

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

October 15, 2019  
1:00 p.m. Central Time  
Nebraska State Office Building, Lower Level B  
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 4 of the Nebraska Administrative Code (NAC) – *Credentialing Review Program*. The chapter implements guidelines for the regulation of health professions that are not regulated and for health professions seeking to change the scope of their practice. The proposed changes remove duplicative statutory language from the regulations; update definitions; remove Attachment 1 from the regulations; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or [dhhs.regulations@nebraska.gov](mailto:dhhs.regulations@nebraska.gov), respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

## FISCAL IMPACT STATEMENT

Agency: <b>Department of Health and Human Services</b>	
Title: 172	Prepared by: Matt Gelvin
Chapter: 4	Date prepared: 05/28/2019
Subject: Credentials Issued Under The Uniform Credentialing Act	Telephone: 402-471-0145

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )
Increased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Increased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Indeterminable	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

EFFECTIVE DATE \_\_\_\_\_ NEBRASKA DEPARTMENT OF \_\_\_\_\_ 172 NAC 4  
JULY 5, 2015 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_

TITLE 172 \_\_\_\_\_ PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 4 \_\_\_\_\_ CREDENTIALING REVIEW PROGRAM

~~4-001 SCOPE AND AUTHORITY: These regulations are intended to implement the Nebraska Regulation of Health Professions Act, Neb. Rev. Stat. §§ 71-6201 to 71-6229. The Act establishes guidelines for the regulation of health professions which are not regulated and those regulated health professions which seek to change their scope of practice. Credentialing review is the process by which the Act is implemented. These regulations establish standards for the use of criteria by review bodies in recommending whether proposals for regulation or change in scope of practice meet the criteria.~~

#### ~~4-002 DEFINITIONS~~

~~Applicant group means any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated by the Division or which proposes to change the scope of practice of a regulated profession.~~

~~Application means the document prepared by the applicant group that contains the proposal and evidence supporting or explaining the proposal~~

~~Board means the State Board of Health.~~

~~Chairperson means the chairperson of the Health and Human Services Committee of the Legislature.~~

~~Committee means the technical committee created in Neb. Rev. Stat. § 71-6224.~~

~~Credentialing means the process of regulating health professions by means of registration, certification, or licensure.~~

~~Directed review means a review conducted at the request of the Director and the Chairperson.~~

~~Director means the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.~~

Division means the Division of Public Health of the Department of Health and Human Services.

Health profession means a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Health professional group not previously regulated means those persons or groups who are not currently licensed or otherwise regulated under the Uniform Credentialing Act, who are determined by the Director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

1. Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
2. Facilitating recovery from injury or illness;
3. Providing rehabilitative or continuing care following injury or illness; or
4. Providing any other health service, health-related service, or environmental service which may be subject to regulation by the Division.

Level of evidence means the following ranking of the strength of these types of evidence, in descending order:

1. Randomized trial;
2. Comparison groups;
3. Pre- vs. post-comparison;
4. Correlation study;
5. Case study; and
6. Anecdotal.

Other evidence may be considered and given appropriate weight.

Practitioner means an individual who has achieved knowledge and skill by the practice of a specified health profession and is actively engaged in such profession.

Proposal means the concept submitted for review under the Nebraska Regulation of Health Professions Act for either (a) regulating a health profession that is not currently regulated in Nebraska or (b) changing the scope of practice of a regulated health profession.

Regulated health professions means those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

1. Preventing physical, mental, or emotional injury or illness;
2. Facilitating recovery from injury or illness;
3. Providing rehabilitative or continuing care following injury or illness; or

4. ~~Providing any other health service, health-related service, or environmental service which may be subject to regulation by the Division.~~

~~Review body means the committee, the board, or the director charged with reviewing applications for new credentialing or change in scope of practice.~~

~~Scope of practice means the activities, functions, procedures, and responsibilities of a licensed health profession as defined by the profession's licensure statute as well as any statutory provisions that restrict or limit the circumstances or location in which the activities may occur.~~

#### 4-003 APPLICATION PROCESS

~~4-003.01 Letter of Intent: Representatives of applicant groups must submit a letter of intent to the Director which includes the following:~~

1. ~~The identity of the applicant group;~~
2. ~~Contact information for the applicant group;~~
3. ~~A brief summary of the legislative changes being sought;~~
4. ~~The expected date of completion of the applicant's proposal; and~~
5. ~~A \$500 dollar fee, or if not, a request for waiver of the fee. Such fee is not refundable.~~

~~4-003.02 Waiver of the Fee: The Director has discretion of waiving some, or all, of the \$500 fee. Circumstances under which a waiver may be granted include, but are not limited to, the following:~~

1. ~~The applicant group is an agency of local, state, or federal government;~~
2. ~~Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or~~
3. ~~Payment of the application fee would result in an unreasonable hardship on members of the applicant group.~~

