

# New York State

## Department of Health

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# NYS Regulations for Lead Poisoning Prevention and Control - NYCRR Title X, Part 67

- [NYS Regulations for Lead Poisoning Prevention and Control - NYCRR Title X, Part 67 \(Volume A-1a\)](#) is also available as a PDF. (PDF, 81KB, 19pg.)

Initially adopted December 22, 1993

Amended effective June 20, 2009

(Statutory Authority: Public Health Law, section 206 (1) (n) and Title X of Article 13)

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# **Title: SubPart 67-1 - Screening and Follow-Up**

Effective Date: 06/20/2009

## **67-1.1 Definitions. The following definitions apply to this Part:**

- (a) "Anticipatory guidance" means providing parents or guardians of children under the age of six and pregnant women with information regarding the major causes of lead poisoning and means of preventing lead exposure. Such guidance shall be pertinent to the environment of the child or pregnant woman.
- (b) "Certificate of lead screening" means documentation prepared by the health care provider who ordered the blood lead test for the child indicating the date the test was performed.
- (c) "Child" shall refer to an individual from birth to less than eighteen years, unless otherwise specified.
- (d) "Confirmed blood lead level" means a blood lead concentration measured on venous blood.
- (e) "Elevated blood lead level" means a blood lead concentration equal to or greater than 10 micrograms per deciliter of whole blood.
- (f) "Environmental management" means environmental investigation and exposure assessment, sampling for lead, environmental testing and reporting, notice and demand of discontinuance of conditions conducive to lead poisoning, environmental intervention and abatement, and enforcement in accordance with Subpart 67-2.
- (g) "Follow-up" means actions by local health units and health care providers which, depending on the blood lead level and exposure history of the child, shall include as appropriate: risk reduction education, follow-up testing, confirmatory testing, diagnostic evaluation, medical management, environmental management and case management, in accordance with generally accepted medical standards and public health guidelines.
- (h) "Health care provider" means any health care practitioner who is authorized to order a blood lead test and any facility licensed pursuant to Article 28 of the Public Health Law.
- (i) "Lead screening" means measuring lead concentration in whole blood to identify elevated blood lead levels.

## **Title: Section 67-1.2 - Lead screening and follow-up of children by health care providers**

Effective Date: 06/20/2009

### **67-1.2 Lead screening and follow-up of children by health care providers.**

- (a) Lead screening and follow-up of children by primary health care providers.
  - (1) At each routine well-child visit, or at least annually if a child has not had routine well-child visits, primary health care providers shall assess each child who is at least six months of age but under six years of age, for high dose lead exposure using a risk assessment tool based on currently accepted public health guidelines. Each child found to be at risk for high dose lead exposure shall be screened or referred for lead screening.
  - (2) Primary health care providers shall provide the parent or guardian of each child under six years of age anticipatory guidance on lead poisoning prevention as part of routine care.
  - (3) Primary health care providers shall screen or refer each child for blood lead screening, at or around one and two years of age, preferably as part of routine well child care
  - (4) The Commissioner of Health may provide recommended alternative schedules for other high risk groups as deemed necessary.
  - (5) Results of blood lead analysis performed in a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) must be reported to the Commissioner of Health and to the local health officer in whose jurisdiction the subject of the test resides. Such results shall be reported within fourteen business days of the date of analysis and on such forms as prescribed by the Commissioner of Health. Such reports must include the subject's name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick) and blood lead

level; the health care practitioner ordering the test, facility identifiers, the date of sample collection, and the date of analysis.

- (6) Each primary health care provider who screens a child for elevated blood lead levels shall explain the blood lead test results and provide documentation of lead screening to the parent or guardian of the child or other person authorized to consent for the medical care of the child.
  - (7) Primary health care providers shall provide or make reasonable efforts to ensure the provision of follow-up testing for each child with an elevated blood lead level in accordance with currently accepted medical standards and public health guidelines.
  - (8) Primary health care providers shall provide or make reasonable efforts to ensure the provision of risk reduction education and nutritional counseling for each child with an elevated blood lead level equal to or greater than 10 micrograms per deciliter of whole blood.
  - (9) Primary health care providers shall confirm blood lead levels equal to or greater than 10 micrograms per deciliter of whole blood obtained on a capillary specimen from a child using a venous blood sample.
  - (10) For each child who has a confirmed blood lead level equal to or greater than 15 micrograms per deciliter of whole blood, primary health care providers shall provide or make reasonable efforts to ensure the provision of a complete diagnostic evaluation; medical treatment, if necessary; and referral to the appropriate local or State health unit for environmental management. A complete diagnostic evaluation shall include at a minimum: a detailed lead exposure assessment, a nutritional assessment including iron status, and a developmental screening.
  - (11) Primary health care providers shall communicate and coordinate as appropriate with local health units to ensure that each child with an elevated blood lead level receives appropriate follow-up, as prescribed above in paragraphs (6) through (10) of this Section.
- (b) Lead screening and follow-up of children by non-primary care providers.
- (1) A health care provider that provides services to a child who is at least 6 months of age but under 6 years of age and who is not the child's ongoing primary care provider, such as a hospital inpatient facility, an emergency service if the child's condition permits, or other facility or practitioner which provides services to the child on a one-time or walk-in basis, shall inquire if the child has been appropriately assessed and screened for elevated blood lead levels in accordance with the schedule prescribed in paragraphs (1) and (3) of subdivision 67-1.2(a).
  - (2) If the child has not received such appropriate lead screening, the health care provider shall screen the child for elevated blood lead levels, or refer the child to the child's primary health care provider or, if the child's primary care provider is unavailable or the child has no primary health care provider, to another primary health care provider, or to the local health unit to obtain a blood lead test.
  - (3) If screening is performed, the blood lead test result shall be sent to the child's primary care provider or to the local health unit to enable appropriate follow-up in accordance with paragraphs (a)(6) through (11) of this section.

