

GOVERNOR'S LEAD POISONING PREVENTION COMMISSION

Maryland Department of the Environment
1800 Washington Boulevard
Baltimore MD 21230

MDE AERIS Conference Room
May 6, 2016

APPROVED Minutes

Members in Attendance

Edward Landon, Patricia McLaine, Paula Montgomery, Cliff Mitchell, Barbara Moore, Del. Nathaniel Oaks, Manjula Paul, John Scott, Adam Skolnik

Members not in Attendance

Nancy Egan, Mel Jenkins, Susan Kleinhammer, Christina Peusch, Ken Strong, Tameka Witherspoon

Guests in Attendance

Jack Daniels (DHCD), David Fielder (LSBC), M. B. Haller (BCHD), Syeetah Hampton-EI (GHHI), Dawn Joy (AMA), Myra Knowlton (BCHD), Ruth Ann Norton (GHHI), Victor Powell (HUD), Christine Schiffkovitz (CONNOR), Tommy Tompsett (MMHA), Marvin Turner (HUD), Chris White (Arc Environmental)

Welcome and Introductions

Pat McLaine called the meeting to order at 9:45 AM with welcome and introductions. Adam Skolnik, new Commissioner introduced himself. He is a small landlord with 41 rental units, born in Baltimore. He has many interests in and concerns about children; his mother ran the Maryland Committee for Children for 30 years.

Approval of Minutes

Three changes to the minutes for April 7, 2016 were identified. Ed Landon made a motion to accept the minutes with these changes and the motion was seconded by Cliff Mitchell. All present Commission members were in favor.

Old Business

Lead Legislation in the Maryland General Assembly

Ed Landon reported that HB 810 and HB 1331 were referred to summer study. The Structured Settlement Bill HB 535 passed and has a section specific to lead paint. Ruth Ann Norton stated she was very disappointed in the lack of vigorous support for HB 1331 to lower the BLL. She indicated it would put Maryland in a better position to get money and would lead to prevention. She stated she hopes the Commission will pursue support of this bill in the future. She asked Cliff Mitchell if the blood lead level could be lowered by DHMH without a statutory change. She also noted that this was the 3rd year that attempts were made to roll back standards on lead free inspections and that legislators do not support this change. She said she thought the structured settlement bill would be helpful. Nathaniel Oaks asked if it was possible for the Governor to do an executive order. Could the Housing Commissioner also lead this effort?

Paula Montgomery stated that MDE has a small grant from CDC to provide special project funding to Baltimore City Health Department (BCHD) to make visits to families of a child with a BLL of 5-9µg/dL who live in a property built before 1978 to ensure compliance and to issue Notices of Defect where warranted. Paula wants to do the same thing in Prince Georges, Montgomery, and Baltimore Counties but CDC has only provided \$200K. MDE is in the first year and a half of the grant now. MDE inspectors are working with Baltimore City. Over 700 families have been identified. Pat McLaine stated that not much has been published on outcomes for this blood lead level and asked MDE to share available information with the Commission.

Ruth Ann Norton expressed concern about the lack of primary prevention efforts in Baltimore City. More resources are needed and GHHI is willing to help. Ed Landon stated that the Commission needed facts on what the summer study process would entail – when will it start? Paula Montgomery stated she did not know about a Summer Study. Cliff Mitchell noted that there was a requirement for a joint report by Medicaid.

Tommy Tompsett noted that Maryland Multi Housing Association was one of the organizations opposed to this. He indicated that we need to really fine tune this issue. For an owner of rental property, it triggers risk reduction and expenses. Owners want to be compliant but are also concerned about owner occupied properties. He suggested that language should use CDC reference terms. Exposures should also include water. Tommy Tompsett suggested that the Commission's role is to address the interests of children but also to keep housing affordable. Ruth Ann Norton said the legislation included \$600,000 for a Medicaid pilot for lead hazard reduction and intervention and \$100,000 for providers for referrals and data analysis. A suggestion was made to invite the Director of Medicaid to meet with the Commission about these upcoming initiatives.

