



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Child Day Care Facilities Lead Hazard Identification, Abatement, and Hazard Remediation Protocol December 1, 2008

The protocol described in this document replaces and supersedes any previous lead hazard identification, abatement, and remediation guidance regarding child day care facilities that has been issued by the Department of Public Health (DPH). Specifically this protocol updates and clarifies responsibilities of local health departments (LHDs) regarding lead hazard identification, abatement, and remediation in child day care facilities. The protocol will clarify the roles and responsibilities of DPH and LHDs relative to the protection of children from lead exposure in licensed child day care facilities.

There are two distinct sets of statutes and regulations that apply to child day care facilities. One set of statutes and regulations encompasses child day care centers and group day care homes while the other set of statutes and regulations encompasses family day care homes.

A. Regulatory Overview of the Requirements for Child Day Care Centers and Group Day Care Homes¹:

Definitions: "Child day care center" means a program of supplementary care for more than twelve children and "group day care home" means a program of supplementary care for seven to twelve children in accordance with §§19a-77(a)(1) and (2) respectively of the Connecticut General Statutes (CGS).

Lead Hazard Identification (Lead Inspections and Limited Testing)

Prior to initial DPH licensure of a child day care center or group day care home that will be located in building(s) that was/were constructed in whole or in part prior to 1978², a comprehensive lead inspection shall be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. A comprehensive lead inspection entails testing of representative components of each type of painted surface throughout the facility (typically with portable X-ray Fluorescence analyzer equipment), dust wipe sampling of select window wells, window sills and floors, testing of bare soil areas in

¹ See Attachment 1 for a summary of statutes and regulations that apply to child day care centers and group day care homes.

² This includes change of ownership.



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the child play areas, and water sampling. The LHD report that is furnished to the DPH prior to licensing shall include a copy of the DPH-prescribed *Lead Inspection Report Form*³ and all reportable information as specified in the Lead Poisoning Prevention and Control Regulations §19a-111-3.

It is important that the lead inspection be scheduled well in advance of the anticipated opening date of the facility to allow time for corrections (if needed) prior to that date where possible. The DPH will not issue a child day care license until the lead inspection is conducted, any identified lead hazards are corrected, and the LHD confirms that the corrections have been completed.

A lead inspection of a facility will need to be conducted only once if the inspection is comprehensive, complete, and thorough. During the inspection, all lead hazards should be identified for correction. Surfaces that contain intact lead-based paint will also be identified and placed in a lead management plan (see below). The operator is required to keep a copy of lead hazard remediation, lead abatement, and lead management plans and records of any additional work that has been performed on file at the facility. Additionally, the lead inspection report and any lead hazard remediation, lead abatement, and lead management plans should be kept on file by the LHD and the DPH Child Day Care Licensing Unit for ease of reference. Lead inspection reports and any lead hazard remediation, lead abatement, and lead management plans and documentation of any corrective measures, are required to be submitted to the DPH Child Day Care Licensing Unit.

Also, a comprehensive lead inspection shall be conducted as part of the required bi-annual (2-year) facility inspection of any licensed child day care center or group day care home that is: (1) located in building(s) that was/were constructed in whole or in part prior to 1978 and (2) has not been previously inspected by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. A trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor shall conduct the lead inspection. The lead inspection report that is furnished to the DPH shall include a copy of the DPH-prescribed *Lead Inspection Report Form* and all reportable information as specified in the Lead Poisoning Prevention and Control Regulations §19a-111-3.

If there are questions regarding these required lead inspections, contact the DPH Lead Poisoning Prevention and Control Program (LPPCP), Environmental Lead Unit at (860) 509-7299.

Lead-based paint and lead hazards may also be identified: (1) by the LHD during comprehensive inspections or through limited testing at times other than those noted above, or (2) through limited testing by a DPH licensing specialist who observes and samples

³ See Attachment 2

chipping or peeling paint during a DPH inspection.⁴ An informal opinion dated May 31, 2001 from the Office of the Attorney General (See Attachment 3) confirms the authority of DPH licensing specialists to collect paint chip samples for lead analysis during Child Day Care inspections and substantiates the legitimacy of analysis results that are derived from such sampling. It is appropriate for LHDs to utilize these results to issue lead hazard remediation and abatement orders and initiate enforcement action.⁵ When a lead hazard is identified by a DPH licensing specialist, DPH is responsible for citing the violation of the day care licensing regulation. The DPH licensing specialist refers the operator to the LHD to develop a lead hazard remediation plan to ensure that the hazard is remediated.