## **Title: Section 67-1.3 - Laboratory testing and specimen collection**

Effective Date: 06/20/2009

### **67-1.3 Laboratory testing and specimen collection.**

(a) All blood lead tests shall be performed by (i) a clinical laboratory approved for toxicology-blood lead under Article 5, Title V of the Public Health Law; (ii) a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA); or (iii) an entity exempt from the

requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.

(b) Venous blood is the preferred specimen for blood lead analysis and should be used for lead measurement whenever practicable.

(c) Fingerstick blood specimens are acceptable for lead screening if appropriate collection procedures are followed to minimize the risk of environmental lead contamination. Instructions regarding appropriate collection procedures for fingerstick specimens may be obtained from laboratories approved for toxicology-blood lead under Article 5, Title V of the Public Health Law.

## **Title: Section 67-1.4 - Lead screening status of children who enroll in preschool or child**

Effective Date: 06/20/2009

### **67-1.4 Lead screening status of children who enroll in preschool or child care.**

(a) Prior to or within three months of initial enrollment, each child care provider, public and private nursery school and preschool, licensed, certified or approved by any State or local agency shall obtain a written statement signed by a health care provider that documents lead screening for any child at least one year of age but under six years of age, and retain such documentation until one year after the child is no longer enrolled.

(b) When no documentation of lead screening exists, the child shall not be excluded from attending nursery school, preschool or childcare, however, the child care provider, principal, teacher, owner or person in charge of the nursery school or preschool shall provide the parent or guardian of the child with information on lead poisoning and lead poisoning prevention and refer the parent or guardian to the child's primary health care provider or, if the child's primary care provider is unavailable or the child has no primary health care provider, to another primary care provider or to the local health unit to obtain a blood lead test.

(c) Each child care provider, public and private nursery school and pre-school licensed, certified or approved by any State or local agency is exempt from the requirement to obtain, prior to or within three months of initial enrollment of children under six years of age, evidence that said children have been screened for elevated blood lead levels until April 1, 1994.

## **Title: Section 67-1.5 - Lead screening and follow-up of pregnant women by prenatal providers**

Effective Date: 12/22/93

### **67-1.5 Lead screening and follow-up of pregnant women by prenatal care providers.**

(a) Prenatal health care providers shall provide each pregnant woman anticipatory guidance on lead poisoning prevention during pregnancy, and shall assess each pregnant woman at the initial prenatal visit for high dose lead exposure using a risk assessment tool. A risk assessment tool shall be recommended by the State Commissioner of Health.

(b) Prenatal health care providers shall screen or refer for blood lead screening each pregnant woman found to be at risk for current high dose lead exposure.

(c) Prenatal health care providers shall provide each pregnant women, who has a confirmed blood lead level equal to or greater than 10 micrograms per deciliter of whole blood, risk reduction counselling in accordance with guidelines recommended by the State Commissioner of Health.

(d) Prenatal care providers shall refer each pregnant woman, who has a confirmed blood lead level equal to or greater than 10 micrograms per deciliter of whole blood and who may have been occupationally exposed to lead, to an occupational health clinic for individual guidance.

(e) Prenatal care providers shall provide anticipatory guidance to each woman at her postpartum visit on the prevention of childhood lead poisoning.

## **Title: Section 67-1.6 - Role of local health units.**

Effective Date: 12/22/93

### **67-1.6 Role of local health units.**

- (a) Local health units shall provide public and professional education and community outreach on lead poisoning prevention.
- (b) Local health units shall provide blood lead screening or arrange for blood lead screening for each child who requires screening as provided in section 67-1.4 of this Subpart and whose parent or guardian is unable to obtain a lead test for their child because the child is uninsured or the child's insurance does not cover lead screening.
- (c) Local health units shall establish a sliding fee schedule for blood lead screening of children from families with incomes in excess of 200% of the federal poverty level, pursuant to Section 606 of the Public Health Law, and shall collect fees for blood lead testing from third party payors, when available.
- (d) Local health units shall provide environmental management as required under this Part.
- (e) Local health units shall provide data to identify exposure patterns and high risk populations for strategic planning for lead poisoning prevention at the State and local level.
- (f) Local health units shall institute measures to identify and track children with elevated blood lead levels to assure appropriate follow-up.
- (g) Local health units who serve as a child's primary health care provider shall carry out activities in accordance with paragraphs (1) through (9) of section 67-1.2(a).

