REPORT OF RECOMMENDATIONS AND FINDINGS

By the Medical Nutrition Therapists'
Technical Review Committee

To the Nebraska State Board of Health, the
Director of the Division of Public Health, Department of Health and
Human Services, and the Members of the Health and Human
Services Committee of the Legislature

March 9, 2021

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent 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.

LIST OF MEMBERS OF THE MEDICAL NUTRITION THERAPISTS' TECHNICAL REVIEW COMMITTEE

Douglas Vander Broek, DC

Brandon Holt, BSRT

Kenneth Kester, PharmD, JD

Jessica Roberts, ATC

Theresa Parker, MA, NHA

Stephen M. Peters, BA, MA

Marcy Wyrens, RRT

Part Two: Summary of Committee Recommendations

The committee members recommended approval of the applicants' proposal.

Part Three: Summary of the Applicants' Proposal

Summary of the Applicants' Original Proposal

1) Advance the scope of practice contained in the Medical Nutrition Therapy Practice Act to the 2017 scope of practice to reflect current standards of practice in nutritional care:

   Include the nutrition care process as a workflow element and as a framework to provide medical nutrition therapy services.

   Define nutrition care process steps of assessment, diagnosis, intervention, monitoring and evaluation and include these items specifically into MNT scope of practice.

   Include writing diet, laboratory, and protocol orders as components of the scope of practice of a licensed medical nutrition therapist.

2) Require pre-approved supervised practice for all applicants, including MS and PhD applicants.

3) Add licensure eligibility requirements for individuals who are Board Certified Specialists in Nutrition based on the academic standards and supervised practice requirements currently established for RDNs.

4) Update supervised practice experience to 1000 hours from 1200 hours to align with ACEND requirements.

5) Clarify and add definitions for the following practice terms to the scope of practice:
   Medical Nutrition Therapy
   Medical weight control
   Nutrition
   Nutrition care services
   Therapeutic diets

6) Clarify exemption language for activities not subject to the act including ensuring that the LMNT scope does not change the current role or responsibilities of a nursing facility's required food service manager / certified dietary manager and does not result in additional requirements for nursing facilities or assisted living facilities to use an LMNT or expend current use of LMNTs.

7) Clarify temporary licensure for individuals eligible for examination but prior to examination completion and individuals in our state on a temporary basis for medical emergency.

8) Update membership of the Medical Nutrition Therapy Board to include a Board-Certified Specialist in Nutrition, as available.

Summary of Amendments to the Original Proposal

Revisions to the original proposal were made to better address the needs of those practitioners who are not members of the applicant group but who satisfy objective standards of eligibility for licensure including Certified Nutrition Specialists (CNS), for example, and to accommodate standardization of credentials across states. Among these additional proposed changes is the elimination of the LMNT credential and its replacement with two new credentials, namely, an LDN credential and an LN credential. Additionally, wording was revised to more appropriately reflect the title and qualifications of those who possess the CNS credential, as well as adding wording which would require on-site supervision by qualified supervisors of the supervised practice of licensure candidates. Other additional proposed changes to the original proposal include the establishment of additional terms and clarifying definitions of these terms.

A second amendment was submitted just before the scheduled public hearing on the applicant's proposal. This amendment was created to: 1) clearly differentiate the qualifications and pathways for all qualified MNT providers to become licensed, 2) appropriately and clearly define and reflect the title, qualifications, and certifying board of CNSs, 3) ensure that those undergoing supervised practice are only providing nutrition care services, 4) revise definitions for nutritional assessment, diagnosis, intervention, monitoring, evaluation, nutritional care services, and medical weight control, 5) revise wording pertinent to prescription dose adjustments in outpatient settings, 6) revise wording pertinent to physician consultation and supervised pre-practice, 7) clarify the use of new LDN and LN credentials and termination of the LMNT credential, 8) clarify requirements pertinent to supervised pre-practice and which professionals could provide such supervision.

