

Testimony of Thomas M. Halaszynski, M.D., D.M.D
on
“Scope of Practice for Health Professions”
before the
Legislative Program Review and Investigations Committee
October 1, 2009

Senator Kissel, Representative Mushinsky, members of the committee, my name is Thomas Halaszynski. I am a Board Certified Anesthesiologist, President of the Connecticut State Society of Anesthesiologists (CSSA) and a practicing physician at Yale-New Haven Hospital. I come before you today to discuss scope of practice determination for health professionals. CSSA welcomes this study and the opportunity to comment to you today.

Anesthesiologists have first hand knowledge of the dilemma facing legislators with regard to scope of practice issues. Over the last several years, efforts have been made to change the scope of practice relationship between APRN's and physicians particularly with regard to the formality of the relationship, the actual definition of collaborative agreement and the responsibilities prescribed to both parties in such agreements. Anesthesiologists have major concerns about the details of the proposed changes because they could potentially affect the relationships we have with Certified Registered Nurse Anesthetists (CRNAs) – relationships that we have deliberately and carefully forged.

CT law currently defines collaboration between nurse anesthetists and anesthesiologists as a mutually agreed upon relationship between the CRNA and the anesthesiologist that details in writing the prescriptive authority of CRNA's and requires that the prescribing and administration of medical therapeutics during surgery be directed by an anesthesiologist who is physically present in the institution, clinic or other setting where the surgery is being performed. These collaborative agreements have been set in place to ensure the proper oversight to create patient safety. Anesthesiologists undergo a rigorous educational training preparation program to prepare them for caring for patients. In addition to patient safety, it is important that individuals have consumer access to the proper health treatment. There remains a great value among health care policy makers regarding the benefits of providing consumers of health care services with added information about their care. Advocates of transparency argue that accurate information empowers patients with an improved understanding of the health care delivery system. Currently there is little transparency associated with the most fundamental and important component of health care delivery – the many health care professionals that interface with patients each day. Patients lack information about the wide variety of individuals who work in health care settings, and they are confused by the increasing ambiguity of health care provider-related advertising and marketing. Because of this lack of information and confusion, patient autonomy and decision-making have been compromised. State legislators are wise to act to enhance information to patients and address the lack of clarity in health care provider services, advertising and marketing. Access to the proper medical treatment will help reduce overall healthcare costs.

There are studies that confirm patient confusion regarding the numerous aspects and types of health care providers including physicians, nurses, technicians, physician assistants and others engaged in providing services in health care settings. All of these providers play important and critical roles with distinct value in the health care delivery system. Ambiguous provider nomenclature and related advertisements and marketing are exacerbating patient uncertainty. Patient autonomy and decision-making are being compromised by uncertainty and misunderstanding in the health care patient-provider relationships.

Legislators do not have the time or resources available to gather a thorough understanding of the health and economic implications of scope of practice proposals. The creation of a state level scope of practice review committee that assesses scope of practice initiatives *prior to* introduction at the legislative level, would serve to create a level playing field for discussion. A committee would provide a forum for objective review of proposed changes in the scope of practice of nonphysician practitioners licensed in the state to ensure that changes contribute to the improvement of the overall health of citizens. Legislation to create a review committee should cover any health professional group that could potentially seek to alter their scope of practice. Four other states, Arizona, Nebraska, Texas and New Mexico have created similar committees and it is our understanding that the Arizona model has been the most successful (see attached).

When establishing a scope of practice review committee, it would be helpful to ensure that it is administratively attached to a specific state agency for oversight. The committee could be housed under the Department of Public Health or another state entity to gather a professional review and make recommendations for changes.

CSSA is hopeful for a procedure of objective review of proposed changes in the scope of practice of healthcare practitioners to guarantee improvement of the overall health of people in this state. Properly examining scope of practice will improve consumer access. It will create a broader array of professionals to provide care. It is critically important however, that it be done professionally and not opened up to practitioners that lack the necessary training and credentials to insure patient safety and proper medical treatment. These decisions should be made with the public's best interest in mind. We have a large concern for public safety. It is imperative that patients receive the appropriate medical treatment.

Having a professional third party organization to mediate would create a non-biased forum for physicians to tackle the issues that surround scope of practice. CSSA shares a positive and healthy relationship with the nurse anesthetists in the state. As a result, we do not feel it is appropriate to have scope of practice issue battled out via legislation. This leads to tension and a negative medical environment. In the end, the shared goal is patient health and safety. The solution is to make sure we provide clarifications and resources to address patient confusion in the health care marketplace. Such investigation and study would provide modest and meaningful enhanced transparency regarding medical care and patient to health care provider relationships.

Thank you again for the opportunity to speak today. I look forward to working with you on this issue in the upcoming legislative session.

32-3101. Definitions

In this chapter, unless the context otherwise requires:

1. "Applicant group" means any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated that proposes to increase the scope of practice of a health profession.
2. "Certification" means a voluntary process by which a regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use the word "certified" in a title or designation to perform prescribed health professional tasks.
3. "Grandfather clause" means a provision applicable to practitioners actively engaged in the regulated health profession before the effective date of a law that exempts the practitioners from meeting the prerequisite qualifications set forth in the law to perform prescribed occupational tasks.
4. "Health professions" means professions regulated pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39 or 41 of this title, title 36, chapter 6, article 7 or title 36 chapter 17.
5. "Increase the scope of practice" means to engage in conduct beyond the authority granted to a health profession by law.
6. "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety and welfare.
7. "Legislative committees of reference" means joint subcommittees composed of the members of the appropriate standing committees of the house of representatives and senate appointed pursuant to section 41-2954.
8. "License" or "licensure" means an individual, nontransferable authorization to carry on a health activity that would otherwise be unlawful in this state in the absence of the permission, and that is based on qualifications that include graduation from an accredited or approved program and acceptable performance on a qualifying examination or a series of examinations.
9. "Practitioner" means an individual who has achieved knowledge and skill by practice and who is actively engaged in a specified health profession.
10. "Public member" means an individual who is not and never has been a member or spouse of a member of the health profession being regulated and who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.
11. "Registration" means the formal notification that, before rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner, the location, nature and operation of the health activity to be practiced and, if required by a regulatory entity, a description of the service to be provided.
12. "Regulatory entity" means any board, commission, agency or department of this state that regulates one or more health professions in this state.
13. "State agency" means any department, board, commission or agency of this state.

