

Local Health Policy 101: Understanding Ordinances, Resolutions, and Proclamations

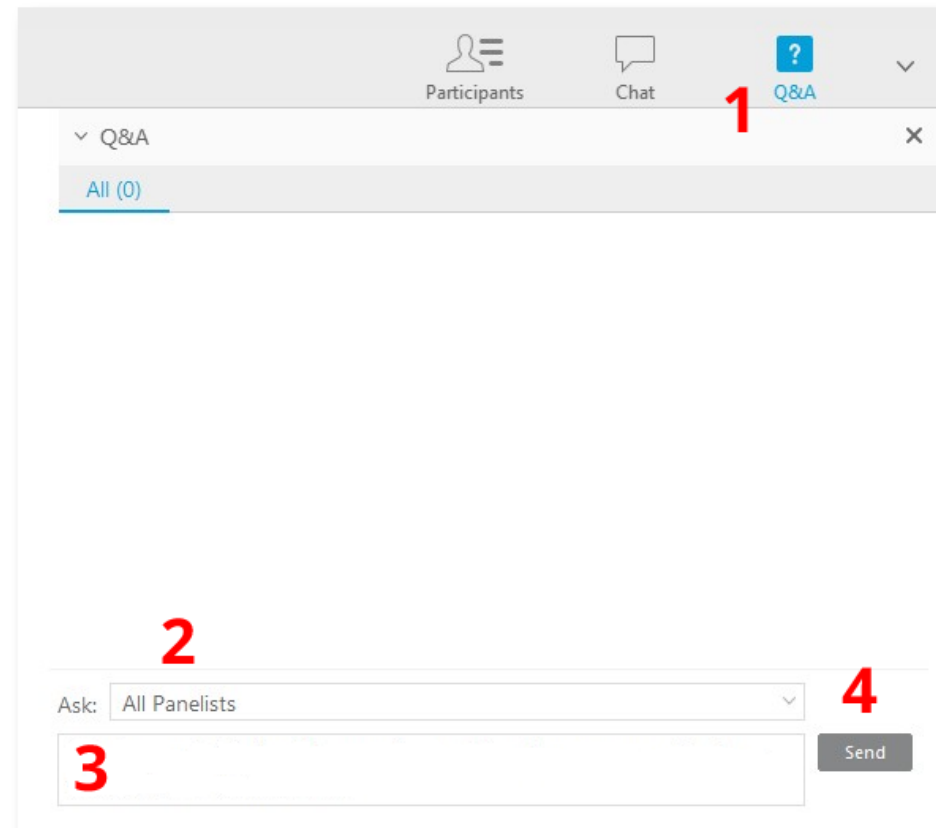
April 19, 2018

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Moderator



Julie Lederhaus, Director of Education and Training,
National Association of Local Boards of Health

- Research interests/areas of expertise:
 - Evaluating practice gaps
 - Identifying priority education
 - Ensuring availability of resources

Presenter



Jill Krueger, Director, Northern Region, Network for Public Health Law

- J.D., University of Iowa College of Law
- Research interests/areas of expertise:
 - Mental health and well-being
 - Rural health
 - Climate resilience
 - Agricultural and food law
 - Oral health



The Network
for Public Health Law

Ideas. Experience. Practical answers.

Local Health Policy 101

Understanding Ordinances, Resolutions, and Proclamations

April 19, 2018

Jill Krueger

**Network for Public Health Law and National Association of Local Boards of Health
Webinar**

Objectives

- » **Explain the difference between advisory authority and policy-making authority**
- » **Describe public health role(s) with regard to reviewing and updating public health laws**
- » **In light of legal authority and public health goals, determine appropriate legal vehicle**
- » **List resources for researching local public health laws and policies**
- » **Identify examples of legal and policy innovations in public health in rural, suburban, and urban communities.**

What is Public Health Law?

The study of the legal powers and duties of the state to assure the conditions for people to be healthy (. . .) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary or other legally protected interests of individuals for the common good.

Lawrence O. Gostin and Lindsay F. Wiley, *Public Health Law: Power, Duty, Restraint*. Berkeley: Univ. of California Press, 2016 (3rd ed.)

