

HB0365S01 compared with HB0365

~~deleted text~~ shows text that was in HB0365 but was deleted in HB0365S01.

inserted text shows text that was not in HB0365 but was inserted into HB0365S01.

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Representative Jeffrey D. Stenquist proposes the following substitute bill:

COSMETIC PROCEDURE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Jeffrey D. Stenquist

Senate Sponsor: {} _____

LONG TITLE

General Description:

This bill modifies provisions relating to cosmetic procedures.

Highlighted Provisions:

This bill:

▶ defines terms;

- ▶ allows a telemedicine service to be used for an initial consult before the initiation of a treatment protocol or series of treatments; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

58-1-102, as last amended by Laws of Utah 2022, Chapter 415

58-1-302.1, as enacted by Laws of Utah 2023, Chapter 278

58-1-506, as last amended by Laws of Utah 2023, Chapter 223

58-67-102, as last amended by Laws of Utah 2023, Chapter 2

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-1-102** is amended to read:

58-1-102. Definitions.

[For purposes of] As used in this title:

(1) "Ablative procedure" [~~is as defined in~~] means the same as that term is defined in Section 58-67-102.

(2) "Cosmetic medical procedure":

(a) [~~is as defined in~~] means the same as that term is defined in Section 58-67-102; and

(b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of Professional Licensing.

(5) "Division" means the Division of Professional Licensing created in Section 58-1-103.

(6) "Executive director" means the executive director of the Department of Commerce.

(7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.

(8) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.

(b) "Nonablative procedure" does not include:

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- (i) a superficial procedure;
- (ii) the application of permanent make-up; or
- (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.

(9) "Pain clinic" means:

- (a) a clinic that advertises its primary purpose is the treatment of chronic pain; or
- (b) a clinic in which greater than 50% of the clinic's annual patient population receive treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.

(10) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.

(11) "Telemedicine service" means the same as that term is defined in Section 26B-4-704.

~~[(11)]~~ (12) "Unlawful conduct" ~~[has the meaning given in]~~ means the same as that term is defined in Subsection 58-1-501(1).

~~[(12)]~~ (13) "Unprofessional conduct" ~~[has the meaning given in]~~ means the same as that term is defined in Subsection 58-1-501(2).

Section 2. Section **58-1-302.1** is amended to read:

58-1-302.1. Temporary license for telemedicine.

(1) As used in this section:

(a) "Nonresident health care license" means a health care license issued by another state, district, or territory of the United States.

(b) "Telemedicine service" means the same as that term is defined in Section ~~[26-60-102]~~ 26B-4-704.

(2) An individual with a temporary license issued under this section is authorized to provide a telemedicine service if:

(a) the telemedicine service is a service the individual is licensed to perform under the nonresident health care license of the state, district, or territory that issued the nonresident health care license;

(b) at the time the telemedicine service is performed, the patient is located in Utah; and

(c) performing the telemedicine service would not otherwise violate state law.

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(3) The division shall issue a temporary license described in Subsection (2) to an individual who has a nonresident health care license in good standing if:

(a) the individual has completed an application for a license by endorsement in accordance with Section 58-1-302; and

(b) the division determines that they will not be able to process the application within 15 days from the day on which the application is submitted.

(4) The division may not charge a fee for a temporary license issued under this section beyond the fee required for a license issued under Section 58-1-302.

Section 3. Section **58-1-506** is amended to read:

58-1-506. Supervision of cosmetic medical procedures.

(1) For purposes of this section:

(a) "Delegation group A" means the following who are licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii):

(i) a physician assistant, if acting in accordance with Chapter 70a, Utah Physician Assistant Act;

(ii) a registered nurse;

(iii) a master esthetician; and

(iv) an electrologist, if evaluating for or performing laser hair removal.

(b) "Delegation group B" means:

(i) a practical nurse or an esthetician who is licensed under this title, acting within their respective scopes of practice, and qualified under Subsections (2)(f)(i) and (iii); and

(ii) a medical assistant who is qualified under Subsections (2)(f)(i) and (iii).

(c) "Direct cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee; and

(ii) is present and available for a face-to-face communication with the supervisee when and where a cosmetic medical procedure is performed.

