Legislative Template: State-based Scope of Practice Review Committees

This template provides an overview of various potential elements of legislation and/or regulation to address the creation of state-level scope of practice review committees.

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II. Overview

State legislatures are routinely overwhelmed with the number of scope of practice proposals they are asked to consider. Often times legislators do not have available to them a thorough, professional and independent understanding of the health and economic implications of such proposals. The creation of a state-level scope of practice review committee, that assesses scope of practice initiatives prior to their introduction at the legislative or regulatory rule-making level, may serve to expose such initiatives to the scrutiny of multiple health care disciplines. These committees have the potential to encourage debate by those most appropriately positioned to consider such issues. They provide a procedure for objective review of proposed changes in the scope of practice of nonphysician practitioners licensed in their state to ensure that the changes contribute to the improvement of the overall health of the state’s citizens.

Several states have passed legislation similar to the proposed model bill, most notably Arizona, Connecticut, Maine and Nebraska. While Arizona has experienced much success with their law, other states’ experiences have been more tempered. In addition to these laws, New Mexico and Texas have seen legislation introduced on this issue in the last 2-3 years. Each one of these bills (AZ, CT, ME, NE, NM, TX) is unique and state specific. For example, each state has addressed the composition of the scope of practice review committee in
a different manner (i.e. Arizona’s committee is primarily composed of legislators, while Texas’ committee is a mixture of legislators, state agency leaders, academics and public members, while Connecticut’s committee is composed of individuals representing health care professionals directly affected by the proposed change in scope). As a result, it is strongly recommended that any state medical association considering this type of legislation take into account its unique state needs, political climate, etc., when determining committee composition and other provisions contained in such legislation.

The AMA does not have model state legislation that addresses the creation of scope of practice review committees, nor is there specific AMA policy that addresses this issue. This template provides the Federation with a proactive mechanism that establishes review committees that span the authority of more than one health professional regulatory board in the state. Notably, the template combines the “best of” provisions from legislation introduced on this issue to date and allows for flexibility when defining the composition of the scope of practice review committee.

In this advocacy tool, we have endeavored to highlight various state laws that have attempted to compose scope of practice review committees. We hope that the information in this template will be a useful tool for states that wish to advocate for such legislation.

III. Legislative purpose

The following is a compilation of the “best of” provisions from all legislation introduced on this issue. This is meant only as an example and can be altered on an as needed basis:

*The Legislature hereby finds and declares that:*

a. The Legislature is routinely overwhelmed with the number of proposals it is asked to consider that recommend changes in healthcare practitioner scopes of practice.

b. Oftentimes legislators may not have available to them a thorough, professional and independent understanding of the health and economic implications of such recommendations on an individual basis.

c. Currently, when a healthcare practitioner scope of practice change is proposed, the [NAME OF STATE] Legislature must consider many complex issues in a relatively short time frame.

d. Effective legislative decision-making is dependent on each legislator having access to balanced, thoroughly researched information.

e. The purpose of this Act is to:

   i. Provide a procedure for objective review of proposed changes in the scope of practice of healthcare practitioners licensed in this state to ensure that the changes contribute to the improvement of the overall health of people in this state; and

   ii. Establish a committee to make recommendations to the [INSERT NAME OF STATE] Legislature.
IV. Application

a. General

The legislation should cover any health professional group or organization or individual that proposes to increase the scope of practice of a health profession.

b. Examples of legislative language

“‘Applicant group’ means any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated or that proposes to increase the scope of practice of a health profession.” ARIZ. REV. STAT. ANN. § 32-3101 (1).

“Any person or entity, acting on behalf of a health care profession that seeks to establish a new scope of practice or change the profession’s scope of practice...” CONN. GEN. STAT. ANN. § 19a-16d(a).

“‘Applicant group’ shall mean any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated or that proposes to increase the scope of practice of a regulated health profession.” NEB. REV. STAT. § 71-6204.

“...A member of a licensing board, a licensee or the licensing board or any other person seeking a change in the scope of practice of a health profession...” NM SB 381 (First Session, 2005) (Sec. 4(A)).

“...A person who seeks to change the scope of practice of a health profession, including a person who is a member of the relevant licensing entity or a license holder in that profession...” TX HB 2706 (2005) (Sec. 113.101(a)).

“Any professional or occupational group or organization, any individual or any other interested party which proposes the regulation of any unregulated professional or occupational group or organization, or who proposes to establish, revise or expand the scope of practice of a regulated profession or occupation...” WV SB 214 (March 6, 2012)

V. Definitions

Every state will have to determine what definitions it needs to provide in order to ensure this legislation is clear and unambiguous. Each statute or piece of legislation discussed in this template differs in this regard.

