

FINAL REPORT OF FINDINGS AND RECOMMENDATIONS.

BY THE
NEBRASKA BOARD OF HEALTH

ON THE APPLICATION FOR
DIETITIANS AND NUTRITIONISTS
TO THE
DIRECTOR OF HEALTH
AND THE
NEBRASKA LEGISLATURE

NOVEMBER 15, 1993

Recommendations of the Full Board of Health

The members of the full Board of Health met on September 20, 1993, in Lincoln in the State Office Building to formulate their recommendations on the proposal to license dietitians and nutritionists.

Chairperson Weaver began the Board's review on this issue by asking Carl Maltas to present the findings of the 407 Committee of the Board on this proposal. Mr. Maltas informed the Board members that the application failed on all four criteria, and that the 407 Committee members felt that the proposal did not demonstrate a need for the proposal or define an acceptable scope of practice. Mr. Maltas stated that the 407 Committee members sympathized with applicant group statements regarding their need for third-party reimbursement, and approved a motion that expressed their support for the idea that dietitians and nutritionists be reimbursed for their services. Mr. Maltas informed the Board members that the 407 Committee did not endorse the technical committee's ancillary recommendation concerning the four criteria of the credentialing review program. Mr. Maltas stated that the 407 Committee members felt that these criteria should remain generic rather than issue-specific.

Chairperson Weaver then recognized Susan Conradt, a representative of the applicant group, for the purpose of getting applicant group responses on the review process on their proposal. Ms. Conradt read a prepared statement outlining the applicant group's concerns about the four criteria of the credentialing review program, and expressed regret that to date none of the 407 review bodies had given their proposal a positive recommendation, and repeated the applicant's comments about the inability of the four criteria of the credentialing review program to cope with specific health-care

issues.

Carl Maltas and Janel Foote then commended the applicant group on their professionalism. Dr. Tempero stated that the Board members need to do all they can to see to it that the ancillary recommendation on third-party payors approved by both the technical committee and the 407 Committee of the Board is taken seriously by lawmakers.

Chairperson Weaver then asked for a motion on whether or not to approve the report of the 407 Committee on the proposal. Carl Maltas moved that the Board members adopt the report of the 407 Committee which had recommended that the Board members not approve the proposal. Bruce Gilmore seconded the motion. Voting aye were Gilmore, Maltas, Polzien, Kuehl, Wempe, Kellough, Foote, Christensen, McQuillan, Allington, and Bennett. Voting nay were Tempero and Caudill. Chairperson Weaver abstained from voting. By this vote the Board members decided not to recommend in favor of the proposal.

Chairperson Weaver then asked whether the Board members wished to make any additional recommendations on this issue. Carl Maltas moved that the Board members adopt the ancillary recommendation on third-party payors approved by both the technical committee and the 407 Committee. Dr. Tempero seconded the motion. Voting aye were Bennett, Allington, McQuillan, Christensen, Foote, Kellough, Caudill, Wempe, Tempero, Kuehl, Polzien, Maltas, and Gilmore. There were no nay votes. Chairperson Weaver abstained from voting. By this vote the Board members approved the ancillary recommendation on third-party payors.

The Recommendations of the 407 Committee on the Proposal

The members of the 407 Committee of the Board of Health met on September 1, 1993, in Lincoln in the State Office Building to formulate their recommendations on the proposal to license dietitians and nutritionists.

I. Presentations by the Technical Committee Chairperson and Other Interested Parties

Carl Maltas, the chairperson of the 407 Committee of the Board of Health, introduced Janel Foote, the chairperson of the Dietetics and Nutrition Services Technical Review Committee, for the purpose of summarizing and commenting upon the work of her committee. Janel Foote described the actions taken by the technical committee members on each of the four criteria, and briefly discussed the reasons why the technical committee members did not approve the applicant group's proposal. Dr. Foote stated that the technical committee members were not convinced by the applicant group's evidence on harm to the public, and were concerned that the proposal might be too restrictive. Dr. Foote informed the 407 Committee that the technical committee members were very supportive of the idea that dietitians and nutritionists should receive third-party reimbursement for their services, and indicated this support in one of their ancillary recommendations.

