

Removing Roadblocks to Lead Hazard Reduction Through Effective Public Policy

Presented by

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- In the early 1990s, the federal government began a grant program for states to initiate lead paint abatement.
- At the time, the Department of Housing and Community Development wanted to obtain a federal grant to initiate a lead paint abatement program. However, to qualify for the federal grant, the state had to have a lead certification program for contractors, professionals, and workers and Virginia did not have a lead certification law.
- Further, the idea of lead abatement regulation was somewhat controversial. Thus, the Joint Subcommittee on Abatement of Lead-Based Paint was established in 1993 for the sole purpose of recommending a lead abatement regulatory program and thereby ensuring the eligibility of the Department of Housing and Community Development for federal funding.
- The Joint Subcommittee met twice in 1993 and recommended a lead certification program. To avoid a heated controversy relating to regulation of lead abatement, the Joint Subcommittee made a commitment that the lead certification program would be no more stringent than the federal requirements. This commitment defused most of the controversy.

- Thus, the lead certification bill, SB 405, was passed during the 1994 Session.
- In most cases, a study will expire upon achieving the stated study goal. However, the lead study was continued in 1994 to monitor the progress of the regulatory program and to make sure that the funds were received.
- From 1994 until the present, the Joint Subcommittee has always been associated with assisting state agencies to obtain federal funding and, in more recent years, with actually saving money for the Commonwealth. Thus, the Joint Subcommittee has been continued in one year increments for 13 years---creating a very long legislative history.
- The longevity of the study has allowed the study to evolve. The study's evolution has been a phenomenon among legislative studies. From 1993 to 1998, the Joint Subcommittee's official focus was on lead paint abatement.
- During this period, the study's legislative initiatives were primarily focused on resolving issues relating to the Virginia certification law for lead contractors, workers, and supervisors.
- The study's logo still reflects those early years, remaining as it was originally designed---a dripping paint can.
- However, beginning slowly and then moving quickly, the study began to shift away from focusing only on the lead certification program and more towards building public/private partnerships and examining other lead poisoning issues.

- In 1999, the study's evolution was completed with the revision of its name from the Joint Subcommittee on Abatement of Lead-Based Paint to the Joint Subcommittee on Lead Poisoning Prevention.
- Over the years, the Joint Subcommittee has been proud of its accomplishments and of the efficiency of its study. We have never met more than three times in any year. We have also had a number of successful and important legislative initiatives, including the passage and updating of the lead contractor/worker certification program.
- The philosophy of this Joint Subcommittee has always been and continues to be to promote cooperation and to look for unique and effective efforts for supporting cooperation and taking small, but effective, steps to prevent lead poisoning. We've had to operate in this way because the Commonwealth has not had a lot of excess revenues during much of the period that we have been in existence.
- In other words, early on in its study, the Joint Subcommittee realized that lead poisoning prevention activities require cooperation through partnerships between public and private agencies. Therefore, a number of our initiatives have focused on supporting, in all appropriate ways, state efforts to obtain and maintain federal grant funds, building relationships, encouraging cooperation, removing barriers, promoting data sharing and collaboration.

Some examples of our more significant initiatives are:

- The Department of Health was authorized through SB 828 of 1997 to request **voluntary** reporting of "additional information . . . for special surveillance or other

epidemiological studies." This authority allows the Department of Health to collect blood lead level testing data from physicians and laboratory directors and to maintain surveillance of lead poisoning in Virginia.

- In 2000, the Board of Health was directed to promulgate a protocol for identification of children at risk for elevated blood-lead levels that required testing of children for elevated blood-lead levels or determinations that the children are at low-risk for lead poisoning.
- The Boards of Health and Medicine were requested by SJR 379 of 2001 to cooperate in publicizing the testing protocol. In response to this request, the Board of Medicine published the protocol in *Board Briefs*, a publication that goes out to all licensed physicians and other professionals regulated by the Board.
- Through SJR 380 of 2001, a memorandum of agreement was initiated between the Departments of Health and Medical Assistance Services that clearly establishes the various responsibilities vis-a-vis lead poisoning. The memorandum of agreement covers identification of Medicaid-enrolled children who are at-risk for lead poisoning; the monitoring of children with elevated blood-lead levels; the notification of providers regarding specific children to be tested or managed; the education and training of providers; lead testing and management of children with elevated blood-lead levels; and the improvement of the data systems.
- In 2001, the promulgation of the patient privacy regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 appeared to threaten the partnership between the state health and human resources

agencies. The agencies were concerned about the sharing of protected health information under the HIPAA regulations. In response to the HIPAA concerns, SB 264 of 2002 was enacted to provide strong statutory language to ensure that a secure system for sharing protected health information could be used by the Departments of Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services.

- The secure system established pursuant to the data-sharing partnership that was authorized by SB 264 enabled the Departments of Health and Medical Assistance Services to save an estimated \$1.2 million in 2002.
- In 2003, the Joint Subcommittee recommended extending the data-sharing partnership to the other agencies under the Secretary of Health and Human Resources with the hope of enhancing the cost savings already experienced through the data-sharing partnership.
- Saving money was particularly important in 2003, because, as you probably remember, Virginia was experiencing a fiscal crisis. The 2003 legislation, SB 1083, expanded the authority to share protected health information to include the Department of Rehabilitative Services and the Departments for the Aging, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing.
- These state agencies continue to report substantial cost savings as a result of the partnership developed through the data-sharing law.
- SB 1082 of 2003 revised the blood-lead testing protocol statute to require the Board's protocol to mandate blood-lead

testing at appropriate ages and frequencies. This more stringent approach has considerably improved the likelihood that Virginia's children will be tested for elevated blood-lead levels.

