

Legislative Analysis



LEAD PACKAGE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5413 as introduced
Sponsor: Rep. Jim Lilly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5414 as introduced
Sponsor: Rep. Rachel Hood

House Bill 5415 as introduced
Sponsor: Rep. Pauline Wendzel

House Bill 5419 as introduced
Sponsor: Rep. Stephanie A. Young

House Bill 5416 as introduced
Sponsor: Rep. Angela Witwer

House Bill 5420 as introduced
Sponsor: Rep. Timothy Beson

House Bill 5417 as introduced
Sponsor: Rep. Sarah Anthony

House Bill 5421 as introduced
Sponsor: Rep. Cynthia Neeley

House Bill 5418 as introduced
Sponsor: Rep. Julie M. Rogers

House Bill 5423 as introduced
Sponsor: Rep. Julie Calley

Committee: Health Policy
Complete to 12-9-21

SUMMARY:

House Bills 5413 to 5423 would amend various statutes to lower the threshold for an elevated blood level in children, require physicians to complete training in lead poisoning identification and treatment, and expand inspections of lead-based paint, and extend the services provided to children with elevated blood lead levels, among other things.

House Bills 5413 and 5415 would amend the Public Health Code to move lead-related definitions from section 5456 to a newly created section 5456a. In addition, the definition for *elevated blood level* currently means, for purposes of case management of children six years of age or less, an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 10 ug/dl (micrograms of lead per deciliter of whole blood). **HB 5415** would lower that threshold to 5 ug/dl.

HB 5413: MCL 333.5456
HB 5415: MCL 333.5456a

House Bill 5414 would amend Parts 170 (which governs doctors of medicine, or M.D.s) and 175 (which governs doctors of osteopathic medicine, or D.O.s) to require those professions' respective boards to require applicants for license renewal to complete training in lead poisoning identification and treatment. The hours or courses completed as part of the continuing education requirement would have to include content on all of the following:

- Screening of children who are six years of age or less for lead poisoning.
- Physiological and behavioral signs of lead poisoning.

- The treatment needs of children with elevated blood lead levels.
- Referring children with elevated blood lead levels to appropriate state agencies.

The new requirements would take effect 12 months after the bill takes effect.

MCL 333.17033 and 333.17533

House Bill 5416 would amend the Social Welfare Act to stipulate that the Department of Health and Human Services (DHHS) must require that all medical assistance recipients under six years of age and all *MiChild* enrollees under six years of age receive an annual lead screening test.

MiChild would mean the federal state children's health insurance program (SCHIP) administered by DHHS.

MCL 400.1111

House Bill 5417 would amend the reporting requirements in Part 54A (Lead Abatement) of the Public Health Code to reflect the lowered blood lead level threshold of 5 ug/dl as provided in HB 5415.

MCL 333.5474

House Bill 5418 would amend the Public Health Code to provide that a child who is reported to DHHS as having elevated blood lead levels under HB 5417 must be considered medically eligible for services under Part 58 (Children and Youth with Special Health Care Needs) of the code.

Absent this provision, DHHS would have to investigate the medical condition of a child to make a determination of his or her medical eligibility.

MCL 333.5823 and 333.5825

House Bill 5419 would create a new act called the Lead-Based Paint Inspection Act.

The act would provide that a person could not transfer an interest in real property on which there is a residential structure that was constructed before 1978 unless the person has obtained an inspection of the property (as described below) to determine whether there is any presence of *lead-based paint* on the property and provided an inspection report to the purchaser. The inspection would have to be conducted by a certified inspector.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess on 1.0 milligrams per square centimeter or more than 0.5% by weight.

Then, the transferor would have to deliver a written report prepared by the inspector to the transferor's agent, the purchaser's agent, or the purchaser. If not provided to the purchaser by the transferor, the transferor's agent or purchaser's agent would have to provide the report to the purchaser.

For a transfer that is a sale of property, the report would have to be delivered to the purchaser before the purchase agreement was executed. For a transfer that is an installment land contract where a purchase agreement has not been executed, or for a sale of property with an option to purchase or a ground lease of the property coupled with improvements by the tenant, the report would have to be delivered before the contract or lease was executed.

For a transfer of this type, the transferor would have to indicate compliance with the act on the purchase agreement, land contract, or lease, or on an addendum attached to those documents, or on a separate document.

If a required report was delivered after the specified deadlines, the purchaser could terminate the purchase agreement, land contract, or lease by delivering written notice within 72 hours after in-person delivery to the purchaser or within 120 hours after non-in-person delivery.

A purchaser's right to terminate a purchase agreement, land contract, or lease would expire upon the transfer of the property by deed, land contract, or lease.

House Bill 5420 would amend the Public Health Code to include *renovation* alongside abatement and lead-based paint activities, with the attendant safety and certification requirements. The bill also would define certain instruments and processes to be used in those activities, including wet disposable cleaning cloths, wet mopping system, and vertical containment (of the affected area).

