

CHAPTER 15

CHILDHOOD LEAD POISONING PREVENTION AND CONTROL

BOARD OF HEALTH ROLE AT A GLANCE

- \$ Determine if lead paint violations are present during routine Sanitary Code inspections in pre-1978 homes occupied by children under the age of six.
- \$ Report the finding of lead violations to the property owner, occupant and DPH Childhood Lead Poisoning Prevention Program, and issue Order to Correct Violations.
- \$ Initiate judicial proceedings within seven working days if property owner fails to meet deadlines in Order.
- \$ Look for evidence of unauthorized deleading while conducting lead or Sanitary Code inspections, or lead determinations.

OVERVIEW

Lead poisoning is a disease especially dangerous for children under six years old. In young children, too much lead in the body can cause serious damage to the brain, kidneys, nervous system and red blood cells. Very high levels can cause retardation, convulsions, coma and sometimes death. Even low levels can slow a child's development and cause learning and behavioral problems. A lead-poisoned child can be medically treated, but some of the damage caused by lead poisoning is irreversible.

While children are usually more readily and seriously poisoned than adults, lead is poisonous to everyone. Pregnant women should avoid lead exposure because of the potential harm to developing fetuses. Most adult lead poisoning is caused by exposures at work, do-it-yourself home renovations that disturb leaded surfaces, and certain hobbies, such as making stained glass.

The main way children become lead poisoned is from swallowing lead paint dust and chips. Lead paint in housing, both urban and rural, causes almost all childhood lead poisoning. Children do not have to chew on leaded surfaces or eat paint chips to become poisoned: The normal hand-to-mouth activity of young children, bringing a small amount of fine lead dust into the child's body, is responsible for most lead poisoning.

Lead is so poisonous that even a small amount of lead dust can poison a child. Lead paint under layers of unleaded paint can still pose a health threat to children, especially when it is exposed or disturbed, such as through normal deterioration or renovation work. When lead paint is on moving surfaces, such as windows, dust is released through normal use and settles, where it can be picked up on children's toys and fingers.

Lead poisoning has no specific symptoms: The only way to tell for sure that a child is lead poisoned is by testing the child's blood for lead.

Lead Paint and the Massachusetts Housing Stock

While lead poisoning is a problem throughout the United States, it is particularly a hazard in Massachusetts. Due to its age and its preponderance of cities and towns developed during the Industrial Revolution, Massachusetts has a high percentage of old, lead-painted housing. It was not until 1978 that the U.S. Consumer Product Safety Commission limited the lead content of house paint to .06 percent. Hundreds of young children in the state are poisoned by lead paint each year.

The Massachusetts Response: The Lead Law

In 1971, Massachusetts became the first state to pass a comprehensive law, the Childhood Lead Poisoning Prevention and Control Act ("Lead Law"), to fight the problem. The Lead Law underwent major changes in 1988 and again in 1994.

The Lead Law requires owners of homes built before 1978 in which a child under six years old lives, to have the home inspected by a licensed lead inspector, and, if there are lead violations, have it delead for full compliance, or brought under interim control.

For full compliance, the owner must have delead the following surfaces:

- * intact leaded paint, plaster or putty on moveable window parts with sills five feet or less from the floor or ground, and those surfaces that come in contact with moveable parts

- * intact leaded paint, plaster or putty on "accessible mouthable surfaces." These are interior or exterior surfaces or fixtures, five feet or less from the floor or ground that, that form a protruding corner or edge, or protrude 1/2 inch or more from a flat wall surface, or are free-standing so that a child may mouth the surface. In general, "accessible mouthable surfaces" are wall corners, and woodwork, such as moldings, doors, door jambs, stairs, stair rails.

In addition, other surfaces with peeling or chipping leaded paint, plaster or putty must be made intact.

Interim control is a set of temporary measures that the owner can take to correct urgent lead hazards, such as peeling or chipping lead paint, excessive lead dust, water leaks or other structural defects causing lead paint to chip or peel, and have up to two years before having to delead for full compliance.

