RESHAPING THE REGULATORY LANDSCAPE
TO SUPPORT HEALTHY HOMES & HEALTHY COMMUNITIES

The Problem

Ultimately, the promise of healthy homes and healthy communities depends upon a coordinated and well-developed regulatory scheme that supports property owners and tenants, the government agencies charged with implementation and enforcement, as well as the multiple professions connected to housing, such as contractors, realtors, and insurers. The challenge for this Working Group is to generate ideas for streamlining and bolstering the current Chicago and Cook County regulatory landscape in order to address the home-based factors that are a major source of health hazards and chronic health conditions in low-income households.

Although multiple laws target indoor environmental hazards that create unhealthy conditions in homes and communities, the current regulatory scheme is disjointed, generalized and lacking in robust, formal and unified policies that specifically address healthy homes. Some of the challenges posed by the current regulatory scheme include:

- The majority of laws are not preventative in nature and address hazards after the harm has already occurred and the cost of repair is exorbitant.
- Most laws pertaining to healthy homes allow for discretionary enforcement or lack enforcement.
- The city and county response to, and regulation of, indoor environmental hazards is often uncoordinated, divided between multiple departments, and requires multiple inspections to evaluate and cure select hazards in a home.
- In many cases, it is unclear which government departments, including public health, environment and building and zoning, about which department is responsible for enforcing existing laws and responding to the issue of unhealthy homes.
- Without a collective data tracking system, the data on the scope, effect, and location of the problem is unreliable.

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1 This document was developed to support the work of the Healthy Homes Healthy Communities Initiative (http://luc.edu/chrc/homerightcolumn/advancinghealthyhomeshealthycommunities/). It was created by law, medical and public health students enrolled in the Health Justice Project at Loyola University Chicago School of Law during spring 2014, including Emily Coffey, Ali Gross, Carlos Minaya, and Paige Steffen, under the supervision of Professor Emily Benfer, Professor Dhrubajyoti Bhattacharya, and Allyson Gold. The students built upon research completed during summer and fall 2013 by Loyola University Chicago School of Law student, Amanda Crews Slezak. Ms. Slezak received a stipend from Loyola University Chicago's Strategic Planning Initiative to undertake the work. Ms. Slezak's work product is available through Professor Anita Weinberg, Director of the ChildLaw Policy Institute, Loyola University Chicago School of Law.

2 For a description of the public health problem resulting from indoor environmental hazards, see The Problem of Indoor Environmental Health Hazards, available through Professor Emily Benfer, Director of the Health Justice Project, Loyola University Chicago School of Law.

3 The United States Court of Appeals for the 8th Circuit found in the case of Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010), that city codes related to indoor environmental hazards may be discriminatory under the Fair Housing Act if they are over enforced against landlords who rent predominantly to low-income, minority tenants and therefore decrease the amount of affordable housing in the city.
Without a public record of buildings that are frequently cited for violations related to the conditions of the home, prospective tenants cannot determine the health of a home prior to move in.

The burden is placed on landlords to repair or abate conditions even when they are unwilling or financially unable to comply. Tenants rarely have the ability or right to seek legal remedies or make large repairs to address health hazards in the home.

Policies that address indoor environmental hazards often lack enforcement mechanisms and private right of actions.

**Legal Background in Chicago and Cook County**

In order to effectively coordinate the approach to healthy homes, it is important to understand the multiple laws that regulate aspects of a home’s health and specific indoor environmental hazards.

**Regulatory Scheme Addressing Specific Indoor Environmental Hazards**

- **Mold: Lack of Policies Requiring Removal**

  In 2004, the Illinois General Assembly passed House Joint Resolution 12, which recognized that “the presence of mold in indoor environments presents a public health risk to the citizens of Illinois” and “has been shown to adversely affect the health of Illinois’ children.” The Resolution created an interdisciplinary Joint Task Force on Mold in Indoor Environments to make recommendations to the legislature.

  The Mold Remediation Registration Act of 2007 requires the Illinois Department of Public Health (IDPH) to make annual reports to the Environment and Energy Committees of the Illinois General Assembly concerning any federal research and regulations related to health effects of mold exposure and mold remediation training, certification and licensing.

