

FINAL Report of Preliminary Findings and Recommendations

By the
Technical Review Committee for the
Review of an Application on
Dietitians and Nutritionists

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

August 25, 1993

The members were appointed by Mark B. Horton, M.D., M.S.P.H., Director of Health, to serve on the Dietetics and Nutrition Technical Review Committee are as follows:

Janel T. Foote, R.P., Committee Chairperson
Director of Pharmacy Services, Mary Lanning Memorial
Hospital (Hastings)

James G. Carlson, M.D., Medical Director of Health Services,
Tabitha, Inc. (Lincoln)

Edward F. Cass, Vice President for Information Services,
Mutual of Omaha Insurance Company (Omaha)

Linda E. Douglas, Ed.D., Director of Special Education,
Lincoln Public Schools (Lincoln)

Charlotte S. Kern, M.S., R.D., C.N., Extension Agent -
Food and Nutrition, Nebraska Cooperative Extension,
University of Nebraska-Lincoln (Lincoln)

Carol McShane, R.N., Nurse Consultant, Nebraska Nursing
Consultants (Lincoln)

Robert M. Yates, J.D., Attorney-at-Law, Partner at Fraser,
Stryker Law Firm (Omaha)

Introduction

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) in 1985, is a review process advisory to the Legislature which is designed to assess the necessity of the state regulation of health professionals 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 four 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 Conclusions and Recommendations

The technical committee members recommended against approval of the applicants' proposal. The committee members decided that the proposal did not satisfy any of the four statutory criteria pertinent to the review.

Summary of the Applicants' Proposal

The proposal would license dietitians and nutritionists that meet the standards of the proposal. The proposal calls for candidates for licensure to meet the following qualifications:

- 1) Has received a baccalaureate or post-baccalaureate degree from a regionally accredited college or university with a major course in human nutrition, food and nutrition, dietetics, or food systems management or an equivalent course of study approved by the Department of Health, and,
- 2) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than 900 hours of a planned continuous experience in a dietetic and nutrition services under the supervision of a licensed practitioner, and,
- 3) Has satisfactorily passed the examination approved by the board.

The proposal would grandfather individuals who meet the educational and experiential standards of the proposal. Those who meet the educational and experiential requirements who apply for licensure during the initial licensing period would not be required to take the examination. The examination requirement would also be waived at any time for applicants who present evidence of having practiced as a dietitian without censure for a period of ten years immediately prior to September, 1987.

The proposal would require fifteen hours of continuing education per year for the renewal of the license.

The scope of practice would comprise those activities associated with nutrition therapy such as nutritional assessment, nutritional counseling, and nutritional monitoring of individual clients, and is not intended to limit the dissemination of general information on diet and nutrition.

The proposal would exempt licensed health care professionals practicing within their scope of practice, dietetic technicians under the supervision

of a licensed nutritionist, certified dietary managers under the supervision of a licensed nutritionist, dietetic students enrolled in approved programs and operating under the supervision of licensed nutritionists, individuals employed by a nonprofit agency approved by the board, individuals serving in the military or for the federal government, graduates of accredited programs working under the supervision of a licensed nutritionist, employees of health food stores, persons employed by commercial weight loss centers, those who provide education and/or information on dietary subjects, and individuals licensed in other states.

Discussion on Issues Raised by the Proposal

What is the harm to the public from the current practice situation of dietetics and nutrition?

Comments on this Issue by those in Support of the Proposal:

The applicant group informed the committee members that severe complications and death can result from inappropriate dietary counseling. The applicants said that persons with diabetes could lose their eyesight and kidney function because of bad nutritional advice, and that kidney failure patients can die from ingesting a diet too high in potassium. The applicants stated that nutritional deficiencies such as rickets have been misdiagnosed by unqualified practitioners, and that persons with heart disease get conflicting and confusing information from the media and unqualified persons that complicates their efforts to prevent costly hospitalizations and health maintenance procedures. The applicants informed the committee that diet and nutrition is the only remaining element of the triad of medical care that is as yet unlicensed in Nebraska, the other two being surgery and prescription drugs, and that public protection requires that this element of medical care be licensed as well (the applicants' Proposal, page 14).