The following is a sampling of definitions that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation:

a. “Applicant group” means any health professional group or organization, any individual or any other interested party that proposes to increase the scope of practice of its profession.

b. “Committee” means the Scope of Practice Review Committee.
c. “Health profession” means a health-related activity or occupation for which a person must hold a license under this title.

d. “License” includes a license, certificate, registration, permit, or other authorization issued by a licensing entity.

e. “Licensing entity” means an agency, board, department, commission, or other entity that issues a license under this title to practice a specific health profession.

f. “Scope of practice” means those activities that a person licensed to practice a health profession is permitted to perform, as prescribed by the appropriate statutes and by rules adopted by the appropriate licensing entity.

VI. Requirements

a. Composition of the scope of practice review committee

i. Considerations

1. When establishing a scope of practice review committee, a state should ensure that it is administratively attached to a specific state agency.

2. The members of the Committee ought to be defined in statute.¹

3. If a state decides to include, as a member of the Committee, an employee of a state agency representative of an institution of higher education, that member ought to be designated by that agency or institution.

4. States should consider allowing their respective governor to appoint any public members of the Committee.

5. States should consider naming the commissioner of the appropriate state department or agency as the chair of the Committee.

ii. State approaches

1. Arizona: “...consisting of five members of the senate appointed by the president of the senate, one of whom shall be a member of the senate appropriations committee, and five members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the house of representatives appropriations committee. Selection of members shall be based on their understanding and interest in legislative audit oversight functions. Not more than three appointees of each house shall be of the same political party. The president and the speaker shall designate one of their

¹ The issue of committee composition is a critical one. Several states (AZ, CT, NE, NM, TX) have approached the committee composition issue, which the resulting legislative language differing significantly from one state to the next. Any state medical association considering this type of legislation needs to consider its unique state needs, political climate, etc., when determining committee composition.
appointed members as chairman of their respective delegation. The chairman of
the audit committee shall serve for the term of each legislature. The
chairmanship of the audit committee shall alternate... The president of the senate
and the speaker of the house of representatives shall also serve as ex officio
members of the committee...”

2. Connecticut: “[T]he Commissioner of public Health shall, within available
appropriations allocated to the department, establish and appoint members to a
scope of practice review committee for each timely scope of practice request
submitted to the department.... Committees established pursuant to this section
shall consist of the following members: (1) Two members recommended by the
requestor to represent the health care profession making the scope of practice request;
(2) two members recommended by each person or entity that has
submitted a written impact statement... to represent the health care profession
directly impacted by the scope of practice request; and (3) the Commissioner of
Public Health or the commissioner’s designee, who shall serve as an ex-officio,
nonvoting member of the committee. The Commissioner of Public Health or the
commissioner’s designee shall serve as the chairperson of any such committee.
The Commissioner of Public Health may appoint additional members to any
committee established pursuant to this section to include representatives from
health care professions having a proximate relationship to the underlying request
if the commissioner or the commissioner’s designee determines that such
expansion would be beneficial to a resolution of the issues presented.”

3. Nebraska: “The director [of Regulation and Licensure] with the advice of the
[state] board [of health] shall appoint an appropriate technical committee to
examine and investigate each application. The committee shall consist of six
appointed members and one member of the board designated by the board who
shall serve as chairperson of the committee. The chairperson of the committee
shall not be a member of the applicant group... or any health profession which is
directly or indirectly affected by the application. The director shall ensure that
the total composition of the committee is fair, impartial, and equitable. In no
event shall more than two members of the same regulated health profession, the
applicant group... serve on the technical committee.”

4. New Mexico: “The commission responsible under this construct is the New
Mexico Health Policy Commission, which is an independent State agency whose
mission is to improve access and quality health care for all New Mexicans by
providing timely, relevant health care information and analysis on health policy
research and planning issues. This commission has the authority to appoint an
“...ad hoc review panel of sufficient numbers and expertise to review and make
recommendations on the proposed change. Each panel: (1) shall include one
board member of the licensing board for the health profession from which the

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2 ARIZ. REV. STAT. ANN. § 32-3101 et seq.
3 CONN. GEN. STAT. ANN. § 19a-16(a)
4 NEB. REV. STAT. § 71-6201 et seq. Notably, Nebraska’s law provides that the technical committee file a report with
the state board of health and the director of regulation and licensure. The state board of health then files a separate report
with the director of regulation and licensure. Finally, the director of regulation and licensure prepares a final report for
various members of the Legislature.

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proposed change in scope of practice originates; (2) may include one additional member from the profession from which the proposed change originates who shall be from the professional association of that profession; and (3) shall have at least one-fourth of its membership as individuals who have no economic interest in the profession originating the request for a change in scope of practice...”  

