

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



Lead-Safe Housing Policy Guidance Series Legal Authorities



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INTRODUCTION

As the Federal Strategy for Eliminating Childhood Lead Poisoning emphasizes, ending lead poisoning as a public health problem requires making our housing stock lead-safe. Blood lead screening, case management services for children with elevated blood lead levels (EBLs), and raising public awareness are all important *supporting* strategies, but identifying and treating children after the damage is done is not protective. In the same regard, educating parents is helpful but insufficient as a prevention strategy. Research makes clear that parents lack the power to protect their children if there are serious lead hazards in their home. The only sure way to protect children from lead poisoning is through primary prevention strategies—preventing, identifying, and controlling lead hazards in housing, especially deteriorated lead-based paint and lead dust hazards.

Of the 39 million leaded housing units in the United States, HUD estimates that 25 million pose “significant lead hazards.” Because these units span the full spectrum of risk—from exceedingly low to extremely grave—different measures are needed in different situations to maximize the public health benefits of investments to improve property maintenance and repair. Making our housing stock lead-safe ultimately depends on action by property owners, but government agencies can foster effective action by setting clear standards, offering technical support and assistance, providing subsidies where justified, encouraging improvements in property maintenance and repairs, and enforcing compliance as needed.

The Alliance for Healthy Homes has created this four-part *Lead-Safe Housing Policy Guidance Series* to assist state and local policy makers and government agency staff in establishing a prevention-based framework to advance lead-safe housing. To develop this resource, the Alliance drew upon enlightened approaches that jurisdictions across the country are already pursuing and finding effective. We hope that this Guidance series will be helpful to health and housing practitioners as well as other advocates for children’s health in every city, county, and state—regardless of its current laws or level of political will.

The *Lead-Safe Housing Policy Guidance Series* includes the following four components:

- I. Basic Lead-Safe Housing Standards:** A three-tiered approach to setting clear, workable, and protective standards that define rental property owners’ duties.
- II. Legal Authorities:** The spectrum of legal authorities and enforcement options needed for state and local agencies to implement and enforce lead-safe housing standards.
- III. Programmatic Opportunities:** Effective strategies for state and local agencies to strengthen code enforcement and build technical capacity to expand the supply of lead-safe housing.
- IV. Reference Materials:** Applicable federal law, regulations, and standards, fundamental tenant safeguards, and a glossary of common terms.

LEGAL AUTHORITIES

Most state and local jurisdictions have legal authority to screen children in order to identify those with elevated blood lead levels (EBLs). Yet many of these same jurisdictions lack the statutory authority to require property owners to prevent and control lead hazards in housing and/or the enforcement powers needed to ensure compliance. Remarkably, at least 15 states that receive CDC lead poisoning prevention grants report that they lack specific power to order property owners to control identified lead hazards, even in the extreme case of an EBL child.

Childhood lead poisoning prevention programs (CLPPPs) cannot effectively protect children if their jurisdiction lacks basic legal authorities and enforcement powers. In some cases, lack of adequate legal authority may be a major limiting factor to continued progress in protecting children from lead hazards in their homes. A critical examination of existing legal authorities and enforcement powers would likely benefit most CLPPPs.

Legal Authorities provides a checklist of legal authorities related to preventing and controlling lead hazards in housing. In developing this checklist, the Alliance drew upon state laws and regulations, local ordinances, and the International Code Council's Property Maintenance Code. It is important to note that no jurisdiction currently has all these legal authorities and enforcement powers in place. Indeed, many effective CLPPPs operate in jurisdictions that have only a subset of these authorities.

The checklist is divided into five categories:

- ◆ Property Maintenance and Accountability Standards
- ◆ Right of Entry
- ◆ Authority to Compel Compliance with Requirements
- ◆ Work Practice Standards
- ◆ Administrative Mechanisms to Support Enforcement

In order to ensure the authority exists to enforce property owners requirements, there is understandably some overlap with *Basic Lead-Safe Housing Standards*.

Some jurisdictions may find that they have broad legal authorities to protect public health and safety that are currently going unused. In addition to laws specific to lead poisoning, jurisdictions should examine state and local health and housing laws, agency regulations and rules, housing and health codes and ordinances, property maintenance codes, nuisance law, and warranty of habitability law. These existing laws and codes may already grant many of the authorities identified in this checklist. While a jurisdiction may already have broad authority to protect health and safety, it is generally advantageous to specifically enumerate powers related to lead safety.

