FINAL REPORT OF RECOMMENDATIONS AND FINDINGS

By the Midwifery Technical Review Committee
on the Proposal for a Change in Scope of Practice for Certified Nurse Midwives 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

June 30, 2006

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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.

MEMBERS OF THE MIDWIFERY TECHNICAL REVIEW COMMITTEE

Daryl Wills, D.C. (Chairperson)
(Gering)

Bruce Beins, Paramedic / EMS Instructor
(Republican City)

Marcus Nichols, Administrator, O.P.P.D.
(Plattsmouth)

Susan Stranghoener, Guidance Counselor
(Norfolk)

Heather Swanson, M.S.N., C.N.M.
(Wilcox)

Bruce Taylor, M.D.
(Lincoln)

Beth Wilson, Pharm.D., R.P.
(Lincoln)

SUMMARY OF THE APPLICANT'S PROPOSAL

Heather Swanson, M.S.N., C.N.M., is the applicant. The applicant's proposal would make the following changes in the Certified Nurse Midwife (CNM) scope of practice:

1. Allow CNMs to attend home births,
2. Remove the requirement for a practice agreement with a physician,
3. Allow CNMs to care for infants through their first 28 days of life with such care to include newborn screening, immunizations, lab work, medications, and early well-child checkups,
4. Add CNMs to the list of providers that shall be reimbursed for services legally provided,
5. Add CNMs to the list of providers that cannot be denied clinical privileges solely on the basis of the type of license they possess, and
6. Provide CNMs with prescriptive authority as appropriate for their scope of practice.

SUMMARY OF COMMITTEE RECOMMENDATIONS

The committee members recommended against approval of the applicant's proposal by voting against it on two of the four statutory criteria.

The committee members then voted to pass a motion in which they approved all of the items in the original proposal except for home births.

The specific actions and discussions on these actions can be found on pages seven through ten of this report.

FULL COMMITTEE RECOMMENDATIONS ON THE PROPOSAL

During the fourth meeting of the review process for the proposal, the committee members made their recommendations on the proposal. The committee members discussed the statutory criteria of the Credentialing Review Program as defined under Section 71- 6201 through Section 71- 6230 that must be used to make recommendations. (All information in this section of the report was generated at the fourth meeting.)

The committee members discussed the four criteria to be used to formulate recommendations and then took action on the first criterion.

Criterion one states:

> **The present scope of practice or limitations on the scope of practice creates a situation of harm or danger to 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.**

David Montgomery, Division Administrator, HHSS Regulation and Licensure, stated that the first criterion asks committee members to make a recommendation as to whether or not there is harm to the public in the current situation of the profession under review.

Swanson moved and Wilson seconded that the proposal satisfies the first criterion. Voting aye were Beins, Wilson, Swanson and Nichols. Voting nay were Taylor and Stranghoener. Chairperson Wills abstained from voting. The motion passed.

The committee members were then asked by Chairperson Wills to state why they voted as they did on this criterion. Bruce Beins stated that he sees a problem pertinent to access to the services of CNMs in rural areas of Nebraska under the present restrictions on the scope of practice of this profession. Susan Stranghoener stated that she felt that no convincing evidence was provided that there is a problem with access to CNM services that is caused by current restrictions on the scope of practice of this profession. She also noted that the wording of criterion one provides admonishment to review bodies to disregard “tenuous arguments.” Dr. Beth that there is a need to improve access to CNM services in rural areas of Nebraska, and that providing for independent practice for CNMs would eliminate restrictions that would improve access to care. Marcus Nichols stated that he felt that current restrictions on the CNM scope of practice make it difficult for them to establish practices in rural areas of Nebraska. Dr. Bruce Taylor stated that no evidence was provided to demonstrate that current restrictions on the CNM scope of practice are somehow linked to access to members of this profession. Heather Swanson stated that the current situation, by denying freedom of choice in the area of home birthing and by maintaining restrictions on the practice of CNMs, does limit access to the services of these professionals.

The committee members then took action on the second criterion.

Criterion two states:

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

Mr. Montgomery commented that this criterion asks committee members to make a recommendation as to whether or not the proposal would do more harm than good.

Swanson moved and Wilson seconded that the proposal satisfies the second criterion. Voting aye were Swanson and Wilson. Voting nay were Nichols, Beins, Taylor, and Stranghoener. Chairperson Wills abstained from voting. The motion did not pass. By this vote the committee members determined that they were not going to approve the proposal since by program rule a proposal must satisfy all four criteria in order to receive a positive recommendation.

