Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 292

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(As Reported by H. Health & Aging)

Reps. Gonzales, Grossman, Stebelton, Reece, Dovilla, Gardner, Baker, Wachtmann, Fende, Antonio, Carney, Celeste, Duffey, Garland, Yuko

BILL SUMMARY

- Creates licensing requirements for the practice of genetic counseling and requires the State Medical Board to implement and administer the licensure process.
- Authorizes a licensed genetic counselor, in general, to (1) provide medical, genetic, and counseling information to patients, their families, and other health care professionals and (2) order genetic or other diagnostic tests under a collaborative agreement with a physician.
- Makes technical corrections in other Board-administered laws.

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Overview

The bill requires an individual to be licensed by the State Medical Board in order to practice genetic counseling. The licensure process is to be operated in generally the same way that the Board currently regulates other health care professionals, such as physicians. Genetic counselors must comply with the licensing requirements beginning one year after the bill's effective date.

In addition to establishing licensing requirements for genetic counselors, the bill makes technical corrections in certain existing laws administered by the Board with respect to other health care professionals.

Scope of practice of genetic counselors

Under the bill, a genetic counselor holding a valid license from the State Medical Board is authorized to engage in all of the following:[1]

(1) Obtaining and evaluating the medical histories of a patient and the patient's family members to determine the risk for genetic or medical conditions and diseases in the patient, the patient's offspring, or the patient's family members;

(2) Discussing with a patient and the patient's family the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;

(3) Identifying and coordinating genetic laboratory tests and other diagnostic studies as appropriate for genetic assessment;

(4) Integrating the results of genetic laboratory tests and other diagnostic tests with individual and family medical histories;

(5) Explaining to a patient and the patient's family the clinical implications of the results of genetic laboratory tests and other diagnostic tests;

(6) Evaluating the response of a patient or the patient's family members to one or more genetic conditions or the risk of reoccurrence and providing patient-centered counseling and guidance;

(7) Identifying and using community resources that provide medical, educational, financial, and psychosocial support and advocacy;

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[1] R.C. 4778.11(A).

(8) Providing medical, genetic, and counseling information to patients, their families, and other health care professionals.

Collaborative agreements with physicians

The bill authorizes a licensed genetic counselor to enter into a collaborative agreement with a physician who agrees to work with and provide medical support to the genetic counselor. Under a collaborative agreement with a collaborating physician, a licensed genetic counselor may, in addition to the activities listed above, do both of the following:[2]

(1) Order genetic or other tests for the purpose of diagnosing a medical condition or inherited disorder or determining the carrier status of one or more of the patient's family members;

(2) Select the most appropriate, accurate, and cost-effective methods of diagnosis.

The collaborative agreement must be in writing, memorialize the relationship between the genetic counselor and the collaborating physician, and establish the criteria governing the performance of these two activities. It may be entered into with a doctor of medicine and surgery or osteopathic medicine and surgery.[3]

Prohibition against unlicensed practice

Beginning one year after the bill's effective date, a person is prohibited from practicing as a genetic counselor without a valid license issued by the State Medical Board. The bill also prohibits a person from using the title "genetic counselor" or otherwise holding the person out as such without a license to practice as a genetic counselor. A person who violates either prohibition is guilty of a first degree misdemeanor for the first offense and a fifth degree felony for each subsequent offense.[4]

Exemptions

The bill specifies that the prohibitions described above do not apply to either of the following:[5]

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[2] R.C. 4778.11(B).

[3] R.C. 4778.01(H) and 4778.11(B).

[4] R.C. 4778.02(A), 4778.99, and Section 4.

[5] R.C. 4778.02(B).

(1) An individual who is authorized by another Revised Code provision to perform any of the activities that a genetic counselor is authorized to perform;

(2) A student performing a task as part of a genetic counseling graduate program.

