

S T A T E O F N E W Y O R K

8504--A

2017-2018 Regular Sessions

I N A S S E M B L Y

June 16, 2017

Introduced by M. of A. JAFFEE, RAIA, McDONOUGH -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the social services law, in relation to the licensure of dietitians and nutritionists; and repealing certain provisions of the education law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and declaration of purpose. The legis-
2 lature finds that the application of scientific knowledge relating to
3 dietetics and nutrition is important in effective care, treatment and
4 prevention of disease or trauma and in the attainment and maintenance of
5 health, and acknowledges that the rendering and communication of sound
6 dietetic and nutrition services in hospitals, nursing homes, extended
7 care and ambulatory care settings, school districts, health departments,
8 private practice and consultation, and in other settings requires
9 trained and competent professionals. The legislature further finds that
10 it is necessary in the provision of medical nutrition therapy, and ther-
11 apeutic diets, for such professionals to be licensed under article 157
12 of the education law to ensure quality nutrition care, consisting of a
13 nutrition assessment, nutrition diagnosis, nutrition intervention and
14 the monitoring and evaluation of outcomes directly related to the nutri-
15 tion care process. Therefore, it is hereby declared to be the purpose of
16 this act to protect the health, safety, and welfare of the public by
17 providing for the licensure and regulation of the activities of persons
18 engaged in the practice of dietetics and nutrition.

19 § 2. Section 8000 of the education law, as added by chapter 635 of the
20 laws of 1991, is amended to read as follows:

21 § 8000. Introduction. This article applies to the use of the titles
22 ["certified dietitian" and "certified nutritionist"] LICENSED NUTRITION-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD13166-03-7

1 IST OR "LN" AND "LICENSED DIETITIAN/NUTRITIONIST" OR "LDN" AND THE PRAC-
2 TICE OF DIETETICS AND NUTRITION. The general provision for all
3 professions contained in article one hundred thirty of this title shall
4 apply to this article.

5 § 3. Section 8001 of the education law, as added by chapter 635 of the
6 laws of 1991, is amended to read as follows:

7 § 8001. [Definitions] DIETETIC AND NUTRITION PRACTICE. [1. Dietetics
8 and nutrition are herein each defined as the integration and applica-
9 tion of principles derived from the sciences of nutrition, biochemistry,
10 physiology, food management and behavioral and social sciences to
11 achieve and maintain people's health.

12 2. Where the title "certified dietitian" or "certified nutritionist"
13 is used in this article it shall mean "certified dietitian", "certified
14 dietician", or "certified nutritionist".

15 3. A certified dietitian or certified nutritionist is one who engages
16 in the integration and application of principles derived from the
17 sciences of nutrition, biochemistry, physiology, food management and
18 behavioral and social sciences to achieve and maintain people's health,
19 and who is certified as such by the department pursuant to section eight
20 thousand four of this article. The primary function of a certified
21 dietitian or certified nutritionist is the provision of nutrition care
22 services that shall include:

23 (a) Assessing nutrition needs and food patterns;

24 (b) Planning for and directing the provision of food appropriate for
25 physical and nutrition needs; and

26 (c) Providing nutrition counseling.]

27 1. DIETETIC AND NUTRITION PRACTICE IS THE APPLICATION OF MEDICAL
28 NUTRITION THERAPY AND ELEMENTS OF NUTRITION CARE, WHICH INCLUDES NUTRI-
29 TION ASSESSMENT, NUTRITION DIAGNOSIS, DIET OR NUTRITION INTERVENTION,
30 COUNSELING, EVALUATION AND MONITORING FOR THE PREVENTION OR TREATMENT OF
31 NUTRITION RELATED ILLNESSES, NOURISHMENT AND MALNOURISHMENT.

32 2. A LICENSED NUTRITIONIST AND LICENSED DIETITIAN/NUTRITIONIST SHALL
33 HAVE THE AUTHORITY, AS NECESSARY, AND LIMITED TO THE PRACTICE OF DIETET-
34 ICS AND NUTRITION, TO ORDER DIAGNOSTIC TESTS AND DEVICES, AND LABORATORY
35 TESTS, AS ESTABLISHED BY THE BOARD IN ACCORDANCE WITH THE COMMISSIONER'S
36 REGULATIONS.

37 3. A LICENSED NUTRITIONIST AND LICENSED DIETITIAN/NUTRITIONIST MAY
38 ORDER, WRITE, REVIEW, EVALUATE, MONITOR AND MANAGE THERAPEUTIC DIETS
39 INCLUDING ENTERAL AND PARENTERAL DIETS.

40 § 4. The education law is amended by adding a new section 8001-a to
41 read as follows:

42 § 8001-A. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE: 1. "MEDICAL
43 NUTRITION THERAPY" IS AN EVIDENCE BASED APPLICATION OF NUTRITION CARE
44 FOCUSED ON PREVENTION, DELAY OR MANAGEMENT OF DISEASES AND CONDITIONS,
45 AND INVOLVES AN IN-DEPTH ASSESSMENT, INTERVENTION AND PERIODIC REASSESS-
46 MENT.

47 2. "NUTRITION DIAGNOSIS" IN THE CONTEXT OF DIETETICS AND NUTRITION
48 PRACTICE MEANS THE IDENTIFICATION AND LABELING OF EXISTING NUTRITION
49 PROBLEMS EXPRESSED IN TERMS OF ETIOLOGY, SIGNS AND SYMPTOMS. NUTRITION
50 DIAGNOSIS IS DISTINCT FROM A MEDICAL DIAGNOSIS. NOTHING IN THIS SECTION
51 SHALL AUTHORIZE A LICENSED NUTRITIONIST OR LICENSED
52 DIETITIAN/NUTRITIONIST TO MAKE A MEDICAL DIAGNOSIS.

