

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 Del.C. Ch 30D)

PROPOSED

PUBLIC NOTICE

4454 Tanning Facilities Regulations

The Department of Health and Social Services is proposing regulations which establish the regulation of Tanning Facilities. 77 Del. Laws, c. 195, § 1. creates the Michelle Rigney Act requiring the regulation of indoor tanning facilities in the State. This Act creates a total ban on indoor tanning for any minors under the age of 14, unless it is medically necessary and prescribed by the specified practitioners. In addition, minors between the ages of 14 and 18 will be required to submit a consent form, signed by the parent or legal guardian in the presence of the tanning facility operator, before they are allowed to tan. This consent will need to be renewed annually. The Act also lays out record retention requirements for these consent forms. This law requires that the Department pass regulations to enforce compliance according to the provisions of Chapter 30D, Title 16 of Delaware Code relating to Regulatory Provisions Concerning Public Health, Tanning Facilities. On February 1, 2010, the Division plans to publish as proposed the Tanning Facilities regulations and hold them out for public comment per Delaware law.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Tanning Facilities. Delaware law mandates that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure and the signature of the consent form is witnessed by an operator. The proposed Regulations for Tanning Facilities will be added as a new chapter to the Division of Public Health regulations and will address the requirements of the consent form, compliance and enforcement procedures, and records retention.

The public hearing will be held on February 23, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the February 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by February 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by March 2, 2010 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

4454 Tanning Facilities Regulations

1.0 Definitions

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. § 3002D: "Customer", "Department", "Minor", "Operator", "Person", "Tanning equipment or device", "Tanning facility".

2.0 Requirements of a Consent Form:

2.1 The consent form to be used by a tanning facility shall include the following model language:

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medicines; or birth control pills). A person taking a prescription or over-the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

2.2 A model consent form that a tanning facility may use is found at Appendix A.

3.0 Records

A tanning facility shall maintain at the facility records of consent forms for all minor customers for a period of at least 3 years from the date of signature on the consent form. The tanning facility shall make records of consent forms available, upon request, for review by the Department.

4.0 Compliance and Enforcement Procedures

4.1 Administrative Penalties

Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500 for the second violation and \$1,000 for the third and all subsequent violations.

4.2 Right to Administrative Hearing

Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 4.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.

4.3 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

5.0 Severability

In the event a particular clause or section of these regulations should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of these regulations shall remain in full force and effect.

Appendix A: Model Consent Form
TANNING FACILITY
PARENT/GUARDIAN CONSENT FORM

Delaware law states that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. (DE Code, Title 16, Chapter 30(D): Tanning Facilities).

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

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PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

CONSENT

I have read and understood the above stated facts about tanning.

I am the _____ parent or _____ legal guardian (check one) of _____
_____ a minor between the ages of 14 and not yet 18 years of age.

(Please print name of minor)

My child and I have been given adequate instruction in the operation of tanning devices.

My child and I have read and understand the contents of this form.

I give consent for my child to use the tanning devices in this facility.

Signature of parent/legal guardian _____ Date _____

Print name of parent/legal guardian _____

Signature of operator _____ Date _____

Print name of operator _____

The minor's parent or legal guardian may withdraw this consent form at any time. Unless so withdrawn, this consent form shall expire one year from the date of the signature.

13 DE Reg. 1029 (02/01/10) (Prop.)