Scope of Practice Review Process

Ronald L. Scott
rscott@central.uh.edu

Legislative battles over nonphysician health care providers’ scope of practice privileges have been common in recent years. For example, Oklahoma enacted legislation in 2004 allowing optometrists to perform some laser surgery procedures. A VA (Veterans Affairs) hospital in Kansas then authorized an optometrist licensed in Oklahoma to perform laser surgeries. Because of objections raised by the AMA, ophthalmologists, and veterans’ groups the Department of Veterans Affairs rescinded the authorization.

Some states are considering a more objective procedure to review proposed changes in scope of practice for nonphysician health care providers. Texas House Bill 2706\(^1\) would establish a Health Professions Scope of Practice Review Commission (“Commission”). The Commission would review any proposed changes to the scope of practice of health care providers and make recommendations to the legislature.

Under HB 2706, any person who seeks to change the scope of practice of a health profession would be required to notify the relevant licensing board and request a hearing on the proposal. The licensing board is charged with collecting data on the proposal, conducting a technical assessment of the proposal, and providing the board’s analysis and recommendations on the proposal.\(^2\)

The Commission then reviews the licensing board’s report in order to provide recommendations to the legislature. The Commission must consider the potential benefits and harms of the proposed change to the public health, safety and welfare, together with the economic impact of the change on the delivery of health care. The Commission is asked to consider whether potential benefits outweigh potential harms, and the extent the change would “affect the availability, accessibility, delivery, and quality of health care in this state . . .”\(^3\)

Under HB 2706, the Commission is also charged with reviewing “other states and countries that have a scope of practice for the relevant profession that is identical or similar to the proposed change and any available information on how that scope of practice has affected the quality and cost of health care in the state or country. . .”\(^4\) The Commission must report its findings and recommendations biannually to the Governor,

\(^2\) Id. § 113.101.
\(^3\) Id. § 113.102.
\(^4\) Id.
Lieutenant Governor, Speaker of the House of Representatives, and relevant Senate and House committees.⁵

New Mexico is considering similar legislation,⁶ and Arizona and Iowa have already enacted legislation addressing a scope of practice review process. Arizona has a statute whose purpose is “to establish guidelines for the regulation of health professions which are not regulated by this state before the effective date of this act and for those regulated professions that seek to increase their scope of practice.”⁷

The Arizona legislature has established two principles regarding scope of practice. First, “the legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for this state to protect the interests of the public by restricting entry into the profession.”⁸ Further, “[i]f such a need is identified, the regulation adopted by this state should be set at the least restrictive level consistent with the public interest to be protected.”⁹ Second, the Arizona legislature doubts the appropriateness of mandated continuing education, stating that continuing education mandates “have not been proven to be an effective method of guaranteeing or improving the competence of licensees or the quality of care received by the consumer.”¹⁰

Under the statute,¹¹ any party that proposes to increase the scope of practice of a health profession must submit a report to the legislature on or before September 1 prior to the start of the legislative session.¹² If the report proposes to increase the scope of practice of a profession, copies of the report are sent to the relevant regulatory board for review, and the regulatory board makes recommendations if so requested by the legislative committees that will review the proposed legislation.¹³

The Arizona statute sets forth a number of factors that must be addressed in the report when increased scope of practice is sought.¹⁴ Such factors include a definition of the problem, why an increase in scope of practice is necessary, the extent to which consumers will benefit from the proposed change, and evidence that the profession’s regulatory board “has functioned adequately in protecting the public.”¹⁵ Applicants seeking to expand a profession’s scope of practice must also address “the extent to which an increase in the scope of practice may harm the public,”¹⁶ including the extent to which

---

⁵ Id. § 113.103.
⁷ ARIZ. REV. STAT. ANN. § 32 Notes and Annotations, citing Laws 1985, Ch. 352, § 1(West, WESTLAW 2004).
⁸ Id.
⁹ Id.
¹⁰ Id.
¹¹ ARIZ. REV. STAT. ANN. § 32-3101-3108 (West, WESTLAW 2004).
¹² Id. § 32-3104.
¹³ Id.
¹⁴ Id. § 32-3106.
¹⁵ Id.
¹⁶ Id.
an increased scope of practice will restrict entry into practice. Finally, the report must address how the proposed change will affect migration of health care professionals from other states and the economic implications to the state and to the public of increasing the scope of practice.\(^\text{17}\)

In 1997, Iowa authorized a pilot project to establish scope of practice review committees.\(^\text{18}\) The Iowa general assembly directed the Iowa department of public health to “conduct a study of utilizing scope of practice review committees to evaluate and make recommendations to the general assembly, and to the appropriate licensure boards”\(^\text{19}\) on a variety of scope of practice issues, including requests from health care providers to expand the scope of practice of a health profession.

In Iowa, scope of practice review committees make recommendations to the general assembly based on a set of standards and guidelines. The committees review whether the proposed change in scope of practice will result in a danger to the public, and whether the change will benefit the health, safety, or welfare of the public.\(^\text{20}\)

Committee membership is limited to five members including one member “representing the profession seeking . . . a change in scope of practice; one member of the health profession directly impacted by . . . the proposed change, one impartial health professional . . . , and two impartial members of the general public.”\(^\text{21}\)

The pilot project has been extended by subsequent legislation, and is currently in effect until June 30, 2005.\(^\text{22}\) The Iowa Department of Public Health must submit annual progress reports to the general assembly and the governor. Such reports must “include any recommendations for legislative action as a result of review committee activities.”\(^\text{23}\) The Department of Public Health is authorized to “contract with a school or college of public health in Iowa to assist in implementing the project.”\(^\text{24}\)

Administrative regulations issued by the Iowa Department of Public Health have further defined the activities of scope of practice review committees.\(^\text{25}\) Under the regulations, any committee of the Iowa general assembly “may request a review to evaluate proposed legislation or administrative rules establishing a regulated health profession, modifying the scope of practice of an existing profession, or resolving disputes between health profession boards.”\(^\text{26}\)

\(^{17}\) Id.
\(^{18}\) 1997 Iowa Legis. Serv. Ch. 203 (West, WESTLAW).
\(^{19}\) Id.
\(^{20}\) Id.
\(^{21}\) Id.
\(^{22}\) 2004 Iowa Legis. Serv. Ch. 1175, S.F. 2298 (West, Westlaw).
\(^{23}\) Id.
\(^{24}\) Id.
\(^{25}\) Iowa Admin. Code r. 641-194.1 to 194.9 (West, WESTLAW 2004).
\(^{26}\) Id. r. 641-194.5.
A 2004 year-end report by the National Conference of State Legislators’ Health Policy Tracking Service summarized scope of practice legislation from 1999 through 2004 for nonphysician health care providers. Nurses, dentists, optometrists, physician assistants, dental hygienists, pharmacists, physical therapists, podiatrists, psychologists, and respiratory care practitioners have all sought to convince state legislators to expand their scope of practice privileges.

A draft report by the Federation of State Medical Boards supports efforts to evaluate requested scope of practice changes “fairly and effectively so that appropriate decisions may be made on behalf of the citizens of the State.” The draft report recommends that state legislators review several elements when considering scope of practice changes, including patient safety, financial incentives for proposed changes, and accountability and liability issues. Some nonphysician providers have criticized certain aspects of the draft report. The American Medical Association supports model legislation to deal with nonphysicians’ scope of practice “reflecting the goal of ensuring that non-physician scope of practice is determined by training, experience, and demonstrated competence.”

---

28 Id.
30 Id. at 2.