

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
Statutory Authority: 29 Delaware Code, Section 2521 (29 **Del.C.** §2521)

FINAL

ORDER

BEFORE THE DELAWARE DEPARTMENT
OF JUSTICE CONSUMER PROTECTION UNIT
IN THE MATTER OF

REGULATION OF DELAWARE'S HEALTH
SPA ACT 105

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105 Health Spa Act Regulation

Nature of the Proceedings

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and 29 **Del.C.** §2521, the Consumer Protection Unit of the Delaware Department of Justice ("the Unit") is proposing the Health Spa Act Regulation to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

The Unit published its notice of proposed regulation pursuant to 29 **Del.C.** § 10115 in the September 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2021, at which time the Unit would receive information, factual evidence, and public comment to the proposed regulation.

No comments were received by the Unit.

Summary of Proposed Regulation

The proposed regulation was created to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

Possible Terms of the Action Agency

None.

Other Regulations That May be Affected by the Proposal

The agency does not believe that other regulations will be impacted.

Findings of Fact

The Unit finds the proposed regulation as set forth in the September 2021 Register of Regulations should be adopted with additions. The Unit finds that the proposed does not require further public notice or comment because the amendments are non-substantive pursuant to 29 **Del.C.** §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to the Health Spa Act is adopted and shall be final effective November 11, 2021.

October 15, 2021
Date of Signature

Marion Quirk
Director, Consumer Protection Unit

105 Health Spa Act Regulation

1.0 Applicability

- 3.1 The Director of the Consumer Protection Unit enforces the Health Spa Regulation Act pursuant to the authority granted to the Director through 6 Del.C. §4222.
- 3.2 This Regulation of the Health Spa Regulation Act articulates the Director's interpretation of the Act for purposes of implementing and clarifying the statute pursuant to the authority granted in 29 Del.C. §2521.

2.0 Definitions

The following terms are defined in 6 Del.C. §4202 and have the same meaning when used in these rules:

"Buyer"

"Director"

"Health spa"

"Health Spa Contract"

"Health spa services"

"Initiation fee"

"Pre-opening contract"

3.0 Registration

- 3.1 All Health Spas must register with the Director prior to offering, advertising, selling, or executing any Health Spa Contract in the State of Delaware regardless of the contract term.
 - 3.1.1 The individual act of offering or advertising any Health Spa Contract is still unlawful unless the Health Spa has been properly registered with the Director.
 - 3.1.2 Multiple-class, class-package style memberships where consumers purchase a set of classes that is comparable in duration and fees to a three-month membership are considered Health Spa Contracts.
 - 3.1.3 If a Health Spa believes they are exempt from payment due to their multiple-class package model, it should inquire with the Director by presenting contracts, plan offerings, and expected duration of packages at HealthSpaRegulation@Delaware.gov.
- 3.2 Health Spas include yoga studios, Pilates studios, and other studios that use a room in which activities done in service of advertised physical exercise, physical fitness, weight control, or figure reduction occurs.
- 3.3 A Health Spa is required to sign the application to register under penalty of perjury.
- 3.4 Upon the occurrence of any material change in the information on the application to register, the Health Spa has 20 days to update the Director of the related change in information.
- 3.5 All Health Spas must be properly registered by January 1 of every calendar year. A calendar year runs from January 1 to December 31.
 - 3.5.1 Applications to register must be emailed to the Director at HealthSpaRegulation@Delaware.gov by ~~November 15~~ **December 1** prior to the year the Health Spa is registering for.
 - 3.5.2 Applications submitted after ~~November 15~~ **December 1** may be subject to fines at the Director's discretion.
- 3.6 Health Spas must re-submit a registration annually. Registration does not automatically renew.
- 3.7 Registration is not transferrable.
 - 3.7.1 Registration is specific to a health spa's location.
 - 3.7.2 If a health spa closes a location and re-establishes the same business in a different location, a new registration must be submitted unless:
 - 3.7.2.1 The new location is within a 15-mile driving distance; and
 - 3.7.2.2 Interchangeable, comparable services are offered to members with no increase to charges, dues, or fees.
 - 3.7.3 If a health spa has multiple locations, each location must submit a separate registration unless the following conditions are present:
 - 3.7.3.1 Each location is within a 15-mile driving distance; and
 - 3.7.3.2 Interchangeable, comparable services are offered to members with no increase in charges, dues, or fees.
- 3.8 Pre-registration Contracts and Advertising
 - 3.8.1 To lawfully offer, advertise, and sell pre-opening contracts or Health Spa Contracts prior to opening, a Health Spa must file a bond or letter of credit with the Director at the time of registration.

