
Special Review

Lead Poisoning Prevention Act
and Lead Hazard Mitigation Act

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State of Rhode Island and Providence Plantations
General Assembly
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May 16, 2005

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Representative Robert A. Watson

We have completed a special review of the duties and responsibilities assigned to state agencies by Chapter 42-128.1 of the General Laws-*Lead Hazard Mitigation*, and Chapter 23-24.6 *Lead Poisoning Prevention Act*. Our report is included herein as outlined in the Table of Contents.

Sincerely,

Ernest A. Almonte, CPA, CFE
Auditor General

**SPECIAL REVIEW – LEAD POISONING PREVENTION ACT AND
LEAD HAZARD MITIGATION ACT**

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Executive Summary

*SPECIAL REVIEW – LEAD POISONING PREVENTION ACT AND
LEAD HAZARD MITIGATION ACT*

We conducted a special review of the *Lead Poisoning Prevention Act*, which has been in effect since 1992, and the statute entitled *Lead Hazard Mitigation*, which is scheduled to be implemented July 1, 2005. Our objective was to identify practices and procedures that could be improved or made more efficient, and to address any unreasonable hardships caused, or likely to be caused, by the Lead Hazard Mitigation statute.

The federal Centers for Disease Control and Prevention require each state to develop a strategic plan to eliminate lead poisoning in children by 2010. In Rhode Island, the elimination goal is to decrease the proportion of incidences of lead poisoning to less than 5% in each community in the state without decreasing the availability of lead safe, affordable housing.

The Lead Poisoning Prevention Act concentrates on the first part of this strategy: reducing blood lead levels in children under the age of 6. Since 1995, the incidence of lead poisoning statewide has decreased from 14.7% to 3.7% (“incidence” is defined as the percent of new cases with a blood lead level equal to or greater than 10 micrograms per deciliter of blood). While this is impressive, the rate of incidence remained unchanged between 2003 and 2004, and 1,167 children were lead poisoned for the first time in 2004.

The Lead Hazard Mitigation Act focuses on rental housing. The *Comprehensive Strategic Plan* developed for the Housing Resources Commission estimates that approximately 300,000 housing units in Rhode Island were built before 1978, when lead paint was banned. Approximately 30,000 units are considered high risk and in urgent need of lead hazard reduction. The Lead Hazard Mitigation Act establishes lead hazard mitigation standards, which are easier to comply with than the existing lead safe standards. Owners of rental property must meet various new requirements beginning July 1, 2005 which include attending a lead hazard awareness class, fixing hazards on their rental property and obtaining a Certificate of Conformance for each rental unit upon tenant turnover.

We found that state agencies have generally been successful in outreach and financial assistance efforts. As required by law, a workgroup formed by representatives of the Division of Family Health within the Department of Health (DOH), the Governor’s Office and the Housing Resources Commission developed a series of public service announcements that encompass four separate time periods between May 2004 and June 2005. The results of this effort included production of four fact sheets and one booklet explaining the Lead Hazard Mitigation Act in English and Spanish. The Housing Resources Commission developed a three-hour awareness course and also certified the training instructors and facilities through which the seminars are provided. DOH has licensed over 200 lead inspectors/technicians.

The Rhode Island Housing and Mortgage Finance Corporation offers programs to assist in making homes and rental properties lead safe. Local assistance programs are also

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available in six communities in the state. The state offers a residential lead abatement credit against the personal income tax.

Our review of the Lead Poisoning Prevention Act and the Lead Hazard Mitigation Act resulted in recommendations that we believe will make these programs more effective. These include securing additional funding for the production and implementation of media/educational efforts, providing evidence of screening for lead poisoning to owners of rental property, implementing procedures to ensure that inspections of child care facilities, including schools, are conducted at least annually, establishing a new category for those high-risk properties in the process of being remediated, and providing funding to allow for the hiring of additional personnel.

We considered three key areas of the lead hazard mitigation program to determine whether any unreasonable hardships exist that should be corrected before implementation of the statute. We determined that on-line courses should be made available for the lead hazard awareness seminars. In addition, the requirement for annual reinspections for lead-safe rental properties should be revised, and prompt action should be taken regarding deferral of the implementation date of the Act to avoid the incurrence of unnecessary costs to insurers.

