

HB 1444-FN-A - AS INTRODUCED

2022 SESSION

22-2506

11/10

HOUSE BILL ***1444-FN-A***

AN ACT relative to the registration of medical spas.

SPONSORS: Rep. Grote, Rock. 24; Rep. Marsh, Carr. 8; Rep. Knirk, Carr. 3

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes the registration of medical spa facilities.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the registration of medical spas.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Legislative Purpose and Findings. The legislature hereby finds and declares that patients are
2 increasingly seeking cosmetic medical procedures and treatment and it is crucial that patient safety
3 remains the top priority for providers of these services. These procedures and treatments are often
4 administered or performed in a medical spa setting; however, lack of regulation has enabled medical
5 spas to offer cosmetic medical procedures by inadequately trained or supervised persons to an
6 unsuspecting public. Some medical spas have a physician, doctor of naturopathic medicine, or APRN
7 listed as a medical director, who does not own the facility and/or is not physically present at the
8 location or immediately available. It is in the public interest to protect patients from harm by
9 ensuring that medical spas deliver safe medical care with supervision by a physician, doctor of
10 naturopathic medicine, or APRN.

11 2 New Chapter; Medical Spa Facilities. Amend RSA by inserting after chapter 313-A the
12 following new chapter:

CHAPTER 313-B

MEDICAL SPA FACILITIES

313-B:1 Definitions.

16 I. "Advanced Practice Registered Nurse" or "APRN" means a registered nurse who has an
17 active, unrestricted license granted under the authority of the New Hampshire board of nursing
18 under RSA 326-B:18 and practices within the state of New Hampshire.

19 II. "Cosmetic medical procedure" means a medical procedure or treatment that is directed at
20 improving the appearance and that does not meaningfully promote the proper function of the body or
21 prevent or treat illness or disease.

22 III. "Doctor of naturopathic medicine" means a person authorized and licensed to practice
23 naturopathic medicine under RSA 328-E.

24 IV. "Executive director" means the executive director of the office of professional licensure
25 and certification.

26 V. "Medical director" means a physician, doctor of naturopathic medicine, or APRN who
27 assumes the role of, or holds oneself out as, the person at a medical spa responsible for the
28 supervision of all medical spa staff performing procedures and ensuring compliance with all
29 applicable federal and state laws and regulations. Medical directors shall be:

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1 (a) Trained in the indications for, and performance of, cosmetic medical procedures,
2 including all medical devices or instruments that can alter or cause biologic change or damage the
3 skin and subcutaneous tissue;

4 (b) Responsible for implementing policies and procedures to ensure quality patient care
5 and for the delegation and supervision of cosmetic medical procedures;

6 (c) Responsible for all cosmetic medical procedures performed by physicians, doctors of
7 naturopathic medicine, APRNs or non-physician providers at a medical spa;

8 (d) Responsible for ensuring that all supervising physicians, doctors of naturopathic
9 medicine, APRN, and non-physician, non-doctor of naturopathic medicine, and non-APRN providers
10 to whom a cosmetic medical procedure has been delegated are properly trained in the safe and
11 effective performance of all cosmetic medical procedures performed at the medical spa; and

12 (e) The name of the medical directors must be posted in such a location within the
13 medical spa that it is visible and known to patients.

14 VI. "Medical spa" or "med spa" means a facility registered with the office of professional
15 licensure and certification that provides cosmetic medical procedures.

16 VII. "Physician" means a doctor of medicine or osteopathy legally authorized to practice
17 medicine and surgery who has an active, unrestricted medical license granted under the authority of
18 the state of New Hampshire board of medicine and practices within the state of New Hampshire.

19 313-B:2 Protecting Patients in a Medical Spa Setting.

20 I. Medical spas shall have one or more medical directors.

21 II. A physician, doctor of naturopathic medicine, or APRN who performs or supervises
22 cosmetic medical procedures by a non-physician, non-doctor of naturopathic medicine, or non-APRN
23 shall be trained in the indications for and performance of the cosmetic medical procedure.

24 III. Training by a vendor or manufacturer on the use of any injectables and/or medical
25 devices used during a cosmetic medical procedure is insufficient as the physician, doctor of
26 naturopathic medicine, or APRN's only educational training unless such training would qualify as
27 continuing education under RSA 329:16-g, RSA 328-E:13, or RSA 326-B:31.

