SB 175-FN - AS AMENDED BY THE SENATE

02/22/2023 0593s
03/23/2023 1030s

2023 SESSION

23-1034
07/05

SENATE BILL ***175-FN***

AN ACT relative to Medicaid coverage for mothers.

SPONSORS: Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Altschiller, Dist 24; Sen. Fenton, Dist 10; Sen. Watters, Dist 4; Sen. Soucy, Dist 18; Sen. Chandley, Dist 11; Sen. Ricciardi, Dist 9; Rep. Simpson, Rock. 33; Rep. M. Murray, Hills. 37

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill:

I. Mandates that the department of health and human services extend Medicaid coverage for pregnant women to 12 months postpartum, to cover doula services, to cover lactation services, and to cover donor breast milk for eligible infants, and creates appropriations thereof.

II. Establishes minimum workplace supports for nursing mothers.

III. Makes an appropriation to the department of health and human services to support healthy outcomes for caregivers and children.

IV. Mandates the wellness and primary prevention council study and submit a report on home visiting programs for all parents of newborns and young children.

V. Mandates the department of health and human services establish a network of early childhood behavioral health supports and makes an appropriation thereof.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 175-FN - AS AMENDED BY THE SENATE

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to Medicaid coverage for mothers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Findings. The general court hereby finds that:

I. The United States is facing a maternal health crisis. Our country's maternal mortality rate is the highest of any developed nation in the world and more than double the rate of peer countries, and most pregnancy-related deaths are considered preventable.

II. For too long, we have allowed preventable deaths, life-altering complications, and untreated mental health and substance use disorders to persist for mothers.

III. The General Court is committed to cutting the rates of maternal mortality and morbidity, reducing the disparities in maternal health outcomes, and improving the overall experience of pregnancy, birth, and postpartum for people across the state, because Granite State mothers deserve to have a safe and dignified pregnancy and birth.

IV. The 2022 Annual Report on Maternal Mortality recommended increased access to maternal health services and increased funding for direct services.

V. Increased attention to maternal and infant health is necessary to improve health outcomes in New Hampshire, including expanded access to coverage and care and increased access to a broader array of services and providers that support maternal and infant health.

2 Short Title. This act shall be known as the "The New Hampshire Mom-nibus."

3 New Paragraph; The Children's Health Plan; Medicaid Enhancement for Children and Pregnant Women; Postpartum Coverage. Amend RSA RSA 167:68 by inserting after paragraph III the following new paragraph:

IV.(a) Pursuant to the state option under the American Rescue Plan Act of 2021 to expand maternity care under Medicaid and section 1902(e)(16) of the Social Security Act (42 U.S.C. section 1396a(e)), the commissioner of the department of health and human services shall submit, no later than September 30, 2023, a Medicaid state plan amendment to the federal Centers of Medicare and Medicaid Services to establish and implement 12 months of continuous coverage for the entire postpartum period. This benefit shall be available to anyone who received medical assistance under the state plan for all pregnancy-related and postpartum medical assistance available under the state plan.

(b) The purpose of the program shall be, through ensuring continuous coverage for a 12-month postpartum period, to increase identification and mitigation of preventable pregnancy related

and pregnancy associated morbidity and mortality, including those related to substance use disorder and mental illness.

(c) The medical assistance provided for a pregnant or postpartum woman under this section shall, consistent with section 1902(e)(16) include all items and services covered under the state plan that are not less in amount, duration, or scope, or are determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in subsection (a)(10)(A)(i); and be provided for the individual while pregnant and during the 12-month period that begins on the last day of the individual's pregnancy and ends on the last day of the month in which such 12-month period ends.

(d) On January 31, 2024, the commissioner shall begin submitting quarterly reports to the oversight committee on Health and Human services, the legislative committees with jurisdiction over Health and Human services, and the governor regarding the department's progress in obtaining and implementing the state plan amendment. The quarterly reports shall include the department's plans for reducing administrative burdens for enrollees and the department's efforts to expand access and participation to voluntary, evidence-based maternal home visiting programs, pursuant to subparagraph (a). Reports submitted under this paragraph shall also be posted on the department's website.

