

Legal Strategies and Mechanisms to Reduce Lead Poisoning

August 19, 2019



Presented by the Lead Legal Strategies Partnership

- National Center for Healthy Housing
- ChangeLab Solutions
- Earthjustice

Funding support for this webinar is provided by The New York Community Trust



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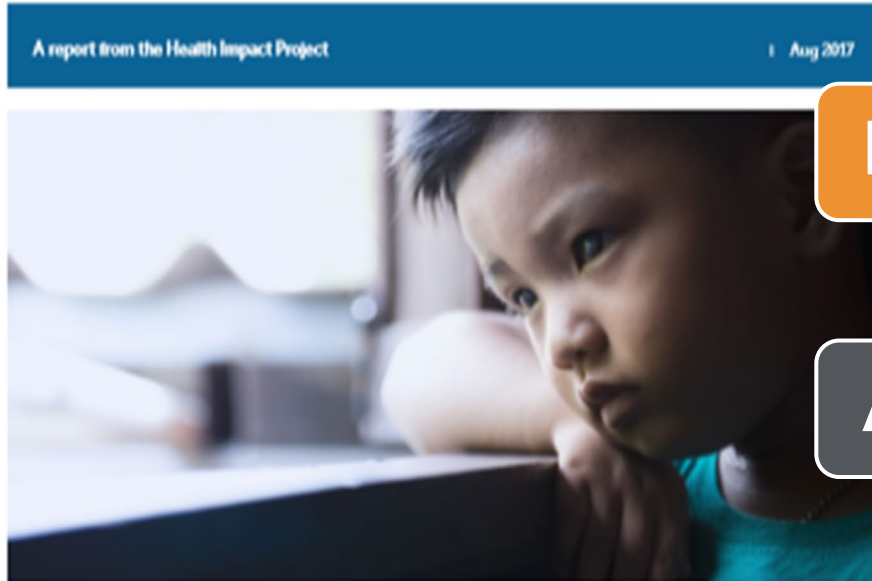
National Center for
HEALTHY HOUSING



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BECAUSE THE EARTH NEEDS A GOOD LAWYER

Welcome

- The National Center for Healthy Housing (NCHH) is a preeminent national nonprofit dedicated to **securing healthy homes for all**. Since 1992, NCHH has served as a highly regarded and **credible change agent**, successfully integrating healthy housing **advocacy**, **research**, and **capacity building** under one roof to reduce health disparities nationwide.



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10 Policies to Prevent and Respond to Childhood Lead Exposure

An assessment of the risks communities face and key federal, state, and local solutions

Priority Sources

- Drinking water, lead paint, enforce RRP

Additional Sources

- Food and consumer products, air emissions, soil

Poisoning Response

- Blood lead testing, assessments, follow-up services

Data and Research

- Public access to data, fill research gaps

Why the Lead Legal Strategies Partnership?



THE NEW YORK
COMMUNITY
TRUST

Welcome!



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EARTHJUSTICE

BECAUSE THE EARTH NEEDS A GOOD LAWYER

Earthjustice is the nation's premier nonprofit environmental law organization. We fight for clean air, clean water, and a toxics-free environment.



TOGETHER



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OUR MISSION:

*Healthy communities for
all through equitable laws
& policies*





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Objectives

As a result of participating in this webinar, grantees will be able to:

- ▶ Identify multiple legal strategies and/or policy levers to act upon to prevent lead poisoning;
- ▶ Issue spot potential unintended consequences and their implications for advancing health equity; and
- ▶ Access various resources to learn more about each legal strategy/policy lever, including successful examples from around the country.



AGENDA

- Why policy?
- Strategy 1: Proactive Rental Inspections
- Strategy 2: Rental Property Licensing
- Strategy 3: Adopt Stricter Definition of Action Level for Lead
- Strategy 4: Renovation, Repair, and Painting
- Overarching Considerations: Strengthening Tenant Protections + Mandatory Testing
- Key Takeaways + Resources



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Why the emphasis on policy strategies and mechanisms?

Through policy work, you can:

- *Reach more people*
- *Offer accountability and enforcement mechanisms*
- *Institutionalize good ideas*
- *Address inequitable impact(s) of existing policies*



Policies can be bundled to address complex issues and operate across sectors in a complementary fashion.

What about litigation?

