



Carol Roessler
STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: April 23, 2003

Re: Clearinghouse Rules Referred to the Committee

CR 02-125, CR 03-001, and CR 03-019 have been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee.

CR 02-125 reflects changes made as a result of 2001 Wisconsin Act 80, specifically music, art and dance therapists who practice psychotherapy. The changes reflect the creation of definitions, the Department of Regulations and Licensing's new authority to issue licenses to registrants to practice psychotherapy, and sets out the requirements for the issuance of a license to practice psychotherapy by reciprocity. The clearinghouse is enclosed for your review.

CR 03-001 relates to the telecommunications assistance program for deaf, deafblind and severely hard of hearing persons' purchase of telecommunications equipment. The changes reflect a decrease in voucher dollar amounts to be used to conserve limited resources, the elimination of financial assistance for the installation of telecommunications equipment and update the terminology used to refer to deaf and severely hard of hearing persons.

CR 03-019 relates to the abatement of lead-contaminated soil and the standards defining lead-based paint hazards. The changes reflect compliance with the most recent and final federal regulations.

The committee has jurisdiction over CR 02-125 until Sunday, May 18, 2003 and CR 03-001 and CR 03-019 until May 23, 2003. If you would like the committee to hold a hearing on CR 2-125, 03-001, or CR 03-019, please contact Sara Jermstad in my office at 266-5300.

In addition the committee received the annual report for the Community Options Program and the Home and Community-Based Waivers.

Copies of the report and the above mentioned rules are attached for your review.

**PROPOSED ADMINISTRATIVE RULES – HFS 163
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.**

Need for Proposed Rules

The Department is authorized under s. 254.167, Stats., to establish by rule procedures for conducting lead investigations and under s. 254.172, Stats., to promulgate rules governing lead hazard reduction. In addition, the Department is required under s. 254.179 (1) (a) and (2), Stats., to promulgate by rule the standards that must be met for issuance of a certificate of lead-free status or a certificate of lead-safe status and to review and revise them as needed to maintain consistency with federal law. These rules are subject to review by a technical advisory committee under s. 254.174, Stats.

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under chapter HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment, and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards.

If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

The most significant proposed modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 the Department proposes will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the proposed rule revisions should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is proposing through this order, the most significant are the following:

1. Currently, section HFS 163.14 (1) (g) only describes the protocol that applies when soil abatement is conducted by removal of soil. To comply with federal regulations, the Department proposes to specify the protocol that must be followed when soil abatement is conducted by covering the soil. Temporary lead hazard reduction of soil-lead, such as covering bare soil with vegetation or landscaping materials, remains an option but is not addressed in regulation.

2. Currently, section HFS 163.14 (5) (c) 8. requires that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department proposes to reduce the permissible threshold to 400 micrograms per square foot.

3. Currently, section HFS 163.15 (2) specifies that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations,

the Department proposes to reduce the permissible threshold to that specified by the EPA.

4. The Department proposes adding standards, as section HFS 163.15 (3), for determining when a lead-based paint hazard exists.

5. The Department proposes modifying section HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

6. The Department proposes to revise its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

7. Finally, the Department proposes to revise section HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

The Lead Technical Advisory Committee met on January 15, 2003. Members present voted to unanimously approve the proposed rule as submitted to the Committee.

Responses to Clearinghouse Recommendations

The Department submitted the proposed rules to the Legislative Council Rules Clearinghouse for review on February 10, 2003. The Department accepted and made changes to the proposed rule in response to all recommendations that the Rules Clearinghouse communicated to the Department on March 7, 2003.

Public Review

The Department held one public hearing on the proposed permanent rule and the emergency rule in Madison on April 2, 2003. Three people attended the hearing to observe. No oral testimony or written comments were received. However, staff from the Department of Agriculture, Trade and Consumer Protection pointed out that the Department of Natural Resources has regulations under NR 720, Soil Cleanup Standards, which also could apply to soil abatement under certain conditions. Therefore, a requirement to also comply with under NR 720 has been added.

Final Regulatory Flexibility Analysis

The proposed rule will not have a significant affect on small businesses as defined in s. 227.114 (1) (a), Stats. The standards are consistent with federal regulations, which already apply to federally owned and federally assisted housing in Wisconsin. Under the State's authority to operate a State lead training and certification program in lieu of a lead training and certification program administered by EPA, State lead regulations must be consistent with federal regulations.

