



September 2021
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REGULATORY BOARD REVIEW

BOARD OF LICENSED DIETITIANS

AUDIT OVERVIEW

The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily.

The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code.

The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency.



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September 12, 2021

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Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the Board of Licensed Dietitians. The issues covered herein are *“The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily,”* *“The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code,”* and *“The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency.”*

We transmitted a draft copy of the report to the Board of Licensed Dietitians on June 2, 2021. We held an exit conference on June 14, 2021. We received the agency response on June 28, 2021.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

CONTENTS

Executive Summary 7

Issue 1: The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily 11

Issue 2: The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of the West Virginia Code 21

Issue 3: The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency 31

List of Tables

Table 1: Comparison of CDR Requirements to Board Requirements 12

Table 2: Degree of Dietetic Regulations by State As of March 2021 15

Table 3: Board of Licensed Dietitians Cash Balances FY 2017-2019 23

Table 4: Dietitian Licensure Fees for West Virginia and Surrounding States 23

Table 5: Summary of Board Complaints FY 2017 through 2019 24

Table 6: Expected Revenue vs. Actual Revenue FY 2017-2019 27

Table 7: Required and Expected Expenditures FY 2017-2019 28

Table 8: West Virginia State Board of Licensed Dietitians Website Evaluation Score 31

Table 9: Website Evaluation Score by Category 32

List of Figures

Figure 1: Malpractice Incident Rate by Population 18

List of Appendices

Appendix A: Transmittal Letters 35

Appendix B: Objectives, Scope and Methodology 37

Appendix C: Website Criteria Checklist and Points System 39

Appendix D: Agency Response 43

EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a Regulatory Board Review of the West Virginia Board of Licensed Dietitians (Board) pursuant to West Virginia Code §4-10-10(b)(3). Objectives of this audit were to assess the continued need for the Board, its compliance with the general provisions of Chapter 30 and other applicable laws and evaluate the Board's website for user-friendliness and transparency. The issues of this report are highlighted below.

Frequently Used Acronyms

PERD – Performance Evaluation and Research Division
CDR – Commission on Dietetic Registration
CSR – Code of State Rules
RD – Registered Dietitian
LD – Licensed Dietitian
PEIA – Public Employees Insurance Agency
MNT – Medical Nutrition Therapy
NPDB – National Practitioner Data Bank
OASIS – Our Advanced Solution with Integrated Systems

Report Highlights:

Issue 1: The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily.

- West Virginia licensure duplicates the national credential.
- Adequate public protection exists without a regulatory board.
- Complaints are infrequent.
- The Degree of regulation varies by state.
- The Legislative Auditor has previously recommended termination of the Board.

Issue 2: The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code.

- The Board is financially self-sufficient.
- The Board has established continuing education requirements.
- The Board has taken steps to reduce the risk of fraud.
- The Board is aware of handicap accessibility needs.
- The Board's rules generally protect the public.

Issue 3: The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency.

- The Board's website needs additional features and content to enhance user-friendliness and transparency.
- There is a need for state government website standardization.

PERD Response to Agency Response

On June 28, 2021, PERD received a written response from the board president of the Board of Licensed Dietitians via email, which can be found in Appendix D. The Board indicated that it is committed to correcting valid deficiencies identified by the recommendations of the report. However, the Board disagreed with the Legislative Auditor's recommendation to terminate the Board.

Agency Response: *Currently, our Board employs one part-time employee. The remaining members volunteer their time. This illustrates the commitment the members have to provide to the public a state agency to verify a licensed dietitian's competency.*

PERD Response: West Virginia Code §30-1-11(a) provides for board member compensation. It states that, "Each member of every board in this chapter is entitled to receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law." As such, board members are not expected to volunteer their time in executing their official duties. Furthermore, the Board verifies dietitian competency simply by confirming he or she possesses the RD credential.

Agency Response: *This past year during the Covid-19 pandemic has been a struggle for many agencies, including ours. It is our belief that we did not have the number of complaints submitted due to this pandemic but we successfully set up our Administrative Assistant to work remotely and maintain continuity of business operation. In addition, we continued our Board meetings (virtually).*

PERD Response: PERD acknowledges the unique challenges posed to all state agencies by the COVID-19 pandemic. However, the scope of the disciplinary review was between fiscal years 2017 and 2019. The pandemic did not begin until fiscal year 2020. The noted pattern of few complaints is long-standing and not attributable to the pandemic, as our review only considered complaints submitted before June 30, 2019. This pattern was noted in prior PERD reports as well.

Agency Response: *Registered dietitian nutritionists practicing in West Virginia are "health care practitioners" under West Virginia law and by virtue of being included in that term, RDNs are immediately integrated into the West Virginia health care regulatory and payment structure in hundreds of ways. Licensure is a prerequisite to being included in the definition of "health care practitioner" in West Virginia, so without the ability to get licensed, West Virginia RDNs would no longer be considered a "health care practitioner" for purposes of providing telehealth or obtaining health insurance reimbursement.*

PERD Response: This statement is incorrect. Under W. Va. Code §16-1A-3, the definition of health care practitioner is a person "required to be credentialed." By rule (CSR §64-89-3.5), credential includes "licensed, certified, or otherwise authorized to provide health care services." Therefore, if the Legislature eliminates the Board and statutorily creates title protection requiring an individual must be certified by the Commission on Dietetic Registration to practice dietetics, then dietitians would remain credentialed and defined as health care practitioners. Also, both PEIA and Medicaid indicated the national RD credential is a sufficient basis to determine eligibility for insurance reimbursement. Moreover, PERD asked the Board, "...does state licensure offer value to licensees and the public, regarding insurance reimbursement of services?" The Board President responded, "Not regarding insurance reimbursement."

Agency Response: *Eliminating dietetics licensure would not only wreak immediate havoc on hospital interdisciplinary teams, state facility regulations, health insurance plans and reimbursement policies, the provision of services via telehealth, and a multitude of other aspects of the health care system, it would*

also drastically limit the duties RDNs can undertake and the care they can provide as previously authorized services now become illegal for them to provide.

PERD Response: It should be noted that elimination of licensure would not “wreak immediate havoc” on any aspect of healthcare. Eliminating the Board would not affect the RD scope of practice once the Legislature codifies title protection and certification by the Commission on Dietetic Registration as the required credential. There is simply no need for a board to enforce title protection and act as a rubber stamp for the CDR credential. A registered dietitian would remain a health care practitioner with a scope of practice as currently codified in West Virginia Code. In addition, as previously noted, elimination of licensure would not prevent reimbursement from insurance.

Agency Response: *The Board was not aware of the Office of the Legislative Auditor’s assessment tool that they developed to evaluate West Virginia’s state agency websites (Appendix C Website Criteria Checklist and Points System).*

PERD Response: PERD has used this assessment tool for over a decade, and it is publicly available in published regulatory board reviews.

Recommendations

1. *The Legislature should consider termination of the Board of Licensed Dietitians and establish title protection for dietitians and nutritionists by statute alone.*
2. *If the Board is continued, the Legislature should consider defining more specific practices in defining the scope of practice for licensed dietitians and nutritionists.*
3. *The Board should maintain a register of applicants with all information specified in W. Va. Code §30-1-12.*
4. *The Board should ensure it handles complaints in compliance with W.Va. Code §30-1-5.*
5. *The Legislative Auditor recommends the Board make improvements to its website to provide more transparency and user-friendliness for online public users.*
6. *The Legislative Auditor recommends creation of a central design standard for state websites, including the use of the .gov domain.*

ISSUE 1

The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily.

