CHAPTER 51

CHILDHOOD LEAD POISONING: STATE SANITARY CODE CHAPTER XIII

Authority

N.J.S.A. 24:1A–7, 24:14A, 26:2Q–1 et seq., and 26:2–137 et seq.

Source and Effective Date

R.2004 d.458, effective November 16, 2004.
See: 36 N.J.R. 2601(a), 36 N.J.R. 3240(a), 36 N.J.R. 5678(a).

Chapter Expiration Date

Chapter 51, Childhood Lead Poisoning: State Sanitary Code Chapter XIII, expires on November 16, 2009.

Chapter Historical Note

Chapter 51, Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey, became effective prior to September 1, 1969.

Subchapter 7, Child Lead Poisoning, was adopted as R.1977 d.402, effective October 25, 1977. See: 9 N.J.R. 364(b), 9 N.J.R. 519(c).

Pursuant to Executive Order No. 66(1978), Subchapters 2 through 6 were readopted as R.1985 d.447, effective August 21, 1985. See: 17 N.J.R. 1633(a), 17 N.J.R. 2270(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1 expired on September 16, 1985.

Subchapter 1 was adopted as new rules by R.1985 d.447, effective September 16, 1985. See: 17 N.J.R. 1633(a), 17 N.J.R. 2270(a).

Chapter 51, Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey, was renamed "Childhood Lead Poisoning", and Subchapters 1 through 6 were repealed by R.1986 d.476, effective December 15, 1986 (operative January 1, 1987). See: 18 N.J.R. 1690(a), 18 N.J.R. 2448(a).

Chapter 51, Childhood Lead Poisoning, was repealed, and Chapter 51, Childhood Lead Poisoning: State Sanitary Code Chapter XIII, was adopted as new rules by R.1990 d.472, effective September 17, 1990. See: 22 N.J.R. 1502(a), 22 N.J.R. 3014(b).

Pursuant to Executive Order No. 66(1978), Chapter 51, Childhood Lead Poisoning: State Sanitary Code Chapter XIII, was readopted as R.1995 d.538, effective September 13, 1995. See: 27 N.J.R. 2660(a), 27 N.J.R. 3934(a).

Chapter 51, Childhood Lead Poisoning: State Sanitary Code Chapter XIII, was repealed, and Chapter 51, Childhood Lead Poisoning: State Sanitary Code Chapter XIII, was adopted as new rules by R.1999 d.188, effective June 7, 1999. See: See: 30 N.J.R. 3735(a), 31 N.J.R. 1515(a).

Chapter 51, Childhood Lead Poisoning, State Sanitary Code Chapter XIII, was readopted as R.2004 d.458, effective November 16, 2004. See: Source and Effective Date.

Cross References

Children's shelter physical facility requirements, see N.J.A.C. 10:124–5.1 et seq.

Law Review and Journal Commentaries

Getting the Lead Out: An Overview of the New Federal Lead-Based Paint Disclosure Requirements. Vincent P. Maltese, Joseph J. Jankowski, 182 N.J. Law. 7 (Mag.)(Jan./Feb. 1997).

Lead Based Paint: Abate or Wait? Your Insurance Policy May Hold the Answer. Eugene R. Anderson, Joan L. Lewis, 182 N.J. Law. 10 (Mag.)(Jan./Feb. 1997).

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APPENDIX. HAZARD ASSESSMENT QUESTIONNAIRE

SUBCHAPTER 1. GENERAL PROVISIONS

8:51–1.1 Scope

The rules of this chapter shall apply to all local boards of health, owners of properties in which children who have been identified with lead poisoning live, owners of any other properties that constitute a lead hazard to children who have been identified with lead poisoning, and to laboratories who perform blood lead tests of children.

Case Notes

No legal authority for board to designate and compensate its members as special representatives to the board; circumvention of statutory requirement that board act through duly licensed professionals not permitted. Deptford Twp. Bd. of Health v. Deptford Twp. Mayor & Council, 200 N.J.Super. 476, 491 A.2d 812 (Law Div.1985).

Local Health Services Act does not provide municipalities with concurrent jurisdiction, along with the Department of Environmental Protection and the Public Utility Commission, in field of solid waste disposal; field preempted by legislation. Little Falls Twp. v. Bardin, 173 N.J.Super. 397, 414 A.2d 559 (App.Div.1979).

8:51–1.2 Purpose

The purpose of this chapter is to protect children from adverse health effects due to exposure to lead hazards in their homes and in the environment.