Renovation would mean the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. Renovation would not include minor repair and maintenance activities. Renovation would include all of the following:

- The removal, modification, or repair of painted surfaces or painted components, including modification of painted doors, surface restoration, window repair, or surface preparation activity such as sanding, scraping, or other activities that may generate paint dust.
- The removal of building components such as walls, ceilings, plumbing, or windows.
- Weatherization projects such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics and planing thresholds to install weather stripping.
- Interim controls that disturb painted surfaces.
- A renovation to convert a building, or part of a building, into target housing or a child occupied facility.

The bill also would add renovator and dust sampling technician to the list of training programs for which a person could seek accreditation to offer courses. The renovator and dust sampling technician course would have to last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. An applicant pursuing certification as a certified renovator or dust sampling technician would have to complete a course in the appropriate discipline and receive a course completion certificate before applying to DHHS for certification.

An individual could apply to DHHS for certification to engage in renovations by demonstrating compliance with the specified requirements, or providing a copy of the renovation certification training program, and paying the requisite fees. The bill would add renovator and dust sampling technician to the list of disciplines for which a qualified applicant would have to be certified by DHHS.

Under the bill, an individual could not conduct lead-based paint activity or renovation unless certified in the appropriate discipline, except that a certified renovator could train workers for renovations for a specific project.

A person could not perform or offer to perform lead-based paint activities or renovations without obtaining certification from DHHS. In order to be certified, the person would have to submit a letter attesting that the person will only employ appropriately certified employees to conduct lead-based activities or renovations and that the employees will follow the requisite work practice standards.

The fees and descriptions for lead-based activities and renovations would be adjusted under the bill as follows:

	Current fee	Proposed fee
Initial accreditation fee to offer courses	\$475	\$450
Reaccreditation fee to offer courses, annual	\$265	\$250
Certification fee for an individual—inspector	\$150	\$125
Certification fee for an individual—risk assessor	\$150	\$125
Certification fee for an individual—supervisor	\$50	\$75
Certification fee for an individual—project designer	\$150	\$125
Certification fee for an individual—abatement worker/laborer	\$25	\$50
Initial abatement application processing fee	\$100	\$100
Abatement firm certification fee, per year	\$220	\$220
Initial renovation firm application processing fee	N/A	\$100
Renovation firm certification fee, per year	N/A	\$60

Additionally, the bill would introduce a \$50 certification fee every three years for a dust sampling technician.

The bill would provide that DHHS could conduct unannounced site inspections on renovation projects, as those projects do not require notification.

Rules promulgated by DHHS to administer and enforce lead-related activities under the code would have to adopt by reference the provisions of the regulations issued by the federal Environmental Protection Agency (EPA) for renovation work practice activities and would have to allow vertical containment to be used in any renovation or lead-based paint activity.

At its own discretion or upon written complaint, DHHS could investigate the acts of accredited training programs, certified parties, or persons allegedly engaged in activities or renovations, and could deny, suspend, or revoke certification or accreditation if noncompliance or other violations were found.

MCL 333.5454 et seq.

House Bill 5421 would amend the Public Health Code to amend the definition for a *child occupied facility* to provide that it could be located in target housing or a public or commercial building. If located in a public or commercial building, all of the following would apply:

- If the building contains common areas:
 - The child occupied facility encompasses only those common areas that are routinely used by children six years old or younger, such as restrooms and cafeterias.
 - The child occupied facility does not encompass common areas that children six years old or younger only pass through, such as hallways, stairways, and garages.
- The child occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child occupied facility or a common area encompassed by the child occupied facility, such as restrooms and cafeterias.

The bill would change the name of the registry established and maintained by DHHS from the Lead Safe Housing Registry to the Lead Information Housing Registry. The registry would provide a public list of properties that had had a lead-based paint investigation or been abated or had interim controls to control lead-based paint hazards. The bill would update the professions qualified to perform that assessment. The registry would have to include at least all of the following information:

- Name of the owner of the building.
- Address of the building.
- Date of construction.
- Property description.
- Date and description of any lead-based paint and interim control activities, including the name of the certified abatement worker or the certified risk assessor who performed the abatement or conducted the inspection, assessment, or clearance testing of the building and the results of the lead hazard control activity.

Currently, the owner of target housing that is offered for rent or lease or the owner of a child occupied facility *must* register that property with DHHS if it has been abated or had interim controls performed. The bill would provide that the owner *may* register with DHHS if it has had a lead-based paint inspection or been abated or had interim controls performed.

The bill also would allow properties built after 1978 to be listed on the registry if proof of the year built was submitted in lieu of any lead-based paint or lead hazard control activity reports.

Additionally, the bill would do all of the following:

- Add an interim control activity or other measure or activity designed to temporarily reduce a lead-based paint hazard to the definition of abatement. (Currently, a similar description is expressly omitted from the definition for abatement.)