5. Texas: “(a) The commission consists of the following members: (1) the commissioner of the Department of State Health Services; (2) an employee of the Legislative Budget Board who works in the Texas Performance Review section; (3) a representative of the Center for Public Policy Dispute Resolution at The University of Texas School of Law; (4) a representative of the Health Law and Policy Institute at the University of Houston; (5) an employee of the Texas Legislative Council who has expertise in scope of practice issues; and (6) two representatives of the public. (b) A member who is an employee of a state agency or representative of an institution of higher education shall be designated by that agency or institution. (c) The governor shall appoint the public members of the commission.”

6. West Virginia: “The committee is composed of fifteen members as follows, five members of the Senate, to be appointed by the President, with no more than three being from the same political party, five members of the House of Delegates, to be appointed by the Speaker, with no more than three being from the same political party; and Five citizen members from this state who are not legislators, public officials or public employees, to be appointed by the Speaker of the House and the President of the Senate, with no more than three being from the same political party and at least one of whom shall reside in each congressional district of this state. The committee has two cochairs, one selected by the President of the Senate from the members appointed from the Senate and one selected by the Speaker of the House of Delegates from the members appointed from the House of Delegates.”

b. Restriction on public membership

Texas’ legislation, in Sec. 113.053, places restrictions on public membership. This is an important component to this legislation. It ensures a balanced composition of this Committee. The following are some examples of possible language – all taken from Texas’ HB 2706:

i. “In this section, “[NAME OF STATE] trade association” means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

ii. A person may not be a public member of the Committee if:

5 NM SB 381 (First Session, 2005)  
6 TX HB 2706 (2005)  
7 W. Va. Code, § 4-10-4
1. The person is an officer, employee, manager, or paid consultant of a [NAME OF STATE] trade association in the field of health care;

2. The person’s spouse is an officer, manager, or paid consultant of a [NAME OF STATE] trade association in the field of health care;

3. The person is required to register as a lobbyist under [CITATION OF APPROPRIATE STATE STATUTE] because the person’s activities for compensation on behalf of a health profession related to the activities of the Committee; or

4. The person has a direct financial interest in a health care profession or is employed within the health care industry.

iii. Examples of other legislative language

Some states, rather than address the issue of public membership in a separate section of the legislation, simply define “public member” in the definitions section. Examples of this tactic are as follows:

1. “‘Public member’ means an individual who is not and never has been a member or spouse of a member of the health profession being regulated and who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.” ARIZ. REV. STAT. ANN. § 32-3101(10).

2. “Public member, defined. Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.” NEB. REV. STAT. § 71-6216.

c. Compensation

i. General

“When considering this legislation, states ought to consider requiring that any member of the Committee not receive compensation for service as a Committee member.” TX HB 2706 (2005) (Sec. 113.055).

“All members of the committee are entitled to compensation and reimbursement for expenses as authorized for members of the Legislature in accordance with the performance of their interim duties.” W. Va. Code, § 4-10-4

ii. Examples of other legislative language

“Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections...” NEB. REV. STAT. § 71-6227(3).
“Any member of such committee shall serve without compensation.” CONN GEN. STAT. ANN. § 19a-16e(a)

VII. Creation of the review panel / subcommittee working group

a. General

States considering the development of this type of legislation, should consider allowing the Committee to create a review panel, subcommittee or working group to assist in performing the Committee’s duties.

b. Points of interest

i. It ought to be mandated that any such panel/subcommittee/working group ought to consist of persons other than members of the Committee.

ii. Also, the name, occupation, employer, and community of residence of each member of the review panel/subcommittee/working group must be made part of the record of the Committee and detailed in any report resulting from the work of the review panel/subcommittee/working group. TX HB 2706 (2005) (Sec. 113.056).

VIII. Applicants for increase in scope of practice; factors

Each statute or piece of legislation discussed in this template differs in this regard. The following is a sampling of factors that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation.

This language is a compilation of the “best of” provisions found in existing law and/or legislation.

a. Applicants, applicant groups, members of a licensing board, a licensee of the licensing board or any other person seeking a change in the scope of practice of a healthcare practitioner profession shall notify the respective licensing board and request a hearing on the proposal.

b. This request shall be submitted on or before August 1 prior to the start of the legislative session for which the legislation is proposed.

c. The licensing board, upon receiving such request, shall notify the Committee and shall:

i. Collect data, including information from the applicant and all other appropriate persons, necessary to review the proposal;

ii. Conduct a technical assessment of the proposal, if necessary, with the assistance of a technical review panel established for that specific purpose, to determine whether the proposal is within the profession’s current scope of practice; and

iii. Provide its analysis, conclusions and any recommendations, together with all materials gathered for the review, to the Committee.