INTRODUCTION

OBJECTIVES, SCOPE AND METHODOLOGY

We conducted a special review of the *Lead Poisoning Prevention Act*, which has been in effect since 1992, and the statute entitled *Lead Hazard Mitigation*, which is scheduled to be implemented July 1, 2005. Our review primarily covered the period from July 1, 2003 to March 31, 2005. Where relevant, we extended our review to other periods.

Our objective was to identify practices and procedures that could be improved or made more efficient, and to address any unreasonable hardships caused, or likely to be caused, by the Lead Hazard Mitigation statute. Section 42-128.1-12 also requires us to consider the following matters:

- (A) The number and type and date of public service announcements required by section 42-128.1-6(1);
- (B) The availability and distribution of education materials specified by section 42-128.1-6(2)(i);
- (C) The number, date and location of lead hazard awareness seminars and the number of persons who have participated in those seminars;
- (D) The number of “mitigation inspectors,” average length of time necessary to conduct the inspections, the costs of meeting standards per inspection and the availability of inspectors to conduct the inspections at a reasonable cost needed in the various geographic areas of the state; and
- (E) The availability of programs to assist property owners, especially low and moderate income property owners.

We reviewed relevant legislation, regulations, policies and procedures; interviewed responsible personnel; and performed tests and other procedures as considered necessary in the circumstances. Our review was limited to functions performed by the Department of Health and the Housing Resources Commission and did not extend to any other department or agency which may have responsibilities relative to lead poisoning prevention and lead hazard mitigation. Additionally, we did not attempt to verify the data accumulated by the Department of Health regarding the prevalence or incidence of lead poisoning among children.

BACKGROUND

The Lead Poisoning Prevention Act was enacted in 1992 as a result of findings by the General Assembly that environmental exposures to even low levels of lead increase a child's risks of developing permanent learning disabilities, and that childhood lead poisoning is caused by environmental exposure to lead. The most significant sources of environmental lead are lead based paint in older housing, house dust, and soil contaminated by lead paint.

The purpose of the law is to protect the public health by establishing a comprehensive program to reduce exposure to environmental lead and prevent childhood lead poisoning; to establish rigorous, systematic enforcement of requirements for the reduction of lead hazards in properties where children have been lead poisoned; and to define the Rhode Island Department of Health (DOH) as the main agency charged with specific responsibilities. These include:

- ❑ Defining lead poisoning
- ❑ Establishing programs for screening persons, especially children under the age of 6, who are at risk of lead poisoning
- ❑ Setting standards for eliminating and reducing lead hazards in buildings and premises, including dwellings where a child under the age of 6 who has been lead poisoned resides
- ❑ Providing information to the public about the risks of lead poisoning
- ❑ Initiating enforcement actions against persons who violate the provisions of the law.

The Lead Hazard Mitigation statute was enacted in 2002 as a result of legislative findings that the state's "rental housing stock is older and lead hazards are widespread"; there has been "an insufficient level of lead hazard abatement in Rhode Island's rental housing stock; children, especially in older urban communities, have been victimized by lead poisoning at disproportionately high rates; the cost of meeting the lead hazard abatement standards established by DOH has ranged from \$7,000 to \$15,000 per unit"; and this has resulted in "few properties being improved to state standards as a result of voluntary activity by property owners".

The purpose of the chapter is "to increase the supply of rental housing in Rhode Island in which lead hazards are, at a minimum, mitigated; to improve public awareness of lead issues and to educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; and to resolve disjointed insurance practices arising from lead liabilities exclusions". The chapter establishes the Housing Resources Commission (HRC) as the "lead state agency for lead hazard mitigation, planning, education, technical assistance,

and coordination of state projects and state financial assistance to property owners for lead hazard mitigation”.

The Centers for Disease Control and Prevention requires each state to develop a strategic plan to eliminate lead poisoning in children by 2010. In Rhode Island, the elimination goal is to decrease the proportion of incidences of lead poisoning to less than 5% in all communities in the state without decreasing the availability of lead safe, affordable housing.