Chairperson Maltas then asked the applicant group to present comments on their proposal and the review process. Barbara Blocker, a Certified Dietitian, spoke for the applicant group. Ms. Blocker commented on the difficulties her group has had in the 407 process, and stated that the applicant group feels that the criteria of the 407 program need to be reevaluated because these criteria make it difficult to deal with current

health care issues and patient outcomes. Ms. Blocker gave attention to a technical committee recommendation that dietetic and nutrition services should receive third-party reimbursement for specific services, and added that this recommendation indicates that nutrition services are key elements in the health care system.

II. Discussion by the Members of the 407 Committee

Chairperson Maltas then asked the applicant group to make additional comments as to why their group has had such a difficult time in the 407 process. Barbara Blocker responded by stating that applicant group proposals have been perceived by some interested parties as infringing upon freedom of speech, and added that it has been difficult for the applicant group to find a way to define standards for protection of the public without creating the perception among some members of the health food industry that their freedom of speech is being violated. Ms. Blocker added that this is why the applicant group is developing a proposal that has a more restricted scope of practice. Ms. Blocker indicated that the applicant group does need to be licensed in order to have a chance to be reimbursed for their services. Ms. Blocker added that the coming of health care reform adds some urgency to this objective because of the likelihood that under health care reform only those professions who are reimbursed for services are going to be perceived as part of the "health care team." Dr. Caudill then stated that dietitians and nutritionists are an integral part of the health care system, and need to be given more support.

III. The Formulation of Recommendations by the 407 Committee

The 407 Committee members then indicated that they were ready to vote on the four criteria. Chairperson Maltas asked for a motion on the first criterion. Janel Foote moved that the members of the 407 Committee adopt

the recommendation of the technical committee on criterion one. The technical committee recommended that the proposal had not demonstrated that there is significant harm to the public in the current practice situation of dietetics and nutrition. Dr. Duane Polzien seconded the motion. Voting aye were Caudill, Fitzgerald, Foote, Kellough, and Polzien. There were no nay votes. Chairperson Maltas abstained from Voting. By this vote the committee members decided to recommend that the proposal does not satisfy the first criterion. Janel Foote stated that the applicants provided very little evidence that there is harm occurring as a result of the fact that their group is not licensed, and that the evidence that was provided was either anecdotal in nature, or not germane to the current situation of their profession.

Chairperson Maltas asked for a motion on the second criterion. Janel Foote moved that the members of the 407 Committee adopt the recommendation of the technical committee on criterion two. The technical committee recommended that the proposal did not satisfy the second criterion which asks whether or not a proposal creates significant new harm to the public health and welfare. Dr. Richard Fitzgerald seconded the motion. Voting aye were Fitzgerald, Foote, Kellough, Polzien, and Tempero. Voting nay was Caudill. Chairperson Maltas abstained from the voting. By this vote the 407 committee members decided to recommend that the proposal does not satisfy the second criterion. Dr. Caudill stated that he could not see any new potential for harm that the proposal would cause. Dr. Kellough responded by stating that concern was raised during the technical committee review regarding the impact of the proposal on freedom of speech. Dr. Caudill responded that such concerns are beyond the scope of a 407 review. Dr. Kellough then stated that the technical committee members were also

concerned about possible adverse impacts of the proposal on access to some nutrition services.

Chairperson Maltas asked for a motion on criterion three. Janel Foote moved that the members of the 407 Committee adopt the recommendation of the technical committee on criterion three. The technical committee recommended that the proposal did not satisfy the third criterion which states that the proposal would benefit the health, safety, and welfare of the public. Dr. Caudill seconded the motion. Voting aye were Foote, Kellough, and Polzien. Voting nay were Caudill and Fitzgerald. Chairperson Maltas abstained from voting. By this vote the 407 Committee members decided to recommend that the proposal does not satisfy the third criterion. Dr. Caudill stated that the public could benefit from licensing this profession because licensure would make it easier for the profession to gain reimbursement, and if this occurred, the public would gain greater access to their services.

