**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 52 PREVENTIVE MEDICINE**

**10.52.06 Use of Tanning Devices by Minors**

Authority: Health-General Article, §20-106, Annotated Code of Maryland

**Notice of Proposed Action**

[20-061-P]

The Secretary of Health proposes to amend Regulations **.02** and **.03**, repeal existing Regulations **.04**, **.05**, and **.07**, adopt new Regulation **.05**, amend and recodify existing Regulations **.06**, **.08**, and **.10—.12** to be Regulations **.04**, **.06**, and **.08—.10**, respectively, and recodify existing Regulation **.09** to be Regulation **.07** under **COMAR 10.52.06 Use of Tanning Devices by Minors**.

**Statement of Purpose**

The purpose of this action is to:

(1) Align regulations with statute by repealing language regarding parental consent forms as set forth under Chs. 440 and 441, Acts of 2019;

(2) Repeal requirements for maintaining records for each minor customer;

(3) Require the posting of a notice; and

(4) Add penalties for failure to post the notice.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

There may be a decrease in revenues for tanning facilities that derive significant business from customers who are minors, although the extent and magnitude of this impact is indeterminable. The Department cannot estimate how many indoor tanning facilities will be affected, what proportion would qualify as small businesses, or what proportion of their clients have been minors. The proposed changes are pursuant to statutory changes that took effect October 1, 2019; this proposal places no additional burden on small businesses. Funding is not required to implement the proposed amendments to COMAR 10.52.06.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through March 16, 2020. A public hearing has not been scheduled.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(6) (text unchanged)

*(7) “Phototherapy device” means any equipment that emits ultraviolet radiation and is used in the diagnosis or treatment of disease or injury.*

**[**(7)**]***(8)*—**[**(10)**]***(11)*(text unchanged)

**.03 Exclusions.**

This chapter does not apply to **[**tanning devices intended for use:

A. Other than for the tanning of human skin; or

B. For phototherapy by health professionals trained in the treatment of disease.**]***the use of any phototherapy device by a health care practitioner acting within the scope of the license of the health care practitioner or by order of a health care practitioner acting within the scope of the license of the health care practitioner.*

**[.06] *.04*Verification of Age.**

A person-in-charge may not allow a customer to use a tanning device at a tanning facility without**[**:

A. Confirmation**]***confirmation*, with a State or federal government-issued identification card, that the individual is not a minor**[**; or

B. For a minor, an unexpired signed consent form as set forth in Regulation .05 of this chapter**]**.

***.05 Posting of Notices.***

*A. A tanning facility shall display conspicuously a notice that conforms to the requirements of §B of this regulation.*

*B. The notice shall state:*

*(1) That it is unlawful for a tanning facility owner, employee, or operator to allow a minor to use any tanning device;*

*(2) That a tanning facility owner, employee, or operator that violates one or more provisions of this section may be subject to a civil penalty;*

*(3) The health risks associated with tanning, including skin cancer, premature skin aging, injuries including burns, and adverse reactions when combined with certain medications, foods, and cosmetics; and*

*(4) That an individual may report a violation of one or more provisions of this chapter to the local law enforcement agency or local health department.*

*C. The notice shall be:*

*(1) Readily visible and at least 18-point type font; and*

*(2) Made available to a tanning facility by the Department on the Department’s website.*

*D. The owner or person-in-charge shall ensure that the notice required under this regulation is conspicuously posted and in good condition.*

**[.08] *.06* Complaints and Investigations.**

A. A person *or law enforcement officer*may report a violation of this chapter **[**by a written or telephone complaint**]** to the health officer in the jurisdiction where the alleged violation took place.

B.—C. (text unchanged)

**[.10] *.08* Violations and Certification of Correction.**

A. The health officer shall provide the owner of a tanning facility found in violation of a provision of this chapter or Health-General Article, §20-106, Annotated Code of Maryland, with a written notice that contains:

(1) The specific finding and, if applicable, the penalty for the violation, as set forth in Regulation **[**.11**]***.09* of this chapter;

(2) (text unchanged)

(3) A provision that, if the owner fails to correct the violation by the date specified or is in violation of another provision of Health-General Article, §20-106, Annotated Code of Maryland, at another time, the Secretary may impose a subsequent penalty, if applicable, as set forth in Regulation **[**.11**]***.09* of this chapter; and

(4) A provision that the owner is entitled to request a hearing under Regulation **[**.12**]***.10* of this chapter on a violation with a penalty.

B. (text unchanged)

**[.11] *.09* Penalties.**

The penalties for a violation of Regulation .04**[**, .05C, D, or E, or.06**]***or .05*of this chapter, or of Health-General Article, §20-106, Annotated Code of Maryland, are:

A.—D. (text unchanged)

**[.12] *.10* Request for Hearing.**

A. A person who receives a notice of violation with a penalty for a violation of Regulation .04**[**, .05C, D, or E, or .06**]***or .05* of this chapter, or of Health-General Article, §20-106, Annotated Code of Maryland, may request a hearing on the notice of violation with a penalty.

B.—D. (text unchanged)

ROBERT R. NEALL
Secretary of Health