We hope that CLPPP staff, policy makers, legislators, and public health advocates will use this checklist as a tool to assess existing authorities, identify gaps in existing powers, and then determine which additional legal authorities and enforcement powers would be most helpful to improve program effectiveness and expand the supply of lead-safe housing in their jurisdiction.

A one-page summary of *Legal Authorities* is provided on the next page, followed by detailed descriptions.

SUMMARY

Legal Authorities

Property Maintenance and Accountability Standards

- Establish baseline property maintenance standards that address lead safety
- Classify deteriorated paint in pre-1960 properties as a serious code violation
- Establish lead dust hazards as a serious code violation
- Require rental property owners to provide documentation of lead-safe status in certain situations

Right of Entry

- Conduct an environmental investigation in response to a child with an elevated blood lead level
- Inspect other units in a multi-family building where one unit is occupied by an EBL child
- Inspect units proactively, such as on a routine periodic basis
- Collect environmental samples to determine the presence of lead dust hazards
- Conduct follow-up inspection to ensure lead hazard repair is performed properly

Authority to Compel Compliance with Requirements

- Set a specific deadline for completion of repair work
- Establish meaningful and appropriate penalties for unresolved code violations
- Ensure occupant protection, including relocation to lead-safe housing when necessary
- Issue stop-work order to halt unsafe work practices
- Order property owner to hire a certified lead professional (e.g. lead inspector, risk assessor, certified lead abatement contractor) in high-risk situations
- Require cleanup of visible dust and debris and clearance dust testing whenever an agency orders repair in pre-1960 properties
- Authorize agency crews to repair hazards and recover costs by placing a lien on the property
- Declare deteriorated properties unfit for human occupancy or uninhabitable, and order them vacated and sealed until repaired or demolished.
- Place properties with numerous, repeated, or long-standing violations in receivership

Work Practice Standards

- Require lead-safe work practices
- Ban unsafe paint removal methods during painting, remodeling, and maintenance activities
- Require property owners, maintenance supervisors, painting/remodeling contractors, and city contractors to complete basic training in LSWP before disturbing or repairing paint in older properties

Administrative Mechanisms to Support Enforcement

- Require a renewable rental permit or certificate of occupancy for all rental properties
- Register the identity of the rental property owner and/or agent for delivery of legal notices
- Attach outstanding lead hazard control orders to the property deed
- Publish information on properties with outstanding code violations and recalcitrant owners
- Create a special court to accelerate successful case closure
- Create a special Treasury fund to finance programmatic/enforcement/abatement activities

LEGAL AUTHORITIES

State and local agencies need statutory authority to require rental property owners to provide lead-safe housing as well as practical enforcement powers to ensure compliance. This checklist compiles existing authorities from around the country. It is intended to help jurisdictions identify gaps and set priorities for securing additional legal authority needed to accelerate progress in protecting children from lead poisoning.

PROPERTY MAINTENANCE AND ACCOUNTABILITY STANDARDS

The most common source of exposure to lead is deteriorating lead-based paint in poorly maintained housing. The link between the adequacy of housing maintenance and the potential for lead exposure puts code enforcement agencies in a unique position to prevent poisonings.

- Establish baseline property maintenance standards that address lead safety** Good property maintenance can prevent most conditions that cause paint to deteriorate, such as water and plumbing leaks. At a minimum, jurisdictions should require that interior and exterior painted surfaces be maintained in intact condition; that roofs, gutters, leaders, and downspouts be maintained in working and leak-proof condition; and that plumbing fixtures and all water and waste pipes be properly connected, installed, and maintained in sanitary, working, and leak-proof condition.
- Classify deteriorated paint in pre-1960 properties as a serious code violation** Deteriorated paint (regardless of its lead content) is a code violation in most jurisdictions, but is often viewed as an eyesore rather than a potentially serious health hazard. Pre-1960 properties are likely to contain paint with the highest concentration of lead. State and local governments can create a rebuttable presumption that all paint in pre-1960 housing is lead-based paint.
- Establish lead dust hazards as a serious code violation** Although lead dust is widely regarded as the primary pathway of exposure, most housing codes ignore it altogether. In order to provide the clearest legal basis for controlling lead hazards, housing codes should state explicitly that deteriorated lead-based paint, lead contaminated dust, and lead-laden bare soil are citable offenses. Jurisdictions can incorporate by reference EPA standards (see *Reference Materials*: Appendix B) for dangerous levels of lead in paint, dust, and bare soil to enable automatic updates based on research that prompts changes in federal standards.
- Require rental property owners to provide documentation of lead-safe status in certain situations** Authority to require a rental property owner to present documentation of a property's lead-safe or lead-free condition, conducted by a qualified and independent third party (i.e. a certified risk assessor), appropriately places the responsibility for safe housing on the landlord.

