

**Department of Legislative Services**  
 Maryland General Assembly  
 2021 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 34

(Senator Lam)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Board of Physicians - Genetic Counselors - Licensing**

This bill requires individuals, on or after January 1, 2024, to be licensed to “practice genetic counseling” by the State Board of Physicians (MBP) before they may practice genetic counseling in the State. The bill also establishes a Genetic Counseling Advisory Committee within MBP. MBP must adopt regulations for the licensure and practice of genetic counseling. **The bill takes effect January 1, 2022.**

**Fiscal Summary**

**State Effect:** Special fund expenditures for MBP increase by \$40,700 in FY 2022 to establish the licensure program and staff the advisory committee. Future years reflect annualization and, beginning in FY 2024, additional contractual services. Beginning in FY 2024, special fund revenues increase from new licensing fee revenues (assumed to be sufficient to cover estimated expenditures going forward) and any civil fines assessed under the bill. General fund revenues may increase by a minimal amount from criminal and civil penalties, beginning in FY 2024.

| (in dollars)   | FY 2022    | FY 2023    | FY 2024    | FY 2025    | FY 2026    |
|----------------|------------|------------|------------|------------|------------|
| GF Revenue     | \$0        | \$0        | -          | -          | -          |
| SF Revenue     | \$0        | \$0        | -          | -          | -          |
| SF Expenditure | \$40,700   | \$68,100   | \$79,600   | \$91,600   | \$94,200   |
| Net Effect     | (\$40,700) | (\$68,100) | (\$79,600) | (\$91,600) | (\$94,200) |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** “Practice genetic counseling” means (1) obtaining and evaluating the medical histories of a patient and the patient’s family members for a genetic assessment; (2) discussing the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions or diseases; (3) identifying, ordering, and coordinating genetic laboratory tests and other diagnostic studies, as appropriate, for purposes of a genetic assessment; (4) using medical histories and the results of genetic laboratory tests and other diagnostic studies for a genetic assessment; (5) explaining the clinical implications of genetic laboratory tests and other diagnostic studies and the results of the tests and studies and communicating the risk factors for genetic or medical conditions or diseases identified by a genetic assessment; (6) evaluating the responses of a patient and the patient’s family members to the results of a genetic assessment and providing counseling and anticipatory guidance for a genetic or medical condition or disease; (7) identifying and using specified community resources for a genetic or medical condition or disease; or (8) providing written documentation of medical, genetic, and counseling information for a patient, a patient’s family members, or appropriate health care professionals. “Practice genetic counseling” does not include diagnosing or treating an illness, disease, or condition.

### *Exceptions to Licensure*

The bill’s licensure requirement does not apply to an individual employed by the federal government to practice genetic counseling while practicing within the scope of that employment, an individual who resides in and holds an active license in another state while consulting with a physician or genetic counselor licensed in the State about a particular patient (subject to specified limitations), and students enrolled in an accredited genetic counseling training program when practicing within the scope of the program.

### *Genetic Counselor License*

An applicant for a license must be of good moral character, be at least 18 years old, be a graduate of an education program approved by MBP, submit to MBP satisfactory evidence of certification as a certified genetic counselor by an approved national certifying organization, meet any additional requirements established by MBP, submit to a criminal history records check, submit an application to MBP, and pay an application fee as set by MBP. An applicant may meet the requirements for licensure without holding certification from an approved national certifying organization if the applicant meets specified qualifications, including working as a genetic counselor for at least 10 years prior to January 1, 2024.

The term of a genetic counselor license may not exceed three years. The bill specifies licensing procedures for renewal and reinstatement, including continuing education requirements.

#### *Supervised Genetic Counselor License*

MBP must issue a supervised genetic counselor license to an applicant who (1) has graduated from a genetic counseling program accredited by the Accreditation Council for Genetic Counselors; (2) met all qualifications for licensure with the exception of certification; and (3) has applied for the first available national certifying examination (subject to the exception that MBP may not issue a license to an applicant who has failed the certification examination two or more times). As a condition of licensure, the supervised genetic counselor must work under the supervision of a qualified supervisor who meets specified requirements and has entered into a specified supervision contract with the supervised genetic counselor.

The term of supervised genetic counselor license may not exceed one year and expires on the earlier of (1) the issuance of a genetic counselor license; (2) the expiration date printed on the supervised genetic counselor license; or (3) on notice of the second failure of the supervised genetic counselor to pass the certification examination.

#### *Requirement to Refer*

If, while practicing genetic counseling, a licensed genetic counselor determines that a patient requires a diagnosis or treatment, the genetic counselor must refer the patient to a licensed physician or another appropriate health care practitioner.

#### *Discipline*

Subject to hearing provisions, an MBP disciplinary panel may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license, if the applicant or licensee violates any one of 29 enumerated disciplinary grounds. The board may reinstate a revoked license under specified circumstances.

A disciplinary panel may also issue a cease and desist order for practicing (1) genetic counseling without a license or with an unauthorized person or (2) supervising or aiding an unauthorized person in the practice of genetic counseling.

