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November 28, 2021

Senators Kavanagh and Rivera
New York State Senate
172 State Street
Albany, NY 12210

Dear Senators Kavanagh and Rivera:

Thank you for the opportunity to submit written testimony for the Joint Senate Hearing on Childhood Lead Poisoning Prevention in New York State. I have worked in childhood lead poisoning prevention in Utica, NY since 2016. From 2016 to 2020 I served as the Director of Strategic Initiatives at the Community Foundation of Herkimer & Oneida Counties on its Lead-Free Mohawk Valley (LFMV) initiative—LFMV is presently administered by the HomeOwnershipCenter in Utica. Since 2020, I have worked as an independent consultant for a consortium of lead poisoning prevention grantmaking foundations, the Lead-Free Kids New York Coalition, and the Health and Environmental Funders Network.

For ease of reference, I have included an outline of my testimony below:

Why Are We Still Talking About Childhood Lead Poisoning?

Health Effects of Lead

There is no safe level of lead for human exposure. Even low levels of lead exposure can cause irreversible neurological damage to the developing brains of children aged six and under, including loss of I.Q., difficulties paying attention, and reduced academic achievement.[1] Lead is most often present in the form of lead dust from deteriorated paint, lead in soil,[2] and lead in drinking water. Other exposure pathways include lead in consumer products, food, medicine, and occupational exposure.[3] Young children exposed to lead may face a range of symptoms, including "…developmental delays, learning difficulties, irritability, loss of appetite, weight loss, fatigue, abdominal pain, vomiting, constipation, hearing loss and seizures."[4]

History & Scope of the Lead Poisoning Problem

In recognition of lead toxicity, New York State banned the sale of lead-based paints in 1970,[5] with the federal government following suit and banning lead paint for residential use in 1978.[6] The federal government took additional action through the Clean Air Act and subsequent EPA regulations that required lead to be phased out of vehicle gasoline from 1973 until its completion in 1996.[7] While

[1] "Childhood Lead Poisoning Prevention: Blood Lead Levels in Children," Centers for Disease Control and Prevention, https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm
[2] Lead in soil oftentimes occurs because of deteriorated lead paint settling into the soil. However, sometimes lead in soil is the result of industrial contamination or the settling of leaded gasoline exhaust over many years.
[3] "Childhood Lead Poisoning Prevention: Sources of Lead Exposure," Centers for Disease Control and Prevention, https://www.cdc.gov/nceh/lead/prevention/sources.htm
[4] "Lead Poisoning: Symptoms & Causes," Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717
[5] Katrina Smith Korfmacher, Emily A. Benfer, and Matthew Chachère, "Lead Laws and Environmental Justice in New York," NYSBA The Environmental Lawyer 39, no. 1 (Fall/Winter 2019): 49
[6] "Childhood Lead Poisoning Prevention: Sources of Lead Exposure: Lead in Paint," Centers for Disease Control and Prevention, https://www.cdc.gov/nceh/lead/prevention/sources.htm
[7] Jessie Stolark, "Fact Sheet: A Brief History of Octane in Gasoline: From Lead to Ethanol," Environmental and Energy Study Institute, March 30, 2016, https://www.eesi.org/papers/view/fact-sheet-a-brief-history-of-octane

lead was phased out of these and other mass-market products, the legacy of its use remains with us today.

Research conducted at Columbia Law School's 2019 Health Justice Advocacy Clinic found "over 78.46% of New York's housing stock was built before 1980, meaning there are 5,370,020 occupied housing units in New York that contain possible lead-based paint hazards. Of these housing units, approximately 629,865 occupied units contain both children under six and possible lead hazards."[8] Columbia's Health Justice Advocacy clinic was also able to project how many children likely have an elevated blood lead level in New York State:

> According to the Centers for Disease Control and Prevention (CDC), 6.19% of New York State's children under six and 2.21% of New York City's children under six had blood lead levels above the CDC reference value of 5 micrograms per deciliter (µg/dL) in 2011 (New York State) and 2014 (New York City), these were the most recent years with complete data available. Applying this percentage to the state's under six population, it is estimated that approximately 80,215 children are likely to have elevated blood lead levels (EBLL) above the CDC's reference value.[9]

Using this information, the Clinic also estimated the societal costs of lead poisoning in New York:

> For one cohort of children ages one to two years old who are estimated to have EBLLs above the CDC reference value, the costs could be as high as $904,386,669.10 with children in the Housing Choice Voucher (HCV) program accounting for $106,835,594.44 of these costs. These costs accrue each year to children when they first develop lead poisoning and repeat themselves every year as new children ages one to two years old develop lead poisoning. The potential costs for a single birth cohort of children in New York state age one to two years old include:
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> - $790,680.02 in costs associated with immediate medical intervention
> - $4,850,701.65 in costs associated with treatment of lead-related ADHD
> - $3,061,141.32 in parental work loss due to time taken off to care for a child with an EBLL above 5
> - $2,233,487.70 in costs associated with additional special education services for children with lead poisoning

[8] Emily Benfer et al., "The Cost of Childhood Lead Poisoning in New York," Columbia Law School Health Justice Advocacy Clinic, 2019, https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/new_york_cba_1_1.pdf

[9] Emily Benfer et al., "The Cost of Childhood Lead Poisoning in New York," Columbia Law School Health Justice Advocacy Clinic, 2019, https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/new_york_cba_1_1.pdf

- $893,450,658.41 in potential earnings over a lifetime

Taxpayers would shoulder up to 26.72%, or $241,674,245.64, of these total costs.

These cost estimates do not include pain and suffering for the child or criminal justice costs. Additionally, these estimates do not include EBLLs between 2 µg/dL and 5 µg/dL and, according to a 2019 study by Altarum,[10] the costs associated with children who have EBLLs above 2 µg/dL could be as high as $6.4 billion and impact 12% of all births in New York State in 2019.[11]

Ongoing Legacy of Environmental Racism & Housing Discrimination

The toxic legacy of lead does not impact all children equally as there are significant racial and socioeconomic disparities in childhood lead poisoning rates. A study published in 2020 found that nationwide, black children are 2.8 times more likely to have an elevated blood lead level than white children.[12] A 2019 New York State Bar Association Journal article examined New York State's disparities, having found that:

> In 2005, [New York State Department of Health] reported that 54% of the children identified with BLLs over 10 µg/dL lived in just 68 of the over 1600 zip codes in the state. Most of these 'high-risk zip codes' encompassed communities of color in older urban areas. For example, analysis of census data in Rochester showed that Black and Latino children were far more likely than white children to live in one of its five 'high-risk zip codes.' The distribution of lead poisoning along racial and socioeconomic lines strongly affirms that lead is an issue of environmental justice in New York."[13]

Researchers uncovered similar findings for other cities throughout the country. For example, one study on the racial ecology of lead poisoning in Chicago from 1995-2013 found:

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[10] "Preventing Childhood Lead Exposure: Costs and Benefits," Altarum Institute, 2019, http://valueofleadprevention.org

[11] Emily Benfer et al., "The Cost of Childhood Lead Poisoning in New York," Columbia Law School Health Justice Advocacy Clinic, 2019, https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/new_york_cba_1_1.pdf

[12] Deniz Yeter, Ellen C. Banks, and Michael Aschner, "Disparity in Risk Factor Severity for Early Childhood Blood Lead among Predominantly African-American Black Children: The 1999 to 2010 US NHANES," *International Journal of Environmental Research and Public Health* 17, no. 5: 1552, 2020, https://doi.org/10.3390/ijerph17051552

[13] Katrina Smith Korfmacher, Emily A. Benfer, and Matthew Chachère, "Lead Laws and Environmental Justice in New York," NYSBA The Environmental Lawyer 39, no. 1 (Fall/Winter 2019): 50.

> …the racial ecology of what we call toxic inequality is partially attributable to socioeconomic factors, such as poverty and education, and to housing-related factors, such as unit age, vacancy, and dilapidation. But controlling these factors, neighborhood prevalence rates of elevated BLL remain closely linked to racial and ethnic segregation.[14]

In examining why New York's cities have such stark disparities in childhood lead poisoning rates along the lines of race and class, it is impossible to ignore the long history of racial discrimination in housing policy. 1930s New Deal housing policies--especially redlining practices by the Home Owners Loan Corporation (HOLC), which resulted in the exclusion of entire neighborhoods of color from accessing the then-newly created and federally insured 30-year mortgage--created significant and persistent racial disparities in access to healthy and affordable housing.[15] In most cities with a history of redlining, the correlation between the redlining "grade" a neighborhood received and its current rates of childhood lead poisoning are undeniable.[16] Across New York State, one can see most formerly redlined neighborhoods have many homes in disrepair, including exposed lead hazards, due to the inability of many residents to buy or refinance real estate in their neighborhood.[17] For example, redlined census tracts can see lead poisoning rates as high as 40% in Buffalo,[18] 35% in Utica,[19] and 26.5 % in Syracuse.[20]