The Lead Poisoning Prevention Act concentrates on the first part of this strategy: reducing blood lead levels in children under the age of 6. Since 1995, the incidence of lead poisoning statewide has decreased from 14.7% to 3.7% (“incidence” is defined as the percent of new cases with a blood lead level equal to or greater than 10 micrograms per deciliter of blood). While this is impressive, the rate of incidence remained unchanged between 2003 and 2004, and 1,167 children were lead poisoned for the first time in 2004.

Fiscal year	(1) Total # of children tested	(1) Total # of children with BLL >= 10 mcg/dl	(1) %	(2) Total # of children tested with no previous elevated BLL	(2) New incidents of children with BLL >= 10 mcg/dl	(2) %
1995	33,212	6,835	20.5%	27,766	4,070	14.7%
1996	32,996	5,843	17.7%	27,395	3,368	12.3%
1997	33,647	4,446	13.2%	28,243	2,369	8.4%
1998	32,684	3,437	10.5%	28,266	1,870	6.6%
1999	32,719	3,208	9.8%	29,280	2,025	6.9%
2000	31,347	2,741	8.7%	28,498	1,740	6.1%
2001	34,685	2,813	8.1%	31,940	1,857	5.8%
2002	34,835	2,450	7.0%	32,057	1,535	4.8%
2003	34,127	1,811	5.3%	31,665	1,161	3.7%
2004	33,839	1,685	5.0%	31,718	1,167	3.7%

Source:

- (1) RI Department of Health – Prevalence of Elevated Blood Lead Levels (BLL >= 10mcg/dl) among RI Children by City and Town – Numbers based on each child’s highest blood test in a given year – data reported here are statewide totals only.
- (2) RI Department of Health – Incidence of Elevated Blood Lead Levels (BLL >= 10mcg/dl) among RI Children by City and Town – Numbers based on each child’s highest blood test in a given year – data reported here are statewide totals only.

The Lead Poisoning Prevention Act defines a “lead-safe” dwelling as one that has undergone sufficient lead hazard reduction to ensure that no significant environmental lead

hazard is present. Specifically, a surface, material, substance, or medium (e.g. water, soil, dust) contains lead in amounts deemed to be within an acceptable range and/or does not contain lead in a condition which is readily accessible to children under six years of age. All interior and exterior paint must be intact, and all friction surfaces (including windows, doors, stairs, etc.) must have been treated to eliminate friction points or surfaces so that the paint is not subject to abrasion. We note that this act applies to all residences, including single-family, owner occupied homes as well as rental properties.

In order for a property owner to receive a lead-safe certificate, a comprehensive environmental lead inspection must be performed by an independent lead inspector or technician that includes an evaluation of lead in painted surfaces (which entails both a visual inspection and the use of XRF instruments), collection of dust samples in each room for laboratory analysis, evaluations of the lead content in the water, and evaluations of the lead content in the soil surrounding the premises. If no hazards are identified, the inspector will issue a Certificate of Lead-Safe Status to the owner. Any hazards that are identified during the inspection are required to be abated prior to issuance of the certificate. A subsequent clearance inspection is required upon completion of the lead hazard abatement work. This inspection is more limited in scope, the focus being directed to the areas in which lead hazards had been identified.

The Lead Hazard Mitigation Act focuses on rental housing. The *Comprehensive Strategic Plan* developed for the Housing Resources Commission estimates that approximately 300,000 housing units in Rhode Island were built before 1978, when lead paint was banned. Approximately 30,000 units are considered high risk and in urgent need of lead hazard reduction.

The Rhode Island Housing Resources Commission was established in 1998 as a state “agency within the executive department” charged with “responsibility for developing plans, policies, standards and programs and providing technical assistance for housing”. The commission is comprised of twenty-seven members. Its specific powers and duties consist of “(1) policy, planning and coordination of state housing functions; (2) establishing, implementing, and monitoring state performance measures and guidelines for housing programs; and (3) administering the programs pertaining to housing resources that may be assigned by state law”.