The full text of the original version of the applicants' proposal as well as the full text of the amendments to the original proposal can be found under Medical Nutrition Therapy in the credentialing review program link at
https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx

Part Four: Discussion on issues by the Committee Members

DISCUSSION ON THE MEDICAL NUTRITION THERAPY PROPOSAL INCLUSIVE OF QUESTIONS AND CONCERNS ABOUT THE PROPOSAL

1) Applicant comments made during presentations on their proposal were as follows:

Dr. Paula Ritter-Gooder, PhD, responded that she would provide an overview of the MNT proposal. Dr. Ritter-Gooder began her comments by stating that the MNT licensure statute has not been updated since it was passed in 1995 and that it is in great need of an update. Dr. Ritter-Gooder continued by referencing the principal points outlined on the applicant group's letter of intent which were as follows:

- Update the MNT scope of practice to reflect current standards of practice in nutrition care as follows:
    i. Include the nutrition care process as a workflow element and a framework in the provision of medical nutrition therapy services.
    ii. Define nutrition care process steps such as assessment, diagnosis, intervention, monitoring, and evaluation.
    iii. Include the writing of diet, laboratory, and protocol orders in an explicit licensed medical nutrition therapist scope of practice.
- Require pre-approved supervised practice for all applicants including MS and PhD applicants. In practice, most applicants complete pre-approved supervised practice, but supervised practice is not required by the practice act for those holding MS and PhD degrees.
- Add licensure eligibility requirements for individuals who are Board Certified Specialists in nutrition based on the academic standards and supervised practice requirements currently established for the Registered Dietitian Nutritionist. These practitioners do not have a clear path to obtain licensure.
- Update supervised practice experience to 1000 hours from the current 1200 hours to align with Accreditation Council of Education for Nutrition and Dietetics requirements.
- Clarify / add definitions for practice terms including but not limited to the following:
    i. Medical nutrition therapy
    ii. Medical weight control
    iii. Nutrition
    iv. Nutrition care services
    v. Therapeutic diets
- Clarify exemption language for activities not subject to the act
- Clarify temporary licensure for persons eligible for examination but prior to exam completion and for persons in Nebraska on a temporary basis for medical emergency.
- Update membership of the Medical Nutrition Therapy Board to include Certified Nutritionist Specialists, as available.

Dr. Ritter-Gooder went on to state that her group would amend the proposal pertinent to the credentialing of Certified Nutrition Specialists and Registered Dietitians and Nutritionists.

Nancy Hackel-Smith, with the applicant group, commented that the main thrust of the proposal is to update the 1995 MNT statute to fit the needs of the twenty-first century, and that this effort includes the following:

- Assessment and diagnosis, the latter wasn't part of MNT education and training when their regulatory act was first passed, but that it is now.
- MNT Therapeutics for each patient is now guided by a distinct body of knowledge.
- MNTs now are able to use tele-health and utilize screenings for various dietetic conditions including malnutrition.
- MNTs consult with client hosts such as nursing home administrators, pharmacies, and medical clinic administrators to ensure that dietetic services are delivered in the safest and most effective manner possible.

2) Committee members asked the applicants to elaborate on the provisions in the proposal pertinent to laboratory work.

Dr. Ritter-Gooder responded that the laboratory provisions in the proposal are important to ensure that no harm can come to a patient from a certain proposed therapeutic dietary regimen. Such laboratory procedures can be used to check such things as a patient's potassium level, for example. The proposal also seeks to clarify MNT's independent authority to write and carry out lab orders, for example.

She went on to state that each MNT would be qualified to write their own lab orders and in doing so would follow the guidelines and standards provided for them by their professional organization for such procedures.

Committee members also asked the applicants how well trained and educated MNTs are in these laboratory procedures, and how they learn these procedures in the first place.