## **Title: SubPart 67-2 - Environmental Assessment and Abatement**

Initially Adopted: January 4, 1995

(Statutory authority: Public Health Law, Section 206(1)(n) and 1370-a)

### **Title: Section 67-2.1 - Purpose**

Effective Date: 01/04/1995

#### **Section 67-2.1 Purpose.**

The purpose of this regulation is to define requirements for the assessment and abatement of conditions conducive to lead poisoning.

### **Title: Section 67-2.2 - Definitions**

Effective Date: 01/04/1995

#### **67-2.2 Definitions. As used in this Subpart, the following words and terms shall have the stated meaning:**

- (a) Abatement includes all actions necessary to discontinue a condition conducive to lead poisoning and may include encapsulation, replacement, enclosure, or removal.
- (b) Accessible mouthable surfaces are those surfaces located within five feet of the floor or ground that form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are located so that a child may place his or her mouth on a protruding surface.
- (c) Area of high risk means an area designated as such by the Commissioner or his designated representative and may consist of one or more dwellings in which a condition conducive to lead poisoning of children exists.
- (d) Approved laboratory means the New York State Department of Health's Wadsworth Center for Laboratory and Research or a laboratory certified by the New York State Department of Health pursuant to the department's Environmental Laboratory Approval Program.
- (e) Child care facilities means any facility licensed by the State Department of Social Services to offer or provide day care services or child care and any public or private schools attended by children six years of age or younger.
- (f) Commissioner means the State Commissioner of Health.
- (g) Condition conducive to lead poisoning means: (i) the presence of lead paint or other similar surface coating on any accessible mouthable surface or any other surface in a condition accessible for ingestion or inhalation, where

peeling, cracking, blistering, flaking, chipping or powdering of such paint or similar surface coating material occurs or is likely to occur; and/or (ii) the presence of other environmental conditions which may result in significant lead exposure.

(h) Designated representative means the health commissioner or health officer of a city of 50,000 population or over, or the health commissioner or health officer of a county or part-county health district, the state regional health director or district director having jurisdiction, or any county health director having all the powers and duties prescribed in section 352 of the Public Health Law, or any individual so designated by the Commissioner pursuant to section 206(8) of the Public Health Law.

(i) Dwelling means all buildings or structures or portions thereof that are on or appurtenant to a property, which is occupied in whole or in part as the home, residence or sleeping place, of one or more human beings, including child care facilities for children under six years of age, kindergartens and nursery schools.

(j) Encapsulation means a method of abatement that makes lead paint inaccessible by covering or sealing surfaces with durable coatings specifically formulated to be elastomeric, long-lasting, and resistant to cracking, peeling, algae and fungus. Paint is not an encapsulant.

(k) Enclosure means a method of abatement that involves covering of surfaces with durable rigid materials affixed to the surface and sealed or caulked to prevent lead paint or other lead-containing material from such surfaces from becoming accessible to children.

(l) High efficiency particulate air (HEPA) filter means a filter capable of filtering at least 99.97%, by weight, of particles 0.3 microns or greater in diameter from air passed through the filter.

(m) Lead paint means paint, plaster or other surface coating material containing more than one-half of one percent of metallic lead based on the total weight of the contained solids or dried film of the paint or plaster or other similar surface coating material.

(n) Removal means a method of abatement that results in the dislocation, stripping or scraping of paint or plaster or other coating material from a surface.

(o) Replacement means a method of abatement that involves removing components such as doors, windows and trim that contain lead paint and installing new or delead components.

(p) Risk reduction efforts mean any temporary action designed to reduce a child's exposure to lead and may include, but are not limited to: encapsulation, temporary relocation, clean-up of paint chips and dust and on-going maintenance of intact paint.

(q) X-ray fluorescence (XRF) analyzer means any instrument which measures lead concentrations in milligrams per square centimeter by measuring emission of X-ray photons activated by a radioactive source within the instrument.

(r)  $\mu\text{g}/\text{dL}$  means micrograms per deciliter.

## **Title: Section 67-2.3 - Environmental investigation**

Effective Date: 01/04/95

67-2.3 Environmental Investigation. Whenever an area of high risk is designated or when a child has been referred for environmental management in accordance with Subpart 67-1.2(a)(9), the Commissioner or his designated representative shall coordinate follow-up activities as defined in section 67-1.1(e) and (f) of this Part and required by section 67-1.6 of this Part. An assessment of conditions conducive to lead poisoning shall be performed and should include an environmental investigation of (1) any dwelling; (2) any child care facility; and (3) any other area where the child spends a significant amount of time.

## **Title: Section 67-2.4 - Sampling for lead**

Effective Date: 01/04/1995

### **67-2.4 Sampling for lead.**

(a) Paint or other similar surface coating that is peeling, cracking, blistering, flaking, chipping or powdering or is on an accessible mouthable surface may be sampled for lead by the following methods:

- (1) At least one gram of paint or other surface coating should be collected from each surface for approved laboratory analysis, or
- (2) A portable X-ray fluorescence analyzer may be used to determine the presence of lead paint. In conducting sampling by X-ray fluorescence the following determinations shall apply:
  - (i) Where substrate correction readings are obtained, a mean reading of 1.6 milligrams of lead per square centimeter or greater shall be considered as satisfactory evidence of lead paint. A mean,

substrate corrected reading of less than 1.6 milligrams of lead per square centimeter but more than 0.4 milligrams of lead per square centimeter shall be considered as inconclusive and in such case a sample, as described in section 67-2.4 (a)(1) of this Subpart may be obtained. A mean substrate corrected reading of less than 0.4 milligrams of lead per square centimeter shall be considered as negative for lead paint.