  Cook County’s Public Health Code pertaining to nuisance makes it unlawful to “own or maintain rental property that contains excessive moisture or water that has or may result in indoor mold growth.” CDPH provides inspections and issues citations in the unincorporated areas of Cook County and provides consultation assistance to local municipalities upon request. In most jurisdictions, Departments of Buildings respond to mold complaints.

  In addition, the U.S. Environmental Protection Agency provides guidelines and educational resources pertaining to mold cleanup and prevention.

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4 This section is intended to be an overview of local and federal laws. For more information on healthy housing laws that apply to Chicago and Cook County, see Federal and Illinois Laws Regarding Indoor Environmental Hazards and Landmark Litigation Regarding Indoor Environmental Hazards, available through Professor Emily Benfer, Director of the Health Justice Project at Loyola University Chicago School of Law.


6 Cook County, Ill. Code of Ordinances, Public Health and Nuisance, § 38-54.29
Lead: Lead Mitigation Occurs After a Child is Poisoned and Requires Agency Involvement

It is the duty of every owner of a residential building in Chicago to maintain the dwelling, “in such a manner so as to prevent the existence of a lead hazard.” In Chicago, lead poisoning is defined as an elevated blood lead level of 5 µg/dL or above. The Chicago Department of Public Health (CDPH) is authorized to inspect any property frequented by a child under age six. CDPH provides recommendations for eliminating the lead hazard and a timeline by which it must be abated. The Chicago Municipal Code requires posting of notice when a lead hazard is identified, health care reporting of elevated blood lead levels, distribution of informational packets to parents or guardians with children under six years, screening of children age six months through six years.

The Illinois Lead Poisoning Prevention Act of 2006 was enacted to reduce and prevent the occurrence of lead poisoning in children mandating certain activities that include:

- Prohibiting the use or application of a lead bearing substance in any dwelling.
- Requiring screening or risk assessment of all children between six months and six years of age.
- Establishing procedures for reporting lead poisoning, including mandated reporting for blood lead levels above 10 µg/dL for children under age 16 years and for pregnant or breast-feeding women and over 25 µg/dL for all others.
- Establishing procedures for mitigation and abatement.
- Requiring the posting of a lead hazard notice in common areas.

Inspections for lead bearing substances are mandated in residential units in Illinois when a child has:

- A confirmed blood lead level at or above 20 µg/dL,
- Three successive confirmed blood lead levels of 15-19 µg/dL,
- Single confirmed blood lead level at or above 10 µg/dL and the physician requests an investigation, or
- A blood lead level at or above 10 µg/dL and the child is less than three years of age.

IDPH must also inspect a unit if mitigation notices have been issued for two or more units or common areas over five years and a parent or guardian of a child under age six or a pregnant woman residing in the building requests the inspection.

The Illinois Lead Prevention Act does not create tenant rights and relies on IDPH to identify a hazard and on the State’s Attorney or Attorney General to execute penalties and enforcement mechanisms, including restraining orders or injunctions, fines, rent withholding, revocation of licenses, and criminal sanctions.

Illinois administers lead poisoning prevention programs, including the CLEAR-WIN Program, created by the Comprehensive Lead Education, Reduction, and Window Replacement Program Act, which provides grants and loans for the Peoria, West Englewood and Englewood communities to replace windows in low-income properties and train local residents to complete

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7 Chicago, Ill. Mun. Code § 7-4-030.
the work. In addition, grant funding is available through the Chicago Department of Public Health to assist low-income homeowners and landlords to eliminate lead hazards.

Federal laws that address lead hazards include the Residential Lead-Based Paint Hazard Reduction Act, Toxic Substance Control Act, and Clean Air Act.

➢ Air Quality and Carbon Monoxide: Policies Lack Private Remedies and Do Not Address Hazards Affecting Respiratory Conditions

IDPH has developed and published guidelines for acceptable indoor air quality, recommendations for achieving acceptable indoor air quality, and approaches to indoor air quality investigation.\(^8\)

The Cook County Clean Indoor Air Ordinance, which prohibits smoking in public places, was enacted to “protect the public health and welfare by prohibiting smoking in all public places and places of employment and to guarantee the right of nonsmokers to breathe smoke-free air.”\(^9\) Similarly, the Smoke-free Illinois Act prohibits smoking indoors and within fifteen feet of the entryway to a public facility or business.\(^10\) Violations of either law are punishable by citations and fines.

