



IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

FREQUENTLY ASKED HEALTH-RELATED LEGAL QUESTIONS REGARDING THE COVID-19 PANDEMIC

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This FAQ document addresses health-related legal questions that have arisen during the COVID-19 pandemic and is intended to provide guidance to county attorneys who represent local public health departments, hospital attorneys, and other members of the bar advising clients on health-related issues. This FAQ was developed by the Iowa Attorney General's Office but does not constitute a formal opinion of the Attorney General. This resource is intended for general informational purposes only and does not constitute legal advice. Every effort will be made to keep this document up-to-date, but in this rapidly changing and fluid legal landscape, changes to this information may not be immediately available.

I. Public Health Disaster

1.1 What is a public health disaster and what does it mean legally that a public health disaster has been declared?

On March 17, 2020, Governor Reynolds issued a Proclamation of Public Health Disaster Emergency. A public health disaster is defined in Iowa law as a state of disaster emergency proclaimed by the Governor in consultation with the Department of Public Health for a disaster that involves an imminent threat of a health condition caused by the appearance of a novel infectious agent and that poses a high probability of a large number of serious health consequences. Iowa Code § 135.140(6).

During a public health disaster, the Governor and the Department of Public Health have broad legal authority to take all reasonable measures necessary to prevent the transmission of the virus and to prevent, control, and treat the infectious disease. These legal authorities are contained in part at Iowa Code sections 135.144 and 29C.6. For a full description of these legal authorities, see "[Legal Authority of the State of Iowa to Prevent, Detect, Manage, and Contain a Public Health Disaster.](#)"

1.2 How do I know what statutes and rules have been waived during the public health disaster?

Iowa Code § 29C.6(6) authorizes the Governor to suspend the provisions of regulatory statutes and rules under certain circumstances if strict compliance with the statute or rule would in any way prevent, hinder, or delay necessary action in coping with the disaster. The Governor has suspended the provisions of hundreds of statutes and rules to enable state and local governments to more adeptly respond to the disaster; to ease the burdens of Iowans impacted by the disaster; and to provide flexibility to health care providers, response agencies, and others serving on the front lines in providing response efforts during this disaster.

For a list of all state statutes and rules that have been suspended, see the following Proclamations at the links provided herein: (1) [March 9, 2020, Proclamation of Disaster Emergency](#) ; (2) [March 17, 2020, Proclamation of Public Health Disaster Emergency](#) (includes certificate of need, telehealth provisions, and professional licensing provisions for certain professions); (3) [March 19, 2020, Proclamation of Disaster Emergency](#) (includes open meetings provisions); (4) [March 22, 2020](#) (includes a broad range of professional licensing provisions related to continuing education, renewal, background checks, and other licensure requirements); (5) [March 26, 2020, Proclamation of Disaster Emergency](#) (includes a suspension of elective and nonessential medical and dental procedures); (6) March 31, 2020, [Proclamation of Disaster Emergency](#); (7) [April 2, 2020, Proclamation of Disaster Emergency](#) (extends closures, continues suspensions, contains additional provisions related to licensure and public health); and (8) [April 6, 2020, Proclamation of Disaster Emergency](#) (additional establishment closures and orders). Proclamations dated April 10 and all subsequent proclamations are available at governor.iowa.gov. The individual agencies and professional licensing boards affected by these temporary suspensions have issued guidance for licensees regarding the details of the scope and nature of these suspensions and have posted such guidance on their websites.

The federal government has also acted to waive certain federal statutes and regulations through both the federal declarations of national emergency and public health emergency. DHSS has issued § 1135 waivers which waive EMTALA sanctions for the direction or relocation of patients to a different location to receive screening under certain conditions; waive certain provisions of HIPAA (discussed more fully below); waive licensure requirements pertaining to out-of-state practice; waive certain conditions of participation, certification requirements, and program participation requirements for health care providers as deemed necessary by CMS to ensure the availability of health care services; waive STARK law sanctions; waive payment limits under Medicare Advantage; and impose modified timelines for performance of required health care program activities. In addition, CMS has issued waivers of a variety of

health care laws including waivers to provide more flexibility to hospitals and SNFs and waivers of enrollment screening requirements. [Here is a complete listing of federal waivers.](#)

1.3 How do I know what health-related businesses are closed during the public health disaster?

Pursuant to the broad legal authorities contained in Iowa Code §§ 29C.6 and 135.144, in March and April of 2020 the Governor issued closure of several businesses and limited nonessential medical and dental services. For a list of all closures, see the following Proclamations at the links provided herein: (1) [March 17, 2020, Proclamation of Disaster Emergency](#) (includes senior citizen centers and adult daycare facilities); (2) [March 22, 2020, Proclamation of Disaster Emergency](#) (includes medical spas, massage therapy establishments, tattoo establishments, tanning facilities, salons and barbershops); (3) [March 26, 2020, Proclamation of Disaster Emergency](#) (includes nonessential or elective surgeries or procedures and dental services); and (4) [April 6, 2020, Proclamation of Disaster Emergency](#) (includes several non-health-related businesses).