The Lead Hazard Mitigation Act establishes lead hazard mitigation standards, which are easier to comply with than the existing lead safe standards. The new law requires (in summary) -- all owners of rental property built before 1978, or their designee shall:

- ❑ Attend a lead hazard awareness class,
- ❑ Conduct a visual assessment of their rental property,
- ❑ Fix hazards on their rental property,

- ❑ Have an independent clearance inspection in order to obtain a Certificate of Conformance for their rental unit(s),
- ❑ Give tenants information about lead hazards and a copy of the inspection report,
- ❑ Respond to tenant concerns,
- ❑ Perform regular maintenance on their rental unit(s), and
- ❑ Keep their certificate of conformance current.

To obtain a certificate of conformance, the owner (or his/her designee) must complete a visual inspection of the rental property (or hire an authorized lead inspector/technician to do so) to ensure that interior and exterior paint is intact, all friction surfaces that are painted are free from abrasion and friction points, high impact areas such as door jambs and stairs are covered with a durable cover or lead free coating, horizontal surfaces (including, but not limited to window sills, window troughs/wells, floors, stairs, etc.) are able to be cleaned, and soil within 5 feet of the premises and within 5 feet of any designated play area for children are covered or made inaccessible to children.

A subsequent clearance inspection is required to be conducted by an independent, licensed lead inspector or technician that includes a visual inspection of painted and friction surfaces and collection of dust samples for laboratory analysis. We note that in these inspections, no laboratory evaluations are performed on the soil and water. If no hazards are identified, the inspector will issue a Certificate of Conformance to the owner. If hazards are identified, the owner must mitigate the lead hazards and schedule a subsequent inspection to ensure adequate compliance.

As of May 5, 2005, the Housing Resources Commission has issued 571 Certificates of Conformance.

FINDINGS AND RECOMMENDATIONS

OUTREACH EFFORTS

Section 42-128.1-12 of the General Laws requires the Office of the Auditor General to consider whether certain specific matters have been complied with, relating to readiness to implement the Lead Hazard Mitigation Act. We found that state agencies have generally been successful in outreach efforts and in preparing for implementation of the Act.

Public Service Announcements

Section 42-128.1-6 of the Lead Hazard Mitigation Act, related to Education, requires that “(1) the Governor, in conjunction with the Department of Health and the Housing Resources Commission, shall sponsor a series of public service announcements on radio, television, and print media about the nature of lead hazards, the importance of lead hazard control and mitigation, and the purposes and responsibilities set forth in the chapter”. We found that media campaigns were conducted during four separate time periods.

- ❑ A total of \$40,000 was expended during May-June 2004 for 111 television spots, 146 radio spots, and 7 newspaper advertisements.
- ❑ During the November-December 2004 period, \$12,000 was expended on 237 radio spots (the media workgroup was unable to utilize the video for television spots previously broadcast and production of a new video was considered too costly).
- ❑ In the January-February 2005 period, \$30,000 was expended on 231 radio spots, 7 newspaper advertisements, and one billboard alongside Route 95 south in Providence.
- ❑ Plans for the May-June 2005 period include a billboard, radio spots, and newspaper advertisements. In addition, the media workgroup is working with several banking institutions and utilities to include lead awareness notices in their monthly statements mailed to customers.

Educational Materials

In April 2004, the media workgroup produced four fact sheets and one booklet explaining the Lead Hazard Mitigation law in English and Spanish. Each fact sheet targets a specific group, including new owners of rental properties, current owners or rental properties, owners of ten or more residential rental units, and tenants. Approximately 100,000 booklets and fact sheets were printed and provided to the Housing Resources Commission (HRC) for distribution through various entities, including the HRC, DOH, state Department of Business

Regulation, the Childhood Lead Action Project, visiting nurses organizations, insurance agents, and realtors. The fact sheets are also accessible through HRC's website. Other information regarding lead hazards and lead abatement are available from the Department of Health and through the DOH website.

