

FINAL Report of Preliminary Findings and Recommendations

By The
Technical Committee for the Review of the
Application for Credentialing by the
American Association for Marriage & Family Therapy
(Nebraska Division)

To the
Nebraska Board of Health
Director of Health
and the
Nebraska Legislature

November 16, 1987

The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Marriage and Family Therapy Technical Committee are as follows:

Jack Clark, R.P., (Chairman), Director, Pharmacy at McCook Community Hospital; member of the Nebraska Board of Health (McCook)

Elsie Cafferty, Ed.D, Professor of Counseling, Center for Vocational Education, Kearney State College (Kearney)

Nickie Haggart, A.C.S.W., Social Worker, Family Enrichment, Inc. (Omaha)

Pastor Paul Hjelle, Director, Lutheran Social Services (Lincoln)

Mary Nichols, R.N., Administrator, Mental Health Services, Nebraska Department of Social Services (Lincoln)

Duane Spiers, Ph.D., Director of Psychology Services, St. Joseph Center for Mental Health (Omaha)

Anne Yu, M.A., Mid-Plains Center for Professional Services (Grand Island)*

*Anne Yu was appointed to replace Bill Achord, who resigned after the first four technical committee meetings.

INTRODUCTION

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) is a review process advisory to the Legislature which is designed to assess the necessity of the state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the three criteria contained within Section 71-6221 Nebraska Revised Statutes; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

SUMMARY OF COMMITTEE RECOMMENDATIONS

The committee recommended that the applicant group's proposal for certification not be approved at present. However, the committee members recommended that all of the parties involved in potential regulation of this field consult with one another for the purpose of developing a new version of the application for submission at some future date. The committee members wanted the applicant group to do a better job of "networking" with other counseling professions so that more feasible alternative proposals can be developed.

SUMMARY OF THE APPLICANT'S PROPOSAL

The Nebraska Division of the American Association for Marriage and Family Therapy originally sought licensure for all practitioners that could meet the terms of the proposal. Let us call this Proposal #1.

In addition to meeting minimum educational requirements, candidates for licensure must successfully complete a examination approved by the Department of Health.

The proposal calls for a separate Board of Examiners and mandatory continuing education in order to maintain high standards of competency in the field of marriage and family therapy.

The proposal provides for reciprocity and also contains a grandfather clause that would enable current practitioners to continue their practice if they successfully pass a qualifying examination.

Renewal of the license would be granted every two years to those practitioners who have completed a certain number of continuing education hours and who have paid their renewal fee.

The proposal would exclude practitioners of other counseling professions currently regulated by the State of Nebraska. This would include social workers, professional counselors, and psychologists.

At the public hearing, the applicant group modified the original proposal by dropping their request for licensure and asking for certification instead. Let us call this Proposal #2. At the fifth meeting of the committee, the applicant group submitted a certification proposal in the form of a bill which would provide marriage and family therapy with certification under the provisions of the Professional Counselors' Certification Act (LB 579). The bill provided for a dual system of title protection for professional counselors and marriage and family therapists.

CRITICAL ISSUES RAISED BY THE
MARRIAGE AND FAMILY THERAPY APPLICATION

The Committee discussed issues regarding the following topic areas:

Harm to the Public Posed by the Current Practice Situation

The applicants stated that Nebraska has no regulatory or statutory provisions which establish minimum competencies for entry into the profession of marriage and family therapy, or which define standards of practice for this profession. The applicants added that there are currently no statutory provisions in Nebraska which would prohibit the misrepresentation of academic credentials or practice experience in the field of marriage and family therapy, or which define minimum standards for practice.

The applicants stated that the absence of such statutorily-defined standards of practice creates potential harm to the public in that untrained or inadequately trained people are not prohibited from practicing marriage and family therapy. Such practitioners are far more likely to provide erroneous or incompetent care than are well-trained practitioners. The applicants stated that the harm that can arise from such erroneous care includes physical, emotional, mental, social, and financial harm. The applicants stated that licensure would prevent poorly trained people from doing marriage and family therapy and thereby, eliminate this source of harm to the public.

Some technical committee members asked the applicant group to provide information on the number of untrained or poorly trained people who are currently providing marriage and family therapy in Nebraska. These committee members wanted to know the extent of the harm being done to the public by such practitioners. The applicant group responded by estimating

that the proportion of the 200 current practitioners doing marriage and family therapy that are unqualified is probably quite small. They stated that there may be as many as 50 qualified practitioners who currently lack any credentialing, and thus have no means of differentiating themselves from those that are unqualified. However, some committee members were not satisfied with the accuracy of this information and expressed concern that the applicant group had not adequately addressed the question of harm to the public. The question of the number of practitioners who were not currently regulated by another practice act was one that consistently concerned the committee, and one that proved difficult to answer authoritatively.

