



Department of Health and Mental Hygiene

Board of Health

Notice of Adoption of Amendments to Article 43 of the New York City Health Code

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to amend Article 43 of the New York City Health Code (the “Health Code”) was published in the City Record on June 15, 2016, and a public hearing was held on the proposal on July 25, 2016. No written comments or testimony were received. One change was made to the original proposal as discussed below. At its meeting on September 13, 2016 the Board of Health adopted the following resolution.

Statement of Basis and Purpose

The Department of Health and Mental Hygiene (the Department) Bureau of Child Care enforces Article 47 of the Health Code which regulates non-residential-based child care centers for children under six years of age) and Article 43 (School-Based Programs for Children Ages Three through Five) which regulates health and safety aspects of school-based programs for children ages three through five.

The Board of Health has amended Article 43 of the Health Code as follows to enhance the health, safety and supervision of children under six years of age attending school-based programs.

Physical facilities: testing drinking water supplies for lead; installing window guards

Health Code §47.43, applicable to non-school based freestanding child care centers, currently requires that “Drinking water from faucets and fountains shall be tested for lead content and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected.”¹ There is no similar requirement in Article 43 or in Article 45 (General Provisions Governing Schools and Children’s Institutions). Although schools may be testing lead levels in water voluntarily, there is no general requirement that schools test potable water supplies for lead. While no water supplies should have lead levels above 15 ppb, the youngest children are most at risk for lead poisoning resulting from any environmental lead source. Article 43 is amended to require testing by school-based programs for children ages three through five of potable water supplies for lead. One change was made to the proposal, to extend the amount of time schools have to conduct drinking water lead testing from 30 days to 60 days after filing the required notice, to accommodate the amount of time needed for such testing.

In addition, the Board is amending this article to require that window guards or other Department approved limiting devices be installed in windows in all areas of a school accessible to children under six years of age. Since 1976, Chapter 12 of the Department’s rules has required window guards to be installed in all multiple dwelling units in which children 10 years of age and younger reside. Section 47.41 (e) of Article 47 similarly requires window guards to be installed in child care services that are not located in school buildings. The Board finds that the same protections should be afforded the children of the same ages attending schools.

¹ This is the federal action level for lead in public drinking water supplies. See, US Environmental Protection Agency, “Lead and Copper Rule,” 40 CFR Part 141 Subpart I.

Teacher immunizations

A new Recommended Adult Immunization Schedule was approved by the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices and published in February, 2016. The Board is amending the immunization requirements for child care teachers and volunteers in Article 47 and for staff teaching early childhood education programs who are covered by Article 43 to be consistent with these recommendations. The major change is that having a history of measles and mumps will not be acceptable substitutes for measles and mumps vaccinations – vaccines must still be administered even if a health care provider indicates that an individual has a history of these diseases. Vaccinations are not needed if there is laboratory proof of immunity.

Statutory Authority

The authority for these amendments is found in §§ 556 and 558 of the New York City Charter (the “Charter”). Sections 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the New York City Health Code (the “Health Code”) and to include all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority.

Section 556 of the Charter provides the New York City Department of Health and Mental Hygiene (the “Department”) with jurisdiction to protect and promote the health of all persons in the City of New York.

The rule is as follows:

Note-matter in brackets [] to be deleted
Matter underlined is new

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivision (c) of §43.11 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes to read as follows:

§43.11 Health; staff.

* * *

(c) *Staff immunizations.* [Health care providers shall certify that each staff or volunteer] Each staff person and volunteer shall obtain a report from a health care provider who is a licensed physician, nurse practitioner, physician’s assistant, or doctor of osteopathy certifying that such person has been immunized against measles; mumps; rubella; varicella (chicken pox); and [tetanus and diphtheria (Td) or] tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices (ACIP). Persons born on or before December 31, 1956 [who have a history of measles or mumps disease shall not require such] are not required to have measles, mumps or rubella vaccines. A history of having health care provider documented varicella [, measles or mumps] or herpes zoster disease shall be accepted in lieu of varicella[, measles or mumps vaccines] vaccine. A

history of having measles, mumps or rubella disease shall not be substituted for the measles, mumps, or rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for ACIP-recognized medical contraindications upon submission of appropriate documentation from a licensed physician Each staff person and volunteer shall submit such report of immunization to the person in charge of a school where he or she is employed or volunteers. Reports of immunizations shall be confidential and shall be kept by the person in charge of a school in a paper or electronic file with other staff and volunteer health information, except that such reports shall be made available to the Department upon request.

* * *

Notes: Subdivision (c) was amended by resolution adopted September 13, 2016 to incorporate recommendations of the CDC Advisory Committee on Immunization Practices issued in February, 2016.

RESOLVED, that Article 43 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, adding a new §43.24, to be printed together with explanatory notes to read as follows:

§43.24 Physical facilities.

(a) *Drinking water.* Drinking water from faucets and fountains must be tested for lead content by persons in charge of a school upon the effective date of this provision or by persons in charge of a new school program within 60 days of filing the notice required by §43.05 of this article and every five years thereafter using a method approved by the Department. Copies of test results must be sent to the Department by mail, email or fax on receipt and the persons in charge of a school must investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected. Remedial action must be described in a corrective action plan to be submitted to the Department with reports of elevated test results. Until remedial action is completed, the persons in charge of a school must provide and use bottled potable water from a source approved by the Department or the State Department of Health.

(b) *Window guards.* Department approved window guards or other window opening limiting devices must be installed on all windows in all rooms, hallways, and stairwells, except windows giving access to fire escapes used as a secondary means of egress, if children under six years of age have access to such areas.

Notes: Section 43.24 was added by resolution adopted September 13, 2016 to require drinking water to be tested for lead, and that approved window guards or other limiting devices be installed in windows in all areas accessible to children under six years of age, mirroring similar requirements for children attending child care services regulated by Article 47 of the Health Code.