Issue Summary

The Legislative Auditor recommended termination of the Board of Licensed Dietitians (Board) in 1999 and in 2000. In 2001, the Board was terminated and had a year to wind down its operation. However, during the 2002 second extraordinary session, the Board was re-established. In 2010, the Legislative Auditor recommended eliminating the Board and requiring a lesser form of regulation such as certification or registration. This current audit report reiterates the recommendation that the Board be terminated. The Board's primary regulatory function is title protection in which by law (§30-35-1(c)) any individual may furnish nutrition information on food, food materials or dietary supplements or engage in explanation of such products to customers, as long as he or she does not use the title "dietician" or "licensed dietician." Moreover, the Board fully duplicates the Commission on Dietetic Registration (CDR), which is a national regulatory organization over dietitians. The Legislative Auditor finds that the Board primarily verifies that West Virginia dietitians are in compliance with the CDR and issues or renews a state credential. The Legislative Auditor concludes that the CDR offers adequate protection to the citizens of the state, and implementing title protection through a stand-alone board adds unnecessary costs to those practicing dietetics or those who seek to enter the profession. **Therefore, the Legislative Auditor recommends that the Legislature consider terminating the Board and provide title protection by statute alone.**

The Legislative Auditor Has Previously Recommended Termination of the Board.

The Performance Evaluation and Research Division (PERD) previously reviewed the West Virginia Board of Licensed Dietitians in 1999, 2000, and 2010. The primary finding of the 1999 review was the Board provided no demonstrable net benefit to West Virginia's public. In each review, the Legislative Auditor recommended the termination of the Board, consolidation of the Board, or use of a lesser form of regulation. The Board was terminated in 2001 but reestablished during the 2002 second extraordinary session through passage of House Bill 204. The Legislative Auditor sees no reason to change the previous recommendations. There is no compelling public need for a board that mirrors the national credential by simply verifying a person's compliance with the CDR, and provides title protection. The risk of harm is relatively

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The Board was terminated in 2001 but reestablished during the 2002 second extraordinary session through passage of House Bill 204.

low, the CDR has a complaint process, other safeguards exist that would protect the public in the absence of the Board, and title protection can be established statutorily. **The Legislative Auditor maintains that a stand-alone board regulating dietitians is unnecessary and unduly costly for the profession.**

West Virginia Licensure Duplicates the National Credential and Provides Minimal Public Protection Beyond the National Certifying Organization.

The primary requirement for West Virginia licensure is an active registration through the Commission on Dietetic Registration.

While W.Va. Code §30-35-7 and WV Code of State Rules (CSR) §31-1 outline the licensure requirements for dietitians, the primary requirement for West Virginia licensure is an active registration through the Commission on Dietetic Registration (CDR) within the Academy of Nutrition and Dietetics. This problem was also identified in the 2010 review of the Board. As shown in Table 1 below, the Board’s requirements for licensure largely duplicate CDR requirements to become a registered dietitian. Additionally, the CDR and the Board have complaint processes with similar potential outcomes.

**Table 1
Comparison of CDR Requirements to Board Requirements**

Requirement	CDR	Board
Education	Baccalaureate Degree	Same as CDR
Clinical Training	Pre-Professional Program	Same as CDR
Testing	Passage of CDR Exam	Same as CDR
Continuing Education	75 hours over 5 years (15 hours annually)	10 hours annually
Disciplinary Power	Possible actions: <ul style="list-style-type: none"> • Reprimand • Mandatory education program • Probation • Suspension of membership or credential • Expulsion from membership • Revocation of credential 	Possible Sanctions: <ul style="list-style-type: none"> • Reprimand • Mandatory education program • Probation • Suspension of license • Revocation of license • Denial of licensure • Refusal to renew license • Fine between \$500 and \$1000 • Period of charitable service

Source: WV CSR §31-4 and Commission on Dietetic Registration Disciplinary and Ethics Complaints Policy

In fact, the board chair stated,

“In order to practice dietetics in this state you must be licensed; in order to be licensed you must be registered by the commission on dietetic registration.”

Furthermore, the Board neither administers its own exam (on professional competence or West Virginia-specific provisions) nor imposes more stringent requirements on prospective licensees. **Essentially, a person must obtain a duplicative credential to legally practice dietetics in West Virginia.** Licensure in West Virginia has no requirements beyond those of the nationally recognized Registered Dietitian (RD) credential. Additionally, the CDR’s continuing education requirements exceed those of the Board.

The Board neither administers its own exam (on professional competence or West Virginia-specific provisions) nor imposes more stringent requirements on prospective licensees.

The Board could distinguish the Licensed Dietitian (LD) credential by imposing more stringent licensing requirements; however, such action is unnecessary because the RD credential is adequate public protection. The RD credential is a nationally recognized standard of competence. The Board maintains similar requirements for LDs as those required by the CDR for RDs, and the Board has determined these requirements to be sufficient to protect the public. **Duplication of the national credential creates a barrier to practice dietetics in West Virginia and imposes unnecessary fees in excess of what is charged by the CDR.**

Furthermore, the Board has noted the primary difference between the Board and the Academy is *“the Board has a complaint process, whereas the Academy does not.”* The Board has used this as justification for its continued existence as late as May 2020. However, the Academy established a complaint process for handling ethics complaints and violations in January 2018. The Academy states it will bear the costs of travel and a one-night hotel stay for the complainant and respondent; this ensures that, while it is a nongovernmental process based out-of-state, the complaints process is accessible should a member of the public wish to take credential-based action against a practitioner. While complaints handled through a private organization differ from state processes, the Academy’s complaint process offers the public a means of addressing improper professional practice without taking more formal legal action. **The Legislative Auditor concludes that since the Academy has established a complaints process, the function of the Board is fully duplicative and provides no additional protection. The Board primarily exists to verify the national credentials of applicants in order to impose a state license which unnecessarily adds to the cost of practicing dietetics in the state.**

The Board primarily exists to verify the national credentials of applicants in order to impose a state license.

The Infrequent Number of Complaints Suggests a Low Risk of Harm to the Public.

The Legislative Auditor finds that the Board does not receive many complaints (see Issue 2 for further discussion). Four complaints were received during the FY 2017-2019 period, all dealing with title protection issues plus one administrative issue initiated by the Board counted by the Board as a complaint for a licensee's failure to respond to a continuing education audit. A 2010 PERD audit reported one complaint received during the FY 2006-2009 period, which did not require an investigation and the situation was handled by a clarification letter sent from the Board to the contracting dietitian. No complaints were received during the FY 1996-2000 period as reported in 1999 and 2000 PERD reports. While receiving a small number of complaints may reflect the effectiveness of a board, it may also indicate that the risk of harm from a profession is relatively low and issues can be resolved by employers or by the national regulatory agency, which provides the public with adequate protection. Furthermore, hospitals, health and fitness facilities, nursing facilities, and doctors, who often need to give referrals for dietitian services, provide an adequate layer of oversight of these professions.

Hospitals, health and fitness facilities, nursing facilities, and doctors, who often need to give referrals for dietitian services, provide an adequate layer of oversight of these professions.

While Most States Regulate Dietitians, the Degree of Regulation Varies.

Table 2 below shows that only two states, Arizona and Michigan, do not regulate the profession of dietetics. However, for the states that regulate dietitians, the degree of regulations varies. Twenty-seven (27) states, plus the District of Columbia, and Puerto Rico mandate that the practice of dietetics is exclusive to licensure, which prohibits anyone from practicing dietetics unless they are licensed by their state, and no person may use certain titles such as dietitian or nutritionist unless they are licensed. This is the most restrictive form of regulation.

A less restrictive form of regulation is title protection. There are 21 states, including West Virginia, that provide title protection, which allows anyone to offer nutritional or dietetic advice, market or distribute food products or dietary supplements and explain their use, or provide weight control services, as long as they do not hold themselves out to be a dietitian or nutritionist licensed or certified by the state. Thirteen (13) of the 21 states that provide title protection do so through a board within a state public health agency. West Virginia and Wyoming are the only states that use a stand-alone board.

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Three (3) of the 21 title-protection only states, California, Colorado, and Virginia, provide title protection using only statutory language that prohibits anyone to represent himself or herself to be or

advertise to be a dietitian or nutritionist unless he or she has the statutory qualifications. For example, the state of Virginia prohibits a person to hold himself or herself out to be a dietitian or nutritionist unless such person has a degree in nutritional sciences, human nutrition, public health nutrition, food and nutrition or dietetics, and has an active registration with the CDR or another national credentialing dietetic organization, or is licensed by another state. Any person who willfully violates the provisions of the law is guilty of a Class 3 misdemeanor. California and Colorado have similar statutory language.

West Virginia can continue to provide title protection for the dietetic profession without the additional cost of a stand-alone board.

