Executive Summary

CRITICAL ISSUES FACING HEALTH PROFESSIONS REGULATION

Health care workforce regulation plays a critical role in consumer protection. For most of this century, the state regulation of health care occupations and professions has established a minimum standard for safe practice and removed the egregiously incompetent. As market and regulatory forces shape the future of health care, particularly the location and content of practice, the structures and functions of state professional regulation must continue to provide consumers with important protections leading to safe and effective practice.

This ostensible goal of professional regulation – to establish standards that protect consumers from incompetent practitioners – is eclipsed by a tacit goal of protecting the professions' economic prerogatives. This dichotomy of goals has created serious shortcomings that include limited public accountability, support for practice monopolies that limit access to care and lack of national uniformity. These shortcomings are further exacerbated by the current changes in health care.

To become a viable element of consumer protection in health care, professional regulation must demonstrate that it unequivocally serves the public good. This will require that it evolve at the same rate as the economic, political, intellectual and technological environments in which its licensees work. In this context of consumer protection, regulators, legislators, policy makers and health care professionals face three priority areas that present the most challenges to, and promise for, improving professional regulation: health professions boards and governance structures, scopes of practice authority, and continuing competence.

REGULATORY BOARDS AND GOVERNANCE STRUCTURES

Key to the current professional regulatory scheme is the professional board. With few exceptions, an individual and independent board is established for each regulated profession in each state. Although charged with consumer protection and despite open meeting laws, board processes are generally unknown to the public. At a time of increasing demands for credible and accountable consumer protection, some fear that boards may become relegated to a sideline role in shaping public policy that serves consumer interests.

There is little coordination of effort among the individual boards or among the states. This lack of coordination, particularly at a time of technological and marketplace change, produces discordant results such as underused professionals, competition for scopes of practice, limited professional mobility, and restricted access to care. Furthermore, in an era when information is crucial to public safety and effective markets, boards are insufficiently equipped and financed to collect, manage and publish information that would be useful to the public.

SCOPES OF PRACTICE AUTHORITY

The legal authority to provide and be reimbursed for health care services is tied to state statutes generally referred to as practice acts, which establish professional "scopes of practice." These practice acts, often different from state to state, are the source of considerable tension among the professions; the resulting "turf battles" clog legislative agendas across the country. Caught in the middle of these battles, legislators must decide whether new or unregulated disciplines and occupations should be regulated and whether professions currently regulated should be granted expanded practice authority.

These battles are costly and time-consuming for the professions and for the state legislators involved. The more critical problem, however, is the decision-making process itself which is distorted by campaign contributions, lobbying efforts and political power struggles. In this environment, practice act decisions may not be based on evidence regarding quality of care and the potential impact on health care costs and access. Such decisions (regarding who can competently provide what types of care) demand a more empirical foundation and a less political venue.

CONTINUING COMPETENCE

Ensuring the competence of health care professionals throughout their careers is a persistent challenge to both public and private sectors. Few would disagree with the assessment that it is possible for a practitioner's competence to diminish years after initial licensure and that continuing education credits do not guarantee competence. Although some of the allied health professions boards (e.g. physician assistants and emergency medical technicians) do

require periodic demonstrations of competence as conditions of continued licensure, most of the health professions boards (including boards of medicine, nursing and pharmacy) do not.

The monumental shift to new reimbursement and delivery structures has highlighted quality of care issues. Underlying managed care's critics and legislative restraints is the concern that high quality health care – and a professional's competence to provide it – may suffer from too much attention on reducing costs. Requiring demonstrations of competence during professionals' careers could shift attention to the quality of care delivered to patients and clients.

Legislatures have not allowed or required regulatory boards to play a role in requiring continuing competence demonstrations of their licensees throughout their careers. The private sector has been far more active in this arena. Voluntary professional associations and private certification and credentialing boards have established and continue to perfect standards, goals and evaluation measurements to meet the demands for competence throughout one's professional practice. These models are good starting points but will need additional development. In addition, the role of the private sector can only go so far. Practitioners whose credentials are not routinely reviewed by private systems may fall through the cracks without attention by the states.

A FUTURE VISION OF HEALTH CARE WORKFORCE REGULATION

The Pew Health Professions Commission envisions a future regulatory system for the health professions that will undergo the following transformations to better serve the public interest:

A move towards national standards – Health care workforce regulation, along with education and credentialing, is moving in the direction of national standards. This national uniformity may be led by the federal government, agreements among the states or national professional associations. For regulation, the most dramatic effect will be standard scopes of practice authority and continuing competence requirements for each profession across the country.

Significant overlap of practice authority among the health professions – Driven by the professions, new information and technologies, and innovation in the workplace, traditional boundaries – in the form of legal scopes of practice – between the professions have blurred.

