

LEAD
2020



LEAD-SAFE HOMES, HEALTHY FAMILIES.

Four weeks, four webinars, one goal:
eliminate lead hazards from Virginia's homes.

WEBINAR #3 SEPTEMBER 2ND

Legally Speaking: Understanding the Lead Legal Landscape

Andrew Tran
Daryl Hayott
Michelle Coward
Jeff Brown

Richmond City Health District and Virginia Poverty Law
Center invite you to learn about current laws and
regulations that protect Virginia families from lead hazards.

Surveillance of Childhood Lead Testing in Virginia

Andrew Tran, MPH
Virginia Lead Safe
Virginia Department of Health

Overview

Background/Program Introduction

Childhood lead testing

Childhood lead cases and management

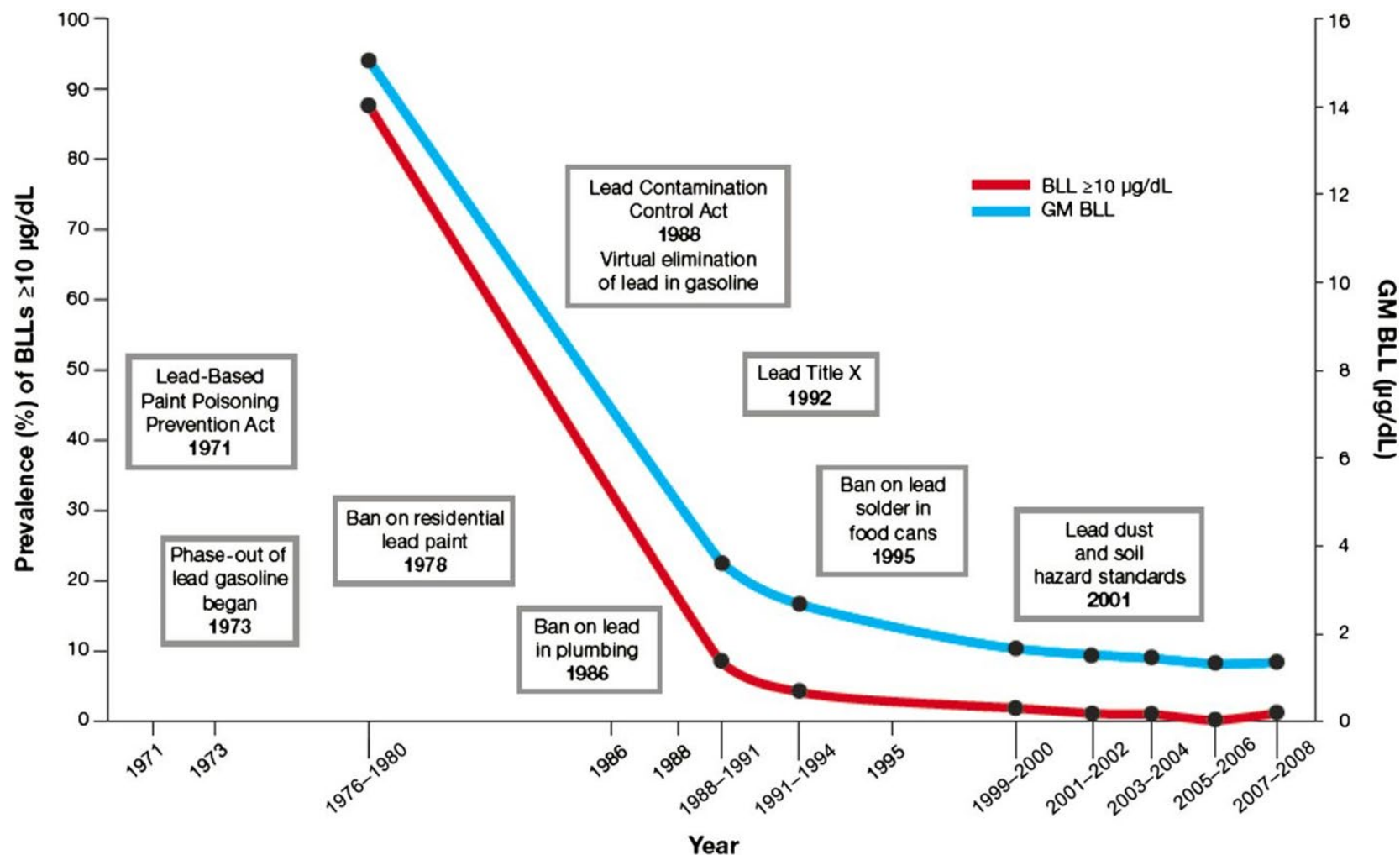
Virginia Lead Safe

- Newish reemergence of the Virginia Lead Safe program in 2018.
 - Received program funding from the CDC Childhood Lead Poisoning Prevention Program
 - Currently in year two of the grant funding.
- Program is supported within the Division of Disease Surveillance and Investigation of the Office of Epidemiology at VDH

Background

- Lead has been known to be a neurotoxin that adversely effects the developing nervous system for children.
- Chronic low levels of lead exposure has been found to impair cognitive function among children.
- There is no known safe level of lead, despite declining blood lead levels in children.
- Prevention of lead poisoning is the optimal strategy to reduce lead exposures among children.

Timeline of lead poisoning prevention policies and blood lead levels in children aged 1–5 years, by year—NHANES, United States, 1971–2008.



COUNCIL ON ENVIRONMENTAL HEALTH Pediatrics
 2016;138:e20161493

Lead Surveillance

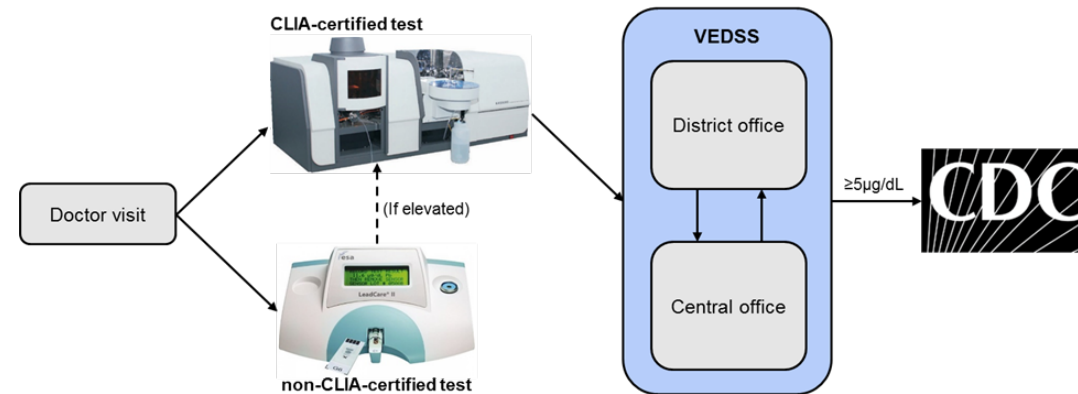
- 2012: CDC lowers reference level for elevated blood lead levels to 5 ug/dL from 10 ug/dL
- 2016: VDH adopts CDC's lowered reference level.
 - Guidelines for lead testing and management remained unchanged.
- Case definition for an elevated blood lead level in children
 - Child = < 16 years of age.
 - One venous blood specimen with elevated lead concentration.OR
 - Two capillary blood specimens, drawn within 12 weeks of each other, both with elevated lead concentration.
- Effective November 14, 2018: All lead results performed by a laboratory certified by the Centers for Medicare and Medicaid Services (CLIA Certified) are considered reportable to VDH.
- Childhood lead laboratory reports are monitored through the Virginia Electronic Disease Surveillance System (VEDSS).

