REPORT OF THE
JOINT SUBCOMMITEE STUDYING

Lead Poisoning Prevention

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 7

COMMONWEALTH OF VIRGINIA
RICHMOND
2006

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To: The Honorable Mark R. Warner, Governor of Virginia
and
The General Assembly of Virginia

I. Origin of the Study

The lead poisoning prevention study evolved from the study of lead paint abatement established by **SJR 245 of 1993**. The original study resolution was narrowly focused and was initiated to ensure that the Commonwealth would be able to obtain federal housing grant funds intended to abate lead paint. The Virginia Department of Housing and Community Development needed this regulatory program to qualify for funding of over five million dollars from the federal Department of Housing and Urban Development for a Lead Safe Homes Demonstration Program. Because a lead contractor/worker regulatory law was required for receipt of these funds, the primary recommendation during the first year of this study was to establish a lead certification program within the Department of Professional and Occupational Regulation. In addition, the original Joint Subcommittee recommended that the study be continued to oversee the receipt of the grant.

II. Legislative History

First Year---1994 Study

During the 1994 Session, the Joint Subcommittee's first recommendations were adopted by the General Assembly. Senate Bill 405, sponsored by Senator Lambert, was enacted, establishing a regulatory program for lead contractors, professionals, and workers. **Senate Bill 405 of 1994** revised the asbestos contractor and worker licensure law to provide for licensure of asbestos contractors and workers and certification of lead contractors and workers. In addition, the Joint Subcommittee was continued pursuant to **SJR 127 of 1994**.

During its 1994 study, the Joint Subcommittee recommended amendments to the lead certification law to resolve issues relating to compliance with the federal regulations and to ensure the receipt of the anticipated federal funds.

Senate Bill 809 of 1995 accomplished this purpose. Because only proposed federal regulations had been published, the legislation delayed implementation of the regulations and

required the regulatory board's provisions to be "no more stringent than either the proposed or final EPA regulations, whichever are in place." The Virginia regulations were required to be in place by October 1, 1995.

The Subcommittee once again recommended continuation of the study through **SJR 287 of 1995**, which called for monitoring the implementation of the lead certification program and the Virginia Department of Housing and Community Development's federal grant for lead abatement.

The Joint Subcommittee also initiated the development of a **public/private partnership** to resolve the problems and concerns surrounding the prevention of lead poisoning and the testing, identification, and treatment of lead-poisoned children through **SJR 288 of 1995**.

1995 Study

During the 1995 interim, the federal Environmental Protection Agency finalized part of its regulations, while maintaining substantial portions as proposed, thereby leaving some uncertainty concerning the future regulations pertaining to lead abatement. In addition, some controversy developed in Virginia and various states across the nation concerning the progress in the use of the federal funds. Organized lead-abatement activities were relatively new and progress was slow because of new certification programs and uncertainty about best practices.

In the **1995** study meetings, the Department of Housing and Community Development assured the Joint Subcommittee that substantial grant activities were being implemented and that an extension of the grant period had been requested.

Through **SJR 70 of 1996**, the Subcommittee was continued once again to monitor the implementation of the lead certification program and the housing grant for lead abatement. In addition, the Joint Subcommittee wanted to evaluate the federal funding and requirements.

1996 Study

During the 1996 interim meeting, the Department of Education detailed a problem concerning inspections of school buildings and compliance with the then current regulations for lead certification. Further, the Department of Health pointed out that it lacked authority to collect blood lead level testing data from physicians and laboratory directors for the purpose of special surveillance or epidemiological studies. Since the EPA had only finalized part of its proposed regulations and the Virginia program did not have clear regulatory authority to have regulations that complied with partly final and partly still proposed regulations, the Virginia lead certification program had to be adjusted.

Senate Bill 827 of 1997 was intended to resolve the school inspection issue with an amendment to authorize inspectors to perform voluntary lead paint inspections of schools without testing in accordance with the federal Housing and Urban Development guidelines and, therefore, being in violation of the Virginia law and regulations. This bill did not pass because

of a commitment on the part of the two departments to work together to resolve the issues; i.e., this problem, once disclosed, was easily resolved administratively.

Senate Bill 828 of 1997 was passed to provide the Department of Health with authority to request voluntary reporting of "additional information . . . for special surveillance or other epidemiological studies."

Senate Bill 1004 of 1997 authorized Virginia's lead certification program to adopt regulations "not more stringent than" final **or proposed** regulations and also authorized the Board to amend its existing regulations as soon as practicable "so as to be not more stringent than such EPA regulations."

Senate Joint Resolution 227 of 1997 continued this study for another year and charged the Subcommittee with monitoring lead poisoning and abatement issues. This was the first specific charge to the Joint Subcommittee to examine lead-poisoning issues.

1997 Study

Thus, the 1997 study was organized to provide updated information on Virginia's progress in preventing lead poisoning and resolving abatement issues. As a result of this examination, three measures were proposed for the 1998 Session: **SB 510, SJR 100, and SJR 101**.

