



GOV. MSG. NO. 862

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 1362 HD1 SD2

On July 15, 2009, House Bill No. 1362, entitled "A Bill for an Act Relating to Genetic Counselors" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to establish a genetic counseling licensure program within the Department of Health.

In 2006 an analysis by the State Auditor concluded that establishing a licensing program for this profession is largely about title protection. It gives licensed individuals the ability to use the title but does not prohibit the practice by unlicensed practitioners. This bill prohibits unlicensed individuals from using the title "genetic counselor" or "licensed genetic counselor," but it would not prohibit them from offering services. It should also be noted that licensing would not impact the commercial marketing of DNA testing and counseling, especially at-home genetic self-testing, which is a growing industry.

While the bill calls for fees to be assessed to defray the cost of the license requirement, the cost of initial implementation is not funded and will have to be covered by the Department of Health when the program is implemented in 2011.

Genetic counselors provide valuable services to individuals and families with health issues who need to understand their family's health history.

In the interim, until this bill becomes law, should individuals in need of services seek knowledge about a genetic counselor's qualifications, they can consult the American Board of Genetic Counseling, which serves as the credentialing organization for the genetic counseling profession in the United States and Canada.

The Honorable Colleen Hanabusa, President
and Members of the Senate
Page 2

For the foregoing reasons, I allowed House Bill No. 1362 to become law as Act 191,
effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO GENETIC COUNSELORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to require licensure
 2 for individuals offering genetic counseling services in order
 3 to:

- 4 (1) Safeguard the public health, safety, and welfare;
- 5 (2) Protect those seeking genetic counseling services from
 6 incompetent and unscrupulous persons, and persons
 7 unauthorized to perform these services;
- 8 (3) Assure the highest degree of professional conduct on
 9 the part of genetic counselors; and
- 10 (4) Assure the availability of high quality genetic
 11 counseling services.

12 SECTION 2. The Hawaii Revised Statutes is amended by
 13 adding a new chapter to be appropriately designated and to read
 14 as follows:

"CHAPTER

GENETIC COUNSELORS

17 § -1 **Definitions.** As used in this chapter, unless the
 18 context requires otherwise:

HB1362 SD2.DOC
 HB1362 SD2.DOC
 HB1362 SD2.DOC

1 "Active candidate status" means documentation of
2 eligibility to take the American Board of Genetic Counseling or
3 its equivalent certification examinations.

4 "Board certified" means an individual who has passed the
5 American Board of Genetic Counseling certification examination
6 and remains actively certified by American Board of Genetic
7 Counseling or its equivalent.

8 "Department" means the department of health.

9 "Director" means the director of health.

10 "Genetic counseling practice" means the rendering of
11 professional counseling services based on specialized education
12 and training to individuals, families, or groups for
13 compensation, monetary or otherwise. These counseling services
14 include the communication process which deals with the human
15 problems associated with the occurrence, or the risk of
16 occurrence, of a genetic disorder. "Genetic counseling
17 practice" includes:

- 18 (1) Obtaining and interpreting individual, family,
19 medical, developmental, and reproductive histories;
20 (2) Determining the mode of inheritance and risk of
21 transmission of genetic conditions and birth defects;

- 1 (3) Discussing the inheritance, features, natural history,
2 means of diagnosis, and management of these
3 conditions;
- 4 (4) Identifying, coordinating, interpreting, and
5 explaining genetic laboratory tests and other
6 diagnostic studies;
- 7 (5) Assessing psychological factors and recognizing
8 social, educational, and cultural issues related to
9 having or being at risk for genetic conditions;
- 10 (6) Evaluating the client's or family's responses to the
11 genetic condition or risk of having the genetic
12 condition, and providing client-centered counseling
13 and anticipatory guidance;
- 14 (7) Communicating information to their clients in an
15 understandable manner;
- 16 (8) Facilitating informed decision making about testing,
17 treatment, and management;
- 18 (9) Identifying and effectively using community resources
19 that provide medical, educational, financial, and
20 psychosocial support and advocacy; and

1 (10) Providing accurate written documentation of medical,
2 genetic, and counseling information for families and
3 health care professionals.

4 "Genetic counselor" means a person licensed under this
5 chapter who engages in genetic counseling practice.

6 "Licensed genetic counselor" means an individual who holds
7 a license in good standing to practice genetic counseling under
8 this chapter.

9 § -2 **Genetic counseling licensure program.** There is
10 established a genetic counseling licensure program within the
11 department to be administered by the director.

