


REPORT

TO: Senator Jim Jensen, Chairperson, Legislative Health & Human Services Committee
Members of the Legislative Health and Human Services Committee
Members of the Nebraska Legislature

FROM: Richard P. Nelson, Director of the Health and Human Services Department of Regulation and Licensure 

DATE: January 7, 2004

SUBJECT: Director's Report on the Certified Alcohol and Drug Abuse Counselors

Overview of the Review Process for CADACs

On September 5, 2003, Senator Jim Jensen, Chair of the Health and Human Services Committee, and I initiated a directed review of certified alcohol and drug abuse counselors (CADACs) as permitted by Section 71-6223.02 of the Nebraska Regulation of Health Professions Act. We directed the Technical Committee to determine whether the voluntary certification program currently in place for CADACs makes appropriate and optimum use of CADACs' special skills and training and whether the current regulatory system provides adequate protection for the public.

The Technical Committee issued its Report of Findings and Recommendations on December 10, 2003. I am pleased that all of the Committee members present and voting supported the adoption of all of the Findings and Recommendations. The ability of the Committee, representing differing viewpoint, to come together at the end of the process is an fine example of the cooperation and collaboration that is necessary for Nebraska to improve the delivery of health services to the people of our State.

Based upon its review, the Technical Committee made a number of specific recommendations. The basic recommendation is that the current voluntary certification system for alcohol and drug abuse counselors, located in the

Department of Health and Human Services, be replaced with a mandatory licensing system to be located in the Department of Health and Human Services Regulation and Licensure. It also recommended that the scope of practice and licensure requirements be placed in statute and that the profession be regulated through a separate professional board under the provisions of the Uniform Licensure Law. A number of more specific recommendations were also made.

The Board of Health, at its public meeting on December 18, 2003, agreed with the Technical Committee Report and recommended approval of the recommendations with one small adjustment. With regard to grandparenting, the Board of Health recommended that holders of the current CADAC credential be required to apply for the new license within two years of the effective date of the implementing legislation. The Board of Health gave final approval to its recommendations on January 6, 2004.

I concur with the recommendations of the Technical Committee and the Board of Health that all recommendations of the Technical Committee should be adopted, with the sole exception of the issue of the time needed for grandparenting. I believe that grandparenting should occur automatically as the result of the enactment of authorizing legislation, and that the six- and/or two-year periods noted are not necessary to accomplish this transition. The actual credentials now held by CADACs would be recognized as licensure or provisional licensure until the time of their renewal or expiration, with licenses or provisional licenses being issued at that time. I do not believe that current CADACs should have to apply to receive the benefits of licensure it should occur immediately once legislation is enacted.

Observations on the Review Process for CADACs

The Technical Committee report is thoughtful and well done. It recognizes the value and effectiveness of CADACs, supports the parts of the regulatory process that have worked well, and proposes improvements that will benefit CADACs, other health professionals, and the public. There are two portions of the Technical Committee report that I would like to highlight as important examples of the how the Technical Committee weighed and balanced competing concerns. The first is found on page 19, introducing the Findings on Charge Directive 2 regarding integration of CADACs into the Nebraska Health System:

A majority of committee members agreed that there is a need for a larger service concept in which CADACs would play a greater role in the provision of behavioral health care in general, and, in which other

health professions would play a greater role in the provision of services to persons suffering from addictions.

The second example is found on page 21, as a part of the response to Charge Directive 3 regarding the adequacy of current regulations:

The committee recognizes that over many years a regulatory process for CADACs has been created which has been beneficial to the public, and that much work has gone into the creation of this process. However, the committee finds that the growth of the CADAC profession has exceeded the ability of the current regulatory process for CADACs to effectively and efficiently protect the public from harm .

These examples illustrate the positive and even-handed approach taken by the Technical Committee in their exploration of the sensitive and potentially contentious issues that comprised their charge. The approach taken lends great credibility to the Committee's recommendations.

Formulation of Recommendations

All recommendations on proposals in the Credentialing Review Program are based the four criteria of the Nebraska Regulation of Health Professions Act, Nebraska Revised Statutes Section 71-6221. The criteria are as follows:

Criterion One States: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument."

This criterion determines whether there is harm to the public inherent in the current practice situation of CADACs. The record of the review demonstrates that there is harm to the public inherent in the current regulatory situation of CADACs, and the potential for harm is easily recognizable, as evidenced by the following:

- 1) The standards and procedures governing the current certification credential are located entirely in rule and regulation. Because these features are not in statute, they may be vulnerable to legal challenge.

