

Synopsis of Committee Substitute

The House State Government, Indian and Veterans Affairs Committee Substitute for the previously substituted House Bill 138 would establish a new licensing category, licensed lactation consultant, in the Board of Nursing. It would ask the Board of Nursing to establish rules, standards, licensing fees, and procedures for the new licensure and prepare materials to inform the public about the newly licensed professionals, including giving the public information about means to submit complaints against any licensed practitioner. The Board of Nursing would appoint an advisory committee that would include at least two members who were experts in lactation promotion. Licensees would have to be trained in the science of breastfeeding and educational methods to support women to nurse their infants, with specific requirements set by the Board of Nursing and/or its lactation care provider advisory board. Licenses would last two years, and the fee for licensure and relicensure would be set as “not more than \$100.”

The bill would allow only licensed lactation counselors to use that term, although non-licensed persons could continue to give lactation advice and counseling.

Section 6 of House Bill 138 specifies disciplinary procedures that could be invoked against a licensed lactation consultant for a felony conviction, fraud or deceit in applying for licensing, unprofessional or incompetent conduct, or violation of provisions of the Lactation Consultant Practice Act or the Board of Nursing’s rules that are developed. The Board would be given the power to summarily suspend or revoke a licensee in urgent situations, subject to review by a hearing requested of the board; complainants would be granted immunity if acting in good faith.

The bill specifies that licensing fees received from lactation consultants would be deposited with the state treasurer to the credit of the Board of Nursing Fund.

FISCAL IMPLICATIONS

The Board of Nursing indicates that “Overall the fiscal impact for adding this regulated profession to the Board of Nursing is minimal. The agency estimates issuing 100-200 licenses to Lactation Consultants which is would be inconsequential for an agency that licenses well over 30,000 people in 9 other roles. We estimate that the license would be revenue/expenditure neutral within the first year. The complaints against Lactation Consultants and costs for investigations are expected to be minimal.”

It calculates the revenue that would be received from the issuance of 110 licenses in the first year (there are currently 111 Internationally Certified Breastfeeding and Lactation Consultants (ICBLC) in New Mexico according to the New Mexico Breastfeeding Task Force), and 20 in the second year, at \$75 per license. Revenues would be almost exactly balanced by expenditure for time required of BN staff in developing the regulations for the new licensing.

It is difficult to estimate the economic balance between upfront costs of breastfeeding support and downstream benefits from decreases in the need for care and medications for ear infections, pneumonia, and gastroenteritis, all common among the diseases decreased by breastfeeding. It is even more difficult to estimate the economic benefits of the added closeness between mother and child brought on by breastfeeding, and the averted costs of breast cancer, which is decreased among breastfeeding mothers. Necrotizing enterocolitis, a devastating and highly expensive disease of premature infants and infants with cardiac and gastrointestinal abnormalities, is also prevented by feeding those premature infants human breast milk.

HSD has calculated the additional costs to the Medicaid program if lactation consultation were to be made available to Medicaid recipients who have not received those services in the past. The following table represents their calculations, based on the assumptions detailed below the table:

POSSIBLE ADDITIONAL OPERATING BUDGET IMPACT TO MEDICAID (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
State share	\$0.0	\$237.6	\$237.6	\$475.2	Recurring	General Fund
Federal share	\$0.0	\$950.4	\$950.4	\$1,900.8	Recurring	Federal Matching Funds
Total	\$0.0	\$1,188.0	\$1,188.0	\$2,376.0	Recurring	20% GF, 80% fed matching funds

According to HSD’s analysis,

In January 2017, there were approximately 11,000 infants enrolled in Medicaid under six months of age. One year of breast feeding is optimal, it is reasonable to assume that after six months, the mother would no longer need consultation. The goal would be to achieve at least six months of breast feeding.

While national statistics vary, it can be estimated that 20% of mothers will breast feed for at least six months, indicating there are no serious breast feeding issues for that population. Therefore, the remaining 80% of mothers is the population that may benefit from lactation consultation (approximately 8,800 mothers).

For calculating estimated costs to HSD to cover the services of a lactation consultant in an office setting, the following assumptions were made:

- A mother using the lactation consultant services would spend 90 minutes per visit, and would make an average of 1 ½ visits during a six month period
- The average reimbursement to the lactation consultant would be \$60.00 per hour

The average cost per mother using the lactation consultant services would be \$135.00, which would be paid in addition to other medical services performed during the same office visit.

