Joint New York State Senate Standing Committee on Health
New York State Senate Standing Committee on Housing, Construction and Community Development

Senator Gustavo Rivera
33rd Senate District
Chair
Senate Committee on Health

Senator Brian Kavanagh
26th Senate District
Chair
Senate Committee on Housing,
Construction, and Community Development

PUBLIC HEARING Childhood Lead Poisoning Prevention in New York State
Tuesday, November 30, 2021 at 10:00 am
LOB, 2nd Floor, Van Buren Hearing Room A, Albany, NY

TESTIMONY PROVIDED BY Jessica Caroline Williams, Program Manager
Lead-Free Mohawk Valley, UNHS HomeOwnershipCenter
1611 Genesee Street, Utica, NY 13501

Lead-Free Mohawk Valley, part of Lead Free Kids New York, is a coalition with hundreds of members working to reduce childhood lead exposure in Oneida and Herkimer Counties through environmental, medical, educational and advocacy efforts.

It is imperative for the New York State Department of Health to comply with Federal guidance provided by the Centers for Disease Control and Prevention and the U.S. Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control regarding lead poisoning data (Exhibit A) in order to reduce childhood lead poisoning rates in New York State. In addition, Lead-Free Mohawk Valley received technical assistance from The Network for Public Health Law in the form of a prepared Issue Brief entitled 'Lead Safe Housing Rule - Overview and Opportunities for Public Health Advocates" (Exhibit B).

Access to data related to childhood lead poisoning, including property addresses, is critical in order to apply all available resources to the reduction of childhood lead poisoning in New York since the state has the highest levels of lead poisoning in America. The lack of data sharing will impact New York State's ongoing ability to bring in and/or sustain millions in federal funding that could be embedded into New York communities. Currently, about 18 municipal entities in New York have HUD Lead Hazard Reduction (LHR) / Control (LHC) grants receiving about $65M in funding over the past 3 years. Specifically, the lack of data sharing is hindering the Mohawk Valley region's ability to bring in $3.5M every 3 years to stay competitive with other regions and states.

NYS Department of Health (DOH) LeadWeb functions as the state childhood blood lead registry and provides care coordination features for both the medical and environmental follow-up for each child. To facilitate childhood lead poisoning prevention efforts across the state of New York, including through collection and monitoring of blood lead level data, the New York state legislature in 1992 directed the state health department to establish a Lead Poisoning Prevention Program (LPPP), including a statewide registry of children with EBLLs. As amended today, the statute requires the following, among other LPPP activities:

(c) establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes; (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by section [2168] of this chapter[.]

The confidentiality requirement, quoted above, does not specifically provide for disclosure of BLL data from the state's lead registry to federally supported housing or other programs that might provide crucial support for public health's efforts to protect children from exposure to lead. This is a problem for communities where the HUD LHR/LHC grant(s) and NYS Lead Poisoning Prevention/Childhood Lead Poisoning Primary Prevention Programs (CLPPPP/LPPP) are not both administered within the local Health Department. Since Federal programs specifically require priority be given for services and properties that involve a child with an EBLL, an exception allowing disclosure to entities administering Federal programs, including grant funds, needs to be added to the statute above.

We are requesting that NYS Legislature modify the N.Y. Pub. Health Law § 1370-a(2)(c) to provide an exemption for disclosure of BLL data from the state's lead registry to federally supported programs that protect children from exposure to lead. This amendment should be accompanied by explicit state guidance that NYS DOH and subsequent Local/County Health Departments recognize and follow any guidance issued by a federal agency including, but not limited to, the United States Department of Health and Human Services, United States Department of Housing and Urban Development, and Centers for Disease Control and Prevention, regarding HIPAA and lead related data sharing.

