Ohio Legislative Service Commission

Justin Pinsker

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 292 of the 129th G.A. **Date**: May 24, 2012

Status: As Passed by the Senate **Sponsor**: Rep. Gonzales

Local Impact Statement Procedure Required: No

Contents: To establish licensure requirements for genetic counselors, to modify certain laws governing the State Medical Board, and to create a visiting clinical professional development certificate for certain physicians who are not licensed in Ohio

State Fiscal Highlights

- **License fees and penalties for genetic counselors.** The State Medical Board would realize a gain in revenue from application, renewal, and other fees for genetic counselors. 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 of genetic counselor licensure requirements.** 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 of genetic counselor licensure requirements.** 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 of genetic counselor licensure requirements.** Costs for the State Medical 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 for genetic counselor license applicants.** 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 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 for genetic counselors.** 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.
- **Clinical professional development certificate fee revenue.** The State Medical Board could experience a gain in fee revenue depending on the number of applicants for the visiting professional development certificate. Any new fee revenue would be deposited in the Operating Expenses Fund (Fund 5C60).
- **Clinical professional development certificate administrative costs.** The State Medical Board would incur administrative costs related to processing certificate applications, maintaining additional records, and adopting rules. The Board could incur administrative costs related to disciplinary actions.
- **Clinical faculty research certificate renewals.** The State Medical Board may experience a minimal gain in fee revenue as a result of the bill's proposed renewals for clinical faculty research certificates. Any additional fee revenue would be deposited in Fund 5C60, Operating Expenses, which is used by the Board.
- **Clinical faculty research certificate register.** The State Medical Board will incur a minimal increase in administrative costs related to the creation and upkeep of a register of all persons who hold a clinical research faculty certificate.
- **Clinical faculty research certificate notice of renewal.** The Board will incur a minimal increase in administrative costs to mail a notice of renewal to each clinical research faculty certificate holder.
- **Clinical faculty research certificate rules.** The Board will experience a minimal increase in costs to revise its rules regarding the certificates.

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

Genetic counselors

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.

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 of genetic counselor provisions

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.

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).

---

[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.

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 of genetic counselor provisions

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.

Visiting clinical professional development certificate

The bill creates a new certificate for certain physicians – the visiting clinical professional development certificate. It requires the State Medical Board to issue the certificate, without examination, to an applicant who meets the bill's requirements. The visiting clinical professional development certificate authorizes the practice of medicine and surgery or osteopathic medicine and surgery as part of the certificate holder's participation in a clinical professional development program.

Fee revenue

To be eligible for a visiting clinical professional development certificate, an applicant must pay a fee of $375 and provide to the State Medical Board additional documentation. The certificate would be valid for the shorter of one year or the duration of the program. The Board could experience a gain in fee revenue depending on the number of applicants for the certificate. Any new fee revenue would be deposited in the Operating Expenses Fund (Fund 5C60). The Board would also incur administrative costs to process the certificate applications.

Disciplinary actions

The Board may revoke a clinical professional development certificate on receiving proof that (1) the certificate holder has engaged in practice in Ohio outside the scope of the certificate or (2) there are grounds for disciplinary action against the certificate holder for any of the reasons that an Ohio physician could be disciplined. As a result, the Board may experience an increase in costs for investigating complaints and conducting disciplinary hearings. If a complaint cannot be resolved administratively by the Board, there could be court costs.

Register

The Board is required to maintain a register of all persons who hold visiting clinical professional development certificates. The Board will experience a minimal increase in administrative costs related to the register. The Board may be able to use the e-licensing system, which is managed by the Department of Administrative Services (DAS), to meet this requirement. Boards and licensing agencies pay a fee to DAS based on their share of the total licenses entered into the system.

Rules

The Board may adopt rules it considers necessary to implement the bill. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Board would incur a minimal administrative cost to adopt rules.

Clinical faculty research certificate

The bill renames the visiting medical faculty certificate, which is currently issued by the State Medical Board, as a "clinical research faculty certificate." The bill also makes changes to the information required from the applicant and the medical school or teaching hospital at which the applicant plans to work. According to a spokesperson for the Board, generally, the information required is already collected as part of the current application process. Thus, there will likely be no additional administrative costs to medical schools or teaching hospitals for providing the required information. However, the Board will experience a minimal increase in costs to revise its rules regarding the certificates.

The bill specifies that a clinical research faculty certificate may be renewed for a three-year period and that there is no limit on the number of times a certificate can be renewed. In addition, the bill specifies that an individual whose visiting medical faculty certificate expires prior to the establishment of the new certificate may apply for a clinical research faculty certificate as a renewal. The bill establishes a $375 certificate renewal fee, which is the same amount as the initial certificate fee. During FY 2011, there were 17 individuals who held a visiting medical faculty certificate. It is possible that some of these individuals will choose to renew their certificate. The Board would experience a minimal gain in fee revenue for any renewed certificates. Fee revenue would be deposited in Fund 5C60, Operating Expenses, which is used by the Board.

The bill requires the State Medical Board to maintain a register of all persons who hold clinical research faculty certificates. As a result, the Board will incur a minimal increase in administrative costs related to the creation and upkeep of the register. The bill also requires that, three months before a clinical research faculty certificate expires, the Board must mail a notice of renewal to the holder's last known address. Thus, the Board will incur a minimal increase in administrative costs.

Emergency clause

The bill contains an emergency clause for the clinical research faculty certificate provision, which allows the provision to go into immediate effect. This provision may generally accelerate by 90 days the incurrence of costs and receipt of revenues that could result from the bill.