- (ii) If substrate correction readings cannot be obtained, a mean, uncorrected reading of greater than 2.0 milligrams of lead per square centimeter shall be considered as satisfactory evidence of lead paint. A mean reading of 2.0 milligrams of lead per square centimeter or less shall be considered as inconclusive and in such case a sample, as described in section 67-2.4(a)(1) of this Subpart, may be obtained.

(b) Any samples of painted surfaces, paint, water, dust, soil, food, consumer products and other potential lead sources collected during an environmental investigation must be analyzed by an approved laboratory as specified by the Commissioner. The sample results may be used to evaluate possible sources of lead exposure.

### **Title: Section 67-2.5 Environmental testing and reporting**

Effective Date: 01/04/95

#### **67-2.5 Environmental testing and reporting.**

An approved laboratory shall examine paint and any other environmental samples according to generally accepted scientific methods specified by the Commissioner and shall report the results of all lead analyses to the designated representative in whose jurisdiction the samples were collected.

### **Title: Section 67-2.6 Notice and demand**

Effective Date: 01/04/95

#### **67-2.6 Notice and demand.**

Whenever the Commissioner or his designated representative determines that a condition conducive to lead poisoning exists in a dwelling, a written notice and demand for discontinuance of such may be issued in accordance with of section 1373(2) of the Public Health Law.

- (a) No person shall commence lead paint abatement in any designated area of high risk prior to issuance of a written notice and demand. Risk reduction efforts may proceed prior to receipt of a notice and demand.
- (b) Upon receipt of a notice and demand for discontinuance of conditions conducive to lead poisoning, the owner of a dwelling is required to abate such conditions. The extent of abatement and method(s) used shall be determined by the Commissioner or his designated representative, in accordance with applicable laws or rules and regulations.
- (c) It shall be the responsibility of the owner of the dwelling to comply with all federal, state and local laws governing building construction, housing, worker health and safety, and disposal of lead-containing wastes. The owner of the dwelling must provide, upon request, to the Commissioner or his designated representative, such documentation as shall show that the owner has fully complied with these laws.
- (d) Any vacancy or change in occupancy of the dwelling before abatement has been completed shall not relieve the owner of that dwelling from compliance with the notice and demand.

### **Title: Section 67-2.7 Environmental intervention and abatement**

Effective Date: 01/04/1995

#### **67-2.7 Environmental intervention and abatement.**

The Commissioner or his designated representative shall require in the notice and demand, where necessary, pre-abatement and clean up actions as specified in 67-2.7(a) and (b) and any one or more of the actions listed in 67-2.7(c) through (j) as part of an abatement of a dwelling:

(a) Pre-abatement actions:

- (1) furniture, rugs, carpets, bedding, drapes, dishware and food shall either be removed or covered with plastic sheets a minimum thickness of six mils and sealed;
- (2) room openings must be sealed with plastic sheets that have a minimum thickness of six mils and

- (3) floors or in place carpet must be covered with two sheets of plastic a minimum thickness of six mil thick, secured to the wall or baseboard with duct tape.
- (b) Clean-up shall be performed daily and consist of misting debris with water and carefully sweeping and placing it in double four mil or six mil plastic bags, followed by wet dusting or wet mopping of all surfaces in the work area. Final clean-up shall be performed a minimum of 2 hours after completion of active abatement and shall include, but not be limited to, an HEPA filtered vacuuming of all interior surfaces, including window sills, followed by a wet mopping of all surfaces with a heavy duty household cleaning solution, followed by a second HEPA filtered vacuuming. In some instances the Commissioner or his designated representative may determine that an alternative wet vacuum system may be used in place of the HEPA filter.
- (c) When necessary, relocation of occupants to temporary housing until the abatement work specified has been completed.
- (d) Placarding of the dwelling with the statement that human habitation is prohibited until the Commissioner or his designated representative determines that the dwelling has been abated.
- (e) Prohibition of the presence of children and pregnant women in part or all of a dwelling during abatement activities.
- (f) Encapsulation of lead painted surfaces with materials approved as an encapsulant of lead paint by the United States Environmental Protection Agency or the United States Department of Housing and Urban Development, or the American Society for Testing and Materials or the Commissioner.
- (1) After repair of water leaks caused by structured or plumbing deficiencies.
  - (2) In accordance with manufacturer's instructions.
  - (3) After the removal of any chipping, peeling or flaking paint in accordance with Section 2.7 (i) of this Subpart.
- (g) Enclosure of lead-containing surfaces with durable materials applied as follows:
- (1) After repair of water leaks caused by structural or plumbing deficiencies.
  - (2) With materials that are fire resistant which may include gypsum board, aluminum, vinyl, plywood paneling a minimum of 5/32 inch thick good (1) grade, Formica, acrylic sheets, fiberglass, durable carpet, tile, Plexiglas.
  - (3) After the removal of any chipping, peeling or flaking paint in accordance with section 2.7 (i) of this subpart.
- (h) Replacement of building components with lead-free materials.
- (i) Removal of lead-containing surface coating materials by one or more of the following methods after which a lead free surface coating material shall be applied to the surface:
- (1) Wet wire brushing or hand scraping with or without the aid of a non-flammable solvent or wet abrasive compound.
  - (2) Machine sanding, using a sander equipped with a high efficiency particle air filter device, to feather edges and prepare surfaces for repainting or sealing.
  - (3) When used with appropriate respiratory protection, a heat gun, which produces a temperature not exceeding 1,100 degrees Fahrenheit, with hand scraping.
  - (4) Off-site paint removal.
  - (5) Other procedures acceptable to the Commissioner.
- (j) Abatement of exterior surfaces by any of the methods described in section 67-2.7 (a-i) of this Subpart or by confined abrasive blasting using a wet-misting technique or simultaneous vacuuming system. In addition, plastic sheets, a minimum thickness of six mils, must be placed on the ground as close to the dwelling foundation as obstructions will allow a minimum of six feet for each story in height before blasting begins, and left in place until cleanup is complete. All seams must be sealed with tape and outer edges raised to trap liquid waste.