- 2) The current certification credential is voluntary, and thus the

authority to establish or enforce practice standards on all alcohol and drug abuse counselors is lacking. This means that effective disciplinary action against those who might practice without benefit of the credential is very difficult, if not impossible.

- 3) Due to the similarities of the practice areas of CADACs and other professions, and the separate mechanisms through which the groups are administered, members of the public can be confused as to whether a practice violation has occurred and, if so, how to go about registering a complaint.
- 4) The current regulatory process does not provide for the participation of other licensees or members of the public in the disciplinary process.
- 5) The current regulations do not provide for equivalency standards for the fair and judicious evaluation of the qualifications of practitioners from other States seeking to practice in Nebraska.
- 6) The regulation-based scope of practice does not require CADACs to refer clients whom they believe to suffer from mental disorders to other practitioners for treatment.

Criterion Two States:

"Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest."

This criterion determines whether there is significant potential for new harm to the public inherent in the recommendations proposed by the technical review committee. No evidence was presented during the review to indicate that the proposed regulatory process would create any new source of harm to the public health or welfare. I am satisfied that concerns raised regarding the possible requirement that many or all CADACs would have to undertake additional training, and that Nebraska's membership in the International Certification and Reciprocity Consortium (ICRC) would be jeopardized, have been adequately allayed by the Committee's recommendations. I would not support any changes that would have such negative effects. Testimony received during the review process indicated that other States had made similar changes in the credentialing of this profession without negative outcomes. I am also satisfied, after reviewing the federal grant provisions, that no disruption of the funding for services will occur as a result of these changes.

Criterion Three States: "The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state."

This criterion determines whether there would be significant benefit to the regulatory changes being proposed for CADACs by the technical committee.

Information received during the course of the review indicates that there would be significant benefit to the public by making the changes recommended by the technical committee. These benefits are:

- 1) The licensure credential would be placed in statute, and this would ensure that there is clear statutory authority to regulate the profession, prevent unauthorized practice, and discipline practitioners.
- 2) The licensure credential would be made mandatory, allowing for the enforcement of the scope of practice.
- 3) Expanding the role of CADACs in screening for mental disorders will be a great step forward both in integrating the CADAC profession with other behavioral health professions and in enhancing the availability and accessibility of behavioral health services to the public.
- 4) A licensure process located in the Health and Human Services Department of Regulation and Licensure would integrate the regulation of this profession with that of all other health professions in Nebraska. Integration would provide for streamlined administrative, complaint, and investigative processes and promote interaction with other licensed professions.
- 5) Creation of a licensing board would provide opportunity for public and professional input in disciplinary cases.
- 6) Implementation of the Committee recommendations regarding the development of equivalency standards, already begun under draft regulations, would eliminate unnecessary barriers to professional mobility.

- 7) Persons with co-occurring disorders would be assured that CADACs will refer them to appropriate professionals for treatment of mental illness.
- 8) The CADAC profession would be brought under the Uniform Licensing Law, providing enhanced consistency and efficiency in administrative processes.
- 9) Clarification and enhancement of continuing competency options for licensees would improve the State's ability to protect the public from poorly prepared practitioners.

Criterion Four States: "The public cannot be effectively protected by other means in a more cost-effective manner."

This criterion determines whether the regulatory process being proposed by the Technical Committee is the best overall way of addressing the kind of harm identified by the applicant group.

The record of the review clearly indicates that the concept for licensure created by the Technical Review Committee is the most effective approach to resolving the outstanding issues associated with the regulation of CADACs. The only other option for dealing with these issues that was identified during the review was continuing the current regulatory process, along with all of the potential problems associated with it and uncertainties regarding its adequacy as a mechanism for public protection. I do not believe this to be an acceptable option.

There are currently costs incurred by the Services agency that will shift to the Regulation and Licensure agency. There will be some additional costs stemming from the technical committee recommendations associated with the creation of a professional board and a potential increase in the number of disciplinary cases. These are the kinds of costs that must be incurred if the CADAC profession is to come into its own as a full member of the behavioral health care system of Nebraska. Any added costs to the licensees will be justified by the improved level of protection being offered to the public and the improved level of service being offered to the licensees.

Final Remarks

The results of this review showcase the ability of the Credentialing Review Program to act as a catalyst for recommending resolutions to regulatory issues through an open and collaborative process. When coupled with professionals who are clearly interested in furthering the public good, the process provides a strong tool to promote desirable change. I commend all the participants in this review for their dedication to serving the needs of the citizens of Nebraska.

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