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SENATE BILL 415

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PROFESSIONAL LICENSING; PROVIDING LICENSING
REQUIREMENTS FOR GENETIC COUNSELORS; CREATING A FUND; PROVIDING
FOR A DELAYED EFFECTIVE DATE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 12 of this act may be cited as the "Genetic Counseling
Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that the mapping of the
human genome continues to result in the rapid expansion of
genetic knowledge and a proliferation of testing for genetic
conditions. This has created a need for qualified professional
genetic counselors to coordinate assessments, to deliver
accurate information to families, to assist families in

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1 adjusting to the implications of their diagnoses and to help
2 ensure that genetic information is used appropriately in the
3 delivery of medical care.

4 B. The purpose of the Genetic Counseling Act is to
5 protect the public from the unprofessional, improper,
6 incompetent and unlawful practice of genetic counseling.

7 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Genetic Counseling Act:

9 A. "ABGC" means the American board of genetic
10 counseling, a national agency for certification and
11 recertification of genetic counselors, or its successor agency;

12 B. "ABMG" means the American board of medical
13 genetics, a national agency for certification and
14 recertification of genetic counselors and geneticists with
15 medical or other doctoral degrees, or its successor agency;

16 C. "board" means the New Mexico medical board;

17 D. "genetic counseling" means a communication
18 process that may include:

19 (1) estimating the likelihood of occurrence or
20 recurrence of any potentially inherited or genetically
21 influenced condition or congenital abnormality. "Genetic
22 counseling" may involve:

23 (a) obtaining and analyzing the complete
24 health history of an individual and family members;

25 (b) reviewing pertinent medical records;

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1 (c) evaluating the risks from exposure
2 to possible mutagens or teratogens; and

3 (d) determining appropriate genetic
4 testing or other evaluations to diagnose a condition or
5 determine the carrier status of one or more family members;

6 (2) helping an individual, family or health
7 care provider to:

8 (a) appreciate the medical,
9 psychological and social implications of a disorder, including
10 its features, variability, usual course and management options;

11 (b) learn how genetic factors contribute
12 to a disorder and affect the chance for occurrence of the
13 disorder in other family members;

14 (c) understand available options for
15 coping with, preventing or reducing the chance of occurrence or
16 recurrence of a disorder;

17 (d) select the most appropriate,
18 accurate and cost-effective methods of diagnosis; and

19 (e) understand genetic or prenatal
20 tests, coordinate testing for inherited disorders and interpret
21 complex genetic test results; and

22 (3) facilitating an individual's or family's:

23 (a) exploration of the perception of
24 risk and burden associated with a genetic disorder; and

25 (b) adjustment and adaptation to a

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1 disorder or the individual's or family's genetic risk by
2 addressing needs for psychological, social and medical support;
3 and

4 E. "genetic counselor" means a person licensed
5 pursuant to the Genetic Counseling Act to engage in the
6 practice of genetic counseling.

7 Section 4. [NEW MATERIAL] LICENSE REQUIRED.--Unless
8 licensed as a genetic counselor pursuant to the Genetic
9 Counseling Act, a person shall not:

10 A. engage in the practice of genetic counseling;

11 B. use the title or make any representation as
12 being a licensed genetic counselor or use any other title,
13 abbreviation, letters, figures, signs or devices that indicate
14 or imply that the person is licensed to practice as a genetic
15 counselor, including a genetic associate, gene counselor or
16 genetic consultant; or

17 C. advertise, hold out to the public or represent
18 in any manner that the person is authorized to practice genetic
19 counseling.

20 Section 5. [NEW MATERIAL] EXEMPTIONS.--

21 A. Nothing in the Genetic Counseling Act is
22 intended to limit, interfere with or prevent a licensed health
23 care professional from practicing within the scope of the
24 professional license of that health care professional; however,
25 a licensed health care professional shall not advertise to the

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1 public or any private group or business by using any title or
2 description of services that includes the term "genetic
3 counseling" unless the health care professional is licensed
4 under the Genetic Counseling Act.

5 B. The Genetic Counseling Act shall not apply to or
6 affect:

7 (1) a physician licensed under the Medical
8 Practice Act; or

9 (2) a commissioned physician or surgeon
10 serving in the armed forces of the United States or a federal
11 agency.

