

STATE OF WISCONSIN
GENETIC COUNSELORS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE GENETIC
PROCEEDINGS BEFORE THE GENETIC : COUNSELORS AFFILIATED
COUNSELORS AFFILIATED : CREDENTIALING BOARD
CREDENTIALING BOARD : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 029-23, was approved by the Governor on May 4, 2023, published in Register 809A2 on May 8, 2023, and approved by the Genetic Counselors Affiliated Credentialing Board on May 24, 2023. This emergency rule was approved by the Governor on August 31, 2023

ORDER

An order of the Genetic Counselors Affiliated Credentialing Board to create Gen Couns 1 to 5 relating to Genetic Counselors.

Analysis prepared by the Department of Safety and Professional Services.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by Section 24 subsection (3) of 2021 Wisconsin Act 251 provides an exemption from a finding of emergency for the adoption of this rule.

ANALYSIS

Statutes interpreted: subch. VIII ch. 448, Wis. Stats.

Statutory authority: ss. 15.085 (5) (b), 448.9703, and 448.9705 (1), Stats. and 2021 Wisconsin Act 251

Explanation of agency authority:

Section 15.085 (5) (b) states that “[each affiliated credentialing board] shall promulgate rules for its own guidance and for the guidance of the trader or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 448.9703 states that: “the board shall promulgate rules to do all of the following:

- (1) Adopt the National Society of Genetic Counselors code of ethics governing the professional conduct of genetic counselors.
- (2) Establish criteria for the approval of continuing education program and courses required for renewal of a genetic counselor license.
- (3) Establish requirements for an applicant seeking renewal of a genetic counselor license, including that an applicant has satisfied all of the following:

- (a) Successfully completed at least 30 hours of continuing education in the prior 2-year period.
- (b) Maintained certification from and, if applicable, achieved recertification through the American Board of Genetic Counseling.
- (4) Adopt a definition of “temporary basis” for purposes of s. 448.9701 (2) (d) and (e).”

Section 448.9705 (1) states that: “the board may, by rule, provide for a temporary license to practice genetic counseling for an applicant who satisfies the requirements of s. 448.9704 (1) other than the examination requirements under s. 448.9704 (1) (d) (2).”

2021 WI Act 251, Section 24 (3) states that “Using the procedure under s. 227.24, the genetic counselor affiliated credentialing board may promulgate rules under s. 448.9703 for the period before permanent rules take effect, but not to exceed the period authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b)m and (3) the genetic counselors affiliated credentialing Board is not required to provide a finding of emergency for a rule promulgated under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Related statute or rule: None.

Plain language analysis: The objective of this emergency rule is to implement the statutory changes from 2021 Wisconsin Act 251 by creating chapters Gen Couns 1 to 5 as a new part of the Wisconsin Administrative Code.

Summary of, and comparison with, existing or proposed federal regulation: None.

Comparison with rules in adjacent states:

Illinois: Genetic Counselors in Illinois are licensed through the Illinois Department of Financial and Professional Regulation. The Genetic Counselor Licensing Act governs the practice of genetic counselors in Illinois and includes statutory direction regarding genetic counselor examination, temporary licensure, endorsement, and grounds for disciplinary action [225 Illinois Compiled Statutes ch. 135].

Genetic Counselors in Illinois are required to complete 30 hours of continuing education per 2-year license renewal cycle [Illinois Administrative Code Title 68 Part 1251 s. 1251.100]. Part 1251 of the Illinois Administrative Code further details rules for genetic counselors in the areas of licensure, examination, and granting variances. [Illinois Administrative Code Title 68 Part 1251 s. 1251.10 to 1251.110].

Iowa: Genetic Counselors in Iowa are licensed through the Iowa Board of Medicine. Chapter 148H of the Iowa Code governs the practice of genetic counselors in Iowa and includes statutes on licensure and grants administrative rulemaking authority to their Board [Iowa Code ch. 148H].

Chapter 20 of the Medicine Board Section 653 of the Iowa Administrative Code further details rules for of genetic counselors in the areas of licensure, practice, continuing education, and discipline. Each licensee is required to complete at least 30 hours of continuing education approved by the board per biennium. [653 Iowa Administrative Code ch. 20].