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[14] Robert Sampson & Alix Winter, "The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995-2013," *Du Bois Review: Social Science Research on Race, 13, no.*2 (2016): 261-283. doi:10.1017/S1742058X16000151

[15] For an in-depth examination of racial discrimination and segregation in US housing policy see: Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, New York; London: Liveright Publishing Corporation, a division of W.N. Norton & Company, 2017

[16] Ben Knight, "Lead Poisoning Reveals Environmental Racism in the U.S.," *EcoWatch,* May 7, 2020, https://www.ecowatch.com/lead-environmental-racism-2645941587.html

[17] Maria Godoy, "In U.S. Cities, The Health Effects of Past Housing Discrimination Are Plain To See," NPR, November 19, 2020, https://www.npr.org/sections/health-shots/2020/11/19/911909187/in-u-s-cities-the-health-effects-of-past-housing-discrimination-are-plain-to-see

[18] Ben Knight, "Lead Poisoning Reveals Environmental Racism in the U.S.," *EcoWatch,* May 7, 2020, https://www.ecowatch.com/lead-environmental-racism-2645941587.html

[19] Katrina Gerry, "Local Officials Are Worried About Increased Lead Exposure in Home Due to COVID Lockdowns," CNY Homepage, March 3, 2021, https://www.cnyhomepage.com/news/local-news/796313/

[20] "Lead Exposure in Syracuse," Lead Safe CNY, https://www.leadsafecny.org/lead-in-cny.html.

Policy Challenges in New York State

Given the historical, demographic, and societal cost context above, New York State must address the following policy challenges:

Publicly Available Elevated Blood Lead Level (EBLL) Data Is Not Current or Sufficiently Disaggregated

The most current, publicly available NYSDOH Elevated Blood Lead Level (EBLL) data is from 2014,[21] and the most current mapped data is from 2012.[22] Furthermore, EBLL data is not available in a sufficiently geo-targeted format. Data granularity is frequently presented at the county or zip code level of aggregation[23] when health disparities are often most pronounced at the census tract or block group level. Tracking at a county or zip code level prevents public awareness of the geographic clusters of lead poisoning risk that would be much more apparent at a census tract level. This type of granular tracking would also enable local government, community-based organizations, and non-profiting housing organizations to design better lead hazard control programs and increase their likelihood of obtaining federal and private grants for lead remediation in their community.

[21] "Childhood Blood Lead Testing and Elevated Incidence by Zip Code: Beginning 2000," New York State Department of Health, accessed August 24, 2021, https://health.data.ny.gov/Health/Childhood-Blood-Lead-Testing-and-Elevated-Incidenc/d54z-enu8

[22] "Childhood Blood Lead Testing and Incidence of Blood Lead Levels of 10 µg/dL or Greater by County Map," New York State Department of Health, accessed August 24, 2021, https://health.data.ny.gov/Health/Childhood-Blood-Lead-Testing-and-Incidence-of-Bloo/iebf-7vjk

[23] "Childhood Blood Lead Testing and Elevated Incidence by Zip Code: Beginning 2000," New York State Department of Health, accessed August 24, 2021, https://health.data.ny.gov/Health/Childhood-Blood-Lead-Testing-and-Elevated-Incidenc/d54z-enu8

New York's Legal and Technological Limitations of the LeadWeb System Makes It Nearly Impossible to Align State and Federal Lead Policy and Regulation

Legal Limitations

Given the current structure of New York State's Public Health Law, it is nearly impossible for local health departments to create HIPAA Business Associate Agreements (BAAs) or other similar contractual EBLL data disclosure arrangements as required or encouraged by various Federal regulations, programs, and grants. Under HIPAA's public health exemption, a limited scope of protected health information may be disclosed by covered entities to carry out their public health work. The inability to create these legal agreements under New York Law makes it much more difficult for U.S. Department of Housing and Urban Development (HUD) Lead Hazard Control Grant (LHC Grant) recipients that are not local health departments (i.e., N.Y.'s municipalities), to prioritize households approved for lead hazard control by children's EBLLs as is required by HUD.