Eligibility for licensure

To be eligible to receive a license as a genetic counselor, the bill requires that an individual meet all of the following requirements:[6]

(1) Be at least 18 years old and of good moral character;

(2) Attain a master's degree or higher from a genetic counseling graduate program accredited by the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board;

(3) Be a certified genetic counselor, which means that an individual has met the requirements for national certification from either of two organizations specified by the bill, as follows:

(a) The individual possesses the certified genetic counselor credential from the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board;

(b) The individual is a diplomate of the American Board of Medical Genetics, its successor, or an equivalent organization recognized by the State Medical Board. The American Board of Medical Genetics uses the term "diplomate" to describe an individual who has been certified by the Board. The title is granted when the individual receives passing scores on both a general examination and specialty examination.[7]

(4) Satisfy any other requirements established by the Board in rules.

License application and issuance

A person seeking a genetic counselor's license must file with the State Medical Board an application in a manner prescribed by the Board, pay a nonrefundable and nontransferable application fee of $200, and submit to a criminal records check. The application must include all the information the Board considers necessary to process

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[6] R.C. 4778.01(A) and 4778.03(B).

[7] American Board of Medical Genetics, *ABMG Glossary of Terms* (last visited January 23, 2012), available at <http://www.abmg.org/pages/resources_glossary.shtml>.

the application, including evidence that the applicant meets the bill's licensure eligibility requirements.[8]

The Board must review all complete applications within 60 days of receipt. After review, if at least six Board members determine that an applicant meets the requirements for a license to practice genetic counseling, the Board's secretary must issue a license to the applicant. A license is valid for two years and may be renewed.[9]

License renewal and continuing education

Under the bill, a person seeking to renew a genetic counselor's license must, on or before January 31 of each even-numbered year, apply for license renewal. The State Medical Board must send renewal notices at least one month prior to the license expiration date.[10]

To be eligible for renewal, a genetic counselor must certify to the Board that the counselor has done both of the following:

(1) Maintained the counselor's status as a certified genetic counselor;

(2) Completed at least 30 hours of continuing education in genetic counseling that has been approved by the National Society of Genetic Counselors or American Board of Genetic Counseling.[11]

Renewal applications must be submitted to the Board in a manner prescribed by the Board and must be accompanied by a biennial renewal fee of $150. An applicant must report any criminal offense that constitutes grounds for refusing to issue an initial license and to which the applicant has pleaded guilty to or been found guilty of or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing a license application.[12]

If an applicant submits a complete renewal application and qualifies for renewal, the Board must issue to the applicant a renewed license to practice.[13]

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[8] R.C. 4778.03(A) and 4778.04.

[9] R.C. 4778.03(C), 4778.05, and 4778.06.

[10] R.C. 4778.06(A).

[11] R.C. 4778.06(B).

[12] R.C. 4778.06(A).

[13] R.C. 4778.06(C).

The Board may require a random sample of genetic counselors to submit materials documenting that their status as a certified genetic counselor has been maintained and that the required number of hours of continuing education has been completed.

If a genetic counselor certifies that the counselor has completed the number of hours and type of continuing education required for renewal, and the Board finds through the random sample or any other means that the genetic counselor did not complete the required continuing education, the Board is permitted to impose a civil penalty of not more than $5,000. The Board's finding must be made by an adjudication and by an affirmative vote of at least six Board members. Any civil penalty imposed may be in addition to or in lieu of any other disciplinary action the Board is authorized to take under the bill.[14]

License restoration and reinstatement

A license that is not renewed on or before its expiration date is automatically suspended on that date. If a license has been suspended for two years or less, the Board must reinstate it on submission of a complete renewal application, the renewal fee, and a $25 reinstatement penalty.