California Litigation as a Cautionary Tale

- Public nuisance theory and lead poisoning (case law varies from state to state)
- In 2000, California municipalities sued three paint manufacturers, seeking billions in damages for lead paint remediation costs – the litigation process lasted 19 years
- Several lawsuits in other states have failed since 2000
- Governments bring these suits on behalf of the public, so this is not a strategy for nonprofits



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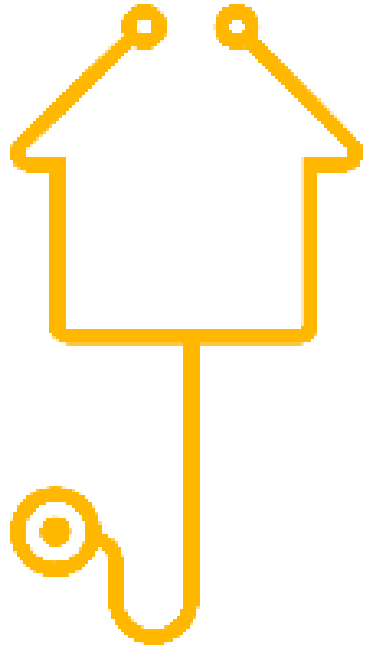


What is a *Proactive Rental Inspection (PRI)* program?



- PRI programs typically share a basic program structure:
 - Registration
 - Periodic inspections
 - Enforcement
- Periodic inspection of rental units is the defining characteristic of a PRI program, though frequency of inspections and the types of units to include can vary by locality
- This a departure from traditional, complaint-based code enforcement programs

Why should you consider adopting a *Proactive Rental Inspection* program?



- To preserve safe and healthy rental housing
- To help to protect the most vulnerable residents
- To preserve neighborhood property values and a locality's property tax base
- To help localities know what rental properties exist and who owns them

Proactive Rental Inspection strategies in practice

Rochester, NY

- Population: 208,046
- Inspection for lead via certificate of occupancy requirements or after a filed complaint
- Enforcement via fines
- Use of data for evaluation
- Prohibition of retaliatory action



Other examples include:

Boston, MA

- Population: 685,094

Toppenish, WA

- Population: 8,906

Proactive Rental Inspections: Key Takeaways

Regardless of geography, the most effective PRI programs will:

- Be tailored to the characteristics of the local rental housing stock
- Factor in on-the-ground political and resource limitations
- Anticipate potential challenges in adoption and implementation
- Incorporate broad-based strategies to ensure that local rental housing remains not only safe and healthy but also stable and affordable for all tenants



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What is *Rental Property Licensing*?



- Requires landlords to acquire license before renting
- Typically coupled with other preventive policies
- Spectrum of options depending on resources for enforcement

Why should you consider adopting a *Rental Property Licensing* strategy?



- Provides “hook” for other prevention policies
- Helps identify and prioritize unhealthy housing stock
- Performance-based licensing can incentivize good behavior

Rental Property Licensing strategy in practice

Philadelphia, PA

- Population: 1.5 Million
- Relatively simple licensing system
- Requires compliance with Philadelphia's Lead Paint Disclosure and Certification Law

Brooklyn Center, MN

- Population: 31,000
- Performance based licensing (more involved and resource intensive)
- Different requirements based on # of code violations

Other cities with RPL:

- Detroit, MI (673,000)
- Rochester, NY (208,000)



Rental Property Licensing: Key Takeaways

Helps enforce other policies

- E.g., inspection, certification, registry

Can incentivize positive behavior

- Performance based licensing, “good landlord programs”

Takes resources to administer

- Localities should consider available funding, staff



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What is the CDC *Reference Level* for Lead?

- *Reference level* is a relative measure of how high a child's blood lead is compared to other children in the U.S. and is not health-based.
- In 2012, the CDC adopted a *reference level* of 5 micrograms per deciliter "to identify children and environments associated with lead-level exposure hazards."



Why should you consider adopting a stricter *Action Level for Lead*?

