

HOUSE STATE GOVERNMENT, INDIAN AND VETERANS AFFAIRS
COMMITTEE SUBSTITUTE FOR HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 138

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION CARE PROVIDER ACT; PROVIDING FOR LICENSURE OF LACTATION CARE PROVIDERS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED LACTATION CARE PROVIDERS; AMENDING A SECTION OF THE NURSING PRACTICE ACT TO PROVIDE FOR BOARD OF NURSING ADMINISTRATION OF FUNDS DEPOSITED IN THE BOARD OF NURSING FUND PURSUANT TO THE LACTATION CARE PROVIDER ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Lactation Care Provider Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a

1 license to provide lactation care and services as a licensee
2 pursuant to the Lactation Care Provider Act;

3 B. "approved certification" means certification as
4 a lactation care provider conferred by a certification program
5 accredited by any nationally or internationally recognized
6 accrediting agency that is approved by the board and that
7 establishes continuing education requirements;

8 C. "board" means the board of nursing;

9 D. "lactation care and services" means the clinical
10 application of scientific principles and a multidisciplinary
11 body of evidence for the evaluation, problem identification,
12 treatment, education and consultation for the provision of
13 lactation care and services to families, including:

14 (1) clinical lactation assessment through the
15 systematic collection of subjective and objective data;

16 (2) analysis of data and creation of a plan of
17 care;

18 (3) implementation of a lactation care plan
19 with demonstration and instruction to parents and communication
20 to primary health care providers;

21 (4) evaluation of outcomes;

22 (5) provision of lactation education to
23 parents and health care providers; and

24 (6) recommendation and use of assistive
25 devices;

1 E. "license" means a license to practice as a
2 lactation care provider that the board issues pursuant to the
3 Lactation Care Provider Act;

4 F. "licensee" means a lactation care provider
5 licensed as a licensed lactation care provider pursuant to the
6 Lactation Care Provider Act;

7 G. "member" means a member of the board; and

8 H. "practice" means a course of business in which
9 lactation care and services are rendered or offered to any
10 individual, family or group of two or more individuals.

11 **SECTION 3. [NEW MATERIAL] BOARD POWERS.--**The board may:

12 A. enforce the provisions of the Lactation Care
13 Provider Act and adopt and promulgate rules to execute the
14 provisions of that act;

15 B. license qualified applicants;

16 C. discipline licensees;

17 D. enforce qualification for licensure;

18 E. establish standards for licensee competence for
19 continuing in or returning to practice based on approved
20 certification;

21 F. issue orders relating to the practice of
22 lactation care and services in accordance with the
23 Administrative Procedures Act;

24 G. regulate licensee advertising and prohibit
25 false, misleading or deceptive practices;

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- 1 H. establish a code of conduct for licensees;
- 2 I. prepare information for the public that
- 3 describes the regulatory functions of the board and the
- 4 procedures by which complaints are filed with and resolved by
- 5 the board; and
- 6 J. appoint a lactation care provider advisory
- 7 committee consisting of at least one member who is a board
- 8 member and at least two members who are experts in lactation to
- 9 assist in the performance of the board's duties.

10 SECTION 4. [NEW MATERIAL] LICENSURE REQUIREMENT--
11 QUALIFICATIONS--EXEMPTIONS FROM LICENSURE.--

12 A. An individual shall not use the title "licensed
13 lactation care provider" unless that individual is a licensee.

14 B. An applicant for a license as a licensee shall:

- 15 (1) be at least eighteen years of age;
- 16 (2) submit an application completed upon a
- 17 form that the board prescribes and in accordance with board
- 18 rules, accompanied by fees required by board rules;

19 (3) possess current approved certification;

20 and

21 (4) assist the board in obtaining the
22 applicant's criminal history background check by:

- 23 (a) providing fingerprints on two
- 24 fingerprint cards or other biometric data for the purpose of
- 25 obtaining criminal history record information from the federal

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1 bureau of investigation or the department of public safety; and

2 (b) paying the cost of obtaining the
3 fingerprints and criminal history background checks. An
4 applicant shall have the right to inspect or challenge the
5 validity of the record development by the background check if
6 the applicant is denied licensure as established by board rule.

7 C. Nothing in the Lactation Care Provider Act shall
8 be construed to affect or prevent the practice of lactation
9 care and services by licensed care providers or other persons;
10 provided that a person who is not a licensee shall not hold
11 that person out or represent that person's self to be a
12 licensed lactation care provider.

13 SECTION 5. [NEW MATERIAL] LICENSE FEES--TERM--RENEWAL.--

14 A. The board shall require each applicant for
15 initial licensure or renewal of a license to pay a
16 nonrefundable licensure fee that shall not exceed one hundred
17 dollars (\$100).

18 B. A license shall expire biennially from the date
19 of initial licensure.

20 C. The board shall renew licenses only upon receipt
21 of renewal of licensure fees and evidence of compliance with
22 continuing education requirements.

