

PREVENTING LEAD POISONING IN CHILDREN

House Bill 5116 (Substitute H-1)
Sponsor: Rep. Randy Richardville

House Bill 5117 (Substitute H-1)
Sponsor: Rep. Stephen Ehardt

House Bill 5118 (Substitute H-1)
Sponsor: Rep. Chris Kolb

Committee: Health Policy

House Bill 5119 as introduced
Sponsor: Rep. Carl M. Williams
1st Committee: Family and Children
Services
2nd Committee: Health Policy

First Analysis (1-21-04)

THE APPARENT PROBLEM:

Though lead-based paint was banned over 30 years ago and decades have passed since cars used lead-based gasoline, lead poisoning remains as a serious health threat to children. Sources of lead include paint chips from lead-based paint, dust from household remodeling projects, contamination in soil (e.g., from airborne lead particles associated with industries) and water. Lead accumulates in the body and, if not detected early and treated properly, can lead to brain damage, mental retardation, learning difficulties, behavior problems, anemia, liver and kidney damage, hearing loss, hyperactivity, and developmental delay. If blood lead levels are high enough, coma or death can result. Even once blood levels are restored to normal, effects from lead poisoning can affect an individual for years.

According to a July 2003 State of Michigan report entitled *Childhood Lead Poisoning Prevention: A Call to Action*, lead poisoning may affect as many as 20,000 children statewide under the age of six. Since about three-quarters of the children who should be tested for elevated blood lead levels never receive that testing, as many as 14,600 children may be lead poisoned but undiagnosed and therefore untreated. To address the public health problem that lead poisoning poses, the *Call to Action* report made a number of recommendations involving a

comprehensive approach that focuses on prevention, public awareness, increased screening, and improved rental housing. Legislation has been offered to implement several of the recommendations.

THE CONTENT OF THE BILLS:

The bills would amend the Public Health Code to

- create a housing registry to identify rental homes that have had lead-paint hazards removed;
- require the electronic reporting by laboratories of blood lead tests;
- create a commission to study environmental threats of childhood lead poisoning and review the state's lead poisoning prevention program, evaluate its effectiveness, and make recommendations for improvements; and
- require Medicaid providers, facilities, and HMOs to comply with federal screening standards. Specifically, the bills would do the following:

House Bill 5116 would add a new section to the Public Health Code (MCL 333.5474a) to require the

Department of Community Health (DCH), in conjunction with the Family Independence Agency and the Michigan State Housing Development Authority, to establish and maintain the Lead Safe Housing Registry. The purpose of the registry would be to provide the public with a listing of residential and multifamily dwellings and child occupied facilities that had been determined to be free of lead-based paint hazards through a lead-based paint investigation performed by a certified risk assessor.

An owner of target housing that was offered for rent or lease as a residence or the owner of a child occupied facility would have to register the property with the department if that property had been determined to be free of lead-based paint hazards through an investigation performed by a certified risk assessor. Registration, which would be free of charge for these property owners, would be on a department-prescribed form that included the name of the building's owner, the building's address, the date of construction, and the date and description of any lead-based activity (the bill specifies the information that would need to be detailed).

Property owners that are required to register a property would also have to provide DCH with a copy of each report, document, or other information that must be filed with the federal government under federal law and regulations related to lead-based paint.

The owner of any other residential or multifamily dwelling offered for rent or lease as a residence or the owner of a child occupied facility could register the property and be included on the Lead Safe Housing Registry, but would have to pay a registration fee as prescribed by the department.

The department would have to publish the registry on its web site and provide a copy of the registry to anyone upon request. A reasonable cost-based fee could be charged by the department for providing copies of the Lead Safe Housing Registry.

House Bill 5117 would add a new section to the Public Health Code (MCL 333.20531) to require, beginning October 1, 2005, a clinical laboratory that analyzed a blood sample for lead to report the results to the Department of Community Health electronically as prescribed by the department. The report would have to be submitted within five days after the analysis was completed. In addition, not later than 90 days after the bill's effective date, the department would have to mail a notice to each

clinical laboratory doing business in Michigan explaining the new reporting requirements.

House Bill 5118 would add a new section to the Public Health Code (MCL 333.5474a) to require the governor to establish a Childhood Lead Poisoning Prevention and Control Commission within the Department of Community Health. The department could instead designate an existing organization or statewide childhood lead poisoning prevention coalition that was able to fulfill the bill's requirements to serve as the commission. The bill's provisions would be repealed on January 1, 2010.