Additionally, a comprehensive lead inspection shall be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor of any pre-1978 vintage day care center or group day care home that is identified as serving a child who has an elevated blood lead level (EBLL) and which has not been previously inspected. See Attachment 4 for procedures that are to be followed when such facilities are identified as containing lead-based paint hazards. The LHD will conduct a site visit at pre-1978 facilities where a documented comprehensive lead inspection has already been conducted. The site visit will verify whether a written lead management plan has been developed and implemented and determine the current condition of all lead-based painted surfaces.

Lead Hazard Remediation and Lead Abatement

The operator and/or the building owner shall develop a lead hazard remediation plan whenever a lead-based paint hazard or hazards has/have been identified. The LHD may offer guidance and may refer the operator and/or owner to a qualified DPH-licensed consultant. The plan may be prepared by the operator and/or owner or by a DPH-certified Planner Project Designer. The operator and/or owner is/are required to submit the lead hazard remediation plan to the LHD for review prior to initiating any corrective work. Once the plan is acceptable, a copy must be provided to the DPH Child Day Care Licensing Unit. Corrective actions must be acceptable and utilize lead-safe work procedures so as to be protective of public health in methodology and results. Paint stabilization may be an appropriate remediation in certain situations. Although day care facilities are not explicitly mentioned in §19a-111-4 of the Lead Poisoning Prevention and Control Regulations (“Abatement of toxic levels of lead”) the protocol within this section provides appropriate guidance for any abatement activities that are proposed. A final inspection and dust wipe sampling is required to assure that the plan was followed, hazards have been eliminated, and

⁴ If deteriorated paint is observed by a DPH licensing specialist, a sample(s) will be collected for analysis. Should the test results be positive for lead, the licensing specialist will send a letter and the test results to the day care provider and the LHD. The letter will explain that lead paint in a hazardous condition has been identified at the facility and that it is required that a lead hazard remediation plan be developed and submitted to the LHD for review prior to initiating any corrective work.

⁵ For example, if such samples were collected from a Family Day Care Home that was also the residence of a child under the age of six, the LHD should initiate corrective action and regulatory enforcement pursuant to the Lead Poisoning Prevention and Control Regulations (RCSA §§19a-111-1 et seq.).

the area is suitable for reoccupancy. The DPH licensing specialist is to be provided written verification from the LHD that the plan has been carried out properly. Failure to follow the plan and remedy the situation may result in DPH taking a licensing action against the facility.

A lead management plan must be prepared by the operator and/or building owner to address any intact lead-based painted surfaces that have been identified and will remain at the facility. The operator must periodically inspect the building components that are listed in the management plan to ensure that they remain in good condition. Whenever a painted surface on the management plan deteriorates, the area must be corrected immediately in a lead-safe manner. It is recommended that the operator and/or building owner contact the LHD for guidance prior to initiating any such corrective work to ensure that the work is performed in a lead-safe manner. A final inspection and dust wipe sampling may be warranted to assure that hazards have been eliminated and the area is suitable for reoccupancy. Corrections, including the date and type of correction should be noted and kept on file with the lead management plan by the operator and/or building owner.

B. Regulatory Overview of the Requirements for Family Day Care Homes:

Definition: "Family day care home" means a program of supplementary care for six or less children in accordance with §19a-77(a)(3) of the CGS.

Lead Hazard Identification (Lead Inspections and Limited Testing)

Family day care homes are also licensed by the Department of Public Health. DPH inspections of family day care homes that are located in residences that were constructed in whole or in part prior to 1978 include an evaluation for evident sources of lead exposure. Paint chips are collected from deteriorated painted surfaces by trained DPH licensing specialists and submitted to the DPH Laboratory for lead analysis.⁶ As noted earlier an informal opinion from the Office of the Attorney General (See Attachment 3) confirms the authority of DPH licensing specialists to collect paint chip samples for lead analysis during Child Day Care inspections and substantiates the legitimacy of analysis results that are derived from such sampling.