HRC is also developing posters designed to inform senior citizens who are property owners of the new law. These are to be placed in senior centers throughout the state. Also, HRC is developing 'warning' signs for retail hardware, paint stores, and home-improvement centers.

Lead Hazard Awareness Seminars

We met with personnel from the Housing Resources Commission, which developed the three-hour awareness course and also authorizes the training instructors and facilities through which the seminars are provided. Attendance at this course is one of the new requirements of the Lead Hazard Mitigation Act for rental property owners. These seminars began in April 2004. The maximum charge for the course is \$50, but some non-profit organizations are making the course available without charge or at a reduced fee. Courses are offered in both English and Spanish (a Portuguese version is currently being developed). The courses were offered at 17 separate locations throughout the state in 2004. Additionally, 6 communities offered free classes at various times during 2004. Currently, the HRC website lists 22 training facilities that offer the course.

The HRC receives monthly reports from training providers indicating the number of persons who attended the seminars. As of April 25, 2005, a total of 9,182 individuals have attended these seminars: 6,958 during the period April-December 2004, and 2,224 in 2005.

In order to verify the number of attendees, we requested the HRC to obtain the attendance records from the training providers. We were able to review documentation supporting attendance by 8,490 of the 9,182 total reported attendees (92.5%).

Mitigation Inspectors

We met with personnel in the Department of Health and gathered the following data as of March 31, 2005:

- ❑ 203 Lead inspectors/technicians have been licensed by the DOH;
- ❑ Lead inspectors/technicians have offices throughout Rhode Island, as well as in 4 nearby Massachusetts communities and 1 nearby Connecticut community.
- ❑ Costs for limited mitigation inspections range from \$95 to \$180 per unit. These inspections typically require about 45 minutes to complete.

- Costs for comprehensive inspections needed for lead-safe status are estimated at \$300-500 per unit. The time required for a comprehensive inspection is estimated at three hours.

The Department of Health will continue to receive inspection reports for lead safe certifications, while the Housing Resources Commission will receive the inspection reports for the conformance reports when the Lead Hazard Mitigation Act takes effect. Each agency will have to determine whether the inspections were conducted in accordance with their regulations.

Assistance Programs

The Rhode Island Housing and Mortgage Finance Corporation offers programs to assist in making homes and rental properties lead safe. Eligible repairs include new replacement windows and doors, interior and exterior painting and removal of lead contaminated soil. The loans have a deferred payment feature, so that the loans are repaid only when the property is sold or ownership is transferred. Borrowers can receive a reduction of \$2,000 in the loan amount by attending a class on lead safe maintenance procedures. Interest on the loans is set at zero or 3%, depending on household income.

Owners can qualify for this program if the property was built before 1978, the household income is below certain levels depending on family size, and there is a child under the age of six living at the property (or visiting 14 days or more per year). Investors who own 12 units or less may qualify if rents are below applicable fair market rents.

The State of Rhode Island offered a residential lead abatement credit against the personal income tax during the period 1992-2004, subject to certain qualifications. The credit was equal to the amount actually paid for the required lead removal or reduction up to a maximum of \$1,000 per dwelling unit. Any amount of tax credit not used could be carried forward to five tax years.

In 2005, the amount of the income tax credit was increased to a maximum of \$1,500 per dwelling unit for mitigation and up to \$5,000 for abatement. The tax credit may be claimed on taxes due to the state for 2005 for certified mitigation or abatement completed during 2005. If the allowable amount of the tax credit claim exceeds the income taxes owed by the claimant, or if no state income tax is due, the credit will be treated as a tax refund to the claimant. There is a \$250,000 cap on the total amount available for tax credit claims.

Local assistance programs are also available in Providence, East Providence, Cranston, Warwick, Woonsocket, and Pawtucket.

EFFECTIVENESS OF PROGRAMS

Section 42-128.1-12 of the General Laws requires us to provide recommendations to make these programs more effective in achieving their respective purposes. Our review yielded the following findings and recommendations that we believe can aid in improving the effectiveness of these programs.

