
Sunrise Analysis of Two Proposals to Regulate Nutritionists

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 95-27
November 1995



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunrise Analysis of Two Proposals to Regulate Nutritionists

Summary

We analyzed whether nutritionists should be regulated as proposed in Senate Bill No. 1499 and House Bill No. 966 introduced during the 1995 Regular Session. We concluded that regulation is not warranted and the proposed measures are flawed.

The terms "nutritionist" and "dietitian" are often used interchangeably. Nutritionists and dietitians plan nutrition programs, supervise meal preparation, help prevent and treat illness, and promote healthy eating through education and research. They evaluate people's diets and suggest appropriate modifications. They also direct food services for hospitals, schools, and other institutions. Some teach in academic settings.

The American Dietetic Association is the major professional organization. The association's Commission on Dietetic Registration awards the title of registered dietitian to persons who meet academic and experience requirements and pass a certification examination.

Senate Bill No. 1499 and House Bill No. 966 would regulate the use of certain titles. With some exceptions, unless licensed as a nutritionist by the State, no one could lawfully engage in the practice of nutrition and dietetics and use the title "nutritionist," "licensed nutritionist," or any other designation that would indicate or imply that the person is a nutritionist.

The bills create a seven-member Board of Examiners in Nutrition and Dietetics. License applicants would be required to meet certain academic and experience requirements and pass a board examination, unless the applicant is licensed by endorsement. Endorsement would be available to anyone licensed as a nutritionist or dietitian in another state with requirements equivalent to Hawaii's, or credentialed as a registered dietitian by the Commission on Dietetic Registration, or certified and registered by any other organization that represents equivalent competency and is sanctioned by the board.

Hawaii's Sunset Law says that professions and vocations should be regulated only when reasonably necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, evidence of abuses must be given great weight. The Auditor also must consider the cost of regulation to taxpayers.

The regulation of nutritionists is not warranted. We found little documented evidence of abuse or harm to the public by nutrition practitioners. Evidence from testimony and interviews was anecdotal. Furthermore, examples of "documented harm" offered in a recent report by the Department of Health do not clearly demonstrate that the alleged harm was caused by nutritionists or by persons representing themselves as nutritionists.

Furthermore, many protections are already in place to protect the public in matters of nutrition. For example, most nutritionists work for organizations such as hospitals that evaluate their qualifications before hiring. Also, registered dietitians—who account for most of the nutritionists in Hawaii—must follow the Code of Ethics of the American Dietetic Association or face disciplinary action by the association.

Regulation would bring uncertain benefits to the public and would be costly. For example, if the regulatory program were assigned to the Department of Commerce and Consumer Affairs, a start-up appropriation of about \$60,000, and possibly more than \$100,000, would be required. Application/license fees to support the program could run from about \$600 to nearly \$4,000 per person depending on such factors as how many of Hawaii's more than 300 dietitians and nutritionists choose to be licensed.

In addition, both Senate Bill No. 1499 and House Bill No. 966 are flawed. The bills establish a confusing regulatory scheme that would be difficult to implement. Enforcement officials would have to determine whether the individual was engaged in nutrition and dietetics practice, not an easy task given the broad definitions in the bills. Furthermore, the bills favor the interests of registered dietitians at the expense of other members of the nutrition community, who could be put out of business by the proposed law. Also, the composition of the proposed licensing board lacks a proper balance of consumers and professionals.

Recommendations and Response

We recommend that Senate Bill No. 1499 and House Bill No. 966 not be enacted.

The Department of Commerce and Consumer Affairs says it echoes our concerns regarding flaws in the proposed form of regulation. It says such flaws would make for "a possibly unfair, inequitable, problematic and inconsistent licensing process."

The Department of Health says there is agreement with the general findings of the report. The department also raises several questions about our methodology, sources, and other issues which we address in our comments on agency responses.

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Submitted by

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Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, contains a sunrise provision that requires that measures proposing to regulate professions or vocations be referred to the State Auditor for analysis prior to enactment. The Auditor is responsible for reporting the results of the analysis to the Legislature.

This report evaluates the regulation of nutritionists as proposed in Senate Bill No. 1499 and House Bill No. 966, introduced in the Regular Session of 1995. The Legislature requested this study in Senate Concurrent Resolution No. 7 and House Concurrent Resolution No. 115 of the 1995 session. The study presents our findings on whether the proposed regulation complies with policies in the Sunset Law and whether there is a reasonable need to regulate nutritionists to protect the health, safety, and welfare of the public. It concludes with our recommendation on whether the proposed regulation should be enacted.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Department of Health, and organizations and individuals knowledgeable about the occupation whom we contacted during the course of our analysis.

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act (Chapter 26H, Hawaii Revised Statutes), contains a sunrise provision requiring that measures proposing to regulate professions or vocations be referred to the State Auditor for analysis prior to enactment. The Auditor is to determine whether regulation is necessary to protect the health, safety, and welfare of consumers.

This report evaluates whether the regulation of nutritionists proposed in Senate Bill No. 1499 and House Bill No. 966, introduced in the Regular Session of 1995, complies with policies for occupational regulation in the Sunset Law. Senate Concurrent Resolution No. 7 of the 1995 session requested a study of Senate Bill No. 1499, and House Concurrent Resolution No. 115 requested a study of House Bill No. 966. This report responds to the requests.

Background on Nutritionists

The *Occupational Outlook Handbook* uses the terms “nutritionist” and “dietitian” interchangeably. Nutritionists and dietitians plan nutrition programs, supervise meal preparation, help prevent and treat illness, and promote healthy eating through education and research. They evaluate people’s diets and suggest appropriate modifications. They also direct food services for hospitals, schools, and other institutions. Some teach in academic settings.¹

Clinical dietitians serve patients in health care settings such as hospitals and nursing homes by coordinating medical and nutritional needs. *Community dietitians* counsel individuals and groups in public health clinics, home health agencies, and health maintenance organizations to prevent disease and promote health. *Administrative or management dietitians* oversee meal planning and preparation in health care facilities, company cafeterias, prisons, and schools.