(e) Working with stakeholder and community organizations, the department shall establish a comprehensive community education and outreach campaign to inform eligible persons and providers of the extended health care coverage in this section.

4 Appropriation. The sum of $300,000 for the fiscal year ending June 30, 2024 and $300,000 for the fiscal year ending June 30, 2025 is hereby appropriated to the department of health and human services for the purpose of expanding postpartum health care services under the state Medicaid plan as provided in section 3 of this act. The governor shall determine if any discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law 117-2, or any other federal funds, can be used for this purpose, and the commissioner shall expend such federal funds for this purpose. Any remainder shall be appropriated from the general fund. The governor is authorized to draw a warrant for the general fund portion of said sums out of any money in the treasury not otherwise appropriated. The department of health and human services may accept and expend matching federal funds without prior approval of the fiscal committee of the general court.

5 New Subdivision; Medicaid Coverage of Certain Birthing, Postpartum, and Newborn Services. Amend RSA 126-A by inserting after section 98 the following new subdivision:

Medicaid Coverage of Certain Birthing, Postpartum, and Newborn Services

126-A:99 Medicaid Doula Coverage.

I. Notwithstanding any other provision of this chapter, doula services shall be covered under the medical assistance for eligible Medicaid beneficiaries.

II. As used in this section, "doula services" means services provided by a highly-qualified doula certified by the state pursuant to RSA 310-A:222 and designed to provide physical, emotional, and educational support to pregnant women before, during, and after childbirth. Doula services include the following:

(a) Support and assistance during labor and childbirth.

(b) Prenatal and postpartum support and education.

(c) Breastfeeding assistance and lactation support.

(d) Parenting education.

(e) Support for a birthing person following loss of pregnancy.

III. The department of health and human services is authorized to take any action to include doula services in the medical assistance program, including seeking waivers or amending the Medicaid state plan to provide reimbursement for doulas who provide Medicaid eligible services to eligible Medicaid beneficiaries.

IV. Not later than January 31, 2025, the commissioner shall report to the oversight committee on health and human services, the legislative committees with jurisdiction over health and human services, and the governor, a set of metrics determined by the department of health and human services.

V. The department shall adopt rules pursuant to RSA 541-A to implement the provisions of this section. The rules shall address the requirements and expertise of practicing doulas, doula training providers, and home visiting experts. Every 2 years, the department shall assess the rates of reimbursement for doula services and adjust rates accordingly.

126-A:100 Medicaid Coverage of Lactation Services; Reimbursement Required.

I. The department of health of health and human services shall cover lactation services for Medicaid recipients as a pregnancy-related service under New Hampshire's Medicaid program.

II. The department is authorized to use the following Medicaid coverage categories to reimburse lactation services:

(a) Inpatient hospital services, other than services in an institution for mental disease, per Social Security Act (SSA) section 1905(a)(1);

(b) Outpatient hospital services, per SSA section 1905(a)(2)(A) and 42 C.F.R. section 440.10;

(c) Early and periodic screening, diagnostic, and treatment services for individuals who are eligible under the plan and are under the age of 21, per SSA section 1905(a)(4)(B);

(d) Physicians' services furnished by a physician under the physician's supervision, whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, per SSA section 1905(a)(5)(A);

(e) Services furnished by a nurse-midwife, which the nurse-midwife is legally authorized to perform under State law, per SSA section 1905(a)(17);

(f) Freestanding birth center services, per SSA section 1905(a)(28); and

(g) Services furnished by nurse practitioners per 42 C.F.R. section 440.166 and other licensed practitioners per 42 C.F.R. section 440.60.

III. Reimbursable lactation services shall include:

(a) Breastfeeding education;

(b) Individual lactation consultation; and

(c) Equipment rentals.