23 SECTION 6. [NEW MATERIAL] DISCIPLINARY PROCEEDINGS.--

24 A. In accordance with the procedures contained in
25 the Uniform Licensing Act, the board may deny, revoke or

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1 suspend any license held or applied for pursuant to the
2 Lactation Care Provider Act, reprimand or place a licensee on
3 probation or deny, limit or revoke a privilege of a licensee
4 desiring to practice or practicing lactation care and services
5 upon grounds that the licensee or applicant:

6 (1) is guilty of fraud or deceit in procuring
7 or attempting to procure a license;

8 (2) is convicted of a felony;

9 (3) is unfit or incompetent;

10 (4) is intemperate or is addicted to the use
11 of habit-forming drugs;

12 (5) is guilty of unprofessional conduct as
13 defined by board rules;

14 (6) has willfully or repeatedly violated any
15 provisions of the Lactation Care Provider Act, including any
16 board rule adopted pursuant to that act; or

17 (7) was certified or licensed to provide
18 lactation care and services in any jurisdiction, territory or
19 possession of the United States or another country and was the
20 subject of disciplinary action for acts similar to acts
21 described in this subsection. A certified copy of the record
22 of the certification or licensure board disciplinary action
23 taken by another jurisdiction, territory or possession of the
24 United States or another country is conclusive evidence of the
25 action.

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1 B. The board may summarily suspend or restrict a
2 license issued by the board without a hearing, simultaneously
3 with or at any time after the initiation of proceedings for a
4 hearing provided under the Uniform Licensing Act, if the board
5 finds that evidence in its possession indicates that the
6 licensee:

7 (1) poses a clear and immediate danger to the
8 public health and safety if the licensee continues to practice;

9 (2) has been adjudged mentally incompetent by
10 a final order or adjudication by a court of competent
11 jurisdiction; or

12 (3) has pled guilty to or been found guilty of
13 any offense related to the practice of medicine or for any
14 violent criminal offense in this state or a substantially
15 equivalent criminal offense in another jurisdiction.

16 C. A licensee is not required to comply with a
17 summary action taken pursuant to Subsection B of this section
18 until service has been made or the licensee has actual
19 knowledge of the order, whichever occurs first.

20 D. A person whose license is suspended or
21 restricted under this section is entitled to a hearing by the
22 board pursuant to the Uniform Licensing Act within fifteen days
23 from the date that the licensee requests a hearing.

24 E. Disciplinary proceedings may be instituted by
25 any person, shall be by complaint and shall conform with the

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1 provisions of the Uniform Licensing Act. Any party to a
2 hearing may obtain a copy of the hearing record upon payment of
3 costs for the copy.

4 F. Any person filing a complaint shall be immune
5 from liability arising out of civil action if the complaint is
6 filed in good faith and without actual malice.

7 G. All written and oral communication made by any
8 person to the board relating to actual or potential
9 disciplinary action, including complaints made to the board,
10 shall be confidential communications and are not public records
11 for the purposes of the Inspection of Public Records Act. All
12 data, communications and information acquired, prepared or
13 disseminated by the board relating to actual or potential
14 disciplinary action or its investigation of complaints shall
15 not be disclosed, except to the extent necessary to carry out
16 the purposes of the board or in a judicial appeal from the
17 actions of the board or in a referral of cases made to law
18 enforcement agencies, national database clearinghouses or other
19 licensing boards.

20 H. The board shall not initiate a disciplinary
21 action more than two years after the date that it receives a
22 complaint.

23 I. The time limitation contained in Subsection D of
24 this section shall not be tolled by any civil or criminal
25 litigation in which the licensee or applicant is a party,

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1 arising substantially from the same facts, conduct,
 2 transactions or occurrences that would be the basis for the
 3 board's disciplinary action.

4 J. The board may recover the costs associated with
 5 the investigation and disposition of a disciplinary proceeding
 6 from the person who is the subject of the proceeding.

7 SECTION 7. Section 61-3-27 NMSA 1978 (being Laws 1968,
 8 Chapter 44, Section 23, as amended) is amended to read:

9 "61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF
 10 PAYMENT.--

11 A. There is created a "board of nursing fund".

12 B. Except as provided in Sections [~~2 and 3 of this~~
 13 ~~2003 act~~] 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received
 14 by the board and money collected under the Nursing Practice Act
 15 and the Lactation Care Provider Act shall be deposited with the
 16 state treasurer. The state treasurer shall place the money to
 17 the credit of the board of nursing fund. Any income earned on
 18 investment of the fund shall remain in the fund.

19 C. Payments out of the board of nursing fund shall
 20 be on vouchers issued and signed by the person designated by
 21 the board upon warrants drawn by the department of finance and
 22 administration in accordance with the budget approved by the
 23 department.

24 D. All amounts paid into the board of nursing fund
 25 shall be subject to the order of the board and shall only be

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1 used for the purpose of meeting necessary expenses incurred in
2 the enforcement of the purposes of the Nursing Practice Act and
3 the Lactation Care Provider Act, the duties imposed by [~~that~~
4 ~~act~~] those acts and the promotion of nursing and lactation care
5 provider education and standards in this state. All money
6 unused at the end of the fiscal year shall remain in the board
7 of nursing fund for use in accordance with the provisions of
8 the Nursing Practice Act and the Lactation Care Provider Act to
9 further the purposes of [~~that act~~] those acts.

10 E. All funds that may have accumulated to the
11 credit of the board under any previous act shall be continued
12 for use by the board in administration of the Nursing Practice
13 Act and the Lactation Care Provider Act.

14 F. As used in this section, "lactation care
15 provider" means a person licensed by the board pursuant to the
16 Lactation Care Provider Act to provide lactation care and
17 services."