32-3102. Nonapplicability of chapter

This chapter does not:

1. Apply to any regulatory entity or increase in scope of practice legislatively enacted before the effect date of this chapter, except as provided in this chapter.
2. Apply to or interfere in any way with the practice of religion or any kind of treatment by prayer.
3. Apply to any remedial or technical amendments to any legislation.

32-3103. Regulation of health profession legislation

A. Regulation shall not be imposed on any unregulated health profession except for the exclusive purpose of protecting the public interest. All proposed legislation to regulate a health profession for the first time shall be reviewed according to the following criteria. A health profession shall be regulated by this statute only if:

1. Unregulated practice can clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.
2. The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

3. The public cannot be effectively protected by other means in a more cost beneficial manner.

B. After evaluating the criteria prescribed in subsection A and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and the following:

1. If existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation shall provide for stricter civil actions and criminal prohibitions.
2. If a service is being performed for individuals which involves a hazard to the public health, safety or welfare, the regulation shall impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court.
3. If the threat to the public health, safety or economic well-being is relatively small as a result of the operation of the health profession, the regulation shall implement a system of registration.
4. If the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification.
5. If it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

32-3104. Applicant groups; written report

Applicant groups shall submit a written report explaining the factors prescribed in section 32-3105 or 32-3106 to the joint legislative audit committee established pursuant to section 41-1279. The report shall be submitted on or before September 1 prior to the start of the legislative session for which the legislation is proposed. The joint legislative audit committee shall assign the written report to the appropriate legislative committee of reference. The legislative committee of reference shall study the written report and deliver the report of its recommendations to the joint legislative audit committee, the speaker of the house of representatives, the president of the senate, the governor and, if appropriate, the regulatory board of the health profession on or before December 1 of the year in which the report is submitted.

Legislative committees of reference may hold hearings as they deem necessary. If a health profession group proposes to increase the scope of practice of its profession, copies of the written report shall be sent to the regulatory board of the health profession for review and comment. If applicable, the regulatory board of the health profession shall make recommendations based on the report submitted by applicant groups to the extent requested by the legislative committees of reference.

32-3105. Applicants for regulation; factors

Applicant groups for regulation shall explain each of the following factors to the extent requested by the legislative committees of reference:

1. A definition of the problem and why regulation is necessary including:
 - (a) The nature of the potential harm to the public if the health profession is not regulated and the extent to which there is a threat to public health and safety.
 - (b) The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession
 - (c) The extent of autonomy a practitioner has, as indicated by the following:
 - (i) The extent to which the health profession calls for independent judgment and the extent of skill or experience required in making the independent judgment.
 - (ii) The extent to which practitioners are supervised.
2. The efforts made to address the problem including:
 - (a) Voluntary efforts, if any, by members of the health profession to either:
 - (i) Establish a code of ethics.
 - (ii) Help resolve disputes between health practitioners and consumers.
 - (b) Recourse to and the extent of use of applicable law and whether it could be amended to control the problem.
3. The alternatives considered including:
 - (a) Regulation of business employers or practitioners rather than employee practitioners.
 - (b) Regulation of the program or service rather than the individual practitioners.
 - (c) Registration of all practitioners.
 - (d) Certification of all practitioners.
 - (e) Other alternatives.
 - (f) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest.
 - (g) Why licensing would serve to protect the public interest.
4. The benefit to the public if regulation is granted including:
 - (a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation.
 - (b) Whether the public can identify qualified practitioners.
 - (c) The extent to which the public can be confident that qualified practitioners are competent including:
 - (i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification or licensure, including the composition of the board and the number of public members, if any, the powers and duties of the board or state agency regarding

examinations and for cause revocation, suspension and nonrenewal of registrations, certificates or licenses, the adoption of rules and canons of ethics, the conduct of inspections, the receipt of complaint and disciplinary action taken against practitioners and how fees would be levied and collected to pay for the expenses of administering and operating the regulatory system.

(ii) If there is a grandfather clause, whether grandfathered practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date.

(iii) The nature of the standards proposed for registration, certification or licensure as compared with standards of other jurisdictions.

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions.

(v) The nature and duration of any training including whether the training includes a substantial amount of supervised field experience, whether training programs exist in this state, if there will be an experience requirement, whether the experience must be acquired under a registered, certified or licensed practitioner, whether there are alternative routes of entry or methods of meeting the prerequisite qualifications, whether all applicants will be required to pass an examination, and if an examination is required, by whom it will be developed and how the costs of development will be met.

(d) Assurance of the public that practitioners have maintained their competence including:

(i) Whether the registration, certification or licensure will carry an expiration date.

(ii) Whether renewal will be based only on payment of a fee or whether renewal will involve reexamination, peer review or other enforcement.

5. The extent to which regulation might harm the public including:

(a) The extent to which regulation will restrict entry into the health profession including:

(i) Whether the proposed standards are more restrictive than necessary to ensure safe and effective performance.

(ii) Whether the proposed legislation requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure if the other jurisdiction has substantially equivalent requirements for registration, certification or licensure as those in this state.

(b) Whether there are professions similar to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation.

6. The maintenance of standards including:

(a) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics.

(b) How the proposed legislation will assure quality including:

(i) The extent to which a code of ethics, if any, will be adopted.

(ii) The grounds for suspension or revocation of registration, certification or licensure.

7. A description of the 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.

8. The expected costs of regulation including:

(a) The impact registration, certification or licensure will have on the costs of the services to the public.

(b) The cost to this state and to the general public of implementing the proposed legislation.

