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OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Thursday, April 20, 2023
2:00 p.m.
Conference Room 430 and Videoconference**

On the following measure:

**S.C.R. 6, S.D. 1, H.D. 1, REQUESTING THE DEPARTMENT OF HUMAN SERVICES
MED-QUEST DIVISION, IN COLLABORATION WITH THE DEPARTMENT OF
COMMERCE AND CONSUMER AFFAIRS, TO EXPAND THE TYPES OF QUALIFIED
PROVIDERS ALLOWED TO PROVIDE LACTATION CONSULTANT SERVICES FOR
THE MEDICAID POPULATION IN THE STATE.**

Chair Nakashima and Members of the Committee:

My name is Lee Ann Teshima, and I am an Executive Officer for Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. The Department offers comments on this measure.

The purpose of this resolution is to request that the Department of Human Services (DHS) Med-QUEST Division, in collaboration with the Department of Commerce and Consumer Affairs: (1) expand the types of qualified providers allowed to provide lactation consultant services for the Medicaid population in the State; (2) take any steps necessary to obtain necessary approvals, create internal processes, and expand access to appropriate providers who have obtained International Board of Lactation Consultant Examiners certification; and (3) submit a report to the Legislature

on the steps taken and progress made in expanding the types of providers who can provide lactation consultant services no later than twenty days prior to the convening of the Regular Session of 2024.

The Department appreciates the intent to provide lactation consultant services for the Medicaid population and is willing to work with the DHS Med-QUEST division by providing more information on providers regulated by the Division who may be able to provide this service. However, it should be noted that although not specified under the scopes of practice, health care providers, such as nurses, including advanced practice registered nurses, midwives, and naturopaths may already provide lactation services if they have received the appropriate education and training, which may not necessarily be national certification as a Lactation Consultant or Lactation Counselor.

The Department questions whether the purpose of this resolution is to determine who may be reimbursed to provide these services, or if a separate license would be required as a lactation consultant or lactation counselor for purposes of reimbursement. If the latter, the Department urges this Committee to consider Hawaii Revised Statutes (“HRS”) section 26H-2, which provides, in part, that the “the regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services then; *the purpose of regulation shall be the protection of the public welfare and not that the of the regulated profession or vocation.*” Further, prior to the enactment of any regulatory scheme, HRS section 26-6, would require that appropriate referral be made to the State Auditor for a sunrise analysis.

Thank you for the opportunity to testify on this measure.

LAW OFFICE OF EUGENE R. CURRY

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April 19, 2023

Representative Mark M. Nakashima, Chair
Representative Jackson D. Sayama, Vice Chair
Committee on Consumer Protection and Commerce
Conference Room 430
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

*RE: S.C.R. 6, S.D 1, H.D.1 REQUESTING THE DEPARTMENT OF HUMAN SERVICES
MED-QUEST DIVISION TO EXPAND THE TYPES OF QUALIFIED PROVIDERS
ALLOWED TO PROVIDE LACTATION CONSULTANT SERVICES FOR THE
MEDICAID POPULATION IN THE STATE.*

Dear Representative Nakashima and Representative Sayama,

I am the general counsel to the Healthy Children Project, Inc. I am submitting this testimony on behalf of the Academy of Lactation Policy and Practice (ALPP), a division of the Healthy Children Project, Inc. ALPP operates the Certified Lactation Counselor® (CLC®) certification program.

As is evident from the previous testimony submitted, we support any effort to expand access to lactation care and services in order to increase breastfeeding rates in Hawaii and other states. For that reason, we support favorable action by the Committee on Consumer Protection and Commerce on S.C.R. 6, S.D. 1, and H.D.1 (the "Resolutions").

The Resolutions request the Med-Quest Division expand the types of qualified providers allowed to provide lactation support for the Medicaid population of Hawaii. The Resolutions limit the providers to be included in the expanded coverage to individuals who possess certification as International Board-Certified Lactation Consultants (IBCLCs). While ALPP applauds this effort to increase access to lactation care in Hawaii, for the reasons cited in our previous testimony, we request that the Resolutions be amended to also request that the Division expand coverage to include CLCs.