Senate Bill 510 of 1998 conformed the Virginia certification of asbestos and lead contractors, workers, and supervisors law to federal regulations by adding several definitions; allowing a general contractor to contract to perform a project, a portion of which constitutes asbestos or lead abatement work, if all the asbestos or lead abatement work is subcontracted to a person licensed to perform such work; and exempting private parties working on their own buildings, if no other person resides in the building and no child resides in the building who has been identified as having an elevated blood-lead level. The bill also authorized the Board to approve the criteria for accredited training programs and deleted redundant references to the Board's power to approve asbestos courses and primary instructors.

Senate Joint Resolution 100 of 1998 requested the Departments of Health, Professional and Occupational Regulation, and Housing and Community Development to strive to involve the Virginia Association of Building Officials and other local government officials in a cooperative effort to avert lead poisoning.

Senate Joint Resolution 101 of 1998 also continued this Subcommittee for one year to monitor lead poisoning and abatement issues.

1998 study

During the 1998 Interim, the Joint Subcommittee focused on prevention of childhood lead poisoning, the implementation of the lead certification programs, the progress toward eliminating childhood lead poisoning, the implementation of the Virginia Department of Housing

and Community Development's federal grant for lead abatement, and the impact of federal law and regulations on the real estate industry and the citizens of Virginia.

The study evolved, in 1998, to concentrate on lead poisoning prevention. As a result of this concentration, the Joint Subcommittee recommended the establishment of two supplemental agency studies to augment the collection of information on the issues and options for remedying these issues, as follows:

Senate Joint Resolution 393 of 1999 established the Interagency Task Force on Lead Hazard Reduction, a multi-agency study focused on standards for lead-risk reduction that could protect buyers and renters and real estate professionals from illness and liability; and

Senate Joint Resolution 394 of 1999 established a study within the Bureau of Insurance of the State Corporation Commission on the issues relating to property insurance and lead poisoning risks and liability.

In addition to the above resolutions, **SJR 395 and HJR 722 of 1999**, identical resolutions, continued the Joint Subcommittee on Abatement of Lead-based Paint as the Joint Subcommittee on Lead Poisoning Prevention. Thus, the Joint Subcommittee's evolution was complete.

1999 Study

The 1999 work of the Joint Subcommittee was closely focused on lead poisoning prevention and receipt of the reports of the task force and from the Bureau of Insurance. The Joint Subcommittee heard testimony on lead testing issues and interdepartmental cooperation and recommended three actions to the 2000 Session.

As a result of the Joint Subcommittee's 1999 deliberations, **SB 725 of 2000** was enacted to require the Board of Health to promulgate a protocol for identification of children at risk for elevated blood-lead levels. Effective July 1, 2001, Virginia required testing of children for elevated blood-lead levels or determinations that the children are at low-risk for lead poisoning pursuant to the Board's regulations. This bill also provided a religious exemption if the parent objects to testing on the basis of conflict with his religious tenets or practices. Emergency regulations were required to facilitate implementation of this provision.

The Joint Subcommittee also recommended that a memorandum of agreement between the Departments of Health and Medical Assistance Services be required that clearly establishes the responsibilities of the two departments vis-à-vis lead poisoning. **Senate Bill 726 of 2000**, the bill introduced to accomplish this recommendation, was carried over to the 2001 Session in the Senate Committee on Education and Health.

Further, the Joint Subcommittee recommended that the Department of Medical Assistance Services ensure that children in programs governed by it were tested for lead poisoning. **Senate Bill 727 of 2000**, which was also **c**arried over in the Senate Committee on Education and Health, would have required DMAS to ensure that all contracts for

implementation of the children's health insurance program and all contracts for implementation of managed care include testing of children for elevated blood-lead levels in accordance with the regulations of the Board of Health.

The Joint Subcommittee's work was continued through the passage of **HJR 297 of 2000**.

2000 Study

The **2000 study** focused on reviewing the Board of Health's protocol for blood-lead testing or determinations of low-risk for lead poisoning and the carry-over legislation. The Joint Subcommittee also heard much testimony concerning the voluntary revision of the agreement between the Department of Health and the Department of Medical Assistance Services relating to communications and data sharing on childhood lead poisoning prevention, and the voluntary inclusion of specific language relating to blood-lead testing in Medicaid provider agreements. The Joint Subcommittee was pleased to request that the two bills relating to these activities be struck from the 2000 carry-over docket of the Senate Committee on Education and Health. The Joint Subcommittee recognized the growing partnership between the agencies, finding the voluntary initiation of close cooperation a viable solution. In lieu of the bills, the Joint Subcommittee recommended a resolution requesting the agencies to cooperate. Therefore, the Joint Subcommittee proposed the following three resolutions to frame its 2001 initiatives:

Senate Joint Resolution 378 of 2001 continued the study for another year and specifically noted the Joint Subcommittee's intent to develop a blueprint for consumers, homeowners, real estate professionals, and medical professions. The blueprint was conceived as providing a logical sequence of steps to be taken to prevent lead poisoning and lead risks.

Senate Joint Resolution 379 of 2001 requested the Boards of Health and Medicine to cooperate in publicizing the statutory requirements for blood-lead testing or low-risk determinations for Virginia's children. This resolution requested the Board of Health to submit an article concerning the dangers of lead poisoning to children, the CDC's goal of eliminating childhood lead poisoning by 2010, the origin of the protocol statute, the requirements of the protocol law, the development of the protocol, and the contents of the protocol for publication in "Board Briefs," the newsletter of the Board of Medicine which goes out to every licensed doctor in Virginia.

