



## Wisconsin Health Freedom Coalition

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TO: Chairman Richards

Members of the Assembly Health and Healthcare Reform Committee

FROM: Syncha Maniscalco, Wisconsin Health Freedom Coalition

DATE: December 10, 2009

RE: Assembly Bill 440/Senate Bill 115 - Requiring licensure for nutrition care services

The Wisconsin Health Freedom Coalition strongly opposes AB 440/SB 115. This letter provides a summary of our objections in advance of the upcoming Assembly hearing on the bill and also provides a rebuttal to the October 11, 2009 letter to the legislature by the Wisconsin Dietetic Association.

Our major objection to AB440/SB115 is that alternative care providers will be prohibited from practicing their nutritional services. This fact was clearly confirmed by legislative council during the SB 115 hearing, despite continued lobbying by the dietitians to the contrary. WIHFC has provided suggestions for fixing this bill however those suggestions have been ignored. These suggestions are included in Addendum 2. It is our understanding that this bill would move Dietitians from having certification to licensure. In doing so, it adds "nutrition care services" to the dietitian practice definition, adds licensing requirements for "nutrition care services," and adds restricted use of the title, Dietitian Nutritionist.

We believe that the prohibitions to practice nutrition care services are unfounded and unnecessary and will limit consumer choice, put Wisconsin citizen practitioners out of work, and lead to an overall increase in the cost of nutrition services. We do not see a compelling reason why the dietitians need to add nutrition care services, requirements for licensure for persons practicing nutrition care services, or Dietitian Nutritionist exclusivity to the current dietitian practice definition in their efforts to become licensed.

It is also important to understand that the bill has the potential to negatively affect a diverse community of businesses in Wisconsin including nutrition professionals and practitioners, cultural healers, nutritional supplement manufacturers, farmers, distributors, retailers and others (See Addendum 1). These small businesses rely on the availability of consumer choice throughout the community—a choice, which is threatened by the language of AB 440.

We believe that dietetics is a subset of the nutrition field. Through this bill, dietitians originally sought to have exclusive control of the term "nutritionist", prohibiting all others from using this term. Newer versions of the bill would give dietitians exclusive use of the term Dietitian Nutritionist. According to Senator Vinehout, this bill would allow anyone to use the term nutritionist alone. This reveals that dietitians are desperate to be known as nutritionists. One can only speculate as to why this title has become so important to the dietitians.

Contrary to the original assertions by the authors of this bill, this bill will unnecessarily prohibit nutritional services and put some practitioners out of business.

- For retailers: this bill restricts true and legal speech about the specific benefits of nutritional products.

- For nutritionists: This bill would allow nutritionists to use the title but according to Senate legal counsel this bill would prohibit the specific practices that nutritionists use to help their clients.
- For all others (see Addendum Part 1): this bill restricts true and legal speech about the specific benefits of nutritional products. In addition, even if a person is simply giving *general nutrition information*, they are compelled to adhere to unnecessary and draconian disclosure provisions that will severely and adversely affect freedom of speech in our state and in these practices. These restrictions are in the bill as follows:

*448.865 Disclosure required to provide certain services. A person providing services as authorized under s. 448.72 (11) (b) shall comply with all of the following:*

*(1) Provide to the client or clients of the person a written disclosure that contains the following information:*

*(a) The name, professional title, business address, and business telephone number of the person.*

*(b) A statement that the person is not licensed as a dietitian nutritionist in this state.*

*(c) A statement that the person may not provide a medical diagnosis or recommend that the client of the person discontinue medically prescribed treatments.*

*(2) Clearly post in the person's place of business a copy of the written disclosure under sub. (1).*

*(3) Prior to providing services to a client, obtain from the client a signed and dated statement on which the client confirms receiving and reading the disclosure required under sub. (1). The person shall maintain the signed statement in the client's file for 7 years after the client has ceased being a client of the person.*

For anyone who is in the business of providing nutritional advice, and only general information as required by the bill, these disclosure requirements are unnecessary and excessive and would only act as a disincentive for smaller practitioners and would as a consequence limit access to consumers.

## **Response to points in WDA letter:**

WIHFC Response #1. This bill restricts anyone who is not a licensed dietitian/nutritionist from doing any of the practices included in the broad definition of dietetics and nutrition care services, except for providing “general nutritional information.” Almost all nutritional information conveyed by those affected by this bill is more than “general nutritional information.”

WIHFC Response #2. Again, the WDA asserts that “general nutritional information” is adequate for the consumer and the only information allowed to be given by nutritional practitioners and retail sellers of products. Federal law under the Dietary Supplement Health and Education Act (DSHEA) allows sellers of products to discuss structural and functional benefits of nutritional products so long as that information is truthful. This bill will limit the freedom of speech of practitioners to providing general information instead of more specific structure and function discussions, and it could be argued that the bill is attempting to establish more restriction on retailers than is now allowed by federal law, by pointing to general information. Consumers deserve and need specific nutritional information and this was recognized in DSHEA and should be recognized under Wisconsin occupational law.

WIHFC Response #3. While some consumers were worried that this bill will limit access to nutritional products, we agree with the WDA that this bill will not restrict sales of nutritional products. We assert this bill **will** restrict legal speech about the specific benefits of nutritional products and that will hurt the industry and consumers.

WIHFC Response #4. The dietitians are claiming that they practice “Medical Nutrition Therapy” and that this is the same as “Dietetic and Nutrition Therapy”. Yet they do not mention “Medical Nutrition Therapy” (MNT) in their bill. In the hearing Senator Vinehout was asked why not define and limit the bill to the scope of practice of the dietitians as “Medical Nutrition Therapy” and leave the rest out of the bill. She stated that the dietitians didn’t want to use the term MNT in order to avoid offending the medical establishment. There are distinctions between medical practice, dietetic practice and alternative health practices. The dietitians with this bill are now encroaching upon the rights of both other practices.

