

Oregon State Legislature
Senate Health Committee
900 Court St NE
Salem, OR 97301



eat right. an affiliate of the Academy of Nutrition and Dietetics

May 13, 2019

Re: HB 3342 (Related to the Provision of Plant-Based Meals in Regulated Facilities)

Chair Monnes Anderson, Vice Chair Linthicum and Members of the Committee:

The Oregon Academy of Nutrition and Dietetics (the “Oregon Academy”) represents 690 registered dietitian nutritionists (RDNs) and dietetic interns who are working to improve the health of Oregonians through food and nutrition. Although we support the purpose of HB 3342 in principle, we are writing to express our conditional opposition to it given concerns with implications of problematic language and provisions in both its introduced form and in proposed amendments in HB 3342-6.

At the outset, we reaffirm to the committee that the Oregon Academy and Oregon RDNs recognize the benefits of nutritionally adequate vegetarian and vegan diets and are aligned with the position of the national Academy of Nutrition and Dietetics (the “Academy”) with which we are affiliated: “It is the position of the Academy of Nutrition and Dietetics that appropriately planned vegetarian, including vegan, diets are healthful, nutritionally adequate, and may provide health benefits for the prevention and treatment of certain diseases.”¹ In addition, the Oregon Academy endorses the Academy’s position recognizing the importance of individualized nutrition care, particularly for older adults and others who receive health care in long-term, post-acute and other settings:

The Academy advocates that as part of the interprofessional team, registered dietitian nutritionists assess, evaluate, and recommend appropriate nutrition interventions according to each individual’s medical condition, desires, and rights to make health care choices. Nutrition and dietetic technicians, registered assist registered dietitian nutritionists in the implementation of individualized nutrition care, including the use of least restrictive diets. . . . Food is an essential component of quality of life; an unpalatable or unacceptable diet can lead to poor food and fluid intake, resulting in malnutrition and related negative health effects. Including older individuals in decisions about food can increase the desire to eat and improve quality of life.²

Below we outline our concerns with the specific language of HB 3342 and its proposed and adopted amendments that should be addressed to avoid (1) creating conflicts and regulatory burdens for health care practitioners writing diet orders or (2) sowing confusion by incorrectly defining the term “plant-based,” conflating its meaning with that of the materially different

¹ Melina V, Craig W, Levin S. Position of the Academy of Nutrition and Dietetics: Vegetarian Diets. *J Acad Nutr Diet.* 2016;116(12):1970-1980.

² Dorner B, Friedrich EK. Position of the Academy of Nutrition and Dietetics: Individualized Nutrition Approaches for Older Adults: Long-Term Care, Post-Acute Care, and Other Settings. *J Acad Nutr Diet.* 2018;118(4):724-735.

concept “vegan.” We note that this committee’s amendment A6 is a substantial improvement over the bill as introduced or as the House proposed it to be amended, and thus with slight modifications to the language in amendment A6 to HB 3342, we foresee a potential pathway for success. Testimony the Oregon Academy submitted to this committee before its May 1, 2019, meeting takes issue with problematic aspects of the bill that would be largely eliminated if proposed amendment A6 is adopted, rendering it inoperable under the changed circumstances. To remove the possibility that our position on HB 3342 could be misconstrued, we retract our testimony submitted on the earlier version of the bill and submit this revised testimony specific to HB 3342 in conjunction with this committee’s proposed amendment A6.

HB 3342 Creates Conflicts and Unnecessarily Restrictive Regulatory Burden

HB 3342 adds unnecessary regulatory burdens onto hospitals and long-term care facilities for which multiple bodies exercise oversight of facilities in respecting resident/patient rights and preferences of the dietary services they receive. They are regulated at the state level, respectively, by the Oregon Health Authority and the Oregon Department of Human Services; regulated at the federal level by the Centers for Medicare and Medicaid Services; and additionally through facilities’ accreditation by The Joint Commission and other accreditation organizations.

The Oregon Academy believes existing regulatory authority requires long-term care facilities to honor a resident’s preference for a plant-based or vegan diet,³ whereas hospitals must prioritize a patient’s individual needs before meeting her preferences.⁴ RDNs have the knowledge, skills and training required to fulfill requests for nutritionally adequate meals in accordance with established national guidelines. RDNs consistently exercise their responsibilities ethically whether we are establishing dietary aspects of a care plan in accordance with a resident’s wishes,⁵ ordering or recommending nutritionally adequate diets that meet a patient’s individual needs,⁶ or providing a patient refusing their food with a nutritionally adequate substitution.⁷ To

³ The purpose of Oregon long term care facility regulations is to “establish requirements for nursing facilities that ***promote quality care and maximization of personal choice*** and independence for residents.” OAR 411-085-0000.

⁴ See, Interpretive Guidelines §482.28(b)(2) in the Centers for Medicare and Medicaid Services State Operations Manual: Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals (Rev. 183, Oct. 12, 2018). Accessed May 10, 2019. Available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf. (“Diets must be based on an assessment of the patient’s nutritional and therapeutic needs and documented in the patient’s medical record (including documentation about the patient’s tolerance to any therapeutic diet ordered.)”)

⁵ See, OAR 411-086-0060(2).

⁶ See, 42 CFR 482.28(b)(1) (“Individual patient nutritional needs must be met in accordance with recognized dietary practices.”)

