Lead Poisoning in New Hampshire

Policy Options for Primary Prevention

PRS Policy Brief 0708-13
July 15, 2008

Prepared by:

Allyson Bennett
Louisa Pollard

This report was written by undergraduate students at Dartmouth College under the direction of professors in the Rockefeller Center. We are also thankful for the services received from the Student Center for Research, Writing, and Information Technology (RWiT) at Dartmouth College. Support for the Policy Research Shop is provided by the Ford Foundation.

Contact:
Nelson A. Rockefeller Center, 6082 Rockefeller Hall, Dartmouth College, Hanover, NH 03755
http://policyresearch.dartmouth.edu • Email: Policy.Research@Dartmouth.edu

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Lead poisoning has been linked to numerous behavioral problems and health conditions among children with elevated lead blood levels. This report first focuses on methods that have been used for primary prevention and then gives several policy recommendations that can be implemented in New Hampshire.

Methods for primary prevention include:

- Regulation: States such as Maryland and Massachusetts have mandated that property owners perform paint stabilization or abatement.
- Public-Private Partnerships: State and local governments should consider forming partnerships with non-profit organizations when developing methods for lead poisoning prevention.
- Financial Incentives: States can give monetary incentives such as tax credits to encourage homeowners to perform abatement or stabilization.
- Lead Courts: The lead court in Philadelphia has proven effective for ensuring the completion of remediation on properties where lead hazards have been identified.

Any measures to prevent lead poisoning will require significant amounts of funding. This report examines three main sources of funding:

- Earmarks and Appropriations
- Nonprofits
- Taxes, fees and surcharges

Taking a holistic approach to combating lead poisoning allows the state to draw on resources not specifically allocated for primary prevention. Initiatives designed to improve energy efficiency and further community development often also help reduce the incidence of lead poisoning by encouraging the replacement of windows and renovation of old buildings.

1. REGULATIONS

Passing regulations requiring homeowners to perform lead risk management procedures is one way to reduce lead poisoning by encouraging primary prevention. States usually enforce regulations through inspections and fines. Both Maryland and Massachusetts have used legal measures to require lead abatement or stabilization practices.

As part of its Lead Poisoning Prevention, for example, Maryland requires all owners of residential properties built before 1950 to meet certain risk reduction standards under its 1994 Reduction of Lead Risk in Housing Law. Property owners are required to register such units, and the state maintains a statewide database. Property owners must either pass a test for lead-contaminated dust or perform abatement or stabilization measures, including capping window wells and removing and repainting chipping, peeling and flaking paint. Since February 24, 1996, the Maryland Reduction of Lead Risk in Housing Act has required all pre-1950 residential rental properties to be certified in compliance with the risk reduction standard before changes in occupancy. Also by February 24, 2006, all rental properties built before 1950 had to be certified to be incompliance with lead risk reduction regardless of whether any change in occupancy occurred. Maryland's Department of the Environment is responsible for enforcing the legislation.[1]

Massachusetts' Lead Law requires owners to cover up lead-based materials to make them inaccessible to children under six years of age. All property owners must comply, whether they own rental property or live in their own single-family home. The law also contains a lead disclosure provision. Failure to comply can result in a fine of $10 to $500 per day that the violation persists.[2]

2. PUBLIC-PRIVATE PARTNERSHIPS

Both state and local governments should consider developing public-private partnerships with non-governing entities when formulating lead poisoning prevention policies. Possible partners include private sector entities and/or lead poisoning and environmentally focused nonprofit organizations. Chicago and Philadelphia are two prime examples of cities that implemented lead abatement policies built on public-private partnerships. Public-private partnerships have increased these cities' capacities to perform or supervise lead abatement work in low-income areas and have also helped to generate funds for these programs.

2.1 Chicago

Recently, the City of Chicago implemented a lead abatement program that relies completely on public-private partnerships and targets property owners of multi-family properties in low-income areas. Specifically, the program provides low interest loans to property owners who agree to replace windows containing lead paint on their properties. Property owners are expected to pay back the loans over a fourteen year period. However, the program provides an additional incentive of fifty percent debt forgiveness if the first half of the loan is paid back in full and on time during the first seven years of

repayment.[3] Although the program is managed by the City of Chicago Department of Public Health, city partnerships with two nonprofit organizations (Illinois Leadsafe and Delta Redevelopment Institute) and one private corporation (Chicago Lead Safe Window Services) make up the main infrastructure of the program.[4] Under the supervision of the Department of Public Health, each of these three entities implements a specific portion of the program.

