

House Bill 4074

Sponsored by Representative SCHOUTEN, Senator MONNES ANDERSON; Representatives GREENLICK, HOLVEY, KENY-GUYER, LIVELY, MEEK, NERON, NOSSE, SALINAS, SANCHEZ (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Health Licensing Office to issue license to practice genetic counseling to qualified applicant. Defines "genetic counseling." Prohibits unlicensed use of "licensed genetic counselor" title and practice of genetic counseling. Provides exemptions to prohibition. Allows office to impose discipline for certain violations. Directs office to provide administrative and regulatory oversight to genetic counseling program. Imposes civil penalty for violation of licensure requirements.

Becomes operative January 1, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to genetic counselors; creating new provisions; amending ORS 676.565, 676.579, 676.590,
3 676.612, 676.613, 676.622 and 676.992; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 5 of this 2020 Act:

5
6 (1) "Genetic counseling" means the practice of assisting patients in understanding and
7 adapting to the medical, psychological and familial implications of genetic conditions, in-
8 cluding:

9 (a) Obtaining and evaluating individual and family medical histories to determine risk for
10 genetic and medical conditions and diseases of a patient and the patient's family members;

11 (b) Discussing the features, natural history, means of diagnosis, genetic and environ-
12 mental factors and risk management for genetic and medical conditions and diseases;

13 (c) Identifying, ordering and coordinating genetic laboratory tests and other diagnostic
14 studies appropriate for genetic assessment;

15 (d) Integrating test and study results with the patient's personal and family history to
16 assess and communicate risk factors for genetic and medical conditions and diseases;

17 (e) Explaining the clinical implications of tests and studies and their results and evalu-
18 ating the patient's, and patient's family's responses, to the results and the risk of any re-
19 currence of conditions and diseases, and providing patient-centered counseling and
20 anticipatory guidance;

21 (f) Identifying and using any community resources to provide educational, financial,
22 medical and psychosocial support and advocacy; and

23 (g) Providing written documentation of medical, genetic and counseling information for
24 families and health care providers.

25 (2) "Licensed genetic counselor" means a person licensed to practice genetic counseling.

26 **SECTION 2. (1) The Health Licensing Office may issue a license to practice genetic
27 counseling to an applicant who:**

28 (a) Is at least 18 years of age;

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) Is certified by a national certification organization for genetic counselors approved
2 by the office by rule;

3 (c) Pays a licensure fee; and

4 (d) Meets other requirements established by the office by rule.

5 (2) The office may adopt rules establishing a process for issuing a temporary license to
6 practice genetic counseling, including but not limited to rules establishing qualifications and
7 fees for temporary licensure.

8 **SECTION 3.** (1) A person may not practice genetic counseling or assume any title, words
9 or abbreviations, including but not limited to the title or designation “licensed genetic
10 counselor,” that indicate that the person is authorized to practice genetic counseling, unless
11 the person is licensed under section 2 of this 2020 Act.

12 (2) Subsection (1) of this section does not prohibit:

13 (a) A person authorized by a health regulatory board to provide a health care service
14 other than genetic counseling from practicing genetic counseling as part of the person’s
15 provision of the health care service; or

16 (b) A student from practicing genetic counseling while the student is participating in an
17 educational program for genetic counseling and under the direct supervision of a licensed
18 genetic counselor who is assigned to oversee the student, on duty and available to assist the
19 student.

20 **SECTION 4.** In the manner described in ORS chapter 183 for contested cases, the Health
21 Licensing Office may impose a form of discipline listed in ORS 676.612 against a person for
22 any violation of section 3 of this 2020 Act and for any violation of a rule adopted under
23 sections 1 to 5 of this 2020 Act.

24 **SECTION 5.** (1) The Health Licensing Office shall adopt rules to establish:

25 (a) A process for issuing licenses to practice genetic counseling;

26 (b) A process for renewing licenses to practice genetic counseling;

27 (c) Fees for issuing and renewing licenses to practice genetic counseling; and

28 (d) Qualifications for applicants for initial licensure and licensure renewal.

29 (2) The office may adopt:

30 (a) Rules to approve certification issued by a national certification organization for ge-
31 netic counselors; and

32 (b) Other rules necessary to carry out sections 1 to 5 of this 2020 Act.