12 Section 6. [NEW MATERIAL] REQUIREMENTS FOR LICENSING.--
13 The board shall grant a license to practice genetic counseling
14 to a person who has:

15 A. submitted to the board:

16 (1) a completed application for licensing on
17 the form provided by the board;

18 (2) required documentation as determined by
19 the board;

20 (3) the required fees;

21 (4) an affidavit stating that the applicant
22 has not been found guilty of unprofessional conduct or
23 incompetence;

24 (5) satisfactory documentation of having
25 earned:

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1 (a) a master's degree from a genetic
2 counseling training program that is accredited by the ABGC, or
3 an equivalent as determined by the board; or

4 (b) a doctoral degree from a medical
5 genetics training program that is accredited by the ABMG, or an
6 equivalent as determined by the board; and

7 (6) proof that the applicant is ABGC- or ABMG-
8 certified; and

9 B. complied with any other requirements of the
10 board.

11 Section 7. [NEW MATERIAL] LICENSE RENEWAL.--

12 A. A licensee shall renew the licensee's genetic
13 counseling license biennially by submitting prior to the date
14 established by the board:

15 (1) the completed application for license
16 renewal on the form provided by the board; and

17 (2) the required fee for annual license
18 renewal.

19 B. The board may require proof of continuing
20 education or other proof of competence as a requirement for
21 renewal.

22 C. A sixty-day grace period shall be allowed a
23 licensee after the end of the licensing period, during which
24 time the license may be renewed by submitting:

25 (1) the completed application for license

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1 renewal on the form provided by the board;

2 (2) the required fee for annual license
3 renewal; and

4 (3) the required late fee.

5 D. A genetic counselor's license not renewed at the
6 end of the grace period shall be considered expired, and the
7 licensee shall not be eligible to practice within the state.
8 For reinstatement of an expired license within one year of the
9 date of renewal, the board shall establish requirements or fees
10 that are in addition to the fee for annual license renewal and
11 may require the former licensee to reapply as a new applicant.

12 Section 8. [NEW MATERIAL] TEMPORARY LICENSE.--

13 A. The board may issue a temporary license to an
14 applicant who has met all licensure requirements except the
15 examination requirement. The temporary license is valid until
16 the results of the next scheduled examination are available and
17 a license is issued or denied. The temporary license
18 automatically expires if the applicant fails to take the next
19 scheduled examination, or upon release of official examination
20 results if the applicant fails the examination.

21 B. The board may issue a temporary license to a
22 person licensed in another state or country who:

23 (1) is in New Mexico temporarily to teach or
24 assist a New Mexico resident licensed to practice genetic
25 counseling; or

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1 (2) met the requirements for licensure in that
2 state, which were equal to or greater than the requirements for
3 licensure in New Mexico at the time the license was obtained in
4 the other state.

5 C. The board shall not issue a temporary license to
6 a person who qualifies for the temporary license under
7 Subsection A of this section more than three consecutive times
8 within the three-year period immediately following the issuance
9 of the first temporary license.

10 D. A person practicing genetic counseling under a
11 temporary license shall be supervised by a licensed genetic
12 counselor or physician.

13 Section 9. [NEW MATERIAL] FEES.--The board shall
14 establish a schedule of reasonable administrative and licensing
15 fees, but an individual fee shall not exceed four hundred
16 dollars (\$400).

17 Section 10. [NEW MATERIAL] DISCIPLINARY PROCEEDINGS--
18 JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

19 A. In accordance with the procedures contained in
20 the Uniform Licensing Act, the board may deny, revoke or
21 suspend a license held or applied for under the Genetic
22 Counseling Act upon findings by the board that the licensee or
23 applicant:

24 (1) is guilty of fraud or deceit in procuring
25 or attempting to procure a license;

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1 (2) has been convicted of a felony. A
2 certified copy of the record of conviction shall be conclusive
3 evidence of conviction;

4 (3) is guilty of incompetence as defined by
5 board rule;

6 (4) is habitually intemperate, is addicted to
7 the use of habit-forming drugs or is addicted to any vice to
8 such a degree as to render the licensee or applicant unfit to
9 practice as a genetic counselor;

10 (5) is guilty of unprofessional conduct as
11 defined by board rule;

12 (6) is guilty of violating the provisions of
13 the Controlled Substances Act;

14 (7) has violated a provision of the Genetic
15 Counseling Act or rules promulgated by the board;

16 (8) is guilty of failing to furnish the board,
17 its investigators or its representatives with information
18 requested by the board;

19 (9) is guilty of willfully or negligently
20 practicing beyond the scope of genetic counseling as defined in
21 the Genetic Counseling Act;

22 (10) is guilty of failing to adequately
23 supervise a sponsored temporary licensee;

24 (11) is guilty of aiding or abetting the
25 practice of genetic counseling by a person not licensed by the

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1 board;

2 (12) is guilty of practicing or attempting to
3 practice under an assumed name;

4 (13) advertises by means of knowingly false
5 statements;

6 (14) advertises or attempts to attract
7 patronage in a manner prohibited by the Genetic Counseling Act
8 or the rules of the board;

9 (15) has been declared mentally incompetent by
10 regularly constituted authorities;

11 (16) fails, when counseling a patient, to
12 possess or apply the knowledge or to use the skill and care
13 ordinarily used by reasonably well-qualified genetic counselors
14 practicing under similar circumstances, giving due
15 consideration to the locality involved; or

16 (17) has had a license, certificate or
17 registration to practice genetic counseling revoked, suspended
18 or denied in any jurisdiction of the United States or a foreign
19 country for actions of the licensee similar to acts described
20 in Paragraphs (1) through (16) of this subsection. A certified
21 copy of the record of the jurisdiction taking disciplinary
22 action is conclusive evidence of the revocation, suspension or
23 denial of a license, certificate or registration.

