REPORT OF FINDINGS AND RECOMMENDATIONS

By the Certified Alcohol and Drug Abuse Technical Review
Committee On Issues Pertinent to the Credentialing of Certified Alcohol and Drug
Abuse Counselors in Nebraska

To the Nebraska State Board of Health, the
Director of the Department of Health and Human Services Regulation
and Licensure, and the Legislature

December 10, 2003

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 Health and Human Services Department of Regulation and Licensure. The Director of this agency 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 four 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 agency along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on 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 current review is a directed review. Directed reviews are initiated by a charge directive drafted jointly by the Chairperson of the Legislature's Health and Human Services Committee and the Director of the Health and Human Services Department of Regulation and Licensure. Directed reviews occur in circumstances wherein there is no applicant group willing or able to come forward to initiate a review process.

SUMMARY OF COMMITTEE RECOMMENDATIONS

During their fourth meeting the committee members took action on each of the four directives of their charge. **All information in this section of the report was summarized from the section beginning on page 17 of the report.**

Pertinent to Charge Directive One, the Committee Members Made the Following Recommendations:

1) That referral criteria specific to CADACs be developed that would make it possible to determine accountability for actions taken, and that any referral criteria developed specify that referral be required only for co-occurring mental disorders. Referral criteria should include the following:

   a) That CADACs should be clearly allowed to screen, assess, and treat substance abuse,
   b) That CADACs should only be allowed to screen and refer mental disorders other than substance abuse,
   c) That CADACs are prohibited from doing mental health assessment or treatment,
   d) That CADACs be required to refer co-occurring mental disorders unless already under the care of, or previously assessed or diagnosed by, an appropriate practitioner within a reasonable amount of time,
   e) That references to axes one through five (DSM4) in Title 209 be deleted and replaced by these items ("a" through "d" above),

2) That the current CADAC code of ethics or its successor be incorporated into statute,

3) That the scope of practice currently in Title 209 regulations as modified be made statutory as part of a licensing statute for the profession. This will allow for the promulgation of appropriate rules and regulations for the regulation of the practitioners.

Pertinent to Charge Directive Two, the Committee Members Made the Following Recommendations:

1) That the role CADACs have in the screening of mental health disorders be expanded,

   a) There is a need to expand the number of people who provide these services to meet patient needs,

5) That any licensure legislation provide for a separate Credentialing Board for CADACs consistent with the Uniform Licensure Law, that CADACs who are not dually credentialed constitute the majority of the members of this board, and that representatives of other mental health professions and consumers also be included,

6) That the standards of ICRC or its equivalent be adopted for the purpose of determining equivalency in reciprocity cases,

7) That all currently certified CADACs in good standing be grand-parented into licensure without any further requirements provided that application for licensure is made within a time period not to exceed six years,

8) That all currently provisionally certified CADACs in good standing be granted a provisional license for a period not to exceed six years within which all of the requirements for licensure must be satisfied, and,

9) That the current ICRC standards or the equivalent be the accepted standards for the education and training of CADACs, and that this be specifically stated in statute.

Pertinent to Charge Directive Four, the Committee Members Made the Following Recommendations:

1) That all credentialing processes pertinent to CADACs be moved from the HHS Department of Services to the HHS Department of Regulation and Licensure as a separate profession with its own administrative processes, and,

2) That all statutory wording pertinent to CADACs be written in a manner consistent with any new credentialing process that is created for these professionals.

Concerns Raised by the Committee Members About the Review Process:

1) That the committee members received in two separate letters ostensibly from the same source diametrically opposed statements on important matters pertinent to the committee charge. The committee members were concerned that this might have been an attempt to manipulate the review process, and,

2) That an employee of the Office of Mental Health, Substance Abuse, and Addiction Services stated that they had been prohibited from making any further public comments about the issues under review after the second meeting of the committee on October 14, 2003.

from harm, and that there is no need to change this process. CADAC spokespersons also stated that there is no need to create a legislatively defined scope of practice, and expressed the concern that this would eventually lead to efforts to require advanced academic degrees for CADACs which they said is not necessary. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Charge Directive 2: Are CADACs appropriately integrated into the Nebraska health system to provide services, including addiction services? If not, how can they be more appropriately integrated?

