

**REPORT OF THE
JOINT SUBCOMMITTEE**

**Supplemental Report:
Lead Poisoning Prevention**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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* Louise Fontaine Ware was Director of the Department of Professional and Occupational Regulation from 2002 through 2005. On April 3, 2006, Jay W. DeBoer was appointed Director of the Department of Professional and Occupational Regulation and will, thus, become a member of the Joint Subcommittee.

SENATE JOINT RESOLUTION 380 (2005)

JOINT SUBCOMMITTEE STUDYING LEAD POISONING PREVENTION

2006 SUPPLEMENTAL REPORT

Background

The lead poisoning prevention study developed from the 1993 study of lead paint abatement to its present posture of seeking to prevent lead poisoning.¹ The study logo still reflects its early years, remaining as it was originally designed---a dripping paint can.

Senate Joint Resolution 380, the 2005 enabling resolution, directed the Joint Subcommittee to: (i) monitor the evolution of the data-sharing partnership established by the Joint Subcommittee in the data-sharing statute, § 32.1-127.1:04 of the Code of Virginia; (ii) monitor the completion of the reference database of statewide health-related data elements required by SB 565 of 2004; (iii) examine issues relating to lead poisoning among immigrant and adopted children; and (iv) seek to assist the Department of Health and the Department of Housing and Community Development in every appropriate way in maintaining federal funding.

As in previous years, the Joint Subcommittee reviewed lead poisoning prevention activities in the Commonwealth and evaluated the issues to identify any problems amenable to legislative solutions.

Childhood Lead Poisoning in Virginia: Elimination Plan

The Lead-Safe Virginia Program is operated by the Virginia Department of Health (VDH). The Program provides statewide surveillance and tracks trends and clusters of lead poisoning throughout the Commonwealth. The Program targets resources to increase testing of high-risk and Medicaid enrolled children (who often live in housing with lead risks) between the ages of 12-36 months. Pursuant to federal grant requirements, the Elimination Plan for Virginia seeks to eradicate lead as a health hazard for children by 2010, consistent with the goal established by the federal Centers for Disease Control and Prevention.

The Pre-Renovation Education (PRE) Rule, a federal law that requires contractors to provide lead information to residents before renovating pre-1978 housing, and the Disclosure Rule, which is a federal law that requires real estate professionals to disclose information

¹ See Senate Document 7 (2006) for a composite account of the Joint Subcommittee's work from its inception in 1993 through 2004.

concerning lead hazards upon the sale or lease of residential property built prior to 1978, are key to eliminating lead poisoning. In accordance with the PRE Rule, renovators must give the owner or tenant a pamphlet entitled "Protect Your Family from Lead in Your Home," before starting work.

The objectives of the Elimination Plan include the identification of "multiple offender" units, the definition of a data-sharing authority, a toll-free emergency lead health care hotline, and a web-based training module for medical professionals. A process was also developed to collect and report federal disclosure violations; a survey of local health departments was completed to evaluate capacity for lead poisoning follow-up activities and to target resources more effectively; and the Board of Contractors agreed to require a "lead safety practices" course for contractors being disciplined. Weak involvement from historical preservation groups and from rental agents and other real estate organizations is one of the barriers to completion of the Elimination Plan Mission.

The Centers for Disease Control and Prevention (CDC) announced 10 essential lead program elements in October 2005 that will be required of the 2006 grantees. As of December 2005, Virginia lacked two of the elements: (i) regulatory authority to require abatement of lead hazards in housing units containing children with elevated blood lead levels and (ii) statutory protection from retaliatory eviction or discrimination related to disclosure of lead hazards for clients. The 10 essential elements were requirements for the grant application, which was submitted in February 2006.

The key issues for Lead-Safe Virginia in the closing days of 2005 were identified as (i) the potential for elimination of federal funding after 2010 and (ii) the lack of a standard Virginia 'process' to assure that lead hazards are removed in order to prevent future lead exposures.

Data-Sharing Partnership

A review of interagency collaborations in 2005 acknowledged the cost savings to the Commonwealth as a result of the data-sharing initiative that was established as an initiative of the Joint Subcommittee in 2002. For example, the electronic sharing of Medicaid eligibility records with VDH saves an estimated \$1,030,000 per year, and the transmission of decedent records by VDH to the Department of Medical Assistance Services (DMAS) saves approximately \$350,000 per year through the avoidance of reimbursement errors (for services billed after death). In addition, the Community-based Coordinated Services System, an information-sharing system between the various health services agencies, utilizes an electronic uniform assessment instrument to save time and achieve greater efficiency in the provision of community-based services.