Senate Joint Resolution of 2001 encouraged the Departments of Health and Medical Assistance Services to continue to cooperate in preventing childhood lead poisoning. The Departments were requested to address various issues, including identification of Medicaid-enrolled children who are at-risk for lead poisoning; the monitoring of children with elevated blood-lead levels; the notification of providers regarding specific children to be tested or managed; the education and training of providers concerning lead poisoning, lead testing and management of children with elevated blood-lead levels; and working to improve the data systems and to enhance effective data sharing.

2001 Study

During the 2001 interim, the Joint Subcommittee gratefully acknowledged publication by the Board of Medicine of the lead testing protocol in its "Board Briefs" in response to and satisfaction of SJR 379. The Joint Subcommittee also closely monitored the progress in communication and data sharing between the Departments of Health and Medical Assistance Services and examined barriers to interagency cooperation and data sharing. The agencies informed the Joint Subcommittee of the progress and obstacles to this interagency cooperation and data sharing. As a result of these deliberations, the Joint Subcommittee determined that the federal patient privacy regulations, which had been promulgated in compliance with a requirement of the Health Insurance Portability and Accountability Act of 1996, were being perceived as barriers to sharing of patient data essential to the delivery of state services and public health and safety.

Senate Bill 264 of 2002 was proposed to resolve these concerns. SB 264, as approved, enacted § 32.1-127.1:04 to provide strong statutory language declaring coordination of prevention and control of disease, injury, or disability and the delivery of health care benefits to be (i) necessary public health activities; (ii) necessary health oversight activities for the integrity of the health care system; and (iii) necessary to prevent serious harm and serious threats to the health and safety of individuals and the public. This bill also authorized the Departments of Health, Medical Assistance Service, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services to establish a secure system for sharing protected health information that may be necessary for the coordination of prevention and control of disease, injury, or disability and the delivery of health care benefits when such protected information concerns individuals who (i) have contracted a reportable disease, including exposure to a toxic substance, as required by the Board of Health; (ii) are the subjects of public health surveillance, public health investigations, or public health interventions or are applicants for or recipients of medical assistance services; (iii) have been or are the victims of child abuse or neglect or domestic violence; or (iv) may present a serious threat to the health or safety of a person or the public or may be subject to a serious threat to their own health or safety.

In addition to the data-sharing bill, the Joint Subcommittee recommended and obtained approval of three resolutions. **Senate Joint Resolution 65 of 2002** encouraged the Board of Medicine, the Medical Society of Virginia, and the Old Dominion Medical Society to cooperate in educating the medical profession concerning certain laws and programs relating to lead poisoning prevention. The Joint Subcommittee requested that this cooperation include (i) the lead-testing requirements or the determination of lack of risk, (ii) the activities of Lead-Safe Virginia and Bright Futures, and (iii) the partnership between the Departments of Health and Medical Assistance Services to prevent lead poisoning and to improve children's health.

Senate Joint Resolution 66 of 2002 continued this study for another year to (i) continue working on a blueprint for consumers (ii) stimulate the development of a needed secure system for patient data sharing between relevant state agencies in order to ameliorate concerns about compliance with certain new federal regulations; and (iii) provide written support for the state grant application efforts, as appropriate. A letter of support was provided to the Department of

Housing and Community Development and several letters were also written to support the lead testing protocol.

Senate Joint Resolution 67 of 2002 was an alternative version of the data-sharing bill that merely directed the Departments to develop a secure system for sharing protected health information. The resolution was carried over to the 2003 Session and was ultimately struck. However, the directives provided in this resolution were useful as a guide for the development of the data-sharing initiative.

2002 Study

During the 2002 interim, the Joint Subcommittee provided a letter of support and cooperation to the Department of Housing and Community Development to be attached to its grant application to the federal Department of Housing and Urban Development. In addition, the Chairman wrote a letter to every member of the Virginia Congressional delegation, requesting that they "provide any support that they may find appropriate at the Congressional level to the Virginia Department of Housing and Community Development in its efforts to obtain federal funding for its lead risk reduction activities." The excellent work of the Virginia Department of Housing and Community Development was deservedly recognized when a grant for $2.1 million was awarded in late October 2002.

The Joint Subcommittee also reviewed the implementation of **SB 264 (2002)**, the bill establishing the data-sharing initiative. The members were informed during the 2002 study that the auditors for the various participating agencies estimated that the data-sharing initiative had saved the Commonwealth approximately $ 1.2 million.

In 2002, the language of the lead testing protocol statute and its implementing regulations became an issue. Established pursuant to **SB 725 of 2000,** the law required the Board of Health to promulgate regulations to "provide" for blood-lead level testing at appropriate frequencies and ages. The Board's regulations implementing the protocol stated that testing "should" be conducted and, thus, did not require compliance.

After receiving a letter from an out-of-state physician who believed that the testing ought to be required, the Joint Subcommittee discussed the issues relating to the use of "should." The author of the letter expressed doubts concerning the effectiveness of merely recommending the testing. Among the pros and cons for and against a more concrete requirement were: the testing program appeared to be working as it was and mandating medical practice is often unpopular. However, changing the language in the statute to mandate testing would require the Board to revise its protocol regulations to require testing by physicians and provide more direction to the medical community and undoubtedly result in more children being tested, with the identification of lead-poisoned children at an earlier stage.

