

Effective: [See Text Amendments]

New Jersey Statutes Annotated Currentness

Title 26. Health and Vital Statistics ([Refs & Annos](#))

→ Chapter 2Q. Lead Evaluation and Abatement ([Refs & Annos](#))

26:2Q-1. Legislative findings and declarations

The Legislature finds and declares that:

Lead poisoning is the most prevalent environmental health problem facing children in New Jersey today; the Department of Health estimates that over 177,000 children under the age of five in New Jersey are at high risk of lead poisoning, and the effects of lead poisoning in children include learning disabilities, mental retardation, behavioral disorders, hyper-irritability, lack of coordination, loss of appetite, vomiting, abdominal pain, convulsions, permanent brain damage and death; even low levels of lead exposure can cause subtle neurological changes, reduced concentration and attentiveness, reduced I.Q. scores, behavioral problems, and learning disabilities; these problems persist and can adversely affect the child's chances for success in school and life; lead poisoning is caused by environmental exposure to lead and the most significant sources are lead-based paint in older housing and lead-laden dust and soil; and the Department of Health estimates that approximately 65% of New Jersey's housing stock may contain lead-based paint, representing a potential public health hazard of alarming magnitude.

The Legislature further finds and declares that:

Persons performing lead evaluation and lead abatement work must receive appropriate training and certification to ensure that lead evaluations and abatements are reliable, thorough, and safe; persons performing lead evaluation, without proper training, may fail to detect lead-contaminated surfaces; an abatement work plan that is based on an improper evaluation will be inadequate to rid a dwelling of a lead hazard; persons performing lead abatement, without proper training, may cause the contamination of an entire home with dangerous levels of lead; and a certification program for lead abatement is essential to ensure the safety of the occupants and the safety of the workers and is also necessary to protect consumers from fraud, abuse, and shoddy work practices.

Effective: April 19, 2004

26:2Q-2. Definitions

As used in sections 1 through 12 of [P.L.1993, c. 288](#) ([C.26:2Q-1](#) through [C.26:2Q-12](#)):

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment,

ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or as the term is defined under [42 U.S.C.s.4851b](#).

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner of Community Affairs in compliance with standards promulgated by the appropriate federal agencies. Such term includes:

a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

b. all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

"Lead evaluation" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under federal law and as defined in [42 U.S.C.s.4851b](#), or to eliminate permanently lead-based paint hazards by abatement on a premises by a person certified to perform lead abatement work pursuant to sections 1 through 12 of [P.L.1993, c. 288 \(C.26:2Q-1 et seq.\)](#) and sections 14 through 24 of [P.L.1993, c. 288 \(C.52:27D-427 et seq.\)](#).

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5% by weight, or such other level as may be established by federal law.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects.

"Lead-based paint hazard inspection" means an inspection of residential housing and the structure's interior common areas and exterior surface for the presence of lead-based paint hazards.

"Lead safe maintenance work" means those maintenance activities which are necessary to maintain surfaces in a lead safe condition and to prevent lead-based paint hazards from occurring or reoccurring.

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, door frame, window sill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

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[26:2Q-3. Certification of lead evaluators and lead abatement workers; term of certification; inapplicability of section to painting, woodworking or structural renovation work](#)

a. A person shall not perform a lead evaluation or lead abatement work unless the person is certified by the de-

partment pursuant to this act.

b. The commissioner shall establish a certification program to assure the competency of persons to perform lead evaluations or lead abatement work in a safe and reliable manner. The commissioner may establish different classes of certification reflecting the different types and complexities of lead evaluation and abatement activities.

c. The commissioner shall certify a person who satisfactorily completes the certification training course required pursuant to this act, passes an examination prescribed by the department and meets any other requirements for certification that may be established by the commissioner or by federal law.

d. The certification shall be in writing with a photo identification, signed and dated by the commissioner. It shall be carried upon the person while performing evaluation or abatement services.

e. Notwithstanding the provisions of subsection a. of this section to the contrary, a person who is certified to conduct lead evaluations or perform lead abatement work in a jurisdiction outside of New Jersey is entitled to receive a New Jersey certification from the department if the person demonstrates successful completion of a training and certification program in that jurisdiction that is at least as rigorous and comprehensive as the State training and certification program.

f. Lead evaluation and lead abatement certifications shall be for a period not to exceed two years and shall be non-transferable. A person may apply for recertification during the 90-day period before the certification expiration date or the 90-day period after the certification expiration date; except that if a person applies after the certification expiration date, he shall not perform any services for which certification is required until the certification is renewed. If a certification has expired for more than 90 days, the person is required to obtain a new certification.

g. Nothing in this section shall be construed to restrict or otherwise affect the right of any person to engage in painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, or to engage in lead safe maintenance work or lead hazard control work, but a person shall not hold himself out as certified by the department or otherwise represent that he has specialized competency to perform lead evaluation or abatement work, unless he has been certified or otherwise specifically authorized pursuant to sections 1 through 12 of [P.L.1993, c. 288 \(C.26:2Q-1 through C.26:2Q-12\)](#).

