

**REPORT OF RECOMMENDATIONS AND FINDINGS
ON THE PROPOSAL TO CHANGE SOME PROVISIONS OF THE SCOPE
OF PRACTICE OF PHYSICIAN ASSISTANTS**

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

October 28, 2019

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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 written reports on the same 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.

The Members of the Nebraska State Board of Health, 2019

Kevin Borchert, PharmD, RP

Shane Fleming, BSN, MSN, RN

Michael Hansen, (Hospital Administrator)

Diane Jackson, APRN

Kevin Low, DDS

Joel Bessmer, MD

Debra Parsow (Public Member)

Wayne Stuberger, PhD, PT (Vice Chair)

Travis Teeter, MD (Chair)

Joshua Vest, DPM

Douglas Vander Broek, DC

Jeromy Warner, PsyD, LP

BOH Meetings held to discuss the PA proposal

Meeting of the Credentialing Review Committee of the Board: October 28, 2019

The Meeting of the Full Board of Health: October 28, 2019

Part Two: Summary of Board of Health Recommendations on the PA Proposal

Summary of the Board's Credentialing Review Committee Recommendations

The Board Committee members approved the amended compromise PA proposal.

Summary of the Recommendations of the full Board of Health

The Board of Health members approved the amended compromise PA proposal except that they recommended against the provision within this compromise proposal that called for adding a PA to the State Board of Health, and that a PA representative be added to the membership of the Board of Medicine and Surgery.

Part Three: Summary of the PA Proposal

Summary of the Original Applicant Group Proposal

The Nebraska Academy of PAs (NAPA) requests specific revisions to existing laws governing the practice of PAs (physician assistants) in the state. NAPA believes that the proposed changes do not represent a change in PA scope of practice; rather, these changes are a modernization of the statutes regulating the practice. These changes allow PAs to continue to provide high-quality patient care as part of a healthcare team while also reducing the administrative burdens currently experienced by both PAs and the physicians with whom they practice. NAPA has prepared this document for the Division outlining the requested changes to current law, and addressing each of the Division's criteria.

All of the changes requested in this application are based on the following guiding principles:

- *Allowing flexibility in the PA-physician professional relationship increases patient access to healthcare by giving PAs greater ability to practice in separate locations, including rural and underserved areas.*
- *It frees up physicians' time, letting them focus on their patients' needs, rather than meeting strict administrative requirements.*
- *The PA practice is one in which PAs, physicians, and other practitioners work together to deliver quality patient care.*

PAs in Nebraska practice under requirements defined in Nebraska Revised Statutes, Chapter 38, Sections 2008, 2018, and 2046-2056. These statutes are attached to this application as Appendix A. An additional provision related to the structure of the Board of Health is found in Chapter 71, Sections 2601, which is attached as Appendix B.

NAPA proposes the following changes to the current PA statutes. Several of these changes have already been implemented in other states, as noted below each of the requested changes and marked with [brackets].

- (1) Modernizing the statutory mandates related to PA-physician employment relationships and the practice of PAs, including:
 - (a) Removing specific employment requirements for a PA to practice in a hospital setting;
 - (b) Removing the requirement that physician supervision be continuous, as contained in 382050(3); and
 - (c) Removing the prescriptive sections mandating the provisions that must be included in the PA-physician practice agreement, currently outlined in Section 38-2050(2). While a practice agreement will still be required by statute, NAPA proposes the decisions as to what should be included in the practice agreement should be made at the practice or facility level.

[Thirty-one states have adopted adaptable collaboration requirements, which allow determinations about the geographic proximity and/or on-site requirements for collaborating physicians to be determined at the practice site.

- These states include: Arizona, Arkansas, California, Connecticut, Delaware, D.C., Georgia, Hawaii, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming.]

- (2) Updating the current PA to physician ratio contained in Section 38-2050(4) from 4:1 to 8:1. NAPA believes this increased ratio will lead to better access to care for Nebraskans across our state.

[Several states have recently increased or eliminated their ratio limits. Louisiana increased its ratio limit from four to eight in 2018, and over the last two years, Michigan, Minnesota, and Mississippi have all eliminated their ratios.

- States with **no** ratio limit include: Alaska, Arkansas, Connecticut, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Rhode Island, Tennessee, and Vermont.]

- (3) Updating language related to “supervision” and “delegation” to more accurately reflect the physician-PA relationship in which PAs are allowed to engage in practice under a collaborative agreement with the supervision of a physician and practice on a healthcare team. These changes include:

- (a) Redefining “supervising physician” as defined in Sec. 38-2017 to “a licensed physician who supervises a physician assistant under a collaborative agreement”, and;
- (b) Redefining “supervision” as defined in Sec. 38-2018 to defined to mean the ready availability of the supervising physician for consultation and collaboration on the activities of a physician assistant. Consultation and collaboration may be by telecommunication and shall not require the physical presence of the physician at the time and place services are rendered.

[As of March 15, 2019, six states (Alaska, Illinois, Michigan, Tennessee, Virginia, and West Virginia) have removed references to supervision of PAs, instead using “collaboration,” or in the case of Michigan, “participation.” New Mexico now allows certain experienced PAs to collaborate with physicians, as well. While NAPA is not suggestion removal of physician supervision, the experience of these states in instructive.]