Blood Lead Testing Criteria

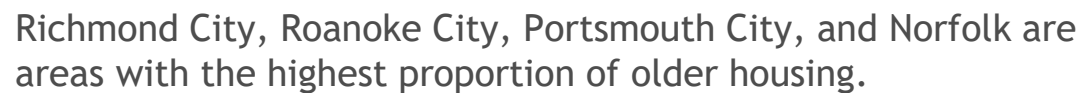
- Not all children are equally at risk of exposure to lead
- Targeted testing approach:
 1. Is eligible for or receiving Medicaid or WIC
 2. Lives in housing or attends childcare facility built pre-1960
 3. Lives in housing built pre-1978 with peeling/chipping paint, or undergoing renovations
 4. Lives in or visits housing where another person has evidence of lead exposure
 5. Spends time with an adult whose job/hobby involves lead exposure
 6. Lives near active lead smelter, battery recycling plant, etc.
 7. Has a parent or guardian who requests testing
 8. Is a recent refugee, immigrant, or adoptee from outside US

Blood Lead Testing

- Public health surveillance relies mostly blood lead screening/testing
 - Detection of lead AFTER a child has been exposed.
- If a child meets testing criteria,
 - Test reports are submitted electronically or reported through mail, fax, or morbidity (EPI-1) reporting.
 - The Virginia Disease Surveillance System receives blood test reporting
 - Results are submitted to CDC
- Primary prevention of lead exposure remains the optimal approach to preventing lead toxicity.



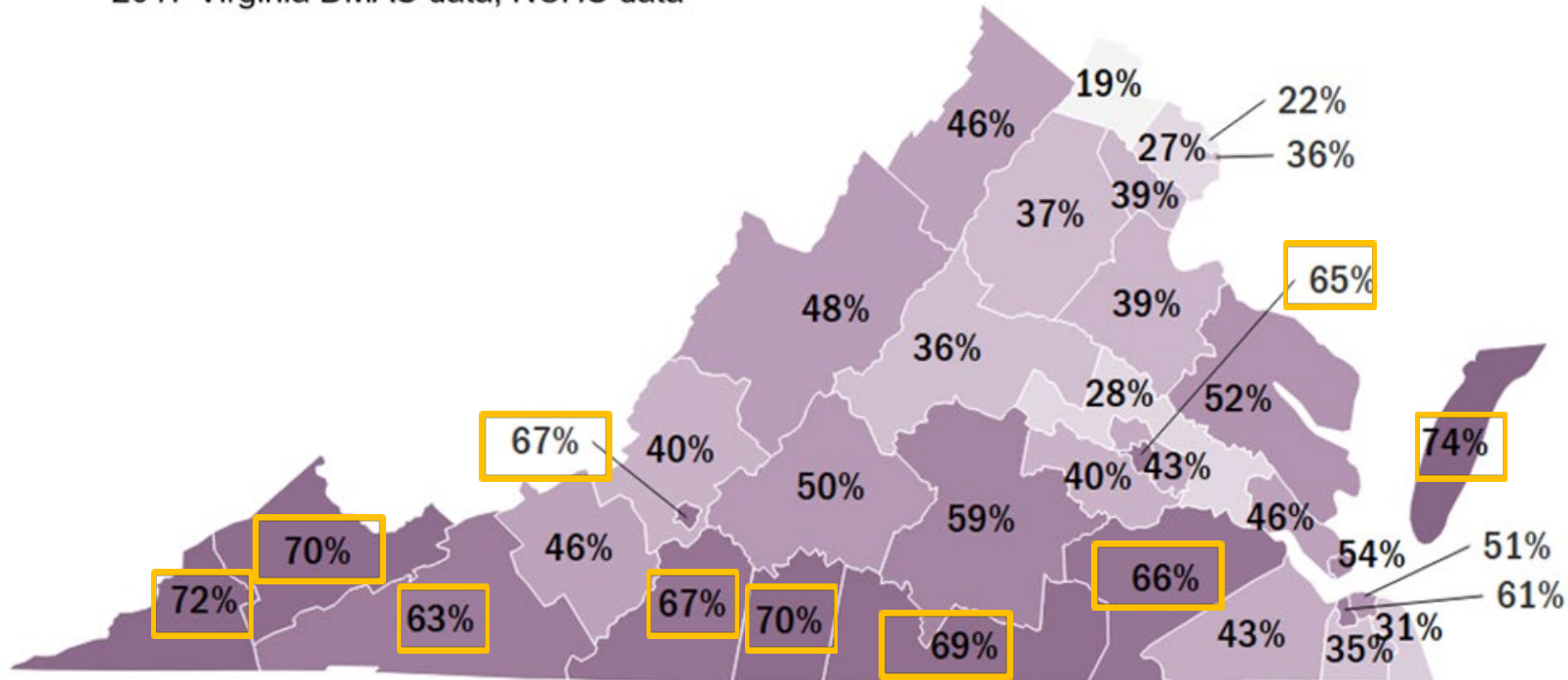
2017 American Community Survey data



VDH VIRGINIA
DEPARTMENT
OF HEALTH
*To protect the health and promote the
well-being of all people in Virginia.*

