

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on March 7, 1995 in Room 423-S of the State Capitol.

All members were present.

Committee staff present: Norman Furse, Revisor of Statutes
Emalene Correll, Legislative Research Department
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
James O'Connell, Secretary of Health and Environment
Joseph L. Kroll, Director, KDHE Bureau of Adult & Child Care
Lesa Bray, KDHE Director of Health Credentialing

Others attending: See Guest List, Attachment 1.

Chairperson Mayans commented that because of the many questions the committee has concerning the scope of practice and differences between health care groups and the related issues on licensing or credentialing, the committee is fortunate to have Secretary O'Connell here to speak on credentialing and educate the committee in the process.

Mr. O'Connell expressed appreciation to appear before the committee and address the credentialing process as it now exists. He noted that Mr. Kroll and Ms. Bray (who administers the program) were present to respond to any questions. Mr. O'Connell stated credentialing is available only to those health care practitioners not previously certified, licensed or registered in Kansas. The procedural steps were enumerated: (1) Filing a Letter of Intent, on which the initial determination is made as to whether it is a credentialing issue. (2) Determination as to whether the group (applicant) fits the definition set out in the statute. If it does, the process for application is begun. (3) Once the application is completed, the Technical Review Committee reviews it; holds a minimum of four meetings (including a public hearing); makes their recommendations to the Secretary of Health and Environment. (4) The Secretary finalizes the recommendations and forwards both his and the Committee's recommendations to the Legislature for final action.

Chairperson Mayans stated, as an example, that a group of midwives came before this committee to establish the registration of direct entry midwives and were asked during that meeting to investigate the credentialing process. The committee was told their group did not fit in the categories for credentialing and thus, perhaps the Legislature needs to reexamine the guidelines for health occupations that can go through the credentialing process.

Ms. Bray offered some details in response. She pointed out that a copy of the *Manual for Applicants of the Kansas Credentialing Review Program* (a copy of which is on file in the Chairperson's office or obtainable through KDHE) has been distributed to each committee member. Concerning the applications for the midwives, two groups came before KDHE and filed Letters of Intent (which is the first step in the process). As of now, the two letters were approved as health occupations. After the Letter filing, KDHE never received a full application. That was in 1986 and at that point, one applicant withdrew formally and the other did not complete the process.

Ms. Bray then outlined some history of the process found on page 1 of the Manual (Attachment 2). In the 1970's many occupations that are now credentialed were not. Because the Legislature had many applications to consider, it was decided the process needed to be changed so the Legislature could be advised of the specific health care cost benefits to society. In the '80s a specific law was enacted (recommended by the State Health Coordinating Council, a mechanism for health care planning). In 1986, the responsibility for administering the process was given to KDHE.

Since then, 21 Letters of Intent have been filed. Of those, 2 were denied and 19 approved. Of the 19 approved, 12 completed applications; 9 were approved by the Technical Review Committee, and 8 by the Secretary. Ms. Bray then "walked" the committee through the process by pointing out the diagram on page 3

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on March 7, 1995

of the Manual (Attachment 3). She displayed one completed application that was about 8 inches thick. Ms. Bray explained that the complete process takes some 8-9 months. Once the application is filed, it cannot be withdrawn.

Chairperson Mayans stated that the legislators do not have sufficient time to address all the questions relating to registrations and licensing and should not have to research all of this--the staff should be doing this. When legislators talk about credentialing to some of these groups, they tell us that the process puts them through too many hoops. Yet, when these requests come to the Legislature it is expected a decision can be made in a few hours. The National Council of State Legislatures has advised that Kansas is not the only state concerned with this issue. He said perhaps the Legislature needs to revamp the process, especially when the credentialing fee can be as much as \$20,000.

The hearing was opened to questions to the conferees. Representative Merritt asked if the questions in the application form were designed for certain groups and he also questioned the fee. Ms. Bray answered questions are not designed for specific professions, and that the fees are relevant to the process. Initially, \$1,000 is required when the application is filed. Secretary O'Connell stated that \$20,000 is a rough estimate as the fee is based on the amount of staff time required to process the application. Considering the economic benefit to the group, the costs of these applications should be paid by the group that benefits--and not the populace in general. The fee depends on the group and the extent of the effort.

