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FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 7

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

**Environment - Lead Hazards - Environmental Investigation, Reporting, and Risk
Reduction**

This bill requires the Maryland Department of the Environment (MDE), by October 1, 2018, to adopt regulations establishing procedures for conducting environmental investigations to determine lead hazards for children younger than age six and pregnant women with elevated blood lead levels (EBL) greater than or equal to 10 micrograms per deciliter. The regulations adopted pursuant to the bill must be consistent with specified guidelines of the U.S. Department of Housing and Urban Development (HUD); however, this provision may not be construed as requiring MDE to alter any standard established by regulation before January 1, 2017, for lead-based paint or a lead-containing substance. MDE must include the results of the environmental investigations conducted pursuant to the bill in its annual report on statewide childhood blood lead testing. Finally, the bill requires an owner of an affected property to satisfy the modified risk reduction standard within 30 days after receipt of written notice that an environmental investigation conducted pursuant to the bill determined that one of the lead hazards for the person at risk included a lead-based paint hazard in the property.

Fiscal Summary

State Effect: MDE can handle the bill's requirements with existing resources, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal overall, but potential meaningful increase in costs for certain small business rental property owners to comply with the modified risk reduction standard as a result of an environmental investigation conducted pursuant to the bill.

Analysis

Current Law/Background: MDE procedures for conducting environmental investigations related to EBLs are not codified in statute or regulation. Currently, an environmental investigation is conducted whenever a “person at risk” is identified as having an EBL of 10 micrograms per deciliter or greater. “A person at risk” is defined as a child or a pregnant woman who resides or regularly spends at least 24 hours per week in an affected property.

MDE advises that the current procedures incorporate the HUD guidelines, as well as case management guidelines of the federal Centers for Disease Control and Prevention (CDC), and training and certification requirements for individuals and companies providing lead paint services specific to Maryland. MDE reviews and updates these protocols on an as-needed basis to ensure that they remain current and include all potential sources of lead in a child’s environment. MDE further advises that the protocols are designed to ensure that the documentation generated during the investigation allows for enforcement of Maryland law on the reduction of lead risk in housing. Thus, MDE procedures are generally consistent with HUD guidelines, except that:

- HUD guidelines use an EBL of 5 micrograms per deciliter or greater to trigger an environmental investigation, while MDE procedures, like the bill, use an EBL of 10 micrograms per deciliter or greater;
- The federal standard for lead-based paint is equal to or greater than 1 milligram per square centimeter, while the State standard for lead-based paint is more stringent (greater than 0.7 milligram per square centimeter); and
- HUD guidelines generally apply only to federally funded housing, while MDE procedures apply to all housing types.

Currently, two jurisdictions, Baltimore City and Prince George’s County, conduct their own environmental investigations, with results sent to MDE. MDE handles any required follow-up. Each jurisdiction has entered into a memorandum of understanding (MOU) with MDE to conduct investigations and utilizes current MDE procedures so that MDE can be assured of the results.

U.S. Department of Housing and Urban Development Guidelines

The [HUD guidelines](#) for the investigation and treatment of dwellings that house children with EBLs address the management, identification, and reduction of the hazard posed by lead in federally funded housing. The guidelines outline various procedures for the environmental investigation and intervention for children with EBLs. For example, the guidelines include recommendations for testing to determine the source of lead exposure, which should include, at a minimum:

- X-ray fluorescence (XRF) or laboratory paint chip analysis of all defective paint or coatings on the child’s residence including furniture and play structures, and on buildings frequented by the child;
- XRF or laboratory paint chip analysis of all impact and friction surfaces and surfaces that appear to have been chewed, including windowsills;
- dust samples from areas frequented by the child, including play areas, porches, kitchens, bedrooms, and living and dining rooms. Additional dust samples may be collected from other surfaces (*e.g.*, shoes, boots, cars) for which there are no standards;
- soil samples from bare soil areas, particularly child play areas (areas near the foundation of the house and areas from the yard);
- where water testing is indicated, first-drawn and flushed water samples from the tap most commonly used for drinking water, infant formula, or food preparation; and
- where applicable, other media, as appropriate, including glazed tableware or ceramic cookware likely to contain lead.

The guidelines also include examples of questions that investigators should ask regarding a child’s environmental history, common sources of lead exposure to be considered, and other recommendations for assessment and remediation of lead exposure.