~~4-003.03 Review of the Letter of Intent and Applicant Eligibility: The Director must review the letter of intent and respond within fifteen days whether the applicant group is eligible for review, and whether their request for waiver of the fee has been accepted, if such a request was made. If a request for waiver of the fee is denied, the fee must be submitted before any further action on the application can proceed.~~

~~4-003.04 Application: After the Director has determined that an applicant group is eligible for review, the applicant group must submit to the Director a complete application.~~

~~4-003.04A Completeness of an application: A complete application consists of the following:~~

1. ~~Identification of the applicant group;~~
  - a. ~~Name of the applicant group;~~
  - b. ~~Composition of the applicant group; and~~
  - c. ~~Relationship of the applicant group to the proposal;~~

- ~~2. Contact information (mailing address, telephone number, e-mail address, etc.) for the applicant group;~~
- ~~3. A description of the proposal, which includes answers to the questions contained in Attachment 1, incorporated herein by this reference; and~~
- ~~4. An explanation of:
  - ~~a. The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;~~
  - ~~b. If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in Neb. Rev. Stat. § 71-6222, and the impact of such methods on the public;~~
  - ~~c. The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;~~
  - ~~d. The extent to which regulation or the change of scope of practice might harm the public;~~
  - ~~e. The type of standards that exist to ensure that a practitioner of a health profession would establish and maintain competency;~~
  - ~~f. A description of the health professional group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice;~~
  - ~~g. The role and availability of third-party reimbursement for the services provided by the applicant group;~~
  - ~~h. The experience of other jurisdictions in regulating the practitioners affected by the application, in particular, any experience gained relative to the proposed authority;~~
  - ~~i. The expected costs of regulation, including (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (ii) the cost to the state and to the general public of implementing the proposed legislation.~~~~

~~4-003.04B Amending or Withdrawing a Proposal:~~ A proposal may be amended only by the applicant group and only with the approval of a majority of the technical review committee members. A proposal can only be amended prior to the public hearing on the proposal. The applicant group may withdraw the proposal at any time.

#### 4-004 TECHNICAL REVIEW COMMITTEE REQUIREMENTS IN REVIEWS INITIATED BY APPLICATION

~~4-004.01~~ Each committee shall be chaired by a member of the Board. Board members who serve as committee chairpersons must have no bias, personal or professional regarding the issues under review.

~~4-004.02~~ Each committee must be established so that it is fair, impartial, and equitable regarding the issues under review.

~~4-004.03~~ No more than one representative of any given health profession may serve on any particular committee.

~~4-004.04~~ After an applicant group's proposal has been accepted for review the Director is required to appoint an appropriate committee with the advice of the Board pursuant to the Act.

~~4-004.05~~ All technical review committee meetings must be open to the public and must conform to the Nebraska Open Meetings Act.

~~4-004.06~~ At least one public hearing must be held during the review process for each proposal at which members of the public are allowed to submit comments to the members of the committee.

~~4-004.07~~ Each committee must prepare and submit a report of recommendations on each proposal under review to the Board and the Director.

#### 4-005 DIRECTED REVIEWS

~~4-005.01~~ Initiating a Directed Review: The Director and the Chairperson may initiate a directed review after determining that no appropriate applicant group exists.

#### ~~4-005.02~~ Technical Review Committee Requirements for directed reviews:

~~4-005.02A~~ Each committee shall be chaired by a member of the Board. Board members who serve as committee chairpersons must have no bias, personal or professional regarding the issues under review.

~~4-005.02B~~ Each committee must be established so that it is fair, impartial, and equitable regarding the issues under review.

~~4-005.02C~~ No more than one representative of any given health profession may serve on any particular committee.

~~4-005.02D:~~ After initiating a directed review, the Director is required to appoint an appropriate committee with the advice of the Board.

~~4-005.02E:~~ All committee meetings must be open to the public and must conform to the Nebraska Open Meetings Act.

~~4-005.02F:~~ At least one public hearing must be held during the review process for each proposal, at which members of the public are allowed to submit comments to the committee.

~~4-005.02G: In a directed review, the committee must develop a proposal to address the issues defined by the Director and the Chairperson.~~

~~4-006 CRITERIA AND STANDARDS FOR A NEW CREDENTIAL: The Nebraska Regulation of Health Professions Act sets out criteria for new credentialing of a health profession. These are professions currently not credentialed but allowed to practice in Nebraska. The review body must determine whether the following criteria are met.~~

~~4-006.01 Criterion One: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. The review body must determine that the public is suffering harm or danger, that the harm or danger is clearly and directly attributable to the absence of regulation of the profession, and that this harm or danger is of sufficient magnitude to warrant state intervention.~~
- ~~2. Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the lack of regulation of the profession in question. Evaluation of harm or danger is based on the highest level of evidence available.~~
- ~~3. Harm or danger to the public must be clearly, directly, and primarily attributable to the absence of regulation of the profession. Evidence of harm or danger that cannot meet this test must not be considered.~~
- ~~4. Harm or danger to the health, safety, or welfare of the public may occur in physical, emotional, economic, or social contexts.~~
- ~~5. Harm or danger to the public must be of sufficient extent and severity to warrant governmental intervention. A certain level of harm or danger attributable to human error and uncontrollable factors will always occur within any health care field.~~