The proposed rule revises definitions and standards for identifying lead-based paint and does not establish any additional reporting requirements or deadlines. These revisions will help to protect State residents from lead poisoning caused by exposure to lead-based paint hazards.

**Summary of Public Hearing on Ch. HFS 163
Emergency and Proposed Permanent Rules
Clearinghouse Rule 03-019**

Public hearing location

April 2, 2002, in Madison

Staff in attendance

Terry Moen, Director, Bureau of Occupational Health (BOH)
Perry Manor, Chief, Asbestos and Lead Section, BOH
Shelley Bruce, Supervisor, Quality Assurance Unit, Asbestos and Lead Section, BOH
Gail Boushon, Supervisor, Administrative Unit, Asbestos and Lead Section, BOH

Participation in the hearing

The hearing record remained open until April 11, 2003, for receipt of written comments. The following is a complete list of persons who attended a public hearing. No written comments were received or oral testimony given.

1. Chris Peshek, Northern Environmental
Waupun, WI
No position indicated/no testimony or written comments.
2. Duane Klein, Department of Agriculture, Trade and Consumer Protection
Madison, WI
No position indicated/no testimony or written comments.
3. Jeff Ackerman, Department of Agriculture, Trade and Consumer Protection
Madison, WI
No position indicated/no testimony or written comments.

PROPOSED ORDER OF
THE DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, RENUMBERING, AMENDING,
REPEALING AND RECREATING, AND CREATING RULES

To repeal HFS 163.42 (1) (c) and (2) (e) 3. d.; to renumber HFS 163.42 (1) (d) to (i); to amend HFS 163.14 (1) (g), (5) (c) 8. c. and (9) (g) 1. and 2., 163.15 (title) and (2), 163.42 (1) (b) and, as renumbered, (e) 2. c., and (2) (a) 10.; to repeal and recreate HFS 163.42 (1) (i), as renumbered; and to create HFS 163.14 (9) (g) 3., 163.15 (3), and 163.42 (2) (a) 10. c., relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status.

Analysis Prepared by the Department of Health and Family Services

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under chapter HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment, and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

The most significant proposed modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 the Department proposes will mean that persons removing

lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the proposed rule revisions should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is proposing through this order, the most significant are the following:

1. Currently, section HFS 163.14 (1) (g) only describes the protocol that applies when soil abatement is conducted by removal of soil. To comply with federal regulations, the Department proposes to specify the protocol that must be followed when soil abatement is conducted by covering the soil. Temporary lead hazard reduction of soil-lead, such as covering bare soil with vegetation or landscaping materials, remains an option but is not addressed in regulation.

2. Currently, section HFS 163.14 (5) (c) 8. requires that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department proposes to reduce the permissible threshold to 400 micrograms per square foot.

3. Currently, section HFS 163.15 (2) specifies that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department proposes to reduce the permissible threshold to that specified by the EPA.

4. The Department proposes adding standards, as section HFS 163.15 (3), for determining when a lead-based paint hazard exists.

5. The Department proposes modifying section HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

6. The Department proposes to revise its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

7. Finally, the Department proposes to revise section HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

The Department's authority to repeal and recreate these rules is found in ss. 254.167, 254.172 and 254.179 (1) (a) and (2), Stats. The rules interpret ss. 254.167, 254.172 and 254.179, Stats.

SECTION 1. HFS 163.14 (1) (g) and (5) (c) 8. c. are amended to read:

HFS 163.14 (1) (g) ~~Requirement~~ Requirements when soil abatement is removed ~~conducted~~.
1. If soil is removed, any replacement soil shall have a level of lead concentration of less than 400 parts per million and shall comply with NR 720 as applicable. The soil that is removed shall not be used as topsoil at another dwelling or child-occupied facility.

2. If the soil abatement does not involve removal of soil-lead, the soil shall be permanently covered by a barrier consisting of solid, relatively impermeable materials, such as asphalt or concrete.

(5) (c) 8. c. ~~Eight~~ Four hundred micrograms per square foot (~~800~~ 400 mg/ft²) on window wells or troughs.

SECTION 2. HFS 163.14 (5) (c) 8. c. Note is repealed.

SECTION 3. HFS 163.14 (9) (g) is amended to read:

(9) (g) Soil sampling. Unless assessment of the lead concentration in soil is specifically excluded by a written contract, collect soil samples for analysis of lead concentrations in both of the following locations.