#### *Required Reporting*

Hospitals, related institutions, alternative health systems, and employers must report specified information regarding genetic counselors to MBP for any reasons that may be

grounds for disciplinary action. The entity must submit any required report within 10 days of the action that is the subject of the report. A disciplinary panel may impose a civil penalty of up to \$1,000 for failure to make a required report; any collected penalties are remitted to the general fund.

### *Licensee Profiles*

MBP must create and maintain a public individual profile on each genetic counselor licensee that includes specified information, including information relating to charges filed and any final disciplinary action taken against a licensee. MBP must forward a written copy of the profile to a person on request.

### *Genetic Counseling Advisory Committee*

The advisory committee must develop and recommend to MBP regulations to carry out the licensure and regulation of genetic counselors, a code of ethics for the practice of genetic counseling, continuing education requirements for license renewal, criteria for individuals who are licensed to practice genetic counseling in another state or territory to become licensed in Maryland, and on request, standards of care for the practice of genetic counseling. The advisory committee must also evaluate the credentials of applicants and recommend licensure of applicants who fulfill the requirements for a license to practice genetic counseling and submit an annual report to MBP.

### *Penalties*

A person who violates the bill's prohibitions against practicing genetic counseling without a license; misrepresentation as a licensed genetic counselor; or providing, attempting to provide, or representing that the person provides genetic counseling services if not authorized is guilty of a misdemeanor and on conviction subject to a maximum penalty of one year imprisonment and/or a \$1,000 fine. A person who violates these provisions is also subject to a maximum civil fine of \$5,000 to be levied by a disciplinary panel; fines are payable to the MBP Fund.

### *Program Evaluation and Termination*

The Maryland Genetic Counseling Act is subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act and terminates July 1, 2031.

**Current Law:** The mission of MBP is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction by protecting and educating clients/customers and stakeholders and enforcing the Maryland Medical Practice Act. The board has regulatory authority over physicians, physician

assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, perfusionists, and naturopathic doctors.

**State Fiscal Effect:** Special fund expenditures for MBP increase by \$40,703 in fiscal 2022, which accounts for the bill’s January 1, 2022 effective date. This estimate reflects the cost to hire one full-time, grade 15 licensure analyst to develop regulations, recruit members for and staff the advisory committee, and establish a licensing program for genetic counselors. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                 |
|---|-----------------|
| Position                                | 1               |
| Salary and Fringe Benefits              | \$35,285        |
| Operating Expenses                      | <u>5,418</u>    |
| <b>Total FY 2022 State Expenditures</b> | <b>\$40,703</b> |

Once licensure of genetic counselors is in place (on or after January 1, 2024), MBP special fund expenditures increase by an additional \$19,000 annually for contractual services related to investigating compliance, performing peer reviews, providing rehabilitation services to licensed genetic counselors, and litigation expenses for any disciplinary actions against licensed genetic counselors (or unlicensed genetic counselors in violation of the licensure requirement).

This analysis assumes that available fund balance is used to cover costs for fiscal 2022 and 2023 related to *establishing* the licensure program. As MBP is special funded, it must set reasonable fees for the issuance and renewal of licenses and other services it provides to genetic counselors. Licensure fees must be set so as to approximate the cost of *maintaining* the licensure program.

No special fund revenues are anticipated in fiscal 2022 or 2023, as MBP needs time to implement the new licensure program before accepting applications; moreover, licensure is not required until January 1, 2024. Accordingly, this analysis assumes license fees are collected beginning in fiscal 2024, at which time the license fee will be set to cover the cost of the licensure program going forward.

Based on provider information from the National Society of Genetic Counselors, there are approximately 70 genetic counselors in Maryland. Based on the estimated expenditures discussed above, and assuming that MBP licenses genetic counselors on a biennial basis as with other licensees under the board, initial biennial license fees may be as much as \$2,500. The license fee must be sufficient to cover expenditures for a two-year period. Actual license fees and revenues depend on the number of genetic counselors that seek licensure under the bill, as well as the actual costs incurred by MBP. To the extent that

costs related to establishing licensure (assumed to be paid by fund balance) must also be covered by the license fee, the initial license fee must be set much higher.

**Small Business Effect:** Genetic counselors must be licensed under the bill in order to practice in Maryland; accordingly, they must pay license fees and are subject to disciplinary actions.

**Additional Comments:** Certification in genetic counseling is offered by the American Board of Genetic Counseling through an examination administered twice per year. Certification, while not required everywhere, demonstrates that the individual has met the standards necessary to provide competent genetic counseling.

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### **Additional Information**

**Prior Introductions:** SB 763 of 2020, a similar bill, passed the Senate as amended and was referred to the House Health and Government Operations Committee, but no further action was taken. Its cross file, HB 1040, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

**Designated Cross File:** HB 299 (Delegate Carr) - Health and Government Operations.

**Information Source(s):** National Society of Genetic Counselors; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2021  
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