33 **SECTION 6.** ORS 676.565 is amended to read:

34 676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and
35 regulatory oversight and centralized service for the following boards, councils and programs:

36 (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

37 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;

38 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

39 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

40 (5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in
41 ORS 688.800 to 688.840;

42 (6) Environmental Health Registration Board, as provided in ORS chapter 700;

43 (7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

44 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

45 (9) Sexual Offense Treatment Board, as provided in ORS 675.365 to 675.410;

- 1 (10) Long Term Care Administrators Board, as provided in ORS 678.710 to 678.820;
- 2 (11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;
- 3 (12) Behavior Analysis Regulatory Board, as provided in ORS 676.806;
- 4 (13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;
- 5 (14) Art therapy, as provided in ORS 681.740 to 681.758;
- 6 (15) Lactation consultation, as provided in ORS 676.665 to 676.689; [and]
- 7 (16) Music therapy, as provided in ORS 681.700 to 681.730; **and**
- 8 **(17) Genetic counseling, as provided in sections 1 to 5 of this 2020 Act.**

9 **SECTION 7.** ORS 676.579 is amended to read:

10 676.579. (1)(a) The Health Licensing Office is under the supervision and control of a director,
11 who is responsible for the performance of the duties, functions and powers and for the organization
12 of the office.

13 (b) The Director of the Oregon Health Authority shall establish the qualifications for and ap-
14 point the Director of the Health Licensing Office, who holds office at the pleasure of the Director
15 of the Oregon Health Authority.

16 (c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if
17 not so provided, as prescribed by the Director of the Oregon Health Authority.

18 (d) The Director of the Health Licensing Office is in the unclassified service.

19 (2) The Director of the Health Licensing Office shall provide the boards, councils and programs
20 administered by the office with any services and employees as the office requires to carry out the
21 office's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Di-
22 rector of the Health Licensing Office shall appoint all subordinate officers and employees of the of-
23 fice, prescribe their duties and fix their compensation.

24 (3) The Director of the Health Licensing Office is responsible for carrying out the duties, func-
25 tions and powers under ORS 675.365 to 675.410, 676.560 to 676.625, 676.665 to 676.689, 676.810,
26 676.815, 676.825, 676.992, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758,
27 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to
28 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 1 to 5 of this**
29 **2020 Act.**

30 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-
31 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office
32 by other statutes.

33 **SECTION 8.** ORS 676.590 is amended to read:

34 676.590. (1) Information obtained by the Health Licensing Office as part of an investigation
35 conducted under the following laws and any reports issued by an investigator are exempt from
36 public disclosure:

37 (a) ORS 676.630 to 676.660, 676.665 to 676.689, 681.700 to 681.730, 681.740 to 681.758, 690.005 to
38 690.225, 690.350 to 690.410 or 694.015 to 694.170.

39 (b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

40 (A) Advanced nonablative esthetics under ORS 676.630 to 676.660;

41 (B) Lactation consultation under ORS 676.665 to 676.689;

42 (C) Music therapy under ORS 681.700 to 681.730;

43 (D) Art therapy under ORS 681.740 to 681.758;

44 (E) Barbering, hair design, esthetics, nail technology or natural hair care under ORS 690.005 to
45 690.225;

1 (F) Electrologists and body art practitioners under ORS 690.350 to 690.410; [or]

2 (G) Dealing in hearing aids under ORS 694.015 to 694.170; or

3 **(H) Genetic counseling under sections 1 to 5 of this 2020 Act.**

4 (2) The office shall disclose information obtained as part of an investigation described in sub-
5 section (1) of this section to a person who demonstrates by clear and convincing evidence that the
6 public interest in disclosure outweighs other interests in nondisclosure, including the public interest
7 in nondisclosure.

8 (3) A complaint that forms the basis for an investigation described in subsection (1) of this sec-
9 tion shall not be considered information obtained as part of an investigation and is not exempt from
10 public disclosure.

11 (4) Upon request, the office shall disclose to a person against whom disciplinary action is sought
12 any information obtained as part of an investigation described in section (1) of this section, if the
13 information is not otherwise privileged or confidential under state or federal law.

