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Policy Impact Assessment: The “Reasonable Break Time” Provision of the Patient Protection and Affordable Care Act

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Policy Impact Assessment:

The “Reasonable Break Time” Provision of the
Patient Protection and Affordable Care Act

Merritt Juliano

While the significance of breastfeeding over formula feeding is widely debated, breastfeeding continues to be the most optimal source of nutrition for infants under 6 months of age. Recommendations include exclusive breastfeeding for the first 6 months post-birth, followed by continued breastfeeding supplemented with age-appropriate foods during the first 2 years (American Academy of Pediatrics [AAP], 2010; Johnston & Esposito, 2007; World Health Organization [WHO], 2014). Numerous professional organizations report improved infant and maternal health benefits related to breastfeeding, including protection against illness and disease, as well as improved psychosocial outcomes for both mother and child (AAP, 2010; Bakalar, 2014; Rosin, 2009; Office of the Surgeon General, 2011; WHO, 2014). These findings underscore breastfeeding behavior as a matter of important public health concern (Sussner, Lindsay & Peterson, 2008). Breastfeeding is also associated with significant economic and environmental benefits (AAP, 2010; Bakalar, 2014; Rosin, 2009; Office of the Surgeon General, 2011; World Health Organization [WHO], 2014).

A national effort to increase breastfeeding rates by 2010 set goals that 75% of all new mothers would initiate breastfeeding, with 50% continuing to 6 months post-birth, and 25% continuing for 1 year (Johnston & Esposito, 2007). These objectives were not met (Johnston & Esposito, 2007). While breastfeeding initiation rates came close to reaching the target, continued breastfeeding rates at 6 and 12 months consistently fell below expectations (Guendelman et al., 2009; Johnston & Esposito, 2007).

Social Problem

Breastfeeding women face many challenges in our society. Various risk factors serve as barriers to achieving the optimal breastfeeding duration. A national health survey identified the

following maternal sociodemographic circumstances associated with lower rates of breastfeeding: (1) Non-Hispanic Blacks and African Americans, (2) Women Infants and Children (WIC) recipients, (3) poverty, (4) lack of education, (5) single, (6) young, and (7) non-metropolitan residence (Centers for Disease Control and Prevention [CDC], 2013). Research further identifies maternal employment as a major risk factor for early breastfeeding cessation rates (Fein, Mandal & Roe, 2008; Guendelman et al., 2008; Johnston & Esposito, 2007; Mandal, Roe & Fein, 2010; Ogbuanu et al., 2011). This is an important finding given that 57% of mothers with infants work outside the home (U.S. Department of Labor, 2012).

Breastfeeding mothers in the workplace must overcome many obstacles. Most workplaces lack onsite childcare and/or lactation facilities for women to either continue nursing or express breast milk (Fein, Mandel & Roe, 2008; Guendelman et al., 2008). Inflexible work schedules and lack of support from both coworkers and supervisors also contributes to early weaning (Fein, Mandal & Roe, 2008; Guendelman et al., 2008; Johnston & Esposito, 2007). In the presence of these workplace deficiencies, working mothers and their children are unable to continue breastfeeding. The ability to continue nursing is important given research associating direct breastfeeding with healthy mother-child attachments, a significant factor for positive emotional, psychological and cognitive outcomes (Britton, Britton & Gronwaldt, 2006; Tharner et al., 2012). Similarly, the inability to continue breastfeeding indirectly via bottle-feeding due to an inability to express breast milk at work deprives both mother and child of their natural ability to give and receive the unique immunological and cognitive health benefits offered by human milk (Sussman, Lindsay & Peterson, 2008). Moreover, at a macro level, low breastfeeding rates result in unrealized public health benefits.

Policy Solution

Continued efforts to increase breastfeeding rates in the U.S., particularly among working mothers, led to landmark federal legal protections for breastfeeding mothers in the workplace (Rippeyoung & Noonan, 2012). In 2010, Section 4207 of the Patient Protection and Affordable Care Act [ACA] amended fair labor standards by requiring employers to provide breastfeeding workers with reasonable break time and private lactation facilities, other than a bathroom, to express breast milk for up to one year following the birth of the employee's child (ACA, 2010; Fair Labor Standards Act of 1938 [FLSA], 2011). These new provisions do not require employers to compensate breastfeeding employees receiving reasonable break time for any work time spent expressing breast milk, unless the employee utilizes paid break times already available to her for such purpose (ACA, 2010; FLSA, 2011). All employees covered by the FLSA are subject to the reasonable break time requirements (ACA, 2010). However, an employer with less than 50 employees is not subject to these requirements if compliance would impose an undue hardship (ACA, 2010; FLSA, 2011). In essence, the "reasonable break time" provision gives mothers returning to work an opportunity to continue breastfeeding during what is a crucial period in child growth and development (Rippeyoung & Noonon, 2012).

