



# Division of Food and Recreational Safety

May 17, 2022

## **Suspension of tourist rooming houses and bed and breakfasts from ATCP 76**

To tourist rooming house operators:

On April 26, 2022, the Joint Committee for Review of Administrative Rules (JCRAR) suspended the phrase “a tourist rooming house” from Wis. Admin. Code § ATCP 76.02(1)(a), relating to the applicability of ch. ATCP 76, and moved to introduce senate and assembly bills to remove pools, whirlpools and hot tubs that are located at TRHs from DATCP’s statutory authority. Below is the portion of ch. ATCP 76 impacted by this legislative committee action.

### **ATCP 76.02 Applicability.**

**(1)** This chapter applies to the operation of public pools and water attractions.

**(a)** A pool or water attraction is a public pool or water attraction if it is installed in a “place of employment,” as defined in s. [101.01 \(11\)](#), Stats., or in a “public building,” as defined in s. [101.01 \(12\)](#), Stats., or if it serves or is installed for use by the state, a political subdivision of the state, a motel, a hotel, a tourist rooming house, a bed and breakfast establishment, a resort, a camp, a campground, a club, an association, a housing development, such as an apartment complex, condominium complex, or housing complex having a homeowners’ association, a school, a religious, charitable or youth organization, or an educational or rehabilitative facility.

Prior to this suspension, DATCP treated pools offered at TRHs as public pools subject to chs. ATCP 76 and SPS 390. Based on the JCRAR action, a pool, whirlpool, or hot tub at a TRH is no longer included in the definition of a public pool. Suspension of the section of rule went into effect immediately. During the next legislative session, likely in January 2023, the legislature is expected to consider the bills proposed in the April 26, 2022, hearing and whether to remove DATCP’s statutory authority to regulate pools at TRHs. If the legislation passes, the suspension would permanently remove “a tourist rooming house” from ch. ATCP 76.

Going forward pools, whirlpools or hot tubs offered at TRHs are not under the regulatory jurisdiction of DATCP or its agents. There is no longer a need for TRH owners to offer their pools, whirlpools, or hot tubs via a separate agreement from the lodging rental.

**Question:** *Does this mean that I can now open my TRH pool, whirlpool or hot tub to public usage without meeting the public pool regulatory requirements?*

Yes, your guests can use the TRH pool, whirlpool or hot tub as currently designed.

**Question:** *Does my TRH pool, whirlpool or hot tub have to be locked, fenced or gated?*

No, with the JCRAR action your pool, whirlpool or hot tub is no longer held to these standards. However, we encourage you to review local zoning requirements as some municipalities may require fencing or gating.

**Additional information**

If you would like additional information we encourage you to view the DATCP Website at [DATCP Home](#)  
[Public Swimming Pools.](#)

Information on safe pool operation is available on the Centers for Disease Control and Prevention website: [Healthy Swimming/Recreational Water](#) | [Healthy Swimming](#) | [Healthy Water](#) | [CDC](#)