

AMENDMENTS TO LB1249

LB 1249
Senator Ben Hansen
Exhibit 1

Introduced by

- 1 1. On page 3, line 17, strike "the primary care or" and insert "a
2 consulting physician or the".
- 3 2. On page 5, lines 12 and 13, strike "Connected with health care
4 facilities as defined in section 71-413 that" and insert "That".
- 5 3. On page 23, line 7, strike "(1)"; and strike lines 11 through 16.




Medical Nutrition Therapy Practice Act Modernization

The Nebraska Academy of Nutrition and Dietetics (NAND) seeks revisions to specific statutes in the Medical Nutrition Therapy Practice Act to update and modernize the statutes that have been in use, and remain largely unchanged, since 1995. Dietitians continue to hold a unique role in health care, and their skills, education, and populations served have continued to evolve. This ongoing change has now surpassed the boundaries of the current scope of practice. To ensure Nebraskans have access to the level of care they deserve and to protect their safety, it is necessary to adapt the current scope of practice to reflect such change and protect the public's health and welfare.

407 Process

NAND submitted its 407 application to DHHS in 2020, and the Technical Review Committee met six times over the course of five months to discuss the application, working through questions and concerns presented by various stakeholders, including the Nebraska Medical Association (NMA), American Nutrition Association (ANA), and Nebraska Health Care Association (NHCA). NAND submitted an amendment to its application to address concerns and include suggestions made. At the final public hearing, NMA and ANA representatives made comments supportive of the application as amended. NHCA submitted comments regarding concerns about how the changes may potentially impact nursing facilities. The National Academy of Nutrition and Dietetics (NAND's national parent organization) addressed these comments and provided assurances on how these changes have worked in other states and NAND's commitment to continue to work cooperatively with NHCA.

The Technical Review Committee approved NAND's amended application on March 9, 2021. The Board of Health gave its approval on March 15, 2021. Dr. Gary Anthone, the Director of the Public Health Division, issued his report to the Nebraska Legislature supporting passage of NAND's amended application on April 12, 2021.

Technical Review Committee	Board of Health	Public Health Division Director
		
March 9, 2021	March 15, 2021	April 12, 2021

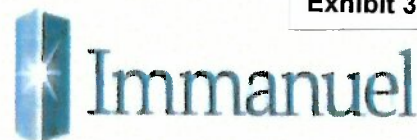
All documents related to the NAND proposal are available on the [DHHS 407 website](#).

<u>Current Law</u>	<u>Proposal</u>
Credential <ul style="list-style-type: none"> • Licensed Medical Nutrition Therapist (LMNT) 	<ul style="list-style-type: none"> • Licensed Dietitian Nutritionist (LDN) for Registered Dietitian Nutritionist (RDN)* • Licensed Nutritionist (LN) for Certified Nutrition Specialists and non-Registered Dietitian Nutritionist alternative pathway
Medical nutrition therapy <ul style="list-style-type: none"> • Nutrition assessment • Writing diet orders • (Current standard of practice includes nutrition care process and use of nutrition assessment, nutrition diagnoses, nutrition monitoring and evaluation terminology. Currently uses protocol orders approved by physician/facility.) 	Added <ul style="list-style-type: none"> • Nutrition care process and terminology used • Nutrition assessment - clarified • Nutrition diagnosis • Nutrition monitoring and evaluation • Specifies competency for writing parenteral/enteral diet orders • Writing lab orders to monitor nutrition intervention therapy treatments • Uses physician/facility-approved protocols that result in prescription of a legend drug
LDN (Licensed Dietitian Nutritionist) Education, supervised practice experience requirements Registered dietitians (RDs) and Registered dietitian nutritionists (RDNs) automatically meet eligibility requirements due to credentialing with the Commission on Dietetic Registration, which requires academic, supervised practice, and exam components. If an individual is a RD/RDN, they only need to complete an application and provide confirmation that they have earned the RD/RDN credential. There is no additional exam to obtain licensure in Nebraska. There is no additional burden to the practitioner to maintain the license (except the licensure fee of \$114.00 every two years). Practitioners can use the same continuing education credits to maintain both their NE license and RD/RDN credential.	No change, except practice experience hours reduced from 1200 to 1000 hours to align with changes in Accreditation Council for Education in Nutrition and Dietetics requirements used by Commission on Dietetic Registration.
LN (Licensed Nutritionist) Education, supervised practice experience requirements No pathway for licensure	Dual pathways to licensure are being introduced in bills across the country. NAND's national organization, the Academy of Nutrition and Dietetics, is in communication with the American Nutrition Association to ensure consistency across the country. At its core, requirements for LN licensure mirror LDN requirements. Clarity is provided for the Board and applicants to determine when academic and supervised practice experience meets requirements. Qualified supervisor and onsite supervision for supervised practice experience are defined. The Commission on Dietetic Registration Standards currently in use for the RDN are used when differences occur.