(d) "General cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) is available in a timely and appropriate manner in person to evaluate and initiate care for a patient with a suspected adverse reaction or complication; and

(iii) is located within 60 minutes or 60 miles of the cosmetic medical facility.

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(e) "Hair removal review" means:

(i) conducting an in-person, face-to-face interview of a patient based on the responses provided by the patient to a detailed medical history assessment that was prepared by the supervisor;

(ii) evaluating for contraindications and conditions that are part of the treatment plan; and

(iii) if the patient history or patient presentation deviates in any way from the treatment plan, referring the patient to the supervisor and receiving clearance from the supervisor before starting the treatment.

(f) "Indirect cosmetic medical procedure supervision" means the supervisor:

(i) has authorized the procedure to be done on the patient by the supervisee;

(ii) has given written instructions to the person being supervised;

(iii) is present within the cosmetic medical facility in which the person being supervised is providing services; and

(iv) is available to:

(A) provide immediate face-to-face communication with the person being supervised;

and

(B) evaluate the patient, as necessary.

(2) A supervisor supervising a nonablative cosmetic medical procedure for hair removal shall:

(a) have an unrestricted license to practice medicine or advanced practice registered nursing in the state;

(b) develop the medical treatment plan for the procedure;

(c) conduct a hair removal review, or delegate the hair removal review to a member of delegation group A, of the patient prior to initiating treatment or a series of treatments;

(d) personally perform the nonablative cosmetic medical procedure for hair removal, or authorize and delegate the procedure to a member of delegation group A or B;

(e) during the nonablative cosmetic medical procedure for hair removal provide general cosmetic medical procedure supervision to individuals in delegation group A performing the procedure, except physician assistants, who shall act in accordance with Chapter 70a, Utah Physician Assistant Act, and indirect cosmetic medical procedure supervision to individuals in

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delegation group B performing the procedure; and

(f) verify that a person to whom the supervisor delegates an evaluation under Subsection (2)(c) or delegates a procedure under Subsection (2)(d) or (3)(c)(ii):

(i) has received appropriate training regarding the medical procedures developed under Subsection (2)(b);

(ii) has an unrestricted license under this title or is performing under the license of the supervising physician and surgeon; and

(iii) has maintained competence to perform the nonablative cosmetic medical procedure through documented education and experience of at least 80 hours, as further defined by rule, regarding:

(A) the appropriate standard of care for performing nonablative cosmetic medical procedures;

(B) physiology of the skin;

(C) skin typing and analysis;

(D) skin conditions, disorders, and diseases;

(E) pre- and post-procedure care;

(F) infection control;

(G) laser and light physics training;

(H) laser technologies and applications;

(I) safety and maintenance of lasers;

(J) cosmetic medical procedures an individual is permitted to perform under this title;

(K) recognition and appropriate management of complications from a procedure; and

(L) cardiopulmonary resuscitation (CPR).

(3) For a nonablative cosmetic medical procedure for tattoo removal:

(a) a supervisor supervising a nonablative cosmetic medical procedure for tattoo removal shall:

(i) have an unrestricted license to practice medicine or advanced practice registered nursing in the state; and

(ii) develop the medical treatment plan for the procedure; and

(b) a nurse practitioner or physician assistant:

(i) shall conduct an in-person face-to-face evaluation of a patient before initiating a

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treatment protocol or series of treatments for removing a tattoo;

(ii) shall inspect the patient's skin for any discoloration unrelated to the tattoo and any other indication of cancer or other condition that should be treated or further evaluated before the tattoo is removed;

(iii) shall refer a patient with a condition described in Subsection (3)(b)(ii) to a physician for treatment or further evaluation; and

(iv) may not perform a nonablative cosmetic medical procedure to remove a tattoo on a patient unless the patient is approved for the tattoo removal by a physician after the physician evaluates the patient.

