



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	Board of Health Professions, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC75-30
<b>Regulation title</b>	Regulations Governing Standards for Dietitians and Nutritionists
<b>Document preparation date</b>	2/22/12

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

The legal basis for setting standards for dietitians and nutritionists is found in:

**Chapter 27.1.  
Dietitians and Nutritionists.**

**§ 54.1-2730. Scope of chapter.**

Nothing in this chapter shall preclude or affect in any fashion the ability of any person to provide any assessment, evaluation, advice, counseling, information or services of any nature that are otherwise allowed by law, whether or not such services are provided in connection with the marketing and sale of products.

**§ 54.1-2731. Prohibited terms; penalty.**

A. No person shall hold himself out to be or advertise or permit to be advertised that such person is a dietitian or nutritionist unless such person:

1. Has (i) received a baccalaureate or higher degree in nutritional sciences, community nutrition, public health nutrition, food and nutrition, dietetics or human nutrition from a regionally accredited college or university and (ii) satisfactorily completed a program of supervised clinical experience approved by the Commission on Dietetic Registration of the American Dietetic

Association;

- 2. Has active registration through the Commission on Dietetic Registration of the American Dietetic Association;
- 3. Has an active certificate of the Certification Board for Nutrition Specialists by the Board of Nutrition Specialists;
- 4. Has an active accreditation by the Diplomats or Fellows of the American Board of Nutrition;
- 5. Has a current license or certificate as a dietitian or nutritionist issued by another state; or
- 6. *Has the minimum requisite education, training and experience determined by the Board of Health Professions appropriate for such person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist.*

The restrictions of this section apply to the use of the terms "dietitian" and "nutritionist" as used alone or in any combination with the terms "licensed," "certified," or "registered," as those terms also imply a minimum level of education, training and competence.

B. Any person who willfully violates the provisions of this section shall be guilty of a Class 3 misdemeanor.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board the authority to promulgate regulations:

**§ 54.1-2400 -General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

...

- 6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

**Alternatives**

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

Section 54.1-2731 of the Code of Virginia establishes the credentials one must have in order to “hold himself out to be or advertise or permit to be advertised that such person is a dietitian or nutritionist.” There are five such credentials or qualifications set out in the Code. The sixth one listed is:

*“Has the minimum requisite education, training and experience determined by the Board of Health Professions appropriate for such person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist.”*

In 1996, when Chapter 30 was adopted, the only additional credential that the Board could identify was the qualification for a person to work as a dietitian or nutritionist in a federally funded program (such as Head Start). The Board found that a baccalaureate degree with a major in foods and nutrition or dietetics or equivalent hours of food and nutrition course work and two

years of work experience in nutrition or dietetics concurrent with or subsequent to such degree was acceptable for employment by or under contract to a governmental agency. Therefore, regulations adopted for dietitians or nutritionists set out, in addition to the qualifications in § 54.1-2731, the criteria by which the title could be used.

In its 2012 review, staff of the Board of Health Professions reported that no additional criteria were recommended for title protection as allowed by the Code. The regulation currently adopted is the least restrictive and most inclusive of qualifications to use the title of dietitian or nutritionist.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

The Notice of Periodic Review of the current regulation was published on November 21, 2011 with comment requested until January 20, 2012. There was one comment posted on the Virginia Regulatory Townhall.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Carol Blum Papillon, President, Va. Dietetic Assoc.	Recommended licensure of dietitians by regulation. Recommended continued regulation of Registered Dietitians.	As noted by the commenter, legislation for licensure of dietitians under the Board of Medicine was introduced in the 2012 Session and continued in the Health, Welfare & Institutions Committee until 2013. The Board of Health Professions is not a licensing board, and without statutory authority, the profession cannot be further regulated by any board at DHP.

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The regulation has been in effect since 1996; it is minimal since most of the available credentials or qualifications are already set out in Code. There is no exemption from the title protection restriction for persons employed by or under contract with federal entities, so the additional criteria in regulation is essential to ensure that persons who meet the federal qualifications for dietitians or nutritionists can continue to be employed using the protected titles.

**Result**

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The Board of Health Professions is recommending that 18VAC75-30-10 et seq., Regulations Governing Dietitians and Nutritionists, remain in effect without change.

**Small business impact**

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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There is no impact on small businesses, since the regulation is permissive and only applies to persons who are working for or under contract to a federal agency and who need to be able to use the protected titles of dietitian or nutritionist.

**Family impact**

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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There is no impact on the institution of the family and family stability.