NLCA
NATIONAL LACTATION CONSULTANT ALLIANCE

Position Paper

Licensure of the International Board Certified Lactation Consultant

Position

The National Lactation Consultant Alliance (NLCA) considers licensure of the International Board Certified Lactation Consultant (IBCLC®)[1] integral to the provision of clinical lactation care to childbearing families. NLCA supports access to affordable, risk appropriate clinical lactation care as a basic human right. Licensure of qualified IBCLCs® facilitates clinical lactation care that is safe, affordable, and equitable and is thereby supported by NLCA.

Background

The purpose of state licensing for healthcare practitioners is to protect the health, safety, and welfare of the public.[2] Licensure validates a minimum standard for education, training, and expertise, upholds the integrity of a profession, and helps assure the provision of competent care. Professional licensure laws are enacted to assure the public that practitioners have met the qualifications and minimum competencies necessary for safe and effective practice.[3] Licensure is deemed necessary by the state when the regulated activities are complex and require specialized knowledge, skills, and independent decision making. The licensure process determines if the applicant has the necessary skills to safely perform within the specified scope of practice that is paired with the license. The state agency that is charged with issuing licenses to qualified applicants also has authority to restrict, suspend, or revoke those licenses when in the interest of public safety. Most states require healthcare practitioners with direct patient contact and independent clinical decision making to be licensed. In 2011, the U.S. Surgeon General called for licensure of the IBCLC®.[4]

"Scope of Practice" - What it Means

A license gives the licensee the authority to practice within the parameters – the scope—as outlined in a state licensing law and its accompanying agency regulations. The legal term is "Scope of Practice." This term is often misused. Those without a license do NOT have a "scope of practice"—they may have anticipated, expected, or verified competencies and job descriptions ---but they do not have a legal scope of practice.[5] Only a General Assembly/state legislature creates that through a licensing law. Only a licensed IBCLC® has a scope of practice. Licensure with its legally defined scope of practice adds a layer of patient safety, as this is designed to prevent individuals from performing tasks beyond their level of education, training, and competence and reduces the potential for harm.

Importance of IBCLC® licensure

NLCA seeks to clarify what licensure might look like for the IBCLC® and how concerns regarding safety, accessibility, and sustainability might be improved by licensure of qualified IBCLCs®.

In addition to providing a measure of patient safety for the public, licensure of the IBCLC®:

- Allows families and the healthcare system to recognize a specific quality indicator for clinical lactation care.
- Promotes access to clinical lactation care for all families regardless of their ability to pay by providing the foundation for provider reimbursement. Without licensure, IBCLC® clinical services are frequently not covered by public and private insurers, robbing families with low financial resources of the services of an IBCLC®.[6] Such a gap in access creates a disparity in care and a challenge to equitable healthcare opportunities. As stated by the Centers for Medicare & Medicaid Services, "The services of a lactation consultant, **if licensed by the state**, could be covered under the state plan's "other licensed practitioner" benefit."[7] Medicaid finances approximately 41% of all births in the United States.[8] Licensure facilitates access to clinical lactation care that otherwise may not be available or affordable for participants in the Medicaid program.
- Provides greater access to the lactation consultant profession by opening opportunities for the provision of a living wage and increased job opportunities. Colleges are typically more inclined to offer programs to educate and train students seeking to become licensed providers and those colleges, particularly public community colleges, have increased availability for tuition grants, scholarships, and other financial aid.[9]
- Helps deliver clarification regarding the confusing array of lactation personnel within the lactation field.[10] The US Women's Preventive Services Initiative (a joint program between the US Health Resources and Services Administration (HRSA) and led by the American College of Obstetricians and Gynecologists) describes lactation personnel as follows:

"Clinical lactation professionals providing clinical care include, but are not limited to, licensed lactation consultants, the IBCLC®, certified midwives, certified nurse-midwives, certified professional midwives, nurses, physician assistants, nurse practitioners, and physicians. Lactation personnel providing counseling, education or peer support include lactation counselors/breastfeeding educators and peer supporters.[11]"

