

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND SECTION 173.14 OF THE
NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, notice is hereby given of the proposed amendment of Section 173.14 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON THURSDAY, JANUARY 19, 2006 FROM 10:00 A.M. TO 12:00 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. JANUARY 18, 2006. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY JANUARY 10, 2006.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013 OR BY EMAIL TO THIS ADDRESS, RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR BY FAX ADDRESSED TO RENA BRYANT AT (212) 788-4315, ON OR BEFORE 5:00 P.M. ON JANUARY 19, 2006.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY.

STATUTORY AUTHORITY

This amendment to the New York City Health Code (“Health Code”) is promulgated pursuant to §27-5056.18 of the Administrative Code of the City of New York (“Administrative Code”), and §558(b) and (c) of the New York City Charter (“Charter”) which authorizes the Board of Health to amend the Health Code.

STATEMENT OF BASIS AND PURPOSE

Background/Overview

This proposal, as outlined below, is intended to increase the effectiveness of the New York City Lead Poisoning Prevention Act of 2003 (“Local Law 1”) in preventing childhood lead poisoning. In accordance with provisions of Local Law 1, it would lower the age of a “child of applicable age” which triggers Local Law 1 actions from “under seven years of age” to “under six years of age” in order to better prioritize the invested private and public moneys and resources for lead hazard reduction in housing. Protecting younger children who are at greatest risk for lead poisoning is the most effective and efficient way of preventing childhood lead poisoning in New York City.

Local Law 1 amended the Housing Maintenance Code and other provisions of the Administrative Code with respect to addressing lead hazards in units in multiple dwellings in which a child of “applicable age” resides. To maintain consistency with the Administrative Code, the Board of Health repealed and reenacted various Health Code provisions applicable to lead-based paint hazard control and remediation in the homes of children with environmental intervention blood lead levels (“EIBLL”), as well as in day care facilities, kindergartens and residences of other children of applicable age.

Effective August 2, 2004, Local Law 1 included a provision defining a child of “applicable age” and also authorized the Board of Health to amend such definition, as follows:

§27-5056.18 Application of this article based on age of child. For the purposes of this article, the term “applicable age” shall mean “under seven years of age” for at least one calendar year from the effective date of this section. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of this article should apply to children of age six, and based on this determination, may redefine “applicable age” for the purposes of some or all of the provisions of this article to mean “under six years of age,” but no lower.

Proposal

The New York City Department of Health and Mental Hygiene (the “Department”) has analyzed surveillance data and proposes that the Board of Health amend subdivision (b) (“Definitions”) of

Health Code §173.14 (“Safety standards for lead based paint abatement”) by adding a definition of “applicable age” to mean “under six years of age” rather than “under seven years of age.”

Over the past 30 years there has been a dramatic decline in childhood lead poisoning. Despite recent increases in blood lead testing rates, both the number and severity of lead poisoning cases in New York City have decreased dramatically. However, childhood lead poisoning remains a significant public health concern. Lead poisoning has been associated with possible reductions in intelligence, reading and learning disabilities, reduced attention span, increased hyperactivity and behavior problems (Baghurst et al., 1992; Bellinger et al., 1994; Canfield et al., 2003; Lanphear et al., 2000; Mendelsohn et al., 1998). Interior lead-based paint that is peeling, cracking or chipping and dust from abraded lead-based paint remain major sources of lead exposure for urban children including children in New York City (Lanphear et al., 1996; Lanphear and Roghmann, 1997; NYC Department of Health and Mental Hygiene, Childhood Lead Poisoning Prevention Program Annual Report, 2004). In 2004, approximately 73% of New York City children with EIBLL¹ whose homes were inspected by the Department’s Lead Poisoning Prevention Program had peeling lead-based paint in their homes.

Reduction of lead-based paint hazards in housing is essential to prevent childhood lead poisoning. These efforts are most effective when targeted to young children who are greatest risk for lead poisoning.

Lead poisoning is more common among young children: The vast majority of children with lead poisoning,² both nationally and in New York City, are under the age of six. According to data from National Health and Nutrition Surveys (NHANES) from 1999-2002, children aged one through five had the highest prevalence of elevated blood lead levels (BLL \geq 10 μ g/dL) of all age groups (prevalence of 1.6% for children aged 1-5 years vs.0.2% for children aged 6-19) (CDC, 2005). In New York City, in 2004, children under six years of age constituted 84% of children identified with a first-time elevated BLL and 87% of children with a first-time EIBLL.

