

## **BILL ANALYSIS**

Senate Research Center

H.B. 449  
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Health & Human Services  
5/6/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 449 requires laser hair removal processes to be performed by a certified laser hair removal professional or by an individual under the supervision of a certified professional. The bill establishes levels of expertise in laser hair removal to be regulated by the Department of State Health Services. The bill requires each laser hair removal facility to be licensed and each facility to retain the services of a consulting physician to develop and review each facility's procedures and protocol.

H.B. 449 relates to the regulation of laser hair removal facilities and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 401.502, 401.511, 401.515, 401.516, and 401.522, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 401, Health and Safety Code, by adding Subchapter M, as follows:

#### **SUBCHAPTER M. LASER HAIR REMOVAL**

Sec. 401.501. DEFINITIONS. Defines "department," "executive commissioner," "laser hair removal," "laser hair removal facility" (facility), "laser or pulsed light device," "nonablative hair removal procedure," and "operator."

Sec. 401.502. EXAMINATION. Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to govern the development and administration of an examination for an applicant under this subchapter.

Sec. 401.503. APPLICATION PROCESS. (a) Requires that an application for a certificate or license under this subchapter be made on a form prescribed and provided by the Department of State Health Services (DSHS).

(b) Requires that the application require an applicant to provide sworn statements relating to the applicant's education and to provide other information required by DSHS.

Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) Prohibits a person from performing or attempting to perform laser hair removal unless the person holds the appropriate certificate under this subchapter.

(b) Provides that a certificate issued under this subchapter only authorizes a person to perform nonablative cosmetic laser hair removal and does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect, or deformity of the human body. Requires the certificate holder to specifically disclose this limitation in writing to all clients and prospective clients.

(c) Provides that this subchapter does not require a health professional licensed under another law to hold a certificate under this subchapter to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

(d) Provides that this subchapter does not apply to a physician or to a physician's employee or delegate acting under Chapter 157 (Authority of Physician to Delegate Certain Medical Acts), Occupations Code.

Sec. 401.505. **CERTIFIED LASER HAIR REMOVAL PROFESSIONAL.** (a) Requires an applicant for a laser hair removal professional certificate to be certified by a recognized certifying agency, including the Society for Clinical and Medical Hair Removal or another certification entity approved by DSHS; meet the requirements for a senior laser hair removal technician certificate under Section 401.506; and pass an examination administered by DSHS.

(b) Authorizes a certified laser hair removal professional acting under the protocol established with a consulting physician to perform laser hair removal without supervision.

Sec. 401.506. **SENIOR LASER HAIR REMOVAL TECHNICIAN.** (a) Requires an applicant for a senior laser hair removal technician certificate, except as provided by Subsection (b), to meet the requirements for a laser hair removal technician certificate under Section 401.507 and have supervised at least 100 laser hair removal procedures, as audited by a certified laser hair removal professional.

(b) Requires that the qualifications for eligibility for an applicant for a senior laser hair removal technician certificate who is a licensed health professional be established by the entity that issues licenses for that health profession.

Sec. 401.507. **LASER HAIR REMOVAL TECHNICIAN.** Requires an applicant for a laser hair removal technician certificate to meet the requirements for a laser hair removal apprentice-in-training certificate under Section 401.508 and have performed at least 100 laser hair removal procedures under the direct supervision of a senior laser hair removal technician or a certified laser hair removal professional.

Sec. 401.508. **LASER HAIR REMOVAL APPRENTICE-IN-TRAINING.** (a) Requires an applicant for a laser hair removal apprentice-in-training certificate to have at least 24 hours of training in safety, laser physics, skin typing, skin reactions, treatment protocols, burns, eye protection, emergencies, and posttreatment protocols.

(b) Requires a laser hair removal apprentice-in-training to work directly under the supervision of a senior laser hair removal technician or a certified laser hair removal professional.

(c) Requires a person to be at least 18 years of age to qualify to be a laser hair removal apprentice-in-training.

Sec. 401.509. **CONTINUING EDUCATION.** Requires DSHS to recognize, prepare, or administer continuing education programs for certificate holders. Requires a certificate holder to participate in the programs to the extent required by DSHS rule to renew the person's certificate.

Sec. 401.510. **FACILITY LICENSE REQUIRED.** (a) Prohibits a person from operating a facility unless the person holds a license issued under this subchapter to operate the facility.

(b) Provides that a separate license is required for each facility.

(c) Provides that this section does not apply to a facility owned or operated by a physician for the practice of medicine.

Sec. 401.511. EXPIRATION OF CERTIFICATE OR LICENSE. Authorizes the executive commissioner by rule to adopt a system under which certificates and licenses expire on various dates during the year.

Sec. 401.512. RENEWAL OF CERTIFICATE OR LICENSE. (a) Provides that a certificate or license expires on the second anniversary of the date of issuance.

(b) Requires a person to renew the person's certificate or license on or before the expiration date.

(c) Requires DSHS to issue a renewal certificate or license on receipt of a renewal application in the form prescribed by DSHS, accompanied by a renewal fee in an amount equal to the original certificate or license fee.

Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. Requires a person holding a license or certificate under this subchapter to display the person's license or certificate in an open public area of the facility.

Sec. 401.514. LASER OR PULSED LIGHT DEVICE. (a) Requires that a laser or pulsed light device used for laser hair removal in a facility comply with all applicable federal and state laws and regulations.

(b) Provides that a person who adulterates or misbrands a laser or pulsed light device violates Chapter 431 (Texas Food, Drug, and Cosmetic Act). Authorizes DSHS to investigate a person accused of adulterating or misbranding a laser or pulsed light device.

(c) Authorizes a person to only use a laser or pulsed light device approved for laser hair removal by the federal Food and Drug Administration for that purpose and to only use the device at the settings expected to safely remove hair.

Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) Requires a facility to give each customer a written statement outlining the relevant risks associated with laser hair removal, including a warning that failure to use the eye protection provided to the customer by the facility may result in damage to the eyes.

(b) Requires the executive commissioner to adopt rules relating to the customer notice.

(c) Provides that compliance with the notice requirement does not affect the liability of the laser hair removal facility operator (operator) or a manufacturer of a laser or pulsed light device.

Sec. 401.516. WARNING SIGNS. (a) Requires a facility to post a warning sign as prescribed by DSHS in a conspicuous location readily visible to a person entering the facility. Requires that the sign provide a toll-free telephone number for DSHS and inform the customer that the customer may call DSHS.

(b) Requires the executive commissioner to adopt rules specifying the size, content, and design of the sign, with wording listing the potential dangers involved.

(c) Requires DSHS to include with a license application and an application for renewal of a license a description of the design standards required for a sign under this section.

Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Requires a facility, except as provided by Subsection (b), to have a certified laser hair removal professional or a licensed health professional described by Section 401.504(c) present to supervise the

laser hair removal procedures performed at the facility during the facility's operating hours.

(b) Authorizes a facility to continue to perform laser hair removal procedures after the facility's certified laser hair removal professional leaves the facility if a senior laser hair removal technician is present to perform or supervise each procedure. Provides that not later than the 45th day after the date the facility's certified laser hair removal professional leaves the facility, the facility's senior laser hair removal technician is required to become certified as a laser hair removal professional under Section 401.505, or the facility is required to hire a new certified laser hair removal professional.

Sec. 401.518. SAFETY. (a) Provides that an operator is responsible for maintaining the facility's compliance with the requirements of this subchapter and DSHS rules relating to laser and pulsed light devices.

(b) Prohibits an operator from claiming, advertising, or distributing promotional materials that claim that laser hair removal is free from risk or provides any medical benefit.

(c) Prohibits an operator from producing false or misleading advertising regarding the services offered at the facility.

Sec. 401.519. CONSULTING PHYSICIAN. (a) Requires a facility to have a written contract with a consulting physician to establish proper protocols for the services provided at the facility and audit the facility's protocols and operations.

(b) Requires a facility, under the rules of DSHS, to document with DSHS the facility's contractual relationship with the consulting physician.

(c) Requires the consulting physician to be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. Requires another designated physician to be available for the consultation with the facility relating to care for the client if the consulting physician is unavailable for an emergency consultation.

(d) Provides that this subchapter does not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.

Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Prohibits an operator or other person, except as provided by Subsection (b), from disclosing a customer record required to be kept by DSHS.

(b) Authorizes an operator or other person to disclose a customer record for certain reasons.

Sec. 401.521. PROHIBITED PRACTICE. (a) Prohibits a person from operating a laser or pulsed light device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the person is a physician, acting under a physician's order, or authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(b) Provides that a person who violates Subsection (a) is practicing medicine in violation of Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code, and is subject to the penalties under that subtitle and under Section 401.522.

Sec. 401.522. ENFORCEMENT; PENALTIES. (a) Authorizes DSHS to impose an administrative penalty on a person who violates this subchapter or a rule adopted under

this subchapter. Prohibits the amount of the penalty from exceeding \$5,000 for each violation.

(b) Authorizes DSHS to suspend or revoke a license or certificate issued under this subchapter in addition to or instead of imposing a penalty under Subsection (a).

(c) Requires the executive commissioner to adopt rules as necessary to implement this section.

SECTION 2. Amends Section 483.041(c), Health and Safety Code, to provide that Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by certain persons or an agent or employee of the person, including a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with DSHS rules for the sole purpose of cosmetic nonablative hair removal. Makes nonsubstantive changes.

SECTION 3. (a) Requires a facility in operation on the effective date of this Act, not later than September 1, 2010, to obtain licenses and certificates required by Subchapter M, Chapter 401, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner, not later than March 1, 2010, to adopt rules as required by Subchapter M, Chapter 401, Health and Safety Code, as added by this Act.

SECTION 4. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 401.504, 401.510, 401.517, 401.521, and 401.522, Health and Safety Code, as added by this Act, and Section 483.041(c), Health and Safety Code, as amended by this Act: September 1, 2010.