The data-sharing initiative has also enabled interagency collaboration that benefits the lead poisoning prevention efforts, including interagency agreements (memoranda of understanding), integrated policies and procedures, consistent processes for patient authorization or informed consent, and standards for technical security specifications, user authentication, and a definition of file access. The Governor's Task Force on Information Technology in Healthcare,

which was appointed in January 2005, is working on a uniform foster child personal health record project, which is under construction as a VDH and Carilion Health System collaborative electronic health record pilot. The uniform foster child personal health record, a mechanism for sharing medical information about foster children, including any elevated blood-lead levels, will provide a valuable and effective means of tracking foster children's health.

Virginia Lead Safe Homes Program

The Virginia Department of Housing and Community Development (VDHCD) completed the 2002 federal grant for lead abatement in homes, abating a total of 103 units, located on the Eastern Shore and in Danville, Petersburg, and Richmond City, at a cost of \$1.9 million. In 2006, the Department's new \$3 million grant will be used primarily for units that have been cited for multiple incidents of elevated blood-lead levels/lead poisoning. The period for the grant runs from November 1, 2005, to October 31, 2008, and should provide for the abatement of 100 units. The coverage for the grant will be statewide, with continued work in Petersburg, the Eastern Shore, and Danville; however, the project will also target nine other localities with high levels of multiple incident units.

The Department's partnership efforts with VDH, the Virginia Commonwealth University (VCU) Center for Environmental Studies, housing development organizations, and within the components of VDHCD itself have resulted in the development of a "LeadTrax" System that pinpoints housing with multiple incidents of elevated blood-lead levels/lead poisoning and in the collaborative training of various community constituencies. Working internally, VDHCD identified contractors through an existing network in order to more effectively coordinate activities. The partnership with the VCU Center for Environmental Studies led to increased training of lead workers, risk assessors, and contractors. Lead abatement activities were increased as well, as the Department worked with housing development organizations.

Among the lessons learned by the Department through its lead hazard reduction work are that (i) centralized data collection decreases the burden on smaller agencies; (ii) the use of multiple local partners increases production capability; and (iii) an established reimbursement structure controls cost variability.

Early and Periodic Screening, Diagnosis, and Treatment - Outreach and Informing

The Maternal and Child Health Division of the Department of Medical Assistance Services operates the Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT), a Medicaid component focused on improving primary health benefits for children that emphasizes prevention, which includes, among its many components, outreach activities related to screening for lead poisoning. The federal law mandates lead testing for all Medicaid-enrolled children at ages one (12 months) and two (24 months); children who present without any medical history must be tested up to age six. Once a child receives an elevated blood lead test result, the VDH provides that information to DMAS who then provides a data match to confirm that the child is a Medicaid enrollee. On a quarterly basis, DMAS provides elevated lead testing notices to Virginia families enrolled in Medicaid and Medicaid managed care organizations (MCOs) and to

the individuals' physicians to notify them of a need for confirmatory lead tests and possible treatment.

Currently, DMAS is developing a memo to define the lead testing strategies and mandates for EPSDT screeners. Further, with the use of LabCorp (Laboratory Corporation of America) or other contracted entities being federally mandated, VDH sent out letters to the local health departments informing them of who may bill for laboratory testing. In 2006, a Medicaid memo will be sent to all providers with the same information. VDH will also present the Lead-Safe Virginia Program at the upcoming EPSDT physician training and will provide their own technical consultant. DMAS will also send physicians a memo to specify the lead-screening requirements for each age group.

In the future, and with the hope that screenings will increase, DMAS will send the parents of nine month old and 21 month old children enrolled in Medicaid and Medicaid managed care organizations² a postcard to remind them of the need for testing at ages one and two. The Department will also send out follow-up notices at the intervals of 15 and 27 months to providers and parents of children who were not tested at the 12- and 24- month time frames. Medicaid managed care organizations will report to DMAS about the testing status for their current and new enrollees with elevated blood levels so that all Medicaid enrollees can be tracked for follow-up lead testing status.

Reference Database of Statewide Health-Related Data (SB 565 of 2004)

Pursuant to SB 565 of 2004, a Joint Subcommittee initiative, the Health Care Data Element Project, a database of statewide health-related data, is being developed under the leadership of the Director of Information Architecture at the Department of Medical Assistance Services.

The SB 565 objective was to build a relational database of individual data elements (a data element dictionary) from the information systems of each of Virginia's Health and Human Resources (HHR) agencies to be used in the conduct of research and evaluation to improve the planning, delivery, and financing of health care available to all Virginians. Meetings have been held with representatives of each HHR agency, the project has been defined, and target systems containing health care data have been identified. The collected data has been used to build the Microsoft Access Database. Each agency owns its own data in the database, which will be maintained by DMAS and does not contain actual health care data, only names and descriptions of data elements contained in each of the health-related data systems.