126-A:101 Medicaid Coverage of Donor Breast Milk; Reimbursement Required.

I. The department of health and human services shall provide reimbursement under the medical assistance program for donor breast milk provided to an infant receiving benefits under this chapter by organizations approved by the department if a physician or physician assistant licensed in this state or an advanced practice registered nurse licensed in this state signs an order state the following:

(a) The infant is medically or physically unable to receive maternal breast milk or participate in breastfeeding or the infant's mother is medically or physically unable to produce maternal breast milk in quantities sufficient for the infant; and

(b) The infant:

(1) Was born at a birth weight of less than 1,500 grams;

(2) Has a gastrointestinal anomaly or metabolic or digestive disorder or is recovering from intestinal surgery and the infant's digestive needs require additional support;

(3) Is not appropriately gaining weight or growing;

(4) Has formula intolerance and is experiencing weight loss or difficulty feeding;

(5) Has low blood sugar;

(6) Has congenital heart disease;

(7) Has received or will receive an organ transplant; or

(8) Has another medical condition for which donor breast milk is medically necessary.

II. The department shall adopt rules pursuant to RSA 541-A to implement the program described in this section.

6 Medicaid State Plan; Requiring Coverage of Donor Breast Milk. The department of health and human services shall prepare and submit a Medicaid state plan amendment or waiver as necessary to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services no later than September 30, 2023 that provides or requests, as appropriate, Medicaid coverage consistent with RSA 126-A:101 for the coverage of donor breast milk for eligible infants.

7 Appropriation; Reimbursement for Donor Breast Milk under the Medicaid Program. The sum of $250,000 for the biennium ending June 30, 2025 is hereby appropriated to the department of health and human services for the purpose of providing reimbursement for donor breast milk for

eligible infants under the state Medicaid plan as provided in sections 4 and 5 of this act. The governor shall determine if any discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law 117-3, or any other federal funds, can be used for this purpose, and the commissioner shall expend such federal funds for this purpose. Any remainder shall be appropriated from the general fund. The governor is authorized to draw a warrant for the general fund portion of such sum from any money in the treasury not otherwise appropriated. The department of health and human services may accept and expend matching federal funds without prior approval of the fiscal committee of the general court.

8 Appropriation; Reimbursement for Doulas under the Medicaid Program. The sum of $300,000 for the biennium ending June 30, 2025 is hereby appropriated to the department of health and human services for the purpose of providing reimbursement for state-certified doulas under the state Medicaid plan as provided in section 4 of this act. The governor shall determine if any discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law 117-2, or any other federal funds, can be used for this purpose, and the commissioner shall expend such federal funds for this purpose. Any remainder shall be appropriated from the general fund. The governor is authorized to draw a warrant for the general fund portion of such sum from any money in the treasury not otherwise appropriated. The department of health and human services may accept and expend matching federal funds without prior approval of the fiscal committee of the general court.

9 Appropriation; Reimbursement for Lactation Services under the Medicaid Program. The sum of $300,000 for the biennium ending June 30, 2025 is hereby appropriated to the department of health and human services for the purpose of providing reimbursement for lactation services under the state Medicaid plan as provided in section 4 of this act. The governor shall determine if any discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law 117-2, or any other federal funds, can be used for this purpose, and the commissioner shall expend such federal funds for this purpose. Any remainder shall be appropriated from the general fund. The governor is authorized to draw a warrant for the general fund portion of such sum from any money in the treasury not otherwise appropriated. The department of health and human services may accept and expend matching federal funds without prior approval of the fiscal committee of the general court.

10 New Subdivision; Labor; Protective Legislation; Policies Relating to Nursing Mothers. Amend RSA 275 by inserting after section 77 the following new subdivision:

Policies Relating to Nursing Mothers

275:78 Definitions. In this subdivision:

I. "Employee" shall mean a person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit but shall not include any individual who volunteers services for a public, charitable, or religious facility without expectation or promise of pay.

