

SENATE BILL REPORT

SB 5470

As of February 7, 2023

Title: An act relating to creating a new health profession for lactation consultants.

Brief Description: Creating a new health profession for lactation consultants.

Sponsors: Senators Trudeau, Short, Lovelett, Nguyen, Randall, Saldaña, Shewmake and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 2/07/23.

Brief Summary of Bill

- Creates a voluntary certification process for lactation consultants, beginning January 1, 2024.
- Directs the Health Care Authority to ensure the services of certified lactation consultants are covered under the state Medicaid program by January 1, 2025.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Andie Parnell (786-7439)

Background: The Department of Health (DOH) licenses, certifies, and regulates health professions in Washington State. All health professions are subject to the Uniform Disciplinary Act (UDA). Under the UDA, DOH may take disciplinary action against licensed, certified, and registered health professionals for unprofessional conduct. Disciplining actions include fines, license revocations, and practice restrictions.

The Health Care Authority (HCA) administers the Medicaid program, which is a state-federal program that pays for health care for low-income state residents who meet certain

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eligibility criteria.

Lactation Consultants. Lactation consultants are not a regulated health profession in Washington State. There are several already regulated professions that may provide lactation care or services under their scopes of practice including nurses, allopathic and osteopathic physicians, midwives, registered dietitians, and others.

International Board Certified Lactation Consultant. The International Board of Lactation Consultant Examiners (board) provides certification for the International Board Certified Lactation Consultant (IBCLC) credential. The board certifies IBCLCs through an examination and requires clinical practice hours based on the professional background of the applicant. IBCLCs must re-certify every five years through examination or continuing education credits and must renew their certification every ten years through passing the certification examination. In addition to the IBCLC credential, there are several other training programs for providing lactation care including:

- Certified Lactation Specialist training;
- Breastfeeding Educator Certification;
- Certified Lactation Counselor certification;
- Breastfeeding Counselor Certification; and
- Lactation Educator Counselor training program.

Sunrise Review. The Sunrise Act states that a healthcare profession should be regulated, or the scope of practice expanded only when:

- unregulated practice can clearly harm and endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- public needs can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- the public cannot be effectively protected by other means in a more cost beneficial manner.

In December 2016, DOH conducted a sunrise review of a proposal to require lactation consultant licensure and create a Lactation Consultant Advisory Committee. In the review, DOH recognized the extensive training of IBCLCs and their value within the healthcare system helping mothers to initiate and continue breastfeeding. DOH could not support the proposal to require state licensure of lactation consultants, based on the following rationale:

- the proposal does not meet the sunrise criteria because the applicant has not provided evidence of a clear and easily recognizable threat to public health and safety from the unregulated practice of lactation consultation;
- the proposal may result in unintended harm to particular populations;
- limiting the number of healthcare professionals who can provide lactation care may create barriers to access, particularly in rural and underserved areas;
- the proposal would place the burden of dual state licensure, renewal fees, and education requirements on already licensed healthcare professionals operating within

- their scopes of practice if they want to continue to call themselves lactation consultants;
- there are currently processes in place for the public to file complaints against practitioners who provide substandard care or commit unprofessional conduct;
 - since a majority of IBCLCs already hold registered nurse or registered dietician credentials, licensing lactation consultants to provide oversight and discipline would be costly and an unnecessary duplication of regulation; and
 - the proposal would place a significant financial burden on lactation consultants, particularly in rural areas, without a corresponding increase in public protection.

DOH offered an alternative proposal to the Legislature. DOH recommended voluntary certification for lactation consultants. Voluntary certification would allow non-certified providers to continue performing lactation care and services, but not use certified in their professional title. This certification may also help IBCLCs receive insurance reimbursement for their services.

Summary of Bill: "Lactation care and services" means the clinical application of scientific principles and a multidisciplinary body of evidence for evaluation, problem identification, treatment, education, and consultation to provide lactation care and services to childbearing families.

Lactation Consultant Certification Creation. Beginning January 1, 2024, lactation consultants are created as a new health profession to be regulated by the Secretary of Health (secretary). Lactation consultants may voluntarily apply for certification from the secretary. The secretary has disciplining authority in accordance with the UDA and must adopt rules for administering the certification for lactation consultants.

A certified lactation consultant may perform lactation care and services including, but not limited to:

- lactation assessment through the systemic collection of subjective and objective data;
- analysis of data and creation of a plan of care;
- implementation of a lactation care plan with demonstration and instruction to parents and communication to the primary health care provider;
- evaluation of outcomes;
- provision of lactation education to parents and health care providers;
- the recommendation and use of assistive devices; and
- other lactation care and services authorized in rule by the secretary.

Beginning January 1, 2024, an individual may not use the title state-certified lactation consultant in connection with the person's name to indicate or imply, directly or indirectly, that the person is a state-certified lactation consultant without being certified. This voluntary certification does not prohibit an individual who holds a credential issued by Washington State to engage in the practice of lactation consultation without obtaining a lactation consultant credential if it is within that profession's scope of practice.

Certification Requirements. The secretary must issue a certification to any applicant who meets the following requirements:

- board certification by a national or international certifying organization approved by the secretary that at minimum requires 90 hours of lactation-specific education; 24 college-level academic credits in health professional courses; at least 300 hours of clinical practice; or equivalent education and experience approved by the secretary;
- passage of an examination approved by the secretary;
- good moral character;
- the physical and mental capability to safely provide lactation care and services;
- submission of an application on a form provided by DOH;
- payment of a certification fee; and
- has not engaged in unprofessional conduct.

An applicant holding a license in another state may be certified as a lactation consultant in Washington without examination if the secretary determines the other state's licensing standards are substantially equivalent to the standards in Washington.

An applicant with military training or experience satisfies the training or experience requirements unless the secretary determines the military training or experience is not substantially equivalent to the standards in Washington.

Secretary of Health Powers and Duties. The secretary must adopt rules specifying the requirements for renewal of a lactation consultant's certification including, but not limited to:

- reasonably appropriate evidence of competency; and
- continuing education requirements consistent with the requirements of the approved certifying organization.

The secretary must maintain a record of all applicants and certifications, and establish administrative procedures, administrative requirements, and fees for renewal or late renewal.

HCA must ensure the services of lactation consultants certified by an international governing body, who are also certified by DOH, are covered under the state Medicaid program by January 1, 2025.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: Lactation consultants in Washington are currently unable to serve Medicaid patients. This bill expands access to lactation care and services. Lactation care and services are an integrative piece of post-partum health for mother and baby. Washington needs a higher level of managed care for complicated breastfeeding issues, and to supplement the limited services currently available.

OTHER: There is a lack of qualified lactation care in Washington, but certification would likely not succeed in expanding access to care. Lawmakers should consult with current and aspiring lactation consultants, organizations that offer reimbursement and families that need lactation feeding support for a better solution. Washington should also recognize the Certified Lactation Counselor certification for competency verification, and state Medicaid reimbursement.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Emily Ager.

OTHER: Sharon Sullivan; Kate Majestic; Stephanie Peñalver; Ellie Mulpeter, Academy of Lactation Policy and Practice; Eugene Curry; Whitney Boyle.

Persons Signed In To Testify But Not Testifying: No one.