Exhibit A

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Services

Centers for Disease Control
And Prevention (CDC)
Atlanta, GA 30333

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF HEALTHY HOMES AND
LEAD HAZARD CONTROL

Contact Name
Title
Name of Health Department
Address

Subject: Confidentiality of Childhood Lead Poisoning Data

Dear Colleague:

The Office of Healthy Homes and Lead Hazard Control (OHHLHC) of the U.S. Department of Housing and Urban Development and the Lead Poisoning Prevention Branch (LPPB) of the Centers for Disease Control and Prevention are issuing this letter in response to requests for clarification regarding confidentiality of childhood lead poisoning data.

Such information may be considered "identifiable" under the Department of Health and Human Services, Privacy Rule (45 CFR Parts 160 and 164) and other state or local laws and regulations. For those agencies and institutions that are "covered entities" under the Privacy Rule, the OHHLHC, for purposes of this program, is functioning as a public health authority as defined by the Rule (45 CFR 164. 501). HUD, CDC, and EPA are authorized by statute to conduct lead poisoning prevention activities, consistent with our missions and capabilities, to address the public health problem of lead poisoning and to coordinate these activities.

Therefore, you may disclose to OHHLHC, without authorization, the information that is reasonably limited to that which is minimally necessary to accomplish the intended purpose of the disclosure (45 CFR 164.512(b)), including the addresses of housing units. For this program, reporting the property address where there is a history of lead-based paint hazards and/or children with elevated blood-lead levels is essential for targeting efforts to address lead-based paint hazards.

Since the Residential Lead-Based Paint Hazard Reduction Act (Title X) became law more than 10 years ago, millions of children have been protected from lead-based paint hazards. The report, *"Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards,"* identified enforcement of lead regulations as a key component in the overall strategy to eliminating childhood lead poisoning. Enforcement is best targeted to high-risk properties

where children are actually or potentially exposed to lead-based paint hazards, particularly those where multiple lead poisoning cases have been identified. Therefore, the most effective way to eliminate lead poisoning is spearheaded by partnerships with all levels of government to facilitate sharing information about targeted compliance reviews to ensure compliance with the federal Lead Disclosure Rule (Section 1018 of Title X) and other applicable local laws.

The Federal Lead Disclosure Rule requires that sellers, landlords, and agents of most housing constructed prior to 1978 provide each buyer or lessee with information on the presence and knowledge of lead-based paint and/or lead-based paint hazards before the buyer or lessee is obligated under any contract to buy or lease the housing. This rule is most effective when families are warned that lead hazards exist, and are then able to make an informed decision about housing.

To date, the U.S. Department of Justice, HUD, EPA, and local health programs have completed 34 enforcement settlements, including collecting over $561,000 in penalties, and ensuring commitments to test and abate lead-based paint hazards in over 166,000 high-risk rental units. As a result of these settlements, an additional $421,750 has been made available to fund projects such as purchasing portable blood lead testing devices for hospitals, funding lead hazard abatement programs through local health or housing departments, training, and outreach programs. These settlements simultaneously resolved violations under federal, state and local laws, and both cities and states have been signatories to the settlement agreements. All this translates into more homes free of lead paint hazards that are available for families, and further progress towards ending childhood lead poisoning in the United States.

Our collaboration with you has produced a dramatic decline in the number of children with elevated blood levels over the past several decades. Yet far too many children remain at risk. Together, we can achieve the goal of eliminating childhood lead paint poisoning as a major public health problem by 2010.

Sincerely,

Mary Jean Brown, ScD, RN
Chief, Lead Poisoning Prevention Branch
Centers for Disease Control and Prevention

David E. Jacobs, Ph.D.
Director, Office of Healthy Homes
and Lead Hazard Control, HUD

Exhibit B

The Network
for Public Health Law

Ideas.
Experience.
Practical answers.

The Network – Mid-States Region
University of Michigan
School of Public Health
1415 Washington Heights
Tel (734) 647-1316
www.networkforphl.org

To:	John Monaghan, Caroline Williams Lead-Free MV, Community Foundation of Herkimer and Oneida Counties
From:	Colleen Healy Boufides, J.D., Deputy Director, and Denise Chrysler, J.D., Director Network for Public Health Law - Mid-States Region
Subject:	Exchange of blood lead data to facilitate responsive action under the Lead Safe Housing Rule
Date:	May 21, 2019

Questions

1. What pathways exist under the HIPAA Privacy Rule to enable data exchange between a New York county health department and a HUD-supported housing program?

