

LAW OFFICE OF EUGENE R. CURRY

EUGENE R. CURRY
HEIDI A. GRINSELL, ASSOCIATE

Barnstable House
3010 Main Street, Route 6A
Barnstable, Massachusetts 02630

Phone: (508) 375-0070
Fax: (508) 437-0459
E-mail: ercurry@eugenecurry.com

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Federal Trade Commission
Office of Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: *Health Care Workshop*
Project No. P131207

To whom it may concern,

I am writing on behalf of the Healthy Children Project, Inc., Center for Breastfeeding (“Healthy Children”).¹ Healthy Children appreciates the opportunity to provide comments in advance of the Commission’s workshop on Examining Health Care Competition on March 20-21, 2014. The mission of Healthy Children is to increase breastfeeding rates, to advocate for change in societal attitudes towards breastfeeding, to train health care professionals, known as lactation consultants or lactation counselors, and to assist mothers in successfully breastfeeding exclusively and for longer durations. Healthy Children is concerned that restrictions on licensure, support, and reimbursement for lactation consultants have the effect of inhibiting, rather than promoting healthy breastfeeding, and of unreasonably suppressing competition among lactation consulting professionals.

Healthy Children, through the Center for Breastfeeding and the Academy of Lactation Policy and Practice, operates the Certified Lactation Counselor (“CLC”) testing and certification program. This program promotes healthy breastfeeding by identifying competent lactation counselors to expectant and nursing mothers, as well as other health care professionals. Healthy Children’s Certified Lactation Counselor Program is recognized by American Nurses Credentialing Center as a Nursing Skills Competency Program. In addition, Healthy Children has recently obtained accreditation of its Certified Lactation Counselor/CLC certification program from the Accreditation Program for Personnel Certification Bodies of the American National Standards Institute (“ANSI”).²

¹Healthy Children, based in East Sandwich, Massachusetts, is a non-profit corporation recognized as a tax-exempt organization by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. Further information about Healthy Children may be found at www.healthychildren.cc.

² The ANSI Accreditation Program is described at:

<https://www.ansica.org/wwwversion2/outside/PERgeneral.asp?menuID=2>.

There is a consensus among major health profession organizations and government entities that breastfeeding provides significant health benefits to mother and child.³ Although progress in promoting rates of breastfeeding has been made, rates of breastfeeding in the United States are lower than optimum, particularly among African-American mothers and babies.⁴ There is a further consensus that lactation counseling and support are important components of a strategy for increasing rates of breastfeeding.⁵

The Affordable Care Act and implementing regulations provide for expanding access to lactation counseling services. However, the regulations do not define which lactation care providers are eligible for reimbursement by insurers.⁶ It is anticipated that the availability of reimbursement for lactation counseling services will have a dynamic effect on the market for lactation counseling services.

In order to expand access to lactation counseling and support services and to meet the requirements of the Affordable Care Act, there is a need at the federal and state level to identify qualified lactation counselors. This need has not been met.

To date, efforts at the federal and state level have tended to restrict licensure, third party reimbursement and other support to one group of providers of lactation consulting services, those certified International Board Certified Lactation Consultant (“IBCLC”) by the International Board of Lactation Consultant Examiners (“IBCLE”).⁷ For example, rather than urge access to services provided by all qualified lactation support professionals, one of the actions identified to achieve the goals of the *Call to Action* was “Action 11: Ensure access to services provided by

³ See, e.g., American Academy of Pediatrics Section on Breastfeeding, "Breastfeeding and the Use of Human Milk (Policy Statement)." *Pediatrics* 129, no. 3 (2012). Available at:

<http://pediatrics.aappublications.org/content/115/2/496.full.pdf+html>; U.S. Department of Health and Human Services, *The Surgeon General's Call to Action to Support Breastfeeding* [Call to Action], Washington, D.C.: U.S. Department of Health and Human Services, Office of the Surgeon General: 2011. Available at <http://www.surgeongeneral.gov/topics/breastfeeding/>

⁴ Centers for Disease Control, *Morbidity and Mortality Weekly Report Progress in Increasing Breastfeeding and Reducing Racial/Ethnic Differences* (February 8, 2013), available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6205a1.htm?s_cid=mm6205a1_w.