Policy Analysis

The primary goal of the "reasonable break time" policy is to allow mothers to continue breastfeeding for one year following the birth of a child once they return to work. Given the national initiative to increase breastfeeding rates prior to the passage of the this policy, a secondary goal is likely to meet Healthy People 2020 goals in order to "improv[e] the health and well-being of women, infants, children and families" by increasing the percentage of mothers

who breastfeed during the critical post-natal period to 81.9 percent by the year 2020 (Healthy People, 2013; Jones et al., 2011).

The "reasonable break time" policy provides benefits to breastfeeding mothers in the workplace by requiring employers to provide breastfeeding employees reasonable break time and private space to express breast milk. Any breastfeeding employee of an employer covered under the FLSA can access the benefit. The FLSA defines a covered employer as an enterprise, which has at least two employees, and at least \$500,000 in annual dollar volume sales or business, or hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies (FLSA, 2011).

The policy is delivered by public and private sectors and essentially funded by taxpayers and the marketplace, respectively, in that the burden is placed on public and private employers to provide the benefit. The cost will vary from employer to employer based on size, resources and nature of an employer's business. In some cases, for example, private space for breast milk expression may be readily available at no additional cost to the employer. However, employers may cite costs related to lost productivity as research indicates that breastfeeding mothers may be less productive or work less hours (Rippeyoung & Noonan, 2012).

There are many potential gains from implementation of the "reasonable break time" provision. At the micro level, individual mothers and infants benefit. Infants continue to access the health benefits of consuming breast milk, including a reduced risk of contracting a wide spectrum of diseases and illnesses, reduced risk of developing allergies and potentially the achievement of higher IQ scores (Sussman, Lindsay & Peterson, 2008). According to a variety of research, breastfeeding mothers may also receive illness and disease shielding health benefits,

including protection against certain cancers (Rojjanasrirat & Sousa, 2010; Sussman, Lindsay & Peterson, 2008). At the mezzo and macro levels, governmental and professional organizations recommending breast milk over formula as an infant's main source of nutrition benefit from this policy implementation. From an economical standpoint, the marketplace will also benefit. An increase in women who continue to breastfeed in the workplace is likely to yield higher demands for lactation consultants and breastfeeding equipment industry suppliers.

While many parties stand to benefit from the implementation of the "reasonable break time," others will not. The policy requires certain enterprises to provide breastfeeding mothers with break time and lactation facilities. However, not all breastfeeding mothers in the workplace will have access to the benefits. Millions of mothers working for small businesses, and independent contractors, such as professionals in the dental, entertainment, construction and arts industry, as well as mothers in traditionally inflexible jobs, will not access the benefit.

Women with flexible work schedules and supportive workplace environments maintain longer breastfeeding durations (Fein, Mandal & Roe, 2008; Guendelman et al., 2009; Johnston & Esposito, 2007). However, small businesses and employers who hire independent contractors are the least likely to provide flexible work hours and supportive workplace environments. Moreover, small businesses tend to employ more women, Hispanics, employees with lower education levels, and individuals receiving financial and public assistance (Headd, 2000). Small business employees also tend to receive less compensation, pension and health benefits (Headd, 2000). Lower breastfeeding rates in the U.S. have also been identified among women in certain immigrant racial and ethnic groups (Sussner, Lindsay & Peterson, 2008). This correlates with studies finding that women who have been successful at coupling work and breastfeeding tend to

be older, white, married and of higher socioeconomic status (CDC, 2013; Fein, Mandal & Roe, 2008; Johnston & Esposito, 2007; Kozhimannil et al., 2013). All of these findings suggest that working mothers unable to access the "reasonable break time" benefits are disproportionately of lower socioeconomic status. Paradoxically, studies imply that breastfeeding may serve as an important coping mechanism for low-income mothers who face stressful life events (Dozier, Nelson & Brownell, 2012).

In addition to millions of mothers, employers and infant formula manufacturers also lose from an economic standpoint. Certain covered smaller employers who fail to qualify for the undue hardship carve out may not have the resources to provide breastfeeding mothers with break time to pump even though such break time does not have to be paid. Similarly, these same employers are less likely to have space other than bathrooms readily available for women to pump privately. An additional expense may be incurred to meet these requirements.

The ACA became effective on March 30, 2010. Consequently, policy outcomes have not yet been evaluated. Breastfeeding rates among working-women, however, are likely to increase, at least within the population of breastfeeding women with access to benefits. Policy effectiveness will most likely be evaluated by both public and private organizations. The Department of Health and Human Services (HHS) and the CDC will likely be tasked with evaluating the "reasonable break time" provision of the ACA. Breastfeeding data is currently collected by both the CDC and Abbott Laboratories, the largest manufacturer of infant formula.