The committee members were then asked by Chairperson Wills to state why they voted as they did on this criterion. Mr. Beins expressed concern that the proposal would weaken oversight and medical support aspects of birthing care. Dr. Taylor stated that the proposal would virtually take the physician out of the loop for birth care, and that this would imperil the safety of birthing services for those who might choose to have a home birth in Nebraska. Dr. Wilson commented that many other states allow for home births, and that she has seen nothing to indicate that this cannot be done safely. She indicated that she was also in favor of the independent practice components of the proposal. Ms. Stranghoener stated that she is concerned about the home birth component of the proposal. She stated that under the terms of the proposal there would be no way to define a standard of safety for home births, and no way to adequately define what conditions or amenities a home would have to have to be considered safe for a home delivery. Ms. Swanson responded that CNMs are trained to assess the health and safety conditions in the home of a potential client before committing themselves to providing a home delivery for them. Mr. Nichols stated that he felt there would be a lack of adequate medical oversight of home birth services under the terms of the proposal. He commented that there was potential that the proposal would encourage more expectant mothers to attempt to have home deliveries. Mr. Nichols added that even if the proposal were approved, there would be no way to know who else might be providing home birth services, including persons with no qualifications at all. Ms. Swanson commented that the proposal would not worsen the safety of birth services, and that it would not create situations where CNMs are providing services without adequate support or backup. She stated that CNMs typically attend home births with an assistant who could be another CNM, an RN or an LPN.

The committee members then took action on the third criterion.

Criterion three states:

> **Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.**

Mr. Montgomery commented that the third criterion asks committee members to make a recommendation as to whether the proposal would benefit the public.

Swanson moved and Wilson seconded that the proposal satisfies the third criterion. Voting aye were Beins, Wilson, Swanson, and Nichols. Voting nay were Taylor and Stranghoener. Chairperson Wills abstained from voting. The motion passed.

The committee members were then asked by Chairperson Wills to state why they voted as they did on this criterion. Mr. Beins stated that he supported the proposal on this criterion because of its potential to improve access to CNM services in rural areas of Nebraska, and did so in spite of his concerns about the safety of the home birth component of the proposal. Dr. Taylor stated that the proposal does not provide a benefit to the public health and welfare. He stated

that the proposal is designed to address the desire for greater freedom of choice in birth services on the part of a very small section of the total population of Nebraska, and does so by seeking to weaken laws designed to provide for the public health and safety of all Nebraskans. Ms. Stranghoener stated that she was concerned about the safety of the home birth component of the proposal. She indicated that there might be some benefit from the independent practice components, but added that the proposal needed to be voted on as a single entity. Given this, she felt compelled to vote against the proposal because she could not support the concept of home births. Dr. Wilson stated that she felt that the independent practice components of the proposal would benefit rural areas of Nebraska. Mr. Nichols stated that he supported the proposal on this criterion because it holds out some hope for improving access to care in rural areas of Nebraska. Ms. Swanson stated that the proposal would benefit those who want to be able to choose home birth services that are safe, and improve access to CNM services in rural areas of the state.

The committee members then took action on the fourth criterion.

Criterion four states:

> **The public cannot be effectively protected by other means in a more cost-effective manner.**

Mr. Montgomery commented that the fourth criterion asks committee members whether or not the proposal would solve the problems identified and if so whether it would be the most practical solution.

Swanson moved and Beins seconded that the proposal satisfies the fourth criterion. Voting aye were Swanson and Wilson. Voting nay were Beins, Taylor, Stranghoener, and Nichols. Chairperson Wills abstained from voting. The motion did not pass.

The committee members were then asked by Chairperson Wills to state why they voted as they did on this criterion. Mr. Beins stated that he did not support the proposal on this criterion because of his concerns about the public safety implications of the proposal. He indicated that the risks that the proposal would pose were too great to justify approving it even though he felt that the independent practice aspects of the proposal might have provided some benefit. Dr. Taylor stated that the proposal provides no benefits, and only risks what protection is already in place to provide safe delivery services. Dr. Wilson stated that she supported the proposal on this criterion because home births works in other states, and that she has seen no reason why Nebraska couldn't also make it work. Dr. Wilson added that the independent practice components of the proposal would clearly benefit the public. Ms. Stranghoener stated that she was opposed to home birth services. Mr. Nichols agreed with Ms. Stranghoener regarding home births. Ms. Swanson stated that the proposal is the only way to address the problems identified in the proposal.

By these four votes on the criteria, the committee members recommended against approval of the proposal.

Ancillary Recommendations

Nichols moved and Beins seconded that the committee members recommend that the CNM scope of practice be expanded consistent with the provisions of the applicant's proposal, with the exception of the provision for attending home births. Voting aye were Beins, Wilson, Nichols and Stranghoener. Voting nay were Taylor and Swanson. Chairperson Wills abstained from voting. The motion passed.