An Important Note to Begin

**THE SPECIFIC
GOVERNS THE
GENERAL**

Sources of Authority

» U.S. Constitution—10th Amendment

- The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

» Police power

» Delegation from the state to local governments

- May be statutory or constitutional
- Home rule (limited by the courts in some states)

Types of Authority

» **Governing (Policy-making)**

- Make decisions (establish ordinances, approve budgets, establish fees, approve permits)
- Exercise legal responsibilities, often including hiring and oversight of the health officer

» **Advisory**

- Make recommendations
- Offer advice and support
- Help guide priorities

The 10 Essential Public Health Services



PHAB Domain 6: Update and Enforce Public Health Laws

- » Review existing laws and update as needed
- » Educate the public on the meaning, purpose, and benefit of public health laws
- » Educate the public on how to comply
- » Conduct and monitor public health enforcement
- » Coordinate notification of violations among appropriate agencies.

Board of Health Role

- » **Policy development**
- » **Resource stewardship**
- » **Legal authority**
- » **Partner engagement**
- » **Continuous improvement**
- » **Oversight**

NALBOH, The Governance Functions, 2012, https://c.ymcdn.com/sites/nalboh.site-ym.com/resource/resmgr/Docs/Governance_Functions.pdf

City/ County Government Role

- » **May be the (or a) regulatory/ policy-making body**
- » **May develop or approve budgets**

Role of Health Department

- » **Develop policies—may include offering expertise and recommendations to the policy-making body**
- » **Implement and enforce laws**

Role of Legal Counsel

- » **Provide legal advice**
- » **Draft or review proposed laws to ensure compliance with local, state, and federal law**
- » **Advise regarding confidentiality, privacy, and data sharing**
- » **Explain legal risks**
- » **Enforcement**
- » **Review and draft contracts**

“Every public health agency in the country should have adequate access to dedicated governmental legal counsel with public health expertise.”

IOM (Institute of Medicine). 2011. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*. Washington, CC: The National Academies Press.

The Pump Handle and the Gavel: Considering the role of legal counsel in protecting and promoting public health

Andy Baker-White, J.D., M.P.H. • Network for Public Health Law – Mid-States Region



Introduction

A recent Institute of Medicine report recommends every public health agency in the country have adequate access to dedicated legal counsel with public health expertise. The ability to work effectively with legal counsel on public health issues can facilitate the goals of public health practice and significantly impact community health. Recognizing the roles and perspectives of legal counsel can lead to a collaborative working relationship between attorneys and public health practitioners. These relationships can be challenging, however, strategies exist to allow public health practitioners to engage legal counsel as part of the public health team.

Objectives

1. Distinguish between the roles and perspectives of legal counsel and public health practitioner.
2. Recognize challenges to the relationship between legal counsel and public health practitioner.
3. Identify strategies for engaging legal counsel as an active member of the public health team.

Roles of Legal Counsel

Legal advisor: Aids in policy planning and advises on how course of action relates to public health agency's legal authority, any inherent liability issues and procedural requirements; provides legal research and opinions.

Protector of confidentiality: Responds to and advises on Freedom of Information Law, subpoena and deposition requests. Ensures agency's compliance with the Health Insurance Portability and Accessibility Act (HIPAA) as well as educating about HIPAA's public health exception.

Legislative and regulatory counsel: Ensures that proposed changes to law (e.g., ordinances, rules, regulations) comply with statutory authority. Analyzes, drafts and prepares regulations or rules.

Enforcement: Ensures that orders from health department are valid and enforceable. Prepares, files and prosecutes court petitions and administrative actions.

Miscellaneous duties: Reviews and drafts contracts. Serves as litigation liaison between public health agency and governing entity.

Differing Perceptions

Public health practitioners and their attorneys perceive their objectives differently, as well as have differing ideas about what it means to succeed or fail.



Public Health's Perception

Objective is to protect public's health using available authority and tools.

Success

- Public health is protected.
- Programmatic and policy objectives met in timely fashion.
- Not being sued or little time spent in court.

Failure

- Statutory authority challenged and weakened.
- Attorney fails to recognize importance of issue.



Attorney's Perception

Objective is to keep client out of legal trouble and avoid problems within context of legal system.

Success

- Compliance with all relevant laws.
- Legal risks identified and addressed.

Failure

- Legal or administrative action against department.
- Client ignores advice and loses case.
- Inappropriate or inadequate advice.

Attorney/Client Challenges

- Attorney may serve another client (e.g., county board, state government, etc.).
- Access to counsel can be limited and costly.
- Attorney and client lack familiarity and experience with public health laws and issues.
- Willingness of attorney to accept guidance or counsel from others.
- Timeliness of legal assistance.
- Advice from program manager conflicts with legal advice.

