

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;"><b>(All Comments submitted on this regulation will appear on IRRC's website)</b></p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <p><b>RECEIVED</b></p> <p>Independent Regulatory Review Commission</p> <p>December 4, 2023</p>
<p>(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Cosmetology</p>		<p>IRRC Number:     3391</p>
<p>(2) Agency Number: 16A       Identification Number: 4518</p>		
<p>(3) PA Code Cite:  49 Pa. Code § 7.150</p>		
<p>(4) Short Title: Practice of Massage Therapy in Cosmetology or Esthetician Salons.</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):  Primary Contact: Jared L. Hinsey, Board Counsel, State Board of Cosmetology, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) <a href="mailto:jhinsey@pa.gov">jhinsey@pa.gov</a>.  Secondary Contact: Thomas M. Davis, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) <a href="mailto:tmdavis@pa.gov">tmdavis@pa.gov</a>.</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This rulemaking is authorized by the act of September 24, 2014, (P.L. 2476, No. 136) (Act 136), which amended the Cosmetology Law (63 P.S. §§ 507- 527) by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon.</p> <p>Effective November 24, 2014, section 9.3(a) of the Cosmetology Law (63 P.S. § 515.3) permits an individual licensed under the Massage Therapy Law (63 P.S. §§ 627.1 – 627.50) to practice massage therapy within the approved premises of a licensed cosmetology salon or licensed esthetician salon. Section 9.3 immediately permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. The purpose of the State Board of Cosmetology Board’s (Board) joint regulations with the State Board of Massage Therapy (Massage Board) is to clarify standards for the practice of massage therapy in cosmetology or esthetician salons.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p>		

The act of September 24, 2014, (P.L. 2476, No. 136) (Act 136) amended the Cosmetology Law (63 P.S. §§ 507 – 527) by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Section 9.3(d) of the Cosmetology Law requires the Board and Massage Board to jointly promulgate final regulations to carry out the provisions of section 9.3.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is required by section 9.3(d) of the Cosmetology Law, which provides that the Board and the Massage Board jointly promulgate final regulations to carry out the provisions of section 9.3. Otherwise, it is not required by any Federal or state law or court order, or Federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Act 136 authorized massage therapists to practice massage therapy within the approved premises of licensed cosmetology and esthetician salons under specified conditions. The Board and the Massage Board must promulgate joint regulations to clarify requirements set forth in the law to ensure safety of individuals receiving massage therapy services in salons.

There are approximately 8,693 licensed massage therapists in this Commonwealth, and the proposed regulation will benefit every massage therapist who has contemplated working in a salon that offers massage therapy services, because the proposed regulation addresses the responsibilities of salon owners, massage therapists, cosmetologists and estheticians working in such a salon.

In this Commonwealth, there are approximately 13,960 licensed cosmetology salons and approximately 2,728 licensed esthetician salons (16,688 salons in total). The Board and Massage Board estimate that as many as one half of these salons in the Commonwealth offer massage therapy services. Therefore, approximately 8,344 salons may be affected by the regulation.

The proposed regulation will benefit individuals working in salons that offer massage therapy services and will also benefit individuals receiving such services. Act 136 was enacted in an effort to modernize the Cosmetology Law and to update the law and regulations to reflect the developments in the spa industry. While some adjustments may need to occur to accommodate massage therapy within salons due to size requirements of massage therapy rooms, such adjustments will improve the services and safety of individuals receiving such services.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions more stringent than federal standards, as there are no federal standards applicable to the subject matter of the regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Of the thirteen (13) states that make up the Northeast quadrant of the United States, none of them prohibit massage therapy from being practiced in a cosmetology or esthetician salon; accordingly, none of them address privacy concerns with relation to massage therapy clients in cosmetology or esthetician salons. The practice of massage therapy was not permissible until the passage of Act 136 of 2014 (63 P.S. § 515.3), which was approved on September 24, 2014. Act 136 positively affects the Commonwealth's ability to compete, by allowing salons in the Commonwealth to hire massage therapists and offer massage therapy services. Much of the proposed regulation clarifies and implements section 9.3 of the Cosmetology law and sets forth the responsibilities of massage therapists when practicing in cosmetology or esthetician salons. The privacy standards are based on the statutory requirements in Act 136, which defines appropriate levels of privacy for massage clients when massage therapists are practicing in cosmetology or esthetician salons.

Subsection (a)(3)(ii)(B) requires that massage therapy rooms be a minimum of 120 square feet in size, which is a generally accepted industry standard based on the size of a standard massage table (73 inches x 30 inches) and allowing room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). Being that 120 square feet is an industry standard minimum size for massage therapy rooms, massage therapists nationwide are expected to perform massage therapy in rooms no smaller than 120 square feet, and such a requirement should come as no surprise to licensed massage therapists.

Accordingly, this regulation will not adversely affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This rulemaking does not affect other regulations of the Board or other state agencies. The regulations are joint regulations with the Massage Board. The Massage Board is proposing the same square footage requirement for massage therapy rooms.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

After Act 136 was enacted, the Board discussed the proposed regulation at board meetings and provided input to the Massage Board with regard to the square footage of massage therapy rooms. On April 17, 2015, an exposure draft was released to interested parties and stakeholders (including the American massage Therapy Association (AMTA), Associated Bodywork & Massage Professionals (ABMP), Federation of State Massage Therapy Boards (FSMTB), National Certification Board for Therapeutic Massage & Bodywork (NCBTMB)), and numerous other professional associations and individuals on April 17, 2015. At the July 6, 2015, Board meeting, the Board was informed that several comments were received in response to the exposure draft. Several comments were from owners of Massage Envy, a business that offers massages. These comments focused on the minimum requirement of 120 square feet for the massage therapy room contained within the regulation. The Massage Envy commentors indicated they would have liked to see the minimum square footage requirement reduced to 90 square feet. The Boards considered the request but decided that the 120 square foot requirement provided in the

regulation was the minimum necessary to ensure the health and safety of patrons of cosmetology salons that offered massage therapy services.