Mr. Nichols commented that this concept would improve access to CNM care in underserved areas of Nebraska. Dr. Wilson and Mr. Beins expressed agreement with this comment.

Concerns were expressed by Dr. Taylor about the absence of necessary medical oversight under this concept. He indicated that some CNMs are not good at providing medical oversight, and that this makes this concept too risky. Mr. Beins stated that hospitals and the appropriate regulatory boards would have to play a role in assisting the profession to maintain necessary oversight of their services. Heather Swanson stated that she voted against this motion because removing the home birth option defeats the purpose of the proposal, which had been to respond to consumers requests for CNMs to attend home births.

COMMITTEE DISCUSSION ON ISSUES OF THE REVIEW

1) Does the current practice situation of CNMs create potential for harm to the public health, safety, or welfare?

- Access to home birthing alternatives to hospital birthing services:

  Heather Swanson, C.N.M., the applicant representative on the technical committee, stated that under the current situation the act of having a home birth attended by a midwife is illegal in Nebraska, and that any midwife attending a home birth can be cited for practicing medicine without a license. Ms. Swanson informed the committee members that this has not stopped those Nebraskans who seek these services from pursuing the birthing services of midwives. She went on to state that expectant mothers are finding it increasingly difficult to access the services of midwives willing to attend a home birth. She informed the committee members that many consumers came forward during the last legislative session to testify in support of proposed legislation that would have legalized midwifery-attended home births. These consumers voiced their desire for these services and requested that these be legalized and regulated so that consumers can be assured of reasonably safe and good quality services. **(The Applicant's Direct Entry Midwifery Proposal, Page 5)**

  Ms. Swanson informed the committee members that expectant mothers in western Nebraska have reported traveling to Wyoming to have midwife-attended births in hotel rooms. Ms. Swanson stated that some expectant mothers have arranged for midwives from out-of-state to come to their homes to attend a home birth for them. She stated that some expectant mothers have not been able to find a midwife to attend their home birth and have had to rely on family members for assistance. She added that the current legal situation is to blame for these access problems. **(The Applicant's Direct Entry Midwifery Proposal, Page 6)**

  Ms. Swanson informed the committee members that of thirty-three midwifery consumers who responded to a survey, eleven cited cost as an important reason why they sought out the services of a midwife. According to Ms. Swanson, these consumers wanted more value for their health-care dollar than they would receive from hospital care. **(Survey of Midwifery Consumers Conducted by Heather Swanson regarding the Availability of CNM Services in Nebraska, The Applicant's Proposal, Appended Item # 14)** Ms. Swanson commented that midwives take more time for prenatal visits and spend more time with expectant mothers than do physicians, for example, and for low-to moderate-risk expectant mothers, care outcomes have been just as good, if not better, for midwife-attended births than physician-attended births. She stated that studies have shown that home births attended by midwives are significantly less costly than hospital births attended by physicians. **(The Applicant's Direct Entry Midwifery Proposal, Page 23 and 24, Hodges S., and Goer, H., "Effects of Hospital Economics on Maternity Care," Citizens for Midwifery News, Spring/Summer 2004)**

  Krynn Buckley, M.D., a board certified obstetrician / gynecologist and member of the American College of Obstetrics and Gynecology, and President of the Nebraska Medical Association, stated that the current situation wherein birthing services are located in hospital settings is the most optimal one for the safety of both expectant

mothers and their babies. In these settings, emergency care can be provided as required by the circumstances without delays associated with emergency medical transport. Dr. Buckley commented that in the current situation, the services of nurse midwives are an important component of birth services, and that nurse midwives work cooperatively with physicians and other health care professionals in hospital settings to provide safe deliveries. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 80**) Dr. Buckley commented that it is difficult to predict complications, and that even low risk pregnancies can become high risk pregnancies. An unpredictable emergency would include uterine hermorrhage, abruption of the placenta, prolapsed cord, shoulder dystocias, uterine rupture, and malpresentation. Dr. Buckley stated that even in a hospital setting, delivery with these complications within 10 to 15 minutes is difficult but it is possible and has saved many a child. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 84)** Dr. Buckley stated that both the American College of Obstetrics and Gynecology and the American Academy of Pediatrics are opposed to home deliveries. Dr. Buckley went on to state that another report from both these organizations states that time is of the essence when dealing with complications pertinent to neonatal encephalopathy and cerebral palsy. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 82)**

Ms. Swanson asked Dr. Buckley whether she had read the articles that were supportive of the data presented in the application. Dr. Buckley responded that she had not looked up all the applications references - it seemed redundant. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 93)**

