

Learning from the Flint Water Crisis: Legal Implications and Community Public Health Impacts

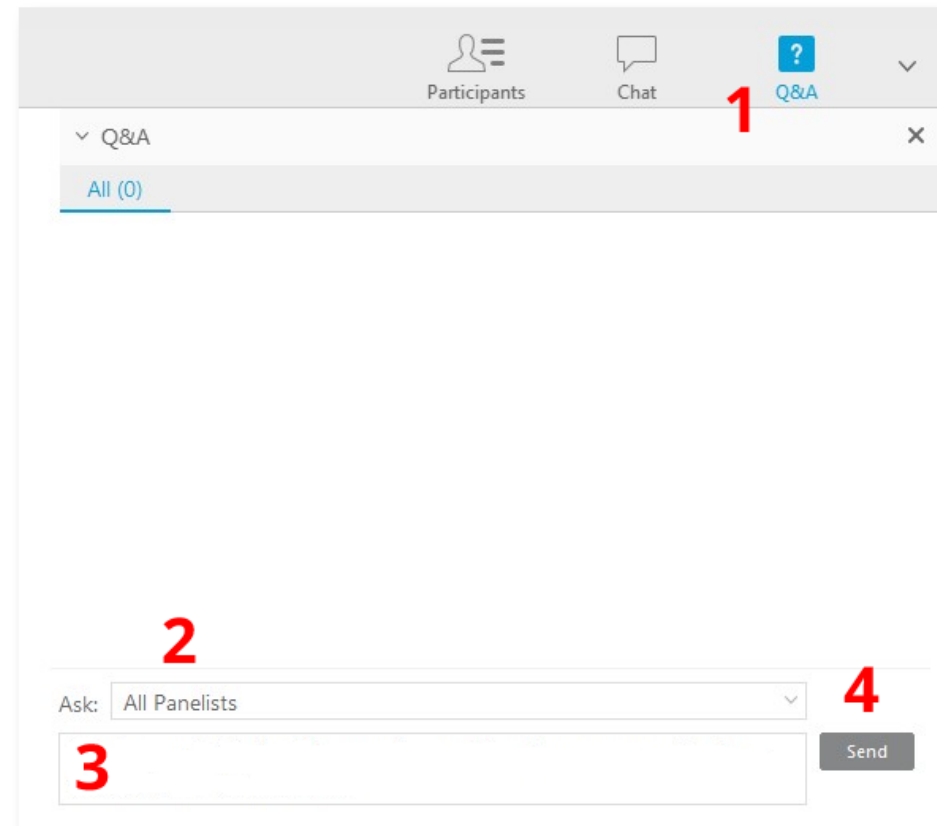
May 15, 2018

Co-sponsored by:

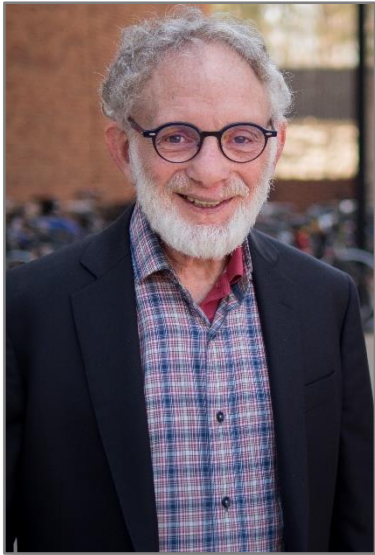


How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



Moderator



Peter D. Jacobson, Professor Emeritus of Health Law and Policy, University Michigan School of Public Health, Co-Director, The Network for Public Health Law – Mid-States Region

- J.D., University of Pittsburgh School of Law
- M.P.H., University of California Los Angeles
- Research interests/areas of expertise:
 - Health equity
 - Health care delivery
 - Public health agency structure, organization and accreditation

Presenter



Colleen Healy Boufides, Senior Attorney, Network for Public Health Law – Mid-States Region

- J.D., Duke University School of Law
- Research interests/areas of expertise:
 - Community health workers
 - Emergency financial management and public health
 - Environmental health and climate change
 - Medical-Legal Partnership and policy development
 - Public health statutory and regulatory authority