WIHFC Response #5. The WIHFC does not want to de-regulate medicine and no such suggestion has ever been made. Health Freedom is not about de-regulation, but about drafting laws that are fair and reasonable and that acknowledge the existence of diverse forms of healing sought out by consumers, and protecting those alternatives so that they can continue to exist in the marketplace. The proposed Health Freedom Safe Harbor language would actually make it easier to pass licensing laws in the future, because the boundary with unlicensed practitioners would already be established. In addition, the following WDA points require clarification:

First, this bill is not about medical licensing, it is about licensing dietitians to be the only acceptable provider of nutritional care information.

Secondly, they suggest that consumers routinely receive harmful advice from under-qualified practitioners. However, at the Senate hearing, we did not hear from even one consumer who claimed harm at the hands of an alternative practitioner. In contrast, the dozens of witnesses who have been helped by alternative practitioners testified.

We do not have a problem in Wisconsin of alternative practitioners pretending to be medical doctors or certified dietitians. If we did, current law is sufficient to stop any fraudulent or unlawful practice.

We have not seen any evidence that consumers are being harmed or are dissatisfied with alternative practices. Again, in cases of harm, current law is sufficient to stop any fraudulent or harmful practice. Alternative practices are paid for with out-of-pocket dollars, and consumers overall are happy with the services being provided.

Instead, we believe the evidence is the lack of consumer complaints and of significant consumer harm. Opponents of the bill recognize the need for medical doctors, certified dietitians, and alternative practitioners and we want access to all three, and we want the right to choose our preferred health practitioners.

WIHFC Response #6. We believe that the true objective of the WDA is that they want third party reimbursement and being licensed is door to greater reimbursement. It is ironic that consumers may be resistant to paying for dietitians out of pocket, but they have no problem paying for alternative services that they want. The dietitians state that this bill will protect the public from harm, but where is the evidence to support this claim? Current existing laws are sufficient to prosecute any fraud or consumer harm.

## Addendum 1 - List of Affected Health Providers in Wisconsin

Type of Provider	Comments	Numbers
Nutritionists and Nutrition Consultants	Wisconsin nutritionists practice natural nutrition, not dietetics.	600
Health Food Stores	Consumers depend on HFS for 'specific nutrition information'	140
Organic Farms	Also advise on nutrition	807
Ethnic Healers	Native American and Hmong healers, etc.	Unknown
Nutrition Coaches	There are many nutrition coaches providing service in many different venues	Unknown
Weight Loss Coaches	Weight Watchers and Weight Loss Centers, etc	Unknown
Athletic Trainers	At all levels, from high school to profession sports, nutrition is an important component.	Unknown
Multi-Level (network) Marketers	At least 10 companies operating in Wisconsin	10,000
Herbalists	Wisconsin has a long history of herbal healing	20
Holistic Health Providers	Provide comprehensive, lifestyle training, including nutrition	Unknown
Aroma Therapists	These providers also advise on nutrition	Unknown
Homeopaths	These providers also advise on nutrition	Unknown
Natural Health Schools/Students	4 schools with Wisconsin enrollees	786
Natural Supplement Manufacturers	major companies with national and international presence	3
Natural Nutrition Distributors	distributor's service hundreds of Wisconsin accounts	2
Weston A. Price Foundation in Madison	Dedicated to restoring nutrient-dense foods to the human diet through education	183
<b>Estimated Total</b>		<b>&gt; 12,536</b>

## **Addendum 2 – Suggestions to fix this bill**

Here are some ideas of how you might resolve some of the conflicts with this bill.

### **For dietitians:**

- Seek licensure for the dietitians as long as it is a dietitian exclusive title bill only and does not have prohibition of practice, including containing amendments drafted by the health freedom community to assure that the Dietitian Licensing bill will interface accurately with the principles of a “safe harbor exemption bill” (Consumer Health Freedom Bill)
- Create a new title of “Dietitians Nutritionist”. The use of title of “Nutritionist” on its own would be completely non-exclusive. This portion of the bill would not create any restrictions on the title of Nutritionist and would not restrict the practice of nutritional care services or advice.

### **For alternative practitioners**

- Introduce and pass a safe harbor Consumer Health Freedom Bill for the state of Wisconsin that protects consumer access to alternative health care practitioners of all kinds.
- Or, on the alternative, attach the Consumer Health Freedom Bill to AB440/SB115.
- Amend key parts of the Dietitian Licensing bill to interface accurately with the “safe harbor exemption bill” (Consumer Health Freedom Bill)

### **Benefits For consumers**

- Doctors and medical practice is unchanged.
- Dietitians and dietetic practice is a state licensed occupation; Dietitians can append Nutritionist to their title, and access to reimbursed services is increased.
- Alternative practitioners are protected. This will allow practitioners to have confidence to practice and yet insure greater visibility and accountability on the part of those who sell their services.
- Consumers will have access to a greater variety of services. Consumers would also be protected because practitioners cannot practice medicine or dietetics without being within the legal parameters of the law.

Consumers have become aware of the tens of thousands of studies that reveal the benefits of nutrition. They are unwilling to wait for doctors and dietitians to come to a consensus about the benefits of alternative nutrition. Consumers willingly pay for these services out of pocket and there is no evidence that people are unhappy with these services overall.

Recent estimates suggest that consumers spend one third of their discretionary health dollars on complementary and alternative care (CAM).

Alternative treatments are generally very safe and there is no evidence of problems of such a nature that would require a more restrictive environment.

None of this would excuse or allow any violation of existing state or federal law related to dietetics and/or medical practice. None of this would allow harm or fraud to be excused.