Todd Pankratz, M.D., an obstetrician / gynecologist, in practice with two physician partners in Hastings, has two nurse midwives. Dr. Pankratz informed the committee members that at some health care facilities in Nebraska, Certified Nurse Midwives provide care consistent with the midwifery model of care that the applicant has referred to in her documentation and discussion comments. Dr. Pankratz stated that hospitals attempt to provide care that is as considerate of the wishes of expectant mothers as possible, while being consistent with the safety and well-being of both mother and child. **(The Transcript of the Public Hearing Held on April 20, 2006, Pages 95, 96 and 97)**

- <u>Costs of hospital services compared with home birth alternatives</u>:

  Ms. Swanson stated that hospital delivery costs are consistently higher than costs for deliveries by CNMs providing home births. For expectant mothers who do not have health insurance, hospital costs can be prohibitive. Ms. Swanson stated that the average home birth fee in 1999 ranged from $2,300 to $5,000, while hospital birth fees ranged from $4,300 to $16,000 for the same time frame. **(The Applicant's Proposal, Page 44, and Hodges S., and Goer, H., "Effects of Hospital Economics on Maternity Care," Citizens for Midwifery News, Spring/Summer 2004.)**

  Ms. Swanson stated that patients who do not have health insurance are often the ones who seek the home birth alternative. Dr. Taylor, an opponent of the proposal serving on the technical committee, commented that his knowledge and professional experience indicates that many hospitals in Nebraska are willing to reduce the price

of their fee for patients without health insurance, and allow the patient to pay one-third of the cost in advance and still deliver in the hospital. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006)** Roger Keetle, General Counsel for the Nebraska Hospital Association, commented that hospitals are willing to provide services to patients without means to pay, and that such charitable care would extend to the provision of birth services as well. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 108)**

Mr. Keetle commented that home births are not necessarily more cost-effective than hospital delivery. He indicated that if there is a need to transport to a hospital setting, the expectant mother incurs hospital costs in addition to the midwifery costs, which could be a problem if the mother does not have health insurance. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 107)**

- Treatment interventions in hospital births:

  Ms. Swanson expressed safety concerns about the current situation in which the state does not allow expectant mothers the option of having a home birth attended by a CNM, and where hospital birthing is defined as the only "safe" option for birthing. Ms. Swanson noted that she has observed a trend in hospitals towards more medical interventions, even with low-risk pregnancies and comprise potential for harm for low risk expectant mothers. She informed the committee members that the incidence of such things as continuous electronic fetal monitoring, labor induction, labor augmentation, instrumental delivery, C-section and episiotomy associated with physician-attended births in hospitals are rising. She feels they are often unnecessary for the majority of expectant low-risk pregnancies, and comprise potential source of physical, emotional, and financial harm for the majority of expectant mothers. Ms. Swanson stated that home deliveries by midwives would forego such medical procedures unless it became clear that abnormalities had occurred requiring the use of medical procedures. **(The Applicant's Proposal, Page 41)**

  Dr. Pankratz provided statistics pertinent to deliveries from his OB/GYN practice in Hastings, Nebraska in which he employs two CNMs. According to Dr. Pankratz, in 2005 these CNMs delivered babies for 189 expectant mothers who were in the low-risk category, and of these deliveries, forty-nine percent required no anesthesia. He indicated that the primary C-section rate was fifteen percent and the rate of operative deliveries via forceps or vacuum procedures was only four percent. **(The Transcript of the Public Hearing Held on April 20, 2006, Pages 96 and 97)**

  Mr. Keetle stated that hospitals are the safest places to deliver a child, and the fact that insurance companies will always insure the work of a certified nurse midwife as long as their work is in a hospital setting is testimony to that fact. Mr. Keetle stated that it is his professional opinion that right now the two major insuring agencies in Nebraska would not insure a CNM who chose to perform home deliveries even if it were legal to do so. **(The Transcript of the Public Hearing Held on April 20, 2006, Pages 103 and 104)**

  Mr. Keetle went on to state that another reason why hospitals are the safest places for deliveries is their peer review process wherein professional colleagues are continually critiquing one another's work. He added that another strength of hospital

settings includes quality assurance programs, and that together with peer review and quality assurance, the patient is provided as safe a place as is possible for delivering a baby. **(The Transcript of the Public Hearing Held on April 20, 2006, Pages 105 and 106)**

- Practice restrictions on the ability of CNMs to attend home births:

  Ms. Swanson stated that she is seeking to eliminate the requirement for a practice agreement with a physician in part because of concerns that supervising physicians might use their position to prevent CNMs from providing home deliveries should the time come when home deliveries become legal in Nebraska. **(The Minutes of the Second Meeting of the Technical Review Committee Meeting, April 1, 2006)** Ms. Swanson also stated that the requirement for a practice agreement is restrictive given that it is sometimes difficult to find a physician to agree to provide this kind of ongoing oversight, and that it is particularly difficult to find such a physician whose practice includes obstetrics. **(The Applicant's Proposal, Page 22)**

  Ms. Swanson stated that she is seeking to expand the CNM scope of practice to include clinical privileges, prescriptive authority, and third-party reimbursement privileges in order to provide CNMs with the legal right to utilize skill sets and financial supports that will be necessary for them to fully engage in independent practice. **(The Applicant's Proposal, Page 22; and the Minutes of the Second Meeting of the Technical Review Committee Meeting, April 1, 2006)** Opponents of the proposal indicated that the current practice agreement requirement is working quite well, and that it should be maintained. These opponent testifiers also indicated that the current practice situation of CNMs is working quite well and that there is no need to change their scope of practice. **(The Transcript of the Public Hearing Held on April 20, 2006, Pages 80, 96 and 97)**

2) Would this proposal create significant potential for new harm to the public health, safety, or welfare?

- Comparative risk of home versus hospital births:

  Opponents of the proposal commented that concerns about freedom of choice should not override concerns about safety. They stated that home births are inherently risky, and that even with low-risk pregnancies things can very quickly go wrong. They argued that for the safety of both mother and baby, a hospital is the safest place to give birth**. (The Minutes of the Second Meeting of the Technical Review Committee Meeting, April 1, 2006; and the Transcript of the Public Hearing Held on April 20, 2006, Pages 87, 88, 97, and 98)**

  Representatives of the Nebraska Medical Association submitted research articles on potential infant and maternal complications during childbirth. These articles dealt with the following topics: fetal macrosomia and shoulder dystocia, meconium aspiration syndrome, and obstetrical hemorrhage. Research on the risks of maternal hemorrhaging stated that serious hemorrhaging can occur at any time during pregnancy. This research stated that one of the risk factors for this problem is substandard care, including the lack of availability of obstetrical and anesthetic services. **(Chapter 25 of a medical text referred to as "Williams Obstetrics",**

Pages 620 and 621) The research on meconium aspiration indicated that meconium-stained amniotic fluid is seen in a median of fourteen percent of deliveries and is associated with increased risk of respiratory disorders. The research shows that respiratory distress occurs in eleven percent of newborns that have meconium-stained amniotic fluid. **("Clinical features and diagnosis of meconium aspiration syndrome" by Joseph A. Garcia-Prats, M.D.)** The research submitted on shoulder dystocia indicates that it is a problem in 0.2 to two percent of births and can be a devastating obstetrical emergency. The research indicated that this condition typically occurs in the absence of risk factors. The risk with this problem is that the infant can be asphyxiated during the delivery unless the attendee is well prepared to deal with the problem. **("Management of fetal macrosomia and shoulder dystocia" by John F. Rodis, M.D.)**

Ms. Swanson stated that one study on birthing found that there were lower rates of low-birth-weight infants and lower rates of one-minute APGAR scores less than seven for home births as opposed to hospital births. She added that one study showed good outcomes, and supported CNM-attended home births, although Ms. Swanson cautioned that the study lacked a comparative dimension to CNM-attended hospital births**. (The Transcript of the Public Hearing Held April 20, 2006, Pages 20 and 21, Hosmer, L., Clinical Obstetrics and Gynecology, 44(4) (2000), Pages 671-680)** Ms. Swanson discussed other research articles pertinent to comparative risks which she said were supportive of home birthing. **These included Janssen, P.A., Lee, S.K., Ryan, E. M., Etches, D.J., and Peacock, D., et. al., "Outcomes of Planned Home Births versus Planned Hospital Births after Regulation of Midwifery in British Columbia," The Canadian Medical Association Journal, 166 (3), Pages 315-323 (2002) and Murphy, P.A., and Fullerton, J., "Outcomes of Intended Home Births in Nurse-Midwifery Practice: A Prospective Descriptive Study," Obstetrics and Gynecology, 92(3), Pages 461-470 (1998), and Olsen, O., "Meta-Analysis of the Safety of Home Birth," Birth, 24(1), Pages 4-13 (1997), and Hosmer, L., "Home Birth," Clinical Obstetrics and Gynecology, 44(4), Pages 671-680 (2001)**