I am testifying to respond to arguments advanced by the IBCLC community against including reimbursement by CLCs.

The first argument advanced against inclusion of CLCs in the Resolution is focused on the number of hours required to obtain the IBCLC certification. This argument is flawed for several reasons. As a starting point, this argument ignores the fact that the CLC certification course is based on the WHO/UNICEF Breastfeeding Counseling Training Course. The efficacy of this course has been established.¹² The role and task composition of CLCs is analyzed under a rigorous Job Task Analysis every five years in order to qualify with ANSI accreditation. It also ignores the fact that there are multiple pathways for IBCLCs and CLCs to obtain certification. The difference in hours reflects a difference in philosophy of training rather than a basis of qualification. Most importantly, **advocates of licensure and reimbursement for IBCLCs in multiple states over many years have failed to identify any empirical evidence to suggest that interventions provided by IBCLCs provide mothers and babies with better outcomes than interventions provided by CLCs. Additionally, the claim that the IBCLC credential is the “gold standard,” which is so often referred to in testimony on these Resolutions, is a self-issued label and claim by the United States Lactation Consultant Association (USLCA) – the membership organization for IBCLCs.**

In considering the respective qualifications of CLCs and IBCLCs with respect to eligibility for reimbursement, we respectfully request that rather than follow the self-serving statements of regarding the qualifications of IBCLCs, the Committee give greater weight to the the *Model Policy Payer Coverage of Breastfeeding Support and Counseling Services* (“*Model Policy*”). The *Model Policy* was developed by a consortium of non-profits and governmental agencies (including the organization that certifies IBCLCs) to identify lactation care providers recommends eligible for reimbursement under the Affordable Care Act. The *Model Policy* recommends that “approved lactation care providers” be eligible for reimbursement and defines “approved lactation care providers” to include:

¹ Gavine, A., MacGillivray, S., Renfrew, M.J. *et al.* Education and training of healthcare staff in the knowledge, attitudes and skills needed to work effectively with breastfeeding women: a systematic review. *Int Breastfeed J* 12, 6 (2016). <https://doi.org/10.1186/s13006-016-0097-2>.

² Zakauja-Grkovic, I, Burmaz T., *Effectiveness of the UNICEF/WHO 20 Hour Course in Improving Health Professionals’ Knowledge, Practices, and Attitudes to Breastfeeding: A Before/After Study of 5 Maternity Facilities in Croatia*, Croatia Medical Journal 51(5): 396-399 (2010); Zakauja-Grkovic, I, Segvic O, Bozinovic, T, *Hospital Practices and Breastfeeding Rates before and after the UNICEF/WHO 20 Hour Course for Maternity Staff*, Journal of Human Lactation, 28(3) 389-399 (2012).

those who ... have individual certification awarded by an independently-accredited program that measures assessment of predetermined standards for knowledge, skills, or competencies in a health-related profession, substantially equal to those articulated by the National Commission for Certifying Agencies (NCCA), the Institute for Credentialing Excellence (ICE), and American National Standards Institute (ANSI).³

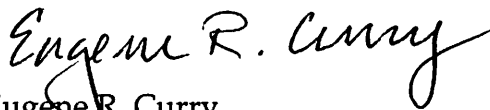
Under this definition, both CLCs and IBCLCs would be eligible for reimbursement as approved lactation care providers.

While proponents of reimbursement for IBCLCs offer the need to include other lactation care providers as a basis for not including CLCs in the Resolutions, we note that the formula we have offered provides a basis for many more types of providers to become eligible. More importantly, why not expand care as much as possible now, rather than waiting to take that approach later? If the purpose of these Resolutions is to expand access to lactation care and services, wouldn't Hawaii families be best served by having access to more qualified, competent lactation care providers rather than fewer?

We appreciate your consideration of our concerns and would welcome the opportunity to work with the Committee on this important legislation.

Thank you for your time.

Very truly yours,



Eugene R. Curry
General Counsel
Health Children Project, Inc.
Academy of Lactation Policy and Practice

³ United States Breastfeeding Committee, National Breastfeeding Center, *Model Policy Payer Coverage of Breastfeeding Support and Counseling Services, Pumps and Supplies*, 3rd rev. ed. (2016) at 8, n8.



