Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 292 of the 129th G.A. **Date**: December 6, 2011

Status: In House Health & Aging **Sponsor**: Rep. Gonzales

Local Impact Statement Procedure Required: No

Contents: To establish licensure requirements for genetic counselors and to modify certain laws governing the State Medical Board

State Fiscal Highlights

- **License fees and penalties.** The State Medical Board would realize a gain in revenue from application, renewal, and other fees for genetic counselors. The bill specifies fee amounts for initial licensure, license renewal, duplicate licenses, special activity licenses, reinstatement of a license, and restoration of a license. The bill also permits the Board to impose up to a $5,000 civil penalty on licensed genetic counselors found to not have maintained their certification or continuing education; though, the number of penalties would likely be few. Fee revenue would be deposited to the credit of the State Medical Board Operating Fund (Fund 5C60). The total revenue increase would be dependent upon the number of genetic counselors applying for licensure. The Board expects between 100 and 150 individuals to seek licensure if the bill is enacted.
- **Incarceration for violations.** As a result of violations of the bill's felony prohibition, there could be a small number of additional offenders sentenced to prison. This could increase the Department of Rehabilitation and Correction's GRF-funded incarceration expenditures. However, the magnitude of any such increase would likely be no more than minimal because the number of persons who might violate the bill's prohibition in any given year appears likely to be small.
- **Fines for violations.** As a result of violations of the bill's prohibition, additional revenue, in the form of state court costs, may be collected locally and forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total $45, of which the GRF receives $15 and Fund 4020 receives $30. Given the expectation that there would likely be such a small number of cases, if any, in which individuals are charged with a felony for violating the bill's prohibitions, the additional state revenue will likely be negligible.

- **Implementation and enforcement.** The bill would require the State Medical Board to adopt rules to implement the licensure of genetic counselors. Costs for the Board would increase due to rule promulgation and other start-up costs in the first year. Costs for administration, oversight, and enforcement, relating to the licensure of genetic counselors, would also increase. The Board would realize a gain in revenues from license application, renewal, and other fees for genetic counselors. The total revenue increase would be dependent upon the number of genetic counselors applying for licensure. Any increase in costs would be paid out of the State Medical Board Operating Fund (Fund 5C60). Revenues would be deposited into this fund.
- **Background checks.** Genetic counselors applying for initial licensure or restoration of a license would be required to have criminal background checks performed. The applicant would pay the fee of $22 for a state criminal records check and $24 for a federal records check. The fees would be paid to the Attorney General's Bureau of Criminal Identification and Investigation (BCII) and deposited into the General Reimbursement Fund (Fund 1060). Any gain in revenue would likely be offset by an increase in expenditures related to performing these criminal records checks.
- **Adjudication of mental competency.** The bill allows the State Medical Board, if a genetic counselor is believed to be mentally ill or mentally incompetent, to file an affidavit for an adjudication hearing in probate court. The bill states that the Attorney General may represent the Board in these proceedings. LSC assumes the number of adjudications conducted under these circumstances would likely be small and therefore costs would likely be minimal.

Local Fiscal Highlights

- **Misdemeanor costs.** As a result of potential misdemeanor violations relating to practicing without a license and representing oneself as a genetic counselor without a license, it is possible that county and municipal court costs and county jail costs could increase. It is also possible that any court costs could be partially offset by fine revenue. However, the number of violators would likely be small.
- **Felony costs.** As a result of the felony penalty for violating the bill's prohibitions, it is possible that court costs could increase for county courts of common pleas. As noted, it appears unlikely that the bill will create many, if any, new cases for county criminal justice systems to process. Any resulting increase in a county's criminal justice system expenditures is likely to be no more than minimal because such violations would likely be rare. Furthermore, the bill could result in a gain in court cost revenue and fine revenue collected by counties from offenders. However, given that the number of cases is likely to be small, the amount of additional court cost and fine revenue that counties may collect is likely to be no more than minimal.
- **Affidavits for a hearing.** The bill allows the State Medical Board, if a genetic counselor is believed to be mentally ill or mentally incompetent, to file an affidavit for an adjudication hearing in probate court. It is possible that probate courts could

realize an increase in expenditures relating to this. LSC assumes the number of affidavits issued in these circumstances would be small and therefore costs would likely be minimal.

Detailed Fiscal Analysis

The bill requires the State Medical Board to license genetic counselors. The bill specifies the duties a genetic counselor may perform and the qualifications needed for licensure. The bill specifies what procedures the genetic counselor may perform, as well as those procedures that they may not perform. The bill also specifies what is required of a licensed genetic counselor or physician to be eligible to supervise a genetic counselor holding a supervised practice license and the level of supervision required under certain circumstances. The bill specifies that the supervising individual of a genetic counselor assumes legal liability for the services provided by the genetic counselor. Failure to provide appropriate supervision of a genetic counselor constitutes a reason for which the Board must take disciplinary action against the supervising individual. The bill also allows the Board to take disciplinary actions against a physician who fails to appropriately fulfill the responsibilities of collaboration after entering into a collaborative agreement with a genetic counselor.