While the terms “nutritionist” and “dietitian” are often used interchangeably, some distinctions have been made. It has been said that nutritionists study the process of taking in and utilizing food, while dietitians apply nutrition principles to people’s diets. Dietetics has also been described as a subset of nutrition. Yet such distinctions are not firm. For example, some practitioners who help people with their diets call themselves nutritionists, not dietitians.

Also, many other persons offer nutritional advice, such as physicians; holistic health practitioners; herbalists; and the staff of health food stores, chain grocery stores, vitamin distributors, weight-loss clinics, and exercise programs.

Professional organizations and credentials

The American Dietetic Association is the major professional organization for nutrition professionals with about 62,000 members. The association's mission is to advocate for the dietetic profession and promote optimal nutrition, health, and well-being. The association's Commission on Dietetic Registration awards the title of registered dietitian to persons who meet academic and experience requirements and pass a certification examination.

Other national organizations exist. For example, the Certification Board for Nutrition Specialists awards the designation certified nutrition specialist to individuals with advanced training in nutrition science (including a graduate degree).

Locally, over 300 registered dietitians are affiliated with the Hawaii Dietetic Association, a chapter of the American Dietetic Association. In addition, the Hawaii Nutritional Council provides nutritional information to the public. Affiliated with the Society for Nutrition Education, the council's 80 members include university professors, students, dietitians, and others interested in nutrition. The council is informal and has no membership requirements.

Educational background

Traditionally, the basic educational requirement for nutritionists and dietitians is an appropriate bachelor's degree. For example, the Food Science and Human Nutrition Department of the College of Tropical Agriculture and Human Resources at the University of Hawaii offers four programs that enable students to concentrate on different areas. The options include dietetics, human nutrition, food science, and foods and nutrition. After graduation, students can seek employment or pursue graduate studies in medicine, dentistry, pharmacy, food science, or human nutrition.

Students seeking a career as a registered dietitian major in dietetics. The program meets the undergraduate academic requirements for membership in the American Dietetic Association. Once registered, graduates can work in hospitals and other health care facilities. Other employment opportunities include consulting work for public and private food and nutrition related programs.

Students preparing for graduate study in human nutrition major in human nutrition. Students who pursue graduate work are eligible to work in research, teaching, or health related positions in the private or public sector.

The food science concentration is for students seeking a career in the food industry. Courses in business, marketing, and management prepare graduates to work in quality assurance, food inspection and grading, technical sales, operations and production, and food research and development.

The foods and nutrition major is geared toward students who want a general education in the field. This path leads to jobs in nutrition and food information, child and geriatric care centers, fitness and health, media, and others.

Number of practitioners

The number of nutritionists and dietitians in Hawaii is not certain. The state Department of Labor and Industrial Relations estimated 130 in 1992 and projected 150 in 1997. According to the department, about two-thirds of these work for service organizations such as health care facilities; the rest work in government.

The department's projections are based on a sample and the actual number is probably higher. The Hawaii Dietetic Association claims to have at least 300 registered dietitians, with about two-thirds in active practice. About 20 to 40 other persons may call themselves nutritionists or offer nutrition advice. These include health store, gym, and weight-control workers, herbalists, and others.

Regulation in other states

Conflicting information exists on the number of states that regulate nutritionists and dietitians. The terminology and the nature of regulation vary.

The 1994 edition of *The Directory of Professional and Occupational Regulation in the United States and Canada*, published by The Council on Licensure, Enforcement and Regulation (CLEAR), says that five states license nutritionists and one certifies them. CLEAR does not list "dietitian" as an occupation.

Yet, according to the 1994-95 edition of *The Book of the States*, published by the Council of State Governments, 20 states license dietitians and four states certify them. The Council does not list "nutritionist" as an occupation.

In a recent report titled "Laws that Regulate Dietitians/Nutritionists," the American Dietetic Association lists regulation in 36 states. The list contains 12 different types of regulation ranging from New Mexico's licensing of dietitians, nutritionists, and nutritionist associates to Montana's licensing of nutritionists and title protection for dietitians.

Proposals to Regulate Nutritionists

Senate Bill No. 1499 and House Bill No. 966 are similar bills that regulate the use of certain titles. With some exceptions, unless licensed as a nutritionist by the State, no one could lawfully engage in the practice of nutrition and dietetics and use the title "nutritionist," "licensed nutritionist," or any other designation that would indicate or imply that the person is a nutritionist.

The bills create a Board of Examiners in Nutrition and Dietetics. The board is responsible for issuing licenses, examining applicants, and disciplining licensees. The board must also establish continuing education requirements and maintain a registry of licensed nutritionists.

Both bills require license applicants to meet certain academic and experience requirements and to pass a board examination, unless the applicant is licensed by endorsement. Endorsement is available to anyone licensed as a nutritionist or dietitian in another state with requirements equivalent to Hawaii's, or credentialed as a registered dietitian by the Commission on Dietetic Registration, or certified and registered by any other organization that represents equivalent competency and is sanctioned by the board.

The bills establish numerous practitioner violations including drug addiction and fraud. Breaking the law can lead to discipline by the board and prosecution for a misdemeanor.

Objectives of the Analysis

The objectives for this analysis were to:

1. Determine whether there is a reasonable need to regulate the occupation to protect the health, safety, and welfare of the public.
2. Make recommendations based on our findings.

Criteria for the Analysis

The Legislature established the “sunrise” criteria to ensure that regulation of an occupation takes place only for the right reason: to protect consumers. Regulation is an exercise of the State’s police powers and should not be taken lightly.

Consumers rarely initiate regulation. More often, practitioners themselves request regulation for benefits that go beyond consumer protection. They often equate licensure with professional status in seeking respect for the occupation. Through regulation, they may gain access to third-party reimbursements for their services and control entry into their field.

Policies and principles for regulation

Hawaii’s sunrise law—Section 26H-6, HRS—requires the Auditor to assess legislative proposals against the regulation policies in the statute. The policies reinforce the primary purpose of consumer protection:

- the State should regulate professions and vocations only where reasonably necessary to protect consumers;
- regulation should protect the public health, safety, and welfare and not the profession;
- evidence of abuses by providers of the service shall be given great weight in determining whether a reasonable need for government intervention exists;
- regulation should protect those consumers who may be at a disadvantage in choosing or relying on the provider;
- regulation should be avoided if it artificially increases the costs of goods and services or if its costs to taxpayers outweigh its benefits to consumers; and
- regulation should not unreasonably restrict qualified persons from entry into the profession.