The Database can be used for (i) the preparation of grant applications to maximize the level of federal and private foundation participation in projects that benefit the health of Virginia citizens; (ii) conducting a wide variety of health-related studies conducted by HHR policy and planning staffs; (iii) conducting studies related to the provision and outcomes of medical services

² Medicaid managed care organizations also provide services to children enrolled in the Family Access to Medical Insurance Security Program (FAMIS), which is Virginia's State Children's Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

to at-risk populations; and (iv) supporting projects dependent upon the sharing of protected health information between HHR agencies, such as lead poisoning identification and education.

Full implementation of the project has not yet been achieved; however, in the coming year, copies of the elements database will be disseminated to all the participating HHR agencies on CD and a meeting of all the agency coordinators will be convened to discuss data-sharing projects.

Update: Certification of Lead Contractors and Workers

Under Virginia law³, the regulations governing lead contractors and workers cannot be any more stringent than federal Environmental Protection Agency (EPA) regulations and thus only cover projects that meet the federal definition of lead abatement and are conducted in target housing and child-occupied facilities. The Virginia Board of Asbestos, Lead, and Home Inspectors within the Department of Professional and Occupational Regulation (DPOR) is the regulatory authority.

The regulation revisions in 2003 and 2004 conformed Virginia's regulations to the EPA's more recent regulations by removing the licensing requirement for lead-based paint activities conducted in public buildings, commercial buildings, and superstructures. The revised regulations also require, in order to facilitate identification of qualified contractors and professionals, that accredited training providers notify DPOR before conducting a training course and provide DPOR a roster of those successfully completing the training courses. At this time, the lead abatement regulants in Virginia are 18 training providers, 141 contractors, 455 workers, 194 supervisors, 94 inspectors, 245 risk assessors, and 52 project designers.

The Board has written regulation amendments to add "ostensible ownership" language in the Lead-Based Paint Activities Regulations. "Ostensible ownership" restrictions would enable the Board to deny application, deny renewal, impose a fine, suspend or revoke any licensee, training provider, training program, training manager, or principal instructor for acting as or being an ostensible licensee for undisclosed persons who do or will control, or direct, the operations of the licensee's business or the accredited lead training provider's business. These amendments currently await the Governor's approval to be published for public comment.

The Board has also adopted a voluntary reciprocity agreement between Virginia, Pennsylvania, Maryland, Delaware, West Virginia, and the District of Columbia (EPA Region III states) that was created to improve communication and cooperation among member states. Upon adoption by the relevant regulatory agencies in all member states and the District of Columbia, the agreement will take effect. Since all member states and District of Columbia operate EPA authorized training programs for contractors, the agreement will allow, when it takes effect, applicants to obtain licensure in any of the member states if they have received training approved by any member state.

³ See Chapter 5 (§ 54.1-500 et seq.) of Title 54.1, Asbestos, Lead, and Home Inspection Contractors and Workers.

Work Session

During its 2005 work session, the Joint Subcommittee deliberated concerning its legislative actions for the 2006 Session, addressing issues relating to the continuation of the study, the two CDC essential program elements required for the 2006 grant funding cycle that Virginia lacks (regulatory authority to require abatement of lead hazards in housing units containing children with elevated blood lead levels and statutory protection for clients from retaliatory eviction or discrimination related to disclosure of lead hazards), and mechanisms for engaging the health care community in eliminating lead poisoning.

After seeking input from the agencies participating in the lead activities, the Joint Subcommittee was told that being able to reference the Joint Subcommittee on grant applications and cite the support and cooperation between the agencies and the legislature has been a strong factor in obtaining favorable decisions on grant applications. The Department of Health also observed that the CDC's goal for elimination of lead poisoning is 2010, and that the 2006 grant will be competitive and may not be given to all 50 states. Having the Joint Subcommittee to cite as a forum and advocate for enhancing its programs has been and would be significant for Virginia's application.

The discussion of legislation to establish the two CDC essential program elements that Virginia lacks (regulatory authority to require abatement of lead hazards in housing units containing children with elevated blood lead levels and statutory protection for clients from retaliatory eviction or discrimination related to disclosure of lead hazards) revolved around the possibilities for mandating these elements through regulation, and the timeliness for possible cooperative agency solutions.

After extended discussion, the Joint Subcommittee determined to recommend seeking continuation for two years in order to assist the agencies in all appropriate ways in seeking federal and other funding and that, if no regulatory solutions resulted from a December conference involving the stakeholders, two bills to provide the lacking essential elements would be introduced.

2006 Legislation

In 1994, the first legislation proposed by the Joint Subcommittee---a lead contractors and workers certification program was for the purpose of satisfying a federal grant requirement. Thus, in 2006, the Joint Subcommittee's work came, in a sense, full circle with the introduction of SJR 107 and SB 450---bills to ensure that Virginia could meet federal grant criteria.

