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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 and Commerce
Wednesday, March 29, 2023

2:10 p.m.

State Capitol, Conference Room 329 and via Video Conferencing

On the following measure:

H.R. 6, 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:

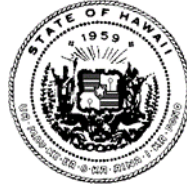
My name is Gordon Ito, and I am the Insurance Commissioner for the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this concurrent resolution.

The purpose of this bill is to request 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.

We appreciate efforts to expand access to health care service in the State.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

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DEPUTY DIRECTOR
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STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 27, 2023

TO: The Honorable Mark Nakashima, Chair
House Committee on Consumer Protection and Commerce

FROM: Cathy Betts, Director

SUBJECT: **HCR 7 HB1/ HR 6 HB1– 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.**

Hearing: March 29, 2023, 2:10 p.m.
Conference Room 329 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this resolution and offers comments. DHS defers to the Department of Commerce & Consumer Affairs.

PURPOSE: These resolutions request that DHS Med-QUEST Division (MQD), in collaboration with the Department of Commerce and Consumer Affairs, expand the types of qualified providers allowed to provide lactation consultant services for the Medicaid population in the State; and that MQD take any steps necessary to obtain necessary approvals, create internal processes, and credential appropriate providers who have obtained International Board of Lactation Consultant Examiners certification; and 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 Committee on Human Services amended the resolutions by (1) Amending the title; (2) Requesting the Department of Commerce and Consumer Affairs (DCCA) to collaborate with the Department of Human Services Med-QUEST Division on expansion on types of providers allowed to provide lactation consultant services to the State's Medicaid population; (3) Including Certified Lactation Counselors as the type of counselor to be included as a qualified provider.

DHS appreciates the commitment of the Legislature to improve access to maternal and child health services of lactation consultation services and fully supports their expansion as feasible. However, MQD would respectfully clarify that qualified providers can provide lactation consultation services currently, although billing for the services may be included as part of a bundled payment code. MQD also recognizes the need for greater clarity regarding who can provide the services, how to bill for them, and in what setting may also help improve access to and the provision of lactation consultation services.

Finally, although requested to collaborate with DCCA, MQD is unable to take one of the requested actions - credentialing appropriate providers who have obtained International Board of Lactation Consultant Examiners certification or Certified Lactation Counselors, as described on page 2, lines 25-31:

“BE IT FURTHER RESOLVED that to expand the types of qualified providers, the Department of Human Services Med-QUEST Division is requested to take any steps necessary to obtain necessary approvals, create internal processes, **and credential appropriate providers** who have obtained International Board of Lactation Consultant Examiners certification or are Certified Lactation Consultants; and....”

MQD does not have the function of credentialing providers though the health plans do. Also, although MQD cannot change federal rules for enrolling Medicaid providers or regarding providers who can bill for services, MQD can research and review lactation consultation services and make changes aligned with the intent to expand access to the services. However, such changes may take longer than when the report to the legislature is due twenty days before the next session, which will start on January 17, 2024. MQD can report on these efforts in the requested legislative report.

Thank you for the opportunity to provide comments on this measure.



March 27, 2023

Representative Mark Nakashima, Chair
Representative Jackson Sayama , Vice Chair
Committee on Consumer Protection and Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: HR 6 / HCR 7 - 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,

My name is Ellie Mulpeter and I am the Director 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. I am testifying today to express our support of House Resolutions 6 and 7.

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 have been amended to include expanded coverage for individuals who possess certification as International Board-Certified Lactation Consultants (IBCLCs) and Certified Lactation Counselors (CLCs). ALPP applauds this effort to increase access to lactation care in Hawaii and appreciates the work of the Committee of Human Services to amend the language to be more inclusive.

Last week, we made a similar request in testimony before the Senate Committee on Human Services with respect to S.R 4 and S.R.C. 6 , and the Committee also voted to include CLCs as a type of counselor to be included as a qualified provider.

CLCs are qualified to provide lactation care and services. The CLC certification program “identifies a professional in lactation counseling who has demonstrated the necessary skills, knowledge, and attitudes to provide clinical breastfeeding counseling and management support to families who are thinking about breastfeeding or who have questions or problems during the course of breastfeeding/lactation”.¹ CLCs play an important role in providing lactation care and services in Hawaii. As of today, there are 161 CLCs certified by ALPP providing vital lactation care and services in Hawaii.²

ALPP believes that expectant and breastfeeding families are best served when lactation care options are expanded, rather than restricted. To increase access to care, ALPP supports reimbursement for all qualified providers of lactation care and services based on certification by an accredited agency. Both the CLC and IBCLC certification programs are accredited by nationally recognized accreditation agencies. The CLC certification program is accredited by the American National Standards Institute (ANSI), while the IBCLC certification program is accredited by the National Commission for Certifying Agencies (NCCA).