- 3.8.2 Any Health Spa that has registered with the Director to lawfully advertise or sell pre-opening contracts may request the bond or letter of credit be terminated after 90 days of operation but is not required to cancel or terminate the bond or letter of credit.
- 3.8.3 Failure to terminate the bond as provided in subsection 3.8.2 of this regulation is not a waiver of the annual registration requirement for health spas offering and selling qualifying health spa contracts.

4.0 Health Spa Guaranty Fund

- 4.1 Health Spas that offer, advertise, or execute or cause to be executed by the buyer a Health Spa Contract must pay an annual fee pursuant to 6 Del.C. §4203:

<u>Number of unexpired contracts exceeding 3 months</u>	<u>Amount of Annual Fees</u>
<u>199 or fewer</u>	<u>\$1,000</u>
<u>200 to 499</u>	<u>\$2,000</u>
<u>500 to 999</u>	<u>\$4,000</u>
<u>1,000 or more</u>	<u>\$8,000</u>

- 4.2 Health spas must pay an annual fee when:
 - 4.2.1 A Health Spa Contract is offered, advertised, executed, or caused to be executed by a buyer.
 - 4.2.2 A health spa:
 - 4.2.2.1 Obligates a buyer to purchase health spa services to be rendered over a period longer than three months; and
 - 4.2.2.2 Receives money, in an aggregate amount at any point, the amount of which is greater than the value of three months' commitment, are required to pay the annual fee.
- 4.3 Waiver of Annual Fee
 - 4.3.1 A waiver of the annual fee does not waive other registration requirements.
 - 4.3.2 A health spa that meets the criteria for a waiver may apply for a fee waiver under subsection 4.3 of this regulation when filing the annual registration at HealthSpaRegulation@Delaware.gov.
 - 4.3.3 A waiver of the annual fee may be granted at the discretion of the Director when:
 - 4.3.3.1 A health spa does not meet all the criteria of subsection 4.2.2.
 - 4.3.3.2 A health spa that advertises or offers but does not execute contracts for longer than three months.
 - 4.3.3.2.1 If at any point during a calendar year, a health spa that has been granted an exemption pursuant to subsection 4.3.3.2 of the regulation executes a qualifying health spa contract:
 - 4.3.3.2.1.1 The fee waiver shall be automatically revoked without any action by the Director; and
 - 4.3.3.2.1.2 The Health Spa will be required to pay the appropriate fee pursuant to subsection 4.1 of this regulation.
 - 4.3.3.3 The Health Spa Guaranty Fund is over \$250,000 and a health spa is able to demonstrate proof of payment into the fund for any three years in a row.
 - 4.3.3.3.1 Health spas bear the burden of proving they have paid the annual fee for three consecutive years with proof of payment.
 - 4.3.3.3.2 Proof of payment means a copy of the check, bank invoice, or statement demonstrating payment was withdrawn, or other proof of transaction.

5.0 Right of Cancellation

- 5.1 Every Health Spa Contract must be memorialized in writing between the Health Spa and the consumer regardless of the duration of the contract, regardless of fees and pricing schedules, and regardless of the number of locations.
- 5.2 Moving or Going Out of Business
 - 5.2.1 If a Health Spa moves or goes out of business, the Spa must provide its consumers with an alternative facility within 15 miles driving distance, not radial distance, of the original Health Spa location.
 - 5.2.2 If the location is within a 15-mile radius but not within a 15-mile driving distance, the Health Spa must offer its members a pro-rated refund of their fees/paid dues.

6.0 Initiation Fees Limited

- 6.1 It is unlawful for a Health Spa to charge an initiation fee for any contract of less than 12 months' duration. Any Health Spas found to be doing so are subject to be fined at the Director's discretion.
- 6.2 An initiation fee is distinct from optional fees offered in exchange for merchandise that are neither required nor necessary to fully utilize all services offered in the health spa contract.
- 6.3 Initiation fees include ~~[annual fees.]~~ one-time facility fees, club entrance fees, and one-time fees marketed as refundable pending successful completion of the contract.

25 DE Reg. 539 (11/01/21) (Final)