

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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MEMORANDUM

To: Local Boards of Health

From: Steven Hughes, Director, Community Sanitation Program

Date: September 22, 2005

Re: Swimming Pool Enclosure Advisory

105 CMR 435.00 Minimum Standards for Swimming Pools
(State Sanitary Code, Chapter V)

This Advisory concerning outdoor inground swimming pool enclosures replaces the previous Swimming Pool Enclosure Advisory, issued by the Division of Community Sanitation on June 24, 1988. This new advisory, provided by the Community Sanitation Program (CSP) and the Department's Office of the General Counsel is intended to clarify current requirements under 105 CMR 435.00 and M.G.L. c. 140, §206 regarding required enclosures for outdoor inground public and semi-public swimming and wading pools.

In Chapter 397 of the Acts of 1975, the Legislature enacted a requirement that: "Every semi-public outdoor inground swimming pool shall be enclosed by a fence or structure six feet in height and firmly secured at ground level" This law was amended the following year in Chapter 253 of the Acts of 1976 which is codified at Massachusetts General Laws c. 140, §206 (hereafter, the "Act"). The Act, as it currently reads, has the following provision concerning enclosures for both public and semi-public outdoor inground swimming and wading pools:

Every public and semi-public outdoor inground swimming pool shall be enclosed by a fence six feet in height and firmly secured at ground level provided that any board or stockade fence or structure shall be at least five feet in height, but if over five feet in height, the fence shall be chain link. Such enclosure, including gates therein, shall not be less than six feet above the ground, and any gate shall be self-latching with latches placed four feet above the ground or otherwise made inaccessible from the outside to children up to eight years of age. Such enclosure shall be constructed of such material and maintained so as not to permit any opening in said enclosure, other than a gate, wider than three inches at any point along the enclosure.

The relevant section of the swimming pool regulations (hereafter, the "Regulations") on pool enclosures [105 CMR 435.03(12)] states the following: (12) *The operator of every swimming pool, wading or special purpose pool shall provide and maintain adequate enclosures to prevent animals and unauthorized persons from entering the pool area.*

(a) All outdoor inground swimming, wading or special purpose pools constructed before October 2, 1975 shall be enclosed by a firmly secured fence of at least four feet in height. All gates into the pool area shall be self-latching with latches placed four feet above ground level or otherwise made inaccessible to children up to eight years of age.

(b) All outdoor inground swimming, wading or special purpose pools constructed after October 2, 1975 shall be enclosed by a fence six feet in height and firmly secured at ground level provided that any board or stockade fence or structure shall be at least five feet in height, but if over five feet in height, the fence shall be a chain link. Such enclosure, including gates therein, shall not be less than six feet above the ground, and any gate shall be self-latching with latches placed four feet above the ground or otherwise made inaccessible from the outside to children up to eight years of age. Such enclosure shall be constructed of such material and maintained so as not to permit any opening in said enclosure, other than a gate, wider than three inches at any point along the enclosure. (M. G.L. c. 140, § 206)

Pools constructed prior to the effective date of the Act [October 2, 1975] are subject to a grandfather clause which exempts such pools from the enclosure requirements of the Act provided that such pools "were constructed in conformity with -the local building code and the state sanitary code, and provided further, that said fences or structures shall be not less than four feet in height and anchored into ground or base." [St. 1975, c. 397, §2; 8t. 1976, c. 253, §2.]

For all outdoor inground public or semi-public swimming and wading pools constructed after October 2, 1975, full compliance with the Act and regulations is required. While the Act is somewhat ambiguous and contradictory regarding the requirements for pool enclosures, the CSP provides the following guidance based on a reasonable interpretation of the Act in order to assist local Boards of Health in enforcing compliance with the pool enclosure requirements:

1. All outdoor inground public and semi-public swimming and wading pools must be completely enclosed by:
 - (a) A chain link fence at least 6 feet in height; or
 - (b) A board or stockade fence exactly 5 feet in height; or
 - (c) A combination of an approved fence (a or b above) and a structure (such as a building) that is at least 5 feet in height.
2. Although not mandated by the Act, all outdoor public and semi-public special purpose pools must comply with the same enclosure requirements (1a, 1b or 1c above), pursuant to the Regulations.
3. Pools constructed prior to October 2, 1975, which are exempt from the enclosure requirements of the Act, must comply with the enclosure requirements (1a, 1b or 1c above) if the fence is replaced.
4. All entrances/gates into pool areas must be the same height as the fence and equipped with self-latching devices placed 4 feet above the ground or otherwise made inaccessible from the outside to children up to 8 years old. An entrance from a structure (such as a building) directly into the pool area is only permitted if the entrance has a doorway with a self-latching device placed 4 feet above the ground.
5. Pools must be completely enclosed by the fence and/or structure to ensure that individuals do not have access to the pool from any areas other than the *entrance/gate*.
6. No opening in the enclosure, other than the gate (when open), can be wider than 3 inches (including the space between the fence and the ground).
7. All indoor public and semi-public swimming, wading and special purpose pools must comply with the requirements outlined at 105 CMR 435.03(12)(c).

Local Boards of Health cannot grant variances for outdoor inground public and semi-public swimming and wading pool fences. Since these requirements are governed by statute, local

Boards of Health and the Department of Public Health do not have authority to vary any of these provisions regarding pool enclosures.