28 IV. To satisfy the educational requirement, a physician must complete a program or courses
29 approved by the New Hampshire board of medicine, a doctor of naturopathic medicine must
30 complete a program or courses approved by the New Hampshire naturopathic board of examiners,
31 and an APRN must complete a program or courses approved by the New Hampshire board of
32 nursing. Programs or courses which meet the continuing education requirements of RSA 329:16-g,
33 RSA 328-E:13, RSA 326-B:31 would satisfy this requirement.

34 V. The supervising physician, supervising doctor of naturopathic medicine, or supervising
35 APRN shall:

36 (a) Develop and maintain written office protocols for each cosmetic medical procedure.

37 (b) Perform the initial assessment of the patient.

1 (c) Prepare a written treatment plan for each patient, including diagnosis, course of
2 treatment and specifications for any device or injectable being utilized.

3 (d) Implement policies and procedures to obtain patient consent if the procedure is being
4 done by a non-physician, non-doctor of naturopathic medicine, or non-APRN provider and identify
5 credentials and name of the non-physician provider who will be performing the medical procedure.

6 (e) Create and maintain medical records in a manner consistent with accepted medical
7 practice and in compliance with all applicable laws.

8 (f) Be readily available at all times during which the patient is receiving the procedure
9 or treatment.

10 VI. Those providers who are not licensed by board of medicine, naturopathic board of
11 examiners, or board of nursing may only perform cosmetic medical procedures:

12 (a) In which they have been properly trained; and

13 (b) If the procedure has been delegated to them by a supervising physician, supervising
14 doctor of naturopathic medicine, or supervising APRN.

15 VII. All providers who are not licensed by the board of medicine, naturopathic board of
16 examiners, or board of nursing shall:

17 (a) Wear identification that clearly communicates they are not physicians, doctors of
18 naturopathic medicine, or APRNs and identifies the type of provider they are and their licensing.

19 (b) Review and follow written protocols for each delegated cosmetic medical procedure.

20 (c) Verify that the supervising physician, supervising doctor of naturopathic medicine, or
21 supervising APRN has assessed the patient and given written instructions for each procedure or
22 treatment to be performed.

23 (d) Review the cosmetic medical procedure to be performed with each patient.

24 (e) Notify the medical director and supervising physician, supervising doctor of
25 naturopathic medicine, or APRN of any adverse events or complications before the patient leaves the
26 medical spa or as they become aware; and follow-up communications with the patient post-
27 operatively.

28 (f) Document all relevant details of the cosmetic medical procedure in each patient's
29 medical record.

30 (g) Comply with all laws and rules imposed by the licensing board of the non-physician,
31 non-doctor of naturopathic medicine, and non-APRN.

32 313-B:3 Exemptions. Nothing in this chapter shall be construed so as to prohibit any individual
33 licensed by any regulatory board from performing functions or duties within the scope of such
34 individual's license.

35 313-B:4 Medical Spa Facility Registration Required; Penalties. It shall be a misdemeanor for
36 any person, as owner, manager, or agent to open, establish, conduct or maintain a medical spa
37 unless such medical spa is registered in accordance with this chapter.

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1 313-B:5 Rulemaking. The executive director shall adopt rules, pursuant to RSA 541-A, relative
2 to:

- 3 I. The issuance, suspension, revocation, renewal, and denial of registrations.
- 4 II. Hearings and the conduct of investigations, public or confidential, and issuing orders
5 relating to such hearings and investigations. The contested case provisions of RSA 541-A:31-36 shall
6 apply when a person is aggrieved by a decision of the executive director under this chapter. Appeals
7 shall be made in accordance with RSA 541.
- 8 III. Conditions, requirements, and standards for operation of a registered medical spa
9 facility.
- 10 IV. Standards and procedures for inspections of facilities.
- 11 V. A fine schedule for violations of any law or administrative rule.
- 12 VI. Application forms and procedures to open, close, relocate, or renew a facility.
- 13 VII. Requiring public display of the registration certificate.
- 14 VIII. Procedures for disciplinary action, including cease and desist orders, suspensions,
15 limitations, or revocation of facility registration.
- 16 IX. Requiring an applicant for registration to obtain a certificate of good standing from the
17 secretary of state.
- 18 X. Establishing the fees for registration of a medical spa facility.
- 19 XI. Qualifications for exemption of schools, health facilities, or others from medical spa
20 facility registration requirements in section

21 313-B:6 Violations.