Dr. Ritter-Gooder responded that licensed MNTs follow the guidelines and standards provided by their professional organization vis-à-vis their utilization of laboratory procedures and that they function under protocols and do so independently of other health care providers including physicians.

Theresa Parker asked Dr. Ritter-Gooder how an MNT would work up a lab order for a nursing home resident. Dr. Ritter-Gooder responded that an MNT would first perform a nutritional assessment of the resident and then, based on this, would do an evaluation to identify the exact regimen that would work best for this resident.

Ms. Wyrens informed the attendees that currently Nebraska medical nutrition therapists are not allowed under Nebraska law to order lab work for a patient. Given this, how would the proposal work vis-à-vis this aspect of care? Ms. Ritter-Gooder commented that there are other states that allow medical nutrition therapists to write lab orders, and that this change might one day come to Nebraska, as well. Ms. Wyrens continued her question about lab orders by stating that she also wanted to know how this aspect of the proposal would work if it were approved for medical nutrition therapists in Nebraska. Would there be conflicting orders between various independent providers? One applicant representative responded by stating that protocols would need to be worked out to prevent this from happening.

Marcy Wyrens commented that the applicants' use of the term "independent" in their proposal needs clarification given what applicant representatives have recently stated regarding their intent not to make changes in, or otherwise disrupt, the way nursing care facilities provide their services. Dexter Schrodt, speaking on behalf of the NMA, commented that NMA has had conversations with the applicant group regarding matters pertinent to collaboration between them and other health professionals in health care facilities, and that the question of independence versus collaboration, therein, is one that will continue to be the subject of on-going discussions as these issues advance through the review process.

Paula Ritter-Gooder responded that medical nutrition therapists cooperate with physicians to issue lab orders as part of a health care team rather than issue lab orders on a solo basis.

Jessica Roberts asked the applicants for more information regarding the specifics of how MNTs learn to do lab orders. Is this learned after licensure is already in place vis-à-vis "CE"? Or, is it learned prior to licensure as part of the standard curriculum? Are there significant differences between ANA practitioners and NAND practitioners as regards how they learn procedures pertinent to lab orders as well as diagnosis and assessment?

3) Committee member Stephen Peters asked the applicants if current MNT licensees would be required to upgrade their education and training to satisfy the new professional standard that would be established by the proposal. Dr. Ritter-Gooder responded that exemptions or exclusions would be defined for current licensees.

4) Mr. Peters asked Dr. Ritter-Gooder who would be responsible for oversight of the new procedures defined in the proposal, and who would be held liable for any errors resulting from this care? Dr. Ritter-Gooder responded that each licensee has their own liability insurance. She went on to state that each MNT would be qualified to write their own lab orders, and in doing so, would follow the guidelines and standards provided for them by their professional organization for such procedures.

5) Dr. Ritter-Gooder was asked if MNTs have to report to a physician regarding their therapeutic services to patients. She responded that MNTs do not report to any other health care professionals, even now, but the proposal would clarify that MNTs are independent providers whose services are guided by their own training and professional guidelines. The proposal seeks to clarify that consultation, when it does occur, is to be collegial and voluntary in nature and not the result of any kind of mandate or requirement imposed on MNTs. The proposal also seeks to clarify MNT's independent authority to write and carry out lab orders, for example.

   Committee members asked the applicants how they learn to do lab orders, asking what specific skills they have in this regard. Ms. Ritter-Gooder responded by stating that medical nutrition therapists function via protocols when doing lab orders but do so independently of other health care providers. Linda Young responded that the achievement of Masters Degree education and training should soon successfully address these kinds of concerns.

   Committee member Marcy Wyrens asked the applicants how critical care procedures would work under the terms of the proposal, specifically, vis-à-vis 1) working with critical care physicians, and, 2) working with patients who have swallowing problems vis-à-vis either medicines or foods, for example.