Ms. Swanson commented that child birth is a natural process, not a medical procedure, and that medical intervention should only be sought when abnormalities have been identified requiring such intervention. **(The Minutes of the Second Meeting of the Technical Review Committee Meeting, April 1, 2006)** Other applicant testifiers also commented that home birth is not inherently more risky than delivery in a hospital, and that when problems with a pregnancy do arise the CNM is trained to identify them in advance of the delivery date so that appropriate medical attention can be provided before the problem becomes a crisis. **(College of Nursing, University of New Mexico, April 20, 2006)**

Ms. Swanson submitted a study which provided statistics showing lower infant mortality rates for infants delivered by CNMs than for those delivered by physicians. According to this study the risk of experiencing an infant death was nineteen percent lower for births attended by certified nurse midwives than for those attended by physicians. Additionally, this study presented data showing that the risk of neonatal mortality was thirty-three percent lower for CNM delivery than for MD delivery, and that the risk of having a low-birth-weight infant was thirty-one percent lower. This study examined all single, non-cesarean section births in the United States in 1991

delivered at 35 to 43 weeks of gestation by either physicians or certified nurse midwives. **("New Study Shows Lower Mortality Rates for Infants Delivered By Certified Nurse Midwives", National Center for Health Statistics: News Releases, May 19, 1998)**

Opponents to the proposal argued that the studies submitted by the applicant which argue that home births attended by midwives appear to be as safe or safer than hospital births often have not controlled for all relevant medical and demographic variables, and do not adequately consider that women who choose to have a home birth are a self-selected group whereas those women who deliver in hospitals cover the entire range of expectant mothers, including those who are high-risk. **(Nebraska Hospital Association written testimony, Attachment 2, by Carly Runestad, Health Policy Specialist, April 28, 2006)** Ms. Swanson responded to these opponent comments by stating that the studies presented by her to the committee members did factor in demographic and medical variables. **(Written Testimony Provided by Heather Swanson dated April 29, 2006)**

Opponents to the proposal stated that a study done in the State of Washington documents the risks associated with planned home birthing. **(Pang, J., Heffelinger, J., and Huang, G., et. al., "Outcomes of Planned Home Births in Washington State: 1989-1996, Obstetrics and Gynecology, 100(2), Pages 253-259, 2002)** Ms. Swanson responded to these comments by stating that the study cited by the opponents used data that could not differentiate between planned and unplanned home births, and therefore could not validly be used to document harm associated with planned home births. **(Transcript of the Public Hearing Held on April 20, 2006, Page 135; CNM Proposal, Pages 43 and 55, Appended Item # 29; DEM Proposal, Pages 28 and 29)**

Carly Runestad, testifying on behalf of the Nebraska Hospital Association, stated that transfer time to a hospital by ambulance is a critical concern in any discussion of home birthing issues. Ms. Runestad informed the committee members that in Nebraska the average transfer time is fifty-three minutes, and given that a newborn may suffer brain damage after fifteen minutes (or within thirty minutes in the case of a C-section) this amount of transfer time does not provide for necessary protection. She clarified that this is in no way a criticism of EMS services, but rather is an argument for the importance of having services located in facilities wherein all necessary emergency personnel and technology are already in place. **(The Transcript of the Public Hearing Held April 20, 2006, Page 167, and the Nebraska Ambulance Rescue Service Information System, Douglas Fuller, Southeast EMS Specialist, Contact Person)**

Ms. Runestad stated that in a recent study, 12.1 percent of women who intended to have a home delivery at the time labor began were transferred to a hospital, and 3.4 percent of these transfers were considered urgent. Ms. Runestad added that these were women who had been carefully prescreened prior to being deemed as low-risk and considered appropriate for home delivery. **(Johnson, K. J., and Daviss, B., "Outcomes of Planned Home Births with Certified Professional Midwives: A Large Prospective Study in North America," The British Medical Journal, 330, Page 1416; Transcript of the Public Hearing Held April 20, 2006, Page 118)**

Ms. Runestad informed the committee of statistics from the testimony on LB 338 during the last legislative session provided by Dr. Joann Schaefer, Director of the Health and Human Services Department of Regulation and Licensure. Dr. Schaefer said that there were 25,832 hospital births in Nebraska during 2003 and 68 out-of-hospital births in Nebraska during the same time period. Ms. Runestad stated that there were 148 fetal deaths in hospital settings and three fetal deaths in out-of-hospital setting. Ms. Runestad went on to state that the deaths per delivery location are .5 percent for the hospital death rate and the 4.4 percent for the out-of-hospital death rate. She added that these are Nebraska statistics not national statistics. **(Transcript of the Public Hearing Held on April 20, 2006, Page 172 and 173)**

