

The Office of Children and Family Services

Residential Pool Guidelines (Updated 8-6-08)

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Regulations Pertinent to Residential Pool Use (Emergency Regulations filed June 6, 2001)

Part 416 Safety:

416.5 (f) and (g)

(f)(1) Each group family day care provider must ensure that barriers exist to prevent children from gaining access to any swimming pool, drainage ditches, wells, ponds or other bodies of open water located on or adjacent to the property where the group family day care home is located. Such barriers must be of adequate height and appropriately secured to prevent children from gaining access to such areas.

(2) Each group family day care provider must ensure that adequate barriers exist to prevent children from gaining access to unsafe, dangerous or hazardous areas or devices. Such areas and devices include, but are not limited to, holes, pits, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.

(g)(1) The use of spa pools, hot tubs and fill-and-drain wading pools is prohibited. The use of non-public and residential pools is also prohibited except in those instances where a provider can demonstrate the ability to operate and adequately supervise the use of a non-public or residential pool in a clean, safe and sanitary manner. The provider must receive Office approval prior to use of a non-public or residential pool for children in day care.

(2) To receive approval from the Office of the use of a non-public or residential pool, a provider must:

(i) provide to the Office documentation demonstrating that there will be adequate supervision of all children in care while children use the pool, in accordance with the requirements of section 416.8 of this Part;

(ii) submit documentation acceptable to the Office demonstrating that consistent, safe and adequate water quality of the pool will be maintained; and

(iii) submit a written pool safety plan acceptable to the Office that sets forth adequate safety standards for use of the pool.

(3) Providers must obtain prior written permission from the parent for their child to use the pool. Permission notes must include the following:

- (a) Name and age of the child;
- (b) Address where the pool is located;

- (c) The depth of the pool at its deepest point;
- (d) Dates or months the child is permitted to swim in the pool; and
- (e) Signature of parent and date signed

(4) A trained person as described in paragraph (4) of subdivision (a) of section 416.8 of this Part must present at the pool whenever the pool is in use by day care children.

(5) Providers approved to use non-public or residential swimming pools for children in day care will maintain those records required by the Office as a condition of approval of use of the pool.

Part 416 Supervision:

416.8 (a)(4)

(4) With the prior written permission of the parents, providers meeting the requirements of subdivision (g) of section 416.5 of this Part may allow children in day care to participate in residential pool activities providing the following supervision criteria are met:

(i) The provider must develop a plan of supervision which ensures that there is a person supervising the children in the pool at all times children are using the pool. This person must be able to swim. Where some children in care are using the pool and others are not using the pool, the plan of supervision must ensure that there will be adequate and appropriate supervision of the children using the pool and those not using the pool. While the pool is in use, the group family day care home must continue to meet the supervision requirements of subdivision (d) of this section for all children in care, including children involved in pool activities.

(ii) As of August 1, 2001, any person supervising children in pools must possess a current American Red Cross Cardiopulmonary Resuscitation Certification (CPR) or equivalent certification, as approved by the Office.

Part 417 Safety:

417.5(f) and (g)

(f)(1) Each family day care provider must ensure that barriers exist to prevent children from gaining access to any swimming pool, drainage ditches, wells, ponds or other bodies of open water located on or adjacent to the property where the group family day care home is located. Such barriers must be of adequate height and appropriately secured to prevent children from gaining access to such areas.

(2) Each family day care provider must ensure that adequate barriers exist to prevent children from gaining access to unsafe, dangerous or hazardous areas or devices. Such areas and devices include, but are not limited to, holes, pits, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.

(g)(1) The use of spa pools, hot tubs and fill-and-drain wading pools is prohibited. The use of non-public and residential pools is also prohibited except in those instances where a provider can demonstrate the ability to operate and adequately supervise the use of a non-public or residential pool in a clean, safe and sanitary manner. The provider must receive Office approval prior to use of a non-public or residential pool for children in day care.