~~4-006.02 Criterion Two: Regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. The review body must determine that regulating the profession would not, in itself, bring about significant harm or danger to the health, safety, or welfare of the public through the creation of unnecessary barriers to service.~~



- ~~2. Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the creation of the separate regulated profession in question, and that it is serious and extensive. Evaluation of harm or danger is based on the highest level of evidence available.~~
- ~~3. Harm or danger to the public may occur in physical, emotional, economic, or social contexts.~~
- ~~4. Evidence supporting the status quo must clearly demonstrate how and why this situation protects the public from harm or danger.~~
- ~~5. Evidence must show the benefits of creating the new regulated health profession clearly to be greater in extent and impact than any harm or danger that would be created.~~
- ~~6. If regulation of the profession would require a scope of practice to be defined, the scope of practice must be coordinated with those of regulated professions to minimize fragmentation of the health care system.~~
- ~~7. Regulation of the profession must not lead to unnecessary limitations on the utilization of personnel by employers or to underutilization of qualified personnel.~~
- ~~8. Regulation of the profession must not result in an unnecessary reduction in competition.~~

~~4-006.03 Criterion Three: The public needs assurance from the state of initial and continuing professional ability.~~

The review body must apply the following standards in determining whether this criterion is met:

- ~~1. In order to find that this criterion is met for a profession whose practice is typically autonomous, the review body must determine that the need of the public for this assurance can be demonstrated, that members of the public play an active role in choosing their caregiver, that information about the qualifications of the caregiver is an important element in making that choice, and that currently there is no mechanism that will provide such information as effectively as would the issuance of a State credential.~~
- ~~2. In order to find that this criterion is met for a profession whose practice typically is not autonomous, the review body must determine that the institutional or supervisory structure is inadequate to protect the public from harm, and that the issuance of a State credential to the practitioners of this profession would overcome these inadequacies.~~

- ~~3. Evidence presented must show why a state-issued credential is necessary to allow the public to identify competent practitioners. This is especially significant for professions that already have a strong recognized private system of credentialing.~~
- ~~4. If there is a recognized system of private credentialing, the proposed requirements for obtaining state credentialing must be compared closely to those for private credentialing. If they are essentially identical, there must be compelling evidence to show why such redundancy is in the public interest.~~
- ~~5. Evidence must show that if practitioners are generally supervised by members of other credentialed professions, or if they practice under institutional or similar regulation, it must be demonstrated that such supervision or regulation is not sufficient to protect the public.~~
- ~~6. Evidence must show that members of the public are unable easily to evaluate the qualifications of persons offering the service in question.~~
- ~~7. The review body must evaluate whether the education and training requirements set forth in the proposal are necessary and adequate for safe and effective practice.~~

~~4-006.04 Criterion Four: The public cannot be protected by a more effective alternative.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. The review body must determine that the credentialing proposal as presented to the review body is an effective remedy to the harm or danger identified, and that no other evident means of dealing with this harm or danger, including the status quo, would provide a more effective alternative.~~
- ~~2. Viable alternatives to this proposal must be identified, if available, in terms of being able to address the same harm or danger as was raised in the applicant proposal.~~
- ~~3. Evidence supporting the proposal must show that its enactment would clearly, specifically, and directly solve or alleviate the problems, including harm or danger to the public, that are used to justify the application.~~
- ~~4. Any and all evident alternatives to the proposal must be evaluated to determine if they might provide the same (or greater) problem-solving potential as the proposal, while being more cost-effective or less restrictive. Alternatives may include different levels or types of state credentialing or regulation of the profession, maintenance of the status quo, and other potential solutions. Reviewers are not limited to evaluating only alternatives presented to them by the applicant group; they must actively seek to identify and analyze potential alternatives whenever they can. The recommendations of the reviewing body~~

must reflect their best assessment of the most likely solution to the problems identified.

5. ~~The costs of the proposal, and of any alternatives considered, must be evaluated.~~

~~4-007 CRITERIA AND STANDARDS FOR A PROFESSION NOT CURRENTLY ALLOWED TO PRACTICE IN NEBRASKA: The Nebraska Regulation of Health Professions Act sets out criteria for the regulation of a profession not currently allowed to practice in Nebraska. These are professions currently not credentialed and currently not allowed to practice in Nebraska. The review body must determine whether the following criteria are met.~~

~~4-007.01 Criterion One: Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public.~~

The review body must apply the following standards in determining whether this criterion is met:

1. ~~The review body must determine that the public is suffering harm or danger, that the harm or danger is clearly and directly attributable to the absence of the separately regulated health profession under review, and that this harm or danger is of sufficient magnitude to warrant state intervention.~~
2. ~~Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the absence of the separate regulated health profession in question. Evaluation of harm or danger is based on the highest level of evidence available.~~
3. ~~Harm or danger to the public must be clearly, directly, and primarily attributable to the absence of the separate regulated profession. Evidence of harm or danger that cannot meet this test must not be considered.~~
4. ~~Harm or danger to the health, safety, or welfare of the public may occur in physical, emotional, or social contexts.~~
5. ~~Harm or danger to the public must be of sufficient extent and severity to warrant governmental intervention. A certain level of harm or danger attributable to human error and uncontrollable factors will always occur within any health care field.~~

~~4-007.02 Criterion Two: Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public.~~

The review body must apply the following standards in determining whether this criterion is met:

- ~~1. The review body must determine that any harm or danger that might result from the creation of the separate regulated profession would not be outweighed by the benefits of providing legal access to the profession in question.~~
- ~~2. Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the creation of the separate regulated profession in question, and that it is serious and extensive. Evaluation of harm or danger is based on the highest level of evidence available.~~
- ~~3. Harm or danger to the public may occur in physical, emotional, economic, or social contexts.~~
- ~~4. Evidence supporting the status quo must clearly demonstrate how and why this situation protects the public from harm or danger.~~
- ~~5. Evidence must show the benefits of creating the new regulated health profession clearly to be greater in extent and impact than any harm or danger that would be created.~~
- ~~6. If regulation of the profession would require a scope of practice to be defined, the scope of practice must be coordinated with those of regulated professions to minimize fragmentation of the health care system.~~
- ~~7. Regulation of the profession must not lead to unnecessary limitations on the utilization of personnel by employers or to underutilization of qualified personnel.~~
- ~~8. Regulation of the profession must not result in an unnecessary reduction in competition.~~

~~4-007.03 Criterion Three: Creation of a separate regulated profession would benefit the health, safety, or welfare of the public.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. The review body must determine that creation of a separate regulated profession would likely produce widespread benefits for the public, and that the amount and extent of the benefits would outweigh any possible harm or danger that might be caused by creating this newly credentialed and legalized profession.~~
- ~~2. Documentation of benefits to the public must be sufficient to demonstrate that there is a realistic expectation of their occurrence following enactment of the desired legislation, and that they will be of significant amount and extent. Evaluation of benefits to the public is based on the highest level of evidence available.~~

- ~~3. The extent and amount of benefit to the public must clearly outweigh any potential harm or danger to the public that might be brought about by the creation of a separate regulated profession.~~
- ~~4. Benefits to the public may occur in physical, emotional, economic, or social contexts.~~
- ~~5. The review body must evaluate whether the education and training requirements set forth in the proposal are necessary and adequate for safe and effective practice.~~

~~4-007.04 Criterion Four: The public cannot be protected by a more effective alternative. The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. The review body must determine that creation of the separately regulated profession would be an effective remedy to the harm or danger identified, and that no other evident means of dealing with this harm or danger, including the status quo, would provide a more effective alternative.~~
- ~~2. Viable alternatives to this proposal must be identified, if available, in terms of being able to address the same harm or danger as was raised in the applicant proposal.~~
- ~~3. Evidence supporting the proposal must show that its enactment would clearly, specifically, and directly solve or alleviate the problems, including harm or danger to the public, that are used to justify the application.~~
- ~~4. Protection of the public must be interpreted as protecting it both from any harm or danger caused by absence of the profession, and from any harm or danger caused by permitting the separate practice of the profession.~~
- ~~5. Any and all evident alternatives to the proposal must be evaluated to determine if they might provide the same (or greater) problem-solving potential as the proposal, while being more cost-effective or less restrictive. Alternatives may include different levels or types of state credentialing or regulation of the profession, maintenance of the status quo, and other potential solutions. Reviewers are not limited to evaluating only alternatives presented to them by the applicant group; they must actively seek to identify and analyze potential alternatives whenever they can. The recommendations of the reviewing body must reflect their best assessment of the most likely solution to the problems identified.~~
- ~~6. The costs of the proposal, and of any alternatives considered, must be evaluated.~~

~~4-008 CRITERIA AND STANDARDS FOR A CHANGE IN SCOPE OF PRACTICE OF A REGULATED PROFESSION:~~ The Nebraska Regulation of Health Professions Act sets out criteria for a change in scope of practice of a regulated profession. The review body must determine whether the following criteria are met.

