

“Required by Law” Disclosures of Protected Health Information (PHI) by HIPAA-Covered Local Health Departments (LHDs) to County Departments of Social Services (DSS) Under G.S. 7B-302(e) and 7B-3100(a)

NC Statute	G.S. 7B-302(e)	G.S. 7B-3100(a)
Who Makes the Request?	DSS director or the DSS director’s representative.	The request comes from DSS. The statute does not indicate that a particular employee (e.g., the director) must make the request.
Form of the Request	The statute requires that the request be made in writing.	The statute does not require that the request be made in a specific form (e.g., in writing versus verbally).
Who Must Disclose Information?	“Any public or private agency or individual.” This includes LHDs.	Agencies designated in rule by the Division of Juvenile Justice of the Department of Public Safety, after consultation with the Conference of Chief District Court Judges. This includes LHDs. <i>See also</i> Rule 14B NCAC 11A .0301.
What Information Must Be Disclosed?	<p>Information or reports that, in the DSS director’s opinion, may be relevant* to:</p> <ul style="list-style-type: none"> • The assessment of a report of child abuse, neglect, or dependency, or • The provision of protective services. <p>The statute excludes information that is protected by attorney-client privilege. The statute only requires disclosure of information to the extent permitted by federal law.</p> <p>*The statute does not define “relevant,” except to say that relevancy is determined by the DSS director.</p>	<p>Information that is relevant* to:</p> <ul style="list-style-type: none"> • Any assessment of a report of child abuse, neglect, or dependency, • The provision or arrangement of protective services, or • Any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent, or undisciplined. <p>The statute imposes a time limit on sharing information until:</p> <ul style="list-style-type: none"> • The protective services case is closed by DSS, or • If a petition is filed, until the juvenile is no longer subject to the jurisdiction of the court. <p>The statute only requires disclosure of information to the extent permitted by federal law. Upon disclosure and receipt by the requesting party, the information can only be used “for the protection of the juvenile or others” or to “improve the juvenile’s educational opportunities.”</p> <p>*The statute does not define “relevant”; however, because most DSS records are confidential, the LHD may not have the information necessary to determine the relevance of the requested information. A representation by DSS that the information requested is “relevant” to an assessment, the provision or arrangement of child protective services, or any case in which a petition has been filed alleging that a juvenile is abused, neglected, dependent, delinquent, or undisciplined may be sufficient for meeting the statute’s relevancy requirement.</p>

Does HIPAA Allow Disclosure of PHI Under this Statute?	Yes (for both statutes). Pursuant to 45 C.F.R. 164.512(a), a HIPAA covered entity (in this case, the LHD) may use or disclose PHI “to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.” This includes G.S. 7B-302(e) and G.S. 7B-3100(a). <i>See</i> 45 C.F.R. 164.103 for a definition of “required by law” under HIPAA.
Does HIPAA Require Verification of the Requestor’s Legal Authority?	<p>Yes (for both statutes). Pursuant to 45 C.F.R. 164.514(h), prior to disclosing the PHI, the LHD must verify the requestor’s legal authority to access the requested PHI if the legal authority is not already known to the LHD. For “required by law” disclosures, the legal authority is the law that requires the LHD to make the disclosure to the requestor (here, either G.S. 7B-302(e) or G.S. 7B-3100(a)).</p> <p>For requests made by public officials, the LHD may rely, if it is reasonable to make such a reliance under the circumstances, on a written statement of the requestor’s legal authority. If a written statement of authority is impracticable, the LHD may rely on an oral statement of the public official’s authority.</p>
Does HIPAA Require Verification of the Requestor’s Identity?	<p>Yes (for both statutes). Pursuant to 45 C.F.R. 164.514(h), prior to disclosing the PHI, the LHD must verify the requestor’s identity if the requestor’s identity is not already known to the LHD.</p> <p>For requests made by public officials, the LHD may rely, if it is reasonable to make such a reliance under the circumstances, on the following to verify identity:</p> <ul style="list-style-type: none"> • Presentation of the public official’s badge or other credentials/proof of government status (if request is made in person), • Use of appropriate government letterhead (when request is made in writing), or • If the request is to disclose PHI to someone acting on behalf of a public official (who is not themselves a public official with authority to access the PHI): <ul style="list-style-type: none"> • A written statement on appropriate government letterhead that the person is acting on a public official’s behalf, or • Other documentation that the person is acting under the government’s authority, like a services contract.
Does HIPAA Require Documentation of the Disclosure for Accounting Purposes?	<p>Yes (for both statutes). Disclosures of PHI made under HIPAA’s exception for “required by law” disclosures are not exempt from the documentation and accounting requirements set out at 45 C.F.R. 164.528.</p> <p>An accounting must include certain disclosures made in the 6 years prior to the date on which the accounting is requested. The general requirements for documentation of a disclosure for accounting purposes include:</p> <ul style="list-style-type: none"> • Date of disclosure (or frequency and date of last disclosure if multiple are disclosures made to the same recipient over time), • Name and address of the recipient of the PHI, • Description of the PHI that was disclosed, and • Brief statement of basis for disclosure. A copy of a written request for the PHI can be kept and used in lieu of a brief statement.
Does HIPAA Require Notifying the Individual of the Disclosure?	<p>Maybe (for both statutes), but only if an exception does not apply. Pursuant to 45 C.F.R. 164.512(c)(2), the LHD must “promptly” notify the individual if the LHD makes a “required by law” disclosure of the individual’s PHI to a government authority authorized by law to receive the information and the LHD “reasonably believes” that the individual is a victim of abuse, neglect, or domestic violence. There are two exceptions: notification to the individual is not required if the LHD determines, in the exercise of professional judgment, that (1) notification would put the individual at serious risk of harm or (2) notification would have to be made to the individual’s personal representative, who the LHD reasonably believes is responsible for the abuse, neglect, or dependency, and notification is not in the individual’s best interest. In many cases, an exception will apply.</p>