



STATE OF NEBRASKA

ROBERT KERREY • GOVERNOR • GREGG F. WRIGHT, M.D., M.Ed. • DIRECTOR

MEMORANDUM

TO: Senator Donald Wesely

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

SUBJECT: Recommendations Regarding Credentialing of Respiratory Care

DATE: January 3, 1986

Introduction

In preparing my recommendations on the respiratory care proposal, I have attempted to conform to both the letter and the spirit of LB 407. My principal concern has been to try to assure that there has been a reasonably uniform interpretation and application of the philosophy, criteria, and procedures required by the act.

The language of LB 407 is quite specific in identifying the three criteria that must be satisfied by any group seeking professional credentialing. Briefly stated, these are that there must be clear evidence of harm to the public resulting from the lack of regulation; that the public must need and benefit from an assurance of minimum standards of competence; and that no method other than regulation by the state provides for cost-effective protection of the public.

However, each of the technical review committees has found it necessary to determine for itself how to apply these criteria. For example, each has had to decide what type and amount of documentation of actual or potential harm to the public is sufficient to warrant exercise of the regulatory powers of the state. If the committee found the three criteria to be met, it had to determine which level of regulation was most appropriate. Most importantly, each committee has had to determine whether the proposed regulation will, in fact, protect the public from the harm that has been documented.

I have attempted to identify each of these elements in the committee report, and I have scrutinized the application, and the evidence and testimony submitted by all parties. In making my recommendations, therefore, I have reviewed the same material that was used by the technical committee. But I have also been guided by the intent of LB 407 to provide a uniform application of a broad philosophy of regulation to all applications. I take this philosophy as one that views state regulation as a means of last resort. This philosophy finds the necessity for regulation to rest almost exclusively in the

need to protect the health, safety, and welfare of the public from the prospect of widespread and significant harm. It seeks to balance this necessity against the very real economic and social costs of regulation, such as restriction of competition, potential increases in the cost of health care, limitation of the availability and accessibility of services, and increases in the size and cost of state government.

In this light, I submit the following comments and recommendations regarding the proposal for credentialing of respiratory care.

Recommendations

The proposal of the Respiratory Care providers sought certification for registered respiratory therapists and respiratory therapy technicians by the State of Nebraska. However, the technical review committee recommended licensure for respiratory care providers with the provision that certain amendments be included as part of the recommendation. I concur with the committee's recommendation for licensure rather than certification.

Discussion

I believe that the applicants have made an effective case for the additional credentialing of respiratory therapists. Respiratory care does present a number of potential threats to the public health. These threats are magnified and the need for additional regulation of the profession is intensified by the evolution of the field from a hospital-based service (with attendant supervision) to a home-based service.

Respiratory care involves the use of invasive procedures which by necessity put the patient at risk. In addition, it is often most necessary in the patients whose physical condition is most compromised. Respiratory care practitioners apply, operate, and monitor oxygen and life support equipment. Inappropriate application in any form can result in physical disability or death of the patient. Medications are administered with direct effects to vital organ systems controlling life. The materials and equipment used by respiratory care providers includes oxygen concentrators, mechanical respirators, aerosol generators, transcutaneous monitors, and therapeutic and diagnostic medical gases. All of these technologies and procedures by their very nature put the public at risk if those applying them lack sufficient training.

In addition, the information available to me indicates that the amount of supervision of the procedures of respiratory care personnel is declining, due in part to the proliferation of home health care and other ambulatory services in Nebraska. This trend has significantly increased the risk of substandard respiratory care being given to the public.

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I have recommended licensure as the appropriate level of regulation for several reasons. First of all, the harm to the public is sufficient that the state should seek to exert control over who can and cannot engage in respiratory care. Secondly, the scope of practice of respiratory care is sufficiently clear for licensure to be an effective and yet equitable means of regulation. Finally, the recipients of respiratory care services are often not in a position to "shop around" for the services. Certification alone would not provide appropriate protection from the harm that uncertified operators could do.

As with all reports, I recommend that the Legislature review the attached technical review by the Department of Health for possible adoption as part of the committee's recommendation that the Department's "Proposal for Uniformity in Credentialing" be applied to this proposal and that the resulting legislation be modified accordingly.

GFW:das

Enclosures

cc: Senator Harry B. Chronister
Senator Timothy J. Hall
Senator Dan Lynch
Senator Richard Peterson
Senator Jacklyn J. Smith
Senator Ron Withem