Emalene Correll explained that the history goes back to the 1970s--where it was reviewed by an Interim Committee, and then the law amended in 1985. The Legislature determined the criterions for the application as there is a lot at stake. The Legislature not only set the criterions but added a standard of proof within the law. Chairperson Mayans stated the 1995 Legislature is going to simplify that process.

Representative Kirk questioned the delineation of the scope of practice. Secretary O'Connell stated that the credentialing process is as an advisory to the Legislature. He stated the delineations have been determined by the Legislature to give those occupations not heretofore certified, licensed, or registered through independent boards (such as Healing Arts, Nursing, Dentists) a method of credentialing.

Representative Howell questioned the criterions that have been established. Ms. Bray referred him to page 8 of the Manual (Attachment 4). Mr. Kroll stated the fee is imposed to discourage a group from filing an application and then withdrawing from the process. It takes a considerable investment in time and effort on the part of the Department.

Representative O'Connor asked about the midwives application. Ms. Bray explained that many who assist in the delivery of babies are covered by Healing Arts, physicians, nurses, advanced practitioners. Perhaps midwives could be held accountable for practicing without a license. She explained that the Letter of Intent is to determine if the occupation should be credentialed--is it a health care profession?

Chairperson Mayans stated he has received many letters on the issue of midwifery. He asked what actually occurred in respect to the midwives application? Ms. Bray stated KDHE did nothing except approve the Letter of Intent; but it never received a completed application after that Letter was approved.

Representative Morrison questioned if the group that withdrew requested a refund of the fee. Ms. Bray replied one group sought a refund, but it was not given as there was no precedent for it. At that point no further action was taken. Representative Morrison questioned if the Secretary always accepts the Technical Review Committee's recommendation. Ms. Bray said that it is rare for the Secretary to differ. In only three instances has this happened. Representative Morrison stated the Legislature will do its own thing with regard to regulation, and perhaps Kansas is restrictive and should be liberalized.

Representative Geringer stated legislators need to give serious thought to destroying or liberalizing the system that is in place. The Legislature found it necessary to set the credentialing process and made it more enabling for those to enter the health care professions; and the system works.

Representative Merrit again questioned the costs of credentialing. Secretary O'Connell answered that the procedure allows an estimate of the costs made early in the process and reviewed with the group to settle whether it is willing to pay it. Taxpayers should not pay for it and it should not come out of state funds.

Representative Kirk stated she supports Representative Geringer's statement concerning revision of the law. She asked how KDHE handles the delineation to determine if credentialing is the appropriate method to follow. Ms. Bray stated the Letter of Intent spells out the scope of practice for the applicant; and through the hearings, the scope is readily identifiable.

CONTINUATION PAGE

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S State Capitol, at 1:30 p.m. on March 7, 1995

Chairperson Mayans stated it was not intended to do away with the process, but to simplify it. Ms. Bray stated the last application was received in 1992, when respiratory therapists requested a change from registration to licensure, which was not recommended.

Representative Wells asked who developed the criterions. Ms. Bray answered she presumed the statewide Health Council.

Representative Goodwin asked if KDHE felt Kansans were over regulated in credentialing; and if we relax these regulations, would there be more civil and criminal causes of action? Mr. Kroll said lessening the requirements would open Pandora's box. If anyone is holding themselves out as competent and capable of performing certain services and are following unscrupulous practices, they should not be left to operate unfettered. Secretary O'Connell stated KDHE does not argue against procedural simplification. In fact, the Governor has requested the agency to review their responsibilities with that in mind.

Emalene Correll stated when you license a group, you create a group that may provide certain services. The real issue may be whether to do away with all licensing and registration and go to credentialing. One state is looking in that direction.

Chairperson Mayans thanked the conferees for an interesting presentation.

The meeting was adjourned at 3:05 p.m.

The next meeting is scheduled for Noon, March 9, 1995, to tour Sterling House in West Topeka.

