

# STATE OF NEW YORK

1323--A

Cal. No. 607

2017-2018 Regular Sessions

## IN SENATE

January 9, 2017

Introduced by Sens. LAVALLE, FUNKE, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the education law, in relation to licensing of genetic counselors

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 142 to read as follows:

### ARTICLE 142

#### GENETIC COUNSELING

##### Section 7050. Introduction.

7051. Practice of genetic counseling and use of the title "genetic counselor".

7052. State board for genetic counseling.

7053. Requirements for a professional license.

7054. Exempt persons.

7055. Limited permits.

7056. Special provisions.

§ 7050. Introduction. This article applies to the licensing of genetic counselors. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

§ 7051. Practice of genetic counseling and use of the title "genetic counselor". 1. The "practice of genetic counseling" shall mean the communication to and education of clients, their families, other health care professionals and the general public with regard to genetic test-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD05260-04-7

ing, individual family histories, or other genetic, medical, and technical information associated with the occurrence, risk of occurrence or recurrence, of a genetic or hereditary condition or birth defect. A practitioner of genetic counseling shall seek to promote decision-making for their client which respects the client's culture, language, tradition, lifestyle, religion, beliefs and values. Genetic counseling shall include, but not be limited to, the following:

(a) obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic conditions and diseases in a client, his or her offspring, and other family members;

(b) discuss with clients the features, means of diagnosis, genetic and environmental factors, and management of risk for genetic conditions and diseases;

(c) identify and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment;

(d) integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic conditions;

(e) explain to a client the clinical implications of genetic laboratory tests and other diagnostic studies and their results; and

(f) provide written documentation of the genetic counseling services performed for clients and health care professionals.

2. Nothing in this article shall be construed to authorize a licensed genetic counselor to diagnose or treat any genetic disease or medical condition, practice psychotherapy, or practice any other profession that is licensed under this title. This includes, but may not be limited to, the following:

(a) Prescribe or administer drugs as defined in this chapter or as a treatment, therapy, or professional services in the practice of his or her profession;

(b) Use invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For the purposes of this subdivision, "invasive procedure" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedures shall include surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy; or

(c) Provide psychotherapy as defined in subdivision two of section eighty-four hundred one of this title.

3. If in the course of providing genetic counseling to any client, a genetic counselor finds any indication of disease or condition that may require medical assessment, the genetic counselor shall refer that client to a licensed physician, or as appropriate, another health care professional licensed pursuant to this title.

4. Only a person licensed under this article shall practice genetic counseling. Only a person licensed under this article shall use the title "licensed genetic counselor" and use the letters "L.G.C." after his or her name or any words or letters, abbreviations or insignia indicating or implying that a person is licensed pursuant to this article.

§ 7052. State board for genetic counseling. 1. A state board for genetic counseling shall be appointed by the board of regents upon the recommendation of the commissioner, prior to the effective date of this article, and shall assist on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. Members of the first board need not be licensed prior to their appointment to such board. An executive secretary to the board

1 shall be appointed by the board of regents on recommendation of the  
2 commissioner.

3 2. The board shall consist of seven individuals, to be composed of the  
4 following:

5 (a) five licensed genetic counselors,

6 (b) one licensed physician, and

7 (c) a public representative as defined in paragraph b of subdivision  
8 one of section sixty-five hundred eight of this title.

9 3. Board members shall be appointed for terms of five years. The terms  
10 of the first appointed members shall be staggered so that two members  
11 are appointed for three years, three members are appointed for four  
12 years and two members are appointed for five years.

13 § 7053. Requirements for a professional license. To qualify for a  
14 license as a "licensed genetic counselor", an applicant shall fulfill  
15 the following requirements:

16 1. Application: file an application with the department;

17 2. Education: have received a master's degree or higher in genetic  
18 counseling or human genetics from a program registered by the depart-  
19 ment, or determined by the department to be the substantial equivalent,  
20 in accordance with the commissioner's regulations. Appropriate course-  
21 work shall be determined in accordance with the commissioner's regu-  
22 lations on recommendations of the state board for genetic counseling;

23 3. Experience: experience acceptable to the department;

24 4. Examination: pass an examination satisfactory to the department and  
25 in accordance with the commissioner's regulations;

26 5. Age: be at least twenty-one years of age;

27 6. Character: be of good moral character as determined by the depart-  
28 ment;

29 7. Fees: pay a fee of three hundred dollars to the department for an  
30 initial license and two hundred dollars for each subsequent triennial  
31 re-registration of a license.

32 § 7054. Exempt persons. So long as the person does not hold him or  
33 herself out to the public as a genetic counselor, the provisions of this  
34 article shall not apply to:

35 1. A licensed health care professional licensed under this title who  
36 is practicing within the scope of practice as defined in this title;

37 2. A student or intern enrolled in a master's or higher program regis-  
38 tered or approved by the department where the student or intern is  
39 engaged in activities constituting the practice of a profession as  
40 defined in this title, whose scope of practice includes genetic coun-  
41 seling; provided, however, such activities shall be part of a supervised  
42 training program under a licensed genetic counselor or a health care  
43 professional licensed pursuant to this title in accordance with the  
44 commissioner's regulations; and

45 3. An employee of the state department of health in the provision of  
46 education regarding conditions included on the newborn screening panels.  
47 Nothing in this article shall be construed as prohibiting counseling  
48 services provided by an attorney, rape crisis counselor, or pastoral  
49 counseling by a clergy member working within his or her ministerial  
50 charge of obligation.

