

STATE OF NEBRASKA

DEPARTMENT OF HEALTH
Mark B. Horton, M.D., M.S.P.H.
Director



E. Benjamin Nelson
Governor

MEMORANDUM

TO: Senator Don Wesely, Chairman
Health and Human Services Committee
District 26 - Nebraska Legislature

FROM: Mark B. Horton, M.D., M.S.P.H.
Director of Health

DATE: February 13, 1995

SUBJECT: Final Report of the Director of Health on the Proposal to License
Medical Nutrition Therapists

Recommendations of the Director

The Nebraska Dietetic Association submitted a proposal to license medical nutrition therapists to a technical committee in the summer of 1994. The technical committee recommended against the proposal as did the Board of Health. I concur with these recommendations. However, I see merit in the idea of licensing this profession, but I cannot endorse the proposal in its current form.

Discussion on Issues Raised by the Proposal

The current proposal of the Nebraska Dietetic Association represents a significant departure from earlier proposals submitted by this group. The idea of licensing only those aspects of the dietetic profession pertinent to medical nutrition is an imaginative alternative to the typical licensing proposal.

Proposals such as this suggest that there might be a way to establish minimum standards to protect the public health and welfare without creating a monopoly in all functions and services provided by a given health profession.

I do feel that there is a body of knowledge that is critical to the treatment of the nutritional problems of persons with serious medical problems. We know, for example, that there is specific nutritional advice pertinent to the health problems of persons with diabetes, renal disease, and cancer that is important to the treatment of these health problems; and there is a need to ensure that persons who suffer from these health problems receive this advice from properly trained persons.

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However, after examining the applicant's proposal in more detail, and after evaluating it in terms of the four criteria of the 407 statute, I do not recommend approval of the current version of the proposal to license medical nutrition therapy. Regarding the first criterion which asks whether there is significant evidence of harm to the public inherent in the current situation of a profession undergoing 407 review, my review of the record indicates that no compelling evidence was provided by the applicant group to indicate that serious harm to the public is occurring, or has occurred, as a result of the current situation of medical nutrition therapy. Compelling evidence of any harm would assist us in determining which modalities need to be restricted to licensed persons, as well as provide guidance as to the circumstances wherein such restrictions might be necessary. Also, it would be helpful to have some evidence of the amount of education and training that is needed to provide these modalities safely and effectively. As of this writing, no such evidence has been presented.

The second criterion asks whether a proposal under review would create significant new harm to the public pertinent to access to care. I do not perceive that the proposal creates significant barriers to service. I believe that the applicant group has done all that can be done via amendments to the original proposal to address the concerns of other occupational groups and professions who provide services in the area of medical nutrition.

The third criterion asks whether the public needs the proposal under review for the assurance of receiving care from a qualified provider. No convincing evidence was presented to indicate that the public is not already receiving such care in the area of medical nutrition therapy.

The fourth criterion asks whether there is a more cost-effective means than the proposal of addressing whatever problems have been identified in the current situation. The applicants did not present compelling evidence to indicate that there is a connection between licensure for this group and third-party reimbursement for their services.

The greatest problem with the current proposal is its lack of clarity regarding exactly what comprises the proposed scope of practice. The proposal bases its scope of practice on the definition of medical nutrition therapy, which the applicants define as, "The use of specific nutritional services to treat an illness, injury, or condition." The applicants indicate that there are two phases to this process, namely, assessment which they define as, "...the process of evaluating the nutritional status of patients with a condition, illness, or injury that places them at high risk of malnutrition," and treatment which includes diet modification, tube feedings, intravenous feedings, and monitoring to evaluate response to therapy. It is unclear who determines who is "at risk," and how would this be done. The original proposal indicated that only those health professionals who were allowed by law to diagnose a patient's condition would be allowed to make such a determination. However, subsequent amendments to the proposal replaced the word "diagnosis" with the term

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"assess," and thereby seemed to extend this privilege to any health profession that can do a nutritional assessment. Exactly which professions this would comprise is not clear. I have a concern about extending this privilege to professions that cannot by law do a formal diagnosis of a patient's condition. It is unclear whether the applicants intend to limit their scope to the treatment of persons with malnutrition. If they do, then it seems to me that they are unduly limiting their scope of functions. It is unclear whether or not it is the intent of the applicants to totally restrict who can do assessment and treatment to licensed persons, or whether they mean to restrict these functions to licensed persons only wherein the treatment of "at risk" patients is concerned.

I believe that the way to begin to resolve the problems of this proposal is to clearly define medical nutrition therapy. Medical nutrition therapy is the use of specific dietary and nutritional interventions to treat patients with certain medical and surgical conditions for which such interventions are considered an essential component of the standard care. An effort to clarify the proposed scope of practice should begin with either this definition, or one similar to it.

There is also a need to ensure that the legitimate activities of unlicensed weight-loss counselors and health food store personnel are not unduly restricted by the proposal. The proposal needs to clarify what would and would not constitute a violation of the proposed statute on the part of such unlicensed persons.

Although I cannot endorse this proposal in its current form, I would support continued efforts to refine the proposal to license the activities that comprise medical nutrition therapy. Addressing the concerns raised in this report as well as in the reports of the technical committee and the Board of Health regarding scope of practice and the impact of the proposal on unlicensed practice should improve the proposal, and I believe, greatly facilitate its success.

MBH/RB/das