- Improves the likelihood that insurers and physicians will contract with, and make referrals to, Lactation Consultants. Breastfeeding families may be unable to receive the risk appropriate clinical lactation care they need when physicians and hospitals will not refer patients to an IBCLC®, or an insurer will not include IBCLCs® in their provider panels, due to the risk of liability for referral to someone who is not licensed. A negligent referral claim can occur when the physician does not use appropriate care in determining that a referral is necessary or fails to refer the patient to a qualified specialist — e.g., if the referring physician *knew or should have known* that the specialist was not competent to render the care needed by the patient.[12] Licensure of the receiving specialist is a means of protecting the referring physician because, with licensure, the state has indicated that the specialist is competent to render specified care. If the clinical specialist (IBCLC®) is not licensed, the referring physician can have liability for any untoward clinical care given by that IBCLC®. The licensed IBCLC® gives the referrer prima facia legal protection. There is no liability for "negligent referral" when the referring physician selects someone who is "authorized under the laws of the state to practice" and the referring physician "has no knowledge of the incompetency or lack of skill."[13] As warned by Harvard professor, David M. Eisenberg, M.D., to physician colleagues, "From a conservative legal standpoint, referring to somebody who does not own a license to treat a patient is risky business. Don't do it."[14]
- Commands greater respect for the profession from the interdisciplinary care team while also instilling confidence and acceptability among other clinical practitioners. Increased professional confidence from other clinical practitioners and hiring managers will increase accessibility to full-time, higher-paying positions. Although some IBCLCs® prefer part-time or per diem positions for the flexibility they offer, a profession that primarily offers temporary or part-time employment often does not provide livable wages. This is a common issue among stand-alone IBCLCs®, who struggle to secure permanent positions. Therefore, if the respect for the IBCLC® profession increases among other clinical practitioners and hiring managers through the licensing of IBCLCs®, it has the potential to result in more stable positions with increased pay.
- Provides a framework for state-level regulation of the Lactation Consultant profession that would prevent people from solely having to rely on a remote international board to address complaints. Even if the International Board of Lactation Consultant Examiners were to take action against a credential holder, that Board has no authority to prevent a person from practicing. It can only suspend or revoke a credential. Licensure would give a state agency authority to promulgate standards of practice and to address patient harm that occurs in the state. Such state oversight would also provide administrative avenues for addressing practice concerns within the field, including harm based on race, ethnicity, and socioeconomic status.
- Supports increased accessibility of clinical lactation training and entry into the profession for all, while also promoting greater diversity and representation among IBCLCs®. Licensure has the potential to address breastfeeding disparities and inequities by growing the profession with more racially diverse individuals with lived cultural competency. Licensure of IBCLCs® would set the foundation for the development of policy that could reinforce resources to education programs with BIPOC (black, indigenous and people of color) students in Pathway 2 & 3 Programs. Thus, the number of these professionals can be increased. By way of example, subsequent to licensure passing in Georgia, a community college started a Human Lactation program offering all of the education and training hours needed to sit for the IBCLC® exam. That college has graduated about 60 students with more than 50% representing an underserved population, including gender, ethnic and racial minorities.[15]
- Presents an opportunity to distinguish the different types of lactation personnel. Lactation credentials that lack a comprehensive clinical lactation training component cannot be considered equivalent to the IBCLC® credential. Distinguishing those who have completed abbreviated lactation education courses from the holders of the IBCLC® credential helps to maintain the clinical standards for the provision of clinical lactation patient care, optimizes health outcomes, and decreases the risk of patient harm.

- Provides opportunity to grow the number of IBCLCs® in each state. The US Surgeon General's *Call to Action to Support Breastfeeding* recommends a standard of 8.6 IBCLCs® per 1,000 live births.[4] Yet many states fall below this threshold. The licensing of IBCLCs® in Georgia helped to propel growth of the profession in that state. In the seven years before licensing, 2009-2016, the number of IBCLCs® in Georgia increased from 275 to 366—a gain of 91 people with the credential. In the seven years subsequent to licensing, 2016-2023, the number of IBCLCs® in Georgia increased from 366 to 515—a gain of 149 people with the credential. This is a 64% increase in the number of people becoming IBCLCs® in the seven years after licensure compared to the number who became IBCLCs® in the seven years prior to licensure, and it is a 41% increase in the total number of IBCLCs® subsequent to the 2016 passage of the licensing law.[15] Licensure can be a catalyst and facilitate states in reaching the recommended number of IBCLCs®, helping to assure an adequate workforce is available to meet the needs of all breastfeeding families.

Challenges to IBCLC® licensure

Criticism and concerns regarding IBCLC® licensure have arisen. NLCA respects these concerns and seeks to address each.

Licensure is too expensive, and thus it discriminates against low-income people and those from marginalized communities. Accessibility to the Lactation Consultant field, especially for marginalized populations and people of low socioeconomic status, who are already underrepresented in the IBCLC® profession, would improve with licensure. The prerequisite education upon which IBCLC® credential is based can be expensive. However, as seen in a state that achieved licensure, state and federal funded community/technical colleges could add education and training programs to become an IBCLC®. This facilitates students to not only secure a profession, but have access to job opportunities, and earn a living wage. Students who matriculate to community colleges would have access to financial aid through scholarships and grants for tuition and books. Other private scholarships are also available from various entities to help offset the cost of becoming an IBCLC®.[16] NLCA provides a partial list of scholarship opportunities on its website. With regard to state licensing application fees for Lactation Consultants, in both Rhode Island and Georgia, the renewal application fee has been $50 every two years.[17]