Presenter



Jennifer Bernstein, Deputy Director, The Network for Public Health Law – Mid-States Region

- J.D., M.P.H., University of Iowa
- Research interests/areas of expertise:
 - HIPAA
 - Health Equity
 - Health information and data sharing
 - Mental health and trauma informed care
 - Sexual, reproductive and maternal health

Presenter



Kent Key, Director, Office of Community Scholars and Partnerships, Michigan State University

- Executive Deputy Director, Community Based Organization Partners (CBOP)
- Founder, Community Ethics Review Board
- Fellow, Robert Wood Johnson Foundation, Culture of Health Leaders Program
- Ph.D., M.P.H.

Presenter



Nayyirah Shariff, Executive Director, Flint Rising

- Organizer, Flint Democracy Defense League
- Community Activist/Leader

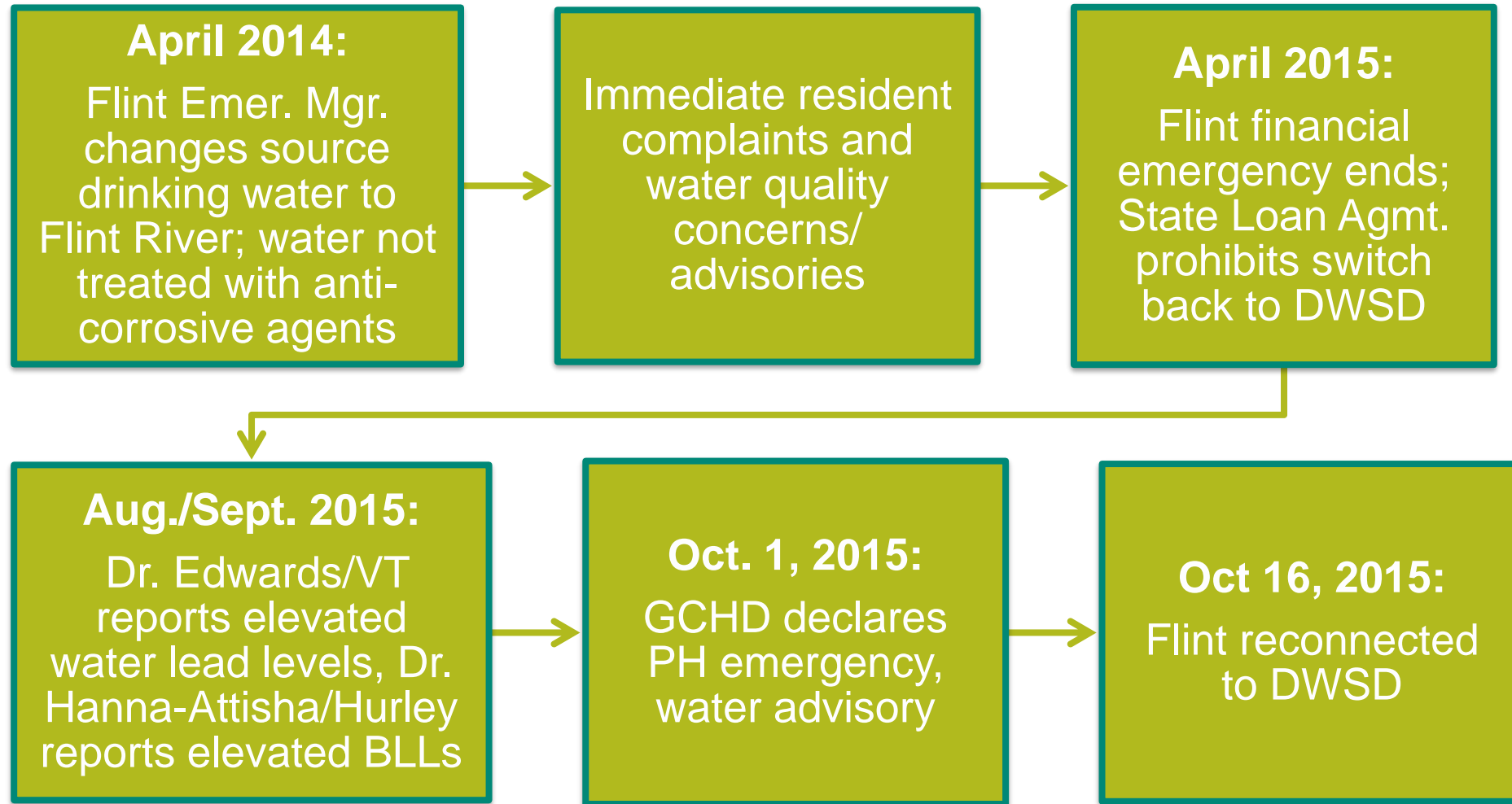


Learning from the Flint Water Crisis:

Protecting the Public's Health During a Financial Emergency

May 15, 2018

Peter D. Jacobson, JD, MPH, University of Michigan School of Public Health
Colleen Healy Boufides, JD, Network for Public Health Law – Mid-States Region
Denise Chrysler, JD, Network for Public Health Law – Mid-States Region
Jennifer Bernstein, JD, MPH, Network for Public Health Law – Mid-States Region
Toby Citrin, JD, University of Michigan School of Public Health





The Network
for Public Health Law

Ideas. Experience. Practical Answers.

I. The Public Health Legal Framework & Michigan's Emergency Manager Law

- » **The Flint water crisis wasn't inevitable.**
- » **Complex legal arrangements were a contributing factor.**
 - » **Structural legal flaws**
 - » **Implementation failures**

Key Legal Question

- » **Given the appointment of an emergency manager, what legal authority could state, local, and federal public health and environmental agencies use to avert or mitigate the crisis?**
 - » **Phase I: Existing legal environment**
 - » **Phase II: Impact of emergency manager law**

Phase I: Existing legal environment

