

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER:	DHS 163, 181, and 182
RELATING TO:	The definition of “lead poisoning or exposure” when reporting blood lead test results
RULE TYPE:	Permanent and emergency
SCOPE TYPE:	Revised. This statement of scope modifies SS 077-22 to include two additional rule chapters and seeks to promulgate an emergency rule in addition to a permanent rule. SS 077-22 was approved by the Governor on September 8, 2022, published in Wisconsin Administrative Register No. 801A2 on September 12, 2022, and approved by the Secretary on January 23, 2023. An emergency rule is necessary to protect the public peace, safety, and welfare. These rules require that specific actions be taken to abate or prevent further exposure to lead hazards when a certain amount of lead is detected in a child’s blood, and the current definitions of “lead poisoning or exposure” provided in rule and statute—the lowest of which is 5 micrograms per 100 milliliters of blood—are higher than the new blood lead reference value of 3.5 micrograms per 100 milliliters of blood established by the U.S. Centers for Disease Control and Prevention. Between November 2021 and February 2024, approximately 3,272 children had blood lead levels between 3.5 and 4.9 micrograms per 100 milliliters of blood, but they did not qualify to receive environmental intervention services under ch. 254, subch. II, Stats., because they did not meet the definitions of “lead poisoning or exposure” provided in statute. Notwithstanding the statutory definition of “lead poisoning or exposure,” the department is required to promulgate a definition of “lead poisoning or exposure” in rule, based on CDC levels, which supersedes the statute. As of March 2024, at least 800 additional children are estimated to test with blood lead levels between 3.5 and 4.9 micrograms of lead per 100 milliliters of blood before the end of 2024, and the proposed emergency rule would allow those children to be eligible for environmental intervention services under ch. 254, Stats.
FINDING OF EMERGENCY:	

SUMMARY

1. Description of rule objective/s

The Wisconsin Department of Health Services (“the department”) proposes to amend the definitions of lead poisoning and lead exposure in chs. DHS 163, 181, and 182 correspond to the new U.S. Centers for Disease Control and Prevention (CDC) blood lead reference value.

2. Existing policies relevant to the rule

In accordance with provisions in ch. 254, subch. II, Stats., the department administers a comprehensive statewide lead poisoning prevention program that includes all of the following: (1) childhood blood lead screening requirements; (2) requirements for reporting the results of a blood lead screen; (3) lead poisoning or lead exposure prevention grants; (4) lead investigation requirements; (5) lead hazard reduction requirements; (6) certification, accreditation, and approval requirements for identification, removal and reduction of lead-based paint hazards.

Chapters DHS 163, 181, and 182 currently contain varying definitions of lead poisoning or exposure that range from a blood lead level of 5 or more micrograms per 100 milliliters (5 µg/dL) of blood to 10 or more micrograms per 100 milliliters of blood (10 µg/dL)

Section 254.11 (9), Stats., currently defines “lead poisoning or lead exposure” as a blood lead level 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 standards used by the CDC, notwithstanding the statutory definition.

3. Policies proposed to be included in the rule

The CDC recently 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 or higher, rather than 5 µg/dL or higher. In accordance with s. 254.156, Stats., the department therefore proposes to update the current definition of “lead poisoning or lead exposure” in chs. DHS 163, 181, and 182 to incorporate the new standards recommended by the CDC.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The department must amend chs. DHS 163, 181, and 182 in order to comply with statutory directives from 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

General rulemaking authority is provided in s. 227.11 (2) (a), Stats., and the general authority to promulgate emergency rules is provided in s. 227.24, Stats.:

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 227.24 Emergency rules; exemptions.

(1) PROMULGATION. (a) An agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Chapter DHS 163 was promulgated in accordance with ss. 250.04(7), 254.167, 254.172, 254.176 (1) and (3), 254.178, and 254.179, Stats. Chapter DHS 181 was promulgated in accordance with ss. 250.04 (7), and 254.13, Stats. Chapter DHS 182 was promulgated in accordance with s. 254.151, Stats. The authority to amend the definition of “lead poisoning or exposure” based on CDC guidelines is contained in s. 254.156, Stats. All of the above identified statutes read:

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.

... (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 254.151 Lead poisoning or lead exposure prevention grants. From the appropriation account under s. 20.435 (1) (ef), the department shall:

(1m) Award the following grants under criteria that the department shall establish in rules promulgated under this subsection:

(a) To fund educational programs about the dangers of lead poisoning or lead exposure.

(b) To fund lead poisoning or lead exposure screening, care coordination and follow-up services, including lead investigations, to children under age 6 who are not covered by a 3rd-party payer.

(c) To fund administration or enforcement of responsibilities delegated under s. 254.152.

(d) To fund other activities related to lead poisoning or lead exposure.

(e) To fund any combination of the purposes under pars. (a) to (d).

(f) To develop and implement outreach and education programs for health care providers to inform them of the need for lead poisoning or lead exposure screening and of the requirements of this subchapter relating to lead poisoning or lead exposure.

(g) In each fiscal year, \$175,000 to fund lead screening and outreach activities at a community-based human service agency that provides primary health care, health education and social services to low-income individuals in 1st class cities.

(2m) Award grants for residential lead hazard abatement and residential lead hazard reduction.

