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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1529

03/13/2013 Authored by Abeler

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act  
1.2 relating to health; regulating laser treatments; requiring transparency in health  
1.3 care advertising; amending Minnesota Statutes 2012, section 147.081, subdivision  
1.4 3; proposing coding for new law in Minnesota Statutes, chapters 144; 147.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[144.6586] HEALTH CARE ADVERTISING TRANSPARENCY.**

1.7 (a) An advertisement for health care services that includes a health care provider's  
1.8 name shall identify the title and type of license the health care provider holds under which  
1.9 the health care provider is practicing.

1.10 (b) An advertisement for health care services that includes a health professional's  
1.11 name shall identify the American Board of Medical Specialties member board, a board or  
1.12 association with requirements equivalent to a board approved by that person's medical  
1.13 licensing authority, or a board or association with an Accreditation Council for Graduate  
1.14 Medical Education approved postgraduate training program that provides complete  
1.15 training in the person's specialty or subspecialty, and shall disclose the name of the board  
1.16 or association in which the health professional is certified.

1.17 (c) A health care provider who violates this section commits an act of professional  
1.18 misconduct.

1.19 (d) For the purposes of this section, "advertisement" includes billboards, brochures,  
1.20 pamphlets, radio and television scripts, electronic media, printed telephone directories,  
1.21 telephone and direct mail solicitations, and any other means of promotion intended to  
1.22 directly or indirectly induce any person to enter into an agreement for services with the  
1.23 health professional. Advertisement does not include materials that provide information  
1.24 about network providers that are created by an entity regulated under chapter 62A.

2.1 Sec. 2. Minnesota Statutes 2012, section 147.081, subdivision 3, is amended to read:

2.2 Subd. 3. **Practice of medicine defined.** For purposes of this chapter, a person not  
2.3 exempted under section 147.09 is "practicing medicine" or engaged in the "practice of  
2.4 medicine" if the person does any of the following:

2.5 (1) advertises, holds out to the public, or represents in any manner that the person is  
2.6 authorized to practice medicine in this state;

2.7 (2) offers or undertakes to prescribe, give, or administer any drug or medicine for  
2.8 the use of another;

2.9 (3) offers or undertakes to prevent or to diagnose, correct, or treat in any manner or  
2.10 by any means, methods, devices, or instrumentalities, any disease, illness, pain, wound,  
2.11 fracture, infirmity, deformity or defect of any person;

2.12 (4) offers or undertakes to perform any surgical operation including any invasive  
2.13 or noninvasive procedures involving the use of a laser or laser assisted device, upon any  
2.14 person unless authorized under section 147.38;

2.15 (5) offers to undertake to use hypnosis for the treatment or relief of any wound,  
2.16 fracture, or bodily injury, infirmity, or disease; or

2.17 (6) uses in the conduct of any occupation or profession pertaining to the diagnosis  
2.18 of human disease or conditions, the designation "doctor of medicine," "medical doctor,"  
2.19 "doctor of osteopathy," "osteopath," "osteopathic physician," "physician," "surgeon,"  
2.20 "M.D.," "D.O.," or any combination of these designations.

2.21 Sec. 3. **[147.38] USE OF LASERS.**

2.22 Subdivision 1. Definitions. (a) For the purpose of this section, the following  
2.23 definitions have the meanings given.

2.24 (b) "Advanced medical practitioner" means a physician assistant licensed under  
2.25 chapter 147A or an advanced practice registered nurse licensed under sections 148.171 to  
2.26 148.285.

2.27 (c) "Care provider" means an advanced medical practitioner, a nurse, or a health  
2.28 practitioner.

2.29 (d) "Health practitioner" means a licensed practical nurse licensed under sections  
2.30 148.171 to 148.285, a clinical esthetician licensed under chapter 155A, a board-certified  
2.31 electrologist by the American Electrology Association, or a certified laser technician  
2.32 with a national certification.

2.33 (e) "Laser treatment" means a procedure using laser devices, intense pulsed light  
2.34 devices, and radio frequency devices designed to alter the aesthetic appearance of a  
2.35 human individual.

3.1 (f) "Nurse" means a nurse licensed under sections 148.171 to 148.285.

3.2 (g) "Physician" means a physician or osteopath who is licensed under this chapter  
3.3 and has received laser safety training.

3.4 (h) "Supervision" means overseeing the delegated treatments performed by advanced  
3.5 medical practitioners, nurses, health practitioners, and certified laser technicians.

3.6 (i) "Written protocol" means an ongoing order that is maintained at the facility at  
3.7 which the treatment is to be performed.

3.8 **Subd. 2. General restrictions on the use of lasers, intense pulsed light devices,**  
3.9 **and radio frequency devices.** (a) The use of a laser, intense pulsed light device, or radio  
3.10 frequency device for aesthetic treatments may only be performed by a nurse, an advanced  
3.11 medical practitioner, or a health practitioner.