Safe Drinking Water Legal Framework

	Federal		State			County	City		
	EPA	HHS / CDC	Governor	MDEQ	MDHHS	GCHD	Mayor	City Council	DPW
Prevention									
Surveillance/ Detection									
Investigation									
Intervention									

Public Health Legal Framework

	Federal		State			County	City		
	EPA	HHS / CDC	Governor	MDEQ	MDHHS	GCHD	Mayor	City Council	DPW
Prevention									
Surveillance/ Detection									
Investigation									
Intervention									

Phase I: Existing legal environment

Public Health & Safe Drinking Water Legal Framework

	Federal		State			County	City		
	EPA	HHS / CDC	Governor	MDEQ	MDHHS	GCHD	Mayor	City Council	DPW
Prevention	XX			XX			XX	XX	X
Surveillance/ Detection	X	X		XX	X	X			XX
Investigation	X	X	XX	XX	X	X	X	XX	
Intervention	X	X	XX	XX	X	X	XX	XX	

Key:

X = Safe Drinking Water Responsibilities

X = Public Health Responsibilities

Key Recommendations

» Safe Drinking Water:

» **Structure**: Need for public health role in permitting/regulation

» **Implementation**: Coordination/communication with PH

» Public Health:

» **Structure**: Greater PH role in environmental health prevention activities

» **Implementation**: Rigorously employ PH powers (monitoring, investigation, and intervention when needed)

» Need for improved legal preparedness

Michigan's Emergency Manager Law

- » Governor determines financial emergency
- » Governor may appoint an emergency manager to take control of a local government. An EM:
 - » temporarily supplants the governing body and officer of the local government
 - » has complete authority over government operations, organization and employees
 - » is immune from liability except for gross negligence that proximately causes harm

Local Financial Stability and Choice Act, MCL § 141.1541 et seq.

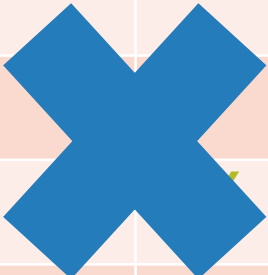
Broad authority and responsibility for assuring continued operation of local government:

The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the **public health**, safety, and welfare.