~~4-008.01 Criterion One:~~ The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

The review body must apply the following standards in determining whether this criterion is met:

- ~~1. The review body must determine that at least one of the following is occurring:~~
  - ~~a. The cost of the services in question is prohibitive for some members of the public under the current limitations on scope of practice.~~
  - ~~b. Access to the services in question is very difficult for some members of the public under the current limitations on scope of practice.~~
  - ~~c. The quality of the services in question is adversely impacted under the current limitations on scope of practice.~~
  - ~~d. The range of services of the profession under review is too limited under the current scope of practice raising concerns about consumers having to access the services of other providers whose practices are not as accessible or whose services are more costly.~~
  - ~~e. Actual harm or danger to the public health and safety is occurring because of the absence of the proposed scope of practice.~~

~~4-008.02 Criterion Two:~~ Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

The review body must apply the following standards in determining whether this criterion is met:

- ~~1. The review body must determine that enactment of the proposed changes in scope of practice would produce widespread benefits for the public, and that the amount and extent of the benefits would outweigh any potential harm or danger to the public that might be caused by enactment of these changes.~~
- ~~2. Documentation of benefits to the public must be sufficient to show that there is a realistic expectation of their occurrence following enactment of the proposed changes in scope of practice, and that they would be of significant amount and extent. Evidence from other jurisdictions in which the profession has practiced with the proposed change in scope of practice is preferred if available.~~
- ~~3. Benefit to the public may occur in physical, emotional, economic, or social contexts.~~
- ~~4. Benefit must occur in at least one of the topic areas listed in 172 NAC 4-006.01.~~

~~4-008.03 Criterion Three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. Evaluation of physical, emotional, economic, or social danger to determine whether any evident danger would be:
  - ~~a. Created by the proposed change in scope of practice; and~~
  - ~~b. Significant enough to outweigh the benefits of implementing the proposed change in scope of practice.~~~~
- ~~2. Evaluation of danger is based on the highest level of evidence available.~~

~~4-008.04 Criterion Four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. Analysis of the current education and training must show that it adequately prepares the practitioners in question to perform the new skill or service being proposed in a safe and effective manner.~~
- ~~2. Evidence must be presented to demonstrate that the current education and training is adequately and appropriately accredited.~~

~~4-008.05 Criterion Five: There are appropriate post-professional programs and competence assessment measures available to ensure that the practitioner is competent to perform the new skill or service in a safe manner.~~

~~The review body must apply the following standards in determining whether this criterion is met:~~

- ~~1. It must be determined that there are such programs in place and that an analysis of these programs shows that they are adequate to ensure that the practitioners in question are able to perform the new skill or service being proposed in a safe and effective manner.~~
- ~~2. Evidence must be presented to demonstrate that these programs comply with acceptable standards.~~
- ~~3. Evidence must be presented to demonstrate that these programs are available and at a cost that is not prohibitive.~~

~~4-008.06 Criterion Six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.~~

The review body must apply the following standards in determining whether this criterion is met:

- ~~1. Practitioners of the proposed new scope of practice must be subject to the complaint, investigation, and discipline provisions of the Uniform Credentialing Act.~~
- ~~2. If the proposed new scope of practice will be implemented through the issuance of a new credential, appropriate continuing competency requirements must be established for that credential.~~



**ATTACHMENT 1**

**ADDITIONAL QUESTIONS AN APPLICANT GROUP MUST ANSWER ABOUT THEIR  
PROPOSAL PURSUANT TO 172 NAC 4-003.04A, item 3.**

1. ~~Identify by title, address, telephone number, e-mail address, and website of any other groups, associations, or organizations in Nebraska whose membership consists of any of the following:
  - a. ~~members of the same occupation or profession as that of the applicant group,~~
  - b. ~~members of the occupation dealt with in the application,~~
  - c. ~~employers of the occupation dealt with in the application,~~
  - d. ~~practitioners of the occupations similar to or working closely with members of the occupation dealt with in the application,~~
  - e. ~~educators or trainers of prospective members of the occupation dealt with in the application,~~
  - f. ~~citizens familiar with or utilizing the services of the occupation dealt with in the application (e.g., advocacy groups, patient rights groups, volunteer agencies for particular diseases or conditions, etc.);~~
  - g. ~~any other group that would have an interest in favor of, or unfavorable to, your application.~~~~
2. ~~If the profession is currently credentialed in Nebraska, provide the current scope of practice of this occupation as set forth in state statutes. If a change in this scope of practice is being requested, identify that change.~~
3. ~~If the profession is not currently credentialed in Nebraska describe the proposed scope of practice, or the functions and procedures of this group.~~
4. ~~Describe in detail the functions typically performed by practitioners of this occupation, and identify what if any specific statutory limitations have been placed on these functions, and if possible, explain why the Legislature created these restrictions.~~
5. ~~Identify other occupations that perform some of the same functions or similar functions.~~
6. ~~What functions are unique to this occupation? What distinguishes this occupation from those identified in question 5?~~
7. ~~Identify other occupations whose members regularly supervise members of this occupation, as well as other occupations whose members are regularly supervised by this occupation. Describe the nature of the supervision that occurs in each of these practice situations.~~
8. ~~What actions, judgments, and procedures of this occupation can typically be carried out without supervision or orders? To what extent is this occupation, or portions of its practice, autonomous?~~

