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## FISCAL IMPACT REPORT

SPONSOR Thomson LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/25/2023  
BILL \_\_\_\_\_  
SHORT TITLE Dietician & Nutritionist Licensure NUMBER House Bill 444  
ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD	Indeterminate but minimal	Indeterminate but minimal	No fiscal impact	Minimal	Recurring	Nutrition and Dietetic Practices Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Board of Nursing (BON)

## SUMMARY

### Synopsis of House Bill 444

House Bill 444 (HB444) proposes to amend the Nutrition and Dietetics Practice Act to update dietitian nutritionist and nutritionist licensure requirements, create a scope of practice for each, and provide penalties for unlawful practice.

More specifically,

Section 1 and 2 cite the statutory reference, and in the definitions section, update and add industry titles, functions and oversight terms to recognize current practice for a “licensed nutritionist and licensed dietitian nutritionist.” This section expands the practice of nutrition and dietetics to a more active and collaborative role with the patient and other practitioners that includes ordering and interpreting clinical data, obtaining nutritional diagnoses, and providing medical nutrition therapy.

Section 3 restricts medical nutrition therapy to licensed dietitians, nutritionists, and other practitioner’s within the scope of their licenses. This section also states the act shall not interfere with (1) nutrition care services that are not medical nutrition therapy, (2) medical weight control

programs for prediabetes or obesity, if approved by a licensed practitioner, or (3) a person providing nutrition care services free of charge to family members.

Section 4 modifies requirements and experience levels of the licensees who serve on the Nutrition and Dietetics Practice Board and adds a procedure for the governor to follow when filling vacancies. The bill requires unapproved minutes to be posted to the board's website within 10 days.

Section 5 revises licensure requirements to include coursework to obtain proficiency in medical nutrition therapy, supervised on-site practice experiences with allowances for telehealth, and the provision of fingerprints to the Department of Public Safety for a criminal background check.

Section 8 increases the license term from annual to biennial and increases the maximum renewal fee that can be set by the board from \$75 to \$150.

Section 9 waives initial licensing fee for active-duty members and spouses of the U.S. armed forces.

Section 10 allows a board to refuse to issue or renew a license to an applicant that conceals material facts in their application for licensure.

Section 11 updates scope of practice to include enteral and parenteral nutrition therapy, ordering clinical tests for nutrition assessments, adjusting drug doses as prescribed by a licensed practitioner, advising on nutritional supplements, and managing facility food service operations.

Section 12 adds a penalty (misdemeanor) for unlicensed practice, practicing on a suspended, revoked or lapsed license, or other violations of the act. Penalties may include imprisonment for not more than three months and a fine of not more than \$1,000, or both. Prosecution is by the office of Attorney General or by any district attorney that the Attorney General designates.

Sections 13 and 14 add temporary provisions for current licensees that allow them to maintain and renew their licenses without meeting any additional requirements and for current members of the Nutrition and Dietetics Practice Board to continue to serve until their terms expire.

Section 15 repeals Section 61-7A-2 NMSA 1978 (legislative findings, purpose of the act).

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

RLD believes rulemaking and hearings can be accommodated within the board's FY23 budget.

## **SIGNIFICANT ISSUES**

HB444 revises the act for licensed nutritionist and licensed dietician nutritionist to reflect current established professional standards. According to BON, board composition, structure processes, scope of practice, and license fees are consistent with other professional regulatory boards.

Section 5 specifies the education required for a “nutritionist” license but there are no educational requirements for a “dietician nutritionist” other than being credential as a registered dietitian or registered dietitian nutritionist by the Commission on Dietetic Registration. RLD notes the scope of practice for each license type is the same except only a licensed dietitian nutritionist can order enteral and parenteral nutrition therapy. As such, RLD questions why there are two license types, and what is the value of the higher-level license of dietitian nutritionist?

## PERFORMANCE IMPLICATIONS

RLD explained:

In light of the significant changes that would be made to the Nutrition and Dietetics Practices Act by HB444, a number of updates (additions, amendments, repeals) will be necessary for the administrative rules that have been adopted by the Board. HB444 does not contain an effective date for the changes to law to be made, so if the bill is enacted the effective date would be June 16, 2023. To avoid conflicts, the board will be required to take action immediately to make changes to the existing administrative rules during FY23.

## ADMINISTRATIVE IMPLICATIONS

Section 4 requires “unapproved” minutes to post within 10 business days during normal business hours. RLD explains this is not common practice for state boards and commissions and not in keeping with the Open Meetings Act. This also creates an unwarranted liability for the board and RLD. In addition, updates to websites are often scheduled during evening and other non-peak hours.

## AMENDMENTS

RLD suggested the following amendments:

- Section 5, p. 17, lines 12-15 (currently parenthetical (5)) should be moved and the current (6) changed to (5). Former parenthetical (5) should be parenthetical (6) and read: “(6) for a licensed dietitian nutritionist license, in addition to meeting the education requirements for a licensed nutritionist license, provide evidence of current and valid credential as a registered dietitian or registered dietitian nutritionist by the commission on dietetic registration.” If this change proposed is not adopted, the current parenthetical (5) should follow the licensure requirements for a nutritionist.
- Strike in Section 4 (G), page 14, line 25, beginning at the word “The”, and continuing through the end of line 3 on page 15.

## QUESTIONS

Will this bill affect bars, lounges or spas that offer intravenous vitamin or hydration therapy?

AHO/mg/hg/mg