The other concern among commentors, including the Associated Bodywork and Massage Professionals (ABMP), the owner of the Mandarin Rose, and the owner of the Red Sage Salon and Spa, indicated that they disagreed with the requirement that individuals who practice massage therapy in cosmetology or esthetics salons be employees or owners. These commentors expressed a desire to allow independent contractors to perform those services in cosmetology or esthetics salons. The Board considered these comments; however, it was noted that the requirement that individuals performing massage therapy in a cosmetology or esthetics salon be owners or employees is derived from a statutory requirement in Act 136.

The Red Sage Salon and Spa also indicated they wished the Board would create a “spa license” which would incorporate nails, cosmetology, and massage; however, Act 136 does not empower the Board to create a spa license and the Board is not otherwise empowered by the act to create this license classification.

On September 21, 2020, the Board discussed this proposed regulation again to determine if updates to the proposed rulemaking were necessary, and determining no updates were needed, the Board adopted the proposed annex. On November 6, 2020, the Board released another exposure draft to interested stakeholders. A list of the stakeholders is attached as Attachment “A.” The Board did not receive any comments from the regulated community.

The Board and the Massage Board worked cooperatively in identifying issues and jointly decided that clarification was needed with regard to appropriate levels of privacy and square footage requirements. At the January 30, 2023, meeting of the Board, the Board considered the proposed regulation and voted to promulgate the proposed regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

According to the Small Business Administration (SBA), there are approximately 1,095,907 businesses in Pennsylvania; of which 1,091,524 are small businesses. Of the 1,091,524 small businesses, 226,483 are small employers (those with fewer than 500 employees) and the remaining 865,041 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses.

For purposes of this rulemaking, all licensed massage therapists will be impacted by this regulation because it sets forth requirements for massage therapy rooms in salons if they choose to work in salons. Additionally, cosmetology and esthetician salons will be impacted if they choose to offer massage therapy services within the salon.

According to the Pennsylvania Department of Labor and Industry (Department of Labor & Industry), in 2020, massage therapists held about 144,600 jobs nationally, and are employed in the following private sector positions: self-employed workers (35%); offices of all other health practitioners (23%); other amusement and recreation industries (3.25%) and accommodation (.25%). There are approximately 8,693 licensed massage therapists in this Commonwealth.

According to the Department of Labor & Industry, in 2020, cosmetologists held approximately 569,600 jobs nationally, and approximately 12,689 within this Commonwealth, and are employed in the following private sector positions: personal care services (46%); self-employed workers (43%); retail trade (10%). Estheticians held approximately 68,700 jobs nationally, and approximately 2,063 in this Commonwealth and are employed in the following private sector positions: personal care services (40%); self-employed workers (31%); offices of physicians (4%), other amusement and recreation industries (1.4 %) and traveler accommodation (1.1%).

In this Commonwealth, there are approximately 79,533 cosmetologists, 8,787 estheticians, and 13,860 nail technicians. Furthermore, there are approximately 13,960 licensed cosmetology salons and approximately 2,728 licensed esthetician salons (16,688 salons in total). The Board and Massage Board estimate that as many as one half of the cosmetology and esthetician salons in the Commonwealth offer massage therapy services. Therefore, approximately 8,344 cosmetology and esthetician salons may be affected by the regulation.

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the Small Business Administration (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the 2022 NAICS standards to the types of businesses that would be impacted by this proposed regulation, a small business is one that has \$8.5 million or less in average annual receipts for cosmetology (beauty) salons (812112) and \$8.0 million or less in average annual receipts for businesses that offer other personal services (812199).

The Board does not collect information on the size of the businesses where its licensees are employed. However, for purposes of determining the economic impact on small businesses, because 99% of all businesses in the Commonwealth are small businesses, the Board must assume that a large number of its licensees either are or work for small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

This rulemaking only affects salons that choose to allow for the practice of massage therapy and massage therapists who practice in those salons.

The joint decision to require a minimum of 120 square feet for massage rooms in salons is expected to have a minimal effect on the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Most, if not all massage therapy rooms currently in use should already be a minimum of 120 square feet in size because that is a generally accepted industry standard based on the size of a standard massage table (73 inches x 30 inches) and allowing room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). This regulation will have an overall positive effect on salons, massage therapists, and massage clients, because it will require that massage therapy services be provided in a room large enough to safely accommodate the massage therapist, the massage table, and the client.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Only massage therapy licensees who wish to offer massage services in salons will be required to comply

with the proposed regulation. Salon owners who decide to offer massage therapy services (approximately 8,344), and massage therapists who provide services in salons, will be required to comply with the proposed regulation. The Board does not track the number of massage therapists currently working in cosmetology or esthetician salons, and the Massage Board does not track its licensees' place of employment. Additionally, many massage therapy licensees work on a part-time basis, and many licensees are believed to work at multiple locations. Accordingly, there is no way to properly estimate how many massage therapists currently work in salons.

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(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This regulation authorized by section 9.3(d) of the Cosmetology Law, which requires that the Board and the Massage Board jointly promulgate final regulations to carry out the provisions of section 9.3. Accordingly, in drafting its proposed regulation, the Board has determined that regulations are necessary to establish minimum square footage for massage rooms at a minimum of 120 square feet.