Medical Nutrition Therapy Board Membership 3 LMNTs 1 Physician 1 Lay Member	2 LDNs 1 LN as available or 1 LDN 1 Physician 1 Lay Member
License required, activities not subject to act	Added: <ul style="list-style-type: none"> • Temporary License • Individuals instructing a general medical weight control program approved in writing by LDN, LN, Physician, RDN, CNS • Individuals providing coaching, behavior change management who do not represent themselves as licensed • <i>"Nothing in the Act shall require a health care facility, as defined in section 71-413, to employ or consult additional licensed dietitians or licensed dietitian nutritionists or to provide medical nutrition therapy in such health care facility, unless ordered by a primary care provider, except as otherwise required by law."</i>
	Definitions for: <ul style="list-style-type: none"> • Medical Weight Control • Therapeutic Diets

* RD versus the RDN Credential

The RD credential to denote a registered dietitian has been in use since 1970. In 2012 the American Dietetic Association changed its name to the Academy of Nutrition and Dietetics. The **option** for registered dietitians to use the initials **RDN** was added in 2013 because inclusion of the word "nutritionist" "communicates a broader concept of wellness (including prevention of health conditions beyond medical nutrition therapy) as well as treatment of conditions. The requirements to sit for the registered dietitian/registered dietitian nutritionist exam are determined by the Commission on Dietetic Registration (CDR), which is the Academy's credentialing agency. The RD and RDN credential have identical meanings and legal trademark definitions. The RD and RDN credentials can be used interchangeably and at the preference of the individual practitioner. In recent years, the Academy of Nutrition and Dietetics has encouraged the use of the RDN credential. RDN is used in the draft bill to reflect this trend. However, one could substitute the term RD for RDN throughout the document. There are no additional requirements for someone to use the RDN versus the RD credential.



February 1, 2022

Nebraska Health and Human Services Committee
107th Legislature
Lincoln, Nebraska

RE: LB1249 – Letter of Opposition

Dear Chairman Arch and Fellow Committee Members:

Please accept this letter in opposition of LB 1249 for inclusion in the public hearing record. I serve as the Corporate Legal Counsel for Immanuel, a non-profit provider of senior housing and health services, including the operation of various assisted living and nursing facilities.

Immanuel opposes the passage of LB 1249 as currently drafted in as much as the proposed language could be interpreted to require assisted living facilities to employ a licensed dietician or nutritionist to supervise nutrition care. Specifically, the definitions at page 4 lines 6-12 and page 5 lines 30-31 through page 6 lines 1-13, could potentially require an assisted living facility to employ a licensed professional covered under this bill. If this were the case, assisted living providers will be burdened with increased expenses that could result in increased costs for seniors or facility closures – especially in rural communities who lack access to licensed providers and must rely on expensive contracted providers.

Immanuel appreciates the opportunity to provide testimony on this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Adam B. Kuenning".

Adam B. Kuenning
Corporate Legal Counsel



Concerns Regarding LB 1249

Prepared by Abbie Widger, NHCA General Counsel
Johnson Flodman Guenzel & Widger Law Firm

Concern: LB 1249 will increase requirements and cost for nursing and assisted living facilities.

- A. [Page 4 line 26 through page 5 line 16.] LB1249 defines medical nutrition therapy to mean *"developing, directing, and managing food service operations with functions in nutrition-care or collaborating with directors of food and nutrition services at such operations, including food service operations connected with health care facilities that prepare or provide therapeutic diets."*
- B. This language places the dietitian in the role of managing a food service operation which includes tasks that, in nursing facilities, are currently the responsibility of the food services manager, such as ordering, cooking and other preparation. Placing the dietitian in the role of the food services manager will result in increased costs.
- C. Federal nursing facility regulations [42 CFR 483.60(a)(2)] require a nursing facility provider to employ a director of food and nutrition services, if they do not employ a fulltime dietitian, and require the director of food and nutrition services to consult with, not collaborate with *"a qualified dietitian or other clinically qualified nutrition professional."*
- D. The language in paragraph A will require the addition of a dietitian for assisted living facilities which will result in increased cost.

Concern: LB 1249 expands supervision by a dietitian to every health care facility.

- A. [Page 9 line 21 through page 13 line 18.] LB1249 attempts to revise Neb. Rev. Stat. section 38-1812 to define what medical nutrition therapy is not.

However, pages 9 lines 21 through 26 and page 10 lines 16 through 22 provide:

"No person shall practice medical nutrition therapy unless licensed for such purpose pursuant to the Uniform Credentialing Act. ... The Medical Nutrition Therapy Practice Act shall not be construed to require a license under the act in order to: ...

(4) Be employed as a nutrition or dietetic technician or other food service professional who is working in a hospital setting or other regulated health care facility or program and who has been trained and is supervised while engaged in the provision of medical nutrition therapy by an individual licensed pursuant to the Medical Nutrition Therapy Practice Act whose

services are retained by that facility or program on a full time or regular, ongoing consultant basis [.]”

