



STATE OF NEBRASKA

DEPARTMENT OF HEALTH

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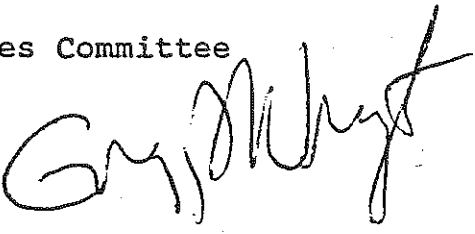
Memorandum

To: Senator Don Wesely, Chairman
Health and Human Services Committee

From: Gregg F. Wright, M.D., M.Ed.
Director of Health

Date: June 29, 1990

Subject: Recommendations regarding the Proposal for a change
in the Nursing Scope of Practice by ARC-Nebraska



Summary:

ARC-Nebraska has proposed a change in the method of regulating certain "special care" procedures in the health maintenance of individuals with developmental disabilities. Under this change, such procedures would not be considered within the scope of practice of nursing when performed in certain settings and when the caregiver receives a certain minimum amount of training from a physician or nurse.

According to the procedures of the Nebraska Credentialing Review Program, a technical committee was appointed to study the proposal. After reviewing the proposal and holding a public hearing on the issue, the technical committee voted 4 to 2 that the proposal did not meet the criteria required by the statute. The technical committee then unanimously voted that an alternate plan involving home health aides may meet the important intent of this proposal and indicated that such a plan should be studied.

The Board of Health appointed a subcommittee to study the issue and the technical committee report. This committee recommended that the full board endorse the technical committee report which it did by unanimous vote at its meeting on January 22, 1990.

The Department of Health has reviewed the application, the technical committee report, the transcript of the public hearing, and the issue in general, and agrees with the technical committee

and the Board of Health that the proposal as submitted does not provide sufficient protection to individuals requiring special care procedures. However, the proposal has raised a number of important issues, and the alternative proposed by the technical committee deserves careful and expeditious study.

A copy of the technical committee report and the Board of Health action have been previously forwarded to your office.

Background:

This proposal addresses an important problem. At the time it was submitted, many of the services described as special care services would be considered within the scope of practice of nursing and would require a nurse for their performance. Despite this, there was evidence that in common practice many of these special care services were being performed by unlicensed individuals with varying amounts of training and preparation as a means of serving developmentally delayed individuals in settings close to their own communities. Without question, the rapid and widespread enforcement of the letter of the nurse-practice statutes would cause great disruption in the care of many individuals. It was not clear that harm was being done which would justify such disruption, and at the same time it was not clear that the system had evolved to a safe alternative. This proposal has allowed a systematic study of the issue through the Nebraska Credentialing Review Program. With the passage of LB1064 the Legislature has placed a one-year moratorium on the enforcement of the Nurse Practice Act in certain situations. This review provides an important step towards a permanent solution.

Discussion:

Two things were clear from the opinions expressed at the public hearing and from the deliberations of the technical committee. First, there is a widespread acknowledgement of the importance of providing services to individuals in family-like, community-based settings whenever possible. Secondly, individuals testifying both for and against this proposal reiterated that the issues raised by the proposal are not simple, and deserve careful consideration.

The discussion of this proposal has defined two competing points of view. The proponents argue that the need for care in a community setting is crucial, and that for the most part the special care services are simple and can be learned easily by a caretaker. On the other hand, many health professionals pointed out that the seeming simplicity of many procedures is deceptive because complications can be life-threatening and argued that

some continuing responsibility on the part of a health professional is important. It is notable that both proponents and opponents on the technical committee agreed that some involvement of home health aides with a supervising home health agency might be able to satisfy both considerations.

The Nebraska Credentialing Review process sets up four standards that should be met before the current system of regulation of health care is changed. Each will be discussed below.

1. Does 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 in which the potential for harm is easily recognizable and not remote or dependent on tenuous argument?

The technical committee voted 4 to 2 that the proposal does not satisfy this criterion. On this criterion I disagree with the technical committee.

The proponents argued that if these procedures stay within the scope of practice of nursing, a combination of unacceptable costs and unavailable nurses will force many individuals to be cared for in an institutional setting out of their own community. I believe that this is true.

It may be true that some individuals currently being cared for in a community setting would be more appropriately cared for in a setting in which more intense medical care is available, and that this may require the individual to move from his/her community to obtain this care. Certainly as medical technology advances, we cannot expect to provide for the needs of everyone in every community. However, the current scope of practice of nursing does not make clear provisions for the delegation of these special care functions from the nurse to an assistant. To require that a nurse personally perform all of these special care services would unnecessarily restrict the care options for many individuals.

2. Does the proposed change in scope of practice create a significant new danger to the health, safety or welfare of the public?

The list of special care services included in the application includes but is not limited to catheter irrigation, care and cleaning of colostomies and ileostomies, administration of enemas and suppositories, wound care, gastrostomy tube feeding, suctioning the trachea with a bulb syringe or machine, and changing tracheostomy tubes. These procedures alone involve a number of potential risks and the "but not limited to" language would potentially open the proposal to even riskier procedures. The proposal would require that at least two hours of training be provided to any caregiver, and that the individual's physician

would decide whether the procedure could be safely done by an unlicensed staff person. This does not provide sufficient protection given the wide range of complications that can occur with these procedures.

The physician who would be making the judgments under this proposal would have an ongoing relationship with the individual as their personal physician, but would not have any ongoing responsibility for the care as provided by the facility in which the individual was living. The individual's personal physician does not supervise the care being provided and is not a part of the organization providing the care. It is not clear that the state could delegate these scope of practice decisions to a physician on a case-by-case basis, but even if this delegation of authority were legally permitted, it would not be sound. The safe provision of these procedures requires periodic assessment by a trained health professional who retains some ongoing responsibility for the care that is provided.

It is true, as is argued by the proponents, that if the individual were living at home with his or her own family, many of these procedures would be provided by family members. Our laws allow a parent to do many things within their own family which could not be done in other circumstances. However, if an organization is going to stand in place of the individual's family in providing these services for a monetary reimbursement, it is reasonable to require that a trained health professional retain the ongoing responsibility for their safe provision.* This could be done either by requiring that the organization providing the care retain a registered nurse and allowing this nurse to delegate to appropriately trained individuals, or by allowing appropriately trained home health aides to assume this role under their supervising registered nurse.

3. Would the enactment of the proposed change in scope of practice benefit the health, safety, and welfare of the public?

For all the reasons listed in the answer to the previous question, the enactment of this particular proposal would not benefit the health, safety and welfare of the public.

4. Can the public be effectively protected by other means in a more cost-effective way?

It is clear from the answer to the first question that some change in the system is needed. The technical committee, and in particular its chairman, Dr. Weaver, deserve much credit for going beyond their initial task in looking for alternate solutions. They have identified, in their deliberations, a possible alternative involving the delegation of these tasks to a home health aide under supervision of their supervising home health nurse. This plan deserves study and this will be

undertaken immediately by the Department of Health by appointing a task force to study this issue. The list of procedures to be considered will have to be much more clearly specified, either by this task force or by the Board of Nursing. In addition, the training of persons to whom the procedures can be delegated must be discussed and specified.

Footnote:

* This argument naturally leads to questions about the role of foster parents who also assume the care of individuals for monetary reimbursement. This issue deserves study also. The situation of a foster parent who cares for a limited number of children in their own homes as a parent may be best considered under the same exemption that parents enjoy from the nursing scope of practice laws.

GFW:kj

cc: Arturo Coto
Dave Palm
Bruce Rowe
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