8:51–1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Abatement" means any set of measures or processes designed to either mitigate or permanently eliminate lead-based paint or any other lead-related hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the enclosure or encapsulation of lead-based paint; the replacement or removal of lead-painted surfaces, fixtures, furniture, toys or objects; the removal, treatment or covering of lead-contaminated soil; and all preparation, clean-up, disposal, and post-abatement clearance testing activities associated with such measures.

"Ambient source of lead" means lead contamination from salvage, recycling or industrial discharges or from known contaminated sites.

"CDC recommendations" means the recommendations made by the United States Centers for Disease Control and Prevention, as specified in its policy statement: "Preventing Lead Poisoning in Young Children," published October 1991, by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, GA 30333, and any amendments thereto.

"Chewable surface" means any projection from an interior or exterior surface that offers a biting surface or that can be mouthed by a child. Chewable surfaces may include, but are not limited to: window sills, window casings, doors, door casings, stair railings, stair treads, balusters, toys, parts of certain furniture or any other surface that may be readily mouthed by children.

"Child" means a person less than 17 years of age.

"Commissioner" means the Commissioner of the New Jersey Department of Health and Senior Services.

"Common area" means any portion of a premises that is generally accessible to occupants and may include, but is not limited to, entryways, hallways, stairways, lobbies, laundry and recreational rooms, playgrounds, porches, patios, community centers, garages, yard areas and boundary fences.

"Confirmed blood lead level" means a blood lead level obtained from a venous blood sample.

"Defective paint" means any paint located on any interior or exterior surface or object that is damaged, deteriorated, loose, cracked, peeling, chipped, blistered, chalking or flaking.

"Department" means the New Jersey Department of Health and Senior Services.

"Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence, or sleeping quarters of one or more persons, and includes any dwelling unit, rooming house or rooming unit, and any facility occupied or used by children.

"Environmental intervention" means actions taken by the appropriate authority to identify lead hazards present in the child's environment and to order the abatement of those hazards, and to educate the family of the child identified with lead poisoning.

"Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain stair surfaces and moving parts or contact surfaces of doors and windows.

"HUD guidelines" means the United States Department of Housing and Urban Development's "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," July 1995, Document #1539–LBP, by the U.S. Department of Housing and Urban Development, Office of Lead Hazard Control, 451 Seventh Street, SW, Washington, DC 20410, and any amendments thereto.

"Impact damage" means any painted surface that is cracked, chipped, or otherwise damaged because of repeated impacts.

"Impact surface" means an interior or exterior surface that is subject to damage by repeated impacts, including chair rails and certain parts of doors.

"Intact surface" means any surface that is free of damage or defects which would allow exposure to lead-based paint or lead-contaminated dust.

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligram per square centimeter or in excess of 0.5 percent by weight.

"Lead contaminated dust" means dust particles that contain lead in excess of the levels established by the United States Environmental Protection Agency pursuant to the Toxic Substance Control Act, Section 403, 40 C.F.R. 745.61 to 745.69.

"Lead contaminated soil" means soil that contains lead in excess of the levels established by the United States Environmental Protection Agency pursuant to the Toxic Substance Control Act, Section 403, 40 C.F.R. 745.61 to 745.69.

"Lead hazard" means any condition that allows access or exposure to lead, in any form, to the extent that adverse human health effects are possible.

"Nonpaint lead hazard" means any condition that allows access or exposure to a lead hazard that is not related to lead-based paint, including, but not limited to: lead-contaminated particles brought into the dwelling by adults who are exposed to lead in an occupation or hobby; lead-containing materials used in the dwelling for art works or hobbies; water containing lead in excess of the standards set by the U.S. Environmental Protection Agency at 40 C.F.R. 141, food stored in cans with lead soldered seams; pottery or ceramics with leachable lead glazes; or traditional medicines or cosmetics containing lead.

"Premises" means a building or structure that contains one or more dwelling units, and/or a facility that is occupied or used by children, and the property on which it is located.

"Primary residence" means the dwelling where the child sleeps most of the time. Unless shown otherwise, it is presumed to be the legal residence of the child's primary caretaker.

"Risk assessment" means the evaluation of an individual child to determine whether the potential for exposure to lead is high or low.

"Screening" means the taking of a blood sample from an asymptomatic child, and its analysis by medical laboratory, licensed in accordance with N.J.A.C. 8:44, to determine if the child has lead poisoning.

