

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2222

SPONSOR: Senator Cowin

SUBJECT: Genetic Counselors

DATE: April 17, 2003

REVISED: 4/22/03

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/5 amendments</u>
3.	<u>                    </u>	<u>                    </u>	<u>FT</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>AHS</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

The bill provides for the regulation of genetic counseling in Florida by the Board of Genetic Counselors in the Department of Health. The bill provides legislative intent, definitions, requirements for licensure, exemptions, criminal penalties, rulemaking authority for the newly-created 7-member Board of Genetic Counselors, requirements for membership and appointment to the board, fees, criminal offenses prohibiting the making of false or fraudulent statements to the Board of Genetic Counselors and prohibiting the practice of genetic counseling without the required licensure or exemption thereto, and grounds for which genetic counselors may be disciplined for failure to adhere to specified standards of practice by their board.

This bill creates part XV of chapter 468, Florida Statutes, that includes sections 468.901, 468.902, 468.903, 468.904, 468.905, 468.906, 468.907, 468.908, 468.909, 468.911, 468.912, and 468.913, F.S.

## II. Present Situation:

Genetic counselors offer supportive care to patients with potential or actual genetic diseases, and counsel patients concerning the origin, transmission, and development of hereditary characteristics that have a relationship to birth abnormalities. Genetic counselors provide confidential information to clients about sensitive and emotional issues involving genetic conditions or birth defects or the potential for such things to occur. Genetic counselors work closely with obstetricians and other health care practitioners who provide maternal and family medicine.

Since 1993, national certification has been available for genetic counselors. The American Board of Genetic Counseling (ABGC) prepares and administers examinations to certify individuals

who provide services in the medical genetics specialty of genetic counseling and accredits training programs in the field of genetic counseling. The certifying examination was offered by the ABGC for the first time in 1993. Prior to the establishment of the ABGC, certification in this specialty was offered by the American Board of Medical Genetics (ABMG). The genetic counselor training programs grant a master of science or doctoral degree. There are 27 accredited genetic counseling training programs (seventeen fully accredited programs, eight new programs, and two programs having interim accreditation) in the United States and Canada. New programs must apply for full accreditation within one to five years after the first class of graduates. Two states, California and Utah, recently passed legislation regulating the practice of genetic counseling.

The Sunrise Act, codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following: (1) that substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote; (2) that the skill the profession requires are specialized and readily measurable; (3) that other forms of regulation do not or cannot adequately protect the public; and (4) that the overall cost-effectiveness and economic impact of the proposed regulation is favorable. The act requires proponents of regulation of a previously unregulated profession to provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation.

A sunrise questionnaire has not been completed. The proponents of the regulation, members of the National Society of Genetic Counseling, informally have indicated that approximately 50 to 60 genetic counselors are in Florida and estimate that approximately 37 of that number are certified by the ABMG or ABGC. The proponents indicated that the average annual salary of genetic counselors ranges from \$35,000 to \$60,000. The Department of Health indicates that internationally there are approximately 2,000 genetic counselors and 1,410 are certified genetic counselors, 37 of which are in Florida.

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the Department of Health. The organization of the Department of Health is created in s. 20.43, F.S., including the Division of Medical Quality Assurance which is responsible for various boards and professions established within the division.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates part XV, ch. 468, F.S., the "Genetic Counseling Practice Act," providing for the regulation of genetic counselors within the Department of Health by a seven-member board. Legislative intent is provided that genetic counselors who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in Florida. Legislative intent is specified that the act may not be construed to require payment from insurers for genetic counseling services.

The bill provides definitions. “Genetic counselor” is a person licensed under this part to practice genetic counseling. “Practice of genetic counseling” is, for remuneration, the communication process that deals with the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder in a family, including the provision of services to help an individual or family:

- Comprehend the medical facts involving the diagnosis, the probable cause of the disorder, and the available management of the disorder;
- Appreciate the way heredity contributes to the disorder and the risk of occurrence in specified relatives;
- Understand the alternatives for dealing with the risk of occurrence;
- Choose the appropriate course of action in view of specified factors; and
- Make the best possible psychosocial adjustment to the disorder in an affected family member or to the risk of occurrence of the disorder.

No person may practice genetic counseling or hold himself or herself out as a genetic counselor or as being able to practice genetic counseling or to render genetic counseling services in Florida unless he or she is licensed under this act. Exemptions to the licensure requirements are provided to: Florida-licensed medical physicians or osteopathic physicians acting within their scope of practice; or public health or military officers while acting within the scope of their military or public health responsibilities.

The Board of Genetic Counselors is created within the Department of Health and must consist of seven members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed genetic counselors who are Florida residents and the remaining two members must be consumers and at least one member of the board must be aged 60 years or older. The membership of the board is staggered. The board may adopt rules to implement its duties, including rules relating to standards of practice for genetic counselors. All provisions of ch. 456, F.S., (general regulatory provisions for health care professions within the Department of Health) relating to the board apply.