2. Does New York State's lead registry law prohibit a county health department from disclosing blood lead data to a HUD-supported housing program?

Background: Data Sharing Requirements under the Lead Safe Housing Rule

Sharing data—especially data regarding children's elevated blood lead levels—is key to coordinating lead poisoning prevention efforts between health departments, housing agencies, and community partners. Recognizing the importance of data exchange, recent amendments to the U.S. Department of Housing and Urban Development's (HUD) Lead Safe Housing Rule (LSHR) encourage and in some cases require exchange of information between public housing agencies and public health departments.[1]

In general, the LSHR requires that if the entity responsible for a HUD-supported housing unit is notified that an occupant under age 6 has an elevated blood lead level[2] (EBLL), the entity must

[1] The LSHR defines "public health department" as "a State, tribal, county or municipal public health department or the Indian Health Service." 24 C.F.R. § 35.110.
[2] EBLL is defined at 24 C.F.R. § 35.110 to align with the most recent guidance from the U.S. Department of Health and Human Services. Currently, CDC guidance recommends intervention at 5 mg/dL (5 micrograms of lead per deciliter of blood). *See* Requirements for Notification, Evaluation and Reduction of Lead-Based Pain Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels, 82 Fed. Reg. 4151, 4152 (Jan. 13, 2017), available at

complete an environmental investigation of the child's dwelling unit and common areas serving that unit. If lead-based paint hazards are identified, the entity must undertake appropriate hazard reduction, control, or abatement actions as specified in the law; must notify affected occupants of the actions taken; and must conduct lead risk assessments (and appropriate follow-up) for all other federally assisted units within the property in which a child under age 6 resides or is expected to reside.[3]

To facilitate these activities, the rule requires HUD-supported housing entities[4] to share certain information with public health agencies, including the following:

- If the housing entity is notified of a child's EBLL by a person who is not a medical health care provider, the provider must immediately verify this information with the public health department or another health care provider. [If the information is verified, the verification is treated as notification for purposes of triggering an environmental investigation, which must occur within 15 days of notification.]
- Within 5 business days of being notified by a medical professional that a child has an EBLL, the owner must report the child's name and address to the public health department.
- Within 5 business days of being notified of a child's EBLL (by either a health care professional or a public health department), the owner must report the case to the HUD field office and HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) (and must subsequently report completion of required activities within 10 business days of the deadline).[5]

The LSHR requires additional data collection, record keeping, and reporting by housing entities or subrecipients (or their designees) responsible for administering tenant-based rental assistance programs (e.g., Section 8). These requirements are as follows:

- At least quarterly, the housing entity or designee must "attempt to obtain from their local public health department the names and/or addresses of children under 6 years old who have been identified as having a EBLL."
    - ➢ If the housing entity receives EBLL data from the health department, it must match the data with names and addresses of families receiving tenant-based rental assistance (unless the health department performs this matching function instead).

https://www.federalregister.gov/documents/2017/01/13/2017-00261/requirements-for-notification-evaluation-and-reduction-of-lead-based-paint-hazards-in-federally.

[3] 24 C.F.R. §§ 35.730, 35.830, 35.1130, 35.1225. *See also* 24 C.F.R. § 35.325 (establishing more general requirements for providers of project-based assistance provided by federal agencies other than HUD).

[4] These requirements apply to entities providing project-based assistance under a HUD program (24 C.F.R. § 35.730), HUD-owned multifamily property (or a multifamily residential property for which HUD is the mortgagee-in-possession) (24 C.F.R. § 35.830), HUD public housing programs (24 C.F.R. § 35.1130), and tenant-based rental assistance (24 C.F.R. § 35.1225).

[5] 24 C.F.R. §§ 35.730, 35.830, 35.1130, 35.1225.