LHDs are not required to inspect family day care homes as part of the licensing process. However, LHDs will receive written notification from DPH when an initial application for a family day care home license has been received by the department and provided the opportunity to comment on the application (see Attachment 5).

⁶ If deteriorated paint is observed by a DPH licensing specialist, a sample(s) will be collected for analysis. Should the test results be positive for lead, the licensing specialist will send a letter and the test results to the day care provider, the LHD, and the DPH LPPCP. The letter will explain that lead paint in a hazardous condition has been identified at the facility and that it is required that a lead hazard remediation or lead abatement plan be developed and submitted to the LHD for review prior to initiating any corrective work.

Whenever testing identifies deteriorated lead-based paint in an existing or proposed family day care home that has not been previously inspected, DPH will require that a comprehensive lead inspection shall be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. The day care operator is referred to the LHD for assistance as described below. The report shall include a copy of the DPH-prescribed *Lead Inspection Report Form* and all reportable information as specified in the Lead Poisoning Prevention and Control Regulations §19a-111-3.

DPH will require the day care provider to correct any condition that may put children at risk of injury. Poisonous substances must not be accessible to children who attend the facility. The day care provider is required to keep a copy of lead hazard remediation, lead abatement, and lead management plans and records of any additional work that has been performed on file at the facility. Lead inspection reports and any lead hazard remediation, lead abatement, and lead management plans and documentation of any corrective measures, are required to be submitted to the DPH Child Day Care Licensing Unit.

Please note that §§19a-111-1 through 19a-111-11 of the RCSA (the Lead Poisoning Prevention and Control Regulations) address dwellings (including family day care homes) with resident children under six (6) years of age. This regulation also deals with day care facilities in general but in a more limited manner.

Additionally, a comprehensive lead inspection shall be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor of any pre-1978 vintage family day care home that is identified as serving a child who has an elevated blood lead level (EBLL) and which has not been previously inspected. See Attachment 4 for procedures that are to be followed when such facilities are identified as containing lead-based paint hazards. The LHD will conduct a site visit at pre-1978 family day care homes where a documented comprehensive lead inspection has already been conducted. The site visit will verify whether a written lead management plan has been developed and implemented and determine the current condition of all lead-based painted surfaces.

Lead Hazard Remediation and Lead Abatement

1. Family Day Care Homes That Have Resident Children Under Six (6) Years of Age

If there is a violation of the family day care licensing regulations in respect to lead-based paint hazards, the provider is cited and required to develop an appropriate lead abatement plan. As noted above, DPH will require that a comprehensive lead inspection be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. In family day care homes where children under six (6) years of age reside, the LHD is required to undertake direct enforcement action pursuant to the Lead Poisoning Prevention and Control (LPPC) regulations (§19a-111-1 et seq). It is required that the day care operator submit written verification that an appropriate lead abatement plan has been

reviewed and accepted by the LHD. In these circumstances, abatement of lead-based paint hazards must be consistent with the LPPC regulations. A final inspection and dust wipe sampling is required to assure that the plan was followed, hazards have been eliminated, and the area is suitable for reoccupancy. After abatement, a copy of the Letter of Compliance (that verifies that the lead abatement project has been properly completed) must be furnished to the DPH Child Day Care Licensing Unit. Failure to follow the abatement plan and correct the situation may result in DPH taking a licensing action against the facility.

2. Family Day Care Homes That Do Not Have Resident Children Under Six (6) Years of Age But Are Located in Rental Dwelling Units (i.e., "Rented Dwellings" or "Tenement Houses")

If there is a violation of the family day care licensing regulations in respect to lead-based paint hazards, the provider is cited and required to develop an acceptable lead hazard remediation plan. As noted above, DPH will require that a comprehensive lead inspection be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. In family day care homes that are located in rental dwelling units in which children under six (6) years of age do not reside, the LHD (or other appropriately designated local agency) is required to undertake direct enforcement action to require lead hazard remediation pursuant to subsection (d) of §47a-52 or subsection (b) of §47a-54f of the Connecticut General Statutes. It is required that the day care operator submit written verification that an appropriate lead hazard remediation plan has been reviewed and accepted by the LHD. Lead hazard remediation must be performed using lead-safe work practices. After remediation, written documentation must be furnished to the DPH Child Day Care Licensing Unit that verifies that the lead hazard remediation has been properly completed. Failure to follow the lead hazard remediation plan and correct the situation may result in DPH taking a licensing action against the facility.