- **There is no safe level of lead**
- Benefits of lowering to 5 $\mu\text{g}/\text{dL}$ or 3.5 $\mu\text{g}/\text{dL}$ the elevated blood lead level for triggering remediation and intervention include:
 - Stopping exposure for children
 - Prevention for younger siblings and other children who live in the dwelling or attend the school or day care



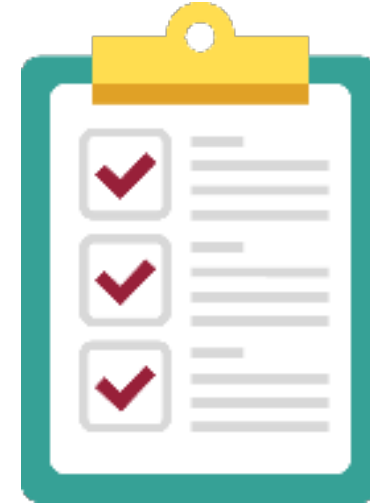
Stricter Action Level for Lead strategy in practice

New York

- Governor's budget action lowering elevated blood lead level to 5 µg/dL

Pennsylvania

- No state action level
- *Allegheny County*
 - Health Department treats confirmed blood level tests with 5 µg/dL or more as elevated
- *City of Philadelphia*
 - Health Department only investigates lead poisoning cases when a child's blood lead level is 10 µg/dL or higher
 - In 2017, there were nearly 1,800 children with blood lead levels above 5 µg/dL but below 10 µg/dL



Action Level for Lead: Key Takeaways

- **This is an action that can possibly be done at the state or local level**
 - State level “home rule” laws may either encourage or preempt official action at the local level
- **This approach is only effective if the elevated blood lead level triggers meaningful action**



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What is the *Renovation, Repair, and Painting rule*?

- EPA rule implementing the Toxic Substances Control Act
- Requires the following of firms performing RRP projects that disturb lead-based paint in homes, child care facilities, and preschools built before 1978:
 - *Be certified by EPA (or an EPA-authorized state)*
 - *Use certified renovators who are trained by EPA-approved training providers*
 - *Follow lead-safe work practices*



Why should you consider doing something about *Renovation, Repair, and Painting?*

- Renovations as a primary lead exposure method
- Enforcement is staggeringly low in states where EPA is enforcing the RRP:
 - *In 2016, EPA brought three enforcement actions in NY State*
 - *In 2018, EPA had 141 enforcement actions across 36 states. That's approximately four enforcement actions per state.*



Renovation, Repair, and Painting strategy in practice

State Level

- Get your state to petition for delegation to take over the program
- Adopt a state level law similar to Pennsylvania's Lead Certification Program

Local Level

- Require proof of RRP certification
- Incorporate RRP requirements into ordinance
 - *E.g., Rochester, NY*
- Support local nonprofits providing RRP training and awareness
 - *E.g., Overbrook Environmental Center in Philadelphia, PA*



Renovation, Repair, and Painting: Key Takeaways

- **Renovation, Repair, and Painting are a major pathway exposing children to lead**
- **Federal enforcement is minimal**
 - *States and communities should find a way to implement these programs*
- **Long-Term: States should seek delegation**
- **Short-Term: There are several ways to implement locally:**
 - *Incorporating into ordinance*
 - *Requiring proof of training*
 - *Supporting local groups to provide education and training*



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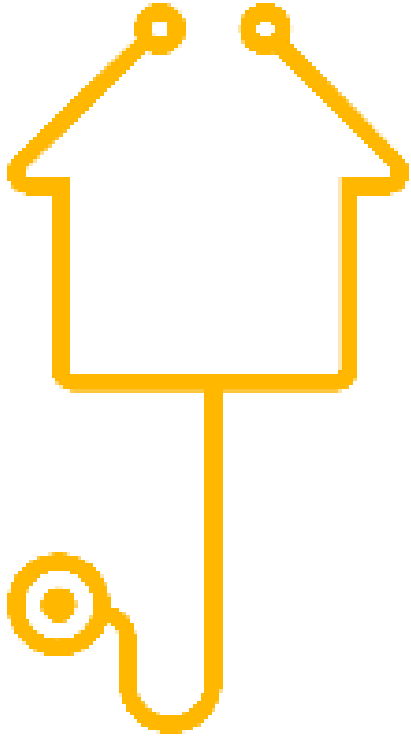


What is *Strengthening Tenant Protections*?

- Localities can take measures to ensure lead protections don't negatively impact tenants



Why should you consider adopting strategies to *Strengthen Tenant Protections*?