Marcy Wyrens commented that the applicants' use of the term "independent" in their proposal needs clarification regarding how this would play out given what applicant representatives have recently stated regarding their intent not to make changes in, or otherwise disrupt, the way nursing care facilities provide their services. Dexter Schrodt, speaking on behalf of the NMA, commented that NMA has had conversations with the applicant group regarding matters pertinent to collaboration between them and other health professionals in health care facilities, and that the question of independence versus collaboration, therein, is one that will continue to be the subject of on-going discussions as these issues advance through the review process.

6) Jessica Roberts asked the applicants what other states allow this proposed scope of practice for MNTs. Dr. Ritter-Gooder replied that since 2019 New Jersey allows independent practice for MNTs. Jessica Roberts followed up by asking if disciplinary information is available for states that allow this expanded scope of practice. Dr. Ritter-Gooder responded by stating that she would try to get that information if it is available.

7) Theresa Parker asked how services to residents of long-term care facilities like nursing homes would be impacted by the proposal. Would the regulatory burden get worse or better under the terms of the proposal? Dr. Ritter-Gooder responded that the services in question would be more timely and efficient and that the administrative and regulatory burden would decrease for such services. Theresa Parker continued by asking how the proposal would affect the scope of practice of RNs regarding education of residents in diet and health concerns. Would this proposal replace the RN's role in this aspect of care in long-term care facilities? Dr. Ritter-Gooder responded by stating there is no reason to believe that the MNT proposal would result in the replacement of the RNs role in providing dietary education in these kinds of facilities. She added that MNTs recognize that RNs' and Nurse Practitioners' scopes of practice include dietetics and that there's plenty of room in the health care system for both types of practices.

   Additional questions about the possible impacts of the proposal on health care facilities were as follows:

   Ms. Parker asked the applicants what implications the proposal would have for health care facilities such as nursing homes in rural areas of Nebraska. Ms. Parker asked the applicants if rural facilities could still utilize the services of RDs under the terms of the proposal. Ms. Parker went on to comment that it is difficult for rural health care facilities to find licensed dietetic practitioners willing to work for them, for example. She asked the applicants how can rural facilities find enough licensed people to provide medical nutrition therapy? Ms. Ritter-Gooder responded by stating that current law already requires that each facility in Nebraska have at least one licensed medical nutrition therapist available for medically vulnerable residents. Ms. Ritter-Gooder added that food service providers are not required to be licensed and that the proposal would do nothing to change this aspect of nutrition services in health care facilities in our state.

   Ms. Parker asked the applicants how the proposal would impact nurses who provide services in rural healthcare facilities. An applicant representative responded by stating that the proposal would not adversely impact these nurses and that the services of these nurses would be protected by their nursing license which defines what nurses can / cannot do.

Ms. Parker asked whether representatives of the medical profession have any concerns about the proposal. Amy Reynoldson, representing NMA at this meeting, commented that NMA has not yet completed reviewing the proposal and is not yet prepared to make a comment on it. Ms. Ritter-Gooder commented that medical staff oversees and approves all dietary orders in Nebraska long-term care facilities, and nothing in the current proposal would alter these procedures.

8) Committee member Jessica Roberts asked Dr. Ritter-Gooder to comment on the education and training of MNTs to provide assessments and diagnoses. Dr. Ritter-Gooder responded that there are competency assessment measures designed to evaluate each MNT provider regarding such procedures.

Mr. Peters asked the applicants who would be responsible for a nutrition diagnosis, a medical nutrition therapist or a physician? Ms. Ritter-Gooder responded by stating that only medical nutrition therapists make a nutrition diagnosis and only they are responsible for their diagnoses. Ms. Hackel-Smith, a member of the applicant group, commented that nutrition diagnoses are not medical diagnoses, rather they are entirely nutritional in nature and in no way would they be in conflict with the diagnoses of other health care practitioners.

Jessica Roberts asked the applicants what they mean by "nutritional diagnosis." Paula Ritter-Gooder responded by stating that medical nutrition therapists perform these procedures under standardized protocols and guidelines developed in cooperation with physicians.