The committee members wanted to know how CADAC practitioners fit into the health care system under their current regulatory situation. CADAC spokespersons responded that CADACs are able to refer to other mental health practitioners regarding conditions they are not qualified to treat. Dr. Wayne Price, the representative of psychology on the committee, commented that CADACs are not able to make referrals because they are not able to assess the mental health condition of their clients in order to make an appropriate referral. This committee member stated that the use of the term "assessment" in CADAC regulations is not clear, and might be in conflict with the Uniform Licensure Law and the practice acts for Psychology and Medicine. Ann Ebsen, the attorney on the committee, commented that Title 209 NAC 1(001.08) uses the term "assessment" without making distinctions between initial assessment and other kinds of assessments. Jason Conrad responded that assessment is not the same as diagnosis, and that CADACs are able to screen for mental health problems and refer the information on to other providers who then make the assessment. This committee member indicated that the training CADACs receive provides for a thorough understanding of the assessment and referral process. **(Minutes of the First Committee Meeting, October 6, 2003)**

Dr. Syed Sattar, the physician on the committee, asked CADAC representatives to comment on directive number two of the committee's charge. A CADAC spokesperson responded by asking for a clarification on the meaning of the expression "appropriately integrated" as stated in the context of this directive. Dr. Nancy Myers, the LMHP representative on the committee, commented that this aspect of the charge pertains to the issue of dual diagnosis, and went on to state that under the current service situation it is often not clear where or by whom such persons should be treated. This committee member added that there is often concern that these persons might "fall through the cracks" of the health care system. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Dr. Price commented that in cases involving dual diagnosis, law enforcement makes the final decision regarding the commitment process with input from hospital staff that has the necessary privileges to participate in this kind of decision-making process. This committee member stated that since most hospitals require a masters degree for such privileges, and since most CADACs do not possess masters degrees, most CADACs are

Committee Meeting, October 6, 2003)

The committee members heard testimony from a licensed mental health practitioner from New Mexico. This testifier informed the committee that in New Mexico he had been able to participate in alcohol and drug abuse treatment programs, but when he came to Nebraska he was not allowed under the current reciprocity provisions to become certified in Nebraska without repeating much of his training. The problem seemed to be that, while he had had considerable supervised practice under psychologists and psychiatrists in New Mexico, these individuals did not have the specific CADAC credential. This testifier characterized the current system in Nebraska as being "very exclusive". **(Minutes of the First Committee Meeting, October 6, 2003)**

CADAC spokespersons responded that this situation has been confused with the court-ordered assessment process, and added that the criminal justice system has followed the recommendations of a gubernatorial task force which has recommended that only CADACs be approved to do court-ordered alcohol and drug abuse assessments. Another CADAC spokesperson commented that this task force has since recommended modifying these requirements so that certain other professions that by scope of practice can be eligible given training in addictions specified by the Governor's Task Force to do court-ordered assessments. This spokesperson added that these practitioners would need to document that they had the additional training to do this work. **(Minutes of the First Committee Meeting, October 6, 2003)**

Dr. Price asked the CADACs how, and to whom, other mental health professionals would demonstrate that they have a certification to do this work? This committee member stated that psychologists have been effectively excluded from providing these services under the current situation. Teresa Hawk, the public member on the committee, commented that there seems to be two totally separate issues under discussion; one being CADAC regulations, and the other being the policies of the criminal justice system. This committee member expressed concern about the ability of the credentialing review process to have an impact on the policies of the criminal justice system. **(Minutes of the First Committee Meeting, October 6, 2003)**

Dr. Price indicated that it is important that the competency of all providers needs to be taken into account, regardless of what their specific professional background is, and that some LMHPs and psychologist possess the training necessary to provide the services in question, and should not be barred from doing so. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Dr. Sandstrom asked whether the current system is adequately integrated to treat the addictions and other mental health problems of persons who are homeless. Jason Conrad responded that no system has worked well in addressing the needs of this particular population, and that the greatest problem is not the current regulatory process or service

a minimum standard not an optimum standard. Dr. Sandstrom went on to state that it is important not to lose sight of the need to balance quality and access in whatever is recommended. Dr. Sandstrom added that there is a need for greater dialogue between the affected professional associations on all of the issues under review, and that such dialogue needs to be collegial, and focus on what is good for the public. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Charge Directive 3: Are all services provided by CADACs, regardless of funding source, appropriately regulated? If not, should CADACs be licensed by the Department of Health and Human Services Regulation and Licensure?