Michigan: Genetic Counselors in Michigan are licensed through the Michigan Department of Licensing and Regulatory Affairs. Part 170 of The Public Health Code Act 368 governs the practice of genetic counselors in Michigan. This section of the Michigan Compiled Laws includes requirements for genetic counselors regarding licensure, practice, continuing education, and standards of practice. The Michigan Board of Medicine is also responsible for the regulation of Genetic Counselors in Michigan. The board may require each licensee to provide evidence of completion of at least 75 hours within the three years immediately preceding the application for license renewal [Michigan Compiled Laws ss. 333.17091 to 333.17097].

Minnesota: Genetic Counselors in Minnesota are licensed through the Minnesota Board of Medical Practice. Chapter 147F of the Minnesota Statutes includes requirements for scope of practice, licensure requirements, grounds for disciplinary action, and continuing education. Genetic Counselors in Minnesota must either meet the licensure standards or provide evidence of completion of at least 25 hours of National Society of Genetic Counselors (NSGC) or American Board of Medical Genetics (ABMG) approved continuing education within the two years preceding renewal [Minnesota Statutes ch. 147F].

Summary of factual data and analytical methodologies:

The Board reviewed the statutory changes from 2021 Wisconsin Act 251 and promulgated rules as needed for the profession. While promulgating these rules, the Board referenced Wisconsin Administrative Code chs. MPSW 20, OT 4 and 5, PA 3, and Pod 2 and 8, among other sources.

Fiscal Estimate: The Fiscal Estimate will be attached upon completion.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-26-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822

Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapters Gen Couns 1 to 5 are created to read:

Chapter Gen Couns 1 AUTHORITY, ADOPTION OF STANDARDS, AND DEFINITIONS

Gen Couns 1.01 Authority. The rules in chapters Gen Couns 1 to 5 are adopted by the genetic counselors affiliated credentialing board pursuant to the authority delegated by ss. 15.85 (5) (b) and 448.9703, Stats.

Gen Couns 1.02 Adoption of Standards. The National Society of Genetic Counselors (NSGC) code of ethics, issued in April 2017, is incorporated by reference into chs. Gen Couns 1 to 5.

Note: Copies of the above standards are on file in the office of the department and the legislative reference bureau. A copy of the NSGC code of ethics can be retrieved from: <https://nsgc.org>.

Gen Couns 1.03 Definitions. As used in chapters Gen Couns 1 to 5:

- (1) “Board” means the genetic counselors affiliated credentialing board.
- (2) “Genetic counseling” has the meaning given in s. 448.970 (3), Stats.
- (3) “Genetic counselor” means an individual who is licensed by the board to practice genetic counseling.
- (4) “Temporary basis” means three months from the date you submit notification to the board. After those three months, regular licensure is required. This definition does not apply to those individuals who hold a temporary license under s. 448.9705, Stats.

Chapter Gen Couns 2 LICENSE TO PRACTICE GENETIC COUNSELING

Gen Couns 2.01 Initial Licensure. Except as provided in sub. (2), the board shall grant a license as a genetic counselor to an applicant who does all of the following:

- (1) Submits all of the following:
 - (a) A completed application form.
Note: Instructions for applications are available from the department of safety and professional services’ website at <http://dsps.wi.gov>.
 - (b) The fee determined by the Department under s. 440.05 (1), Stats.
 - (c) Subject to ss. 111.321, 111.322, and 111.335, Stats., evidence satisfactory to the board that the applicant does not have an arrest or conviction record.

- (d) Evidence satisfactory to the board of one of the following:
 - 1. Successful completion of the academic and clinical requirements of and developed the practice-based competencies required by a degree-granting program in genetic counseling that is accredited by the Accreditation Council for Genetic Counseling or the American Board of Medical Genetics and Genomics.
 - 2. Successful completion of a degree-granting program outside of the United States that the board determines is substantially equivalent to a program described in sub. (c) 1.
 - (e) Evidence satisfactory to the board of having successfully passed an examination administered by the American Board of Genetic Counseling or the genetic counseling examination administered by the American Board of Medical Genetics and Genomics.
 - (f) Evidence of current certification with the American Board of Genetic Counseling.
- (2) The board may waive the requirements of subs. (1) (d), (e), and (f) either of the following apply:
- (a) The applicant holds an unexpired genetic counselor license issued by another state, territory, foreign country, or province and the requirements for licensure and for renewal of a genetic counselor license of such other state, territory, foreign country, or province are deemed by the board to be substantially equivalent to the requirements for licensure and for renewal of a genetic counselor of this state.
 - (b) The applicant does all of the following:
 - 1. Applies for licensure under sub. (1) by September 1, 2023.
 - 2. Submits evidence satisfactory to the board of all of the following:
 - a. Has 10 years of documented work experience practicing genetic counseling.
 - b. Has completed, within the previous 5 years, 25 hours of continuing education approved by the National Society of Genetic Counselors.
 - 3. Submits to the board 2 letters of recommendation, one from a genetic counselor and another from a physician.

