

**REPORT OF RECOMMENDATIONS AND FINDINGS ON THE
PROPOSAL TO EXPAND THE SCOPE OF PRACTICE OF
LICENSED HEARING AIDE DEALERS AND SPECIALISTS**

By the Nebraska State Board of Health

To the Director of the Division of Public Health of the Department of
Health and Human Services and the Members of the Health and
Human Services Committee of the Legislature

June 10, 2024

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

LIST OF MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

J Paul Cook, MD

Heather Cramer, RN

Russell Crotty, OD

Jaime Dodge, MD

Diane Jackson, APRN-FNP

Michael Kotopka, DDS

Brett Lindau, DO

Mark Patefield, PharmD

Connie Lynn Petersen, PhD

David Reese, MHA

Daniel Rosenthal, PE

Douglas Vander Broek, DC

Dan Vehle

Jeffrey Wienke, DPM

The Board's Credentialing Review Committee met in the morning of June 10, 2024 to formulate its recommendations on the proposal.

The members of the full Board of Health met in the afternoon of June 10, 2024 to formulate their recommendations on the proposal.

Part Two: Summary of Board of Health Recommendations

The Board Credentialing Review Committee members recommended against the proposal by a vote of three to one.

The members of the full Board of Health recommended against the proposal by a vote of ten to one.

Part Three: Summary of the Applicants' Proposal

Summary of the Original Proposal:

The purpose of the requested review is to enhance the authorized scopes of practice for licensed Audiologists, Hearing Instrument Specialists, and Hearing Instrument Dispensers to better serve hearing impaired patients throughout Nebraska. The proposed changes can be summarized as:

1. Allow Hearing Instrument Specialists to provide cerumen management.
2. Ensure that Hearing Instrument Specialists and Audiologists can order the dispensing of the newly created over the counter and prescription hearing aid categories following the August 2022 U.S. Food and Drug Administration final rule.
3. Provide a comprehensive description of what qualifies as "dispensing of hearing instruments".
4. Update filing and examination requirements as well as hearing assessment protocols.

The changes that the society would seek are through amendments to sections 38-511, 38-1501

Summary of the First Amended Version of the Proposal:

Janie York, a Hearing Instrument Specialist, responded to a request from the Committee members that someone from the applicant group provide them with a brief overview of the revisions to the proposal. Ms. York stated that the changes to the proposal in question include the following: 1) passing a cerumen removal course approved by their Board with a supervised practicum by any of the following health care professionals: an audiologist, a physician, or a physician's assistant. The course must be at least four clock-hours in duration. The course must include infection control verified for each candidate via a certificate of completion; 2) cerumen removal is to be limited to the outer cartilaginous one-third of a patient's external auditory canal; 3) applicant practitioners must refer patients to better qualified providers if they are: a) under eighteen years of age, or, b) have had previous ear surgeries, or, c) are currently experiencing pain or discomfort in their ear canals; 4) to qualify for tinnitus training an applicant provider must have two consecutive years of post-licensure experience and approval from the Board to take the course; 5) Tympanometry can only be utilized by applicant providers after two consecutive years of being a provider followed by completion and passage of a training course in tympanometry approved by the Board which then is to be followed by continuing education within one year of passing the training course in question.

Summary of the Second Amended Version of the Proposal:

The final amended version of the proposal states that: 1) Tympanometry has been removed from the proposal entirely while tinnitus care would only be through tinnitus maskers in accordance with manufacturers audiology department staff; 2) Continuing education would be for the purpose of cerumen removal only and cerumen removal is now the principal reason for the changes in scope being sought; and, 3) Only persons defined as adults would be treated by the members of the applicant group. Under the amended proposal there would be more referrals to Audiologists from members of the applicant group.

The full text of the applicants' proposal can be found under the appropriate subject area of the credentialing review program link at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Discussion by, and Recommendations of, the Members of the Credentialing Review Committee of the Board of Health on the Proposal

Testimony: Proponent Testimony

Misti Chmiel came forward to testify on behalf of the applicant group. Ms. Chmiel began her remarks by stating that she is a state-licensed, Board-Certified hearing instrument specialist. Ms. Chmiel went on to state that the applicant group is asking for two specific hearing care services and these are as follows:

- 1) Cerumen (earwax) removal while examining ears, taking ear impressions, and / or fitting hearing aids, and,
- 2) Tinnitus care and the assessment, recommendation, and selection of tinnitus management devices such as turning on a white noise tinnitus masker that is typically built into most hearing aids.