Commission duties. The commission's duties would be to study the environmental threats of lead poisoning to children's health; review the state's lead poisoning prevention program; evaluate the effectiveness of the program, including the ability of the program to satisfy federal requirements that children enrolled in Medicaid be screened with a blood lead test; and make recommendations for improvements to that program.

The commission would have to develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in the state. These recommendations would have to include strategies to enhance public and professional awareness of lead poisoning as a child health emergency; significantly increase blood lead testing rates for young children; eliminate or manage the sources of lead poisoning, especially focusing on lead based paint in aged housing; and assure state interagency as well as public and private cooperation and communication regarding resolution of the complex environmental and public health problem of childhood lead poisoning.

A written report of the commission's findings, including the recommendations detailed above, would have to be presented to the governor and the legislature by January 1, 2005 and annually after that by January 1 of each year. The commission would have to continue to monitor and evaluate the state's lead poisoning prevention program and the implementation progress of its recommendations.

The commission would have to conduct at least two public hearings, one within 60 days after members had been appointed or designated, to seek input from the general public and from any groups not represented on the commission, but could add additional public hearings as determined necessary to fulfill its duties. All business would be conducted in compliance with the Open Meetings Act, and

writings prepared, owned, used, etc. by the commission in the performance of an official function would be accessible by the public under the Freedom of Information Act.

Commission membership. Membership would be by gubernatorial appointment and would have to include at least one representative from each of the agencies and organizations listed in the bill. This list includes 39 specific organizations and agencies and could also include members of any other interested organization or association concerned with the prevention, treatment, and control of lead poisoning that the department determined necessary.

All members would serve without compensation. Subject to appropriations, commission members could receive reimbursement for actual and necessary expenses while attending meetings or performing authorized official commission business.

House Bill 5119 would add a new section to the Social Welfare Act (MCL 400.111k) to require the Department of Community Health, beginning January 1, 2006, to ensure – as a condition of participation and funding – that all health professionals, facilities, or health maintenance organizations (HMOs) receiving Medicaid payments under the act are in substantial compliance with federal standards for lead screening for children enrolled in Medicaid.

The department could determine that an HMO that provided lead screening tests to fewer than 80 percent of children enrolled in that HMO who were Medicaid recipients was not in substantial compliance with federal screening requirements. Payment of the costs of the screening test not provided could then be withheld by the department from a payment owed to the HMO. The department could also contract with other community-based agencies or local health departments to provide lead screening tests to children enrolled in the HMO who were Medicaid recipients.

BACKGROUND INFORMATION:

The following information is derived from an analysis by the Senate Fiscal Agency of Senate Bills 753 and Senate Bills 755-757 dated 1-6-04.

Lead Poisoning. Lead is a toxin that builds up in the body as it is ingested, and collects in bone tissue and blood. Although lead-based paint itself is not dangerous, it can crack and peel in deteriorating buildings. Small children and pets can ingest the

paint chips or dust. Industrial pollution can contribute to the problem when lead in the emissions from factories and incinerators gets into the air and soil surrounding homes where children play. The dust can saturate carpets and build up in ventilation ducts. Drinking water in older structures also can be contaminated by lead, which is often present in the pipes and solder used in the plumbing. A lead-based paint hazard is abated either by removal, which makes the building lead-free, or, more commonly, by encapsulation, which makes it lead-safe. Encapsulation entails activities short of removal, such as painting over lead-based paint with lead-free paint. The procedure, however, does not necessarily mean that the new paint will not deteriorate, exposing the lead-based paint in the future.

While people of any age can be adversely affected by lead poisoning, young children are particularly susceptible to it because their brains are still developing. Prolonged exposure to lead can interfere with the development of the central nervous system and has been linked to brain damage, mental retardation, developmental delays, learning difficulties, anemia, liver and kidney damage, hearing loss, seizures, hyperactivity, attention deficit disorder, and, in extreme cases, coma and death. Recent studies also have suggested a link between lead poisoning and juvenile delinquency and violent behavior. Lead poisoning can be treated through a potentially painful and expensive process called “chelation therapy”, in which the lead is cleared from the blood and excreted in urine.