51 § 7055. Limited permits. Limited permits may be issued by the depart-  
52 ment to authorize the practice of the profession under a licensed genet-  
53 ic counselor or physician pursuant to the commissioner's regulations:

54 1. The department may issue a limited permit to an applicant who meets  
55 all qualifications for licensure as a genetic counselor, except those

1 relating to the examination, in accordance with the commissioner's regu-  
2 lations.

3 2. Limited permits shall be for one year. Such permits may be extended  
4 at the discretion of the department, for one additional year.

5 3. The fee for each limited permit and for each renewal shall be  
6 seventy dollars.

7 § 7056. Special provisions. 1. (a) Any person who obtained a master's  
8 degree or higher of genetic counseling or human genetics, or a substan-  
9 tially equivalent degree as determined by the department in accordance  
10 with the commissioner's regulations satisfactory to the department,  
11 prior to two thousand eight, who has ten years post-graduate genetic  
12 counselor employment and meets the requirements for a license pursuant  
13 to this article, except for examination, and who files an application  
14 and fee with the department within two years of the effective date of  
15 this article shall be licensed as a licensed genetic counselor upon  
16 application.

17 (b) Any person who is currently a certified genetic counselor (CGC)  
18 and who meets the requirements for a license under this article, except  
19 for examination, and who files an application and fee with the depart-  
20 ment within two years of the effective date of this article shall be  
21 licensed as a licensed genetic counselor upon application.

22 2. This article shall not prohibit the provision of genetic counseling  
23 services as defined in subdivision one of section seven thousand fifty-  
24 one of this article by employees or agents of a corporation providing  
25 genetic counseling services in this state; provided, however, that such  
26 services are provided by a licensed genetic counselor or person exempt  
27 under this article and a violation of this provision shall be a class E  
28 felony. Provided further, that any such corporation must:

29 (a) have registered with the department before providing any such  
30 services in this state by providing their name and address for service  
31 of process;

32 (b) submit and, as necessary, revise a current list of genetic counse-  
33 lors licensed pursuant to this article who are employees or agents of  
34 the corporation and are providing such services in the state.

35 2-a. This article shall not prohibit the provision of genetic coun-  
36 seling services as defined in subdivision one of section seven thousand  
37 fifty-one of this article by employees or agents providing genetic coun-  
38 seling services in this state; provided, however, that such services are  
39 provided by a licensed genetic counselor or person exempt under this  
40 article and a violation of this provision shall be a class E felony.  
41 Provided further:

42 (a) The person providing genetic counseling services is a licensed  
43 genetic counselor or is a person exempt under this article.

44 (b) The compensation of the licensed genetic counselor or exempt  
45 person is consistent with the fair market value of the services and is  
46 not determined in a manner that takes into account (directly or indi-  
47 rectly) the volume or values of genetic tests ordered by the referring  
48 licensed physician or other licensed healthcare provider.

49 (c) The licensed genetic counselor or exempt person provides a form to  
50 each patient disclosing the name of the corporation and informs the  
51 patient of his or her right to utilize a specifically identified alter-  
52 native genetic counselor if any such genetic counselor is reasonably  
53 available. The licensed genetic counselor or exempt person shall main-  
54 tain documentation of each instance of disclosure to a patient pursuant  
55 to this section.

1 (d) The licensed genetic counselor or exempt person shall not exert  
2 undue influence over the client or referring physician so to promote  
3 products or services provided by the corporation, nor shall the corpo-  
4 ration exert undue influence over the licensed genetic counselor to  
5 recommend a certain test or tests.

6 (e) The licensed genetic counselor or exempt person shall conduct  
7 himself or herself in such a way as to not be in violation of subdivi-  
8 sions seventeen, eighteen, and nineteen of section sixty-five hundred  
9 thirty of this title.

10 3. Any person or corporation offering the services of genetic coun-  
11 seling of a client in this state shall employ, for the purpose of  
12 providing such services, only persons licensed or exempt under this  
13 article and a violation of this provision shall be a class A misdemea-  
14 nor.

15 § 2. Severability. If any clause, sentence, paragraph, section or part  
16 of this act shall be adjudged by any court of competent jurisdiction to  
17 be invalid and after exhaustion of all further judicial review, the  
18 judgment shall not affect, impair or invalidate the remainder thereof,  
19 but shall be confined in its operation to the clause, sentence, para-  
20 graph, section or part of this act directly involved in the controversy  
21 in which the judgment shall have been rendered.

22 § 3. This act shall take effect two years after it shall have become a  
23 law; provided, however, that the state education department is author-  
24 ized to promulgate any and all rules and regulations and take any other  
25 measure necessary to implement this act, including, but not limited to,  
26 the appointment of board members pursuant to section 7052 of the educa-  
27 tion law, as added by section one of this act on or before such effec-  
28 tive date.