

Texas Administrative Code

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 37 MATERNAL AND INFANT HEALTH SERVICES
SUBCHAPTER Q REPORTING, TREATMENT AND INVESTIGATION OF
CHILD BLOOD LEAD LEVELS

Rules

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RULE §37.331 Purpose

The purpose of these sections is to implement the provisions of Texas Health and Safety Code, Chapter 88 which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules relating to the reporting of child blood lead levels and control of elevated blood lead levels in children through an understanding of the prevalence and nature of the problem of childhood lead poisoning in Texas.

Source Note: The provisions of this §37.331 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.332 Definitions

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified lead risk assessor--A person certified by the department to conduct lead risk assessments, inspections, and lead-hazard screens, as defined by Subchapter I, Texas Environmental Lead Reduction, in Chapter 295 of this title concerning Occupational Health.

(2) Child care--A school, preschool, kindergarten, nursery school, or other similar activity that provides care or instruction for young children.

(3) Child care facility--A public place or a residence in which a person furnishes child care.

(4) Child-occupied facility--A building or part of a building, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(5) Coordination of care--Includes overseeing that needed care is provided, including medical follow-up as defined under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(6) Department--The Department of State Health Services.

(7) Environmental lead investigation--An investigation performed by a certified lead risk assessor of the home environment of, or other premises frequented by, a child who has a confirmed elevated blood lead level warranting such an investigation, under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(8) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(9) Follow-up care--Medical management includes follow-up blood lead testing at the suggested frequency under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(10) Health authority--A physician appointed as such under Texas Health and Safety Code, Chapter 121.

(11) Health professional--An individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certification or license, or membership in a regional or national association.

(12) Lead hazard--An item, surface coating, or environmental media that contains or is contaminated with lead and, when ingested or inhaled, may cause exposures that contribute to elevated blood lead levels in children, including:

- (A) an accessible painted surface or coating;
- (B) an article for residential or consumer use;
- (C) accessible soil and dust, including attic dust; and
- (D) food, water, or remedies.

(13) Lead--Metallic lead and materials containing metallic lead with a potential for release in sufficient concentrations to pose a threat to public health.

(14) Lead poisoning--Presence of a confirmed venous blood level established by rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the United States Public Health Service, Centers for Disease Control and Prevention (CDC).

(15) Local health department--A department created under the Texas Health and Safety Code, Chapter 121.

(16) Physician--A person licensed to practice medicine by the Texas Medical Board.

(17) Regional director--A physician appointed as the chief administrative officer of a public health region under the Texas Health and Safety Code, Chapter 121.

Source Note: The provisions of this §37.332 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.333 Confidentiality of Information Provided to the Department

a) Pursuant to the Texas Health and Safety Code, Chapter 88, §88.002, all data obtained is for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of the Texas Health and Safety Code, Chapter 88, §88.002. Reports, records, and other information collected by, or maintained by, or provided to the Department of State Health Services relating to children's reports of blood lead testing are not public information under open records law and may not be released or made public on subpoena or otherwise, except as described in subsection (b) of this section.

(b) Medical, epidemiologic, or toxicologic information may be released:

- (1) for statistical purposes if released in a manner that prevents the identification of any person;
- (2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention or the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

(c) Limited release of the data is allowed by the Texas Health and Safety Code, §88.002.

(d) Any requests for confidential or statistical data shall be made in accordance with Texas Health and Safety Code, §88.002.

Source Note: The provisions of this §37.333 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.334 Reportable Health Condition

(a) All blood lead levels in children 14 years of age or younger shall be reportable to the Department of State Health Services (department). Elevated blood lead levels for individuals over 14 years of age shall be reported in accordance with Chapter 99 of this title (relating to Occupational Condition Reporting).

(b) The department will maintain a registry of children's blood lead test results.

(c) Reports shall include all information as required on the Texas Child Blood Lead Level Report Form, Publication #F09-11709, which can be found at <http://www.dshs.state.tx.us/lead>, or by calling 1-800-588-1248.

Source Note: The provisions of this §37.334 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.335 Persons Required to Report

(a) The following persons are required to report all blood lead results:

(1) a physician after the first examination of a child;

(2) the person in charge of:

- (A) an independent clinical laboratory;
- (B) a hospital or clinic laboratory; or
- (C) any facility in which a laboratory conducts blood lead testing.