32-3106. Applicants for increase in scope of practice; factors

Applicant groups for increased scope of practice shall explain each of the following factors to the extent requested by the legislative committee of reference:

1. A definition of the problem and why a change in scope of practice is necessary including the extent which consumers need and will benefit from practitioners with this scope of practice.
2. The extent to which the public can be confident that qualified practitioners are competent including:
 - (a) Evidence that the profession's regulatory board has functioned adequately in protecting the public.
 - (b) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or endorse standards or a code of ethics.
 - (c) Evidence that state approved educational programs provide or are willing to provide core curriculum adequate to prepare practitioners at the proposed level.
3. The extent to which an increase in the scope of practice may harm the public including the extent to which an increased scope of practice will restrict entry into practice and whether the proposed legislation requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure if the other jurisdiction has substantially equivalent requirements for registration, certification or licensure as those of this state.
4. The cost to this state and to the general public of implementing the proposed increase in scope of practice.

32-3107. Continuing education requirements; evidence of effectiveness

Any legislative proposal which contains a continuing education requirement for a health profession shall be accompanied by evidence that such a requirement has been proven effective for the health profession.

32-3108. Grievance process; public testimony

Notwithstanding any law to the contrary, a regulatory entity shall allow a person or a representative of a person who has made a complaint or a person or a representative of a person against whom a complaint has been made attending a board disciplinary meeting open to the public to address the board on that complaint on the agenda by filling out a request form before or at the time of the meeting.

COMMITTEES OF REFERENCE

41-2951. Purpose

A. The Arizona legislature finds that state government actions have caused an increase in the number of agencies, departments, boards, commissions, institutions and programs of this state and that the process has developed without sufficient legislative oversight. Furthermore, the legislature finds that state government should be continually reviewed and revised in response to the developing needs of the public. In addition, the legislature finds that programs are perpetuated without periodic and systematic reappraisal of their achievements as compared to their original objectives. The legislature concludes that by establishing a system for the termination, study, review, continuation or reestablishment of such agencies, it will be in a better position to evaluate the need for the continued existence of current and future agencies, departments, boards, commissions, institutions and programs of this state.

B. It is the intention of the legislature:

1. To establish an orderly schedule for the termination of existing state agencies, departments, boards, commissions, institutions and programs and to make provisions for legislative review to enable the legislature to have the benefit of recommendations for the continuation of those state agencies, departments, boards, commissions, institutions and programs which are deemed to be essential for the necessary and efficient operation of government.
2. That the sunset review of an existing state agency, department, program, board or advisory council committee means the sunset review of the powers and duties exercised by such state agency, department, program, board or advisory council or committee.
3. That any amendment of the enabling authority for an agency, department, program, board or advisory council or committee subject to sunset review be in accordance with this chapter.

41-2952. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any department, office, agency, commission, board or other instrumentality of this state specified in article 2 of this chapter regardless of whether monies are appropriated to such board.
2. "Committee" means the joint legislative audit committee.
3. "Committee of reference" means a joint subcommittee which is composed of the members of the appropriate standing committees of the house of representatives and senate and which is appointed for the purpose of evaluating agencies subject to termination pursuant to this chapter.
4. "Special performance audit" means a performance audit of limited scope.
5. "Sunset review" means a systematic evaluation by the committee of reference under the supervision of the joint legislative audit committee, with the assistance of the appropriate agency, joint legislative budget committee, committees of reference, auditor general and support staff, to determine if the merits of the program justify its continuation rather than termination, or its continuation at a level less than or greater than the existing level. Such review shall be undertaken in the scope and detail the committee of reference deems appropriate and shall include, without limitation, whether there is a need for the program in state government and, if so, an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of the performance, impact or accomplishments of the program and of the situation it was intended to address. Such review shall be coordinated with the performance audit procedures of the auditor general as set forth in chapter 7, article 10.1 of this title or the committees of reference, whichever is appropriate.
6. "Terminate" or "termination" means the date provided for termination of legislative authority for the existence of a particular agency pursuant to article 2 of this chapter.

41-2953. Joint legislative audit committee sunset powers and duties; report by auditor general and committees of reference; sunset review reports; performance audits

A. The joint legislative audit committee shall designate the chairman of each committee of reference and shall assign agencies to the respective committees of reference according to subject matter for performance review.

B. The auditor general shall provide to the committee a list of agencies scheduled for termination in the next sunset termination schedule, plus an estimate of the audit hours necessary to conduct a sunset

review of each agency, not less than twenty months prior to the termination date for such agencies. Not less than nineteen months prior to such termination date, the committee shall meet to review the information submitted by the auditor general, shall select which agencies are subject to sunset review by the auditor general and which agencies are subject to sunset review by the committees of reference and shall determine the priority of review by the auditor general or the committees of reference. If the auditor general or the committees of reference are unable to complete the sunset review of a selected agency, the committee shall oversee the preparation of proposed legislation to place such agency in the following sunset termination schedule and is responsible for the introduction of such legislation. Those agencies selected for sunset review by the committee shall terminate pursuant to article 2 of this chapter unless otherwise continued by the legislature.

C. The committee shall initiate the sunset review not less than seventeen months prior to the termination date for each agency which is selected pursuant to subsection B of this section and scheduled for termination pursuant to article 2 of this chapter. The draft sunset review report shall be completed not less than eleven months prior to the date established by article 2 of this chapter for termination. Before such report is submitted, the state agency affected shall be given an opportunity to review the draft report and submit written comments or rebuttal which shall be included in the preliminary sunset review report. The agency shall have not more than forty calendar days to review the draft report for comment or rebuttal. The preliminary sunset review report shall be submitted to the governor, to each member of the committee, to the committee of reference and to the affected agency by October 1 of the year prior to the scheduled termination date of the agency.

D. The committee may direct the auditor general or the committees of reference to conduct a performance audit, as defined in chapter 7, article 10.1 of this title, or a special performance audit of any agency as defined in section 41-2952.

E. If an agency is continued, the joint legislative audit committee may direct the auditor general or the committees of reference to conduct a follow-up review of the agency to determine how the agency has performed its statutory functions or corrected deficiencies of prior sunset review, or both.