We were also guided by the publication *Questions a Legislator Should Ask*, published by the national Council on Licensure, Enforcement and Regulation. The primary guiding principle for legislators, according to this publication, is whether the unregulated profession presents a clear and present danger to the public’s health, safety, and welfare. If it does, regulation may be necessary; if not, regulation is unnecessary and wastes taxpayers’ money.²

We developed additional criteria for this review, including whether:

- the incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- the cause of harm is the practitioner's insufficient skill or incompetence;
- the occupational skill needed to prevent harm can be defined in law and measured;
- the field is too complex for consumers to be able to choose practitioners wisely; and
- no alternatives provide sufficient protection to consumers, for example federal programs, other state laws, marketplace constraints, private action, or supervision.

We assessed the specific regulatory proposals—Senate Bill No. 1499 and House Bill No. 966—as to whether:

- the scope of practice to be regulated is clearly defined and enforceable;
- the licensing requirements are constitutional and legal, for example, no residency or citizenship requirements;
- licensing requirements, such as experience or continuing education, are directly related to preventing harm;
- provisions are not unduly restrictive nor do they violate federal anticompetition laws;
- prohibited practices are directly related to protecting the public; and
- disciplinary provisions are appropriate.

Burden of proof

The sunrise process places the burden of proof on those in the occupation to justify their request for regulation and defend their proposed legislation. We evaluate their arguments and data against the sunrise criteria.

We examine the regulatory proposal and determine whether practitioners and their professional associations have made a strong enough case for regulation. It is not enough that regulation *may* have *some* benefits. We

recommend in favor of regulation only if it is *demonstrably* necessary to protect the public. We also scrutinize the language of the regulatory proposal for appropriateness.

Types of regulation

In examining the type of government regulation being proposed, we determine whether it is one of three approaches to occupational regulation:

A *licensing* law gives persons who meet certain qualifications the legal right to deliver services, that is, to practice the profession (for example, social work). Penalties may be imposed on those who practice without a license.

A *certification* law restricts the use of certain titles (for example “social worker”) to persons who meet certain qualifications, but does not bar others who do not use the title from offering such services. This is sometimes called title protection. (Government certification should not be confused with certification, or credentialing, by private organizations. For example, social workers receive accreditation from the National Association of Social Workers.)

A *registration* law simply requires practitioners to sign up with the State so that a roster or registry will exist to inform the public of the nature of their services and to enable the State to keep track of them. Registration may be mandatory or voluntary.

As part of our analysis, we assess the appropriateness of the selected approach.

Scope and Methodology

To accomplish the objectives of the analysis, we reviewed literature on nutritionists and dietitians. We also reviewed complaints and other evidence of harm to consumers.

We obtained information from national and Hawaii nutritionist and dietitian associations. We interviewed representatives of these associations, the Department of Food Science and Human Nutrition of the University of Hawaii, hospitals in Hawaii, and staff of the Department of Commerce and Consumer Affairs and the Department of Health.

Our work was performed from June 1995 through October 1995 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendation

This chapter presents our findings and recommendation on the need to regulate nutritionists. We conclude that regulation is not warranted. We also conclude that Senate Bill No. 1499 and House Bill No. 966 which propose regulation are flawed.

Summary of Findings

1. The regulation of nutritionists is not needed to protect consumers from harm. The benefits of regulation are unclear and its costs would be substantial.
2. The proposed legislation is flawed. The regulatory scheme is confusing and restrictive and would be difficult to enforce. The bills are biased against the public and against some practitioners.

Regulation of Nutritionists Is Not Warranted

The Sunset Law, Chapter 26H, Hawaii Revised Statutes, states that professions and vocations should be regulated only when necessary to protect the health, safety, and welfare of consumers. In assessing the need for regulation, the Auditor is required to give great weight to evidence of abuse by practitioners of the occupation. The law states that the purpose of regulation is to protect the public, not the regulated occupation. The Auditor also must consider the cost of regulation to taxpayers.

We found little documented evidence of abuse or harm to the public by nutrition practitioners. Furthermore, other protections for consumers already exist. It appears that regulation is likely to benefit the profession more than consumers. The costs of regulation would be substantial. We conclude that regulation of nutritionists is not warranted.

Scant evidence of consumer harm exists

Proponents of regulation in Hawaii express concern that anyone can call himself or herself a nutritionist and proceed to misinform consumers about diet. Fraudulent and harmful nutrition practices are key concerns.

Evidence exists that health and nutrition “quackery” may be a significant problem in our society. However, there is not much documented evidence of substantial risks to the public in Hawaii. While many individuals have testified about harm, the documented cases are inconclusive. Complaints are few.

Allegations of harm

During legislative hearings on the resolutions requesting this sunrise analysis, many individuals—including registered dietitians, physicians, and others—claimed actual or potential harm to the public from nutritionists or persons purporting to be nutritionists. Persons whom we interviewed echoed these concerns.

The examples included people with serious medical problems, such as diabetes and kidney disease, who received bad nutrition advice from unqualified persons, resulting in a worsening of their medical condition, hospitalization, and even death. The testimony also described food and nutrition fads—which may be particularly attractive and hazardous to vulnerable disabled and elderly persons—leading to malnutrition and unnecessary expense for nutrition supplements. Proponents were particularly concerned about alleged misinformation on nutrition from gyms, health food stores, vitamin distributors, and holistic health practitioners.

Inconclusive health department evidence

Because the evidence from the testimony and interviews was anecdotal, we turned for documentation to a 1995 report on nutritionists by the Department of Health. The report favors regulation of nutritionists and offers four examples of “documented harm” in Hawaii.¹ However, the report does not clearly demonstrate that the alleged harm was caused by nutritionists or by persons representing themselves as nutritionists.

In one case, according to the health department report, a 78-year-old male was admitted to the hospital in a coma suffering from hepatitis of unknown origin. The patient apparently had been taking huge amounts of vitamin supplements including up to 75,000 IU of vitamin A each day. He died of respiratory arrest, hepatic failure, and cirrhosis of the liver. But the health department report contains no documentation that a nutritionist was involved.