(4) For a nonablative cosmetic medical procedure other than hair removal under Subsection (2) or tattoo removal under Subsection (3):

(a) a physician who has an unrestricted license to practice medicine, a nurse practitioner who has an unrestricted license for advanced practice registered nursing, or a physician assistant acting in accordance with Chapter 70a, Utah Physician Assistant Act, who has an unrestricted license to practice as a physician assistant, shall:

(i) develop a treatment plan for the nonablative cosmetic medical procedure; and

(ii) conduct an ~~[in-person face-to-face]~~ evaluation of the patient ~~[prior to]~~ either in-person or utilizing a live telemedicine ~~{service}~~ visit before the initiation of a treatment protocol or series of treatments; ~~{[and]}~~

~~—~~ and

(iii) if the evaluation is conducted via telemedicine, ensure that the registered nurse or master aesthetician performing the procedure is in-person with the patient during the evaluation and the supervisor is on the telemedicine visit at the same time conducting the evaluation;

~~[(b) a nurse practitioner or physician assistant conducting an in-person face-to-face evaluation of a patient under Subsection (3)(a)(ii) prior to removing a tattoo shall:]~~

~~[(i) inspect the patient's skin for any discoloration unrelated to the tattoo and any other indication of cancer or other condition that should be treated or further evaluated before the tattoo is removed;]~~

~~[(ii) refer a patient with any such condition to a physician for treatment or further evaluation; and]~~

~~[(iii) shall not supervise a nonablative cosmetic medical procedure to remove a tattoo~~

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on the patient until the patient has been approved for the tattoo removal by a physician who has evaluated the patient; and

~~(c)~~ (b) the supervisor supervising the procedure shall:

(i) have an unrestricted license to practice medicine or advanced practice registered nursing;

(ii) personally perform the nonablative cosmetic medical procedure or:

(A) authorize and provide general cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by a registered nurse or a master esthetician;

(B) authorize and provide supervision as provided in Chapter 70a, Utah Physician Assistant Act, for the nonablative cosmetic medical procedure that is performed by a physician assistant; or

(C) authorize and provide direct cosmetic medical procedure supervision for the nonablative cosmetic medical procedure that is performed by an esthetician; and

(iii) verify that a person to whom the supervisor delegates a procedure under Subsection (3)(c):

(A) has received appropriate training regarding the medical procedures to be performed;

(B) has an unrestricted license and is acting within the person's scope of practice under this title; and

(C) is qualified under Subsection (2)(f)(iii).

~~(4)~~ (5) A supervisor performing or supervising a cosmetic medical procedure under Subsection (2) or (3) or (4) shall ensure that:

(a) the supervisor's name is prominently posted at the cosmetic medical facility identifying the supervisor;

(b) a copy of the supervisor's license is displayed on the wall of the cosmetic medical facility;

(c) the patient receives written information with the name and licensing information of the supervisor who is supervising the nonablative cosmetic medical procedure and the person who is performing the nonablative cosmetic medical procedure;

(d) the patient is provided with a telephone number that is answered within 24 hours

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for follow-up communication; and

(e) the cosmetic medical facility's contract with a master esthetician who performs a nonablative cosmetic medical procedure at the facility is kept on the premises of the facility.

~~[(5)]~~ (6) Failure to comply with the provisions of this section is unprofessional conduct.

~~[(6)]~~ (7) A chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, is not subject to the supervision requirements in this section for a nonablative cosmetic medical procedure for hair removal if the chiropractic physician is acting within the scope of practice of a chiropractic physician and with training specific to nonablative hair removal.

Section 4. Section 58-67-102 is amended to read:

58-67-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) (a) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers.

(b) "Ablative procedure" does not include hair removal.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(3) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) "Associate physician" means an individual licensed under Section 58-67-302.8.

(5) "Attempted sex change" means an attempt or effort to change an individual's body to present that individual as being of a sex or gender that is different from the individual's biological sex at birth.

(6) "Biological sex at birth" means an individual's sex, as being male or female, according to distinct reproductive roles as manifested by:

(a) sex and reproductive organ anatomy;

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(b) chromosomal makeup; and

(c) endogenous hormone profiles.

(7) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(8) "Collaborating physician" means an individual licensed under Section 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

(9) "Collaborative practice arrangement" means the arrangement described in Section 58-67-807.

(10) (a) "Cosmetic medical device" means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection (10)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection (10)(a).