For example, the City of Chicago contracted with Chicago Lead Safe Window Services, a local window manufacturer and installer, to perform all the lead abatement services provided for in the city's program. Additionally, Chicago Lead Safe Window Services coordinates and supervises the loans for property owners provided by the program.[5] Guaranteeing lead abatement work to a single private contractor in such a manner could potentially benefit a city or state government in several ways. First, a private contractor may be able to provide lead abatement services in greater capacity and in a more efficient and cost effective manner than city abatement crews. Second, by guaranteeing the work to one contractor, governing institutions can easily monitor quality control and may be able to negotiate a cheaper price for lead abatement services in exchange for the large and lucrative contract.

Chicago's new lead abatement program should also be noted for using the resources of the nonprofit organizations such as Delta Redevelopment Institute and Illinois Lead Safe. Specifically, the Delta Redevelopment Institute, an organization which designs and raises funds for redevelopment projects in the Chicago area, was able to raise over six million dollars for the program, effectively doubling the funds put forth by the city.[6] Furthermore, the board of Delta Redevelopment Institute includes members from various city agencies as well as numerous private corporations involved in financing and development.[7] Combining such a diverse board with representatives from the Chicago Department of Public Health, representatives for Lead Safe Windows, and representatives from Illinois Leadsafe allowed for a diverse array of opinions to be heard during policy formulation, a fact that may have led to better policy implementation.

2.2 Philadelphia

Enacted in 2002, the Philadelphia Department of Public Health's (PDPH) Lead Abatement Strike Team program, known as LAST, has helped the city expand its remediation capabilities for buildings with lead hazards located in low-income areas.[8] Unlike the City of Chicago, PDPH contracted with several local contractors who worked in addition to city crews to perform remediation work.[9] The city was able to oversee the work completed by private contractors by requiring the contractors to be certified by the state in lead abatement work and by requiring that the contractors file detailed work plans with PDPH.[10] In addition to partnering with private contractors PDPH also worked with several other city governing agencies as well as local nonprofits to run various aspects of the program. For example, the Office of Emergency Shelters and Services supervised relocation efforts for families whose homes were being remediated by LAST contractors.[11]

The creation of LAST was a huge success in terms of the city being able to perform abatement work on more homes in which lead hazards were identified. In 2001, the year before the creation of LAST, city workers performed abatement work on only 28 properties. In 2003, the year after the inception of LAST, city workers remediated 18 properties, and private contractors remediated 126 properties. The total number of homes remediated that year (144) represented a substantial increase from 2001.[12] However, LAST does have admitted negatives. Besides requiring substantial funding from the city budget ($1.5 million for the year of 2002 alone), LAST has been criticized for inefficiency and poor communication between the various agencies and organizations involved in its administration.[13]

3. FINANCIAL INCENTIVES

State and local governing agencies have established policies that provide different types of financial incentives directly to property owners who complete lead abatement work. Both the State of Massachusetts and the City of Chicago offer tax credits to property owners who complete abatement work. Massachusetts offers a per unit income tax credit to property owners for every unit remediated.[14] In addition to the incentives described in section 2.1, the new City of Chicago lead abatement program also offers an additional property tax credit to property owners completing work. The credit allows owners to pay only half of their normal property tax rate for ten years following remediation.[15] For a discussion of the loans offered to Chicago property owners by the city's new program, please see section 2.1. Additionally, the State of Maryland offers an alternative form of financial incentive by guaranteeing liability protection to property owners who have completed lead abatement work. Specifically, the State of Maryland caps damages for any lawsuit against a property owner who has worked to remediate lead hazards.[16]

4. LEAD COURT

Established as part of the LAST program by the City of Philadelphia in 2002, the Philadelphia lead court has proven to be an effective mechanism for ensuring that remediation is completed on properties where lead hazards have been identified. The court, which hears twenty cases per day and meets two days a week, helps to prevent a backlog from developing in the legal system once lead hazards have been identified. Property owners are summoned to the lead court if their properties fail a second inspection (a re-inspection of an identified hazard) and face fines ranging from $1000 to $5000 if they fail to appear in court. The lead court has proven to be quite effective in moving properties through the legal system and enforcing the completion of remediation work. Cases in the lead court average only 108 days in the lead court system. Cases can only leave the lead court when property owners complete or show significant progress in completing remediation work, meaning that it takes an average of 108 days for progress to be made in the abatement of lead hazards on identified properties. The court has been touted by nonprofits and is considered one of the most efficient courts within the City of Philadelphia.[17]

5. FUNDING SOURCES

States and municipalities have used a variety of funding sources to help cover the costs of performing lead abatement. One of the most common methods of funding lead abatement measures is through earmarks and appropriations. A variety of other funding sources, however, are available.