The Illinois Indoor Air Quality Act requires the Illinois Board of Public Health to develop criteria for acceptable indoor air quality, which includes developing statewide indoor air quality guidelines. These guidelines include ventilation standards, source control, and occupancy control guidelines.\(^11\)

Every dwelling unit in Illinois must have a carbon monoxide alarm installed within fifteen feet of every bedroom.\(^12\) The property owner must provide the alarm and information about its use, while the tenant is responsible for maintaining the alarm. Failure to install or maintain the alarm in operating condition is punishable as a Class B Misdemeanor and tampering with an installed alarm is a Class A Misdemeanor.

The Environmental Protection Agency Clean Air Act develops and enforces federal regulations to protect the public from airborne contaminants that are hazardous to health and requires states to develop regulations that comply with the Act. The EPA has the discretionary authority to enforce the act and issue a range of civil and criminal sanctions and penalties.

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\(^9\) County, Ill. Code of Ordinances, County Clean Indoor Air Ordinance, § 30-911, et seq.

\(^10\) 410 ILCS 82/15

\(^11\) 410 ILCS 87/1, et seq.

\(^12\) Illinois’ Carbon Monoxide Detector Alarm Act, 430 ILCS 135/1, et seq. There are exceptions to this Act. For example, units that do not rely on combustion of fossil fuels for heat, ventilation, or hot water and are not connected to a garage are not close enough to any ventilated source of carbon monoxide, as determined by the local building commissioner.
Pests and Asthma Inducing Infestations: Tenant Remedies Only Apply in Chicago

In Chicago, landlords must maintain the premises and make repairs to eliminate insects, rodents or pests. Failure to do so gives the tenant the right to terminate the lease, recover damages, obtain an injunction or correct the condition at the owner’s expense. As of 2013, Chicago landlords and tenants must work together to eradicate bed bug infestations. The Chicago Bed Bug Ordinance, administered by the Department of Buildings and Department of Public Health, enumerates requirements for addressing bed bug infestations, including:

- Notification to landlords of bed bug infestations in writing.
- Landlord inspection extermination with the assistance of a certified exterminator.
- Disposal of infested belongings that cannot be treated.
- Inspection of surrounding units for signs of bed bugs and exterminate if necessary.

Inspectors from the Department of Buildings and the Department of Health have the authority to inspect the inside and outside of buildings for bed bugs. Failure to comply with the Bed Bug Ordinance results in fines to the landlord or tenant between $300 and $1,000 per day for every individual offense.

The International Building Code, International Maintenance Code and International Residential Code, adopted by many Cook County municipalities, including unincorporated Cook County, are designed, in part, to create infestation resistant buildings by requiring sufficient foundation to make buildings unattractive to pests. Infestations must be “promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.” The Codes place the responsibility for eradication on the owner of a multi-unit dwelling to rental and the occupant of a single-family dwelling. The occupant of any dwelling unit is responsible for maintaining the pest-free condition after eradication, unless the infestation is caused by a defect in the building’s structure.

Illinois law regulates, prohibits and restricts the use of certain pesticides by pest control specialists. IDPH provides licenses, controls all aspects of the licensing process, and conducts compliance inspections. Failure to comply with Illinois law regulating the use of pesticides results in fines, Class A Misdemeanor and up to 364 days in jail. The State’s Attorney of the county in which the violation occurred and the Illinois Attorney General have the authority to bring such actions. IDPH, which is charged with adopting rules and regulations to implement the Illinois Structural Pest Control Act, has developed guidelines for an integrated pest management program for school buildings and other school facilities, but not for dwelling units.

School districts and daycares are required to inform parents and guardians who have registered to receive notification at least 2 days prior to pesticide application to school property and at least 4 days prior to application on school grounds. IDPH is responsible for informing

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15 Int’l Property Maintenance Code, § 309 et seq.
16 Structural Pest Control Act, 225 ILCS 235/1 et seq.
school boards and day care centers of their obligations. IDPH can initiate an administrative hearing or the State’s Attorney can prosecute. Fines range between $200-1000 per offense.