- ~~9. Approximately how many people are performing the functions of this occupation in Nebraska, or are presenting themselves as members of this occupation? To what extent are these people credentialed in Nebraska?~~
- ~~10. Describe the general level of education and training possessed by practitioners of this occupation, including any supervised internship or fieldwork required for credentialing. Typically, how is this education and training acquired?~~
- ~~11. Identify the work settings typical of this occupation (e.g., hospitals, private physician offices, clinics, etc.) and identify the predominant practice situations of practitioners, including typical employers for practitioners not self-employed (e.g., private physician, dentist, optometrist, etc.).~~
- ~~12. Do practitioners routinely serve members of the general population? Are services frequently restricted to certain segments of the population (e.g., senior citizens, pregnant women, etc.)? If so, please specify the type of population served.~~
- ~~13. Identify the typical reasons a person would have for using the services of a practitioner. Are there specific illnesses, conditions or situations that would be likely to require the services of a practitioner? If so, please specify.~~
- ~~14. Identify typical referral patterns to and from members of this occupational group. What are the most common reasons for referral?~~
- ~~15. Is a prescription or order from a practitioner of another health occupation necessary in order for services to be provided?~~
- ~~16. How is continuing competence of credentialed practitioners evaluated?~~
- ~~17. What requirements must the practitioner meet before his or her credentials may be renewed?~~
- ~~18. Identify other jurisdictions (states, territories, possessions, or the District of Columbia) wherein this occupation is currently regulated by the government, and the scopes of practice typical for this occupation in these jurisdictions~~

TITLE 172                    PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 4                    CREDENTIALING REVIEW PROGRAM

001. SCOPE AND AUTHORITY. This chapter implements the Nebraska Regulation of Health Professions Act, Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-6201 to 71-6229. This chapter establishes standards for the use of criteria by review bodies in recommending whether proposals for regulation or change in scope of practice meet the criteria.

002. DEFINITIONS. The definitions set out in Neb. Rev. Stat. §§ 71-6201 to 71-6229 and the following apply to this chapter.

002.01 APPLICATION. The document prepared by the applicant group that contains the proposal and evidence supporting or explaining the proposal is the application.

002.02 LEVEL OF EVIDENCE. Level of evidence is the ranking of the strength of these types of evidence, in descending order:

- (A) Randomized trial;
- (B) Comparison groups;
- (C) Pre- vs. post-comparison;
- (D) Correlation study;
- (E) Case study; and
- (F) Anecdotal.

002.03 PROPOSAL. A proposal is the concept submitted for review under the Nebraska Regulation of Health Professions Act for either regulating a health profession that is not currently regulated in Nebraska or changing the scope of practice of a regulated health profession.

002.04 SCOPE OF PRACTICE. Scope of practice is the activities, functions, procedures, and responsibilities of a licensed health profession as defined by the profession's licensure statute as well as any statutory provisions that restrict or limit the circumstances or location in which the activities may occur.

003. CRITERIA AND STANDARDS FOR A NEW CREDENTIAL. The Nebraska Regulation of Health Professions Act sets out criteria for new credentialing of a health profession. These are professions currently not credentialed but allowed to practice in Nebraska. The review body determines whether the following criteria are met.

003.01 CRITERION ONE. Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public. The review body must apply the following standards in determining whether this criterion is met:

- (A) Is the public suffering harm or danger, is the harm or danger, if any, clearly and directly attributable to the absence of regulation of the profession, and whether the harm or danger, if any, is of sufficient magnitude to warrant state intervention.
- (B) The documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear and is attributable to the lack of regulation of the profession in question. Evaluation of harm or danger must be based on the highest level of evidence available.
- (C) Harm or danger to the health, safety, or welfare of the public may occur in physical, emotional, economic, or social contexts; and as such all of these can be considered.
- (D) Harm or danger to the public must be of sufficient extent and severity to warrant governmental intervention. A certain level of harm or danger attributable to human error and uncontrollable factors will always occur within any health care field.

003.02 CRITERION TWO. Regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest. The review body must use the following to determine if this criterion is met:

- (A) Will regulating the profession, in itself, bring about significant harm or danger to the health, safety, or welfare of the public through the creation of unnecessary barriers to service.
- (B) Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the creation of the separate regulated profession in question, and that it is serious and extensive.
- (C) Evidence supporting the status quo must clearly demonstrate how and why this situation protects the public from harm or danger.
- (D) Evidence must show the benefits of creating the new regulated health profession clearly to be greater in extent and impact than any harm or danger that would be created.
- (E) If regulation of the profession would require a scope of practice to be defined, the scope of practice must be coordinated with those of regulated professions to minimize fragmentation of the health care system.
- (F) Regulation of the profession must not lead to unnecessary limitations on the utilization of personnel by employers or to underutilization of qualified personnel.
- (G) Regulation of the profession must not result in an unnecessary reduction in competition.

003.03 CRITERION THREE. The public needs assurance from the state of initial and continuing professional ability. The review body must use the following to determine if this criterion is met:

- (A) In order to find that this criterion is met for a profession whose practice is typically autonomous, the review body must determine that the need of the public for this

assurance can be demonstrated, that members of the public play an active role in choosing their caregiver, that information about the qualifications of the caregiver is an important element in making that choice, and that currently there is no mechanism that will provide such information as effectively as would the issuance of a State credential.