53 3. "NUTRITION ASSESSMENT" MEANS THE SYSTEMATIC PROCESS OF OBTAINING,
54 VERIFYING, AND INTERPRETING BIOCHEMICAL, ANTHROPOMETRIC, NUTRIGENOMIC,
55 PHYSICAL AND DIETARY DATA IN ORDER TO MAKE DECISIONS ABOUT THE NATURE
56 AND CAUSE OF NUTRITION RELATED PROBLEMS. THE MERE COLLECTION OF THESE

1 DATA FOR USE IN A NUTRITION ASSESSMENT IS NOT A NUTRITION ASSESSMENT AND
2 DOES NOT REQUIRE A LICENSE IN DIETETICS AND NUTRITION AS SET FORTH IN
3 THIS ARTICLE.

4 4. "NUTRITION INTERVENTION" IS A PURPOSEFULLY PLANNED ACTION, INCLUD-
5 ING, BUT NOT LIMITED TO, THE RECOMMENDATION OR ORDERING OF FOOD AND
6 NUTRITION SUPPLEMENTS DESIGNED TO POSITIVELY CHANGE NUTRITION RELATED
7 BEHAVIOR, RISK FACTOR, ENVIRONMENTAL CONDITION OR ASPECTS OF HEALTH
8 STATUS FOR INDIVIDUALS, GROUPS, OR THE COMMUNITY.

9 § 5. Section 8002 of the education law, as added by chapter 635 of the
10 laws of 1991, is amended to read as follows:

11 § 8002. [Use] PRACTICE AND AUTHORIZATION of titles. Only a person
12 [certified] LICENSED OR OTHERWISE AUTHORIZED under this article shall
13 [be authorized to] PRACTICE DIETETICS AND NUTRITION OR use the title
14 ["certified dietitian", "certified dietician", or "certified nutrition-
15 ist"] "LICENSED NUTRITIONIST" OR "LN" OR "LICENSED
16 DIETITIAN/NUTRITIONIST" OR "LDN"; PROVIDED, HOWEVER, THAT NOTHING IN
17 THIS ARTICLE SHALL PREVENT AN INDIVIDUAL FROM USING ANY TITLE OBTAINED
18 FROM A NATIONAL CREDENTIALING BODY.

19 § 6. Section 8003 of the education law, as amended by chapter 282 of
20 the laws of 1992, is amended to read as follows:

21 § 8003. State board for dietetics and nutrition. A state board for
22 dietetics and nutrition shall be appointed by the board of regents, on
23 recommendation of the commissioner, for the purpose of assisting the
24 board of regents and the department on matters of [certification] LICEN-
25 SURE, PRACTICE and professional conduct in accordance with section
26 sixty-five hundred eight of this [chapter] TITLE.

27 The board shall consist of not less than [thirteen] ELEVEN members,
28 [ten] FOUR of whom shall be [certified dietitians or certified nutri-
29 tionists, except that the members of the first board need not be certi-
30 fied but shall be persons who are eligible for certification under the
31 provisions of this article prior to their appointment to the board]
32 LICENSED DIETITIAN/NUTRITIONISTS AND FOUR OF WHOM SHALL BE LICENSED
33 NUTRITIONISTS PURSUANT TO THIS ARTICLE. The [first] board, with respect
34 to members representing the profession, shall consist of [five] FOUR
35 members [registered] CREDENTIALIED by a national dietetic association
36 having [registration] CREDENTIALING standards acceptable to the depart-
37 ment and [five] FOUR members who are [members of or registered] CREDEN-
38 TIALED by a national nutritional association having [membership and/or
39 registration] CREDENTIALING standards acceptable to the department;
40 PROVIDED, HOWEVER, THAT NO SUCH CREDENTIALIED MEMBER SHALL BE ALSO
41 CREDENTIALIED BY A NATIONAL NUTRITION ASSOCIATION, NOR A NATIONAL DIETET-
42 IC ASSOCIATION, RESPECTIVELY. [Thereafter, members of the profession
43 appointed to such board shall be certified pursuant to this article. To
44 the extent reasonable, the board of regents should insure the state
45 board is broadly representative of various professional interests within
46 the dietetic and nutritional community. Three members] TWO MEMBERS
47 shall be representatives of the general public AND ONE MEMBER SHALL BE A
48 PHYSICIAN LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE.
49 SUCH PHYSICIAN MEMBER SHALL NOT BE A MEMBER OF OR CREDENTIALIED BY A
50 NATIONAL DIETETIC OR NATIONAL NUTRITION ASSOCIATION. An executive secre-
51 tary to the board shall be appointed by the board of regents on the
52 recommendation of the commissioner.

53 § 7. Section 8004 of the education law is REPEALED and a new section
54 8004 is added to read as follows:

1 § 8004. REQUIREMENTS FOR PROFESSIONAL LICENSE. 1. TO QUALIFY FOR A
2 LICENSE AS A LICENSED NUTRITIONIST, AN APPLICANT SHALL FULFILL THE
3 FOLLOWING REQUIREMENTS:

4 (A) FILE AN APPLICATION WITH THE DEPARTMENT;

5 (B) EDUCATION:

6 (1) HAVE RECEIVED A MASTER'S OR DOCTORAL DEGREE IN NUTRITION OR A
7 NUTRITION-RELATED SCIENCE FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR
8 DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT, IN
9 ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; OR A MASTER'S OR
10 DOCTORAL DEGREE IN A HEALTHCARE FIELD FROM A PROGRAM REGISTERED BY THE
11 DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIV-
12 ALENT, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; AND

13 (2) HAVE COMPLETED COURSEWORK COVERING CONTENT AREAS INCLUDING BUT NOT
14 LIMITED TO:

15 (I) BIOCHEMISTRY;

16 (II) METABOLISM IN HEALTH AND DISEASE;

17 (III) ANATOMY AND PHYSIOLOGY;

18 (IV) CLINICAL AND LIFE SCIENCES;

19 (V) HUMAN NUTRITION, ACROSS THE LIFE CYCLE IN HEALTH AND DISEASE;

20 (VI) NUTRITION ASSESSMENT AND EVALUATION;

21 (VII) MEDICAL NUTRITION THERAPY, PLANNING AND IMPLEMENTATION;

22 (VIII) FOOD CONTENT, SAFETY AND QUALITY; AND

23 (IX) PROFESSIONAL ORIENTATION AND ETHICS.