It is also challenging for public/municipal housing authorities and municipal Housing Choice Voucher (HCV) program administrators to ensure compliance with HUD's Lead Safe Housing Rule (LSHR). The LSHR requires housing authorities and HCV administrators to conduct lead risk assessments in their federally supported housing whenever they know a child with an EBLL resides there. When the HUD regulations went into effect, HUD envisioned that local health departments would enter into EBLL data exchange agreements with municipal HCV program administrators and municipal/public housing authorities. After identifying a lead-poisoned child in federally supported housing, this regulatory construct would enable local health departments to refer the environmental investigation to the relevant housing agency or administrator and, in the case of the HCV program administrator, enforcement actions against the property owner to compel remediation if necessary. This model would help align state and federal regulations and programs for more cost-effective deployment of public resources while also providing local government and social service agencies with more tools for

enforcement mechanisms when required. LSHR is very similar to local health departments' responsibility under New York State's Public Health Law to conduct environmental investigations, including lead risk assessments when a child has an EBLL. In the absence of this state and federal coordination, duplicative lead risk assessments will likely be conducted on the same property, increasing time and cost without protecting any additional children.

These challenges exist because New York State's Public Health Law limits the use of LeadWeb Data in Section 1370-a.2.(c):

> The department shall: establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes, (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by section twenty-one hundred sixty-eight of this chapter."[24]

Since none of the federal regulations, programs, or grants fit within these disclosure categories, local government and social service agencies cannot coordinate these mechanisms to achieve maximum impact in protecting children from lead poisoning. And, as addressed earlier, the societal costs in New York State for one birth year cohort of lead-poisoned children in housing choice voucher supported housing is $106,835,594.44,[25] to say nothing of the pain and suffering experienced by children and their families. New York State has a childhood lead poisoning crisis, and the State should allow communities to use all the tools in the toolbox, no matter if they are federal or state tools.

Technological Limitations

In addition to the above-mentioned statutory limitations regarding the use of LeadWeb data, a 2019 Report by the Office of the New York State Comptroller found several information systems limitations in the LeadWeb database. LeadWeb serves as New York State's singular system of record for

[24] New York State Public Health Law, Title 10, Article 13, §1370-a.2.(c)
[25] Emily Benfer et al., "The Cost of Childhood Lead Poisoning in New York," Columbia Law School Health Justice Advocacy Clinic, 2019, https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/new_york_cba_1_1.pdf

EBLL case coordination, but the Comptroller's office "… found significant issues with the reliability of the system's data."[26] The Comptroller's office found discrepancies between data managed in LeadWeb and the data used by local health departments. Some local health departments don't use LeadWeb, preferring to use the New York State Immunization Information System (NYIIS) as a workaround to access LeadWeb data in a more user-friendly way.[27]

LeadWeb is undergoing a series of I.T. enhancements to address some of these issues and modify the system to reflect the April 12, 2019, lead law amendment requiring the statutory definition of elevated blood lead level to be lowered to at least 5 µg/dL.[28] It should be noted that this amendment has increased the number of cases needing follow-up services from 24,989 under the 10µg/dL standard to 80,946 under the 5 µg/dL standard.[29] And on October 28, 2021, the Centers for Disease Control and Prevention (CDC) lowered its blood lead reference value from the 5 µg/dL level it set in 2012 to 3.5 µg/dL. New York should follow suit and amend its statutory definition of elevated blood lead levels to match the CDC reference value as it did before in 2019. With lead poisoning cases slightly more than tripling at the 5 µg/dL level and CDC's recommendation to adopt a 3.5 µg/dL level, there needs to be a timelier implementation of the necessary I.T. upgrades, program, and process redesign, and state funding for local health departments. Taking these steps will help ensure all New York's children receive the public health services to which they are legally entitled.

[26] "Department of Health: Lead Poisoning Prevention Program," Office of the New York State Comptroller, Division of State Government Accountability, Report 2018-S-12, August 2018, 12.
[27] "Department of Health: Lead Poisoning Prevention Program," Office of the New York State Comptroller, Division of State Government Accountability, Report 2018-S-12, August 2018, 13.
[28] This brought New York State into alignment with CDC's 2012 recommendation that 5µg/dL be used as a reference level of lead toxicity following the medical determination that there is no safe level of lead for children
[29] "Department of Health: Lead Poisoning Prevention Program," Office of the New York State Comptroller, Division of State Government Accountability, Report 2018-S-12, August 2018, 14-15.
https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2019-18s12.pdf

Lead Risk Assessment Data Is Not Shared with The Public

Results of publicly funded lead risk assessments, let alone private sector lead risk assessments, in New York's rental housing are not available in a publicly accessible housing registry such as Maryland's Lead Safe Rental Registry.[30] Without a universal lead testing requirement for residential property and a method for the public to access this environmental data, renters and homebuyers must rely exclusively on landlords and sellers to accurately disclose known lead hazards under the joint HUD/EPA lead-based paint disclosure rule.[31] Unfortunately, the rule does not require a lead risk assessment to be conducted, and so most owners simply say they do not know if the property has a lead hazard. This loophole would be closed by Senator Kavanagh's bill S.2142A, a bill that would require lead testing at the point of sale.