- On a quarterly basis, the housing entity or designee must report to the public health department "an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program" (unless the health department states that it does not want the report).[6]

Thus, the LSHR requires HUD-supported housing entities to proactively report data to public health agencies, and it encourages mutual exchange of data to facilitate reduction and remediation of lead hazards. However, because state laws generally require health care providers and laboratories to report EBLL data to state or local health departments[7]—but not to housing agencies—it is important to facilitate mutual data exchange rather than just the one-way transfer of data from housing agencies to public health departments as required by the LSHR.

We discuss below potential pathways for mutual data exchange between a New York county health department and a HUD-supported housing program under the HIPAA Privacy Rule and New York's lead registry law. The Network for Public Health Law provides information about public health laws. We do not provide legal representation or advice on taking a particular course of action. For legal advice, we urge you to consult with your attorney.

Question 1: What pathways exist under the HIPAA Privacy Rule to enable mutual data exchange between a New York county health department and a HUD-supported housing program?

The Alliance for Healthy Homes has developed a guide for state and local childhood lead poisoning prevention programs titled *Overcoming Barriers to Data-Sharing Related to the HIPAA Privacy Rule*. The guide outlines several pathways for local health departments and public housing agencies to share data without violating the Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (referred to as the "Privacy Rule").[8] Though the guide was published in 2004 (shortly after HIPAA took effect), the pathways and guidance appear to remain viable today. The most salient points are summarized here, but readers may wish to also consult the guide's in-depth explanations for additional information.

First, when defining a HIPAA-compliant pathway for sharing data between housing and public health agencies, two key questions that should begin the inquiry are whether the HIPAA Privacy Rule applies: (1) to the entity that holds the relevant data, and (2) to the relevant data. If the answer to either of these questions is no, the HIPAA Privacy Rule does not apply and the data may be shared in accordance with other applicable laws. Part c below discusses potential pathways for sharing data if the HIPAA Privacy Rule applies to both the entity and the relevant data.

[6] 24 C.F.R. § 35.1225(g).
[7] *See, e.g.*, N.Y. Comp. Code R. & Regs. tit. 10, § 67-3 (Reporting of blood lead levels).
[8] 45 C.F.R. Parts 160 and 164, subparts A and E.

a. Is the entity that is holding relevant data a "covered entity" under the HIPAA Privacy Rule?

The HIPAA Privacy Rule applies only to data shared by "covered entities," defined to include health plans, health care clearinghouses, and most health care providers.[9] Generally, housing agencies are not covered entities and therefore are not subject to the Privacy Rule. In contrast, the Privacy Rule is more likely to apply to a public health department because many health departments provide health care services. If the health department provides health care services, it may be fully covered by HIPAA or it may be a hybrid entity, meaning that certain components are covered by the Privacy Rule while other components are not.[10] If the health department is not a covered entity, or if it is a hybrid entity but the program that holds the relevant data is not part of the designated health care component, the HIPAA Privacy Rule does not apply.

b. Is the relevant data considered "protected health information" under the HIPAA Privacy Rule?

With regard to which data is covered, the Privacy Rule safeguards use and disclosure of "protected health information" (PHI), which is defined as individually identifiable health information that is transmitted or maintained in electronic media or in other forms.[11] Health information is defined fairly broadly:

> Health information means any information, including genetic information, whether oral or recorded in any form or medium, that:
>
> (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
>
> (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.[12]

Thus, individual blood lead level data would be considered PHI. A health department's housing-related data alone (e.g., lead ordinance violation records) is less likely to contain PHI.

c. Pathways for public health departments that are covered entities to share PHI with housing agencies or community partners to investigate and remediate lead hazards.

If a health department is a covered entity, or it is a hybrid entity and the program that holds EBLL data is part of the designated health care component, the Privacy Rule applies to the agency's use

[9] 45 C.F.R. § 160.103.
[10] 45 C.F.R. § 164.105.
[11] 45 C.F.R. § 160.103.
[12] 45 C.F.R. § 160.103.

and disclosure of EBLL data. In general, disclosure of PHI is prohibited unless for purposes specified in the rule (e.g., treatment, payment, or health care operations) or in accordance with a valid authorization.[13] While obtaining individual consent is one potential method for enabling exchange of information between public housing and public health agencies, this is not always a viable method, particularly where private health care providers have reported EBLLs to the health department and the health department has not had direct contact with the affected children or their families.

