

Lead-Safe Rental Housing Plan

**Prepared for Governor John Carney and the Delaware General Assembly
by the Childhood Lead Poisoning Prevention Advisory Committee**

State of Delaware

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Table of Contents

Background	2
What is Lead Poisoning?	3
Understanding Childhood Lead Poisoning Rates in Delaware	4
Blood Lead Screening Alone is Insufficient to Protect Delaware's Children	7
Rental Housing and Lead Poisoning Hazards	7
Lead Paint Hazard Control is a Wise Public Investment	10
Existing Data Gaps	11
Methodology for Plan Recommendations	12
Deficiencies With Programs in Other Jurisdictions	13
Plan Recommendations Summary	14
Recommendations for a Lead-Safe Rental Housing Plan	15
Recommendation 1. Residential Landlord-Tenant Code	15
Recommendation 2. Universal Registration	16
Recommendation 3. Non-Discrimination	18
Recommendation 4. Lead-Free and Lead-Safe Certification	19
Recommendation 5. Education	20
Recommendation 6. Tenant Protection Measures	21
Recommendation 7. Administrative Warrants	22
Recommendation 8. Penalties	22
Recommendation 9. Grants and Funding Support	23
Recommendation 10. Workforce Development	24
Recommendation 11. State Agency Staffing	25
Program Challenges and Future Considerations	25
Stakeholder Impact and Feedback	27
Conclusions	28
References	30
Appendix A. Proposed Legislation	34
Appendix B. Stakeholder Suggestions Not Included in the Plan	41
Appendix C. Programs in Other Jurisdictions	44

Background

The Childhood Lead Poisoning Prevention Advisory Committee (CLPPAC) is pleased to present to the Governor and General Assembly our proposal for a statutory requirement for lead-safe rental housing.

The CLPPAC was tasked by SB 9 with developing a plan to ensure that rental housing is lead safe and does not pose a health hazard to tenants, to be submitted to the Governor and General Assembly by January 1, 2024, which must include:

1. A plan for a statutory requirement that all rental properties built before January 1, 1978, be screened for the presence of lead based paint hazards, as defined at 40 C.F.R. § 745.65, before the rental properties are made available to a new tenant, and at least once before January 1, 2026, even if the rental properties are not made available to a new tenant, and that all lead based paint hazards are abated or remediated promptly on discovery.
2. Provisions for the state to augment, where appropriate, the cost of lead abatement or remediation based on an objective eligibility standard, through the use of state or federal funds.
3. Specific recommendations to ensure that an adequate work force is available to perform all screening, remediation, and abatement work required by the adoption of the statutory requirement under paragraph (2)a. of this Section.

In the 45 years since the sale of lead paint for residential use was banned in the United States, 19 states and many more counties and municipalities have taken steps to prevent lead poisoning in rental housing.¹ Delaware, in comparison, has fallen behind. The age of our housing stock, paired with our enduring neglect of lead-poisoning hazards in rental housing, has harmed generations of Delaware children. This will continue until fundamental changes are made to ensure that rental housing is safe.

Primary prevention, the removal of lead hazards before a child is exposed, is recognized as the “most reliable and cost-effective measure” to ensure that children do not experience harmful effects from lead poisoning. Primary prevention is superior to all other methods, including parent education, hand-washing, and cleaning to control dust (AAP, 2016; Garrison and Ashley, 2021: 555), and “yields large economic benefits” (Needleman, 2004: 219).

¹ State-level lead abatement mandates and enactment year: Connecticut 1992, Washington D.C. 1983, Georgia, 2000, Illinois, 1992, Kentucky, 1974, Louisiana, 1988, Massachusetts, 1971, Maryland 1995, Maine 1991, Michigan 2005, Minnesota 1991, Missouri 1993, North Carolina 1989, New Hampshire 1993, Vermont New Jersey 1971, Ohio 2003, Rhode Island 2002, South Carolina 1979, and Vermont 1996 (Gazze, 2021: 30).

This Lead-Safe Rental Housing Plan is a deliberate strategy to prevent childhood lead poisoning in Delaware.

What is Lead Poisoning?

“The scientific community and many political leaders now recognize that lead poisoning has been among the most important epidemics affecting children in the United States in the last century” (Markowitz and Rosner, 2013: 16).

While child blood lead levels are documented to have declined over the past several decades, it is now widely recognized by the global public health community, including the U.S. Centers for Disease Control and Prevention (CDC), the World Health Organization (WHO), the American Academy of Pediatrics (AAP), and the U.S. Preventive Services Task Force (USPSTF), that there is no safe level of lead in children’s blood:

“No safe blood lead level in children has been identified” (CDC, 2022).

“There is no level of exposure to lead that is known to be without harmful effects” (WHO, 2023).

“There is no identified threshold or safe level of lead in blood” (AAP, 2016).

“No safe level of lead exposure has been established” (USPSTF, 2019).

The potential impacts of lead exposure, including low levels of lead, are described by the AAP (2016) as follows:

- Cognitive deficits, including intellectual deficits, diminished academic abilities, attention deficits, and lower IQ
- Behavioral problems, including inattention, impulsivity, aggression, hyperactivity, and elevated risk of attention deficit/hyperactivity disorder (ADHD)
- Antisocial behaviors, encompassing conduct disorder, delinquency, and criminal behaviors, including arrests and convictions later in life
- Reproductive problems, including spontaneous abortion, low birth weight, and reduced growth in children
- Kidney failure and renal failure
- Decreased hearing
- Cardiovascular effects

Lead exposure does not always show symptoms, making it difficult for healthcare providers to identify. While lead exposure can present clinical features at lower levels, exposure can also be asymptomatic at higher levels (AAP, 2016; USPSTF, 2019; Wani et. al, 2015). This has necessitated routine universal screening in Delaware’s Childhood Lead Poisoning Prevention Act, which since 2021 has required blood lead screening for all children at 12 months of age, and again at 24 months of age.

Lead exposure can occur through three pathways into the body: inhalation, ingestion, or through skin contact. The amount of lead absorbed by the body depends upon several factors, including lead chemistry and the metabolism of the individual, which is impacted by their age, stresses on the body, and degree of malnutrition for certain minerals, including iron and calcium. Lead has a half-life in blood of approximately 40 days, and is either excreted or stored in bone, teeth and soft tissue, including the brain, spleen, kidney, liver, and lungs (Wani et al, 2015: 58, 59).

While health effects of lead were known for many centuries, toxic neurological effects of lead poisoning were only first described in modern medical literature in 1839 in France (Walusinski, 2021). Cases of childhood lead poisoning were first reported in the United States in 1887, and by the 1930s childhood lead poisoning was considered common in urban areas with older housing, with Baltimore being the first U.S. city to offer free blood lead testing to children in 1935 (Markowitz and Rosner, 2002: 41; 55).

Pursuit of an acceptable threshold of lead in children's blood was initially based on observations made by industrial hygienists about symptomatic exposure among adult workers in factories where lead paint and other lead-based products were manufactured. The threshold of acceptable lead in blood has been regularly lowered since the 1960s,² with no safe level of lead now widely recognized in the medical literature (ibid). In more recent decades, research has provided evidence of disproportionate, cumulative, neurological, and behavioral effects of low levels of exposure among children, which has prompted a greater policy response to prevent childhood lead poisoning across the U.S. and other countries (Markowitz and Rosner, 2002; 2013; Bellinger and Bellinger, 2006).

Understanding Childhood Lead Poisoning Rates in Delaware

Childhood lead poisoning is a serious public health issue in Delaware. Using reported screening and testing³ data, Delaware Department of Health and Social Services (DHSS) tracks blood lead levels and has documented that in the 10-year period between 2012 and 2021, 5212 Delaware children up to 72 months of age were identified with a blood lead level at or above the

² Definitions for interpreting children's blood lead levels in the United States: 1960 = 60 µg/dL; 1970 = 40 µg/dL for undue or increased lead absorption; 1975 = 30 µg/dL for undue or increased lead absorption; 1978 = 30 µg/dL for elevated blood lead level; 1985 = 25 µg/dL for elevated blood lead level; 1991 = 10 µg/dL for level of concern; 2012 = 5 µg/dL for reference value; and 2021 = 3.5 µg/dL for reference value (Ruckhart, 2021: 1509).

³ Federal law has required lead poisoning assessments for children receiving Medicaid services since 1989. Universal screening for lead poisoning was initiated in Delaware with SB 78 in 1994, which mandated a blood lead screening for all children at 12 months of age. In 2010, a second screening at 24 months of age through the use of a risk questionnaire was added by SB 300. The use of risk questionnaires were discontinued in 2021 when HB 222 expanded the universal blood screening requirements for all children at 24 months of age. The regulations implementing HB 222 were finalized and appeared in the Delaware Register on August 1, 2023.

CDC's 2021 Blood Lead Reference Value of 3.5 µg/dL,⁴ as shown in Figure 1 (DHSS, 2022b: 17). This Blood Lead Reference Value is not a health-based standard to determine a level of safety, and CDC acknowledges that there is no safe level of lead in children's blood (Ruckhart et al., 2021).

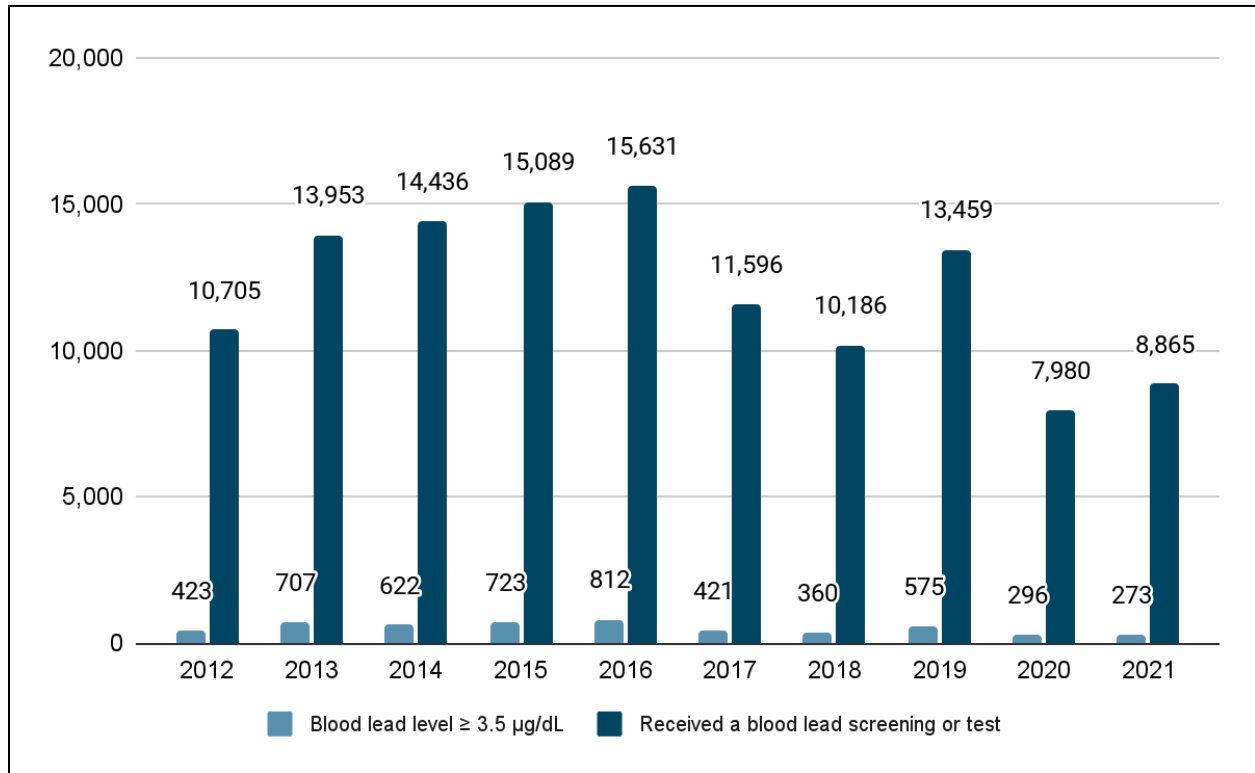


Figure 1. Delaware children up to 6 years of age who received a blood lead screening or test, and with blood lead levels at or above the 2021 CDC Blood Lead Reference Value of 3.5 µg/dL (DHSS, 2022b: 17).