HOUSE COMMITTEE ON HEALTH
AND HUMAN SERVICES COMMITTEE
GUEST LIST
MARCH 7, 1995

NAME	REPRESENTING
Harold Rienn	KADM
KETH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Joe Furganic	KCA
Joseph Hoel	KDHK
Hesa Bray	KDHE
Patrick Stealey	Ks Acad Fam. Physicians
Rich Gutman	Health Midwest
Michelle Peterson	Ks. Gov Consulting
Stacy Empson	Hein, Ebert & Weir
Bobi Williams	Ks. Pharmacists Assoc
Chuck Kisting	KOA
Gary Robbins	Ks Opt Assn
Mike Meacham	NCA- KS
Dede Gish Parjada	Applied Measurement Professionals
David Hanzlick	KS Dental Ass'n
Jennifer A. Smith	Applied M.P.
Bob Crouty	AMP, Lenexa, KS
Joyce Miller	AMP, Lenexa, KS
Vicki Allen	Ks Health Care Assn.

INTRODUCTION

In the 1970s the Kansas legislature was besieged with requests from health care professions or occupations to be licensed by the state. The legislature felt that it needed a mechanism to review all pertinent information in order to determine whether the benefits to society outweighed the societal costs of credentialing a certain group. Hence, a credentialing review program was statutorily developed in 1980. The statutes placed the responsibility of administering the credentialing review program on the Kansas Department of Health and Environment.

This program allows health care professional or occupational groups seeking to be credentialed (licensed or registered) by the State of Kansas to submit a credentialing application to the Secretary of Health and Environment. The credentialing application is taken through an extensive review process involving a technical committee and the Secretary.

The purposes of the credentialing review program are: (1) to provide the legislature with a thorough analysis of the credentialing application and information gathered at the technical committee meetings, and (2) to make recommendations to the legislature on whether a group should be credentialed and, if so, at what level of credentialing or other means is necessary to protect the health, safety, and welfare of the public.

The reasons professions or occupations seek credentialing regulations often include a desire to upgrade the status of the profession or occupation, limit practice in a certain field, or enhance earning potential. **However, the state looks at whether a profession or occupation should be credentialed on the basis of protecting the public's health, safety, and welfare.** To make this determination, the 1986 legislature developed nine statutory criteria that an application must address. These nine criteria pertain to the issues of whether a need for protection from the unregulated profession or occupation exists and what effects might credentialing of the profession or occupation have on society (i.e., effects on costs of health care to consumers, other health care professions, etc.).

The end product of the credentialing review program is a final report by the Secretary specifying facts and findings on whether the statutory criteria are met, recommendations on whether a group should be credentialed, and, if so, what measures are appropriate to protect the public. Attached to the final report is the report and recommendations from the technical committee. These reports are forwarded to the legislature. All of the statutory criteria must be found met and a determination that a need for credentialing exists before a recommendation for credentialing can be made. The statutes also dictate the conditions that must be met in order to determine the appropriate actions (licensure, registration, and/or other statutory requirements) required to protect the public.

The credentialing review program is only advisory to the legislature; legislative action is required before a profession or occupation can be credentialed by the state. Health care groups may first approach the legislature with their credentialing requests or may first submit a credentialing application to be reviewed through the credentialing review program prior to seeking legislation. The legislature may also refer groups to go through the program.

The chart on the next page depicts the credentialing review program's process as outlined by the state statutes (KSA 65-5001, et seq., as amended) and the rules and regulations (KAR 28-60-1, et seq., as amended). (See Appendix A for a copy of the statutes and Appendix B for the rules and regulations.)

Summary of Credentialing Review Program's Procedures

In summary, the credentialing review program requires an applicant to first submit a notice of intent to apply to the Secretary for approval. The Secretary determines by the notice whether the profession or occupation requesting credentialing consists of health care personnel. If approved, the applicant may submit a credentialing application. Accompanying the application must be an application fee of \$1,000 and 100 signatures from Kansas residents supporting the credentialing of the profession or occupation. The application is reviewed by staff of the Kansas Department of Health and Environment for completeness and then reviewed by a seven-member technical committee selected by the Secretary.