Young children are more susceptible to adverse effects of lead exposure: Lead is more readily absorbed from the gastrointestinal tract of young children. The rapidly developing nervous system of young children makes them further vulnerable to the neurotoxic effects of lead (Lidsky and Schenider, 2003).

Young children are more likely to be exposed to current lead-based paint hazards in housing: Children under three years of age are at greatest risk for exposure to lead-based paint hazards in the home. These children are more likely to crawl on the floor and engage in normal mouthing and hand-to-mouth activities, behaviors that increase their risk of exposure to household leaded paint and dust. Blood lead levels generally peak at around two years of age and subsequently decrease, mainly due to declining hand-to-

¹ Since August 2, 2004, environmental intervention blood lead level has been defined as one venous BLL \geq 15 μ g/dL. The EIBLL has changed over time in Health Code §173.13 since 1970. Most recently, between 1999 and August 2004, an EIBLL was defined as one venous BLL \geq 20 μ g/dL or two BLL=15-19 μ g/dL from tests taken at least 3 months apart.

² Lead poisoning is defined in Health Code §11.03 as a BLL \geq 10 μ g/dL.

mouth activities (Lanphear et al., 1996, Lanphear et al., 2002). In New York City, lead-based paint hazards in current housing are most often identified for young children with EIBLLs. Even among EIBLL children ages three to less than six, the proportion who have peeling or deteriorating lead paint in their home is lower than among children under three years of age (70% among EIBLL cases aged three to less than six vs. 77% among cases under three years of age; 2004 NYC surveillance data).

Young children benefit the most from environmental intervention: Analysis of New York City childhood lead poisoning surveillance data has demonstrated that children less than three benefit the most from remediation of lead-based paint hazards in their home as compared to older children (Leighton et al, 2003).

Furthermore, changing the applicable age to children under six will also harmonize New York City law with national and state policies, guidelines and regulations aimed at reducing childhood lead poisoning. These include Centers for Disease Control and Prevention (CDC) guidelines, New York State law, and policy statements of the American Academy of Pediatrics (AAP) regarding childhood blood lead screening and risk assessment for lead exposure., as well as provisions for control of lead-based paint hazards in day care, as required by Local Law 1 and Health Code §47.44, and in kindergartens, as required by Health Code §45.12.

In addressing lead-based paint hazards, as in so much of public health, prioritization is absolutely crucial. Approximately five to 20% more childhood lead poisoning cases could be prevented by focusing regulatory actions on children under six years of age instead of children under seven years. Reducing the applicable age from under seven years of age to under six years of age would increase the effectiveness of Local Law 1 by focusing effort and resources to children most in need of, and who will benefit most from, intervention.

In addition to adding a definition of “child of applicable age” the Department proposes that the Board also amend the definition of “chewable surface” in Health Code §173.14 (b) to apply to children under six years of age residing in multiple dwelling units. Currently this definition is applicable to children under seven years of age residing in multiple dwelling units in New York City, and to children under six years of age who attend day care and kindergarten.

References

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STATEMENT PURSUANT TO SECTION 1042- REGULATORY AGENDA

Through an oversight, this proposal was not included in the Regulatory Agenda.

The proposal is as follows:

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

RESOLVED, that subdivision (b) of Section 173.14 of the New York City Health Code as repealed and re-enacted by resolution adopted on the twenty-second day of July, two thousand four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

* * *

(b) *Definitions.* When used in this Article, or in §§45.12 or 47.44 of this Code, the following terms shall have the following meanings:

* * *

Chewable surface. “Chewable surface” shall mean a protruding interior window sill (i) in a dwelling unit in a multiple dwelling where a child under [seven] six years of age resides, which is readily accessible to such child, or (ii) such surface in a day care service or kindergarten in an elementary school, that is readily accessible to a child under six years of age. “Chewable surface” shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair, (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under [seven] six years of age resides in that multiple dwelling, or (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

Child of applicable age. When used in Article 13 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, the term “child of applicable age” shall mean a child who is less than six years of age.

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Notes: Subdivision (b) of §173.14 was amended by resolution adopted on XXXX to define the term “child of applicable age,” in accordance with §27-5056.18 of the Administrative Code, and the definition of “chewable surface” was amended accordingly.