One testifier for the applicant group stated that health food store employees, food distributors, exercise counselors, fitness instructors, and the employees of commercial weight loss centers are examples of persons who are a source of potential harm to the public because, according to this testifier, they often attempt to provide services that border on medical practice, and that these groups are not qualified to provide such services. This testifier stated that the current proposal has been created to address

this situation, and create a scope of practice that can be enforced against those who try to engage in nutrition-related practices that are beyond their qualifications. This testifier informed the committee members that the scope of functions that the proposal seeks to protect constitutes what the applicant group calls "nutrition therapy" (Questions Addressed for Nutrition and Dietetics Technical Review Public Hearing, May 19, 1993; Response to question 13 on the list of questions generated by the technical review committee at its second meeting, April 29, 1993).

According to this testifier, nutrition therapy comprises the activities associated with nutrition assessment, nutrition counseling, and nutrition monitoring. The applicants stated that **nutritional assessment** is the process of identifying and evaluating the nutritional needs of a person by using measurable methods and recommending appropriate therapy including parenteral and enteral nutrition. This process includes history taking, nutritional anthropometry, a physical exam, and biochemical tests. **Nutritional counseling** refers to the provision of expert advice to help an individual with current or potential nutrition problems, based on nutritional assessment data. This process includes development of an individualized nutritional care plan, translation of complex nutritional information into food choices, and nutritional education. **Nutritional monitoring** refers to the provision of information on a regular basis about the role and status of nutritional factors that relate to health. This process includes periodic assessment, review and revision of the care plan, on-going nutrition education, and appropriate referral to other health care practitioners as indicated (the Transcript of the Public Hearing, pages 17-20; and The Scope of Practice of Nutrition Services provided to the committee by the applicant group). The applicant group stated that only

those who meet the standards of the proposal or those who have been specifically exempted should be allowed to perform these functions.

The applicant group also provided the committee with letters from various health professionals and the general public that the applicants said demonstrate that harm has occurred to the public as a result of the nutritional counseling provided by those persons the applicant group believes to be unqualified to do nutrition therapy. The letters referred to dietary services and information provided by homeopaths, naturopaths, health food store employees, and magazines dealing with health and nutrition. The applicants stated that many of these practitioners have come dangerously close to practicing medicine without a license (the Applicants' Proposal, Appendix E; the Document Log for this review on file in the Nebraska Department of Health; and Exhibits 4 through 8 in the Transcript of the Public Hearing).

The applicant group also submitted a chart to the committee that describes the potential harm of following inappropriate dietary practices. This chart classifies this harm according to physical, emotional, mental, social, and economic criteria with a list of possible afflictions under each criteria that could result from inappropriate dietary practices (the Applicants' Proposal, Appendix B).

Comments on this Issue by those Opposed to the Proposal:

Some of those who presented testimony opposed to the proposal stated that the applicants proposal does not consider the qualifications of nutrition practitioners who have been trained and educated in schools and programs other than those that typically train and educate those dietary practitioners represented by the Nebraska Dietetic Association. One

testifier who identified himself as a naturopath informed the committee members that he has an advanced degree in the area of diet and nutrition from a naturopathic medical college comparable to the graduate degrees that are available in the field of dietetics. This testifier submitted a document to the committee members detailing his qualifications to provide nutritional counseling. This testifier informed the committee members that the proposal as currently worded does not recognize freestanding schools granting single degrees such as the medical college he attended. This testifier added that the federal Department of Education recognizes the accreditation of freestanding schools as being on a par with the regionally accreditation recognized by the applicants in their proposal (the Transcript of the Public Hearing, pages 89-93).

This testifier stated that persons with naturopathic training are not only minimally qualified to provide diet and nutrition counseling, but in fact have been at the leading edge of the field of nutrition, and that this testifier stated that his profession was among the first to stress the importance of diet in health maintenance. As examples, this testifier stated that such modern dietary practices as emphasizing fiber in diet as a way of minimizing the risk of colon cancer, and the emphasis on minimizing fat in the diet as a way of minimizing the risk of heart disease were part of naturopathic practice long before the members of the Dietetic Association made it part of their practice (the Transcript of the Public Hearing, page 105).