- 22 I. The executive director may undertake disciplinary proceedings against a medical spa
23 facility registrant:
 - 24 (a) Upon his or her initiative; or
 - 25 (b) Upon written complaint of any person which charges that a registered medical spa
26 facility or any person who owns or is employed by such medical spa facility has committed
27 misconduct and the grounds therefore. A person who owns or is employed by a medical spa facility
28 who has been alleged to have committed misconduct shall be referred to the board which issued his
29 or her individual professional license for further investigation and any appropriate disciplinary
30 proceedings.
- 31 II. Misconduct sufficient to support disciplinary proceedings against a medical spa facility
32 registrant shall include:
 - 33 (a) The practice of fraud or deceit in procuring or attempting to procure a registration
34 under this chapter;
 - 35 (b) Willful or repeated violation of the provisions of this chapter or rule adopted
36 thereunder;

1 (c) Suspension or revocation of a registration, similar to one issued in this chapter in
2 another jurisdiction.

3 III. The executive director may take disciplinary action in one or more of the following ways:

4 (a) By reprimand;

5 (b) By suspension, limitation, or restriction of a registration;

6 (c) By revocation of a registration;

7 (d) By imposing an administrative fine in accordance with RSA 313-B:7.

8 313-B:7 Administrative Fines. The executive director, after notice and hearing pursuant to
9 rules adopted under RSA 541-A, may impose fines upon any medical spa registrant who violates any
10 provision of this chapter or rules adopted pursuant to this chapter, in an amount not to exceed
11 \$2,000. Rehearings and appeals from a decision of the executive director shall be in accordance with
12 RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of
13 further penalties or administrative fines under this chapter.

14 313-B:8 Inspectors.

15 I. The office of professional licensure and certification shall employ inspectors and authorize
16 them to enter and inspect any facility registered pursuant to this chapter for the purpose of
17 ascertaining whether or not the administrative rules of the executive director and the provisions of
18 this chapter are being observed. Each inspector shall file a report with the executive director of
19 inspection findings and results. Salaries and necessary expenses shall be charged against the fees
20 and other moneys collected under this chapter.

21 II. The executive director shall adopt rules relative to the qualifications of an inspectors.

22 3 Office of Professional Licensure and Certification; New Classified Position; Salary and
23 Expenses.

24 I. One program inspector, labor grade 21, is hereby established as a classified position in the
25 office of professional licensure and certification.

26 II. The amount necessary to pay for the salary and necessary expenses of the position
27 established in paragraph I, which shall be in addition to any sums appropriated in 2021, 90:1, 01-21-
28 21-216010-3302, for the division of enforcement, shall be a charge against the office of professional
29 licensure and certification fund established in RSA 310-A:1-e.

30 4 Effective Date. This act shall take effect 60 days after its passage.

**HB 1444-FN-A- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the registration of medical spas.

FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$150,000	\$7,500	\$165,300	\$8,400
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	☒ General ☒ Education ☐ Highway ☒ Other - ☒ Other - Office of Professional Licensure and Certification Agency Fund			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes registration for medical spas and clarifies the scope of practice for medical professionals. It also establishes a classified position to inspect medical spas as well as establishes penalties for unlicensed massage establishments.

The Office of Professional Licensure and Certification (OPLC) assumes the fee for spa registration would be \$300 for two years and that approximately 500 medical spas would be required to pay the spa registration fee. OPLC also assumes there would be a 5% increase in spa registrations each year thereafter. Based on these assumption OPLC assumes the increase in revenue will be as follows:

- FY 2022: \$150,000 (500 licensees X \$300) for biennium
- FY 2023: \$7,500 (25 (new licenses) X \$300)
- FY 2024: \$165,300 (551 (new plus renewal) X \$300) for biennium
- FY 2025: \$8,400 (28 (new licenses) X \$300)

OPLC estimates the cost for the new program inspector, Labor Grade 21, step one, position with a start date of 7/1/2022 would be \$74,000 in FY 2023, \$74,000 in FY 2024, and \$81,000 in FY 2025.

This bill contains penalties that may have an impact on the New Hampshire judicial system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed the State and County expenditures would not occur until FY 2023 and forward.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification, Judicial Branch, Department of Justice,
Judicial Council, and New Hampshire Association of Counties