41-2954. Committees of reference; membership; performance review reports; hearings; guidelines; recommendations; subpoena powers

A. Each standing committee of both legislative houses shall appoint a subcommittee of five members. Not more than three appointees of each house shall be of the same political party. The subcommittees shall jointly constitute a committee of reference in their respective subject matter areas.

B. After receipt of the preliminary sunset review report, the committee of reference shall hold at least one public hearing to receive testimony from the public and from the officials of the agency involved. The agency involved shall prepare a presentation for the first public meeting that addresses the elements of the written statement required by subsection F.

C. The committee of reference shall hold public hearings for the following purposes:

1. To determine the actual need of the agency to regulate or direct the particular activity.
2. To determine the extent to which the statutory requirements of the agency are necessary and are being met.
3. To receive testimony from the public as to the relationship of the agency with the public.

4. To receive testimony from the executive director or other head of the agency as to reasons for the continuation of the agency.

D. The committee of reference shall consider but not be limited to the following factors in determining need for continuation or termination of each agency:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within jurisdiction.
7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.
9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
10. The extent to which the termination of the agency would significantly harm the public health, safety and welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

E. The committee of reference shall deliver the final sunset review report of its recommendations to the committee, the president of the senate, the speaker of the house of representatives, the governor, the auditor general and the affected agency by December 1. Such recommendations shall include one of the following:

1. That the state agency be continued.
 2. That the state agency be revised or consolidated.
 3. That the state agency be terminated pursuant to this chapter.
- F. The final sunset review report by the committee of reference shall also include a written statement prepared by the agency involved that contains:
1. An identification of the problem or the needs that the agency is intended to address.
 2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.
 3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
 4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

G. The committee shall oversee the preparation of any proposed legislation to implement the recommendations of the committees of reference and is responsible for the introduction of such legislation.

H. If an agency is continued, it is not necessary to reappoint any member of the governing board or commission of the agency. Such members are eligible to complete their original terms without reappointment or reconfirmation.

I. Each committee of reference shall have the power of legislative subpoena pursuant to chapter 7, article 4 of this title.

41-2955. Termination of state agencies; continuation

A. All agencies shall terminate pursuant to the schedule prescribed by article 2 of this chapter, unless continued pursuant to this chapter.

B. Any agency may be continued by the legislature for a period not to exceed ten years. At the end of such period, it shall again be subject to sunset review. Any agency continued, revised or consolidated by the legislature shall contain within the enabling legislation a legislative intent section setting forth the objectives of the programs administered by the agency.

C. An agency is continued pursuant to this section if legislation to continue such agency is passed by the legislature and signed by the governor prior to the date set for termination of the agency even if the legislation to continue the agency has not become effective on the date of scheduled termination.

D. Any agency created from and after June 30, 1978 shall continue in existence for not more than ten years from the effective date of its establishment and shall be subject to this chapter.

E. Each agency created from and after June 30, 1978 shall contain a policy or purpose statement in its enabling legislation setting forth the objectives of the programs.

F. Nothing in this chapter shall be construed to prohibit the legislature from terminating any agency covered by this chapter at a date earlier than that prescribed by this chapter nor to prohibit the legislature from considering any other legislation relative to any such agency. Nothing in this chapter shall be construed to terminate the funds administered by the water infrastructure finance authority of Arizona pursuant to title 49, chapter 8.

41-2956. Termination period for agencies; funds; equipment; personnel; documents; bonds

A. Any agency listed in article 2 of this chapter that is terminated, within six months after its termination date, shall conclude its affairs. Termination shall not reduce or otherwise limit the powers, duties or functions of the agency. On expiration of the six-month period, the agency and its personnel positions shall be abolished.

B. Six months after the termination date of the agency, the department of administration shall transfer all funds of that agency to the state general fund. All debts of the agency shall be paid by the department of administration from the agency's funds.

C. All equipment, furniture and supplies of the terminated agency shall be transferred to the department of administration to be stored or disposed of pursuant to law.

D. All documents of the terminated agency shall be transferred to the Arizona state library, archives and public records to be stored or disposed of pursuant to law.

E. All orders, determinations, rules, permits, certificates, licenses, contracts, rates and privileges which have been issued, made, granted or allowed to become effective by an agency abolished by this chapter shall continue in effect according to their terms until the termination date of the agency.

F. Any bonds issued or sold by a state agency shall remain in full force and effect. The state shall assume bond amortization payments for any bond issuing agency abolished pursuant to this chapter.

G. If title 28 is repealed pursuant to this chapter, as long as there are any debts or other obligations payable from either the highway user revenue fund or any regional area road fund and no provision has been made for the payment or retirement of these debts or other obligations, the provisions of title 28 relating to the highway user revenue fund and any regional area road fund and the pledge of revenues from those funds and the liens on those funds to pay the debts or other obligations remain in full force and effect until the debts or other obligations have been fully paid and satisfied or provisions have been made to pay or satisfy the debts or obligations.

41-2957. Claims

This chapter shall not affect the right to institute or prosecute any claim by or against an agency of this state terminated pursuant to this chapter if the claim accrued prior to the date the agency was terminated. Any claim pending on the date the agency is terminated, or instituted thereafter for action prior to the termination date, shall be prosecuted or defended in the name of the state by the department of law.

41-2958. Modified audits of certain agencies

At least every ten years the joint legislative audit committee shall conduct a review of the following agencies and programs according to the following schedule using the factors that are deemed necessary and that are listed in section 41-2954, subsection D:

1. By July 1, 1996 for the department of education including the programs and activities administered, prescribed or regulated by the department.
2. By July 1, 1997 for the programs and commissions established by the legislature within the judiciary.
3. By July 1, 1998 for Arizona state university, Arizona state university west campus, Arizona state university east campus, the university of Arizona and northern Arizona university. For purposes of this paragraph, the committee may combine the review for all of the universities into one or more reviews and reports.