Federal and local EPA offices administer the Federal Insecticide, Fungicide, and Rodenticide Act, which regulate pesticide sale, use and content. The EPA has the authority to require the chemical manufacturer prove that the pesticide is safe, prevent the use of unapproved pesticides, create regulations and enforce the law through fines and/or criminal sanctions, including up to a year in prison.

Radon: Inspection and Notice Requirements Are Not Mandatory

The Illinois Radon Awareness Act requires homeowners and landlords to provide information about known radon hazards during residential real property sales and to current and prospective tenants. In addition, homeowners must provide prospective buyers with a state-developed pamphlet on radon testing and a general warning statement recommending radon testing prior to all home purchases. If the information is not disclosed to a buyer before his offer, the seller must then make the requisite disclosures and allow the buyer to amend his offer. The law does not require a seller or lessor to conduct radon testing.

All new residential construction in Illinois must be radon resistant. In existing construction, only radon contractors who are licensed in accordance with Illinois’ Radon Industry Licensing Act may mitigate hazards and must follow protocols for measurement and remediation. Violation of the Licensing Act is punishable by fine and/or loss of license.

The federal Indoor Radon Abatement Act authorizes funds for radon abatement activities at the state and federal levels, including technical assistance, surveys, training centers, education guides and the development of model construction standards. The EPA’s Federal Radon Action Plan also suggests education, financial incentives, the use of radon resistant materials in new construction, and expanded testing and mitigation.

Laws that Address the Condition of a Home

Implied Warranty of Habitability: All Illinois Dwellings Must Be Fit for Living

The implied warranty of habitability is incorporated into every residential lease in Chicago, Cook County and Illinois. It requires dwellings be fit for living and in compliance with local building and health codes for the duration of the renter’s lease. Under certain circumstances when the implied warranty of habitability is breached, tenants have the right to withhold rent, terminate their lease, or recoup damages from the landlord.

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18 Radon Resistant Construction Act, 420 ILCS 52/1, et seq. Administration and enforcement of the Act, including the adoption of any penalties, is left to local government units.
19 420 ILCS 44/1, et seq. Violation of the Licensing Act is punishable by fine and/or loss of license.
In Chicago, the Chicago Residential Landlord Tenant Ordinance (RLTO) codifies the implied warranty of habitability and elucidates specific rights and responsibilities of landlords and tenants, as well as minimum standards for habitability. The RLTO does not apply to owner-occupied buildings with six or fewer apartments. The RLTO creates a right of action for non-compliance and enumerates multiple sanctions and enforcement mechanisms, including:

- Tenant may withhold rent, repair and deduct rent, repair and seek reimbursement, or break the lease.
- Landlords may be assessed fees, including attorney’s fees, for certain violations.
- Landlord may enter the unit to make repairs, charge tenant for repairs, or break the lease.

➢ Reasonable Housing Accommodations and Modifications to Remove Health Hazards

The Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Amendments provide tenants with disabilities with the right to reasonable housing accommodations and modifications to improve their health. Many conditions resulting from indoor environmental hazards, such as respiratory impairments and lead poisoning, qualify as disabilities. Under these laws, tenants have the right to reasonable accommodations in rules, policies, practices, or services so they may be able to use and enjoy their housing. Tenants have the right to make reasonable modifications, such as structural changes to their housing, at their own expense. When the property is government funded, the owner may be required to pay for the modification.

➢ Prohibition Against Retaliatory Evictions in Illinois

Illinois residents are protected from retaliatory evictions for taking permissible and defensible actions under the law. Chicago tenants receive greater protections from retaliation as the law enumerates prohibited retaliatory conduct, such as terminating or threatening to terminate a lease, increasing the rent, refusing to provide a necessary service, refusing to renew the lease, initiating an eviction action.