Childhood lead poisoning is a statewide problem in Delaware, with blood lead levels documented in all three counties. Kids Count in Delaware (2022) reports the incidence of lead exposures at or above the CDC's Blood Lead Reference Value for children up to 6 years of age on a map by zip code, which is shown in Figure 2.

⁴ The CDC lowered the Blood Lead Reference Value (BLRV) from 5 µg/dL to 3.5 µg/dL in October 2021. The BLRV is intended to assist in the identification of children with higher levels of lead in their blood compared to most children and is based on the 97.5th percentile of the blood lead values among U.S. children ages 1-5 years (Ruckhart et al., 2021).

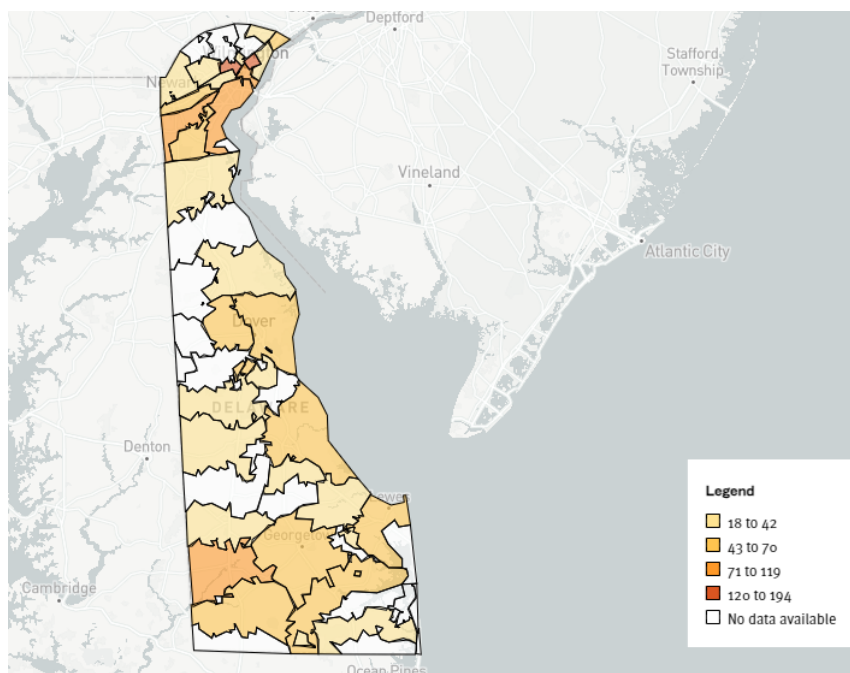


Figure 2. Statewide map of children up to 6 years of age with blood lead levels at or above the CDC Blood Lead Reference Value of 3.5 µg/dL from 2016-2021 by zip code (Kids Count in Delaware, 2022).

While Delaware has collected blood lead screening and testing data in a universal reporting system since the original Childhood Lead Poisoning Prevention Act was passed and signed into law in 1994 (SB 78), DHSS describes blood lead screening and testing as an underrepresentation of the true scale of the problem of childhood lead poisoning in Delaware:

It is evident that the number of lead-poisoned children in Delaware is underrepresented due to low compliance rates in testing. As efforts to increase the testing percentage continue, along with testing now required at 24 months of age, it is anticipated that the number of lead-poisoned children identified will drastically increase (2022a: 22).⁵

Compliance with screening and testing was compromised by the COVID-19 pandemic, which dramatically reduced blood lead screening and testing in Delaware when medical provider offices were closed or limited to urgent care, and well-child visits transitioned to a telehealth model (DHSS 2022a: 12). While the full impacts of the COVID-19 pandemic on lead poisoning are still being researched, “stay-at-home orders may have increased household exposure” to

⁵ Screening and testing rates will need to overcome the following barriers, which have been identified through DHSS’s Performance Improvement Project in 2022; they include: knowledge deficit, lack of transportation for routine care and lead testing, difficulty communicating with providers because of language and/or reading preferences/abilities, non-adherence with preventive care visits, provider lack of knowledge of screening requirements, provider distrust of LeadCare Analyzer results (due to false positives), competing priorities during patients’ office visits, lack of point of care testing resources, lack of resources for patient follow-up, and inability to coordinate care with the targeted population (DHSS 2022c: 5, 6).

lead (Anthes, 2021). This is thought to be largely due to the greater time children spent during the pandemic in lead-contaminated homes instead of in lead-safe school and childcare environments.

Further complicating blood lead screening during the COVID-19 pandemic, on July 6, 2021, the CDC issued a recall of the reagent used in some blood lead screening equipment due to falsely low results, preventing the use of finger-stick testing for lead poisoning across the country (CDC, 2021). Manufacturing resumed in February 2022.

While available evidence indicates urgency, the true size of the problem has been masked by these inadequacies in screening and testing. Improving lead screening rates is a priority for Delaware. For the 2021 CDC National Center for Environmental Health grant requirements for Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children (CDC-RFA-EH21-2102; funding for 2021-2026), Delaware is obligated to develop, update, and implement an appropriate statewide screening and testing plan in collaboration with the CLPPAC.

Blood Lead Screening Alone is Insufficient to Protect Delaware's Children

While screening is an important diagnostic and public health tool in the identification of children with lead poisoning, Bruce Lanphear and Richard Hornung, two of the most experienced and influential researchers on the topic of childhood lead poisoning, have identified the deficiencies in the blood lead screening-only approach, and have stressed housing inspection or assessment as the most valuable tool in primary prevention:

Unfortunately, this [blood testing] strategy fails to prevent the adverse consequences of lead exposure because the child with an elevated blood lead concentration is used as a trigger to control lead hazards. In contrast, screening housing to identify those that contain lead hazards should focus our efforts on the prevention of lead toxicity (Lanphear and Hornung, 2005: 306).

Lead-contaminated floor dust, the condition of housing, and rental status are offered as the best available diagnostic tools to target resources for lead hazard control “prior to occupancy” and before a child becomes exposed. This will prevent the lifelong debilitating health, neurological, and behavioral impacts of lead poisoning (Lanphear and Hornung, 2005: 308, 310).

Rental Housing and Lead Poisoning Hazards

When the American Academy of Pediatrics published their most recent policy statement on the prevention of childhood lead toxicity in 2016, they emphasized the severity of the problem of lead paint in housing in their very first sentence:

[T]oo many children still live in housing with deteriorated lead-based paint and are at risk for lead exposure with resulting lead-associated cognitive impairment and behavioral problems (AAP, 2016: 1).

Lead dust from deteriorated lead paint is widely recognized in the peer-reviewed literature as the “major source” of childhood lead poisoning (Needleman, 2004: 218) and “the most common pathway of lead exposure” in households in the United States. The urgency of addressing the problem of lead paint in housing on public health, specifically for children, cannot be overstated:

Exposure to residential lead dust will continue to be a public health problem until housing with deteriorated lead paint and lead contaminated soil is remediated (Garrison and Ashley, 2021: 555).

Lead paint hazards are created through both chips and dust that can be ingested or inhaled. These hazards may or may not be visible to the naked eye and can result in exposures that are either unknown or undetected until it is too late. Lead dust and lead chips are created by deteriorating lead paint and in areas under friction and impact, such as doors and windows that are opened and closed, painted floors or stairs that are walked upon, and handrails and painted door handles that are handled regularly. In addition to lead-painted surfaces that can generate chips and dust, all surfaces that are able to be reached by children are of particular concern (EPA, 2021).

The connection between lead paint and childhood lead poisoning has been recognized for more than a century. As early as 1909, countries in Europe⁶ began banning lead paint for interior painting (Markowitz and Rosner, 2002: 16). In 1910 the U.S. House of Representatives held the first congressional hearing on lead paint, in which witness testimony proclaimed lead paint “is a poison” (Warren, 2000: 44). The City of Baltimore, Maryland began sampling loose paint for lead in 1935, established its first housing ordinance for lead paint removal or abatement in 1941, and banned the new application of lead paint on the interiors of dwellings in 1951 (Markowitz and Rosner, 2002: 31, 32, 56, 143). Congress passed the Lead-Based Paint Poisoning Prevention Act of 1971, which prohibited lead paint in residences constructed or rehabilitated with federal funds, and the 1987 Housing Act directed HUD to perform a lead inspection in all public housing developments (Markowitz and Rosner, 2013: 125, 133).

An astonishing amount of lead was in house paint. Painters who followed the 1945 government-recommended recipe in the U.S. Department of Commerce’s Paint Manual (Walker and Hickson, 1945) mixed 100 pounds of white lead (lead carbonate) with two to three gallons of linseed oil. The prescribed formulas represent 1.4 ounces to 1.9 ounces of pure lead applied per square foot on interior surfaces for each layer of paint.⁷ While professional painters were

⁶ France, Belgium, and Austria banned white lead for interior painting in 1909, followed by Tunisia and Greece in 1922, Czechoslovakia in 1924, Great Britain, Sweden and Belgium in 1926, Poland in 1927, Spain and Yugoslavia in 1931, and Cuba in 1934 (Markowitz and Rosner, 2002: 16).

⁷ The mixing ratios for paint applied to interior plaster and wallboard included 100 pounds of “white lead paste” (89% lead carbonate) to cover areas of 600 to 800 square feet of painted surface, depending upon whether it was an unpainted surface, a second coat, or repainting a previously-painted surface (Walker and Hickson, 1945: 5, 12, 14). Based on atomic mass, lead carbonate is 77% pure lead.

mixing paints, ready-to-apply and premixed paints were becoming popular in the 20th century. Even ready-to-apply lead paint contained “about 16 pounds of white lead” per gallon (Markowitz and Rosner, 2002: 52; 2013, 8). The layers of lead paint that remain on the walls of housing units constructed prior to 1978 have the potential to contain tremendous quantities of pure lead, with exposure to miniscule amounts of lead dust contributing to dangerous levels of exposure.

Housing constructed prior to 1978 is one of the leading sources of childhood lead poisoning in the United States today; the U.S. Consumer Product Safety Commission’s ban on the sale of lead paint for use in residential and child-occupied facilities became effective on February 28, 1978. Even this initial ban still allowed lead in paint. In 2008, the definition of the permissible level of lead in paint was lowered from 600 to 90 parts per million (ppm) (Federal Register 1977, 42(170), 43957-44210; Federal Register 2009, 74(164), 43031–43042).