This testifier observed that the applicants provided no research that demonstrated that any harm is occurring to the public as a result of the current situation of dietary and nutrition services in Nebraska, and that what little evidence was submitted was mostly anecdotal in nature and that

some of it was generated prior to the passage of the current certification law for Dietitians and Nutritionists. This testifier stated that the harm that was described in the letters submitted to the committee by the applicants was either beyond the ability of the proposal to address, or could more easily be addressed by applying such existing statutes as the Medical Practice Act or laws pertinent to consumer fraud than by creating new legislation. This testifier stated that some of the examples of harm supposedly originating from naturopathic and homeopathic practitioners referred to in the letters provided by the applicants was misleading, and that in at least one instance, the practitioner in question was not trained in any medical field, and was subsequently forced to stop practicing by the state because he was misrepresenting himself to the public. This testifier felt that this example shows that current laws are working adequately to protect the public from harm in this area, and that there is no need to create additional legislation that would duplicate what these statutes are already doing (the Transcript of the Public Hearing, pages 96-97).

This testifier added that the current certification law should provide a basis for the public to receive adequate information on dietary services in order to make an informed choice. He stated that this type of legislation seems to be the way other states are proceeding as regards this area of health care (the Transcript of the Public Hearing, page 99).

One testifier representing the health food industry responded to comments by the applicants regarding the supposed lack of training of health food store employees by stating that many managers of health food stores are graduates of the Institute of Nutritional Education, a two-year correspondence course. This testifier stated that this training program is not accredited, but that it is an in-depth study of nutrition. This

testifier questioned applicant group assertions that the advice offered by some health food store employees was precariously close to practicing medicine without a license. This testifier stated that these employees are taught that their job is to provide information about the products being offered for sale in the health food store, and are taught that they are never to diagnose or prescribe treatment (the Transcript of the Public Hearing, page 113).

Another testifier for the health food industry informed the committee that no complaints have ever been filed against any health food stores with which he has been associated, and that none to his knowledge has ever been harmed by any product from health food stores. This testifier added that the employee manual of the health food stores that he is familiar with makes it clear that it is a termination offense for any employee to attempt to give medical advice to customers (the Transcript of the Public Hearing, page 116).

Other testifiers for the health food industry submitted testimony to the committee by mail. One commentator stated that there have been no reports of harm to the public in the area of diet and nutrition in Nebraska, and that he could see no need for a licensing program at this time. This commentator included summaries of reviews of licensing proposals in other states in an effort to show that the current trend in other states is towards denying licensure for dietitians and nutritionists (document provided by National Nutritional Foods Association).

Would the current proposal benefit the public of Nebraska, or is there harm associated with this proposal that would nullify any benefits that the proposal might offer to the public?

Comments on this Issue by those in Support of this Proposal:

The applicant group stated that the public would benefit from this proposal because it would provide assurance that those who provide dietetic and nutrition services in Nebraska meet minimum qualifications, and thereby protect the public from harm associated with inappropriate and incompetent nutrition services. Those who do not meet these qualifications would not be allowed to practice the scope defined in the proposal (the Applicants' Proposal, page 22).

The applicants stated that this proposal would provide the public with recourse from practitioners who violate the terms of their license. The proposal would make it possible for the state to take action against the license of such practitioners (the Applicants' Proposal, page 25).

The applicants responded to concerns about the potential hardship associated with allowing new practitioners no more than a year to meet the standards of the proposal after it becomes law by stating that those who cannot satisfy the requirements of the proposal within one year would be given several options so that they can practice. Those who satisfy the educational and experiential requirements of the proposal but have not yet taken the exam would be given a six-month temporary license to enable them to make up the deficiency. This temporary license would expire after six months without being reinstated if the person in question has not yet taken and passed the examination. Those with deficiencies in their educational and experiential requirements would be allowed to take a ninety-hour dietary managers course that would enable them to practice under supervision of a licensee. Currently certified practitioners would be grandfathered even if

they have not taken the examination. The applicants felt that this is appropriate given that highly experienced practitioners should not be required to go through any additional hoops to get a license (the Transcript of the Public Hearing, pages 84-85; and Questions Addressed for Nutrition and Dietetics Technical Review Public Hearing, May 19, 1993, Response to question 6 on the list of questions generated at the second meeting of the technical review committee, April 29, 1993).