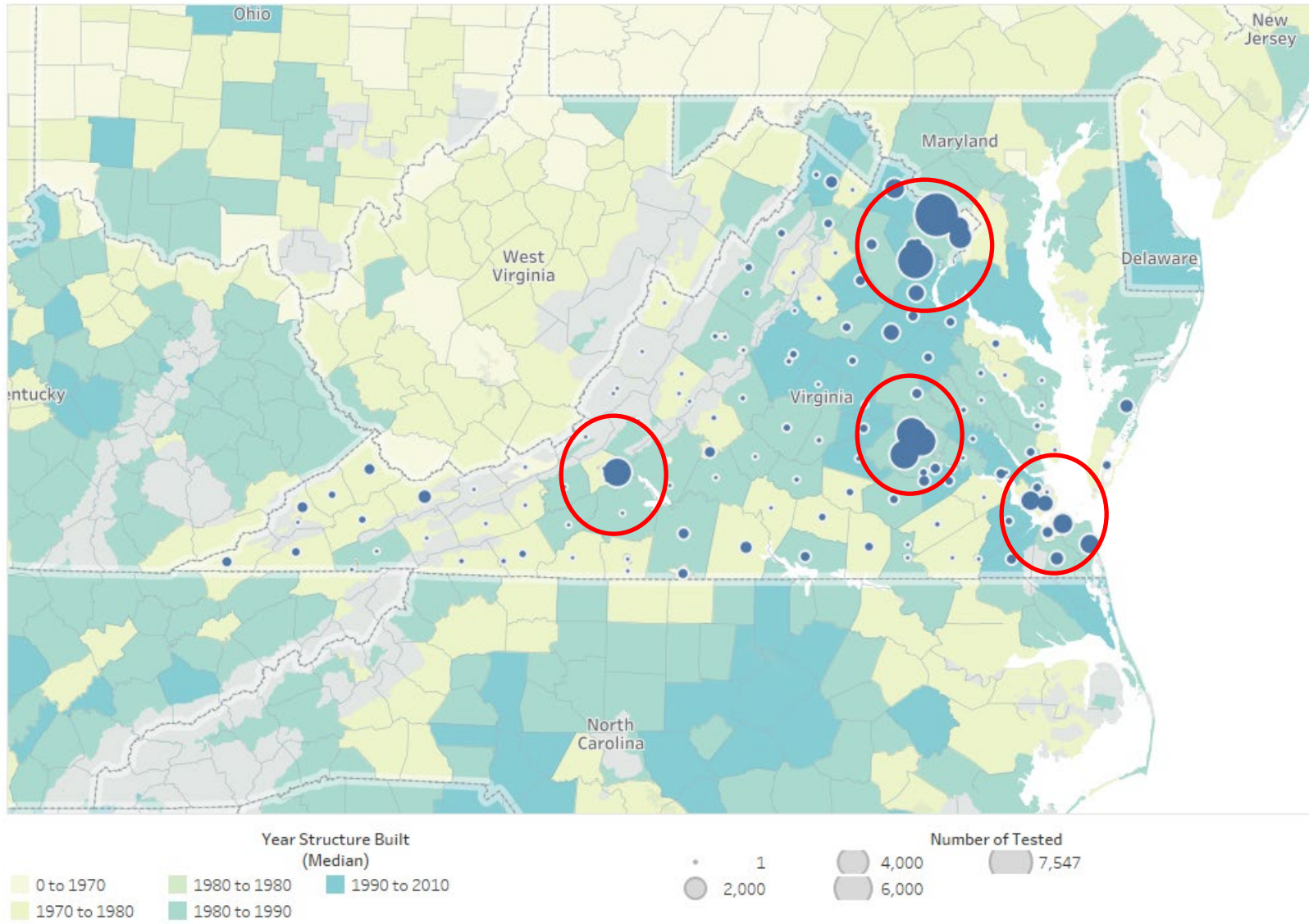
Percent of children younger than 5 receiving Medicaid

2017 Virginia DMAS data, NCHS data



Across the southern region of the state, a greater proportion of children younger than 5 receive Medicaid assistance and meet the criteria for testing.

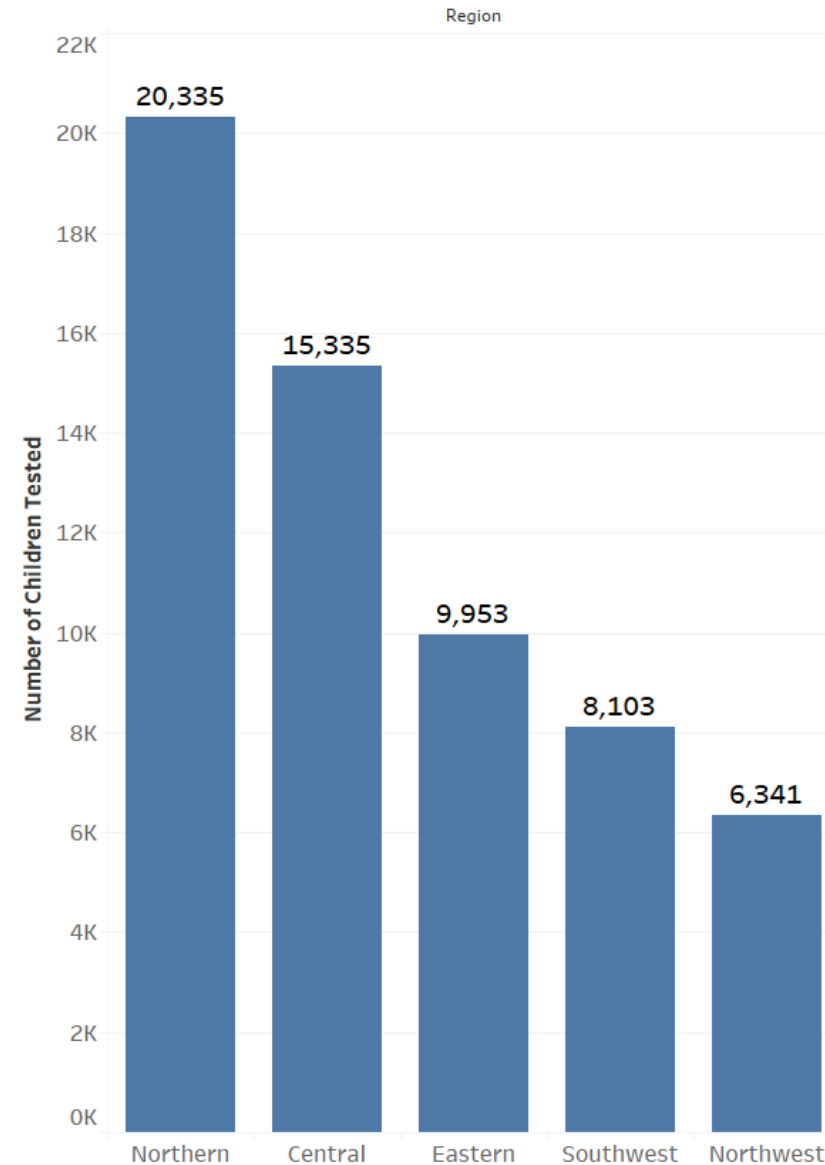
Lead Testing and Housing Structure Years (2018)



2018 Blood Lead Testing in Virginia

- 62,824 Total Tests Results Received
 - 34% Northern
 - 25% Central
 - 17% Eastern
 - 13% Southwest
 - 11% Northwest
- 60,045 Children Tested
 - 34% Northern
 - 25% Central
 - 17% Eastern
 - 13% Southwest
 - 11 % Northwest