- Remove the listing and references to a certified clearance technician.
- List 47 items that fall under the definition of *component*, including interior design or structural elements or fixtures, such as ceilings and doors, and exterior design or structural elements or fixtures, such as chimneys or fences.
- Revise the definition for *elevated blood level (EBL)* from specific levels to the concentration of lead in whole blood equal to or greater than the definition defined by the federal Centers for Disease Control and Prevention (CDC) as the blood lead reference value.
- Replace the definition for, and references to, third party examination with *state examination*.
- Provide that certain individuals who have unpaid enforcement fines and are not executing a DHHS-established payment plan could be denied recertification until the fine is paid or a payment plan is established.
- Remove the requirements that a person seeking certification to perform lead-based paint activities must indicate whether the applicant has liability insurance and submit proof of Michigan workers' disability compensation insurance.
- Create separate fee schedules for abatement and environmental firms, which would nonetheless have the same fees for initial application processing (\$100) and annual certification fee (\$200, formerly \$220).
- Allow DHHS to adjust the fees every three years for persons accredited or seeking accreditation for a training program. The adjustment would reflect the cumulative annual percentage change in the Detroit Consumer Price Index (D-CPI), rounded to the nearest dollar.
- Provide that the address where a lead-based paint investigation occurred is not exempt from disclosure under the Freedom of Information Act (FOIA).
- Stipulate that information identifying a complainant or person who submits a tip or complaint to DHHS regarding lead-related violations is exempt from disclosure under FOIA.
- Increase the maximum administrative fines for violations under Part 54A (Lead Abatement) from \$2,000 to \$5,000 for a first violation, \$5,000 to \$8,000 for a second violation, and \$10,000 to \$13,000 for a third or subsequent violation.
- Revise the statute of limitations for DHHS to issue a citation for a violation of Part 54A from 180 days after discovery of the alleged violation to five years after discovery.
- Increase the maximum fine for a person who engages in a lead-based paint activity under Part 54A and who willfully or repeatedly violates the relevant rules or who fails to correct the violation from DHHS from \$5,000 to \$15,000 for a first offense and from \$10,000 to \$25,000 for a second or subsequent offense.

The bill also would introduce the following definitions:

EBL environmental investigation would mean both of the following:

- A study, for case management purposes, of the living environment of one or more children six years old or younger with an elevated blood lead level performed by an EBL investigator to identify causative lead exposures.
- The provision of a report by the EBL investigator explaining the results of the study and options for remediation of exposures.

Emergency renovation operations would mean renovation activities that were not planned but result from a sudden, unexpected event, such as a nonroutine failure of equipment, that if not immediately attended to presents a safety or public health hazard or threatens equipment or property with significant damage. Once the emergency is controlled, applicable laws and rules would apply.

Lead hazard control activity would mean a measure or set of measures designed or performed specifically to reduce or eliminate lead-based paint hazards in target housing and child occupied facilities. Lead hazard control activity would include, but not be limited to, abatement, interim controls, and clearance examinations.

Finally, the bill would repeal section 5474b[1] of the code but retain section 5474b. The sections are identical.

MCL 333.5453 et al.

House Bill 5423 would amend Part 58 (Children and Youth with Special Health Care Needs) of the Public Health Code to include the children with elevated blood lead levels under section 5474 of the code (as amended by HB 5417) as eligible for certain services by DHHS.

MCL 333.5805

Tie-bars

House Bills 5413, 5415, 5417, 5418, and 5423 are tie-barred together, which means that none of those bills could take effect unless all of them were enacted.

FISCAL IMPACT:

House Bills 5413 and 5415 would have no fiscal implications for state or local government.

House Bill 5414 would not have a fiscal impact on the Department of Licensing and Regulatory Affairs or on other units of state or local government. While the bill would create additional continuing education requirements for licensees, it would not create additional regulatory burdens for LARA.

House Bill 5416 would increase state costs from \$3.3 million to \$9.6 million, depending on whether the gross cost increase is eligible for federal Medicaid reimbursements. Based on federal CMS guidelines, all Medicaid recipients between the ages of 12 and 24 months are required to be tested for lead exposure. Pursuant to the guidance provided by CMS,¹ under the Early and Periodic Screening and Diagnostic Testing benefit (EPSDT), these tests are considered Medicaid eligible. However, current guidelines are unclear as to whether or not additional testing would be eligible for federal Medicaid reimbursement. Therefore, the requirement for annual lead level testing in addition to EPSDT required lead level testing would incur additional costs to the state that may, or may not, be matched by Medicaid. The current federal Medicaid reimbursement rate is 65.48%. The bill would have no fiscal impact on local units of government.

¹ <https://www.medicaid.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/lead-screening/index.html>

House Bills 5417, 5420, and 5421 would have a fiscal impact on DHHS with fee changes and increased requirements of the state programs of lead poisoning prevention, lead abatement, certification of individuals to perform lead abatement, lead hazard remediation and training, and remediation compliance assistance and enforcement. Further fiscal analysis is in progress.

House Bill 5418 would increase state costs for the Children's Special Health Care Services (CSHCS) Program by a likely moderate, but indeterminate at this time, amount. CSHCS presently covers services to treat some lead-induced conditions (e.g., gout), but does not cover services to treat all lead-induced conditions for children who are referred to the department's Childhood Lead Poisoning Prevention Program. The bill would have no fiscal impact on local units of government.

House Bill 5419 would not have a fiscal impact on the state. The bill does not specify a state department that would be responsible for oversight of the bill's provisions, therefore, as written, the bill would not create any costs for units of state government and the bill would not create any additional revenue.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.