5.1 Federal Funding

Several federal agencies offer programs that can be used, at least in part, to fund efforts that help prevent lead poisoning. The Department of Urban Housing and Development (HUD), for example, offers lead-based paint hazard control grants to help identify and control lead-based paint hazards in privately owned housing. The program requires 10 percent matching of federal funds on the part of the state.[18] HUD also offers funding through its Lead Hazard Reduction Demonstration Grant program, designed to help grantees implement comprehensive programs to identify and control hazards from lead-based paint. The program focuses on urban areas and also has a 10 percent matching requirement.[19] However, the requirements of these grants, such as making funding contingent on a person's income or mandating that owners document a problem with lead-based paint before applying for a grant, may limit their usefulness.[20]

The Environmental Protection Agency (EPA) also offers a number of grants to help control environmental lead contamination. The EPA's National Community-Based Lead Grant Program funds local efforts to reduce the number of children who contract lead poisoning. In 2007, the program offered more than $3.1 million in grants. Because the program focuses on *local* efforts, however, the state itself would not be eligible to receive funding.[21] The EPA also offers a Targeted Lead Grant Program to fund projects in areas with high incidences of lead poisoning among children. Similar to grants made under the previous grant program, funding under the Targeted Lead Grant Program is largely given at the community, rather than the state, level.[22]

Other federal agencies, such as the Department of Energy, also offer grants that could be useful in performing paint-stabilization and lead abatement.[23] These grants largely focus on improving energy efficiency, weatherization and community development, rather than on lead abatement specifically. A more detailed discussion of these grants will follow in Section 6.

5.2 Nonprofits

A variety of nonprofit groups also offer assistance in funding measures for primary prevention of lead poisoning. The Connecticut Housing Investment Fund, for example, is a private, nonprofit organization designed to help finance affordable housing and neighborhood revitalization projects. It helps individuals and organizations to purchase, rehabilitate, or construct homes for low and moderate income families through several loan programs. Many of the actions undertaken with these funds, such as renovating old homes, also help with primary prevention.[24]

5.3 Taxes, fees and surcharges

Some states also levy taxes to pay for lead abatement efforts. Maine, for example, has a $0.25 tax on each gallon of paint sold. An average of two gallons of household paint is sold for each person in the United States, so this tax could potentially yield large returns. Such a tax, however, may prove politically unviable in New Hampshire.[25]

Furthermore, some states levy fees and surcharges. Massachusetts, for example, has a surcharge on licenses for six major industries that raises approximately $1.25 million to $1.5 million every year. The revenue helps finance lead-prevention education efforts.[26] California imposes a fee on manufacturers and others who are formerly or presently engaged in commerce involving lead or products containing lead or who are otherwise responsible for identifiable sources of lead that have contributed or are contributing to environmental lead contamination. These fees contribute to a childhood lead poisoning prevention fund.[27] They were, however, challenged unsuccessfully under the California constitution because they have been viewed as an additional tax.[28]

6. HOLISTIC APPROACH

Thinking about measures to prevent lead poisoning as part of a broader program of home improvement greatly increases a state's flexibility in finding funding and designing lead-prevention programs. Several states and municipalities – such as Connecticut, Chicago and Maryland – have programs that do not specifically focus on primary prevention of lead poisoning, but achieve such prevention as a result.

6.1 Energy Efficiency

One way to achieve primary prevention is to focus on energy efficiency in general. Chipped paint around windows is one of the most common sources of lead poisoning in children. Thus, focusing on window replacement as part of an energy efficiency program will also help decrease incidences of lead poisoning. Both Maryland and Chicago, for example, give weatherization grants that help owners pay for the cost of replacing windows. Such programs are able to draw on federal money not only designated for lead-poisoning prevention but also for weatherization.[29] The Department of Energy, for example, has a weatherization assistance program designed to enable low-income families to reduce their heating bills by increasing the energy efficiency of their homes.[30] The DOE's state energy program provides grants to states to design and implement renewable energy and energy efficiency programs.[31]

6.2 Community Development

Larger community development programs can also help prevent lead poisoning. Connecticut's Community Development Block Grant Program, for example, provides funding and technical support for projects aimed toward local community and economic development.[32] Furthermore, HUD offers several grants for community development. For example, the HOME program, a block grant to states and local governments, aims to

create affordable, low-income housing. In creating new low-income housing and renovating old buildings, which are more likely to contain lead-based paint, these programs also help reduce occurrences of lead poisoning.[33]