Number of Children Tested By Region



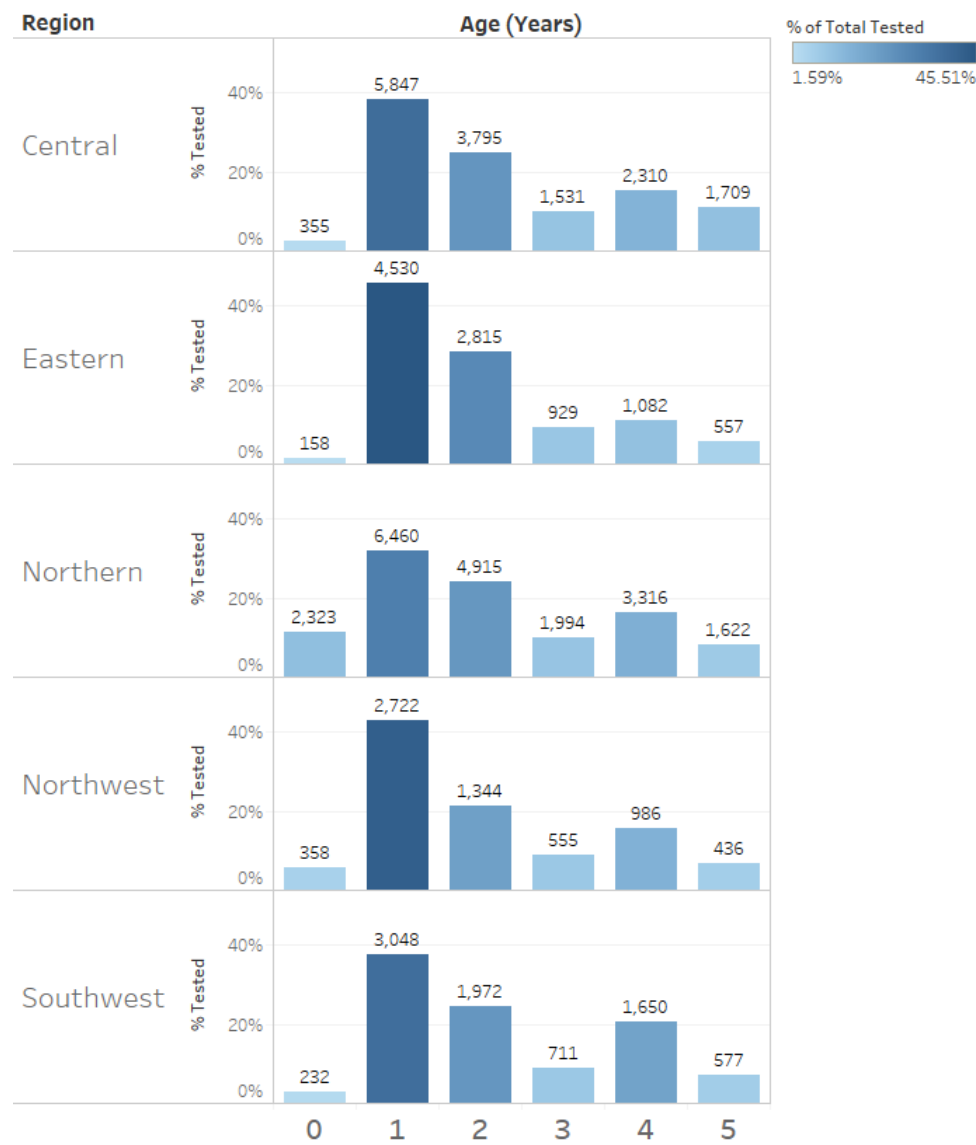
Age of Children Tested

Under the reportable condition of lead poisoning in Virginia, the Virginia Department of Health considers a child under the age of 16.

Adverse health effects from lead exposure are greatest as the child is younger due to developing neurological functioning.

Among the high risk age group, in 2018, most children were tested at 1 and 2 years old.

Number of Children Tested by Age and Region



Elevated vs. Non-Elevated Results

- Elevated: A blood lead lab report with a level of 5 ug/dL or higher
 - Venous test or capillary test
- Cases of elevated blood lead levels need to meet case definition for confirmation of an EBLL.
 - Requires confirmation testing if an elevated capillary result
- In 2018, 95% or more of lead lab reports received by VDH VEDSS are below 5 ug/dL.

Number and Proportion of EBLLS

Region		EBLL	
		Elevated	Non-Elevated
Central	Count	570	15,491
	Percentage	3.55%	96.45%
Eastern	Count	320	10,031
	Percentage	3.09%	96.91%
Northern	Count	564	20,547
	Percentage	2.67%	97.33%
Northwest	Count	226	6,349
	Percentage	3.44%	96.58%
Southwest	Count	360	8,367
	Percentage	4.13%	95.87%

