

COVID-19 AND SWIMMING POOLS – UPDATED REGULATIONS FOR ASSOCIATIONS IN DECIDING WHETHER AND HOW TO REOPEN

By Loren Rosenberg Lightman, Esq. – Hill Wallack LLP, President of CAI-NJ Board of Directors
Benjamin Basch – American Pool Enterprises, Secretary of CAI-NJ Board of Directors

As we head into the summer of 2021 pool season, the questions and concerns raised about whether to and how community associations should open association amenities during the COVID-19 pandemic became stronger and louder. In light of the new Executive Orders and the vaccine availability, many communities found themselves revisiting their options for the 2021 pool season. This article will summarize the revised regulations announced by the state in recent weeks.

On May 7, 2021, the NJ Department of Health (DOH) issued updated regulations on “Pools and Aquatic Recreation Facility Standards” that went into effect on May 19, 2021. The regulations, interpreted as applying to pools located within community associations, tweaked but did not eliminate previous DOH pool regulations. A new role designation, COVID Point of Contact, was specified combining the responsibilities of the COVID Contact Person and the Ambassador from previous guidance. It indicated that the position could be covered by existing staff, volunteers or third parties, as long as it did not fall on active duty lifeguards. It remains advisable to consider retaining an outside vendor to perform this task for insurance and liability purposes. The minimum cleaning frequency for frequently touched surfaces within the pool facility and bathrooms was relaxed from several times a day to just one time daily.

With the adoption of Executive Order No. 239 on May 13, 2021, effective May 19, 2021, Governor Murphy relaxed many of the restrictions that were implemented during the pandemic. While the EO removed percentage capacity limits for indoor and outdoor business, it still imposed requirements that facilities limit occupancy in order to ensure social distancing of six feet between individuals or groups of individuals entering a facility together. The regulations were applicable to indoor and outdoor pools so that even though percentage capacity limits were no longer relevant, capacity limits were still governed by limits imposed by social distancing requirements.

Then, on May 20th, the Governor issued Executive Order No. 241, which eliminated masking requirements in most outdoor settings. It therefore seemed that while pool patrons did not have to wear masks outdoors with a couple of exceptions, a very relevant exception in the community association realm was outdoor swimming pools due to existing state regulations applying specifically to pools. The question left open was whether and how soon the DOH would

issue updated regulations reflecting the recent executive orders pertaining to capacity limits and mask requirements.

That question was answered on May 19, 2021, when the DOH issued revised regulations applicable to indoor and outdoor pools. Congruent with the governor's Executive Order 239, both indoor and outdoor pools were no longer subject to percentage-based capacity limits. However, the revised DOH guidance maintained that measures must be taken to ensure that "patrons or groups of patrons" **can** maintain a 6-foot distance from other patrons **both in and out of the pool**.

So, although the 50% capacity limit was lifted, each pool operator had to determine how many individuals could utilize the pool at any one time so that patrons from different households were able to socially distance themselves from one another. The revised guidance for pool operations maintained a calculation of 28 square feet per bather based on the pool's surface area to avoid overcrowding. Until further easing of operational restrictions, capacity levels and attendance records still require management and documentation. Those restrictions were eased as of May 28, 2021, when the DOH issued revised regulations permitting pools to operate at full capacity without regard to social distancing. There are, however, certain practices that are strongly encouraged for unvaccinated patrons. Community associations should adopt a common sense approach in terms of ensuring the safety of patrons and pool staff and adhering to any requirements set by the local DOH.

Another major change from prior regulations was the provision that individuals were no longer required to wear masks in outdoor settings although unvaccinated people were strongly encouraged to do so. For safety reasons, masks are not to be worn in the water. Lifeguards performing lifesaving activities and actively monitoring bathers would remain mask-free during those duties.

The regulations also contain provisions relating to indoor ventilation requirements and measures pertaining to restrooms. A link to the latest DOH regulations can be found here: <https://www.nj.gov/health/ceohs/documents/phss/PoolsAquaticGuidance05-19.pdf>

Taken together, the Executive Orders and DOH regulations present a challenging but not impossible landscape for pools to operate this summer. Associations should contact their vendors, especially their pool operator and legal counsel, for guidance on how to operate their specific pool in light of all relevant legal and liability considerations in the coming months. Every facility is different and there is no one size fits all approach to compliant operations.