A person for hire who seeks to engage in lead safe maintenance work or lead hazard control work shall, prior to doing so, complete such training course as may be prescribed by the Commissioner of Community Affairs and provided by a training provider accredited by the commissioner.

A person who utilizes interim controls to reduce the risk of lead-based paint exposure shall utilize only those methods approved by the appropriate federal agencies, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, as may be set forth under [42 U.S.C.s.4851b](#) or those methods set forth in guidelines established by the Commissioner of Community Affairs, but shall not be required to be certified pursuant to this section unless performing lead abatement.

Effective: [See Text Amendments]

26:2Q-4. Training program for certification; covered topics; federal guidelines

a. The department shall develop, offer, or accredit training courses which shall be required for certification. These training courses shall include instruction in safe and effective evaluation and abatement methods. The training courses shall be developed in accordance with regulations adopted by the Department of Community Affairs pursuant to sections 14 through 24 of P.L.1993, c. 288 (C. 52:27D-427 through C. 52:27D-437) and the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.).

b. The training course for persons performing lead evaluation shall include, but not be limited to, instruction in:

- (1) safe and effective techniques and methods to test for lead hazards and assess lead hazards on premises before, during and after abatement of lead hazards;
- (2) risk assessment of the dangers posed by lead hazards on a premises and the effectiveness of various abatement techniques and methods and hazard reduction measures to reduce the risk posed by the presence of lead;
- (3) safe work practices, including determining whether occupants must be relocated during lead abatement;
- (4) practices to prevent contamination of the premises; and
- (5) applicable State and federal requirements.

c. The training course for persons performing lead abatement shall include, but not be limited to, instruction concerning:

- (1) safe and effective abatement techniques to remove, cover, encapsulate, or otherwise mitigate lead-based paint and lead-contaminated dust and soil;
- (2) possible routes of exposure during abatement of lead hazards;
- (3) safe work practices, including determining whether occupants must be relocated during lead abatement;
- (4) proper cleanup of lead-contaminated waste generated on the premises during and after lead abatement;
- (5) safe and lawful handling, transport and disposal of lead-contaminated waste; and
- (6) applicable State and federal requirements.

d. The commissioner is authorized to adopt any applicable federal requirements or guidelines established by federal law, including any requirements or guidelines that apply to homeowners or other property owners, notwithstanding that the requirements or guidelines may be inconsistent with the provisions of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12).

e. The department may establish continuing education requirements for recertification.

f. A person shall not hold himself out as accredited by the department or otherwise represent that he is competent to offer training unless he has been accredited to provide training pursuant to this section.

Effective: [See Text Amendments]

26:2Q-5. Suspension or revocation of certification; entitlement to hearing; ineligibility for reapplication for certification

a. The department may deny, suspend, impose conditions upon, revoke, or refuse to renew a certification for good cause, including but not limited to, the department's finding that:

- (1) a person has obtained a certification based upon a misrepresentation or fraud;
- (2) a person performed work without a certification as required in section 3 of [P.L.1993, c. 288 \(C. 26:2Q-3\)](#);
- (3) a person engaged in unsafe work practices, violated the rules promulgated by the Department of Community Affairs pursuant to sections 14 through 24 of [P.L.1993, c. 288 \(C. 52:27D-427 through C. 52:27D-437\)](#), failed to obtain a permit pursuant to the Uniform Construction Code, [N.J.A.C. 5:23-1.1 et seq.](#) or acted in a manner which posed a health risk to others;
- (4) the quality of the person's performance is below standards set by the department and remedial measures such as consultation and training are not accepted or do not result in improvement to a level of acceptable proficiency;
- (5) a person made false reports or reports not based on work done;
- (6) a person knowingly authorized or permitted the use of the name of a certified person to an uncertified person;
- (7) a person falsely represented his certification credentials; or
- (8) a person has violated any provision of sections 1 through 12 of [P.L.1993, c. 288 \(C. 26:2Q-1 through C. 26:2Q-12\)](#).

b. An applicant or certificate holder whose application or certification is denied, suspended, conditionally issued, revoked or not renewed is entitled to a hearing pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 ([C. 52:14B-1 et seq.](#)).

c. Denial of, suspension of, imposition of conditions upon, revocation of, or refusal to renew a certification shall not limit the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. Any person whose certification has been revoked shall be ineligible to apply for certification for three years from the date of revocation.