⁷ See, Interpretive Guidelines for §482.28(b)(1) in the Centers for Medicare and Medicaid Services State Operations Manual: Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals (Rev. 183, Oct. 12, 2018). Accessed May 10, 2019. Available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf. (“Patients who refuse the food served should be offered substitutes that are of equal nutritional value in order to meet their basic nutritional needs.”)

the extent possible and permissible, dietary services would already seek to accommodate a preference for a plant-based meal.

Moreover, hospitals⁸ and long term care facilities⁹ in Oregon are each required to have a diet manual approved either by the dietitian or the dietitian in conjunction with the medical staff readily available and annually reviewed. The Academy's *Nutrition Care Manual*, the gold standard for meeting these requirements, explicitly states that, "Vegetarian diets should be available for and provided to *all individuals in institutional settings who indicate a preference to avoid meat and/or animal products.*"¹⁰

In addition, this committee's proposed amendment A6 includes the language, "when such a meal is allowed by a physician diet order," the purpose of which is an essential improvement over the originally introduced bill, because it appropriately prioritizes the patient's medical needs (as specified in the diet order) over patient's mere preference. However, the amendment as written negatively impacts public safety and patient care because it only bestows this ability to prioritize a diet order if it is signed by a physician, despite Oregon allowing registered dietitians and certain other "health care practitioners" to order therapeutic diets if they obtain privileges or other authorization from the medical staff. In addition, the language would appear to preclude RDNs or other authorized health care practitioners to order the plant-based or vegan diet, since any such order would not be "allowed by a physician diet order." Thus, we urge the committee to strike the words "physician diet order" in amendment A6 and replace them with the phrase "a written order by the responsible physician, or other health care practitioner authorized within the scope of his or her professional license" immediately preceding the words "and is necessary to accommodate" consistent with OAR 333-520-0020(2)(e).

Definition and Clarification of Terms "Vegan" and "Plant-Based"

The Oregon Academy appreciates that this committee's amendment A6 recognized the need to address the inaccurate, novel¹¹ definition used for the term "plant-based meal" in the original HB 3342, the use of which fundamentally misrepresents a plant-based meal as being identical to a "vegan meal" when the terms are far from fungible. In fact, vegan meals are a subset of the

⁸ See, 42 CFR 482.28(b)(3) ("A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.).

⁹ See, OAR 411-086-0250(4)(b) ("A diet manual, approved by a dietitian, shall be readily available to the attending physician, nursing and dietary service personnel. The manual shall be reviewed at least annually by the dietitian [sic].").

¹⁰ Academy of Nutrition and Dietetics. *Nutrition Care Manual. Vegetarian Nutrition: Overview*. Available at https://www.nutritioncaremanual.org/topic.cfm?ncm_category_id=1&lv1=38544&lv2=144609&lv3=273848&ncm_toc_id=273848&ncm_heading=Normal%20Nutrition. Accessed May 10, 2019. (Emphasis added.)

¹¹ The Oregon Academy recognizes this is not an entirely novel definition, as similar bills seeking to redefine the commonly understood and plain meaning of "plant-based" include this same inaccurate definition for "plant-based meal" have advanced in California and New York. Consumers are already more than a little confused and unsure about the exact differences between "plant-based," "vegetarian," and "vegan," and it would do a disservice to the public, investments in nutrition education, and the proposition that words are supposed to mean something to add additional confusion and uncertainty into the equation.

category of “plant-based meals,” and a healthful plant-based meal can be vegan, vegetarian, or a meal containing small amounts of animal foods or byproducts from meat, poultry, fish, dairy or eggs. We maintain that improperly conflating definitions of “plant-based” and “vegan” in statute limits the variety of choices that plant-based dietary patterns can offer the large number of Oregonians willing to adopt a plant-based lifestyle who have no interest in the extremely restrictive vegan dietary pattern.

That stated, even if amendment A6 were adopted, the bill would lack a definition specifying what a healthy “plant-based meal” constitutes. In fact, even the term “healthy” lacks a common, consistent understanding, which poses a challenge for both the Food and Drug Administration as it undertakes a process to redefine that term and for Oregonians wondering what a “healthy plant-based meal” means. Instead, we suggest replacing “healthy” with “nutritionally adequate” or use the phrase “plant-based or vegan meals that meet their nutritional needs.” Although RDNs have the knowledge and skillset required to work with patients, residents, physicians and dietary services staff to plan menus that ensure that nutritional needs and dietary preferences are met while accommodating for allergies, intolerances and religious, cultural, ethnic or personal preferences, we also appreciate that a single definition of “plant-based meal” for this section could enhance meal consistency, align expectations among patients, residents and health care practitioners, improve diet quality, and enable dietary services are preparing meals consistent with the intent of the legislation. Should the committee find there is not sufficient time to identify a consensus definition, we are confident in the ability of stakeholders to craft a definition for inclusion in subsequent implementing regulations.

Our Oregon Academy of Nutrition and Dietetics appreciates your consideration of these serious concerns with the language of HB 3342, and we would be grateful and willing to speak with the chairman, vice chairman or members of the committee to discuss the value of plant-based meals and the complex impacts on patient care should HB 3342 pass.

Sincerely,

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