STATE OF NEW YORK

1323--B

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sens. LAVALLE, FUNKE -- 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 -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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§ 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 testing, individual family histories, or other genetic, personal medical history, 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 personal and family medical history to determine genetic risk for genetic conditions and diseases in a client, his or her offspring, and other family members;

(b) educate clients regarding the means to assess and manage risk for genetic conditions and disease;

(c) identify and order genetic laboratory tests and coordinate 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) maintain 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 shall be appointed by the board of regents on recommendation of the commissioner.

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

(a) five licensed genetic counselors,

(b) one licensed physician, and

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

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

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

1. Application: file an application with the department;

2. Education: have received a master's degree or higher in genetic counseling or human genetics from a program registered by the department, or determined by the department to be the substantial equivalent, in accordance with the commissioner's regulations. Appropriate coursework shall be determined in accordance with the commissioner's regulations on recommendations of the state board for genetic counseling;

3. Experience: experience acceptable to the department;

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

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

6. Character: be of good moral character as determined by the department;

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

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

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

2. A student or intern enrolled in a master's or higher program registered or approved by the department where the student or intern is engaged in activities constituting the practice of a profession as defined in this title, whose scope of practice includes genetic counseling; provided, however, such activities shall be part of a supervised training program under a licensed genetic counselor or a health care professional licensed pursuant to this title in accordance with the commissioner's regulations; and

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

§ 7055. Limited permits. Limited permits may be issued by the department to authorize the practice of the profession under a licensed genetic counselor or physician pursuant to the commissioner's regulations:

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure as a genetic counselor, except those relating to the examination, in accordance with the commissioner's regulations.

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

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

§ 7056. Special provisions. 1. (a) Any individual who meets the requirements for a license established in this article, except for examination, experience and education, and who is certified by a national certifying body having certification standards acceptable to the department, may be licensed without meeting additional requirements as to examination, experience, or education, provided that such individual submits an application to the department within two years of the effective date of this article.

(b) Any individual who meets the requirements for a license established in this article, except for examination, may be licensed without examination, provided that the person completed the education requirement prior to two thousand eight, submits evidence of a minimum of ten years employment as a genetic counselor, submits experience acceptable to the department and submits an application to the department within two years of the effective date of this article.

2. This article shall not prohibit the practice of genetic counseling by a lawfully organized business entity meeting the requirements authorized by this article or by an employee or agent of such a business entity provided that such practice is provided by a licensed genetic counselor or persons exempt under this article. Violation of this provision shall be subject to the provisions of section sixty-five hundred twelve of this title. For the purposes of this subdivision, "business entity" means any lawfully established business entity, other than a professional service corporation (PC), a professional service limited liability company (PLLC) or a registered limited liability partnership (LLP) that is authorized to practice genetic counseling under New York law. Provided further, that any such business entity must:

(a) have registered and been approved by the department before providing any such services to patients who reside in this state by providing their name and address for service of process.

(b) submit an application to the department which shall:

(i) be made in a manner and form prescribed by the department;

(ii) include information as may be required by the department to ensure safe practice, including, but not limited to, a current list of genetic counselors licensed pursuant to this article who are employees or agents of the business entity and are providing such services to patients who reside in the state; and

(iii) be accompanied by a fee of three hundred forty-five dollars.

(c) submit annually to the department a current list of genetic counselors licensed pursuant to this article who are employees or agents of the business entity and are providing such services to patients who reside in the state.

(d) not compensate the licensed genetic counselor or exempt person in a manner that takes into account, directly or indirectly, the volume or financial values of genetic tests ordered.

(e) ensure the licensed genetic counselor or exempt person provides a form to each client disclosing the name of the business entity and

informs the client of his or her right to utilize an alternative genetic counselor.

(f) as a condition of employment, not require a licensed genetic counselor or exempt person to order a certain test or tests, or otherwise direct or influence professional conduct.

3. All business entity registrations shall be renewed on dates set by the department. The triennial registration fee shall be two hundred sixty dollars, or a prorated portion thereof as determined by the department.

4. Such business entity registered under this section shall be under the supervision of the board of regents and shall be subject to disciplinary proceedings and penalties in accordance with article one hundred thirty of this title in the same manner and to the same extent as individual licensees. Provided further, that failure to comply with the requirements of this section shall also constitute professional misconduct.

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

§ 3. This act shall take effect two years after it shall have become a law; provided, however, that the state education department is authorized to promulgate any and all rules and regulations and take any other measure necessary to implement this act, including, but not limited to, the appointment of board members pursuant to section 7052 of the education law, as added by section one of this act on or before such effective date.