Our approach is consistent with the *Model Policy Payer Coverage of Breastfeeding Support and Counseling Services (“Model Policy”)* issued by the United States Breastfeeding Committee and the National Breastfeeding Center. The *Model Policy* was developed to address confusion regarding which lactation care providers should be 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:

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.

¹ Academy of Lactation Policy and Practice. *Certifications*. Available at: <https://www.alpp.org/certifications/certifications-clc>

² Academy of Lactation Policy and Practice. CLCs by State. Available by request.

³ *Id.* *Model Policy* at 8, n8.

For example, we supported legislation in New York in 2019 that provided for reimbursement based on certification. The definition of an approved certification is substantially similar to the definition of “approved lactation care providers” in the *Model Policy* that requires accreditation by a “nationally or internationally recognized accrediting agency that is approved by the board [board of nursing].”⁴ The regulations implementing the legislation in new York recognize CLC and IBCLC certifications as approved certifications.⁵

We would like to request clarification on the amended language, and are happy to work with the committee should they choose to adopt these small changes.

On Page 1 of HR 6, we would like to suggest the following amendments:

ADD: “WHEREAS, a lactation counselor is a professional who provides clinical breastfeeding counseling and management support to families who are thinking about breastfeeding or who have questions or problems during the course of breastfeeding. Lactation counselors have demonstrated the skills required to provide safe, evidence-based counseling for pregnant, lactating, and breastfeeding families, including the assessment of effective/ineffective breastfeeding and milk transfer.”

EDIT: “WHEREAS, lactation consultants *and* lactation counselors in the United States are often nurses, midwives, nurse practitioners, dietitians, and other healthcare professionals who have obtained additional certification through the International Board of Lactation Consultant Examiners or *the Academy of Lactation Policy and Practice.*”

On Page 2 of HR 6:

EDIT: “WHEREAS, Hawaii’s QUEST Integration Program, which provides eligible low — income adults and children access to health and medical coverage through managed care plans, does not currently allow all qualified providers who have obtained *the International Board-Certified Lactation Consultant (IBCLC) certification or the Certified Lactation Counselor (CLC) certification* to provide lactation support services; and”

EDIT: “BE IT FURTHER RESOLVED that to expand the types of qualified providers, the Department of Human Services Med-QUEST Division is requested to take any steps necessary to obtain necessary approvals, create internal processes, and credential appropriate providers who have obtained *the International Board-Certified Lactation Consultant (IBCLC) certification or the Certified Lactation Counselor (CLC) certification.*”

⁴ *Id.* at § 61-36-2B. In addition, the definition requires continuing education.

⁵ AB 2345/SB 3387 - An act to amend the social services law, in relation to lactation counseling services. Available from: <https://www.nysenate.gov/legislation/bills/2019/S3387>

As you have seen in the testimonies provided on these House Resolutions, the language used to describe both certifications is important to the implementation of any legislation around the profession. I appreciate the opportunity to provide these suggestions and to testify in support of these resolutions. I am available should you have any questions.

Sincerely,

Ellie Mulpeter, MPH, CLC
Director, Academy of Lactation Policy and Practice
PO Box 2170
South Dennis, MA 02660

TO: Rep. Mark M. Nakashima, Chair and Rep. Jackson D. Sayama, Vice Chair and Members
of The Committee on Consumer Protection and Commerce

FROM: Krista Olson, IBCLC, MC-MCH

Representing LATCH (Lactation Access Transforming Communities in Hawai'i, a joint project of
Early Childhood Action Strategy & Breastfeeding Hawai'i)

RE: SUPPORT for HR6/HD1 Requesting the Department of Human Services Med Quest
Division To Expand Types of Qualified Providers Allowed to Provide Lactation Consultant
Services For the Medicaid Population

DATE: Wednesday, March 29, 2023

Good Afternoon.

My name is Krista Olson, I practice clinically as an IBCLC (International Board Certified Lactation Consultant), and also work as maternal child health advocate and researcher. I am submitting testimony on behalf of two organizations I represent. I lead LATCH, a three-year project aimed at elevating community voice in discussions with insurers to address critical gaps in lactation care. We are funded to engage communities, providers, insurers, and policy makers to design an equitable system of funded breastfeeding support. Our organization SUPPORTS HR6/HD1. We do wish to address concerns about recent amendments to the proposed legislation.