Public Service Announcements

A majority of the available funding for public service announcements was expended in anticipation of the Lead Hazard Mitigation Act being implemented on July 1, 2004. Postponement of implementation to July 1, 2005 (or possibly later) dilutes the effectiveness of this campaign. We believe additional funding should be made available to allow for an increased public awareness campaign during the period immediately before and after eventual implementation of the Lead Hazard Mitigation Act.

Our review also found that the tax credit available for residential lead abatement has been used sparingly. In calendar 2002, 22 taxpayers received a total of \$15,814 in tax credits; in 2003, 12 taxpayers claimed a total of \$16,862; and in 2004, 9 taxpayers claimed a total of \$5,946. The new income tax credit available for calendar 2005 includes both lead abatement and lead hazard mitigation, and provides greater tax relief than the previous tax year. We believe including this tax credit program in the public awareness campaign discussed above will lead to greater participation.

RECOMMENDATION

1. Provide funding for additional public awareness announcements immediately before and after implementation of the Lead Hazard Mitigation Act. Include the available tax credit program for lead abatement and mitigation in the campaign.

Auditee Views:

The Department of Health shares responsibility for public service announcements with the Housing Resources Commission and the Governor's Office. The Department of Health and the Human Resources Commission agree that additional funding for both media efforts and the staffing to support education and outreach is necessary to continue public awareness and assure understanding of the requirements of the law for property owners and tenants on an ongoing basis. Including information on the available tax credit program would be an appropriate addition to the campaign materials.

EVIDENCE OF SCREENING FOR LEAD POISONING

Section 23-24.6-8 of the General Laws requires evidence of screening for lead poisoning to be provided for each child under the age of six in the care of a licensed child care provider, or prior to enrollment in a public or private nursery school and kindergarten. This assists in ensuring that children in this age group are being screened for lead poisoning as required by law, while also affording a degree of protection to the child care provider or school should a child's blood lead level subsequently exceed acceptable standards.

Similar evidence of screening for lead poisoning is not required to be provided by owners of rental property with prospective tenants including children under the age of six. However, prospective tenants can request evidence that the rental property is lead safe or mitigated from the landlord.

MATTERS REQUIRING FURTHER STUDY OR LEGISLATIVE DELIBERATION:

Consideration should be given to amending section 23-24.6-8 to include owners of rental property considering renting or leasing to tenants with children under the age of six. As currently required for schools and child care providers, evidence of lead testing for children under the age of six (not testing results) could be provided to owners of rental property. This will help to ensure that children in that age group not in child care or in nursery school or kindergarten are being screened as required while establishing the child's blood lead level at the time of residence in the rental property.

Auditee Views:

The Department of Health believes this appears useful within the context of a clearly defined goal. DOH strongly agrees that issues associated with medical testing need to be thoroughly studied to assess the impact this may have on available, affordable housing for a population that moves frequently.

INSPECTION OF CHILD CARE FACILITIES

Section 23-24.6-14 of the General Laws as well as Section 4.2 of the "Rules and Regulations for Lead Poisoning Prevention" issued by the Department of Health require DOH or its designee to conduct Comprehensive Environmental Lead Inspections of all licensed child care facilities in the state, including licensed preschools, day-cares, nursery schools, public and private elementary schools, playgrounds, and shelters and foster homes serving children under six years of age.

Our review determined that, due to staff shortages, only day care programs are currently being inspected. Since children under the age of six could be exposed to lead

hazards at the other child care facilities included in the law which could contribute to elevated blood lead levels, we believe DOH should implement procedures to ensure these inspections are conducted at least annually. If necessary, DOH should request additional personnel to fulfill this important function.

RECOMMENDATION

2. Implement procedures to ensure that inspections of child care facilities, including schools, are conducted at least annually.

Auditee Views:

The Department of Health agrees that inspections should be conducted in licensed child care facilities. DOH would like to see such facilities having initial comprehensive inspections with annual reinspections. Private inspectors under contract to Department of Health conduct comprehensive inspections. Environmental Lead Program staff provide oversight, quality assurance, and follow up. This effort requires both additional funding to pay for the private inspections and additional staffing. Funding to assist licensed child care facilities also needs to be identified.