A second case involved a 32-year-old female admitted with toxic hepatitis and alcohol withdrawal. The medical history indicated Vitamin A-induced liver toxicity; the patient was taking 42 vitamin supplements a day. The hospital discharge summary stated that the symptoms were likely caused by alcohol-induced hepatitis and cirrhosis, and urosepsis, compounded by Vitamin A toxicity and iron toxicity with some hemochromatosis (a disorder of iron metabolism) “in view of the multiple supplements taken.” The physician reported that a “holistic” friend of the patient recommended the vitamin supplements. But it is not clear from the report whether the friend claimed to be a nutritionist. It is also not clear whether the primary problem was alcoholism or vitamin toxicity.

In another case, a 25-year-old female in a commercial low-calorie weight-loss program lost 24 pounds in eight weeks, then gained 13 pounds back in less than two weeks. Suffering from pain, she went to a clinic where gallstones were diagnosed. But the report does not say whether the gallstones resulted from the low-calorie diet, whether the patient was following the directions of the weight-loss program staff, or whether staff claimed to be nutritionists.

The fourth case involved a 63-year-old female with many food allergies who sought dietary advice at a health food store. She blamed subsequent swelling and breathing problems on spirulina and pancreatic enzymes in the products that the “store manager” recommended. However, the report does not establish whether her self-diagnosis was correct. Again, there is no indication that the store manager claimed to be a nutritionist. Furthermore, we were informed that this case occurred on the mainland, not in Hawaii.

Lack of complaints

During the past three years, consumers have made no complaints against nutritionists to the Office of Consumer Protection, the Office of the Ombudsman, or the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs.

Other protections exist

Many protections are already in place to protect the public in matters of nutrition:

- Most nutritionists work for organizations such as hospitals, long-term care facilities, clinics, schools, and state government that evaluate their qualifications before hiring.
- Under federal regulations, many health care facilities are required to hire qualified dietitians as a condition of reimbursement.
- Registered dietitians—who account for most of the nutritionists in Hawaii—must follow the Code of Ethics of the American Dietetic Association or face disciplinary action by the association.
- Anyone who attempts to treat disease must do so only under the supervision of a licensed physician or may risk charges of practicing medicine without a license.

- Federal regulations enforced by the U.S. Food and Drug Administration require that any food that purports to be for special dietary use must bear nutritional labeling and a statement of dietary usefulness.
- Both the state Food and Drug Branch and the state Office of Consumer Protection are responsible for investigating charges of consumer fraud and deception, false advertising, and the like.
- The Nutrition Branch of the Department of Health educates consumers and practitioners on nutrition and diet and provides diet counseling for referred children and adults.
- The department's Hospital and Medical Facilities Division enforces state and, where applicable, federal standards for nutritional services at hospitals, long-term care facilities, and residential care homes.
- Books, magazines, newspapers, television, and radio provide extensive information on nutrition.

Costs of regulation outweigh the benefits

Despite existing protections, advocates of regulation believe regulation is needed to help consumers identify and gain access to qualified nutritionists and to protect the public from bad advice from unqualified practitioners. Title protection, they believe, would enable consumers to distinguish between “unqualified” persons and persons who have received appropriate formal training in nutritional science and satisfied other qualifications such as passing an examination. However, it is not clear that regulation would be worth the costs involved.

Uncertain benefits to public

While regulation could assist consumers in selecting a nutritionist, the bills that propose regulation explicitly allow a wide variety of persons—nutritionists, physicians, government employees, weight control staff, exercise workers, health food store workers, and herbalists—to continue to offer nutrition information without being licensed so long as they do not use certain titles. Any harmful practices by these individuals would thus escape licensing authorities.

Furthermore, as observed by one expert whom we interviewed, it is difficult to prevent people from seeking miracle cures. They may turn for advice to all kinds of sources—traditional and nontraditional, reliable and unreliable, licensed or unlicensed. This will occur with or without regulation. One proponent of regulation predicted that once the law defines a nutritionist, people will go only to licensed nutritionists. However, this is speculation.

Proponents of regulation also point to studies showing that medical nutrition therapy is very cost effective. They contend that licensure of qualified nutritionists will increase the availability of third-party reimbursement, making nutritionists' services more affordable for consumers and enhancing access to cost-effective care. However, this is not certain. The decision to regulate should not be based on such tenuous grounds.

In addition, advocates of regulation argue that in an unregulated market, people with health problems will risk their survival by pursuing alternative nutritional therapies rather than contact a physician. While avoiding medical care and seeking therapy from nutritionists with dubious qualifications are risky, consumers must bear some responsibility for making their own choices. A recent study indicated that one-third of Americans use unconventional medical treatments—often to *supplement* the care they receive from a physician.²

While proponents of regulation cite many consumer-oriented benefits, they also believe regulation would strengthen the nutrition community, increase their recognition as professionals, and foster the growth of private-practice nutrition services. While these are understandable goals for nutritionists, they do not serve public protection purposes. They are not legitimate reasons for regulation under the Sunset Law.

Considerable cost of regulation

Regulation would be costly. The Sunset Law requires that regulation be avoided if its benefits to consumers are outweighed by its cost to taxpayers and if it unreasonably restricts entry into the occupation. The proposed regulation of nutritionists appears unacceptable under these requirements.

Although Senate Bill No. 1499 and House Bill No. 966 do not say where the regulatory program would be located, most such programs are assigned to the Department of Commerce and Consumer Affairs. If this occurs, the department has informed us that it would need a general fund appropriation of at least \$59,716 to start up the program and prepare for implementation. Start-up costs include personnel, operations, and equipment. If no national, valid, and reliable nutritionist licensing examination is available, an additional general fund appropriation of \$45,000 would be needed to develop an examination. This would bring the total start-up appropriation to \$104,716.

Once the start-up period has elapsed, the program must become self-sustaining. The department estimates that \$97,555 a year would be needed to cover personnel and operations.

Section 26-9(1), HRS, authorizes the department to assess fees on applicants and licensees so long as the fees bear a reasonable relationship to the cost of services provided. We provided the department with our estimate that as many as 350 nutritionists might initially obtain licenses, and perhaps 30 applicants would apply in each subsequent year.