Implementation schedule

The bill specifies that, beginning one year after the effective date of the bill, no person shall practice or hold oneself out in any manner as a genetic counselor without a license. Presumably by the same date, the Board must adopt all necessary rules to implement licensure of genetic counselors. In addition, the criminal penalties for unlicensed practice would begin on that date.

Prohibitions against unlicensed practice

The bill prohibits a person from practicing as a genetic counselor without holding a genetic counselor license or supervised practice license. The bill also prohibits a person from using the title "genetic counselor," or holding himself or herself out in any manner as a genetic counselor, without a license. Under the bill, whoever violates either prohibition is subject to criminal penalties. On a first offense the person is guilty of a misdemeanor of the first degree, on each subsequent offense a felony of the fifth degree. The bill delays the prohibition against practicing without a license from the Board until one year after the bill's effective date.

License application and issuance procedures

The bill requires each person seeking to practice as a genetic counselor to file with the State Medical Board an application in a manner prescribed by the Board. Under the bill, the minimum qualifications to apply for a genetic counselor license include being 18 years of age and of good moral character, having attained a master's

degree from a genetic counseling graduate program accredited by the American Board of Genetic Counseling (ABGC), having attained an ABGC certified genetic counselor credential or being a diplomate of the American Board of Medical Genetics, and meeting any additional requirements as specified in rules to be adopted by the Board. The application must be accompanied by an initial application fee of $200. The Board may not grant a license to practice as a genetic counselor unless the Board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a license.

The bill requires a $150 renewal license fee and a $35 duplicate license fee. The bill requires the Board to adopt rules to implement and administer the licensure of genetic counselors. In addition, the bill requires that a genetic counselor complete at least 30 hours of continuing education biennially. The continuing education must be approved by the ABGC or the National Society of Genetic Counselors (NSGC).

The bill permits the Board to require a random sample of genetic counselors to submit to the Board materials that document their status as a certified genetic counselor has been maintained and that they have maintained the required hours of continuing education. If the Board finds that the genetic counselor has not completed the continuing education hours they certified to the Board, the Board may impose a civil penalty up to $5,000.

Disciplinary actions, investigations, etc.

The bill specifies the reasons for which the Board is required to take action against a genetic counselor or applicant. If the Board has reason to believe that any person who has been granted a license to practice as a genetic counselor is mentally ill or mentally incompetent, it may file an affidavit in the probate court in the appropriate county. The Attorney General may represent the Board in any proceeding commenced.

The bill specifies some investigation procedures and states that a subpoena issued by the Board may be served by a sheriff, sheriff's deputy, or a Board employee. A sheriff's deputy who serves a subpoena is to receive the same fees as a sheriff. Each witness who appears before the Board in obedience to a subpoena is to receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

Reporting requirements

Within 60 days after any formal disciplinary action has been taken by any health care facility against any individual holding a valid license to practice as a genetic counselor, the chief administrator or executive officer of the facility shall report to the Board the name of the individual, the action taken by the facility, and a summary of the underlying facts leading to the action taken. A genetic counselor, professional association or society of genetic counselors, physician, or professional association or society of physicians that believes a violation of law or rule of the Board has occurred shall report to the Board the information on which the belief is based. Any professional association or society composed primarily of genetic counselors that suspends or

revokes an individual's membership for violations of professional ethics, or for reasons of professional incompetence or professional malpractice, within 60 days after a final decision, shall report to the Board the action taken by the organization and the summary of the underlying facts leading to the action taken. Any insurer providing professional liability insurance to any person holding a valid license to practice as a genetic counselor or any other entity that seeks to indemnify the professional liability of a genetic counselor shall notify the Board within 30 days after the final disposition of any written claim for damages where such disposition results in a payment exceeding $25,000.

Genetic counselors in other states

According to the NSGC, there are currently 11 states that have some form of licensure for genetic counselors, and two additional states that have passed bills and are in the process of rulemaking.[1] NSGC is the professional membership association for genetic counselors. The ABGC certifies genetic counselors and accredits professional genetic counseling training programs. In Ohio, there are ABGC accredited training programs at Case Western Reserve University and the University of Cincinnati.

State fiscal effects

Licensure

The bill would require the State Medical Board to adopt rules to implement the licensure of genetic counselors. Costs for the Board would increase due to rule promulgation and other start-up costs in the first year. Costs for administration, oversight, and enforcement would also increase after the program got up and running.

The Board would realize a gain in revenue from application, renewal, and other fees for genetic counselors. The bill specifies a $200 initial licensure fee, a $150 renewal fee, a $35 duplicate license fee, and a $25 special activity license fee. In addition, the bill specifies a $35 fee for reinstatement of a license and a $50 fee for the restoration of a license. The bill also permits the Board to impose up to a $5,000 civil penalty on licensed genetic counselors found to not have maintained their certification or continuing education; though, the number of penalties would likely be few. Fee revenue would be deposited to the credit of State Medical Board Operating Fund (Fund 5C60). The total revenue gain would be dependent upon the number of genetic counselors applying for licensure. As of July 21, 2011, there were 106 individuals in Ohio with an ABGC certification, according to a search of the ABGC web site. The Board expects between 100 and 150 individuals to seek licensure if the bill is enacted.

