compliance.

- Requiring licensees to provide an email address of record with the Department (225 ILCS 30/10).
- Repealing making licensee rosters, including name and address, available upon request and payment (225 ILCS 30/90). Roster information, such as personal addresses, exceeds the information available under a Freedom of Information Act request.
- Allowing for notice of hearing to be served by mail or email, rather than registered or certified mail (225 ILCS 30/105).

Conclusion:

Dietitian nutritionists are licensed individuals who practice dietetics and nutrition services. Dietetics and nutrition services involve the application of food and nutrition licenses through nutrition counseling, nutrition assessment, medical nutrition therapy including medically prescribed diets, and restorative nutrition care. Continued licensure and regulation of dietitian nutritionists will ensure individuals providing such services have achieved educational and training requirements while ensuring continued adherence to industry standards of practice in order to maintain licensure, the result of which will promote and enhance public health safety and welfare.