## **Title: Section 67-2.8 Enforcement**

Effective Date: 01/04/9

### **67-2.8 Enforcement.**

When an owner of a dwelling fails to comply with a written notice and demand for discontinuance of a condition conducive to lead poisoning, the procedures for enforcement, including formal hearings, receivership and cooperation and assistance from those public officers, departments and agencies of the State and its political subdivisions, as provided in sections 1373, 1374 and 1375 of the Public Health Law, shall be followed.

## **Title: SubPart 67-3 - Reporting of Blood Lead Levels**

Initially adopted October 13, 1993

Amended effective June 20, 2009

[Statutory Authority: Public Health Law, Section 206(1)(n)]

### **Title: Section 67-3.1 - Laboratory reporting of blood lead levels for public health follow-up**

Effective Date: 06/20/2009

#### **Section 67-3.1 Laboratory reporting of blood lead levels for public health follow up.**

(a) For purposes of this Subpart, laboratory shall mean: (i) any laboratory that holds a permit issued in accordance with Public Health Law Article 5, Title V and is authorized to conduct blood lead analyses; or (ii) an entity exempt from the requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.

(b) Laboratories shall report the results of all blood lead analyses performed on residents of New York State to the Commissioner of Health and to the local health officers in whose jurisdictions the subjects of the tests reside. If the laboratory reports electronically to the Commissioner of Health in accordance with subdivision (e) below, the Department of Health shall notify the appropriate local health officer of the test results and the laboratory shall be deemed to have satisfied the reporting requirements of this section.

(c) Whenever a laboratory refers a blood lead sample to another laboratory for analysis, the laboratories may agree on which laboratory will report in compliance with this Subpart, but both laboratories will be accountable to insure that a report is made.

(d) All laboratories shall report electronically to the Commissioner of Health each blood lead analysis conducted. The report must include the subject's name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick) and blood lead level; the health care practitioner ordering the test, laboratory identifiers, the date the sample was collected and the date of analysis. Reporting pursuant to this subdivision shall be done using an electronic telecommunication system consistent with the technical specifications established by the Department.

(e) Any laboratory not permitted in accordance with Public Health Law Article 5, Title V to perform blood lead analyses which accepts a blood lead sample and refers the sample elsewhere for analysis shall transmit to the laboratory performing the analysis all of the information that is required by subdivision (d) above.

(f) Time limits for reporting and special notification requirements of blood lead levels in children.

- (1) Laboratories shall report the results of all blood lead tests as specified in this Subpart within five business days of the date of analysis.
- (2) In addition to any other reporting required by this Subpart, all laboratories shall notify the provider ordering the blood lead test of the results of any analysis in a child less than eighteen years of age which is equal to or greater than 45 mcg/dL (micrograms per deciliter) within 24 hours of the analysis.

(g) Nothing in this Subpart shall be construed to relieve any laboratory from reporting results of any blood lead analysis to the physician, or other health care provider that ordered the test or to any other entity as required by state, federal, or local statutes or regulations or in accordance with accepted standards of practice except that reporting in compliance with this Subpart shall satisfy the blood lead reporting requirements of Public Health Law Article 13, Title 10 and Part 22 of this Title.

## **Title: Section 67-3.2 - Reporting of elevated blood lead results by health care providers**

Effective Date: 06/20/2009

### **67-3.2 Reporting of elevated blood lead results by health care providers.**

(a) All health care providers shall assure that all of the information specified in section 67-3.1 above is completed for all blood lead analyses ordered by the health care provider and that this information accompanies the sample to the testing laboratory.

(b) All health care providers shall notify the health officer having jurisdiction of the occurrence of any blood lead level above 45 mcg/dL (micrograms per deciliter) in a child less than eighteen years of age within 24 hours of having been notified of this result by the testing laboratory.

(c) For the purposes of this Subpart, health care provider shall mean any health care practitioner who is authorized to order a blood lead test and any facility licensed pursuant to Article 28 of the Public Health Law.