PERD finds that West Virginia can continue to provide title protection for the dietetic profession without the additional cost of a stand-alone board. Implementing title protection through a board adds unnecessary costs to those practicing dietetics or who seek to enter the profession. **Therefore, the Legislative Auditor recommends that the Legislature consider terminating the Board and provide title protection by statute alone.**

Table 2
Degree of Dietetic Regulations by State
As of March 2021

Degree of Regulation	States, Including the District of Columbia and Puerto Rico	Number
Scope of Practice Exclusive to Licensure	Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee	29
Title Protection (Scope of Practice Not Exclusive to Licensure/ Certification)	<u>With Board or Agency:</u> Alaska, Connecticut, Hawaii, Idaho, Indiana, Massachusetts, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Vermont, Washington, West Virginia , Wisconsin, Wyoming	18
	<u>By Statute Only:</u> California, Colorado, Virginia	3
Unregulated	Arizona, Michigan	2

Source: Academy of Nutrition and Dietetics.

Insurance Carriers Can Recognize the National Credential; Therefore, If the Board Is Terminated, Insurance Coverage Will Not Be Affected.

The audit team also interviewed the chief financial officer of the Public Employees Insurance Agency (PEIA) regarding its requirements for coverage of the services provided by dietitians. PEIA indicated that it does **not** require dietitians to be both registered with the CDR and licensed in his or her state of practice. PEIA requires providers possess only one credential. Furthermore, PEIA stated that the registered dietitian credential is sufficient to determine eligibility for reimbursement in the absence of state licensure.

PEIA stated that the registered dietitian credential is sufficient to determine eligibility for reimbursement in the absence of state licensure.

The absence of state licensure has been accounted for in federal legislation as well. The Consolidated Appropriations Act, 2001, allows alternate criteria for Medicare coverage of services provided by dietitians to be established in states that do not license dietitians. Medicaid programs, in some cases, provide coverage for dietitian services. Consequently, the audit team requested an opinion from the Department of Health and Human Resources on Medicaid coverage of medical nutrition therapy in the event licensure were eliminated in West Virginia. The Department of Health and Human Resources stated elimination of licensure would not prevent Medicaid coverage as long as dietitians had another acceptable credential. Medicaid in West Virginia would move to the national registration to enroll dietitian providers and this would not impact medical coverage other than potentially expanding the number of providers enrolled. Medicaid would simply need to update provider enrollment criteria for dietitians. **The Legislative Auditor concludes that eliminating the Board will not prevent insurance reimbursements to continue.**

Improper Medical Nutrition Therapy Can Be a Source of Harm to the Public But Adequate Public Protection Exists Without a Regulatory Board.

The primary scope of practice for licensed dietitians is the provision of medical nutrition therapy (MNT). Licensed dietitians may also perform other nutrition-related services to promote the general health, well-being and the prevention of chronic diseases or conditions (W. Va. §30-35-2a). W.Va. Code §30-35-2(e) describes “medical nutrition therapy” or “nutrition therapy” as “*nutritional diagnostic assessment and nutrition therapy services for the purpose of disease management.*” At the federal level, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 defines medical nutrition therapy services as “*nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional...pursuant to a referral by a physician.*” The

Elimination of licensure would not prevent Medicaid coverage as long as dietitians had another acceptable credential.

key element distinguishing MNT from general nutrition advice in these definitions is its use to treat disease.

Some basic protections for the public against inappropriate MNT exist regardless of state licensure. First, diagnosis of disease is not within a dietitian's scope of practice. Secondly, for a dietitian to provide MNT for disease management, a person must be diagnosed by a qualified healthcare professional. Therefore, MNT for the purpose of disease management should have the involvement of a qualified healthcare professional. The risk of inappropriate MNT can be further reduced with a well-defined scope of practice for dietitians. However, the scope of practice in statute is simply two sentences allowing the provision of MNT and other nutrition-related services to promote the general health, well-being and the prevention of chronic diseases or conditions (§30-35-2a(a)). The scope of practice does not list specific types of actions that are prohibited, such as diagnosing or prescribing treatment beyond nutrition-related services or products. **If the Board is continued, the Legislature should consider defining specific prohibited practices in defining the scope of practice for licensed dietitians.**

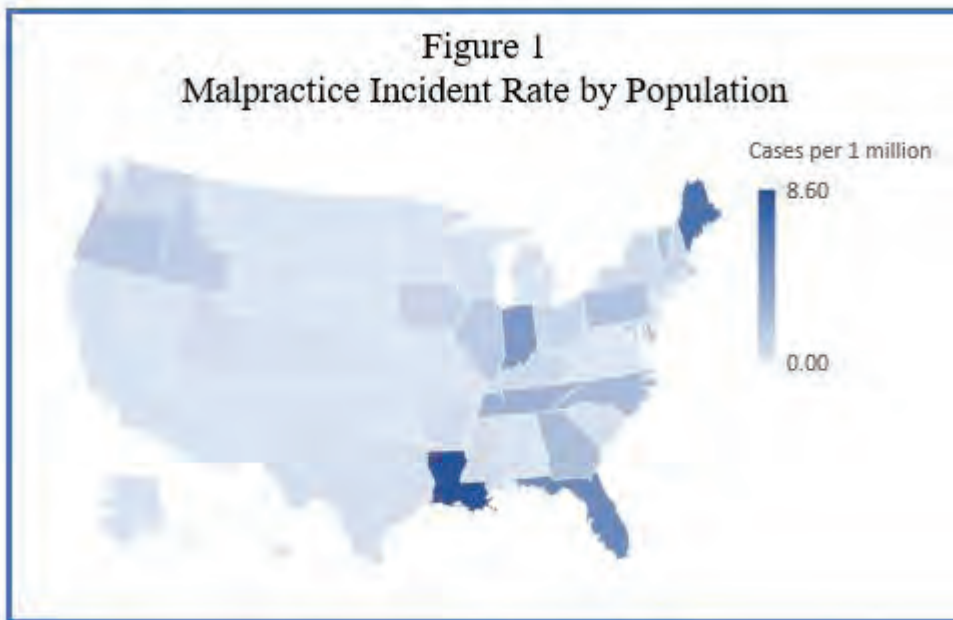
Some basic protections for the public against inappropriate MNT exist regardless of state licensure.

Other safeguards against inappropriate or unethical practices by a dietitian include requirements to receive medical insurance reimbursement. Insurance coverage of a dietitian's services is often contingent on diagnosis of a specific disease and referral or prescription by a physician. While it is possible to receive nutrition services without seeking insurance reimbursement or a diagnosis, this would require someone willing to pay the cost of uncovered services and unwilling to consult an appropriate healthcare professional. The patient has a financial incentive to comply with his or her insurance carrier's requirements for reimbursement. The insurance reimbursement requirements and the financial incentives for patients helps to ensure proper diagnosis and a review by the insurance carrier that MNT being provided is consistent with the diagnosed disease.

PERD found no record of malpractice or adverse actions against nutrition or dietetic professionals in 20 states including West Virginia since 2010.

Poor nutritional advice can be harmful to a patient's health. There are circumstances where a dietitian could do severe, immediate, and irreparable harm to a critically ill patient resulting in allergic or adverse reactions to inappropriate MNT. However, the audit team reviewed the National Practitioner Data Bank (NPDB) which provides information concerning malpractice cases taken against various professions. PERD gathered reports that listed licensed nutritionists or dietitians. The NPDB indicates the profession, the license, and the state in which the malpractice or adverse action case originated. Figure 1 shows the results of PERD's compilation adjusted for population. Figure 1 measures malpractice cases per million residents, with Louisiana having the greatest rate, at 8.6 cases per million residents (per the 2010 US Census). PERD found no record of malpractice or adverse actions against nutrition or dietetic professionals in 20 states including West Virginia since 2010. However, in other states there have been malpractice claims alleging outcomes

including minor temporary injuries, major temporary injuries, significant permanent injuries, and death. Only 9 states have greater than 10 claims since 2010. Only three states have greater than five (5) malpractice cases per million residents, Louisiana, Maine (6.78), and Florida (5.27). Large numbers of malpractice cases appear to be concentrated in relatively few states, while significantly more states have no reported claims. Lack of malpractice incidents could reflect the effectiveness of a regulatory body or other institutionalized safeguards.