After receiving comments on this issue, the Joint Subcommittee determined to recommend a bill to the 2003 General Assembly to mandate testing, as recommended by the Board of Health. **Senate Bill 1082 of 2003** (Lambert) was introduced on the first day of the 2003 Session to require the Board's protocol to mandate blood-lead testing at appropriate ages

and frequencies. This bill also provided that the Board and Department of Health are not responsible for enforcing the protocol and that any complaints relating to noncompliance must be directed to the appropriate health regulatory board and not filed with the Board or the Department of Health. In addition, a third enactment clause authorized the Board of Health, in order to avoid costs as much as possible during the regulatory process, to notify, distribute, and provide public access and opportunity for comment via electronic media, including, but not limited to, posting documents to and receiving comments via the Department's website, by e-mail and fax. The Board was required, however, to continue to provide public notice and participation to individuals who do not have access to the Internet or other forms of electronic media. This bill was approved (see **Chapter 463 of the 2003 Acts of Assembly**).

Another issue addressed by the Joint Subcommittee in 2002 was whether to expand the data-sharing statute to include additional agencies within the Secretariat of Health and Human Resources. The Joint Subcommittee noted that the data-sharing efforts of the Departments of Health and Medical Assistance Services had saved an estimated $1.2 million and speculated that expanding this authority could have the effect of increasing savings and improving delivery of state services to children and adults. The Joint Subcommittee noted that savings could only be realized through aggressive implementation of the data-sharing initiative.

In view of the fiscal crisis in the Commonwealth, the possibility that the expansion of the data-sharing program would reap large cost-saving and patient-care benefits swayed the Joint Subcommittee to recommend adding four agencies to the data-sharing statute. **Senate Bill 1083 of 2003** implemented this recommendation. The bill expanded the authority to share protected health information to include the Department of Rehabilitative Services and the Departments for the Aging, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing or any successors in interest thereof. This bill was approved (see **Chapter 464 of 2003 Acts of Assembly**).

During the course of the 2002 discussions, the Joint Subcommittee was also made aware that, because physicians may not have or do not make the time for lead-poisoning screening, authorizing nurses to conduct the screenings could result in greater identification of lead-poisoned children. The question raised was: Would authorizing nurses to conduct lead-poisoning screening encourage almost universal testing of children at risk for such poisoning and provide a low-cost alternative to the physician's screening? After some discussion and taking note of the positive experience in Texas with this kind of system, the Joint Subcommittee decided to recommend an exemption to the medical practice act that would allow nurses to conduct lead-poisoning screening. **House Bill 2477 of 2003** (Crittenden) provided this exemption by authorizing physicians of medicine and osteopathy or nurse practitioners to delegate to registered nurses under their supervision the authority to screen and test children for elevated blood-lead levels when such tests are conducted in accordance with a written protocol between the physician or nurse practitioner and the registered nurse and in compliance with the Board of Health's regulations. This bill was also approved (see **Chapter 519 of the 2003 Acts of Assembly**).

The work of the Joint Subcommittee was continued in 2003 via **SJR 356**, which noted its past accomplishments, particularly the partnership between the Joint Subcommittee and the

relevant agencies, the data-sharing program, the testing protocol, and the efforts to retain funding for lead abatement and elimination of lead poisoning.

2003 Study

The Joint Subcommittee once again focused, in 2003, on data sharing and cooperation and enhancement of communications between various state agencies. Several issues were addressed concerning the knowledge of and access to existing data; bridging the gap between agencies of various secretariats that are intimately involved in some way in lead poisoning prevention efforts; facilitating the implementation of **HB 2477 of 2003** (which did not yet appear to have any impact on improving the screening of children at-risk for lead poisoning); and the availability of federal funds during this time of fiscal exigency in Virginia.

The agencies in the partnership noted that the availability and access to data had been greatly enhanced by the data-sharing statute. However, several of the agency auditors pointed out that there was no depository of all of the databases or searchable inventory of the health databases. The contention was that such an inventory would improve access to public health services, including lead-poisoning prevention, and reduce the costs of services through cross-linking and resources management.

The 2003 discussions concerning whether to continue the study revolved around the Joint Subcommittee's long record in promoting communication and coordination in Virginia and also noted that the data-sharing partnership had saved the Commonwealth nearly $2 million in 2003 through immediate Medicaid disenrollment of deceased recipients and through the sharing of intellectual property for compliance with the federal HIPAA privacy requirements. In addition, the data-sharing capability improved the quality and the accountability of many programs, including Lead-Safe Virginia.

The Joint Subcommittee also discussed ways to increase communication and coordination across secretariats between agencies with important roles in preventing lead poisoning. For example, the Division of Consolidated Laboratory Services, which is responsible for processing the blood-lead tests, is part of the Department of General Services under the Secretary of Administration, while the Department of Health, which is responsible for reducing lead poisoning, is under the Secretary of Health and Human Resources.