d. The person or entity seeking the change in scope of practice shall provide the licensing board with all information requested, including:
i. A summary of state and/or federal laws that govern the health care profession making the request;

ii. A summary of the state’s current regulatory oversight of the health care profession making the request;

iii. A definition of the problem and why a change in scope of practice is necessary including the extent to which consumers need and will benefit from practitioners with this scope of practice;

iv. The extent to which the public can be confident that qualified practitioners are competent including:
   
   1. Evidence that the profession’s regulatory board has functioned adequately in protecting the public;
   
   2. Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or endorse standards or a code of ethics; and
   
   3. Evidence that state approved educational programs provide or are willing to provide core curriculum adequate to prepare practitioners at the proposed level.

v. The extent to which the proposed scope of practice increase may harm the public including the extent to which the proposed increase will restrict entry into practice and whether the proposed increase requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure as those in this state;

vi. The cost to [NAME OF STATE] and to the general public of implementing the proposed scope of practice increase; and

vii. A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation or the establishment, revision or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy.

viii. A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public.

ix. Any proposal which contains a continuing education requirement for a health profession shall be accompanied by evidence that such a requirement has been proven effective for the health profession.

IX. Committee scope of practice reviews and analysis

Each statute or piece of legislation discussed in this template differs in this regard. The following is a sampling of requirements related to a Committee’s review and analysis that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation.
This language is a compilation of the “best of” provisions found in existing law and/or legislation.

a. Upon receipt of notice, as required under Section 4 (c) (b) of this Act, the Committee shall review and make recommendations on the proposed scope of practice change.

b. In performing its duties under this Section, the Committee shall:

   i. Familiarize itself with the Committee’s rules on procedures and criteria for such reviews;

   ii. Ensure appropriate public notice of its proceedings;

   iii. Invite testimony from persons with special knowledge in the field of the proposed change;

   iv. Assess the proposal using the following criteria:

      1. Whether the proposed change could potentially harm the public health, safety, or welfare;

      2. Whether the proposed change will benefit the health, safety and welfare of health consumers;

      3. What economic impact on overall health care delivery the proposed change is likely to have;

      4. Whether potential benefits of the proposed change outweighs potential harm;

      5. Whether the public can be adequately protected by other means in a more cost-effective manner; and

      6. The extent to which the proposed changes will affect the availability, accessibility, delivery and quality of health care in [INSERT NAME OF STATE].

   v. Evaluate the quality and quantity of the training provided by health care professional degree curricula and post-graduate training programs to healthcare practitioners in active practice with regard to the increased scope of practice proposed;

   vi. Whether the practice of the profession or occupation requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational competence

   vii. Determine whether a need exists for the proposed scope of practice change;

   viii. Draft a report that includes findings from subparagraph (iv) above, as well as:

      1. A review of other states 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;
2. A review of any statutory or regulatory changes that were required in the other state to implement the identical or similar scope of practice change;

3. An objective and balanced review that examines the extent to which the potential benefits predicted by proponents of the change or concerns raised by opponents of the change materialized after the scope of practice change took effect in the other state;

4. This report must include evidence-based legislative recommendations for each proposed scope of practice change submitted to the Committee; and

ix. The Committee shall report, not later than December 31 of each year, the results of its review to the:

1. Governor;

2. Lieutenant Governor;

3. Speaker of the House of Representatives;

4. President of the Senate; and

5. standing committees of the [NAME OF STATE] Senate and House of Representatives having jurisdiction over [APPROPRIATE ISSUES, I.E. STATE FINANCE, HEALTH AND HUMAN SERVICES, ETC.].

X. Failure to submit

Any state considering this type of legislation ought to address the issue of an applicant groups failure to submit their legislative proposal for a scope of practice expansion by the deadline set forth in this legislation.

An example of this type of language is as follows: “[a]ny bill that proposes to expand, contract or change the scope of practice of a healthcare practitioner profession that was not submitted to the Committee will not be considered by [NAME OF STATE] Legislature.”

XI. Other committee duties

States ought to consider mandating that as the Committee determines appropriate, the Committee ought to conduct other reviews and perform research on issues related to the scope of practice of a health profession, including retrospective reviews of scope of practice changes.

In addition, this Committee ought to be allowed to provide assistance to the respective states’ Legislature, on an as needed basis, with regard to a proposed health profession scope of practice change.

This Committee should also provide staff services to any review panel/subcommittee/working group established under this law.

Finally, states ought to consider allowing these Committees to have the power of legislative subpoena. ARIZ. REV. STAT. ANN. § 41-1279(C)(3).
XII. Notice and public hearing

States considering this type of legislation ought to legislate the following to ensure an open and fair process:

a. that the Committee shall notify, on an annual basis, each licensing entity and, whenever possible, each professional association and group of health professions, of both the Committee’s duties under this Act; and

b. that a public hearing conducted under this Act shall be open to the public and is subject to the requirements of the appropriate state statute.