41-1279. Joint legislative audit committee; composition; meetings; powers and duties

A. The joint legislative audit committee is established consisting of five members of the senate appointed by the president of the senate, one of whom shall be a member of the senate appropriations committee, and five members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the house of representatives appropriations committee. Selection of members shall be based on their understanding and interest in legislative audit oversight functions. Not more than two appointees of each house shall be of the same political party. The president and the speaker shall designate one of their appointed members as chairman of their respective delegations. The chairman of the audit committee shall serve for the term of one legislature. The chairmanship of the audit committee shall alternate between the chairman of the senate delegation and the chairman of the house of representatives delegation beginning with the chairman of the senate delegation. The president of the senate and the speaker of the house of representatives shall also serve as ex officio members of the committee.

B. The committee shall meet at least quarterly and on call of the chairman. Members of the committee are eligible for reimbursement by their respective houses in the same manner as a member of the legislature who attends a meeting of a standing committee.

C. The committee shall:

1. Oversee all audit functions of the legislature and state agencies including sunset performance, special and financial audits, special research requests and the preparation and introduction of legislation resulting from audit report findings.

2. Appoint an auditor general subject to approval by a concurrent resolution of the legislature and direct the auditor general to perform all sunset, performance, special and financial audits and investigations.

3. Have the power of legislative subpoena in accordance with article 4 of this chapter.

4. Require state agencies to comply with findings and directions of the committee regarding sunset, performance, special and financial audits.

5. Perform all functions required by chapter 27 of this title relating to the sunset review of state agencies.

79R9737 JMM-F

By: Delisi

H.B. No. 2706

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Health Professions Scope of Practice Review Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. HEALTH PROFESSIONS SCOPE OF PRACTICE REVIEW

COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. SHORT TITLE. This chapter may be cited as the Scope of Practice Review Act.

Sec. 113.002. PURPOSE. The purpose of this chapter is to:

(1) provide a procedure for objective review of proposed changes in the scope of practice of health professionals licensed in this state to ensure that the changes contribute to the improvement of the overall health of people in this state; and

(2) establish a commission to make recommendations under Subdivision (1) to the legislature.

Sec. 113.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Health Professions Scope of Practice Review Commission.

(2) "Health profession" means a health-related activity or occupation for which a person must hold a license under this title.

(3) "License" includes a license, certificate, registration, permit, or other authorization issued by a licensing entity.

(4) "Licensing entity" means an agency, board, department, commission, or other entity that issues a license under this title to practice a specific health profession.

(5) "Scope of practice" means the activities that a person licensed to practice a health profession is permitted to perform, as prescribed by the appropriate statutes and by rules adopted by the appropriate licensing entity.

[Sections 113.004-113.050 reserved for expansion]

SUBCHAPTER B. COMMISSION

Sec. 113.051. HEALTH PROFESSIONS SCOPE OF PRACTICE REVIEW COMMISSION. The Health Professions Scope of Practice Review Commission shall be administratively attached to the Department of State Health Services.

Sec. 113.052. MEMBERSHIP. (a) The commission consists of the following members:

(1) the commissioner of the Department of State Health Services;

(2) an employee of the Legislative Budget Board who works in the Texas Performance Review section;

- (3) a representative of the Center for Public Policy
Dispute Resolution at The University of Texas School of Law;
- (4) a representative of the Health Law and Policy
Institute at the University of Houston;
- (5) an employee of the Texas Legislative Council who has
expertise in scope of practice issues; and
- (6) two representatives of the public.

(b) A member who is an employee of a state agency or
representative of an institution of higher education shall be
designated by that agency or institution.

(c) The governor shall appoint the public members of the
commission.

Sec. 113.053. PRESIDING OFFICER. The commissioner of the
Department of State Health Services serves as the presiding officer
of the commission.

Sec. 113.054. RESTRICTION ON PUBLIC MEMBERSHIP. (a) In this
section, "Texas trade association" means a cooperative and
voluntarily joined statewide association of business or
professional competitors in this state designed to assist its
members and its industry or profession in dealing with mutual
business or professional problems and in promoting their common
interest.

(b) A person may not be a public member of the commission if:

(1) the person is an officer, employee, manager, or paid
consultant of a Texas trade association in the field of health

care;

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care;

(3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a health profession related to the activities of the commission; or

(4) the person has a direct financial interest in a health care profession or is employed within the health care industry.

Sec. 113.055. COMPENSATION. A member of the commission may not receive compensation for service as a commission member.

Sec. 113.056. SUBCOMMITTEES, WORKGROUPS, AND ADVISORY PANELS.

(a) The commission may create subcommittees, workgroups, and advisory panels as needed to perform the commission's duties under this chapter.

(b) A subcommittee, workgroup, or advisory panel established under this section may consist of persons other than members of the commission. The name, occupation, employer, and community of residence of the person must be made part of the record of the commission and detailed in any report resulting from the work of the subcommittee, workgroup, or advisory panel.

[Sections 113.057-113.100 reserved for expansion]

SUBCHAPTER C. SCORE OF PRACTICE ANALYSIS

Sec. 113.101. REQUEST FOR CHANGE IN SCOPE OF PRACTICE. (a) A

person who seeks to change the scope of practice of a health profession, including a person who is a member of the relevant licensing entity or a license holder in that profession, shall notify the licensing entity and request a hearing on the proposal.

(b) On receipt of the request, the licensing entity shall notify the commission and shall:

(1) collect data, including information from the person making the request under Subsection (a) and other appropriate persons, necessary to review the proposal;

(2) conduct a technical assessment of the proposal, with the assistance of a technical advisory group established for that specific purpose if necessary, to determine whether the proposal is within the profession's current scope of practice; and

(3) provide the analysis, the entity's conclusions and recommendations, if any, and the material collected by the entity to the commission.

(c) The person making the request under Subsection (a) shall provide to the licensing entity all information requested by the entity.

Sec. 113.102. COMMISSION REVIEW AND ANALYSIS. (a) On receipt of notice under Section 113.101, the commission shall review and make recommendations on the proposed change to the scope of practice.