II. "Employer" shall mean a person, partnership, association, corporation, or legal representative of a person, partnership, association, or corporation, or the state or any of its political subdivisions, which has 6 or more employees working in the state.

III. "Expression of milk" means the initiation of lactation by manual or mechanical means but shall not include breastfeeding.

IV. "Reasonable break period" shall mean an unpaid break of approximately 30 minutes for every 3 hours of work performed by a nursing employee for the purpose of expressing milk.

V. "Undue hardship" shall mean any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources and the nature and structure of its operation.

275:79 Notification of Policies.

I. Every employer shall adopt a policy to address the provision of sufficient space and reasonable break periods for nursing employees that need to express milk during working hours.

II. Every employer shall, at the time of hire, make available to its employees the employer's policy related to expression of milk during working hours.

III. A nursing employee shall notify its employer at least 2 weeks prior to needing reasonable break periods and sufficient space for expression of milk during work hours.

275:80 Sufficient Space.

I. Every employer shall provide access to reasonable, sufficient space, either temporary or permanent in nature, for the use of an employee to express milk for a nursing child for a period of one year from the date of birth of the child.

II. The location of the space provided shall be within a reasonable walk of the employee's worksite, unless otherwise mutually agreed to by the employer and employee.

III. Sufficient space provided in accordance with this section shall not be a bathroom, and shall be a clean space shielded from view and free from intrusion from coworkers and the public.

(a) If the space is not solely for the use of employees expressing milk it shall be made available when requested to comply with the requirements set forth in this subdivision.

(b) If feasible, the room shall have, at a minimum, an electrical outlet and a chair.

275:81 Reasonable Break Period.

I. Every employer shall provide reasonable break periods to employees who need to express milk for a child for a period of one year from the date of birth of the child. Nothing in this section shall preclude an employer from negotiating with an employee reasonable break periods to express milk that are different from the requirements in this subdivision.

II. Nothing under this subdivision shall preclude an employee from taking a reasonable break period contemporaneously with break or meal periods already provided to the employee by the employer.

III. An employer shall not require an employee to make up time related to use of unpaid reasonable break periods.

275:82 Penalties. Any employer who violates any provision of this subdivision shall be subject to a one-time civil penalty pursuant to RSA 273:11-a.

275:83 Hardship Exemption. An employer may be exempted from this subdivision if providing reasonable break time and sufficient space for expressing milk would impose an undue hardship to the employer's operations.

11 Appropriation; Maternal and Child Support. The sum of $2,000,000 for fiscal year ending June 30, 2024, and the sum of $2,000,000 for the fiscal year ending June 30, 2025, is hereby appropriated to the department of health and human services to support healthy outcomes for caregivers and children and shall be allocated to the family resource center facilitating organization, New Hampshire Children's Trust, for distribution to family resource centers. The use of the funds shall include, but not be limited to, better serving families, preparing for FRC-Q designation, enhancing coordination with other early childhood systems, and supporting evidence-based programs such as home visiting programs and perinatal doula services, ACERT, and community collaboration. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

12 New Section; Wellness and Primary Prevention Council; Voluntary Home Visiting Program Report. Amend RSA 126-M by inserting after section 6 the following new section:

126-M:7 Voluntary Home Visiting Program Report.

I. The council shall study how New Hampshire can reduce barriers, improve access, and create a system of universal access to voluntary home visiting programs available to all parents of newborns and young children designed to support families, bridge gaps between caretakers and community resources, and improve maternal and child health wellness.

II. The council shall submit a report on any findings and recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor and the state library on or before October 15, 2024.

13 New Subdivisions; Medicaid Reimbursement-Eligible Doulas and Lactation Service Providers. Amend RSA 310-A by inserting after section 221 the following new subdivisions:

Medicaid Reimbursement-Eligible Doulas and Lactation Service Providers

310-A:222 Doula and Lactation Service Provider Certification.