In response to the need for a searchable data base to enhance public health services, the Joint Subcommittee determined to introduce legislation to require the establishment of a Virginia Health and Human Services Metadata Clearinghouse. **Senate Bill 565 of 2004**, patroned by Senator Lambert, as introduced on January 14, 2004, would have required the Virginia Information Technologies Agency (VITA), a newly established information technology organization, to conduct an inventory of the databases or data repositories within the Secretariat of Health and Human Resources, with revisions every three years. The inventory was to have been focused on facilitating the implementation of a consistent, reliable, and secure information technology infrastructure for the data-sharing partnership and to increase the efficiency and cost-effectiveness of the services reflected in the databases and data repositories within the

Secretariat. The inventory was to have identified all existing technical and general systems within the various departments of the Secretariat that include statewide health information on Virginia's citizens; for example, health status, specific medical conditions, potential risk of morbidity and mortality; the delivery of state health and human services; third-party reimbursement systems for health and human services; revenues for delivery of health and human services; the exchange of data with federal data systems or repositories; and the costs of health and human services. The inventory was to have been a metadata clearinghouse for Virginia health and human services that would have been developed in three phases. The financial difficulties being experienced by the Commonwealth rendered the costs of this sophisticated and complex system unrealistic at the time. Therefore, **SB 565 of 2004** underwent an evolution that was focused on retaining the fundamental intent while eliminating the high cost.

Senate Bill 565 of 2004, as passed, required the development by the Secretary of Health and Human Resources of a reference database of statewide health-related data elements. Much of the information that was to have been collected by VITA devolved to be compiled by the Secretary of Health and Human Resources. The database, when completed, will consist of a list of the names and general narrative descriptions of existing automated systems containing statewide health-related data; the hardware and software platforms upon which each identified system is running; and a data dictionary describing the data fields comprising each system.

The Joint Subcommittee also recommended three resolutions to the 2004 Session: **SJR 43** to continue the study; **SJR 45** to request the Secretary of Health and Human Resources to establish a taskforce to examine issues relating to delegation to registered nurses of screening and testing pursuant to the Medicaid program known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT); and **SJR 46** to request the Division of Consolidated Laboratory Services and the Secretary of Health and Human Resources to establish a task force concerning communication and cooperation on blood-lead testing issues. During the legislative process, **SJR 45** relating to delegation of EPSDT services to registered nurses and **SJR 46** relating to blood-lead testing issues were folded into the Joint Subcommittee's continuing resolution, **SJR 43**.

Therefore, the Joint Subcommittee's lead-poisoning prevention work was continued through the 2004 interim via the passage of **SJR 43 of 2004**. The Joint Subcommittee's 2004 issues included: (i) working with the Lead-Safe Virginia program within the Department of Health, in all ways feasible, to maintain and increase federal support for Virginia's lead-poisoning prevention efforts; (ii) cooperating with the Department of Housing and Community Development, in all ways feasible, to assist with its housing grant; (iii) pursuing the development of a metadata clearinghouse by The Virginia Information Technologies Agency (VITA) of the databases and data repositories within the Secretariat of Health and Human Resources, upon approval of appropriate legislation (please note the current status of this initiative as described above); (iv) examining any issues relating to the blood-lead testing protocol as needed; (v) assessing any housing issues that may arise in the coming year; (vi) seeking the establishment of a collaborative approach to blood-lead testing issues between the testing laboratory and the health agencies, particularly the Division of Consolidated Laboratories, the Department of Health, and the Department of Medical Assistance Services; (vii) seeking input from nurses,

pediatricians, nurse practitioners, physician assistants, and various state agency personnel concerning the potential benefits or drawbacks of delegating certain screening and testing to registered nurses; and (viii) continuing to act as a coordinating influence on state efforts to prevent lead poisoning.

As already noted above**, SJR 43**, as passed, also included the requests for (i) the Secretary of Health and Human Resources to establish a task force on the delegation to registered nurses of screening and testing for EPSDT and (ii) for the Division of Consolidated Laboratory Services and the Secretary of Health and Human Resources to establish a task force to facilitate communication and cooperation on blood-lead testing issues.

Specifically, the task force on delegation to nurses was directed to (i) review the EPSDT protocols; (ii) identify the screening and testing tasks that could presently be delegated to registered nurses; (iii) identify any screening and testing tasks that would require additional training to be delegated to registered nurses; (iv) evaluate any quality of care issues relating to delegation to a registered nurse by a physician or nurse practitioner; (v) evaluate any costs/reimbursement issues relating to delegation to a registered nurse by a physician or nurse practitioner; (vi) evaluate supervision issues relating to delegation to a registered nurse by a physician or nurse practitioner; (vii) consider the advantages or benefits and disadvantages or disincentives to physicians and nurse practitioners of authorization to delegate EPSDT screening and testing to registered nurses; and (viii) consider whether any cost savings can be realized for delegation to a registered nurse of EPSDT screening and testing. The Secretary was to be asked to make a presentation of the task force's findings and recommendations to the Joint Subcommittee no later than November 30, 2004.