The applicants stated that educational assistance is available for dietetic and nutrition students and practitioners from UN-L, UN-O, UN-K, and the American Dietetic Association. The Nebraska Dietetic Association funds two of the American Dietetic Association scholarships, and has contributed to several others set up to honor current or former members. The applicants added that Nebraska schools produce sufficient numbers of qualified professionals to meet the service needs of the state (Questions Addressed for Nutrition and Dietetics Technical Review Public Hearing, May 19, 1993, Response to question 6 on the list of questions generated at the second meeting of the technical review committee, April 29, 1993).

The applicants informed the committee members that licensure would provide the public with better access to dietetic and nutrition services than does certification. This is because third-party payers will only reimburse for the services provided by licensed professionals. The applicants informed the committee members that many persons who need dietetic and nutrition services are not getting them because they cannot pay for these services without the kind of assistance provided by third-party payers (the Applicants' Proposal, page 22).

The applicants submitted a list of exempted professions and activities to the committee members to demonstrate that their proposal is not

unnecessarily restrictive (document entitled The Scope of Practice of Nutrition Services submitted by the applicant group for the public hearing). This list included all licensed health professions practicing within their scope of practice, dietetic students, graduates of dietetic programs working under the supervision of a licensee, nutritional educators, and the employees of health food stores provided that they do not engage in the protected scope of practice, and the employees of commercial weight loss centers provided that their programs have been reviewed by a licensee. One applicant testifier informed the committee members that the proposal seeks to protect those activities associated with nutritional therapy, and that the proposal does not seek to restrict the free flow of nutritional information or unduly limit the activities of those who sell dietary supplements and health food products. This testifier stated that the proposal would restrict such activities only when the persons engaged in these activities attempt to provide nutritional therapy (the Transcript of the Public Hearing, page 20).

The applicants responded to questions regarding the potential cost to the state if dietary services are covered by Medicaid by acknowledging that Medicaid coverage of these services would initially increase costs to the state, but that such coverage would be cost-effective in the long run (the Transcript of the Public Hearing, page 87). One applicant testifier informed the committee members that improved access to nutrition services for women with low-income would produce cost savings because improved access to such services has been shown to lower the incidence of low birth-weight babies. This testifier stated that the average cost differential between a low birth-weight infant and a normal weight infant is approximately \$15,500, and that the U.S. General Accounting Office has estimated that every dollar

spent on nutritional programs for pregnant women has produced \$4.21 in savings. The committee members were also informed that the state of Maine has discovered that improving access to nutrition counseling for persons with diabetics has reduced the incidence of hospitalizations for diabetes control by thirty-three percent and that this information encouraged Maine to facilitate an agreement between Medicaid and Blue Cross and Blue Shield to reimburse hospitals for this type of nutritional counseling (contained in Answers Addressed for Nutrition and Dietetics Review Public Hearing, May 19, 1993, Response to question 14 on the list of questions generated at the second meeting of the technical review committee on April 29, 1993).

Regarding the potential impact of the proposal on rural Nebraska, the applicants acknowledged that dietitians practice primarily in urban areas, but that rural Nebraska would not be adversely affected by this proposal because the WIC program, an important provider of nutritional counseling in rural areas, would be exempted, and the nutritional services provided in nursing homes would also be exempt as long as they are under the direction of a licensee. The applicants stated that rural areas would also eventually benefit from the increased access to services that the proposal would bring (contained in Answers Addressed for Nutrition and Dietetics Review Public Hearing, May 19, 1993, Response to question 18 on the list of questions generated at the second meeting of the technical review committee on April 29, 1993).

Comments on this Issue by those Opposed to the Proposal:

Those testifiers opposed to the proposal informed the committee members that the field of nutrition is much more diverse than the applicant group has indicated. One testifier was concerned that the proposal would not

recognize the credentials of practitioners who have been educated and trained in nutrition programs other than those that educate and train the members of the Dietetic Association. This testifier informed the committee members that there are highly qualified people that have degrees from schools that are accredited as single-degree granting institutions, but that the current proposal would only recognize the credentials of those who were educated in nutrition programs in schools with regional accreditation (the Transcript of the Public Hearing, page 92).