24 (C) EXPERIENCE:

25 (1) COMPLETE A MINIMUM OF ONE THOUSAND HOURS OF SUPERVISED EXPERIENCE
26 RELEVANT TO THE PRACTICE OF DIETETICS AND NUTRITION IN A PLANNED,
27 CONTINUOUS EXPERIENCE SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE
28 WITH THE COMMISSIONER'S REGULATIONS. A PRACTICUM COMPLETED AS PART OF A
29 GRADUATE LEVEL PROGRAM SHALL BE CONSIDERED SUPERVISED EXPERIENCE FOR THE
30 PURPOSES OF THIS PARAGRAPH IN ACCORDANCE WITH THE COMMISSIONER'S REGU-
31 LATIONS.

32 (2) SUPERVISED EXPERIENCE SHALL BE UNDER THE SUPERVISION OF AN INDI-
33 VIDUAL WITH EXPERIENCE IN THE PRACTICE OF DIETETICS AND NUTRITION WHO IS
34 LICENSED UNDER THIS ARTICLE OR IS A LICENSED HEALTHCARE PROFESSIONAL
35 UNDER THIS TITLE, SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH
36 THE COMMISSIONER'S REGULATIONS. SATISFACTORY EXPERIENCE OBTAINED IN AN
37 ENTITY OPERATING UNDER A WAIVER ISSUED BY THE DEPARTMENT PURSUANT TO
38 SECTION SIXTY-FIVE HUNDRED THREE-A OF THIS TITLE MAY BE ACCEPTED BY THE
39 DEPARTMENT NOTWITHSTANDING THAT SUCH EXPERIENCE MAY HAVE BEEN OBTAINED
40 PRIOR TO THE EFFECTIVE DATE OF SUCH SECTION SIXTY-FIVE HUNDRED THREE-A
41 OF THIS TITLE AND/OR PRIOR TO THE ENTITY HAVING OBTAINED A WAIVER. THE
42 DEPARTMENT MAY, FOR GOOD CAUSE SHOWN, ACCEPT SATISFACTORY EXPERIENCE
43 THAT WAS OBTAINED IN A SETTING THAT WOULD HAVE BEEN ELIGIBLE FOR A WAIV-
44 ER BUT WHICH HAS NOT OBTAINED A WAIVER FROM THE DEPARTMENT OR EXPERIENCE
45 THAT WAS OBTAINED IN GOOD FAITH BY THE APPLICANT UNDER THE BELIEF THAT
46 APPROPRIATE AUTHORIZATION HAD BEEN OBTAINED FOR THE EXPERIENCE, PROVIDED
47 THAT SUCH EXPERIENCE MEETS ALL OTHER REQUIREMENTS FOR ACCEPTABLE EXPERI-
48 ENCE.

49 (3) EXPERIENCE OBTAINED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION
50 SHALL HAVE BEEN SUPERVISED BY A CERTIFIED DIETITIAN/NUTRITIONIST OR BY
51 AN INDIVIDUAL CREDENTIALLED BY OR RECOGNIZED AS A SUPERVISOR BY A
52 NATIONAL DIETETIC CREDENTIALING ORGANIZATION OR NATIONAL NUTRITIONAL
53 CREDENTIALING ORGANIZATION. SUCH NATIONAL CREDENTIALING ORGANIZATIONS
54 MUST BE ACCREDITED BY THE NATIONAL COMMISSION FOR CERTIFYING AGENCIES,
55 AND APPROVED BY THE DEPARTMENT AS HAVING CREDENTIALING STANDARDS

1 SUBSTANTIALLY EQUIVALENT TO STANDARDS SET FORTH FOR LICENSURE PURSUANT
2 TO THIS ARTICLE.

3 (4) EXPERIENCE SHALL BE RELEVANT TO THE PRACTICE OF DIETETICS AND
4 NUTRITION UNDER VARYING CONDITIONS OF HEALTH AND DISEASE, SOCIAL, PHYS-
5 ICAL, PSYCHOLOGICAL AND ECONOMIC STATUS.

6 (D) EXAMINATION: PASS AN EXAMINATION SATISFACTORY TO THE BOARD AND IN
7 ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; PROVIDED THAT SUCH EXAM-
8 INATION SHALL TEST A LEVEL OF KNOWLEDGE AND EXPERIENCE EQUIVALENT TO
9 THAT OBTAINED BY AN INDIVIDUAL SATISFACTORILY MEETING THE REQUIREMENTS
10 OF PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION;

11 (E) PAY A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS TO THE DEPARTMENT
12 FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND/OR INITIAL
13 CERTIFICATION, A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION, A
14 FEE OF ONE HUNDRED FIFTEEN DOLLARS FOR AN INITIAL CERTIFICATION FOR
15 PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION, A
16 FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR EACH TRIENNIAL REGISTRATION
17 PERIOD;

18 (F) BE AT LEAST EIGHTEEN YEARS OF AGE; AND

19 (G) BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT.