The task force to be established by the Division of Consolidated Laboratory Services and the Secretary of Health and Human Resources was directed to examine the blood-lead testing issues and to evaluate relevant agency processes, forms, and guidance letters that could be revised or standardized to (i) improve providers' understanding of when to submit samples to the Division for testing; (ii) avoid inappropriate funding of tests; and (iii) document for federal authorities the efficiency of the blood-lead testing component of Lead-Safe Virginia. The purpose of the task force was to establish a consistent approach to the processes and communications relating to blood-lead testing. The Division and the Secretary were authorized to view this collaboration as a pilot study to determine if other collaboration on processes, communications and forms would benefit all involved parties. The Division and Secretary were to be asked to make a presentation of their findings and recommendations to the Joint Subcommittee no later than November 30, 2004.

III. The Joint Subcommittee's 2004 Work

During the 2004 interim, the Joint Subcommittee continued to pursue its goals of enhancing agency partnerships and interdisciplinary cooperation in the private sector. As in past years, the Joint Subcommittee's commitment was to provide assistance to the agencies striving to eliminate lead poisoning.

Delegation of Screening and Testing to Registered Nurses

The task force examining delegation to registered nurses of screening and testing in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, which included physicians, nurses, agency personnel, and advocates, met several times, heard presentations, and deliberated. The task force "concluded that certain screening and testing components of EPSDT, including blood-level testing, can be safely delegated to registered nurses, but the comprehensive physical examinations are not within their scope of practice and should not be delegated. Such examinations should only be performed by licensed health care practitioners who have specialized training in the physical assessment and diagnosis of the pediatric population. Delegation of the physical examination portions of EPSDT to a registered nurse would not result in cost savings to Medicaid but could result in the long-term costs of failure to provide early detection and intervention."

Although these conclusions were somewhat disappointing, the Joint Subcommittee felt that the extensive and detailed discussions among the members of the task force will create a positive effect in their various constituencies through highlighting the many little-known issues relating to lead poisoning.

The task force assigned the study of a consistent approach to the processes and communications relating to blood-lead testing arrived at more positive results. The task force's report noted the long history of the Division of Consolidated Laboratories (DCLS), which was created in 1972 by combining various state laboratories and is the "first consolidated laboratory in the nation to offer a wide variety of scientific testing in support of state programs." The Division of Consolidated Laboratories, a self-funded agency of the Commonwealth, performs various mandated functions and conducts scientific services for state agencies in Virginia and other nearby states through agreements. Pursuant to budget language, DCLS is charged with ensuring that no Virginian is denied laboratory testing because of inability to pay. Consolidated Laboratories does not bill for services to individuals, i.e., to insurance companies or Medicaid, because of the high costs of billing services and of complaince with the Health Insurance Portability and Accountability Act of 1996. Blood-lead testing services are provided by DCLS for approximately $100,000, which is received from the Virginia Department of Health's Lead Safe Virginia Program. This funding is through a Centers for Disease Control grant that covers 50-60 percent of the operating costs for blood-lead testing.

An examination of the DCLS annual blood-lead testing indicated that more than 52 percent or an estimated 5,400 blood-lead tests were for children covered by Medicaid. This apparently occurs as a result of the EPSDT testing requirements for children at 12 and 24 months old, regardless of risks and between the ages of 36 and 72 months for children who have never been tested. Although providers may receive reimbursement for blood collection and handling and laboratories participating in the Cooperative Nationwide Blood Lead Proficiency Testing Program may receive reimbursement for processing, DCLS does not participate in Medicaid or, as previously noted, bill for individual tests. The task force was also informed that the recorded percentage of Medicaid children being tested was "relatively low," because of contributing factors. Scenarios identified as contributing to this low recorded testing rate for Medicaid children were: (i) processing by nonparticipating laboratories, (ii) less emphasis on blood

sampling in clinics participating in the Women, Infants, and Children Program, and (iii) failure of families to obtain testing because of the policies of certain Medicaid managed care organizations to require venipuncture rather than capillary sticks for blood-lead testing requiring the families to travel to laboratory sites to have blood drawn.

Upon a review of the providers who inappropriately use DCLS for testing of Medicaid children, the task force found that such providers appeared to be unaware of Medicaid's requirement that the blood samples be submitted to a Medicaid-enrolled laboratory for processing or perhaps had prior contact with DCLS and were merely continuing to follow a familiar pattern. As a result of this review, the task force determined that an effective communication schedule was needed to inform providers of proper procedures. The message will convey strong public policy relating to the critical importance of blood-lead screening and testing for the health of Virginia's children, the anticipated changes in federal funding streams to support blood-lead testing, the availability of Medicaid reimbursement for blood-lead testing and processing, and the importance of following the instructions of health insurers. The message will also clearly state that blood tests for children without insurance or ability to pay should be processed through DCLS; however, "[u]se of DCLS for processing samples for insured children could jeopardize the continued processing of samples for uninsured children." The task force also established a "communications plan," which includes reevaluation of DCLS utilization to determine whether proper procedures are being followed and appropriate reimbursement sought. The communications plan also enhances contact with providers by the Department of Health and the Department of Medical Assistance Services.