In April and May of 2020, the Governor issued voluntary reopenings of many closed businesses provided they comply with specific measures intended to keep the public safe. Required safety measures vary by business type, but commonly include a requirement to operate at fifty percent capacity, adopt social distancing policies, and take other reasonable precautions pursuant to Iowa Department of Public Health guidance. For a list of all reopenings and required safety measures, see the following Proclamations at the links provided herein: (1) [April 24, 2020 Proclamation of Disaster Emergency](#) (includes nonessential or elective surgeries or procedures); (2) [May 6, 2020, Proclamation of Disaster Emergency](#) (includes medical spas and tanning facilities); and (3) [May 13, 2020, Proclamation of Disaster Emergency](#) (includes massage therapy establishments, tattoo establishments, salons, barbershops, and several non-health-related businesses). For general reopening guidance from the Iowa Department of Public Health, see [“Public Health COVID-19 Reopening Guidance”](#) and [“Public Health COVID-19 Reopening Guidance for Businesses That Provide Direct Services to Clients.”](#)

Pursuant to the most recent Proclamation, senior citizen centers and adult daycare facilities, in addition to other non-health-related businesses (such as indoor playgrounds and theaters with live performances), remain closed at this time (see [May 26, 2020, Proclamation of Disaster Emergency](#)).

The full list of closures, bans and reopenings are contained in the Proclamations available at coronavirus.iowa.gov.

II. CLINICAL ISSUES

2.1 How do my health care clients know who to test for COVID-19 and under what criteria, and what should they do if they have a patient who tests positive?

The Iowa Department of Public Health has detailed guidance on its website regarding testing and other questions of a clinical nature. The Department and the State Hygienic Laboratory have issued a [“COVID-19 Testing Framework For Iowa.”](#)

If a health care provider, hospital, or laboratory orders or conducts a test for COVID-19 all such tests must be immediately reported to the Department. On March 19, 2020, the Department issued a [Mandatory Reporting Order](#), which designates all positive and negative results for COVID-19 as immediately reportable. This Order was updated on April 18, 2020, to include reporting of serological testing as well as viral RNA testing.

2.2 What if a health care provider, EMS personnel, law enforcement officer, or other essential services personnel is exposed to COVID-19?

[The Department has issued guidance](#) that provides distinct recommendations for those essential services personnel who are well as compared to those who are ill with a fever or respiratory symptoms.

2.3 What can my health care clients legally share with the Department of Public Health or with local public health during the COVID-19 outbreak?

Iowa law requires health care providers, hospitals, and laboratories to immediately report to the Department all test results (negative and positive) for COVID-19 and to assist the Department and local public health with all facets of this outbreak investigation. This includes providing any information requested by the Department or the local health department including medical records, exposure histories, medical histories, contact information, and test results. Iowa Code §§ 139A.3, 139A.3A, 641 IAC 1.7. HIPAA expressly authorizes these disclosures to public health authorities for purposes related to disease reporting, investigation, and surveillance. 45 CFR 164.512(b)(1).

2.4 Have there been any HIPAA waivers or guidance that affect my health care clients during this disaster emergency?

1. On March 17, 2020, the Office for Civil Rights (OCR) within the Department of Health and Human Services announced it will exercise its enforcement discretion to waive potential penalties for HIPAA violations involving health care providers who treat their patients/clients through everyday communication technologies

during the period of the public health emergency. This determination applies to all widely available, non-public facing communication apps including FaceTime, Google Hangouts video, and Skype, used in good faith for any telehealth treatment or diagnostic purpose regardless of whether the telehealth service is directly related to COVID-19. Providers may not use Facebook live, Twitch, TikTok, and other similar public-facing apps.

2. On March 16, 2020, OCR announced limited waivers of penalties for hospitals for noncompliance with certain HIPAA provisions, including waivers of the following:

- a. The requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care
- b. The requirement to honor a request to opt out of the facility directory
- c. The requirement to distribute notice of privacy practices
- d. The patient's right to privacy restrictions
- e. The patient's right to request confidential communication

The waiver of these provisions applies only to hospitals that have instituted a disaster protocol and for up to 72 hours from the time such protocol is implemented.