Gen Couns 2.02 Temporary Licensure. (1) The board may issue a temporary license to an applicant who has completed all of the following:

- (a) Submits a completed application for licensure and a completed application for a temporary license.
- Note: Instructions for applications are available from the department of safety and professional services' website at <http://dsps.wi.gov>.
- (b) Pays the fee determined by the Department under s. 440.05 (1), Stats.
 - (c) Submits evidence of completion of the education requirements from Gen Couns 2.01 (d).
 - (d) Submits evidence of current active candidate status with the American Board of Genetic Counseling.
- (2) A person granted a temporary license to practice genetic counseling under this section shall practice at all times under the supervision and direction of a licensed genetic counselor or physician.
- (3) Except as provided in sub. (4), a temporary license issued under this section expires upon granting of a license under s. 448.9704 (1), Stats. or on whichever if the following dates occurs first:

- (a) The date that is one year after the date on which the temporary license was granted.
- (b) 30 days after the results of the examination under s. 448.9704 (1) (d) 2 Stats. taken by the applicant have been issued by the American Board of Genetic Counseling.
- (4) The board may grant a one time renewal of a temporary license, for a period specified by the board, if the person maintains active candidate status with the American Board of Genetic Counseling.
- (5) The board may require an applicant for the renewal of a temporary license to appear before a member of the board for an interview.

Gen Couns 2.03 Reciprocal Credentials for Service Members, Former Service Members, and their Spouses. A reciprocal license shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. subject to s. 440.09 (2m), Stats. The board may request verification necessary to make a determination under this section.

Gen Couns 2.04 Title Protection. No person may designate themselves as a genetic counselor or use or assume the title “genetic associate,” “genetic counselor,” “licensed genetic counselor,” or “registered genetic counselor, or append to the person’s name the letters “G.A.,” “G.C.,” “L.G.C.,” or “R.G.C.,” or use any insignia or designation that would imply that the individual is licensed or certified or registered as a genetic counselor, or claim to render genetic counseling services unless the person is licensed by the board.

Gen Couns 2.05 Exceptions. A license to practice genetic counseling is not required for any of the following if the person does not claim to be a genetic counselor:

- (1) Any person who is lawfully practicing within the scope of a license, permit, registration, or certification granted by this state or the federal government.
- (2) Any person assisting a genetic counselor in practice under the direct, on-premises supervision of the genetic counselor.
- (3) A student of genetic counseling assisting a genetic counselor in the practice of genetic counseling if the assistance is within the scope of the student’s education and training.
- (4) Pursuant to s. 448.9701 (2) (d), Stats., a person who is licensed to practice genetic counseling in another state or country and who is providing consulting services in this state on a temporary basis. The person must notify the board that they will be providing consulting services and the nature and date of those services. The person must receive authorization from the board to provide consulting services on a temporary basis prior to the beginning of the time period they are providing those consulting services.
- (5) Pursuant to s. 448.9701 (2) (e), Stats., a person who is not licensed to practice genetic counseling in another state or country and who is providing consulting services in this state on a temporary basis, if the person satisfies all of the following:

- (a) Current certification by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.
- (b) Submits notification to the board that they will be providing consulting services and the nature and date of those services.
- (c) Receives authorization from the board to provide consulting services on a temporary basis prior to the beginning of the time period they are providing those consulting services.

Chapter Gen Couns 3 **LICENSE RENEWAL AND REINSTATEMENT**

Gen Couns 3.01 License Renewal and Continuing Education. (1) A licensee shall renew their license as specified by ss. 440.03 (9) (a) and 440.08 (2) (a), Stats.