Tips for Working with Attorneys

- Contact your attorney as soon as you can for legal input.
- Be candid and open, give all the facts – don't let your attorney get surprised.
- Establish and nurture relationship.
- Engage attorney in your day-to-day operations and challenges.
- Help attorney understand the public health perspective.
- Recognize when your authority is unclear.

Framing Legal Questions

1. Determine desired public health outcome.
2. Determine the preferred pathway to achieve the outcome or alternative pathways.
3. Frame your legal question by asking:

“How can I best accomplish X [the desired public health outcome] by Y [the preferred pathway] given my authority under the law?”

Citations

- Northwest Center for Public Health Practice. *Practical Law for Public Health Officials*. <http://www.nwcp.org/training/courses/practical-law>
- IOM (Institute of Medicine). 2011. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*. <http://www.iom.edu/Reports/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges.aspx>
- Pestronk, R. 2010. *ICM Committee on Public Health Strategies to Improve Health*. Audio and slides at: <http://www.iom.edu/Activities/PublicHealth/PHStrategies/2010-MAY-18.aspx>

Public Health Law Framework



Burris S, Ashe M, Blanke D, Ibrahim J, Levin DE, Matthews G, Penn M, and Katz M. Better Health Faster: The 5 Essential Public Health Law Services. Public Health Rep. 2016 Nov;131(6):747-753. doi: 10.1177/0033354916667496. Epub 2016 Oct 13.

Some Tools of Local Public Health Law

- » **Ordinances**
- » **Resolutions**
- » **Proclamations**
- » **Not an exhaustive list. For example, contracts, MOU's, and MOA's are other essential tools.**

ELEMENTS OF EFFECTIVE POLICY

Findings	Findings are brief statements of fact and/or statistics relevant to issue being addressed and that support the need for the policy. Think about: <ul style="list-style-type: none"> ■ Are the findings evidence-based? ■ Do the findings support the purpose of the policy? ■ Do the findings anticipate challenges?
Purpose	The purpose is a statement that explains the goal(s) of the policy.
Definitions	The definitions are detailed explanations of the key terms in the policy. Think about: <ul style="list-style-type: none"> ■ Are all the key terms defined? ■ Are any unnecessary terms defined? ■ Are the definitions written broadly enough to encompass new or emerging concepts or products without being overly broad?
Main policy provisions	The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply. Think about: <ul style="list-style-type: none"> ■ Are all the requirements and prohibitions reasonable? ■ Do the provisions address the purpose? ■ Are the provisions consistent with other policies and laws? ■ Are the provisions clearly stated? ■ Is it clear to whom the policy applies?
Exceptions or exemptions	This section contains any exemptions or exceptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy. Think about: <ul style="list-style-type: none"> ■ Are the exceptions or exemptions limited and written as narrowly as possible?
Enforcement	The enforcement section identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties or fines that may be imposed, and any appeal process.
Implementation	The implementation section states the effective date for the policy and the steps to disseminate and publicize the policy.
Evaluation	The evaluation section outlines the timeline and process to assess the effectiveness of the policy, including how it meets the goals, as well as providing a framework for policy revision.

From, Drafting Effective Policies, Public Health Law Center (2014); <http://www.publichealthlawcenter.org/sites/default/files/resources/Drafting%20Effective%20Policies.pdf>. See also Kristine M. Gebbie and James G. Hodge, Jr., Components of Local Ordinances to Protect and Promote the Public's Health (2009), <https://web.law.asu.edu/Portals/20/Files/PHLPP/Components%20of%20Public%20Health%20Ordinances.pdf>. See also Georgia Municipal Association, <https://www.gmanet.com/Advice-Knowledge/City-Clerk-Handbook/Ordinances-and-Resolutions.aspx>.



Researching Local Public Health Laws: Proceed with Caution

James Marshall, Goldilocks and the
Three Bears

Researching Local Public Health Laws

- » **Public Health Law Concepts**
- » **Public Health Law Organizations**
- » **Public Health Organizations**
- » **Municipal Law Resources**
- » **Topical Law Resources**
- » **Nonprofit Organizations**

Public Health Law Concepts

- » **Public Health Law 101**
- » https://www.cdc.gov/phlp/publications/phl_101.html
- » **Public Health Law Academy**
- » <http://changelabsolutions.org/public-health-law-academy>
- » **5 Essential Public Health Law Services**