3. Family Day Care Homes That Do Not Have Resident Children Under Six (6) Years of Age and Are Located in Homes That Are Owned and Occupied by the Day Care Operator

Facilities that fall in this category do not fall within the scope of the Lead Poisoning and Control Regulations (RCSA §19a-111-1 et sec.) or the rental housing statutes (CGS §47a-50 et sec.).

If there is a violation of the family day care licensing regulations in respect to lead-based paint hazards, the provider is cited (RCSA §19a-87b-9) and required to develop an acceptable lead hazard remediation. As noted above, DPH will require that a comprehensive lead inspection be conducted by a trained code enforcement official or a DPH-certified lead inspector or lead inspector risk assessor. In such family day care homes, the provider must submit an appropriate lead hazard remediation plan to DPH, prior to beginning repair work. The plan must insure that:

- all children are not exposed to any hazards (including lead paint chips and dust) before and during repairs, and after the lead-based paint hazard has been removed;
- all parents of enrolled children are given notice that lead-based paint hazards have been identified at the facility, and the conditions are being corrected;
- time frames for completion of repairs are in place;
- all work is performed in a lead-safe manner.

The provider will be given technical assistance materials from DPH. It will be strongly recommended by DPH that the provider contact a licensed consultant who has on staff a certified lead inspector/ risk assessor and lead planner project designer for assistance in developing an appropriate lead hazard remediation plan. The LHD may serve as a resource to assist the provider in locating an appropriate consultant in the local area and may provide technical assistance. After the plan is approved and the lead hazard remediation is completed, the provider must notify DPH. A follow up inspection will be made by a DPH licensing specialist to assure that the plan has been properly implemented and no obvious lead-based paint hazards remain. Failure to follow the lead hazard remediation plan and correct the situation may result in DPH taking a licensing action against the facility.

4. Related Issues

The LHD may also take action pursuant to an epidemiological investigation of a reported elevated blood lead level (CGS §19a-111).

A lead management plan must be prepared by the day care provider and/or building owner to address any intact lead-based painted surfaces that have been identified and will remain at the facility. The day care provider must periodically inspect the building components that are listed in the management plan to ensure that they remain in good condition. Whenever a painted surface on the management plan deteriorates, the area must be corrected immediately in a lead-safe manner. It is recommended that the day care provider and/or building owner contact the LHD for guidance prior to initiating any such corrective work to ensure that the work is performed in a lead-safe manner. A final inspection and dust wipe sampling may be warranted to assure that hazards have been eliminated and the area is suitable for reoccupancy. Corrections, including the date and type of correction should be noted and kept on file with the lead management plan by the day care provider and/or building owner.

DPH as the licensing agency is responsible for issuing violation letters and taking licensing actions if the facility is not in compliance with the statutes and regulations for licensing family day care homes. DPH may summarily suspend and revoke day care licenses when children are in danger.

C. Summary:

For child day care purposes in child day care centers, group day care homes, and family day care homes, the licensee is the entity that is ultimately responsible (and held accountable by

DPH) to assure that children are not placed in danger by exposure to any toxic substance including deteriorated lead-based paint, lead-based paint chips, and/or lead dust.

DPH will not issue an initial license to operate a child day care facility if DPH or a LHD has identified a hazardous condition. The condition must be appropriately remediated or abated before DPH will issue the license.

ATTACHMENT 1
Statutes and Regulations

Child Day Care Centers and Group Homes

Connecticut General Statute CGS §19a-82 states that the Commissioner of Public Health shall utilize consultative services and assistance from LHDs in the licensure of child day care centers and group day care homes.

§§19a-79-2a(b) and (c) of the Regulations of Connecticut State Agencies (RCSA) require that child day care centers and group day care homes meet local health codes for initial licensure and license renewal. Written verification of compliance is required. The application for licensure must also contain all other documentation that the Commissioner deems necessary to establish that the licensee will meet the health needs of children likely to attend the facility.