I. For the purposes of Medicaid billing pursuant to RSA 126-A:99, the office of professional licensure and certification shall establish a voluntary doula certification process and establish a lactation service certification process to certify lactation service providers that are credentialed by the International Board of Lactation Examiners.

II. The office of professional licensure and certification shall adopt rules pursuant to RSA 541-A relative to the authority set out in paragraph I.

III. Nothing in this section shall prevent a person certified by this state pursuant to any other provision of law from performing the occupation for which he or she is certified.

14 New Section; System of Care for Children's Mental Health; Early Childhood Behavioral Health Supports. Amend RSA 135-F by inserting after section 9 the following new section:

135-F:10 Early Childhood Behavioral Health Supports Established.

I. The department of health and human services shall develop and maintain a publicly available network of trauma-informed early childhood mental health consultants and ensure ongoing training and consultation of the early childhood mental health consultants. Early childhood mental health consultations shall be:

(a) Provided by qualified mental health professionals who possess a masters or doctoral-level degree in the mental health field and who demonstrate evidence of specialized training and experience in infant and early childhood mental health as established by the department;

(b) Offered, if necessary, to children across settings and regardless of changes to setting and placement;

(c) Integrated with other available behavioral health and family support services providers, including but not limited to the care management entities established under RSA 135-F, early childhood mental health services, and early supports and services; and

(d) Implemented in accordance with this chapter and include, but not be limited to, the following services:

(1) Conducting observation and assessment of a child and their caregivers across child care settings, including universal strengths-based assessments in accordance with this chapter and RSA 170-G:4-e and the use of valid and reliable measures of: trauma exposure, chronic exposure to stress and symptoms, emotional and behavioral development, and the strengths and needs of the caregiving/child-caregiver relationship;

(2) Consulting with caregivers, teachers, directors, administrators, and other medical and behavioral health providers about the meaning of challenging behaviors and how to meet the needs of the child and care givers;

(3) Strengthening caregiver and professional capacity to successfully handle challenging behaviors though developmentally appropriate methods, including but not limited to reflective questioning, developmental guidance, modeling, and role playing;

(4) Offering training in young child socio-emotional development, emotional and behavioral regulation, and trauma exposure to caregivers and professionals; and

(5) Be provided to any child 0-6 presenting with behaviors substantially interfering with their successful engagement in child care and to any child who is placed or at risk of being placed in foster care within 30 days of their placement in care.

II. The department shall establish the eligibility and referral process for the consultations that prioritized children in foster care or at risk of being placed in foster care.

III. Notwithstanding any paragraph of this section, the availability of consultations shall be subject to available appropriations to this program.

15 Appropriation; Early Childhood Mental Health Consultation. The sum of $1,000,000 for the fiscal year ending June 30, 2024, and the sum of $1,000,000 for the fiscal year ending June 30, 2025, is hereby appropriated to the department of health and human services to support existing programs to provide trauma-informed early childhood mental health consultation to caregivers at home and in child care settings to support young children with exposure to adverse childhood experiences and who experience emotional and behavioral challenges. Of this amount, the governor shall determine if any remaining discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law 117-2 or any other federal funds can be used for this purpose and any remainder shall be general funds. The funds shall be non-lapsing. The governor is authorized to draw a warrant for the general fund share of said sums out of any money in the treasury not otherwise appropriated.

16 Effective Date.

I. Sections 2, 3, 4, 11, and 15 shall take effect July 1, 2023.

II. Section 10 of this act, except for RSA 275:82, shall take effect July 1, 2025.

III. RSA 275:82, as inserted by section 10 of this act shall take effect July 1, 2026.

IV. The remainder of this act shall take effect July 1, 2024.

LBA
23-1034
1/17/23

SB 175-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to Medicaid coverage for mothers.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

AGENCIES CONTACTED:

Department of Health and Human Services