The technical committee conducts at least four fact-finding meetings, which include one public hearing. The technical committee produces a very thorough analysis of the application and information gathered at the meetings. The technical committee submits to the Secretary its report and recommendations on whether the profession or occupation requesting credentialing meets all statutory criteria and standards¹ and whether a need for credentialing exists. If all of the criteria are met and a need for credentialing exists, then the technical committee recommends the appropriate action to protect the public from specified harm. The Secretary reviews all of the information gathered at the meetings and the technical committee's report and submits a final report and recommendations to the legislature.

The applicant then needs to have a bill introduced to the legislature and the legislature determines whether to credential and at what level to credential the health care professional or occupational group.

¹Standards interpret portions of a criterion and provide a way to measure whether that portion of the criterion is met. (See pages 9-12 for a description of criteria and standards.)

FLOW CHART: CREDENTIALING REVIEW PROGRAM

Occupational group seeking credentialing
submits a LETTER OF INTENT TO APPLY



KDHE* Secretary determines if group is a health care personnel as defined by KSA 65-5001 et seq



KDHE Secretary invites group
to submit an application



KDHE Secretary informs group
that they do not meet definition



If the group disagrees with the decision, it may appeal to the KDHE Secretary



KDHE Secretary reevaluates decision



Invites group to submit application



Denies Letter of Intent



Occupation group submits
APPLICATION, FEE, AND SIGNATURES TO KDHE SECRETARY



KDHE staff review application for completeness



Technical committee conducts the following meetings to determine if the group meets
statutory criteria and to make a report on findings and recommendations

1. Applicant Review Meeting
2. Analysis Meeting
3. Public Hearing
4. Final Findings and Recommendations



KDHE Secretary examines all information, findings, and recommendations and makes final report and recommendations



Final report and recommendations submitted to the legislature



Requires legislative action for an occupation to be credentialed

HOUSE H&HS COMMITTEE
3 - 7 - 1995
Attachment 3

APPLICATION PROCEDURES

The 1986 legislature established nine criteria that the profession or occupation must meet before the technical committee and the Secretary can make a recommendation for credentialing. KSA 65-5003(d) further states that the applicant has the burden of bringing forth evidence to determine if the criteria are met. Furthermore, the evidence must be more than hypothetical examples or testimonials.

The purpose of the application questions is to acquire appropriate information for the technical committee and the Secretary so they may determine if the criteria are met.

Criteria and Standards

In 1987 the Statewide Health Coordinating Council (SHCC)² and the Kansas Department of Health and Environment developed standards which provide further interpretation of a portion of a criterion to assist the technical committee and the Secretary in making a decision on whether that portion of the criterion is met. Standards are defined as conditions set that the technical committee and the Secretary must apply to determine whether a portion of the criterion is met (KAR 28-60-9). Standards were developed only where a portion of the criterion required further interpretation; therefore, not all of the issues of a criterion have standards. A majority of the criteria and most elements of a given criterion are self-explanatory and, therefore, do not require elaboration for a decision to be made.

Please study the following statutory criteria and corresponding standards carefully to develop a thorough understanding of the information required in the application in order to provide sufficient evidence that the criteria have been met.

- I. **STATUTORY CRITERION:** The unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public and the potential for such harm is recognizable and not remote.
 - A. **STANDARD:** Harm to the public's health, safety, and welfare shall be present in at least one of the following forms:
 1. The dangerous nature of the functions or procedures of the profession or occupation;
 2. The dangerous nature of devices or substances used in performing the functions or procedures of the occupation; OR
 3. The frequent exercise by a practitioner of an observable degree of independent judgment when identifying or evaluating consumers' problems, planning, or coordinating their care or directly delivering their care.
 - B. **STANDARD:** Harm shall be documented through the following:
 1. Expert testimony or consumer testimony; AND

²SHCC was an advisory body to the Kansas Department of Health and Environment until May 1987. SHCC was instrumental in developing the program.