3. On March 16, 2020, OCR clarified that even though the remainder of HIPAA is not suspended at this point in time, existing regulatory provisions in HIPAA authorize disclosures of health information in particular circumstances relevant to this public health disaster, including the disclosure of information without patient authorization: (1) for treatment, (2) to a public health authority, at the direction of a public health authority, or to persons at risk of contracting or spreading a disease if other law authorizes the notification and as necessary to control the spread of the disease; (3) disclosures to family, friends, and others involved in an individual's care and for notification; and (4) disclosures to prevent or lessen a serious and imminent threat. [Here is additional guidance regarding the application of these allowable disclosures during a public health disaster.](#)

2.5 Is a hospital legally authorized to notify other providers who have treated or will treat a hospital patient infected with COVID-19? For example:

If EMS has transported a patient from a long-term care facility to a hospital where the patient tests positive, can or must the hospital inform EMS and the long-term care facility that the patient tested positive? Similarly, if law enforcement transported a patient from a jail to a hospital where the patient tests positive, can or must the

hospital inform law enforcement and the jail facility that the patient tested positive?

If a hospital patient tests positive for COVID-19 the hospital must report the positive case to the Department of Public Health. The Department and the county health department will then notify contacts to the positive case that they have been exposed to a positive patient, including the EMS or law enforcement officers who transported the patient and the facility from which the patient was transferred. Local public health will provide guidance to EMS, law enforcement officers, and the facility staff about monitoring their condition, testing, and isolation. [Here is a complete listing of this guidance.](#)

Hospitals have expressed concern that local public health may become overwhelmed and unable to promptly notify EMS and law enforcement who had contact with the patient. At the current time, it is important that local public health conduct the notifications to ensure that uniform and consistent guidance is provided to such contacts about required actions. If the local public health system becomes overwhelmed and is unable to provide notification to EMS and law enforcement, the Department may request that the hospital conduct such notification. Such notification would be authorized under HIPAA to occur without patient authorization if the notification was made at the direction of the Department and accompanied by a statement that the notification of a person exposed to COVID-19 is necessary to conduct a public health intervention and to prevent or lessen a serious and imminent threat to the health or safety of a person. 45 CFR 164.512(b)(1)(i) and (iv), 164.512(j).

In addition, hospitals can disclose information directly to law enforcement and EMS without direction from a public health authority under certain limited circumstances allowed by HIPAA, including disclosures which are necessary to avert a serious threat to health or safety and which are made to persons reasonably able to prevent or lessen the threat. 45 CFR 164.512(j). On March 24, 2020, the Office for Civil Rights (OCR) issued a guidance document which outlines those limited circumstances under which hospitals can disclose identifiable information about a COVID-19 positive patient to law enforcement and EMS. In reviewing section “j”, the guidance document indicates that a hospital may disclose such identifiable information to responders “if the covered entity believes in good faith that the disclosure of the information is necessary to prevent or minimize the threat of imminent exposure to such personnel in the discharge of their duties.” The guidance document emphasizes that disclosures must be limited to the “minimum necessary” to accomplish the purpose for disclosure.

Hospitals which have questions about whether a direct disclosure to law enforcement or EMS is authorized should contact their legal counsel. A couple items of note:

The role of a hospital during the COVID-19 outbreak is to provide clinical treatment to infected patients in need of acute care; the role of public health is to identify patients infected with COVID-19, conduct detailed patient interviews to identify case contacts, notify case contacts, provide appropriate recommendations to cases and case contacts, and monitor positive cases. A hospital does not have a duty, nor is a hospital generally authorized, to identify case contacts and conduct notification of such individuals. It is important to understand the distinct purposes and functions of these entities when assessing whether a particular disclosure is authorized.

For example, hospitals may in good faith determine that it is not necessary for the hospital to notify case contacts such as law enforcement and EMS because public health has already done so or such notification by public health is imminent. Likewise, and to address a scenario discussed in the March 24, 2020, OCR guidance document, hospitals may in good faith determine that it is not necessary to provide a list of names and addresses of all individuals who have tested positive or received treatment for COVID-19 to an EMS dispatch because local public health is already providing such information to PSAP's in the manner discussed in section 3.1 below. Hospitals may in good faith determine that providing such information to EMS dispatch would result in a duplication of efforts, inconsistencies and confusion, and significant administrative burdens at a time when hospital resources are particularly scarce and overburdened. Again, hospital staff reviewing whether to notify case contacts or assessing how to respond to requests for patient-identifiable information from law enforcement or EMS should consult with their legal counsel in reaching these decisions.

If a hospital patient who has tested positive is going to be transferred to another facility, can or must the hospital notify EMS and the receiving health care facility that the patient has tested positive for COVID-19?

