DIRECTOR'S REPORT ON THE PROPOSAL TO EXPAND THE SCOPE OF PRACTICE OF ACUPUNCTURISTS

From: **Joseph Acierno, M.D., Chief Medical Officer**
Director, Division of Public Health, Department of Health and Human Services

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: **February 14, 2014**

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 seeking the elimination of the current requirement that all new patients of Licensed Acupuncturists must first have been seen by a physician or an osteopath within ninety days of their seeking the services of a Licensed Acupuncturist before the Licensed Acupuncturist is allowed to treat them. This is sometimes referred to as the 'pre-screening requirement'.

Summary of Technical Committee and Board of Health Recommendations

The technical review committee members recommended approval of the applicants' proposal. These committee members also recommended approval of the following ancillary recommendations:

- Nebraska should consider adopting referral criteria for Licensed Acupuncturists that are currently used by the State of Minnesota.
- Licensed Acupuncturists should be required to develop and utilize an informed consent intake form for all first time clients, as is now done in the State of Minnesota.
- The rules and regulations for Licensed Acupuncturists should be updated, and that such an updating process should include the replacement of the examination currently specified in these rules and regulations with the more up-to-date biomedical examination.
- The continuing education units for Licensed Acupuncturists should be reviewed every two years to ensure that they are current and appropriate.

- The continuing education units of licensed professionals other than Licensed Acupuncturists who also provide acupuncture services should be reviewed periodically to ensure that they are current and appropriate.

The Board of Health recommended approval of the applicants' proposal. The members of the Board of Health recommended approval of the following ancillary recommendations:

- Nebraska should adopt the standardized referral criteria for Licensed Acupuncturists currently used by the State of Minnesota, and Licensed Acupuncturists should be required to adopt and utilize the standardized informed consent intake form for all first time clients currently used by the State of Minnesota.

- The rules and regulations for Licensed Acupuncturists should be updated, and such an updating process should include the replacement of the examination currently specified in these rules and regulations with the more up-to-date biomedical examination, or what is currently recommended by the NCCAOM.

The Director's Recommendations on the Proposal

A review of the record of the review on this proposal indicates the importance of the following questions in formulating recommendations on this proposal: 1) Is there a public health-related problem with the current pre-screening requirement? 2) What would be the impact on public health if it were eliminated? and, 3) If this requirement were eliminated, would there be a need for something else to take its place, for the sake of public protection?

Pertinent to the first question, the intent of the current pre-screening requirement is to provide protection for a person who might have contracted a serious illness since they were last examined by a physician. Given that Licensed Acupuncturists are not able to diagnose a patient's overall health condition, it was the hope of those who created this pre-screening requirement that it would help such a person get examined by a physician to ensure that they do not have a serious illness, prior to receiving treatment from a Licensed Acupuncturist.

After considerable thought, I have made the following conclusions:

1) The ninety-day prescreening requirement creates a false sense of security by implying that if a person has seen a physician within the previous ninety days and has not experienced symptoms indicative of a serious illness or condition since that visit, they, in effect, should be given a clean 'bill of health' to proceed with acupuncture treatment. The ninety-day parameter in this requirement is entirely arbitrary and without merit. A serious illness or undiagnosed condition can arise at any time within such a ninety-day time frame.

2) The ninety-day prescreening requirement is satisfied via a one-time visit to a physician. There is no provision for reexamination by a physician. This 'one-and-done' approach to public safety creates the illusion of protection without the reality of protection.

Pertinent to the second question regarding the possible impact of eliminating the prescreening requirement, eliminating this requirement would make Licensed Acupuncturists portal of entry providers, easing access to their services by members of the public. Is there any reason to believe that such a practice situation would create increased risk of harm to the public? I have concluded that it would not, and I say this because the record of the review documents that Licensed Acupuncturists

receive the benefit of an advanced biomedical training course with the option to be tested on its contents via a biomedical examination. This should enable them to make an appropriate referral if they encounter conditions they cannot treat.

Pertinent to the third question regarding the question of whether an alternative mechanism to the pre-screening requirement is needed to ensure protection of the public if the current requirement were eliminated. My response to this concern is as follows:

1) The proposal was amended to require Licensed Acupuncturists to refer a patient to an appropriate practitioner when the patient's problem is beyond the training, experience, or competence of the Licensed Acupuncturist. In effect, this amendment to the proposal would create an alternative to the current requirement.

2) The record of the review documents that Licensed Acupuncturists already utilize referral criteria during their initial screening of new clients, enabling them to make a referral to another type of provider if they come across symptoms or conditions they cannot treat. In effect, the applicant group has already created an alternative to the current requirement.

It could be argued that Licensed Acupuncturists are not currently mandated by Nebraska law to utilize referral criteria, and that this raises concerns about public safety if the proposal were to pass. Concern could also be raised about the fact that there is currently no model for referral criteria in Nebraska that defines what items should be included in such criteria. However, I do not regard such concerns as sufficient reason to deny approval of the applicants' proposal.

In conclusion, it is my recommendation that the current pre-screening agreement be eliminated.