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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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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;
- (F) Anecdotal; and
- (G) Other evidence as appropriate.

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 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.
- (D) 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.
- (E) 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 unnecessary 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.

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) If the proposed new scope of practice will be implemented through the issuance of a new credential, and appropriate continuing competency requirements are established for the credential.

006. 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.