



Minimum Standards Revision Notice

Date: September 10, 2024

Effective Date: September 26, 2024

To: All Holders of Chapter 744, Minimum Standards for School-Age and Before or After-School Programs

From: Rachel Ashworth-Mazerolle, HHSC Associate Commissioner for Child Care Regulation

Subject: Adopted Requirements Related to Water Safety

The amended and new rules implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding Section 341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

Child Care Regulation (CCR) has adopted new and amended rules to:

- Add definitions and requirements related to water safety, including:
 - Water safety training for employees, substitutes, volunteers, and contractors, and
 - The use of a personal flotation device for children who access swimming pools via their licensed child-care operation; and
- Update references to bodies of water and wading pools to be consistent with HSC Section 341.0646(a).

CCR has also repealed a rule related to child to caregiver ratios and group sizes because the rule established a grandfather clause that is no longer necessary.

The changes are effective September 26, 2024.

Adopted Requirements Related to Water Safety

This memo covers substantive changes made to the rules in Chapter 744 to (1) add definitions and requirements related to water safety; and (2) update references to bodies of water and wading pools to be consistent with HSC Section 341.0646(a).

In addition to the substantive changes outlined in this memo, CCR made non-substantive changes to the rules to improve the understanding and readability of the rules. In addition, CCR added Technical Assistance (TA) boxes that follow the rules in the minimum standards publication to provide additional clarification and/or additional resources. These non-substantive changes and updates to TA boxes are not identified in this document but are identified in the highlighted version of the rules.

Specific Rule Changes

Definitions

§744.123. What do certain words and terms mean when used in this chapter?

Amended §744.123:

- Adds definitions for “body of water”, “personal flotation device”, “swimming pool”, and “wading pool”; and
- Updates the definition of “water activities” to remove the terms “splashing pools” and “bodies of water”.

Record Keeping

§744.605. What admission information must I obtain for each child?

Amended §744.605(16) clarifies that if a child-care operation allows a child to access a swimming pool, a parent is required to indicate at admission whether the child is:

- Able to swim competently as defined by the American Red Cross; or
- Requires a personal flotation device because the child is:
 - Unable to swim competently; or
 - At risk of injury or death when swimming or otherwise accessing a body of water.

Personnel

- §744.1301. What are the training requirements for employees, caregivers, and directors?
- §744.1309. What areas of training must the annual training for caregivers and site directors cover?
- §744.1311. What areas of training must the annual training for an operation director or a program director cover?
- §744.1318. What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?
- §744.1403. What are the training requirements for substitutes, volunteers, and contractors?

Amended §744.1301(a)(8) adds to the chart of training requirements for employees, caregivers, and directors the requirement that the site director and program director or operation director and each employee of a child-care operation who accompanies a child to a swimming pool must have water safety training:

- Prior to accompanying a child to a swimming pool; and
- Annually thereafter.

Amended §744.1309(g) clarifies that water safety training is exclusive of the 15 clock hours of annual training required for caregivers and site directors.

Amended §744.1311(j) clarifies that water safety training is exclusive of the 20 clock hours of annual required training for an operation director or a program director.

New §744.1318 outlines the additional training an employee and site director and program director or operation director must have if the child-care operation allows a child to access a swimming pool at or away from the operation. The rule:

- Requires water safety training for each:
 - Employee who accompanies a child to a swimming pool before the employee accompanies the child to a swimming pool; and
 - Site director and program director or operation director;

- Specifies that the training must be specific to water safety in and around swimming pools; and
- Clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

Amended §744.1403(a)(7) adds to the chart of training requirements for substitutes, volunteers, and contractors the requirement that each substitute, volunteer, and contractor of a child-care operation who accompanies a child to a swimming pool to have water safety training:

- Prior to accompanying a child to a swimming pool; and
- Annually thereafter.

Child/Caregiver Ratios and Group Sizes

§744.1901. Must I have additional caregivers for wading activities?

§744.1907. Must a certified lifeguard be on duty when children are swimming in more than 18 inches of water?

§744.1911. Must persons who are counted in the child/caregiver ratio during swimming know how to swim?

Amended §744.1901 removes references to “splashing”.

Amended §744.1907 updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water.

Amended §744.1911 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

Safety Practices

§744.2601. What safety precautions must I take to protect children in my operation?

Amended §744.2601(8) updates the list of vessels containing water that must be inaccessible to all children to:

- Add wading pools; and
- Remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water".

Swimming Pools, Wading Pools, and Sprinkler Play

- §744.3401. What safety precautions must I follow when a child in my care uses a swimming pool?
- §744.3409. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?
- §744.3410. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of injury or death when swimming when the child is participating in swim instruction or a competition?
- §744.3411. What are the safety requirements for wading pools?
- §744.3415. Can a child in my care swim in a body of water other than a swimming pool?

Amended §744.3401 removes language indicating a swimming pool has a depth of more than two feet of water.

New §744.3409 outlines the additional safety precautions a child-care operation must take for a child in care who is unable to swim competently or at risk of injury or death when swimming. The rule requires the child-care operation to do the following before the child enters a swimming pool:

- Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- Ensure the child is wearing the PFD; and
- Ensure the PFD is properly fitted and fastened for the child.

The rule also requires a PFD be in good repair.

New §744.3410 clarifies that a child-care operation is not required to provide a PFD to a child who is unable to swim competently or is at risk of injury or death when swimming or ensure the child is wearing a PFD if:

- The child is actively participating in swim instruction or a competition; and
- The child-care operation ensures the child is supervised in accordance with §744.1205 during the instruction or competition.

The amendment to §744.3411 removes the term “splashing” and removes language indicating that a wading pool has a depth of two feet or less.

The amendment to §744.3415 removes references to:

- "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and
- "wading pool" as a wading pool is not considered a "body of water".

Highlighted Versions

You may view highlighted versions of the adopted rules at [Minimum Standards | Texas Health and Human Services](#). CCR is updating the minimum standards publication and will complete the update by September 26.

If you have questions, please contact your CCR inspector or send an email to [HHSC Minimum Standards Comments](#).