(2) To receive approval from the Office of the use of a non-public or residential pool, a provider must:

(i) provide to the Office documentation demonstrating that there will be adequate supervision of all children in care while children use the pool, in accordance with the requirements of section 417.8 of this Part;

(ii) submit documentation acceptable to the Office demonstrating that consistent, safe and adequate water quality of the pool will be maintained; and

(iii) submit a written pool safety plan acceptable to the Office that sets forth adequate safety standards for use of the pool.

(3) Providers must obtain prior written permission from the parent for their child to use the pool. Permission notes must include the following:

(f) Name and age of the child;

(g) Address where the pool is located;

(h) The depth of the pool at its deepest point;

(i) Dates or months the child is permitted to swim in the pool; and

(j) Signature of parent and date signed

(4) A trained person as described in paragraph (4) of subdivision (a) of section 416.8 of this Part must be present at the pool whenever the pool is in use by day care children.

(5) Providers approved to use non-public or residential swimming pools for children in day care will maintain those records required by the Office as a condition of approval of use of the pool.

Part 417 Supervision:

417.8 (a) (4)

(4) With the prior written permission of the parents, providers meeting the requirements of subdivision (g) of section 417.5 of this Part may allow children in day care to participate in residential pool activities providing the following supervision criteria are met:

(i) The provider must develop a plan of supervision which ensures that there is a person supervising the children in the pool at all times children are using the pool. This person must be able to swim. Where some children in care are using the pool and others are not using the pool, the plan of supervision must ensure that there will be adequate and appropriate supervision of the children using the pool and those not using the pool.

(ii) As of August 1, 2001, any person supervising children in pools must possess a current American Red Cross Cardiopulmonary Resuscitation Certification (CPR) or equivalent certification, as approved by the Office.

OPERATION REQUIREMENTS

The use of spa pools, hot tubs and fill and drain wading pools is prohibited. The use of non-public and residential pools is also prohibited except when a provider submits adequate documentation that the pool can be operated and maintained in a clean, safe and sanitary manner.

Adequate documentation shall mean:

Permit to operate a swimming pool in conformance with Subpart 6-1 of the State Sanitary Code issued by a County or State Health Department

Or

A letter or report from a professional engineer licensed to practice engineering in New York State indicating that the recirculation, filtration and disinfection systems have been evaluated and can produce safe, sanitary water quality.

The recirculation system consisting of pumps, piping filters, water conditioning and disinfection equipment shall be capable of clarifying, chemically balancing and disinfecting the swimming pool water. A minimum turnover rate of 8 hours shall be provided.

The disinfection system shall be designed to provide continuous disinfection of the pool water by chlorine or bromine. The equipment shall be capable of maintaining at least 0.6ppm free chlorine residual or 1.5ppm bromine residual throughout the pool.

The report shall also address safety aspects of the pool including adequacy of fences*, main drain suction outlet covers/grating, pool bottom slope, safety float lines, prohibition of slides and diving boards. Fencing should be in compliance with the State Uniform Fire Prevention and Building Code. The slope of the pool bottom in water less than five (5) feet shall not exceed one (1) foot vertical to twelve (12) feet horizontal.

Or

Equivalent documentation acceptable to the State Health Department.

* Adequacy of fences shall mean consistent with Local Standards.

Pool Safety Plan

Family and group family providers electing to use their residential pools for use by day care children must develop, update and implement a written safety plan, consisting of:

- procedures for daily bather supervision
- safety instruction for day care children
- a list of pool rules and a plan on how they will be shared with day care children
- injury prevention
- reacting to emergencies, injuries and other incidents,
- providing first aid
- summoning help
- Informing parents of injuries and other incidents
- Reporting serious incidents to Bureau of Early Childhood Services, Regional Office.(see reporting guidelines)

The safety plan must be submitted to the regional office in your area for review and approval. **Children in day care may not use the swimming pool or be permitted in the pool area until approval of the plan has been issued by the regional office.** Re-review of the safety plan by the regional office licensor is needed only when changes are made to the existing pool safety plans of record.