A licensed deleader must do any removal of lead paint, and make intact significant amounts of deteriorated lead paint (more than two square feet per room, hall, or interior area and more than 10 square feet in total on the exterior. The owner or someone who works for the owner who is not a licensed deleader can do certain low-risk deleading and interim control tasks, after reviewing CLPPP educational materials and completing a self-administered exam. A licensed lead safe renovator or the owner or owner's agent as defined at 105 CMR 460.020, can remove

any leaded components and surfaces (such as windows and woodwork, with the exception of walls and ceilings) and make intact up to two square feet of deteriorated lead paint per room, hallway or interior area after taking a one day course and passing an exam. This program is called moderate risk deleading.

Property owners who do not meet the requirements of the Lead Law are strictly liable for all damages to a child who is lead poisoned in their property.

The purpose of these provisions is to make homes with young children lead-safe, and to thus prevent children from becoming lead poisoned in the first place.

BOARD OF HEALTH RESPONSIBILITIES (Concurrent authority over most of these responsibilities with the Massachusetts Department of Public Health's Childhood Lead Poisoning Prevention Program [CLPPP])

(Legal authority under M.G.L. c. 111, ss. 189A through 199B; Massachusetts Regulations for Lead Poisoning Prevention and Control, 105 CMR 460.000, and M.G.L. c. 111, ss. 127A to 127K; and Regulations for Minimum Standards of Fitness for Human Habitation [State Sanitary Code, Chapter II], 105 CMR 410.000)

The board of health must:

Conduct lead inspections or lead determinations in homes built before 1978 in which a child under the age of six lives, to find out if there are dangerous levels of lead, and to require compliance with the Lead Law, the Sanitary Code and the Regulations for Lead Poisoning Prevention and Control.

- * Full lead inspections may only be performed by licensed lead inspectors. A lead inspection is a comprehensive, surface-by-surface testing of a home for the presence of lead. (Consult your training manual and any materials received from refresher trainings and CLPPP mailings, on how to perform a lead inspection.)
- * Licensed lead determination inspectors may only perform lead determinations, and may not perform lead inspections, reinspections, or issue Letters of Full Compliance or Interim Control. The lead determination enforcement procedure is one in which a board of health or CLPPP lead inspector or lead determination inspector must test a minimum of five surfaces for the presence of lead. If one or more test positive for lead, the inspector or determination inspector can establish a Lead Law violation and issue the property owner an Order to Correct Violation(s). (See B 1, below.). (Consult your training manual and any materials received from refresher trainings and CLPPP mailings, on how to perform a lead determination.)

Lead inspections or determinations must be made in the following circumstances:

- * Upon referral from CLPPP of a case involving a poisoned child

(25 mcg/dL and above) or a child at risk of becoming poisoned (20 to 24 mcg/dL) to a board of health with a licensed lead inspector on staff in the town in which the child lives. (If the case involves a poisoned child, a lead inspection and not a lead determination must be performed. If the case involves a child with a blood lead level between 20 and 24 mcg/dL, either a lead inspection or lead determination may be performed.)

- * In the course of an inspection for any violation of Chapter II of the Sanitary Code in a home built before 1978 where a child under six years of age lives, unless the reason for the inspection is solely lack of heat. If the reason for the inspection is solely lack of heat, but the occupant requests a full Sanitary Code inspection, then a lead inspection or determination must be done.
- * Upon the request of a tenant in a home built before 1978 in which a child under age six resides. Under the Lead Law, best efforts must be used to schedule and complete an inspection or determination for lead within ten days of a request for such an inspection. If there is a request for an inspection for any of the specified Sanitary Code violations in 105 CMR 410.820, best efforts must be used to schedule and complete the Sanitary Code inspection, which must include the lead inspection or determination (unless lack of heat is the only reason for the Sanitary Code inspection), within 24 hours.