Yes, disclosure of this information is necessary to treat the patient and thus may occur without patient authorization. 45 CFR 164.502(a)(1)(ii), 164.506(c).

III. LAW ENFORCEMENT AND EMS ISSUES

- 3.1 Law enforcement officials and EMS providers have requested local public health departments provide them with a list, including the name and addresses, of all COVID-19 positive patients in their jurisdiction. Is local public health required or authorized to provide such a list to law enforcement or EMS?**

Summary: Local boards of health have been directed by the Department of Public Health to provide a list of the names and addresses of all individuals known to have tested positive for COVID-19 in their jurisdiction to their local public safety answering point (PSAP)¹, which will then disclose this information to law enforcement and EMS on a per-call basis only. The PSAP will inform law enforcement or EMS being dispatched to the scene of the name and address of a COVID-19 positive patient so that law enforcement and EMS can take extra precautions or use PPE to lessen the risk of exposure. The PSAP should disclose the minimum amount of information necessary to enable the responder to take appropriate action on each particular call.

Legal analysis: Most local boards of health are covered entities under HIPAA and therefore must comply with both federal and state confidentiality laws. [The Department of Public Health is not a covered entity under HIPAA, and therefore its disclosures are not governed by HIPAA but must comport with state confidentiality laws]. There is no law, whether federal or state, which requires local boards of health to provide law enforcement and EMS with a list of COVID-19 positive patients in their jurisdiction and hence local boards are not legally required to do so. Local boards of health are required to disclose patient information under HIPAA in only two situations - to patients themselves and to HHS during audit – neither of which are relevant to this inquiry.

Local boards of health are permitted to disclose patient identifiable information only if such disclosure is authorized by HIPAA and state confidentiality laws such as Iowa Code chapters 22 and 139A. On March 24, 2020, the Office for Civil Rights (OCR) issued a guidance document which outlined the circumstances under which covered entities are permitted - but not required - to disclose patient identifiable information under HIPAA to law enforcement and EMS, including to persons who may be at risk of contracting a disease if the covered entity is authorized by law to notify such person in the conduct of a public health intervention or investigation (45 CFR 164.512(b)(1)(iv); and when the disclosure is necessary to prevent or lessen a serious and imminent threat to the health of a person and is to a person reasonably able to prevent or lessen the threat (45 CFR 164.512(j)(1)). [note: These HIPAA exemptions do not apply to disclosures made by the Department of Public Health because it is not a covered entity under HIPAA].

In light of the unprecedented nature and scope of the COVID-19 pandemic and the March 24, 2020, OCR guidance, the Department of Public Health has directed local boards of health to provide the following information to the public safety answering points (PSAPs) within their jurisdiction: name and address of persons testing positive

¹ A PSAP is a twenty-four hour public safety communications facility that receives 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency, including agencies providing fire, police, ambulance, or emergency medical services. Iowa Code § 34A.2(22), (23).

for COVID-19.² This notification should be provided as a part of the case tracking process. The PSAP should “flag” this information in the system to be seen only when a call is received about the person or related to the person’s address. The PSAP will inform law enforcement or EMS being dispatched to the scene of the name and address of a COVID-19 positive patient so that the responder can take extra precautions or use PPE to lessen the risk of exposure. The PSAP should disclose the minimum amount of information necessary to enable the responder to take appropriate action for each particular call.

The disclosure from local public health to the PSAPs is authorized in the March 24, 2020, OCR guidance document, which states a covered entity such as a local board of health may under HIPAA provide a list of names and addresses of all positive individuals to a dispatch “for use on a per-call basis.” The guidance states a local board of health “should not distribute compiled lists of individuals to EMS personnel, and instead should disclose only an individual’s information on a per-call basis.” Distribution of compiled lists of patient names and addresses directly to law enforcement or EMS personnel would likewise be inconsistent with state law. *See Iowa Code §§ 22.7(2) and (16), 139A.3.*

Flagging the name and address of COVID-19 positive patients in the PSAP is sufficient to ensure law enforcement and EMS are aware they need to utilize PPE and take proper precautions. Disclosing a list of all COVID-19 positive patients directly to law enforcement and EMS is not necessary to achieve this benefit, nor does it serve any additional purpose that flagging the name and address in the PSAP does not. In addition, to expect local public health departments to provide a list of all COVID-19 positive patients to all local law enforcement agencies and all EMS services in their jurisdiction is unreasonable and unfeasible given the numbers of law enforcement and EMS agencies in each county, the numbers of positive patients, the substantial workload of all public health officials at this time, and the significant confidentiality concerns such a blanket disclosure raises.