"Secondary address" means a dwelling, other than the primary residence, where a child spends a significant portion of time, including, but not limited to, the residences of relatives or friends, the residences of babysitters, day care centers, schools, and public facilities.

"μg/dL" means micrograms of lead per deciliter of whole blood.

SUBCHAPTER 2. SCREENING AND CASE MANAGEMENT

8:51–2.1 Screening

(a) The local board of health shall work with health care providers in its jurisdiction to ensure that all children under six years of age are appropriately screened for lead poisoning in accordance with N.J.A.C. 8:51A.

(b) If a local board of health determines that a child under six years of age, who is receiving service from one of its child health programs, is in need of lead screening, and it is not able to make arrangements for the child to be screened by a health care provider, the local board of health shall perform a lead screening of the child.

8:51–2.2 Screening methods

(a) All screening for lead poisoning shall be performed in accordance with N.J.A.C. 8:51A.

(b) Local boards of health shall use, for blood lead testing, a laboratory that reports test results to the Department in accordance with N.J.A.C. 8:44–2.11.

8:51–2.3 Confirmation of blood lead test results

(a) A capillary blood screening sample that produces a blood lead level of 20 μg/dL or greater shall be confirmed by a venous blood lead sample before an environmental intervention is performed. A venous blood lead level of 20 Sg/dL or greater does not require a confirmatory test.

(b) If a child is reported to have a blood lead level of 20 Sg/dL or greater on a capillary sample, the local board of health in whose jurisdiction the child resides shall contact the child's parent or guardian to ensure that a timely venous confirmatory blood lead test is performed, in cooperation with the child's health care provider. If it is determined that the child has moved to another jurisdiction subsequent to being tested but before a venous confirmatory test can be obtained, the local board of health shall notify the local board of health in whose jurisdiction the child now resides.

8:51–2.4 Case management

(a) Whenever a child is determined to have a confirmed blood lead level of 20 μg/dL or greater, the local board of health shall provide for case management of the child and his or her family.

(b) Case management shall consist of:

1. Determining whether or not the child has a regular provider of medical care, and, if not, referral to a physician or licensed health care facility that is willing and able to provide primary medical care to the child;

2. Assisting the family in arranging for a medical evaluation, venous follow-up blood lead tests and related medical treatment in cooperation with the child's physician;

3. Arranging for lead screening, when indicated, of siblings and other children between six months and six years of age living in the same household, in accordance with N.J.A.C. 8:51A;

4. Education about lead poisoning, its possible effects on children, and lead hazards that may be present on the premises;

5. Education and counseling about nutrition and its role in reducing lead absorption;

6. Education and counseling about personal hygiene and housekeeping measures that parents can take to reduce their child's exposure to lead hazards;

7. Assessment of other health, developmental and socioeconomic needs of the child and family and referral to appropriate community resources;

8. Monitoring of all followup activities to ensure that medical, environmental and educational interventions are delivered in a timely, safe and coordinated manner according to current standards of care; and

9. Referral, in writing, of children under active case management who move from the jurisdiction of one board of health to another, if a forwarding address is available.

SUBCHAPTER 3. REPORTING

8:51–3.1 Notification to local board of health

Whenever the Department receives a report from a laboratory of a blood lead level of 20 μg/dL or greater in a child, the Department shall notify the local board of health in whose jurisdiction the child resides.

8:51–3.2 Reporting by local boards of health

(a) When a local board of health receives a report of a child with blood lead level of 20 μg/dL or greater, it shall report back to the Department, on the actions it has taken on behalf of the child:

1. Upon completion of the environmental investigation, it shall report the date the inspection was completed, name of the inspector, type of inspection performed (visual or XRF; hazard assessment or limited hazard assessment), whether an abatement is required, and, if not, the reason no abatement was required; and

2. Upon completion of the abatement, if required, the date abatement was completed, the type of abatement performed, and by whom the abatement was performed.

8:51–3.3 Confidentiality of records

All records maintained by the Department, and by local boards of health, regarding blood lead screening and environmental interventions, that identify individual children, including address information and laboratory test results, shall be confidential in accordance with Executive Order No. 9(1963), issued by former Governor Richard J. Hughes, and shall not be released without a signed release from the child's parent or legal guardian, except that these records may be released to other government agencies having regulatory responsibility regarding lead hazards.