Much of the proposed regulation reiterates section 9.3 of the Cosmetology law, but it plays an important role, which is to inform salon owners who wish to offer massage therapy services and massage therapy licensees who perform those services in cosmetology salons of their rights and responsibilities under the Cosmetology law by including the content of section 9.3 into the Cosmetology Board's regulations. Beyond that, the proposed regulation defines an appropriate level of privacy for massage clients in cosmetology or esthetician salons.

The decision to jointly require a minimum of 120 square feet for massage rooms in salons is expected to have a minimal effect on the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. The proposed 120-square-foot room requirement will only affect salon owners who elect to offer massage therapy services. Some salons will have to undergo renovations to meet the 120-square-foot requirement; and if this is the case, they will have to decide whether the cost of renovations outweighs the potential income. However, only salons that have made this cost-benefit analysis will undergo renovations, and the logical conclusion would be that the salons spending money on renovations have determined that to do so would be in their economic interests because benefits outweigh costs. This regulation will have an overall positive effect on salons, massage therapists, and massage clients, because it will require that massage therapy services be provided in a room large enough to safely accommodate the massage therapist, the massage table, and the client.

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(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This regulation is required by section 9.3(d) of the Cosmetology Law, which provides that the Board and the Massage Board jointly promulgate final regulations to carry out the provisions of section 9.3. The proposed regulation requires massage therapy rooms be at least 120 square feet in size. The Board in conjunction with the Massage Board, and with input from interested stakeholders, determined it was necessary to establish specific square footage for massage therapy rooms in salons because the Board regulations at § 7.76 set forth room sizes for cosmetologists that do not take into consideration the different needs of massage therapy.

The benefits of requiring that salons provide massage therapists with rooms that are at least 120 square

feet in size outweigh the costs because establishing massage therapy room size is necessary to provide for a safe environment. Most, if not all massage therapy rooms currently in use should already be a minimum of 120 square feet in size because that is a generally accepted industry standard based on the size of a standard massage table (73 inches x 30 inches) and allowing room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). Additionally, it is safer because along with the massage therapy table, the room must fit all the typical massage therapy supplies to include oils and towels. Moreover, clients typically use the massage therapy room to disrobe and transition to the massage therapy table. This will require a chair, as well as clothing storage such as clothing hooks or a shelving unit. The Board believes allowing a massage therapist to perform massage therapy, multiple times a day, in any room smaller than 120 square feet would be a safety risk.

Only those salons that offer massage therapy services will have to ensure that the separate massage therapy room(s) have the required square footage. Some of these salons will have to undergo renovations to meet the 120-square-foot requirement; and if this is the case, they will have to decide whether the cost of renovations outweighs the potential income. However, only salons that have made this cost-benefit analysis will undergo renovations, and the logical conclusion would be that the salons spending money on renovations have determined that to do so would be in their economic interests because benefits outweigh costs.

Cosmetology and esthetician salon owners have benefited from Act 136 because the salons are now able to offer massage therapy services in their salons for a more rewarding customer experience, and massage therapy licensees have benefited as they are now able to offer services in salons, and the proposed regulation ensures that they will be able practice in an appropriately sized massage therapy room of a minimum of 120 square feet.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board does not anticipate any costs to massage therapists but rather, anticipates that the proposed regulation will benefit massage therapists because it ensures a safe and appropriate workspace for massage therapy. While many established cosmetology and esthetics salons may be able to move a massage therapist from a small room to an appropriately sized room, some salons may incur costs if renovations are necessary to meet the square foot requirements for massage therapy rooms. The proposed 120-square-foot room requirement will only affect salon owners who elect to offer massage therapy services. Some salons will have to undergo renovations to meet the 120-square-foot requirement; and if this is the case, they will have to decide whether the cost of renovations outweighs the potential income. However, only salons that have made this cost-benefit analysis will undergo renovations, and the logical conclusion would be that the salons spending money on renovations have determined that to do so would be in their economic interests because benefits outweigh costs.

Any renovations done to meet the square foot requirement would vastly vary based upon what renovations would be needed.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation would not result in costs or savings to local governments. Should a salon elect to renovate, permits would likely be required, but this would be a cost bore by a salon owner, not the local government.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board is not expected to incur any increased costs in light of this proposed regulation. Under section 9.3(b) of the Cosmetology Law, massage therapists practicing in salons are subject to inspection by the Board and the Massage Board. The Board currently conducts inspections of its licensed salons to ensure compliance with its regulations. The Massage Therapy Board does not license facilities and would be unable perform such inspections without raising fees. As Board inspectors would be inspecting massage therapy rooms within the square footage of salons, and these salons are already being inspected by Board inspectors, the Board does not expect there to be any increase cost to inspect salons who choose to offer massage therapy services.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There should be no legal, accounting or consulting procedures associated with this rulemaking.

(22a) Are forms required for implementation of the regulation?

No new forms must be generated by the Board to implement this regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

No new forms must be generated by the Board to implement this regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 23-24	FY +1 24-25	FY +2 25-26	FY +3 26-27	FY +4 27-28	FY +5 28-29
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0



Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b> 2020-2021 (actual)	<b>FY -2</b> 2021-2022 (actual)	<b>FY -1</b> 2022-2023 (budget)	<b>Current FY</b> 2023-2024 (proposed budget)
State Board of Cosmetology	\$5,523,869.77	\$5,433,521.06	\$5,825,000.00	\$5,597,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
  - (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
  - (c) A statement of probable effect on impacted small businesses.
  - (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.
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- (a) The small businesses ultimately subject to this proposed regulation are cosmetology and esthetician salons that offer massage therapy services (approximately 8,344).
  - (b) There are no additional reporting, recordkeeping or other administrative costs, imposed by the Board, required for compliance with the proposed regulation.
  - (c) The impacted small businesses are salons that decide to offer massage therapy services.