The prevalence of lead paint in the U.S. housing stock is assessed by the U.S. Department of Housing and Urban Development, which reports the following percentages of homes with Lead-Based Paint by construction year in the United States: before 1940 = 87%, 1940-1959 = 69%, and 1960-1977 = 30% (HUD 2021). Significantly, renter-occupied households are nearly twice more likely to have deteriorated paint than owner-occupied housing (Garrison and Ashley, 2021: 549).⁸

Delaware State Housing Authority estimated that 108,662 (28.5%) housing units in the state are renter occupied, and of these, 5,534 are estimated to be substandard⁹ (DSHA, 2023). The National Center for Healthy Housing estimated that “45% of housing in Delaware was built prior to 1978 and may contain lead-based paint” (NCCH, 2022). At the county level, New Castle County has the oldest housing inventory; “68% of rental homes were built before 1979 [sic.] and 20% were constructed before 1950” (DHSS, 2022a: 14). Analysis of lead paint hazards in housing by census tract found the predicted risk rate for household exposure to large areas of deteriorated lead paint in Delaware to be between 1.23 and 1.42 percent (Garrison and Ashley, 2021: 552). DHSS’s *Childhood Blood Lead Surveillance in Delaware 2021 Annual Report* also noted that “many Delawareans live in rental properties, and do not have the financial ability or legal authority to remediate the presence of lead” (DHSS 2022a: 7).

Title X of the Housing and Community Development Act, which passed Congress in 1992, requires disclosure of known lead hazards upon lease or sale. Since 1996, regulations to implement Title X have mandated disclosure of known lead hazards to tenants prior to signing a lease (Federal Register 1996, 61(45), 9064-9088). These policies have not led to sweeping improvements in lead hazard reduction, as described by Jacobs and Brown (2023: 236):

⁸ Rental housing status as a household characteristic is a significant predictor of deteriorated paint and has an adjusted odds ratio of 1.82 times, with a 95% confidence interval 1.82-1.83, compared to owner-occupied housing (Garrison and Ashley, 2021: 549).

⁹ Substandard housing was defined in 2000 in [Title 24 CFR §5.425](#) as dilapidated, does not have operable indoor plumbing, does not have a usable flush toilet, does not have a usable bathtub, does not have electricity, does not have a safe or adequate source of heat, should but does not have a kitchen, or has been declared as unfit for habitation by a local government.

Most homes remain uninspected for lead. The current law is limited to disclosure of “known lead paint and/or lead-based paint hazards,” which allows most sellers or landlords to simply check a “don’t know” box on a form, denying buyers and renters the knowledge of whether lead paint hazards are present. This loophole means that parents usually do not have the information they need to protect their children because they do not know exactly where the lead is located in their homes, and landlords, property managers, and owners do not know where their maintenance and capital improvements should be focused.

Housing with lead hazards is unfit for habitation due to its potential to poison tenants. Without action by the federal government, states must correct the shortcomings of Title X. Risk assessments or inspections of lead paint hazards prior to rental unit occupancy, and after lead hazard removal to prevent lead poisoning, are long overdue and have been identified as a priority by lead poisoning researchers for decades (Jacobs and Brown, 2023; Lamphear and Hornung, 2005; and Needleman, 1998).

By emphasizing the value of eliminating the lead hazard compared to other methods of lead poisoning prevention in the home, the AAP (2016: 1) maintained that “lead poisoning prevention education directed at hand-washing or dust control fails to reduce children’s blood lead concentrations.” Dust control efforts that focus on parent education about the importance of cleaning have not effectively reduced blood lead levels in children (Nussbaumer-Streit et al., 2000). Lead dust is particularly tenacious; cleaning-only efforts have the potential to simply spread the lead around. The past effort to encourage parents to better clean their homes instead of addressing the source of exposure has resulted in many lead-poisoned children.

Lead Paint Hazard Control is a Wise Public Investment

Childhood lead exposure provides numerous cognitive, behavioral, and health impacts that harm a child’s ability to succeed in school and in life. Delaware taxpayers are already paying for the costs of inaction and the state should responsibly shift from a reactionary spending paradigm that only funds activities for children after they are lead-poisoned to greater investment in primary prevention.¹⁰ “Each dollar invested in lead paint hazard control results in a return of \$17-221” in a “conservative estimate” to savings from healthcare costs, special education, and criminal justice, and increases in lifetime earnings (Gould, 2009).

¹⁰ Existing state programs for children with lead poisoning include early intervention services funded through IDEA Part C for all children age birth to three years with a blood lead venous test at or above 5 µg/dL; case management and a home lead paint risk assessment by the Department of Public Health for all children with a blood lead level at or above the CDC’s 2021 Blood Lead Reference Value of 3.5 µg/dL; as well as other programs, including school-based special education services (some of which may be funded by IDEA Part B); school-based behavior programs, including increased need for school resource officers; additional pressure on the criminal justice system; and the new Lead Based Paint Program established by SB 9 in 2023.

Arguments against the economics of primary prevention have been described by University of Pittsburgh pediatrician Herbert Needleman, who was among the first researchers to document the neurological harm caused by low levels of exposure, twenty-five years ago: “The belief that we cannot afford primary prevention coexists in a mutual paradox with another powerful fiction: that the struggle to eliminate lead poisoning has been won” (Needleman, 1998: 1876). The struggle to eliminate childhood lead poisoning is far from over in Delaware, and the need for serious consideration and funding for primary prevention is long overdue.

This Lead-Safe Rental Housing Plan supplements the Delaware Lead Based Paint Program, also created by SB 9, which addresses lead paint hazards in homes of children with identified blood lead levels at or above CDC’s Blood Lead Reference Value. This is a secondary prevention measure, which is essential to stop ongoing exposure and to protect other current and future residents of the household.

Existing Data Gaps

While progress has been made in the collection of data and reporting on childhood lead poisoning in recent years,¹¹ Delaware continues to operate in a data-poor environment with respect to many of the aspects of childhood lead poisoning within rental housing. Data gaps we identified are as follows:

1. **How many rental properties would be covered by this proposal?** Because there is no statewide registration for rental housing, we do not know how many rental units are in the state and how many were constructed prior to the 1978 U.S. Consumer Product Safety Commission ban on the sale of lead paint for residential use. Some municipalities provide rental licenses and track rental properties, and New Castle County has a seemingly optional rental registration system. Rental license or registration is not universally performed across the state, and the municipalities that do track rental properties have their own exemptions from when a rental license is needed. We can make estimates based upon other data sources, but do not have a firm number on how many residential rental units were constructed prior to 1978.
2. **How many Delaware children are lead-poisoned due to lead paint in rental housing?** DHSS has performed home lead-paint risk assessments for children with blood lead levels at or above 10 µg/dL until mid-2022, when it lowered the threshold to 7.5 µg/dL. SB 9 mandated a home assessment for all children with a blood lead level at or above CDC’s Blood Lead Reference Value of 3.5 µg/dL, which went into effect on November 14, 2023. DHSS has not yet reported the results of any of its home risk assessments and did not begin entering data from these assessments into its tracking software (HHPSS) until earlier this year. We therefore cannot parse out how many

¹¹ Progress to date includes the requirement that the Childhood Lead Poisoning Prevention Program produce annual reports in 2021 (HB 222), the transition of the data management of children with lead screening, testing, or case management to the CDC-supported Healthy Homes and Lead Poisoning Surveillance System (HHPSS) in 2015, and the transition to electronic reporting of all lead screening and test results to the department of Public Health (DHSS, 2022a).

children with lead poisoning were exposed due to lead paint in their home, and how many resided in rental housing. Because the DHSS risk assessment can be declined by the tenant, there are also some households that lack a risk assessment, the numbers of which also have not been reported. Instead of having this data, we have had to rely upon national datasets and analysis.

3. Are there rental units that have repeatedly exposed children to lead over time?

The potential exists for the same rental unit to have exposed numerous children over a period of years, with subsequent occupants exposed to lead-paint hazards. The ability to identify rental units that have repeatedly exposed children would greatly assist in prioritizing enforcement. However, this Lead-Safe Rental Housing Plan, which requires that lead-based paint hazards are eliminated, will prevent repeated poisoning of children.

4. Are occupational exposures among lead-paint contractors a current health risk in our state? While DHSS receives all blood lead test results, including adult blood lead test results, Delaware is one of the few remaining states that does not yet participate in the CDC's Adult Blood Lead Epidemiology and Surveillance (ABLES) program, and does not report on the results of adult blood lead tests. The ability to develop recommendations for appropriate and health-protective training certification of lead assessors, inspectors, or contractors would be greatly assisted by information on the impact of this type of work on the lead exposure of the workforce.

Methodology for Plan Recommendations

The CLPPAC developed this Lead-Safe Rental Housing Plan over a series of public meetings¹² using a program evaluation model that incorporated the following steps:

1. Problem identification and scope: these were defined for us by SB 9.
2. Literature review: the extensive literature on this subject is incorporated throughout this document.
3. Program comparison: we identified programs in surrounding states and other jurisdictions, and compared these based upon consistent policy themes and performance measures. We specifically looked at the following programs, which are described in detail in Appendix C:
 - a. Maryland's Lead Law (1994)
 - b. New Jersey's Lead-Based Paint Inspections in Rental Dwellings (1971, 2023)
 - c. Philadelphia, PA's Lead Paint Disclosure and Certification Law (2011, 2020)

¹² CLPPAC public meetings devoted to this Lead-Safe Rental Housing Plan were held on August 17, 2023, September 28, 2023, October 17, 2023, November 15, 2023, November 29, 2023, December 5, 2023, December 7, 2023 Listening Session, and December 13, 2023.

- d. Buffalo, NY's Proactive Rental Inspection (2020)
 - e. Detroit, MI's Lead Paint Inspections for Rental Properties (2010)
 - f. Burlington, VT's Lead Poisoning Prevention Law (1996, 2022)
4. Identification of barriers: we documented the challenges we are presented with, including data gaps, which we describe in this report.
 5. Draft development: we developed a preliminary set of priorities for stakeholder feedback.
 6. Stakeholder engagement: we invited stakeholders to our meetings throughout the process, and held a virtual listening session on December 7, 2023 to specifically listen to stakeholder concerns.
 7. Draft review: we reviewed and refined draft language, continuing to hone ideas and document their justification.
 8. Final report: we voted on this final report on December 13, 2023.

Deficiencies With Programs in Other Jurisdictions

Through our literature review and program comparison we have identified some program deficiencies that have guided our decision-making. These are cautionary tales of how we do not want the program to proceed in Delaware.

1. Policies that have poor compliance: the program comparison found varying rates of compliance that indicate that reliance on existing municipal rental housing inspectors to inspect all rental units constructed before 1978, as required by SB 9, will overwhelm capacity. Programs using this approach, such as in Detroit and Buffalo, have failed to inspect most rental units, and have taken years to appropriately staff themselves, exposing many children to potential lead poisoning. As a result, instead of engaging in the prescribed activities of lead-free or lead-safe certification, landlords in many of the jurisdictions with rental unit requirements simply absorb the depreciation in the value of their properties (Gazze, 2021). Maintaining a vibrant rental housing market without decreased property values requires a systematic approach that includes the assistance and enforcement components included here.
2. Policies that lead to housing discrimination: the approach taken by some states, such as Ohio and Massachusetts, require inspections and lead-safe certification only in instances where the rental unit houses a tenant less than the age of 6 years old. In the case of Ohio, it has led to a "statistically significant, sizable, and economically meaningful" increase in targeted evictions. "To combat this unintended consequence while also taking advantage of the societal benefit of lead abatement, a preferable policy would be for states to enact lead abatement laws forcing *all* rental properties to be fully abated, as is the current case in Maryland, Rhode Island, and Vermont. Passage of this type of

lead abatement law may lead to the full capture of benefits of lead abatement without the unintended consequence of increased evictions” (Fesko, 2023).