(2) A licensee shall complete a renewal application approved by the board and return it with the required fee prior to the date specified by ss. 440.03 (9) (a) and 440.08 (2) (a), Stats.

Note: Instructions for renewal applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

(3) Except as provided under subsection (4) and specified by s. 440.08 (2) (a), Stats., a licensee shall attest to the completion of the following:

- (a) At least 30 hours of continuing education approved by the National Society of Genetic Counselors.
- (b) Current certification with the American Board of Genetic Counseling.

(4) Section (3) does not apply to the first scheduled renewal date under s. 440.08 (2) (a) 37m., Stats. following the date a license is issued.

(5) Licensees shall retain certificates of continuing education attendance for a minimum of four years to be provided to the board upon request.

Gen Couns 3.02 Reinstatement. (1) A licensee who fails for any reason to be licensed as required under this chapter may not exercise the rights or privileges conferred by any license granted by the board.

(2) Failure to renew a license as specified in s. Gen Couns 3.01. shall cause the license to lapse. A licensee who allows the license to lapse may apply for reinstatement of the license by the board, subject to s. 440.08 (4), Stats., as follows:

- (a) If the licensee applies for renewal of the license less than five years after its expiration, the license shall be renewed upon payment of the renewal fee.
- (b) If the licensee applies for renewal of the license more than five years after its expiration, the board shall make an inquiry to determine whether the applicant is competent to practice under the license in this state and shall impose any reasonable conditions on the renewal of the license. This paragraph does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

(3) A licensee who has unmet disciplinary requirements and failed to renew a license within five years of the renewal date or whose license has been surrendered or revoked may apply to have a license reinstated if the applicant provides all of the following:

- (a) Evidence of completion of requirements under s. Gen Couns 3.02 (2) (b) if the licensee has not held an active Wisconsin license in the last five years.
- (b) Evidence of completion of disciplinary requirements, if applicable.
- (c) Evidence of rehabilitation or a change in circumstances, warranting reinstatement of the license.

Chapter Gen Couns 4 PRACTICE AND SUPERVISION

Gen Couns 4.01 Scope of Practice. (1) “Genetic counseling,” as defined in s. 448.970 (3), Stats., means to do any of the following:

- (a) Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, a patient’s offspring, and other family members.
- (b) Discuss the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases.
- (c) Identify, coordinate, and order genetic laboratory tests as appropriate for genetic assessment.
- (d) Integrate genetic laboratory test results with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases.
- (e) Explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.
- (f) Evaluate a patient’s or family’s response to the condition or risk of recurrence and provide patient-centered counseling and anticipatory guidance.
- (g) Provide written documentation of medical, genetic, and counseling information for families and health care professionals.

Gen Couns 4.02 Standards of Practice. Genetic counselors shall adhere to the minimum standards of practice of genetic counseling that have become established in the profession, including but not limited to the following areas:

- (1) REFERRALS. Referrals are not required but may be accepted from licensed health care professionals. Patients may also self-refer for genetic counseling services.
- (2) INFORMED CONSENT. (a) Any genetic counselor who provides services to a patient shall inform the patient about the availability of reasonable alternatives and about the benefits and risks of these options. The reasonable genetic counselor standard is the standard for informing a patient under this section. The reasonable genetic counselor standard requires disclosure only of information that a reasonable genetic counselor would know and disclose under the circumstances.
 - (b) The genetic counselor’s duty to inform the patient under sub. (a) does not require disclosure of any of the following:
 1. Detailed technical information that in all probability the patient would not understand.
 2. Risks apparent or known to the patient.

3. Extremely remote possibilities that might falsely or detrimentally alarm the patient.

4. Information in emergencies where failure to provide information would be more harmful to the patient than not giving information.

5. Information in cases where the patient is incapable of consenting.

6. Information about reasonable alternatives for any condition the genetic counselor has not included in their diagnosis at the time the genetic counselor informs the patient.

(c) A genetic counselor's patient record shall include documentation that reasonable alternatives have been communicated to the patient and informed consent has been obtained from the patient as required under sub. Gen Couns 4.02 (2) (a).

(3) RECORDKEEPING. (a) When patient healthcare records are not maintained by a separate entity, a genetic counselor shall ensure patient health care records are maintained on every patient for a period of not less than 10 years after the date of the last entry, or for a longer period as may be otherwise required by law.