Paula Ritter-Gooder stated that there is no consensus definition of the term "diagnosis" among health care professionals. Each profession defines diagnosis in terms of its own knowledge base and the kinds of specific maladies and conditions it typically treats. Regarding differences between ANA and NAND professionals Ms. Ritter-Gooder went on to state that there is a Commission on Dietetic requirements which determines the specifics of training and education necessary to safely and effectively provide the elements of service associated with medical nutrition therapy. She went on to state that the "Rubric" document should be helpful to anyone trying to assess the differences versus similarities between ANA and NAND professionals.

Paula Ritter-Gooder went on to state that NAND and ANA representatives have collaborated to define a "gold standard" for the education and training for the proposed new medical nutrition licensure categories. However, more work needs to be done to clarify supervision requirements.

Nancy Hackel-Smith, speaking on behalf of the applicant group, commented that nutritional diagnosis focuses on the kinds of health issues that medical nutrition therapists deal with every day such as weight loss, for example. Medical nutrition therapists base their interventions on their diagnoses of their client's nutritional problems.

Dr. Vander Broek asked the applicants if medical nutritionists actually make these diagnoses or if other health professionals make them. Nancy Hackel-Smith responded by stating that medical nutrition therapists make these nutritional diagnoses, adding that these are not medical diagnoses. They are nutritional diagnoses.

9) Brittany McAllister representing the American Nutrition Association and a Certified Nutrition Specialist by education and training expressed concern that members of her specialty currently are not recognized by Nebraska and to date are not eligible to sit for the MNT licensure examination in Nebraska. Ms. McAllister continued by stating that CNS's are currently excluded from the MNT proposal as it is currently worded. She expressed the hope that the MNT Technical Review Committee would consider urging the applicant group to amend its proposal to provide CNSs with a pathway to licensure in Nebraska. She noted that there are errors within the submitted application related to information about pathways to licensure.

   Committee member Stephen Peters asked what other states have done vis-à-vis this CNS group and whether there are other, similar, groups "out there." One observer stated that some states utilize a "dual path approach" to licensure. Mr. Peters asked for additional information about who these groups might be and if their members are qualified to sit for a licensing examination and how we would be able to verify if they were qualified. Ms. McAllister responded that she knows that her CNS group does deserve a pathway to licensure. At this juncture Dr. Ritter-Gooder commented that her group would submit an amendment to their proposal to address the CNS pathway to licensure issue.

   More comments about the "dual pathway concept" for medical nutrition licensure were as follows:

   Paula Ritter-Gooder, PhD, speaking on behalf of the applicant group, stated that the proposal would replace the current MNT credential with two separate, distinct, medical nutrition credentials, one a license for Dietitian Nutritionists and another license for non-Dietitian Nutritionists, the latter being inclusive of Certified Nutrition Specialists, for example. Additionally, the proposal would clarify the academic and practice requirements necessary for practitioners to become eligible for licensure. Ms. Ritter-Gooder commented that currently there are ten states which utilize the dual approach to licensure defined in the proposal under review.

   Theresa Parker asked the applicants to clarify the difference between CNSs and RDNs. Ms. Ritter-Gooder replied that there is very little difference between them in terms of education and training.

   Committee member Stephen Peters asked the applicants to do more to clarify the details of the "dual licensure concept" in their proposal. He suggested that the applicants create a chart or table to show, step-by-step, how this concept would work. Committee member Brandon Holt agreed that something like a chart or a table would be helpful in understanding this aspect of the proposal. Amy Reynoldson also indicated that having a chart or a table of some kind would be helpful in understanding how this aspect of the proposal would work. Mr. Peters asked the applicants what would CNSs be required to do under the terms of the proposal? What would RDNs be required to do?