In Michigan, the highest incidence of lead poisoning is in the Counties of Wayne, Kent, Muskegon, Berrien, Calhoun, Kalamazoo, Genesee, Ingham, Saginaw, and Oakland. Childhood lead poisoning is of particular concern in the Cities of Detroit, where 63 percent of the homes were constructed before 1950, and Grand Rapids, which has the highest concentration of lead poisoning in the state. Based on data from 1998 blood screenings, in some Detroit zip codes, children had blood lead levels up to 10 times the national average (The Detroit News, 5-17-01).

Lead Abatement Act. The Federal Toxic Substances Control Act contains requirements for the certification of individuals engaged in lead-based paint activities and for the accreditation of lead-based paint activity training programs. In 1996, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for the accreditation of training programs, the certification of individuals and firms engaged in lead-based paint activities, and

work practice standards for performing these activities. The regulations required states to have an authorized program in place as of August 1998; in a state without an authorized program, no individual or firm could perform lead-based paint activity without certification from the EPA.

Before the EPA regulations were promulgated, Michigan had administratively established a certification program. In response to the regulations, Public Acts 219 and 220 of 1998 created the Lead Abatement Act within the Public Health Code. The act contains training program requirements, prescribes accreditation and certification fees, and requires the DCH to conduct training programs. The act also required the DCH to establish a lead poisoning prevention program. The program must include a comprehensive educational and community outreach program regarding lead poisoning prevention, as well as a technical assistance system to assist health care providers in managing cases of childhood lead poisoning. As part of this system, the DCH must require that results of all blood lead level tests conducted in Michigan be reported to the department. When the DCH receives notice of blood lead levels above 10 micrograms per deciliter, it must initiate contact with the local public health department or the physician, or both, of the child whose blood lead level exceeds that level.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

As a package, the bills would implement several of the recommendations developed by a lead abatement workgroup that included participants from several state agencies. The full recommendations are contained in the report *Childhood Lead Poisoning Prevention: A Call to Action*, which is available on the state's web site (www.michigan.gov). Early detection of elevated blood lead levels decreases the possibility of long-term and/or serious effects of lead poisoning. Since as many as 20,000 Michigan children under the age of six may be lead poisoned – with the majority of those being untested, undiagnosed, and untreated – it is crucial that the state adopt a comprehensive approach to increase the numbers of children being screened for lead poisoning, that safe housing be easily identified, and that environmental factors contributing to lead poisoning be identified and mitigated. The bill

package, therefore, constitutes good public policy by protecting the health and well-being of the state's children.

For:

Several years ago, as a way to contain costs, the state moved its Medicaid program to a managed care system and since then has contracted with qualified health maintenance organizations to provide physical and mental health services to the program's recipients. Under state and federal laws, all children under six years of age who are enrolled in the Medicaid program must be screened for elevated blood lead levels (EBLL). The protocol is to test a child at 12 months and again at 24 months, or between three years of age and six years of age if not previously tested. The cost of the lead screening tests is included in a health plan's capitation payment (the state pays a set amount per patient for certain specified services).

Even though all children enrolled in Medicaid are supposed to be screened by the age of six, the actual figures are much lower, perhaps only one-fourth by some estimates. As an incentive to increase lead screening, House Bill 5119 would allow the Department of Community Health, for those HMOs which failed to comply with federal standards for childhood lead screening, to withhold that part of the capitation payment that would have paid for those screening tests; however, the department could restrict payment only to those HMOs with less than an 80 percent compliance rate instead of the full 100 percent rate. The department could then use those funds to contract with a community-based agency or local health department to provide the lead screening tests to the children enrolled in the HMO who were Medicaid recipients.

Response:

House Bill 5119 would penalize an HMO for something that is out of its control. An HMO can encourage its participating providers to screen all children under six who are enrolled in the Medicaid program, but it can't force the providers to do so. And the providers cannot force a parent to give consent to have the test done. The testing is done by taking a blood sample. If a test done by a finger prick shows an EBLL, blood must then be drawn from a vein to confirm the results. Some parents do not want to subject a young baby or child to the trauma and pain of a blood sample, especially if the child is asymptomatic. Others may find it inconvenient to wait for the sample to be drawn or to make a separate trip to a lab. The point is that even if an HMO and its clinicians are proactive in seeking to

screen all Medicaid-enrolled children under six, parents can still refuse to consent.