➢ Adoption of International Building, Property Maintenance, and Residential Code in Cook County Municipalities and Unincorporated Cook County

Of the 130 municipalities in suburban Cook County, 70 municipalities have adopted the International Residential Code, 43 municipalities have adopted the International Property Maintenance Code, and 75 municipalities have adopted the International Building Code. In addition, unincorporated Cook County has adopted the codes.

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22 Chicago, Ill. Mun. Code, § 5-12-010, et seq.
23 Under Illinois Residential Tenants’ Right to Repair Act, all tenants in Illinois have the right to repair and deduct. 765 ILCS 742/5, et seq.
25 For example, a tenant with asthma has the right to request that a landlord use integrated pest management, rather than spraying certain pesticides, to remedy an infestation in the tenant’s home.
26 Retaliatory Eviction Act, 765 ILCS 720/0.01, et seq.
27 Chicago, Ill. Mun. Code, § 5-12-150.
29 Unincorporated Cook County is the portion of Cook County that is not governed by its own municipal entity.
The International Building Code was published in 1997 in an effort to coordinate the United States’ model building codes and has been adopted throughout most of the country. The IBC, combined with the International Property Maintenance Code and International Residential Code, sets baseline standards for dwellings.\(^{30}\) The codes address requirements for occupancy, construction, materials used in construction, means of egress, fire protection, heat, appliances, walls, floors, ceilings, windows and doors, among others. These codes do not specifically address indoor environmental hazards.

Under the codes, in multi-unit rental dwellings, the mitigation and eradication of defects is the responsibility of the property owner; in a single family dwelling, the responsibility is placed on the occupant. Although the codes do not create a private right of action, they include penalties. Any person who violates or fails to comply “shall be prosecuted within the limits provided by state or local laws” and indicates that each day a violation persists is a separate offense.\(^{31}\)

➢ *Building Conditions That Are Detrimental to Health Are a Public Nuisance in Chicago and Cook County*

In Chicago, every building or structure . . .“which is in an unsanitary . . . unsafe or dangerous condition, or which in any manner endangers the health or safety of any person or persons, is hereby declared a public nuisance.”\(^{32}\) Once a nuisance is identified, it is the duty of the Building Commissioner to serve a notice ordering the owner to abate the nuisance in a reasonable time.\(^{33}\) If the owner does not abate the nuisance in the specified timeframe, he or she must be fined between $250-500 per day that the nuisance continues. In addition, the building commission must correct the nuisance at the owner’s expense.

Similarly, in unincorporated Cook County, public nuisances that are injurious to the public health are unlawful and punishable by fines ranging from $350 to $6000 and payable to the Department of Revenue.\(^{34}\) An administrative law officer assesses fines, costs and orders of abatement. The Cook County Public Health Code only applies to unincorporated areas of Cook County.\(^{35}\)

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\(^{31}\) Int’l Property Maintenance Code, § 106.4


Barriers to Healthy Homes & Healthy Communities

The following factors could potentially create barriers to the development and implementation of a healthy homes policy in Chicago and Cook County:

- High cost of proactive rental inspections, data collection systems and remediation.
- Limited city and county inspection staff and funding for hazard mitigation.
- Indoor environmental hazards may not be a main priority for city and county departments and agencies.
- Repair costs may be passed onto tenants through rent increases, thereby reducing the affordable housing supply.
- Public perception of healthy homes as an environmental issue and not a community health issue.
- Lack of knowledge or data about the scope and breadth of problem or effectiveness of model approaches.
- Resistance from owners of low-income buildings and other stakeholders.

Possible Actions, Approaches and Policies

The following actions, approaches and policies are being implemented in jurisdictions outside of Illinois\(^{36}\) and could be incorporated into a model healthy homes policy in Chicago and Cook County.

**Education and Outreach:** Consumers must be educated about indoor environmental hazards and long-term health risks associated with exposure. In addition, housing providers and tenants require education on available programs, guidance and mandated requirements in order to comply. Further, landlords require education on small-business management and best practices to remedy unhealthy housing conditions.

**Community Involvement:** Community task forces and “block by block” campaigns are an effective way to address community health by placing the task of education and accountability in the hands of community members. In addition, any policies addressing community health should incorporate the voice of educated community members.