14 **SECTION 9.** ORS 676.612 is amended to read:

15 676.612. (1) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter
16 183 for contested cases and as specified in ORS 675.385, 676.685, 676.825, 678.780, 680.535, 681.733,
17 681.755, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111 **and section 4 of this**
18 **2020 Act**, the Health Licensing Office may refuse to issue or renew, may suspend or revoke or may
19 otherwise condition or limit an authorization or may discipline or place on probation an authori-
20 zation holder for commission of the prohibited acts listed in subsection (2) of this section.

21 (2) A person subject to the authority of a board, council or program listed in ORS 676.565
22 commits a prohibited act if the person engages in:

23 (a) Fraud, misrepresentation, concealment of material facts or deception in applying for or ob-
24 taining an authorization to practice in this state, or in any written or oral communication to the
25 office concerning the issuance or retention of the authorization.

26 (b) Using, causing or promoting the use of any advertising matter, promotional literature, testi-
27 monial, guarantee, warranty, label, insignia or any other representation, however disseminated or
28 published, that is false, misleading or deceptive.

29 (c) Making a representation that the authorization holder knew or should have known is false
30 or misleading regarding skill or the efficacy or value of treatment or remedy administered by the
31 authorization holder.

32 (d) Practicing under a false, misleading or deceptive name, or impersonating another authori-
33 zation holder.

34 (e) Permitting a person other than the authorization holder to use the authorization.

35 (f) Practicing with a physical or mental condition that presents an unreasonable risk of harm
36 to the authorization holder or to the person or property of others in the course of performing the
37 authorization holder's duties.

38 (g) Practicing while under the influence of alcohol, cannabis, controlled substances or other
39 skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-
40 impairing substances so as to create a risk of harm to the person or property of others in the course
41 of performing the duties of an authorization holder.

42 (h) Failing to properly and reasonably accept responsibility for the actions of employees.

43 (i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered per-
44 son to practice a regulated occupation or profession subject to the authority of the boards, councils
45 and programs listed in ORS 676.565.

1 (j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from
 2 or failure to conform to standards of practice in performing services or practicing in a regulated
 3 occupation or profession subject to the authority of the boards, councils and programs listed under
 4 ORS 676.565.

5 (k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-
 6 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the
 7 conviction. A plea of no contest or an admission of guilt is a conviction for purposes of this para-
 8 graph.

9 (L) Failing to report any adverse action, as required by statute or rule, taken against the au-
 10 thorization holder by another regulatory jurisdiction or any peer review body, health care institu-
 11 tion, professional association, governmental agency, law enforcement agency or court for acts or
 12 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
 13 in this section.

14 (m) Violation of a statute regulating an occupation or profession subject to the authority of the
 15 boards, councils and programs listed in ORS 676.565.

16 (n) Violation of any rule regulating an occupation or profession subject to the authority of the
 17 boards, councils and programs listed in ORS 676.565.

18 (o) Failing to cooperate with the office in any investigation, inspection or request for informa-
 19 tion.

20 (p) Selling or fraudulently obtaining or furnishing an authorization to practice in a regulated
 21 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
 22 676.565, or aiding or abetting such an act.

23 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated
 24 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
 25 676.565, or aiding or abetting such an act.

26 (r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of
 27 any order issued by the office that has become final.

28 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
 29 181A.195, the office may require the fingerprints of a person who is:

- 30 (a) Applying for an authorization;
- 31 (b) Applying for renewal of an authorization; or
- 32 (c) Under investigation by the office.

33 (4) If the office places an authorization holder on probation under subsection (1) of this section,
 34 the office, in consultation with the appropriate board, council or program, may determine and at any
 35 time modify the conditions of the probation.

36 (5) If an authorization is suspended, the authorization holder may not practice during the term
 37 of suspension. Upon the expiration of the term of suspension, the authorization may be reinstated
 38 by the office if the conditions of suspension no longer exist and the authorization holder has satis-
 39 fied all requirements in the relevant statutes or administrative rules for issuance, renewal or rein-
 40 statement.