It is unclear what direct harm is posed to the public that the Board can appropriately address. The Board acknowledged its options are limited when a respondent is not licensed by the Board. Except for a complaint the Board initiated for failure to verify continuing education upon request, the Board did not handle any complaint against a licensee between FY 2017-2019. Two complaints against unlicensed individuals were resolved by simple wording changes concerning their services. As the 1999 PERD report on the Board noted, “Were licensure needed, the public would receive protection from services, not titles.”

It is unclear what direct harm is posed to the public that the Board can appropriately address.

The 1999 PERD report on the Board stated:

“While incidents are described in which persons were harmed as a result of receiving poor advice, they do not represent issues which could have reasonably been prevented by the West Virginia Board...examples of ‘quackery’ can be made in which persons may be violating other laws and scopes of practice of other

licensed professions, defrauding consumers and other activities which would be illegal regardless of the Board's existence (emphasis added).”

The Board's Primary Regulatory Function Is Title Protection.

The prescriptions and treatments dietitians provide are generally not restricted. While specialized treatment such as parenteral or enteral feeding may be limited, the general actions a dietitian can advise are not. Access to food is not legally restricted; people are not prohibited from purchasing food that could harm their health or the health of others. For example, tree nuts and peanuts are widely available despite the prevalence of severe allergies to them, as are foods with little nutritional value. Consumers can maintain poor diets entirely by choice. While false experts providing incorrect information is a concern, such advice would typically be followed of one's own volition and the same ends could be legally achieved without consultation of a claimed expert.

W.Va. Code currently protects the title of “dietitian” and “licensed dietitian” for RDs who practice MNT. W.Va. Code §30-35-1(c) provides that individuals are permitted to furnish nutrition information on food and dietary supplements while marketing and distributing such products as long as they do not represent themselves as dietitians or licensed dietitians. The Board further stated, “*The WVBOARD does not have oversight of the title 'nutritionist'.*” Other states protect the titles nutritionist and dietitian as used alone or in any combination with the terms “licensed,” “certified,” or “registered.” Letters are also protected by some states such as “L.D.,” “C.D.,” and “C.N.” for licensed or certified dietitian, and certified nutritionist.

West Virginia Code, board rules, and board actions indicate the Board is primarily limited to addressing improper use of titles or restricting the use of specific terms. Any title that implies state authorization to practice dietetics varies, although only “dietitian” and “licensed dietitian” are explicitly protected. However, W.Va. Code §30-35-1(c) allows unlicensed individuals to provide certain nutrition information and explanations, as long as the individual does not represent himself or herself as a dietitian or licensed dietitian. In some instances it is unclear as to what services and titles are restricted, even should an individual use a term such as “nutritionist” that is not explicitly protected.

Based on actions taken in response to two recent complaints, as discussed in Issue 2, the Board has taken action against unlicensed practitioners who practice medical nutrition therapy, which is distinguished by its individualized use to treat or manage disease. However, the Board appears to make this distinction based on words

Consumers can maintain poor diets entirely by choice.

used to describe a service rather than the service itself. In other words, it is not so much the services that are provided as it is the use of a title. The two complaints were resolved by requiring the persons to change phrases within advertisements. The issue was title protection but the actual services provided by these individuals were unaffected.

Conclusion

Given that there is limited risk of harm associated with the practice of dietetics, a national regulatory body exists that provides adequate public protection, and the industries in which dietitians practice offer an additional layer of protection, the Legislative Auditor concludes that eliminating the Board would not adversely affect public safety. The Board's primary regulatory function is title protection, and the Board is duplicative of the national Commission on Dietetic Registration. Since title protection can be established by statute and the Board is simply confirming a national credential, maintaining a stand-alone board is a redundant layer of government that unnecessarily imposes additional costs to practice dietetics in the state. **Therefore, the Legislative Auditor recommends the Legislature consider termination of the Board and establish title protection statutorily.**

Recommendations

1. *The Legislature should consider termination of the Board of Licensed Dietitians and establish title protection for dietitians and nutritionists by statute alone.*
2. *If the Board is continued, the Legislature should consider defining more specific practices in defining the scope of practice for licensed dietitians and nutritionists.*

ISSUE 2

The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code.

Issue Summary

The primary purpose of the Board of Licensed Dietitians is to protect West Virginia citizens through the licensure and regulation of dietitians. The Board reviews applications made for licensure and it licenses only individuals qualified by West Virginia Code and rule to practice medical nutrition therapy in West Virginia. The Board meets the criteria for financial self-sufficiency and its rules, as written, generally protect the public.

The Board Complies With Most General Provisions of Chapter 30.

The West Virginia Board of Licensed Dietitians is compliant with most of the general provisions of Chapter 30 of the West Virginia Code. These provisions are important for the effective operation of regulatory boards. The Board is compliant with the following provisions:

- The Chair, Executive Director, or Chief Financial Officer must annually attend an orientation session conducted by the State Auditor (§30-1-2a(c)(2));
- Each Board member shall attend at least one orientation session during each term of office (§30-1-2a (c)(3));
- The Board has adopted an official seal (§30-1-4);
- The Board meets at least once annually (§30-1-5(a));
- Rules have been promulgated specifying the investigation and resolution procedure of all complaints (§30-1-8(h));
- The Board must be financially self-sufficient in carrying out its responsibilities (§30-1-6(c));
- The Board has established continuing education requirements (§30-1-7a);
- The Board has submitted the Annual Report to the governor and legislature describing transactions for the previous two years (§30-1-12(b));
- The Board has prepared and maintained a Roster of all licensees which includes name, and office address (§30-1-13)¹;
- The Board has procedures to investigate and resolve complaints which it receives to comply with (§30-1-5 (c));

The West Virginia Board of Licensed Dietitians is compliant with most of the general provisions of Chapter 30 of the West Virginia Code.

¹ The roster provided by the Board lacks licensees social security numbers and office addresses but otherwise fulfills statutory requirements. The Board chair stated the Board maintains a separate database that includes social security numbers and addresses.

- Every board shall provide public access to the record of the disposition of the complaints which it receives in accordance with the provisions of chapter twenty-nine-b of this code, and shall provide public access on a website to all completed disciplinary actions in which discipline was ordered. (§30-1-5 (d)). The Board had no disciplinary actions during the audit period, excepting a refusal to renew a license due to a licensee's failure to respond to a continuing education audit.

The Board has not complied with the following Chapter 30 provisions:

- The Board should maintain a register of all applicants with the appropriate information specified in code. Specifically, the Board should include application dates, education and other qualifications, place of residence, and examination information. While the Commission on Dietetic Registration (CDR) maintains information on the education and examination of dietitians, the Board should also maintain this information as it is required by code.
- The Board has not complied with some of the public access requirements as specified by (§30-1-12(c)). While the Board's contact information is available online, it is not listed in the Charleston area phone directory as required by code.

The Board maintains an end-of-year cash balance in excess of one year of expenditures.

The Board Is Financially Self-Sufficient.

The Board maintains an end-of-year cash balance in excess of one year of expenditures (see Table 3). *West Virginia Code §30-1-6(c)* requires boards to be financially self-sufficient. It is the Legislative Auditor's opinion that cash reserves in the amount of one to two times a board's annual expenditures are an acceptable level.

Table 3
Board of Licensed Dietitians Cash Balances
FY 2017-2019

Fiscal Year	Beginning Cash Balance	Revenue	Disbursements	Ending Cash Balance
2017	\$56,956	\$25,000	\$26,431	\$55,525
2018	\$55,525	\$38,230	\$30,719	\$63,161
2019	\$63,161	\$40,700	\$33,552	\$71,809
Average	\$58,547	\$34,643	\$30,234	\$63,498

Source: West Virginia OASIS (WV-FIN-GL-151).

The Board's annual revenues come from fees for application, licensure, and renewals. Annual disbursements include per diem, staff salary, utilities, rent, supplies and travel costs. According to a roster provided by the Board in February 2020, the Board has 519 licensees.

