



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 29, 2024

TO:

FROM: Benjamin Shrader, Chairperson 
State Council for Persons with Disabilities

RE: House Bill 348, 27 DE Register of Regulations 740 (April 1, 2024)}

The SCPD has reviewed HB 348 to amend Section 122 of Title 16 to prohibit DHSS from issuing any regulation requiring that a “hotel, private campground facility or pool servicing residential communities including apartments, townhomes or single-family communities provided the pool is not accessible to the general public” have a lifeguard.

The Division of Public Health has the responsibility for regulating swimming pools. The regulations are found in 16 Delaware Admin Code Section 4400.¹ Indeed, in Section 1.4, motels, hotels, private campgrounds and any pool that has been granted private pool status are exempted from the requirement to have a lifeguard on duty. Private pools are defined in Section 2 and include pools that are not open to the general public and intended strictly for the “beneficial owner/s” or their guests. A pool with multiple users can be considered a private pool if it is owned by the homeowners collectively and no pool memberships are available to non-beneficial owners. The pools that HB 348 intends to exempt do not meet the definition of a private pool under the regulation. The pool is not owned or controlled by the residents, and they have no control whatsoever over the operation of the pool or who can use it.

Swimming pool- related accidents are a significant cause of both deaths and serious and frequently disabling injuries. Obviously, death by drowning is a primary risk. Death by drowning is the

¹[https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20\(HSP\)/4464.shtml](https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20(HSP)/4464.shtml);

leading cause of death for children between the ages of 1 and 4 and the third leading cause of accidental death for children ages 5 to 19.² People of color are at significantly greater risk of drowning.³ According to the CDC:

For people younger than age 30, drowning rates among Black people were 1.5x higher and among American Indian and Alaska Native people were 2x higher than White people

- Drowning is a leading cause of death among children 1–4 years of age
- Deaths among persons with autism spectrum disorder were nearly 40x as likely to be caused by drowning as deaths in the general population (Injury mortality in individuals with autism, AJP) ⁴

In addition, nonfatal swimming accidents cause a significant number of spinal cord injuries, and brain injuries due either to blunt trauma or anoxia from near-drowning. Diving is especially dangerous and is one of the top five causes of spinal cord injuries.⁵ Swimming accidents are one of the top ten causes of brain injury in children under 14.⁶

Moreover, as of 2021, 19% of Delaware residents lived in multifamily housing and 28% lived in renter-occupied housing.⁷ It is also true that African Americans constitute a disproportionately high percentage of renters.⁸ Pools at apartment and condo complexes are attractive nuisances. There are frequently many young families living in these settings. Many users are young, and they are not accomplished swimmers. In every way, pools at multi-family housing complexes resemble community pools rather than private pools owned and maintained by homeowners.

The American Academy of Pediatrics recommends that all community pools have lifeguards, as one layer of protection against drowning and serious injuries.⁹ Given the risks associated with unattended swimming, particularly among children and especially children from disadvantaged groups who are more likely to live in apartment complexes, it makes little sense not to require such facilities to provide lifeguards. This is not a decision that should be driven by economics, especially as it is unlikely that the impetus for this bill is coming from tenant complaints.

² AAP Policy Statement, Prevention of Drowning, Sarah A. Denny, MD, et al, http://publications.aap.org/pediatrics/article-pdf/143/5/e20190850/1076765/peds_20190850.pdf;

³ Id; <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6319a2.htm#:~:text=Blacks%20aged%205%E2%80%9319%20years%20were%205.5%20times%20more%20likely,times%20the%20rate%20of%20white>

⁴ https://www.cdc.gov/drowning/pdf/CDC-DIP_At-a-Glance_Drowning_508.pdf;

⁵ <https://helpholive.org/5-unforgettable-facts-about-diving-and-spinal-cord-injuries/>

⁶ <https://www.aans.org/Patients/Neurosurgical-Conditions-and-Treatments/Sports-related-Head-Injury>

⁷ https://www.destatehousing.com/FormsAndInformation/datastatmedia/ds_delaware_fs.pdf;

⁸ <https://www.nlc.org/article/2023/09/12/housing-for-renters/#:~:text=People%20of%20color%20are%20more%20likely%20to%20be%20renters%2C%20reflecting,in%20the%20lowest%20income%20groups;>

⁹ AAP Policy Statement, supra.

The SCPD suggests DHSS continue to require lifeguards at pools in multi-family complexes including apartments and townhomes as one layer of protection for residents and their guests who access the facilities. Even preventing one serious spinal cord injury or one drowning of a child is well worth the expense of a seasonal lifeguard.

Thank you for your consideration. Please reach out to the SCPD with any questions or concerns.

cc: Marissa Band, Esq., DLP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council