RIGHT OF ENTRY

Jurisdictions need authority for code inspectors and other agency staff to enter a dwelling with reasonable notice to check for lead hazards. If the property owner refuses entry, the agency should have authority to pursue a warrant.

- ❑ **Conduct an environmental investigation in response to a child with an elevated blood lead level (EBL)** In a property where an EBL child lives, the source of the exposure must be determined and any identified lead hazards effectively controlled to prevent further exposure. Consistent with CDC guidance, an environmental investigation should include sampling for lead dust as well as a visual check for deteriorated paint.
- ❑ **Inspect other units in a multi-family building where one unit is occupied by an EBL child** If lead hazards are identified in one unit in a multi-family building, it is highly likely that other units in the same building contain hazards. Undertaking hazard assessment throughout such buildings is a useful strategy for targeting high-risk units. In addition, other tenants should be encouraged to have their children screened.
- ❑ **Inspect units proactively, such as on a routine periodic basis** Rather than rely solely on tenant complaints, some jurisdictions inspect all rental properties every three or five years, and/or at tenant turnover. Proactive inspection schedules could focus first on high-risk neighborhoods, high-risk properties, or problem landlords. Systematic, periodic inspection programs can reinforce regular maintenance and ensure that properties meet basic health and safety standards. Tenant turnover also presents an excellent opportunity for lead hazards to be assessed and controlled in a vacant unit where the safety and convenience of occupants is not an issue; property owners could be required to hire a certified person to inspect. By identifying underlying problems early, problems can be addressed before lead hazards develop and poison a child.
- ❑ **Collect environmental samples to determine the presence of lead dust hazards** Code inspectors should be authorized to collect environmental samples for analysis, in older units with deteriorated paint, where work has been done that disturbed old paint and in other high-risk circumstances.
- ❑ **Conduct follow-up inspection to ensure lead hazard repair is performed properly** Health and housing agencies must have the authority to re-inspect units cited for violations and perform clearance testing after repairs have been completed. Alternatively, property owners could be required to obtain clearance by a qualified independent third-party.

AUTHORITY TO COMPEL COMPLIANCE WITH REQUIREMENTS

Jurisdictions must ensure that property owners promptly and safely correct cited code violations.

- ❑ **Set specific deadline for completion of repair work** Orders to repair lead hazards and other code violations should include a suitable and specific deadline for compliance. Deadlines should be based on a standardized schedule that can be amended reasonably, such as extending the timeframe for exterior repairs to take weather into account.

- ❑ **Establish meaningful and appropriate penalties for unresolved code violations**
Jurisdictions should have authority to assess penalties for code violations, including a range of monetary fines, and for egregious situations, criminal penalties. Furthermore, each day that elapses after a missed deadline should be considered a separate violation, which can increase financial pressure on the owner to take timely corrective action.
- ❑ **Ensure occupant protection, including relocation to lead-safe housing when necessary**
Property owners' responsibility for providing safe housing includes the obligation to protect occupants from contamination from lead hazards during activities that disturb paint. When it is unsafe for tenants to occupy the premises, jurisdictions should have the authority to require the landlord to pay appropriate relocation costs.
- ❑ **Issue stop-work orders to halt unsafe work practices** Agencies need authority to stop owners from generating and dispersing lead hazards through unsafe work practices.
- ❑ **Order property owner to hire a certified lead professional in high-risk situations** Older properties may require a risk assessment or lead-based paint inspection as well as abatement by a certified abatement contractor if lead hazards are extensive.
- ❑ **Require cleanup of visible dust and debris and clearance dust testing whenever an agency orders repair in pre-1960 properties** Traditional paint repair practices can leave behind dangerous levels of invisible lead dust. Clearance dust testing conducted by agency staff or a third party is the only way to be sure that lead dust hazards are not left behind after repair, remodeling, and lead hazard control projects.
- ❑ **Authorize agency crews to repair hazards and recover costs by placing a lien on the property** Codes provide for emergency measure to ensure the immediate repair of imminently dangerous conditions. If property owners fail to address lead hazards, enforcement agencies should be authorized to dispatch trained crews to make repairs and institute action to recover the cost if the property owner refuses to pay.
- ❑ **Declare deteriorated properties unfit for human occupancy or uninhabitable, and order them vacated and sealed until repaired or demolished** The ability to condemn and vacate housing can be a powerful enforcement tool. It protects occupants from hazards and prevents property owners from collecting rent on substandard properties. Officials must take into account the availability of affordable housing in the jurisdiction in ordering properties vacated.
- ❑ **Place properties with numerous, repeated, or long-standing violations in receivership** In situations where a rental property has multiple, repeated, or long-standing violations, and the property owner consistently fails to comply with hazard reduction orders, agencies need authority to seek a court-appointed independent receiver for the property. The court can authorize the receiver to obtain needed financing, collect and expend rental income to correct lead hazards, and control the property long enough to assure that remediation is complete. By making it easy to turn at-risk, deteriorating property over to receivers, jurisdictions can accelerate repairs, avoid abandonment, and maintain affordable rental housing.