20 2. TO QUALIFY FOR A LICENSE AS A LICENSED DIETITIAN/NUTRITIONIST, AN
21 APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

22 (A) FILE AN APPLICATION WITH THE DEPARTMENT;

23 (B) EDUCATION: HAVE RECEIVED AN EDUCATION, INCLUDING A BACHELOR'S
24 DEGREE OR HIGHER IN DIETETICS AND NUTRITION FROM A PROGRAM REGISTERED
25 WITH THE DEPARTMENT, OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTAN-
26 TIAL EQUIVALENT THEREOF, IN ACCORDANCE WITH COMMISSIONER'S REGULATIONS;
27 OR POST GRADUATE COMPLETION OF A GRADUATE COURSEWORK IN DIETETICS AND
28 NUTRITION FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY
29 THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT THEREOF, IN ACCORDANCE
30 WITH THE COMMISSIONER'S REGULATIONS. THE COURSEWORK IN DIETETICS AND
31 NUTRITION SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING AREAS:

32 (1) PHYSICAL AND LIFE SCIENCES, INCLUDING ORGANIC CHEMISTRY, BIOCHEM-
33 ISTRY, PHYSIOLOGY, GENETICS, MICROBIOLOGY, PHARMACOLOGY, STATISTICS,
34 NUTRIENT METABOLISM AND NUTRITION ACROSS THE LIFESPAN;

35 (2) HUMAN BEHAVIOR AND DIVERSITY, SUCH AS PSYCHOLOGY OR SOCIOLOGY AND
36 COUNSELING METHODS;

37 (3) PROFESSIONAL PRACTICE AND ETHICS;

38 (4) NUTRITION CARE INCLUDING MEDICAL NUTRITION THERAPY, NUTRITION
39 DIAGNOSIS AND ENTERAL AND PARENTERAL NUTRITION;

40 (5) ROLE OF ENVIRONMENT, FOOD, NUTRITION AND LIFESTYLE CHOICES IN
41 HEALTH PROMOTION AND DISEASE PREVENTION; AND

42 (6) PRINCIPLES OF FOOD SCIENCE AND FOOD PREPARATION, AND FOOD SYSTEMS
43 MANAGEMENT.

44 (C) EXPERIENCE:

45 (1) COMPLETE A MINIMUM OF ONE THOUSAND HOURS OF SUPERVISED EXPERIENCE
46 RELEVANT TO THE PRACTICE OF DIETETICS AND NUTRITION IN A PLANNED,
47 CONTINUOUS, EXPERIENCE PROGRAM SATISFACTORY TO THE DEPARTMENT AND IN
48 ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS. A PRACTICUM COMPLETED AS
49 PART OF AN EDUCATION PROGRAM SHALL BE CONSIDERED SUPERVISED EXPERIENCE
50 FOR PURPOSES OF THIS PARAGRAPH IN ACCORDANCE WITH THE COMMISSIONER'S
51 REGULATIONS.

52 (2) SUPERVISED EXPERIENCE SHALL BE UNDER THE SUPERVISION OF A LICENSED
53 DIETITIAN/NUTRITIONIST LICENSED UNDER THIS ARTICLE. SATISFACTORY EXPERI-
54 ENCE OBTAINED IN AN ENTITY OPERATING UNDER A WAIVER ISSUED BY THE
55 DEPARTMENT PURSUANT TO SECTION SIXTY-FIVE HUNDRED THREE-A OF THIS TITLE
56 MAY BE ACCEPTED BY THE DEPARTMENT NOTWITHSTANDING THAT SUCH EXPERIENCE

1 MAY HAVE BEEN OBTAINED PRIOR TO THE EFFECTIVE DATE OF SUCH SECTION
2 SIXTY-FIVE HUNDRED THREE-A OF THIS TITLE AND/OR PRIOR TO THE ENTITY
3 HAVING OBTAINED A WAIVER. THE DEPARTMENT MAY, FOR GOOD CAUSE SHOWN,
4 ACCEPT SATISFACTORY EXPERIENCE THAT WAS OBTAINED IN A SETTING THAT WOULD
5 HAVE BEEN ELIGIBLE FOR A WAIVER BUT WHICH HAS NOT OBTAINED A WAIVER FROM
6 THE DEPARTMENT OR EXPERIENCE THAT WAS OBTAINED IN GOOD FAITH BY THE
7 APPLICANT UNDER THE BELIEF THAT APPROPRIATE AUTHORIZATION HAD BEEN
8 OBTAINED FOR THE EXPERIENCE, PROVIDED THAT SUCH EXPERIENCE MEETS ALL
9 OTHER REQUIREMENTS FOR ACCEPTABLE EXPERIENCE.

10 (3) EXPERIENCE OBTAINED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION
11 SHALL HAVE BEEN SUPERVISED BY A CERTIFIED DIETITIAN/NUTRITIONIST OR BY
12 AN INDIVIDUAL CREDENTIALLED BY OR RECOGNIZED AS A SUPERVISOR BY A
13 NATIONAL DIETETIC CREDENTIALING ORGANIZATION OR NATIONAL NUTRITIONAL
14 CREDENTIALING ORGANIZATION. SUCH NATIONAL CREDENTIALING ORGANIZATIONS
15 MUST BE ACCREDITED BY THE NATIONAL COMMISSION FOR CERTIFYING AGENCIES,
16 AND APPROVED BY THE DEPARTMENT AS HAVING CREDENTIALING STANDARDS
17 SUBSTANTIALLY EQUIVALENT TO STANDARDS SET FORTH FOR LICENSURE PURSUANT
18 TO THIS ARTICLE.

19 (4) EXPERIENCE SHALL BE RELEVANT TO THE PRACTICE OF DIETETICS AND
20 NUTRITION UNDER VARYING CONDITIONS OF HEALTH AND DISEASE, SOCIAL, PHYS-
21 ICAL, PSYCHOLOGICAL AND ECONOMIC STATUS.

22 (D) EXAMINATION: PASS AN EXAMINATION SATISFACTORY TO THE BOARD AND IN
23 ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; PROVIDED THAT SUCH EXAM-
24 INATION SHALL TEST A LEVEL OF KNOWLEDGE AND EXPERIENCE EQUIVALENT TO
25 THAT OBTAINED BY AN INDIVIDUAL SATISFACTORILY MEETING THE REQUIREMENTS
26 OF PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION;

27 (E) PAY A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS TO THE DEPARTMENT
28 FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND/OR INITIAL
29 CERTIFICATION, A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION, A
30 FEE OF ONE HUNDRED FIFTEEN DOLLARS FOR AN INITIAL CERTIFICATION FOR
31 PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION, A
32 FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR EACH TRIENNIAL REGISTRATION
33 PERIOD;

34 (F) BE AT LEAST EIGHTEEN YEARS OF AGE; AND

35 (G) BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT.

