



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621


The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: November 28, 2023

TO: Department of Education, Office of the Secretary, Attn: Regulation Review

FROM: Benjamin Shrader, Chairperson 
State Council for Persons with Disabilities

RE: Delaware Health and Social Services (DHSS)/Division of Public Health (DPH) proposal to amend 16 Del. Admin. C. § 4459A regarding the Childhood Lead Poisoning Act. The proposed regulation was published as 27 DE Reg. 315 in the November 1, 2023, Register of Regulations.

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Health and Social Services (DHSS)/Division of Public Health (DPH) proposal to amend 16 Del. Admin. C. § 4459A regarding the Childhood Lead Poisoning Act. The proposed regulation was published as 27 DE Reg. 315 in the November 1, 2023, Register of Regulations.

SCPD has the following comments:

- The proposed regulation is to “establish standards for blood lead level screening and testing of children between 12 and 24 months of age.” However, the majority of what is published in this proposal has already been adopted as a final regulation as of August 1, 2023.
- The proposal would add a 60-day timeline for investigating instances when a child’s blood level is elevated. In such cases, the Division “shall determine: the child’s residential address from birth through testing, the site of the child’s lead exposure, and the property owner of the site at which the child became exposed to lead.” Any confidential health information would not be publicly accessible. Additionally, “[w]ithin 10 days of identifying the site of lead exposure, the Division shall notify the Delaware State Lead-Based Paint Program of the location and contact information of the property owner.” These communications will be obtainable under the Freedom of Information Act.

- Lead exposure data has recently stirred controversy. See e.g., <https://newjerseymonitor.com/2022/07/13/newborn-screening-program-used-to-aid-criminal-investigation-public-defender-says/>. Presently, this regulation addresses that documents will be confidential but it does not address sample retention, nor safeguard this information from potential subpoenas such as what was utilized in the New Jersey news article.
- Once the site of lead exposure is definitively identified, DPH's next steps must be within 10 days, DPH has 60 days to get to the point of triggering the 10-day timeline (note: this is consistent with 16 Del. C. § 2610). If a child is still at risk of exposure in their current home, such a lengthy timeline can prolong and increase the lead exposure the child faces, which can have long-term health implications and increase the potential for disability. For information about environmental lead exposure and impact on children's health, see: <https://www.yalemedicine.org/conditions/lead-poisoning-in-children> and <https://www.cdc.gov/nceh/features/leadpoisoning/index.html>. Considering the potential impact, and compounding risk of continued exposure, it is confounding why this time-period is so long. Although this 60-day period is consistent with the floor set by statute, DPH could shorten the timeframe, excepting extraordinary circumstances that require the full 60-days.

SCPD supports investigative and reporting requirements but questions the 60-day timeline that DPH is establishing for investigations. Further, SCPD would like for DPH to clarify the policy regarding storage and destruction of blood samples or information that could identify sensitive genetic and health information, as well as steps DPH will take to safeguard samples from uses not contemplated by the lead poisoning law.

Thank you for your consideration and please contact the SCPD with any questions or comments regarding our observations and recommendations on this proposed regulation.

cc: Ms. Marissa Band, Esquire CLASI, DLP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council