

# **ALLIANCE FOR HEALTHY HOMES**

*Protecting Children from Lead and Other Environmental Health Hazards*



## **Lead-Safe Housing Policy Guidance!** **Gi a a Uf]Yg'**



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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 38 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 created *Lead-Safe Housing Policy Guidance* to assist state and local policy makers and government agency staff in establishing a prevention-based framework to advance lead-safe housing. The Childhood Lead Poisoning Prevention Branch of the Centers for Disease Control and Prevention funded the development of this material.

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 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* consists of four parts:

- 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.

This document presents descriptions and summaries of Parts I - III.

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## BASIC LEAD-SAFE HOUSING STANDARDS

No jurisdiction with an older housing stock can effectively protect children from lead poisoning without laws and ordinances that clearly state what rental property owners must do to prevent and control lead-based paint and dust hazards. To be effective, such standards must: 1) clearly define landlords' responsibilities; 2) offer adequate protection for children's health; and 3) be practical, workable, and sensitive to the economic realities of affordable housing.

Many cities and states currently lack such clear, workable, and protective standards for lead-safe housing. Some jurisdictions' laws and regulations establish ambiguous requirements or ignore lead hazards altogether. Other jurisdictions have standards that either are too weak to protect children's health or are impractical for property owners to meet.

Part I of *Lead-Safe Housing Policy Guidance* is intended to assist legislators, state and local health officials, and other advocates for children's health develop laws and ordinances that establish effective and enlightened lead-safe housing standards. Because the extent of risk varies widely from property to property, applying uniform requirements to all pre-1978 housing either imposes unnecessary requirements and costs on lower-risk units or fails to offer sufficient protection to occupants of higher-risk units. To provide maximum public health protection for the resources invested, this framework organizes lead-safe housing standards in three tiers, based on level of lead hazard risk:

- ◆ Tier I includes a set of low-cost, prevention-based standards designed for all properties built before 1978 that contain, or may contain, lead-based paint.
- ◆ Tier II offers alternative approaches, criteria, and action triggers that jurisdictions can use to tailor requirements to ensure lead safety in higher-risk properties.
- ◆ Tier III addresses extremely high risk and dangerous circumstances, such as the identification of a lead-poisoned child or significant non-compliance by landlords.

Enacting specific standards for lead-safe housing benefits private property owners as well as children and communities. Codifying lead safety standards in laws and ordinances reinforces the importance of good property maintenance and clarifies what steps landlords need to take in order to prevent and control hazards. Lead-safe housing laws and ordinances provide objective standards against which landlords can demonstrate compliance. Adherence can qualify owners for property and casualty insurance, reduce legal liability, and maintain property condition and value. Primary prevention of lead poisoning provides community-wide benefits through savings in health care and special education costs, improved school performance, and reductions in anti-social behavior and juvenile delinquency.

A one-page summary of *Basic Lead-Safe Housing Standards* is provided on the next page.

### **TIER I – Baseline Standards for All Pre-1978 Rental Properties**

*This tier consists of low-cost, prevention-based measures that jurisdictions should require of owners of all pre-1978 properties except those found to be lead-free by a lead-based paint inspection.*

- Maintain properties in good physical condition and in compliance with code
- Perform visual inspection for deteriorated paint and water damage upon vacancy and annually thereafter
- Promptly and safely repair deteriorated paint and its causes
- Follow lead-safe work practices (and avoid unsafe work practices) when repairing deteriorated paint or disturbing painted surfaces
- Urge tenants to report peeling paint and clearly explain how to do so

### **TIER II – Safeguards for Owners of High-Risk Rental Properties**

*To supplement the baseline standards for high-risk properties, jurisdictions need to establish criteria for designating properties that are presumptively higher risk, as well as additional safeguards that should be required in some circumstances. Alternatives for consideration are provided below. Multiple criteria and/or hazard control measures can be combined to best meet local needs.*

Criteria/circumstances for classifying rental properties as higher risk or requiring additional action:

- A government agency identifies peeling paint or other code violations in the unit
- A government agency identifies lead hazards in any unit in a multi-family property
- The property was built prior to 1940/1950/1960
- The property is located in a high-risk area (as defined by a legislative body or executive agency)
- A family with a child under six resides in the unit
- A triggering event occurs, such as property sale, re-rental, or remodeling

Alternatives for additional measures required of owners of higher-risk properties:

- Pass visual inspection and clearance dust tests after any activity that disturbs or repairs more than a *de minimis* area of a painted surface (*more than 2 square feet in any one interior room or space*)
- Pass visual inspection and clearance dust tests at vacancy
- Make all floor surfaces smooth and cleanable
- Ensure that doors and windows do not bind
- Perform lead-safe window treatments, such as vinyl/aluminum cladding of window troughs
- Cover bare soil with mulch, gravel, sod, or dense plantings
- Hire a certified contractor to perform a risk assessment or lead inspection
- Hire a certified abatement contractor to control identified lead hazards
- Develop a lead safety plan for ongoing maintenance
- Notify all residents in a building found to contain lead hazards