36 § 8. Section 8005 of the education law is REPEALED.

37 § 9. Section 8006 of the education law, as added by chapter 635 of the
38 laws of 1991 and subdivision 2 as amended by chapter 282 of the laws of
39 1992, is amended to read as follows:

40 § 8006. Special conditions. [A person shall be certified without
41 examination provided that, within three years of the effective date of
42 this article, the individual:

43 1. files an application and pays the appropriate fees to the depart-
44 ment; and

45 2. (a) is registered as a dietitian or nutritionist by a national
46 dietetic or national nutrition association having registration standards
47 acceptable to the department;

48 (b) meets the requirements of subparagraph one of paragraph (a) of
49 subdivision two and subdivision five of section eight thousand four of
50 this article and has been actively engaged in the provision of nutrition
51 care services for a minimum of three years during the five years imme-
52 diately preceding the effective date of this article; or

53 (c) meets all the requirements of paragraph (b) of subdivision two and
54 subdivision five of section eight thousand four of this article.] 1. ANY
55 PERSON WHO IS LICENSED AS A CERTIFIED DIETITIAN OR A CERTIFIED NUTRI-
56 TIONIST (CDN) ON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO

1 THOUSAND SEVENTEEN, WHICH AMENDED THIS SECTION, SHALL BE LICENSED AS A
2 LICENSED DIETITIAN/NUTRITIONIST WITHOUT MEETING ANY ADDITIONAL REQUIRE-
3 MENTS.

4 2. ANY NON-EXEMPT PERSON PRACTICING THE PROFESSIONS TO BE LICENSED
5 PURSUANT TO THIS ARTICLE SHALL APPLY FOR A LICENSE WITHIN ONE YEAR OF
6 THE EFFECTIVE DATE OF THIS SECTION.

7 3. ANY NON-EXEMPT PERSON PRACTICING THE PROFESSION THAT MEETS THE
8 REQUIREMENTS FOR A LICENSE, EXCEPT FOR EXPERIENCE, AS A LICENSED
9 DIETITIAN/NUTRITIONIST AS ESTABLISHED IN THIS ARTICLE, SUCH PERSON SHALL
10 BE ELIGIBLE FOR A LICENSE AS A DIETITIAN/NUTRITIONIST UNTIL TWO YEARS
11 AFTER THE EFFECTIVE DATE OF THIS SECTION IF THE APPLICANT SUBMITS
12 EVIDENCE OF HAVING NINE HUNDRED HOURS OF SUPERVISED EXPERIENCE SATISFAC-
13 TORY TO THE DEPARTMENT.

14 § 10. The education law is amended by adding four new sections 8007,
15 8008, 8009 and 8010 to read as follows:

16 § 8007. EXEMPTIONS. THIS ARTICLE SHALL NOT BE CONSTRUED TO AFFECT OR
17 PREVENT:

18 1. A LICENSED PHYSICIAN FROM PRACTICING HIS OR HER PROFESSION AS
19 DEFINED UNDER ARTICLES ONE HUNDRED THIRTY-ONE AND ONE HUNDRED THIRTY-
20 ONE-B OF THIS TITLE; A REGISTERED PROFESSIONAL NURSE OR A CERTIFIED
21 NURSE PRACTITIONER PRACTICING HIS OR HER PROFESSION AS DEFINED UNDER
22 ARTICLE ONE HUNDRED THIRTY-NINE OF THIS TITLE; OR QUALIFIED MEMBERS OF
23 OTHER PROFESSIONS LICENSED UNDER THIS TITLE FROM PERFORMING WORK INCI-
24 DENTAL TO THE PRACTICE OF THEIR PROFESSIONS, EXCEPT THAT SUCH PERSONS
25 MAY NOT HOLD THEMSELVES OUT UNDER THE TITLE AUTHORIZED BY THIS ARTICLE;

26 2. A STUDENT, INTERN OR RESIDENT FROM ENGAGING IN THE PRACTICE OF
27 DIETETICS OR NUTRITION WHILE PARTICIPATING IN THE EDUCATION OR EXPERI-
28 ENCE REQUIREMENTS DEFINED IN PARAGRAPHS (B) AND (C) OF SUBDIVISIONS ONE
29 AND TWO OF SECTION EIGHT THOUSAND FOUR OF THIS ARTICLE;

30 3. ANY PERSON WHO DOES NOT HOLD HIMSELF OR HERSELF OUT TO BE LICENSED
31 PURSUANT TO THIS ARTICLE FROM FURNISHING TO INDIVIDUALS OR GROUPS GENER-
32 AL NON-MEDICAL NUTRITION INFORMATION GUIDANCE, ENCOURAGEMENT; OR INDI-
33 VIDUALIZED NON-MEDICAL NUTRITION RECOMMENDATIONS ON FOOD OR DIETARY
34 SUPPLEMENTS FOR THE PURPOSE OF PRIMARY PREVENTION OR MAINTENANCE OF GOOD
35 HEALTH; OR ENGAGING IN THE EXPLANATION TO CUSTOMERS ABOUT FOOD OR FOOD
36 PRODUCTS IN CONNECTION WITH THE MARKETING AND DISTRIBUTION OF THOSE
37 PRODUCTS; PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO
38 AUTHORIZE THE PROVISION OF MEDICAL NUTRITION THERAPY. FOR PURPOSES OF
39 THIS SUBDIVISION, "GENERAL NON-MEDICAL NUTRITION INFORMATION" AND "INDI-
40 VIDUALIZED NON-MEDICAL NUTRITION RECOMMENDATIONS" MEANS INFORMATION OR
41 RECOMMENDATIONS ON THE FOLLOWING: (A) PRINCIPLES OF GOOD NUTRITION AND
42 FOOD PREPARATION; (B) FOOD TO BE INCLUDED IN THE NORMAL DAILY DIET; (C)
43 THE ESSENTIAL NUTRIENTS NEEDED BY THE BODY; (D) RECOMMENDED AMOUNTS OF
44 THE ESSENTIAL NUTRIENTS, BASED ON ESTABLISHED STANDARDS; (E) THE ACTIONS
45 OF NUTRIENTS ON THE BODY; (F) THE EFFECTS OF DEFICIENCIES OR EXCESSES OF
46 NUTRIENTS; (G) FOOD AND SUPPLEMENTS THAT ARE GOOD SOURCES OF ESSENTIAL
47 NUTRIENTS; OR (H) EVIDENCE BASED RECOMMENDATIONS ON NUTRITION AND DIET
48 DEMONSTRATED TO MAINTAIN GOOD HEALTH AND FOR THE PURPOSES OF PRIMARY
49 PREVENTION;