Some opponent testifiers expressed concern that the proposal would restrict access to nutritional services. One of these opponent testifiers was concerned that the proposal might have the impact of eliminating alternative practitioners from providing nutritional services without any assurance that a sufficient number of licensed dietitians would enter the market to compensate for the loss of alternative practitioners. This testifier informed the committee members that a survey of Lincoln and Omaha telephone directories reveals that it is difficult to identify any members of the group to which this proposal would grant an exclusive right to practice, namely certified nutritionists, and that this caused him to question the extent to which this group makes itself available to the general public (the Transcript of the Public Hearing, page 94).

Testifiers for the health food industry expressed concerns about the potential impact of the proposal on freedom of choice and the free flow of information in the area of nutrition. These testifiers were particularly concerned about what type of advice a health food store employee could provide to a customer, and the type of literature on nutrition a health food store could disseminate under the terms of the proposal. Written testimony from a representative of a health food association in Virginia warned the

committee to watch for "misleading and inadequate" exemptions frequently contained in dietetics proposals that exempt health food store employees if and only if they are providing "general information" on dietary supplements, but which would not exempt such employees from providing "true, accurate, non-fraudulent, and specific nutritional or therapeutic information" pertinent to the use of dietary supplements to prevent or treat disease (Testimony submitted by the National Council for Improved Health, page 2).

Other testifiers for the food store industry stated that the proposal represented an effort to establish a monopoly of information in the area of dietetics, and warned the committee members that similar proposals enacted into law in other states have produced stringent restrictions on the freedom of speech of those in the nutrition industry who do not subscribe to the philosophy of the Dietetic Association (the Transcript of the Public Hearing, page 117; the testimony submitted by the National Council for Improved Health, pages 2-3).

Are there alternatives to the current proposal that could address the problems identified?

The committee members asked the applicants to present testimony on such possible alternatives to the proposal as registration of all practitioners. One testifier for the applicant group stated that registration is most appropriate for a profession that has multiple paths to competency, and that this does not describe the situation for the profession under review. This testifier stated that this type of regulation would be confusing to the public because members of the profession under review already possess private registration as members of the Dietetic Association, and that adding another registration title to the one already possessed would not help the public identify competent practitioners (Dietetic and Nutrition Services

Technical Review Response to: Questions 3, 4, 7, and 8 on the list of questions generated by the Technical Review Committee at their second meeting on April 29, 1993).

Summary of Committee Concerns and Recommendations

Committee discussion on Criterion One which asks whether there is harm to the public inherent in the current practice situation of the profession undergoing review.

During the review process, the technical committee members expressed concern regarding the lack of clarity of the proposed scope of practice. One committee member stated that he could not see where the parameters of the proposed scope would be, and that he could not find a description of what functions unlicensed people would be prohibited from performing. The applicants responded by stating that the proposal would prohibit unlicensed persons from performing such clinical functions as nutritional assessment, nutritional counseling, and nutritional monitoring (these terms were defined by the applicants at the public hearing). The committee member asking for clarification of the scope of practice responded to the information from the applicants on scope of practice by stating that he still did not see who would be prohibited from providing the functions protected by the scope of practice (Minutes of the Second and Fourth Meetings of the technical review committee, April 29, 1993 and June 16, 1993, respectively).

The committee members expressed concern about the relative lack of evidence on the nature and extent of harm to the public associated with the current practice situation. Several committee members stated that they were not impressed by the evidence of harm presented by the applicant group. One committee member stated that most of this evidence was anecdotal in nature, and that much of this anecdotal evidence was presented by the applicants in a prior 407 review in 1985, and as such, would have reflected the situation prior to the passage of the current certification process for dietitians and nutritionists. One committee member stated that some of the evidence

presented by the applicants was actually harmful to their case. This committee member stated that one of the examples of harm to the public occurred in a state that already licenses dietitians and nutritionists which caused him to question whether licensure can really do much to prevent harm to the public in this area of health care when it does occur. Another committee member stated that there is some merit to the applicant group's arguments on economic harm caused by the absence of third-party reimbursement for their services, but added that the applicants have not adequately made this case either (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

Another committee member added that it is not clear that the proposal would increase access to services or diminish access to services. This committee member stated that prior testimony indicates that there are only an average of fourteen new graduates from programs in dietetics in Nebraska each year, and that he did not see how this would be enough to meet the demand for services if only members of the applicant group were allowed to provide such services. This committee member was particularly concerned that the proposal would decrease the availability of services for rural areas of Nebraska (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

The committee members formulated their recommendations by voting on the four criteria of the credentialing review statute. Pertaining to criterion one which asks whether there is significant harm to the public associated with the current practice situation of the profession under review, committee member Yates moved that the proposal does not satisfy the first criterion. Committee member Cass seconded the motion. Voting aye were Cass, Douglas, McShane, and Yates. Voting nay were Carlson and Kern.

