

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES**

Clearinghouse Rule 24-022

The Wisconsin Department of Health Services proposes an order to **amend** DHS 181.03 (10), relating to the definition of “lead poisoning or exposure” when reporting blood lead test results.

RULE SUMMARY

Statutes interpreted

Not Applicable

Statutory authority

Sections 227.11 (2) (a), 250.04 (7), 254.13 (2), 254.15, and 254.156, Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., authorizes the Department of Health Services (“the Department”) to 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.

Section 250.04 (7), Stats., authorizes the Department to promulgate and enforce rules relating to any subject matter under the department's supervision that are necessary to provide efficient administration and to protect health.

Section 254.13 (2), Stats., requires a person screening a child under 6 years of age for lead poisoning or exposure to report the results of any screening to the Department in accordance with rules promulgated in ch. DHS 181. Subsection (2) of the statute also requires that the Department promulgate rules specifying the form of the required blood lead testing report.

Section 254.15, Stats., requires that the department administer a comprehensive statewide lead poisoning prevention program that includes childhood lead poisoning screening requirements.

Section 254.156, Stats., requires that whenever the U.S. Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services specifies a standard for the definition of lead poisoning or lead exposure that differs from that set in section 254.11 (9), Stats., 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.

Related statute or rule

Section 254.11 (9), Stats., defines lead poisoning or lead exposure as a concentration of lead in the blood of 5 micrograms or more per 100 milliliters of human blood ($\mu\text{g}/\text{dL}$).

Ch. DHS 181.03 (10) defines “lead poisoning or lead exposure” as having the meaning given in s. 254.11 (9), Stats.

Plain language analysis

The Department proposes to amend ch. DHS 181.03 (10) in accordance with s. 254.156, Stats. In 2021, the CDC lowered the blood lead level at which it recommends intervention in cases of lead poisoning. The CDC now recommends public health interventions at 3.5 $\mu\text{g}/\text{dL}$, rather than 5 $\mu\text{g}/\text{dL}$, the current

value provided in s. 254.11 (9), stats. The Department is therefore obligated, by s. 254.156, Stats., to promulgate a rule defining “lead poisoning or lead exposure” in s. DHS 181.03 (10) to correspond to the blood lead level specification set by the CDC.

There are no reasonable alternatives to the proposed rulemaking.

Summary of, and comparison with, existing or proposed federal regulations

The CDC uses a reference value of 3.5 µg/dL to identify children with blood lead levels that are much higher than most children’s levels. When a child has a blood lead test result at 3.5 µg/dL or greater, CDC recommends taking certain actions, including identifying source(s) of lead exposure through an environmental investigation of the child’s home, as well as other nursing and medical follow-up actions.

Comparison with rules in adjacent states

Illinois:

"Elevated Blood Lead Level" or "EBL" means a blood lead level greater than or equal to 5 micrograms per deciliter (µg/dL) of whole blood. “Lead poisoning” means the condition of having an EBL. [77 IL Admin Code Section 845.20](#). Illinois Administrative Code requires case management in all cases of confirmed EBLs, and an environmental investigation for all cases of children or pregnant persons with a confirmed EBL.

Iowa:

“Elevated blood lead (EBL) child” means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter. No definition for lead poisoning in rule. [Iowa Admin. Code 641.68.2](#). The local board shall appoint a certified elevated blood lead (EBL) inspector/risk assessor to conduct elevated blood lead (EBL) inspections in residential dwellings and child-occupied facilities where an elevated blood lead (EBL) child lives, visits, or has recently lived. [Iowa Admin. Code 641—68.3\(135\)](#)

Michigan:

“Elevated blood level” or “EBL” means, for purposes of lead abatement, a confirmed concentration of lead in whole blood of 20 ug/dl, micrograms of lead per deciliter of whole blood, for a single venous test or of 15-19 ug/dl in 2 consecutive tests taken 3 to 4 months apart. For purposes of case management of children 6 years of age or less, elevated blood level means a confirmed concentration of lead in whole blood of 10 ug/dl. [MCLS 368-1978-5-54A, Section 333.5456](#). The Michigan Department of Health and Human Services recently revised its elevated blood level definition to 3.5 micrograms per deciliter in policy, specifically [HPE-531-101](#).

Minnesota:

"Elevated blood lead level" is defined in statute and was recently amended to read: “‘Elevated blood lead level’ means a diagnostic blood lead test with a result that is equal to or greater than ~~ten~~ 3.5 micrograms of lead per deciliter of whole blood in any person.” The law amending the definition was signed by Governor Walz on May 24, 2023. [Minn. Stat. s. 144.9501, subd. 9.](#); *see also* [Laws of Minnesota 2023, Chapter 70, Article 4, s. 45](#). The statute permits the Commissioner of the Minnesota Department of Health to set a lower concentration if necessary to protect public health.

Summary of factual data and analytical methodologies

The proposed rule is based on the CDC’s updated blood lead reference value, which was based on the 97.5th percentile of blood lead distribution in children, as determined in the National Health and Nutrition Examination Survey data from 2015–2016 and 2017–2018.

Analysis and supporting documents used to determine effect on small business

Based on an analysis of current lab reporting times for blood lead test results, the proposed rule is anticipated to have little or no economic impact to labs and clinics 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 or higher must be reported within 48 hours. Due to the increased efficiency of electronic reporting, in 2023 over 85% of test results between 3.5-4.9 µg/dL (“tests”) were already reported to the state within 48 hours. Moreover, 88% of labs (97 out of 110 total) reported more than half of their tests within 48 hours, regardless of the rule. Only four labs did not report any tests within 48 hours, and they each only had one test result between 3.5-4.9 µg/dL to report. Meaning, if the proposed rule had been in place for 2023, it would have resulted in only a 17% increase in the total number of tests that needed to be reported within 48 hours compared to what was reported.

Effect on small business

The proposed rule is expected to have minimal or no overall long-term economic effect on small businesses.

Agency contact person

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Statement on quality of agency data

The data used by the Department to prepare these proposed rules and analysis comply with s. 227.14 (2m), Stats.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department’s website, at <https://www.dhs.wisconsin.gov/rules/active-rulemaking-projects.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 181.03 (10) is amended to read:

DHS 181.03 (10) “Lead poisoning or lead exposure” ~~has the meaning given in s. 254.11 (9), Stats.~~ means a level of lead in the blood of 3.5 or more micrograms per 100 milliliters of blood.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.