- (B) In order to find that this criterion is met for a profession whose practice typically is not autonomous, the review body must determine that the institutional or supervisory structure is inadequate to protect the public from harm, and that the issuance of a State credential to the practitioners of this profession would overcome these inadequacies.
- (C) Evidence presented must show why a state-issued credential is necessary to allow the public to identify competent practitioners. This is especially significant for professions that already have a strong recognized private system of credentialing.
- (D) If there is a recognized system of private credentialing, the proposed requirements for obtaining state credentialing must be compared closely to those for private credentialing. If they are essentially identical, there must be compelling evidence to show why such redundancy is in the public interest.
- (E) Evidence must show that if practitioners are generally supervised by members of other credentialed professions, or if they practice under institutional or similar regulation, it must be demonstrated that such supervision or regulation is not sufficient to protect the public.
- (F) Evidence must show that members of the public are unable easily to evaluate the qualifications of persons offering the service in question.
- (G) Whether the education and training requirements set forth in the proposal are necessary and adequate for safe and effective practice.

003.04 CRITERION FOUR. The public cannot be protected by a more effective alternative. The review body must determine whether:

- (A) The credentialing proposal as presented is an effective remedy to the harm or danger identified, and that no other evident means of dealing with this harm or danger, including the status quo, would provide a more effective alternative.
- (B) Viable alternatives to the proposal have been identified and, if available, if the alternative are able to address the same harm or danger raised in the applicant proposal.
- (C) Evidence supporting the proposal shows that its enactment would clearly, specifically, and directly solve or alleviate the problems, including harm or danger to the public, that are used to justify the application.
- (D) Any and all evident alternatives to the proposal might provide the same or greater problem-solving potential as the proposal, while being more cost-effective or less restrictive. Alternatives may include different levels or types of state credentialing or regulation of the profession, maintenance of the status quo, and other potential solutions. Reviewers are not limited to evaluating only alternatives presented to them by the applicant group; they can actively seek to identify and analyze potential alternatives. The recommendations of the reviewing body must reflect their best assessment of the most likely solution to the problems identified.

- (E) The costs of the proposal, and of any alternatives considered, must be evaluated for unnecessary financial burden to the public.

004. CRITERIA AND STANDARDS FOR A PROFESSION NOT CURRENTLY ALLOWED TO PRACTICE IN NEBRASKA. The Nebraska Regulation of Health Professions Act sets out criteria for the regulation of a profession not currently allowed to practice in Nebraska. These are professions currently not credentialed and currently not allowed to practice in Nebraska. The review body must determine whether the following criteria are met.

004.01 CRITERION ONE. Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public. The review body must apply the following standards in determining whether this criterion is met:

- (A) The public is suffering harm or danger, which is clearly and directly attributable to the absence of the separately regulated health profession under review, and that this harm or danger is of sufficient magnitude to warrant state intervention.
- (B) The Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the absence of the separate regulated health profession in question. Evaluation of harm or danger is based on the highest level of evidence available.
- (C) Harm or danger to the health, safety, or welfare of the public may occur in physical, emotional, or social contexts and as such all of these can be considered.
- (D) Harm or danger to the public must be of sufficient extent and severity to warrant governmental intervention. A certain level of harm or danger attributable to human error and uncontrollable factors will always occur within any health care field.

004.02 CRITERION TWO. Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public. The review body must apply the following standards in determining whether this criterion is met:

- (A) Any harm or danger that might result from the creation of the separate regulated profession would not be outweighed by the benefits of providing legal access to the profession in question.
- (B) Documentation of harm or danger to the public must be sufficient to demonstrate that the harm or danger is clear, that it is attributable to the creation of the separate regulated profession in question, and that it is serious and extensive. Evaluation of harm or danger is based on the highest level of evidence available.
- (C) Evidence supporting the status quo must clearly demonstrate how and why this situation protects the public from harm or danger.
- (D) Evidence must show the benefits of creating the new regulated health profession clearly to be greater in extent and impact than any harm or danger that would be created.
- (E) If regulation of the profession would require a scope of practice to be defined, the scope of practice must be coordinated with those of regulated professions to minimize fragmentation of the health care system.
- (F) Regulation of the profession must not lead to unnecessary limitations on the utilization of personnel by employers or to underutilization of qualified personnel.

- (G) Regulation of the profession must not result in an unnecessary reduction in competition.

004.03 CRITERION THREE. Creation of a separate regulated profession would benefit the health, safety, or welfare of the public. The review body must use the following to determine if this criterion is met.