WORK PRACTICE STANDARDS

Traditional paint repair practices can create serious lead dust hazards. It is critical that painting, remodeling, repair, and maintenance work be done in a safe manner to avoid creating additional hazards.

- ❑ **Require lead-safe work practices (LSWP)** Lead-safe work practices (LSWP) are a collection of best practices that minimize the amount of dust and debris created during remodeling, renovation, rehabilitation, or repair of pre-1978 housing. LSWP include appropriate worksite preparation and containment, occupant protection, safe paint removal methods, and specialized cleaning to control, contain, and clean up lead-contaminated dust.
- ❑ **Ban unsafe paint removal methods during painting, remodeling, and maintenance activities** Research makes clear that traditional paint repair and removal practices can generate significant lead dust hazards. Unless testing proves that painted surfaces are lead-free, unsafe work practices should not be used during repainting, renovation, and remodeling work in pre-1978 housing. Unsafe methods of paint removal include open flame burning, machine sanding without a HEPA attachment, operating a heat gun above 1100°F, extensive dry scraping or sanding, and stripping in poorly ventilated areas using volatile substances.
- ❑ **Require property owners, maintenance supervisors, painting/remodeling contractors, and city contractors to complete basic training in lead-safe work practices before disturbing or repairing paint in older properties** One way to help ensure adoption of LSWP is to require contractors to attend a one-day basic training course, such as the HUD/EPA LSWP training. These courses cover the dangers posed by unsafe work practices and reinforce the need to control, contain, and clean up lead dust.

ADMINISTRATIVE MECHANISMS TO SUPPORT ENFORCEMENT

To increase compliance with the law, state and local jurisdictions can implement various administrative means to support enforcement.

- ❑ **Require a renewable rental permit or certificate of occupancy for all rental properties** Prohibiting owners from renting dwellings that have been cited for lead hazards provides a strong incentive for owners to take corrective action. To ensure that hazardous units are not rented, rental licenses can be revoked and public notices about property conditions can be posted on cited buildings. Similarly, requiring certificates of occupancy for property owners to enter new lease agreements can prompt inspections of vacant units, motivating owners to keep properties in good condition. Such approaches should be coupled with measures to protect tenants from eviction and preserve affordable housing from gentrification.
- ❑ **Register the identity of the rental property owner and/or agent for delivery of legal notices** Requiring owners to register their properties with a state or local agency will assure that the identity of rental property owners can be determined. As part of the registration/licensing obligation, jurisdictions can require owners to provide contact information for themselves and any agents managing the property, and to designate an agent in the property's locality to receive official

notification from public agencies. To be effective, this strategy must be accompanied by meaningful enforcement and penalties. Property owners who do not comply should be subject to fines and precluded from evicting tenants for any reason, including nonpayment of rent.

- ❑ **Attach outstanding lead hazard control orders to the property deed** To protect unsuspecting buyers, jurisdictions can attach copies of lead hazard violation citations and/or repair orders to the property deed, so that a title search or other public records search will reveal untreated hazards or code violations.
- ❑ **Publish information on properties with outstanding code violations and recalcitrant owners** Drawing attention to repeat violators through newspaper and television coverage may help pressure recalcitrant landlords to take corrective action. Such publicity holds property owners accountable, can help build political will for code enforcement, and may deter similar violations by other owners.
- ❑ **Create a special court to accelerate successful case closure** In some jurisdictions, effective code enforcement is hampered by backlogs in the courts. Establishing a special lead or code enforcement court can reduce or eliminate the backlog, build subject matter expertise among prosecutors and judges, and expedite compliance.
- ❑ **Create a special Treasury fund to finance programmatic/enforcement/abatement activities** A special fund in the Treasury can earmark penalties, fines, rental registration fees, and inspection fees to support the code enforcement program, local lead hazard control programs, and childhood lead poisoning prevention programs. Absent such a dedicated fund, these monies typically revert to the general fund.

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