The department says that it would rely on the initial group of 350 to bear the \$195,110 cost of the program for two fiscal years (\$97,555 times two). To fully recover this cost, each applicant/licensee would be assessed an initial application/license fee of \$558. An additional fee of \$70 to support the department's Compliance Resolution Fund would bring the total fee to \$628. Examination fees could make the fee even higher.

Furthermore, the department says it might require the regulated group to "reimburse" the general fund for the \$59,716 start-up appropriation, which would add \$171 to the initial application/license fee for each of the 350 applicants. This would bring the total fee to at least \$800.

The department calculates that license renewal fees would be in the same range, but slightly lower if the pool of licensees increases slightly as we estimated.

We also note an additional factor that could make the fees dramatically higher. Many nutritionists may not seek licenses because they are inactive or for other reasons. The licensed nutritionists would then bear a greater share of the regulation costs. For example, assume that only 200 instead of 350 nutritionists sought licensure. Each would pay an application/license fee of \$975 instead of \$558, and the total fee including the compliance resolution fee would be at least \$1,045 per person. Or assume that 300 registered dietitians in Hawaii chose not to be licensed, which is permissible under both bills. Each of the remaining 50 licensees would face an initial application/license fee of \$3,902, plus the \$70 compliance resolution fee, for a total of at least \$3,972.

In addition, we note that both bills require nutritionists to complete 30 hours of continuing education courses every two years as a condition of license renewal. Course fees would impose additional financial demands on licensees without any demonstrable benefits. Nationally, little evidence currently exists that mandatory continuing professional education ensures competency or learning.

We believe the State should not allocate its limited resources to establish regulation of nutritionists when the benefits of regulation are so uncertain. Moreover, the projected high fees to cover the State's costs could severely restrict entry into the occupation.

Proposed Legislation Is Flawed

We found that Senate Bill No. 1499 and House Bill No. 966 which would regulate nutritionists are flawed. The bills establish a confusing regulatory scheme that would be difficult to implement. Furthermore, the bills favor the interests of registered dietitians at the expense of other members of the nutrition community, who could be put out of business by the proposed law. In addition, the composition of the proposed licensing board favors the nutritionist profession as a whole over the interests of the public.

Scope and nature of regulation is unclear

To have effective regulation, the regulated occupation and any restrictions upon it must be clearly defined. Otherwise, the regulatory statute will be confusing and difficult to enforce. Both Senate Bill No. 1499 and House Bill No. 966 are weak in this regard. They do not clearly define a nutritionist. Furthermore, it is not clear whether the bills regulate titles, practice, or both.

Basic provisions

Dietetics and nutrition has been described as a truly vast field. Both bills reflect this. They begin with a broad definition of “nutrition and dietetics practice”:

the integration and application of scientific principles of nutrition, biochemistry, food, physiology, and behavioral and social sciences in achieving and maintaining human health throughout the life cycle and in treating disease. Methods of practice include any or all of the following: nutritional assessment; the establishment of priorities, goals, and objectives that meet nutritional needs; nutrition counseling; the development, implementation, management, and evaluation of nutrition care services; and the development, administration, and evaluation of appropriate standards of quality in nutrition care.

The bills define “nutritional assessment” as:

the evaluation of the food practices and nutritional needs of individuals or groups based on appropriate biochemical, anthropometric, physical, clinical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake.

“Nutrition counseling” is defined as:

advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment.

The bills go on to say:

Only a person licensed under this chapter shall be engaged in nutrition and dietetics practice and use the title 'nutritionist' or 'licensed nutritionist,' or the designation 'L.N.,' or any other word, letters, abbreviations, insignia, or devices that would indicate or imply that the person is a nutritionist.

Problems of interpretation

These basic provisions could be very difficult to implement. First, enforcement officials would have to determine whether the individual was engaged in nutrition and dietetics practice, not an easy task given the broad definitions.

Second, the nature of the proposed regulation is unclear. On the one hand, the bills seem to regulate only the use of certain titles (the "certification" approach to regulation). That is, they do not bar persons from practicing nutrition and dietetics without a license so long as the person does not use certain titles indicating that he or she is a "nutritionist." The Hawaii Dietetic Association supports title protection to prevent the frequent and fraudulent use of the designation "nutritionist." Currently, says the association, anyone can call oneself a nutritionist, even persons with "questionable" degrees from non-accredited schools and correspondence schools.

On the other hand, the bills could be interpreted to restrict both the use of titles (certification) and the practice of the occupation (the "licensing" approach to regulation). Unless the practitioner were using the designation "nutritionist," "licensed nutritionist," or "L.N.," enforcement officials would have to determine whether the individual's designation "indicated or implied" that he or she was a nutritionist. Interpreting "indicating or implying" could be a formidable undertaking. If regulators took a strict approach, the bills could block unlicensed persons from saying anything about the nutrition services they offer, making it virtually impossible for them to practice.

Other language in the bills also suggests more than simple title protection. For example, the bills define a "licensed nutritionist" as a person authorized to *practice* nutrition and dietetics. Also, those who fail to renew their license become "illegal practitioners" subject to penalties including prosecution for a misdemeanor. These provisions appear to regulate practice, not only title, and compound the confusion.

Bills favor registered dietitians and restrict others

The proposals to regulate nutritionists in Hawaii stem from a national movement by the American Dietetic Association and its state affiliates to enact regulation of dietitians/nutritionists. The association believes that,

among other benefits, licensing enables the public to identify individuals who are qualified by education, experience, and examination to provide nutrition care services. The association's Commission on Dietetic Registration also privately certifies as registered dietitians those who meet certain academic and supervised-experience requirements and pass a commission examination.

We found that Senate Bill No. 1499 and House Bill No. 966 are biased in favor of the association and its members in several ways that could damage nutritionists who do not quite fit the registered dietitian mold:

- For licensing, the bills require supervised experience of 900 hours or a reasonable equivalent. The hourly requirement matches one of the experience options offered to candidates for association certification as a registered dietitian.
- The bills exempt Hawaii's more than 300 registered dietitians from licensing unless they wish to call themselves licensed nutritionists or a similar title.
- The bills allow registered dietitians who wish to be licensed as nutritionists to do so more or less automatically. No state examination is needed. Persons registered by other private organizations or associations may also apply for a license on this basis, but the board can reject these applications.

