



New York State
Academy of Nutrition and Dietetics

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Legislation Regarding Therapeutic Diet Order Privileges

Task Force Chair, Josephine Connolly-Schoonen, PhD, RD

Objective

- Protect the public through delivery of the most appropriate diet/nutrition therapy while in a hospital or long-term care facility
- Increase efficiency of operations related to food and nutrition in hospitals and long-term care facilities
 - *CMS estimates that having RDs write diet orders would save \$459 million annually*

Achieve objectives through passage of bills to amend NYS Department of Education Law establishing certification of nutritionists/dietitians (Education Law Article 157)

- Senate bill **S.3330**
- Assembly bill **A.6398**
- “same as bills”
- Covers CDNs and RDN/CDNs in NYS

Dietetics and Nutrition

[Laws, Rules & Regulations](#)
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NYSED / OP / Professions / Dietetics and Nutrition / Laws, Rules & Regulations / Article 157

Education Law

Article 157, Dietetics and Nutrition

[§8000. Introduction.](#) | [§8001. Definitions.](#) | [§8002. Use of titles.](#) | [§8003. State board for dietetics and nutrition.](#) | [§8004. Requirements for certification.](#) | [§8005. Special provisions.](#) | [§8006. Special conditions.](#)

§8000. Introduction.

This article applies to the use of the titles "certified dietitian" and "certified nutritionist". The general provision for all professions contained in article one hundred thirty of this title shall apply to this article.

§8001. Definitions.

1. Dietetics and nutrition are herein each defined as the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's health.
2. Where the title "certified dietitian" or "certified nutritionist" is used in this article it shall mean "certified dietitian", "certified dietician", or "certified nutritionist".
3. A certified dietitian or certified nutritionist is one who engages in the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's health, and who is certified as such by the department pursuant to section eight thousand four of this article. The primary function of a certified dietitian or certified nutritionist is the provision of nutrition care services that shall include:
 - a. Assessing nutrition needs and food patterns;
 - b. Planning for and directing the provision of food appropriate for physical and nutrition needs; and
 - c. Providing nutrition counseling.

§8002. Use of titles.

Only a person certified under this article shall be authorized to use the title "certified dietitian", "certified dietician", or "certified nutritionist".



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What's in the amendment?

- **Language of Amendment:**

*“Notwithstanding any other provision of law to the contrary, a certified dietitian or certified nutritionist may **prescribe, order**, write, review, evaluate, monitor and manage therapeutic diets, including enteral and parenteral nutrition, in hospitals, including diagnostic center, treatment center, or hospital-based outpatient department, residential health care facility or nursing home of any other facility as defined in section twenty-eight hundred one of the public health law **when competency is determined by the medical director or governing body of such facility.**”*

- **“order”** term necessary for RNs to be able to administer such TF or TPN
- **“prescribe”** term necessary for pharmacists to dispense such TPN
- It is **PERMISSIVE** and **INCLUSIVE**
 - Allows hospitals and long term care facilities to go through the process of getting privileges for RD/CDNs to write diet orders to the extent desired; does not mandate such facilities to do so
 - Includes RD/CDNs as one of many health care providers that can write diet orders, including attending physicians, resident physicians, NPs, PAs

Why is this important?

- Improves patient safety and clinical care
- Increase efficiency and productivity of RD/CDNs in hospitals and long term care facilities; as well as all members of the health care teams
 - Currently RD/CDNs can propose diet orders; it currently takes about 1-4 hours to reach MD and have proposed diet order signed. (e.g. carbohydrate modifications to po diet orders, texture modifications and tube feeding orders /modifications)
 - RD/CDNs repeatedly identify wrong diet consistency orders/trays and prevent their delivery to patients Every day RD/CDNs propose carb modifiers that are missing from standing diet orders, but they need MD to sign “proposed diet orders” in EMR

Why Now?

- The impetus of this activity is a ruling by the Centers for Medicare/Medicaid in May 2014 indicating that RDs are the professionals who are best qualified to provide medical nutrition therapy, including writing diet orders, and permitting hospitals/long-term care facilities to extend therapeutic diet order writing privileges to RDs.
 - Since RDs not “licensed” in NY, CMS ruling does not apply, unless we amend NYS Education law covering our certification
- The COVID pandemic highlighted the need for TDO for patient safety and hospital operational efficiency
 - Every vented patient needed to be tube fed; many MDs reassigned to hospital units did not have experience writing diet orders
 - RDs most informed about shortages that impacted tube feeding orders
 - Tube feeding formulas
 - Equipment: pumps, bags, spike sets, etc.



ensured. Therefore, we proposed revisions to § 482.28(b)(1) and (2) that would require that individual patient nutritional needs be met in accordance with recognized dietary practices. We would make further revisions that would allow for flexibility in this area by requiring that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or other clinically qualified nutrition professional as authorized by the medical staff and in accordance with State law. We believe that hospitals that choose to grant these specific ordering privileges to RDs may achieve a higher quality of care for their patients by allowing these professionals to fully and efficiently function as important members of the hospital patient care team in the role for which they were trained. In the proposed rule, we stated that we believe hospitals would realize significant cost savings in many of the areas affected by nutritional care.

FEDERAL REGISTER

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Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 416, 440 et al.

Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II; Final Rule

Issue	Frequency	Estimated savings or benefits (\$ millions)
Ambulatory Surgical Centers:		
• Radiology Services	Recurring annually	41
Hospitals:		
• Food and dietetic services	Recurring annually	459
• Nuclear medicine services	Recurring annually	77
Transplant Centers:		

LTC Regulations

The Rule

A resident's attending physician may delegate the task of writing dietary orders, consistent with § 483.60, to a qualified dietitian or other clinically qualified nutrition professional who—

- (i) Is acting within the scope of practice as defined by State law; and
- (ii) Is under the supervision of the physician.