HIGH RISK PREMISES AND DWELLINGS

Section 23-24.6-23(e) requires DOH to notify property owners that the premises presents a high risk of lead poisoning when both the following conditions have been met: (i) there have been three or more at risk children under the age of six with at least environmental intervention blood lead levels (EIBLL), and (ii) 50% of children under the age of six from the premises who have been tested have at least EIBLL. DOH currently regards a single venous blood lead level of 20 micrograms or higher per deciliter of blood, or two venous blood lead levels of at least 15 micrograms per deciliter of blood separated at least 90 days, but not more than 365 days apart, to constitute “significant lead poisoning” for environmental intervention blood lead levels.

A property owner who receives notice that the premises are high risk has thirty days to conduct a comprehensive lead inspection indicating that lead hazards have been corrected to the lead safe standard, or present a compliance schedule to meet the lead safe standard to DOH and achieve the lead hazard reduction within ninety days.

Property owners who fail to meet these requirements are notified that the premises are declared unsafe for habitation by children under the age of six. A copy of the notice is sent for recording to the town clerk or recorder of deeds in the municipality where the property is located. Once notified, the property owner is required to post and maintain a warning at the primary entrance to the premises and at each unit therein that the unit is unsafe for children under the age of six.

Any property owner who receives a high risk notice and fails to abate the lead hazards is deemed to have committed a felony if there is a subsequent instance of an at risk occupant with an EIBLL attributable in whole or in part to conditions in the dwelling unit. The felony shall be punished by imprisonment for not less than one year nor more than five years and/or a fine of not less than \$5,000 nor more than \$20,000.

At the time of our review, 45 properties in the state were considered high risk. We examined each of the files associated with these high-risk properties. Seven properties are described as single-family houses; two of these are further identified as owner-occupied. We could not determine based on the information in the files whether the other five were owner-occupied.

While all of these properties met the definition of high risk, we found that six properties are in the process of being remediated. For example, we reviewed a case in which the second unit in a two-family unit has received a lead-safe certificate but the first unit is not in compliance. In another case, 2 of the 3 units have received lead-safe certificates. In a third case, all four units are certified lead-safe but work remains to be done on water and exterior hazards.

We believe that properties such as these should be removed from the High Risk category and listed under a new category indicating 'Abatement in Progress'. This would enable the property owner to have the property removed from the public listing of high-risk properties while holding the owner to the compliance schedule for achieving complete lead hazard reduction.

RECOMMENDATION

3. Establish a new category for those high-risk properties in the process of being remediated.

Auditee Views:

The Department of Health believes the existing law does not allow creation of a separate category for properties in the process of being remediated.

NEED FOR ADDITIONAL PERSONNEL

We previously stated our belief that DOH should be afforded additional personnel to fulfill the statutory and regulatory requirement of inspecting all child care facilities in the state to ensure potential lead hazards are abated in these facilities.

Implementation of the Lead Hazard Mitigation Act will create a need for DOH to maintain liaison with the Housing Resources Commission and to support the HRC through quality assurance and oversight of lead professionals licensed by the DOH. An additional industrial hygienist could respond to complaints regarding licensed lead

inspectors/technicians that perform regulatory work, and spot check work performed by lead renovators and remodelers.

An individual under contract currently staffs the position of data manager for the environmental lead program. We believe the importance of this function requires the resources of a full time position.

RECOMMENDATION

4. Seek additional funding to allow for the hiring of additional personnel to inspect child care facilities, maintain liaison with the HRC and oversee licensed lead professionals, and convert the position of data manager to a full time state employee from its current contract status.

Auditee Views:

The Department of Health concurs with the need for additional personnel to perform all legislative mandates, as well as having the data manager as a regular state employee.

CONSIDERATION OF POTENTIAL HARDSHIPS

Chapter 42-128.1-12 requires us to address any unreasonable hardships caused by this chapter or likely to be caused by this chapter with its full implementation on July 1, 2005. We have considered the potential for hardships in three key areas: duties of property owners, annual inspection report, and property insurance. These matters are discussed below.