Burris S, Ashe M, Blanke D, Ibrahim J, Levin DE, Matthews G, Penn M, and Katz M. Better Health Faster: The 5 Essential Public Health Law Services. Public Health Rep. 2016 Nov;131(6):747-753. doi: 10.1177/0033354916667496. Epub 2016 Oct 13.
- » **Public Health Law Textbooks**

Public Health Law Organizations

- » **CDC Public Health Law Program**
- » **ChangeLab Solutions**
- » **Network for Public Health Law**
- » **Public Health Law Center/ Tobacco Control Legal Consortium**
- » **Public Health Law Research/ Law Atlas**
- » **Many others. . .**

Public Health Organizations

- » **APHA**
- » **ASTHO**
- » **NACCHO**
- » **NALBOH**
- » **County Health Rankings and Roadmaps**
- » **Healthy People 2020 Law and Policy**
- » **Many Others**

Municipal Law Resources

- » **City Health**
- » **Municode**
- » **Amlegal.com**
- » **[Your State] League of Cities or similar**
- » **State County/City Attorneys' Associations**
- » **State Bar Association, Municipal Law Section**
- » **International Municipal Lawyers Association**

Topical Law Resources

- » **Government Agencies in Different Sectors**
- » **Google Scholar**
- » **Nonprofit Organizations/ “Gray Literature”**
 - Training and credentials of authors
 - Do they disclose their methodology?
- » **Foundations**
- » **Universities and Research Organizations**
- » **Rural Health**
 - Federal Office of Rural Health Policy
 - Rural Health Information Hub
 - National Rural Health Association

Some Legal and Policy Innovations at the Local Level



See Public Health Resolutions for Rural Communities,
https://www.networkforphl.org/resources_collection/2018/01/31/962/public_health_resolutions_for_rural_communities

Health in All Policies










Caswell County, North Carolina resolution,
<http://www.caswellcountync.gov/files/documents/news36051456062817024659a.pdf>.


ChangeLab Solutions model resolution,
http://changelabsolutions.org/sites/default/files/HIAP_ModelResolution_FINAL_20150728.pdf


Child Poverty

← → ↻ ⓘ www.naco.org/resources/signature-projects/rural-impact-county-challenge-national-effort-combat-rural-child ☆

TRENDING EPA announces plans to roll back Obama-era automobile emissions standards JOIN ABOUT NACo      


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WHAT WE DO TOPICS ADVOCACY **RESOURCES** EVENTS NEWS  **COUNTY EXPLORER INTERACTIVE**

Rural Impact County Challenge: A National Effort to Combat Rural Child Poverty

Apply Now for Community Coaching for the Rural Impact County Challenge

RURAL IMPACT
COUNTY CHALLENGE 

Ouray County, Colorado adoption of the rural impact county challenge resolution,
<http://www.ouraycountycolorado.gov/DocumentCenter/View/7926>

Healthy Eating and Active Living

- » **Healthy Food Policy Project**

<http://healthyfoodpolicyproject.org/>

- » **Healthy Eating and Active Living Community Resolution**

<http://www.publichealthlawcenter.org/sites/default/files/EAGAN%20Healthy%20Eating%20Active%20Living%20Resolution.pdf> (Eagan, Minnesota)

- » **Food policy council, sample resolution**

<http://www.publichealthlawcenter.org/sites/default/files/resources/Drafting%20a%20Resolution%20to%20Create%20a%20Food%20Council.pdf>

- » **Complete Streets Initiatives**

<https://smartgrowthamerica.org/announcing-best-complete-streets-initiatives-2017/>

Procurement Policies



In addition to the Healthy Food Policy Project and City Health mentioned above, see also:

Good Food Purchasing Program,
<https://goodfoodpurchasing.org/>

A Cross-Sector Approach to Institutional Food Procurement, <https://noharm-uscanada.org/sites/default/files/documents-files/5294/ProCureWorks%20Cross-sector%20approach%20to%20institutional%20food%20procurement.pdf>

Kari Hamerschlag, et al., *The Meat of the Matter: A Municipal Guide to Climate-Friendly Food Purchasing*
https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/12/MunicipalReport_ko_120117_v2-1.pdf

Tobacco Control



Tobacco21.org; Sample resolution supporting a minimum legal sales age of 21,
<http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-sample-resolution-MLSA-2015.pdf>;
North Carolina Department of Health and Human Services Toolkit for Local Smoke-Free Resolutions,
<http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-sample-resolution-MLSA-2015.pdf>