Accordingly, as the decision to offer massage therapy services in a cosmetology or esthetician salon is entirely voluntary, the expected probable impact of this regulation on small businesses is that these businesses will increase revenue.

- (d) The Board could discern no less costly or intrusive alternative methods achieve the purpose of the proposed regulation. The Board has proposed a minimum size of massage therapy rooms in salons, requiring that such rooms be a minimum of 120 square feet in size. The Board's regulations set minimum room size at 60 square feet "for each additional licensee in the salon." The Board and the Massage Board agreed that 60-square feet for a massage therapist is insufficient for the safe practice of massage therapy within a salon. Massage therapy requires more room to maneuver around a client as compared to the space needed for a cosmetology or esthetician client. A 60-square-foot room would not provide a massage therapist sufficient room to safely maneuver around a standard-sized massage table (73 inches x 30 inches) and keep the necessary supplies at hand. Additionally, massage therapy clients are often asked to position their arms at a 90-degree angle to the body, and the massage therapist must safely maneuver around the client's outstretched arms. Moreover, clients are typically expected to use the massage therapy room to disrobe and transition to the massage therapy table. This will require a chair, as well as clothing storage such as clothing hooks or a shelving unit. It would be a safety risk to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. Accordingly, after discussing this issue at a public board meeting, and after reaching an agreement with the Massage Board, the Board is of the opinion that a minimum room size of 120 square feet is appropriate.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed for any affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

For a time, the Board and the Massage Board considered a minimum room size of 90 square feet. However, after additional consideration and review of current industry standards, as well as input from the Massage Board, it became clear that the minimum square footage was insufficient. Accordingly, after discussing this issue at public board meetings, and after reaching an agreement with the Massage Board, the Board proposes a minimum room size of 120 square feet to ensure public safety. The Board believes this proposal represents the least burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational

standards required in the regulation; and

e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

a) & b) The Board did not consider less stringent reporting requirements or deadlines for small businesses or for applicants that intend to work for small businesses. The proposed regulation does not include reporting requirements or deadlines.

a) It would be a safety risk to both the licensed massage therapist and the patrons of the cosmetology or esthetician salon where the services are being performed to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. There are no reporting requirements in the proposed regulation.

b) It would be a safety risk to both the licensed massage therapist and the patrons of the cosmetology or esthetician salon where the services are being performed to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. There are no reporting requirements in the proposed regulation.

c) It would be a safety risk to both the licensed massage therapist and the patrons of the cosmetology or esthetician salon where the services are being performed to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. There are no reporting requirements in the proposed regulation.

d) It would be a safety risk to both the licensed massage therapist and the patrons of the cosmetology or esthetician salon where the services are being performed to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. There are no reporting requirements in the proposed regulation.

e) It would be a safety risk to both the licensed massage therapist and the patrons of the cosmetology or esthetician salon where the services are being performed to expect a massage therapist to safely perform massage therapy, multiple times a day, in any room smaller than 120 square feet. There are no reporting requirements in the proposed regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data, studies or references were used to justify the regulation.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period:

30 days

B. The date or dates on which any public meetings or hearings will be held:

No public hearings were scheduled or held. The Board discusses its regulatory proposals at regularly scheduled meetings. This rulemaking was discussed at the January 5, 2015, July 6, 2015, September 21, 2020, and January 30, 2023, public Board meetings. The Board voted to promulgate the proposed regulation on January 30, 2023.

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|---|----------------------------|
| C. The expected date of delivery of the final-form regulation:                                | (Spring 2024)              |
| D. The expected effective date of the final-form regulation:                                  | Upon publication as final. |
| E. The expected date by which compliance with the final-form regulation will be required:     | Upon publication as final. |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | N/A                        |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings. The Board's remaining 2023 meeting dates are as follows: November 20. More information can be found on the Board's website at: (<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Cosmetology>).

# **ATTACHMENT A**

## STATE BOARD OF COSMETOLOGY

Carol Edwards	Carol71448@yahoo.com
Janet Sanko	JanSanko@aol.com
Kim Kane-Santos	thaimassage4u@rcn.com
Kimberly Nesmith-Lewis	kg@endlesscreationsltd.com
Massage Envy Spa Donald McConnell Melissa Leonard	DMcConnell@MassageEnvy.com Melissa.Leonard@MassageEnvy.com
PAPSA - Aaron Shenck	aaron@papsa.org
PSPSA - Richard Dumaresq, Esq.	ccdq@aol.com
Terrie Suica-Reed	tsuicareed@yahoo.com
The Winter Group Peg Callahan Natalie Cook	pcallahan@wintergrouppa.com ncook@wintergrouppa.com

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory  
Review Commission

December 4, 2023

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: Amy M. Elliott  
Digitally signed by Amy M. Elliott  
DN: cn=Amy M. Elliott, o=Pennsylvania  
Office of Attorney General, ou=Chief  
Deputy Attorney General,  
email=aelliott@attorneygeneral.gov, c=US  
Date: 2023.11.27.08:43:15 -0500  
(DEPUTY ATTORNEY GENERAL)

11/27/2023  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Cosmetology  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4518

DATE OF ADOPTION: \_\_\_\_\_

BY: Tammy Y. O'Neill  
Tammy Y. O'Neill

TITLE Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]  
(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

August 3, 2023  
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF COSMETOLOGY

49 PA. CODE, CHAPTER 7

§ 7.150

Practice of Massage Therapy in Cosmetology or Esthetician Salons

The State Board of Cosmetology (Board) proposes to add § 7.150 (relating to the practice of massage therapy in cosmetology or esthetician salons) to read as set forth in Annex A.