We also learned that the examination of the American Dietetic Association may become the official licensing examination for Hawaii.

Based on the above, we find that the bills inappropriately and unfairly incorporate the interests of the American Dietetic Association. The bills restrict nutritionists who have graduated with a nutrition degree but not those with a dietetics degree. At the University of Hawaii, the difference between the two degrees is three courses that a dietetics student must complete: community nutrition, nutrition in disease, and nutrition counseling. One critic of the bills believes that any state examination to license nutritionists should focus on the three nutrition courses rather than incorporate the entire American Dietetics Association examination. Another critic also points out that nutritionists who follow an educational and career path that does not qualify them for licensure—and who therefore could not call themselves nutritionists—will in effect be put out of business.

The bills restrict alternative, nontraditional practitioners in general. This restrictiveness appears unwarranted. While nutrition is considered a science, it is often not an exact science. The media are full of contradictory information on health and nutrition. Even physicians and

medical researchers disagree over nutrition's role in preventing and treating illness. The dispute over the effects of the McDougall diet (meatless, low-fat, low-sodium, high-fiber meals) is an example.

The common sense advice of a lay person with little academic training in nutrition may well be more appropriate than the counsel of a licensed nutritionist using debatable research. The advice of someone who may not be able to obtain licensure may be as reliable as the advice of a registered dietitian who obtained automatic licensure. Furthermore, the bills would allow disciplinary action against licensees—even misdemeanor prosecutions—for “incompetence.” Given the uncertain nature of nutritional science, this broad provision has great potential for abuse.

***Provisions for
regulatory board are
inadequate***

Senate Bill No. 1499 and House Bill No. 966 would establish a Board of Examiners in Nutrition and Dietetics. We found that the membership requirements for the board are biased against consumers and certain members of the nutrition profession. Furthermore, the bills do not identify the location of the board.

Board has insufficient consumer representation

The purpose of regulatory boards is to safeguard the public interest. Boards should have both professional and consumer members in numbers that will serve this purpose.

Neither of the nutritionist bills that we studied ensures adequate consumer representation. Both bills require a seven-member board. Senate Bill No. 1499 requires at least five licensed nutritionists and one public member on the board. House Bill No. 966 requires six licensed nutritionists and one public member.

Lacking a proper balance of consumers and professionals, the board might be less likely to address consumers' concerns and more likely to favor professionals' interests in both its policy making and disciplinary functions.

There is no fixed, universally accepted standard for board composition. But the Institute of Medicine, a national organization, has recommended that at least half the members of licensing boards for the allied health professions, including dietetics, be drawn from outside the regulated occupation.

By this standard, many of Hawaii's licensing boards lack sufficient consumer representation. Some, however, are better balanced than others. For example, the Board of Hearing Aid Dealers and Fitters currently has one hearing aid dealer, one otolaryngologist, one

audiologist, and four consumers. The Motor Vehicle Industry Licensing Board is required to have three industry members and four public members. Some other regulatory boards have only a slight majority of professional members.

Registered dietitians gain an edge

In addition to a consumer-practitioner imbalance, the board's composition favors registered dietitians. They will have an advantage over everyone else seeking an initial appointment to the board.

The bills require that "to the extent reasonable, the board should be broadly representative of various professional interests within the nutrition and dietetics community." At least one member of the board must be drawn from each of the following areas of practice: clinical dietetics; public health nutrition; college or university faculty in nutrition and dietetics; and private-practice nutrition and dietetics.

While *subsequent* appointments to the professional slots are limited to *licensed* nutritionists, *initial* appointees need only be *eligible* for licensure. Registered dietitians are the only category of applicants automatically eligible for licensure.

Location of board is not identified

Regulatory laws should specify the agency in which the regulatory program will be located, for example the Department of Commerce and Consumer Affairs or the Department of Health. The designated agency provides the board with administrative support, including staff assistance. The agency head may be authorized to make final decisions on disciplinary matters.

However, neither of the bills proposing to regulate nutritionists in Hawaii identifies the location of the board.

Conclusion

For the reasons stated above, we believe that nutritionists should not be regulated as proposed in Senate Bill No. 1499 and House Bill No. 966. Our conclusion is consistent with many sunrise and sunset reports from other states that found regulating this occupation to be unnecessary or highly questionable.

Other states' reports oppose regulation

We obtained sunrise or sunset reports prepared by various state agencies in Colorado (1989, 1990, 1993), Georgia (1988), Maryland (1993), Michigan (1986), Minnesota (1990), Nebraska (1987 and 1993), North Carolina (1991), South Carolina (1989 and 1992), Virginia (1977 and 1994), and Washington (1993).

These reports examined proposed or existing regulation of nutritionists or dietitians. The findings from other states generally support our view. Only the North Carolina report favored regulation. Findings in the other states included:

- Practitioners have not harmed the public significantly.
- There is no consumer movement in favor of regulation.
- Most dietitians work for health care facilities, schools, colleges, government agencies, and other organizations capable of evaluating the qualifications of those they hire.
- The public will not benefit from regulation.
- The costs of regulation outweigh the benefits.
- Even title regulation could reduce consumers' access to alternative advice from qualified practitioners.
- Existing laws governing health care and medical practice and fraudulent and deceptive business practices are adequate to protect consumers without additional regulation.
- Complaint activity has been minimal in states that regulate nutritionists. No states had disciplined a dietitian or nutritionist for acts or omissions deemed harmful to the public.
- Exemptions built into the regulatory statutes have proven difficult to administer.
- The pressure to regulate comes from the American Dietetic Association and its affiliates who are concerned about obtaining reimbursement.
- The association's positions inappropriately dominate the laws regulating nutritionists.

Recommendation

We recommend that Senate Bill No. 1499 and House Bill No. 966 not be enacted.

Notes

Chapter 1

1. U.S. Department of Labor, *Occupational Outlook Handbook*, May 1994, p. 167.
2. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, Second Edition, The Council on Licensure, Enforcement and Regulation, Lexington, Kentucky, 1994, p. 24.

