

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 24 Delaware Code, Sections 5306(b) and 5314(b) (24 **Del.C.** §§5306(b) and 5314(b))

PROPOSED

PUBLIC NOTICE

4471 Massage and Bodywork Facilities

Pursuant to 24 **Del.C.** §§5306(b) and 5314(b), the Health Systems Protection Section (HSP), Division of Public Health, Department of Health and Social Services, is proposing new regulations for facilities that offer massage and body work services. The regulations are in response to the revisions to 24 **Del.C.** §§5306(b) and 5314(b) which provide the Division of Public Health the authority to promulgate these regulations. On March 1, 2019, DPH plans to publish as proposed the new regulations, and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the March 1, 2019 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the DPH at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Monday, April 1, 2019, at:

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4471 Massage and Bodywork Facilities

1.0 General Provisions

- 1.1 Preamble. The Secretary, Delaware Health and Social Services (DHSS), adopts these regulations pursuant to the authority vested by 24 **Del.C.** §5306. These regulations establish requirements for the practice of massage and bodywork in massage establishments and provide for the investigation of complaints involving unsanitary or unsafe practices or conditions in such facilities.
- 1.2 Purpose. These regulations shall establish minimum requirements for public health assurance in the practice of massage and body work in massage establishments licensed by the Board of Massage and Bodywork (Board). License holders are encouraged to employ more stringent requirements. License holders must also comply with the Board's rules and regulations applicable to massage establishments.
- 1.3 Facilities – Existing and New. Facilities that are lawfully in existence and operating at the time of adoption of the regulations shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical establishment and structure is in accordance with the original design and no hazard to life or health is created by the existing establishment.
- 1.4 Variance
 - 1.4.1 A licensee may request a variance from these regulations from DHSS. DHSS may grant a variance by modifying or waiving the requirements of these regulations if in the opinion of DHSS a health hazard or nuisance will not result from the variance.
 - 1.4.2 A variance shall not be transferred from person to person, nor from location to location.
 - 1.4.3 If a variance is granted, DHSS shall retain the information specified below in its records for the establishment:
 - 1.4.3.1 Statement of the proposed variance of the regulations, citing the relevant Section of these regulations;
 - 1.4.3.2 An analysis of the rationale for how the potential public health hazards or nuisance will be alternatively addressed by the proposal; and
 - 1.4.3.3 Any other information requested by DHSS that may be deemed necessary to render judgment.
 - 1.4.4 A variance, if granted, is rendered void upon occurrence of one or more of the following:

- 1.4.4.1 The physical establishment is demolished or sold;
- 1.4.4.2 A remodeling project in the establishment includes area(s) addressed in the variance; or
- 1.4.4.3 The license or certificate holder granted the variance ceases to operate the establishment for a period exceeding thirty (30) consecutive days.
- 1.5 Severability. If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.
- 1.6 Effective Date. These regulations are effective May 11, 2019.

2.0 Definitions

For purposes of these regulations the following definitions shall apply:

“Board” means and refers to the Delaware Board of Massage and Bodywork.

“Department” or “DHSS” means the Delaware Department of Health and Social Services.

“DNREC” means the Delaware Department of Natural Resources and Environmental Control.

“EPA” means the United States Environmental Protection Agency.

“Equipment” means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus used in connection with the operation of the establishment.

“FDA” means the United States Food and Drug Administration.

“Handwashing sink” means a permanent lavatory equipped with hot and cold running water, under pressure and used solely for washing hands, arms or other portions of the body.

“Hot water” means water which attains and maintains a temperature of at least 110°F.

“Invasive” means any entry into the body either by incisions or insertion of an instrument or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

“Licensee” means any person licensed by Board.

“Massage establishment” has the same meaning as 24 Del.C. §5302(4).

“Person” means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or incorporated organization.

“Professional in charge” means a licensee who is responsible for the operation of a massage establishment, including ensuring that all employees are licensed where required by law.

“Sanitize / Sanitization Procedure” means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by DHSS.

“Secretary” means the Secretary of DHSS or designee.

“Single use” means products or items that are intended for one-time, one-person use and are disposed of after use on a single client, including but not limited to disposable face cradle covers, tissues or paper products and paper or plastic protective gloves.

3.0 Inspections

The Secretary shall have right of entry without fee or hindrance, for the purpose of determining if the establishment is in compliance with these regulations. The establishment shall allow for inspection and shall provide information and records needed to determine compliance with these regulations, whether or not the evidence exists that the establishment is in violation of these regulations.

4.0 Operational Requirements

4.1 General Requirements

4.1.1 All areas shall be maintained in a safe and sanitary condition.

4.1.2 Licensed facilities including or connected to residential spaces shall be separate from living quarters.

4.1.3 All doors to dressing rooms, toilet rooms, and massage therapy rooms or cubicles shall open inward. Draw drapes, curtain enclosures or accordion-pleated closures in lieu of doors are acceptable on all inner dressing rooms and massage therapy rooms or cubicles.