41 **SECTION 10.** ORS 676.613 is amended to read:

42 676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that
 43 a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that
 44 violates any provision of ORS 675.365 to 675.410, 676.665 to 676.689, 676.810, 676.815, 678.710 to
 45 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to

1 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 or 694.015 to
 2 694.170 or ORS chapter 700 **or sections 1 to 5 of this 2020 Act**, the office may, through the At-
 3 torney General or the district attorney of the county in which the act, practice or transaction oc-
 4 curs or will occur, apply to the court for an injunction restraining the person from the act, practice
 5 or transaction.

6 (2) A court may issue an injunction under this section without proof of actual damages. An in-
 7 junction issued under this section does not relieve a person from any other prosecution or enforce-
 8 ment action taken for violation of statutes listed in subsection (1) of this section.

9 **SECTION 11.** ORS 676.622 is amended to read:

10 676.622. (1) A transaction conducted through a state or local system or network that provides
 11 electronic access to the Health Licensing Office information and services is exempt from any re-
 12 quirement under ORS 675.365 to 675.410, 676.560 to 676.625, 676.665 to 676.689, 676.810, 676.815,
 13 676.992, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to
 14 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to
 15 694.170 and ORS chapter 700 **and sections 1 to 5 of this 2020 Act**, and rules adopted thereunder,
 16 requiring an original signature or the submission of handwritten materials.

17 (2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable
 18 and have the same force as original signatures.

19 **SECTION 12.** ORS 676.992 is amended to read:

20 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
 21 penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to
 22 exceed \$5,000 for each violation of the following statutes and any rule adopted under the following
 23 statutes:

- 24 (a) ORS 688.701 to 688.734 (athletic training);
- 25 (b) ORS 690.005 to 690.225 (cosmetology);
- 26 (c) ORS 680.500 to 680.565 (denture technology);
- 27 (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);
- 28 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal im-
 29 planting and scarification);
- 30 (f) ORS 694.015 to 694.170 (dealing in hearing aids);
- 31 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- 32 (h) ORS chapter 700 (environmental sanitation);
- 33 (i) ORS 675.365 to 675.410 (sexual abuse specific treatment);
- 34 (j) ORS 678.710 to 678.820 (nursing home administrators and residential care facility adminis-
 35 trators);
- 36 (k) ORS 691.405 to 691.485 (dietitians);
- 37 (L) ORS 676.612 (prohibited acts);
- 38 (m) ORS 676.810 and 676.815 (applied behavior analysis);
- 39 (n) ORS 681.700 to 681.730 (music therapy);
- 40 (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure);
- 41 (p) ORS 681.740 to 681.758 (art therapy); [and]
- 42 (q) ORS 676.665 to 676.689 (lactation consultation); **and**
- 43 **(r) Sections 1 to 5 of this 2020 Act (genetic counseling).**

44 (2) The office may take any other disciplinary action that it finds proper, including but not
 45 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any

1 statute listed in subsection (1) of this section or any rule adopted under any statute listed in sub-
2 section (1) of this section.

3 (3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a
4 violation of ORS 694.042.

5 (4) In imposing a civil penalty under this section, the office shall consider the following factors:

6 (a) The immediacy and extent to which the violation threatens the public health or safety;

7 (b) Any prior violations of statutes, rules or orders;

8 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
9 lation; and

10 (d) Any other aggravating or mitigating factors.

11 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

12 (6) The moneys received by the office from civil penalties under this section shall be deposited
13 in the Health Licensing Office Account and are continuously appropriated to the office for the ad-
14 ministration and enforcement of the laws the office is charged with administering and enforcing that
15 govern the person against whom the penalty was imposed.

16 **SECTION 13. (1) Sections 1 to 5 of this 2020 Act and the amendments to ORS 676.565,**
17 **676.579, 676.590, 676.612, 676.613, 676.622 and 676.992 by sections 6 to 12 of this 2020 Act become**
18 **operative on January 1, 2021.**

19 **(2) The Health Licensing Office may take any action before the operative date specified**
20 **in subsection (1) of this section that is necessary to enable the office to exercise, on and**
21 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
22 **and powers conferred on the office by sections 1 to 5 of this 2020 Act and the amendments**
23 **to ORS 676.565, 676.579, 676.590, 676.612, 676.613, 676.622 and 676.992 by sections 6 to 12 of this**
24 **2020 Act.**

25 **SECTION 14. This 2020 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
27 **on its passage.**

28