12 § -3 **Powers and duties of the director.** In addition to
13 any other powers and duties authorized by law, the director
14 shall have the following powers and duties:

15 (1) Examine and approve the qualifications of all
16 applicants under this chapter and issue a license to
17 each successful applicant granting permission to use
18 the title of "licensed genetic counselor" or "genetic
19 counselor" in this State pursuant to this chapter and
20 the rules adopted pursuant thereto;

- 1 (2) Adopt, amend, or repeal rules pursuant to chapter 91
- 2 as the director finds necessary to carry out this
- 3 chapter;
- 4 (3) Administer, coordinate, and enforce this chapter and
- 5 rules adopted pursuant thereto;
- 6 (4) Discipline a licensed genetic counselor for any cause
- 7 described by this chapter or for any violation of the
- 8 rules, and refuse to license an individual for failure
- 9 to meet licensure requirements or for any cause that
- 10 would be grounds for disciplining a licensed genetic
- 11 counselor; and
- 12 (5) Work with the department of health's genetics program
- 13 to assist with the implementation of this chapter and
- 14 the rules adopted pursuant thereto.

15 § -4 **Licensure required.** No individual shall purport to
 16 be a licensed genetic counselor or use the letters "L.G.C." in
 17 connection with the individual's name, or use any words or
 18 symbols indicating or tending to indicate that the individual is
 19 a licensed genetic counselor without meeting the applicable
 20 requirements and holding a license as set forth in this chapter.

21 § -5 **Exemptions.** (a) This chapter does not prohibit
 22 any persons legally regulated in this state by any other law

1 from engaging in the practice for which they are authorized as
2 long as they do not represent themselves by the title of
3 "genetic counselor" or "licensed genetic counselor". This
4 chapter shall not prohibit the practice of nonregulated
5 professions whose practitioners are engaged in the delivery of
6 human services as long as these practitioners do not represent
7 themselves as or use the title of "genetic counselor" or
8 "licensed genetic counselor".

9 (b) Nothing in this chapter shall be construed to limit
10 the activities and services of:

11 (1) A student, intern, resident, or fellow in genetics or
12 genetic counseling seeking to fulfill educational
13 requirements to qualify for a license under this
14 chapter if those activities and services constitute a
15 part of that individual's supervised course of study;

16 (2) An individual seeking to fulfill the post-degree
17 practice requirements to qualify for licensing under
18 this chapter, as long as the activities and services
19 are supervised by a licensed genetic counselor or
20 physician. A student, intern, resident, or fellow
21 shall be designated by the title "intern", "resident",

1 "fellow", or any other designation of trainee status;
2 or
3 (3) An American Board of Genetic Counseling or an American
4 Board of Medical Genetics certified genetic counselor
5 who is brought into the state as a consultant to train
6 health care providers within the state. Nothing
7 contained in this subsection shall be construed to
8 permit students, interns, residents, fellows, or
9 consultants to offer their services as genetic
10 counselors or geneticists to any other person.

11 (c) Nothing in this chapter shall be construed to prevent
12 a physician licensed to practice medicine in this state or an
13 intern, fellow, or resident from performing genetic counseling
14 within the person's scope of practice as long as the person is
15 not in any manner held out to the public as a "genetic
16 counselor" or "licensed genetic counselor".

17 (d) Nothing in this chapter shall be construed to prevent
18 any licensed nurse in this state from performing genetic
19 counseling within the nurse's scope of practice as long as the
20 nurse is not in any manner held out to the public as a "genetic
21 counselor" or "licensed genetic counselor".

1 (e) Nothing in this chapter shall be construed to prevent
2 any licensed social worker, licensed psychologist, or licensed
3 marriage and family therapist from practicing professional
4 counseling in this state as long as the person is not in any
5 manner held out to the public as a "genetic counselor" or
6 "licensed genetic counselor" and does not hold out the person's
7 services as being genetic counseling.

8 § -6 **Licensure requirements.** The director shall adopt
9 rules as deemed necessary for the licensure of genetic
10 counselors to protect public health and safety and may consider
11 the following factors as evidence in determining whether an
12 applicant is qualified to be licensed:

- 13 (1) Board-certification by the American Board of Genetic
14 Counseling or its equivalent; and
15 (2) A report of any disciplinary action or rejection of
16 license applications or renewals relating to genetic
17 counseling practice taken against the applicant in
18 another jurisdiction.

19 § -7 **Provisional license.** (a) The director shall
20 grant, upon application and payment of proper fees, provisional
21 licensure to an individual who, at the time of application, is

1 documented to have active candidate status by the American Board
2 of Genetic Counseling or its equivalent.

3 (b) Individuals with provisional licenses shall meet the
4 requirements for full licensure within the first two available
5 American Board of Genetic Counseling or its equivalent Board
6 examination cycles next following the filing of an application
7 for provisional licensure.