MCL 141.1549(1)

Phase II: Impact of emergency manager law

Public Health & Safe Drinking Water Legal Framework + an Emergency Manager

	Federal		State					County	City		
	EPA	CDC	Governor	Treasury	EM	MDEQ	MDHHS	GCHD	Mayor	City Council	DPW
Prevention	XX			XX	XX	XX			XX	XX	X
Surveillance/ Detection	X	X				XX	X	X			
Investigation	X	X	XX	XX	XX	XX	X	X			
Intervention	X	X	XX	XX	XX	XX	X	X			

Key:

X = Safe Drinking Water Responsibilities

X = Public Health Responsibilities

Structural flaws (failures of law)

- » **Lack of democratic accountability.**
- » **Lack of specific requirement for EM or Treasury to:**
 - » Consider public health in decision-making.
 - » Meaningfully engage with community in decision-making / assure accountability to Flint residents.

Implementation failures

- » **Emergency Manager:**
 - » Failed to recognize breadth of responsibility, which included assuring services essential to PH.
 - » Failed to make fiscally sound decisions.
- » **Treasury** failed to provide adequate oversight.
- » **Disregard for community concerns and complaints at all levels of gov't.**



II. Comparative Analysis of Emergency Manager Laws & Recommendations

Critiques of Michigan's Emergency Manager Law

- » **Controversial history**
- » **Anti-democratic**
- » **Addresses symptoms rather than causes of fiscal distress**
- » **Disproportionately applied in communities of color**

Emergency Manager Laws, generally

» **20 states authorize state intervention in local government**

See The State Role in Local Government Financial Distress (2013), Pew Charitable Trust

» **Scope and nature of interventions vary: Michigan's is one of the most aggressive**

» **Based on our sample of 10 states with EM laws:**

- » Most do not require community involvement in decisions
- » Most do not require consideration of public health in decision-making
- » Several protect EMs from legal liability

Example:

» Rhode Island

- » Budget commission is the emergency management entity.
- » Five members, two of which must be elected officials, including the chief executive for the city and a city council member.
- » Powers of the budget commission are enumerated.
 - Levy and assess taxes
 - Make or suspend rules
 - Adopt a municipal budget
 - Approve collective bargaining agreements and amendments

States without Emergency Manager Laws

- » **Blanket authorization to file for municipal bankruptcy**
- » **Conditional municipal bankruptcy authorization**
- » **Local governments not authorized to file for bankruptcy**

Example:

- » Colorado, Missouri, and South Carolina provide blanket authority for a broad range of local governmental entities to utilize Chapter 9 bankruptcy laws
- » Allows local governments to determine their own needs, allows local government to continue self-governance
- » States do not provide any additional intervention programs to assist distressed local entities

Emergency Manager Law Recommendations

Structure:

- » **Require consideration of public health in decision-making.**
- » **Require community engagement.**
- » **Replace single EM with 3-person team, including local ombudsman.**
- » **Prohibit cost from being primary factor in decision-making.**
- » **Consider imposing fiduciary duty standard.**

Emergency Manager Law Recommendations

Implementation:

- » **Develop rigorous public participation and oversight process.**
- » **Develop criteria for EM decision-making that include public health.**
- » **Recognize limits of EM expertise & require expert consultation.**
- » **Treasury must independently review all decisions; avoid rubber-stamping EM.**
- » **Legal preparedness of other agencies is crucial.**

Five Key Conclusions

1. MDEQ had primary legal authority and responsibility for safe drinking water, but abdicated essential and unique responsibilities.
2. Several agencies had authority to intervene, but gaps, overlaps, and inconsistencies in legal framework impeded action.
3. Relevant laws included checks and balances, but not self-executing. Policy of deference does not work absent communication and cooperation.

Five Key Conclusions

4. Emergency manager's jurisdiction undermined local government's ability to respond to crisis; eliminated local democratic accountability.
5. Inadequate legal preparedness contributed to failures of implementation, especially regarding communication and coordination across agencies.