4.1.4 A massage table / chair shall be used for all massage therapy, with the exception of Thai, shiatsu and similar forms of massage therapy, which may be provided on a padded mat on the floor.

4.1.5 All locker facilities that are provided for the use of patrons shall be fully secured for the protection of the patron's valuables, and the patron shall be given control of the key or other means of access.

- 4.2 Equipment Construction and Design. All interior surfaces and fixtures of a licensed establishment shall be designed so as to be easily maintained and kept clean. Procedure surfaces shall be easy to clean and sanitize.
- 4.3 Floors, Walls and Ceilings. All floors, walls and ceilings shall be free of open holes or cracks, washable, maintained clean and in good repair.
- 4.4 Ventilation. Licensed establishments shall be provided with adequate ventilation which draws air from employees and clients and vents to the outside. Ventilation must be in compliance with all applicable local codes.
- 4.5 Laundry. Soiled reusable cloth items may be mechanically washed with detergent and then dried on premises provided that washers and dryers are installed per local codes and are not included in the area used by clients.
- 4.6 Water Supply
 - 4.6.1 Water shall be obtained from an approved source that is constructed, maintained and operated according to the requirements of DNREC and DHSS and other applicable codes and requirements.
 - 4.6.2 The water source and system shall be of sufficient capacity and pressure to meet the demands of the establishment. Hot and cold water shall be provided at all sinks.
- 4.7 Plumbing. All plumbing systems shall be designed, constructed and installed according to all applicable laws, codes and regulations.
- 4.8 Handwashing sinks. A permanent handwashing sink which is convenient and accessible to all work stations shall be provided. This sink shall be supplied with liquid soap, disposable paper towels and a waste receptacle. One handwashing sink per 40 people is required. The number of people will be determined by the occupant load.
- 4.9 Restrooms
 - 4.9.1 Establishments shall provide the number of toilets and handwashing sinks required by the applicable plumbing code. Restrooms are required to be accessible during business hours and maintained in good working order, have adequate ventilation, and may not be used for storage of linen or supplies beyond normal restroom supplies.
 - 4.9.2 Restrooms shall be kept in a sanitary condition, maintained in a safe and orderly manner and be equipped with an operational handwashing sink, liquid soap dispenser, disposable towels, toilet paper and a waste receptacle.
- 4.10 Sewage. Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained and operated according to the requirements of DNREC and DHSS.
- 4.11 Garbage and Refuse. A waste receptacle shall be provided in each client room and shall be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at a minimum.
- 4.12 Animals. No animals shall be allowed in any licensed establishment except for those that assist persons with disabilities. Notwithstanding the foregoing, fish aquariums are allowed in the waiting area.
- 4.13 Insect and Rodent Control. Establishments shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and, if a problem occurs, professional pest control services shall be provided.

5.0 Safety and Sanitation Requirements

5.1 General Requirements

- 5.1.1 Instruments shall be clean and, when necessary, sanitized in accordance with Section 7.0 of these regulations.
- 5.1.2 An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and sanitized immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.
- 5.1.3 Objects dropped on the floor may not be used until they are cleaned and, if necessary, sanitized in accordance with Section 7.0 of these regulations.
- 5.1.4 All instruments that have been used on a client or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning.
- 5.1.5 All supplies or instruments which come in direct contact with a client and cannot be disinfected, including single use items, shall be disposed of in a waste receptacle immediately after use.
- 5.1.6 Shower facilities shall be cleaned and sanitized after each client use in accordance with Section 7.0 of these regulations.
- 5.1.7 All bathrobes, bathing suits and/or other garments that are provided for the use of clients shall be either disposable and shall not be used by more than one person or shall be laundered after each use.

6.0 Single Use Service

- 6.1 Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a waste receptacle.
- 6.2 The cushion, mat, table or other procedure surface shall be covered with a clean cloth towel, sheet, disposable paper sheet or the similar before the start of each procedure.

7.0 Instruments, Equipment and Supplies

7.1 Non-electric Instruments and Equipment

7.1.1 Before use upon a client, all non-electrical instruments may be sanitized in the following manner:

7.1.1.1 Cleaned with soap or detergent and water; and

7.1.1.2 Then totally immersed in one of the following:

7.1.1.2.1 Commercially marketed EPA approved and registered sanitizer agent sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed;

7.1.1.2.2 A solution of one part commercial bleach to ten parts water for ten (10) minutes; or

7.1.1.2.3 Seventy (70) percent alcohol for a minimum of 20 minutes.

7.1.2 The sanitizing solutions required in subsection 7.1.1 shall:

7.1.2.1 Remain covered at all times;

7.1.2.2 Be changed per the manufacturer's instructions but at least once per week or whenever visibly cloudy or dirty; or

7.1.2.3 Be changed daily if bleach based.

7.2 Electrical Instruments and Equipment

7.2.1 Electrical instruments, including but not limited to electric heating pads, hot towel warmers, and aromatherapy dispensers, may be sanitized prior to each use by:

7.2.1.1 Removing all foreign matter; and

7.2.1.2 Using a commercially marketed EPA-approved and registered sanitation agent(s) sold for the purpose of sanitizing implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed.