MDE Update on Lead Free Certificate Investigation and Enforcement Issues

Paula Montgomery noted that there are some issues with the lead-free certificate. MDE had 125,000 certificates this year and the focus on accredited contractors has been a resource issue. American Homeowner Services has relinquished its ability to perform inspections through 5/21/2016. MDE has invalidated 30+ certificates; 384 were examined. MDE got out to all properties at least once and provided contact information. MDE is now following up with a contractor, Maryland Environmental Services, using EPA money to do further investigation of properties they did not get into, using a lead paint survey to validate findings. A total of 1600 certificates were issued before 2009. Letters were sent to all residents of these properties. Some are not regulated facilities. This is now a massive investigation. Resources for oversight are completely focused on this matter; Paula Montgomery indicated that she would provide an update in July. Paula Montgomery also noted that due to this workload, MDE is currently unable to provide oversight on full risk reduction properties where lead is known to be present and where children have been found to be poisoned. Paula Montgomery stated that private sector inspectors did a good job in larger apartment complexes. Ed Landon asked if letters had been sent to Housing Authorities, since he had not seen copies of any of the letters. Carol Payne stated that HUD did send letters to all Maryland Housing Authorities about this matter.

New Business

State of the Insurance Industry – Availability of Lead Liability Insurance for MD Property Owners

John Scott distributed a handout of the presentation to all in attendance. John Scott stated that lead coverage is not available in Maryland for the everyday landlord, particularly in Baltimore City. Liability insurance covers third parties. A landlord buys property insurance and liability insurance (for example, injury to tenant, damage to neighbor, etc.). This covers the landlord for cases brought by third parties, protecting their rights as owners. It also covers fortuitous events – unforeseen events that happen by chance over which they have no control. In the 1970s, when testing was beginning, there were few lead liability lawsuits and few if any exclusions for lead. In the 1980s a victim had to prove standard elements of negligence – for example that the landlord knew about lead and had the ability to fix the problem. In the 1990s, landlords were deemed to have knowledge about lead in all pre-1978 buildings. This put all landlords at risk to exposure for claims. Insurance companies expect to be able to determine payout for claims. Companies are prepared for usual policy coverage – fire, ice, slips and falls. Before 1984, a family of a lead exposed child had 21 years (18 plus 3) to bring suit. Many policies were affected. In the 1990s, notice was no longer required. In 2000, notice to landlords was no longer required. In 2010, the Qualified Offer was ruled unconstitutional and new limits were placed on liability for owners. But insurers were required to pay up to the Qualified Offer limit if they offered liability insurance.

With regards to policies available today, companies are required to exclude lead. Few select insurance carriers may make coverage available, with very high minimum premiums (\$10,000 per year per property) if coverage is offered. The Maryland Court of Appeals has ruled that for every year a family has lived in a property, the insurance industry was liable for their insurance cap for each year. And all individual children would be covered. This means that one settlement could be \$25-30 million. Most insurance companies have been writing exclusions since the late 1980s and early 1990s. Homeowner policies were missed, for example, an owner occupied home with one rental unit. Umbrella policies have also been available, with coverage provided by different insurance companies. For example, a landlord with 50 units might purchase an umbrella policy with extra limit of coverage for all properties; this would provide additional coverage after initial payments were made. John Scott indicated that Westminster American's current lead liability exclusion policy is attached to the handout as an addendum.

With regards to the Qualified Offer level of \$17,000 (\$9,500 plus 7,500), John Scott indicated that all insurance companies were required to provide or pay for the Qualified Offer. Dachman threw out immunity provisions for landlords but a landlord is still required to offer the Qualified Offer; if accepted, liability ends. However, since Dachman, no party has accepted a Qualified Offer.

Syeetah Hampton-El stated that she understood that a Qualified Offer cannot be offered any longer. The Court made it very clear that a parent can't waive jury trial rights of a child or their future actions down the road and that the amount of money (\$17,000) is not enough. John Scott stated that he has to follow the law and cover for the Qualified Offer because the statute says he must do this. Insurance companies must make the offer because it is the law. Barb Moore asked what we needed to do about this obvious difference in interpretation.

Nathaniel Oaks suggested that the Commission get the Attorney General's opinion on this. Paula Montgomery stated that MDE has tried to remove this portion of the law; two bills were introduced this year. Ruth Ann Norton stated that the bills also included other provisions to roll back safety. Adam Skolnik stated that if this portion of the law is repealed, property owners will never have liability insurance for lead. The dollar amount needs to be dramatically bigger.

