



MEMORANDUM

To: Karen Persichilli Keogh, Secretary to the Governor
Elizabeth Fine, Counsel to the Governor

From: Kathy S. Marks, General Counsel

Date: October 20, 2021

Subject: Government Transparency Initiative

On behalf of the Department of Health, attached is the agency's proposed plan to increase transparency.

DEPARTMENT OF HEALTH PROPOSED TRANSPARENCY PLAN

I. Introduction

Governor Kathy Hochul has pledged to usher in an era of greater transparency and accountability in New York State government. As part of this effort, the Department of Health (DOH, the Department, or the Agency), among other state agencies, has been asked to review its agency's policies and practices and submit a proposed plan to the Governor with a summary of the Agency's review and detailing changes it intends to make to increase the transparency of its work.

As part of this undertaking, DOH reviewed several key areas addressing transparency and accountability relating to its efforts to promote health and safety within New York State. Specifically, DOH reviewed the public's ability to engage with members of the Department both generally and in the decision-making process; the accessibility of data and information to the public; the disclosure of meetings/appearances before the Agency and its decision makers; and the preservation of records for future generations.

Through this plan, DOH strives to better communicate its work; increase data availability and other information; and improve the public's access and use of available information.

II. DOH Transparency and Accountability Initiatives

A. Public Engagement

1. DOH Currently Engages with the Public Through Multiple Avenues.

DOH routinely engages the public through different avenues, including outreach to and dialogue with members of the public, as well as community and advocacy organizations; collaborative research; and canvassing views of other stakeholders. This engagement not only helps DOH keep abreast of public concerns but also provides the public and others who often have in depth knowledge of important health issues under the Department's purview an opportunity to interact with government and a platform from which to contribute towards policy making. More specifically, DOH currently engages with the public as follows:

- a. The public has the opportunity to engage in the decision-making process at meetings conducted by one of the Agency's many boards and statutorily created bodies subject to the Open Meetings Law.

DOH supports 48 statutorily mandated bodies; 29 either are subject to the Open Meetings Law as a result of their authorizing statute or are complying with the Open Meetings Law as a matter of practice, including the opportunity to attend, listen and observe meetings in person. Meetings

are also available to the public through one of the following media: webcasting, WebEx, audiocasting, videoconference, or telephonic conference call. In addition, a transcript is made available to the public for review by those bodies meeting remotely, using a webcast service. The remaining 19 bodies are not a public body within the meaning of the statute, and the confidential nature of the information discussed prohibits the Department from voluntarily opening the meetings to the public as a matter of practice.

- b. DOH provides the public with an opportunity to review and comment on regulations prior to their adoption. The State Administrative Procedure Act (SAPA) contains procedural and substantive requirements for rulemaking activities. DOH adheres to all notice and publication requirements associated with proposed rules and thoroughly reviews and considers all comments from the public prior to the final adoption of a regulation.
- c. DOH engages with the public through various social media outlets such as Twitter, Facebook, Instagram, YouTube and LinkedIn, which allows individuals to communicate with the agency directly. DOH monitors these accounts daily and refers comments and questions to their respective program areas for review and any appropriate action.
- d. As the single state agency responsible for administering the Medicaid program in New York, DOH is responsible for adhering to all Federal transparency requirements instituted by the Centers for Medicare and Medicaid Services (CMS). These transparency requirements involve publication in the *State Register*, multiple public hearings, and the consideration of all oral and written comments.
- e. DOH provides the public the opportunity to engage with it regardless of an individual's primary language. Executive Order 26.1, 9 NYCRR 8.26.1 (2021), sets forth the Statewide Language Access Policy. This policy requires Executive State agencies that provide direct public services to translate vital documents, including essential public documents such as forms and instructions provided to or completed by program beneficiaries or participants. Translation shall be in the ten most common non-English languages spoken by individuals with limited-English proficiency in NYS, based on U.S. census data, and relevant to services offered by each of such agencies. In addition, each such agency is required to provide interpretation services between the agency and an individual in their primary language with respect to the provision of services or benefits.

DOH's language access plan was last updated August 1, 2021 and is available on the Division of Human Rights' website. This plan includes information about the titles of all available translated documents and the

languages into which they have been translated, as well as information on the provision of language access services.

2. Proposed plans to further increase transparency

Despite the existing avenues of public engagement, DOH is committed to increasing public involvement and further developing collaborations with stakeholders, researchers, and grant funders.