## **Title: Section 67-3.3 - Special effective dates**

Effective Date: 10/13/93

### **67-3.3 Special effective dates.**

(a) Reporting the results of all blood lead tests at or above 10 mg/dl (microgram per deciliter) shall begin no later than 120 days after filing the notice of adoption of this Subpart with the Secretary of State.

(b) Reporting the results of all blood lead tests shall begin no later than 360 days after filing the notice of adoption of this Subpart with the Secretary of State.

Revised: June 23, 2009

Revised: June 2009

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## Control of Lead Poisoning - NYS Public Health Law, Title 10 of Article 13

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Amended April 7, 2009

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## § 1370. Definitions.

When used in this title, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

- 1. "Dwelling" means a building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and shall, without limiting the foregoing, include child care facilities for children under six years of age, kindergartens and nursery schools.
- 2. "Area of high risk" means an area designated as such by the commissioner or his representative and consisting of one or more dwellings in which a condition conducive to lead poisoning of children is present.
- 3. "A condition conducive to lead poisoning" means: (i) paint or other similar surface-coating material containing lead in a condition accessible for ingestion or inhalation or where peeling or chipping of the paint or other similar surface-coating material occurs or is likely to occur; and (ii) other environmental conditions which may result in significant lead exposure.
- 4. "Program" means the lead poisoning prevention program in the department established pursuant to section thirteen hundred seventy-a of this title.
- 5. "Council" means the advisory council on lead poisoning prevention established pursuant to section thirteen hundred seventy-b of this title.
- 6. "Elevated lead levels" means a blood lead level greater than or equal to ten micrograms of lead per deciliter of whole blood or such blood lead level as may be established by the department pursuant to rule or regulation.
- 7. "Person" means any natural person

### § 1370-a. Lead poisoning prevention program.

- 1. The department shall establish a lead poisoning prevention program. This program shall be responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead. The department shall exercise any and all authority which may be deemed necessary and appropriate to effectuate the provisions of this title.
- 2. The department shall:
  - (a) promulgate and enforce regulations for screening children and pregnant women, including requirements for blood lead testing, for lead poisoning, and for follow up of children and pregnant women who have elevated blood lead levels;

- (b) enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs;
  - (c) establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes; (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by section twenty-one hundred sixty-eight of this chapter; and
  - (d) develop and implement public education and community outreach programs on lead exposure, detection and risk reduction.
- 3. The department shall identify and designate areas in the state with significant concentrations of children identified with elevated blood lead levels as communities of concern for purposes of implementing a childhood lead poisoning primary prevention program, and may, within amounts appropriated, provide grants to implement approved programs. The commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall develop and implement a childhood lead poisoning primary prevention program to prevent exposure to lead-based paint hazards for the communities of concern in their jurisdiction. The department shall provide funding to the New York city department of health and mental hygiene or county health departments to implement the approved work plan for a childhood lead poisoning primary prevention program. The work plan and budget, which shall be subject to the approval of the department, shall include, but not be limited to:
    - (a) identification and designation of an area or areas of high risk within communities of concern;
    - (b) a housing inspection program that includes prioritization and inspection of areas of high risk for lead hazards, correction of identified lead hazards using effective lead-safe work practices and, appropriate oversight of remediation work;
    - (c) partnerships with other county or municipal agencies or community-based organizations to build community awareness of the childhood lead poisoning primary prevention program and activities, coordinate referrals for services, and support remediation of housing that contains lead hazards;
    - (d) a mechanism to provide education and referral for lead testing for children and pregnant women to families who are encountered in the course of conducting primary prevention inspections and other outreach activities; and
    - (e) a mechanism and outreach efforts to provide housing inspections for lead hazards upon request. The commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall also enter into an agreement or subcontract with a municipal government regarding inspection of the paint conditions in dwellings built prior to nineteen hundred seventy-eight for the area defined as the community of concern and may, when qualified staff exists, designate the local housing maintenance code enforcement agency in which the community of concern is located as an agency authorized to administer the provisions of this title pursuant to subdivision one of section thirteen hundred seventy-five of this title. A portion of grant funding received to support the local primary prevention plan may be used to reduce barriers to lead testing of children and pregnant women within the communities of concern, including the purchase of lead testing devices and supplies when the need for such resources is identified within the community. The commissioner, the commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental

hygiene, is authorized to enter into agreements, contracts, subcontracts or memoranda of understanding with, and provide technical and other resources to, local health officials, local building code officials, real property owners, and community organizations in such areas to create and implement policies, education and other forms of community outreach to address lead exposure, detection and risk reduction. Primary prevention plans shall target children less than six years of age living in the highest risk housing in the communities of concern identified. The plans shall also take into consideration the extent the weatherization assistance program and other such programs can be used in conjunction with lead-based paint hazard risk reduction. Funding provided for this program shall be used for the activities described in this section and shall not be used for other activities required by this title.