Duties of Property Owners

Section 42-128.1-8(a) (1) of the General Laws requires property owners of pre-1978 rental dwellings, which have not been made lead safe or have not been lead hazard abated, to “learn about lead hazards by taking a lead hazard awareness seminar”. Over 9,000 individuals to date have attended these three-hour programs, offered at a cost of no more than \$50. Mandatory attendance can create difficult situations for elderly landlords and out-of-state residents. We believe the Housing Resources Commission should explore the feasibility of offering or sponsoring on-line classes for those who wish to learn about lead hazards but cannot easily attend classes as currently offered.

RECOMMENDATION

5. Consider sponsoring on-line lead hazard awareness seminars for individuals unable to attend classes in person.

Auditee Views:

The Housing Resources Commission concurs with this recommendation. Additional resources including, but not limited to design and development, monitor, and web-based support will be needed for this web-based platform training.

Annual Reinspection Requirement

Rules and regulations for lead poisoning prevention issued by the Department of Health pursuant to the Lead Poisoning Prevention Act require an annual reinspection at intervals not to exceed 12 months from the date of the last lead-safe certification, unless the dwelling unit is exempt from this requirement.

An exemption can be obtained if the dwelling unit and common areas have lead-free windows, the exterior siding is lead-free or covered with vinyl siding, and the dwelling unit and common areas have been certified lead-safe for *three* consecutive years. We believe that the requirement for this exemption should be reconsidered to replace the three consecutive year requirement with a requirement that would require reinspection once every three years if the other current exemption provisions have been met.

RECOMMENDATION

6. Reconsider the requirement for exemption from annual reinspections to provide for reinspection once every three years if certain conditions exist.

Auditee Views:

The Department of Health concurs with this recommendation and believes it can be included in future regulatory amendments.

Insurance

We met with representatives of the property casualty insurance association and the Rhode Island “Fair Access to Insurance Requirement” (FAIR) Plan, as well as personnel from the Division of Insurance within the state Department of Business Regulation to determine whether property liability insurance will be available to property owners once the Lead Hazard Mitigation Act is implemented.

The Division of Insurance issued Insurance Regulation 101 in April 2003 to “establish a uniform policy regarding lead poisoning coverage in pre-1978 residential rental property liability insurance and to set forth requirements to assure the availability of insurance coverage for losses and damages caused by lead poisoning”.

Insurers issuing liability insurance covering rental properties are not permitted to refuse lead liability coverage if the property owner provides evidence that the rental unit is in compliance with lead hazard abatement or mitigation requirements, unless the refusal is in accordance with the insurers' underwriting guidelines. For rental properties not in compliance, the insurer may decline to insure the property against liability risks, or may accept general liability coverage but reject that portion of the risk related to lead liability coverage. If the insurer declines to issue coverage for lead liability, the insurer must assist the insured in placing lead liability coverage through the FAIR plan.

The FAIR plan is obligated to provide lead liability coverage for both compliant and non-compliant rental properties, either under a homeowner policy or a stand-alone lead liability policy. However, the FAIR plan is not obligated to provide lead liability coverage to any property owner who fails to remediate the property after a notice of violation has been issued (subsequent to June 30, 2005, if the Lead Hazard Mitigation act is implemented July 1, 2005). If a notice of violation is issued and the property owner fails to bring the property into compliance within 90 days, any insurance policy issued to that property owner is subject to cancellation and/or renewal.

We were advised by representatives of the property casualty insurance association that insurers will need up to 60 days prior to the implementation date of the Lead Hazard Mitigation act to provide accurate renewal policies to insured property owners. Insurers reportedly incurred significant costs when the implementation date was delayed to July 1, 2005. Since additional deferral of the implementation date is again under consideration, we believe prompt action regarding the implementation date should be taken to avoid the incurrence of unnecessary costs to insurers.

MATTERS REQUIRING FURTHER STUDY OR LEGISLATIVE DELIBERATION:

Prompt action regarding the implementation date for the Lead Hazard Mitigation Act should be considered to avoid unnecessary incurrence of costs to insurers.

Auditee Views:

The Department of Health and the Housing Resources Commission concur.