



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Damean W.E. Freas, D.O., Chair

2021 SESSION POSITION PAPER

BILL NO: HB 299 – State Board of Physicians – Genetic Counselors – Licensing
COMMITTEE: Health and Government Operations
POSITION: Favorable with Amendments

TITLE: State Board of Physicians – Genetic Counselors – Licensing

BILL ANALYSIS: Requires the State Board of Physicians to license genetic counselors; establishes the Genetic Counseling Advisory Committee within the Board; requires individuals to be licensed by the Board as genetic counselors before practicing genetic counseling except under certain circumstances.

POSITION AND RATIONALE:

Over the interim, the Maryland Board of Physicians (the “Board”) has worked with the bill sponsor, stakeholders and proponents of House Board 299 (HB 299) – Genetic Counselors – Licensing. During the process, while the parties have identified many areas of agreement, two major obstacles to licensure under the Board still remain. Until these issues are resolved, the Board is reluctant to fully support HB 299 without the amendments set forth below.

First and foremost, there are consistency issues that would set genetic counselors apart from other allied health practitioners currently licensed by the Board. In the Board’s Sunset Review of 2019, one of the major recommendations made by the Department of Legislative Services was to amend “statutory provisions that have inconsistent language, typographical errors, obsolete references, or are redundant” among the statutes for the eleven allied health practitioners currently licensed under the Board.

A key issue for the Board is the lack of a direct nexus between genetic counselors and physicians. Currently all allied health practitioners regulated by the Board have an established relationship between a physician and the allied health practitioner. For example, a physician assistant practices under a Board-approved delegation agreement with a supervising physician, an athletic trainer operates within an evaluation and treatment protocol established with a physician and a naturopathic doctor is required to have on file with the Board a collaboration agreement with a licensed physician. HB 299 does not provide for any collaborative, supervisory or referral-based agreement between a physician and a licensed genetic counselor.

While the lack of a nexus between physicians and genetic counselors represents the Board's most significant concern, there are also other areas that must be addressed before moving forward with licensure. The composition of the Genetic Counselor Advisory Committee currently leaves the committee at an even number of participants and over-represents genetic counselors in its makeup. Licensure exemptions in HB 299 for recent graduates and out-of-state licensees would allow for unlicensed individuals to practice in Maryland without Board oversight. The ability to waive certification requirements for applicants is another area where genetic counselors would be set apart from other allied health practitioners. The Board has offered amendments to address all of these concerns.

Second, the Board recommends delaying implementation of HB 299 until January 1, 2023. As the licensing body responsible for regulating over 45,000 active health practitioners, the Board has been heavily impacted by the COVID-19 pandemic. The Board budget has been impacted by the Governor's Executive Order extending licensure renewals, which have been suspended for the duration of the state of emergency. While the Board has maintained all essential operations throughout the pandemic despite significant fiscal uncertainty, the Board has no way to properly gauge how deep the pandemic's impact will be on future operations, as the fund balance is entirely generated from licensing fees.

As referenced in our fiscal note, adding on a new licensure category will require significant resources, including at least two new permanent positions within the Board, which require adequate time for training and support. In recent years the Board has taken on numerous responsibilities without additional staff, including implementation of the Interstate Medical Licensure Compact, reciprocity, criminal history records checks, naturopathic medicine and more. During the COVID-19 pandemic, the Board's priorities are maintaining these and all other essential functions, and as a result the Board's current staff is insufficient to take on a new licensure category.

Genetic counselors provide valuable health services to Maryland's residents, and licensure will help ensure that these services are being provided with proper oversight. However, before we can move forward with licensure, inconsistencies must be resolved, and the Board must have an opportunity to assess the state of its budget and personnel following the pandemic. Therefore, the Board urges a favorable report on HB 299 with the Board amendments.

Amendments Offered by the Maryland Board of Physicians

Amendment 1: Adjust Members of Genetic Counselor Advisory Committee

The Board recommends striking the word "Four" on page 3, line 20, and replacing with "Three."

***Rationale:** As currently drafted, the Genetic Counselor Advisory Committee consists of four genetic counselor members, three physician members and one consumer member. This creates an imbalance in favor of genetic counselors and leaves the committee with an even number of members, which may lead to split votes. This is inconsistent with every other allied health practitioner.*

A makeup of three genetic counselors, three physicians with experience working with genetic counselors and one consumer member brings the Genetic Counselor Advisory Committee in line with other similar committees, such as the one established for respiratory therapists under H.O. §14-5A-06. This creates balanced representation and leaves the committee at an odd number for the purpose of voting.