If a lead inspection or determination reveals that the home contains a dangerous level of lead, the board of health must treat the violation as an emergency matter. (M.G.L. c. 111, s. 198; 105 CMR 460.620 and 105 CMR 460.700(C) and the Sanitary Code, 105 CMR 400.200(B)). Thus, the board of health must give preference to lead violations over all other violations, except other emergency matters. 105 CMR 460.700(C).

The board of health must take the following actions with respect to a pre-1978 home of a child under six discovered to contain lead violations:

- * Report the finding of lead violations to the owner, occupants and CLPPP, and issue an Order to Correct Violation(s) to the owner. If the Order to Correct is issued along with a lead determination report instead of a full lead inspection, the Order will require the owner to take the additional step of hiring a licensed lead inspector to perform a lead inspection (or, if the owner wishes to pursue interim control, a licensed risk assessor to perform a risk assessment) and addressing all identified violations or urgent lead hazards, respectively. In this case, the preceding board of health lead determination is crucial: At least one housing court has found that an owner cannot be required to hire a private lead inspector to perform a lead inspection in the absence of a prior Board of Health or CLPPP lead determination.
- * The report, on forms developed and supplied by CLPPP, must be sent to the owner and occupants within three working days after the lead inspection or

determination. However, if the lead inspection or determination was performed as part of a Sanitary Code inspection, the report must be sent within seven days after the lead inspection or determination was performed. Lead determination reports must be accompanied by CLPPP's disclaimer notice, explaining the difference between a lead determination and a lead inspection.

Lead inspection or lead determination reports sent to owners and occupants must also be accompanied by the following:

- * Order to Correct Violation(s) and Cover Letter
- * Residential Deleading Advisory
- * Notice to Property Owners and Tenants: Tenants' Rights, Responsibilities and Remedies

The following additional documents go only to the owner:

- * Documentation of Training to Perform Owner/Agent Low-Risk Abatement and Containment and Deadlines by Which Owner/Agent Low-Risk Work and/or Interim Control Work Will be Completed
- * List of Licensed Inspectors and List of Licensed Risk Assessors
- * Notice to Tenants of Lead Paint Hazards (only if there are common area/exterior violations affecting other tenants in the building)

The cover sheet of the lead determination report form, or lead inspection report form, must be sent to CLPPP.

- * If a board of health licensed lead inspector had performed the lead inspection on which the Order to Correct Violation(s) was based, he or she may reinspect the unit, and if all conditions for full compliance have been met, issue a Letter of Compliance. In lieu of performing the reinspection himself or herself, the board of health licensed lead inspector may refer the case to CLPPP for reinspection. A copy of the reinspection report and the Letter of Compliance must be sent to the owner and the occupant.
- * If an owner under an Order to Correct Violation(s) fails to meet any of the deadlines for action required by the Order, the board of health must initiate judicial proceedings within three working days of the missed deadline. Judicial proceedings may take the form of criminal proceedings seeking enforcement of penalties under M.G.L. c. 111, ss. 194 through 199A and the Sanitary Code, 105 CMR 400.700, or a civil action for injunctive relief. The board of health may hire a licensed deleader to make necessary repairs and bill the owner, or seek court action to reimburse itself. M.G.L. c. 111, ss. 127A through 127C.

Look for evidence of unauthorized deleading while conducting lead or Sanitary Code inspections, or lead determinations.