3. Policies that pass the costs of lead abatement on to renters: Based on their analysis of Ohio’s lead policies, Fesko (2023) identified that “states should also fund lead poisoning prevention funds, not only to provide education and support to renters, but to support landlords in abating the lead in their properties, resolving the incentive compatibility problem.”

Plan Recommendations Summary

The following list summarizes our recommendations, which are provided in full detail in the next section.

Recommendation 1. The Delaware General Assembly should amend the Residential Landlord-Tenant Code (Title 25 Delaware Code) to include the provisions of the Lead-Safe Rental Housing Plan.

Recommendation 2. A comprehensive statewide system for the registration of all residential rental units within the Department of Health and Social Services to document all residential rental units and to identify which rental units are in need of lead hazard certification, to be completed with all rental units registered by January 1, 2025, and the establishment of a state database to manage rental unit registration and certification that is publicly accessible through an internet portal.

Recommendation 3. Non-discrimination requirements to prevent retaliation against a tenant as a result of the new Lead-Safe Rental Housing Plan.

Recommendation 4. Requirements for lead-free and lead-safe certification and registration for all residential rental housing units constructed prior to January 1, 1978, with a schedule for reinspection when lead paint is not completely removed, and the establishment of supporting regulations, all which should be operating and with full compliance by January 1, 2026.

Recommendation 5. Standardized education and disclosure requirements to be provided by landlords to tenants.

Recommendation 6. Tenant protection measures to ensure that tenants are not exposed during lead paint hazard removal work.

Recommendation 7. Administrative warrants and enforcement mechanisms to provide the process of lead hazard assessment or inspection and hazard removal for those rental units that are out of compliance.

Recommendation 8. Penalties for rental unit owners that fail to comply with the Lead-Safe Rental Housing Plan.

Recommendation 9. Establish a Lead Paint Hazard Control Grant Program and apply for federal funds.

Recommendation 10. Support market-based mechanisms to encourage workforce development.

Recommendation 11. Provide the Childhood Lead Poisoning Prevention Program within the Division of Public Health with adequate staffing and support to accomplish the goals of SB 9 and the Childhood Lead Poisoning Prevention Act.

Recommendations for a Lead-Safe Rental Housing Plan

Recommendation 1. Residential Landlord-Tenant Code

The Delaware General Assembly should amend the Residential Landlord-Tenant Code (Title 25 Delaware Code) to include the provisions of the Lead-Safe Rental Housing Plan.

We selected the Residential Landlord-Tenant Code as the most appropriate location for the Lead-Safe Rental Housing Plan for several reasons: it provides reasonable parameters within which the Lead-Safe Rental Housing Plan can be effectively implemented, the definition of rental unit is comprehensive, existing exemptions are reasonable, and access to the courts are practical for this particular policy need. Adding the Lead-Safe Rental Housing Plan to the Residential Landlord-Tenant Code will provide the best structure for successful implementation, particularly in comparison to placement elsewhere in the Delaware Code.

Health, safety, and welfare: DHSS's ability to ensure lead-safe rental housing in those units where a child is lead-poisoned has been hampered by the existing language in the Residential Landlord Tenant Code. Landlord obligations relating to the rental unit (Title 25 Del. Code § 5305) require landlords to "provide a rental unit which shall not endanger the health safety and welfare of the tenants or occupants" and is "kept in a clean and sanitary condition."

DHSS has reported to the primary prevention subcommittee of the CLPPAC that at least one municipality, Georgetown, updated their municipal code to enhance enforcement, but because the Residential Landlord Tenant Code does not specifically mention lead paint hazards as a component of health, welfare, safety, clean, or sanitary, their hands are tied and they cannot require landlords to implement lead hazard correction activities. We therefore recommend that the terminology that already exists in the Residential Landlord Tenant Code for "health, welfare or safety" and "clean and sanitary" be clarified to include lead paint hazards.

No new exemptions for public housing: As a result of our analysis of other jurisdictions and the federal reviews of lead hazards in federally-subsidized housing, the Lead-Safe Rental Housing Plan implementation should not exempt public housing or subsidized housing.

Some jurisdictions that we examined, for example Philadelphia's Lead Paint Disclosure and Certification Law, provided exemptions for housing authorities in certain zip codes, while other jurisdictions, such as Maryland's Lead Law and New Jersey's Lead-Based Paint Inspections in Rental Dwellings, do not exempt federally-subsidized housing.

While there have been requirements for lead-safe housing specific to federally-subsidized housing since the Lead-Based Paint Poisoning Prevention Act of 1971 and the 1987 Housing Act, these initiatives have not provided universal protection from lead hazards. The Office of the Inspector General (2022) of the U.S. Department of Housing and Urban Development found lead paint hazards remain a concern in public housing, and also noted in their analysis that Delaware did not provide complete data about blood lead levels. The U.S. Government Accountability Office (2021) further found that while federal standards for lead paint safety exist, the evaluation methods for the housing choice voucher program were inadequate and left approximately 229,000 young children under 6 years of age at risk of lead exposure.¹³

The lack of lead-safe federally-subsidized housing, and the need to address this need, prompted \$5 million in HUD grant funding awarded to the Wilmington Housing Authority in 2023 to begin the process of identifying and addressing lead paint hazards in the City of Wilmington. The press release of this award by Senator Chris Coons (2023) stated:

"The grant will give the Wilmington Housing Authority the ability to expedite identifying and eliminating lead-based paint hazards much faster than we were previously able and will enhance our efforts to provide affordable and safe housing to the people we serve," said Wilmington Housing Authority Executive Director Ray Fitzgerald.

Existing exemptions in the Landlord-Tenant code may need to be revised in future: The current exemptions in the Residential Landlord-Tenant Code provide an appropriate framework for prioritizing implementation of lead-safe and lead-free certification. Because there is no safe level of lead in children's blood (ibid.), and the potential for lead hazards in some of the exempt rental units from the Residential Landlord-Tenant Code could leave children exposed to lead hazards, we recommend that exemptions be revisited within the next 5 years.

Recommendation 2. Universal Registration

A comprehensive statewide system for the registration of all residential rental units within the Department of Health and Social Services to document all residential rental units and to identify which rental units are in need of lead hazard certification, to be completed with all rental units registered by January 1, 2025, and the establishment of a

¹³ Section 8 inspections (HUD, 2023) allow for 2 square feet of deteriorated paint per room or 10% of a component and do not assess lead dust hazards.

state database to manage rental unit registration and certification that is easily publicly accessible through an internet portal.

The complexity of establishing a system in which all rental housing with the potential for lead paint hazards based on construction year to be made lead-safe is more challenging in Delaware in comparison to other jurisdictions with similar policies because Delaware lacks comprehensive state oversight over residential rental housing registration. We examined Delaware's local governments for an indication of those that tracked rental housing and found that of Delaware's 57 municipalities, only 31 require rental permits of some kind. Of Delaware's three counties, only New Castle County has a seemingly-voluntary rental unit registration. The data tracking of information that does exist for housing construction year is also fragmented and distributed across Delaware's three counties.

The large proportion of residential rental units that are currently estimated to be constructed prior to the U.S. Consumer Product Safety Commission's ban on lead paint for residential use means that Delaware would require lead hazard inspections and certification for an estimated 48,898 housing units that are both renter-occupied and built prior to 1978.¹⁴

The landlord is the most appropriate party to identify the housing characteristics of their rental units and universal registration is the most efficient use of state resources to gather the necessary data to monitor compliance and program metrics. Identification of all residential rental units, and having that registration process identify the construction year of the rental unit, would create the most efficient use of state resources, particularly when instances arise when enforcement may need to verify the construction year of a known rental unit to determine if the property owner is delinquent in providing certification.

The Department of Health and Social Services is the most appropriate agency for the responsibility to manage and enforce the provisions of the Lead-Paint Rental Housing Plan because of its comprehensive approach to childhood lead poisoning prevention. DHSS already oversees the certification for other businesses for health and safety standards, including restaurant inspections, and issues permits for food establishments. DHSS is already responsible for overseeing monitoring and compliance of other statewide resources for lead hazards, specifically drinking water. DHSS houses and enforces Delaware's regulations for Lead-Based Paint Hazards (Title 16 Administrative Code 4459), and since 2014 has been authorized by the EPA to administer and enforce the lead-based paint Renovation, Repair and Painting (RRP) program, including certification for lead-based paint activities (EPA, 2014). DHSS also houses the new Lead Based Paint Program established by SB 9 in 2023.

We also considered the Delaware State Housing Authority (DSHA) and Department of Natural Resources and Environmental Control (DNREC) for program oversight responsibilities. While DSHA could make sense from a housing-only perspective, and DNREC from a pollution-only

¹⁴ Delaware State Housing Authority estimated that 108,662 housing units are renter occupied in Delaware (DSHA, 2023), and The National Center for Healthy Housing estimated that "45% of housing in Delaware was built prior to 1978 and may contain lead-based paint" (NCCH, 2022).

perspective, we excluded them due to their lack of existing oversight and expertise on the issue of lead paint hazards in housing in favor of DHSS.

Registration Database: We envision the registration as internet-based, and therefore a matter of database management for the state government. To increase transparency over lead hazards by prospective tenants and the public, the state database to manage rental unit registration and certification should be kept current and easily publicly accessible through an internet portal.

The registration portal should include parameters for monitoring and enforcement of the Lead-Safe Rental Housing Plan, including the address of the rental unit, the date the rental unit was constructed, and the terms of any existing rental agreement. The database should be searchable by the name and address of the landlord, the address of the rental unit, the date the rental unit was constructed, the terms of any lease, and whether the rental unit and premises have been certified as lead-safe or lead-free.

We understand that the timeline for the creation and population of this database with registrants is aggressive, and note that due to the deadline for full lead-safe certification and remediation of lead paint hazards provided to the CLPPAC by SB 9, we believe that the process of a year between registration and the completion of all certification and lead hazard remediation is needed.

Recommendation 3. Non-Discrimination

Non-discrimination requirements to prevent retaliation against a tenant as a result of the new Lead-Safe Rental Housing Plan.

While DHSS has not reported results on lead paint risk assessments that are performed as part of the current Childhood Lead Poisoning Prevention Program, anecdotal evidence of tenants declining a risk assessment for fear of eviction, and research in the peer-reviewed literature (Fesko, 2023), reveals retaliation against tenants to be a concern.

To prevent this from occurring, the Residential Landlord-Tenant Code should include specific language to prevent discrimination, including non-discrimination:

1. For filing a complaint, testifying about a lead hazard, or assisting in an investigation.
2. For becoming lead poisoned or having a child who has blood lead screening or test that indicates exposure to lead.
3. For having children under the age of 6 or for becoming pregnant.
4. Arbitrary acts of discrimination pertaining to lead poisoning.

Recommendation 4. Lead-Free and Lead-Safe Certification

Requirements for lead-free and lead-safe certification and registration for all residential rental housing units constructed prior to January 1, 1978, with a schedule for reinspection when lead paint is not completely removed, and the establishment of supporting regulations, all which should be operating and with full compliance by January 1, 2026.