It is difficult to know to what extent Medical Assistance Program recipients would use a lactation consultant over existing resources. However, if 25% of the approximate 8,800 mothers who would be eligible for the service actually used them, the impact on the Medicaid program would be an increased expenditure of \$1.188 million per year.

Some lactation consultants in other states who are in private practice provide their services in the home, particularly when the lactation consultant does not work within the office of another health care provider. If lactation consultants become licensed in New

Mexico and provide their services in the home there is the potential of creating additional cost to the Medicaid program. For services provided in the home, the typical charge to the consumer in other states for 60 to 90 minutes of service is approximately \$125.00 to \$150.00. If the Medical Assistance Programs were to cover home visits of lactation consultants, the cost to the Medicaid Program would potentially increase above the \$135.00 per recipient estimated above because of additional travel costs.

SIGNIFICANT ISSUES

There is currently no licensing of lactation consultants in New Mexico, unlike a number of other states. Lack of licensure makes it difficult for lactation consultants to bill insurance companies for their efforts. The result is a dependence on payments from the persons served, and the creation of a disparity between those who can and cannot afford the service.

Use of a certified lactation consultant has been shown to prolong the duration of a mother's breastfeeding – currently almost 80 per cent of New Mexico mothers giving birth begin breastfeeding, but 60 per cent of those stop breastfeeding before they would like to do so. Breastfeeding has been shown to reduce infant infections and emergency room visits. Thus the provision of adequate breastfeeding support is likely to be cost-effective.

DOH comments that:

There is great confusion by both consumers and the medical community about the meaning of titles and the training requirements for various lactation care providers. For example, anyone can call themselves a “lactation consultant” regardless of their level of training or qualifications. There is often a mistaken assumption that everyone using the title lactation consultant possesses equivalent, and adequate, training and credentials. This presents a significant risk to women and their babies. Licensure is the only way to assure public safety and improve access to the level of lactation care and services that mothers need

The *U.S. Surgeon General's Call to Action to Support Breastfeeding* recognizes International Board Certified Lactation Consultants® (IBCLC®) as the only health care professionals certified in lactation care and recommends their licensure. An International Board Certified Lactation Consultant is an allied healthcare provider and a member of the maternal-child healthcare team with specialized skills in clinical lactation care and management. The IBCLC credential is the preeminent certification for the provision of clinical lactation care and services...

To help and support mothers in New Mexico to choose and to continue breastfeeding, the New Mexico Women, Infants and Children's (WIC) Program operates a Breastfeeding Peer Counselor Program. WIC Breastfeeding Peer Counselors (BPCs) are past or current WIC breastfeeding mothers who are from the same cultural and ethnic backgrounds as the population they serve. BPCs provide one-on-one breastfeeding support, 24/7, 365 days a year, to other WIC mothers. They are trained to help mothers with normal breastfeeding experiences, recognize potential breastfeeding problems, and to refer high-risk situations to a lactation expert. However, in many New Mexico communities, there are no lactation experts to provide this clinical management of high-risk lactation problems. HB138 may help expand access to competent clinical lactation services for all mothers and babies.

TECHNICAL ISSUES

The Board of Nursing suggested amendments to the original bill involving the establishment of an advisory committee, the ability to summarily suspend a licensee, and use of alternative methods of checking a criminal record, all of which were adopted into the first committee substitute. Several wording changes suggested by the Board of Nursing have also been incorporated into the committee substitute.

The current committee substitute specifies a fee and a duration of initial licensure, but Section 5 B does not provide for subsequent re-licensure.

New material in Section 4C of the current substitute refers to “licensed care providers or other persons” as ones who would not be denied the ability to offer lactation services, but it is not specified who those “licensed care providers” would be.

ALTERNATIVES

The Office of the Superintendent of Insurance could be asked to require insurance providers to reimburse lactation service providers regardless of their lacking licenses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Confusion about lactation consultants’ status and education would continue. Without licensing, lactation consultants would continue to be denied insurance reimbursement, and payment would be required from the parties served, which would maintain the disparity of services available for those with limited incomes.

LAC/jle/al/sb/jle