Dr. Price asked the CADACs how their regulatory process would deal with uncredentialed practice. One CADAC spokesperson responded that only certified people can receive reimbursement for services, and that to her knowledge there have been no instances of uncredentialed practice in the provision of their services. Dr. Price asked the CADACs how it is possible under the current regulatory process to know whether or not uncredentialed practice might be occurring. This committee member stated that there is a need in every regulatory process to have the ability to discipline those who practice without benefit of a credential. **(Minutes of the First Committee Meeting, October 6, 2003)**

Dr. Sandstrom commented that the statutory authority for CADAC rules and regulations seems to be unclear, and that it has always been his understanding that rules and regulations must be clearly based upon statutory authority. Dr. Sandstrom commented that it is unusual for so much of a profession's regulatory provisions to be placed in rule and regulation. Ann Ebsen commented that it is unclear how the provisions of the rules and regulations could be enforced against unqualified or unscrupulous providers given the lack of clear statutory authority in the CADAC regulatory process. Dr. Price commented that going to licensure would provide better protection for the public. Jason Conrad responded that he has seen no evidence to indicate that the current regulatory process is not already providing good protection for the public. **(Minutes of the First Committee Meeting, October 6, 2003)**

One CADAC spokesperson commented that licensure might be harmful in that it could restrict who could work with people who have a substance abuse problem. Dr. Price responded that licensure statutes can be written to provide for exemptions for other qualified providers. Dr. Sandstrom commented that it is not uncommon for licensed professions to have in their scopes of practice service provisions that are the same or similar to those of other licensed professions, and provided examples from his profession of physical therapy and related professions. **(Minutes of the First Committee Meeting, October 6, 2003)**

Agency staff to the committee informed the committee members that agency legal staff

Committee Meeting, October 14, 2003)

Jason Conrad commented that the agency's disciplinary processes can take action against those who practice outside their scope under the current regulatory situation and that there is no need to make changes in it. Dr. Price responded by stating that the agency can only take action against persons in violation of a licensing statute, and that under certification there is no "hammer" because certification does not require that you must be credentialed to provide services. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Dr. Price asked the CADACs what the sanction would be for those practitioners who practiced beyond their training under the current regulations for CADACs. A CADAC spokesperson with the Office of Mental Health, Substance Abuse, and Addiction Services, responded that there is a code of ethics for CADACs, and, that a practitioner can be disciplined for practice beyond their training. Dr. Price asked whether the program has the authority to issue a cease and desist order. The committee members were informed that the only action that can be taken is to remove the certificate which does not prevent anyone from providing services. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Jason Conrad commented on uncredentialed practice stating that he is not aware of any situation in which someone without any credential or training has claimed to be a CADAC and then proceeded to provide the services. Dr. Price responded to these comments by stating that since there is no requirement that people meet a specific credentialing standard in order to provide CADAC services, there is no way to know whether or not there are persons who are practicing without benefit of the credential. Jason Conrad responded that the regulatory agency can deal with that now by taking action against those who claim to be CADACs but who are not. Dr. Myers responded to this by stating that the agency cannot do this because under certification one does not have to be certified in order to provide services, and that currently there are no "teeth" in the CADAC regulations. Dr. Price reiterated that licensure would provide greater assurance that practitioners who lack the qualifications to practice are dealt with and thereby provides greater protection of the public. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Dr. Myers commented that licensure might allow CADAC regulation to be more flexible as regards, for example, issues pertinent to reciprocity. This committee member added that if the scope and requirements were more clearly defined, it would be easier to recognize the credentials of other mental health professions who have the training and ability to do this work. **(Minutes of the Second Committee Meeting, October 14, 2003)**

Ann Ebsen asked the CADACs whether or not the current regulatory process can take and act upon complaints from the public regarding the activities of CADAC practitioners. Jason Conrad responded by stating that there is no mechanism to report complaints from

COMMITTEE FINDINGS AND RECOMMENDATIONS

The committee members met on November 17, and December 1, 2003 to formulate their recommendations. The information included in this section was taken from these two meetings.