F715 Physician delegation to Dietitian

F808 Therapeutic Diet Prescribed by Physician



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What can each RD do?

- Make sure you are a Certified Dietitian/Nutritionist: <http://www.op.nysed.gov/prof/diet/dietforms.htm>
- Contact your own NYS Senator or Assembly Member requesting they co-sponsor these bills; ask your MD/RN colleagues to do the same
 - Determine your legislators:
<https://nyassembly.gov/mem/search/>
<https://www.nysenate.gov/registration/nojs/form/start/find-my-senator>
 - Determine if legislators already sponsored (see next 2 slides on how to determine this)
 - Call or email asking for co-sponsorship or thanking legislator
 - **Better yet – visit!!! (may be via Zoom)**
 - It is important to follow-up; check if they co-sponsored; if not ask if you can meet to further discuss
- Contact sponsor of bills (template letter prepared); ask your MD/RN colleagues to do the same
 - Assembly Member Fred Thiele
New York State Assembly
Legislative Office Building, Room 837
Albany, NY 12248
 - Senator Gustavo Rivera (518-455-3395; grivera@nysenate.gov)
Chair, Committee on Health
New York State Senate
Capital Building, Room # 502C
Albany, NY 12247
- Through networking with colleagues, advocate for support from fellow RDs, NYS physician/n professional associations; ask MDs/RNs to contact sponsors and/or their legislators



https://nyassembly.gov/leg/

nyassembly.gov/leg/?bn=A06398&term=2021

Stony Br... | Walmart | SUNY SMART | SharedSites | Healthy Corner Stor... | Help Desk SelfServ... | Cardinal Health Kan... | national ctr for case... | SUNY Employee Se... | Ketogenic Calculator | Nutrition and Die



Bill Search Home Laws Legislative Calendar Public Hearing Schedule Assembly Calendars Assembly Committee Agenda

Bill No.:

- [Summary](#) Actions Committee Votes Floor Votes Memo Text LFIN Chamber Video/Transcript

A06398 Summary:

BILL NO A06398

SAME AS SAME AS [S03330](#)

SPONSOR Thiele

COSPNSR

MLTSPNSR

Amd §8001, Ed L

Allows certified dietitians and nutritionists to order therapeutic diets.

[Go to top](#)



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Senate Bill S3330

2021-2022 Legislative Session

Relates to the certification of dietitians and nutritionists

DOWNLOAD BILL TEXT PDF

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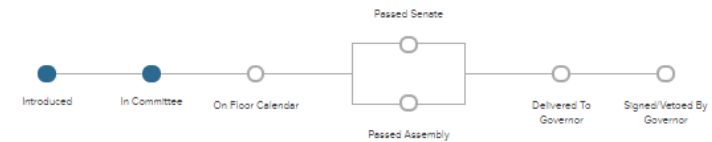


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CURRENT BILL STATUS -
In Senate Committee [Higher Education Committee](#)



ACTIONS

VIEW ACTIONS (1)

CO-SPONSORS



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(D) 5TH SENATE DISTRICT



Robert Jackson
(D, WF) 31ST SENATE DISTRICT



Rachel May
(D, WF) 33RD SENATE DISTRICT



Kevin Thomas
(D) 6TH SENATE DISTRICT

Summary document you can use to structure & guide your to your legislator!

Therapeutic Diet Order Writing Privileges:

Protecting the Public (especially those living in long term care facilities and with a hospital admission)

Goals:

- Protect the public through delivery of the most appropriate diet/nutrition while in a hospital or long-term care facility
- Increase efficiency of operations related to food and nutrition in hospitals and long-term care facilities

Same as bills to amend NYS Department of Education Law establishing certification of nutritionists/dietitians (Education Law Article 157)

- Senate bill S3330
- Assembly bill A6398

Language of Amendment to our Current Certification Law:

“Notwithstanding any other provision of law to the contrary, **a certified dietitian or certified nutritionist may prescribe, order, write, review, evaluate, monitor and manage therapeutic diets, including enteral and parenteral nutrition**, in hospitals, including diagnostic center, treatment center, or hospital-based outpatient department, residential health care facility or nursing home of any other facility as defined in section twenty-eight hundred one of the public health law **when competency is determined by the medical director or governing body of such facility.**”

Why now:

Ruling by the Centers for Medicare/Medicaid in May 2014 indicates that RDs are the professionals who are best qualified to provide medical nutrition therapy, including writing diet orders, and permits hospitals/long-term care facilities to extend therapeutic diet order writing privileges/designation to RDs.

- In NYS, dietitians/nutritionists are “certified” NOT “licensed” and therefore the CMS ruling does not apply, unless the NYS Education law covering our certification is amended. In most other states RDs are licensed and already writing diet orders.

Important Points:

- The proposed legislation is **permissive**, allowing hospitals and long-term care facilities to privilege/designate RDs to write diet orders, but **NOT mandating** them to do so.
- The proposed legislation is **inclusive**, allowing RDs to join other licensed providers who can write diet orders, such as MDs, NPs and PAs.
- The following terms need to be included in the amendment for practical implementation:
 - “order” - necessary for RN to be able to administer the diet/tube feeding RDs order) and
 - “prescribe” - necessary for pharmacists to dispense TPN

Important Websites

- NYSAND and LIAND
 - Tools for visits with elected officials
 - Sample email
 - Sample script for visit
 - TDO summary for legislators (also appropriate for your administrators) to you as guide or outline for your visit
 - FAQ (Frequently Asked Questions)