Acknowledgements

Support for this project was provided by a grant from the de Beaumont Foundation.

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.



Learning from the Flint Community

May 15, 2018

Flint Residents

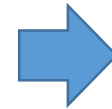
Kent Key, PhD

Nayyirah Shariff

FLINT WATER CRISIS

A Three-Fold Crisis

- Democracy Crisis (EM Law)
- Water Crisis (more than just lead)
- Public Health Crisis



Undocumented Population

- Informed by family from country of origin
- Government communication were not translated in Spanish during the onset of the crisis
- ICE and fear of deportation

Community Health Analysis

- Requested in 2015
- No action from the State
- Lost Data
 - Population decreased (people moved)
 - Many health issues had to be captured within a time window
- MSU's Flint Center for Health Equity
Solution's Flint Area Study has began in 2017

Public Health Response

- Flint Water Course (UM Flint)
- Healthy Flint Research Coordinating Center
- Community Ethics Review Board
- Flint Center for Health Equity Solutions
- Health (Equity) in All Policies
- ReCast
- Lead and Copper Rule

Flint Water Course



This past winter, the department of Public Health and Health Sciences hosted a course on the Flint Water Crisis in the format of a series of community forums. Over one thousand total attendees took advantage of this course, which featured leaders and experts in the Flint Water Crisis, and was offered free to the community, or as a one-credit course to students. Each session was captured on video, and is available here. To watch videos of previously discussed topics in the course, please visit [our YouTube playlist](#).

Views and opinions expressed in these lectures are those of the individual speakers. These views and opinions do not necessarily reflect the opinions of the University of Michigan-Flint

Healthy Flint Research Coordinating Center



Healthy Flint Research
Coordinating Center

[ABOUT US](#) ▾

[CERB](#)

[OPEN DATA FLINT](#)

[FLINT AND GENESEE PROJECT INDEX](#)

[EVENTS](#) ▾



[FLINT & GENESEE PROJECT INDEX](#)

[OPEN DATA FLINT](#)



WHO WE ARE

Flint Community Partners

along with our supporting partners:



MICHIGAN STATE
UNIVERSITY



WHAT WE DO

The Healthy Flint Research Coordinating Center (HFRCC) is organized to create synergy in research, foster ethical and respectful academic-community partnerships, and develop innovative solutions to community defined issues.

[LEARN MORE ABOUT US](#)

SERVICES

Community Ethics Review Board

Community Based Organization Partners



About CBOP

Flint Water Crisis

Mission and Purpose

What we do and How we do it

Become a Member

Affiliates

Community Ethics Review Board

Where we are

Contact Us

Community Ethics Review Board

Community Based Organization Partners (CBOP) – “home” of the **Community Ethics Review Board (CERB)**. The purpose of the **CERB** is to serve as a safety net to ensure that research conducted in the community is ethically safe, morally sound, and provides equal benefit to the community.

The **CERB** reviews research projects to make sure that:

The community is engaged and informed;

It will benefit from said research;

Projects are sensitive to community’s culture and needs;

Needs and concerns about research are heard and addressed;

A feedback loop is provided where research results will be disseminated to the community for its use and its benefit;

The community is educated about research.

Flint Center for Health Equity Solutions

NIH funded Regional Center

Focus: Health Disparities and Chronic Disease

Goal: Implement Health Equity Solutions to Eliminate Health Disparities using CBPR approaches and active participation from partner organizations

Projects: Two community-based multilevel projects: Chronic Physical Health (obesity and cardiovascular disease) and Chronic Behavioral Health (substance abuse and mental health)

Flint Area Study: a community wide health assessment of environmental exposures, physical measures, biological samples, and behavioral survey responses



<http://fches.org/>

Dr. Mona Hanna-Attisha

Pediatric Public Health Initiative

- Multiple experts across fields
- Focus Lead Exposure Elimination
Research, monitoring, and interventions

Flint Registry

- Connect residents to resources
- Monitor and Evaluate effectiveness of services



Health (Equity) in All Policies

Health in All Policies is a collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas.