- a. Establish a process to better engage the public and invite public input for consideration into the development of new policies or initiatives, when not required by SAPA, federal rules and regulations, or other federal or state requirements.
- b. Provide and promote outreach and awareness efforts and expand engagement with communities through easily accessible parts of the DOH website or additional consumer facing materials.
- c. Provide a central location on DOH's website of Boards and Councils that are open to the public (including authority, description, and list of members); continue to provide advance publication of meetings and, to the extent practicable at least 24 hours prior to the meeting, post agendas and materials to be discussed on DOH's website; and continue to promote compliance with recording and transcription requirements as required pursuant to Part E of Chapter 417 of the Laws of 2021.
- d. Increase engagement by DOH leaders and subject matter experts at community meetings, scientific forums, and grantee meetings to increase visibility of DOH's research, science and programs.
- e. Explore additional ways to interact with the public through use of social media to increase public engagement, build awareness, and conduct outreach efforts.
- f. Consistent with Executive Order 26.1, update DOH's language access plan every two years, which will include all progress since its last submission, and continue to translate any new vital document, including any essential public document; provide staff training on the agency's legal obligations to provide language access services and how to obtain translation services.

B. Accessible Data

1. DOH provides the Public with Access to Various Data and Information.

- a. DOH provides the public with access to numerous datasets on Health Data NY. Executive Order 95, 9 NYCRR § 8.95 (2013) establishes an online Open Data Website administered by the Office of Information Technology Services for the collection and public dissemination of Publishable State data, and, to the extent feasible, reports. This Executive Order also requires covered State entities, including DOH, to make their Publishable State data available on the Open Data Website.

DOH manages Health Data NY within the Open Data system in accordance with guidelines set forth in the Open Data Handbook. Health Data NY was established in 2013 to enable data users to access public datasets for the development of apps, research, or other analyses. The goal is to enable researchers, app developers and interested citizens to use and present data in new ways to solve public problems, inform policy, or make decisions. Datasets are made available for download or accessed by an Application Program Interface (API). The API allows outside applications to retrieve and update data continuously. Each dataset is accompanied by a description of the data available, what it represents and any caveats to the data that are available. DOH evaluates the sensitivity of the data to ensure that confidentiality and personal privacy are maintained, and data is aggregated at a level where it is very unlikely to be linked to other public information or may be viewed as individually identifiable. There are over 500 datasets currently available including information for genealogy researchers, Medicaid enrolled providers, COVID-19 data and information on the number of ticks collected and tested for tick-borne illnesses by county. The system is federated with Open Data NY and the New York City Department of Health and Mental Hygiene open data site.

- b. The Freedom of Information Law (FOIL), Article 6 (Sections 84-90) of the NYS Public Officers Law, provides the public the right to access records maintained by government agencies with certain exceptions. DOH is committed to prompt disclosure of public records to ensure accountability to the public and to promote public awareness of public health activities and decision-making. DOH's Records Access Office receives and responds to approximately 500-600 FOIL requests per month. FOIL requests may be submitted in writing by regular mail, email, fax, or through the OPEN FOIL NY online portal. The DOH website provides a subject matter list of categories of records it maintains that are accessible through FOIL.
- c. The DOH website provides a public-facing online source of public health information for individuals, families, providers, health professionals and health facilities. The homepage features four revolving issues of focus, currently including a COVID-19 section, information on Getting Tested, The Child-Parent Security Act: Gestational Surrogacy and Extreme Heat

Advice from the summer months. The site also provides information on social programs such as Medicaid and WIC, and other public health priority areas such as the Flu Vaccine, Childhood Immunizations, and Childhood Nutrition. Additionally, the homepage prominently features sections on NEWS including all recent press releases, information for Local Health Departments and Current Outreach Campaigns. In addition, the DOH website has five additional sections that can be navigated from homepage links (i.e., About, Events, Current Issues, Help and Language Assistance) that provide information on the following topics.

About: Commissioner's Biography, Contact Info, Employment Opportunities, Grant and Funding Opportunities, Laws and Regulations, Press Releases, Reports and Publications, Public Educational Materials, FOIL, Forms, Related Sites, Health Topics A to Z, A to Z in Spanish.