(b) A patient health care record shall contain all of the following clinical health care information which applies to the patient's medical condition:

1. Pertinent patient history.

2. Pertinent objective findings related to examination and test results.

3. Assessment or diagnosis.

4. Recommendations for the patient.

(c) Each patient health care record entry shall be dated, shall identify the genetic counselor, and shall be sufficiently legible to allow interpretation by other healthcare practitioners.

Gen Couns 4.03 Supervision. **(1) TEMPORARY LICENSEES.** A person with a temporary license authorized in s. Gen Couns 2.02 shall practice under the supervision of a licensed genetic counselor or physician. The supervising licensed genetic counselor or physician shall be available to the temporary licensee either in-person or via electronic contact methods at all times while performing genetic counseling services.

(2) UNLICENSED ASSISTANTS. An unlicensed person assisting in the practice of a licensed genetic counselor shall practice under the supervision of that licensed genetic counselor. The supervising licensed genetic counselor or physician shall be available to the unlicensed assistant either in-person or via virtual supervision methods at all times while assisting in the practice of genetic counseling. Supervisory duties for unlicensed assistants may not be delegated to other staff unless they are also licensed as a genetic counselor or a physician.

(3) GENETIC COUNSELING STUDENTS. A genetic counseling student may practice under the supervision of a licensed genetic counselor or physician as long as that practice is within the scope that student's genetic counseling education and training. The supervising licensed genetic counselor or physician shall be available to the genetic counseling student either in-person or via immediate virtual supervision methods. Genetic counseling students shall be supervised at all times while present in the facility they are practicing in.

UNPROFESSIONAL CONDUCT

Gen Couns 5.01 Unprofessional Conduct. “unprofessional conduct” includes the following, or aiding or abetting the same:

- (1) Violating or attempting to violate subch. VIII of ch. 448, Stats., or any provision of a rule or order of the board.
- (2) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other item in connection with any application for licensure.
- (3) Practicing fraud, forgery, deception, collusion, or conspiracy in connection with any examination for licensure.
- (4) Engaging in false, fraudulent, deceptive or misleading billing practices.
- (5) Giving, selling, buying, bartering, or attempting to give, sell, buy, or barter any license.
- (6) Engaging or attempting to engage in practice under any license under any given name or surname other than that under which originally licensed to practice in this or any other state. This subsection does not apply to change of name resulting from marriage, divorce, or order by a court of record.
- (7) Any practice or conduct which may constitute a danger to the health, welfare, or safety of a patient or public.
- (8) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to patients.
- (9) Practicing or attempting to practice under any license beyond the scope of that license.
- (10) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.
- (11) Representing that a manifestly incurable disease or condition may be or will be permanently cured; or that a curable disease or condition can be cured within a stated time, if this is not the case.
- (12) Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent; or obtaining or attempting to obtain any professional fee or compensation by any form of fraud or deceit.
- (13) Willfully divulging a privileged communication or confidence entrusted by a patient or deficiencies in the character of the patient observed in the course of professional attendance, unless lawfully required to do so.
- (14) Engaging in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence; or engaging in false, misleading or deceptive advertising.
- (15) Having a license or other credential granted by another state or any agency of the federal government which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by a state licensing authority or any agency of the federal government including the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

(16) Conviction of any crime the circumstances of which substantially relate to the practice of genetic counseling. A certified copy of judgement of a court record showing such conviction, within this state or without, shall be presumptive evidence.

(17) Aiding or abetting the unlicensed practice of genetic counseling.

(18) Violating or aiding and abetting the violation of any law or administrative rule or regulation the circumstances of which substantially relate to the practice of genetic counseling.

(19) Failing to report to the board or to institutional supervisory personnel any violation of the rules of this chapter by a licensee.

(20) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For purposes of this subsection, an adult receiving genetic counseling services shall continue to be a patient for 2 years after the termination of professional services. If the person receiving genetic counseling services is a minor, the person shall continue to be a patient for the purposes for this subsection for 2 years after the termination of services, or for 2 years after the client reaches 18 years of age, whichever is longer.

(21) Discriminating on the basis of age, race, color, biological sex, gender, gender identity, religion, creed, national origin, ancestry, ethnicity, disability or sexual orientation by means of service provided or denied.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)