The committee members reviewed the four directives of their charge. The committee members proceeded to formulate their recommendations on each directive taking into consideration the four statutory criteria of the credentialing review statute. **(These criteria are listed on page 26 of this report)**

Charge Directive 1: Recognizing the training and experience required of and possessed by persons who become CADAC certified, do the Department of Health and Human Services' regulations appropriately and adequately describe their scope of practice?

The Findings on charge directive 1 were as follows:

A majority of committee members agreed that the scope of practice for CADACs as described in the current regulations for this profession is adequately defined for alcohol and drug counseling, and needs clarification as to the following:

1) The current scope of practice does not provide adequate guidelines regarding how a CADAC should deal with co-occurring mental disorders, and, does not clarify when a CADAC practitioner should make a referral to another mental health provider,

   a) The current wording of the scope of practice is vague regarding if or when CADACs should screen for, and refer for, mental health disorders other than substance abuse given that CADACs are not trained to assess or treat such disorders, and are only trained to do screening and referral for such conditions,

2) The current scope of practice does not provide regulators with the ability to define violations of the scope of practice, and thereby hold offending practitioners accountable for their conduct due to the vagueness regarding assessment and referral of co-occurring disorders,

3) The current scope of practice is defined in rule and regulation rather than in statute which raises concerns as to its legality and enforceability, and,

report be adopted by the committee members as their official findings and recommendations on this directive. Voting aye were Price, Myers, Conrad, Ebsen, and Hawk. There were no nay votes. Chairperson Sandstrom abstained from voting.

Charge Directive 2: Are CADACs appropriately integrated into the Nebraska health system to provide services, including addiction services? If not, how can they be more appropriately integrated?

The Findings on charge directive 2 were as follows:

A majority of committee members agreed that the current placement of CADACs in the Office of Mental Health does not provide for adequate integration of their services into the overall behavioral health system of Nebraska. 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. Accordingly, the committee members also found that,

1) The number of professionals who can provide addiction services is currently not adequate to meet the need,

2) Assessment skills of CADACs pertinent to mental health issues are not currently adequate to provide for the needs of persons with co-occurring mental disorders,

3) There currently are significant access to care issues regarding addiction services, and the following are some of the reasons for the access problems,

   a) The abilities of other mental health professionals who are qualified to do alcohol and drug abuse counseling are not currently being adequately recognized, and inappropriate barriers to their doing this kind of counseling have been created,

   b) The regulations governing reciprocity do not permit practitioners from other states who wish to practice in Nebraska a fair and accurate assessment of their skills and abilities in the area of alcohol and drug abuse counseling, and,

4) Continuing education opportunities for addiction services

Department of Transportation, Drug Free Workplace Act, and the Drug Free Communities and Schools Act.

At the fifth meeting, committee member Price moved and committee member Myers seconded that the findings and recommendations on Charge Directive 2 as written in this report be adopted by the committee members as their official findings and recommendations on this directive. Voting aye were Price, Myers, Conrad, Ebsen, and Hawk. There were no nay votes. Chairperson Sandstrom abstained from voting.

Charge Directive 3: Are all services provided by CADACs, regardless of funding source, appropriately regulated? If not, should CADACs be licensed by the Department of Health and Human Services Regulation and Licensure?

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 for the following reasons,

The Findings on charge directive 3 were as follows:

1) The current credentialing process for CADACs is entirely defined in rules and regulations rather than in statute which raises concerns as to whether it has clear statutory authority to provide regulation for CADACs,

   a) This situation makes the entire regulatory process vulnerable to legal actions that might be taken against it by any practitioner with a grievance who might wish to protest a disciplinary action by the program,

2) The current credentialing process for CADACs is voluntary and therefore action against unregulated practice is limited to removal of the credential which in this case does not prevent the affected individual from continuing to provide services,

   a) The current credentialing process for CADACs has no ability to take action against uncredentialed practitioners,

3) The current credentialing process does not have clear authority to take action against credentialed practitioners who violate their scope of practice,

The Recommendations on charge directive 3 were as follows:

1) That licensure replace certification as the credential for CADACs. Licensure is a mandatory credential, and will provide regulators with the means of taking action against unregulated practice, and provide them with clear authority to take action against credentialed practitioners who violate their scope of practice,

2) That the licensure credential be placed in statute so as to provide clear statutory authority to promulgate appropriate rules and regulations,