- (4) Updating PA scope of practice provisions contained in 38-2047 to reflect legal medical services for which a PA has been prepared by their education, training, and experience and is competent to perform, rather than relying on the supervising physician’s scope.
- (a) Such services will be required to be performed under a collaborative agreement with the supervision of a physician.

[Thirty-eight states allow a PA’s scope of practice to be determined at the practice site. Michigan and Maine allow PAs to practice within their own scope, based on their

education, training, and experience. New Mexico allows PAs to practice within their own scope if they are regulated by the medical board and collaborate with physicians.]

- (5) Updating PA prescribing provisions, Section 38-2055, to include non-pharmacological interventions and clarifying that provisions allowing healthcare providers to furnish medications to patients in certain cases applies to PAs.
- (6) Modifying membership of the Board of Health, listed in Section 71-260, to include one PA member.

[Eighteen states have created at least one specific PA seat on their regulatory boards. Pennsylvania (Board of Medicine and Board of Osteopathic Medicine) has a seat which rotates among PAs, respiratory therapists, perfusionists, and licensed athletic trainers. Eight states (Arizona, California, Iowa, Massachusetts, Michigan, Rhode Island, Texas, and Utah) have established separate, autonomous or semi-autonomous PA boards to regulate PAs.

- (i) States with specific PA seats on their regulatory boards include: Alaska, Colorado, Connecticut, Maine, Maryland, Michigan, Montana (non-voting), New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Vermont, Washington, West Virginia, and Wyoming.]

- (7) Updating membership of the PA Committee, set forth in Section 38-2056, to be majority-PA, with three PA members, one physician who practices with PAs and is a member of the Board of Medicine and Surgery, and one public member. NAPA believes this change in membership is appropriate where the PA Committee is tasked with making recommendations to the Board of Medicine and Surgery regarding all matters relating to PAs that come before the board.

[Twenty-nine states have a PA advisory committee or other body tasked with advising the medical board on matters related to PA licensure, practice, and discipline. Thirteen of these are majority-PA.

- States with a PA advisory committee or similar body include: Alabama, Arkansas, Delaware, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, Wisconsin, and Wyoming.
- States which have majority-PA advisory committees include: Delaware, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Nevada (Medical Examiners Board), New Jersey, South Dakota, Tennessee, Virginia, and Wisconsin.

The Amended Version of the Proposal

Before receiving comments from testifiers the committee members were informed that a compromise had been reached between the NAPA and NMA regarding key points of contention in the original proposal. The committee members were then provided with documentation of the details of this compromise via hard copy handouts provided to them by the applicant group. The following is a brief summary of these mutually agreed-upon compromise points:

- 1) Pertinent to modernizing statutory mandates related to PA-MD employment relationships and PA practice vis-à-vis “continuous supervision” the compromise point is as follows: “Rather than striking the continuous supervision requirement language would be added that would refer back to the definition of supervision which states that supervision requires “ready availability” but does not mean “in person.”
- 2) Pertinent to updating PA to physician ratios from 4:1 to 8:1 the compromise reached is as follows: leave the current practice ratio as is and work toward streamlining the waiver process via an electronic form and allowing for electronic approval of these forms.
- 3) Pertinent to updating PA scope of practice to reflect legal medical services for which PAs are educated and trained to provide the compromise point is as follows: PA scope of practice shall be based on the education, training, and experience of the PA as long as those skills are also supported by the PAs current practice setting either as a component of their supervising physician’s scope of practice or as a component of the scope of practice of other physicians working in the same setting as the PA.
- 4) Pertinent to updating PA prescribing provisions to include non-pharmaceutical interventions the compromise point is as follows: The wording would be revised to read, “A physician assistant may prescribe drugs and devices,” rather than, “A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician.”
- 5) Pertinent to the membership of the PA Committee to create a PA majority the compromise point is as follows: The current make-up of this committee would be retained but the number of members who are able to vote on matters before the committee would be changed. The Board of Medicine and Surgery representative would now have only an advisory role and as such would not be a voting member. However, the other physician representative would continue to be a voting member.

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

Part Four: Discussion on issues by the Board Committee Members

Comments by Wayne Stuberg, PHD

Dr. Stuberg informed the Board Committee members that the members of the Technical Committee that he chaired to review the applicants' proposal unanimously agreed to support the amended proposal including all of the compromise points agreed to by NAPA and NMA.

Comments by interested parties and questions by Board members

Kathleen Tonkin came forward to present testimony on behalf of NAPA in support of the amended proposal. Ms. Tonkin commented that because physicians and physician assistants provide services to patients collaboratively her group was sure that the same collaborative approach could be used to come to agreement on points of disagreement that occurred during the review. Ms. Tonkin continued by stating that the NAPA application seeks to modernize the statutes regulating PA scope of practice. The proposal seeks to reduce administrative burdens and statutory confusion regarding PA services.