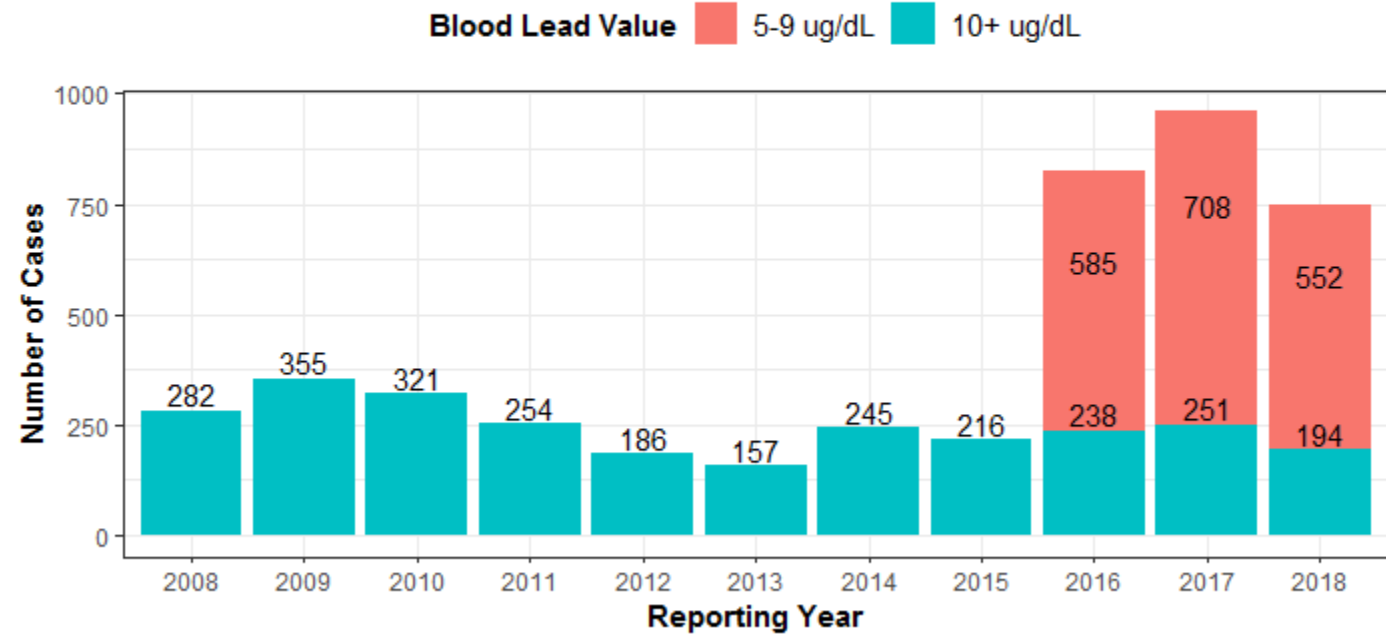
Lead Testing and Specimen Type

- Venous vs. Capillary
 - Venous = confirmation
 - Capillary = screening
- Most testing received from Northern, Eastern, and Northwestern regions are Venous
- Southwest has the largest proportion of capillary testing

Number and Proportion of Specimen Type

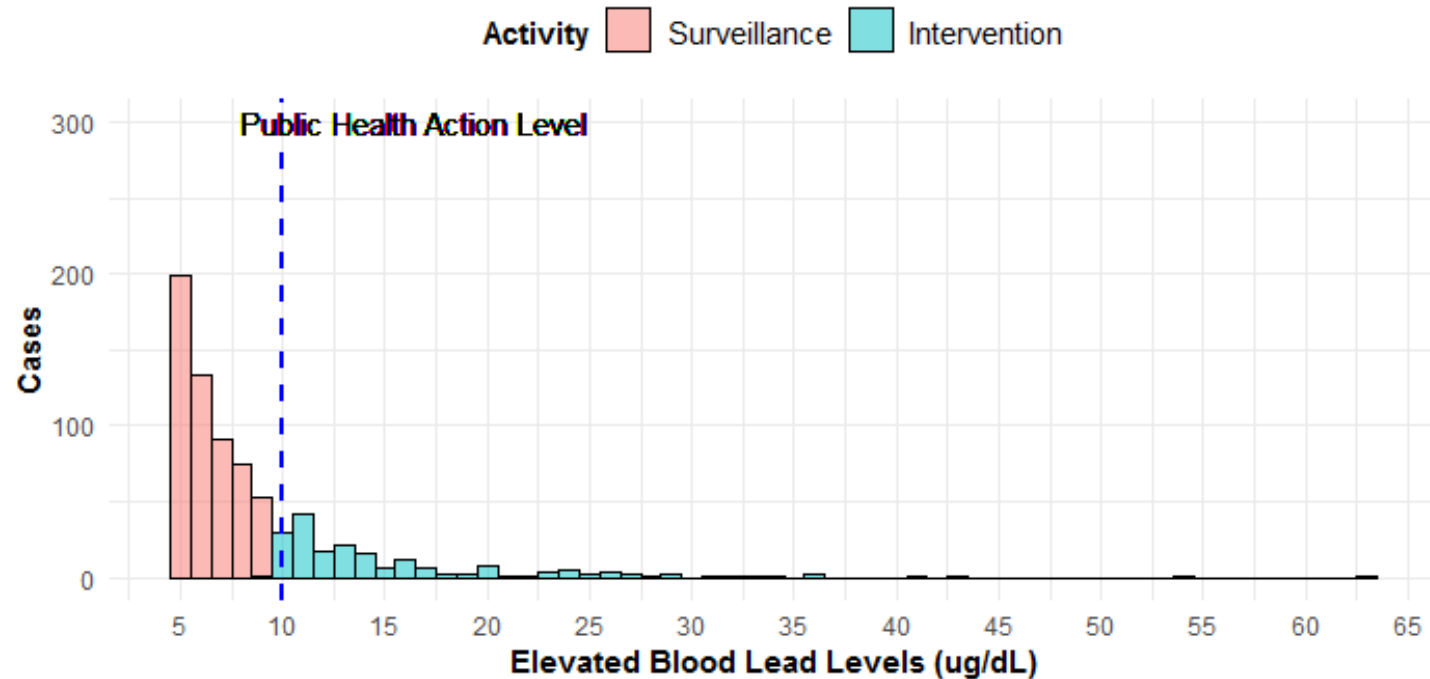
Region		Specimen Type		
		Venous	Capillary	Unknown
Central	Count	7,971	8,081	9
	%	49.63%	50.31%	0.06%
Eastern	Count	7,524	2,821	6
	%	72.69%	27.25%	0.06%
Northern	Count	17,597	3,501	13
	%	83.35%	16.58%	0.06%
Northwest	Count	4,156	2,400	18
	%	63.22%	36.51%	0.27%
Southwest	Count	3,032	5,203	492
	%	34.74%	59.62%	5.64%

Elevated Blood Lead Levels in Children Ten-Year Trend for Number of Cases Virginia, 2008-2018



Source: VEDSS Archive Datamart

Counts of EBLLS for Confirmed Cases in 2018 (Children < 6 Years Old)