Events: Meetings, Hearings, Special Events, Webcasts, Other Events

Current Issues: Smokers Quit Line, Opioid Epidemic, Organ Donor Enrollment, Drinking Water Response Activities, Ending the Epidemic (AIDS/HIV), Synthetic Marijuana, Regulated Marijuana, Medicaid Redesign, Breast Cancer Programs, Notice to Medicaid Recipients

Help: This section provides users with navigation help and other assistance - Web Browser Text Size, File Formats, Disclaimer, Privacy Policy, Accessibility

Languages: Key enrollment forms, publications, and other outreach materials on the website are available in seven languages - English, Spanish, Chinese, Russian, Bengali, Haitian-Creole, Korean

2. Proposed plans to further increase transparency:

In order to keep the public better informed, DOH will identify additional publishable datasets, records, and other information to proactively make available on Health Data NY, through the FOIL process, and on various DOH websites. As with all datasets and DOH information, protecting the confidential nature of personal information is a priority for the agency. DOH will evaluate the sensitivity of the data and only make it available in a format that ensures that confidentiality and personal privacy is maintained, and data is aggregated at a level where it is very unlikely to be linked to other public information or may be viewed as individually identifiable.

a. Health Data NY

- i. Continue the process of reviewing all FOIL requests, frequently asked questions, and data requests of DOH; following appropriate data**

standards, create a roadmap to make additional publishable datasets available on Health Data NY.

Existing datasets include rates of Hepatitis B birth dose vaccination by hospital and year, hospital inpatient discharges, potentially preventable visits, stroke and sepsis cost information.

Additional publishable datasets, as an example, will include final audited Institutional Cost Reports, underlying datasets that support the analyses of reports published by DOH, and a summary of data or survey results submitted by DOH's partners when such information is requested by the agency.

- ii. Review existing and emerging COVID-19 data to identify additional publishable datasets; following appropriate data standards, create a roadmap to make additional publishable datasets available on Health Data NY.

As of October 19, 2021, DOH currently makes the following datasets related to COVID-19 available on the Health Data NY website:

- COVID-19 School Data: All four datasets include the number of positive students, teachers and staff reported daily by each individual school and the number of screening and diagnostic tests performed at each school.
 - New York State Statewide School COVID-19 Report Card BOCES data; 2021-2022
 - New York State Statewide School COVID-19 Report Card Private school data; 2021-2022
 - New York State Statewide School COVID-19 Report Card Charter school data; 2021-2022
 - New York State Statewide School COVID-19 Report Card Public school data; 2021-2022
- New York State Statewide COVID-19 Nursing Home and Adult Care Facility Fatalities. The data includes the cumulative number of nursing home confirmed COVID-19 and presumed COVID-19 fatalities available along with the number of confirmed out of facility fatalities available.
- New York State Statewide COVID-19 Vaccination Data by County. The data includes cumulative daily number of first vaccine doses and vaccine series completion available by county.
- COVID-19 Hospital Data:

- Hospital Electronic Response Data System (HERDS) Hospital Survey COVID-19 Admissions by Gender - Statewide by day
- Hospital Electronic Response Data System (HERDS) Hospital Survey COVID-19 Admissions by Zip Code - Statewide by day
- Hospital Electronic Response Data System (HERDS) Hospital Survey COVID-19 Hospitalizations and Beds - Daily by Facility since 3/26/2020
- Hospital Staff vaccinated - Total number of employees, number partially and fully vaccinated

Additional publishable datasets will include:

- School COVID-19 Reporting: The number of COVID-19 cases reported daily by individual schools and the number of COVID-19 screening tests performed for the 2020-2021 school year.
 - Additional datasets on COVID-19 testing information including positives by zip code.
 - Information gathered from HERDS nursing home/adult care facility surveys.
 - Vaccine distribution data including information about weekly distributions since the beginning of the vaccine campaign and wastage data statewide.
- iii. Extend the Health Data NY platform to local health departments. As part of this effort, DOH will educate local health departments on how to use Health Data NY and, as needed, publish local health departments' datasets so local health departments can offer the data to their constituents.

b. FOIL

- i. Improve on informing the public of the types of records that are not accessible through FOIL; advise on where to go for such records; and show this information more prominently on the FOIL page of DOH's website.
- ii. Identify areas, in which information is routinely submitted to DOH, including applications or proposals, and instruct respondents to submit information in redacted and unredacted versions (with guidance on

information that must be redacted) to help facilitate release of information.