Unlike EBLL information, lead risk assessment data for residential properties do not include Protected Health Information (PHI). Therefore, risk assessment data could be made available in the same way that restaurant health code violations are publicly available. Lead risk assessments paid for by the taxpayer through New York State Department of Health's (NYSDOH) Childhood Lead Poisoning Primary Prevention Program (CLPPPP) should be publicly available in a housing registry. If publicly funded lead risk assessment data from CLPPPP and private-market funded lead inspection data from S.2142A were available in a publicly assessable and user-friendly database, then at least parents with the finical means to have housing choices could make more informed decisions about where to live without exposing their children to a neurotoxin.

[30] "Facts about Maryland's 'Lead Law': Summary of Compliance Requirements Residential Rental Properties," Maryland Department of the Environment, https://mde.state.md.us/programs/Land/Documents/LeadFactSheets/LeadfsStandardOfCare.pdf

[31] "Lead-Based Paint Disclosure Rule," 24 CFR Part 35, Subpart A.

Lack of Renovation, Repair, and Painting (RRP) Enforcement by the US EPA and New York State

For much of New York State, there is insufficient EPA staffing to enforce RRP regulations adequately. These regulations ensure that renovators, contractors, and painters conduct their work in a lead-safe manner. Yet, EPA Region 2 has only 3.5 full-time inspectors working on RRP Enforcement for all of New York State.[32] One of the most significant contributors to creating lead dust hazards (which cause up to 40% of lead poisoning cases) is home renovations that are not conducted in a lead-safe manner.[33] Given the estimated 629,865 homes with potential lead hazards and children under age six, each EPA inspector is responsible for a potential complaint-based inspection pool of up to 179,961 households in New York State, which is clearly too many households for any one person to adequately monitor.

It should be noted that the agency receives about 300 tips, complaints, and referrals from New York State annually. Yet in 2018 and 2019, these inspections resulted in only seven RRP enforcement actions each year.[34] The state may choose to directly administer a more robustly staffed RRP program, subject to federal approval. The Lead-Safe Renovation, Repair, and Painting Act S.6554, introduced by Senator Bailey, would addresses these issues by establishing a NYS-administered RRP program.

Lack of Universal Primary Prevention

With secondary prevention--taking public health action after a child's lead exposure--being the only universal lead poisoning prevention program in the state, we use our children as lead detectors or

[32] Alice Kreher, "Lead-Safe Renovation, Repair, and Painting Activities in New York State: Analysis of the Proposal for State Management of the RRP Rule," Buffalo: ILR Buffalo Co-Lab & Community Foundation for Greater Buffalo, February 2020, 10. https://ppgbuffalo.org/files/documents/lead_rrp_activities_in_nys.pdf
[33] Alice Kreher, "Lead-Safe Renovation, Repair, and Painting Activities in New York State: Analysis of the Proposal for State Management of the RRP Rule," Buffalo: ILR Buffalo Co-Lab & Community Foundation for Greater Buffalo, February 2020, 7. https://ppgbuffalo.org/files/documents/lead_rrp_activities_in_nys.pdf
[34] Alice Kreher, "Lead-Safe Renovation, Repair, and Painting Activities in New York State: Analysis of the Proposal for State Management of the RRP Rule," Buffalo: ILR Buffalo Co-Lab & Community Foundation for Greater Buffalo, February 2020, 10. https://ppgbuffalo.org/files/documents/lead_rrp_activities_in_nys.pdf

as canaries in the coal mine, even though we know the negative health effects of lead exposure are irreversible. Primary prevention--taking public health action to prevent a child's exposure to lead--funding and legal enforcement constructs are only available in a limited number of cities in NYS. The New York State Childhood Lead Poisoning Primary Prevention Program (CLPPPP) is administered by only 15 of New York's 58 local health departments.[35] New York should stop using children as lead detectors and instead adopt a statewide primary prevention public health framework; let's prevent lead exposure in the first place instead of trying to mitigate its damage after the fact.

I thank Chair Kavanagh and Chair Rivera, the Senate Housing and Health Committees, and Senate Staff for making these hearings possible. I believe with renewed commitment, additional legislation, and improved funding, New York State can finally end its childhood lead poisoning crisis.

Respectfully Submitted,

John Monaghan

[35] "New York State Childhood Lead Poisoning Prevention Program (NYS CLPPPP)," National Center for Healthy Housing, https://nchh.org/tools-and-data/technical-assistance/nys-clpppp/