We propose that the General Assembly amend the Residential Landlord-Tenant Code to require lead-safe or lead-free certification for all residential rental units constructed prior to January 1, 1978; these residential rental units cannot be rented without such certification.

We were impressed with the distinction made between lead-safe and lead-free rental units by other jurisdictions, including Maryland and Philadelphia, to distinguish between those rental units that do not have lead paint at all from those that do have lead paint remaining, but this paint has been treated in such a manner that it does not create a lead dust hazard or has the potential to poison children.

This is also consistent with the guidance from the peer-reviewed literature (*ibid.*), that identifying and addressing lead-contaminated floor dust, the condition of housing, and rental status are the best available diagnostic tools to target resources for lead hazard control and childhood lead poisoning prevention.

The Residential Landlord-Tenant Code should be amended to require the following:

1. Define the term “rental unit constructed before January 1, 1978” to mean a rental unit in which a construction permit was obtained before January 1, 1978 or when construction of the rental unit was started before January 1, 1978.
2. Lead hazard assessment or inspection of all rental units constructed prior to January 1, 1978.
3. Lead-safe or lead-free certification required for all rental units constructed prior to January 1, 1978 before a rental agreement or lease is signed. If a rental unit is unable to receive a certification due to a lead hazard, the hazard must be eliminated in order for the rental unit to receive certification before occupancy.
4. Lead-free certification, which provides certification that there is no lead paint in the rental unit, should be performed using x-ray fluorescence technology on all painted surfaces in each room and in common areas. Lead-free certification should not expire for the rental unit, and should not require renewal at any time, unless a child receives a blood lead level at or above the CDC’s Blood Lead Reference Value, or if lead paint or a lead paint hazard are discovered in the unit or premises.

5. Lead-safe certification, which provides certification that there are no lead paint hazards in the rental unit, or common areas, including the following for all painted surfaces within all rooms within the rental unit and all common areas on the premises:
 - a. all lead-painted surfaces are appropriately encased or repainted;
 - b. no exposed lead paint surfaces;
 - c. no peeling, flaking, or chipping lead paint; and
 - d. no lead dust.

Lead-safe certification should expire and rental units should be recertified every four years. This is consistent with neighboring jurisdictions and is necessary due to the continuous emergence of lead hazards and lead dust from existing lead paint from normal wear and tear. For example, Philadelphia's lead-safe rental housing program requires reinspection for lead-safe certificates every four years, and New Jersey requires re-inspection every 3 years or upon tenant turnover, whichever comes first.

6. Require the Department of Health and Social Services to establish regulations that define terminology, some of which already exists in the DHSS Regulations.
 - a. DHSS Regulations 4459 Lead-Based Paint Hazards already define abatement, certified inspector, clearance levels, common area, component or building component, deteriorated paint, dust wipe sample, encapsulant and encapsulation, friction surface, impact surface, lead-based paint, lead-based paint hazard, lead-contaminated dust, lead hazard screen, paint in poor condition, risk assessment, visual inspection for clearance testing, visual inspection for risk assessment, and window trough.
 - b. DHSS should be instructed to establish regulations that define the following terms before January 1, 2025: lead-safe certification, lead-free certification, lead-safe certification assessor or inspector, and lead-free certification assessor or inspector.

Alternative inspection methods should not be included: While it was suggested during our stakeholder listening session that Section 8 housing inspections should be accepted as a lead safe inspection, the Section 8 inspection checklist does not certify that a rental unit is lead-safe. Section 8 inspections allow for 2 square feet of deteriorated paint per room or 10% of a component (HUD, 2023) and do not assess lead dust hazards. We therefore recommend that the use of alternate inspection methods, such as those that currently exist for Section 8, that are not comprehensive in their assessment of lead paint hazards or lead dust, not be allowed.

Recommendation 5. Education

Standardized education and disclosure requirements to be provided by landlords to tenants.

Title X of the 1992 Housing and Community Development Act requires disclosure of known lead hazards to tenants when they sign their lease. Unfortunately, because there are no existing federal or state requirements in Delaware that landlords must inspect their rental units for lead hazards, this provision has been largely ignored (ibid.). Incorporating federal education requirements in Title X into the Residential Landlord-Tenant Code provides additional opportunities for education of lead poisoning prevention, and the already federally-required distribution by landlords to tenants of an EPA pamphlet entitled *Protect Your Family from Lead in Your Home*. This is considered a best-practice and is incorporated into Maryland's and Philadelphia's lead safe rental housing policies.

The lead-free or lead-safe certification is an additional opportunity to educate tenants on lead hazards and how to avoid them. Standardized forms designed by DHSS for use by landlords should be in place well before the January 1, 2026 deadline.

Recommendation 6. Tenant Protection Measures

Tenant protection measures to ensure that tenants are not exposed during lead paint hazard removal work.

A period of greatest risk for exposure is during any abatement, renovation, remediation, or repair of lead paint hazards, where lead dust is disturbed or created:

[H]ousehold interventions lead to a significant increase in blood lead concentrations for young children, especially six-month old infants. Compared with children over 40 months of age, the odds of having an increase in blood lead levels of 5.0 µg/dL or higher following abatement were high (Nussbaumer-Streit et al., 2000).

To prevent lead poisoning of tenants during activities intended to correct lead hazards, we recommend the following:

1. Only those certified to work with lead paint hazards by DHSS should perform any work, and not tenants.
2. Tenants should be temporarily relocated until the unit is able to pass a lead-safe certification inspection, which is especially important in those instances where lead hazards could be created, such as disturbing lead paint or generating lead dust through scraping and sanding, or when a lead-painted building component is removed.
3. Landlords and tenants should also be able to terminate a lease through mutual agreement instead of requiring relocation during the remediation of lead hazards.

Temporary relocation of tenants while lead hazard work is performed is also required in Maryland, while Philadelphia and New Jersey do not have specific requirements. The health

risks of exposure due to inhalation or ingestion during any renovation warrant extreme caution, prompting our recommendation of temporary relocation.

Labor certification requirements are common practice in other jurisdictions with similar policies. Maryland requires any work that disturbs painted surfaces in affected properties to be certified by the Maryland Department of Environment and EPA. Philadelphia requires Pennsylvania state certification and EPA certification. New Jersey also requires state and federal certifications of all workers who are inspectors, risk assessors, and abatement contractors.

Recommendation 7. Administrative Warrants

Administrative warrants and enforcement mechanisms to provide the process of lead hazard assessment or inspection and hazard removal for those rental units that are out of compliance.

Resistance to compliance with an assessment or inspection for certification, either by the property owner or the tenant out of fear of retaliation, is a concern that has the potential to undermine the entire effort to provide lead-safe rental housing. In Newark, for example, a large proportion of rental units receive no inspection at all, despite municipal requirements for rental permits, because their inspectors are turned away at the door. Families with a lead-poisoned child that are eligible for a home lead paint risk assessment with the Childhood Lead Poisoning Prevention Program sometimes decline the assessment for fear of retaliation from their landlord.¹⁵

The public health hazard of lead poisoning, which was described as one of the most important epidemics impacting children in the last century (Markowitz and Rosner, 2013: 16), warrants complete commitment by the Governor and the General Assembly and the establishment of policies that prevent loopholes and guarantee enforcement.

The General Assembly has already established administrative warrants for other public health crises, such as for controlled substances (Title 16 Delaware Code § 4782). We propose an identical process for administrative warrants for the identification of lead paint hazards in rental housing constructed prior to January 1, 1978. Certificates of exemption for a period of six months should be available to be applied for in those instances where good-faith efforts are made to comply.

Recommendation 8. Penalties

Penalties for rental unit owners that fail to comply with the Lead-Safe Rental Housing Plan.

We recommend that the General Assembly amend the Residential Landlord-Tenant Code to include the following penalties for failure to comply:

¹⁵ DHSS has not published data on the rates at which assessments are declined in their annual reports, though a rate of 5% has been discussed in our meetings.

1. Civil penalty of \$20/day for all rental units that are not registered with the state.
2. Civil penalty of \$500/day for rental units that fail to file a Lead-Safe or Lead-Free Certification.
3. Suspension of access to summary possession for rental units that fail to file a Lead-Safe or Lead-Free Certification as required by law.
4. Consideration should be given to extend the deadlines for penalties for acts of good faith to provide lead hazard inspection/assessment or hazard control within a reasonable time frame.

Enforcement mechanisms are taken extremely seriously in neighboring jurisdictions. Maryland requires a \$20/day fine for failure to register or renew a rental unit, \$500/day fine for failure to file lead-safe certification, and civil penalties up to \$25,000. Philadelphia requires a \$2,000/day fine/day for failure to file lead-safe certification, a refund of all rent for the period without a certification, allows for private lawsuits and damages, and will revoke housing licenses. New Jersey assesses fines of \$1,000/week, and because New Jersey has also allocated the responsibility of enforcement to municipalities, municipalities are also subject to fines of \$1,000/week. Detroit offered the most aggressive penalties we reviewed, which can be assessed in amounts up to \$8,000/day.

Recommendation 9. Grants and Funding Support

Establish a Lead Paint Hazard Control Grant Program and apply for federal funds.

The General Assembly should establish grant funds in support of landlords to comply with the assessment/inspection, certification, and removal of lead hazards in their rental units that are required by the Lead-Safe Rental Housing Plan. This should prioritize rental units for families with children, are visited regularly by children, or with a pregnant tenant. The distribution of funds in the grant program should be overseen by the CLPPAC.

These grants should be prioritized for designated funding in the state budget for the 2024-2025 fiscal year to stimulate compliance and provide meaningful support to the impacted rental unit owners; the General Assembly should not wait until the inspection deadline of January 1, 2026 to encourage rental housing inspections or assessments through grant funds.

Pursuit of sustainable funding for lead-safe housing is imperative. In addition to designated emergency funding to assist landlords in the needed lead hazard inspections or assessments, and to make rental units lead-safe, DHSS should also:

1. Apply for funds through the HUD Office of Lead Hazard Control and Healthy Homes for the remediation of lead paint hazards in homes. The last successful DHSS application was for \$3,288,728 for the 2014-2017 grant cycle. DHSS applied on May 5, 2023 but funds were not awarded. Currently, New Castle County is Delaware's sole grantee.

2. If at all feasible, establish a Health Services Initiative (HSI) to leverage the Children's Health Insurance Program (CHIP) to provide funds for lead-abatement activities. Nineteen states already have HSI programs approved under CHIP, which are available for lead hazard abatement work under Title XXI of the Social Security Act. The application process is described as "straightforward" and requires states to develop a proposed lead abatement initiative (Mann et. al., 2017).

Recommendation 10. Workforce Development

Support market-based mechanisms to encourage workforce development.

Strengthening the workforce that is needed to perform assessments, inspections, and hazard control must be aggressive. As evidenced by our comparison of policies in other jurisdictions, allowing for the market to respond to the need for assessment/inspection, certification, and lead-hazard removal, instead of swelling the size of government to accomplish tasks, such as in Detroit and Buffalo, seems to be most successful.

The ability of rental unit owners to comply with the requirements for lead-safe housing could be impinged by local access to an inadequate workforce and could also contribute to price-gouging in the market. While Delaware is bordered by jurisdictions that already require lead-safe certification requirements for rental housing and therefore resides within a region that has developed and maintained a trained workforce, ramping up a workforce within Delaware to the scale required to accommodate the necessary tasks is no small undertaking. We therefore support the establishment of incentives for workforce training, with particular emphasis on training individuals in impacted communities.