3.2 If a law enforcement officer or an EMS provider is exposed to an individual who – after their contact – tests positive for COVID-19, will the responder be informed of the exposure and what precautions should they take?

Yes, all known exposures will be disclosed to law enforcement officers and EMS providers by the Department of Public Health or the local public health department. State and local public health authorities are authorized by law to disclose

² Previous direction from the Department authorized local public health to disclose the address of a COVID-19 positive patient to their PSAP so that the address could be “flagged” in the system and a responder directed to utilize PPE. The guidance has been broadened to include disclosure of the patient name and testing status.

to a law enforcement officer or an EMS provider (and all other contacts of the infected person) that they have been exposed to a COVID-19 positive person. If a responder is notified that he or she has been exposed to a COVID-19 positive person, they should follow the “Isolation Guidance for Essential Services Personnel” found on the Iowa Department of Public Health’s COVID-19 webpage [here](#).

3.2 [note: this Q/A is also contained in the hospital section 2.5 above]

Is a hospital legally authorized to notify other providers who have treated or will treat a hospital patient infected with COVID-19? For example:

If EMS has transported a patient from a long-term care facility to a hospital where the patient tests positive, can or must the hospital inform EMS and the long-term care facility that the patient tested positive? Similarly, if law enforcement transported a patient from a jail to a hospital where the patient tests positive, can or must the hospital inform law enforcement and the jail facility that the patient tested positive?

If a hospital patient tests positive for COVID-19 the hospital must report the positive case to the Department of Public Health. The Department and the county health department will then notify contacts to the positive case that they have been exposed to a positive patient, including the EMS or law enforcement officers who transported the patient and the facility from which the patient was transferred. Local public health will provide guidance to EMS, law enforcement officers, and the facility staff about monitoring their condition, testing, and isolation. [Here is a complete listing of this guidance.](#)

Hospitals have expressed concern that local public health may become overwhelmed and unable to promptly notify EMS and law enforcement who had contact with the patient. At the current time, it is important that local public health conduct the notifications to ensure that uniform and consistent guidance is provided to such contacts about required actions. If the local public health system becomes overwhelmed and is unable to provide notification to EMS and law enforcement who may have been exposed to the patient, the Department may request that the hospital conduct such notification. Such notification would be authorized under HIPAA to occur without patient authorization if the notification was made at the direction of the Department and accompanied by a statement that the notification of a person exposed to COVID-19 is necessary to conduct a public health intervention and to prevent or lessen a serious and imminent threat to the health or safety of a person. 45 CFR 164.512(b)(1)(i) and (iv), 164.512(j).

In addition, hospitals can disclose information directly to law enforcement and EMS without direction from a public health authority under certain limited circumstances allowed by HIPAA, including disclosures which are necessary to avert a serious threat to health or safety and which are made to persons reasonably able to prevent or lessen the threat. 45 CFR 164.512(j). On March 24, 2020, the Office for Civil Rights (OCR) issued a guidance document which outlines those limited circumstances under which hospitals can disclose identifiable information about a COVID-19 positive patient to law enforcement and EMS. In reviewing section “j”, the guidance document indicates that a hospital may disclose such identifiable information to responders “if the covered entity believes in good faith that the disclosure of the information is necessary to prevent or minimize the threat of imminent exposure to such personnel in the discharge of their duties.” The guidance document emphasizes that disclosures must be limited to the “minimum necessary” to accomplish the purpose for disclosure.

Hospitals which have questions about whether a direct disclosure to law enforcement or EMS is authorized should contact their legal counsel. A couple items of note:

The role of a hospital during the COVID-19 outbreak is to provide clinical treatment to infected patients in need of acute care; the role of public health is to identify patients infected with COVID-19, conduct detailed patient interviews to identify case contacts, notify case contacts, provide appropriate recommendations to cases and case contacts, and monitor positive cases. A hospital does not have a duty, nor is a hospital generally authorized, to identify case contacts and conduct notification of such individuals. It is important to understand the distinct purposes and functions of these entities when assessing whether a particular disclosure is authorized.

For example, hospitals may in good faith determine that it is not necessary for the hospital to notify case contacts, including law enforcement and EMS, because public health has already done so or such notification by public health is imminent. Likewise, and to address a scenario discussed in the March 24, 2020, OCR guidance document, hospitals may in good faith determine that it is not necessary to provide a list of names and addresses of all individuals who have tested positive or received treatment for COVID-19 to an EMS dispatch because local public health is already providing such information to PSAP’s in the manner discussed in section 3.1 above. Hospitals may in good faith determine that providing such information to EMS dispatch would result in a duplication of efforts, inconsistencies and confusion, and significant administrative burdens at a time when hospital resources are particularly scarce and overburdened. Again, hospital staff reviewing whether to notify case contacts or assessing how to respond to requests for patient-identifiable information from law enforcement or EMS should consult with their legal counsel in reaching these decisions.