Environmental Health



Cedar Rapids Solar Ready Resolution,
<http://cms.revize.com/revize/cedarrapids/Sustainability/Cedar%20Rapids%20Solar%20Ready%20Resolution.pdf> ; Local Government Solar Toolkit: Planning, Zoning, and Permitting,
<https://www.cleanenergyresourceteams.org/sites/default/files/MinnesotaPZPToolkit1.pdf>

Mental Health

» **Mental Health Awareness and Mental Health First Aid**

DeKalb County, Illinois

<http://dekalbcounty.org/Packet/17/May.pdf> (scroll to page 5)

» **Resilience Awareness Month**

Walla Walla, Washington

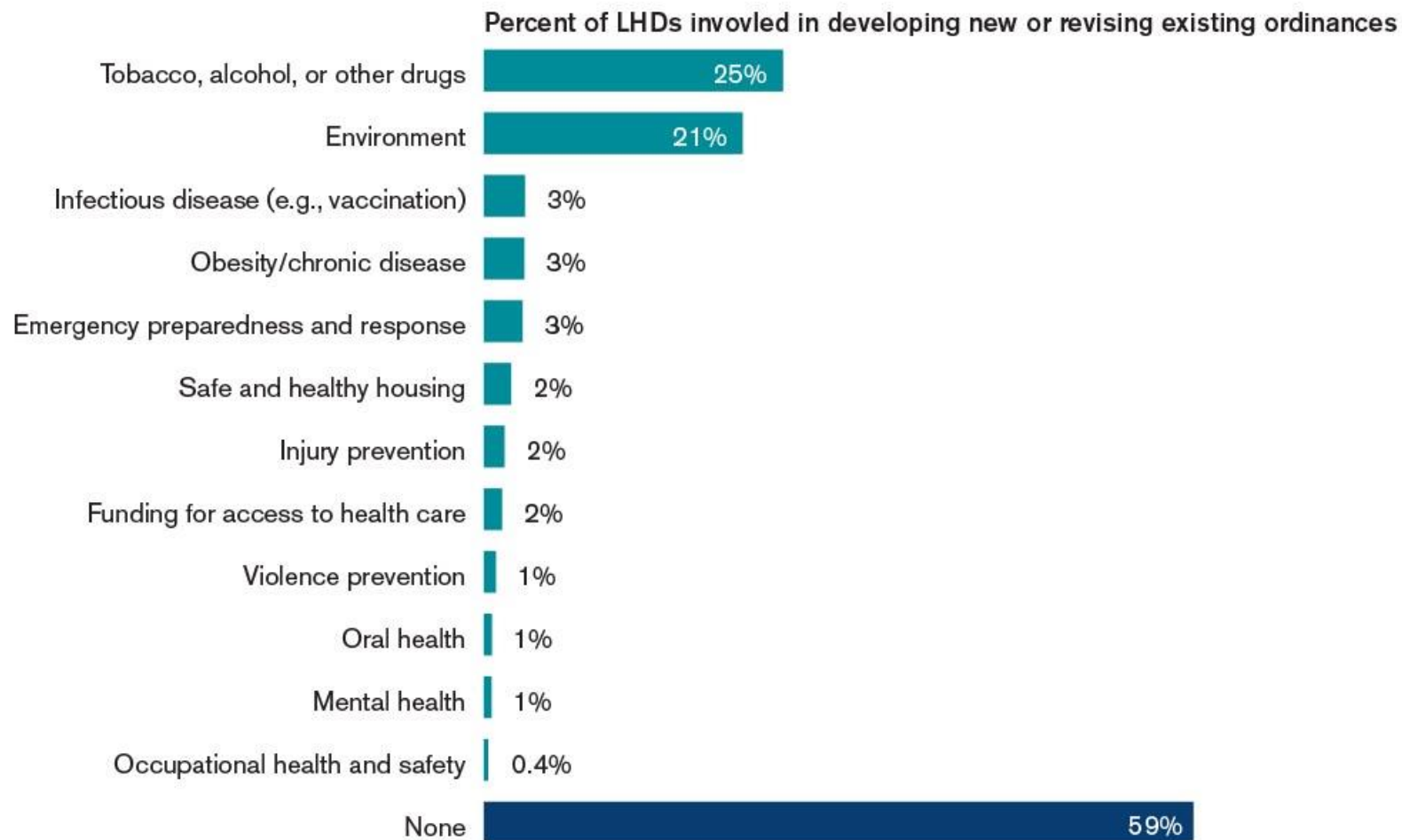
http://epay.ci.walla-walla.wa.us:8066/docs/2017/ccreg/20170927_319/2720_Proclamation.Resilience%20Awareness%2010.2017.pdf