Chairperson Maltas asked for a motion on criterion four. Janel Foote moved that the 407 Committee members adopt the recommendation of the technical committee on the fourth criterion. The technical committee recommended that the proposal does not satisfy this criterion which asks whether or not the proposal is the most cost-effective means of addressing the problems identified by the applicant group. Dr. Fitzgerald seconded the motion. Voting aye were Caudill, Fitzgerald, Foote, Kellough, and Polzien. There were no nay votes. Chairperson Maltas abstained from voting. By this vote the 407 Committee members decided to recommend that the proposal does not satisfy the fourth criterion. By these votes on the four criteria the members of the 407 Committee recommended that the full Board of Health not recommend approval of the proposal.

Dr. Caudill asked Janel Foote to discuss the technical committee's

review as it pertained to this criterion. Ms. Foote responded that the technical committee's review indicated to her that an alternative such as registration might be more appropriate for dietitians and nutritionists than licensure, and that the committee members felt that the current certification process for dietitians and nutritionists should be given more of a chance. Ms. Foote stated that some committee members suggested that there be more of an effort made to educate the public about this certification credential. Ms. Foote also stated that some committee members suggested regulation of the service rather than regulation of the providers of the service might be an alternative worthy of consideration.

IV. Ancillary Recommendations of the 407 Committee

Chairperson Carl Maltas asked the 407 Committee members whether they would like to make any additional recommendations. Janel Foote moved that the 407 Committee members adopt the ancillary recommendation made by the technical committee pertinent to third party payors which reads as follows:

. . . the committee members endorse the idea that certified dietitians and nutritionists be reimbursed by third-party payors for specific services in the interest of public health and preventive care, and that the technical committee members recommend that the Legislature enact a law that would prohibit third-party payors that are doing business in Nebraska or state health entitlement programs from basing decisions on whether or not to reimburse for the services of a given health profession solely on whether that profession possesses licensure.

Dr. Fitzgerald seconded the motion. Voting aye were Caudill, Fitzgerald, Foote, Kellough, Polzien, and Tempero. There were no nay votes. Carl Maltas abstained from voting.

Carl Maltas asked the applicants whether or not it is true that third-party payors will not reimburse for services by unlicensed professions. Charlotte Kern, speaking for the applicants, stated that her group has been turned down repeatedly because they are perceived by third-party payors as being an educational service rather than a health profession. Ms. Kern stated that Blue Cross Blue Shield and Mutual of Omaha have advised her group that the only way to overcome this perception is to get licensed as a health profession. Another dietitian at the meeting stated that even though she does tube feedings, her attempts to get reimbursement have been rejected by third-party payors. This dietitian stated that her experience is that third-party payors perceive all dietary services to be non-medical in nature.

Dr. Caudill responded to these applicant comments by stating that the applicants have the right problem but the wrong solution, and that what the applicants need to do is to go directly to the source of the problem which is the third-party payors themselves rather than repeatedly going through the 407 process.

The 407 Committee members then took up the concerns raised by the applicant group regarding the 407 criteria. Dr. Caudill moved that the 407 Committee members acknowledge the work and concerns of the technical committee members as regards the four criteria, but that the 407 Committee members not endorse any particular approach to this issue. Dr. Kellough seconded the motion. Voting aye were Caudill, Fitzgerald, Foote, Kellough, Polzien, and Tempero. There were no nay votes. Carl Maltas abstained from

voting. Janel Foote stated that the 407 Committee should not support the technical committee motion on the criteria, and that technical committees will always struggle with the criteria regardless of how they might be written. Carl Maltas acknowledged that it is sometimes difficult to apply the criteria to the requirements of a particular review, but that it is not possible to devise criteria that would perfectly suit the needs of every proposal that comes through the program.