Pools rules must include but are not limited to the following:

- Diving in any pool regardless of pool's depth or level of supervision is strictly prohibited.
- The use of pool slides is prohibited. [Serious injury to the spinal cord can result from the improper use of slides.]
- Do not allow a child to attempt back flips, somersaults or twisting somersaults into the pool
- No running around pool deck area
- Children may not swim after dusk
- Children may not swim in inclement weather (rain, storms, thunder, lightning etc)
- Avoid having a child in a pool for long periods of time or when he or she is tired, sick or taking any medication that would interfere with balance or attentiveness.
- Do not allow a child to attempt a move or an activity that is beyond their ability or skill level.
- Strictly adhere to the manufacturers warnings and guidelines for pool use.
- Respect each child's physical limitations. **DO NOT** allow a child to swim if tired or short of breath.

Supervision

According to the National Safety Council drowning is the fourth leading cause of accidental death. A child can drown in **any** body of water no matter how shallow or safe it appears. *Most drownings take place in fresh water, often in home swimming pools. Most children drown within a few feet of safety and in the presence of a supervising adult. ❶.*

There is no substitute for vigilant supervision.

Whenever a pool is in use (children are pool side or in the pool area) at a day care program, all day care children of all ages regardless of their swimming abilities, or maturity levels must have direct supervision. Adequate* pool supervision must include a trained person, as defined in the training section of these guidelines.

The person supervising the children in the pool must be able to swim. There must also be adequate supervision of all children, whether in the pool area or outside the pool area, at all times. This means that either :

1. another adult(s) must be available to supervise the children who are not involved in any water activities or have individual needs unrelated to pool safety
- or**
2. a plan for supervisory coverage of the children in the pool and those outside the pool must be in force whenever a conflict occurs. This plan must be pre-approved by the Regional Office.

The following regulations [416.8(a)(4)(i) and(ii) and 417.8(a)(4)(i) and (ii)] pertain to supervision issues related to pools located at family and group family day care programs:

(i) The provider must develop a plan of supervision which ensures that there is a person supervising the children in the pool at all times children are using the pool. This person must be able to swim. Where some children in care are using the pool and others are not using the pool, the plan of supervision must ensure that there will be adequate and appropriate supervision of the children using the pool and those not using the pool.

(ii) As of August 1, 2001, any person supervising children in pools must possess a current American Red Cross Cardiopulmonary Resuscitation Certification (CPR) or equivalent certification, as approved by the Office.

❶ National Health and Safety Performance Standards, Guidelines for out-of-home child care programs, Maternal and Child Health Bureau (1992) pgs.192-196, section 5.4.

* for purposes of this document the word “adequate” shall mean sufficient to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted or act performed in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of this document.

State Central Register (SCR) Clearances, Finger printing and Training Requirements

If staff are hired for the exclusive purpose of supervising pool activities providers must meet the following requirements for such staff:

- Submit a SCR clearance form to their regional office licensor.
- Comply with all fingerprinting requirements expected of staff or volunteers in day care programs
- Meet the training requirements specific to pool supervision found in 18 NYCRR regulation part 416.8(a)(4)(ii) and 417.8(a)(4)(ii) - see below:

(ii) As of August 1, 2001, any person supervising children in pools must possess a current American Red Cross Cardiopulmonary Resuscitation Certification (CPR) or equivalent certification, as approved by the Office.

If any staff are hired for the sole purpose of supervising day care children while they are in the pool, such staff will not have to meet the health and safety training requirements or the mandated 30 hour requirement that staff with expanded duties must meet.