- (A) The creation of a separate regulated profession would likely produce widespread benefits for the public, and that the amount and extent of the benefits would outweigh any possible harm or danger that might be caused by creating this newly credentialed and legalized profession.
- (B) Documentation of benefits to the public must be sufficient to demonstrate that there is a realistic expectation of their occurrence following enactment of the desired legislation, and that they will be of significant amount and extent. Evaluation of benefits to the public is based on the highest level of evidence available.
- (C) The extent and amount of benefit to the public must clearly outweigh any potential harm or danger to the public that might be brought about by the creation of a separate regulated profession.
- (D) Benefits to the public may occur in physical, emotional, economic, or social contexts and as such all of these can be considered.
- (E) Whether the education and training requirements set forth in the proposal are necessary and adequate for safe and effective practice.

004.04 CRITERION FOUR. The public cannot be protected by a more effective alternative. The review body must determine whether:

- (A) The creation of the separately regulated profession would be an effective remedy to the harm or danger identified, and that no other evident means of dealing with this harm or danger, including the status quo, would provide a more effective alternative.
- (B) Viable alternatives to the proposal have been identified and, if available, if the alternative are able to address the same harm or danger raised in the applicant proposal.
- (C) Evidence supporting the proposal shows that its enactment would clearly, specifically, and directly solve or alleviate the problems, including harm or danger to the public, that are used to justify the application.
- (D) Protection of the public must be interpreted as protecting it both from any harm or danger caused by absence of the profession, and from any harm or danger caused by permitting the separate practice of the profession.
- (E) Any and all evident alternatives to the proposal might provide the same or greater problem-solving potential as the proposal, while being more cost-effective or less restrictive. Alternatives may include different levels or types of state credentialing or regulation of the profession, maintenance of the status quo, and other potential solutions. Reviewers are not limited to evaluating only alternatives presented to them by the applicant group; they can actively seek to identify and analyze potential alternatives. The recommendations of the reviewing body must reflect their best assessment of the most likely solution to the problems identified.

- (F) The costs of the proposal, and of any alternatives considered, must be evaluated for unnessessary financial burden to the public.

005. CRITERIA AND STANDARDS FOR A CHANGE IN SCOPE OF PRACTICE OF A REGULATED PROFESSION. The Nebraska Regulation of Health Professions Act sets out criteria for a change in scope of practice of a regulated profession. The review body must determine whether the following criteria are met.

005.01 CRITERION ONE. The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

005.01(A) DETERMINATION. The review body must determine that at least one of the following is occurring:

- (i) The cost of the services in question is prohibitive for some members of the public under the current limitations on scope of practice.
- (ii) Access to the services in question is very difficult for some members of the public under the current limitations on scope of practice.
- (iii) The quality of the services in question is adversely impacted under the current limitations on scope of practice.
- (iv) The range of services of the profession under review is too limited under the current scope of practice raising concerns about consumers having to access the services of other providers whose practices are not as accessible or whose services are more costly.
- (v) Actual harm or danger to the public health and safety is occurring because of the absence of the proposed scope of practice.

005.02 CRITERION TWO. Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public. The review body must use the following to determine if this criterion is met:

- (A) The enactment of the proposed changes in scope of practice would produce widespread benefits for the public, and the amount and extent of the benefits would outweigh any potential harm or danger to the public that might be caused by enactment of these changes.
- (B) Documentation of benefits to the public must be sufficient to show that there is a realistic expectation of their occurrence following enactment of the proposed changes in scope of practice, and that they would be of significant amount and extent. Evidence from other jurisdictions in which the profession has practiced with the proposed change in scope of practice is preferred.
- (C) Benefit must occur in at least one of the topic areas listed in 172 Nebraska Administrative Code (NAC) 4-003.01.

005.03 CRITERION THREE. The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public. The review body must use the following to determine if this criterion is met:



- (A) Evaluation of physical, emotional, economic, or social danger to determine whether any evident danger would be created by the proposed change in scope of practice and significant enough to outweigh the benefits of implementing the proposed change in scope of practice.
- (B) Evaluation of danger is based on the highest level of evidence available.

005.04 CRITERION FOUR. The current education and training for the health profession adequately prepares practitioners to perform the new skill or service. The review body must use the following to determine if this criterion is met:

- (A) Analysis of the current education and training must show that it adequately prepares the practitioners in question to perform the new skill or service being proposed in a safe and effective manner.
- (B) Evidence must be presented to demonstrate that the current education and training is adequately and appropriately accredited.

005.05 CRITERION FIVE. There are appropriate post-professional programs and competence assessment measures available to ensure that the practitioner is competent to perform the new skill or service in a safe manner. The review body must use the following to determine if this criterion is met:

- (A) There are programs in place and the programs show that they are adequate to ensure that the practitioners are able to perform the new skill or service being proposed in a safe and effective manner.
- (B) Evidence that demonstrates programs comply with acceptable standards.
- (C) Evidence presented that demonstrates programs are available and at a cost that is not prohibitive.

005.06 CRITERION SIX. There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently. The review body must use the following to determine if this criterion is met:

- (A) Practitioners of the proposed new scope of practice must be subject to the complaint, investigation, and discipline provisions of the Uniform Credentialing Act.
- (B) The new scope of practice will be implemented through the issuance of a new credential, and appropriate continuing competency requirements are established the credential.