

2017

Interview With: The Lead Safe Housing Rule: A Step in the Right Direction

Matthew Wagar

Follow this and additional works at: <https://lawcommons.luc.edu/clrj>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Matthew Wagar, *Interview With: The Lead Safe Housing Rule: A Step in the Right Direction*, 37 CHILD. LEGAL RTS. J. 263 (2020).

Available at: <https://lawcommons.luc.edu/clrj/vol37/iss2/8>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

Interview With:
The Lead Safe Housing Rule: A Step in the Right Direction

By: Matthew Wagar

I. INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD) requires that families show that a child has a dangerous level of lead in their body before HUD can take remedial measures to remove sources of lead from the homes. Considering the disastrous effects that lead has on a child's development, it is dangerous to wait until children are already poisoned to act. On February 12, 2017, Congress passed the updated Lead Safe Housing Rule in order to protect children at an earlier stage. Much of the credit for this change can be attributed to Professor Emily Benfer who, in conjunction with students and other health justice advocates, wrote a petition to Congress asking that HUD lower the threshold of blood-lead content. Previously, this threshold, or "action level", was set at twenty micrograms per deciliter, four times the safe limit recommended by the Center for Disease Control and Prevention (CDC). While the measures outlined in the Lead Safe Housing Rule are a victory, they still only require HUD to take remedial measures to remove sources of lead. In order to protect children from the dangers of lead poisoning, Congress must pass legislation that encourages HUD to take more proactive measures in removing sources of lead from homes where it is detected.

II. THE UPDATED RULE

The update to the Lead Safe Housing rule (LSH) is an attempt to ensure a safer living environment for children in the United States. As it stands, HUD sets an action level, measured in micrograms per deciliter of lead found in a child's blood, to determine whether they should send a contractor or specialist to investigate a home to detect any presence of lead-hazards. If that contractor finds lead paint, or detects lead infused dust, or any other potential hazard, the contractor is then obligated to remove those hazards in thirty days. Changes to the LSH will change the blood-lead action level from twenty micrograms per deciliter to five micrograms per deciliter, thus lowering the blood-lead action level to parallel the one set by the CDC in 2010.

The CDC consistently states that there is no safe level of lead in a child's blood. Lead has been shown to have terrible consequences on the brain of a child, specifically related to learning disabilities. Children found with high levels of lead in their blood show symptoms of Attention Deficit Disorder and have difficulty achieving academically. Therefore, in 2010, the CDC removed the use of the term "blood levels of concern" from their vernacular to highlight a more proactive approach. Rather than addressing the consequences of lead ingestion once the damage has been done, the key actors should prevent lead from ever entering child's body. This was in response to the growing scientific evidence showing that relatively small levels of lead can lead to learning disabilities. The CDC also found that it needed to lower the value, which identified children and environments containing lead-related hazards, from ten micrograms per deciliter, to five. Both measures were put into place in the CDC, but it would take until 2017 for HUD to adjust accordingly.

Though the CDC is now firm in its view that there is no safe level of lead in a child, and recommends affirmative, proactive action to prevent lead poisoning in children, there are still

hundreds of thousands of homes where a child is exposed to lead. Furthermore, the Department of Housing and Urban Development has taken a reactive approach to the problem and wait until a child is severely ill before acting. In the news, one can find stories of families who have had to choose between living in a home that could poison their children and living on the streets. Though the newly implemented bill addresses that concern by lowering the action level to a reasonable point, it is still a reactive measure. As the CDC is want to point out, there is absolutely no safe level of lead in a child's body. Thus, simply reacting to the presence of poison in a child is too late. The question then becomes, how would HUD implement a proactive measure?

III. THE INTERVIEW

To gain more perspective on the Lead Safe Housing Rule, I consulted with Professor Benfer and discussed what lead up to filing the petition, the current situation regarding HUD, and her plans moving forward.

Professor Benfer was working with clients at the Health Justice Project at Loyola University Chicago's Beazley Institute for Health Law and Policy when she was inspired to lead the charge on the petition. The Health Justice Project's clients had battled unsafe living conditions for years, specifically, they had serious concerns about their children being poisoned by lead based paint. Initially, Professor Benfer testified before the Chicago Housing Authority (CHA), and met with its director, in an effort to change children's living conditions for the better. Unfortunately, CHA was unreceptive to her efforts. In response, the Health Justice Project appealed at the federal level and petitioned HUD to change the lead safe level to CDC standards. Not only would this impact CHA, and thus achieve the initial goal that the Health Justice Project had set in place; but it would impact similar housing authorities nationwide.