Nevertheless, health departments that are covered by the HIPAA Privacy Rule may be allowed to share individual EBLL data with a public housing agency without obtaining individual authorization under the Privacy Rule's public health exception.[14] Among other public health uses and disclosures, this exception allows covered entities to use or disclose PHI to a public health authority that is authorized by law to collect the data for purposes of preventing or controlling disease, injury, or disability, including by conducting public health surveillance, investigations, and interventions. 45 C.F.R. § 164.512(b)(1)(i). For a covered entity that is also a public health authority (e.g., a local health department that provides health care services), 45 C.F.R. § 164.512(b)(2) allows the entity to use PHI "in all cases in which it is permitted to disclose such information for public health activities."

The public health exception provides at least two potential pathways to allow a local health department to share data with a housing agency or community partner. First, the local health department could designate the housing agency or community partner as its agent for purposes of using the data to conduct an authorized public health activity, such as investigations and interventions related to lead exposure. This arrangement would align with 45 C.F.R. § 164.512(b)(2) because the local health department would be using the data, through its agent, to accomplish authorized public health activities. The CDC has provided sample language that may be used to accomplish a grant of public health authority.[15] A local health department would likely also develop an agreement or memorandum of understanding with the housing agency or community partner to further define the scope of the grant of public health authority, including limits on the partner's use and redisclosure of the data.[16]

[13] 45 C.F.R. § 164.502(a)(1), 164.508.
[14] 45 C.F.R. § 164.512(b).
[15] Centers for Disease Control and Prevention, HIPAA Privacy Rule and Public Health: Guidance from CDC and the U.S. Department of Health and Human Services, 52(S-1) *Morbidity and Mortality Weekly Report* 19-20 (2003), at Appendix B, available at https://www.cdc.gov/mmwr/preview/mmwrhtml/su5201a3.htm.
[16] The New York Lead Poisoning Prevention Program (LPPP) statute also encourages use of interagency agreements to accomplish its purpose. The LPPP statute provides that the state department of health "shall exercise any and all authority which may be deemed necessary and appropriate to effectuate the provisions of this title" and, specifically, "shall enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs." N.Y. Pub. Health Law § 1370-a(2)(b). The LPPP statute likewise encourages county health districts and directors to enter into agreements with

A second possible pathway involves the public health department recognizing a housing agency as a public health authority in its own right, based on the agency's specific responsibilities under the Lead Safe Housing Rule to evaluate and control lead hazards. The Privacy Rule defines a public health authority as follows:

> Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.[17]

Encouraging use of this pathway, HUD in its response to public comments about the LSHR explained that grantees of the HUD Office of Lead Hazard Control and Healthy Homes are considered public health authorities under HIPAA and thus may receive protected health information necessary to accomplish their public health responsibilities. HUD's question and answer published in the Federal Register are included here for reference:

> c. Coordination With HIPAA and Local Data Privacy Laws
>
> *Comment:* Several commenters (8) requested clarification of the protocols for reporting, including the interaction with other federal laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191), and state and local privacy laws.
>
> *HUD Response:* For the purpose of preventing or controlling childhood lead poisoning, in regard to lead hazard evaluation and control activities, the OLHCHH and its lead hazard control grantees acting on its behalf, are considered public health authorities under HIPAA; thus, they may receive related private health information that is minimally necessary to accomplish the intended purpose of the disclosure, including the addresses of housing units and vital information about the children and their families, and must protect that information.[18]

municipalities and community-based organizations to implement state-approved LPPP work plans. N.Y. Pub. Health Law § 1370-a(3). See further discussion of New York laws below in response to Question 2.

[17] 45 C.F.R. § 164.501.

