

APA-1
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-3-23.16

Rule Title Compliance and Enforcement

New XXXX Amend Repeal Adopt by Reference

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? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facts of the rulemaking 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 §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



Date

2019 APR 18 PM 3:53
4/17/19

LEGISLATIVE SVC AGENCY

FORM APA2
10/17

STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-3-23.16, Compliance and Enforcement

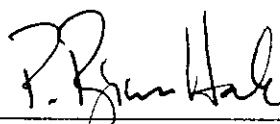
INTENDED ACTION: To amend the current rules.

SUBSTANCE OF PROPOSED ACTION: This amendment will allow for the Department to suspend a body art facility license when persons who do not have a valid Body Art Operators Permit are practicing body art procedures in the facility.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on May 22, 2019, at 9:00 a.m., at the RSA Tower, Suite 1540, 201 Monroe Street, Montgomery, AL 36104.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on Friday, June 4, 2019. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Mark Sestak, Office of Environmental Services, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017, Telephone number: (334) 206-5375.



P. Brian Hale, Agency Secretary

420-3-23-.16 Compliance and Enforcement.

(1) Inspection frequency -

(a) A representative of the Department shall properly identify him or herself upon entering a body art facility to make an inspection. Inspections shall be conducted at least every 180 days or as often as necessary throughout the year to ensure compliance with these rules.

(b) The routine inspection frequency shall be determined by the compliance status found on inspection as below. *Nothing in this section precludes the Department from issuing an immediate Notice of Intent to Suspend/Revoke order, or issuing an emergency order to immediately cease operation or cease using a particular item of equipment or a particular process, if necessary in order to protect the public health.*

(c) A routine re-inspection shall be conducted within 180 days when:

1. No critical items were found in non-compliance or any critical items found in non-compliance are corrected during the inspection, or
2. No second-time repeat non-critical items were found in non-compliance.

(d) A compliance check shall be conducted within 30 days when:

1. One or more critical items are found in non-compliance and are not corrected during the inspection, or one or more repeat corrected critical items from the previous inspection were found in non-compliance regardless of being corrected during the current inspection, or
2. One or more second-time repeat non-critical items from the previous routine inspection were noted in non-compliance regardless of being corrected during the current inspection.

(e) Whenever a compliance check to determine correction of any item finds the item in continuing non-compliance, a Notice of Intent to Suspend or Revoke the license or permit shall be issued to the person in charge at the body art facility. If the item in non-compliance and being the cause for issuance of the Notice is corrected, the body art facility shall retain the inspection status but shall be re-inspected within 30 days.

(2) Inspection report -

(a) The original of the inspection report (see Appendix F) shall be furnished to the permit holder or operator of the body art facility, with the Department retaining possession of a copy.

(b) The inspection report shall designate the compliance status of the body art facility as Routine ~~r~~Re-inspection or Compliance Check Necessary, based on the result of the inspection as specified in 420-3-23-.16(1).

(3) Correction of non-critical violations -

(a) Upon finding a violation of any provision of these rules that is deemed a non-critical item, the Department shall advise the licensee or permitted operator, in writing, of its findings and instruct the operator to correct such violations within a reasonable period of time, but no later than the time of the next routine inspection.

(b) In the event a non-critical violation is not corrected by the time of the next routine inspection, or is the same violation as on the preceding routine inspection, it shall be noted on the inspection report as a repeat violation. In the event one or more non-critical items are found in violation on a second consecutive routine inspection, they shall be noted on the inspection report as a second repeat violation, and shall be corrected as required for critical items in 420-3-23.16(4).

(4) Correction of critical violations -

(a) Violation of any provision of these rules that is deemed a critical item should be corrected immediately, during the course of the inspection, but in any event within 30 days following the inspection.

(b) In the event the violation cannot be corrected during the course of the inspection, or if the critical violation is the same as on the immediately preceding inspection and was corrected at that time but is now in violation again, notice of intent to suspend the body art facility license or operator permit, or both, shall be issued by the Department representative conducting the inspection.

(5) Permit denials, suspensions, and revocations – The Health Officer's denial, suspension, and/or revocation of a permit shall be governed by the Alabama Administrative Procedure Act, § 41-22-1, et seq., Code of Alabama 1975.

(6) Hearings – Contested case hearings shall be provided in accordance with the Alabama Administrative Procedure Act, § 41-22-1, et seq., Code of Alabama 1975, and the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3. Informal settlement conferences may be conducted as provided in the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3.

(7) Suspension of licenses and permits -

(a) Licenses and permits issued under the provisions of these rules may be suspended temporarily by the Department for failure of the holder to comply with the requirements of these rules or for repeated or critical violations of any of the requirements of these rules.

(b) Whenever the Department is aware of, or has reasonable cause to suspect that, 1) a communicable disease has been, or may be, transmitted by an operator to a client; or 2) there is use of unapproved or malfunctioning equipment; or 3) persons who do not have a valid Body Art Operators Permit are practicing body art procedures; or 4) insanitary or unsafe conditions exist which may adversely impact the health of the public, the Department may, upon written notice to the owner or operator, do any or all of the following:

1. Issue an order excluding any or all operators from the licensed body art facility who are responsible, or reasonably appear responsible, for the transmission of a communicable disease until the Department determines there is no further risk to public health.

2. Issue an order to immediately suspend or revoke the license of the body art facility until the Department determines there is no further risk to the public's health. Such an order shall state the cause for the action.

(8) Revocation of permits - The Health Officer may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the Health Officer in the performance of his duty or for failure to comply with the provisions of a notice of permit suspension issued under 420-3-23-.16(5).

(9) Application after revocation - Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit after 90 days from the date of revocation.

(10) Emergency suspension -

(a) Notwithstanding any other provision of these rules, whenever the Department finds insanitary or other conditions which, in the judgment of the designee of the Department authorized to conduct inspections of body art facilities, constitute a substantial hazard to the public's health, he or she may, without warning, issue a written notice to the license holder or permit holder citing such conditions, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken.

(b) If deemed necessary, such order shall state that the license and/or permit is immediately suspended, and all body art procedures shall be immediately discontinued.

(c) Any person to whom such order is issued shall comply immediately therewith.

(11) Penalty -

(a) A person who violates any provision of these rules shall be guilty of a Class C misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both, for each violation.

(b) In addition to any other enforcement action authorized by law, a person alleging a violation of Act 321-2000 may bring a civil action for appropriate injunctive relief.

AUTHORS: Ronald Dawsey, Mark Sestak, Phyllis Fenn, and Lauren Gambill

STATUTORY AUTHORITY: Section 22-17A-7, Code of Alabama, 1975.

EFFECTIVE DATE: May 4, 2001 Amended: Adopted December 20, 2006; effective date January 24, 2007. Amended: Filed September 17, 2009; effective date October 22, 2009. Amended: Filed xx-xx-xxxx, effective date xx-xx-xxxx.