- Encourages tenants to report violations without fear of retaliation
- Avoids evictions and negative health effects of housing instability
- Maintains affordability of housing stock

Strengthening Tenant Protections strategies in practice

Rent-withholding mechanism

- Tenants pay rent into an escrow account until landlords fix unhealthy condition
 - [Baltimore Co. \(MD\)](#)
 - [Franklin Co. \(OH\)](#)



Housing specific dispute resolution system

- Special court or arbitration system focused on housing issues
 - [Cleveland's Housing Court](#)
 - [Philadelphia's Lead Court](#)



Strengthening Tenant Protections: Key Takeaways

- Allows tenants to benefit from lead prevention policies
- Reduces risk of unintended harms
- Promotes health equity



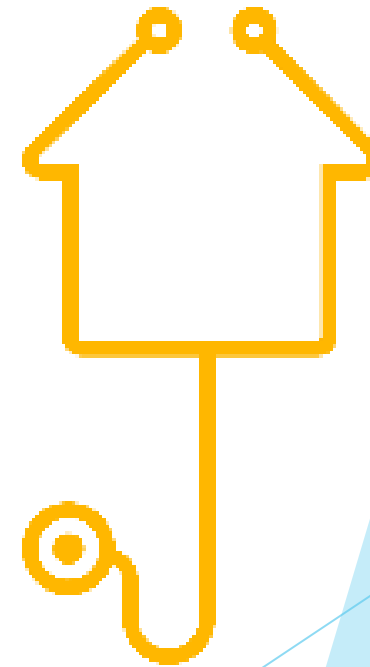
What is *Mandatory Testing*?

- Mandatory blood testing of children at prescribed periods
- Ten states and DC require testing of all children
- Eight states mandate targeted testing
- The remaining states only provide recommendations or have no policy



Why should you consider *Mandatory Testing*?

- In order to provide lead-poisoned children the interventions and care they need, we need to know the levels of lead in their bodies
 - *Mandatory testing helps identify those children exposed to lead*
- Mandatory testing helps gauge whether primary prevention efforts are working



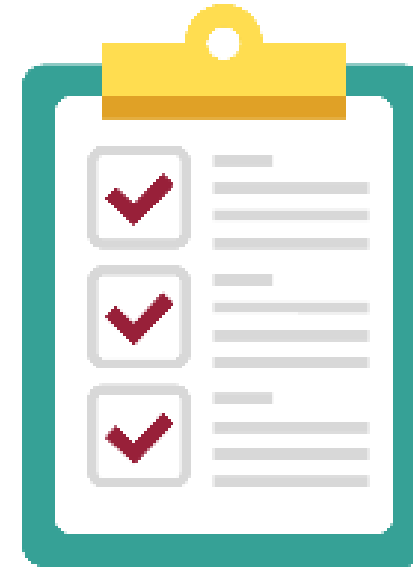
Mandatory Testing in practice



- **Can be state-mandated or locally-mandated**
- **New Jersey**
 - *Child blood lead levels tested at 12 months and 24 months of age, or at least once before turning six*
 - *Enforcement still a challenge: in 2017, 43% of children in the 6-month–26-month age range tested*
- **Louisiana**
 - *Healthcare providers must test children aged 1 and 2 for lead*
 - *Enforcement still a challenge: in 2016, 21% of children aged 1 and 2 were tested*
- **Allegheny, PA, County Council**
 - *July 2017: required universal blood lead testing for children under 6 years of age*
 - *All children required to have first test between 9-12 months age range*

Mandatory Testing: Key Takeaways

- Information gathered is critical to understanding the scope of the problem, identifying children who need help, and measuring the success of programs
- Even with mandatory testing, there remain issues with enforcement
 - *As a result, some children still fall through the cracks*



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Overall Key Takeaways

- Taking a holistic approach to understanding a community's health concerns and the impacts of a policy strategy
- Implementation and Enforcement
- Equity Considerations



Resources to Learn More!

- Proactive Rental Inspections
 - ChangeLab Solutions: [Healthy Housing through Proactive Rental Inspection](#)
- Rental Property Licensing
 - American Bar Association: [Targeted Rental Licensing Programs – A Strategic Overview](#)
- CDC Reference Level for Lead
 - CDC: [New Blood Lead Level Information](#)
- Renovation, Repair, and Painting
 - U.S. EPA: [Lead Renovation, Repair, and Painting Program](#)
- Strengthening Tenant Protections
 - National Center for Healthy Housing: [Tenant Protections](#)
 - Maryland Courts: [Housing Cases for Landlord/Tenant Issues](#)
- Mandatory Testing
 - Allegheny County, PA: [Universal Blood Lead Level Testing](#)



Post-Webinar Survey



- Click [here](#) to complete the survey.
- A link to the survey will also be made available via follow-up email.

Thank you!



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