



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

2020 SESSION POSITION PAPER

BILL NO.: SB 763
COMMITTEE: Senate Education, Health, and Environmental Affairs
POSITION: Oppose

TITLE: State Board of Physicians – Genetic Counselors – Licensing

BILL ANALYSIS: This bill establishes a new licensure category of genetic counselors under the Maryland Board of Physicians.

POSITION & RATIONALE:

The Maryland Board of Physicians (the “Board”) opposes SB 763. The Board believes that the bill is premature, as there has not been an opportunity for a formal assessment on whether there is the need to license a new profession. The Board is frequently asked to take a position on whether new groups of health care providers should be licensed under the Board. In that regard, the Board has adopted a standardized set of criteria and considerations to evaluate the need for licensure.¹ The Board respectfully encourages the legislature to direct a stakeholder workgroup to provide thoughtful evaluation regarding licensure for genetic counselors before making a decision to license this profession.

During the 2018 legislative session, House Bill 1008 and Senate Bill 1087 were introduced to establish a new licensure category of cardiovascular invasive specialists (“CIS”) under the Board. The Board opposed the legislation mainly due to concerns that public safety would be seriously compromised if the CIS did not have sufficient training and education to perform fluoroscopy and the other duties listed in the bills. Proponents of the bills asserted that the legislation was necessary due to a shortage of radiology technologists in Maryland to staff cardiac catheterization laboratories. The Board urged the legislature to direct an interim workgroup to study issues related to the proposed program, including but not limited to the need for licensure, the adequacy of the proposed education and training for the scope of practice, and the definition of terms. Following legislative hearings, the bills were withdrawn, and the Board established a workgroup to conduct an evaluation of registered CIS (“RCIS”) for potential licensure in Maryland. The workgroup, which included the proponents of the bill, did not recommend licensure. After considering all of the factors for licensure, the workgroup recommended that the legislature adopt a limited exception to licensure to allow RCIS to assist in a physician’s performance of fluoroscopy under certain limited circumstances.

¹ The Board’s document is attached.

The Board believes that a workgroup would be beneficial so that a variety of stakeholders have the opportunity to fully consider matters regarding genetic counselors. However, if the legislature is not inclined to direct a workgroup, the Board has other concerns about the bill.

It's the Board's understanding that genetic counselors work with physicians but are not officially affiliated with physicians. According to letters from the Maryland and DC Society of Genetic Counselors (the "Society"), genetic counselors "work with physicians, as part of a multidisciplinary team, or independently, to provide genetics services to families and/or individuals." The Society also noted, "The relationship between Genetic Counselors and Physicians is collaborative, however, in order to allow genetic counselors to practice at the top of their competency they are considered independent practitioners in terms of their unique scope of practice and licensure."

Genetic counselors would be the first allied health practitioners licensed by the Board who would not be supervised or affiliated with a licensed physician in some way. For example, a physician assistant practices under a Board-approved delegation agreement with a supervising physician, an athletic trainer works under the supervision of a physician, and a naturopathic doctor is required to have on file with the Board a collaboration agreement with a licensed physician. The bill does not provide for any collaboration or supervisory arrangement between a physician and a licensed genetic counselor.

The bill provides for supervision for holders of a "temporary" license by a licensed genetic counselor, physician, or a nurse practitioner.² The Board, however, does not have jurisdiction over nurse practitioners, and it is unclear what role, if any, the Board will have in approving the supervision contracts or ensuring that the required supervision contract is in place.

The Board, therefore, seeks clarification on the relationship between genetic counselors and physicians and the involvement of the Board in monitoring and enforcing any supervisory requirements.

The Board's concerns also include, but are not limited to, the following:

- The bill lacks certain provisions that appear in other allied health statutes. For example, there is no general scope of practice section that establishes the duties of genetic counselors or a mechanism for collaboration with or supervision by a licensed physician. The bill also is missing a provision regarding the appropriate educational program to be completed as a condition for licensure.
- The bill includes provisions that do not appear in other allied health statutes. For example, there is a certain continuing education exception (see pages 10-11 of the bill) that is not available to the Board's other allied health practitioners.

² The bill establishes circumstances for a "temporary" license. The Board does not issue "temporary" licenses.

- Board staffing needs will increase in order to implement and operate a new licensure program. There will be numerous tasks, such as establishing the advisory committee, drafting a new chapter of regulations, preparing initial licensure applications and other new forms, updating the Board's Website with genetic counselor information, and revising certain Board processes and databases. The Board anticipates it will require at least one licensure analyst to handle administrative duties and to process licensure applications and other documents. In addition, the Board estimates that it will need at least two compliance analysts to investigate complaints regarding genetic counselors and complaints concerning unlicensed individuals practicing genetic counseling.
- Will this new licensure program be financially self-supporting? The Society stated in its letters to the Board that approximately 220 genetic counselors currently live or work in Maryland, and that there are approximately 150 individuals certified by the American Board of Genetic Counseling in the State and expects all of these individuals would seek licensure. The Board seeks clarification on how many genetic counselors currently work in Maryland, as this number will be used to calculate the potential licensure fees.

Therefore, at this time, the Board urges an unfavorable report on SB 763.

For more information, please contact Wynee Hawk, Manager, Policy and Legislation, Maryland Board of Physicians, 410-764-3786.

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.

Attachment

The Maryland State Board of Physicians is frequently asked to take a position on whether there is a necessity for the licensure of a new profession. This normally occurs in the context of a legislative proposal. The Board suggests that those seeking the Board's support for such a legislative proposal structure their presentation so as to address the issues listed below. These issues have been used in other states as a framework for evaluating the necessity of licensing of a new profession.

The Board invites the public to comment on these issues or to suggest other improvements on this approach.

ISSUE 1: Risk of Harm to the Consumer - Whether the unregulated practice of the allied health profession or occupation will substantially harm or endanger the public health, safety or welfare, and whether the potential for harm is recognizable and not remote. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of health services, or (d) from any combination of these factors.

ISSUE 2: Specialized Skill and Training Required - Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.

ISSUE 3: Extent of Autonomous Practice - Whether the functions and responsibilities of the practitioner require independent judgment and members of the occupational group practice autonomously.

ISSUE 4: Scope of Practice - Whether the scope of practice is distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping duties, methods of examination, instrumentation, or therapeutic modalities.

ISSUE 5: Economic Costs - Whether the economic costs (restriction of job creation through regulation and the cost of funding regulatory boards) to the public of regulating the occupational group are justified.

ISSUE 6: Alternatives to Regulation - Whether the public can be protected by means other than by regulation, such as, by inspections, disclosure requirements, or the strengthening of consumer protection laws. Whenever appropriate, consistent with patient safety and public health, the lesser level of regulation is preferred.

Any group seeking the Board to evaluate a proposal for licensure may wish to submit the following information to the Board for its consideration:

1. Number of those to be regulated;
2. Nature and extent of harm caused by the unregulated practice of the profession/occupation;
3. Voluntary efforts of the profession to protect the public and why they are inadequate;
4. Explanation of why other less restrictive regulation would not protect the public;
5. The cost, availability, and appropriateness of training and examination requirements; and
6. The cost of regulation, including the indirect cost to consumers, and the proposed method to fund the cost of regulation.