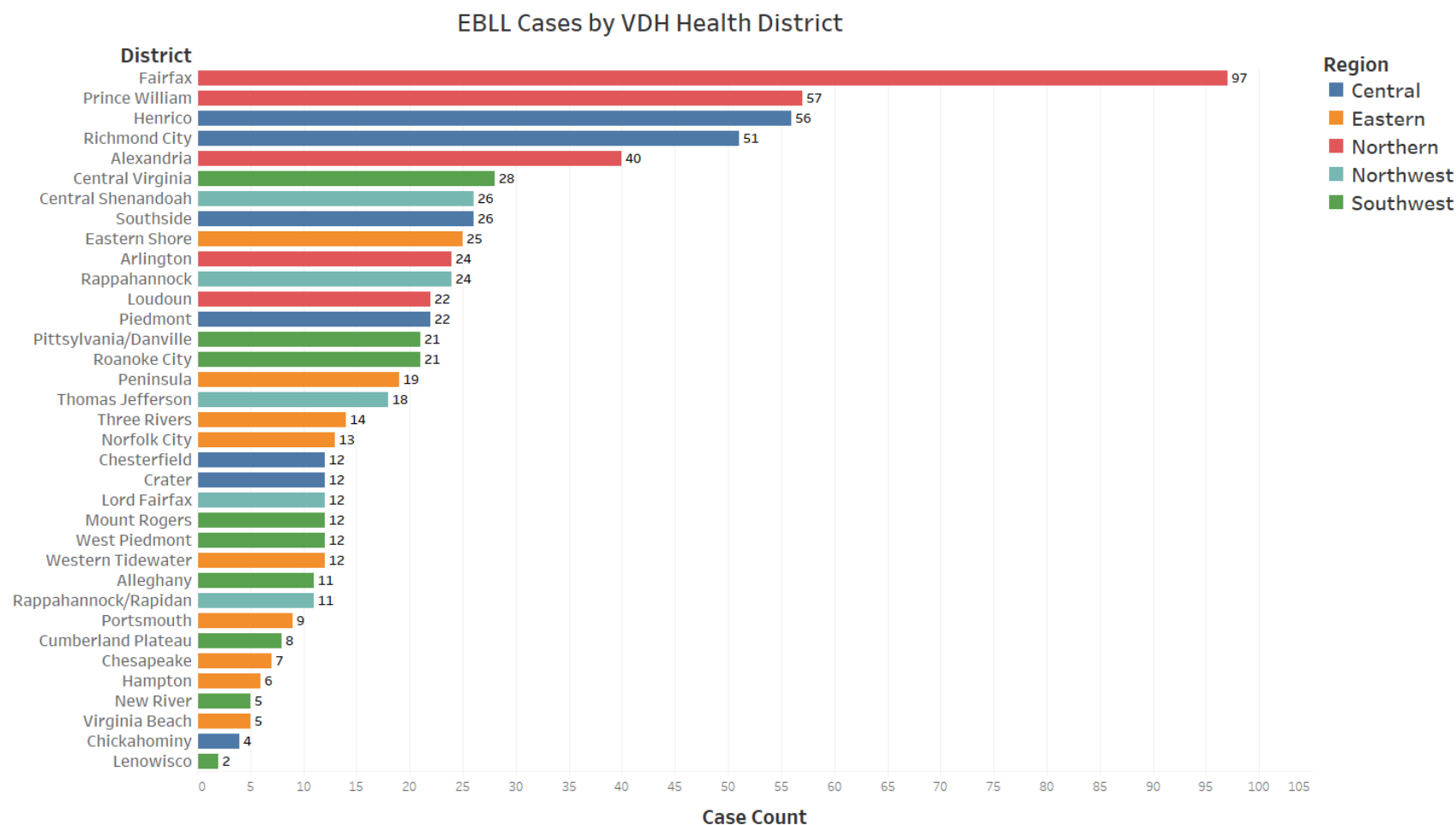
Source: VEDSS

550 cases required public health surveillance only

196 cases required public health action

746 total cases

Case of EBLs by Health District



Lead Case Management

- Case management involves coordination between healthcare providers and public health.
- BLLs <10 ug/dL
 - Primary prevention with primary care providers.
 - Education and counseling
 - Public health surveillance.
- BLLs ≥ 10 ug/dL
 - Public health intervention.

GUIDELINES FOR MANAGEMENT OF CHILDREN WITH CONFIRMED BLOOD LEAD LEVELS ≥ 5µg/dL ^{2, 3, 4}

BLOOD LEAD LEVEL (µg/dL)	ACTION	TIME FRAME
5-9	Child's healthcare provider: <ul style="list-style-type: none"> • Provides educational materials to include dietary and environmental information • Monitors blood lead level with follow up test 	Within 3 months
10-14	Case manager coordinates with child's healthcare provider: <ul style="list-style-type: none"> • Provides educational materials to include dietary and environmental information • Perform nursing assessment • Follow-up blood lead testing within 30 days to assure not rising • Refer for WIC and social services, if needed 	Within 30 days
15-19	Above actions, plus: <ul style="list-style-type: none"> • Proceed according to actions for 20-44 µg/dL if: A follow-up blood lead is 15 or above, or the blood lead level is increasing 	Within 2 weeks
20-44	Above actions, plus: <ul style="list-style-type: none"> • Coordinate a timely environmental investigation 	Within 1 week
45-69	Above actions, plus: <ul style="list-style-type: none"> • Consider chelation 	Within 48 hours
70 and above	Above actions, plus: Hospitalize child and begin medical treatment (chelation therapy as appropriate) immediately. Contact Emergency Lead Healthcare 866-SOS-LEAD (866-767-5323) for consultation and assistance	Immediate, Within 24 hours

Conclusion

Cases of elevated blood lead levels among children in Virginia has increased, mostly as a result of a lowered reference level for case classification.

Reporting of testing is likely undercounted, especially in the southern areas of the state, where children may be under tested.

Current public health efforts rely on mostly on detecting lead exposures after elevate blood lead levels are reported.

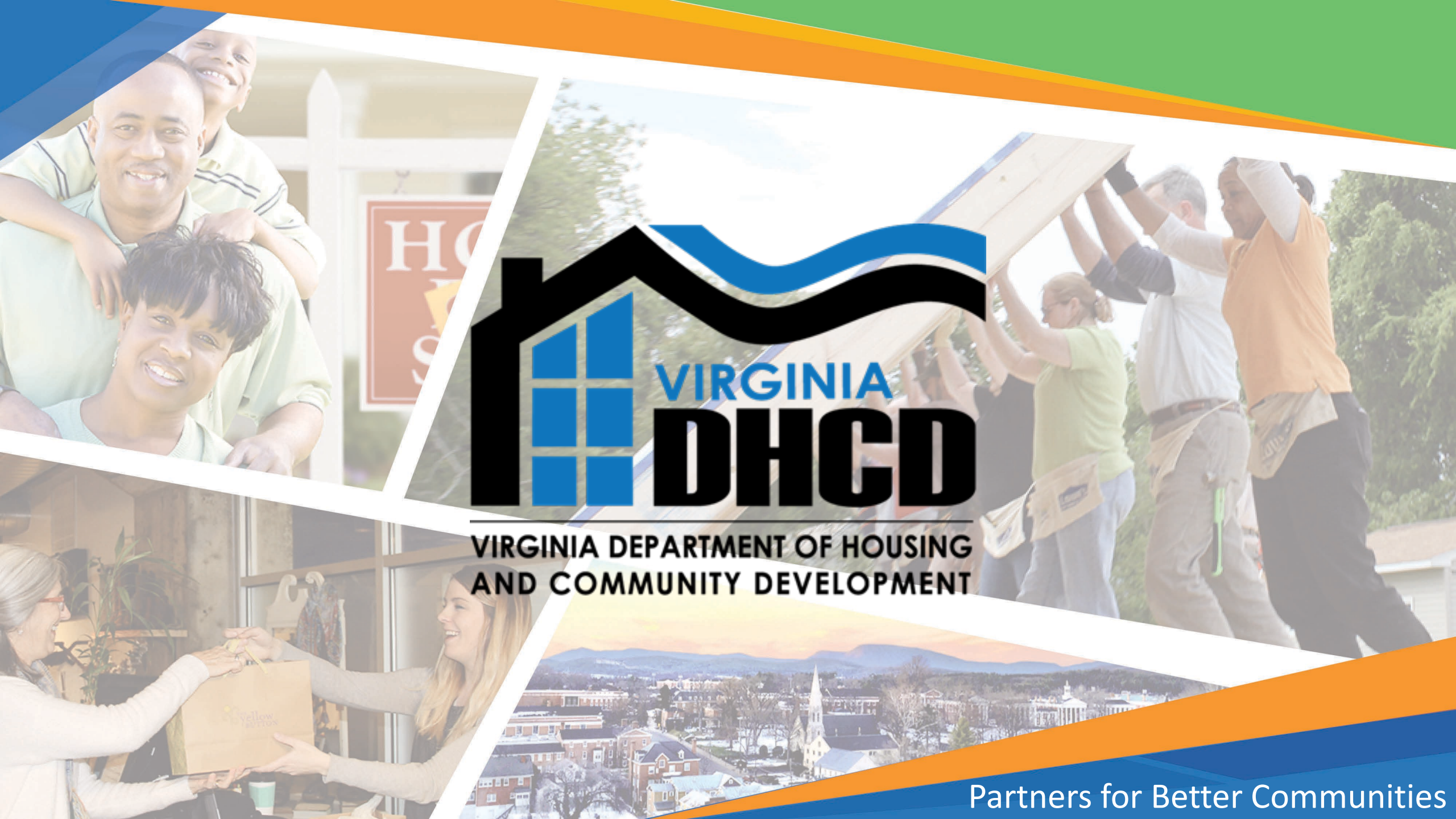
Primary prevention strategies should be prioritized to identify and eliminate sources of lead, before exposure may occur.