Lead Poisoning in Children

According to CDC, there is no safe level of lead exposure, and adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. Since 2012, CDC has urged health care providers and authorities to follow up on any young child with a level as low as 5 micrograms per deciliter. CDC is no longer using the 10 micrograms per deciliter level or referring to a “level of concern.” The new reference level of 5 micrograms

per deciliter represents the blood lead levels of children (ages 1 through 5) in the highest 2.5 percentiles for blood lead levels.

According to MDE's 2015 [*Childhood Blood Lead Surveillance in Maryland*](#) report, the most recent data available, 127,730 blood lead tests from 120,962 children 0-18 years of age were conducted in 2015. A total of 110,217 children younger than age 6 were tested out of an estimated statewide population of 535,094. This was an increase of 1,186 children tested compared to 2014. The estimated population of children 0-72 months of age increased from 2014 by a total of 7,790 children. Of the 110,217 children tested that year, 377 children (or 0.3% of those tested) younger than age 6 were identified as having a blood lead level of greater than 10 micrograms per deciliter, up from 355 in 2014. Of the 377 cases in 2015, 280 were new cases. An additional 1,789 children had blood lead levels between 5 and 9 micrograms per deciliter, down from 2,004 in 2014. Of those 1,789 cases, 1,388 were new cases. According to MDE, much of the decline in blood lead levels in recent years is the result of implementation and enforcement of Maryland's lead law.

Maryland 2015 Lead Targeting Plan

In October 2015, the State released the *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning* (the 2015 targeting plan). The 2015 targeting plan and accompanying proposed regulations called for blood lead testing at 12 months and 24 months of age throughout the State. Previously, only children living in certain at-risk zip codes or who were enrolled in Medicaid were targeted for testing.

The Modified Risk Reduction Standard

The owner of an affected property, defined as residential rental property built before 1978, must comply with a "modified risk reduction standard" if an EBL of 10 micrograms per deciliter or more is found in a person at risk who resides on the property, or a defect is found in a property in which a person at risk resides. Among other changes (discussed below), Chapter 610 of 2011 altered the modified risk reduction standard by requiring a lead dust test and the performance of specified lead hazard reduction treatments; previously, an owner could satisfy the modified risk reduction standard by passing a dust test or performing the treatments. Chapter 610 also altered the various treatments required for a modified risk reduction standard by (1) removing the requirement to strip paint from all interior windowsills, while maintaining the requirement to repaint, replace, or encapsulate the windowsills; (2) specifying that caps of vinyl, aluminum, or other materials are installed only in window wells where lead-based paint or untested paint exists; and (3) specifying that, when a top sash of a window is fixed, it must be done subject to fire code standards.

Finally, Chapter 610 authorized a property owner to comply with the modified risk reduction standard by providing for the temporary relocation of tenants to either a lead-free dwelling unit or another dwelling unit that has satisfied the risk reduction standard for an affected property within 30 days after the receipt of a notice of EBL or a notice of defect.

State Expenditures: MDE advises that the requirement to draft regulations for conducting environmental investigations triggered by an EBL greater than or equal to 10 micrograms per deciliter which are consistent with the HUD guidelines does not substantively change current practice and can be handled with existing resources. However, MDE notes that under the HUD guidelines, an environmental investigation is triggered at the blood lead reference value of 5 micrograms per deciliter or greater. Because the bill directs MDE to incorporate the HUD guidelines with respect to environmental investigations for children and pregnant women with EBLs of 10 micrograms per deciliter or greater, which is consistent with the existing notification requirements for EBLs under State law, MDE assumes that the bill does not require it to undertake environmental investigations at the lower 5 micrograms per deciliter threshold. MDE advises that if the bill were to lower the threshold that triggers an environmental investigation to 5 micrograms per deciliter, workloads increase significantly, requiring additional staff.

While the HUD guidelines apply only to federally funded housing, MDE's protocols encompass all housing types, including owner-occupied, nonsubsidized rentals and day care facilities, as well as federally subsidized housing. MDE assumes that, under the bill, it continues to conduct environmental investigations for all cases of EBL, regardless of housing type.

MDE advises that it can include the results of environmental investigations conducted pursuant to the bill in its annual report on statewide childhood blood lead testing with existing resources, assuming only a summary or aggregate presentation of lead hazards identified during environmental investigations is required.

Local Expenditures: Should the bill require any changes to the procedures outlined in the MOUs between MDE and Baltimore City and Prince George's County, new agreements may be required. However, any impact on Baltimore City and Prince George's County is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of Health and Mental Hygiene; Maryland Association of County Health Officers; Baltimore City; Prince George's County; Department of Legislative Services

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