- * If unauthorized deleading is in progress, board of health lead inspectors or lead determination inspectors must take dust samples in accordance with 105 CMR 460.170. If the circumstances of the work encountered are such that a public health hazard is being created, any board of health inspector -- not only lead inspectors or lead determinators -- can issue a cease-work order to stop the unauthorized party from conducting deleading, or to stop a licensed deleader or trained owner/agent who is deleading unsafely, and require clean-up by a licensed deleader in accordance with the requirements of 105 CMR 460.160. The cease-work order must be posted on the building, and a copy sent to CLPPP, the Department of Labor and Industries and to the property owner.
- * If there is evidence of past unauthorized deleading, such as paint chips, paint residues, paint dust and dust generated from sanding, a line five feet from the floor or ground on accessible, mouthable surfaces, demarcating removal of paint below that height, the lead inspector or lead determination inspector must contact CLPPP. The lead inspector must refuse to issue a Letter of Initial Inspection Compliance. In addition, he or she must resolve any uncertainty as to whether or not visible dust is leaded by taking dust samples in accordance with the procedures in 105 CMR 460.170. The Director of CLPPP will determine whether or not the work constitutes unauthorized deleading, and if so, will take enforcement action.

STATE RESPONSIBILITIES Carried out by the Massachusetts Department of Public Health's Childhood Lead Poisoning Prevention Program

(Legal authority under M.G.L. c. 111, ss. 189A through 199B; Massachusetts Regulations for Lead Poisoning Prevention and Control, 105 CMR 460.000)

DPH must:

- * Establish a statewide program for prevention, screening, diagnosis and treatment of lead poisoning. (M.G.L. c. 111, s. 190, 193.) This includes a case management system, through which CLPPP nurses and social workers counsel families of children who are identified as lead poisoned or as being at risk of lead poisoning (those with a 20-24 mcg/dL blood lead level), and to track the medical treatment of such children.
- * Institute an education and publicity program, for parents, property owners, health care providers, teachers, and human service workers, as well as the general public, on sources of lead poisoning, safety measures that can be taken to reduce the incidence of lead poisoning, legal rights and remedies under the Lead Law, and financing programs available for lead abatement and containment. (M.G.L. c. 111, s. 192, 192B).
- * Establish a statewide program for detection of sources of lead poisoning, and enforce secondary lead poisoning prevention efforts. (M.G.L. c. 111, s. 194) This includes

having CLPPP licensed lead inspectors perform lead determinations or inspections upon request, with priority focused on homes of children who are lead poisoned or have blood lead levels between 20 mcg/dL and 24 mcg/dL.

- * Establish a State Laboratory for blood lead analysis. (M.G.L. c. 111, s. 195)
- * Establish and enforce regulations for a primary lead poisoning prevention effort that requires either deleading for full compliance, or correction of urgent lead hazards for interim control, in all pre-1978 homes in which a child under six live. (M.G.L. c. 111, s. 197)
- * Prepare educational material and forms required for property transfer lead notification (M.G.L. c. 111, s. 197A(a)) and tenant lead law notification (M.G.L. c. 111, s. 197A(d)).
- * License lead inspectors, risk assessors and training providers for lead inspectors and risk assessors, and certify private laboratories performing lead testing of people other than licensed deleaders (M.G.L. c. 111, s. 197B; 105 CMR 460.400).
- * Enforce violations of the Lead Law, having all the powers available to local boards of health under M.G.L. c. 111, ss. 127A through 127K, as well as the Sanitary Code (M.G.L. c. 111, s. 198).

STATE RESPONSIBILITIES (Carried out by the Massachusetts Department of Labor and Industries, Asbestos and Lead Program, 1001 Watertown St., Room 1106, West Newton MA 02165, (617) 727-7047 or 1-800-425-0004; fax (617) 727-7581)

(Authority under M.G.L. c. 111, s. 197B; Massachusetts Deleading Regulations, 454 CMR 22.00)

DLI must:

- * Establish and enforce occupational safety and health regulations governing training of deleaders, and required safe work practices, precautionary measures, protective equipment and other safeguards, including practices to prevent contamination of the residential premises, ambient discharges and ground contamination.
- * License deleaders, lead safe renovators and deleader training providers.
- Establish regulations governing contractors' or employees' performance of renovations that disturb lead-painted surfaces.

For further information, contact:

Childhood Lead Poisoning Prevention Program, Bureau of Environmental Health, 250 Washington Street, Boston, MA 02108.

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