Chairperson Foote abstained from voting. The committee members determined that the proposal did not satisfy the first criterion by this vote.

Committee discussion on Criterion Two which asks whether there is potential for new harm to the public from the proposal.

The committee members raised concerns about the implications of the proposal for freedom of speech and the freedom to disseminate literature in the area of nutrition. The applicants told the committee members that they had no intention of infringing on the free flow of information in the area of nutrition, or to do anything that would prevent health food stores from marketing their products. The applicants submitted a list of exempted groups and activities to the committee members that included health food stores and the freedom of to disseminate nutritional literature. However, some committee members were not convinced that this list of exemptions clarifies this aspect of the review. These committee members were concerned that the proposal continues to prohibit any activity by any unlicensed person that constitutes what the applicants call "nutritional therapy." These committee members continued to be concerned about the implications of the proposal for first amendment liberties because of the vagueness of the proposal in defining exactly what behavior would constitute "nutritional therapy." These committee members also expressed doubts as to how this aspect of the proposal could be enforced if it were to become law (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

Pertaining to criterion two which asks whether there is significant potential for new harm to the public associated with the proposal, committee member McShane moved that the proposal does not satisfy the second criterion. Linda Douglas seconded the motion. Voting aye were Yates,

McShane, Douglas, Cass, and Carlson. Voting nay was Kern. Chairperson Foote abstained from voting. The committee members determined that the proposal did not satisfy the second criterion by this vote.

Committee discussion on Criterion Three which asks whether the public would benefit from the proposal.

The committee members discussed what possible benefit could come from the proposal. Several committee members stated that the proposal's lack of clarity makes it difficult to assess the possible benefits of the proposal. These committee members stated that they could not get a clear picture of what activities or persons would be prohibited by this proposal. One committee member stated that he didn't see how the proposal could possibly address any of the harm that is supposedly occurring in health food stores since employees in these establishments aren't providing dietary advice for a fee, and that as he understood the proposal, it would only cover those persons providing fee for service (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

A representative of the applicant group stated that one of the principal benefits of the proposal for the public is that for the first time there would be third-party reimbursement for dietetic and nutrition services in Nebraska. This spokesperson added that this would greatly improve access on the part of the public to nutrition services. One committee member asked the applicants whether or not licensure would guarantee that the services in question would receive third-party reimbursement. The representative of the applicant group on the committee responded that licensure would not guarantee third-party reimbursement, but that it would remove a major obstacle to it (Minutes of the Fourth Meeting of the technical review

committee, June 16, 1993).

One committee member stated that there are benefits to the kind of preventive care offered by dietitians and nutritionists, and expressed concern that the statutory criteria of the 407 program do not make it easy for committee members to include preventive care concepts into their deliberations. This committee member stated that denying or limiting access to preventive care could be perceived as being a source of harm to public health, but that the criteria of the 407 program instruct committee members to look only for harm that can be documented as currently existing in the form of some extant situation or by persons actively causing "harm" (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

One committee member stated that he believes that the proposal by providing for third-party reimbursement would increase the availability of practitioners in Nebraska. This committee member stated that third-party reimbursement for dietitians and nutritionists in Nebraska would improve the income of members of the profession, and thereby make the state a more attractive place for these professionals to work. Another committee member expressed concern that the proposal might actually diminish access to services because of its restrictiveness vis-a-vis private practitioners who have been educated in schools that the applicant group does not recognize. However, even those committee members that were critical of the proposal regarding the extent to which it would benefit the public agreed that the members of the profession should receive third-party reimbursement for their services (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

Pertaining to criterion three which asks whether the public would benefit from the proposal, committee member McShane moved that the proposal

satisfies the third criterion. Committee member Carlson seconded the motion. Voting aye were Kern, McShane, and Carlson. Voting nay were Cass, Yates, Douglas, and Foote. There were no abstentions. The committee members determined that the proposal did not satisfy the third criterion by this vote.