In the November 1, 2023 Delaware Register, DHSS proposed amendments to Title 16 regulations 4459 Lead-Based Paint Hazards to permit those abatement workers certified outside of Delaware with which Delaware does not already have reciprocity to apply for a provisional certification in Delaware for one year. Such measures should be expanded to include inspectors and assessors to enable a greater workforce for performing inspections or assessments.

In the national effort to make rental housing lead-safe, there is a longstanding and robust relationship demonstrated in the research that workforce training for lead hazard inspection and control reduces unemployment and underemployment in lead-impacted communities, and strengthens communities by providing income alternatives that reduce homelessness (Needleman, 1989; Markowitz and Rosner, 2013).

In light of these benefits, it is also imperative that we not create a cohort of lead-poisoned adults who are performing lead-hazard removal work. We therefore recommend that DHSS participate in the CDC's Adult Blood Lead Epidemiology and Surveillance (ABLES) program and provide annual reports to the General Assembly with the results of adult blood lead surveillance efforts in the state.

To facilitate health-protective and adequate workforce development, we therefore recommend the General Assembly to direct DHSS to:

1. Expand training for lead paint assessment, inspection, lead hazard removal, and abatement certification in partnership with community-based organizations in zip codes with higher rates of housing constructed prior to 1978.
2. Offer this training at a reduced cost for a period of 6 years.
3. Enable those certified in other states to apply for provisional certification in Delaware.
4. Enroll Delaware in the CDC's Adult Blood Lead Epidemiology and Surveillance (ABLES) program and annually report adult blood lead data to the General Assembly.

Recommendation 11. State Agency Staffing

Provide the Childhood Lead Poisoning Prevention Program within the Division of Public Health with adequate staffing and support to accomplish the goals of SB 9 and the Childhood Lead Poisoning Prevention Act.

The Childhood Lead Poisoning Prevention Program operates on a shoestring budget and relies heavily on contract and part-time employees to perform tasks which, even before SB 9, were substantial. SB 9 has added additional responsibilities, including the new requirements for case management and home risk assessments for all children with blood lead levels at or above the CDC's Blood Lead Reference Value of 3.5 µg/dL, and to establish the new Lead Based Paint Program.

DHSS must maintain the ability to competitively apply for federal funds, including the Lead Hazard Control and Healthy Home grants and CHIP lead abatement funds, to provide sustainable federal funding for lead abatement.

This proposed Lead Safe Rental Housing Plan will continue to add responsibilities in data management and reporting, as well as other burdens to the agency, in addition to the proposed requirements for landlords. The proper government structure and support for childhood lead poisoning prevention activities as a whole is required, including a shift from seasonal and contract employees to a sustainably-funded staffing structure with full-time positions to perform the needed work.

Program Challenges and Future Considerations

Challenges we identified in our literature and program comparison, through our discussions, and in listening to stakeholders reveal that the commitment by all involved to overcome the following challenges is imperative to the future success of this concept.

1. Aggressive timeline for implementation: SB 9 provided the guardrails that guided our thinking on the timeline for implementation of this plan, which required that all rental housing constructed prior to January 1, 1978 be certified safe from lead paint hazards for inhabitants by January 1, 2026. The size of this undertaking, which requires universal registration of all rental housing units, assessments and inspections of an estimated 48,898 housing units within the next two years has frustrated stakeholders, particularly landlords. At approximately 260 work days per calendar year, this represents an assessment inspection rate of 188 units/day if performed in a one-year period, or 94 units/day if performed over a two-year period.

Care should be given to a timeline in a final proposal that can be successful without adding further delays and prolonging the conditions of lead poisoning for tenants. Delaware is already decades late in addressing a problem that has garnered national attention for close to a century, has prompted a federal ban 45 years ago, and has inspired action in surrounding states and across the country.

2. Program costs: While successful programs for lead-safe certification and hazard control in rental units have been in place in neighboring jurisdictions for decades and have demonstrated success, developing a new and similar program will have costs that must be absorbed by government, including registration, data tracking, and enforcement, as well as costs that should be offset by government, including some of the costs to landlords, so that Delaware maintains a vibrant and productive rental housing market and is able to provide safe, affordable housing into the future. The nature of this problem is at the core of public health; housing should not poison its inhabitants. A robust financial support system for landlords to accelerate implementation of lead-safe rental housing should be explored. The state has a responsibility to appropriately support the program costs with the proposals outlined here.
3. Fully rehabilitated rental units: Comments at the stakeholder listening session requested consideration that rental units that are fully gutted and completely rehabilitated should qualify as post-1978. This is somewhat complicated, because it would need to be demonstrated that all painted components of the rental unit and common areas were completely removed and replaced, and renovation activities did not generate lead dust or create hazards that could pose a hazard to tenants. Such documentation does not appear to be included in building permits, certificates of occupancy, or the International Building Code. Providing a mechanism for fully gutted buildings to demonstrate that they have removed all lead hazards and obtained a lead dust clearance sufficient to warrant an exemption would require further modification of how lead paint removal is documented and inspected for buildings that are completely rehabilitated.
4. Insurance coverage for lead hazards: Feedback received during the stakeholder listening session indicated that obtaining lead insurance is cost-prohibitive. EPA and HUD rules on Renovation, Repair and Painting establish a standard on methods and training of employees which also allows the insurance market to assess the risk and

offer coverage. The General Assembly may wish to consider policies like those in Rhode Island to make lead hazard liability insurance more accessible for rental housing. For example, the State of Rhode Island Lead Mitigation Act specifically provides guidance on insurance coverage and requires insurance companies to provide lead paint liability insurance to owners of pre-1978 residential rental properties that are in compliance with the Housing Resources Commission Lead Mitigation Regulations.

5. Certification for Real-Estate Transactions: Because we are proposing lead-safe certification to expire after 4 years, it was recommended that qualifying inspections performed as part of a real-estate transaction within the past 4 years should also be eligible for the certification of the rental unit, so long as they meet the criteria established by DHSS for certification. The current process for housing inspection for real estate sales is not something that we examined, and would warrant further research.
6. Sensitive Information in a Public Database: A suggestion was made that the public-facing portion of the registration database should not include information that could be used in fraudulent scams, including fraudulent deed transfers. It should be noted that the City of Newark already provides a public database of all of its rental licenses that include owner information. This is something that should be looked at carefully.
7. Landlord-Certification to Perform Inspections: We received feedback requesting that the plan include the ability for landlords and property managers to have access to lead hazard training and certification to assist in keeping their costs down, with appropriate oversight inspections to ensure that inspections and clearance are thorough. The importance of independent third-party inspectors is well-documented in other jurisdictions and could create additional oversight needs for DHSS to ensure that inspections or assessments are performed correctly and documented accurately.

Stakeholder Impact and Feedback

The CLPPAC sought stakeholder feedback, particularly from housing providers, throughout the development of the plan, including a stakeholder listening session on December 7, 2023 to listen to feedback on the plan. While stakeholder engagement was not required for us by SB 9, we felt that this engagement could help us to understand the challenges of making all rental housing built before 1978 lead-safe and identify opportunities to improve the plan.

Feedback collected throughout this process was categorized by theme and then compared to the programs in our evaluation model and existing peer-reviewed research on this topic. Some of the recommendations from stakeholders were incorporated into this document, while others, which were found to be either inconsistent with best practice, contrary to the objectives of the plan as required by SB 9, or had the potential to cause harm and perpetuate childhood lead poisoning, were not included in the plan.

While we did receive positive feedback about the tenant protections included in the plan, general comments from housing providers about the plan overall were negative, and included the following criticisms: the timeline was suggested to be unrealistic; the costs borne by landlords were considered too high; an adequate workforce to implement the necessary tasks does not exist; and the plan would result in increased vacancy rates, shortages in rental housing, decreased availability and affordability of rental housing, and increased rents. These criticisms are consistent with those documented in the historical record for landlord opposition to primary prevention over the past 90 years (Markowitz and Rosner, 2002; 2013; Needleman, 1998; and Warren, 2000) and have not negatively impacted the other jurisdictions with similar programs that we reviewed.

Recommendations for plan improvement that we received that were incorporated into the plan include the following: administrative warrants would enable the ability to perform inspections and lead hazard control work in those instances where access to the rental unit is denied by the landlord or tenant; mutual agreement between tenants and landlords to terminate a lease in addition to temporary relocation requirements should be allowed; delay of penalties and extension of the compliance timeline for those landlords who had, in good faith, attempted to comply with the certification requirements and any needed repairs; and alternate funding sources for lead abatement, including CHIP funding, should be pursued by the state.

Recommendations that we feel may have merit but warrant further consideration beyond our ability to meet the January 1, 2024 deadline established by SB 9 were included in the Program Challenges and Future Considerations section of this plan, and include: dwellings that are fully gutted and rehabilitated should be able to qualify as post-1978 and therefore be exempt from inspection; rental hazard insurance should be made more affordable; a lookback period for those rental properties that have already received a qualifying inspection, such as for a real-estate transaction; the public-facing side of the rental unit registry should be sensitive to the type of information that is provided to prevent fraudulent activities; and landlords should be eligible to receive training and certification so that they can perform the inspections. Recommendations that we did not incorporate into this plan, and our reasoning, are provided in Appendix B.

Conclusions

In this plan, the CLPPAC presents a comprehensive approach to eliminate childhood lead poisoning from lead paint hazards in rental housing. Our research has demonstrated that pre-1978 rental housing is the most significant cause of childhood lead poisoning in the United States, and that rental unit assessment or inspection and lead-hazard removal are the most responsible and cost-effective approaches to primary prevention available. This is not a controversial idea; it has proven to be effective in other jurisdictions where similar policies have been implemented, including by our immediate neighbors in Maryland and Philadelphia.

Childhood lead poisoning is not a problem that has already been solved. It remains a serious public health threat in Delaware, with hundreds of children identified with lead poisoning each

year, and likely many more who are not identified. The passive approach that Delaware has used to address lead poisoning for the past decades, surveillance and offering services only after a child has a lead exposure documented on a blood lead test, has failed to prevent children from becoming lead-poisoned. A new proactive approach described here emphasizes primary prevention, is urgent, and demands the complete commitment of the Governor and the General Assembly to provide the necessary authority, funding, and support to ensure that all rental housing is safe for its inhabitants.

The plan we present, while containing critical details that are essential to its successful implementation, is really quite simple: rental housing must emerge from the shadows, it must be counted and accounted for, it must be inspected for the invisible lead hazards that poison children, and it must be made safe for habitation.

Delaware's Residential Landlord Tenant Code already requires rental housing to be healthy and safe, and to not endanger the welfare of occupants. Somehow along the way, lead poisoning got left out of the interpretation of these words. Our research has shown that as a whole, pre-1978 rental housing is not safe from lead hazards, is nearly twice as likely to have deteriorated paint than owner-occupied housing, and is widely regarded as the most important source of childhood lead poisoning. Because Delaware has not yet addressed this risk, any particular pre-1978 rental housing unit may not be healthy, may not be safe, and may truly endanger the welfare of occupants, and should therefore be inspected or assessed and lead hazards promptly corrected.

We hope that the Governor, the General Assembly, and others who read this document will seriously consider the contents of this plan and assist in its implementation.