West Virginia and surrounding states' licensure and renewal fees are listed in Table 4 below. Virginia is the only neighboring state that does not currently license dietitians. West Virginia's annual cost for licensure does not exceed that of surrounding states which license dietitians. States use different titles, or titles in addition to dietitian (such as nutritionist). While the meanings of these terms can differ by state and organization, for the purpose of this analysis, these terms are considered equivalent, both referring to the profession that practices MNT.

Table 4
Dietitian Licensure Fees
for West Virginia and Surrounding States

State	Initial Fee	Renewal Fee	Renewal Cycle	Annual Cost
Kentucky	\$50.00	\$50.00	Annual	\$50.00
Maryland	\$300.00	\$250.00	Biennial	\$125.00
Ohio	\$225.00	\$180.00	Biennial	\$90.00
Pennsylvania	\$95.00	\$71.00	Biennial	\$35.50
Virginia*	N/A	N/A	N/A	N/A
West Virginia	\$75.00	\$75.00	Annual	\$75.00

Source: Websites of State licensing agencies.
**The state of Virginia does not regulate dietitians.*

The Board's Investigation and Resolution of Complaints Does Not Fully Comply with Statute.

The audit team reviewed the Board's disciplinary actions for FY 2017-2019. On its website, the Board lists five complaints. The Board's actions regarding these complaints are summarized in Table 5. As indicated in Table 5, the complaint files provided by the Board were incomplete, as they did not contain documentation of board-required actions. For example, in multiple cases, the Board did not send required notifications to complainants and respondents or status updates at six months (W.Va. Code §30-1-5(c)). Furthermore, all complaints with open and closed documentation exceeded the 18-month limit for complaint resolution (W.Va. Code §30-1-5(c)).

In multiple cases, the Board did not send required notifications to complainants and respondents or status updates at six months. All complaints with open and closed documentation exceeded the 18-month limit for complaint resolution.

Table 5
Summary of Board Complaints
FY 2017 through 2019

Complaint	Status Updates	Date Opened	Date Closed	Days Open
01-FY2016	No	9/4/2016	10/22/2018	778
02-FY2016	Unknown	11/28/2016	Unknown	Unknown
02-FY2016 (Reopened as 01-FY2018)	Complainant only	12/4/2017	4/2/2019	484 OR 855
01-FY2017	Unknown	6/15/2017	Unknown	Unknown
02-FY2018*	Not Applicable	11/30/2017	8/24/2019	632

Source: PERD analysis of Board complaint files.

*This complaint was an administrative issue regarding the continuing education audit.

However, it should be acknowledged that in FY 2016, all board members were replaced, due to the death of one long-standing member and the resignation of the others. During that period, the Board's only employee resigned as well. Consequently, both the board members and staff had limited experience with board operations. This was likely exacerbated by the Board's change of office location, which also occurred during that time. The current board chair stated, "We experienced a gap in the process to properly track complaints and readdressed the one that was identified as not complete."

In addition, PERD’s review of the Board’s complaints files found numerous administrative issues. For example, two complaints are listed in FY 2016 when they were opened in FY 2017. In one case the original complaint was not included in the file, so the audit team could not identify the complainant. While the respondent submitted a response on October 20, 2016, the complaint was not closed until 2018, with no documentation of correspondence in the intervening period. Additionally, a verbal complaint without documentation and an administrative issue regarding a licensee’s failure to respond to a continuing education audit are also included as official complaints.

The Board does not have oversight of the use of the nutritionist title.

The Board’s complaint files also involved individuals not licensed by the Board who represent themselves as nutritionists or nutrition experts. The Board does not have oversight of the use of the nutritionist title. However, the Board acts because these individuals ostensibly represent the services they provide as MNT, explicitly or by implication, which is within a dietitian’s scope of practice. Since the Board regulatory function involves title protection, the Board’s determination if MNT was provided is based on verbiage in written documents rather than acts performed. For example, the Board handled a complaint against an individual who called herself a “nutrition coach” and offered “nutrition counseling.” While the service was referred to as “nutrition coaching” in May 2020, the description of the service is the same as that of “nutrition counseling” in the complaint file provided by the Board. Since MNT is not broadly defined in statute, many acts can be construed as MNT and therefore within a dietitian’s scope of practice. This could result in selective, anti-competitive actions against nutrition professionals who are not dietitians or practice MNT. **The Legislative Auditor determines that if the Board is continued, the Legislature should consider specifying in Code a broader scope of practice for dietitians and MNT and including nutritionist as a protected title.**

Since MNT is not broadly defined in statute, many acts can be construed as MNT and therefore within a dietitian’s scope of practice. This could result in selective, anti-competitive actions against nutrition professionals who are not dietitians or practice MNT.

The Board Has Established Continuing Education Requirements.

The Board has established continuing education requirements for its licensees. W.Va. CSR §31-5-7.1.1 states that licensed dietitians shall accrue at least 20 hours of continuing education biennially. However, the rule providing guidelines for continuing education has not been updated since 2001. Furthermore, it should be noted the CDR requires RDs report continuing education credits to maintain their credential; currently, the CDR requires 75 hours every 5 years, or an average of 15 hours each year. The Board requires licensees to have the RD credential. As the Board’s requirement is less than that of the national credential and the

same courses can be used to maintain the national credential, the Board's continuing education requirement is redundant and offers no additional protection to the public.

The rule also contains a list of pre-approved continuing education providers as well as criteria for other continuing education providers to become approved. Continuing education is required to relate "directly to professional growth and development." The Board verifies compliance with continuing education requirements by randomly auditing 10 percent of licensees, based on the licensee's year of initial licensure (odd or even). If the licensee does not meet the Board's requirements, the licensee is ineligible for license renewal. The Board has prohibited a licensee from renewing her license in the past for failure to respond to its continuing education audit.

The audit team verified compliance with the Board's continuing education audit procedures by requesting the continuing education files and documentation for the licensees 2019 continuing education audit. The Board provided a list of all licensees who could be audited and highlighted those selected. They sent these individuals letters requesting documentation of continuing education. For 2019, 24 individuals were audited for compliance. The audit team reviewed continuing education certificates for each audited individual and found all selected licensees fulfilled the Board's continuing education requirements.

While the Board only has one staff member, it has taken steps to reduce the risk of inappropriate use of resources.

Although the Board Has Only One Employee, It Has Taken Steps to Reduce the Risk of Inappropriate Use of Resources.

While the Board only has one staff member, it has taken steps to reduce the risk of inappropriate use of resources. The Board is using the State Treasurer's Lockbox system, which is an online renewal process. Approximately 99 percent of licensees renew online. Proper internal control would have adequate segregation of duties in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue. With only one employee, the Board cannot properly segregate duties. However, the Board's use of an online renewal system, helps mitigate the risk of fraud.

As an example of appropriate segregation of duties for handling cash, the West Virginia State Treasurer specifies in its Cash Receipts Handbook for West Virginia Spending Units, "*Unless otherwise authorized by the State Treasurer's Office, an individual should not have the sole responsibility for more than one of the following cash handling components:*

- *collecting,*
- *depositing,*
- *disbursement, and*
- *reconciling statements.”*

While establishing a secure system of receiving license fees online and encouraging its use helps reduce the risk of fraud, lack of staff remains a concern. PERD examined the Board’s revenue and expenditures to assess the risk of fraud and gain reasonable assurance that fraud has not occurred. For revenue, PERD calculated the minimum expected revenue for the Board by multiplying annual fees by the number of licensees. Actual revenues should be equal to or above expected revenues. Table 6 below compares expected and actual revenue for each year. The increase between 2017 and 2018 can be explained by a \$25 increase in licensing fees. In each year, actual revenue is higher than expected revenue. This suggests a low risk of fraud having occurred.

Fiscal Year	Number of Active Licensees	Annual Renewal Fee	Expected Revenue	Actual Revenue
2017	371	\$50	\$18,550	\$25,000
2018	424	\$75	\$31,800	\$38,230
2019	478	\$75	\$35,850	\$40,700

Source: PERD calculations based on Board records and OASIS reports (WV-FIN-GL-151).