John Scott stated that even if insurance companies have an exclusion, the Baltimore City insurance industry is already strained and would have great difficulty paying this. It would be hard for insurers to stay in business. Ruth Ann Norton stated she was glad to hear that insurers were interested in this because studies show otherwise. The minimum loss for an individual child exposed to lead over their lifetime is \$985,000 plus loss of income. Legislators had introduced bills seven times to increase the liability cap and property owners refused so the lawsuit overturned the standard entirely. John Scott noted that this is a business; if property doesn't fit, insurers can't write the policy. Only four insurers now write insurance policies in Baltimore City. Ruth Ann Norton stated that there needs to be proof that standards are in place; maybe replacement windows should be part of the standard. Cliff Mitchell stated he wants to better understand the Dachman rule that parents can't waive rights of their children to go back to court. Syeetah Hampton-El stated that Mom and Dad cannot accept money and waive a child's rights in the future. Parent can accept for themselves but not for the child. The child can sue later. John Scott stated that a percentage of cases have been brought after a child reaches the age of majority (18) and Dachman threw out the qualified offer for these individuals too. Ruth Ann Norton stated that we knew the standard wasn't fully protective of children and that we need to consider other standards that will protect children.

John Scott noted that larger landlords have policies for \$10,000 for legal coverage but not for claims. John Scott noted that these are big carriers, the buildings insured will probably not have lead, and they would probably not payout for lead. Ruth Ann Norton stated that the big insurance agencies will cover for lead. Ed Landon noted that many Housing Authority lawyers had said City owners were incorporating their properties separately so they had limited liability and could turn over the property to the tenant if sued. Adam Skolnik noted that a very few small landlords have insurance and some very large property owners do (with 5,000 to 20,000 units), but these are lead free units. He added that some big owners have pollution coverage but have to have lead free certificates; clearly small landlords can't afford this. John Scott stated that some mortgagees also require policies for multi-billion \$ bond deals. Maryland Insurance Administration had talked about a pool: setting up a fund that landlords would control. MIA estimated that the pool needed \$100 million, but could only fund \$10 million. John Scott suggested that \$2.5 billion is really needed.

Cliff Mitchell stated that it doesn't appear to him that we have figured out how to meet the needs of children. What are the needs of children from a societal point of view and how do we pay for this? We should define the service needs of kids moving forward. Ruth Ann Norton stated that this is wrong – the priority action item should be about prevention going forward. Why can't we have a priority agenda item to serve the interests of children, government and property owners? Are there three things we could focus on? John Scott noted that we could insure every place that met our standards. Pat McLaine urged an agenda focused on primary prevention. Cliff Mitchell stated he agrees with primary prevention but does not think we should ignore people who are already poisoned.

Barb Moore noted that from a clinical perspective, the number and percent of kids who have been lead poisoned and have developmental delays is lower than we often project. If we look at a child who is 18 years old, there are many events that have occurred since a diagnosis at age two, many variables that have impacted on that child's life, probably more than lead. What is the cost to society for the specific interventions needed? Barb Moore stated that we need to help families: housing, medical intervention, specialized education, mental health. Primary prevention is of the utmost importance. Does an insurance company require homes to be inspected? Who will pay to correct hazards before a home is inspected. Properties could be required to meet a higher standard to protect children from lead hazards in order to be insured – more than what the law requires.