*Effective date*

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

*Statutory authority*

The act of September 24, 2014, (P.L. 2476, No. 136) (Act 136 of 2014) amended the Cosmetology Law (act) (63 P.S. §§ 507 – 527) by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Section 9.3(d) of the act requires the Board and the State Board of Massage Therapy to jointly promulgate final regulations to carry out the provisions of section 9.3.

*Background and purpose*

Section 9.3(a) of the act (63 P.S. § 515.3) permits an individual licensed under the Massage Therapy Law (63 P.S. §§ 627.1 – 627.50) to practice massage therapy within the approved premises of a licensed cosmetology salon or a licensed esthetician salon if: (1) the massage therapy licensee is the owner of or employed by the salon and is not an independent contractor; (2) the massage therapist practices in accordance with the act and the Massage Therapy Law; and (3) the salon owner provides an appropriate level of privacy for clients. Section 9.3(a)(3)(i-ii) of the act further provides that no physical barrier is required when the massage therapist is performing services that a cosmetologist or esthetician could perform; however, should the services exceed those within the scope of cosmetology or esthetics, a separate room with permanent walls and doors must be utilized. Section 9.3(a)(3)(iii) further provides that an esthetician may provide services in the separate room that is designated for massage therapy services, so long as the cosmetologist or esthetician and massage therapist are not providing services concurrently.

Under section 9.3(b) of the act, a licensee is subject to inspection by the Board and the Massage Board. A licensee who violates the act or the Massage Therapy Law shall be subject to discipline by the licensee's applicable licensing board. Section 9.3 of the act immediately permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. For the most part, the amendments to the act were self-executing. The purpose of the Board's joint regulations with the Massage Therapy Board is to clarify standards for the practice of massage therapy in cosmetology or esthetician salons, but it was not immediately clear what provisions required clarification and amendments to the regulations. The Boards worked together in determining and drafting the joint regulations and received input from regulated communities. The Boards agreed to promulgate regulations to address appropriate levels of privacy while practicing massage therapy and minimum size requirements for the separate massage therapy room.



Prior to the enactment of section 9.3, a patron wishing to receive services from a massage therapist and an esthetician would have to move from one room (a room considered not to be within the licensed square footage of the salon) to another room (a room considered to be within the licensed square footage of the salon) for each of the requested services. This process was found to be aversive to the relaxing environment facilities were attempting to provide for their clients. The purpose of section 9.3 (63 P.S. § 515.3) of the act is to allow for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. With the enactment of section 9.3(a)(3)(iii) of the act, a patron can receive massage therapy and esthetic services all within one room. This rulemaking sets forth the requirements for practicing massage therapy in a cosmetology or esthetician salon. The Massage Therapy Board is similarly updating its regulations to clarify the standards for massage therapy in its salons and to ensure consistency between the standards of both Boards.

#### *Description of the proposed amendments*

The Board proposes to add a new section (§ 7.150) to set forth the standards for practicing massage therapy within a cosmetology or esthetician salon under section 9.3 of the act. Subsection (a) would set forth the conditions that must be met to practice massage therapy within a cosmetology or esthetician salon, as required by section 9.3(a) of the act. Subsection (a)(1) would provide that the massage therapy licensee must be the owner of the salon or employed by the salon and is not an independent contractor as required by section 9.3(a)(1) of the act. Subsection (a)(2) would provide that the massage therapist would be required to practice in accordance with this section, the act, the Massage Therapy Law and Chapter 20 (relating to the State Board of Massage Therapy.) Subsection (a)(2)(i) provides that the salon owner may only employ a massage therapist who is currently licensed by the State Board of Massage Therapy. The subsection further provides that the salon owner is responsible to ensure each massage therapist employed by the salon complies with this section, the act, and the Massage Therapy Law and Chapter 20. Subsection (a)(2)(ii) provides that the message therapist who is the owner of the salon shall comply with regulations applicable to salon owners as set forth in the Board’s regulations in §§ 7.50 and 7.66 (relating to management of salons and responsibilities of salon owner or designated person in charge).

Subsection (a)(3) requires that a salon owner provide an appropriate level of privacy for clients. Subsection (a)(3)(i)(A-B) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Furthermore, subsection (a)(3)(i)(A-B) clarifies what services require a separate massage therapy room by specifically listing the massage services that do not require the use of physical barriers. The Board’s proposed regulation reflects section 9.3(a)(3)(i) of the act which provides that no physical barriers separating the areas used for massage therapy from the areas used for cosmetology or esthetics, as defined in section 1 of the act, shall be required when a massage therapist performs massage services that a cosmetologist or esthetician is authorized to perform. Subsection (a)(3)(ii) clarifies that when a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. Furthermore,

subsection (a)(3)(ii) requires that a salon owner provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage services from a massage therapist when the services are beyond the practice of cosmetology or esthetics, as required by section 9.3(a)(3)(i) of the act.