⁵ The *Call to Action* reports that “education and counseling on breastfeeding are unanimously recognized by the AAP and the American College of Obstetricians and Gynecologists in their *Guidelines for Perinatal Care* as a necessary part of prenatal and pediatric care. Similarly, the American Academy of Family Physicians and the American College of Nurse-Midwives call for the consistent provision of breastfeeding education and counseling services”. *Call to Action* at 24 (citations omitted).

⁶ Section 2713 of the Affordable Care Act requires group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage and not impose any cost-sharing on evidence-based items or services that have in effect a rating of 'A' or 'B' in the current recommendations of the United States Preventive Services Task Force. The Task Force included, among its recommendations, “interventions during pregnancy and after birth to promote and support breastfeeding” as a Grade B Recommendation.

<http://www.uspreventiveservicestaskforce.org/uspstf08/breastfeeding/brfeedrs.pdf>. The Health Resources and Services Administration of the Department of Health and Human Services issued implementing guidelines that refer to “[c]omprehensive lactation support and counseling, by a trained provider during pregnancy and/or in the postpartum period” as including in the scope of preventative services. (emphasis supplied). Health Resources and Services Administration, *Women's Preventative Services: Required Health Plan Coverage Guidelines Supported by the Health Resources and Services Administration*, available at: <http://www.hrsa.gov/womensguidelines/>.

⁷ The IBCLC program is described at: <http://americas.ibclce.org/>.

International Board Certified Lactation Consultants”.⁸ At the state level, New York provides Medicaid reimbursement to “licensed, registered, or certified health care professionals who are International Board Certified Lactation Consultants (IBCLCs) credentialed by the International Board of Lactation Consultant Examiners”.⁹

There is no substantive basis for limiting support and reimbursement to individuals with IBCLC certification. No proponent of restrictions has identified any data to suggest that individuals with the IBCLC certification provide higher quality care than other providers of lactation support services.

Limiting licensure, support, and reimbursement to IBCLCs unreasonably restricts the ability of Certified Lactation Counselors and other skilled professionals to practice and obtain support and reimbursement. For example, legislation proposed in Georgia that would limit licensure to IBCLCs was criticized as decreasing access to lactation care because it would deprive 900 Certified Lactation Counselors, some of whom with twenty years of experience, of the ability to practice at a time when there were only 300 IBCLCs in Georgia, thereby dramatically reducing the availability of lactation support services.¹⁰

As Commission staff has recently observed in connection with restrictions on the scope of practice of Advanced Practice Nurse Practitioners, “when these restrictions restrain competition and are not closely tied to legitimate policy goals, they may do more harm than good”.¹¹ Healthy Children urges that in considering the Professional Regulation of Health Care Providers, the Workshop address the failure of federal and state authorities, as well as private parties, to properly evaluate whether proposed or existing restrictions on lactation counseling are justified by well-founded safety concerns and are narrowly tailored to avoid unduly burdening competition.

⁸ *Call to Action* at 48.

⁹ New York Department of Health, *New York State Medicaid Coverage of Lactation Counseling Services*, available at: http://www.health.ny.gov/community/pregnancy/breastfeeding/medicaid_coverage/lactation_counseling_services.htm.

¹⁰ Long and Bugg, *Unintentionally Disenfranchised?* (March 4, 2013), available at: <http://www.momsrising.org/blog/unintentionally-disenfranchised/>.

¹¹ Federal Trade Commission, *Policy Perspectives: Competition and the Regulation of Advanced Practice Nurse Practitioners*, at 38 (March, 2014).

Thank you for your consideration of this matter. Healthy Children looks forward to the opportunity to provide more comprehensive information regarding its concerns during and after the Workshop.

Very truly yours,

Eugene R. Curry

cc: Karin Cadwell, PhD, FAAN, RN, IBCLC, ANLC
Healthy Children Project, Inc.

Submitted Electronically