- iii. Add language to FOIL response letters, when applicable, to assist requestors in accessing records online. For example, DOH can direct a person to the NYS Health Profiles website to access nursing home or adult care facility inspection reports and provide further direction to find the documents that are being requested.

c. Program Information

- i. Continue to expand content available on the website to focus on information that is current, consumer-friendly and accessible to consumers and stakeholders.
- ii. Expand and as needed, update program information and data; this will involve adding priority topics based on the needs of identified audiences and information about the agency, including a description of the agency's organization structure, mission and programs.
- iii. Evaluate website and organize information in a more user-friendly format, which may include creating simpler paths to information and other relevant pages and removing dated content to make it easier for people to learn about issues.
- iv. Explore the ability to launch a newly designed website to improve user experience.

C. Appearances Before the Department of Health

1. DOH has Policies and Procedures in Place to Account to the Public Concerning Appearances Before the Agency's Administrative Bodies and Decision Makers.

- a. Executive Law § 166 requires certain State agencies, including DOH, to keep a record of who appears before them for a fee as a third party on behalf of a person or organization subject to the regulatory jurisdiction of the Agency.

DOH requires all offices of the Department and its advisory bodies such as boards, committees and councils when conducting regulatory proceedings to maintain a record of any person who is being paid to appear before them by anyone subject to the Department's regulatory jurisdiction. DOH submits this information to the Joint Commission on Public Ethics on a quarterly basis.

- b. Project Sunlight requires State agencies, including DOH, to report appearances by individuals, firms, or other entities (other than state or local governmental agencies) who appear before decision-makers or those who advise decision-makers.

DOH requires all its employees, including employees at DOH's health care facilities, independent contractors and temporary employees, who have the power or authority to exercise the Department's discretion in five enumerated categories and DOH employees who advise someone who has such discretion to electronically report defined appearances into an online database, known as "project sunlight."

2. Proposed Plans to Further Increase Transparency and Public Accountability.

Public awareness of efforts to influence the decision-making process at government agencies is an important part of good government. DOH will continue to report and make public those that appear before DOH in an effort to influence the Agency. Specifically, DOH will continue to stress the importance of transparency and accountability and provide professional development for staff to promote openness in the agency's work as follows:

- a. Provide regular reminders to staff on the Record of Appearance requirements and Project Sunlight, including the need to regularly review job functions to establish that new and existing staff are designated appropriately, as well as other appropriate steps to promote public access to information.
- b. Annually review and as needed, update agency-wide policies and procedures that establish roles and responsibilities in promoting openness and ensuring transparency in the agency's work.

D. Record Retention and Disposition

1. DOH has Policies and Procedures in Place to Ensure the Preservation of Important Governmental Records.

Arts and Cultural Affairs Law § 57.05 establishes a framework of policies and procedures for the creation, maintenance, disposition and selective preservation of State government records.

DOH requires all offices and programs, including Health Facilities, to comply with all records retention and disposition requirements set by the State Education Department, State Archives, Office of the State Comptroller, and other agency-specific directives. As part of this requirement, DOH has adopted the General Retention and Disposition Schedule for New York State

Government Records established by State Archives. Additionally, DOH has established over five hundred agency specific Record Disposition Authorizations (RDA), and the Agency provides guidance to program areas concerning the following: the definitions of records, non-records, and records series; the process and procedure for establishing authorized retention and disposition schedules; transferring records to the State Records Center; and the identification of records with potential archival value.

2. Proposed Plans to Further Increase Transparency and Accountability.

DOH is reviewing the records management practices and procedures for all program areas. Through this review, DOH will update the Agency's record retention policy and create a more comprehensive Record Retention Policy and Procedure Manual to provide Agency staff with better guidance on the identification and preservation of records with archival value. In addition to updating the policy, DOH will provide other professional development for staff relating to record retention.

III. Conclusion

Through this transparency plan, DOH describes its plan to increase openness and improve collaboration with the public in support of DOH's mission to protect, improve and promote the health, productivity, and well-being of all New Yorkers. DOH recognizes that the utility of information changes over time as the direction of public health issues change and new public health issues emerge. As such, DOH will continually evaluate and exercise such information sharing in ways that considers the relevance of information and the information needs of the public. At the same time, DOH's anticipated efforts will be balanced with its responsibility to maintain the confidentiality of information to protect legitimate interests, including personal privacy.

Furthermore, to ensure success of DOH's plan, certain systems that are integral to improving transparency will necessitate a plan to ensure that the appropriate level of financial resources, as well as staff, are available. For example, implementation of system upgrades to achieve transparency will begin as the necessary resources become available to implement.