§19a-79-7a of the RCSA requires written approval by the local director of health of plans for new construction, expansion, renovation, or conversion of facilities. Toxic materials are prohibited in areas accessible to children and equipment must not be colored and/or covered by any poisonous material. Paint used for equipment, toys, and art supplies used by children must be non-toxic.

§§19a-111-1 through 19a-111-11 of the RCSA (the Lead Poisoning Prevention and Control Regulations) establish day care facilities as the third priority for inspection by local code enforcement agencies (§19a-111-3c) and establish methodology to conduct such inspections (§19a-111-3). §19a-111-2 provides standards for abatement and management of lead-based painted surfaces in residential units and §19a-111-4 establishes criteria for conducting such abatements. Please note that §19a-111-2 specifically references **residential units** with children under six (6) years of age (i.e., homes where children under 6 years of age reside) and does not mention day care facilities.



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

ATTACHMENT 2

LEAD INSPECTION REPORT FORM

This lead inspection report form must be completed and sent to the property owner, local director of health and the commissioner of the Department of Public Health in accordance with Section 19a-111-3(d) of the regulations of Connecticut State Agencies concerning Lead Poisoning Prevention and Control.

PROPERTY INSPECTED

Street Address: _____ Apt.# _____ Floor: _____

City/Town: _____ Zip Code: _____ Telephone: _____

If Apartment, Number of Units: _____ Year Property Built: _____

PROPERTY OWNER

Name: _____

Street Address: _____ City: _____

State: _____ Zip Code: _____ Telephone: _____

INSPECTING ENTITY

A. If Consultant Contractor:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Consultant License Number: _____

Inspector's Name: _____ Telephone: _____

Inspector's Certification Number: _____

B. If Code Enforcement Agency:

Department Name: _____

Street Address: _____

Town/City Department: _____ Telephone: _____

Inspector's Name: _____ Telephone: _____

Date of Inspector's Initial Training: ____/____/____ Date of Latest Refresher Training: ____/____/____



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INSPECTION INFORMATION

Date(s) of Inspection: _____/_____/_____

For each day the inspection was conducted Consent was given by an adult occupant of the dwelling unit to enter and inspect all areas of the dwelling that are under the control of that individual or to which that individual has legitimate access. Yes No

Name of person granting consent: _____ Date: _____
Name of person granting consent: _____ Date: _____
Name of person granting consent: _____ Date: _____

Were Lead-Based Surfaces Identified? (Please check) Yes No

If yes, check appropriate box(es) below and attach "LEAD BASED PAINT DATA PAGES"

- Interior Defective Surfaces Exterior Defective Surfaces
- Interior Intact Surfaces Exterior Intact Surfaces

Indicate Potential Sources of Lead Identified

- Paint (exterior) Soil Water
- Paint (interior) Dust Other: _____

- Was drinking water exposure pathway investigated and the potential for lead poisoning to a child assessed? Yes No

If yes, list sampling locations: _____

- Was dust exposure pathway investigated and the potential for lead poisoning to child assessed? Yes No

If yes, list area(s) tested: _____

- Was soil exposure pathway investigated and the potential for lead poisoning to child assessed? Yes No

If soil samples were collected, document soil sampling methodology below: _____

Is a lead abatement plan required for this property per section 19a-111-4(a) of the Connecticut State Regulations concerning Lead Poisoning Prevention and Control? (A lead management plan for this property may be required per Section 19a-111-2(e) of the Connecticut State Regulations concerning Lead Poisoning Prevention and Control). Yes No

The federal Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4852d, requires sellers and landlords of most residential housing built before 1978 to disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, including the test results contained or referenced in this notice, to purchasers and tenants at the time of sale or lease or upon lease renewal. This disclosure must occur even if hazard reduction or abatement has been completed. Failure to disclose these test results is a violation of the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency regulations at 24 CFR Part 35 and 40 CFR Part 745 and can result in a fine of up to \$11,000 per violation. To find out more information about your obligations under federal lead-based paint requirements, call 1-800-424-LEAD.