Acknowledgements

- CDC Childhood Lead Poisoning Prevention Program
- Virginia Department of Health:
 - Office of Epidemiology, Division of Disease Surveillance and Investigation, VA Lead Safe
- Richmond City Health Department
- Virginia Poverty Law Center

References

American Academy of Pediatrics. (2020). Prevention of childhood lead toxicity. *Pediatrics*, 145(6).



VIRGINIA
DHCD

**VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT**

Partners for Better Communities

Virginia's Building Regulations

#Lead2020: Lead-safe Homes,
Healthy Families

Federal regulation of lead in construction materials

- Lead-based paint was prohibited from use in residential dwellings beginning in **1978**.
- “Lead-free” plumbing materials (piping, fittings, fixtures, solder, etc.) were mandated beginning in **1986**.
- **40 CFR Part 745 EPA RRP** - Regulations require the use of trained and licensed lead workers for dwelling units built before 1978.

Virginia laws: Lead-based paint

- **Code of Virginia § 32.1-46** – Authorizes VDH to establish guidance for testing and follow up of elevated blood lead levels. QAPP describes VDH environmental investigation process to include risk assessment.
- **Code of Virginia §54.1** – Authorizes DPOR to adopt regulations for certification of lead-based paint abatement contractors and accreditation of training providers .

Code of Virginia §36-106

- Provides for disclosure to the local building official of lead hazards identified through a risk assessment.
- If the court sets a time to abate a lead hazard, each day the hazard remains uncontrolled constitutes a separate violation of the USBC.
- Requires the landlord to maintain the painted surfaces of the dwelling unit in compliance with the Virginia Maintenance Code. The landlord's failure to do so shall:
 - Be enforceable in accordance with the Uniform Statewide Building Code and
 - Entitle the tenant to terminate the rental agreement.

Virginia regulations: Lead-based paint

- **Virginia Administrative Code 18VAC15-30 – (DPOR)** Standards for conducting lead-based paint activities, including contractor licensure and training requirements.
- **Virginia Administrative Code 16VAC25-35-30 – (DOLI)** Lead contractors notification and permit requirements.
- **Virginia Administrative Code 13VAC5-63 – (DHCD)** Virginia Uniform Statewide Building Code (Virginia Construction Code, Virginia Existing Building Code and Virginia Maintenance Code)

Virginia Uniform Statewide Building Code

- The **Virginia Construction Code** requires “lead-free” materials to be used in construction.
- The **Virginia Existing Building Code** requires that painted surfaces in existing buildings be maintained free from peeling, chipping, flaking or abrading.

302.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and *alterations*, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the VCC would not permit their use in *buildings* or *structures* of similar occupancy, purpose and location.

Virginia Maintenance Code

The **Virginia Maintenance Code** requires that lead-based paint on surfaces in existing dwellings or child care facilities be maintained free from peeling, chipping or flaking, or the lead-based paint must be removed or properly covered.

310 LEAD-BASED PAINT

310.1 General. Interior and exterior painted surfaces of dwellings and child care facilities, including fences and outbuildings, that contain lead levels equal to or greater than 1.0 milligram per square centimeter or in excess of 0.50% lead by weight shall be *maintained* in a condition free from peeling, chipping, and flaking paint or removed or covered in an approved manner. Any surface to be covered shall first be identified by an approved warning as to the lead content of such surface.

Current lead-based paint hazard abatement process

- Child with elevated blood lead level
- Lead Hazard identified through a risk assessment
- Local building official notified of hazard if related to building maintenance
- Notice issued by local building official in accordance with USBC
- Hazard abated by licensed lead abatement contractor in accordance with EPA, DOLI, DPOR and DHCD regulations



Division of Building and Fire Regulation

State Building Codes Office

804-371-7150 or sbco@dhcd.virginia.gov





City of Richmond Property Maintenance Code Enforcement Division

Michelle Coward
Operations Manager

Lead Base Paint Laws - Code of Virginia

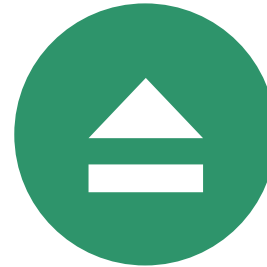
§36-107.1



SALE OF RESIDENTIAL
STRUCTURES WITH LEAD BASE
PAINT.



REQUIRES THAT AN OWNER
NOTIFY PERSPECTIVE
PURCHASER IF THEY HAVE
RECEIVED NOTIFICATION FROM
THE LOCAL BUILDING OFFICIAL
OR LOCAL HEALTH
DEPARTMENT.



DOES NOT APPLY TO SALES
PRIOR TO JULY 1, 1991.



OWNER'S LIABILITY FOR
DAMAGES CAUSED BY FAILURE
TO COMPLY AND CIVIL PENALTY
NOT TO EXCEED \$1,000.

Lead Base Paint Laws – Code of Virginia § 8.01-226-7



Owner/agent compliance with residential lead base paint notification, maintenance immunity.



Applies to lead levels equal to or in excess of 1.0 milligram per square centimeter or 0.05 percent by weight.