3.12 (b) The use of a laser, intense pulsed light device, or radio frequency device for  
3.13 aesthetic treatments may be performed by an advanced medical practitioner or health  
3.14 practitioner if the treatment has been delegated according to subdivision 3; the delegating  
3.15 physician provides the appropriate supervision according to subdivision 4; and the  
3.16 advanced medical practitioner or health practitioner has met the training requirements  
3.17 according to subdivision 5.

3.18 (c) The protocols governing all treatments performed in a spa setting must be  
3.19 designed to result in outcomes that prevent either permanent visible scarring or objectively  
3.20 identifiable functional loss. In the event of either of these negative outcomes, protocols  
3.21 must be reviewed and changed where indicated.

3.22 **Subd. 3. Delegation of treatment.** (a) A physician may delegate the performance  
3.23 of a laser treatment through the use of a written protocol. The written protocol must  
3.24 provide, at a minimum:

3.25 (1) specific criteria to screen clients for the appropriateness of an aesthetic treatment,  
3.26 including case selection and assessment guidelines;

3.27 (2) for clients who meet the selection criteria, the identification of the devices and  
3.28 settings to be used;

3.29 (3) a description of appropriate care and follow-up for common complications,  
3.30 injuries, or adverse reactions that may result from treatment, including a plan to manage  
3.31 emergencies;

3.32 (4) a description of the treatment plan to be followed for each treatment procedure  
3.33 delegated under the written protocol, including the method to be used for documenting  
3.34 decisions, communicating with the delegating physician, and recording all treatment  
3.35 provided in the client's record;

4.1 (5) a referral process for situations when an advanced medical practitioner or health  
4.2 practitioner encounters a condition that may require a physician's attention; and

4.3 (6) a quality assurance plan for monitoring care provided by a care provider,  
4.4 including patient care review and any necessary follow-up.

4.5 (b) The delegating physician shall accept full professional responsibility for all  
4.6 treatment protocols for procedures performed by an advanced medical practitioner or  
4.7 health practitioner.

4.8 (c) Prior to delegating the performance of any treatment, the delegating physician  
4.9 must ensure that the care providers have satisfactorily met the training requirements  
4.10 described in subdivision 5. The delegating physician is responsible for ensuring that the  
4.11 care providers performing the treatments have demonstrated sufficient proficiency in  
4.12 performing a specific treatment prior to treating clients.

4.13 Subd. 4. **Supervision.** (a) For purposes of this section, supervision must be  
4.14 established and maintained by the delegating physician so that:

4.15 (1) the physician and care providers are or can be in contact with one another by  
4.16 telephone or other telecommunication device;

4.17 (2) the physician is available to see any client within 24 hours; and

4.18 (3) the physician is able to refer any client for emergency care.

4.19 (b) A care provider may perform any delegated treatment authorized under  
4.20 subdivision 2 under the general supervision of the delegating physician. The care provider  
4.21 must be able to contact the delegating physician by telephone or other telecommunication  
4.22 device.

4.23 (c) A delegating physician must be licensed to practice in the state of Minnesota.

4.24 Subd. 5. **Training requirements.** (a) Prior to performing any treatment, a care  
4.25 provider must have successfully completed a laser safety training course.

4.26 (b) Before a care provider is permitted to perform a treatment, the care provider  
4.27 must provide verification of successful completion of a laser safety training course to the  
4.28 delegating physician and must demonstrate to the satisfaction of the delegating physician  
4.29 that the provider is proficient in the treatment to be delegated.

4.30 Subd. 6. **Quality assurance.** Prior to delegating the performance of a treatment  
4.31 procedure, the physician must ensure that there is a quality assurance program at the  
4.32 facility at which the procedure is to be performed. The quality assurance program, at a  
4.33 minimum, must include the following elements:

4.34 (1) a mechanism to identify and determine the cause of complications and  
4.35 unintended effects of the treatments performed at the facility;

5.1 (2) a mechanism to review the adherence to the written protocol under which  
5.2 delegated procedures are being performed;

5.3 (3) a mechanism to monitor the quality of the treatments performed;

5.4 (4) a mechanism by which the findings of the quality assurance program are  
5.5 reviewed and incorporated into future written protocols and delegation orders; and

5.6 (5) ongoing training to improve the quality and performance of all treatments.

5.7 Subd. 7. Facility restrictions. (a) Any facility performing treatments for aesthetic  
5.8 purposes:

5.9 (1) must inform the client prior to initiating any treatment that the treatment  
5.10 provided by the facility is for aesthetic purposes only and not intended to diagnose or treat  
5.11 a medical condition; and

5.12 (2) must have a medical director who is licensed under this chapter.

5.13 (b) All facilities offering laser treatments must obtain and maintain liability insurance  
5.14 for the entity and all personnel, including the medical director and all care providers under  
5.15 the director's supervision, in an amount that is usual and customary in the industry.