IV. COUNTY QUESTIONS

4.1 What is the role of local public health departments in conducting disease investigations in the COVID-19 outbreak?

Local public health works alongside the Department of Public Health to investigate and control COVID-19 cases in their jurisdiction. Local public health is generally responsible for notifying the ordering health care provider of the positive result, contacting the patient to conduct the COVID-19 interview, providing information to cases about self- quarantine and isolation, and monitoring the positive cases. [Here is detailed guidance on these duties.](#)

4.2 What information can local public health disclose to the media about positive COVID-19 cases?

Iowa Code § 139A.3(2)(b) provides that information regarding disease investigations “provided to or maintained by the department, a local board, or a local department, which identifies a person infected with or exposed to a reportable or other disease or health condition, is confidential and shall not be accessible to the public.” *See also* Iowa Code § 22.7(16).

This law further provides in section (c) that when the Department and local boards share information about a disease investigation with the public they must do so “in a manner which prevents the identification of any person or business” involved in the investigation. A business name can be released to the public only when the state epidemiologist or the director of the Department “determines such a release of information necessary for the protection of the health of the public.” Local boards cannot make the determination independently to release the name of a business, that decision rests with the state epidemiologist and the Department director.

The state epidemiologist has determined that it is necessary for protection of the health of the public to identify long term care facilities experiencing an outbreak (three or more cases) of COVID-19 at the facility. In addition, the state epidemiologist has determined that it is necessary to protect the public health to release the name of an employer where there has been an outbreak (10% of workforce is a confirmed case) in a single location of an employment setting which constitutes a high-risk environment for the potential of COVID-transmission such as a congregate setting in which social distancing is impossible or impracticable, including but not limited to meatpacking plants, food and beverage processing plants, factories with production lines, and warehouses.

With respect to individuals, the Department follows its established policy regarding release of confidential information to ensure it does not identify persons involved in a disease investigation in a manner which would violate section 139A.3.

4.3 Can local public health take action which is different from the orders of the Department of Public Health and the Governor's office? For example, could a county board of health issue a quarantine or isolation order that is less restrictive than that the Department has ordered, or could a county board of health issue an emergency proclamation that is more restrictive than that issued by the Governor?

Local boards of health must act in a manner which is consistent with the orders and directions of the Department and the Proclamations issued by the Governor. Iowa Code § 137.104 provides local boards of health shall enforce state health laws and the rules and lawful orders of the state health department. Iowa Code § 137.104(1)(a). The local board is also granted the power to make and enforce reasonable rules not inconsistent with the law and rules of the state board as may be necessary for the protection and improvement of the public health. Iowa Code § 137.104(1)(b) and 641 IAC 77.3(2)(b)(2); *see also* Iowa Code § 135.33 (local boards shall enforce the rules of the department and carry out its lawful directions).

With respect to quarantine and isolation orders, the Department of Public Health possesses primary jurisdiction in the COVID-19 outbreak and Department orders may not be altered or amended by local boards. Local boards must also assist the Department in implementing such orders. *See* 641 IAC 1.9(10).

Where a public health disaster exists, the Department in conjunction with the Governor is empowered to take reasonable measures to prevent transmission of infectious diseases and ensure all cases of communicable diseases are identified, controlled, and treated; order testing and exams to diagnose such disease; order treatment; quarantine or isolate individuals; and close schools to prevent transmission. Iowa Code § 135.144. These broad powers granted to the Department indicate that it has the primary authority to respond and coordinate efforts to alleviate a public health disaster. *See also* Iowa Code § 135.141.

The above-cited authorities indicate the broad powers vested in the Governor and the Department to respond to a public health disaster emergency in a coordinated manner were intended to be comprehensive. Authorizing local boards of health to issue their own orders or pass their own local emergency proclamations inconsistent with State orders, proclamations, and plans of action and could frustrate a comprehensive, coordinated public health response to the disaster.

Please note that this FAQ does not address whether county boards of supervisors or city councils may issue orders which are more stringent than the Governor's proclamation, such as shelter-in-place orders. Those questions are beyond the scope of this document.

4.4 What is the role of local law enforcement in assisting the Governor's office and the Department in enforcing public health order and the Governor's proclamations?