Definition and Scope of Practice of Marriage and Family Therapy

Committee discussion on this application focused on the question of whether marriage and family therapy was a separate, distinct profession in its own right, or whether it is merely a procedure or subspecialty that is common to many of the counseling professions. The applicant group stated that their profession is unique in both methodology and scope of practice. In their view, no other profession has the family unit per se as the sole focal point of its concerns. The applicants also stated that the use of a systems approach to counseling differentiates marriage and family therapy from all other counseling professions.

Those technical committee members who belong to counseling professions other than marriage and family therapy took issue with these statements. In their judgment there is no foundation for the applicant's assertion that their profession is unique. They stated that the overlap in both the scopes of practice and methodologies of the various counseling professions is so great that a separate, distinct license for any one of them would be

inappropriate. Differences between these professions are matters of emphasis rather than differences in the kinds of services they provide. They stated that there has been a convergence among all of the counseling professions in the areas of scope of practice and methodology, in particular regarding the adoption and application of the systematic approaches associated with the various types of group therapy.

Grandfathering and Exemptions Under the Applicant's Proposal for Licensure

This was Proposal #1. The applicants stated that their intention was to grandfather those current practitioners who can successfully pass a qualifying examination. They also stated their intention was to exempt all members of other counseling professions who are qualified to do marriage and family therapy. However, there was concern by some of the technical committee members as to whether they would be considered by the applicants as qualified to provide such a service, given the applicant group's insistence that only they are capable of doing family therapy properly. The applicant group later gave assurance to the committee that all members of counseling professions that are currently regulated by the State of Nebraska would be exempted from the restrictions regarding scope of practice, but the title "marriage and family therapy" would be protected.

Discussion of the Applicant's Proposal for Certification

This was Proposal #2. At the public hearing, the applicant group altered its proposal to a request for certification for marriage and family therapy. At the fourth meeting, the applicant group proposed an amendment to the Professional Counselor Law so that marriage and family therapy is a certified, discrete, and autonomous specialty of the mental health professions, possessing parity with professional counselors in all aspects of the administration of this act. The applicant group stated that their

certification proposal was designed to make the term "Marriage and Family Therapist" a protected title that could be held only by those persons who have successfully demonstrated that they meet certain prerequisites and standards defined by the applicant group in a manner that is comparable to marriage and family therapy laws of the 14 states that regulate marriage and family therapy practice. The applicant group felt that this provision is essential for the protection of the public. However, the applicant group acknowledged that there are many qualified mental health professionals providing marriage and family therapy services, and that the proposal would not prevent any of these professionals from providing these services, but would only protect the title associated with that service. Those members of other credentialed counseling professions who are qualified to provide these services but who currently lack the special credentialing to use the title have the option of doing what is necessary to satisfy the requirements of the proposal, and thereby become a certified marriage and family therapist. The applicants stated that acquiring a second credential should not bring great hardship to the members of other credentialed counseling professions. The applicant group further postulated that sharing the same mechanism with the professional counselors will be less costly than setting up an independent board, and the addition of the marriage and family specialty will strengthen the existing law into a bonafide omnibus bill.

The representatives of other counseling professions on the committee objected to the lack of exemptions for their professions in this latest version of the proposal. They stated that it is unfair to require credentialed members of regulated counseling professions, who already provide marriage and family therapy services, to get an additional credential as a marriage and family therapist in order to call themselves

what they already are. This was seen as an attempt to restrict their current scope of practice, which includes marriage and family therapy. They stated that many of these persons are at least as qualified to provide these services as are the members of the applicant group. These committee members also stated that the enactment of a statute containing such a provision would grant a small subspecialty within the counseling profession the power to tell the rest of the counseling profession what they may or may not call themselves. The applicant group countered that certification by endorsement is unfair because it is benefit without responsibility to the cost of processing.

Some committee members expressed concern about the fact that the latest version of the proposal would be implemented by amending the Professional Counselors Act. These committee members stated that amending LB 579 to include Marriage and Family Therapy as an autonomous branch of professional counseling could set a dangerous precedent, whereby LB 579 could become the vehicle for any and all subspecialties of counseling who seek the recognition associated with state regulation. Such a precedent could do harm to the regulatory machinery of the Professional Counselors Act, and thereby hamper its efforts to protect the public from harm. These committee members added that because LB 579 has not even been implemented, any proposal to amend this act is premature. They stated that a certain amount of time will be required to evaluate the ability of LB 579 to protect the public from the harm it was established to address. Only then should we consider whether it has the potential to perform additional regulatory tasks such as those proposed by the Marriage and Family Therapists.