The goal of Health in All Policies is to ensure that all decision-makers are informed about the health, equity, and sustainability consequences of various policy options during the policy development process.

Health in All Policies supports improved health outcomes and health equity through collaboration between public health practitioners and those nontraditional partners who have influence over the social determinants of health.

It engages diverse governmental partners and stakeholders to work together to improve health and simultaneously advance other goals, such as promoting job creation and economic stability, transportation access and mobility, a strong agricultural system, environmental sustainability, and educational attainment

ReCast



Use trauma-informed, evidence based programming to limit negative behavioral health impacts of the FWE on Flint youth and families

Use multiple evidence-based violence prevention programs to enhance ongoing community-organization led activities to support success, leadership, and empowerment for Flint area youth

Expand the trauma informed 1st responder community by offering Community Resilience Model training to local police, first responders, correction officers, etc.

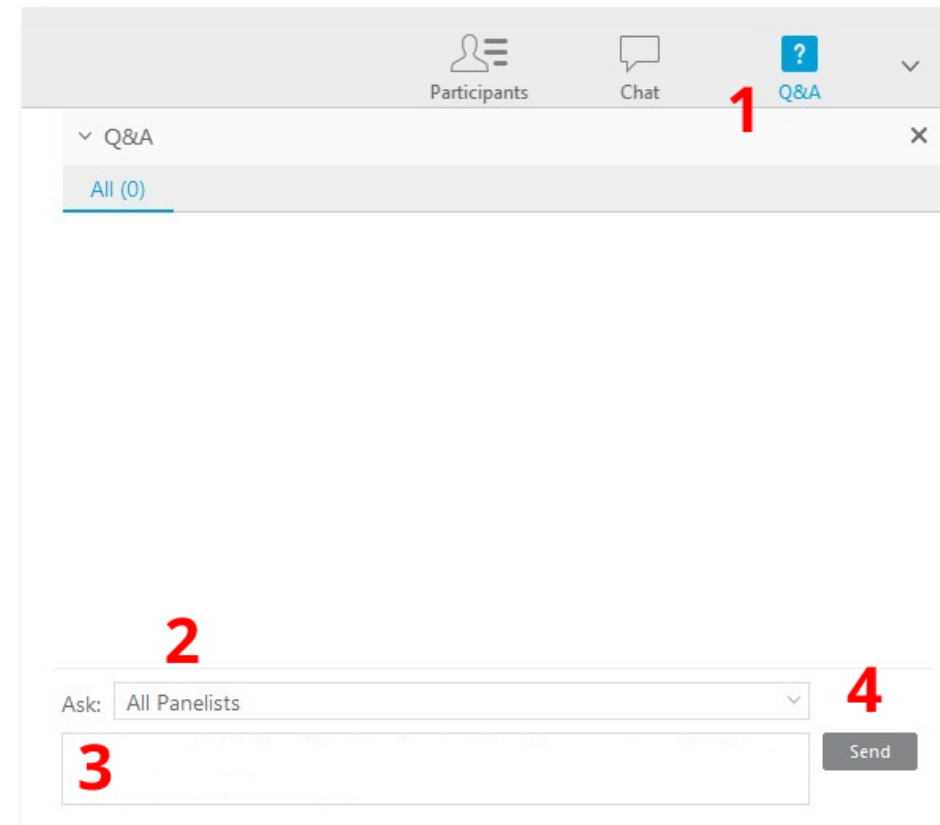
Increase capacity for youth and families to enhance resiliency, career, and stress management skills

LCR

- Lead and Copper Rule
 - Held to an Engineering Standard and not a Health Standard
- Schools not required in Federal LCR protocol
- State LCR through promulgation process

How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



Thank you for attending

For a recording of this webinar and information about future webinars, please visit networkforphl.org/webinars

You may qualify for CLE credit. All webinar attendees will receive an email from ASLME, an approved provider of continuing legal education credits, with information on applying for CLE credit for this webinar.



2018 Public Health Law Conference

Health Justice: Empowering Public Health and
Advancing Health Equity

October 4 – 6 in Phoenix, AZ

PHLC2018.org