Subsections (a)(3)(ii)(A) through (C) set forth standards for separate massage therapy rooms. Subsection (a)(3)(ii)(A) requires that massage therapy rooms be a minimum of 120 square feet in size, which is a generally accepted industry standard based on the size of a standard massage table (73 inches x 30 inches) and allows room for a massage therapist to safely maneuver around it (approximately 3 to 4 feet on each side of the table). The Board feels this requirement is necessary because § 7.76(a) (relating to floor space) requires an “additional area of at least 60 square feet ... for each additional licensee in the salon”. Accordingly, it is likely that salon owners unfamiliar with the practice of massage therapy will expect massage therapists to perform massage therapy in rooms designed for the practice of cosmetology or esthetician services (i.e., rooms with little more than 60 square feet in size). A 60-square-foot room does not provide a massage therapist sufficient room to safely maneuver around a standard-sized massage table and keep the necessary supplies at hand. Additionally, massage therapy clients are often asked to position their arms at a 90-degree angle to the body, and the massage therapist must safely maneuver around the client’s outstretched arms. Moreover, clients are typically expected to use the massage therapy room to disrobe and transition to the massage therapy table. Accordingly, massage therapy rooms frequently include a chair, as well as clothing storage such as clothing hooks or a shelving unit. It would be a safety risk to expect a massage therapist to safely perform massage therapy multiple times a day in any room smaller than 120 square feet. Accordingly, after discussing this issue at public board meetings, and reaching an agreement with the Massage Therapy Board, the Board is of the opinion that a minimum room size of 120 square feet is appropriate.

Subsection (a)(3)(ii)(B) discusses the storage of linens or other supplies used by a massage therapist in a salon. Sections 7.71a - 7.71c (relating to equipment and supplies for salons) set minimum standards for equipment and supplies, detailing what must be available to licensees, and where linens must be stored. Being that massage therapists working in salons will be required to adhere to both Massage Board regulations and the Board’s regulations, the Board believes that it must clarify where massage therapists may store linens and other supplies. Accordingly, subsection (a)(2)(ii)(C) allows the massage therapist to store linens or other supplies used for massage therapy in the massage therapy room or in the salon in a space designated by the salon owner.

Subsection (a)(3)(ii)(C) states esthetician services may be provided in the massage therapy room, so long as esthetician services were not provided concurrent to the massage therapy services, as required by section 9.3(a)(3)(iii) of the act.

Subsection (b) requires a massage therapist practicing massage therapy within the approved premises of a salon to practice in accordance with act and correlating regulations, the Massage Board’s regulations, and the Massage Therapy Law, as required by section 9.3(a)(2) of the act.

Subsection (c) states that a massage therapist practicing in accordance with section 9.3 of the act would be subject to inspection by both the Massage Board and Cosmetology Board, as required by section 9.3(b) of the Cosmetology Law.

Subsection (d) states that a massage therapist practicing in a salon, who violates the Cosmetology Law or the Massage Therapy Law, is subject to discipline by the Board, as required by section 9.3(c) of the act.

#### *Fiscal Impact and Paperwork Requirements*

There will not be a negative fiscal impact on licensees or the Board. Section 9.3 of the act was added September 24, 2014, and permitted the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon as of November 24, 2014. The Board does not track how many massage therapists work in salons. However, it is unlikely that any significant number of massage therapists have been practicing in rooms smaller than 120 square feet because the practice of massage therapy in any room smaller than 120 square feet would be difficult, and potentially dangerous. However, the small number of massage therapists who may be currently working in rooms smaller than 120 square feet will have to find a way to comply with the proposed regulation. For the reasons explained in this Preamble, it is in the public interest to require that massage therapy be performed in a room large enough to accommodate all that is required.

While section 9.3(b) indicates that massage therapists practicing in salons are subject to inspection by the Board and the Massage Board, the Board currently conducts such inspections, while the Massage Board does not. Accordingly, the Board's fees are structured to allow for these inspections.

#### *Sunset Date*

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 4, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a regulatory analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly, and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State at P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail to [RA-STRegulatoryCounsel@pa.gov](mailto:RA-STRegulatoryCounsel@pa.gov), within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4518 (massage therapy in cosmetology and esthetician salons).

Tammy O’Neil  
Chairperson

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 7. STATE BOARD OF COSMETOLOGY**

\* \* \* \* \*

**PRACTICE OF MASSAGE THERAPY IN  
COSMETOLOGY OR ESTHETICIAN SALONS**

**§ 7.150. Practice of Massage Therapy in Cosmetology or Esthetician Salons.**

(a) A massage therapist licensed under the Massage Therapy Law (63 P.S. §§ 627.1 – 627.50) is permitted to practice massage therapy within the approved premises of a licensed cosmetology salon or a licensed esthetician salon if the following conditions are met:

(1) The massage therapy licensee is the owner of or employed by the salon and is not an independent contractor.

(2) The massage therapist practices in accordance with this section, the act, the Massage Therapy Law and Chapter 20 (relating to the State Board of Massage Therapy.)

(i) The salon owner may only employ a massage therapist who is currently licensed by the State Board of Massage Therapy. The salon owner is responsible to ensure each massage therapist employed by the salon complies with this section, the act and the Massage Therapy Law and Chapter 20.

(ii) A massage therapist who is the owner of the salon shall comply with all of the regulations applicable to salon owners set forth in §§ 7.50 -7.66 (relating to management

of salons and responsibilities of salon owner or designated person in charge).