(11) (a) "Cosmetic medical procedure" includes:

[(a)] (i) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; [and] or

(ii) the injection of medication or substance, including a neurotoxin or a filler, for cosmetic purposes.

(b) "Cosmetic medical procedure" does not include a treatment of the ocular globe [such as] including refractive surgery.

(12) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (12)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (12)(a); or

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(d) to make an examination or determination as described in Subsection (12)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(13) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

(14) "Medical assistant" means an unlicensed individual who may perform tasks as described in Subsection 58-67-305(6).

(15) "Medically underserved area" means a geographic area in which there is a shortage of primary care health services for residents, as determined by the Department of Health and Human Services.

(16) "Medically underserved population" means a specified group of people living in a defined geographic area with a shortage of primary care health services, as determined by the Department of Health and Human Services.

(17) (a) (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection (17)(a)(i) nonablative procedure includes hair removal.

(b) "Nonablative procedure" does not include:

(i) a superficial procedure as defined in Section 58-1-102;

(ii) the application of permanent make-up; or

(iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within the individual's scope of practice.

(18) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(19) (a) "Practice of medicine" means:

(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any

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means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;

(ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;

(iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (19)(a)(i) or (ii) whether or not for compensation; or

(iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation "M.D." if it is followed by "Not Licensed" or "Not Licensed in Utah" in the same size and style of lettering.

(b) The practice of medicine does not include:

(i) except for an ablative medical procedure as provided in Subsection (19)(b)(ii) the conduct described in Subsection (19)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

(ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or

(iii) conduct under Subsection 58-67-501(2).

(20) "Prescription device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

(21) "Prescription drug" means a drug that is required by federal or state law or rule to

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be dispensed only by prescription or is restricted to administration only by practitioners.

(22) (a) "Primary sex characteristic surgical procedure" means any of the following if done for the purpose of effectuating or facilitating an individual's attempted sex change:

(i) for an individual whose biological sex at birth is male, castration, orchiectomy, penectomy, vaginoplasty, or vulvoplasty;

(ii) for an individual whose biological sex at birth is female, hysterectomy, oophorectomy, metoidioplasty, or phalloplasty; or

(iii) any surgical procedure that is related to or necessary for a procedure described in Subsection (22)(a)(i) or (ii), that would result in the sterilization of an individual who is not sterile.

(b) "Primary sex characteristic surgical procedure" does not include:

(i) surgery or other procedures or treatments performed on an individual who:

(A) is born with external biological sex characteristics that are irresolvably ambiguous;

(B) is born with 46, XX chromosomes with virilization;

(C) is born with 46, XY chromosomes with undervirilization;

(D) has both ovarian and testicular tissue; or

(E) has been diagnosed by a physician, based on genetic or biochemical testing, with a sex development disorder characterized by abnormal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; or

(ii) removing a body part:

(A) because the body part is cancerous or diseased; or

(B) for a reason that is medically necessary, other than to effectuate or facilitate an individual's attempted sex change.

(23) (a) "Secondary sex characteristic surgical procedure" means any of the following if done for the purpose of effectuating or facilitating an individual's attempted sex change:

(i) for an individual whose biological sex at birth is male, breast augmentation surgery, chest feminization surgery, or facial feminization surgery; or

(ii) for an individual whose biological sex at birth is female, mastectomy, breast reduction surgery, chest masculinization surgery, or facial masculinization surgery.

(b) "Secondary sex characteristic surgical procedure" does not include:

(i) surgery or other procedures or treatments performed on an individual who:

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(A) is born with external biological sex characteristics that are irresolvably ambiguous;

(B) is born with 46, XX chromosomes with virilization;

(C) is born with 46, XY chromosomes with undervirilization;

(D) has both ovarian and testicular tissue; or

(E) has been diagnosed by a physician, based on genetic or biochemical testing, with a sex development disorder characterized by abnormal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female; or

(ii) removing a body part:

(A) because the body part is cancerous or diseased; or

(B) for a reason that is medically necessary, other than to effectuate or facilitate an individual's attempted sex change.

(24) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(25) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-67-501.

(26) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section ~~{4}~~5. **Effective date.**

This bill takes effect on May 1, 2024.