The Ross Laboratories Mothers Survey (RMS), sponsored by Abbott Laboratories, is the largest breastfeeding survey in the U.S., reaching more than 1 million women annually (Ryan, 2005). While the CDC utilizes several data collection methods to gather breastfeeding

information, including the National Immunization Survey (NIS), National Survey of Family Growth, HealthyStyles Survey and the Breastfeeding Report Card, among others, the RMS remains the only survey to collect maternal employment status (CDC, 2014; Ryan, 2005).

Relationship to NASW Code of Ethics

While the "reasonable break time" provision of the ACA is a step in the right direction for both infants, women, families and our society in general, the new policy does not perfectly align with the core values articulated by National Association of Social Workers (NASW) Code of Ethics. The core values set forth in the code are (1) service, (2) social justice, (3) dignity and worth of a person, (4) importance of human relationships, (5) integrity and (6) competence (NASW, 2008). For purposes of this analysis, the "reasonable break time" policy does not trigger the core values of integrity ("social workers behave in a trustworthy manner") and competence ("social workers practice within their areas of competence and develop and enhance their expertise") (NASW, 2008). However, the policy does appear to meet the remaining core values and their associated ethical principles (NASW, 2008). While the "reasonable break time" policy does help mothers who wish to continue breastfeeding in the workplace by giving them time and space to do so, thereby creating a more equitable environment for working mothers and recognizing the importance of the mother-infant dyad, members of lower socioeconomic populations do not have access to policy benefits. Consequently, children of working mothers in vulnerable populations are denied access to the important protective health benefits.

Protections for breastfeeding mothers and their infants should extend further to align with the Universal Declaration of Human Rights [UDHR] and the United Nations Convention on the Rights of the Child [UNCRC] (United Nations [UN], 1948; UN, 1989). Specifically, the

“reasonable break time” provision does not fully align with Article 16 Section 3, stating that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,” Article 23 Section 1, stating that “everyone has the right...to just and favourable conditions of work,” and Article 25 Section 2, stating that “motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection” (UN, 1948). The UNCRC offers stronger protections for the child, requiring that in all actions of society, the best interest of the child is a primary consideration (UN, 1989). To align more closely with the UDHR and UNCRC, policies for breastfeeding mothers should be more extensive, covering all mothers regardless of whether her employer is covered under the provision. Under both the UDHR and the UNCRC, mothers should be entitled to continue nursing in the workplace if she chooses to do so. However, most mothers are denied this right in the absence of onsite childcare facilities. Breastfeeding employees should also be paid for reasonable break time in order to ensure that all mothers can afford to continue breastfeeding at work, especially if she is not able to leave work to nurse or express milk. Under the UDHR and UNCRC, all children whose mothers choose to breastfeed, either directly or via bottle, would be entitled to receive breastfeeding benefits, regardless of maternal employment status or workplace environment.

Recommendations for a Rights-Based Policy

A rights-based approach to protecting breastfeeding mothers in the workplace would more closely align with the UDHR and UNCRC. In order to accomplish this, I make three core recommendations to revise the “reasonable break time” provision. First and foremost, and as stated above, the protections offered should be universal in that all mothers, regardless of

employment situation, would have access to benefits. This would ensure that mothers who work for small businesses, act as independent contractors or receive hourly wages instead of salaries have equal access to the protections afforded under the law. This change would have the effect of extending benefits to women in vulnerable populations, thereby increasing breastfeeding rates in lower socioeconomic groups. Second, employers should also be required to offer flexible work hours, non-traditional work arrangements and/or job sharing opportunities, which would capture millions of women employed in traditionally inflexible jobs (e.g., physicians, flight attendants, bus drivers, military personnel, etc.) (Guendelman et al., 2009; Johnston & Esposito, 2007; Mandal, Roe & Fein, 2010; Shealy, et al., 2005).

In order to ensure higher rates and duration of breastfeeding in the U.S., however, I would also recommend supporting the Family and Medical Insurance Leave (FAMILY) Act, a bill proposed in Congress to create an insurance plan, much like social security, in order to provide paid family and medical leave to all employees (FAMILY, 2013). While the U.S. does not currently mandate paid maternity leave, despite an overwhelming trend to do so in 178 other nations, I would recommend implementing this policy in light of overpowering evidence pointing to maternal employment as a significant obstacle for breastfeeding (Beadle, 2012; Guendelman et al., 2009; Johnston & Esposito, 2007; Mandal, Roe & Fein, 2010; Ogbuanu et al., 2011). This would ensure that mothers in lower income brackets have access to benefits

(Guendelman et al., 2009; Ogbuanu, 2011). Alternatively, creating publicly-funded childcare facilities widely accessible to working mothers could serve as a comparable measure to allow women to return to work and meet breastfeeding duration goals (Fein, Mandal & Roe, 2008).

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POLICY IMPACT ASSESSMENT

12

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POLICY IMPACT ASSESSMENT

13

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POLICY IMPACT ASSESSMENT

14

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