## **§ 1370-b. Advisory council on lead poisoning prevention.**

- 1. The New York state advisory council on lead poisoning prevention is hereby established in the department, to consist of the following, or their designees: the commissioner; the commissioner of labor; the commissioner of environmental conservation; the commissioner of housing and community renewal; the commissioner of children and family services; the commissioner of temporary and disability assistance; the secretary of state; the superintendent of insurance; and fifteen public members appointed by the governor. The public members shall have a demonstrated expertise or interest in lead poisoning prevention and at least one public member shall be representative of each of the following: local government; community groups; labor unions; real estate; industry; parents; educators; local housing authorities; child health advocates; environmental groups; professional medical organizations and hospitals. The public members of the council shall have fixed terms of three years; except that five of the initial appointments shall be for two years and five shall be for one year. The council shall be chaired by the commissioner or his or her designee.
- 2. Members of the advisory council shall serve without compensation for their services, except that each of them may be allowed necessary and actual expenses which he or she shall incur in the performance of his or her duties under this article.
- 3. The council shall meet as often as may be deemed necessary to fulfill its responsibilities. The council shall have the following powers and duties:
  - (a) To develop a comprehensive statewide plan to prevent lead poisoning and to minimize the risk of human exposure to lead;
  - (b) To coordinate the activities of its member agencies with respect to environmental lead policy and the statewide plan;
  - (c) To recommend the adoption of policies with regard to the detection and elimination of lead hazards in the environment;
  - (d) To recommend the adoption of policies with regard to the identification and management of children with elevated lead levels;
  - (e) To recommend the adoption of policies with regard to education and outreach strategies related to lead exposure, detection, and risk reduction;
  - (f) To comment on regulations of the department under this title when the council deems appropriate;
  - (g) To make recommendations to ensure the qualifications of persons performing inspection and abatement of lead through a system of licensure and certification or otherwise;

- (h) To recommend strategies for funding the lead poisoning prevention program, including but not limited to ways to enhance the funding of screening through insurance coverage and other means, and ways to financially assist property owners in abating environmental lead, such as tax credits, loan funds, and other approaches; and
- (i) To report on or before December first of each year to the governor and the legislature concerning the previous year's development and implementation of the statewide plan and operation of the program, together with recommendations it deems necessary and the most currently available lead surveillance measures, including the actual number and estimated percentage of children tested for lead in accordance with New York state regulations, including age-specific testing requirements, and the actual number and estimated percentage of children identified with elevated blood lead levels. Such report shall be made available on the department's website.

### **§ 1370-c. Screening by health care providers.**

- 1. The department is authorized to promulgate regulations establishing the means by which and the intervals at which children and pregnant women shall be screened for elevated lead levels. The department is also authorized to require screening for lead poisoning in other high risk groups.
- 2. Every physician or other authorized practitioner who provides medical care to children or pregnant women, shall screen children or refer them for screening for elevated lead levels at the intervals and using the methods specified in such regulations. Every licensed, registered or approved health care facility serving children including but not limited to hospitals, clinics and health maintenance organizations, shall ensure, by providing screenings or by referring for screenings, that their patients receive screening for lead at the intervals and using the methods specified in such regulations
- 3. The health practitioner who screens any child for lead shall give a certificate of screening to the parent or guardian of the child.
- 4. The department shall establish a separate level of payment, subject to the approval of the director of the budget, for payments made by governmental agencies for screenings performed pursuant to this section by hospitals, as defined in section twenty-eight hundred one of this chapter.

### **§ 1370-d. Lead screening of child care or pre-school enrollees.**

- 1. Except as provided pursuant to regulations of the department, each child care provider, public and private nursery school and pre-school licensed, certified or approved by any state or local agency shall, prior to or within three months after initial enrollment of a child under six years of age, obtain from a parent or guardian of the child evidence that said child has been screened for lead.
- 2. Whenever there exists no evidence of lead screening as provided for in subdivision one of this section or other acceptable evidence of the child's screening for lead, the child care provider, principal, teacher, owner or person in charge of the nursery school or pre-school shall provide the parent or guardian of the child with information on lead poisoning in children and lead poisoning prevention and refer the parent or guardian to a primary care provider or the local health authority.
- 3.
  - (a) If any parent or guardian to such child is unable to obtain lead testing, such person may present such child to the health officer of the county in which the child resides, who shall then perform or arrange for the required screening.
  - (b) The local public health district shall develop and implement a fee schedule for households with incomes in excess of two hundred percent of the federal poverty level for lead screening pursuant

to section six hundred six of this chapter, which shall vary depending on patient household income.

### **§ 1370-e. Reporting lead exposure levels.**

- 1. Every physician or authorized practitioner shall give notice of elevated lead levels as specified by the commissioner pursuant to regulation, to the health officer of the health district wherein the patient resides, except as otherwise provided.
- 2. The commissioner may, by regulation, provide that cases of elevated lead levels which occur (a) in health districts of less than fifty thousand population not having a full-time health officer, or (b) in state institutions shall be reported directly to the department or its district health officer.
- 3. Whenever an analysis of a clinical specimen for lead is performed by a laboratory or a physician or authorized practitioner, the director of such laboratory or such physician or authorized practitioner shall, within such period specified by the commissioner report the results and any related information in connection therewith to the local and state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.
- 4. The person in charge of every hospital, clinic, or other similar public or private institution shall give notice of every child with an elevated blood lead level coming under the care of the institution to the local or state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.
- 5. The notices required by this section shall be in a form and filed in such time period as shall be prescribed by the commissioner.