50 4. A PERSON WHO DOES NOT HOLD HIMSELF OR HERSELF OUT TO BE A LICENSED
51 DIETITIAN/NUTRITIONIST OR A LICENSED NUTRITIONIST FROM PROVIDING GENERAL
52 NON-MEDICAL NUTRITION INFORMATION AND INDIVIDUALIZED NON-MEDICAL RECOM-
53 MENDATIONS AS DEFINED IN SUBDIVISION THREE OF THIS SECTION IF EMPLOYED
54 BY OR OPERATING A HEALTH WEIGHT LOSS OR FITNESS PROGRAM;

55 5. AN INDIVIDUAL EMPLOYED BY A WIC PROGRAM AS A "COMPETENT PROFES-
56 SIONAL AUTHORITY" AS DEFINED IN 7 C.F.R § 246.2 (1895) FROM PROVIDING

1 NUTRITION SERVICES WITHIN SUCH WIC PROGRAM. FOR THE PURPOSE OF THIS
2 SUBDIVISION THE TERM "WIC PROGRAM" SHALL MEAN A PROGRAM AUTHORIZED BY 42
3 U.S.C. § 1786; AND

4 6. A DIET OR NUTRITION TECHNICIAN, AS DEFINED BY THE COMMISSIONER,
5 AUTHORIZED BY THE DEPARTMENT AND UNDER THE DIRECTION AND SUPERVISION OF
6 A LICENSED DIETITIAN/NUTRITIONIST OR LICENSED NUTRITIONIST EMPLOYED IN A
7 HOSPITAL, INCLUDING ANY DIAGNOSTIC CENTER, TREATMENT CENTER, OR HOSPI-
8 TAL-BASED OUTPATIENT DEPARTMENT, RESIDENTIAL HEALTH CARE FACILITY OR
9 NURSING HOME OR ANY FACILITY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED
10 ONE OF THE PUBLIC HEALTH LAW, A HOME CARE SERVICES AGENCY LICENSED OR
11 CERTIFIED AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED FIVE-X OF THE
12 PUBLIC HEALTH LAW, A HOSPICE PROGRAM CERTIFIED PURSUANT TO ARTICLE FORTY
13 OF THE PUBLIC HEALTH LAW, OR AN ENHANCED ASSISTED LIVING RESIDENCE AS
14 DEFINED IN SECTION FORTY-SIX HUNDRED FIFTY-ONE OF THE PUBLIC HEALTH LAW
15 AND CERTIFIED AND LICENSED PURSUANT TO ARTICLE FORTY-SIX-B OF THE PUBLIC
16 HEALTH LAW. SUCH DIET OR NUTRITION TECHNICIAN SHALL BE INDIVIDUALS WHO
17 HAVE MET STANDARDS, INCLUDING THOSE RELATING TO EDUCATION, EXAMINATION,
18 CHARACTER, AND MAY INCLUDE STANDARDS RELATED TO EXPERIENCE, AS PROMUL-
19 GATED IN REGULATIONS BY THE COMMISSIONER. SUCH INDIVIDUAL SHALL BE
20 SUBJECT TO FULL DISCIPLINARY AND REGULATORY AUTHORITY OF THE BOARD OF
21 REGENTS AND THE STATE EDUCATION DEPARTMENT, PURSUANT TO THIS TITLE, AS
22 IF SUCH AUTHORIZATION WERE A PROFESSIONAL LICENSE ISSUED UNDER THIS
23 ARTICLE. THE APPLICATION FEE FOR SUCH AUTHORIZATION SHALL BE ESTABLISHED
24 IN REGULATION BY THE DEPARTMENT. EACH AUTHORIZED DIET OR NUTRITION TECH-
25 NICIAN SHALL REGISTER WITH THE DEPARTMENT EVERY THREE YEARS AND SHALL
26 PAY A REGISTRATION FEE ESTABLISHED IN REGULATION BY THE DEPARTMENT.

27 § 8008. LIMITED PERMIT. 1. THE DEPARTMENT SHALL ISSUE A LIMITED PERMIT
28 TO AN APPLICANT FOR LICENSURE WHO HAS MET THE REQUIREMENTS OF PARAGRAPH
29 (B) OF SUBDIVISION TWO OF SECTION EIGHT THOUSAND FOUR OF THIS ARTICLE.

30 2. THE DURATION OF A LIMITED PERMIT SHALL NOT EXCEED TWO YEARS FROM
31 THE TIME OF ITS FIRST ISSUE AND THE DEPARTMENT MAY FOR GOOD CAUSE RENEW
32 A LIMITED PERMIT FOR AN ADDITIONAL ONE YEAR PROVIDED THAT NO APPLICANT
33 SHALL PRACTICE UNDER ANY LIMITED PERMIT FOR MORE THAN A TOTAL OF THREE
34 YEARS.

35 3. ALL PRACTICE UNDER A LIMITED PERMIT SHALL BE UNDER THE SUPERVISION
36 OF INDIVIDUALS LICENSED PURSUANT TO THIS ARTICLE AND MEET THE REQUIRE-
37 MENTS OF PARAGRAPH (C) OF SUBDIVISION ONE OR PARAGRAPH (C) OF SUBDIVI-
38 SION TWO OF SECTION EIGHT THOUSAND FOUR OF THIS ARTICLE.