SB 565 Implementation

The Joint Subcommittee also reviewed progress in implementation of **SB 565 of 2004**. The bill, as passed, required the Secretary of Health and Human Resources to oversee the development of a reference database of statewide health-related data elements. The purpose of the bill was to advance the benefits of the state agency partnership that was created through **SJR 380 of 2001**, the passage of the **SB 264 of 2002**, providing for data sharing among the agencies, and the addition to the data sharing partnership in 2003 of the remaining agencies within the Health and Human Resources Secretariat. The Joint Subcommittee was informed that Phase I of compliance had been completed, with all of the HHR agencies having identified the relevant systems containing medically related data of interest to researchers and the related financing. This data has been entered into an access data base. In 2005, the agencies will be submitting the data element names associated with each of the identified systems, using a template supplied by the Department of Medical Assistance Services. This data will be entered into a relational database for each identified system. The project was reported to be on track to provide the research community and others with a tool to analyze disease states, including lead poisoning, which can be used to more efficiently provide accurate data for grant applications and allocation of funding in general.

Lead Workers Certification

The Joint Subcommittee received an update on the training and other activities of the Department of Professional and Occupational Regulation and the Board of Asbestos, Lead, and

Home Inspectors relating to the training and other activities for lead contractors and workers. Revised Virginia Lead-Based Paint Activities regulations were adopted in 2004 to conform Virginia's training notification requirements to the requirements of the Environmental Protection Agency. The Board was also engaged in amending its regulations in regard to "ostensible licensees/ostensible ownership," enabling disciplinary and regulatory actions against persons who act as an ostensible owner or licensee for unknown people who control the activities of the business.

The Board also has entered into a training reciprocity agreement with Mid-Atlantic Lead Licensing States in EPA Region II. The agreement should improve cooperation and communication between the member states relating to their licensure programs.

The Joint Subcommittee was informed about the EPA's Working Safe, Living Safe initiative that is focused on increasing lead safe work practices among renovation and remodeling contractors across the country. Realizing that the remodeling industry is decentralized and hard to regulate, the EPA has announced a voluntary initiative that was slated to begin as one pilot program in 2004, with a second pilot anticipated in 2005.

Lead-Safe Virginia Program

The Joint Subcommittee received its annual update on the activities of the Lead-Safe Virginia Program and was reminded that the goal is to eliminate childhood lead poisoning in Virginia by 2010. In this regard, the Board of Health's regulations now require that children shall be tested for lead poisoning if determined to be at risk, with data on children under the age of 6 (72 months), indicating that babies between the ages of 12 to 36 months should be targeted.

The very important everyday work of the program also focuses on high-risk areas in key areas of the state where funding for remediation is available. The work includes conducting statewide surveillance to identify trends/clusters; collaborating with various HUD funded projects across the state as well as with various agencies in other states; educating parents, the public and professionals on maintaining lead-safe environments, federal disclosure rules, and the requirements of the childhood lead poisoning screening requirements; and striving to reduce the levels of lead in drinking water in various facilities, such as day care facilities and schools.

In order to reach Virginia's diverse immigrant population, certain of the educational materials are printed in at least four languages (Chinese, Korean, Spanish, and English). Data sharing efforts are facilitating cross matching of Section 8 housing addresses against reports of elevated blood-lead levels and HUD is being provided with a three-year database of elevated blood-lead levels for the evaluation of addresses in other housing programs.

The Joint Subcommittee was informed that Virginia's elimination plan had been developed, a five-year work plan had been written with evaluation mechanisms, and subcommittees on medical/education and housing/policy issues had been formed. The elimination plan, a collaboration between many local, state, and federal agencies, will also involve parents and other interest groups and identified key stakeholders.

IV. 2004 Joint Subcommittee Findings and Recommendations

Obstacles to increased testing and identification of lead-poisoned children still remained apparent. One such obstacle continues to be that some low-economic parents who are advised to have their children tested may be reluctant or unable to comply with this advice. Parents may sometimes believe that, if the test results are positive for elevated blood lead levels, their landlords may be displeased and could take some action to remove them from the housing. In addition, low-income parents may not have easy access to transportation to the laboratory or local health department where the blood for testing will be drawn or may not fully understand the significance of lead poisoning for their children's long-term health.

The philosophy of this Joint Subcommittee has always been to promote cooperation and to look for unique and effective efforts for supporting cooperation and taking small, but effective, steps to prevent lead poisoning.

The good working relation between the Joint Subcommittee and the executive branch agencies has been and continues to be important and beneficial. In this day of miracle cures, it is hard to make the public aware of the devastating and permanent effects of lead poisoning on children. However, the General Assembly has recognized these problems and the benefits of continuing this study over the years.

Funding has not, however, been forthcoming from the Commonwealth. The fiscal exigencies facing the Commonwealth in 2004 made it impossible to request funds to combat lead poisoning. However, there were still steps that were being taken through the hard work and diligence of Virginia's agencies.

Thus, the Joint Subcommittee committed to assisting in all appropriate ways in obtaining and maintaining adequate support for lead-poisoning prevention efforts and in reviewing the issues.

For these reasons, the Joint Subcommittee's only 2005 legislation was its continuing resolution, **SJR 380**.

Senate Joint Resolution 380 of 2005 continued the lead poisoning prevention study for one more year, with authority to hold two meetings. The enabling resolution noted the past Joint Subcommittee initiatives; for example, the 2004 legislation to develop a clearinghouse of the databases and data repositories subsumed by the Secretary of Health and Human Resources in order to establish a truly integrated and linked data capability among the agencies that form the data-sharing partnership. **SJR 380** also noted that the Joint Subcommittee's work has effectuated "savings for the Commonwealth through the development of the data-sharing partnership" among the health and human resources agencies and the development of prevention initiatives, such as the blood-lead testing protocol and certain reporting and testing requirements.