As a peer-reviewed author publishing and presenting on disparities in breast/chestfeeding health outcomes and barriers to lactation care in the Hawaiian Islands, I can testify that increasing access to insurance coverage for clinically-competent lactation care is critical for families enrolled in Medicaid. We see significant outcome and access disparities for families with QUEST Integration/Medicaid coverage in Hawai'i, and particularly for those living on neighbor islands. Racial and ethnic disparities in breastfeeding outcomes also persist throughout the state.

Identifying a pathway to coverage for a continuum of breastfeeding support and clinical lactation care is imperative to improve social determinants of health for all families in our islands, but especially so for those enrolled in QUEST Integration/Medicaid coverage. Currently, we have identified no more than five providers statewide who are Board-Certified in lactation care and qualify as Medicaid reimbursable providers (as either MD or APRN). With the proposed expansion to potentially include nearly 100 IBCLCs practicing throughout the islands, the proposed resolution could expand access to care exponentially.

LATCH recognizes that DHS, insurers, and maternal infant health providers and advocates must collaborate to identify a pathway that addresses eligibility for Medicaid coverage of care, and also best utilizes the continuum of clinicians and allied health care providers who bring various

skill levels to increase breastfeeding duration and exclusivity throughout the state. We are pleased to be in a position to compile input from focus groups, community surveys, and interviews, and to offer assistance in convening stakeholders to craft a solution that provides meaningful and comprehensive breastfeeding support across the islands.

As advocates for appropriate and qualified care to address the range of support needs, we wish to raise a concern about the proposed single addition of the CLC (Certified Lactation Counselor) as a mid-level provider while excluding the range of other trained breastfeeding supporters, and specifically the Indigenous Breastfeeding Counselor. In other states, we have seen this proposed addition create confusion and potentially limit access to an appropriate continuum of lactation care, and can provide further details as requested. LATCH can also bring expertise regarding current CPT coding and reimbursement practices, and identify potential pathways to support reimbursement for a range of services from Evaluation and Management of complex conditions, to Preventive Services, to Education to support lactation success.

LATCH has spent the past year convening conversations with providers and breast/chestfeeding parents from across the islands to elevate community voice in identifying an equitable pathway to closing gaps in coverage for lactation care. From our community listening sessions, we have identified the need for a continuum of no- and low-cost community-based support that can leverage the skills of a variety of service providers:

Education and support for initiation, duration and assistance with basic questions seems well received from Peer Counselors, Community Health Workers, Home Visitors, and others often recognized as "lay" or community-based health promoters. This care may be integrated into care coordination or initiatives with health plans to address SDOH.

For families needing basic assistance with common but uncomplicated breastfeeding challenges, there are a variety of mid-level providers trained and certified in breastfeeding education and/or support, and these include Indigenous Breastfeeding Counselors (IBC), Certified Lactation Counselors (CLCs), Certified Breastfeeding Educator (CBE) or Certified Breastfeeding Specialist (CBS). The range of providers can be confusing, but what most of these designations have in common is completion of a 45 hour curriculum that is an initial building block on the Board-Certification pathway for clinical lactation consultants. Each of these private designations brings its own approach to certification and organizational accreditation. (In our observation of the process in other states, at least one particular organization, the Healthy Children Project, has a history of aggressively promoting their particular version of CLC certification in other states pursuing pathways to lactation reimbursement, often resulting in confusion and disruption of good faith efforts toward increasing access.)

For families experiencing breastfeeding challenges that have clinical impact on maternal or infant health or are associated with comorbidities that complicate the course of lactation, the International Board-Certified Lactation Consultant (IBCLC) represents the gold standard in clinical care for lactation challenges. For most IBCLCs, the path to certification takes two to five

years, primarily because of the clinical experience requirement. (As an exception, L&D floor nurses with high patient volume can move more quickly through the clinical hours.)

Thank you for the opportunity to provide my testimony. Please contact me if you have questions or comments. krista@ecashawaii.org



March 29, 2023

The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair
House Committee on Consumer Protection & Commerce

Re: HCR7 HD1/ HR6 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 HCR7 HD1 and HR6 HD1, which are 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.

We thank the Women’s Caucus for introducing this resolution to increase access. 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 HCR7 HD1 and HR6 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Kurisu', is written over a light blue horizontal line.

Dawn Kurisu
Assistant Vice President
Community and Government Relations