39 4. THE FEE FOR EACH LIMITED PERMIT SHALL BE SEVENTY-FIVE DOLLARS.

40 § 8009. HOSPITAL PRIVILEGES. NOTHING HEREIN CONTAINED SHALL BE DEEMED
41 TO AUTHORIZE, GRANT, OR EXTEND HOSPITAL PRIVILEGES TO INDIVIDUALS
42 LICENSED UNDER THIS ARTICLE.

43 § 8010. BOUNDARIES OF PROFESSIONAL COMPETENCY. 1. IT SHALL BE DEEMED
44 PRACTICING OUTSIDE THE BOUNDARIES OF HIS OR HER PROFESSIONAL COMPETENCE
45 FOR A PERSON LICENSED PURSUANT TO THIS ARTICLE, IN THE CASE OF TREATMENT
46 OF ANY SERIOUS MENTAL ILLNESS, TO PROVIDE ANY MENTAL HEALTH SERVICE FOR
47 SUCH ILLNESS ON A CONTINUOUS AND SUSTAINED BASIS WITHOUT A MEDICAL EVAL-
48 UATION OF THE ILLNESS BY, AND CONSULTATION WITH, A PHYSICIAN REGARDING
49 SUCH ILLNESS. SUCH MEDICAL EVALUATION AND CONSULTATION SHALL BE TO
50 DETERMINE AND ADVISE WHETHER ANY MEDICAL CARE IS INDICATED FOR SUCH
51 ILLNESS. FOR PURPOSES OF THIS SECTION, "SERIOUS MENTAL ILLNESS" MEANS
52 SCHIZOPHRENIA, SCHIZOAFFECTIVE DISORDER, BIPOLAR DISORDER, MAJOR DEPRES-
53 SIVE DISORDER, PANIC DISORDER, OBSESSIVE-COMPULSIVE DISORDER, ATTEN-
54 TION-DEFICIT HYPERACTIVITY DISORDER AND AUTISM.

55 2. ANY INDIVIDUAL WHOSE LICENSE OR AUTHORITY TO PRACTICE DERIVES FROM
56 THE PROVISIONS OF THIS ARTICLE SHALL BE PROHIBITED FROM:

1 (A) PRESCRIBING OR ADMINISTERING DRUGS AS DEFINED IN THIS CHAPTER AS A
2 TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR
3 HER PROFESSION; AND

4 (B) USING INVASIVE PROCEDURES AS A TREATMENT, THERAPY, OR PROFESSIONAL
5 SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION. FOR PURPOSES OF THIS
6 SUBDIVISION, "INVASIVE PROCEDURE" MEANS ANY PROCEDURE IN WHICH HUMAN
7 TISSUE IS CUT, ALTERED, OR OTHERWISE INFILTRATED BY MECHANICAL OR OTHER
8 MEANS. INVASIVE PROCEDURE INCLUDES SURGERY, LASERS, IONIZING RADIATION,
9 THERAPEUTIC ULTRASOUND, OR ELECTROCONVULSIVE THERAPY.

10 § 11. Subparagraph (i) of paragraph a of subdivision 1 of section
11 6503-a of the education law, as amended by chapter 554 of the laws of
12 2013, is amended to read as follows:

13 (i) services provided under article one hundred fifty-four, ONE
14 HUNDRED FIFTY-SEVEN, one hundred sixty-three or one hundred sixty-seven
15 of this title for which licensure would be required, or

16 § 12. Section 6505-b of the education law, as amended by chapter 477
17 of the laws of 2008, is amended to read as follows:

18 § 6505-b. Course work or training in infection control practices.
19 Every dentist, registered nurse, licensed practical nurse, podiatrist,
20 optometrist and dental hygienist, LICENSED NUTRITIONIST, AND LICENSED
21 DIETITIAN/NUTRITIONIST practicing in the state shall, on or before July
22 first, nineteen hundred ninety-four and every four years thereafter,
23 complete course work or training appropriate to the professional's prac-
24 tice approved by the department regarding infection control and barrier
25 precautions, including engineering and work practice controls, in
26 accordance with regulatory standards promulgated by the department, in
27 consultation with the department of health, which shall be consistent,
28 as far as appropriate, with such standards adopted by the department of
29 health pursuant to section two hundred thirty-nine of the public health
30 law to prevent the transmission of HIV, HBV or HCV in the course of
31 professional practice. Each such professional shall document to the
32 department at the time of registration commencing with the first regis-
33 tration after July first, nineteen hundred ninety-four that the profes-
34 sional has completed course work or training in accordance with this
35 section, provided, however that a professional subject to the provisions
36 of paragraph (f) of subdivision one of section twenty-eight hundred
37 five-k of the public health law shall not be required to so document.
38 The department shall provide an exemption from this requirement to
39 anyone who requests such an exemption and who (i) clearly demonstrates
40 to the department's satisfaction that there would be no need for him or
41 her to complete such course work or training because of the nature of
42 his or her practice or (ii) that he or she has completed course work or
43 training deemed by the department to be equivalent to the course work or
44 training approved by the department pursuant to this section. The
45 department shall consult with organizations representative of
46 professions, institutions and those with expertise in infection control
47 and HIV, HBV and HCV with respect to the regulatory standards promulgat-
48 ed pursuant to this section.