(b) If a report is not made as required in subsection (a)(1) or (2) of this section, the following persons shall report all blood lead results:

- (1) the administrator of a hospital licensed under Texas Health and Safety Code, Chapter 241;
- (2) a professional registered nurse;
- (3) an administrator or director of a public or private child care facility;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a public or private institution of higher education;
- (6) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (7) a parent, managing conservator, or guardian; or
- (8) a health professional.

Source Note: The provisions of this §37.335 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.336 Reporting Procedures

(a) The reporting physician, laboratory director, or alternate person as set forth in §37.335(b) of this title (relating to Persons Required to Report) shall make the report of the child blood lead level results to the Department of State Health Services (department) immediately after receiving the blood lead test result. The department may authorize one or more employees to receive the report from the physician, laboratory director, or alternate person by telephone or fax. The department shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(b) Transmission also may be made by mail, courier, or electronic transfer.

(1) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the Department of State Health Services, Childhood Lead Poisoning Prevention Program and marked "confidential medical records."

(2) If by electronic transmission, including facsimile transmission by telephone, it shall be in a manner and form authorized by the commissioner or his or her designee in each instance. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmission.

(c) Blood lead levels of 40 micrograms per deciliter or greater shall be reported immediately by fax or telephone to the department at (800) 588-1248 or fax to (512) 458-7699. Reports shall include all information as required on the Texas Child Blood Lead Level Report Form, Publication #F09-11709. The following information shall be reported:

(1) the child's name, address, date of birth or age, sex, race and ethnicity;

(2) the child's blood lead level concentration, test date, and name and telephone number of the testing laboratory;

(3) whether the sample is capillary or venous blood; and

(4) the name and city of the attending physician.

Source Note: The provisions of this §37.336 adopted to be effective December 27, 1995, 20 TexReg 10771; amended to be effective June 1, 2003, 28 TexReg 4149; amended to be effective August 28, 2008, 33 TexReg 6829

RULE §37.337 Department Rules for Follow-Up Care; Coordination of Care

(a) Health care providers should follow the department's Form Pb-109, Physician Reference on Follow-up Testing and Coordination of Care, which may be obtained from the department's website <http://www.dshs.state.tx.us/lead> or by calling 1-800-588-1248, and meets the federal requirements for the recommended schedule for:

(1) obtaining a confirmatory diagnostic venous blood lead test sample; and

(2) providing early and late follow-up care and other activities.

(b) Environmental lead investigation, shall comply with the department's eligibility criteria for environmental lead investigation as prescribed in §37.339(a) of this title (relating to Environmental Lead Investigations Procedures).

(c) The investigator shall provide guidance to parents, guardians, and consulting physicians from lead-risk assessment reports on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

Source Note: The provisions of this §37.337 adopted to be effective August 28, 2008, 33 TexReg 6829

RULE §37.338 Environmental Lead Investigations

(a) To be eligible for an environmental lead investigation, the child's elevated blood lead level(s) must meet the most recent criteria for environmental investigation issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(b) The request for an environmental lead investigation shall be on the department's most current form, Pb-101, Request for Environmental Lead Investigation or equivalent. A current version of form Pb-101 may be obtained from the department's website at <http://www.dshs.state.tx.us/lead>, or by calling 1-800-588-1248. The completed form should be sent by FAX, ATTENTION: Environmental Specialist, using the fax number on the form.

(c) On receiving a report of a child with a confirmed blood lead level warranting an environmental lead investigation, the department or its authorized agent may conduct an environmental lead investigation, using Form Pb-103 (Elevated Blood Lead Level Investigation Questionnaire) or its equivalent, of:

(1) the home environment in which the child resides, or other premises frequented by a child, if the department or the department's authorized agent obtains the written consent of an adult occupant;

(2) any child-care facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of the owner, operator, or principal of the facility; and

(3) any child-occupied facility with which the child has regular contact and that may be contributing to the child's blood lead levels, if the department or the department's authorized agent obtains the written consent of:

(A) the owner, operator, or principal of the facility; or

(B) an adult occupant of the facility if the facility is subject to a lease agreement.