### **TIER III – Response to Extreme Situations**

*Jurisdictions should impose special requirements on property owners in situations where housing units pose extremely high risks, such as the identification of an EBL child or the discovery of significant non-compliance with or circumvention of basic lead safety requirements.*

- Respond promptly to all public health agency directives
- Provide public health agency access to other units in a multi-family building for environmental investigation
- Relocate the occupants if identified hazards are not promptly controlled or if a lead hazard control project requires evacuation
- Submit lead hazard control plans to the public health agency for approval
- Safely control identified lead hazards using a qualified contractor and pass visual inspection and clearan

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## 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.

Part II of *Lead-Safe Housing Policy Guidance* 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.

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## SUMMARY

### 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

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## PROGRAMMATIC OPPORTUNITIES

Having clear lead-safety standards for rental properties and legal authority to enforce compliance is necessary but not sufficient to protect children from poisoning. Agencies need to use their legal authorities to actually achieve compliance. This requires effective programs and strategies by health departments, code enforcement, and other agencies, and the political will to enforce codes and provide needed resources.

Part III of *Lead-Safe Housing Guidance* compiles a variety of programmatic and enforcement policies and procedures state and local agencies can institute to strengthen primary prevention activities. It should be noted that no single jurisdiction employs all these approaches. Agencies should consider which of these strategies offer the best opportunities to advance primary prevention and pursue those judged most promising.

Promising strategies fall into two broad categories: strengthening code enforcement and building technical capacity to expand the supply of lead safe housing.

This part's first component, *Fortify Code Enforcement*, contains policies and procedures agencies can use to make code enforcement more effective. There are many opportunities to strengthen code enforcement to ensure compliance with property maintenance requirements. In addition, there are multiple opportunities for code enforcement to contribute much more meaningfully to preventing and controlling lead hazards in housing. In some cases, modest investments of time and resources can pay high dividends for lead-safe housing.

This section's second component, *Build Technical Capacity*, offers ways agencies can incorporate lead safety tools and training into program activities to maximize effectiveness and outreach. Making housing lead-safe depends on expanding the technical capacity of contractors and trades to safely repair deteriorated paint and guard against the creation of lead dust hazards. In addition to certified lead abatement contractors, many other tradespeople need to understand and follow basic safeguards to control, contain, and clean up lead dust, including painters, remodeling contractors, maintenance staff, and do-it-yourselfers.

We hope that health and housing agency staff, as well as policy makers and advocates for children's health, will consider these strategies to help identify the opportunities to advance primary prevention in their jurisdiction.

A one-page summary of *Programmatic Opportunities* is provided on the next page.

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### Fortify Code Enforcement

- Provide a central telephone number to make it easier for tenants to report peeling paint
- Consolidate childhood lead poisoning prevention and code enforcement programs
- Impose fees for code enforcement and dedicate them to support code enforcement and lead hazard control activities
- Develop an early warning system to identify deteriorating properties (e.g., using tax delinquencies and other data as indicators)
- Analyze blood lead and other risk data to identify lead poisoning “hot spots” and proactively screen properties in those areas for lead hazards
- Target enforcement to high-risk properties and/or problem landlords
- Train code inspectors in lead-safe work practices and as lead sampling technicians, risk assessors, and lead inspectors
- Train code inspectors to conduct a visual survey for deteriorated paint and water damage whenever they inspect a pre-1978 property
- Train code inspectors to take dust samples when peeling paint is cited in pre-1960 units
- Refer owners of properties with lead hazards to lead hazard control grant programs
- Report violations of the federal lead hazard disclosure law to HUD and EPA
- Work with HUD and EPA to create effective local CHIP and SEP projects through enforcement of the federal disclosure law
- Send landlords notice of previously identified lead hazards and remind them of their duty to disclose
- Ensure property owners’ full compliance with federal requirements for lead-safety in federally assisted housing
- Educate judges and other court personnel about lead safety
- Influence priorities for CDBG and HOME funds through the Consolidated Plan process

### Build Technical Capacity

- Offer low- or no-cost LSWP training to painters, remodelers, building maintenance staff, rental property owners, do-it-yourselfers, and day laborers
- Market LSWP trainings being offered by others in order to reach priority audiences
- Train staff and volunteers of community-based organizations as Lead Sampling Technicians
- Train other service providers to perform visual surveys and collect dust samples during home visits
- Offer free lead dust sampling kits and home hazard assessments upon request
- Inform property owners and contractors who apply for building permits about lead safety
- Establish a free lending “library” for lead-safety equipment, such as HEPA vacuums