If the certificate has been suspended for more than two years, it may be restored on submission of a complete restoration application, the renewal fee, a $50 restoration penalty, and satisfactory completion of a criminal records check. The Board is authorized to impose terms and conditions for the restoration, including the following:

(1) Requiring the applicant to pass an oral or written examination, or both, to determine the applicant's present fitness to resume practice;

(2) Requiring the applicant to obtain additional training and to pass an examination on completion of such training;

(3) Restricting or limiting the extent, scope, or type of practice of the applicant.[15]

Supervised practice license

The bill authorizes the State Medical Board to issue a supervised practice license to an applicant who meets the following requirements:[16]

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[14] R.C. 4778.06(D).

[15] R.C. 4778.07.

[16] R.C. 4778.08(A).

(1) Provides evidence of meeting all license eligibility requirements other than being a certified genetic counselor;

(2) Is in active candidate status with the American Board of Genetic Counseling. An individual seeking to take the Board's certification examination must first apply for "active candidate status." Application can be made at any time after graduation from a Board-accredited program. An applicant whose credentials are approved by the Board is given "active candidate status" and permitted to take the examination, which is offered annually during a Board-selected period of approximately 30 days.[17]

A supervised practice license allows the license holder to engage in the genetic counseling activities authorized by the bill but only under the general supervision of a licensed genetic counselor or a physician. The bill specifies that general supervision does not require the supervisor to be present while the license holder engages in genetic counseling, but the supervisor is professionally responsible for the license holder and must be readily accessible for professional consultation and assistance.[18]

A supervised practice license is valid for one year from either the date of issuance or until the Board issues a full genetic counselor's license, whichever is earlier. A supervised practice license cannot be renewed.

Special activity license

The bill permits the State Medical Board to issue a special activity license to a person from another state seeking to practice genetic counseling associated with a rare disease.[19] An applicant for a special activity license must submit all of the following information to the Board and pay a nonrefundable and nontransferable application fee of $25:

(1) Evidence that the applicant holds a current, unrestricted genetic counselor's license issued by another state or, if the applicant practices genetic counseling in another state that does not license genetic counselors, evidence that the applicant is a nationally certified genetic counselor;

(2) Evidence that the applicant has actively practiced genetic counseling within two years immediately preceding application;

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[17] American Board of Genetic Counseling, *Frequently Asked Questions about Certification* and *How Do I Qualify for the Exam?* (last visited January 23, 2012), available at <http://www.abgc.net/Resources_Links/FAQs.asp>.

[18] R.C. 4778.08(B).

[19] R.C. 4778.09(A).

(3) The name of the applicant's sponsoring institution or organization, a statement of need for genetic counseling from the sponsoring institution or organization, and the name of the rare disease for which the applicant will be practicing genetic counseling in Ohio.[20]

A special activity license holder is authorized to practice genetic counseling only to the extent that it is associated with the rare disease for which the license was issued. The bill prohibits a license holder from billing a patient or any third party payer for genetic counseling provided in Ohio.[21]

A special activity license is valid for the shorter of 30 days or the duration of the genetic counseling associated with the rare disease for which the license was issued. The license may not be renewed.[22]

The Board may revoke a special activity license on receiving satisfactory proof that the license holder has practiced outside the scope of the license or that there are grounds for taking disciplinary action against the holder.[23]

Duplicate license

The bill permits a genetic counselor to apply for a duplicate license to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The counselor must pay a $35 fee for the duplicate license. On receipt of the application and fee, the State Medical Board must issue the duplicate license.[24]

Disciplinary actions against genetic counselors

Generally, the bill authorizes the State Medical Board to take disciplinary action against a genetic counselor in the same manner, and for the same reasons, as the Board is currently authorized to take against those health care professionals currently regulated by the Board. However, of the reasons for which the Board may take disciplinary action, two relate specifically to genetic counselors: (1) failure to maintain the individual's status as a certified genetic counselor and (2) failure to comply with the code of ethics of the National Society of Genetic Counselors.[25]

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[20] R.C. 4778.09(B) and (C).

[21] R.C. 4778.09(E).

[22] R.C. 4778.09(D).

[23] R.C. 4778.09(F).

[24] R.C. 4778.10.

[25] R.C. 4778.14.

