DIRECTOR'S REPORT ON THE PROPOSAL TO LICENSE GENETIC COUNSELORS

From: **Joann Schaefer, M.D., Chief Medical Officer**
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To: **The Speaker of the Nebraska Legislature**
The Chairperson of the Executive Board of the Legislature
The Chairperson and Members of the Legislative Health and Human Services Committee

Date: **January 3, 2012**

Introduction

The Regulation of Health Professions Act (as defined in Neb. Rev. Stat., Section 71-6201, et. seq.) is commonly referred to as the Credentialing Review Program. The Department of Health and Human Services Division of Public Health administers the Act. As Director of this Division, I am presenting this report under the authority of this Act.

Description of the Issue under Review

The applicant group is the Nebraska Association of Genetic Counselors (NAGC). The issue under review is whether Certified Genetic Counselors (CGCs) should be licensed in Nebraska.

Summary of Technical Committee and Board of Health Recommendations

The technical committee recommended approval of the proposal to license Genetic Counselors. The Board of Health also recommended approval of the applicant group's proposal. I am recommending against approval of the proposal, and more detailed comments regarding my recommendations follow.

The Director's Recommendations on the Proposal

The following paragraphs apply the four criteria of the Credentialing Review Program pertinent to new credentialing proposals, and provide the framework for my recommendations on the current Genetic Counselor proposal.

Criterion one: 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.

The information provided by the applicant group does not provide compelling evidence that there are unqualified practitioners providing these services, or that there is any other kind of harm stemming from the current practice situation. For these reasons I find that the proposal does not satisfy criterion one.

A Board of Health member stated, "Genetic counseling services provided by unqualified practitioners can result in the delivery of inappropriate or unnecessary medical care." Upon what is this statement based? What evidence was provided other than anecdotal? What current structure either through employment or physician oversight exists to safeguard against this?

The following statements were made during the review: "Too many women in Nebraska undergo bilateral prophylactic mastectomies unnecessarily. Many times their physicians rely upon the patient's family history instead of obtaining genetic evidence of the possibility of cancer by performing appropriate tests. There are many instances in which physicians have not ordered BRCA1/BRCA2 testing and accordingly, are unaware that their patients are at risk for ovarian cancer. Therefore, the patient is not notified of the risk. Many physicians see that there might be a genetic risk after reviewing the patient's family history, but are unsure about what tests to order. Sometimes this subjects patients to multiple tests when only one test is necessary. Each additional or unnecessary test incurs cost to these patients."

While this is anecdotal evidence and no actual evidence of this was submitted, let's say this is in fact grounds for a change – how will licensing 18 people in the state, when we have an average annual count of 1,233 incidences of breast cancer in Nebraska, significantly improve women's health? [1]

These are complex decisions for women and their physicians and it is presumptuous to assume that licensure will fix an issue that involves so much more than the regulation of a profession. In addition, there is nothing stopping these professionals now from working on an educational and outreach campaign regardless of their licensure status. Breast cancer is just one disease where genetic counseling is beneficial.

Criterion two: 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.

Licensing the members of the applicant group could have the effect of limiting access to the services of other qualified professionals without providing any tangible benefit to the public. For example, some advanced practice registered nurses (APRNs) currently provide these services under physician oversight; many mental health professionals provide counseling through individual and family therapy; and physicians provide these services in varying degrees. The proposal would have the effect of excluding at least some of these professionals from providing services but provides no compelling reason to justify their exclusion. Therefore, I find that the proposal does not satisfy criterion two.

The Board of Health placed great emphasis upon access to third party payment as its justification for this criterion. But in doing so, I feel that the possible consequences to these other professionals who are currently working in a sound practice model, with educational credentials verified by their employers, were overlooked.

Criterion three: The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state.

The proposal offers no tangible benefit to the public. There is an ample number of qualified practitioners providing these services, including the members of the applicant group. The applicants argue that the proposal might increase access to services by perhaps facilitating third party reimbursement for their group, but this assertion was not supported by compelling argument or

[1] National Cancer Institute Data, FY 2004-2008; Nebraska Cancer Registry Report for 2008 = 1,313 incidences

documentation. Again, the primary argument appears to be for access to third party reimbursement and that doing this would thereby increase the number of professionals wanting to come to the State to practice. This is speculation, and greater concern should be given to prior arguments on APRNs and physicians. For these reasons I find that the proposal does not satisfy criterion three.

Criterion four: The public cannot be effectively protected by other means in a more cost-effective manner.

The applicant group has not identified any significant problems with the current practice situation or demonstrated that there is a need for this proposal. There are approximately eighteen members of the applicant group in Nebraska. Even if it were determined that the public might benefit from some kind of regulation in this area, I believe that this can be accomplished in a cost-effective manner other than by creating a separate licensed profession for this small group of professionals. Therefore, it is my determination that the proposal does not satisfy criterion four.

The training genetic counselors undergo is valuable, valid and extensive. It is well-respected, utilized and in fact, paid for through reimbursement models as they are employed by hospital systems, practices, etc. and their services reimbursed as a part of the overall group care of a complex patient. More of healthcare reimbursement is trending in this direction. Direct access fee-for-service models are declining with or without current changes in the healthcare system due to healthcare reform. While I understand the applicants' desire to have access to third party reimbursement, the justification for the cost of increasing the size of regulatory agencies to simply accommodate the billing needs of one profession with no outright evidence of the protection of the public that could not be afforded by other means cannot be supported.

By these actions on the four criteria I hereby recommend against approval of the proposal.