Ms. Swanson responded to opponent comments about distance factors pertinent to the safety of home birthing by stating that studies supportive of home birthing do not show that distance from a hospital increases risk of harm, and that one of these studies gathered data from rural areas all over North America. **(Johnson, K. L., and Daviss, B., "Outcomes of Planned Home Births with Certified Professional Midwives: A Large Perspective Study in North America, The British Medical Journal, 330, Page 1416 (2005))**

- Education and training of CNMs to manage home births and to manage medical emergencies:

  Ms. Swanson stated that the curriculum of CNMs includes specific training in handling medical emergencies. Other applicant testifiers commented that studies have documented the ability of CNMs to manage birthing complications and emergencies consistent with good outcomes. **(Transcript of the Public Hearing Held April 20, 2006, Page 21, and "Core Competencies of Basic Midwifery Practice," American College of Nurse-Midwives, May, 2002, and, "Quality and Effectiveness of Nurse-Midwifery Practice," American College of Nurse-Midwives, 2003, and Gabay, M., and Wolfe, S., "Nurse-Midwifery: The Beneficial Alternative," Public Health Reports, 112(5), Pages 386-395, 1997, and, MacDorman, M. F., and Singh, G. K., "Midwifery Care, Social and Medical Risk Factors, and Birth Outcomes in the USA," Journal of Epidemiology and Community Health, 52, Pages 310-317, 1998, and, Oakley, D., Murtland, T., Mayes, F., Hayashi, R., Petersen, B., and Rorie, C., et. al., "Processes of Care: Comparisons of Certified Nurse-Midwives and Obstetricians," Journal of Nurse Midwifery, 40(5), Pages 399-409, 1995)**

  Opponent testifiers commented that the critical issue in medical emergencies is transfer time, and that the current transfer time of fifty-three minutes does not provide for necessary protection for newborns. **(The Transcript of the Public Hearing Held April 20, 2006, Page 167)**

  Applicant testifiers commented that home birth is not inherently more risky than delivery in a hospital and that when problems with a pregnancy arise the CNM is trained to identify them in advance of the delivery date so that appropriate medical attention can be provided before the problem becomes a crisis. **(College of Nursing, University of New Mexico, April 20, 2006)**

- Education and training of CNMs to manage care of newborns:

Ms. Swanson was asked what her rationale is for seeking to allow CNMs to provide infant care during the first twenty-eight days of life. Ms. Swanson responded by stating that CNMs are trained to provide this kind of care, and that it is desirable to provide both mother and baby with care together at least during the first couple of weeks after the child is born. Ms. Swanson stated that if a pathological condition emerges during that time period, the CNM would refer the mother and child to a pediatrician. She added that the American College of Nurse-Midwives (ACNM) has standards pertinent to this kind of care that all CNMs must satisfy in their training. She added that if the child is healthy, a CNM is able to care for him or her for the first twenty-eight days of life**. (The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006, and "Core Competencies of Basic Midwifery Practice," The American College of Nurse Midwives, May, 2002)**

Opponents of the proposal expressed concern about this aspect of the proposal given the independent practice and provisions of the proposal, and indicated that a newborn would be better cared for by a pediatrician. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006; and Transcript of the Public Hearing Held on April 20, 2006, Pages 87 and 88)**

- Education and training of CNMs to evaluate and manage the health condition of expectant mothers:

  The applicant provided written testimony describing the training CNMs receive to provide primary care for expectant mothers. According to this testimony, CNMs are trained to independently manage common health problems of women, utilizing consultation and/or referral to other health care providers as necessary. This training includes identification of health problems pertinent to the cardiovascular system, dermatological issues, the endocrinal system, eye-ear-nose-and-throat problems, gastrointestinal problems, mental health issues, musculoskeletal problems, neurological problems, respiratory care problems and renal problems. **(College of Nursing, University of New Mexico, April 20, 2006)**

  Opponents of the proposal expressed concern about this aspect of the proposal given its independent practice provisions, and indicated that a mother would be better cared for by a physician. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006; and Transcript of the Public Hearing Held on April 20, 2006, Pages 87 and 88)**

3) Would this proposal benefit the public health, safety, or welfare?