V. The Joint Subcommittee's 2005 Directives

The Joint Subcommittee's directives for 2005, as set forth in **SJR 380**, are to:

1. Monitor the evolution of the data-sharing partnership established in § 32.1-127.1:04;

2. Monitor the completion of the reference database of statewide health-related data elements required by **SB 565 of 2004**;

3. Examine issues relating to lead poisoning among immigrant and adopted children; and

4. Seek to assist the Department of Health and the Department of Housing and Community Development in every appropriate way in maintaining federal funding.

Respectfully Submitted,

Senator Benjamin J. Lambert III, *Chairman*
Delegate Riley E. Ingram, *Vice Chairman*
Delegate Kenneth C. Alexander
Edward M. Barksdale, Sr.
Delegate Viola O. Baskerville
William Bullock
Delegate Charles W. Carrico, Sr.
C. Ray Davenport
Delegate Thelma Drake*
William D. Dupler
Anna E. Jolly
Senator Mamie E. Locke
Delegate Daniel W. Marshall III
Senator Yvonne B. Miller
William C. Shelton
Dr. Robert B. Stroube
Senator D. Nick Rerras
Dr. Robert Leonard Vance
Louis Fontaine Ware

* The Honorable Thelma Drake was elected to the House of Representatives in November, 2004.

APPENDIX

SENATE JOINT RESOLUTION NO. 380

Continuing the Joint Subcommittee to Study Lead-Poisoning Prevention. Report.

Agreed to by the Senate, February 2, 2005
Agreed to by the House of Delegates, February 24, 2005

WHEREAS, Senate Joint Resolution No. 245 (1993) established the Joint Subcommittee to Study Abatement of Lead-Based Paint to ensure that the Commonwealth would be able to obtain federal housing grant funding in 1994; and

WHEREAS, the joint subcommittee's first substantive action was to establish a lead-abatement contractor and worker certification program in state law; and

WHEREAS, Senate Joint Resolution No. 43 (2004) last continued the study to cooperate with the Department of Health's Lead-Safe Virginia program and with the Department of Housing and Community Development, in all appropriate ways, to maintain federal funding for lead abatement efforts; examine issues relating to and receive agency reports on coordination of blood-lead testing efforts and delegation of certain tasks to nurses; to monitor the development of the reference database of statewide health-related data elements pursuant to Senate Bill No. 565 (2004); and to continue to act as a coordinating influence on state efforts to prevent lead poisoning; and

WHEREAS, the Joint Subcommittee's initiatives have been many and have assisted in preventing lead poisoning as well as effectuating savings for the Commonwealth through the development of a data-sharing partnership among the state agencies under the Secretary of Health and Human Resources and the development of prevention initiatives, such as the blood-lead testing protocol and certain reporting and testing requirements; and

WHEREAS, over the years the joint subcommittee's charge and name have evolved; however, the focus of the study has remained on supporting the continued funding of lead-poisoning prevention activities in Virginia; and

WHEREAS, the issues relating to lead poisoning continue to evolve; for example, the joint subcommittee has learned, during 2004, of a developing issue that concerns immigrant and adopted children who are coming into the country with lead poisoning; and

WHEREAS, the joint subcommittee has received reports on the various research and study activities during its 2004 meeting; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee to Study Lead-Poisoning Prevention be continued. The joint subcommittee shall consist of 19 members that include 10 legislative members, five nonlegislative citizen members, and four ex officio members. Current members appointed by the Senate Committee on Rules shall continue to serve until replaced. Ex officio members shall continue to serve. Other members shall be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of a local governing body, one licensed physician with expertise in treating or other expert working in a medical school with expertise in preventing lead poisoning, and one expert in assisting real estate professionals and property owners in developing safe work practices for remodeling buildings constructed prior to 1978 to be appointed by the Speaker of the House of Delegates. Vacancies shall be filled by the original appointing authority, except that vacancies of Senate appointments shall be filled by the Senate Committee on Rules. The Commissioner of Health, the Commissioner of the Department of Labor and Industry, the Director of the Department of Housing and Community Development, and the Director of the Department of Professional and Occupational Regulation or their designees shall serve ex officio with voting privileges. Nonlegislative citizen members of the joint subcommittee shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the joint subcommittee and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly.

In conducting its 2005 study, the joint subcommittee shall monitor the evolution of the data-sharing partnership established in § 32.1-127.1:04; monitor the completion of the reference database of statewide health-related data elements required by SB 565 of 2004; examine issues relating to lead poisoning among immigrant and adopted children; and seek to assist the Department of Health and the Department of Housing and Community Development in every appropriate way in maintaining federal funding.

Administrative staff support shall be provided by the Office of the Clerk of the Senate. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request. Further, in pursuing its objectives, the joint subcommittee shall seek input from the parents of lead-poisoned children and from the health care community.

The joint subcommittee shall be limited to two meetings for the 2005 interim, and the direct costs of this study shall not exceed $6,000 without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the Senate members or a majority of the House members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2005, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly. The executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2005 interim.