During this public health disaster, the Department has issued voluntary home confinement orders and is now working with local public health to request that certain exposed and infected persons voluntarily confine themselves to their homes. 641 IAC 1.9(2). If the Department becomes aware that an individual under voluntary home confinement violates the terms and conditions of that confinement, the Department may issue a mandatory home or facility quarantine or isolation order. Iowa Code § 139A.4; 641 IAC 1.9(2).

Local law enforcement has a duty to enforce and execute a Department order for quarantine or isolation within their respective jurisdictions. Iowa Code § 135.35, 641 IAC 1.9(10)(c). The Department "shall take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order." Pursuant to Iowa Code § 135.38, an individual who knowingly violates a Department order for isolation or quarantine shall be guilty of a misdemeanor.

In addition, the Governor has issued several Proclamations of Disaster Emergency pursuant to Iowa Code sections 29C.6, 135.140, and 135.144, which contain a number of orders closing certain businesses and establishments and limiting mass gatherings. Under Iowa Code chapters 29C and 135, these orders are enforceable by peace officers and a violation of such orders is a crime: "A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without warrant any person violating or attempting to violate in such officer's presence any order or rule, made pursuant to chapter 29C. This authority shall be limited to those rules which affect the public generally." Iowa Code section 29C.18(2). In addition, officers of homeland security and emergency management "shall execute and enforce the orders or rules made by the governor or under the governor's authority." Iowa Code section 29C.18(1).

4.5 Are state and local public health staff authorized to disclose the name of a COVID-positive person to such person's employer or to a facility at which such person resides for the purpose of conducting disease investigation and control?

Summary: Public health staff are authorized to disclose the name of a COVID-positive person to such person's employer or to a facility at which such person resides under the following limited circumstances: (1) the employment or living setting constitutes a high-risk environment for the potential of COVID-transmission such as a congregate setting in which social distancing is impossible or impracticable, including but not limited to employers such as meatpacking plants, food and beverage processing plants, factories with production lines, and warehouses, and living settings such as homeless

shelters, group homes, and halfway houses; and (2) disclosure of the positive case's name to the employer or facility is necessary to conduct the disease investigation and institute necessary control measures.

Legal Analysis: State and local public health staff are currently conducting disease investigations into COVID-19 outbreaks at meat processing plants and other large-scale workplace settings in Iowa. Public health is also involved with outbreak investigations involving positive cases who reside in group homes, homeless shelters, halfway houses, and other congregate living settings. These public health staff have indicated that disclosure of the name of a COVID-19 positive person to the case's employer or the facility at which they reside may be necessary in order to conduct the disease investigation for a number of reasons, including to quickly and accurately identify other workers or residents who were in close contact with the positive person and to ensure that the person follows proper isolation protocols and does not have contact with other workers or residents while infectious.

Local public health departments are typically covered entities under HIPAA, and thus an analysis of whether they can make such disclosure is governed by both federal and state confidentiality laws. Local public health is authorized by law to conduct disease investigations, which include determining "the specific source, mode of transmission, and cause of a disease or suspected disease and to determine the specific incidence, prevalence, and extent of the disease in the affected population." Disease investigation also includes "instituting appropriate control measures." 641 IAC 1.1, 1.7, Iowa Code § 139A.3. Under HIPAA, local public health is authorized to disclose protected health information without patient authorization if such disclosure is permitted by law and necessary in order to conduct public health activities such as disease investigations. 45 CFR §§ 164.512(b)(1)(i) and 164.512(b)(2).

In addition, local public health staff are permitted under HIPAA to disclose a positive case's name to an employer or facility if such disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public and such disclosure is made to a person reasonably able to prevent or lessen the threat. 45 CFR § 164.512(j)(1)(i). The Office for Civil Rights has issued COVID-19 guidance for interpreting this section of HIPAA which broadly construes this section in a manner that would allow for local public health to disclose the name of a COVID-positive individual to their employer or facility if necessary to conduct the disease investigation, trace contacts, and implement necessary disease control measures. (March 24, 2020, OCR COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, and others).

These provisions of HIPAA require a factual analysis of the level of the threat to the health and safety of persons - including co-workers or other residents - if disclosure is not made, as well as an analysis of whether there are alternative means to conducting

the investigation which do not involve disclosing identifiable information to an employer or facility. Where the employment or living environment is a congregate setting in which social distancing is impossible or impracticable such as a meatpacking plant or homeless shelter, the threat of transmission is serious and disclosure of the name may be necessary to reduce the risk of such threat to close contacts. In such settings, the disclosure of the case's name to the employer or facility may also be necessary to institute control measures such as ensuring the COVID-positive person is removed from the workplace or communal living arrangement until they are no longer infectious.