- Access to qualified nurses for home birth services:

  Ms. Swanson stated that the proposal would provide a corrective to the current situation in which home birth services of CNMs are illegal. The proposal would provide those expectant mothers who want home births with a legal and safe means of accessing such services. Currently, expectant mothers who seek a home birth must circumvent the law in order to access the services of midwives. The proposal would provide CNMs who want to provide home birth services the legal right to do so. **(The Applicant's Proposal, Page 36)**

Ms. Swanson stated that allowing CNMs to provide home deliveries would significantly add to the quality of home delivery services from which consumers could choose because currently CNMs are not allowed to provide these kinds of services. She commented that in Nebraska, currently only direct entry midwives and lay midwives provide these services, and in doing so, they risk being the target of law enforcement and being subject to cease and desist orders. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006)**

Opponent testifiers argued that concerns about freedom of choice should not override concerns about safety of birth services, and that home birthing is inherently high risk even under the best of circumstances. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006; and Transcript of the Public Hearing Held April 20, 2006, Pages 87 and 88)**

Ms. Swanson informed the committee members that in states that allow CNMs to practice their full scope of practice, access to their services has improved due to increases in the number of practice sites and increases in the number of practitioners. Ms. Swanson stated that there is a trend nationally in the direction of expanding the scope of CNM practice to that consistent with their educational and certification requirements, and towards making CNMs independent practitioners. **(The Applicant's Proposal, Page 51)**

The opponents argued that because of concerns about the safety of birthing services, the proposal would not benefit the public health and welfare. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006; and Transcript of the Public Hearing, Pages 87 and 88)**

4) Is the proposal to expand the CNM scope of practice the most cost-effective means of resolving the problems identified by the applicant group in their proposal?

- <u>Comparative costs of home delivery versus hospital birth services</u>:

  During the review, questions were asked about possible cost savings from the applicant's proposal. Ms. Swanson stated that the proposal would help to lower costs for expectant mothers who do not have health insurance. Dr. Taylor stated that in his knowledge and experience many hospitals in Nebraska are willing to reduce fees for patients without health insurance. Dr. Wilson commented that insurance cost and actual cost will vary, and that what the hospital or provider are paid does not govern the final cost of the services per se. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006)**

  The applicant was asked whether CNMs are reimbursed by Medicare and Medicaid for their services. Ms. Swanson stated that in her experience CNMs are reimbursed by Medicare at sixty-five percent of the Medicare reimbursement rate of physician reimbursement for the same services, whereas Nebraska Medicaid reimburses CNMs at one-hundred percent for these services. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006)**

Ms. Swanson expressed the opinion that cost savings can be achieved by minimizing the use of expensive technologies, and that home birthing can play a role in achieving such savings. Mr. Keetle observed that if there is a need to transport to a hospital, then the expectant mother incurs hospital costs in addition to the midwifery costs. **(The Transcript of the Public Hearing Held on April 20, 2006, Page 107)**

Ms. Swanson expressed the viewpoint that more third-party payers would reimburse CNMs for their services under the terms of the proposed changes in scope of practice than currently. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006)** Mr. Keetle expressed the opinion that most insurance companies would not choose to cover the costs of CNM home birthing services. **(The Transcript of the Public Hearing Held April 20, 2006, Page 107)**

- Improved access to quality, cost-effective CNM services:

  Ms. Swanson expressed the opinion that access to CNM services has improved in states that have allowed CNMs to expand their scope of practice consistent with their education and training. **(The Applicant's Proposal, Page 51)** Ms. Swanson stated that CNM services save the consumer money even in the context of hospital settings, and that this is due to shorter hospital stays, lower malpractice insurance rates, and lower salary costs associated with CNM care. **("Quality and Cost-Effective Care: The Midwifery Solution," The American College of Nurse-Midwifery, 2004)**

  Opponents of the proposal argued that it is vital that safety must always be the highest priority of regulation, not freedom of choice. **(The Minutes of the Second Meeting of the Technical Review Committee, April 1, 2006; Transcript of the Public Hearing Held on April 20, 2006, Page 87 and 88)**

OVERVIEW OF COMMITTEE PROCEEDINGS

The committee members met for the first time on **February 10, 2006** in Lincoln, at 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 **April 1, 2006** in Lincoln, in the HHSS Regulation and Licensure Hearing Room in the Gold's Building. The committee members thoroughly discussed the applicant's proposal and generated questions and issues that they wanted discussed further at the next phase of the review process, which will be the public hearing.

The committee members met for their third meeting on **April 20, 2006** in Kearney, at the Buffalo County Extension Building. This meeting was the public hearing on the proposal during which both proponents and opponents were each given one half-hour to present their testimony. Individual testifiers were given ten minutes to present their testimony. There was also a rebuttal period after the formal presentations for testifiers to address comments made by other testifiers during the formal presentation period. 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 **June 2, 2006** in Lincoln, in the Nebraska State Office Building. The committee members continued their discussion on the proposal, and then formulated their recommendations on the proposal.

The committee members met for their fifth meeting on **June 30, 2006** in Lincoln, in the Nebraska State Office Building and by teleconference. At this meeting the committee members made corrections to the draft report of recommendations, and then approved the corrected version of the report as the official document embodying the recommendations of the committee members on the proposal. The committee members then adjourned sine die.