» **Reducing the Number of People with Mental Illness in Jails**

Bonneville County, Idaho

<http://www.co.bonneville.id.us/images/PDF/Resolutions/16-12.pdf>

Topic areas of new or revised ordinances in the past two years



n=1,864

Involvement in policy areas in the past two years by size of population served

	All LHDs	Size of population served		
		Small (<50,000)	Medium (50,000–499,999)	Large (500,000+)
Tobacco, alcohol, or other drugs	74%	72%	78%	81%
Emergency preparedness and response	72%	73%	70%	75%
Infectious disease (e.g., vaccination)	68%	66%	68%	79%
Food safety	57%	53%	62%	67%
Obesity/chronic disease	55%	48%	62%	82%
Waste, water, or sanitation	43%	40%	47%	46%
Animal control or rabies	41%	38%	45%	49%
Education	34%	33%	35%	40%
Oral health	31%	27%	35%	44%
Injury or violence prevention	29%	26%	32%	51%
Mental health	27%	22%	36%	40%
Funding for access to health care	27%	21%	36%	44%
Safe and healthy housing	23%	19%	28%	40%
Body art	18%	15%	23%	23%
Land use	17%	12%	21%	33%
Affordable housing	11%	8%	13%	21%
Occupational health and safety	10%	9%	10%	15%
Criminal justice system	9%	5%	14%	20%
Labor	2%	2%	2%	9%
None	7%	8%	6%	3%

n=1,872

Source: National Association of County and City Health Officials (NACCHO)
2016 National Profile of Local Health Departments

Just Right . . .

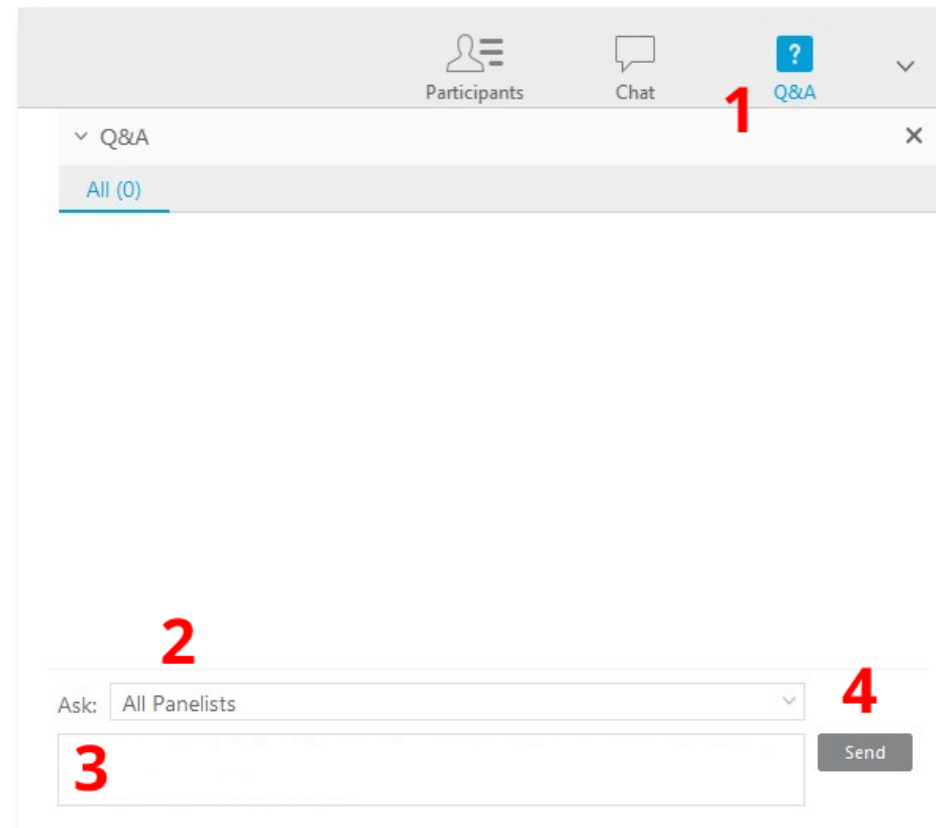


Contact Me

Jill Krueger
The Network for Public Health Law
Edina, Minnesota
952-452-9705
jkrueger@networkforphl.org

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NALBOH 2018 Conference
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Raleigh, North Carolina
nalboh.org