(b) In performing the commission's duties under this section,

the commission shall:

(1) provide appropriate public notice of the commission's proceedings;

(2) invite persons having special knowledge or expertise in the relevant field to testify regarding the proposed change;

(3) assess the proposed change according to the following criteria:

(A) whether the proposed change could potentially harm the public health, safety, or welfare;

(B) whether the proposed change will benefit the public health, safety, or welfare;

(C) what economic impact the proposed change would likely have on the overall delivery of health care;

(D) whether potential benefits from the proposed change outweigh any potential harm caused by the change; and

(E) the extent to which the proposed change would affect the availability, accessibility, delivery, and quality of health care in this state;

(4) evaluate the quality and quantity of the training provided by health care professional degree curricula and post-graduate training programs to health care professionals in active practice with regard to the increased scope of practice proposed;
and

(5) whether a need exists for the change in the scope of practice.

(c) The analysis performed by the commission must include:

(1) a review of other states and countries that have a scope of practice for the relevant profession that is identical or similar to the proposed change and any available information on how that scope of practice has affected the quality and cost of health care in the state or country;

(2) a review of any statutory or regulatory changes that were required in the other state or country to implement the identical or similar change in the scope of practice; and

(3) an objective and balanced review that examines the extent to which the potential benefits predicted by proponents of the change or concerns raised by opponents of the change materialized after the change of the scope of practice took effect in the other state or country.

Sec. 113.103. RECOMMENDATION; REPORT. (a) The commission shall report, not later than December 31 of each even-numbered year, the results of the commission's reviews in the preceding biennium under Section 113.102 to the:

- (1) governor;
- (2) lieutenant governor;
- (3) speaker of the house of representatives;
- (4) standing committees of the senate and house of representatives having jurisdiction over state finance issues; and
- (5) standing committees of the senate and house of representatives having jurisdiction over health and human services

issues.

(b) The report must include evidence-based legislative recommendations for each proposed change in the scope of practice of a health profession submitted to the commission.

(c) A bill that proposes to expand, contract, or change the scope of practice of a health profession that was not submitted to the commission must include a statement to that effect.

Sec. 113.104. OTHER REVIEW AND RESEARCH DUTIES. As the commission determines appropriate, the commission shall conduct other reviews and perform research on issues related to the scope of practice of a health profession, including retrospective reviews of changes in the scope of practice.

Sec. 113.105. REQUIREMENTS PERTAINING TO NOTICE AND PUBLIC MEETINGS. (a) The commission shall notify annually each licensing entity and each professional association and group of health professions of the commission's and entity's duties under this chapter.

(b) A public hearing conducted under this chapter shall be open to the public and is subject to the requirements of Chapter 551, Government Code.

Sec. 113.106. ASSISTANCE PROVIDED TO LEGISLATURE AND REVIEW PANELS. (a) The commission on request shall provide assistance to the legislature with regard to a proposed change in the scope of practice of a health profession.

(b) The commission shall provide staff services to any review

panel established under this chapter.

Sec. 113.107. RULES. The commission and each licensing entity shall adopt rules as necessary to administer the requirements of this chapter.

SECTION 2. The initial appointments to the Health Professions Scope of Practice Review Commission shall be made not later than December 31, 2005.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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SENATE BILL 381

47TH LEGISLATURE - STATE OF ~~NEW MEXICO~~ FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO HEALTH; ENACTING THE PATIENT HEALTH SAFETY ACT;
PROVIDING FOR A PROCESS TO REVIEW THE SCOPE OF PRACTICE FOR
CERTAIN LICENSED HEALTH PROFESSIONALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Patient Health Safety Act".

Section 2. PURPOSE.--The purpose of the Patient Health
Safety Act is to:

A. provide a procedure for objective review of
proposed changes in the scope of practice of health
professionals licensed by the state in order to ensure that the
changes contribute to the improvement of the overall health of
the people of New Mexico; and

B. make recommendations of the review available to

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1 the legislature.

2 Section 3. DEFINITIONS.--As used in the Patient Health
3 Safety Act:

4 A. "commission" means the New Mexico health policy
5 commission;

6 B. "health profession" means a health-related
7 activity or occupation licensed pursuant to Chapter 61, Article
8 2, 3, 4, 5A, 6, 7A, 8, 9, 9A, 10, 10A, 11, 12, 12A, 12B, 12C,
9 12D, 12E, 14A, 14B, 14C, 14D or 14E NMSA 1978;

10 C. "licensing board" means a licensing board of a
11 specific health profession regulated pursuant to Chapter 61
12 NMSA 1978; and

13 D. "scope of practice" means those practice
14 activities permitted a health profession as defined in its
15 licensing act and rules adopted pursuant to that act.

16 Section 4. PROPOSED STATUTORY CHANGE--LICENSING BOARD
17 ANALYSIS.--

18 A. A member of a licensing board, a licensee of the
19 licensing board or any other person seeking a change in the
20 scope of practice of a health profession shall notify the
21 respective licensing board and request a hearing on the
22 proposal. The licensing board shall notify the commission and
23 shall:

24 (1) collect data, including information from
25 the applicant and all other appropriate persons, necessary to

underscored material = new
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1 review the proposal;
2 (2) conduct a technical assessment of the
3 proposal, if necessary with the assistance of a technical
4 advisory group established for that specific purpose, to
5 determine whether the proposal is in the profession's current
6 scope of practice; and
7 (3) provide its analysis, conclusions and any
8 recommendations, together with all materials gathered for the
9 review, to the commission.
10 B. The person seeking the change in the scope of
11 practice shall provide the licensing board with all information
12 requested.
13 Section 5. REVIEW PANELS--APPOINTMENT--DUTIES.--
14 A. The commission shall, upon notification of a
15 proposed change in a health profession scope of practice,
16 appoint an ad hoc review panel of sufficient numbers and
17 expertise to review and make recommendations on the proposed
18 change. Each panel:
19 (1) shall include one board member of the
20 licensing board for the health profession from which the
21 proposed change in scope of practice originates;
22 (2) may include one additional member from the
23 profession from which the proposed change originates who shall
24 be from the professional association of that profession; and
25 (3) shall have at least one-fourth of its

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1 membership as individuals who have no economic interest in the
2 profession originating the request for a change in scope of
3 practice.