Chapter 2

1. Hawaii, Department of Health, *Report to the Legislature on SCR No. 79, Definition of Qualified Nutritionists—Protect Public from Nutrition Fraud*, Honolulu, 1995, Appendix B.
2. David M. Eisenberg, M.D. et al, "Unconventional Medicine in the United States—Prevalence, Costs, and Patterns of Use," *The New England Journal of Medicine*, vol. 328, no. 4, Jan. 28, 1993, pp. 246-252.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs and the Department of Health on October 25, 1995. A copy of the transmittal letter to the Department of Commerce and Consumer Affairs is included as Attachment 1. A similar letter was sent to the Department of Health. The responses of the two departments are included as Attachment 2 and Attachment 3 respectively.

The Department of Commerce and Consumer Affairs says it echoes our concerns regarding flaws in the proposed form of regulation. It says such flaws would make for "a possibly unfair, inequitable, problematic and inconsistent licensing process." In particular, the department raises concerns about various provisions that allow a "grandfathered" group to satisfy lesser minimum qualifications; that favor "nutritionists"; that allow the regulatory board to subjectively vary the licensing standards; and that do not align with due process requirements or administrative adjudication practices and procedures.

The Department of Health says there is agreement with the general findings of our report. The department also raises questions about our methodology, sources, and other issues.

The health department suggests that our report should review or discuss other states with licensure laws. We believe that pages 3 and 4 of our report adequately summarize regulation in other states; we focused on the regulatory proposals in Hawaii. The department also suggests that we document our sources of information and include a bibliography. However, our report follows our standard format and we believe that the report is well supported.

The health department also suggests that we delete from page 12 the last of the nine protections that we say are already in place to protect the public in matters of nutrition. This refers to our statement that books, magazines, and other media provide extensive information on nutrition. The department says that media information ranges from quality to quackery. While this may be so, we believe that our statement belongs in the report because media sources provide much useful material on nutrition.

The department also questions why the start-up operating costs of a new regulatory program for nutritionists are less than the operating costs for subsequent years. The cost figures in our report are based on information provided by the Department of Commerce and Consumer Affairs. That

department envisions a nine-month start-up period from October 1, 1996 to June 30, 1997. The start-up cost of \$59,716 includes salaries and fringe benefits for one clerk typist and one secretary for the nine-month period; a half year of other operational costs; and equipment costs (for example, desks and chairs). Starting on July 1, 1997, the annual costs of running the program would include full-year salaries for one clerk-typist and one secretary; recurring full-year operational costs; and part of the annual salaries of an additional administrative assistant, clerk, and clerk typist who would give some of their time to the ongoing program.

The health department also suggests that some of our conclusions are contradictory or inaccurate. Its comments and our responses follow:

- The department sees a conflict between, on the one hand, our criticism that the bills proposing regulation favor dietitians and could put other members of the nutrition community out of business, and, on the other hand, our observation that the bills allow many persons such as nutritionists and weight control staff to continue to offer nutrition information without being licensed so long as they do not use certain titles. However, we believe that our report is internally consistent. Our statements focus, respectively, on the bills' inequitable treatment of one segment of the profession and the questionable value of title protection in protecting consumers.
- The department questions our description of one of the experience options for candidates for certification as a registered dietitian. However, the department is unclear on this point.
- The department questions the accuracy of our statement that traditionally, the basic educational requirement for nutritionists and dietitians is an appropriate bachelor's degree. The source for our statement is the *Occupational Outlook Handbook* published by the U.S. Department of Labor. Furthermore, the University of Hawaii offers several bachelor's programs in nutrition. We believe that our statement is accurate even though additional training such as an advanced degree or internship may be required to obtain specific positions in the nutrition and dietetics field.
- The department says that we appear to employ our statement that "while nutrition is purportedly a science, it is often not an exact science" as justification for not supporting licensure. The department says that nutrition is a science and questions why disagreements among professionals in the field make licensure unwarranted. Actually, we were simply making the point that given the uncertain nature of nutritional science, the bills' restrictiveness against alternative nontraditional practitioners appears unwarranted and the provision allowing disciplinary action against licensees for

incompetence has a high potential for abuse. However, we changed the phrase “purportedly a science” to “considered a science” in our final report for purposes of clarification.

- The department recommends deleting our statement that “the common sense advice of a lay person with little academic training in nutrition may be more appropriate than the counsel of a licensed nutritionist using debatable research.” While we appreciate the department’s discomfort with this statement, we believe that it stands on its own merit. For example, a person who follows the common sense principle of a balanced diet may well be as prudent as the person who constantly changes his or her diet based on the latest scientific study. The department also argues that if licensure is adopted, regulatory sanctions could be imposed on nutritionists using debatable research to support harmful practices. But we are concerned about giving the board such broad power to determine what is debatable and what is harmful.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

October 25, 1995

COPY

The Honorable Kathryn S. Matayoshi, Director
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Matayoshi:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunrise Analysis of Two Proposals to Regulate Nutritionists*. We ask that you telephone us by Friday, October 26, 1995, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, November 8, 1995.

The Department of Health, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script that reads "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

BENJAMIN J. CAYETANO
GOVERNOR



KATHRYN S. MATAYOSH
DIRECTOR

BENJAMIN I. FUKUMOTO
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

November 1, 1995

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OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, HI 96813-2917

Dear Ms. Higa:

*Thank you for the opportunity to comment on the draft report, **Sunrise Analysis of the Two Proposals to Regulate Nutritionists.***

As the report points out, the bills proposing a regulatory program for nutritionist do not identify a specific state agency where the program will be located. As the Department of Commerce and Consumer Affairs (hereafter "Department") may be a candidate for placement, and as we have sufficient expertise to determine whether specific regulatory proposals will be fair, equitable, implementable and consistent with other Department regulatory programs we offer the following:

1. *We echo the concerns pointed out in the report regarding the flaws with the proposed form of regulation. Such flaws would make for a possibly unfair, inequitable, problematic and inconsistent licensing process.*
2. *We have opposed "grandfathering" provisions which allow a group to satisfy lesser minimum qualifications, while those same minimum qualifications are to be imposed on others. If minimum qualifications are established, and they are to ensure the practitioner is minimally competent so the consumer's health, safety or welfare is reasonably well protected then such minimum qualifications should not be compromised. While we can understand the dilemma the profession may be in to take care of "their own", our mission is to take care of the consumer. In this case, there should be no compromise. The bills for nutritionists contain grandfathering.*