B. [Page 4 line 26 through page 5 line 16.] LB 1249 requires a dietitian to “*manage food service operations*” and “*collaborate with directors of food and nutrition services at such operations*” at page 9, lines 21 through 26 and page 10, lines 16 through 22. LB 1249 requires a dietitian to supervise any food service operation in a regulated health care facility. The term “supervision” is not defined but there is a definition of “general supervision,” which may or may not apply.

1. [Page 4 section 8 lines 6 through 12.] LB1249 defines general supervision to mean “*the qualified supervisor is on-site and present at the location where nutrition care services are provided or is immediately available by means of electronic communication to the supervisee providing the services, and both maintains continued involvement in the appropriate aspects of patient care and has primary responsibility for all nutrition care services rendered by the supervisee.*” Note, the supervision has now been expanded to include nutrition care services, not just medical nutrition therapy.

2. [Page 5 section 15, line 30 through page 6 line 13.] LB1249 defines nutrition care services to mean any or all of the following services provided within a systematic process: ...

(4) Developing, implementing, and managing nutrition-care systems;

(5) Evaluating, changing, and maintaining appropriate standards of quality in food and nutrition services; and[.]

...

3. [Page 7 line 16 through page 8 line 19.] LB1249 defines qualified supervisor. When supervising the provision of medical nutrition therapy, a person must be a licensed dietitian nutritionist or a health care provider licensed in any state or if the state does not provide for such license or certification then meets the criteria as the board may establish in Nebraska. If a consulting dietitian is in another state, there is no guarantee the person will be a qualified supervisor.

4. There is no guidance as to what is “immediately available.” Nursing facilities have consulting dietitians as required by the federal requirements of participation, but that person may not be immediately available. The requirement would increase the coverage needed by the dietitian.

C. The requirement of a dietitian would be placed on assisted living facilities.

D. This bill expands the scope of practice for the dietitian to include nutrition care which is more than medical nutrition therapy. Medical nutrition therapy is providing nutrition to treat the disease. Nutrition care services is managing the food services. Requiring a dietitian to manage the food service expands the dietitian requirement to every health care facility.

Concern: Federal nursing facility regulations allow for delegation to the director of food and nutrition services.

A. Federal regulations [42 CFR §483.60(a)(2)] state:

“If a qualified dietician or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services who –

(i)... is:

(A) A certified dietary manager; or

(B) A certified food service manager; or

(C) Has similar national certification for food service management and safety from a national certifying body; or

(D) Has an associate's or higher degree in food service management or in hospitality, if the course study includes food service or restaurant management, from an accredited institution of higher learning; and

(ii) In States that have established standards for food service managers or dietary managers, meets State requirements for food service managers or dietary managers, and

(iii) Receives frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional.”

B. The Centers for Medicare and Medicaid Services' survey guidance for nursing facilities states that the qualified dietician or other clinically qualified nutrition professional can delegate to the director of food and nutrition services:

- Assessing the nutritional needs of residents;
- Developing and evaluating regular and therapeutic diets, including texture of foods and liquids, to meet the specialized needs of residents;
- Developing and implementing person centered education programs involving food and nutrition services for all facility staff;
- Overseeing the budget and purchasing of food and supplies, and food preparation, service and storage; and,
- Participating in the quality assurance and performance improvement (QAPI), as described in §483.75, when food and nutrition services are involved.

C. LB 1249 does not specifically allow for delegation to the director of food services. It states the dietitian practices medical nutrition therapy which includes:

“(2) Developing, directing, and managing food service operations with functions in nutrition-care or collaborating with directors of food and nutrition services at such operations, including food service operations: (a) Connected with health care facilities as defined in section 71-413 that prepare or provide therapeutic diets;” [page 5 lines 9-13].

D. The requirement in LB1249 that the dietitian collaborate with the directors of food and nutrition services is more inclusive and costly than the federal language allowing for delegation.

Concern: LB1249 increases costs for nursing and assisted living facilities in contrast to the instruction of the 407 Committee.

A. Technical Review Committee Report – page 6, states:

- 6) Clarify exemption language for activities not subject to the act including ensuring that the LMNT scope does not change the current role or responsibilities of a nursing facility's required food service manager/certified dietary manager and does not result in additional requirements for nursing facilities or assisted living facilities to use an LMNT or expend current use of LMNTs.

B. Board of Health Report – page 6, states:

- 6) Clarify exemption language for activities not subject to the act including ensuring that the LMNT scope does not change the current role or responsibilities of a nursing facility's required food service manager/certified dietary manager and does not result in additional requirements for nursing facilities or assisted living facilities to use an LMNT or expend current use of LMNTs.

Concern: LB 1249 is beyond the scope of the 407 Review

- A. The definition of medical nutrition therapy and nutrition care services encompasses preparing preset and dietary approved menus and managing and ordering food in all health care facilities. [Page 5, lines 9-11.]
- B. A dietitian is required to supervise a food service director in a healthcare facility. [Page 10, line 18.]