SUBCHAPTER 4. ENVIRONMENTAL INTERVENTION

8:51–4.1 Environmental intervention for all children with confirmed blood lead levels of 20 μg/dL or greater

(a) Whenever a child is determined to have a confirmed blood lead level of 20 μg/dL or greater, the local board of health in whose jurisdiction the child resided at the time of testing shall provide environmental intervention.

(b) The environmental intervention shall be performed at the primary residence of the child.

1. The address given on the report of a blood lead test result shall be presumed to be the primary residence of the child, unless it is subsequently determined that the child never resided at that address.

2. If it is determined that the child no longer resides, or never resided, at the reported address, the local board of health shall attempt to determine the child's current address.

3. If it is determined that the child resided at the reported address at the time of the blood lead test, and subsequently moved to another primary address, then the local board of health shall conduct an environmental intervention at both the primary residence at the time of the test and the current primary address.

4. If it is determined that the child has moved, subsequent to being tested, to a primary residence outside of its jurisdiction, then the local board of health shall conduct an environmental intervention in accordance with (b)1 through 3 above and shall forward the report of blood lead test result of 20 μg/dL or greater to the local board of health in whose jurisdiction the child now resides, which shall conduct an environmental intervention at the child's current primary residence.

(c) If the primary residence of the child is part of a multi-unit dwelling, the environmental intervention shall be performed on the dwelling unit in which the child resides, and any common areas on the interior or exterior of the dwelling, or the premises, that are used by or accessible to the child. The local board of health may expand the environmental intervention to include any other units or areas of the premises, including the entire premises, that may contain lead hazards that are accessible to children.

(d) The environmental intervention shall be conducted by a person who has met the training and permitting requirements for inspector/risk assessor specified in N.J.A.C. 8:62.

8:51–4.2 Environmental intervention for children up to 72 months of age

(a) Whenever a child up to 72 months of age is determined to have a confirmed blood lead level of 20 μg/dL or greater, the local board of health in whose jurisdiction the child resides shall conduct a hazard assessment of the child's primary residence to identify lead sources in the child's environment.

(b) A hazard assessment shall also be conducted on the following addresses that are determined, through the hazard assessment questionnaire (chapter Appendix, incorporated herein by reference) to be built before 1978 and to contain defective paint or have undergone renovations or remodeling within the past six months.

1. Any previous primary address where the child has resided within the three months prior to the blood lead test; and

2. Any secondary address where the child spends at least 10 hours per week.

(c) A hazard assessment shall consist of, but not be limited to, the following:

1. Collection of background information regarding physical characteristics and residential use patterns including:

i. The age of structure and any additions;

ii. Copies of any previous lead hazard inspections or assessments;

iii. A diagram of dwelling showing each room and its use;

iv. The number of children under 72 months of age currently residing in the dwelling; and

v. Potential sources of lead exposure in the neighborhood.

2. Administration to a parent, guardian or responsible adult of the hazard assessment questionnaire found in the chapter Appendix;

3. A visual inspection of the dwelling to determine the condition of all interior and exterior painted surfaces and to detect any evidence of chewing on painted surfaces;

4. Testing of defective paint on the interior and exterior surfaces of the dwelling, other buildings on the premises, furniture, toys, or play structures;

5. Testing of intact paint on friction surfaces;

6. Testing of intact paint on chewable surfaces, if indicated by the questionnaire or if evidence of chewing is noted;

7. Testing of paint on impact surfaces, if there is evidence of impact damage;

8. Dust sampling of window sills and floors in rooms identified in the questionnaire as play areas, hiding spots or areas where the child is most likely to come in contact with dust. At least one sample shall be collected on the floor of the primary entry way. A minimum of six samples per dwelling shall be collected and analyzed in accordance with N.J.A.C. 8:51–5; and

9. Soil sampling, when indicated by the questionnaire, of bare soil on the premises of the primary residence that is accessible and/or posing a hazard to the child. If indicated, a minimum of two soil samples shall be collected and analyzed in accordance with N.J.A.C. 8:51–5.

(d) The local board of health shall investigate and take appropriate action regarding other possible sources of lead exposure, as indicated by the results of the questionnaire. Other sources may include, but are not limited to, nonpaint lead hazards and other sites with potential lead hazards that are accessible to the child.