Ms. Marion M. Higa

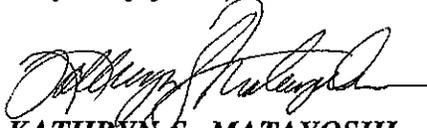
November 1, 1995

Page 2

3. *The report points out that the bills favor registered dietitians and restrict others. We also found instances where language in the bills favor "nutritionists". This occurs in using a licensure exam "for nutritionists", and requiring experience be gained under a licensed nutritionist or licensed dietician (the latter of which does not exist in the State, thus experience would only be considered valid if done under the supervision of a nutritionist). Strict interpretation of the language would in some cases give an unfair advantage to "nutritionists".*
4. *Discretionary power is provided to the board to consider and approve other standards that would satisfy the educational and experiential requirements for licensure. Regulatory laws should state specific licensure requirements and hold all applicants to the same standard. Special circumstances may be appropriate to accept other standards. However, this should be the exception rather than the rule. The language in the bills appear to allow the Board to subjectively vary the standards with no stated reason for the exception. This could lead to inequitable and inconsistent practices.*
5. *Enforcement provisions in the bill do not align with current due process requirements or administrative adjudication practices and procedures.*

We appreciate the opportunity to provide our input on the substantive provisions for regulation. We hope it will add to the evaluation process.

Very truly yours,



KATHRYN S. MATAYOSHI

Director

BENJAMIN J. CAYETANO
 GOVERNOR OF HAWAII



LAWRENCE MIIKE
 DIRECTOR OF HEALTH

STATE OF HAWAII
 DEPARTMENT OF HEALTH

P.O. BOX 3378
 HONOLULU, HAWAII 96801

November 6, 1995

In reply, please refer to:
 File: HPED / Nutr

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OFF. OF THE AUDITOR
 STATE OF HAWAII

The Honorable Marion M. Higa, State Auditor
 State of Hawai'i Office of the Auditor
 465 South King Street, Room 500
 Honolulu, Hawai'i 96813-2917

Dear Ms. Higa:

Thank you for the opportunity to provide comment on the draft report, *Sunrise Analysis of Two Proposals to Regulate Nutritionists*.

Attached is a review the draft document conducted by the Nutrition Branch. Although there is agreement with the general findings of the report, several questions have been raised regarding:

- methodology used in data and information gathering,
- documentation of sources of information,
- inaccuracies in the listing of other existing protections,
- the cost analysis for licensing, and
- other contradictions and/or inaccuracies.

A brief discussion of each of these questions is provided. If additional clarification is required please contact Claire Hughes, Chief of the Nutrition Branch at 586-4671.

The Department appreciates the opportunity to review and comment on the draft Sunrise Analysis on regulation of nutritionists and submits these comments for your consideration and action.

Sincerely,

for Lawrence Miike
 Director of Health

Hawai'i State Department of Health

Review of the State Auditor's Report on Sunrise Analysis of Two Proposals to Regulate Nutritionists

The State Auditor's Report on the *Sunrise Analysis of two Proposals to Regulate Nutritionists* was reviewed by the Nutrition Branch staff. There was support of the general findings of the report; however, the following additional comments and recommendations are offered for your consideration.

Should the analysis include a review and/or discussion of States which have established licensure laws?

Although current information indicates that twenty-four (24) states (see attached) have some form of licensure for dietitians and/or nutritionists and two states have certification laws which are termed "voluntary licensing" laws, the Auditor's report does not include a discussion of this issue.

Would it be possible to include documentation of the sources of information within the document?

Documenting the source of information which distinguishes between generally recognized national and professional standards and the 'opinions' of one, a few, or a consensus of those interviewed, and a bibliography with dates of publications would assist with future reference to this document.

We recommend deletion of a listing within the section "Other protections exist" which provides unsubstantial protection for the public.

Ninth protection. Information published in books, magazines, and other mass media range from quality information to pure fallacy and quackery.

Why are the annual start up operating costs less than the continuing years?

The start-up year costs, which include equipment purchases and the potential initial licensing of over 350 individuals, is estimated at \$59,716. However, the operating costs for subsequent years (which included an estimated additional 30 new licenses per year) was estimated at \$97,555.

There are sections which seem to propose contradictory and/or inaccurate conclusions.

The report states the bills "favor dietitians at the expense of other members of the nutrition

community, who could be put out of business by the proposed bill." However, the bills are also criticized for allowing "a wide variety of persons - nutritionists, physicians, government employees, weight control staff, ...to continue to offer nutrition information...". These conclusions appear to be contradictory.

The report states that the bill favors dietitians because "the hourly requirement matches one of the experience options offered to candidates for association certification as a registered dietitian." However, the "required" completion of a six to eighteen month internship to qualify for registration is not an "offer" but a competitive application process for qualified candidates.

The report states that "Traditionally, the basic educational requirement for nutritionists and dietitians is an appropriate bachelor's degree." Currently, essentially all existing positions within the professions of nutrition and dietetics require an advanced degree or dietetic internship with registration. There are also 'nutritionists' which do not complete a bachelor's degree in nutrition or a related field, but their advanced degrees are within the field. There is concern with the accuracy of that this statement and that it may imply that the Bachelor's degree is the current 'entire' training standard for practice in these professional fields.

This report states that "While nutrition is purportedly a science, it is often not an exact science." and appears to employ this as justification for not supporting licensure. Nutrition is a science, and disagreements among professionals within any scientific field exists due to the continuous advances in scientific research. It is unclear as to why it is concluded that licensure is unwarranted for this reason when the same conditions exists in medicine, nursing, and other health fields which are regulated.

The report further concludes that licensure is not warranted because the "The common sense advice of a lay person with little academic training in nutrition may well be more appropriate than the counsel of a licensed nutritionist using debatable research." We strongly recommend deletion of this comment. It is unclear as to why it has been concluded that a lay person with no formal training would be a reliable source of nutrition counseling services. Additionally, this statement appears to support licensure because regulatory sanctions could be imposed on the nutritionist using debatable research to support harmful practices.