Exposure to lead from contaminated dust, soil or paint that has deteriorated.

Lead Base Paint Laws - Code of Virginia

§ 8.01-226-7-cont.

- ▶ Requires maintenance in accordance with the provisions of the Property Maintenance Code.
- ▶ Applies to residential dwellings all or part of which is used as a home or residence.
- ▶ Requires compliance with the United States Residential Lead Base Paint Hazardous Reduction Act of 1992.

Lead Base Paint Laws - Code of Virginia

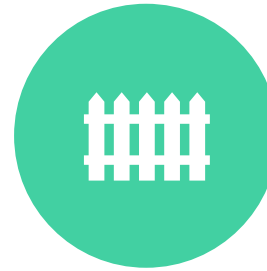
§ 55.1-1227

- ▶ Tenant to maintain dwelling unit.
- ▶ List several provisions that a tenant is responsible for.
- ▶ Not paint or disturb painted surfaces without prior written approval of landlord provided that:
 - ▶ Property was constructed prior to 1978
 - ▶ Landlord has provided disclosure

Lead Base Paint Laws - Virginia Maintenance Code - Section 310



Interior and Exterior.



Include fences and accessory structures.



Lead levels equal to or greater than 1.0 milligram per square centimeter or in excess of 0.05 percent by weight.



Maintained free from chipping and flaking paint - removed or covered in an approved manner.

Enforcement - VMC Section 310

- ▶ Previously enforcement was done by my agency.
- ▶ Several years ago we went under a Memorandum of Understanding with the Health Department allowing them enforcement authority.

Challenges with the Law

Requirement to test for lead to determine content to be in violation.

Cost of equipment needed to test (XRF).

Cost of training staff on the equipment.

Cost of maintaining and calibrating the equipment.

Relocation of tenants for abatement.

Cost of abatement.

Challenges with the Law

- ▶ Requirement to be licensed to abate.
- ▶ Notification is not elimination.
- ▶ Not all localities within the state have adopted the VMC.
- ▶ Number of housing stock still existing built before 1978.
- ▶ The level of lead identified is still too high.

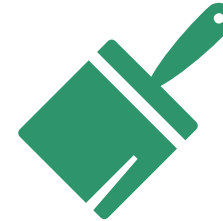
Strengths in the Law- VMC



Although we know that lead is prevalent in houses prior to 1978 this code does not limit it.



It addresses both dwelling units and daycare facilities where children would more likely be exposed.



It allows for the paint to be removed or covered which gives the owner options for abatement.

Property Maintenance Code Enforcement Role in Addressing Lead Base Paint & Potential Exposure



Partnerships



Identify Potential Hazards



Referrals and Resources



Educate Tenants/Owners

#Lead2020: Lead-safe Homes, Healthy Families

It is only together that we can raise the awareness for the need for stronger legislation, coupled with financial support; to address the continued exposure that our children have to lead base paint and the potential hazards it has to their overall health.



Must Virginia Tenants Live with Lead Paint Hazards?



A PRESENTATION BY THE
VIRGINIA POVERTY LAW CENTER

DARYL HAYOTT
EQUAL JUSTICE WORKS LEGAL FELLOW



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VPLC



The statewide support center for legal aid in Virginia
providing support in

ADVOCACY

TRAINING

LITIGATION

on the civil justice issues faced by
low-income Virginians

Landlords' Responsibilities



- Before a lease is signed, the landlord must give the tenant:
 - EPA-approved lead hazard information pamphlet
 - Notice of any known lead-based paint and/or lead based paint hazards
 - A statement to sign acknowledging the disclosure and receipt of the literature
- BUT if the landlord has provided these disclosures and the lease says the tenant is required to get the landlord's written approval before painting or disturbing painted surfaces, a tenant who paints over lead-based paint without written permission could be evicted
- Landlord must disclose in writing any new information related to lead-based paint hazards

Landlord Responsibilities



- Landlord has additional responsibilities under the International Property Maintenance Code (IPMC)
- Not all localities have adopted the IPMC, but in those that have not adopted the IPMC, if a tenant files a complaint, code enforcement **MUST** investigate
- Deteriorating paint that is tested and found to be lead-based is a violation of the IPMC and makes a dwelling unit unfit for human occupancy – **THIS IS A VERY DIFFICULT SITUATION FOR TENANTS**

Local Lead Ordinance



- **City of Richmond (example):**
 - Covers single family homes constructed before 1978
 - Any city resident can request a lead risk assessment for a fee
 - If lead-based paint hazards are found, City issues a Notice of Violation to owner (landlord)
 - Owner/Landlord must reduce/abate lead-based hazards within 90 days
 - If the lead-based hazards aren't remedied by the 90th day. Landlord is issued a criminal summons
 - But the landlord has a “safe haven” under Virginia landlord tenant law: If the landlord can't afford to abate the lead-based paint hazards, the court “shall” order the lease terminated in 30 days

What's a tenant to do?



- **Tenant Assertion**

- When a landlord violates the obligation to keep the premises fit and habitable, the tenant can file a tenant's assertion case against the landlord as long as the tenant has:
 - ✦ Sent the landlord notice in writing of the problem and demanded that the landlord fix it (in this case, this would mean demanding that the landlord abate the lead-based paint)
 - ✦ Paid all of the rent due (i.e. tenant cannot be behind in rent)
 - ✦ Continued to pay rent into court once case has been filed
- Remedies available to tenant:
 - ✦ Termination of lease (at tenant's request)
 - ✦ Abatement of rent
 - ✦ Amounts paid into escrow order to be put toward repairs

What else can a tenant do?



- Tenant can serve a 21/30 day notice on landlord
- 21/30 notice demands that the landlord abate the lead hazard within 21 days
- If the landlord doesn't abate the lead hazard within the 21 day period, the lease terminates in 30 days
- Practical consideration: Landlord often will not acknowledge the lease termination, and will sue tenant for unpaid rent after the tenant moves out

Repair and Deduct



- If tenant notifies landlord in writing of lead-based paint hazard and requests abatement, landlord is obligated by law to take reasonable steps to remedy it
- If landlord doesn't remedy it within 14 days of notice from tenant, tenant may contract to have the problem remedied by a contractor licensed to conduct lead abatement
- Tenant is entitled to reimbursement from landlord of costs of third-party contractor, up to an amount equal to the greater of one month's rent or \$1500
- If landlord doesn't reimburse tenant, tenant can deduct the cost of the abatement from the monthly rent

Thank You



The Virginia Poverty Law Center is a non-profit committed to serve the needs of low-income Virginians. The work of the center is supported by individual and corporate donors and through lawyer's IOLTA accounts. If you would like to find out how to give to our general or specific efforts, please contact us at donate@vplc.org

Q&A

Please use the Q&A box to type your questions,
and a panelist will answer them.