This trend will continue to pressure the regulatory system to accommodate the demand for flexibility while ensuring that the public's safety is protected. Decisions regarding scopes of practice and continuing competence requirements therefore must be based on comprehensive evidence regarding the accessibility, quality and cost-effectiveness of care provided to the consumer.

New venues and participants for regulatory policy-making – The representation of various parties at health care decision-making tables is changing. Legislatures may not be the best venue to decide technical professional matters as lobbying, campaign contributions and allegiance to constituents often distort rational policy development. A more impartial venue with increased representation of interested parties, particularly consumers of health care services, will better support regulatory policy-making that is accountable, balanced and based on empirical evidence.

Integration of regulatory systems that protect health care consumers – Efforts to regulate health care plans, care delivery sites and health care professionals historically have been independent, both within and across states. This lack of coordination and integration among systems has resulted in inefficiencies and inadequate protection of the public. For example, poor coordination restricts practitioners who might competently provide care, particularly across state borders. Poor coordination also allows incompetent practitioners to move from health plan to health plan and from state to state. Today's market trends to integrate the various regulatory and delivery systems will mean that health professions regulation will be scrutinized and evaluated for its strengths and weaknesses with an eye toward consolidating systems where appropriate to better serve the public.

Increased regulatory focus on quality of care and competence assurance – Concerns over market forces in health care illuminate the need to strengthen all means of ensuring consumer protection. The resulting integration of regulatory entities and increased consumer participation in policy making will contribute to regulations that emphasize quality assurance, continuing competence demonstrations, and cooperation among the professions.

SUMMARY OF RECOMMENDATIONS

❖ *Indicates a legislative implementation template in Appendix A*

Here, the Pew Commission focuses on three issues of critical importance identified in the 1995 report: professional boards and governance, scopes of practice authority and continuing competence. These three issues generate the most controversy and present the most challenge to crafting improvement in professional regulation.

REGULATORY BOARDS AND GOVERNANCE STRUCTURES

Recommendation 1 Congress should establish a national policy advisory body that will research, develop and publish national scopes of practice and continuing competency standards for state legislatures to implement.[1]

❖ **Recommendation 2** States should require policy oversight and coordination for professional regulation at the state level. This could be accomplished by the creation of an oversight board composed of a majority of public members or it could become the expanded responsibility of an existing agency with oversight authority. This policy coordinating body should be responsible for general oversight of that state's health licensing boards and for assuring the integration of professional regulation with other state consumer regulatory efforts (e.g. health facility and health plan regulation).

Recommendation 3 Individual professional boards in the states must be more accountable to the public by significantly increasing the representation of public, non-professional members. Public representation should be at least one-third of each professional board.[2]

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1 Commissioner Graham abstained from voting on this recommendation.

2 While all of the Commissioners support this recommendation, some Commissioners also support these configurations for boards: 1) 50 percent public membership; 2) public member majorities; or 3) one-third public members, one-third health care professionals, and one-third other representatives (e.g. other licensed health care professionals, hospital and health plan administrators, health services researchers).

Recommendation 4 States should require professional boards to provide practice-relevant information about their licensees to the public in a clear and comprehensible manner. Legislators should also work to change laws that prohibit the disclosure of malpractice settlements and other relevant practice concerns to the public.

Recommendation 5 States should provide the resources necessary to adequately staff and equip all health professions boards to meet their responsibilities expeditiously, efficiently and effectively.

Recommendation 6 Congress should enact legislation that facilitates professional mobility and practice across state boundaries.

SCOPES OF PRACTICE

Recommendation 7 The national policy advisory body recommended above should develop standards, including model legislative language, for uniform scopes of practice authority for the health professions. These standards and models would be based on a wide range of evidence regarding the competence of the professions to provide safe and effective health care.

Recommendation 8 States should enact and implement scopes of practice that are nationally uniform for each profession and based on the standards and models developed by the national policy advisory body.

❖ **Recommendation 9** Until national models for scopes of practice can be developed and adopted, states should explore and develop mechanisms for existing professions to evolve their existing scopes of practice and for new professions (or previously unregulated professions) to emerge. In developing such mechanisms, states should be proactive and systematic about collecting data on health care practice. These mechanisms should include:

- Alternative dispute resolution processes to resolve scope of practice disputes between two or more professions;
- Procedures for demonstration projects to be safely conducted and data collected on the effectiveness, quality of care, and costs associated with a profession expanding its existing scope of practice; and
- Comprehensive legislative "sunrise" and "sunset" processes that ensure consumer protection while addressing the challenges of expanding existing professions' practice authority, and regulating currently unregulated healing disciplines.

CONTINUING COMPETENCE

❖ **Recommendation 10** States should require that their regulated health care practitioners demonstrate their competence in the knowledge, judgment, technical skills and interpersonal skills relevant to their jobs throughout their careers.