Inspector's Signature: _____ Dated: _____/_____/_____

**Mail To:
State of Connecticut - Department of Public Health
Division of Environmental Health**

P.O. Box 340308, MS# 51LED
Hartford, CT 06134-0308

ATTACHMENT 3
Attorney General Opinion
May 31,2001



MEMORANDUM

To: Alan J. Buzzetti, RS
Supervising Environmental Sanitarian
Department of Public Health
410 Capitol Avenue, MS #51 LED
Hartford, CT 06134-00308

From: Phyllis E. Hyman
Assistant Attorney General
Office of the Attorney General
55 Elm Street, 4th Floor
Hartford, CT 06106
808-5210

Date: May 31, 2001

Subject: **Collection of Lead Samples by Day Care Specialists**

This memorandum is in response to your request for advice concerning whether day care specialists who inspect family day care homes prior to licensure or relicensure are authorized to collect samples of paint for analysis by a laboratory to determine whether the paint contains impermissible levels of lead. Based on my review of the relevant statutes and regulations regarding family day care and lead paint inspection, we conclude that day care specialists who license family day care homes for the Department of Public Health (the "Department") are authorized to collect paint chips during their inspection visits for the purpose of having them analyzed for the presence of lead paint.

Pursuant to section 19a-87b(a) of the Connecticut General Statutes, when an individual applies for a license to establish a family day care home or applies for relicensure of said license, "the department shall make an inquiry and investigation which shall include a visit and inspection of the premises for which the license is requested." Department day care specialists perform these inspections to ensure that all applicable statutory and regulatory requirements pertaining to family day care homes are met.

As part of these inspections, the family day care statute requires the Department's day care inspectors to inspect for sources of lead poisoning. Specifically, section 19a-87b(a) provides that "[a]ny inspection conducted by the department shall include an inspection for

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evident sources of lead poisoning.” Moreover, the statute provides that the Department “shall provide for a chemical analysis of any paint chips found on such premises.” Id.

The process of statutory interpretation involves a reasoned search to determine the intention of the legislation. See Willoughby v. City of New Haven, 254 Conn. 404 (2000). On the floor of the state House of Representatives, prior to the passage of the legislation that required the collection of paint samples by inspectors, Representative Favreau remarked as follows concerning the proposed legislation:

This bill actually requires inspectors from the Department of Human Resources [the former agency that used to inspect and register family day care homes] which has egis [sic] over the family day care facilities that are actually in family day care homes and requires inspectors when they go out either for the pre-registration [family day care homes used to be registered instead of licensed] initial inspections or one of the random inspections that they’re required to conduct, to look for evident sources of lead poisoning.

What we mean there is whenever there is evidence of peeling paint, we want the inspectors to bring those samples of paint chips back so they can be analyzed in a laboratory to determine whether or not there is any lead in the paint.

30 H. R. Proc., Pt. 7, 1987 Sess., p. 2478-79.

It is apparent from the above legislative history that the legislature intended, as part of the regular family day care home licensure and relicensure inspection visits, that day care inspectors would collect any paint chips found on the premises and bring the samples to a laboratory for a chemical analysis. The legislative history does not contemplate that separate “lead inspectors would come in to inspect family day care homes for the purpose of collecting samples of paint chips.

As you know, there are other, more general, statutes and regulations that pertain to inspection and testing for the presence of toxic levels of lead and to lead abatement. See Conn. Gen. Stat. § 19a-111 to 19a-111f, inclusive, and accompanying regulations; Conn. Gen. Stat. § 20-474 to 20-483, inclusive, and accompanying regulations. It is a well-established rule of statutory construction that, where there is a specific statute that addresses a specific situation and a general statute that concerns a broader range of situations, it is the specific statute that governs the outcome when the specific situation is at issue. See Griffin v. Freedom of Information, 227

Conn. 641 (1993); Gaynor v. Union Trust Co., 216 Conn. 458 (1990). Therefore, the specific statutes authorizing day care inspectors to collect paint samples and have them analyzed for their lead content, governs.

Even under the general statutory provisions concerning inspections for the presence of toxic levels of lead, however, there is nothing that would prohibit day care inspectors from inspecting family day care homes for evident sources of lead poisoning, collecting samples and providing for the chemical analysis of these samples.