Disciplinary actions against physicians

The bill adds to the reasons for which the State Medical Board may take disciplinary action against a physician. The additional reasons relate to genetic counselors: (1) failure to appropriately supervise a genetic counselor holding a supervised practice license and (2) failure to appropriately fulfill the responsibilities of collaboration after entering into a collaborative agreement with a genetic counselor.[26]

Existing law extended to genetic counselors

The bill establishes additional procedures for the regulation of genetic counselors that are the same as the procedures that apply to the other health care professionals currently regulated by the State Medical Board, including physicians, physician assistants, anesthesiologist assistants, radiologist assistants, acupuncturists, massage therapists, and cosmetic therapists. The issues addressed in the procedures extended to genetic counselors include the following:

--Board investigations of violations and imposition of sanctions;[27]

--License suspension or revocation for a licensee who is (1) adjudicated mentally ill or mentally incompetent, (2) in default under a child support order, or (3) found guilty of certain sex or drug offenses;[28]

--Notifications to be provided to the Board by prosecutors, health care facilities, professional associations or societies, and professional liability insurers regarding actions taken against a genetic counselor;[29]

--Injunctions against a person engaging in genetic counseling without a license;[30]

--Maintenance of records by the Board of its proceedings and a register of license applicants;[31]

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[26] R.C. 4731.22(B)(45) and (46).

[27] R.C. 4778.18.

[28] R.C. 4778.15, 4778.16, and 4778.19.

[29] R.C. 4731.224.

[30] R.C. 4778.21.

[31] R.C. 4731.07.

--Requirements relating to genetic counselors suffering impairment from the use of drugs or alcohol.[32]

Rulemaking

The bill requires the State Medical Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) necessary to implement and administer the bill's provisions. The rules must include all of the following:[33]

(1) Any standards and procedures not addressed in the bill that the Board considers necessary for issuing and renewing licenses;

(2) Any standards and procedures the Board considers necessary to govern the practice of genetic counselors, the collaborative agreements between genetic counselors and collaborating physicians, and the supervision of genetic counselors holding supervised practice licenses;

(3) Any other standards and procedures the Board considers necessary for the administration and enforcement of the bill.

Board immunity from liability

In the absence of fraud or bad faith, the bill provides that the State Medical Board, a current or former Board member, an agent of the Board, a person formally requested by the Board to be the Board's representative, or an employee of the Board is not liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to the bill's provisions. If any such person asks to be defended by the state against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, and if the request is made in writing at a reasonable time before trial and the person requesting defense cooperates in good faith in the defense of the claim or action, the bill requires the state to provide and pay for the person's defense and pay any resulting judgment, compromise, or settlement. However, the bill specifies that at no time is the state to pay any part of a claim or judgment that is for punitive or exemplary damages.[34]

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[32] R.C. 4731.25.

[33] R.C. 4778.12.

[34] R.C. 4778.24.

Board secretary

If the secretary of the State Medical Board has knowledge or notice of a violation of the bill or the rules adopted under it, the bill requires that the secretary investigate the matter. If probable cause appears, the secretary must file a complaint and prosecute the offender. When requested by the secretary, the prosecuting attorney of the proper county is to take charge of and conduct the prosecution.[35]

State Medical Board Operating Fund

The bill provides that all fees, penalties, and other funds received by the State Medical Board relating to the regulation of genetic counselors are to be deposited in the state treasury to the credit of the existing State Medical Board Operating Fund.[36]

Technical corrections

The bill makes technical corrections in other laws that are currently administered by the State Medical Board. The corrections are made in a provision dealing with massage therapy and a provision dealing with the Board's process for restoring or issuing certificates to practice for applicants who have not been in practice for more than two years.[37]

HISTORY

ACTION	DATE
Introduced	07-06-11
Reported, H. Health & Aging	12-07-11

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[35] R.C. 4778.20.

[36] R.C. 4731.24 and 4778.22.

[37] R.C. 4731.19 and 4731.222.