3) That the entire regulatory process for the CADAC credential be moved to the Health and Human Services Department of Regulation and Licensure,

4) That any licensure legislation created for CADACs include appropriate exemptions for all qualified practitioners and provide a means of identifying and defining equivalent standards,

5) That any licensure legislation provide for a separate Credentialing Board for CADACs consistent with the Uniform Licensure Law, that CADACs who are not dually credentialed constitute the majority of the members of this board, and that representatives of other mental health professions and consumers also be included,

6) That the standards of ICRC or its equivalent be adopted for the purpose of determining equivalency in reciprocity cases, and,

7) That all currently certified CADACs in good standing be grand-parented into licensure without any further requirements provided that application for licensure is made within a time period not to exceed six years,

8) That all currently provisionally certified CADACs in good standing be granted a provisional license for a period not to exceed six years within which all of the requirements for licensure must be satisfied, and,

9) That the current ICRC standards or the equivalent be the accepted standards for the education and training of CADACs, and that this be specifically stated in statute.

agency, and,

2) That all statutory wording pertinent to CADACs be written and / or changed to reflect the recommended new regulatory situation as described in item 1 above.

At the fifth meeting, committee member Ebsen moved and committee member Conrad seconded that the findings and recommendations on Charge Directive 4 as written in this report be adopted by the committee members as their official findings and recommendations on this directive. Voting aye were Price, Myers, Conrad, Ebsen, and Hawk. There were no nay votes. Chairperson Sandstrom abstained from voting.

The committee members expressed their concerns about two situations that occurred during their review process, and these are as follows,

1) The committee members received two letters written on HHS Department of Services letterhead both of them ostensibly signed by the same employee of the Office of Mental Health, Substance Abuse, and Addiction Services of the Services agency during the review process the first of which vigorously criticized the directives in the charge to the technical committee, while the second letter repudiated these comments and denied any role in the preparation of, or submission of, the first letter. The committee members expressed dismay at what could be construed as an attempt by someone to manipulate the review process by submitting erroneous and unapproved testimony to the committee members as if it were testimony endorsed by a division of a state agency. The committee members stated that this is a matter that the health and human services agency needs to investigate and take appropriate action so that similar situations do not arise in the future, and,

2) The committee members were informed by an employee of the Office of Mental Health, Substance Abuse, and Addiction Services during the public forum that they had been prohibited from making any further comments on the substance of the issues under review in the context of the public meetings for the remainder of the credentialing review process on CADACs. The committee members were concerned that this situation could create the impression in the minds of some observers of the review process that important testimony on the issues has not been received, and thereby conclude that the quality of the review has been adversely impacted. The committee members stated that they want to clarify that they have received detailed written testimony from the division in response to committee requests for information, and that representatives of the division presented information and comments during technical committee meetings held prior to the public forum.

OVERVIEW OF COMMITTEE PROCEEDINGS

The committee members met for the first time on **October 6, 2003** in Lincoln, in the Nebraska State Office Building. The committee members received an orientation regarding their duties and responsibilities under the Credentialing Review Program.

The committee members held their second meeting on **October 14, 2003** in Lincoln, at the Settle Inn. The committee members thoroughly discussed the issues and the Directives of their charge. The committee members generated questions and issues that they wanted discussed further at the next phase of the review process which is the public hearing.

The committee members met for their third meeting on **October 31, 2003** in Lincoln, in the Nebraska State Office Building. This meeting was a public forum on the issues of the CADAC review during which members of the public presented testimony pertinent to the issues under review. Individual testifiers were given five minutes to present their testimony. A public comment period lasting ten days beyond the date of the public hearing was also provided for during which the committee members could receive additional comments in writing from interested parties.

The committee members met for their fourth meeting on **November 17, 2003** in Lincoln, in the Nebraska State Office Building. The committee members formulated their recommendations on the issues under review.

The committee members met for their fifth meeting on **December 1, 2003** in Lincoln, in the Nebraska State Office Building. The committee members completed their recommendations on the issues under review.

The committee members met for the sixth meeting on **December 10, 2003** in Lincoln, in the Nebraska State Office Building. The committee members made corrections to the draft report of findings and recommendations, and then, approved the corrected version of the report as the official document embodying the findings and recommendations of the committee members on the issues under review. The committee members then adjourned sine die.