Senate Joint Resolution 107 requested the Departments of Health, Housing and Community Development, and Labor and Industry to execute a memorandum of agreement relating to the prevention of childhood lead poisoning that is needed to facilitate the exchange of information under the new \$3 million federal grant that was awarded to the Department of

Housing and Community Development and to enhance the competitive position of the Virginia Department of Health in the 2006 grant cycle.

The necessary memorandum of agreement was developed and signed by all parties in time to be attached to the Department of Health's application for federal funding as submitted on February 13. Thus, this resolution was only active for one month during the 2006 Session (from January 11 to February 10) and was struck at the request of the patron (Senator Lambert, Chairman of the Joint Subcommittee).

Further, SB 450 was introduced to ensure that the Department of Health's Lead-Safe Virginia program could meet all 10 of the essential elements required to be competitive for continued federal funding. Specifically, Virginia lacked two of these elements:

1. A requirement for abatement or lead hazard control when a child residing in the unit is found to have an elevated blood lead level and to be lead poisoned; and
2. A prohibition on retaliation when lead risks or lead poisoning is reported.

As already noted, the Joint Subcommittee's initial approach to these issues was to look first to the agencies to determine if they could administratively mandate the two missing elements. However, an administrative approach could not be developed in time.

Thus, SB 450 was necessary. Senate Bill 450 strikes old, archaic language that allowed the landlord to declare that he was financially unable to abate the lead-based paint hazard and to terminate the rental agreement and also sets out appropriate safeguards against retaliation. The bill requires the landlord to maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. Failure to maintain the painted surfaces in compliance with these standards will be enforceable under the Uniform Statewide Building Code and will entitle the tenant to terminate the rental agreement. Further, the bill prohibits termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level.

In the last several years, the Joint Subcommittee has pondered whether to continue its study. This year, however, even more than in past years, the agencies with whom the Joint Subcommittee has worked over the past 13 years, strongly urged that the Joint Subcommittee continue its work until the CDC's goal year of 2010.

Because continuation for four years appeared unlikely, the Joint Subcommittee compromised by proposing a two-year extension. Senate Joint Resolution 103, the vehicle for the requested continuation, was approved. This 2006 enabling resolution directs the Joint Subcommittee to:

1. Monitor the development of the reference database of statewide health-related data to determine its usefulness in containing health care costs and improving health care outcomes, including among children who may be exposed to lead risks or may have elevated blood lead levels;

2. Seek to obtain the two essential lead program elements needed by the Department of Health to be competitive in the 2006 federal grant process⁴; and

3. Continue to assist the agencies of the Commonwealth to obtain funding for activities to protect Virginia's children from lead risks.

The goal to eliminate childhood lead poisoning by 2010 is ambitious but laudable. Lead poisoning has permanent neurological effects, especially on young children, impairing the cognitive functions and development of children who were born normal, often resulting in mental retardation, causing irritability and inappropriate behaviors, damaging hearing and eye sight, and general affecting their health.

Obstacles to increased testing and identification of lead-poisoned children still remain apparent. Further, in these days of uncertain safety and severe social pressures, the public and health care providers may need to be reminded that seemingly insignificant circumstances---such as living in an old home with chipping and peeling paint---can cause the devastating and permanent effects of lead poisoning on normal children.

In the next two years, the Joint Subcommittee will be able to continue to act as a forum for discussion of new issues relating to lead poisoning, to support state agency efforts to obtain funding, and to assist in educating the public and health care providers about the dangers of lead poisoning to children.



LEAD POISONING PREVENTION

⁴ Please note that, upon the introduction of the Joint Subcommittee's three legislative initiatives, the bills' fates were unknown; therefore, this objective was included in the continuing resolution as a failsafe mechanism. Further, although this goal has been accomplished through SB 450, the Joint Subcommittee will monitor the implementation of the bill in the next two years.

RELEVANT LINKS

APPROVED 2006 LEGISLATION

Senate Joint Resolution 103---Continues the Joint Subcommittee Studying Lead Poisoning Prevention for two years.

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=061&typ=bil&val=SJ103>

Senate Bill 450---Lead hazard reduction; retaliation prohibited.

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=061&typ=bil&val=SB450>

STRUCK 2006 LEGISLATION

Senate Joint Resolution 107---Memorandum of Agreement between the Departments of Health, Housing and Community Development, and Labor and Industry.

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=061&typ=bil&val=SJ107>

2005 COMPOSITE REPORT

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[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD72006/\\$file/SD7.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD72006/$file/SD7.pdf)

STUDY WEBSITE

<http://dls.state.va.us/Lead.htm>