The Committee discussed other means by which the occupation in question could be certified. They discussed the feasibility of establishing

a special board of examiners, as well as the concept of direct regulation by the Department of Health. The committee agreed that a "stand-alone" board would not be cost-effective, given the small size of the applicant group. The committee also agreed that direct regulation by the Department was not a good idea because it would create a situation where the profession in question is regulated by people who lack sufficient understanding of the field to do an adequate job of protecting the public.

Some committee members expressed concern about the lack of accredited marriage and family therapy training programs in Nebraska. They stated that there are not enough accredited schools to train a sufficient number of marriage and family practitioners to support a credentialing program for this profession. The committee members discussed the difference between accredited educational institutions and accredited marriage and family therapy programs. The applicant group maintained that it is not necessary to have AAMFT accredited training programs for credentialing, since that is not the case in other states where there is marriage and family therapy regulation. A number of academic avenues for marriage and family therapy in Nebraska were provided to the committee by the applicant group.

Is Marriage and Family Therapy Covered by the Professional Counselor's Act?

During the course of the review, the committee was informed by staff that an opinion had been received from the Legal Services Division of the Department of Health pertaining to the possible impact of the Professional Counselor's Act (LB 579) on the practice of marriage and family therapy. This opinion stated that marriage and family therapists who do not qualify for certification under this act will have to register under this act when it goes into effect on December 1, 1987. However, staff made it clear that this is merely an opinion, and as such has no independent authority.

The applicant group was adamant in arguing that they should not be regulated under the terms of the current Professional Counselor's Act at the level of registration because it is a generic, unrepresentative title and Nebraska is the only state where marriage and family therapists have no legal option to choose not to be so recognized. The applicant group stated that they could demonstrate that the current version of the Professional Counselor's Act does not cover what marriage and family therapy does. The applicants also expressed concern as to what effect this opinion might have on the technical committee's review of their proposal. Nebraska Department of Health staff reiterated that this opinion does not constitute an official ruling on this matter, and that it was not an issue that the committee was charged to resolve. However, staff added that the committee must be cognizant of this information in that it could affect the profession's regulatory status in Nebraska.

The Cost of the Proposal

There was considerable discussion of the costs to the public of implementing the proposal in question. The applicant group estimated that the cost of setting up the regulatory machinery associated with enforcing a certification law for their profession would be \$16,750 for the first year. Thereafter, the annual costs would decline to \$4,422.50 for the second year, and then to approximately \$4,172 for each subsequent year. Total costs for the first five years were estimated at about \$33,690. The applicant group estimated that total revenues for the first year would be \$30,000, but would decline to \$1,500 for the second year and then rebound to \$3,750 for the third year. Estimates for fourth and fifth year revenues were \$900 and \$3,900 respectively. Fifteen percent of each year's total revenue would go to the State General Fund.

One committee member expressed skepticism about the applicant group's cost estimates. This committee member stated that the costs associated with the process of administering a new licensing law are much greater than the applicant group seems to realize. This committee person stated that the costs associated with the creation of rules and regulations, continuing education, and the creation and support of a Board of Examiners can sometimes run in excess of \$30,000 for the first year alone. The same committee person also expressed concern about the social costs of new credentialing systems in general, and the proposed licensing system in particular. Licensure tends to fragment health care delivery systems, which in turn drives up costs to the consumer and lessens efficiency. The licensing of marriage and family therapists in the opinion of this committee person would similarly damage the delivery of mental health services in Nebraska by unduly fragmenting it.

Department staff also expressed concern over the expenditure figures cited. The estimates do not appear to take into account the five percent of gross receipts that are allocated to support the 407 program, or the proportion of fees paid to the Department of Health for support activities (set at 14.3 percent for FY 1988).

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

At their fifth meeting, the technical committee members took action on the three criteria of LB 407 as they relate to the proposal in question. Regarding the first criterion, a majority of the committee members decided that the application did not satisfactorily demonstrate that significant harm is being done to the public as a result of the unregulated practice of marriage and family therapy. A majority of committee members felt that there was need for more specific evidence demonstrating harm than had been provided to them by the applicant group. In addition a majority of the committee members were not satisfied with the information that had been provided by the applicant group regarding the extent of the harm being done by unqualified practitioners of marriage and family therapy in Nebraska. The committee members were also concerned about the lack of information on the number of such unqualified practitioners provided by the applicant group.