[18] Requirements for Notification, Evaluation and Reduction of Lead-Based Pain Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels, 82 Fed. Reg. 4151, 4156 (Jan. 13, 2017), available at https://www.federalregister.gov/documents/2017/01/13/2017-00261/requirements-for-notification-evaluation-and-reduction-of-lead-based-paint-hazards-in-federally.

Likewise, the CDC and HUD have together recognized in a letter that this specific interpretation of "public health authority" is consistent with the OLHCHH's legal mandate.[19] Their interpretation is also consistent with the following explanation from the U.S. Department of Health and Human Services Office for Civil Rights in response to a question about whether the National Institutes of Health is considered a public health authority under the HIPAA Privacy Rule:

> The definition of a "public health authority" requires that an agency's official mandate include the responsibility for public health matters. The mandate can be responsibility for public health matters, generally, or it can be for specific public health programs. Furthermore, an agency's official mandate does not have to be exclusively or primarily for public health. Therefore, to the extent a government agency has public health matters as part of its official mandate, it qualifies as a public health authority.[20]

Upon recognizing a housing agency as a public health authority, the public health department is then permitted to disclose PHI to the agency pursuant to 45 C.F.R. § 164.512(b)(1)(i).

Note that in addition to presenting pathways for data exchange between public health and housing agencies, the public health exception may be used to involve community organizations that are authorized to act as agents of either entity. In all contexts, agencies will need to be cognizant of the Privacy Rule's other requirements relating to use and disclosure of health information, such as the requirement to use and disclose only the minimum necessary information.[21]

Question 2: Does the state of New York's lead registry law prohibit a county health department from disclosing EBLL data to a HUD-supported housing program?

To facilitate childhood lead poisoning prevention efforts across the state of New York, including through collection and monitoring of blood lead level data, the New York state legislature in 1992 directed the state health department to establish a Lead Poisoning Prevention Program (LPPP), including a statewide registry of children with EBLLs.[22] As amended today, the statute requires the following, among other LPPP activities:

> (c) establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes;

[19] Letter from the U.S. Department of Housing and Urban Development and the Centers for Disease Control and Prevention (CDC), *Subject: Confidentiality of Childhood Lead Poisoning Data*, (undated), at http://www.cdc.gov/nceh/lead/partnership/HUD_letter.pdf.
[20] Department of Health and Human Services Office for Civil Rights, *Does the HIPAA Privacy Rule's public health provision permit covered entities to disclose protected health information to authorities such as the National Institutes of Health (NIH)?* (created Dec. 20, 2002, last reviewed July 26, 2013), https://www.hhs.gov/hipaa/for-professionals/faq/297/does-the-hipaa-public-health-provision-permit-covered-entities-to-disclose-information-to-authorities/index.html (last visited May 17, 2019).
[21] *See* 45 C.F.R. § 164.514.
[22] N.Y. Pub. Health Law § 1370-a.

> (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by section [2168] of this chapter[.][23]

Though the statute strictly protects confidentiality of information contained in the registry, it clearly allows the information to be maintained as part of the statewide immunization information system (IIS), which may be accessed by local health departments to protect people within their jurisdiction.

The confidentiality requirement, quoted above, does not specifically provide for disclosure of BLL data from the state's lead registry to HUD-supported housing or other programs that might provide crucial support for public health's efforts to protect children from exposure to lead. However, in reviewing the Lead Poisoning Prevention Program statute as a whole, we believe that a common sense reading would enable local health districts to use the data to identify and reduce exposure to lead hazards, including through activities performed by agents, contractors, and cooperating agencies. As discussed below, disclosure of identifiable data to these partners may be permissible to the extent that the data is necessary for their lead exposure prevention and reduction activities. While this is our reading, we suggest you consult with legal counsel to obtain his or her interpretation of this statute.