### **§ 1371. Manufacture and sale of lead painted toys and furniture.**

- 1. No person shall manufacture, sell or hold for sale a children's toy or children's furniture having paint or other similar surface-coating material thereon containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film.
- 2. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.

### **§ 1372. Use of leaded paint.**

No person shall apply paint or other similar surface-coating material containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film to any interior surface, window sill, window frame or porch of a dwelling.

### **§ 1373. Abatement of lead poisoning conditions.**

- 1. Whenever the commissioner or his representative shall designate an area of high risk, he may give written notice and demand, served as provided herein, for the discontinuance of a paint condition conducive to lead poisoning in any designated dwelling in such area within a specified period of time.
- 2. Such notice and demand shall prescribe the method of discontinuance of a condition conducive to lead poisoning which may include the removal of paint containing more than one-half of one per centum of metallic lead based on the total weight of the contained solids or dried film of the paint or other similar

surface-coating material from surfaces specified by the commissioner or his representative under such safety conditions as may be indicated and the refinishing of such surfaces with a suitable finish which is not in violation of section one thousand three hundred seventy-two of this title or the covering of such surfaces with such material or the removal of lead contaminated soils or lead pipes supplying drinking water as may be deemed necessary to protect the life and health of occupants of the dwelling.

- 3. In the event of failure to comply with a notice and demand, the commissioner or his representative may conduct a formal hearing upon due notice in accordance with the provisions of section twelve-a of this chapter and on proof of violation of such notice and demand may order abatement of a paint condition conducive to lead poisoning upon such terms as may be appropriate and may assess a penalty not to exceed two thousand five hundred dollars for such violation.
- 4. A notice required by this section may be served upon an owner or occupant of the dwelling or agent of the owner in the same manner as a summons in a civil action or by registered or certified mail to his last known address or place of residence.
- 5. The removal of a tenant from or the surrender by the tenant of a dwelling with respect to which the commissioner or his representative, pursuant to subdivision one of this section, has given written notice and demand for the discontinuance of a paint condition conducive to lead poisoning shall not absolve, relieve or discharge any persons chargeable therewith from the obligation and responsibility to discontinue such paint condition conducive to lead poisoning in accordance with the method of discontinuance prescribed therefor in such notice and demand.

## **§ 1374. Receivership**

- 1. In the event of failure to comply with an order issued pursuant to this title and containing provision for such application, the officer issuing the order may apply to a court of competent jurisdiction in the county wherein the dwelling is located for an order appointing such officer or his designee receiver of the rents of such dwelling for the purpose of effectuating the provisions of such order.
- 2. An application for appointment of a receiver hereunder shall be on at least ten days' notice to the owner of the dwelling, effected in the same manner as in an action to foreclose a mortgage. A receiver appointed hereunder shall not have any right superior to those of any mortgagee or lienor of record who has not had at least ten days' notice, by personal service or registered or certified mail, of the application for appointment of a receiver.
- 3. A receiver appointed hereunder shall have the power to collect the accrued and accruing rents of the dwelling and shall apply such collected rents to costs and expenses incurred in connection with (a) removing, replacing, repainting and covering surfaces of the dwelling necessary to effectuate the provisions of the order of abatement, (b) interim operation and management of the dwelling, (c) administration of the receivership.
- 4. As soon as practicable after completion of his duties, the receiver shall render a full accounting to the court and, upon payment over of any surplus moneys to the owner or other persons as the court may approve or direct and upon the order of the court, he shall be relieved of any further responsibility or liability in connection with his receivership.

## **§ 1375. Enforcement agencies.**

- 1. The commissioner's designee having jurisdiction, county and city commissioners of health and local housing code enforcement agencies designated by the commissioner's designee having jurisdiction or county or city commissioner of health shall have the same authority, powers and duties within their respective jurisdictions as has the commissioner under the provisions of this title.
- 2. The commissioner or his representative and an official or agency specified in subdivision one of this section may request and shall receive from all public officers, departments and agencies of the state and its

political subdivisions such cooperation and assistance as may be necessary or proper in the enforcement of the provisions of this title.

- 3. Nothing contained in this title shall be construed to alter or abridge any duties and powers now or hereafter existing in the commissioner, county boards of health, city and county commissioners of health, the New York City department of housing preservation and development and the department of health, local boards of health or other public agencies or public officials, or any private party.

## **§ 1376-a. Sale of consumer products containing lead or cadmium.**

- 1. In the absence of a federal standard for a specific type of product, the commissioner shall establish the maximum quantity of lead or cadmium (and the manner of testing therefor) which may be released from glazed ceramic tableware, crystal, china and other consumer products. Such maximum quantity shall be based on the best available scientific data and shall insure the safety of the public by reducing its exposure to lead and cadmium to the lowest practicable level. The commissioner may amend such maximum quantity (and the manner of testing therefor) where necessary or appropriate for the safety of the public. Until such maximum quantity of lead or cadmium established by the commissioner is effective, no glazed ceramic tableware shall be offered for sale which releases lead in excess of 7 parts per million, or cadmium in excess of .5 parts per million.
- 2. The commissioner is hereby empowered to order the recall of or confiscation of glazed ceramic tableware, crystal, china or other consumer products offered for sale which do not meet the standards set forth in or pursuant to this section.
- 3. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.

Revised: June 2009

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