Ms. Tonkin went on to briefly summarize the principal points of the NAPA proposal as follows:

- 1) Modernize statutory mandates related to physician / physician assistant employment relationships by removing specific employment requirements for a PA to practice in a hospital setting,
- 2) Clarify the meaning of supervision in the context of PA / MD collaboration by direct reference to the statutory definition of supervision found in Section 38-2018 wherein supervision is required to be readily available but does not have to be in person,
- 3) Removing overly restrictive requirements as to what has to be in a practice agreement and instead leaving the details of such agreement to be worked out by the respective physician and their physician assistant,
- 4) Working with DHHS and the Board to streamline the waiver process to ensure faster response time to situations wherein gaps in services in a particular area of our state have arisen rather than make statutory changes to the physician / physician assistant practice ratio,
- 5) Update PA scope provisions so as to allow PA scope to be defined by their education and training rather than solely in terms of the scope of practice of the supervising physician,
- 6) Update PA scope by clarifying that PAs are qualified to prescribe both pharmaceutical and non-pharmaceutical interventions,
- 7) Modify the membership structure of the Physician Assistant Committee which operates under the Board of Medicine and Surgery to ensure that physician assistants play a larger role in the regulatory process of their own profession, and,
- 8) Revise the Board of Health statute so as to add a physician assistant to the membership of this body.

Shane Fleming, RN, asked Ms. Tonkin how much variation there is in the nature of MD/PA collaborative relationships. Ms. Tonkin responded that there is always a need to ensure that the skill sets of each respective participant in a given collaborative agreement are matched up in order to ensure that patients get the full benefit of the teamwork potential of this kind of practice. Mr. Fleming asked for clarification as to the core issue surrounding the controversy over PA/ MD practice ratios. Ms. Tonkin responded that the issue herein is the need to ensure delivery of

care to underserved areas of our state and to provide for a waiver of current oversight requirements pertinent to how many PAs a given MD can supervise if this is needed to ensure that every area of our state gets access to health care services. Dr. Stuberg commented that the practice agreement concept under review is not broken. All it needs is a little streamlining to make it work better for all concerned.

Travis Teetor, MD, Chair of the Board of Health, asked Ms. Tonkin why NAPA wants a seat on the Nebraska State Board of Health. She responded that NAPA wants its members recognized as important players in the delivery of health care in Nebraska, and that membership on this board would be helpful to them in this regard.

David Hoelting, MD, came forward to present testimony on behalf of NMA in support of the amended proposal. He commented that the amended version of the proposal would improve the coordination, timeliness, and accessibility of the delivery of MD / PA health care services in Nebraska. Dr. Hoelting went on to say that he will present ideas to the medical board regarding how the waiver process can be speeded up so as to more quickly address the needs of medically underserved areas.

Later, it was learned that the current waiver procedures of concern are not statutorily defined and thus can be modified internally by DHHS without having to seek legislative approval to do so.

Part Five: Recommendations of the Credentialing Review Committee of the Board on the PA Proposal during its October 28, 2019 Bimonthly Meeting

Actions taken by the members of the Board of Committee:

Voting to approve the physician assistant proposal were Shane Fleming, Diane Jackson, Debra Parsow, Travis Teetor, and Joshua Vest. There were no nay votes or abstentions. By this action, these Committee members recommended that the full Board of Health approve the amended physician assistant proposal.

Part Six: Recommendations of the Full Board of Health on the PA Proposal

Discussion by the members of the full Board of Health:

Dr. Teetor asked for input from the Board members regarding the provision in the PA proposal that called for adding a physician assistant to the State Board of Health. Debra Parsow commented that rather than add a PA to the Board of Health it might be more productive to add a PA to the Board of Medicine and Surgery. Shane Fleming commented that the idea of adding a PA to the Board of Health would encourage other professions similarly regulated by committees of a larger credentialing board to seek to have their members represented on the board, as well. Dr. Teetor commented that this would not be a good precedent because it would pave the way for a Board of Health that is too large and unwieldy to get anything done.

Dr. Bessmer stated that the Board members need to make a specific recommendation on this matter. Pursuant to this Diane Jackson moved and Debra Parsow seconded that the members of the Board of Health recommend against the idea of adding a physician assistant to the Board of Health, and that, instead of this, recommend that a physician assistant be added to the Board of Medicine and Surgery. Voting to approve this motion were Vest, Vander Broek, Teetor, Stuberg, Parsow, Low, Jackson, Hansen, Fleming, and Bessmer. There were no nay votes or abstentions. The motion passed.

Actions taken on the PA proposal by the members of the full Board of Health:

The Board members then discussed how their action on the idea of adding a PA to the Board of Health would impact their stance on the applicants' proposal as a whole. Dr. Teetor stated that the Board members will need to act on the compromise version of the PA proposal except that the provision of this compromise proposal that called for adding a PA to the membership of the Board of Health no longer be included and instead be replaced by the idea of adding a PA representative to the Board of Medicine and Surgery. Voting in favor of this recommendation were Vest, Vander Broek, Teetor, Stuberg, Parsow, Low, Jackson, Hansen, Fleming, and Bessmer. There were no nay votes or abstentions.