To become licensed to practice genetic counseling in Florida, in addition to paying required fees and completing an application, an applicant must be of good moral character, provide evidence of completing a master’s degree from a genetic counseling training program accredited by the American Board of Genetic Counseling or a doctoral degree from a medical genetics training program accredited by the American Board of Medical Genetics; and have passed the examination for certification as a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics or as a medical or clinical geneticist by the American Board of Medical Genetics. The Department of Health may issue a temporary license to an applicant who meets all the licensure requirements except the examination and has obtained active candidate status establishing eligibility to sit for the next available certification exam administered by the American Board of Genetic Counseling.

The Board of Genetic Counselors is granted specific rulemaking authority to establish a procedure for biennial license renewal and to prescribe continuing education requirements and approve course criteria for license renewal. The board must establish a procedure for approving continuing education courses and providers and may set a fee for continuing education course

and provider approval. The board is authorized to establish the following fees: application, no greater than \$100; initial licensure, no greater than \$200; biennial renewal, no greater than \$200; and inactive, delinquent, reactivation, or voluntary inactive licensure status, all of which may be no greater than \$100. The board must establish fees at a level, not exceeding the statutory fee cap, which is adequate to ensure the continued operation of the regulatory program for genetic counselors.

Criminal offenses are created for: making false or fraudulent statements in any application, affidavit, or statement presented to the board; practicing genetic counseling without a license; and using the title genetic counselor or other similar designation unless that person is licensed or exempt from the licensing requirements for genetic counseling. A person who violates the prohibitions created in the bill is guilty of a second degree misdemeanor punishable by jail time up to 60 days and the imposition of a fine up to \$500.

Grounds for which a genetic counselor may be subject to discipline for violating practice standards are specified. The board may deny licensure or impose any of the penalties in s. 456.072(2), F.S., for violating the practice standards or any provision of s. 456.072, F.S.

**Section 2.** Provides an effective date of July 1, 2003.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

The Board of Genetic Counselors is authorized to establish the following fees for the regulation of genetic counseling: application, no greater than \$100; initial licensure, no greater than \$200; biennial renewal, no greater than \$200; and inactive, delinquent, reactivation, or voluntary inactive licensure status, all of which may be no greater than \$100.

**B. Private Sector Impact:**

Persons seeking to practice genetic counseling in Florida will incur the expenses to meet the licensure requirements established in the bill.

**C. Government Sector Impact:**

The Department of Health will incur costs to implement the regulation of genetic counseling.

**VI. Technical Deficiencies:**

On page 2, line 20 through page 3, line 3, the bill refers to a list of services that constitute the “practice of genetic counseling,” but the bill does not specify whether each of these services must be performed in order to constitute such practice or if performing one of the services is sufficient. It may be desirable to amend the bill to reflect whether all or one of the services is sufficient to constitute “practice of genetic counseling.”

On page 5, lines 13 through 14, the bill provides that the department shall renew a license upon receipt of the renewal application and fee; however, the bill also requires the board to adopt rules that establish requirements for renewal. It may be desirable to amend the bill to specify that a condition of the department’s renewal of the license is “demonstrated compliance with rules regarding renewal established by the board.”

On page 5, line 22, commas are misplaced. It may be desirable to amend the bill to correct the grammatical deficiency.

On page 6, lines 29 through 30, the bill provides that two grounds for disciplinary action under the Part are “[a]ttempting to procure a license by fraudulent misrepresentation,” and “[a]dvertising goods or services in a fraudulent, false, deceptive, or misleading manner.” For clarity and in order to conform these provisions to similar provisions already in law and to avoid due process concerns, it may be desirable to amend the bill to state, “[a]ttempting to procure a license *to practice genetic counseling* by fraudulent misrepresentation,” and “[a]dvertising goods or services *related to genetic counseling* in a fraudulent, false, deceptive, or misleading manner.”

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Health, Aging, and Long-Term Care:

Amends s. 20.43(3)(g), F.S., to add the Board of Genetic Counselors under the Division of Medical Quality Assurance in the Department of Health. (WITH TITLE AMENDMENT)

#1 by Governmental Oversight and Productivity:

Amends s. 468.903(4), F.S., to indicate that provision of any listed service constitutes the “practice of genetic counseling.”

#2 by Governmental Oversight and Productivity:

Clarifies that license renewal is contingent on compliance with board rules.

#3 by Governmental Oversight and Productivity:

Makes a grammatical correction.

#4 by Governmental Oversight and Productivity:

Provides that an attempt to fraudulently procure license, which is a ground for discipline, must be an attempt to fraudulently procure a genetic counseling license.

#5 by Governmental Oversight and Productivity:

Provides that the fraudulent advertising of goods or services, which is a ground for discipline, must relate to genetic counseling.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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