Effective: [See Text Amendments]

26:2Q-6. Civil actions against persons, not properly certified, engaging in lead evaluation or abatement

If the department has reason to believe that a person who: is not certified pursuant to section 3 of P.L.1993, c. 288 (C. 26:2Q-3) is engaging in lead evaluation or lead abatement work or is soliciting another person to engage, employ or retain him to perform lead evaluation or lead abatement work, for pecuniary gain; or is either certified or not certified pursuant to section 3 of P.L.1993, c. 288 (C. 26:2Q-3) and is causing an imminent threat to the public health, safety or welfare, the department may initiate a civil action in a court of competent jurisdiction for injunctive relief to enforce or prevent a violation of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12). The court may proceed in the action in a summary manner.

Effective: [See Text Amendments]

26:2Q-7. Knowing or purposeful violation; disorderly persons offense

A person who knowingly or purposely:

- a. hinders or delays the department in the enforcement of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12);
- b. fails to obtain the certification required by section 3 of P.L.1993, c. 288 (C. 26:2Q-3) and engages in lead evaluation or lead abatement work for pecuniary gain;
- c. solicits another person to engage, employ or retain him to perform a lead evaluation or lead abatement work, for pecuniary gain, when he is not certified pursuant to section 3 of P.L.1993, c. 288 (C. 26:2Q-3);
- d. holds himself out as accredited by the department or otherwise represents that he is competent to offer training when he is not accredited to provide training pursuant to section 4 of P.L.1993, c. 288 (C. 26:2Q-4); or
- e. otherwise violates any provision of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12); is guilty of a disorderly persons offense.

Effective: [See Text Amendments]

26:2Q-8. Penalties

As an alternative, or in addition to the provisions of section 7 of P.L.1993, c. 288 (C. 26:2Q-7), the commissioner may, subject to notice and hearing, impose an administrative civil penalty for a violation set forth in this section not to exceed \$1,000 for the first offense and \$5,000 for each subsequent offense. If the violation is of a continuing nature, each day it continues constitutes an additional and separate violation.

The penalty may be sued for and recovered by and in the name of the commissioner in a civil action in a court of competent jurisdiction by a summary proceeding under "the penalty enforcement law," N.J.S.2A:58-1 et seq. For the purposes of this act, the Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law."

The department may compromise and settle a claim for a penalty under this section in such amount as the de-

partment determines to be appropriate and equitable.

As used in this section, a violation shall include the:

- a. obstructing, hindering, delaying or interfering by force or otherwise with the commissioner in the exercise of any power or the discharge of any function or duty pursuant to the provisions of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12);
- b. preparing, uttering or rendering of any false statements, reports, documents, plans or specifications permitted or required pursuant to sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12); or
- c. refusal or failure to comply with a ruling, action, order or notice of the commissioner pursuant to sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12).

Effective: [See Text Amendments]

26:2Q-9. Fees

The department shall assess fees from persons for certification and recertification and from training providers for any training course or continuing education course that it accredits. The fees shall be used to support the certification and accreditation programs.

Effective: [See Text Amendments]

26:2Q-10. Property owner performing lead abatement in own dwelling not subject to this act

The provisions of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12) shall not apply to a property owner who personally performs his own lead abatement in a dwelling unit that he occupies as his primary place of residence.

Effective: [See Text Amendments]

26:2Q-11. Commissioner granted right of entry and right to inspect records

Sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12) shall be enforced by the commissioner or his representative, who shall have the right of entry to all premises at which the department has reason to believe that lead abatement or evaluation activities have taken place or are taking place, or to any premises occupied or used by a business firm subject to sections 14 through 24 of P.L.1993, c. 288 (C. 52:27D-427 through C. 52:27D-437); and the right to review any records for the purposes of inspection or investigation.

Effective: [See Text Amendments]

26:2Q-12. Rules and regulations

The department, in consultation with the Department of Community Affairs, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) to carry out the provisions of sections 1 through 12 of P.L.1993, c. 288 (C. 26:2Q-1 through C. 26:2Q-12).

Current with laws effective through L.2009, c. 89 and J.R. No. 7.
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