(d) Written consent shall be on the department's form or equivalent meeting the requirements of the Texas Health and Safety Code, §161.011, §161.0211, and §161.0212.

(e) The lead risk assessor shall provide documented evidence when applicable, of all attempts made to receive consent for environmental lead investigation as required by subsection (c) of this section.

(f) If consent is denied, the investigator shall document the reason and circumstance for the denial, and measures that should be taken to protect the health of the child.

(g) Written consent is not required for an investigation for a child with a blood lead level of at least 45 micrograms per deciliter if a good faith attempt to contact the person authorized to provide written consent under subsection (e) of this section has been unsuccessful.

Source Note: The provisions of this §37.338 adopted to be effective August 28, 2008, 33 TexReg 6829

RULE §37.339 Environmental Lead Investigations Procedures

a) Eligibility Criteria for Environmental Lead Investigation.

(1) The eligibility criteria for an environmental lead investigation shall be as stated on the department's Form Pb-101, Request for Environmental Lead Investigation or equivalent.

(2) A city, health district, or local health department may conduct an environmental lead investigation using lower elevated blood lead results than those in paragraph (1) of this subsection.

(3) Before conducting the investigation, city, health district, or local health department will:

(A) inform the health care provider of the intent to conduct the investigation; and

(B) submit to the department the most current Form Pb-101, Request for Environmental Lead Investigation or equivalent.

(b) Requesting an Environmental Lead Investigation.

(1) The request for an environmental lead investigation shall be, completed in its entirety, on the department's most current form Pb-101, Request for Environmental Lead Investigation or equivalent.

(2) The following persons may request an environmental lead investigation for a child meeting criteria in subsection (a) of this section:

(A) the child's attending healthcare provider;

(B) a public health nurse;

(C) local health department staff;

(D) local Childhood Lead Poisoning Prevention Program staff; or

(E) designated Texas Childhood Lead Poisoning Prevention Program staff.

(3) An environmental lead investigation request may be denied by the department if the eligibility criteria is not met.

(4) The department will notify the requestor of the reason for such denial.

(c) Conducting and Reporting an Environmental Lead Investigation.

(1) Only a person currently certified by the State of Texas as a lead risk assessor shall conduct an environmental lead investigation.

(2) The lead risk assessor shall conduct the investigation in accordance with the conditions and requirements of the certification by the department.

(3) The lead risk assessor shall provide a written report of each completed environmental lead investigation to the provider; parent or guardian; and homeowner or property owner.

(A) The written report shall contain at least the following from the investigation:

(i) date lead risk assessment was performed;

(ii) address where lead risk assessment was performed;

(iii) name and address of property owner;

(iv) date structure or unit was built;

(v) name of lead risk assessor, certification number, or business affiliation of the person that conducted the investigation;

(vi) testing methods used (e.g. X-ray fluorescence (XRF), what samples were collected, and name of the accredited laboratory that analyzed samples);

(vii) a general statement of the results;

(viii) a description of recommended interim controls and/or abatement options for each identified lead-based paint hazard;

(ix) a suggested prioritization for taking each action based on the immediacy and severity of the hazard; and

(x) if the risk assessor is recommending use of an encapsulant or enclosure, the report shall include maintenance and monitoring schedule for the encapsulant or enclosure.

(B) If the parent or guardian is not the owner of the property investigated, and the risk-assessor discovered lead-based paint hazards on the property; the lead risk assessor shall inform

the property owner about the investigation findings, recommendations, and their legal obligation to disclose the same to all future tenants and buyers.

(4) The lead risk assessor conducting the investigation shall send a complete copy of the environmental lead investigation report to the department's Texas Childhood Lead Poisoning Prevention Program. The report shall consist of the following:

(A) a copy of the summary report letter sent to the healthcare provider, the parent, or guardian, and to the property owner, if applicable;

(B) a completed form Pb-103 (Elevated Blood Lead Level Investigation Questionnaire) or its equivalent;

(C) signed consent forms or records of consent denials; and

(D) results of all environmental sampling and testing performed.

(5) Confidentiality. The report shall be confidential as provided by the Texas Health and Safety Code, §161.0213.

Source Note: The provisions of this §37.339 adopted to be effective August 28, 2008, 33 TexReg 6829