7.3 Equipment Storage

7.3.1 Cleaned and sanitized implements and equipment shall be stored in a clean and dry cabinet or drawer.

7.3.2 Unused clean cloth towels and disposable towels shall be stored in a clean cabinet or towel dispenser.

7.3.3 A cabinet or separate bin or hamper for the disposal of soiled towels is required as appropriate.

7.4 Supplies

7.4.1 Lotions, oils and any other type of liquid shall be dispensed into a container or cleaned hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.

7.4.2 All liquids, creams and other preparations shall be kept in clean, closed and distinctly labeled containers. Poisonous substances shall be in marked containers. Powders may be kept in clean shakers.

8.0 Massage Therapists and Other Personnel

8.1 Sanitary and Hygienic Practices

8.1.1 Massage therapists and personnel performing services shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before serving each client.

8.1.2 Disposable gloves shall be worn if the massage therapist or personnel has an open wound.

8.1.3 A massage therapist or personnel whose hands come in contact with blood or other bodily fluids shall wash them immediately.

8.2 Health

8.2.1 No massage therapist or personnel shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients, or instructor train in the licensed establishment.

8.3 Clothing

8.3.1 Massage therapists, personnel, and their uniform or attire shall be clean at all times.

9.0 Infectious, Contagious or Communicable Diseases

- 9.1 No professional in charge shall knowingly require or permit an employee to work upon a person believed to have an infection or parasitic infestations capable of being transmitted to the employee unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.
- 9.2 A massage therapist or personnel shall wear gloves when required to serve a client with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.
- 9.3 Infections or parasitic infestations capable of being transmitted to a client include but are not limited to:
 - 9.3.1 Cold, influenza or other respiratory illness accompanied by a fever, until twenty-four hours after resolution of the fever;
 - 9.3.2 Streptococcal pharyngitis ("strep throat") until twenty four (24) hours after treatment has been initiated and twenty-four (24) hours after resolution of fever;
 - 9.3.3 Purulent conjunctivitis ("pink eye") until examined by a physician and approved for return to work;
 - 9.3.4 Pertussis ("whooping cough") until five days of antibiotic therapy has been completed;
 - 9.3.5 Varicella ("chicken pox") until the sixth day after onset of rash or sooner if all lesions have dried and crusted;
 - 9.3.6 Mumps, until nine days after onset of parotid gland swelling;
 - 9.3.7 Tuberculosis, until a physician or local health department authority states that the person is noninfectious;
 - 9.3.8 Impetigo (bacterial skin infection) until twenty-four (24) hours after treatment has begun;
 - 9.3.9 Pediculosis (head lice) until the morning after first treatment; and
 - 9.3.10 Scabies ("crabs") until after treatment has been completed.
- 9.4 Blood-borne diseases such as HIV/AIDS and Hepatitis B (HBV) shall not be considered infectious or communicable diseases for the purpose of this regulation.

10.0 Prohibited Hazardous Substances / Use of Products

- 10.1 No establishment shall have on the premises products containing hazardous substances, which have been banned by federal, state or local law for use in products. Establishments permitted under these regulations may only use and store pesticides and cleaning products approved for use in compliance with subsection 10.2.
- 10.2 No product shall be used in a manner that is disapproved by the Board, DHSS or the FDA or is in violation of any applicable Federal or State statute or regulation.

11.0 Invasive Procedures

- 11.1 No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:
 - 11.1.1 Application of electricity which contracts the muscle;
 - 11.1.2 Application of substances which affect living tissue, such as chemical peel preparations or bleaches;
 - 11.1.3 Penetration of the skin with any needle-like instrument for any purpose;
 - 11.1.4 Abrasion of the skin below the nonliving, epidermal layers; and
 - 11.1.5 Removal of skin by means of any razor-edged instrument or other device or tool.

12.0 Compliance and Enforcement

- 12.1 The professional in charge of a massage establishment shall be responsible for maintaining the Standards for Public Health Assurances established by these regulations.
- 12.2 Refusal to permit, or interference with, an inspection by DHSS, or the Board, constitutes violation of the regulations.
- 12.3 DHSS shall investigate all complaints for violations of these regulations as herein regulated and shall refer any failure to comply with these regulations to the Board for disciplinary sanctions as allowed by law.
- 12.4 When a professional in charge of a massage establishment is not in compliance with the provisions of these regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event there is an immediate risk to the public health, the Secretary, in accordance with 16 Del.C. §122(1) may take immediate action.
- 12.5 Penalties. Any person violating any of the requirements established by these regulations is subject to be referred to the Board for disciplinary sanctions pursuant to 24 Del.C. Ch. 53.