Professor Benfer noted that HUD has done some great things in the update of the Lead Safe Housing Rule. Within the bill, HUD has also added a provision to implement building wide inspections in federally assisted housing. The rule mandates that: if a child, living in federally assisted housing, has been identified as having a blood/lead level that is higher than the action level, then not only will that child's unit be investigated and remedied; but all units in that complex will be investigated. Furthermore, HUD is currently piloting policy that weighs how to improve the homes themselves. According to Professor Benfer, HUD has asserted there are a lot of restrictions that prevent it from implementing certain preventative policies. Therefore, HUD is experimenting with policies ensure they are abiding by all laws and regulations. This is heartening news, as Professor Benfer's ultimate goal in this, as she says, is to reach true preventative protection for the nation's children. However, although the Lead Safe Housing Rule change was focused on reactive measures, these new developments may lead to preventative rules being enacted in the future.

Recently, President Trump's proposed budget has called for cuts across federal agencies, if passed, how could that impact Professor Benfer's efforts? Professor Benfer noted that a budget that heavily cuts funding to HUD would stymie efforts to get more proactive in trying to protect children. Though the proposed budget would not cut lead protection funding, it would cut community block grant programs, HUD's main resource for developing creative policy changes, including the ones necessary to protect children from lead paint. Even though HUD does not yet know the extent of the impact of the budget cuts, there are other solutions.

IV. PROPOSAL

One way HUD could address this issue is by sending out a contractor to every home built before a certain year. An overwhelming majority of homes that contain lead based paint were built before 1978, the year that Congress prohibited the use of lead based paints in homes. The earlier a house was built relative to 1978, the higher the likelihood that the home contains lead based paints. For that reason, a possible measure could be for HUD to investigate all child-housing homes that are old enough. For example, homes built before 1940 would have a higher likelihood of containing lead based paint, and thus present a significant danger to children living in them. Therefore, those houses should be prioritized, and should be categorically investigated by HUD regardless of whether any lead has been found in a child's bloodstream.

Unfortunately, the issue then becomes whether this is cost effective. Though there is no direct data to show the cost of such an action, that cost still needs to be considered. In order to help mitigate the cost of such an action certain homes built in certain years should be HUD's priority. Regardless of the solution, HUD should begin to, at bare minimum, educate the homeowners on the dangers inherent in those homes to rally more support around this issue.

V. CONCLUSION

Thanks to Professor Benfer, Professor Gold, and the many advocates who contributed to the petition, HUD's standards now align with the modern medical and safety sensibilities set by the CDC. However, there are still a frighteningly large number of homes around the United States that contain dangerous levels of lead paint. In some of these homes children, who may eat that paint and gravely injure themselves. Though the Lead Safe Housing rule enables HUD to react if dangerous levels of paint are found in a child's bloodstream, it does not prevent that child from ingesting that paint in the first place. Proactively addressing this problem may prove very costly, and the true extent of that cost is not currently known. However, there ought to be no greater moral goal, or social desire, than to ensure the health and safety of this nation's children. Therefore, though the update Lead Safe Housing Rule is an achievement deserve great praise and gratitude, it brings to light the true objective: to remove lead paint from every home in America to secure safer and healthier children because, as Professor Benfer concluded in the interview, "our children deserve nothing less".

Sources

Lead, CDC, <https://www.cdc.gov/nceh/lead/>

Micheal Hawthorne, *Durbin Urges Action on Lead Threat to Children*, THE CHICAGO TRIBUNE, Jan 26, 2016 <http://www.chicagotribune.com/news/ct-durbin-hud-letter-20160126-story.html>

Dean Reynolds, *Fear of Lead Paint in HUD Housing Leads Family to Homeless Shelter*, CBS NEWS, June 21, 2016 <http://www.cbsnews.com/news/chicago-mom-chooses-homelessness-over-hud-housing-to-protect-son-from-lead-paint/>

Blood Lead Levels in Children, CDC, https://www.cdc.gov/nceh/lead/acclpp/lead_levels_in_children_fact_sheet.pdf

CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendation in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention," CDC https://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf

<https://www.epa.gov/sites/production/files/documents/steps.pdf>

Steps to Lead Safe Renovation, Repair, and Painting, EPA, https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2017/HUDNO_17-006

24 CFR 35, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-13/pdf/2017-00261.pdf>

Lead Poisoning and Health, EPA, September 2106, <http://www.who.int/mediacentre/factsheets/fs379/en/>