

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 181
RELATING TO: Reporting of Blood Lead Test Results
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDING OF EMERGENCY: Not applicable

SUMMARY

1. Description of rule objective/s

The Wisconsin Department of Health Services (“the department”) proposes to amend ch. DHS 181 in order to comply with statutes governing Wisconsin’s lead poisoning prevention program. The specific revision updates the definition of lead poisoning or lead exposure in ch. DHS 181.03 to correspond to the new U.S. Centers for Disease Control and Prevention (CDC) blood lead reference value.

2. Existing policies relevant to the rule

Section 254.15, Stats., requires that the department administer a comprehensive statewide lead poisoning prevention program that includes childhood lead poisoning screening requirements. Section 254.13, Stats., requires that the department promulgate rules specifying the form of the required reports. Requirements for reporting the results of blood lead screening are established in ch. DHS 181.

3. Policies proposed to be included in the rule

In late 2021, the CDC lowered the blood lead level at which it considers a child to be lead poisoned. The CDC now recommends public health interventions at a blood lead level of 3.5 µg/dL, rather than 5 µg/dL. In Wisconsin, “lead poisoning or lead exposure” is currently defined in Section 254.11(9), as a concentration of lead in the blood of 5 µg/dL or more. Section 254.156, Stats., requires the department to promulgate a rule defining “lead poisoning or lead exposure” to correspond to the specification of the CDC. The department therefore proposes to update the current definition of “lead poisoning or lead exposure” in DHS 181 to the blood lead level set by the CDC.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The department must amend ch. DHS 181 in order to comply with statutory directives provided by the Legislature.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department is authorized to promulgate the rule based upon explicit statutory language.

b. Statute/s that authorize/s the promulgation of the proposed rule

DHS 181 is promulgated under the general authority granted in s. 227.11 (2) (a), Stats., and the express authority granted in ss. 250.04 (7), 254.13, and 254.156, Stats. These provisions read as follows:

Section 227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Section 250.04 Powers and duties of the department.

(7) The department may promulgate and enforce rules and issue and enforce orders governing the duties of all local health officers and local boards of health and relating to any subject matter under the department's supervision that are necessary to provide efficient administration and to protect health. Whoever violates a rule or order specified under this subsection shall be fined not less than \$10 nor more than \$100 for each offense, unless a different penalty is provided.

Section 254.13 Reporting requirements.

(1) Every physician who diagnoses lead poisoning or lead exposure, or any nurse, hospital administrator, director of a clinical laboratory or local health officer who has verified information of the existence of any person found or suspected to have lead poisoning or lead exposure, shall report to the department or to the local health officer of the region in which the person resides within 48 hours after verifying this information. The local health officer shall report to the department the name, address, laboratory results, date of birth and any other information about the person that the department considers essential. Any physician, nurse, hospital administrator, director of a clinical laboratory, local health officer or allied health professional making such a report in good faith shall be immune from any civil or criminal liability that otherwise might be incurred from making the report.

(2) A person who screens a child under 6 years of age for lead poisoning or lead exposure under this subchapter, or any rule promulgated under this subchapter, shall report the results of the screening to the department within the time period for reporting by rule. The department shall promulgate rules specifying the form of the reports required under this subsection. A person making a report under this subsection in good faith is immune from civil or criminal liability that might otherwise be incurred from making the report.

Section 254.156 Definition of lead poisoning or lead exposure.

Notwithstanding s. 254.11 (intro.) and (9), whenever the centers for disease control and prevention of the federal department of health and human services specifies a standard for the determination of lead poisoning or lead exposure that differs from that specified in s. 254.11 (9), the department shall promulgate a rule defining "lead poisoning or lead exposure" to correspond to the specification of the centers for disease control and prevention. Rules promulgated under this section supersede s. 254.11 (9) with respect to the requirements of this subchapter.

a. Statute/s or rule/s that will affect the proposed rule or be affected by it

The definition of "lead poisoning or lead exposure" specified in s. 254.11(9) will be superseded by the updated definition in ch. DHS 181.03.

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The department estimates it will take approximately 400 hours to develop the proposed rule amendments. This includes the time required for research and analysis, coordinating a technical advisory committee, drafting rule language, preparing related documents, holding a public hearing, and communicating with stakeholders and other affected parties.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility rate payers who may reasonably be anticipated to be affected by the rule

Any physician, nurse, hospital administrator, director of a blood drawing site or local health officer who obtains blood samples or orders blood samples to be taken from persons to determine the concentration of lead in the

blood, and directors of clinical laboratories that analyze human blood samples to determine the concentration of lead in blood.

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

In 2021, the CDC began using a reference value of 3.5 µg/dL to identify children with blood lead levels that are much higher than most children’s levels. “Lead poisoning or lead exposure” is currently defined in 254.11(9) as a concentration of lead in the blood of 5 µg/dL or more. The department proposes to update this definition in Ch. 181.03 to the CDC reference value, as required by s. 254.156, Stats.

9. Anticipated economic impact, locally or statewide

The proposed rule is anticipated to have little or no economic impact if promulgated. Laboratories and other blood lead testing sites will need to submit test results of 3.5 – 4.9 µg/dL to the department within 48 hours, where currently only results of 5 µg/dL must be reported within 48 hours. This represents approximately 58% more tests to be reported within 48 hours. However, in 2021, through electronic laboratory reporting to the DHS web-based data system (HHLPSS), 77% of test results of 3.5 – 4.9 µg/dL were reported to the department within 48 hours. As of September 1, 2021, 95% of tests of 3.5 – 4.9 µg/dL were reported within 48 hours. Therefore, the proposed rule is expected to have little or no overall long-term economic impact.

10. Agency contacts:

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