Legal Strategies and Mechanisms to Reduce Lead Poisoning

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Presented by the Lead Legal Strategies Partnership

- National Center for Healthy Housing
- ChangeLab Solutions
- Earthjustice

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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.
Why the Lead Legal Strategies Partnership?
Welcome!

Jill Heaps
Legal Consultant
Earthjustice

Greg Miao
Senior Attorney
ChangeLab Solutions

Cesar De La Vega
Policy Analyst
ChangeLab Solutions

Zac Hale
Legal Fellow
ChangeLab Solutions
Earthjustice is the nation’s premier nonprofit environmental law organization. We fight for clean air, clean water, and a toxics-free environment.
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.
• 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
AGENDA

• Why policy?

• Strategy 1: Proactive Rental Inspections

• Strategy 2: Rental Property Licensing

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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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• Strategy 2: Rental Property Licensing

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• Key Takeaways + Resources
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
AGENDA

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• **Strategy 2: Rental Property Licensing**

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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
AGENDA

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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 µg/dL or 3.5 µg/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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Key Takeaways + Resources
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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• **Overarching Considerations: Strengthening Tenant Protections + Mandatory Testing**

• Key Takeaways + Resources
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
Why policy?

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Key Takeaways + Resources
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!