April 20, 2023

The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair
House Committee on Human Services

Re: SCR6 SD1 HD1 – requesting the Department of Human Services Med-QUEST division, in collaboration with the Department of Commerce and Consumer affairs, to expand the types of qualified providers allowed to provide lactation consultant services for the Medicaid population in the state.

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide testimony in support of SCR6 SD1 HD1, which is requesting the Department of Human Services Med-QUEST division to expand the types of qualified providers allowed to provide lactation consultant services for the Medicaid population in the state.

We thank the Women’s Caucus for introducing an identical resolution in the House. We also thank DHS Med-QUEST for continuing to care for Hawaii residents and for their shared commitment to strengthening health and well-being in Hawaii. Prioritization of access to maternal health care is critically important for ensuring health and well-being for mothers and future generations. The U.S. Department of Health and Human Service Office of Disease Prevention and Health Promotion notes, “Improving the well-being of mothers, infants, and children is an important public health goal for the United States. Their well-being determines the health of the next generation and can impact future public health challenges for families, communities, and the health care system.”

We urge the legislature to encourage access to lactation consultant services for Hawaii’s Medicaid beneficiaries. The evidence for the benefits of breastfeeding are widely researched and published and it’s important to ensure that all mothers have access to these services, including QUEST members. HMSA’s Pregnancy Support Program currently supports QUEST members in need of lactation consultant services by referring them to various community resources. However, these community resources have limited access. The Affordable Care Act mandates that health insurance plans must provide breastfeeding support, counseling, and equipment for the duration of breastfeeding¹ and states including New York², Georgia³, and Washington, D.C.⁴ are already successfully providing reimbursement to certified health care professionals who are International Board-Certified Lactation Consultants (IBCLCs) through Medicaid. Hawaii has an incredible opportunity to increase access and outcomes by expanding the types of qualified

¹ <https://www.healthcare.gov/coverage/breast-feeding-benefits/>

² https://health.ny.gov/community/pregnancy/breastfeeding/medicaid_coverage/lactation_counseling_services.htm

³ <https://dch.georgia.gov/announcement/2022-08-05/dch-enrolling-lactation-consultants-new-provider-type>

⁴ http://www.dcbfc.org/pdfs/Medicaid_Enrollment_and_Reimbursement_for_the_IBCLC_122020.pdf



providers allowed to provide lactation consultant services for the Medicaid population in the State.

Thank you for the opportunity to testify in support of SCR6 SD1 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Kurisu', with a long horizontal flourish extending to the right.

Dawn Kurisu
Assistant Vice President
Community and Government Relations

SCR-6-HD-1

Submitted on: 4/17/2023 10:46:31 PM

Testimony for CPC on 4/20/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Do not Cover the Ilegals. We want them Gone form Hawaii. Stop Wasting Our Money on this Crap!!!!

SCR-6-HD-1

Submitted on: 4/19/2023 10:51:43 AM

Testimony for CPC on 4/20/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Patricia Bilyk	Individual	Support	Written Testimony Only

Comments:

To: Rep. Nakashima, Chair, Rep. Sayama, Vice Chair and Members of the Committee on Consumer Protection and Commerce

FROM: Patricia L Bilyk, RN, MSN, MPH, IBCLC (Ret) Maternal Infant Clinical Nurse Specialist

RE: SCR 6, SD1, HD1 Requesting DHS MedQuest Expand Qualified Providers To Provide Lactation Consultant Service to Medicaid Population

DATE: Thursday, April 20, 2023

Good Afternoon.

I stand in SUPPORT of SCR 6 with the following Change to the Resolution.

In Whereas #6 REMOVE /DELETE wording

"or the Academy of Lactation Policy and Practice's Certified Lactation Counselor Program"

This wording is irrelevant to the Resolution intent and credentialing of the International Board Certified Lactation Consultant (IBCLC) and the International Board of Lactation Examiners Credentialing Board.

Thank you for allowing me to have my input for this Resolution. The IBCLC provider support will help Breastfeeding infants and their Mothers in our State.