   Brittany McAllister, CNS, speaking on behalf of the American Nutrition Association, commented that the amended version of the applicant's proposal imposes unacceptable restrictions on the ability of CNSs to become licensed. This representative went on to state that this version of the proposal would impose standards on CNSs that are inappropriate for the way CNSs practice, standards that are more appropriate for the way Registered Dietitians practice. She went on to state that the current private CNS credential provides CNSs with all the requirements they need become licensed, and that

CNSs do not need the applicants' proposal for this purpose. Ms. Ritter-Gooder responded by stating that the applicant group is doing all it can to include the CNSs in the licensure process and that the proposed licensing process as defined is intended to accomplish this in such a way as to adhere to important standards pertinent to the protection of the public as well as treating all licensure candidates equally whether they be CNSs or RDNs.

10) Committee member Marcy Wyrens asked Nancy Hackel-Smith to clarify who currently does the orders for nutrition therapy for nursing homes. Ms. Hackel-Smith responded by stating that there are certain physicians who do this. Marcy Wyrens then asked Ms. Hackel-Smith if the proposal would change this and if so, how? Ms. Hackel-Smith responded that in this circumstance MNTs would still need to get approval from the facility's physician to get an order filled under the terms of the proposal.

11) Committee member Peters commented that he noticed that some educational standards defined in the proposal seem to be less rigorous than those defined under the current situation of MNTs, and then asked the applicants whether the proposal would be less rigorous in this regard than the current version of MNT licensure. He went on to ask what would be required for a person to acquire one of the two new credentials defined in the proposal? Would there be grandfathering of some providers? If so, under what circumstances would this occur? Would there be at least some new educational / training requirements? If so, what would these required elements be?

12) Representatives of NHCA submitted the following list of questions for the applicant group to answer:

a) Would all RDs be required to become licensed in order to practice in Nebraska?
b) Are all RDs in Nebraska already qualified for licensure as MNTs?
c) Would the oversight of MNTs by CDMs require greater formality than currently?
d) Would a CDM be allowed to provide the services of an MNT under the terms of the proposal?
e) Would nurses (RNs/LPNs) employed by a nursing care facility be allowed to advise residents about diet and weight control without involving an MNT under the terms of the proposal?
f) Would nurses (RNs/LPNs) employed by a nursing care facility be allowed to advise a physician regarding the diet and nutritional care of a resident without involving an MNT?
g) Would nurses (RNs/LPNs) employed by a nursing care facility be allowed to advise a physician regarding the diet and nutritional care of a resident without involving an MNT if the resident in question was having chewing or swallowing difficulties?
h) Would a physician be allowed to make changes in the diet of a nursing care resident including dietary supplements, parenteral nutrition, or dietary-related medications, for example, without involving an MNT under the terms of the proposal?

Paula Ritter-Gooder responded by stating that the applicant group does not seek to change the way other health care providers do their work, adding that protocols in place in health care facilities would ensure that such would not occur. The proposal seeks only to define the work and services that MNTs are allowed to provide, not to place limitations or restrictions on what other licensed health care professionals can do, adding that the scopes of practice of other health care professionals would not be impacted by this proposal.

Stephen Peters asked the applicants to clarify which professionals in health care facilities in Nebraska would have the ultimate responsibility vis-à-vis decisions regarding diet and nutrition care for residents, adding that he wanted the applicants to clarify what the “chain of command” is in residential facilities and how it might change under the terms of the proposal. The applicants restated that their proposal would in no way alter the current manner by which care is delivered in such facilities.

All sources used to create Part Four of this report can be found on the credentialing review program link at
https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx

Part Five: Committee Discussion and Recommendations

Discussion on the Six Statutory Criteria as They Pertain to the Proposal by the Committee Members

Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

Dr. Kester: The current situation is confusing regarding what MNTs are able to do versus what they are not able to do, and this proposal successfully addresses this concern.

Mr. Holt: The proposal successfully clarifies what MNTs can versus cannot do.

Ms. Wyrens: Expressed agreement with the comments of Mr. Holt and Dr. Kester.