Additionally, PERD evaluated the Board’s expenditures for FY 2017 through 2019 and determined that, on average, 90 percent of the Board’s expenditures consisted of expected and required expenditures. Table 7 below shows the annual percentage of expected expenditures out of all expenditures. The Legislative Auditor’s opinion is that when the Board’s required and expected expenditures are 90 percent or more of the Board’s total annual expenditures, the likelihood of fraud having occurred on the expenditure side is relatively low. However, if expected and required expenditures are significantly below 90 percent, then the likelihood of fraud and abuse occurring is greater. For the three fiscal years examined, the Board was at the threshold where there is a low likelihood of fraud. Required and expected expenditures in 2017 and 2019 were close enough to the 90 percent threshold that it was deemed unnecessary to conduct a detailed examination of expenditures.

For the three fiscal years examined, the Board was at the threshold where there is a low likelihood of fraud.

Table 7 Required and Expected Expenditures FY 2017-2019	
Fiscal Year	Percent of Required and Expected Expenditures
2017	88
2018	93
2019	88
Average	90
<i>Source: PERD calculations based on OASIS reports (WV-FIN-GL-151).</i>	

Board records show an awareness of the need for a safe and accessible office and document Board actions to this end.

The Board Is Aware of Handicap Accessibility Needs.

In the past, PERD reviewed regulatory board offices for handicap accessibility. Due to the COVID-19 pandemic, the audit team did not complete an ADA review of the Board of Licensed Dietitian’s office. However, Board records show an awareness of the need for a safe and accessible office and document Board actions to this end. In its FY 2016 and FY2017 annual report, the Board listed the following as a major accomplishment: *“The Board has moved the office to a ground level office building to allow handicap individuals to gain access to the office.”* In its November 14, 2017 meeting minutes, the Board noted it had safety and maintenance concerns at its previous location and that its new office “offers parking and easy walk-in access.” While these records cannot replace PERD’s ADA review, they demonstrate appropriate actions by the Board to accommodate adequate accessibility to the public.

The Board’s Rules Generally Provide for Protection of the Public.

PERD reviewed the rules promulgated by the Board and found that, as written, its rules are generally intended to protect the public and do not unduly favor the profession. The audit team’s review found only two rules of concern.

Specifically, CSR §31-1-5.1 further codified the need for dietitians in West Virginia to obtain the national registered dietitian credential, that West Virginia licensure duplicates. This requirement reflects W.Va. Code, but presents a second cost to dietitians who practice in West Virginia. To maintain the national RD credential, dietitians must pay the CDR \$70

annually. The cost of West Virginia licensure is \$75 annually. Since the national RD credential is an adequate indicator of qualification to practice medical nutrition therapy, state licensure is unnecessary, particularly as licensure mirrors the requirements of national registration and offers little to no tangible benefit to the public.

The second rule of concern is the Board's Code of Professional Ethics CSR §31-2, a legislative rule which places "other nutritional services" within the profession's scope of practice. This term is defined as "*nutrition related services to promote the general health, well-being and the primary prevention of chronic diseases or conditions based on sound scientific findings and/or research.*" This term is vaguely defined and does not describe specific practices, yet scopes of practice can be used to exclude unlicensed persons from performing certain activities. This term may be overly broad and could be construed to limit nutrition-related practices in West Virginia that are not dangerous to the public and do not require the supervision of a licensed dietitian. **The Legislative Auditor recommends the Board specifically define the practices it intends to restrict in the scope of practice and ensure prohibited acts are clearly communicated as such.**

Since the national RD credential is an adequate indicator of qualification to practice medical nutrition therapy, state licensure is unnecessary.

Conclusion

The Legislative Auditor finds the Board of Licensed Dietitians complies with most of the general provisions of Chapter 30 of the West Virginia Code. However, if the Board is continued, it should work to correct issues and inconsistencies noted in this report.

Recommendations

3. *The Board should maintain a register of applicants with all information specified in W. Va. Code §30-1-12.*
4. *The Board should ensure it handles complaints in compliance with W.Va. Code §30-1-5.*

ISSUE 3

The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency.

Issue Summary

The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia's state agency websites (See Appendix C). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 8 indicates the West Virginia Board of Licensed Dietitians (Board) integrates 48 percent of the checklist items in its website. The measure indicates that improvement is needed for the Board's website to be more user-friendly and transparent.

West Virginia Board of Licensed Dietitians (Board) integrates 48 percent of the checklist items in its website.

Table 8 West Virginia State Board of Licensed Dietitians Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Board 48%		
<i>Source: PERD review of the West Virginia State Board of Licensed Dietitians website as of January 28, 2020.</i>			

The Board's Website Scores Moderately Low in User-Friendliness and Transparency.

In order to actively engage with the agency online, citizens must first be able to access and comprehend the information on government websites. Therefore, government websites should be designed to be user-friendly. A user-friendly website is understandable and easy to navigate from page to page. Government websites should also provide transparency of an agency's operation to promote accountability and trust.

PERD staff reviewed the Board's website for both user-friendliness and transparency and found that the website needs enhancements in these areas (see Table 9). **The Board may want to consider adding more elements that could be beneficial to the public.**

Table 9			
Website Evaluation Score by Category			
Category	Possible Points	Agency Points	Percentage
User-Friendly	18	10	55%
Transparency	32	14	44%
Total	50	24	48%

Source: PERD staff’s review of the Board’s website as of January 28, 2020.

Also of concern is the Board’s use of a “.com” domain rather than a “.gov” domain. While there is no requirement for state and local governments to use the .gov domain, it is generally considered an accurate indicator of a government website, which in turn signifies legitimacy and authority. The ability to identify a site as legitimate is an important part of usability.

The Board’s Website Is Navigable, but Additional User-Friendly Features Should Be Considered.

The Board’s website is easy to navigate as there is a link to every page on the left of the website; however, the website lacks a site map, social media links, and a foreign language accessibility tool. According to the Flesch-Kincaid Reading Test, the average readability of the text is between an 8th and 10th grade reading level, which is slightly higher than the recommended 7th grade level for readability.

Of concern is the Board’s use of a “.com” domain rather than a “.gov” domain.

User-Friendly Considerations

Although some items may not be practical for this board, the following are some attributes that could improve user-friendliness:

- **Foreign language accessibility** - A link to translate all webpages into languages other than English.
- **Site Map** - A list of pages contained in a website that can be accessed by web crawlers and users.
- **Mobile Functionality** - The agency’s website is available in a mobile version.
- **Feedback Options** - A page where users can voluntarily submit feedback about the website or particular section of the website.
- **Online survey/poll** - A page where users can voluntarily submit feedback.

- **Social Media Links** - The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.
- **RSS Feeds** - This allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.

The Website Has Transparency Features but Improvements Can Be Made.

A website that is transparent should promote accountability and provide information for citizens about how well the Board is performing, as well as encouraging public participation. The Board's website has 44 percent of the core elements that are necessary for a general understanding of the Board's mission and performance. The Board's website contains important transparency features such as email contact information, its telephone number, and address.

The Board's website has 44 percent of the core elements that are necessary for a general understanding of the Board's mission and performance.

Although some items may not be practical for this board, the following are some attributes that could improve site transparency:

- **FOIA Information** - Information on how to submit a FOIA request, ideally with an online submission form.
- **Performance Measures/Outcomes** - A page linked to the homepage explaining the agency's performance measures and outcomes.
- **Job Postings/Links to Personnel Division Website** - The agency should have a section on the homepage for open job postings and a link to the application page with the Personnel Division.

The Legislature Has Previously Addressed the Need for Government Website Standardization.

In 2019, the Legislature passed HB 2992, which included the requirement that state executive agencies include certain contact information for its office and employees. This included office contact information, staff member contact information, an organizational chart, administrative officials, governing statutes and legislative and procedural rules, meeting minutes, and annual reports, when applicable. This bill was similar to HB 2446, which passed in 2017. However, both bills were vetoed. The veto messages cited overly broad application, noting the lack of exemptions for employees who work from their personal residence, or would be placed at risk should their information be published online (e.g., undercover law enforcement officers). Both veto messages affirmed the importance of providing the public with readily accessible information about state and local government.