4 B. Each panel shall be chaired by the director of
5 the commission or the director's designee, who shall be a
6 nonvoting member. The panel shall:

7 (1) familiarize itself with the commission's
8 rules on procedures and criteria for such reviews;

9 (2) ensure appropriate public notice of its
10 proceedings;

11 (3) invite testimony from persons with special
12 knowledge in the field of the proposed change;

13 (4) assess the proposal using the following
14 criteria:

15 (a) whether proposed changes offer
16 potential harm to the health, safety or welfare of consumers;

17 (b) if the proposed changes will benefit
18 the health, safety and welfare of health consumers;

19 (c) what economic impact on overall
20 health care delivery the proposed change is likely to have;

21 (d) whether potential benefits of
22 proposed changes outweigh potential harm; and

23 (e) the extent to which the proposed
24 changes will affect the availability, accessibility, delivery
25 and quality of health care in New Mexico;

1 panels created pursuant to Section 5 of the Patient Health
2 Safety Act; and

3 D. provide the legislature with all assistance
4 requested on the proposal.

5 Section 7. RULES.--The commission and each licensing
6 board shall promulgate such rules as are necessary to carry out
7 the provisions of the Patient Health Safety Act.

underscoring material = new
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71-6201. Act, how cited.

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Source: Laws 1985, LB 407, § 1; ; Laws 1988, LB 384, § 1; ; Laws 1993, LB 536, § 102. ;

71-6202. Purpose of act.

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions not licensed or regulated prior to January 1, 1985, and those licensed or regulated health professions which seek to change their scope of practice. The act is not intended and shall not be construed to apply to any regulatory entity created prior to January 1, 1985, or to any remedial or technical amendments to any laws which licensed or regulated activity prior to January 1, 1985, except as provided in such act. The Legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public.

Source: Laws 1985, LB 407, § 2. ;

71-6203. Definitions, where found.

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

Source: Laws 1985, LB 407, § 3; ; Laws 1988, LB 384, § 2; ; Laws 1993, LB 536, § 103. ;

71-6204. Applicant group, defined.

Applicant group shall mean 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 or which proposes to change the scope of practice of a regulated health profession.

Source: Laws 1985, LB 407, § 4. ;

71-6205. Board, defined.

Board shall mean the State Board of Health.

Source: Laws 1985, LB 407, § 5. ;

71-6205. Board, defined.

Board shall mean the State Board of Health.

Source: Laws 1985, LB 407, § 5. ;

71-6206.01. Chairperson, defined.

Chairperson shall mean the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 1993, LB 536, § 104. ;

71-6207. Committee, defined.

Committee shall mean the technical committee created in section 71-6224.

Source: Laws 1985, LB 407, § 7. ;

71-6207.01. Credentialing, defined.

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

Source: Laws 1988, LB 384, § 3. ;

71-6207.02. Directed review, defined.

Directed review shall mean a review conducted at the request of the director and the chairperson in which (1) there shall be no applicant group or application, (2) the duty of the committee shall be to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director shall be to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

Source: Laws 1993, LB 536, § 105. ;

71-6208. Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health.

Source: Laws 1985, LB 407, § 8; ; Laws 1996, LB 1044, § 758; ; Laws 2007, LB296, § 652.;
Operative date July 1, 2007

71-6209. Grandfather clause, defined.

Grandfather clause shall mean a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

Source: Laws 1985, LB 407, § 9. ;

71-6210. Health profession, defined.

Health profession shall mean any regulated health profession or any health professional group not previously regulated.

Source: Laws 1985, LB 407, § 10. ;

71-6211. Health professional group not previously regulated, defined.

Health professional group not previously regulated shall mean 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; or
- (3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 11; ; Laws 2007, LB463, § 1241.; Operative date December 1, 2008

Cross Reference

Uniform Credentialing Act, see section 28-101.

71-6212. Inspection, defined.

Inspection shall mean the periodic examination of practitioners by a state agency in order to ascertain whether the practitioner's occupation is being carried out in a manner consistent with the public health, safety, and welfare.

Source: Laws 1985, LB 407, § 12. ;

71-6213. License, licensing, or licensure, defined.

License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title.

Source: Laws 1985, LB 407, § 13. ;

71-6214. Professional license, defined.

Professional license shall mean an individual nontransferable authorization to work in a health profession based on qualifications which include graduation from an accredited or approved program and acceptable performance on a qualifying examination or series of examinations.

Source: Laws 1985, LB 407, § 14. ;

71-6215. Practitioner, defined.

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

Source: Laws 1985, LB 407, § 15. ;

71-6216. Public member, defined.

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

Source: Laws 1985, LB 407, § 16. ;

71-6217. Registration, defined.

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity but shall not be required to meet any test of education, experience, or training in order to render services.

Source: Laws 1985, LB 407, § 17; ; Laws 1988, LB 384, § 5. ;

71-6218. Regulated health professions, defined.

Regulated health professions shall mean 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; or

(3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 18; ; Laws 2007, LB463, § 1242.; Operative date December 1, 2008

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6219. Regulatory entity, defined.

Regulatory entity shall mean any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

Source: Laws 1985, LB 407, § 19. ;

71-6219.01. Review body, defined.

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

Source: Laws 1988, LB 384, § 6. ;

71-6220. State agency, defined.

State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

Source: Laws 1985, LB 407, § 20; ; Laws 1991, LB 81, § 5. ;

71-6220.01. Welfare, defined.

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

Source: Laws 1988, LB 384, § 4. ;

71-6221. Regulation of health profession; change in scope of practice; when.

(1) After January 1, 1985, a health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Regulation of the 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;

(c) The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(3) After March 18, 1988, the scope of practice of a regulated health profession shall be changed only when:

(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(c) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(4) The Division of Public Health shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Source: Laws 1985, LB 407, § 21; ; Laws 1988, LB 384, § 7; ; Laws 1996, LB 1044, § 759; ; Laws 2007, LB296, § 653.; Operative date July 1, 2007

71-6222. Least restrictive method of regulation; how implemented.