(e) Whenever a child up to 72 months of age at time of testing is determined to have a capillary blood lead result of 45 μg/dL or higher, the local board of health shall conduct a visual inspection of the child's primary residence within 48 hours for the purposes of identifying immediate lead hazards, providing appropriate education and expediting a venous confirmatory test. If, upon notification or receipt of a capillary blood lead result of 45 μg/dL or higher, the local board of health determines that a venous confirmatory blood lead sample has been drawn or will be performed within 48 hours, no action is required until the results of the confirmatory test are available.

8:51–4.3 Environmental intervention for children whose age is 72 months or greater

(a) Whenever a child, whose age is 72 months or greater, is determined to have a confirmed blood lead level of 20 Sg/dL or greater, the local board of health in whose jurisdiction the child resides shall administer to the child's parent, guardian or responsible adult the hazard assessment questionnaire in the chapter Appendix.

(b) If exposure to a nonpaint lead hazard is identified through the questionnaire, the local board of health shall order remediation of that hazard, and/or provide the family with education as how to avoid exposure to that hazard.

(c) If exposure to a nonpaint lead hazard is not identified, then the local board of health shall conduct a limited hazard assessment of the child's primary residence. A limited hazard assessment shall also be conducted on any secondary addresses that are determined to be a likely source of exposure to the child. The limited hazard assessment shall consist of, but not be limited to, the following:

1. Collection of background information regarding physical characteristics and residential use patterns including:

i. The age of structure and any additions;

ii. Copies of any previous lead hazard inspections or assessments;

iii. A diagram of dwelling showing each room and its use;

iv. The number of children currently residing in the dwelling; and

v. Potential sources of lead exposure in the neighborhood;

2. A visual inspection of the dwelling to determine the condition of all painted surfaces, to detect any evidence of chewing on painted surfaces and to identify any other probable source of lead exposure; and

3. Testing of defective paint surfaces and areas where evidence of chewing has been identified.

(d) If the child with confirmed blood lead of 20 μg/dL or greater has been medically diagnosed as having a developmental disability or developmental delay, such that the effective developmental age of the child is less than 72 months, the investigation of the child's environment shall be conducted as if the child were less than 72 months of age, in accordance with N.J.A.C. 8:51–4.2.

8:51–4.4 Environmental intervention for children with persistent blood lead levels between 15 and 19 Sg/dL

(a) Whenever a child less than 72 months of age is determined to have a blood lead level in the range of 15 Sg/dL to 19 μg/dL for two consecutive tests, performed on venous blood samples, taken at least three months but no more than 12 months apart, the local board of health shall provide written and verbal educational information to the parents/ guardian of the child and, in the case of a rental unit, to the property owner of the dwelling where the child/family resides. The educational material shall address the following topics: sources of childhood lead exposure, testing children for lead poisoning, what blood lead test results mean and what parents and property owners can do to protect children from lead exposure.

(b) Whenever a child less than 72 months of age is determined to have a blood lead level as specified in (a) above, the local board of health in whose jurisdiction the child resides may conduct a limited hazard assessment as specified in N.J.A.C. 8:51–4.3(c).

Administrative correction.
See: 31 N.J.R. 1954(b).

8:51–4.5 Reporting results of environmental interventions

(a) The local board of health shall provide a written report to the property owner of the dwelling where the child/family resides, describing the findings of the hazard assessment or limited hazard assessment, identifying any conditions determined to constitute a lead hazard, and setting forth orders, if required, for the abatement of those hazards.

(b) The local board of health shall also provide a written report to the parents/guardian of the child describing the findings of the hazard assessment or limited hazard assessment and identifying any conditions determined to constitute a lead hazard.

SUBCHAPTER 5. DETERMINATION OF LEAD IN DWELLING UNITS

8:51–5.1 Environmental sampling methods

(a) Single surface paint and other surface coating samples shall be collected in conformance with sampling procedures found in the HUD Guidelines.

(b) Single surface dust wipe samples shall be collected in conformance with sampling procedures found in the HUD Guidelines.

(c) Soil samples shall be collected in conformance with sampling procedures found in the HUD Guidelines.

8:51–5.2 On site x-ray fluorescence testing

(a) X-ray fluorescence (XRF) testing conducted as part of a hazard assessment or limited hazard assessment shall be performed in conformance with the EPA/HUD Performance Characteristic Sheet for the specific XRF instrument being used or other applicable Federal protocols that may be developed. To obtain sheets, write:

XRF Performance Characteristic Sheets
U.S. Department of Housing and Urban Development
Office of Lead Hazard Control
451 Seventh Street, SW
Washington, DC 20410