Maintenance of Pools

- Swimming pool recirculation and disinfection equipment must be operated continuously.
- A floating line must be provided at the slope breakpoint or five-foot depth point. It is also recommended that a four-inch stripe of contrasting color be provided and maintained at the slope breakpoint or five-foot depth point on the pool bottom, and at submerged step edges and ledges.
- Any main drain grates must be secured in place at all times. Broken or missing main drain grates must be repaired or replaced before the pool is used.
- Inlets must be adjusted to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the swimming pool.
- Water levels in the swimming pool must be maintained to provide adequate skimming of the entire pool surface. Skimming must be continuous.
- Skimmer weirs must be maintained in working order and the skimmer covers must be secure. Skimmer baskets must be cleaned at least daily.
- All electrical devices, such as radios and dryers must not be in the pool area.
- Colorimetric test kits must be used to determine free disinfectant residual, pH of the pool water and where necessary, total alkalinity and calcium hardness. The kits used must be appropriate to the type and size of pool to accurately measure levels of pH, disinfectant residual, alkalinity and calcium.
- A pH level should be checked at least once a day and maintained in a range of between 7.2 to 7.8 .
- Chlorine levels should be checked at least three times a day and maintained in the range of 0.6 and 5.0. Checking the levels of chlorine is only required on days the pool will be used for day care purposes.
- Bromine levels must be checked 3 times a day and maintained in the range of 1.5 and 6.0. Checking levels of bromine is only required on days the pool will be used for day care purposes.

Record Keeping and Reporting Responsibilities.

Employee records must be kept on behalf of any staff person hired **solely** to supervise day care children in a residential pool. Along with the required employee forms such as references and medical forms the employer must keep a copy of the SCR clearance, criminal history record review results, and a photo-copy of the certification the person supervising the pool presented at the time of employment.

A full report of any injury or illness occurring at a swimming pool must be reported by the provider to the Regional Office within 1 business day of its occurrence. This shall include incidents that occur which: require resuscitation; require referral to a hospital or other facility for medical treatment; or is a bather illness associated with pool water quality. Any death of a child associated with pool use must be reported to the Office immediately.

A complete daily operations record for pool use must be kept. Forms for this use may be obtained through the regional office but minimally the daily record must include:

- Date
- Name of person supervising the pool and credentials
- Filter wash (record how often this is done)
- Pool cleaned check
- Total number of bathers (names of those using the pool)
- Chlorine used (amount)
- Disinfection test results: Residual, Chlorine, Bromine
- Alkalinity test results
- Special remarks

POOL ALARMS

Effective July 16, 2008, Executive Law added § 377 and 378 to its uniform code provisions. This newly adopted law requires that each *residential swimming pool** installed, constructed or substantially modified** after December 14, 2006 and each *commercial swimming pool**** installed, constructed or substantially modified after December 14, 2006 shall be equipped with an approved pool alarm which:

1. is capable of detecting a child entering the water and giving an audible alarm when it detects a child entering the water;
2. is audible pool side and at another location on the premises where the swimming pool is located;
3. is installed, used and maintained in accordance with manufacturer's instructions;

4. is classified by Underwriters Laboratory, Inc. (or other approved independent testing laboratory)
5. is not an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation;

Multiple Alarms may be required if a single alarm device is not capable of detecting entry into the water at all points on the surface of the swimming pool.

Exceptions: There are two exceptions to the rules above:

1. A hot tub or spa equipped with a safety cover classified by Underwriters Laboratory Inc. to reference standard ASTM F1346 (2003)
2. Any swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover classified by Underwriters Laboratory Inc. to reference standard ASTM F3146 (2003).

Definitions:

* **Residential swimming pool** is defined in code as a swimming pool situated on the premises of a detached one-or two-family dwelling not more than three stories in height with separate means of egress; a multiple single-family dwelling (townhouse) not more than three stories in height with separate means of egress; a one-family dwelling converted to a bed and breakfast; a community residence for 14 or fewer disabled persons, operated by or subject to licensure by the Office of Mental Health or the Office of Mental Retardation and Developmentally Disabilities; a one-or-two-family dwelling operated for the purpose of providing care to more than two but not more than eight hospice patients.

** **Substantially modified** means any repair reconstruction, rehabilitation, addition, or improvement of a swimming pool, the cost of which equals or exceeds 50 percent of the market value of the swimming pool before the repair, rehabilitation, addition or improvement is started. If a swimming pool has sustained substantial damage, any repairs are considered to be a substantial modification regardless of the actual repair work performed.

*** **Commercial swimming pool** means any swimming pool that is not a residential swimming pool as defined above.