

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 532
Department or Agency: Alabama Board of Massage Therapy
Rule No.: 532-X-3-.04
Rule Title: Establishment Licensure
Intended Action: Amend

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? Yes

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Keith E. Warren
Keith E. Warren

Date

REC'D & FILED

Thursday, July 20, 2023

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LEGISLATIVE SVC AGENCY

ALABAMA BOARD OF MASSAGE THERAPY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 532-X-3-.04 Establishment Licensure

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

To further to define the rule pertaining to perform on-site or out-call massage therapy. Also, to create a process for a massage therapy establishment owner to petition the board for transfer of location for an existing establishment license without a new application and license fee under certain hardship circumstances pertaining to relocating the business.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Written comments will be received by the Board until 4:00 p.m. on Monday, September 4, 2023. Comments should be directed to Keith E. Warren, Executive Director, 2777 Zelda Road, Montgomery, Alabama 36106 or via electronic mail at keith@alstateboard.com

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, October 5, 2023

CONTACT PERSON AT AGENCY:

Keith E. Warren
Executive Director
2777 Zelda Road
Montgomery, Alabama 36106
334-420-7233

Keith E. Warren

Keith E. Warren

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

Establishment Licensure.

(1) Each massage therapy establishment and on-site or out-call establishment as defined in these rules and regulations shall obtain a license to operate from the Board. A licensed owner, employee, or contractor may perform on-site or out-call massage therapy so long as the client knows the massage therapist owns, is employed by, or contracted from a licensed establishment.

(2) The applicant for licensure of the establishment shall be the owner, lessee, or legal possessor of the establishment.

(3) In the event the licensed establishment sold, subleased, or legal possession of the establishment is changed, the new owner, lessee, or legal possessor of the establishment shall be required to apply for and obtain a new license within sixty (60) days of the change of ownership, lessee, or legal possess. The establishment license is not assignable or transferable.

(4) ~~(Repealed)~~ The owner of an establishment may petition the Board to waive a new establishment fee when they apply for a new establishment license due to circumstances where a current licensed establishment is changing locations and they do not intend to change the name or ownership of the establishment. The Board will waive the new establishment license fee when the estabslihment owner can show:

(a) The request is made prior to a change in ownership of hte current estabslihment's address;

(b) The establishment is changing addresses for reasons that are out of their control;

(c) The request must be made at least twelve (12) months before the establishment license expires;

(d) The person seeking the waiver must provide documentation;

(e) The person seeking the waiver must pay a fifty (\$50) administrative fee.

(5) Each massage therapy establishment shall be subject to an inspection by the Board at any time during normal business hours and must demonstrate:

(a) current professional and general liability insurance coverage for bodily injury and property damage for the establishment in the amount of at least one million dollars (\$1,000,000);

(b) compliance with state and local fire and safety requirements;

(c) a fire extinguisher in good working condition;

(d) provision for extermination of vermin, insects, termites, and rodents;

(e) laundering or sanitation of all equipment and linens or other materials furnished for use of the customer or client, prior to reuse, if applicable;

(f) maintenance of equipment in a safe and sanitary condition;

(g) adequate toilet and lavatory facilities with running water, equipped with toilet tissue, soap dispenser with soap or other hand cleansing materials, sanitary towels or hand-drying devices, waste receptacle, with adequate lighting and ventilation sufficient to remove objectionable odors;

(h) adequate and sanitary shower facilities if the establishment maintains a whirlpool bath, sauna, hot tub, spa, steam cabinet or steam room; the shower, if any, is to be equipped with soap, sanitary cloth towels, and adequate lighting and ventilation;

(i) clean drape material (towel, sheet, blanket, linen) for draping clients during the massage, use of which shall be explained to the client prior to the massage, and which shall cover the buttocks and genitals of a male client at all times during the massage, and which shall cover the buttocks, breasts, and genitals of a female client at all times during the massage.

(j) the massage shall not intentionally expose the intergluteal cleft and genitals of a male/female client or breasts of a female client.

(6) Upon receipt of an application for a massage therapy establishment license, the Board may cause an initial inspection to be made of the site to confirm that the establishment meets the above requirements and is to be utilized for massage therapy and not for the purposes unlawful under the massage therapy statutes.

(7) Inspections may be initiated by the Board at any time during reasonable business hours after licensure of the establishment, which may include but are not limited to determining whether the

establishment is in compliance with the rules governing the establishment's operation, facilities, personnel, safety, sanitary requirements, and review of existing insurance coverage. Failure to cooperate with such inspection may lead to disciplinary action.

(8) No massage therapy establishment owner, lessee, or legal possessor shall knowingly engage in or permit any person or persons to engage in sexual activity in that owner's massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

(9) Each massage therapy establishment applicant shall pass a criminal history check unless the applicant is a licensed massage therapist and has passed a criminal history check.

(10) If an establishment fails an inspection, they must correct the violations outlined on the inspection report and be re-inspected within 30 days along with submitting a re-inspection fee approved by the Board.

(11) An establishment that is owned by an individual, company, or corporation residing outside of the State of Alabama must be inspected prior to opening the establishment and pay an inspection fee approved by the Board.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §§34-43-7.

History: **New Rule:** Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 9, 2006; effective December 14, 2006. **Amended:** Filed April 20, 2009; effective May 25, 2009. **Amended:** Filed February 10, 2012; effective March 16, 2012. **Amended:** Published October 31, 2019; effective December 15, 2019. **Amended:** Published August 31, 2022; effective October 15, 2022. **Amended:** Filed July 20, 2023;