Ms. Chmiel commented that patients often present with earwax which complicates the assessment of hearing conditions and the process of addressing these hearing care problems. Ms. Chmiel went on to quote from a comment made by a Medicaid company official about the process of removing earwax, to wit: “The routine removal of asymptomatic, non-impaired, non-obstructive cerumen does not generally require a physician’s skill.” However, to ensure public safety this application requires that a hearing instrument specialist must have been practicing for two years and to have completed a comprehensive theoretical and practical cerumen removal course before removing earwax.

Ms. Chmiel commented that the expectation of a Hearing Instrument Specialist who provides earwax removal is that if an “HIS” discovers any evidence of trauma such as bleeding or lacerations, for example, that the “HIS” immediately refers the patient in question to an ENT licensed professional.

Ms. Chmiel commented that currently North Carolina, Tennessee, South Dakota, and Wisconsin explicitly authorize HIS professionals to perform earwax removal, and that North Carolina, with the longest statutory history of allowing this procedure by HIS professionals, informs us that there have never been any disciplinary actions taken against HIS professionals pertinent to procedure specific to the removal of earwax since the inception of this procedure in North Carolina which began in 2013.

Testimony: Opponent Testimony

Dr. Nikki Kopetzky, dually licensed “HIS” professional and Audiologist, and Vice President of Legislative Affairs of NSLHA, came forward to testify in opposition to the proposal on behalf of the Nebraska Speech, Language, and Hearing Association. Dr. Kopetzky began her remarks by stating that NSLHA’s opposition to the proposal is based upon serious health and safety concerns raised by the provisions of the current applicant proposal pertinent to matters surrounding procedures for the removal of earwax.

Hearing Instrument Specialists do not have the medical training or the infection control knowledge to complete cerumen removal safely and effectively as independent providers, nor do they possess sufficient medical training to provide tinnitus care safely and effectively as independent providers. The only additional training outlined in the NHS proposal is “completion of an HIS approved or board-approved cerumen removal course.” However, effective training to perform the tasks associated with this procedure necessitates in-person, hands-on, supervised training with real patients, and nothing like this would be provided by the proposed training regimen.

Discussion by the Board Committee Members

Dr. Vander Broek asked for comments clarifying the differences between HIS education and training and Audiology education and training. Dr. Nikki Kopetzky stated that the differences include 1) level of education and training—Masters for HIS and Doctoral for Audiologists—with much more clinical training for Audiologists than for HIS professionals, though not even all Audiologists are trained in tinnitus, for example; 2) HIS professionals are not provided with hands-on, clinical, patientcare training, whereas Audiologists are extensively trained this way, for example.

The Board of Health Credentialing Review Committee members then reviewed the six statutory criteria as they relate to the applicants’ proposal which are as follows, below, and then acted on each criterion as they relate to the proposal under review.

Action on the Six Scope of Practice Criteria By the Board of Health Credentialing Review Committee Members

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

Aye votes: Cramer

Nay votes: Vander Broek, Jackson, Lindau

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

Aye votes: Vander Broek, Lindau

Nay votes: Cramer, Jackson

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

Aye votes: Vander Broek

Nay votes: Cramer, Jackson, Lindau

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

Aye votes: There were no aye votes

Nay votes: Cramer, Jackson, Lindau, Vander Broek

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

Aye votes: There were no aye votes

Nay votes: Cramer, Jackson, Lindau, Vander Broek

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

Aye votes: There were no aye votes

Nay votes: Cramer, Jackson, Lindau, Vander Broek

The Credentialing Review Committee Members made their Recommendations on the Hearing Care Professionals Proposal in its entirety by taking a yes-no, up-down vote on the proposal, as follows:

Aye votes: Vander Broek

Nay votes: Cramer, Jackson, Lindau

By this vote the Board's Credentialing Review Committee members recommended against approval of the proposal.

Part Five: The Recommendations of the Members of the Full Board of Health on the Proposal

The Recommendations of the Members of the Full Board of Health on the Hearing Care Professionals Proposal

The Board of Health members made their recommendation on the proposal via a yes-no, up-down vote on the recommendation of their Credentialing Review Committee, as follows:

Voting “yes” to recommend approval of this committee’s recommendation which was to recommend against approval of the applicants’ proposal were:

Cook, Cramer, Crotty, Jackson, Lindau, Patefield, Petersen, Reese, Vehle, and Wienke

Voting “no” to recommend against approval of this committee’s recommendation which was to recommend against approval of the applicants’ proposal was:

Vander Broek

By this vote the members of the full Board of Health acted to endorse the recommendation of their Credentialing Review Committee which was to recommend against approval of the proposal.