

Pool access for the disabled sparks controversy

May 25 2012, By ANDREW TAYLOR , Associated Press

(AP) -- The Obama administration is sidestepping an election-year confrontation with the hotel industry and other pool owners to give them more time to comply with access rules for the disabled.

The rules have been in the works since the early 1990s, but the Justice Department created an uproar among hotels, waterparks, health clubs and the like earlier this year when it said it will require many such facilities to install fixed, permanent lifts to comply with the Americans With Disabilities Act.

After initially setting a March 15 deadline - and telling the industry it wouldn't budge - the department has granted two extensions. After first saying it might grant a reprieve until September, Justice announced last week that pool owners won't have to comply with the new requirements until early next year, a move that gets the controversy safely past the election.

At issue is whether hotels and other facilities will have to install fixed, permanent lifts to assist disabled people getting in and out of their [pools](#), a move that requires hiring a contractor and tearing up the pool deck at a cost of as much as \$6,000.

Many pool owners were hoping to comply with the rules by purchasing less costly portable lifts that could be wheeled out to poolside as needed. Hotel owners who already have lifts say few of their customers ever ask for them.

Advocates for the disabled are frustrated by the delay, saying it means another summer swim season without lifts at most pools. They accused the [hotel industry](#) of creating an 11th hour tempest to undo rules that have been in the making since the Clinton administration.

"It's a little disingenuous to say that came out of nowhere," said Heather Ansley, a lawyer with United Spinal Association.

But they're pleased that Justice isn't caving to demands that everybody be allowed to get by with portable lifts.

"They've been trying to duck it for 10 years, and the agency keeps putting it off, putting it off," said Rep. Jerold Nadler, D-N.Y. "Enough already."

[Disabled people](#) complain that in cities where lifts are already required, portable lifts are often stowed away and that not all employees know how to operate them. And they say that the hotel and motel industry has a long record of trying to evade access rules for the disabled, sometimes waiting to be sued before complying.

The issue gets even trickier. There's a longstanding exemption in the law which says existing facilities can avoid an ADA requirement if they determine compliance is not "readily achievable." That's pretty ambiguous, but as defined in the law it basically means you're eligible for the exemption if you determine that it's too difficult or expensive. Figuring out whether one qualifies for the exemption can be difficult.

The rules always had been going to require that newly constructed pools be required to have built-in lifts. But in January, Justice issued technical guidance that for the first time required fixed pool lifts at existing pools, said Minh Vu, a Washington lawyer representing the hotel industry. That took many pool owners by surprise, upending their plans.

The guidance created a new set of potential problems and concerns. Among them was that children might climb on the lifts - which would be built at the shallow end of the pool - and potentially hurt themselves by falling or diving off.

The January directive put hotel owners in a real bind. Over the horizon they saw themselves being hit with government penalties and private lawsuits for failing to comply with the rules. Some hotels announced they would have to close their pools. Community and municipal pools risked being out of compliance as well.

The uproar quickly made its way to Capitol Hill. Several members of Congress prepared legislation to roll back the fixed lift requirement. At the same time, hotels flooded the Justice Department with complaints about being unable to meet the deadline.

A week ago, Justice announced that pool owners now have until Jan. 31, 2013, to comply with the rules.

"We got such an overwhelming response indicating the widespread misunderstanding of the law and indicating that the pool lift manufacturers are having trouble meeting the demand, so we wanted to make sure people had enough time," Eve Hill, a senior attorney in the Justice Department's civil rights division, said.

On Thursday, Justice said pool owners who bought a portable lift before the original March 15 deadline two months ago would be considered in compliance as long as the lift is in place whenever the pool is open.

The department also hopes to clear up confusion among hotel operators about whether their circumstances qualify them to get by with a somewhat less expensive portable lift or win exemption from the requirement altogether.

Hotel industry lobbyists, meanwhile, succeeded in getting the House to block the Justice Department from implementing the new regulation requiring permanent pool lifts as part of a spending bill for next year. The idea could get a Senate vote next month.

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Citation: Pool access for the disabled sparks controversy (2012, May 25) retrieved 19 April 2024 from <https://medicalxpress.com/news/2012-05-pool-access-disabled-controversy.html>

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