

Tanning Facilities

Effective date: 11/6/13

Pursuant to the authority vested in the Commissioner of Health by Sections 3551 and 3554 of the Public Health Law, Subpart 72-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (a), (b) and (c) of Section 72-1.2 are added as follows:

72-1.2 Application.

(a) The requirements of this Subpart shall apply to all tanning facilities except where ultraviolet radiation devices are used by a qualified health care professional for treatment of medical conditions.

(b) A county or other local jurisdiction may apply to the department for approval of a program for the regulation of tanning facilities within its jurisdiction. When such approval is given, the department of health, or equivalent agency of such county or other local jurisdiction, may enact and enforce local regulations governing such program.

(c) Any local regulations issued pursuant to subdivision (b) of this section must be at least as protective as any related requirements in this Subpart, and may include, but are not limited to, provisions relating to the following:

(1) the conspicuous posting of the tanning facility's license and appropriate warning signs;

- (2) the required provision of informational materials by tanning facilities, which may include, but need not be limited to, an advisory to customers of conditions, such as the use of photosensitizing drugs, under which the use of ultraviolet radiation is contraindicated;
- (3) standards for cleanliness, hygiene and safety;
- (4) the requirement that each tanning facility provide safety goggles and any other safety-related devices to customers without additional charge therefor;
- (5) the reporting of injury or illness related to the use of ultraviolet radiation devices;
- (6) requiring tanning facilities to maintain specified records;
- (7) requiring patrons to provide identification and sign a statement of acknowledgment prior to undergoing ultraviolet radiation exposure at a tanning facility.

The requirements of sections 72-1.1 and 72-1.3 et seq. of this Subpart shall not apply within a local jurisdiction that has established and been approved for a program pursuant to subdivision (b) of this section when such program is in effect.

Paragraph (2) of Section 72-1.8(a) is amended as follows:

- (2) No person under [fourteen (14)] seventeen (17) years of age shall be permitted to use an ultraviolet radiation device. Persons [fourteen (14)] seventeen (17) years of

age to eighteen (18) years of age must provide a consent form as described in Section 72-1.8 (d) of the Subpart.

Section 72-1.8 (d) is amended as follows:

(d) Consent form.

The operator shall not permit persons [fourteen (14)] seventeen (17) years of age to eighteen (18) years of age to use ultraviolet radiation devices until such persons provide the tanning facility operator or an employee responsible for the operation of the ultraviolet radiation device of such facility (per § 3555(2) of PHL) with the written consent form, prescribed by the Commissioner, indicating the following conditions have been met:

Paragraphs (2) and (3) of Section 72-1.8 (d) are amended as follows:

(2) By signing the consent form, the parent or legal guardian and persons [fourteen (14)] seventeen (17) years of age to eighteen (18) years of age acknowledges that they have read the warnings required in Section 72-1.9(a) of these rules and have received the information specified in Section 72-1.8(b) of these rules.

(3) By signing the consent form, the parent or legal guardian acknowledges that the person(s) [fourteen (14)] seventeen (17) years of age to eighteen (18) years of age has agreed to wear protective eyewear.

Notice of Consensus Rulemaking

Statutory Authority:

The Commissioner of Health is authorized by Sections 3551 and 3554 of the Public Health Law (PHL) to promulgate rules and regulations as are necessary to carry out the tanning facility provisions of the PHL.

Basis:

The proposed amendments to Subpart 72-1 (Tanning Facilities) will modify the minimum age that minors are allowed to use commercial ultraviolet (UV) tanning devices to conform with 2012 legislation which amended Section 3555 of the Public Health Law. Chapter 105 of the laws of 2012. The amendments also provide technical revisions to clarify the authority of local jurisdictions to enact and enforce local regulations governing tanning facilities.

The amendment is submitted as a consensus rule because no objections to the changes are anticipated as the amendment merely makes the regulation consistent with the Public Health Law, as amended by Chapter 105 of the laws of 2012, by prohibiting use of UV tanning devices by children less than 17 years of age and requiring those between 17-18 years of age to obtain written parental consent. The law previously prohibited children less than 14 years of age from using UV tanning devices and required those between 14-18 years of age to obtain written parental consent.

There also should be no objection to the technical revisions clarifying the authority of local jurisdictions to enact and enforce local regulation governing tanning facilities.

Job Impact Statement

No job impact statement is required pursuant to section 201-a (2)(a) of the State Administrative Procedures Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.