While these bills would address content standardization, the Legislative Auditor further recommends creation of a central design standard for state websites, including the use of the .gov domain. Consistency in website design would promote board accessibility and recognition, as well as address other concerns more completely (such as usability for the vision impaired). Boards could continue to be responsible for specific content and submissions but use a standardized web format or have dedicated sections within a single domain. Sharing and standardizing technology resources would not only promote consistency, but address accessibility issues that may be beyond the ability of small boards to correct given limited resources. **While web accessibility may be an issue for all government agencies, the specific state and needs of regulatory boards should be considered in addition to general government accessibility and transparency needs.**

The Legislative Auditor further recommends creation of a central design standard for state websites, including the use of the .gov domain.

Conclusion

The Legislative Auditor finds that more improvements are needed to the Board's website in the areas of user-friendliness and transparency. The website can benefit from incorporating several common features. The Board has pertinent public information on its website including its mission statement, rules and regulations, and current licensees. The Board's contact information is also provided, as are online items, such as complaint forms. However, providing website users with additional elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

Consistency in website design would promote board accessibility and recognition.

Recommendations

5. *The Legislative Auditor recommends the Board make improvements to its website to provide more transparency and user-friendliness for online public users.*
6. *The Legislative Auditor recommends creation of a central design standard for state websites, including the use of the .gov domain.*

Appendix A Transmittal Letter



WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
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Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX

John Sylvia
Director

June 2, 2021

Margaret Andrews, Board President
Board of Licensed Dietitians
101 Dee Drive, Suite D
Charleston, WV 25311

Dear Mrs. Andrews:

This is to transmit a draft copy of the regulatory board review of the Board of Licensed Dietitians. This report is tentatively scheduled to be presented during the September 12 through 14 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on Friday, June 11, 2021. Please notify us to schedule an exact time. In addition, we need your written response by noon on Friday, June 25, 2021 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, September 9, 2021 to make arrangements.

We request that your personnel not disclose the report to anyone unaffiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

John Sylvia
John Sylvia

Enclosure

————— *Joint Committee on Government and Finance* —————

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Licensed Dietitians as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board, as established in West Virginia Code §30-35, is to protect the public through its licensing process, and to be the regulatory and disciplinary body for dietitians throughout the state.

Objectives

The objectives of this review are to determine if the Board should be continued, consolidated or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1, of the *West Virginia Code*, the Board's enabling statute §30-35, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. Finally, it is the objective of the Legislative Auditor to assess the Board's website for user-friendliness and transparency.

Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal year 2017 through 2019, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2017 through 2019, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1-et al.) for regulatory boards and other applicable laws, and key features of the Board's website.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

PERD staff visited the Board's office in Charleston and met with its staff. However, due to the onset of the COVID-19 pandemic, most testimonial evidence was gathered by exchange of letters or interviews conducted via phone call, then confirmed by written statements and in some cases by corroborating evidence.

To assess the elimination of licensure's impact on insurance reimbursement, PERD communicated with PEIA and Medicaid, and reviewed relevant federal laws for Medicare programs.

PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. PERD also obtained information regarding licensing fees for dietitians in Kentucky, Maryland, Ohio, Pennsylvania, and Virginia by reviewing regulatory body websites and, where necessary, state code provisions.

Additionally, PERD reviewed the Academy of Nutrition and Dietetics website for information on which states utilize title protection and practice exclusivity. PERD sampled the states to confirm the accuracy of the information provided by the Academy.

The Legislative Auditor compared the Board's actual revenues to expected revenues to assess the risk of fraud and obtain reasonable assurance that revenue figures were sufficient and appropriate. Expected revenue was calculated based upon licensees, applications, and fees.

The Legislative Auditor also tested the Board's expenditures for fiscal years 2016 through 2020. The test involved determining if expected or required expenditures were at least 90 percent of total expenditures. Expenditure categories not considered expected or required include: office expenses, professional services, travel, out-of-state training and development, and expenses categorized as "miscellaneous." On average, the Board met the 90 percent threshold.

In order to evaluate state agency websites, the Legislative Auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states in regards to e-government. The Legislative Auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The Legislative Auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the Legislative Auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board of Hearing Aid Dealers and Fitters can determine if it is progressing in step with the e-government movement and if improvements to its website should be made. Additionally, PERD staff reviewed recent state legislation applicable to website content and standards.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Website Criteria Checklist and Point System

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	10
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	2
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	2
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	3
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	0
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	0
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2

Website Criteria Checklist and Points System			
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	14
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1
Physical Address	General address of stage agency.	1 point	1
Telephone Number	Correct telephone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0

Website Criteria Checklist and Points System			
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	2
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	2
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	0
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0
Public Records	The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	0

Website Criteria Checklist and Points System			
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0

Appendix D Agency Response

WEST VIRGINIA BOARD OF LICENSED DIETITIANS

RESPONSE TO

OFFICE OF LEGISLATIVE AUDITOR PERFORMANCE REVIEW OF THE BOARD OF LICENSED DIETITIANS

BEFORE THE

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

West Virginia Board of Licensed Dietitians
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BOARD MEMBERS

Peg Andrews, Chair
Mallory Mount, Vice Chair
Mary Kathryn Gould, Secretary
Susan Arnold, Auditor
Kelly Rutherford Public Member
Alexandra Pauley, Administrative Assistant and Treasurer

TABLE OF CONTENTS

	Page
RESPONSE	4
INTRODUCTION.....	4
ISSUE 1: The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily.....	5 - 6
ISSUE 2: The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code..	7
ISSUE 3: The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency....	8
CONCLUSION.....	9

RESPONSE

The WEST VIRGINIA BOARD OF LICENSED DIETITIANS (“Board”) for its response to the OFFICE OF LEGISLATIVE AUDITOR PERFORMANCE REVIEW OF THE WEST VIRGINIA BOARD OF LICENCED DIETITIANS (“Review”) states as follows:

INTRODUCTION

The West Virginia Board of Licensed Dietitians appreciates the time the auditors took to conduct a performance review of our Board. The purpose of the review is to provide information to the Legislature for legislative decision-making. The Board hopes the Committee on Government Operation will consider our response to the review and ultimately support the continuation of the West Virginia Board of Licensed Dietitians.

The Board was enacted on “the thirtieth day of June, one thousand nine hundred ninety-seven” (§30-35-1). The Board has made adjustments throughout the years such as adding a scope of practice (§30-35-2a) to regulate the practice of dietetics to help protect the public health and safety. Currently, our Board employs one part-time employee. The remaining members volunteer their time. This illustrates the commitment the members have to provide to the public a state agency to verify a licensed dietitian’s competency.

We strive to be transparent in our processes by posting information in a timely manner on our website. This past year during the Covid-19 pandemic has been a struggle for many agencies, including ours. It is our belief that we did not have the number of complaints submitted due to this pandemic but we successfully set up our Administrative Assistant to work remotely and maintain continuity of business operation. In addition, we continued our Board meetings (virtually).

The Board feels strongly there is a need for an agency on the state level to monitor Licensed Dietitians in West Virginia. The Board will address the issues identified by the Performance Review Evaluations. It is our intent to ensure we meet the standards as laid out by code.

ISSUE 1: The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily.