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.

Section 254.167 Conduct of lead investigation. Subject to the limitation under s. 254.174, the department may promulgate rules establishing procedures for conducting lead investigations of dwellings and premises. The rules promulgated under this section may include the following:

(1) Specific procedures for investigating, testing or sampling painted, varnished or other finished surfaces, drinking water, household dust, soil and other materials that may contain lead.

(2) Specific procedures for the notification of owners, operators, occupants or prospective occupants, mortgagees and lienholders of lead levels identified during a lead investigation and of any health risks that are associated with the lead level and condition of the lead found during the lead investigation.

(3) The form of lead investigation reports, the requirements for filing the reports with the department and the procedures by which members of the public may obtain copies of lead investigation reports.

(4) Requirements for the posting of warnings, where appropriate, of the presence of a lead hazard.

Section 254.172 Prevention and control of lead-bearing paint hazards in dwelling and premises.

(1) Subject to the limitation under s. 254.174, the department may promulgate rules governing lead hazard reduction that the department determines are consistent with federal law.

(2) If a certified lead risk assessor or other person certified under s. 254.176 conducts a lead investigation of a dwelling or premises, he or she shall conduct the lead investigation and issue a report in accordance with any rules promulgated under s. 254.167. If the report indicates that the dwelling or premises meets criteria under s. 254.179 (1) (a) for issuance of a certificate of lead-free or of a certificate of lead-safe status, the lead risk assessor or other person shall issue the appropriate certificate, subject to s. 254.181.

Section 254.176 Certification requirements.

(1) Except as provided in sub. (2) and s. 250.041, and subject to sub. (3m) and s. 254.115, the department may establish by rule certification requirements for any person who performs lead hazard reduction or a lead management activity or who supervises the performance of any lead hazard reduction or lead management activity.

... (3) Except as provided in s. 250.041 and subject to sub. (3m) and s. 254.115, the department may promulgate rules establishing certification requirements for persons required to be certified under this section. Any rules promulgated under this section:

(a) Shall include requirements and procedures for issuing, renewing, revoking and suspending under this section certifications issued under this section.

(c) Shall require completion of an appropriate training course accredited under s. 254.178 or of a training course determined by the department to be comparable to the appropriate training course under s. 254.178.

(d) May provide for requirements other than training as a condition for full certification.

(e) Shall specify fees for certifying persons under this section, except that no fee may be imposed on any person employed by the state or by any political subdivision of the state for a certification required to perform duties within the scope of the employment or on an individual who is eligible for the veterans fee waiver program under s. 45.44.

(f) Shall require the issuance of a photo identification card to each person certified under this section.

Section 254.178 Accreditation of lead training courses and approval of lead instructors.

... (2) The department shall promulgate rules establishing requirements, except as provided in sub. (2m) and s. 250.041, for accreditation of lead training courses and approval of lead instructors. These rules:

(a) Except as provided in s. 250.041, shall include requirements and procedures for granting, renewing, revoking and suspending under this section lead training course accreditations and lead instructor approvals.

(c) May provide for full or contingent accreditation or approval.

(d) Shall specify fees for accrediting lead training courses and approving lead instructors, except that no fee may be imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44.

Section 254.179 Rules for dwellings and premises

(1) Subject to s. 254.174 and after review of ordinances of cities, towns and villages in this state, the department shall, by use of a research-based methodology, promulgate as rules all of the following:

(a) Except as provided in s. 254.18, the standards for a premises, dwelling or unit of a dwelling that must be met for issuance of a certificate of lead-free status or a certificate of lead-safe status to the owner of the premises, dwelling or unit of a dwelling, with the goal of long-term lead hazard reduction.

(b) The procedures by which a certificate of lead-free status or a certificate of lead-safe status may be issued or revoked.

(c) The period of validity of a certificate of lead-free status or a certificate of lead-safe status, including all of the following:

1. Authorization for the certificate of lead-free status to remain in effect unless revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not free of lead-bearing paint. The rules shall specify that the face of the certificate shall indicate that the certificate is valid unless revoked.

2. The standards limiting the length of validity of a certificate of lead-safe status, including the condition of a premises, dwelling, or unit of a dwelling, the type of lead hazard reduction activity that was performed, if any, and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling, or unit of the dwelling is not safe from lead-bearing paint hazards. The rules shall specify that the face of the certificate shall indicate the certificate's length of validity.

(d) A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free status or a certificate of lead-safe status is issued.

(e) The requirements for a course of up to 16 hours that a property owner or his or her employee or agent may complete in order to receive certification of completion and the scope of the lead investigation and lead hazard reduction activities that the owner, employee or agent may perform following certification, to the extent consistent with federal law.

c. 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 blood lead reference value of 3.5 µg/dL to identify children with blood lead levels that are much higher than most children’s levels.

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. Currently only results of 5 µg/dL or greater must be reported within 48 hours, and tests with a result of 4.9 µg/dL or less must be reported within 10 days. However, as of September 1, 2021, 95% of tests in the range of 3.5 – 4.9 µg/dL were voluntarily reported within 48 hours. Therefore, the proposed rule would result in a small increase in tests reported within 48 hours, and it is therefore expected to have little or no overall long-term economic impact.

10. Agency contacts:

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