After evaluating the criteria in sections 71-6221 to 71-6223 and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and this section, as follows:

(1) When the threat to the public health, safety, welfare, or economic well-being is relatively small, regulation shall be by means other than direct credentialing of the health profession. Such regulation may include, but shall not be limited to:

(a) Inspection requirements;

(b) Enabling an appropriate state agency to bring an end to a harmful practice by injunctive relief in court;

(c) Regulating the business activity or entity providing the service rather than the employees of the business or entity; or

(d) Regulating or modifying the regulation of the health profession supervising or responsible for the service being performed;

(2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration;

(3) When the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification; or

(4) When it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

Source: Laws 1985, LB 407, § 22; ; Laws 1988, LB 384, § 8. ;

71-6223. Letter of intent; application; contents.

An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review. The director shall notify the applicant group as to whether it is eligible for review within fifteen days of the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days of receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed. The application shall include an explanation of:

(1) The problem and why regulation or change of the scope of practice of a health profession is necessary, including (a) the nature of the potential harm to the public if the health profession is not regulated or the scope of practice of a health profession is not changed and the extent to which there is a threat to public health and safety, (b) the extent to which consumers need, and will benefit from, a method of regulation

identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession, and (c) the extent of autonomy a practitioner has, as indicated by the extent to which the health profession calls for independent judgment, the extent of skill or experience required in making the independent judgment, and the extent to which practitioners are supervised;

(2) The efforts made to address the problem, including (a) voluntary efforts, if any, by members of the health profession to establish a code of ethics or help resolve disputes between health practitioners and consumers and (b) recourse to, and the extent of use of, applicable law and whether present law could be strengthened to control the problem;

(3) If the application is for the regulation of an unregulated health profession, an analysis of all feasible methods of regulation, including those methods listed in section 71-6222, identifying why each method is or is not appropriate for regulation of the profession;

(4) The benefit to the public if the health profession is regulated or the scope of practice of a health profession is changed, including:

(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent, as determined by:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examination and revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the adoption and promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and if an examination is required, by whom it will be developed and how the costs of development will be met; and

(d) Assurance of the public that practitioners have maintained their competence, including whether the registration, certification, or licensure will carry an expiration date and whether renewal will be based only upon payment of a fee or will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation or the change of scope of practice might harm the public, including:

(a) The extent to which regulation will restrict entry into the health profession as determined by (i) whether the proposed standards are more restrictive than necessary to ensure safe and effective performance and (ii) whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards, including (a) whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics, and (b) how the proposed legislation will assure quality as determined by the extent to which a code of ethics, if any, will be adopted and the grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the 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; and

(8) The expected costs of regulation, including (a) the impact registration, certification, or licensure will have on the costs of the services to the public and (b) the cost to the state and to the general public of implementing the proposed legislation.

Source: Laws 1985, LB 407, § 23; ; Laws 1988, LB 384, § 9. ;

71-6223.01. Application fee; disposition; waiver.

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. All application fees shall be deposited in the Nebraska Regulation of Health Professions Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

(1) The applicant group is an agency of state 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 impose unreasonable hardship on members of the applicant group.

Source: Laws 1988, LB 384, § 14. ;

71-6223.02. Directed review; initiation; procedure; report.

At any time the director and the chairperson may initiate a directed review to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the committee in a directed review shall be to investigate the issues that are the subject of the review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the committee's proposal, other options considered, and other relevant information.

Source: Laws 1993, LB 536, § 106. ;

71-6224. Technical committee; appointment; membership; meetings; duties.

(1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than two members of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. Each committee shall conduct public factfinding hearings and shall otherwise investigate the application. Each committee shall comply with the Open Meetings Act.

(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223. If a committee finds that all appropriate criteria are

not met, it shall recommend denial of the application. If it finds that all appropriate criteria are met by the application as submitted, it shall recommend approval. If the committee finds that the criteria would be met if amendments were made to the application, it may recommend such amendments to the applicant group and it may allow such amendments to be made before making its final recommendations. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

Source: Laws 1985, LB 407, § 24; ; Laws 1988, LB 384, § 10; ; Laws 2004, LB 821, § 20. ;

Cross Reference

Open Meetings Act, see section 84-1407.

71-6225. Board; review technical committee report; report to director.

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (3) of section 71-6224.

Source: Laws 1985, LB 407, § 25; ; Laws 1988, LB 384, § 11. ;

71-6226. Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (3) of section 71-6224. The final report shall be submitted to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than nine months after the application is submitted to the director and shall be made available to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

Source: Laws 1985, LB 407, § 26; ; Laws 1988, LB 384, § 12. ;

71-6227. Rules and regulations; professional and clerical services; expenses.

(1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1985, LB 407, § 27. ;

71-6228. Nebraska Regulation of Health Professions Fund; created; use; investment.

The Nebraska Regulation of Health Professions Fund is hereby created. All money in the fund shall be used exclusively for the operation and administration of the Nebraska Regulation of Health Professions Act. The director shall annually determine the percent of all fees collected during that year pursuant to the licensing or regulation of regulated health professions to be credited to the fund, except that such percentage shall not be greater than five percent. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sources: Laws 1985, LB 407, § 28; ; Laws 1988, LB 384, § 13; ; Laws 1995, LB 7, § 81; ; Laws 1996, LB 1044, § 760; ; Laws 1999, LB 828, § 175. ;

			Cross Reference			
Nebraska	Capital	Expansion	Act,	see	section	72-1269.
Nebraska State Funds Investment Act, see section 72-1260.						

71-6229. Act, how construed.

Nothing in the Nebraska Regulation of Health Professions Act shall apply to the practice of the religious tenets of any recognized church or religious denomination which includes healing solely by spiritual means through prayer.

Sources: Laws 1985, LB 407, § 29. ;

71-6230. Repealed. Laws 1993, LB 536, § 128.