24 B. Disciplinary proceedings may be instituted by
25 any person and shall be by sworn complaint and shall conform

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1 with the provisions of the Uniform Licensing Act. A party to
2 the hearing may obtain a copy of the hearing record upon
3 payment of the costs of the copy.

4 C. A person filing a sworn complaint shall be
5 immune from liability arising out of civil action if the
6 complaint is filed in good faith and without actual malice.

7 D. The licensee shall bear the costs of
8 disciplinary proceedings unless exonerated.

9 Section 11. [NEW MATERIAL] FUND CREATED.--

10 A. There is created in the state treasury the
11 "genetic counseling fund".

12 B. Money received by the board pursuant to the
13 Genetic Counseling Act shall be deposited with the state
14 treasurer for credit to the genetic counseling fund. The state
15 treasurer shall invest the fund as other state funds are
16 invested. All balances in the fund shall remain in the fund
17 and shall not revert. Money in the fund shall be disbursed on
18 warrants signed by the secretary of finance and administration
19 pursuant to vouchers signed by the superintendent of regulation
20 and licensing.

21 C. Money in the genetic counseling fund is
22 appropriated to the board and shall be used only for the
23 purpose of meeting the necessary expenses incurred in carrying
24 out the provisions of the Genetic Counseling Act.

25 Section 12. [NEW MATERIAL] CRIMINAL OFFENDER EMPLOYMENT

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1 ACT.--The provisions of the Criminal Offender Employment Act
2 shall govern any consideration of criminal records required or
3 permitted by the Genetic Counseling Act.

4 Section 13. Section 61-6-5 NMSA 1978 (being Laws 1973,
5 Chapter 361, Section 2, as amended) is amended to read:

6 "61-6-5. DUTIES AND POWERS.--The board shall:

7 A. enforce and administer the provisions of the
8 Medical Practice Act, the Physician Assistant Act, the
9 Anesthesiologist Assistants Act, the Genetic Counseling Act and
10 the Impaired Health Care Provider Act;

11 B. adopt, publish and file, in accordance with the
12 Uniform Licensing Act and the State Rules Act, all rules for
13 the implementation and enforcement of the provisions of the
14 Medical Practice Act, the Physician Assistant Act, the
15 Anesthesiologist Assistants Act, the Genetic Counseling Act and
16 the Impaired Health Care Provider Act;

17 C. adopt and use a seal;

18 D. administer oaths to all applicants, witnesses
19 and others appearing before the board, as appropriate;

20 E. take testimony on matters within the board's
21 jurisdiction;

22 F. keep an accurate record of all its meetings,
23 receipts and disbursements;

24 G. maintain records in which the name, address and
25 license number of all licensees shall be recorded, together

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1 with a record of all license renewals, suspensions,
2 revocations, probations, stipulations, censures, reprimands and
3 fines;

4 H. grant, deny, review, suspend and revoke licenses
5 to practice medicine and censure, reprimand, fine and place on
6 probation and stipulation licensees and applicants in
7 accordance with the Uniform Licensing Act for any cause stated
8 in the Medical Practice Act and the Impaired Health Care
9 Provider Act;

10 I. hire staff and administrators as necessary to
11 carry out the provisions of the Medical Practice Act;

12 J. have the authority to hire or contract with
13 investigators to investigate possible violations of the Medical
14 Practice Act;

15 K. have the authority to hire a competent attorney
16 to give advice and counsel in regard to any matter connected
17 with the duties of the board, to represent the board in any
18 legal proceedings and to aid in the enforcement of the laws in
19 relation to the medical profession and to fix the compensation
20 to be paid to such attorney; provided, however, that such
21 attorney shall be compensated from the funds of the board;

22 L. establish continuing medical education
23 requirements for licensed physicians and continuing education
24 requirements for physician assistants;

25 M. establish committees as it deems necessary for

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1 carrying on its business;

2 N. hire or contract with a licensed physician to
3 serve as medical director and fulfill specified duties of the
4 secretary-treasurer; and

5 O. establish and maintain rules related to the
6 management of pain based on review of national standards for
7 pain management."

8 Section 14. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.

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