1. ~~Mid-yard~~ Exterior play areas where bare soil is present.
2. ~~Dripline and foundation areas~~ The rest of the yard where bare soil is present.

SECTION 4. HFS 163.14 (9) (g) 3. is created to read:

HFS 163.14 (9) (g) 3. Dripline and foundation areas where bare soil is present.

SECTION 5. HFS 163.15 (title) and (2) are amended to read:

HFS 163.15 (title) Lead-based paint hazard standards for dust and soil samples.

(2) SOIL-LEAD HAZARD. A soil-lead hazard is present when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million laboratory result for a bare soil sample is equal to or greater than any of the following:

(a) Four hundred parts per million (400 ppm) for the soil-lead concentration from a composite sample of bare soil in a play area.

(b) One thousand two hundred parts per million (1,200 ppm) for the arithmetic mean lead concentration from one or more composite samples of bare soil from the rest of the yard.

SECTION 6. HFS 163.15 (2) Note is repealed.

SECTION 7. HFS 163.15 (3) is created to read:

HFS 163.15 (3) LEAD-BASED PAINT HAZARD. A lead-based paint hazard is present when any of the following applies:

(a) A friction surface is subject to abrasion and the dust-lead levels on the nearest horizontal surface underneath the friction surface are equal to or greater than the dust-lead hazard levels under sub. (1).

(b) A chewable lead-based painted surface bears evidence of teeth marks.

(c) There is any damaged or deteriorated lead-based paint on an impact surface that is caused by impact from a related building component.

(d) There is any other deteriorated lead-based paint in any dwelling or child-occupied facility or on the exterior of any dwelling or child-occupied facility.

SECTION 8. HFS 163.42 (1) (b) is amended to read:

HFS 163.42 (1) (b) ~~Exterior painted components below 5 feet.~~ Exterior painted components at a height from ground or floor level to 5 feet above ground or floor level shall be free of deteriorated paint unless the paint is proven to be lead-free.

SECTION 9. HFS 163.42 (1) (c) is repealed.

SECTION 10. HFS 163.42 (1) (d) to (j) are renumbered (c) to (i).

SECTION 11. HFS 163.42 (1) (e) 2. c., as renumbered, is amended to read:

HFS 163.42 (1) (e) 2. c. The laboratory result for a dust sample collected from a window trough or well is equal to or greater than ~~800~~400 micrograms per square foot (~~800~~400 mg/ft²).

SECTION 12. HFS 163.42 (1) (i), as renumbered, is repealed and recreated to read:

HFS 163.42 (1) (i) *Soil-lead hazard.* There shall be no soil-lead hazard on registered lead-safe property. A soil-lead hazard is present when bare soil is present and an assessment conducted under s. HFS 163.14 (9) (g) determines that the bare soil is a soil-lead hazard under s. HFS 163.15 (2).

SECTION 13. HFS 163.42 (2) (a) 10. is amended to read:

HFS 163.42 (2) (a) 10. 'Collection of soil samples.' ~~If the property owner requests assessment of the lead concentration in soil, no soil~~ Soil analysis is not required if ~~no~~unless bare soil is present. If bare soil is present, collect soil samples for analysis of lead concentrations from the following locations:

a. ~~Mid-yard areas~~ Exterior play areas where bare soil is present ~~or the area of bare soil closest to mid-yard.~~

b. ~~Dripline and foundation areas~~ The rest of the yard where bare soil is present.

SECTION 14. HFS 163.42 (2) (a) 10. c. is created to read:

HFS 163.42 (2) (a) 10. c. Dripline and foundation areas where bare soil is present.

SECTION 15. HFS 163.42 (2) (e) 3. d. is repealed.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Helene Nelson
Secretary

SEAL:

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number HFS 163

Subject
 Certification for the identification, removal and reduction of lead-based paint hazards

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

- Fund Sources Affected**
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule revisions do not require any governmental entity to perform an activity; they simply revise the definitions of lead-based paint hazards in bare soil and in dust found in window troughs.

Long-Range Fiscal Implications

None

Prepared By: G Boushon	Telephone No. 267-2289	Agency DHFS/DPH/BOH/Asbestos & Lead Sec.
Authorized Signature <i>James M. Wehler</i>	Telephone No. 266-9622	Date (mm/dd/ccyy) 2/5/2003