(3) The salon owner provides an appropriate level of privacy for clients in accordance with the following:

(i) *Massage therapy services within the scope of practice of the Cosmetology Law.*

When a massage therapist is practicing in a separate massage therapy room of the salon or in the areas of the salon used for cosmetology or esthetics, the massage therapist is practicing in the licensed square footage of the salon. Physical barriers separating the areas used for massage therapy services from the areas used for cosmetology or esthetics are not required when a massage therapist provides massage therapy services that are within the scope of practice of cosmetology as defined in § 7.1 (relating to definitions) as follows:

(A) Massage therapy services of the scalp, face, arms or hands, or the upper part of the body.

(B) Massage therapy services of the feet or the lower legs of an individual up to the individual's knee.

(ii) *Massage therapy services beyond the scope of practice of the Cosmetology Law.*

When a massage therapist is practicing in a separate massage therapy room of the salon, the massage therapist is practicing in the licensed square footage of the salon. A salon owner shall provide separate massage therapy rooms with permanent walls and doors to ensure privacy for clients receiving massage therapy services from a massage therapist when the massage therapy services are beyond the scope of practice of cosmetology or esthetics as provided in § 7.1.

(A) The size of the separate massage therapy room must be a minimum of 120 square feet.

(B) The massage therapist may store linens or other supplies in the separate room provided or in the salon in a space designated by the salon owner.

(C) Esthetician services may be provided to a client in the same room where the client receives massage therapy, provided these services are not performed concurrently.

(b) A massage therapist providing massage therapy services within the approved premises of a salon shall practice in accordance with the act, this chapter, and the Massage Therapy Law.

(c) A massage therapist providing massage therapy services within the approved premises of a salon is subject to inspection by the State Board of Massage Therapy and the Board.

(d) A massage therapist providing massage therapy services within the approved premises of a salon who violates the Massage Therapy Law, the act or this section is subject to discipline by the Board.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF COSMETOLOGY

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717)783-7140

December 4, 2023

The Honorable George D. Bedwick, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking  
State Board of Cosmetology  
16A-4518: Practice of Massage Therapy in Cosmetology or Esthetician Salons

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Cosmetology pertaining to Practice of Massage Therapy in Cosmetology or Esthetician Salons.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Tammy Y. O'Neill".

Tammy Y. O'Neill, Chairperson  
State Board of Cosmetology

TYO/TMD/jpp  
Enclosure

cc: Arion Claggett, Acting Commissioner of Professional and Occupational Affairs  
K. Kalonji Johnson, Deputy Secretary for Regulatory Programs  
Andrew LaFratte, Executive Policy Specialist, Department of State  
Cynthia Montgomery, Deputy Chief Counsel, Department of State  
Thomas M. Davis, Regulatory Unit Counsel, Department of State  
Jared L. Hinsey, Board Counsel, State Board of Cosmetology  
State Board of Cosmetology



RECEIVED

**From:** [Orchard, Kari L.](#)  
**To:** [Porta, Jason](#); [Barton, Jamie](#); [Brett, Joseph D.](#)  
**Subject:** RE: DELIVERY NOTICE: REGULATIONS 16A-4518 & 16A-726  
**Date:** Monday, December 4, 2023 10:37:38 AM

Independent Regulatory  
Review Commission  
December 4, 2023

Received.

**Kari Orchard**

Executive Director (D) | House Professional Licensure Committee  
Chairman Frank Burns, 72<sup>nd</sup> Legislative District

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 9:42 AM  
**To:** Orchard, Kari L. <KOrchard@pahouse.net>; Barton, Jamie <JBarton@pahouse.net>; Brett, Joseph D. <JBrett@pahouse.net>  
**Subject:** DELIVERY NOTICE: REGULATIONS 16A-4518 & 16A-726  
**Importance:** High

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

Please be advised that the State Board of Cosmetology and State Board of Massage Therapy are jointly delivering the below proposed rulemakings,

Thank you for your attention to this matter.

- 16A-4518 & 16A-726: Massage Therapy in Cosmetology or Esthetician Salons
  - Currently, Section 7.77 of the State Board of Cosmetology regulations (49 Pa. Code, Chapter 7) prohibits any part of a salon from being used for any purposes other than the practice of cosmetology. Act 136 of 2014, amended the Beauty Culture Law (the Cosmetology Law) (63 P.S. §§ 507 – 527) by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Additionally, section 9.3 directs the State Board of Cosmetology and the State Board of Massage Therapy to jointly promulgate regulations to carry out the provisions of section 9.3. In response, the Boards have drafted and now propose the attached, jointly-promulgated rulemakings.

**Jason P. Porta** | Legal Assistant II  
Counsel Division  
PA Department of State | Office of General Counsel  
2601 North 3rd St  
Harrisburg, PA 17105  
Phone: 717.783.7200 | Fax: 717.787.0251  
[www.dos.state.pa.us](http://www.dos.state.pa.us)

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**From:** [Nicole Sidle](#)  
**To:** [Porta, Jason](#); [Francesca Summa](#)  
**Subject:** RE: [EXTERNAL]: DELIVERY NOTICE: REGULATIONS 16A-726 & 16A-4518  
**Date:** Monday, December 4, 2023 12:04:45 PM

Independent Regulatory  
Review Commission  
December 4, 2023

Good Afternoon—

This has been received.  
Thanks,  
Nicole

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 9:36 AM  
**To:** Nicole Sidle <Nsidle@pahousegop.com>; Francesca Summa <Fsumma@pahousegop.com>  
**Subject:** [EXTERNAL]: DELIVERY NOTICE: REGULATIONS 16A-726 & 16A-4518  
**Importance:** High

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

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Thank you for your attention to this matter.