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Appendix A. Proposed Legislation



SPONSOR: Sen. XXXXXX

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. XX

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

WHEREAS, lead exposure poses significant health risks, particularly to young children, causing developmental delays, learning difficulties, and other severe health issues;

WHEREAS, rental housing built before 1978 may contain lead-based paint, which can deteriorate over time, leading to potential exposure through peeling, chipping, or flaking paint;

WHEREAS, establishing certification requirements for rental housing as lead-free or lead-safe will safeguard the health and well-being of tenants, especially children;

WHEREAS, creating a certification program will encourage landlords to undertake necessary measures to eliminate lead hazards, thereby reducing the prevalence of lead poisoning cases; and

WHEREAS, it is in the public interest to enact legislation that promotes safe and healthy living environments by addressing the hazards associated with lead exposure in rental housing.

NOW, THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend Part III, Title 25 by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 54. Lead-Based Paint Hazard Reduction.

§ 5401. Definitions.

For purpose of this chapter:

- (1) The term “alternative housing” shall be as defined by the regulations of the Department and shall include reasonable out-of-pocket expenses incurred as a result of relocating the tenant to alternative housing such as rent charged for the alternative housing above the cost of the tenant’s existing unit, costs to move back and forth from the alternative housing, and storage costs for personal belongings.
- (2) The term “constructed” shall mean the date on which a construction permit was obtained. If no construction permit was obtained, it shall mean the date that construction was started.

- (3) The term "Department" shall mean the Department of Health and Social Services.
- (4) The term "lead-based paint hazard" shall be as defined by the regulations of the Department.
- (5) The term "lead free" means that lead is not present in any form anywhere in the rental unit or premises.
- (6) The term "lead inspector" shall be as defined in the regulations of the Department.
- (7) The term "lead safe" means a designation made after an inspection by a lead inspector that a rental unit and premises do not have a lead-based paint hazard at the time of the inspection.
- (8) The term "regularly visited" shall mean at least two (2) times a week for three (3) or more hours at least ten (10) weeks per year.
- (9) The term "rental unit constructed before January 1, 1978" shall mean a rental unit for which a construction permit was obtained before January 1, 1978. If no permit was obtained, it shall mean that construction of the rental unit was started before January 1, 1978.

§ 5402. Registration of Rental Units.

- (a) Effective January 1, 2025, every rental unit shall be registered with the Department prior to the commencement of a rental agreement on such rental unit.
- (b) The registration shall include the name and address of the landlord and any property manager, the address of the rental unit, the date the rental unit was constructed, and the expiration of the term of any existing rental agreement.
- (c) The failure to register a rental unit shall be punishable as follows: a civil penalty of \$20 per day per rental unit until the unit is registered.

§ 5403. Rental Unit Registry.

- (a) The Department shall establish and maintain a registry of all rental units by September 1, 2024.
- (b) The registry shall be kept current and made available to the public in a format that is searchable by the name and address of the landlord and any property manager, the address of the rental unit, the date the rental unit was constructed, the term of any existing lease, and when and whether the rental unit and premises have been certified as lead safe or lead free.

§ 5404. Certification of Rental Units as Lead Free or Lead Safe.

- (a) Effective January 1, 2026, a certificate for any rental unit constructed before January 1, 1978, shall be required. The certificate shall certify that the rental unit and premises are "lead free" or "lead safe." The certificate shall be filed with the Department prior to January 1, 2026 and prior to the commencement of any rental agreement on such rental unit after January 1, 2026. The certificate shall include the name and address of the landlord and any property manager, the address of the rental unit, the lead inspector issuing the certificate, the date the certificate was issued, the date of the inspection of the rental unit and premises, and whether the rental unit and premises are certified as lead free or lead safe. The information provided in the certificate shall be included in the rental unit registry created by the Department as required by this chapter.
- (b) Only individuals approved as lead inspectors by the Department shall issue certificates. No individual shall be approved by the Department as a lead inspector unless such individual has successfully completed a training program established by the Department on the identification and evaluation of lead paint hazards or a training program of another state that the Department has determined to be as stringent as the program established by the Department.
- (c) No certificate shall be issued unless the lead inspector conducts an inspection and evaluation of the rental unit and premises in a manner required by the regulations of the Department.

(d) The Department shall establish and maintain a list of all lead inspectors. Such list shall be available to the public.

(e) The failure to obtain and file a certificate prior to January 1, 2026 or the commencement of a rental agreement shall be punishable as follows: a civil penalty not to exceed \$500 per day per rental unit until the required certificate is obtained and filed with the Department. No civil penalty shall be imposed if a certificate exemption is issued by the Department prior to January 1, 2026, or the commencement of a rental agreement after January 1, 2026. A certificate exemption shall only be issued upon a showing that it is not possible to timely obtain a certificate. The length of the certificate exemption shall not exceed six (6) months. No certificate exemption shall be issued if a lead hazard exists that makes the rental unit uninhabitable unless the landlord provides the tenant alternative housing as required by this chapter.

(f) The tenant shall permit reasonable access to the rental unit and premises for an inspection and evaluation by a lead inspector as required by this chapter.

(g) The failure to obtain and file a certificate shall preclude the landlord from bringing an action for summary possession of the rental unit for which a certificate is required. This section shall not apply if the landlord has obtained a certificate exemption issued by the Department prior to January 1, 2026, or the commencement of a rental agreement commencing after January 1, 2026. A certificate exemption shall only be issued upon a showing that it is not possible to timely obtain a certificate. The length of the certificate exemption shall not exceed six (6) months. No certificate exemption shall be issued if a lead hazard exists that makes the rental unit uninhabitable unless the landlord provides the tenant alternative housing as required by this chapter.

(h) The landlord shall provide for alternative lodging when an inspection and evaluation by a lead inspector, as required by this chapter, reveals that the rental unit is inhabitable as a result of a lead-based paint hazard before or during the abatement or remediation of the rental unit. The landlord shall provide the tenant with reasonable advance notice before the tenant is required to move into or out of the alternative housing. Nothing in this chapter shall preclude a tenant and landlord from agreeing to terminate a rental agreement so long as such agreement is voluntary and not coerced.

(i) The lead inspector shall inform the Department, the landlord, and tenant of any lead-based paint hazard revealed during an inspection and evaluation of a rental unit. The lead inspector shall provide the landlord and tenant with information regarding the safe remediation and abatement of lead-based paint hazards as required by the regulations of the Department.

§5405. Recertification of Rental Units as Lead Free or Lead Safe.

(a) Any rental unit certified as lead safe shall be recertified as follows:

- i. prior to the commencement of any rental agreement more than four years after the date on which such unit was last certified as lead safe;
- ii. if an individual residing in the unit or regularly visiting the rental unit develops an elevated blood level as defined by the regulations of the Department; or
- iii. if a lead-based paint hazard is discovered in the rental unit or premises.

(b) Any rental unit certified as lead free need not be recertified unless:

- i. a lead-based paint hazard is discovered in the rental unit;
- ii. an individual residing in the rental unit or regularly visiting the rental unit develops an elevated blood level as defined by the regulations of the Department; or
- iii. if a lead-based paint hazard is discovered in the rental unit or premises.

§ 5406. Disclosure of Registration and Certification.

(a). Effective January 1, 2026, every rental agreement shall contain a written disclosure that the rental unit has been registered as required by this chapter.

(b). Effective January 1, 2026, every rental agreement on a rental unit constructed prior to January 1, 1978 shall contain a disclosure that the rental unit and premises have been certified as lead safe or lead free, the date of the certification, and the lead inspector issuing the certificate. The landlord shall provide the tenant with a copy of the certificate within seven (7) days of a request for such certificate. Failure to provide such certificate shall be punishable as follows: a civil penalty of \$50 per day until the certificate is provided to the tenant.

(c). The Department shall promulgate regulations addressing the format of the disclosures required by this chapter.

§ 5407. Educational Materials.

The landlord shall provide the tenant with any educational materials required to be provided by the regulations of the U.S. Environmental Protection Agency or the Department. Such material shall be provided before the tenant occupies the rental unit. Failure to provide the required educational materials shall be punishable as follows: a civil penalty of \$20 per day until the materials are provided to the tenant.

§ 5408. Lead Paint Hazard Control Grant Program.

The Department shall establish and administer a lead paint hazard control grant program to assist eligible landlords in obtaining a required certificate or in the remediation or abatement of lead hazards in a rental unit. Preference for grants shall be given for rental units which are the primary residence for children under six, pregnant individuals, or are regularly visited by a child under six (6) years of age. The program shall also provide grants to assist eligible tenants to obtain temporary alternative lodging while a rental unit serving as their primary residence is undergoing lead paint remediation or abatement.

§ 5409. No Discrimination.

(a). It shall be unlawful to discriminate against an individual because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing relating to the presence of a lead-based paint hazard in a rental unit or premises, the failure to register the rental unit or to obtain or provide a certificate.

(b). It shall be unlawful to discriminate against an individual because the individual or someone residing with such individual in a rental unit has an elevated blood lead level or is perceived as having an elevated blood level. It shall also be unlawful to discriminate against an individual seeking to rent a rental unit because the individual or someone who would be residing in the rental unit has an elevated blood level or is perceived as having an elevated blood level.

(c). It shall be unlawful to discriminate against an individual because the individual or someone who is or would be residing in the rental unit is pregnant or is under six years of age (unless the rental unit is qualified as housing for older persons under the Delaware Fair Housing Act).

(d). Prohibited discriminatory acts shall include, but are not limited to, the following: arbitrary refusal to renew a rental agreement; arbitrary refusal to enter into a rental agreement; termination of tenancy; arbitrary rent increase or decrease in service to which a tenant is entitled; or any constructive eviction.

§5410. Enforcement.

(a) Any officer or employee of the Secretary of Department designated by the Secretary shall:

- i. Execute and serve administrative inspection warrants issued under the authority of this State;
 - ii. Make seizures of property pursuant to this chapter;
 - iii. Have all powers of constables and other police officers of the State, counties and other subdivisions of the State; and
 - iv. enforce this chapter.
- (b). Issuance and execution of administrative inspection warrants shall be as follows:
- i. Any person authorized to issue search warrants in this State may, within the person's jurisdiction and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the rental unit or, premises in the circumstances specified in the application for the warrant.
 - ii. A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or justice of the peace and establishing the grounds for issuing the warrant. If the judge or justice of the peace is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the rental unit or premises to be inspected, the purpose of the inspection and, if appropriate, the type of property to be inspected or seized, if any. The warrant shall:
 - a. State the grounds for its issuance, and the name of each person whose affidavit has been taken in support thereof;
 - b. Be directed to a person authorized by §5410(a) to execute it;
 - c. Command the person to whom it is directed to inspect the rental unit or premises identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
 - d. Identify the item or types of property to be seized, if any; and
 - e. Direct that it be served during normal business hours and designate the judge or justice of the peace to whom it shall be returned.
 - iii. A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.
 - iv. The judge or justice of the peace who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the Prothonotary in the county in which the inspection was made.

(c). The Secretary may make administrative inspections of rental units in accordance with the following provisions:

i. When authorized by an administrative inspection warrant issued pursuant to this section, an officer or employee designated by the Secretary, upon presenting the warrant and appropriate credentials to the tenant may enter the rental unit for the purpose of conducting an administrative inspection.

ii. This section does not prevent the inspection of a rental unit without a warrant or prevent entries and administrative inspections, including seizures of property, without a warrant:

a. If the tenant consents;

b. In situations presenting imminent danger to health or safety;

c. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

d. In all other situations in which a warrant is not constitutionally required.

§5411. Regulations.