In addition to requiring the state health department to create a statewide registry, the LPPP statute directs the state health department to identify and designate communities of concern within the state, characterized by significant concentrations of children with elevated BLLs, and to provide grants in those communities to implement approved programs.[24] Under state-approved work plans, county health districts shall implement specified lead poisoning prevention activities, including "partnerships with other county or municipal agencies or community-based organizations to … coordinate referrals for services," to prevent lead exposure in communities of concern within their jurisdiction.[25] Under these approved work plans, county health districts may enter into an agreement or subcontract with a municipal government to inspect homes, and may designate a municipal authority (in accordance with N.Y. Pub. Health Law § 1375) to administer the provisions of the LPPP statute.[26] As the health department's designee, a municipality is entitled to request and receive "from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as may be necessary or proper in the enforcement of the provisions of this title."[27] Finally, under an approved work plan, a county health district "is authorized to enter into agreements, contracts, subcontracts or memoranda of understanding with, and provide technical and other resources to, local health officials, local building code officials, real property owners, and

[23] N.Y. Pub. Health Law § 1370-a(2)(c). The statute goes on to encourage interagency coordination among local governmental entities and community-based organizations to reduce childhood lead exposure. N.Y. Pub. Health Law § 1370-a(3).
[24] N.Y. Pub. Health Law § 1370-a(3).
[25] N.Y. Pub. Health Law § 1370-a(3).
[26] N.Y. Pub. Health Law § 1370-a(3).
[27] N.Y. Pub. Health Law § 1375.

community organizations in such areas to create and implement policies, education and other forms of community outreach to address lead exposure, detection and risk reduction."[28]

Thus, county health districts are specifically authorized to coordinate with other governmental and community agencies *pursuant to state-approved work plans* and may even designate other governmental agencies to act on their behalf in administering the county's lead poisoning prevention program. To the extent that EBLL data is necessary for a local health district's partner (pursuant to contract, memorandum of understanding, or other agreement) to perform activities included in a state-approved work plan, it seems that the LPPP statute recognizes such an exchange of EBLL data as a use—rather than a disclosure—by the local health district.

Although disclosure of BLL data is expressly limited by N.Y. Pub. Health Law § 1370-a(2)(c), this provision does not address appropriate uses of BLL data maintained in the registry. The New York IIS law, on the other hand, specifies appropriate uses of data depending on the type of authorized user.[29] The statute permits the following use of the registry by local health departments:

> (iii) [L]ocal health departments shall have access to the immunization information system and the blood lead information in such system for purposes of outreach, quality improvement and accountability, epidemiological studies and disease control within their county[.][30]

Accordingly, local health departments are permitted to access and use BLL data obtained from the IIS for purposes related to reducing lead exposure within their county. Moreover, pursuant to a state-approved work plan, it appears that the health department may contract with a municipal or community-based agency to perform such lead poisoning prevention activities.

Conclusion

Reading the HIPAA Privacy Rule and New York State's LPPP and IIS laws together, it appears that a county health district may use identifiable EBLL data obtained from the state lead registry for purposes of lead poisoning prevention activities and, pursuant to a state-approved work plan, may designate a governmental or community-based agency to implement the activities on its behalf.

[28] N.Y. Pub. Health Law § 1370-a(3).

[29] The New York IIS was created and is governed by N.Y. Pub. Health Law § 2168. This statute separately protects the confidentiality of all information contained in the registry and specifies appropriate uses and disclosures of registry data. Section 2168(4)(c) provides that data collected by the state department of health may only be included in the IIS if authorized by law and further states that such data "shall be subject to any provisions in such statute or regulation limiting the use or redisclosure of the data." In general, any person, institution, or agency who is given access to records or information in the registry "shall not divulge any part thereof so as to disclose the identity of such person to whom such information or record relates, except insofar as such disclosure is necessary for the best interests of the person or other persons, consistent with the purposes of this section." N.Y. Pub. Health Law § 2168(4)(d). The statute further states that access to and use of identifiable information in the registry is limited to authorized users for authorized purposes. N.Y. Pub. Health Law § 2168(8).

[30] N.Y. Pub. Health Law § 2168(8)(b)(iii).

The Network for Public Health Law provides information and technical assistance on issues related to public health. This email should not be considered legal advice or representation. For legal advice, please contact your attorney.