6. CONCLUSION

As this report has shown, state and local governments, nonprofit organizations, and even private entities have pursued various policies aimed at preventing lead poisoning. These policies range from simple direct financial incentives for property owners to complete lead abatement work to unorthodox public-private partnerships. Other policies, such as the establishment of the Philadelphia lead court, have pioneered new approaches to forcing property owners to complete lead abatement work. Regardless of the policy mechanism, lead poisoning prevention policies tend to require significant funding. For this reason, it makes sense to take a holistic approach to lead poisoning prevention. Specifically, weatherization and community development grants may be untapped sources of funding. Additionally, governing agencies should be open to new public-private partnerships in which the agency relinquishes some policy control in exchange for resources from the nonprofit and private sectors. In short, thinking outside the traditional means of funding and the traditional methods for combating lead poisoning may yield more efficient lead poisoning prevention policy.

REFERENCES

[1] http://www.peoples-law.org/housing/ltenant/lead%20paint%20laws%20and%20concerns.htm.
[2]Massachusetts Department of Health and Human Services. http://www.mass.gov/?pageID=eohhs2terminal&L=6&L0=Home&L1=Government&L2=Laws%2c+Regulations+and+Policies&L3=Department+of+Public+Health+Regulations+%26+Policies&L4=Regulations+and+Other+Publications+-+I+to+L&L5=Lead++The+Massachusetts+Lead+Law+and+Legal+Documents&sid=Eeohhs2&b=terminalcontent&f=dph_environmental_lead_g_lead_law_require&csid=Eeohhs2.
[3]"An Exciting New City Supported Lead Abatement Program Providing Financial Assistance and Incentives to Landlords and Building Owners." Available at: http://www.leadsafeillinois.org/cmsfiles/NMTCprograminfo.pdf.
[4] "Chicago: Lead Abatement: Chicago Lead Safe Window Services, Chicago, IL." Delta Redevelopment Institute. Available at: http://deltaredi.org/currentprojects.php.
[5] "An Exciting New City Supported Lead Abatement Program Providing Financial Assistance and Incentives to Landlords and Building Owners." Available at: http://www.leadsafeillinois.org/cmsfiles/NMTCprograminfo.pdf.
[6] "Chicago: Lead Abatement: Chicago Lead Safe Window Services, Chicago, IL." Delta Redevelopment Institute. Available at: http://deltaredi.org/currentprojects.php.
[7] "About Us." Delta Redevelopment Institute. Available at: http://deltaredi.org/about.php.
[8] Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 218.
[9] Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." P. 220. Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 218.
[10]Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 220.
[11]Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 220.
[12]Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 221.
[13] Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 222.
[14] Telephone Interview with Paul Hunter, Massachusetts Department of Public Health.
[15] "An Exciting New City Supported Lead Abatement Program Providing Financial Assistance and Incentives to Landlords and Building Owners." Available at: http://www.leadsafeillinois.org/cmsfiles/NMTCprograminfo.pdf.
[16] Telephone Interview with Mary Philips. Maryland Department of the Environment.
[17] Cambell, Carla and Robert Himmelsbach and Peter Palmero and Richard Tobin." Health and Housing at LAST: The Philadelphia Lead Abatement Strike Team." Available at: http://www.publichealthreports.org/userfiles/120_3/120218.pdf. p. 220.
[18] See: http://www.hud.gov/offices/lead/lbp/lhc.cfm.
[19] See: http://www.hud.gov/offices/lead/lbp/lhrd.cfm.
[20] Telephone interview with Nancy Serrell.
[21] See: http://www.epa.gov/lead/pubs/grants/nationalgrants2007.pdf.
[22] See: http://www.epa.gov/lead/pubs/grantmap.htm#national.
[23] See: http://www.eere.energy.gov/weatherization/about.html.
[24] See: http://www.chif.org/.
[25] See: http://mainegov-images.informe.org/dhhs/eohp/lead/documents/PL2005_C403.pdf.
[26] Telephone interview with Paul Hunter, Massachusetts Department of Public Health.

[27] See: http://caselaw.lp.findlaw.com/cacodes/hsc/105275-105310.html.
[28] See: http://pmstax.com/state/sinc9708.shtml.
[29] Telephone interview with Terry Phillips, Maryland Department of the Environment.
[30] See: http://www.eere.energy.gov/weatherization/.
[31] See: http://www.eere.energy.gov/state_energy_program/.
[32] See: http://www.ct.gov/ecd/cwp/view.asp?a=1098&q=249736.
[33] See: http://www.hud.gov/offices/cpd/communitydevelopment/programs/.