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[1] *States Issuing Licenses for Genetic Counselors*, National Society of Genetic Counselors (July 1, 2011), http://www.nsgc.org/Advocacy/StatesIssuingLicensesforGeneticCounselors/tabid/347/Default.aspx.

Genetic counselors applying for initial licensure or restoration of a license would be required to submit to criminal background checks. The Attorney General's Bureau of Criminal Identification and Investigation charges $22 to perform a state criminal records check and an additional $24 to obtain information from the FBI to perform a federal criminal records check. Presumably, these charges would offset the cost of performing the background checks required by the bill. The revenue would be deposited to the credit of the General Reimbursement Fund (Fund 1060).

Violations

The bill prohibits a person from practicing as a genetic counselor without holding a genetic counselor license. The bill also prohibits a person from holding himself or herself out in any manner as a genetic counselor without a genetic counselor license. Under the bill, whoever violates either prohibition is subject to criminal penalties. On a first offense the person is guilty of a misdemeanor of the first degree, and on each subsequent offense a felony of the fifth degree. Although most violations are likely to be handled administratively, there could be a small number of additional offenders sentenced to prison for the felony offense. This could increase the Department of Rehabilitation and Correction's GRF-funded incarceration costs. However, the magnitude of any such increase would likely be no more than minimal because the number of persons who might violate the bill's prohibition in any given year appears likely to be small.

As a result of violations of the bill's prohibition, additional revenue, in the form of state court costs, may be collected locally and forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total $45, of which the GRF receives $15 and Fund 4020 receives $30. Given the expectation that there would likely be a small number of new cases, if any, in which individuals are charged with violating the bill's prohibitions, any additional state revenue will likely be negligible.

The bill allows the State Medical Board, if a genetic counselor is believed to be mentally ill or mentally incompetent, to file an affidavit for an adjudication hearing in probate court. The bill states that the Attorney General may represent the Board in these proceedings. LSC assumes the number of adjudications conducted under these circumstances would likely be small. Any additional costs to the Attorney General would likely be minimal.

Local fiscal effects

Violations

On a first offense of practicing without holding a genetic counselor license or holding oneself out in any manner as a genetic counselor without a genetic counselor license, the person is guilty of a misdemeanor of the first degree, and on each subsequent offense, a felony of the fifth degree. The number of violations is likely to be small at most. As a result of the misdemeanor penalty, it is possible that county or

municipal court costs and county jail costs could increase. It is also possible that any court costs could be partially offset by potential fine revenue.

As a result of the felony penalty, it is possible that court costs could increase for county courts of common pleas. Any resulting increase in a county's criminal justice system expenditures is likely to be no more than minimal because such violations would likely be rare. Furthermore, the bill could result in an increase in court costs and fine revenue collected by counties from offenders. Given that the number of cases is likely to be small, the amount of additional court cost and fine revenue that counties would collect is likely to be no more than minimal.

The bill allows the State Medical Board, if a genetic counselor is believed to be mentally ill or mentally incompetent, to file an affidavit for an adjudication hearing in probate court. It is possible that probate courts could experience an increase in expenditures relating to this provision. LSC assumes the number of affidavits issued in these circumstances would likely be small. Any additional costs to probate courts would likely be minimal at most.

Synopsis of Fiscal Effect Changes

- The substitute bill specifies the dollar amounts ($200 for initial licensure and $150 for renewal) for genetic counselor licensure fees, instead of requiring the State Medical Board to set the fees in rules. The revenue gained from these fees would still be contingent on the number who apply for licensure;
- The substitute bill adds a special activity license with an associated $25 fee, instead of a temporary license of an amount to be determined in rules adopted by the Board; any associated increase in revenue would be dependent upon the number of genetic counselors that apply for the special activity license;
- The substitute bill adds, as one criteria of eligibility for licensure, an applicant's status as a diplomate of the American Board of Medical Genetics, instead of only an applicant's credential with the American Board of Genetic Counseling. With the additional eligibility criteria, the State Medical Board still expects the number of applicants to be between 100 and 150 under the bill, and therefore this change would likely have a negligible fiscal effect;
- The substitute bill adds procedures for the Board to reinstate a license that has been suspended for two years or less, and to restore a license that has been suspended for more than two years. In order to reinstate a license, the Board would collect a $25 penalty fee. In order to restore a license, the Board would collect a $50 penalty fee. Any revenue gain from these penalties would likely be minimal; and
- The substitute bill permits the State Medical Board to require a random sample of genetic counselors to submit to the Board materials that document their status as a certified genetic counselor has been maintained and that they have maintained the required hours of continuing education. If the Board finds that the genetic counselor had not completed the continuing education hours they certified to the Board, the Board may impose a civil penalty up to $5,000. Any revenue from such penalties, if any, would likely be minimal.

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