**Proactive Rental Inspections:** Conducting inspections of rental units prior to the start of a lease term will guarantee compliance with healthy homes policies before any hazards pose a threat to tenant health. Inspections could be conducted by a city official or property owners could be given a choice of licensed professionals. At a minimum, government funded housing programs should inspect for all indoor environmental hazards prior to approving rental agreement.\(^{37}\)

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\(^{36}\) For additional information about model policies, see *Model Healthy Homes Policies* available through Professor Emily Benfer, Director of the Health Justice Project at Loyola University Chicago School of Law.

\(^{37}\) For example, the Chicago Housing Authority requires inspection of a prospective rental unit prior to signing a Housing Assistance Payment contract; however, this does not include a lead hazard inspection and units with indoor environmental hazards are often approved for use by voucher holders.
Landlord Licensing: As a condition of entering the rental market, landlords could be required to obtain a license from the municipal government. Requiring licenses would allow the municipality to maintain an accurate list of all rental property, which it could then monitor for healthy housing issues. The municipality could also require the landlord to comply with certain rules to be eligible for a license, such as: healthy homes regulations, and business training, among others. Registration fees could also be a condition of renting the property.

Coordinated Response Between Departments: Designating or creating a principal department responsible for promulgating rules, administering and enforcing healthy homes policy and clearly delineating roles of partner governmental agencies will ensure successful implementation and fulfillment of responsibilities.

Interprofessional Inspection: Interprofessional inspection teams, comprised of city inspectors, health services providers, organizers, and legal services providers, could work together with tenants to identify unhealthy conditions and address the poor health outcomes caused by the conditions.

No Home Should Harm Health Twice: City and county departments could track buildings and communities and require follow up visits, inspections and repairs. Resources could be made available to assist with repairs and penalties could be adopted to prevent non-compliance.

Ensure Uniform Inspection Practices and Accountability: Requiring inspectors in all departments to undergo continuing education and follow a uniform set of practices—such as moving furniture and appliances away from walls and carrying high wattage flashlights—will ensure that all properties are thoroughly inspected to determine whether they comply with existing healthy housing laws.

Healthy Homes Consumer Support Hotline and Social Media Outlet: Hotlines and social media sites create forums for asking questions, receiving technical assistance to mitigate hazards, registering complaints and requesting inspections. In addition, detailed records of calls allow for data collection and evaluation of the program.

Hazard Rating System and Public Record of Citations: Healthy homes rating systems allow for tracking and categorizing varying levels of indoor environmental hazards and poor conditions. Properties are given a rating of A through F during certification or licensing inspections prior to leasing. Publicly accessible ratings describe history of violations as well as compliance connected to the property and provide incentives to make repairs expeditiously.

Enforcement Mechanisms: The creation of a rental escrow program would strengthen the implied warranty of habitability and provide support for tenants seeking compliance with healthy homes policies. Liens or notice of required back pay could be placed on properties in which severe violations are found, forcing the property owner to make renovations without delay. Private right of enforcement allows tenants to rectify the situation when a government agency is delayed or elects to focus efforts elsewhere. A special healthy homes court could be created to settle disputes related to indoor environmental hazards.
Private Right of Action and Remedies for Tenants: Few policies provide tenants with enforceable rights related to healthy housing. Providing tenants with remedies for landlord noncompliance with healthy housing laws allows tenants to rectify the health hazard when a government agency is delayed or elects to focus efforts elsewhere. Private remedies include the parties affected by the condition in the solution.

Include Specific Indoor Environmental Hazards in the Law: Laws must address explicit indoor environmental hazards, such as mold. These laws will provide tenants and property owners with specific rights that are easier to assert than generalized laws such as the warranty of habitability and landlord’s duty to maintain.

Maintain Affordable Housing Stock: When units cannot be brought into compliance without dispersing costs upon tenants, relocation programs and supportive services are crucial to preventing further harm to health.

Reporting Requirements and Uniform Data Tracking System: Data related to the location and extent of indoor environmental hazards must be maintained and evaluated in order to demonstrate the problem and assess the effect of any response efforts. In addition, health professionals could also be required to track and report diagnoses associated with indoor environmental hazards, such as asthma and dermatitis.