Ms. Parker: Expressed agreement with the comments of Mr. Holt and Dr. Kester.

Criterion two: Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

Mr. Holt: The proposal would benefit the public.

Ms. Wyrens: The proposal would benefit the public.

Ms. Parker: Expressed agreement with Mr. Holt and Ms. Wyrens as long as NHCA concerns are addressed in the final version of the proposal.

Dr. Vander Broek: The proposal would streamline and clarify procedures.

Dr. Kester: Expressed agreement with Mr. Holt and Ms. Wyrens comments, above.

Criterion three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.

Ms. Wyrens: The proposal would not create new danger for the public.

Mr. Holt: Expressed agreement with Ms. Wyrens comments.

Ms. Parker: Expressed agreement with Ms. Wyrens comments.

Dr. Kester: Expressed agreement with Ms. Wyrens comments.

Dr. Vander Broek: Stated that he sees no danger to the public in this proposal.

<u>Criterion four</u>: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.

Ms. Wyrens: Commented that a great deal of work has been done by the applicants to address concerns about educational and training equivalences between MNTs who come from different academic and experiential backgrounds.

Ms. Roberts: Commented that the provisions in the proposal regarding the dual path to MNT licensure helps the proposal satisfy this criterion.

Dr. Vander Broek: Asked the committee members to comment on whether or not it is clear that older practitioners would be brought along into the new scope and its practice elements and be able to perform them. Ms. Roberts commented that the provisions on "CE" clarify that this would be the case if the proposal were implemented.

Mr. Holt: Also asked a similar question as the one asked by Dr. Vander Broek, above, but then expressed confidence that the proposal would address these kinds of concerns.

Ms. Parker: Stated that the proposal satisfies this criterion.

Dr. Kester: Also asked a similar question as the one asked by Dr. Vander Broek, above, but went on to state that these kinds of concerns are common across the board in health care regulation and went on to state that he too has confidence that the proposal satisfies this criterion.

<u>Criterion five</u>: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.

Dr. Kester: Commented that the proposal satisfies this criterion.

Mr. Holt: Expressed agreement with Dr. Kester.

Ms. Wyrens: Expressed agreement with Dr. Kester.

Ms. Roberts: Commented that the "CE" provisions of the proposal would address any concerns in this regard.

Ms. Parker: Expressed agreement with Dr. Kester.

<u>Criterion six</u>: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

Ms. Roberts: The proposal satisfies this criterion.

Ms. Parker: Concurred with Ms. Roberts.

Dr. Kester: Concurred with Ms. Roberts.

Mr. Holt: Concurred with Ms. Roberts.

Ms. Wyrens: Concurred with Ms. Roberts.

Dr. Vander Broek: Commented that the disciplinary provisions in the proposal would be sufficient to address the concerns raised by this criterion.

The recommendation on the proposal as a whole was as follows:

The Committee members took action on the proposal as a whole via an up/down vote as follows:

The following committee members voted to recommend approval of the MNT proposal:

Holt, Kester, Roberts, Parker, and Wyrens

The following committee members abstained from voting on the MNT proposal:

Dr. Vander Broek

There were no nay votes on the MNT proposal.

By this action the committee members recommended approval of the MNT proposal.

ADDENDA: APPLICANT GROUP COMMENTS ON, AND AMENDMENTS TO, THEIR PROPOSAL, AND RESPONSES FROM OTHER INTERESTED PARTIES

1. Diet Ordering

What is the current diet ordering practices of the LMNT?

At present—and in contrast to our registered dietitian nutritionist colleagues across most of the country—only a few of LMNTs in Nebraska have been able to take advantage of federal rules issued in 2014 and 2016 that explicitly recognize RDNs as the practitioner best qualified to determine, order, and manage therapeutic diets in hospitals and long-term care facilities, respectively.