The committee members agreed unanimously that the application satisfied the second criterion pertaining to the need for additional assurance of competency from the state regarding those who practice marriage and family therapy. However, some committee members were concerned about the relative lack of accredited marriage and family therapy training programs in Nebraska. They were concerned about the ability of Nebraska's educational system to produce a sufficient number of graduates in marriage and family therapy to justify a credentialing program for this group.

A majority of the committee members did not feel that the application satisfied the third criterion pertaining to the matters of cost-effectiveness. A majority of the committee members stated that no version of the proposal for certification of the members of the occupation in

question adequately addressed issues pertaining to the impact of this certification on the members of other counseling professions such as Psychology, Social Work, and Professional Counseling. The fact that the applicant group did not provide for exemptions from the terms of the application for these professions concerned a majority of committee members. They felt that requiring members of these professions to obtain a separate credential to perform a service they already perform was not cost-effective. Further, they feared the establishment of a precedent that could lead to a proliferation of such additional certifications at great cost to practitioners and the public. In addition, there was a strong feeling that this would add to the fragmentation of the mental health professions, further increasing costs of service delivery.

Some committee members were concerned about the applicant's proposal that their regulatory act be administered by a revised version of the Professional Counselors board of examiners which would be composed of an equal number of professional counselors and marriage and family therapists. These committee members felt that this aspect of the proposal gave undue representation on this board to marriage and family therapists, since the latter is only a small subspecialty of the field of professional counseling. The applicant group explained that parity between specialties is the technical essence of an omnibus bill. However, some committee members pointed out the fact that the Professional Counselor's Act (LB 579) is not an omnibus bill, nor was there an intention to create such a bill when this act was created.

By virtue of the fact that the committee had determined that the application did not satisfy all of the three criteria, the committee had in effect decided not to recommend in favor of the proposal. However, the

committee members did support a motion which stated that the idea of certification for the occupation in question should be jointly studied by the various interested parties with the goal of resubmitting a new proposal sometime after the completion of that study.

All of the committee members perceived a need to broaden the applicant group so as to include more than just AAMFT people. These committee members expressed the hope that by networking with the representatives of other professions, including Psychiatry, Psychology, Social Work, Professional Counseling, and Nursing, the applicant group could resolve the outstanding controversies that had plagued them throughout the current review process. They added that any subsequent proposal ought to reflect the views of the substantial number of well-qualified professionals currently already in the field.

OVERVIEW OF COMMITTEE PROCEEDINGS

The Marriage and Family Therapy Credentialing Review Technical Committee first convened on July 17, 1987, in Lincoln at the Nebraska State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas touched upon were the charge to the committee, the three criteria for credentialing contained within Section 21 of LB 407, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on August 17, 1987, in Lincoln at the Nebraska State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions were made.

The committee convened on September 10, 1987, in Lincoln at the Nebraska State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their reviews on the proposal and the questions raised by the committee at their second meeting. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth time on October 6, 1987, in Lincoln at the Nebraska State Office Building. After studying all of the relevant information concerning the proposal, the committee decided to postpone the formulation of recommendations until its next meeting.

The committee held its fifth meeting on October 27, 1987, in Lincoln at the Nebraska State Office Building. At the fifth meeting, one committee member proposed another public hearing because the applicant group has completely changed the application level of credentialing from licensure to certification, and there are substantial changes in the proposed revisions. At this meeting Anne Yu replaced Bill Achord as the representative of the applicant group. The committee formulated its recommendations on the proposal at this meeting. The committee took action on the three criteria of LB 407 as they relate to the application. Regarding Criterion One, Dr. Spiers moved that the unregulated practice of marriage and family therapy 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. Rev. Hjelle seconded the motion. Voting aye were: Hjelle and Yu. Voting nay were: Cafferty, Haggart, Nichols, and Spiers. Chairperson Clark abstained from voting.

Committee person Nichols moved that the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability in the conduct of the practice of marriage and family therapy. Ms. Yu seconded the motion. Voting aye were: Cafferty, Haggart, Hjelle, Nichols, Spiers, and Yu. Mr. Clark abstained from voting. There were no nay votes. Committee person Yu then moved that the public cannot be effectively protected by other means in a more cost-effective manner than by the certification of marriage and family therapists. Ms. Nichols seconded the motion. Voting aye was Yu. Voting nay were: Cafferty, Haggart, Hjelle, Nichols, and Spiers. Mr. Clark abstained from voting. By this action the committee had decided not to recommend the certification of marriage and family therapists.

Dr. Spiers then moved that the general idea of certification be studied with the provision that there be consultation by the contending parties with submission of a new proposal after that time. Rev. Hjelle seconded the motion. Voting aye were: Cafferty, Haggert, Hjelle, Nichols, Spiers, Yu, and Clark. There were no nay votes.