Issue Summary

The Legislative Auditor recommended termination of the Board of Licensed Dietitians (Board) in 1999 and in 2000. In 2001, the Board was terminated and had a year to wind down its operation. However, during the 2002 second extraordinary session, the Board was re-established. In 2010, the Legislative Auditor recommended eliminating the Board and requiring a lesser form of regulation such as certification or registration. This current audit report reiterates the recommendation that the Board be terminated. The Board's primary regulatory function is title protection in which by law (§30-35-1(c)) any individual may furnish nutrition information on food, food materials or dietary supplements or engage in explanation of such products to customers, as long as he or she does not use the title "dietician" or "licensed dietician." Moreover, the Board fully duplicates the Commission on Dietetic Registration (CDR), which is a national regulatory organization over dietitians. The Legislative Auditor finds that the Board primarily verifies that West Virginia dietitians are in compliance with the CDR and issues or renews a state credential. The Legislative Auditor concludes that the CDR offers adequate protection to the citizens of the state, and implementing title protection through a stand-alone board adds unnecessary costs to those practicing dietetics or those who seek to enter the profession. **Therefore, the Legislative Auditor recommends that the Legislature consider terminating the Board and provide title protection by statute alone.**

Conclusion

Given that there is limited risk of harm associated with the practice of dietetics, a national regulatory body exists that provides adequate public protection, and the industries in which dietitians practice offer an additional layer of protection, the Legislative Auditor concludes that eliminating the Board would not adversely affect public safety. The Board's primary regulatory function is title protection, and the Board is duplicative of the national Commission on Dietetic Registration. Since title protection can be established by statute and the Board is simply confirming a national credential, maintaining a stand-alone board is a redundant layer of government that unnecessarily imposes additional costs to practice dietetics in the state. **Therefore, the Legislative Auditor recommends the Legislature consider termination of the Board and establish title protection statutorily.**

1. *The Legislature should consider termination of the Board of Licensed Dietitians and establish title protection for dietitians and nutritionists by statute alone.*
2. *If the Board is continued, the Legislature should consider defining more specific practices in defining the scope of practice for licensed dietitians and nutritionists.*

RESPONSE

Registered dietitian nutritionists practicing in West Virginia are “health care practitioners” under West Virginia law and by virtue of being included in that term, RDNs are immediately integrated into the West Virginia health care regulatory and payment structure in hundreds of ways. Licensure is a prerequisite to being included in the definition of “health care practitioner” in West Virginia, so without the ability to get licensed, West Virginia RDNs would no longer be considered a “health care practitioner” for purposes of providing telehealth or obtaining health insurance reimbursement. (See, §30-1-26) These changes would be devastating not only for RDNs, but more importantly, for our patients as well. Eliminating dietetics licensure would not only wreak immediate havoc on hospital interdisciplinary teams, state facility regulations, health insurance plans and reimbursement policies, the provision of services via telehealth, and a multitude of other aspects of the health care system, it would also drastically limit the duties RDNs can undertake and the care they can provide as previously authorized services now become illegal for them to provide.

The scope of practice in a state licensure law also provides legal clarity as to (1) the breadth and extent of dietetics practice permitted in the state and (2) the nature of services and duties that can be delegated to unlicensed personnel (such as Certified Dietary Managers or Dietetic Technicians, Registered) RDNs direct and supervise consistent with federal CMS regulations. Some elements of an RDN’s scope of practice are sufficiently complex and/or highly regulated that certain associated tasks must clearly—often specifically—be included in that legislated scope before a registered dietitian is legally authorized to undertake them (e.g. prescriptive authority for therapeutic diets; ordering of lab tests). There are also numerous tasks permitted under the existing licensed dietitian scope of practice RDNs provide on a daily basis (e.g., bedside swallow screenings to assess presence of dysphagia; insertion of nasogastric feeding tubes) that would become *illegal* for RDNs to provide if dietetics licensure were eliminated, because the tasks also fall within the exclusive scope of practice of another licensed profession. See, W. Va. Code §30-32-13 (“The scope of practice for speech-language pathology includes (1) Prevention, screening, consultation, assessment and diagnosis, treatment, intervention, management, counseling and follow-up services for . . . swallowing or other upper aero digestive functions . . .”) Without the opportunity for a license, RDNs would no longer be eligible for exemption from the speech-language pathology practice act and would either have to curtail care for their patients or face fines and jail time.

Issue 2: The West Virginia Board of Licensed Dietitians Complies With Most General Provisions of Chapter 30 of the West Virginia Code.

Issue Summary

The primary purpose of the Board of Licensed Dietitians is to protect West Virginia citizens through the licensure and regulation of dietitians. The Board reviews applications made for licensure and it licenses only individuals qualified by West Virginia Code and rule to practice medical nutrition therapy in West Virginia. The Board meets the criteria for financial self-sufficiency and its rules, as written, generally protect the public.

Conclusion

The Legislative Auditor finds the Board of Licensed Dietitians complies with most of the general provisions of Chapter 30 of the West Virginia Code. However, if the Board is continued, it should work to correct issues and inconsistencies noted in this report.

3. *The Board should maintain a register of applicants with all information specified in W. Va. Code §30-1-12.*
4. *The Board should ensure it handles complaints in compliance with W.Va. Code §30-1-5.*

RESPONSE

The Legislative Auditor indicated the Board provide a list of licensed dietitians on the website. The www.WVBOLD.com website has a list of all licensed dietitians under the Public Information tab. Although, a full address and phone number is not displayed to protect our licensee's personal information, the Board maintains a complete roster of the names, telephone numbers and office addresses of all persons licensed as specified in W. Va. Code §30-1-12 and W. Va. Code §30-1-13 on an e-data base. It is open to public inspection upon request at all reasonable times from our office.

The Board recognizes that people would web browse over using a paper directory to locate an office telephone number or address. In keeping with the intent of the code to promote public access, the Board posts the address, telephone number including toll-free telephone and facsimile on the www.WVBOLD.com website. The address and telephone number of the Board had been in the state government listing of the Charleston area telephone directory. It is unfortunate this listing has lapsed with the changing of the Board members but this concern can be addressed.

Issue 3: The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency.

Issue Summary

The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia's state agency websites (See Appendix C). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 8 indicates the West Virginia Board of Licensed Dietitians (Board) integrates 48 percent of the checklist items in its website. The measure indicates that improvement is needed for the Board's website to be more user-friendly and transparent.

Conclusion

The Legislative Auditor finds that more improvements are needed to the Board's website in the areas of user-friendliness and transparency. The website can benefit from incorporating several common features. The Board has pertinent public information on its website including its mission statement, rules and regulations, and current licensees. The Board's contact information is also provided, as are online items, such as complaint forms. However, providing website users with additional elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

Recommendation

- 5. The Legislative Auditor recommends the Board make improvements to its website to provide more transparency and user-friendliness for online public users.*

RESPONSE

The Board was not aware of the Office of the Legislative Auditor's assessment tool that they developed to evaluate West Virginia's state agency websites (Appendix C Website Criteria Checklist and Points System). Therefore, we were not cognizant of the measures used to assess our website. We asked and obtained a copy of the document and will use it to determine a course of action in aligning our website based on the criteria in the tool. Of note, we have not received any negative comments related to our website design, usefulness or ease of navigation from our users. In addition, there have been several website changes related to transparency (Complaint tab) and ease of use (Forms tab) since the evaluation was performed.

CONCLUSION

The Legislative Auditor wrote, “CE requirement is redundant and offers no additional protection to the public” and “the Board fully duplicates the Commission on Dietetic Registration (CDR), which is a national regulatory organization over dietitians”. The CDR requirement of 75 hours every 5 years could theoretically be done all in one year. WVBOARD, by requiring 20 hours every 2 years, is requiring a more even distribution of professional development and potentially keeping practitioners more up-to-date with cutting-edge developments. Unlike Commission on Dietetic Registration’s (CDR) private credentialing, a state licensure board upholding title protection provisions really puts the public at the forefront of the regulatory and oversight process. State licensure (even when voluntary) ensures the public is protected by being able to trust that anyone using a broader set of state-recognized titles meets state-approved qualifications. In addition, licensure provides a public-centered mechanism for reporting and tracking incompetent, unethical, or harmful practice by a practitioner in a fair and open process that includes due process protections. Moreover, it is important to note that the public and the broader health care community both assume and expect that the state already licenses *all* health care professionals practicing in the state; there should not be an inexplicable outlier creating a gap in public protection. Not only is there compelling reason not to eliminate licensure for dietitians and no benefit from doing so, but relying instead entirely upon CDR’s private certification would create significant problems by hindering and restricting current practice and inhibiting future practice in our state. In fact, instead of eliminating dietetics licensure, West Virginia ought to finally close its healthcare licensing gap and should *require* a narrowly-tailored license for the provision of nutrition care services that rise to the level of *the provision of medical care* (*i.e.*, when treating or managing their patient’s diseases or medical conditions). We strongly urge the legislature not to eliminate licensure for these essential health care workers, as the unintended consequences would be unnecessarily devastating and the process of unwinding dietitians from the complex, interwoven framework of healthcare laws and regulations would be highly inefficient and would create gaps in patient care that are not easily rectified.



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