The Centers for Medicare and Medicaid Services' updated regulations and removed restrictions that limited diet order authority, including for enteral and parenteral nutrition, to physicians, advanced practice nurses, and other "practitioners responsible for the care of the patient." As a result, in states embracing the regulatory changes, more than a billion dollars in health care costs has been saved, innumerable patient outcomes improved, and nursing home residents received incalculably more responsive care since 2014.

Today, while thousands of qualified RDNs outside of Nebraska are ordering therapeutic diets either (1) independently in hospitals after being privileged by the hospital's medical staff or (2) semi-autonomously in long term care facilities upon delegation of the attending physicians' authority to manage dietary orders, many Nebraska's LMNTs lack the same ability to do so. Ambiguous, outdated, and unnecessarily restrictive provisions in state law effectively preclude LMNTs from practicing at the height of our scope. Health care facilities require greater clarity regarding LMNTs' ability to independently order therapeutic diets; without it, they are likely to continue acting out of an abundance of caution, limiting Nebraska's ability to benefit from CMS's regulatory flexibilities.

CMS updated regulations related to therapeutic diets and RDNs in 2014 after realizing federal "regulatory language *and its interpretation*" had led "most hospitals [to take] a very conservative approach toward the granting of privileges, especially ordering privileges, to other types of non-physician practitioners, including RD[N]s." (79 Fed. Reg. 27105, 27117 (2014) (emphasis added).) It eliminated ambiguity at the federal level as to whether RDNs could independently order therapeutic diets by specifically clarifying that medical staffs could and should extend ordering privileges to qualified RDNs, reiterating that,

"[t]he addition of ordering privileges *enhances the ability that RD[N]s already have* to provide timely, cost-effective, and evidence-based nutrition services as the recognized nutrition experts on a hospital interdisciplinary team." (79 Fed. Reg. 27105, 27146 (2014) (emphasis added).)

This proposed update to the Medical Nutrition Therapy Practice Act will eliminate similar ambiguity at the state level and align Nebraska law with the revised federal regulations. It makes explicit that the independent ordering of therapeutic diets is within the LMNTs' scope of practice while recognizing physicians' and APRNs' continuing role as the practitioners responsible for the care of patients. In so doing, the update enables Nebraska's health care system to take full advantage of the "greater flexibility for hospitals and medical staffs to enlist the services of nonphysician practitioners to carry out the patient care duties for which they are trained and licensed [and] will allows them to meet the needs of their patients most efficiently and effectively." (79 Fed. Reg. 27105, 27114 (2014).) The update also allows Nebraska's seniors in long term care facilities to fully benefit from subsequent CMS regulations affirming the ability of attending

physicians, advanced practice registered nurses (APRNs) and physician assistants at these residential facilities to improve care and save money by delegating order writing authority to RDNs. In both cases, the medical director or medical staff have given approval through their rules, regulations, and bylaws.
In updating the Medical Nutrition Therapy Practice Act, Nebraska will join 34 other states that not only specifically allow RDNs to independently order therapeutic diets but also make health care facilities more comfortable extending them privileges to do so by eliminating residual ambiguous language in state statutes and regulations. Upon checking with the DHHS and the Academy of Nutrition and Dietetics, no licensed RDN has been identified as having been disciplined by a state Board for ordering therapeutic diets inconsistent with state law or professional standards since CMS revised its regulations in 2014.

2. Dual Pathway/Additional nutrition professionals

Which states allow for “dual pathways”/additional nutrition professionals?
This varies because in some states (a) there are significantly different scopes of practice (e.g., KY, ME, ND) for the dual pathways or (b) allow significant loopholes that could be considered pathways (e.g., LA, NE); neither which have been included in the below calculation.

Ten states have adopted a version of the updated structure and have two pathways with substantially similar scopes (AK, DE, FL, IL, MD, MN, NJ, NM, NY, NC).

Respectfully submitted by Nebraska Academy of Nutrition and Dietetics on 12/3/20