Adam Skolnik stated that the best primary prevention is abating lead in a home. No organization is focusing more than landlords about getting rid of lead. It's the right thing to do. It will save money. Adam Skolnik noted that the number of lead free units has risen dramatically, based on 2014 numbers. If 30% of cases are in affected rental properties, must look at the totality. If 60% of new cases are in owner occupied or non-affected properties, what is the source? We need to look at that. Maybe all pre-1978 properties need to be tested before they get insurance. How can we help owner occupants do something? Syeetah Hampton-El noted that there are still issues with landlords in Maryland; in particular, small mom and pop landlords are refusing to comply with the law. There is money available for owner occupied properties, she said, but the question is what else can we do to get information out to home owner organizations? Home owners don't apply for money and say there is no requirement for them to comply. Paula Montgomery stated that some owner occupants also don't qualify and resources are an issue. Also, there are differences between Baltimore City (60% pre-50 rentals, 2% post-49 rentals, 38% owner occupants) and the rest of the state (175 pre-50 rentals, 50% post 49 rentals, 33% owner occupants). Looking and lead poisoning and lead poisoning prevention, Paula Montgomery noted that the disparities in Baltimore City are quite pronounced compared to the rest of the state. Immigrant and refugee populations include some children already with high blood lead levels and purchases of leaded products. The families of many children with BLLs above 10µg/dL are strapped for resources. Primary prevention is big and there are other sources; it isn't just a housing issue. Ruth Ann Norton stated that we need data on cases. How many families are immigrants? We have a small population of immigrants in Maryland. Paula Montgomery stated that MDE does have such information available and can compile it for 2015 as part of the Annual Report. When MDE does environmental inspections, they look at all hazards in a child's environment. The inspector needs to identify what is responsible for causing the child's EBL; MDE can't always do that, but we do need to ID sources.

Ruth Ann Norton noted that the RRP law was passed in 2012 but regulations have not yet been promulgated by MDE, including dust testing for owner occupied properties. This would improve action taken on owner occupied properties. She added that regulations were promulgated on March 28, 2016 related to universal blood lead testing and this information needs to be pushed to the public.

Cliff Mitchell stated that he is trying to coordinate with MDE and DHCD and will try to have periodic case conferences to look at all children with EBL to make sure grant resources are getting to people who need them. Christine Schifkovitz stated that from a training perspective,

contractors are refusing to get re-trained. Contractors don't know the difference between RRP and Maryland training. Owners don't know how to ask to see that contractors are trained.

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MDE Annual Enforcement and Compliance Report for 2015

Copies of the 2015 report were distributed. Paula Montgomery noted that significant violations included registration, turn-over violations, Notice of Defects and violations when actions are taken on an owner. A total of 701 carried over from the prior year. Out of the 5,572 formal enforcement actions, the majority were registration violations. Syeeta Hampton-El asked why there had been so few referrals for criminal action to the AG. Paula Montgomery indicated that the lead program made recommendations about cases to pursue but that the AGs made decisions. This is the number of cases where criminal action was taken. In pursuing criminal action, there must be intent. Paula Montgomery noted that having a document that looks fraudulent may not be enough to pursue action; cases that MDE pursues for criminal action are cases where the facts are clear. Barbara Moore noted that it would be good to know how many referrals were made. Pat McLaine suggested that it would be helpful for the report to show the larger universe of properties covered by the law, for example, estimates from the census. Paula Montgomery noted that MDE's program has little additional information about referrals but hopes to know more about what happens with environmental crimes referred in the future. She indicated that she does not know how many referrals were made but can tell how many criminal complaints were referred to MDE. She indicated that MDE has a process and would have to pull this information. The Commission is interested in knowing the number of criminal complaints that the program received and the number of possible criminal actions that are referred to the AG.

With regards to the inspection universe of 142,904, Pat McLaine asked what is known about the other 50,772 properties that were not inspected this year. Barbara Moore asked if we know how many regulated properties have never been inspected. Paula stated the data base does not contain this information. Barbara Moore asked if we have data to reflect the percentage of owners who comply with testing when a renter changes. Paula Montgomery noted that an owner must register within 30 days of a tenant moving in and has to inspect before. Pat McLaine suggested that this appears to be in the ballpark of about 30% turnover per year. Adam Skolnik added that a 32% annual turnover rate is correct (estimates vary from 30-48%) and older properties are expected to turnover more. Christine Schiffkovitz asked if these are risk reduction inspections; Paula Montgomery stated probably both.

Future Meeting Dates

The next Lead Commission Meeting is scheduled for Thursday, June 2, 2016 at MDE in the AERIS Conference Room, Front Lobby, 9:30-11:30 AM.

Agency updates

There was no time for agency updates.

Adjournment

A motion was made by Pat McLaine to adjourn the meeting, seconded by Ed Landon. The motion was approved unanimously and the meeting was adjourned at 11:50 AM.