Committee discussion on the issues pertinent to Criterion Four which asks if the proposal is cost-effective.

The committee members discussed possible alternatives to the current proposal. During the review process some committee members suggested that regulating the service rather than regulating the providers of the service might be a better way of dealing with the issues raised by the proposal. Other committee members asked the applicants whether they would consider registration as an option. The applicants did not feel that either of these options would work to address their concerns. The applicants stated that licensure was necessary for their profession in order to receive third-party reimbursement, and to be considered as a "major player" in the upcoming health care reform process. The applicants also stated that registration is most applicable to a profession that possesses multiple paths to competence, and that is not the case in their profession (Minutes of the Second and Fourth Meetings of the technical review committee, April 29, 1993 and June 16, 1993, respectively).

One committee member stated that the applicant group could learn a great deal by examining statutes on nutrition from other states. This committee member stated that Kansas and Iowa have defined broad and absolute exemptions for commercial weight-loss centers and health food stores in statutes regulating dietitians and nutritionists. This committee member

added that the current proposal is much more restrictive than those of Iowa and Kansas. Another committee member suggested that educating the public about good nutrition and about the meaning of the professional titles that qualified providers already have would be another approach to these issues (Minutes of the Fourth Meeting of the technical review committee, June 16, 1993).

Pertaining to criterion four which asks whether the proposal is the most cost-effective method of addressing the harm to the public identified by the applicant group, committee member McShane moved that the proposal does not satisfy criterion four. Committee member Cass seconded the motion. Voting aye were Yates, McShane, Douglas, Cass, and Carlson. Voting nay was Kern. Chairperson Foote abstained from voting. The committee members determined that the proposal did not satisfy the fourth criterion by this vote.

These four votes against the proposal mean that the technical review committee has decided to recommend against approval of the proposal.

At their fifth meeting, the committee members discussed and approved the following ancillary recommendations:

Charlotte Kern moved that the technical committee recommend that the criteria of the credentialing review statute pertinent to scope of practice proposals be re-evaluated by the Legislature, and that the technical committee is concerned that these criteria currently address only harm to the consumer, not current issues, health care needs, or patient outcomes. Robert Yates seconded the motion. Voting aye were Carlson, Kern, McShane, and Yates. Janel Foote abstained from voting.

Robert Yates moved that the technical committee members endorse the idea that certified dietitians and nutritionists be reimbursed by third-party payers 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 payers 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. Carol McShane seconded

the motion. Voting aye were Yates, McShane, Kern, and Carlson. Janel Foote abstained from voting.

The committee members then passed a motion by committee member Robert Yates and seconded by Dr. James Carlson to approve their report with corrections, and with the ancillary recommendations approved by the committee. Voting aye were Carlson, McShane, and Yates. Kern and Foote abstained from voting.

Robert Yates moved and Carol McShane seconded that the committee members commend credentialing review staff members David Montgomery and Ronald Briel for their hard work and assistance to the committee members during the course of the review process. The motion was passed by acclamation.

Overview of Committee Procedures

The technical committee members met for their first meeting on April 6, 1993, in Lincoln, in the Nebraska State Office Building. The purpose of this meeting was to orient the committee members to their duties and responsibilities in the credentialing review program. Copies of the proposal were submitted to the committee members by the members of the applicant group at this meeting.

The technical committee members met for their second meeting on April 29, 1993, in Lincoln, in the Nebraska State Office Building. The committee members discussed the applicants' proposal, and formulated a list of questions and issues that they wanted addressed at their public hearing.

The technical committee members met for their public hearing on May 19, 1993, in Lincoln, in the Nebraska State Office Building. The committee members gave representatives of the applicant group one hour to present their testimony. Other testifiers were given the remainder of the hearing to present their testimony. The committee allowed time for testifiers to respond to comments made by other testifiers.

The technical committee members met for their fourth meeting on June 16, 1993, in Lincoln, in the Nebraska State Office Building. The committee members formulated their recommendations on the proposal at this meeting by taking action on each of the four statutory criteria of the credentialing review statute that pertain to this type of proposal. The votes of the committee members on these criteria can be found on pages 21-26 of this report.