For:

According to the *A Call to Action* report, the 2000 census data for Michigan indicated that there are almost two million homes in the state that were constructed before 1950. At that time, over 90 percent of homes used lead-based paint. Of this number, close to 400,000 are rental properties. Lead paint does not pose a health risk unless it is released into the interior or exterior of a house through deterioration or lack of maintenance. However, it is often difficult for a family looking for a place to rent to ascertain if a house or apartment poses a danger of lead exposure. House Bill 5116 would create a registry that would list residential and multifamily dwellings, as well as child-occupied facilities (e.g., day-care center, preschool, or kindergarten classroom), that are free of lead-based paint hazards.

Under the bill, owners of target housing that is offered as a rental unit would have to register the property with the Department of Community Health and be placed on the list. Registration would be free, but the owner would have to provide documentation that the property had been examined by a qualified risk assessor and determined to be free of lead-based paint hazards. "Target housing" is defined in the health code and refers to buildings constructed prior to 1978. Since it is difficult for a potential renter to know when a rental property was constructed, owners of post-1978 constructed buildings could also register their properties (with proper documentation of being free from lead-based paint hazards) if they paid a registration fee. (The amount of the fee has not yet been determined.)

Even though there would be some cost associated with the investigation conducted by a risk assessor, and with the registration fee for owners of more recent properties, being on the registry would most likely increase the desirability of the property, thus ensuring that it would rarely be without renters.

Response:

It is important that the costs associated with registration for non-target housing and the costs for lead abatement for target housing be kept low or that grant monies and/or low-interest loans be available to offset those costs. Otherwise, the bill could inadvertently reduce the availability of affordable housing for low-income families.

Further, the bill is a good beginning, but needs to be more comprehensive to ensure effectiveness. Get the

Lead Out, a coalition of organizations which seek to end childhood lead poisoning in Grand Rapids and Kent County, recommend that a workgroup be established to further develop the bill so that an effective registry would be implemented. Apparently, similar registries in other states have failed to accomplish the intended goals. States that have created successful registries have offered limited liability protection, offered tax credits, prohibited insurers from waiving lead hazards in their coverage, and more. In addition, some states are finding that a phase-in approach over several years gives the private sector advance notice of coming changes and increases compliance numbers, and other states.

For:

Current rules strongly encourage laboratories that provide analyses of blood lead samples to report the results electronically. House Bill 5117 would require the results from these analyses to be reported electronically within five days of when an analysis was completed. The bill would enable treatment to begin sooner and exposure to lead sources to be ended more quickly. This would be beneficial because early treatment for an adult or child with elevated blood lead levels can significantly decrease the negative health effects associated with lead poisoning.

For:

House Bill 5118 is an important component of the bill package. It would create a multi-agency/multi-stakeholder task force charged with studying environmental threats of lead poisoning to the health of the state's children, reviewing the state's lead poisoning prevention program, and evaluating the effectiveness of the program. The commission would also be responsible for developing short- and long-range strategic recommendations for childhood prevention and control in the state. As the tasks specified in the bill are accomplished, such as increasing blood testing rates for children, eliminating or managing sources of lead poisoning, and enhancing public awareness of the dangers of lead poisoning, the health problems associated with lead poisoning, which include developmental delays and learning disabilities, should decrease.

POSITIONS:

A representative from the Michigan Rental Property Owners Association testified in support of the bill. (1-20-04)

A representative from Get the Lead Out indicated that the coalition is generally supportive of the legislation. (1-20-04)

A representative from the Michigan Junior League testified that the League supports the legislation in principle. (1-20-04)

A representative from Ascension Health/St. Mary's testified in support of the bills. (1-20-04)

A representative from the West Michigan Environmental Council testified in support of the bills. (1-20-04)

A representative from the Department of Community Health indicated support for the bills. (1-20-04)

A representative from the Michigan Association of School Social Workers indicated support for the bills. (1-20-04)

A representative from the ARC Michigan indicated support for the bills. (1-20-04)

A representative from The Michigan Health & Hospital Association indicated support for the bills. (1-20-04)

A representative from the Michigan State Medical Society indicated support for the bills. (1-20-04)

Representatives from the Michigan Association of Health Plans indicated support for efforts to improve the health care of children in Michigan, but have concerns regarding House Bill 5119. (1-20-04)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.