49 § 13. Paragraph a of subdivision 3 of section 6507 of the education
50 law, as amended by chapter 554 of the laws of 2013, is amended to read
51 as follows:

52 a. Establish standards for preprofessional and professional education,
53 experience and licensing examinations as required to implement the arti-
54 cle for each profession. Notwithstanding any other provision of law, the
55 commissioner shall establish standards requiring that all persons apply-
56 ing, on or after January first, nineteen hundred ninety-one, initially,

1 or for the renewal of, a license, registration or limited permit to be a
2 physician, chiropractor, dentist, registered nurse, podiatrist, optome-
3 trist, psychiatrist, psychologist, licensed master social worker,
4 licensed clinical social worker, licensed creative arts therapist,
5 licensed marriage and family therapist, licensed mental health counse-
6 lor, licensed psychoanalyst, dental hygienist, licensed behavior
7 analyst, [or] certified behavior analyst assistant OR LICENSED NUTRI-
8 TIONIST OR LICENSED DIETICIAN/NUTRITIONIST shall, in addition to all the
9 other licensure, certification or permit requirements, have completed
10 two hours of coursework or training regarding the identification and
11 reporting of child abuse and maltreatment. The coursework or training
12 shall be obtained from an institution or provider which has been
13 approved by the department to provide such coursework or training. The
14 coursework or training shall include information regarding the physical
15 and behavioral indicators of child abuse and maltreatment and the statu-
16 tory reporting requirements set out in sections four hundred thirteen
17 through four hundred twenty of the social services law, including but
18 not limited to, when and how a report must be made, what other actions
19 the reporter is mandated or authorized to take, the legal protections
20 afforded reporters, and the consequences for failing to report. Such
21 coursework or training may also include information regarding the phys-
22 ical and behavioral indicators of the abuse of individuals with mental
23 retardation and other developmental disabilities and voluntary reporting
24 of abused or neglected adults to the office of mental retardation and
25 developmental disabilities or the local adult protective services unit.
26 Each applicant shall provide the department with documentation showing
27 that he or she has completed the required training. The department shall
28 provide an exemption from the child abuse and maltreatment training
29 requirements to any applicant who requests such an exemption and who
30 shows, to the department's satisfaction, that there would be no need
31 because of the nature of his or her practice for him or her to complete
32 such training;

33 § 14. Paragraph (a) of subdivision 1 of section 413 of the social
34 services law, as amended by section 2 of part Q of chapter 56 of the
35 laws of 2017, is amended to read as follows:

36 (a) The following persons and officials are required to report or
37 cause a report to be made in accordance with this title when they have
38 reasonable cause to suspect that a child coming before them in their
39 professional or official capacity is an abused or maltreated child, or
40 when they have reasonable cause to suspect that a child is an abused or
41 maltreated child where the parent, guardian, custodian or other person
42 legally responsible for such child comes before them in their profes-
43 sional or official capacity and states from personal knowledge facts,
44 conditions or circumstances which, if correct, would render the child an
45 abused or maltreated child: any physician; registered physician assist-
46 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
47 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
48 psychologist; registered nurse; social worker; emergency medical techni-
49 cian; licensed creative arts therapist; licensed marriage and family
50 therapist; licensed mental health counselor; licensed psychoanalyst;
51 licensed behavior analyst; certified behavior analyst assistant;
52 LICENSED NUTRITIONIST; LICENSED DIETITIAN/NUTRITIONIST; hospital person-
53 nel engaged in the admission, examination, care or treatment of persons;
54 a Christian Science practitioner; school official, which includes but is
55 not limited to school teacher, school guidance counselor, school
56 psychologist, school social worker, school nurse, school administrator

1 or other school personnel required to hold a teaching or administrative
2 license or certificate; full or part-time compensated school employee
3 required to hold a temporary coaching license or professional coaching
4 certificate; social services worker; employee of a publicly-funded emer-
5 gency shelter for families with children; director of a children's over-
6 night camp, summer day camp or traveling summer day camp, as such camps
7 are defined in section thirteen hundred ninety-two of the public health
8 law; day care center worker; school-age child care worker; provider of
9 family or group family day care; employee or volunteer in a residential
10 care facility for children that is licensed, certified or operated by
11 the office of children and family services; or any other child care or
12 foster care worker; mental health professional; substance abuse counse-
13 lor; alcoholism counselor; all persons credentialed by the office of
14 alcoholism and substance abuse services; peace officer; police officer;
15 district attorney or assistant district attorney; investigator employed
16 in the office of a district attorney; or other law enforcement official.

17 § 15. Subdivision 5-a of section 488 of the social services law, as
18 amended by chapter 205 of the laws of 2014, is amended to read as
19 follows:

20 5-a. "Human services professional" shall mean any: physician; regis-
21 tered physician assistant; surgeon; medical examiner; coroner; dentist;
22 dental hygienist; osteopath; optometrist; chiropractor; podiatrist;
23 resident; intern; psychologist; registered nurse; licensed practical
24 nurse; nurse practitioner; social worker; emergency medical technician;
25 licensed creative arts therapist; licensed marriage and family thera-
26 pist; licensed mental health counselor; licensed psychoanalyst; licensed
27 behavior analyst; certified behavior analyst assistant; licensed
28 speech/language pathologist or audiologist; licensed physical therapist;
29 licensed occupational therapist; LICENSED NUTRITIONIST; LICENSED
30 DIETITIAN/NUTRITIONIST; hospital personnel engaged in the admission,
31 examination, care or treatment of persons; Christian Science practition-
32 er; school official, which includes but is not limited to school teach-
33 er, school guidance counselor, school psychologist, school social work-
34 er, school nurse, school administrator or other school personnel
35 required to hold a teaching or administrative license or certificate;
36 full or part-time compensated school employee required to hold a tempo-
37 rary coaching license or professional coaching certificate; social
38 services worker; any other child care or foster care worker; mental
39 health professional; person credentialed by the office of alcoholism and
40 substance abuse services; peace officer; police officer; district attor-
41 ney or assistant district attorney; investigator employed in the office
42 of a district attorney; or other law enforcement official.

43 § 16. This act shall take effect one year after it shall have become a
44 law; provided however, that effective immediately, the addition, amend-
45 ment and/or repeal of any rule or regulation necessary for the implemen-
46 tation of this act on its effective date are authorized and directed to
47 be made and completed by the department of education on or before such
48 effective date.