- House Bill 2477 of 2003, also a Joint Subcommittee initiative, was approved to provide an exemption to the medical practice act that allows nurses to conduct lead-poisoning screening. Although we have not been able to document significant changes in office practices as a result of this bill, the concept was to encourage more screenings in situations where physicians may not have or do not make the time for lead-poisoning screening. In other words, the Subcommittee thought that more screening might be performed if nurses were authorized to conduct it. Time may tell and we may yet see positive effects from this initiative.
- In 2004, the Joint Subcommittee set the stage for improving data-sharing through SB 565. As passed, this bill requires the Secretary of Health and Human Resources to develop a reference database of statewide health-related data elements.
- The Joint Subcommittee was informed in its 2005 study that a database of individual data elements is being built from the information systems of each of the relevant agencies. This database may eventually be used in research and to improve the planning, delivery, and financing of health care. Of course, the project is not yet fully implemented; however, hopefully, the project will result in long-term improvement in the delivery of public health services in Virginia.
- In a sense, the Joint Subcommittee came full circle in 2006. In 1994, our first legislative proposal for the lead certification program was for the purpose of satisfying a federal grant

requirement. Our 2006 legislation had much the same purpose---satisfying ever changing federal requirements to qualify for grant funding.

- For example, Senate Joint Resolution 107 requested the Departments of Health, Housing and Community Development, and Labor and Industry to execute a memorandum of agreement relating to the prevention of childhood lead poisoning.
- The memorandum of agreement was needed to facilitate the exchange of information under a new \$3 million federal grant that was recently received by the Department of Housing and Community Development and to enhance the competitive position of the Virginia Department of Health in the 2006 grant cycle.
- This resolution did not pass---in fact, it was struck at my request---because its goal was accomplished early on in the Session. The memorandum of agreement was signed by all parties in early February in plenty of time for all purposes and was attached to the application for federal funding that was submitted by the Department of Health on February 13, 2006.
- In addition, the federal requirements for the Department of Health's Lead-Safe Virginia program were rewritten to include 10 essential elements. At this time, Virginia does not have two of these elements, i.e.:
 1. A requirement for abatement or lead hazard control when a child residing in the unit is found to have an elevated blood lead level and to be lead poisoned; and

2. A prohibition on retaliation when lead risks or lead poisoning are reported.

- The Joint Subcommittee's approach to these issues was to look first to the agencies to determine if they could administratively mandate the two missing elements in Virginia. However, an administrative approach could not be developed in time.
- Thus, a bill was necessary. Senate Bill 450, the vehicle for this Subcommittee recommendation, was developed with some nervousness---because of concerns about opposition from landlords.
- Fortunately, as passed, the bill was unopposed!
- Senate Bill 450 requires the landlord to maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. Failure to maintain the painted surfaces in compliance with these standards will be enforceable under the Uniform Statewide Building Code and will entitle the tenant to terminate the rental agreement.
- The SB 450 also struck language that would have allowed the landlord to declare that he was financially unable to abate the lead-based paint hazard and to terminate the rental agreement.
- The bill prohibits termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level.

- In addition, this year, for the first time, the Joint Subcommittee proposed a two-year continuing resolution---Senate Joint Resolution 103.
- In the last several years, the Joint Subcommittee has analyzed whether to continue the study or to go out of existence. This year, we again discussed whether or not to seek continuation of the study.
- However, this year, even more than in past years, the agencies, with whom we have worked over the past 13 years, strongly urged the Joint Subcommittee to continue its work until 2010.
- Our role as a forum for discussion of new issues and our support of their efforts to obtain federal funding through legislative actions were cited as invaluable.
- Because we did not believe the General Assembly would agree to continue the study for four more years, we opted for a two year resolution authorizing two meetings a year---and we got it! Thus, the study is still in business until 2008 and headed for 15 years of history!
- By 2008, we hope to have some idea of whether the federal government will continue to provide funding for lead poisoning prevention and how Virginia should proceed to protect its children from lead hazards.
- Dr. Vance reminded you in his opening remarks that lead poisoning has permanent neurological effects on young children, impairing the cognitive functions and development of children who were normal, often resulting in mental

retardation, causing irritability and inappropriate behaviors, damaging hearing and eye sight, and generally affecting health.

- Obstacles to increased testing and identification of lead-poisoned children still remain apparent. And, in this day of miracle cures, it is hard to make the public and health care providers aware that the mundane circumstances of every day living---something as simple as living in an old house with chipping and peeling paint or burning candles with lead wicks---can cause the devastating and permanent effects of lead poisoning on normal children.
- For these reasons, the Joint Subcommittee will continue its efforts to prevent lead poisoning and to educate the public and health care providers about the dangers of lead poisoning---at least for another two years!