Amendment 2: Remove 30-Day Exemption for Out-of-State Licensees

The Board recommends striking the language found on page 8, lines 11 through 13.

***Rationale:** Physicians and allied health practitioners must always possess a Maryland license to practice in Maryland. There are limited exceptions in specific circumstances, such as to allow an athletic trainer to assist a team that is travelling to Maryland, but no profession has a broad 30-day exemption to licensure as is proposed here. Allowing out-of-state genetic counselors to practice in Maryland without a Maryland license creates significant hurdles in terms of jurisdiction, verification and enforcement of its licensing statutes. The Board recommends removing this language.*

Amendment 3: Remove Licensure Exemption for Recent Graduates

The Board recommends striking the language found on page 8, lines 20 through 24.

***Rationale:** Permitting unlicensed individuals to practice for up to a year without completing their examinations or becoming licensed allows for individuals who would otherwise be ineligible for licensure to practice. Without the usual licensure process, the Board has no way to verify if these individuals meet the educational or training requirements, perform criminal history records checks or go through any of the other licensure procedures that exist to safeguard Maryland consumers.*

Amendment 4: Remove Board Ability to Waive Certification Requirements

The Board recommends striking the language found on page 9, lines 10 through 27.

***Rationale:** The Board does not have the ability to waive educational or certification requirements for any of the professions it currently licenses. These requirements are typically defined by statute and no discretion is permitted in how the Board enforces them. Allowing for the Board to waive certification requirements under certain circumstances for genetic counselors will set genetic counselors apart from other allied health practitioners, and potentially create scenarios where the Board is subject to litigation for exercising this discretion. The Board recommends that all training and certification requirements be established in a non-discretionary manner.*

Amendment 5: Create Referral Requirement for the Practice of Genetic Counseling

The Board recommends adding the following language to page 10, after line 25:

(B) NO LICENSED GENETIC COUNSELOR MAY PROVIDE GENETIC COUNSELING TO A PATIENT WITHOUT A DOCUMENTED REFERRAL FROM A LICENSED PHYSICIAN OR PHYSICIAN ASSISTANT.

***Rationale:** Currently all allied health practitioners that fall under the purview of the Board of Physicians do so because an established relationship exists between physicians and the allied health practitioner. This relationship can manifest in various forms, such as a direct supervisory relationship or a collaborative or delegative agreement between the physician and the allied health practitioner.*

As currently drafted, there exists no direct nexus between a physician and a genetic counselor. In its communications with the proponents of the bill, the Board brought up this issue, and the proponents rejected the idea of a required collaborative agreement or direct supervisory relationship. However, the Board still believes that some form of direct link between physicians and genetic counselors is a necessary component to licensure.

Adding a referral requirement creates a nexus between a physician and a genetic counselor, while still allowing for genetic counselors to practice without direct supervision or under a collaborative agreement. This will ensure that there is proper continuity of care and medical record-keeping for all patients who receive genetic counseling services.

Amendment 6: Delay Implementation Until January 1, 2023

The Board recommends striking “October 1, 2021” on page 23, line 18 and replacing it with “January 1, 2023.”

***Rationale:** The COVID-19 pandemic has created a significant amount of uncertainty for the Board. The Board is responsible for licensing and regulating over 45,000 active practitioners. Continuing to maintain all essential Board operations without jeopardizing the health of its staff during a pandemic is a difficult and expensive task. Furthermore, as the Board is special funded, it is wholly reliant on licensing fees to operate. However, with all licensing fees suspended and with out-of-state practitioners permitted to practice without a Maryland license for the duration of the state of emergency, the future of the Board’s revenue and fund balance is very much in question.*

Taking on a new profession would require significant resources, including the hiring and training of dedicated staff members, the recruitment of the mandated Genetic Counselor Advisory Committee, the scheduling and implementation of committee meetings, modification of the Board’s proprietary licensure and enforcement database, updates to the Board’s website, developing procedures and mechanisms for verifying credentials of applicants and more. While the bill as drafted includes language that the Board may set fees as necessary to approximate the cost of maintaining the licensure program, many of these costs must be borne by the Board up-front and may not be recouped for years.

Until the state of emergency is lifted and the Board has had an opportunity to assess its financial status and the state of its personnel, it will be extraordinarily difficult to take on a new licensure category. Therefore, the Board recommends that the implementation of this bill be delayed until January 1, 2023.

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.