8 § -8 **Licensure by endorsement.** The director shall
9 grant, upon application and payment of proper fees, licensure to
10 an individual who, at the time of application, holds a valid
11 license as a genetic counselor issued by another state,
12 territory, or jurisdiction if the requirements for that
13 certification or license are equal to, or greater than, the
14 requirements of this chapter.

15 § -9 **Issuance of license.** The director shall issue a
16 license to any individual who meets the requirements of this
17 chapter, upon payment of the prescribed fees.

18 § -10 **Renewal of license.** (a) Every licensee or
19 provisional licensee under this chapter shall renew a license
20 granted pursuant to this chapter annually on or before June 30,
21 with the first renewal deadline occurring on July 1, 2010.

22 Failure to renew a license shall result in a forfeiture of the

1 license. Licenses that have been so forfeited may be restored
2 within one year of the expiration date upon payment of renewal
3 and penalty fees. Failure to restore a forfeited license within
4 one year of the date of its expiration shall result in the
5 automatic termination of the license, and relicensure may
6 require the individual to apply as a new applicant.

7 (b) Proof of maintenance of American Board of Genetic
8 Counseling or its equivalent board certification shall be
9 required for license renewal.

10 (c) Proof of continued active candidate status shall be
11 required for provisional license renewal.

12 § -11 **Application for licensure.** (a) Application for a
13 license shall be made on an application form to be furnished by
14 the department. An applicant shall provide the following
15 information:

- 16 (1) The applicant's legal name;
17 (2) The applicant's current residence and business mailing
18 addresses and phone numbers;
19 (3) The applicant's social security number;
20 (4) The date and place of any conviction of a penal crime
21 directly related to the profession or vocation in
22 which the applicant is applying for licensure, unless

- 1 the conviction has been expunged or annulled, or is
2 otherwise precluded from consideration by section
3 831-3.1;
- 4 (5) Proof that the applicant is a United States citizen, a
5 permanent resident, or is otherwise authorized to work
6 in the United States;
- 7 (6) Disclosure of similar licensure in any state or
8 territory;
- 9 (7) Disclosure of disciplinary action by any state or
10 territory against any license held by the applicant;
11 and
- 12 (8) Any other information the licensing authority may
13 require to investigate the applicant's qualifications
14 for licensure.
- 15 (b) Failure to provide the information required by
16 subsection (a) and pay the required fees shall be grounds to
17 deny the application for licensure.
- 18 § -12 Fees; disposition. (a) Application, examination,
19 reexamination, license, renewal, late renewal penalty, inactive,
20 and other reasonable and necessary fees relating to
21 administration of this chapter shall be as provided in rules
22 adopted by the director pursuant to chapter 91.

1 (b) Fees assessed shall defray all costs to be incurred by
2 the director to support the operation of the genetic counselor
3 licensure program.

4 § -13 **Revocation, suspension, denial, or condition of**
5 **licenses; fines.** In addition to any other acts or conditions
6 provided by law, the director may refuse to renew, reinstate, or
7 restore, or may deny, revoke, suspend, fine, or condition in any
8 manner any license for any one or more of the following acts or
9 conditions on the part of the applicant or licensed genetic
10 counselor:

11 (1) Conviction by a court of competent jurisdiction of a
12 crime that the director has determined to be of a
13 nature that renders the individual convicted unfit to
14 practice genetic counseling;

15 (2) Failure to report in writing to the director any
16 disciplinary decision or rejection of license
17 application or renewal related to genetic practice
18 issued against the licensed genetic counselor or the
19 applicant in any jurisdiction within thirty days of
20 the disciplinary decision or within twenty days of
21 licensure;

1 (3) Violation of recognized ethical standards for genetic
2 counselors as set by the National Society of Genetic
3 Counselors;

4 (4) Use of fraud, deception, or misrepresentation in
5 obtaining a license;

6 (5) Revocation, suspension, or other disciplinary action
7 by another state, territory, federal agency, or
8 country against the licensed genetic counselor or
9 applicant for any reason provided under this section;

10 or

11 (6) Other just and sufficient cause that renders an
12 individual unfit to practice genetic counseling.

13 § -14 **Hearings; appeals.** The director shall establish a
14 hearing and appeals process for persons to appeal the
15 revocation, suspension, denial, or condition of a license.

16 § -15 **Prohibited acts; penalties.** (a) No individual
17 shall:

18 (1) Use in connection with the person's name any
19 designation tending to imply that the individual is a
20 licensed genetic counselor unless the individual is
21 duly licensed and authorized under this chapter; or