“Inspection” under the lead abatement statutes is defined as “an investigation to determine the presence of lead in paint, lead in other surface coverings, lead in dust, lead in soil or lead in drinking water, *and the provision of a report explaining the results of the investigation.*” Conn. Gen. Stat. § 20-474 (10) (emphasis added). An “inspector” under these statutes is an individual who

performs inspections *solely for the purpose* of determining the presence of lead-based paint and surface coverings *and lead in soil, dust, drinking water through the use of on-site testing* including, but not limited to, x-ray fluorescence (XRF) analysis with portable analytical instruments, and the collection of samples for laboratory analysis and who collects information designed to assess the level of risk.

Conn. Gen. Stat. § 20-474 (11) (emphasis added).

These definitions do not apply to that portion of the statutes that governs the inspection of family day care homes. See Conn. Gen. Stat. § 20-474 (definitions in section 20-474 apply to sections 20-474 to 20-482, inclusive, subsections (e) and (f) of section 19a-88 and section 19a-111). Even if they did, however, day care specialists are not “inspectors” conducting “inspections” as the terms are defined above. The family day care inspectors are not visiting family day care homes “solely for the purpose of determining the presence of lead-based paint and surface coverings. . . .” Rather, they are inspecting the family day care homes for the purpose of ensuring that the home and its staff are following the Department’s extensive health and safety regulations that pertain to all aspects of the family day care operation. The gathering of paint chips is an incidental piece of a family day care inspection.

Moreover, there is no sampling of the soil, dust and drinking water and there is no on-site testing performed by the day care specialists during their inspections. Accordingly, the mere gathering of paint chips by family day care specialists inspecting the premises of a family day

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care home for the purpose of licensure or relicensure is not a lead "inspection" and day care specialists are not "inspectors."

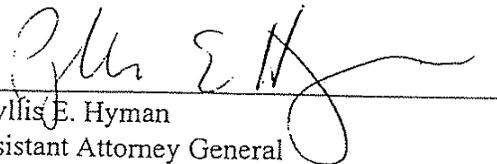
In addition, under the Public Health Code, code enforcement agencies are required to carry out lead inspections in accordance with a set of priorities. See Conn. Agencies Regs. § 19a-111-3 (c). A "code enforcement agency" is, in addition to the local health department or local housing agency, "any other agency designated by the appropriate authority to enforce . . . the public health code . . ." Conn. Agencies Regs. § 19a-111-1 (20). Investigations concerning a child's elevated blood lead levels and all dwellings units in which such child lives are number one and two priorities, respectively. Conn. Agencies Regs. § 19a-111-3(c)(1) and (2). As a third priority, and before the licensure or relicensure of a child day care center, group day care home or family day care home, code enforcement agencies or lead inspectors are required to inspect the premises in which these services are provided for toxic levels of lead. Conn. Agencies Regs. § 19a-111-3(c)(3).

" 'Lead inspector' or 'inspector' means 'certified lead inspector' or 'code enforcement official' as defined in subsection (20) [sic] of this section unless specifically noted otherwise." Conn. Agencies Regs. § 19a-111-1 (14). A "code enforcement official" is defined in subsection (21) as meaning "the director of health or a person authorized by him to act on his behalf, the local housing code official, or a person authorized by him to act on his behalf, *or an agent of the commissioner.*" (emphasis added). "Commissioner" is "the commissioner of public health." Conn. Agencies Regs. § 19a-111-1 (22).

The Department is an agency that enforces the Public Health Code. Family day care specialists are acting as agents of the commissioner. Accordingly, there is nothing in this section that would prohibit family day care specialists employed by the Department from, in the course of a licensure inspection, gathering paint chips and sending them for a chemical analysis for lead.

Based on all of the above, I conclude that the family day care specialists are authorized by law to collect paint chips found on the premises of family day care homes they are inspecting for purposes of licensure or relicensure in order to provide for a chemical analysis for toxic levels of lead paint.

This is an informal opinion of the undersigned and should not be construed as a formal opinion of the Attorney General.