The Department shall promulgate regulations to effectuate this chapter.

Section 2: Amend Part III, Title 25, §5305 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5305. Landlord obligations relating to the rental unit.

(a) The landlord shall, at all times during the tenancy:

(1) Comply with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants, is free of lead and certified as lead safe or lead free as required by chapter 54, and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition, free of lead and certified as lead safe or lead free as required by chapter 54, all common areas of the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

(4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy; and

(5) Maintain all electrical, plumbing and other facilities supplied by the landlord in good working order.

SYNOPSIS

This bill requires all rental units to be registered with the Department by January 1, 2025 and all rental units constructed before January 1, 1978 to be assessed by an approved lead inspector by January 1, 2026 and all lead hazards promptly corrected . It requires rental units certified as lead safe to be recertified every four (4) years.

This bill requires the Department to establish and maintain a registry of all rental units and their status as lead-free or lead safe.

This bill requires the landlord to provide alternative housing to tenants while a rental unit is made lead-free or lead safe.

This bill also requires every rental agreement on a rental unit constructed prior to January 1, 1978 contain a disclosure that the unit has been certified as lead-free or lead safe.

This bill requires landlords to provide the tenant with educational materials about lead-based paint hazard prior to tenancy.

This bill requires the Department to establish and maintain a grant program to assist landlords in obtaining a required certificate or in remediating or abating lead-based hazards in rental units and to assist tenants in obtaining alternative housing while rental units are undergoing remediation or abatement.

This bill prohibits discrimination against individuals who have made a complaint or participated in an investigation, hearing or other proceeding about a lead-based paint hazard in a rental unit or the failure to register or certify a rental unit. It also prohibits discrimination because an individual residing in a rental unit or seeking to rent a rental unit has or is perceived to have an elevated blood level. It prohibits discrimination because an individual who is or would be residing in a rental unit is pregnant or under six (6) years of age unless the rental unit qualifies as housing for older persons under Delaware law.

The bill provides that the Secretary of the Department shall designate individuals who can enforce the chapter and a procedure to obtain administrative warrants.

The bill provides for fines for the failure to timely register or to obtain and file a required certificate, unless an exemption of up to six (6) months is granted by the Department. Fines are also provided for failure to provide the tenant with educational materials or a copy of the required certificate, when requested.

The bill bars landlords who have failed to obtain and file a required certificate from commencing an action for summary possession of the rental unit, unless a certificate exemption of up to six months has been issued by the Department.

The bill directs the Department to promulgate regulations to effectuate the chapter.

The bill amends the landlord obligations under §5305 to include providing a rental unit and common area free of lead and certified as lead free or lead safe.

Author: XXXXXXXX

Appendix B. Stakeholder Suggestions Not Included in the Plan

Stakeholder feedback that was not included in this plan, with our justification for why the suggestion was excluded, include the following:

Suggestion	Justification for Exclusion from the Plan
Tenants should be able to choose to live in lead-contaminated housing, and their choice to do so should release the landlord from liability for any lead poisoning that occurs in the rental unit, if an appropriate lead hazard warning about the dangers is provided to the tenant.	We found this contrary to the direction provided by SB 9, extremely dangerous for health, and problematic ethically.
Households with children should be inspected and abated first; requiring lead-safe certification for households occupied only by adults adds unnecessary costs.	This is counter to anti-discrimination objectives; these types of policies were shown by the research to result in an increase in evictions in other jurisdictions.
Inspections performed for Section 8 should be able to qualify as a lead-safe inspection.	We examined Section 8 inspection protocols and found that they do not currently include lead dust; they also allow for deteriorated paint to continue in the dwelling (2 square feet of deteriorated paint per room or 10% of a component).
Instead of making rental housing lead-safe, focus should be more on public education so people can know how to protect themselves from lead poisoning; lead-safe housing requirements are a poor use of resources.	This is counter to our task assigned by SB 9, our research has also concluded that public education alone is not sufficient to prevent lead hazards, and that the removal of lead hazards from rental housing is the most important mechanism for primary prevention. This has also been a talking-point of the lead industry and housing providers for many years, has been used elsewhere to delay policy action, and has perpetuated the continuation of childhood lead poisoning (Markowitz and Rosner, 2002, 2013; Warren, 2000).
Property owners should be exempt from hiring lead-safe contractors and should be able to perform the work themselves.	We examined the EPA rules for lead hazard work and found this to be counter to federal requirements. Certification exemptions for owners to perform their own work apply only to owner-occupied units and exclude owners if someone outside the immediate family resides in the unit.

Suggestion	Justification for Exclusion from the Plan
Not enough children are lead-poisoned to take action; “why should we care about only a few hundred lead-poisoned children?”	Delaware children are not disposable. Existing data and research demonstrate childhood lead poisoning to be a severe public health crisis warranting immediate action.
Inspections should be limited to rental turnovers; this would assist with addressing lead hazards in occupied units.	This would introduce loopholes that would prevent inspection for long periods of time and could undermine the effort. Best practices from other programs utilized a routine schedule for reinspection to prevent hazards that can continue to develop from lead paint left behind due to wear and tear.
The plan should allow for a visual inspection for lead dust and degrading paint instead of dust sampling.	Lead dust can be invisible to the naked eye and can evade detection until a child becomes lead-poisoned. The only way to detect the presence of lead is through a dust sample.
Liability protection: protections for landlords from lead poisoning claims if they comply with the program.	This is not something we have seen in the research or our program analysis.
Registration of all rental units is outside the scope of SB 9; all rental units should not be required to register in a state database.	The shadow economy of rental housing without adequate health protections and accountability currently perpetuates ongoing childhood lead poisoning in Delaware.
Lead hazards should be a private matter, the state should not be involved, and instead lead hazards should be resolved privately between the landlord and the tenant.	Lead poisoning is a matter of public health that is already regulated and managed by the state and federal governments, including the Environmental Protection Agency, Department of Housing and Urban Development, Food and Drug Administration, and Consumer Product Safety Commission. Toxic exposures to poisons are not a private matter between a property owner and a tenant.
The program should target the oldest housing first, inspect and abate them, and then proceed to newer housing.	This is beyond the scope as outlined in SB 9. Furthermore, lead paint was banned 45 years ago and too much time has passed to justify further delays.

Suggestion	Justification for Exclusion from the Plan
<p>A request by the City of Newark in regard to the tremendous annual turnover in rental housing that occurs at the same time due to the large proportion of rental units for students at the University of Delaware. Providing a mechanism to space the compliance and reporting, particularly if it includes the municipal government, would be appreciated.</p>	<p>The proposed plan would not require any inspections or record-keeping by municipalities, so this should not create a new burden for them that could create a bottle-neck at any particular time of year. If municipalities decided to incorporate new changes to the Delaware Code into their municipal code, this may then become an issue for them.</p>

Appendix C. Programs in Other Jurisdictions

We carefully evaluated the following programs in other jurisdictions, which are also summarized as follows:

State of Maryland: Adopted in 1994, Maryland's Lead Law is considered highly effective at preventing childhood lead poisoning. The Green and Healthy Homes Initiative (2020) which implements Maryland's Lead Law, reports that Maryland's proactive approach to primary prevention, which includes the rental housing program and other prevention initiatives, has resulted in a 98% reduction in childhood lead poisoning since 1993.

The Lead Law is mandatory for all rental dwellings constructed prior to 1978, and includes housing authorities and housing choice voucher programs. All rental properties must be registered with the Maryland Department of Environment as well as with the county where they are located, registration must be renewed annually, and includes a \$30 fee. Property owners must obtain a lead risk reduction certificate at every change of tenancy and other triggering events, and provide certification that interior and exterior painted surfaces of the rental unit meet the risk reduction standard for lead paint and dust. Lead hazards that are identified must be corrected within 30 days, include relocation of the tenant during lead hazard reduction work, and educational materials must be provided. Advanced abatement measures are required if a pregnant tenant or child under the age of 5 has a blood lead level at or above 5 µg/dL. All work must be performed by those certified by the state and EPA. Exemptions to the Lead Law include hotels, motels, seasonal, and transient rental facilities. Penalties for violation include \$20/day for failure to register, \$500/day for failure to file an inspection certificate (not to exceed \$100,000), and civil penalties not to exceed \$25,000.

City of Philadelphia: Adopted in 2011 and updated in 2020, Philadelphia's Lead Paint Disclosure and Certification Law applies to all rental units constructed prior to March 1978, though it excludes public housing authorities and housing choice voucher programs in specific zip codes. The program is implemented as part of the city's annual rental license and enforced by the City of Philadelphia, and requires lead-safe certificates for all rental units, which must be updated every 4 years. Lead-free certification lasts forever. Lead hazards must be remediated to the extent that the unit can pass inspection prior to tenant occupancy, and educational materials must be provided. All workers must be licensed by the state and EPA. There are no exemptions for temporary housing units, dormitories, or hotels. Penalties include \$2,000 per offense per day, with each day constituting a separate offense; refund of rent for the period without a lead inspection certification; landlords may be subject to a private lawsuit for money damages and attorney's fees; and housing licenses may be revoked.

State of New Jersey: While New Jersey's original lead-safe rental housing laws began in 1971, the Lead-Based Paint Inspections in Rental Dwellings was revised in 2023, applies to all rental units constructed prior to 1978, and is enforced by local governments. Lead-safe certification is required within 2 years or with tenant turnover, whichever is sooner, and thereafter every 3 years or upon tenant turnover. Tenant turnover restarts the 3-year clock. The periodic

lead-based paint inspection applies to interior spaces within dwellings and common areas that tenants of a rental dwelling have access to, including hallways and basements. All lead paint hazards must pass clearance, including a lead dust wipe inspection, as part of a post remediation inspection. New Jersey requires all workers to be licensed in the state and by the EPA, and does not have specific education requirements. Seasonal rentals that do not have consecutive leases are exempt. Penalties for both the landlord of \$1,000/week and for the local government \$1,000/week are assessed.

City of Buffalo: Buffalo, New York added a proactive rental inspection lead screening for rentals to their existing certificate of rental compliance in 2020 and has incorporated a 6-year phased-in approach to full capacity that focuses on areas with a history of childhood lead poisoning. The city schedules inspections with property owners; units that fail inspection are issued an order of remedy with inspection clearance required within 60 days. Units that pass inspection are in good standing for a period of 3-years. Penalties for negligence include fines and loss of rental license.

City of Detroit: Rental properties in Detroit, Michigan must have lead clearance certification before they can be rented. Rental units constructed prior to 1978 must have a lead inspection and risk assessment performed to determine the presence of lead based paint and lead based paint hazards. If lead based paint hazards exist, the hazards must be controlled prior to occupancy, all workers must be licensed, and the rental unit must pass clearance inspection. Penalties range from \$500 to \$8,000 and can be assessed daily.

City of Burlington: Burlington, Vermont requires all landlords to certify compliance with the state's Essential Maintenance Practices for lead hazards. Property owners must conduct a visual assessment of each unit annually and upon tenant turnover to detect and remedy deteriorating paint, perform specialized cleaning of all interior surfaces that are subject to lead safe cleaning procedures at tenant turnover, and provide educational materials. City inspectors are authorized to enter into rental homes on the basis of carrying out local, periodic inspections. If refused, Vermont District Court may issue search warrants for unit entry provided probable cause. Failure to observe lead-safe practices may result in a \$500 fine and/or a stop work order, loss of occupancy certificate, and civil and/or criminal penalties.