

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 15-388)**

Overview and Legal and Fiscal Impact

The regulations conform the Lead Poisoning Screening Program in the State with the revised guidelines of the Advisory Committee for Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention (CDC).

The regulations present no legal issues of concern.

Expenditures increase by an indeterminate amount beginning in fiscal 2016 for the Maryland Department of the Environment (MDE), the Department of Health and Mental Hygiene (DHMH), and local health departments due to an increase in the number of children tested for lead in Maryland. Revenues are not affected.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Maternal and Child Health: Lead Poisoning Screening Program:
COMAR 10.11.04.02 and .04-.06

Legal Analysis

Background

In May 2012, the CDC received recommendations from its Advisory Committee on Childhood Lead Poisoning Prevention regarding lowering children's acceptable blood lead levels from 10 mcg/dL to 5mcg/dL. The Department of Health and Mental Hygiene endorsed the CDC recommendations and issued a letter to clinicians on June 7, 2012, recommending that clinicians follow the new CDC guidelines and re-test children with blood levels of 5 – 9 mcg/dL within 3 months. In addition, the department began to analyze surveillance results for childhood lead exposure in the State in cooperation with the Maryland Department of the Environment (MDE), which resulted in the 2015 Targeting Plan for Areas at Risk for Childhood Lead Poisoning. The 2015 Targeting Plan revises the previous Targeting Plan, adopted by the department in 2004. According to the department, the 2015 Targeting Plan is part of a comprehensive State strategy to eliminate or control known sources of lead in the environment, conduct surveillance of blood lead levels, ensure appropriate clinical follow-up for those exposed, and provide case management for lead exposed children. The State Lead Poisoning Prevention Program is based at MDE and is jointly conducted with the department and local health departments.

Summary of Regulations

Definitions

The regulations alter the definition of “at-risk” area to mean, effective January 1, 2016, any geographic area within the State that has been designated by the department as at-risk for lead exposure: (1) for individuals born on January 1, 2015 or later in the 2015 Targeting Plan for Areas at Risk for Childhood Lead Poisoning or (2) for individuals born before January 1, 2015 in the 2004 Targeting Plan for Areas at Risk for Childhood Lead Poisoning. The definition of “elevated blood level” is altered from a blood lead level of 10 micrograms per deciliter or greater to 5 micrograms per deciliter or greater. The regulations alter the definitions of “child at high-risk”, “high-risk area”, and “targeting plan” to reference the 2015 Targeting Plan.

Blood Tests for Lead Poisoning

Effective January 1, 2016, a primary care provider for a child who resides, or who is known to have previously resided, in an at-risk area is required to administer a blood test for lead poisoning during the 12-month visit and again during the 24-month visit. In addition, effective January 1, 2016, a primary care provider for a child who is 24 months old or older and younger than 6 years old who resides, or is known to have previously resided, in an at-risk area as defined in the 2004 Targeting Plan is required to administer a blood test for lead poisoning if (1) the child has not previously received a blood test for lead poisoning; (2) the child’s parent or guardian fails to provide documentation that that the child has previously received a blood test for lead poisoning; or (3) the provider is unable to obtain the results of a previous blood lead analysis.

Documentation Requirements on Entry into a Prekindergarten Program, Kindergarten Program, or First Grade

The regulations authorize the use of an electronic report of a child’s blood level analysis from a health care provider to the administrator of the child’s school or program, or the administrator’s designee, as an acceptable alternative to written documentation. The regulations alter the content of the form issued by the department to be used by a health care provider to certify documentation of a child’s blood lead analysis to include, in addition to the current requirement for the date of a blood lead analysis, the result of the analysis.

Blood Level Analysis Reporting

For a child for whom certified documentation of blood lead analysis has not been provided, the regulations repeal a requirement that an administrator of a school or program, or the administrator’s designee, report to the local health department the child’s name, the child’s last known address, and the name and phone number of child’s parent or guardian. This requirement violates the federal Family Educational Rights and Privacy Act.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 7-403 of the Education Article, § 6-303 of the Environment Article, and § 18-106 of the Health – General Article as statutory authority for the regulations.

Section 7-403 of the Education Article requires the department, in cooperation with the State Board of Education and the Maryland State Medical Society, to adopt regulations regarding blood tests for lead poisoning required of children entering schools. In areas designated as at risk for lead poisoning, as determined under § 18-106 of the Health – General Article, when a child enters a public prekindergarten program, kindergarten program, or first grade, the parent or legal guardian of the child is required to provide documentation from a health care provider, on a specified form, certifying that the child has undergone blood testing for lead poisoning. In addition, a program or school is required to report the name, last known address, and telephone number of each child for whom certified documentation of a lead test is not provided, as determined by regulation, to the local health department in the jurisdiction where the child resides.

Section 6-303 of the Environment Article requires the Department of the Environment to report the results of blood tests for lead poisoning indicating an elevated blood lead level, as defined by regulation, to (1) the local health department in the jurisdiction where the child resides and (2) the department.

Section 18-106 of the Health – General Article requires the Secretary of Health and Mental Hygiene to establish and administer a Lead Poisoning Screening Program that will assure the appropriate screening of children in the State for lead poisoning.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Expenditures increase by an indeterminate amount beginning in fiscal 2016 for the Maryland Department of the Environment (MDE), the Department of Health and Mental Hygiene (DHMH), and local health departments due to an increase in the number of children tested for lead in Maryland. Revenues are not affected.

Agency Estimate of Projected Fiscal Impact

The regulations (1) expand the definition of “at-risk” areas to include the entire State; (2) alter the definition of “elevated blood level” from 10 micrograms per deciliter or greater to 5 micrograms per deciliter or greater; (3) require primary care providers to administer a blood lead test at the 12-month and 24-month visits or under specified conditions for a child older than two but younger than six; and (4) make additional administrative changes.

DHMH advises that the regulations result in an indeterminate increase in expenditures for MDE, DHMH, and local health departments beginning in fiscal 2016 related to outreach, investigation, and case management. The Department of Legislative Services generally concurs and notes that expenditures are likely to be significant; even so, Medicaid expenditures are not anticipated to be materially affected as testing is generally already provided for all children

enrolled in Medicaid at 12 and 24 months. Other administrative changes related to testing and notification requirements are not expected to increase State or local expenditures. Revenues are not affected.

The Maryland 2015 Lead Targeting Plan, developed by DHMH and incorporated into the regulations by reference, estimates that the total cost of implementing a three-year period of universal lead testing of children younger than age six at 12 and 24 months, including both public and private expenditures, is between \$3.9 million and \$5.9 million, including \$1.1 million for additional MDE lead inspections. As these estimates were prepared as part of the development of the 2015 Targeting Plan using historical data, they are used to demonstrate the likely magnitude of *total* expenditures (some of which are already incurred) rather than specific estimated costs.

Impact on Budget

DHMH advises that the fiscal 2016 budget includes approximately \$1.4 million in general funds for all lead-related activities. These funds may need to be supplemented on a one-time-only basis with federal funds from the Environmental Public Health Tracking project.

Agency Estimate of Projected Small Business Impact

DHMH advises that the regulations have a meaningful impact on small businesses. Specifically, DHMH notes that property owners who meet the definition of small businesses may incur additional increases in expenditures if children residing in their properties are identified as having been exposed to lead. The Department of Legislative Services concurs but also notes that small businesses that conduct lead testing and/or provide lead abatement services are likely to see an increase in revenue, as demand for their services increases to the extent more homes containing lead are identified because of the increased testing requirements.

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