Phyllis E. Hyman
Assistant Attorney General

PEH

**When A Child Who Attends A Child Day Care Facility
 Has A Blood Lead Level $\geq 20 \mu\text{g/dL}$ ($\geq 15 \mu\text{g/dL}$ after 1/1/09)**

- CBRS = DPH Community Based Regulation Section
- CAP = Corrective Action Plan
- EBLL = $\geq 20 \mu\text{g/dL}$ ($\geq 15 \mu\text{g/dL}$ after 1/1/09)
- LHD = Local Health Dept.
- LPPCP= DPH Lead Poisoning Prevention and Control Program
- NOV = Notice of Violation
- OE = Quality Enhancement

Clinical Laboratory/Physician reports EBLL to LHD. LHD follows DPH established protocol per DEH Circular Letter #2005-08

LHD conducts an investigation to identify sources of lead exposure that includes the identification of any DPH-regulated child day care facility that the EBLL child attends

LHD provides copies of the completed Epidemiological Investigation Form and the Lead Inspection Report to the LPPCP

Child with an EBLL **does attend** day care

Child with an EBLL **does not attend** day care;
 No further follow-up required by CBRS

LPPCP obtains pertinent information from the LHD regarding the DPH-regulated day care facility; CBRS confirms license status

CBRS identifies illegal day care operations & refers to QE as necessary.

LHD, LPPCP, or Certified Private-Sector Lead Inspector conducts a comprehensive lead inspection (unless previously inspected)

No lead hazards identified; No further follow-up required

Lead hazards identified; CBRS investigates licensing regulatory violations and facilitates receipt of an immediate interim CAP that includes parent notifications; LHD and/or CBRS initiate enforcement action regarding elimination of lead hazards; LPPCP provides technical assistance as required

CBRS QE seeks Summary Suspension where serious and immediate threats to health and safety have been identified

LHD issues order to correct lead hazard

Facility in consultation with LHD develops immediate interim CAP to protect children until all lead hazards are eliminated; CBRS reviews interim CAP until all lead hazards are eliminated; LPPCP consults if needed

LHD monitors interim CAP with consultation from CBRS and LPPCP if needed

Lead Abatement Plan, Lead Hazard Remediation Plan, and/or Lead Management Plan developed by property owner & submitted to LHD for approval; Plan(s) serve(s) as bases for final CAP and become(s) part of licensing file

LHD and CBRS collaborate to ensure development, approval and implementation of plan(s) with consultation from LPPCP if needed



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

DIVISION OF COMMUNITY BASED REGULATION

ATTACHMENT 5

Date

Name

Health District

Address

Town, State Zip

Re: Applicant Name

Address

Town, State Zip

Dear Name:

The CT Department of Public Health is required by state statute (CGS sec. 19a-87b) to license family day care homes.

A family day care home consists of a private family home caring for not more than six children, including the provider's own children not in school full time, where the children are cared for not less than three nor more than twelve hours during a twenty-four-hour period and where care is given on a regularly recurring basis, except that care may be provided in excess of twelve hours but not more than seventy-two consecutive hours to accommodate a need for extended care or intermittent short-term overnight care. During the regular school year, a maximum of three additional children who are in school full time, including the provider's own children, are permitted, except that if the provider has more than three children who are in school full time, all of the provider's children are permitted.

The above referenced individual has applied to the Department for a family day care home license, and has an application pending approval. Family day care homes are not subject to any conditions on the operation of the home by local officials if the home complies with all local codes and ordinances applicable to single and multifamily dwellings. ***Local health departments are not required to inspect family day care homes as part of the licensing process.*** However, DPH would like to inform you of pending family day care applications in your area, and give you the opportunity to comment on the application. You may wish to bring to our attention any public health issues at the local level that may need to be considered in the licensing process for this applicant.

If you wish to comment, please call me at 860-509-8045, 800-282-6063 or 800-439-0437. You may send written comments to my attention at:

CT Department of Public Health-Day Care
410 Capitol Avenue-MS#12DAC
P.O. Box 340308
Hartford, CT 06134
FAX (860) 509-7541

Your assistance is greatly appreciated.

Sincerely,

Supervisor Name,

Child Care Licensing Supervisor

W:\Regulatory Services\Comm Prog Lic and Inv.\ Division\Licensure\Family\Initial Family Application\ Local Health Letter 03/14/2008 PG