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Counsel Division  
PA Department of State | Office of General Counsel  
2601 North 3rd St  
Harrisburg, PA 17105  
Phone: 717.783.7200 | Fax: 717.787.0251  
[www.dos.state.pa.us](http://www.dos.state.pa.us)

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**From:** [Smeltz, Jennifer](#)  
**To:** [Porta, Jason](#)  
**Subject:** RE: DELIVERY NOTICE: REGULATIONS 16A-726 and 16A-4518  
**Date:** Monday, December 4, 2023 9:35:32 AM

Independent Regulatory  
Review Commission  
December 4, 2023

Received.

*Jen Smeltz*  
*Executive Director*  
*Office of Senator Pat Stefano*  
*Consumer Protection and Professional Licensure Committee*  
*Phone: (717) 787-7175*

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 9:32 AM  
**To:** Smeltz, Jennifer <jmsmeltz@pasen.gov>  
**Subject:** DELIVERY NOTICE: REGULATIONS 16A-726 and 16A-4518  
**Importance:** High

ⓘ CAUTION : External Email ⓘ

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

Please be advised that the State Board of Cosmetology and State Board of Massage Therapy are jointly delivering the below proposed rulemakings,

Thank you for your attention to this matter.

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Independent Regulatory  
Review Commission

December 4, 2023

**From:** [Vazquez, Enid](#)  
**To:** [Porta, Jason](#); [Monoski, Jesse](#)  
**Subject:** RE: DELIVERY NOTICE: REGULATIONS 16A-4518 & 16A-726  
**Date:** Monday, December 4, 2023 9:55:51 AM

---

Received. Thank you!

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 9:39 AM  
**To:** Monoski, Jesse <jesse.monoski@pasenate.com>; Vazquez, Enid <Enid.Vazquez@pasenate.com>  
**Subject:** DELIVERY NOTICE: REGULATIONS 16A-4518 & 16A-726  
**Importance:** High

EXTERNAL EMAIL

---

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

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December 4, 2023

**From:** [Bulletin](#)  
**To:** [Porta, Jason](#)  
**Cc:** [Keval Mandalia](#); [Adeline E. Gaydosh](#)  
**Subject:** Re: [External] Re: DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726  
**Date:** Monday, December 4, 2023 10:41:39 AM

---

Thank you for sending these two proposed rulemakings. They are scheduled for publication in the 12/16 issue of the *Pennsylvania Bulletin*.

Have a great day!  
Adeline

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 10:27 AM  
**To:** Bulletin <bulletin@palrb.us>  
**Subject:** RE: [External] Re: DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726

Of course. Jason.

**Jason P. Porta** | Legal Assistant II  
Counsel Division  
PA Department of State | Office of General Counsel  
2601 North 3rd St  
Harrisburg, PA 17105  
Phone: 717.783.7200 | Fax: 717.787.0251  
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**From:** Bulletin <bulletin@palrb.us>  
**Sent:** Monday, December 4, 2023 10:25 AM  
**To:** Porta, Jason <jporta@pa.gov>  
**Subject:** Re: [External] Re: DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726

No worries. May we have the word files for the preamble and annex, please?

Thanks in advance,  
Adeline

---

**From:** Porta, Jason <jporta@pa.gov>  
**Sent:** Monday, December 4, 2023 10:17 AM  
**To:** Bulletin <bulletin@palrb.us>  
**Subject:** RE: [External] Re: DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726

No, I had forgotten to attach it. My sincere apologies for any inconvenience. Jason.

**Jason P. Porta** | Legal Assistant II  
Counsel Division  
PA Department of State | Office of General Counsel  
2601 North 3rd St  
Harrisburg, PA 17105  
Phone: 717.783.7200 | Fax: 717.787.0251  
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**From:** Bulletin <[bulletin@palrb.us](mailto:bulletin@palrb.us)>  
**Sent:** Monday, December 4, 2023 10:15 AM  
**To:** Porta, Jason <[jporta@pa.gov](mailto:jporta@pa.gov)>  
**Subject:** [External] Re: DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726

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Hi Jason,

Is 16A-726 coming separately? I want to be sure before scheduling.

Thanks,  
Adeline

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**From:** Porta, Jason <[jporta@pa.gov](mailto:jporta@pa.gov)>  
**Sent:** Monday, December 4, 2023 9:55 AM  
**To:** Bulletin <[bulletin@palrb.us](mailto:bulletin@palrb.us)>  
**Subject:** DELIVERY NOTIFICATION- REGULATIONS 16A-4518 & 16A-726

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

Please be advised that the State Board of Cosmetology and State Board of Massage Therapy are jointly delivering the below proposed rulemakings,

Thank you for your attention to this matter.

- 16A-4518 & 16A-726: Massage Therapy in Cosmetology or Esthetician Salons
  - Currently, Section 7.77 of the State Board of Cosmetology regulations (49 Pa.

Code, Chapter 7) prohibits any part of a salon from being used for any purposes other than the practice of cosmetology. Act 136 of 2014, amended the Beauty Culture Law (the Cosmetology Law) (63 P.S. §§ 507 – 527) by adding section 9.3 (63 P.S. § 515.3) allowing for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon. Additionally, section 9.3 directs the State Board of Cosmetology and the State Board of Massage Therapy to jointly promulgate regulations to carry out the provisions of section 9.3. In response, the Boards have drafted and now propose the attached, jointly-promulgated rulemakings.

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Review Commission

December 4, 2023

**Jason P. Porta** | Legal Assistant II  
Counsel Division  
PA Department of State | Office of General Counsel  
2601 North 3rd St  
Harrisburg, PA 17105  
Phone: 717.783.7200 | Fax: 717.787.0251  
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