Under state law, the names of persons involved in disease investigations are confidential and disclosed only under limited circumstances expressly authorized by law. Iowa Code § 139A.3(2), 641 IAC 1.17, 175.9, 175.10. Disclosure of the names of COVID-positive persons may be made to employers or facilities only if it is necessary for such employer or facility to assist in instituting disease control measures, such as assisting public health in the identification of close contacts or ensuring that the COVID-positive case does not return to work or close contact with others until it is safe to do so. 641 IAC 1.17(3)(a), (b), 175.10(2)(a). The analysis for this disclosure under state law is similar to the HIPAA analysis as the disclosure should occur only if the employment or living environment is one in which prompt identification of close contacts is not possible without informing the employer or facility of the name of the positive case, and the threat of transmission is high. In addition, the unprecedented nature and scope of the COVID-19 outbreak and the public health threat it poses, as evidenced by the Governor's Declaration of Public Health Disaster Emergency on March 17, 2020, weigh in favor of releasing that level of information necessary to appropriately identify cases and close contacts and ensure appropriate disease control measures are implemented.

In sum, disclosure of a COVID-positive case's name to an employer or facility is authorized under the limited circumstances discussed above. Local public health staff should contact their county attorney or other legal counsel for advice in applying this guidance in specific situations, and such counsel should feel free to contact me with additional questions or concerns.

V. IMMUNITIES

5.1 Are there immunities which protect health care providers, businesses, and others who cooperate with the state during the disaster or who provide care to victims of this public health disaster?

A broad range of immunities exist to legally protect those who cooperate with the government to mitigate the effects of the disaster and those who offer assistance during a public health disaster, including:

Immunity for Good Samaritans. “A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for civil damages for acts or omissions occurring at the place of an emergency or accident or while the person is in transit to or from the emergency or accident or while the person is being moved to or from an emergency shelter unless such acts constitute recklessness or willful and wanton misconduct. An emergency includes but is not limited to a disaster as defined in section 29C.2 or the period of time immediately following a disaster for which the governor has issued a proclamation of a disaster emergency pursuant to section 29C.6.” (Iowa Code § 613.17)

Immunity for Persons, Businesses, and Others Providing Disaster Aid. “A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of a public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.” (Iowa Code § 135.147)

Note: The Department of Public Health has issued a number of Orders and guidance documents during the COVID-19 public health disaster which extend this immunity to persons or other legal entities which comply with such Order or guidance, including a Hospital Mandatory Reporting Order issued April 3, 2020; PPE Shortage Order issued April 9, 2020, and modified on April 25, 2020; Statewide Standing Order for COVID-19 Testing issued May 12, 2020; and Distribution Order for Remdesivir issued May 11, 2020.

Immunity for State Volunteers. “A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person’s duties, except for acts or omissions which involve the intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.” (Iowa Code § 669.24)

Immunity for Reporting and Cooperating with a Disease

Investigation. Any person who acts reasonably and in good faith in filing a disease report, releasing information, or otherwise cooperating with IDPH or a

local health department or board in a disease investigation is immune from any liability, civil or criminal. (Iowa Code § 139A.3(2)(a)).

Immunity for Compliance with a Vaccine Shortage Order. “A health care provider, hospital, clinic, pharmacy, health care facility, local board of health, public health agency, or other person or entity that distributes or administers vaccines shall not be civilly liable in any action based on a failure or refusal to distribute or administer a vaccine to any person if the failure or refusal to distribute or administer the vaccine was consistent with a department order issued pursuant to” chapter 139A. (Iowa Code § 139A.8A)

State Immunity for Damages Associated with Quarantine. The state has not waived immunity from suit and liability for “any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.” (Iowa Code § 669.14(3)). Hence the state retains immunity against any claim for money damages resulting from issuing or enforcing a quarantine order.

Immunity for Local Government. Local governments (cities, counties, townships) are immune from claims “based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communication services.” (Iowa Code § 670.4(1)(k)).

Federal Volunteer Protection Act. This federal act generally provides that no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by the volunteer so long as the volunteer was acting within the scope of the person’s responsibilities, was properly licensed, and did not cause harm by willful or criminal misconduct, gross negligence, or reckless misconduct. (42 USCA Section 14503).

Countermeasure Liability Legislation. This federal act limits liability with respect to pandemics and other public health emergencies. If the Secretary of DHHS has declared a public health emergency or the credible risk of such emergency, this statute eliminates liability for manufacturers, distributors, program planners, and persons who prescribe, administer, or dispense a “covered countermeasure.” (Division C of P.L. 109-148 (2005), 42 USCA 247d). NOTE: DHHS issued an “Advisory Opinion” on April 14, 2020, regarding PREP Act immunity in the COVID-reponse.