IBCLC® licensure is not needed because other licensed practitioners can provide lactation services.
While many healthcare practitioners possess a license allowing them to provide clinical lactation care, physicians, nurses, and others may have difficulty delivering clinical lactation care due to deficiencies in time, academic education, and clinical training. Education and training on breastfeeding and clinical lactation management may have been absent or minimal in clinician training programs or may not have been pursued through continuing education offerings. Deficiencies in breastfeeding management education and training have been reported in pediatricians, obstetricians, and family practice physicians,[18] nurses,[19] pediatric nurse practitioners,[20] pediatric residents,[21] and neonatal intensive care nurses.[22] Delivering effective clinical lactation care is time intensive with an average consultation lasting up to one hour.[23] Limited physician time often precludes accommodating the necessary extended visits. Enough clinical lactation care is not necessarily available through other licensed clinicians. Licensure of the IBCLC® would add a category of clinicians for this care to the healthcare team and would increase the likelihood of risk appropriate care being available for all families who need clinical lactation care, especially in acute and complex situations. This is especially important in high-risk situations to safeguard patients from receiving interventions that do not meet the risk level presented.

Licensure restricts the ability of other lactation personnel to practice
There is no published data or evidence that licensure of the IBCLC® would prevent other lactation personnel from performing education functions that are consistent with the accepted standards of their respective occupations. Moreover, it has been shown that when the IBCLC® and other lactation personnel work collaboratively, breastfeeding outcomes improve.[24]

Licensure serves only to enrich the IBCLC® at the expense of other lactation personnel

The structure of the US healthcare system typically requires that for a healthcare practitioner to receive reimbursement from a public or private insurer for clinical healthcare services, the practitioner needs to possess a license granted by a state to practice within their designated scope. As the IBCLC® credential is a board certification, not a state license, families seeking risk appropriate care from an IBCLC® may need to pay out of pocket for their unlicensed services. Licensure represents an access opportunity for those under-resourced breastfeeding families to receive the clinical lactation care they need, to enjoy the same enhanced maternal/infant health outcomes as high resource families, and to experience a lower risk of maternal/infant morbidity and mortality.

There is no proof of harm to support the need for licensure

Some states require a sunrise review, a process occurring prior to bill filing to explore whether there is a need to regulate a currently unregulated occupation or profession. Typically, evidence is required to be presented demonstrating a clear and recognizable threat to public health and safety from unregulated practice. Abbreviated breastfeeding duration or lack of access to IBCLCs® usually does not meet the sunrise criteria. However, proof of harm examples reside in the December 2023 New York Times article regarding tongue-tie releases being recommended and facilitated by Lactation Consultants.[25] As the article indicates, Lactation Consultants who allegedly contributed to infant harm could not be reported to a state board because of the lack of a state board with authority and licensure responsibility. Additionally, NLCA has received numerous reports of harm resulting from inappropriate care delivered by unlicensed, non-clinical breastfeeding support personnel, including severe infant hyperbilirubinemia, dehydration, readmission to the hospital, critical weight loss, and maternal mastitis and abscess. Many of these devastating outcomes resulting from minimally educated unlicensed lactation personnel could likely have been averted had these families been seen by an IBCLC® trained in acute and complex lactation situations. These reports provide evidence of a clear and easily recognizable threat to public health and safety from the unregulated clinical practice of lactation personnel.

Recommendations

NLCA is working with many states to achieve licensure by providing consultation on the process along with actionable steps and grassroots advocacy tools for securing data and filing bills. NLCA offers the following recommendations regarding qualified IBCLC® licensure:

- Contact NLCA for information on the licensure process and how you might become involved.[26]
- Consider joining the NLCA State Advocacy Committee to work on licensure with others in your state.
- Attend webinars and information sessions conducted by NLCA to gain information on licensure and its nuances.
- Learn how the legislative process works in your state.
- Collect stories from families who were unable to secure clinical lactation care due to the inability to pay for the service or who lacked access to the risk appropriate care they needed. This helps legislators understand the need for licensure. Stories are being collected by NLCA at: https://docs.google.com/forms/d/1rALUfXbeBkruhFcnvPq6HDM-RxYt9xoIAfy4MZGFggc/edit
- Work alongside NLCA's Center for Lactation Equity to reduce the barriers to becoming an IBCLC®.[27]

Working with advocacy organizations like NLCA is one step towards reducing disparities in access to clinical lactation care for families and increasing access to the IBCLC® profession. NLCA offers connections, tools, skills, and individuals with a deep understanding of the many nuances of licensure.

References

[1] International Board Certified Lactation Consultant and IBCLC® are registered marks of the International Board of Lactation Consultant Examiners (IBLCE). NLCA is not endorsed or supported by, and has no affiliation with, IBLCE.

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[26] www.nlca.us

[27] www.nlca.us/equity

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