

Outline Summary:
2004 Public Health Preparedness & Response Act
S.L. 2004-80 (S 582)

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During the 2004 legislative session, the North Carolina General Assembly enacted a new state law amending several state public health statutes. Many of the amendments affected the state's communicable disease and bioterrorism laws. In addition, the law made a significant change to G.S. 130A-12, one of the principal medical confidentiality laws for local health departments. This outline summarizes the key provisions of SL 2004-80. The full text of the law can be downloaded from the General Assembly's website: <http://www.ncleg.net/html2003/bills/AllVersions/Senate/S582vc.html>.

I. Changes to Communicable Disease and Bioterrorism Laws

A. Definition of Isolation Authority (G.S. 130A-2(7a))

The new law amends the legal definition of "isolation authority" to permit the State and local health directors to issue isolation orders to persons or animals *suspected* of being infected with a communicable disease or condition. Under the previous definition, the orders were permitted only if the person or animal *had* the disease or condition.

B. Due Process for Persons Substantially Affected by Isolation or Quarantine Orders (G.S. 130A-145(d))

1. New Notice Requirement: The new law requires officials who issue isolation or quarantine orders that limit a person's or animal's *freedom of movement* or *freedom of access* to give reasonable notice to the substantially affected person of his right to have a court review the order. This provision does not apply to orders limiting *freedom of action*.
 - a. An order limiting freedom of movement essentially prohibits an individual from going somewhere. It may confine the person to a particular place, such as his home or a health care facility. Or it may prohibit the person from entering a particular place—for example, it may prevent a person from returning to school or work during the period of communicability.
 - b. An order limiting freedom of access prohibits access to an isolated or quarantined person or animal.
 - c. An order limiting freedom of action limits specific behaviors, but not the ability to move freely in society. For example, a person who is required to

refrain from sexual activity during the course of treatment for gonorrhea has had his or her freedom of action restricted.

2. 30-Day Limit on Orders Limiting Freedom of Movement or Access: In 2002, the General Assembly imposed a 10-day limit on isolation and quarantine orders that limit freedom of movement and access. In other words, the orders expired automatically after 10 days, regardless of whether the danger to the public health had subsided. If more than 10 days were needed to protect the public health, the health director who issued the initial order was required to ask a court to order an additional period of limitation.

The 10-day time period proved to be too brief for public health officials who had to grapple with illnesses that require a longer period of isolation or quarantine (such as SARS). The new law therefore extends the limit on the health director's initial order to 30 days. If a longer period of time is needed, the health director who issued the initial order still must ask a court for an extension. (See more on this below.)

3. New Specifications for Court Orders Extending Limitations: The state health director or a local health director may issue an isolation or quarantine order limiting freedom of movement or access without first seeking a court's permission. However, as explained above, such an order may not exceed 30 days. Neither the state health director nor a local health director has authority to extend the order if more time is needed. Only a court can order an extension.

The new law requires a court that orders an extension to specify in the order:

- a. the period of time for which the limitation on freedom of movement or access is extended (essentially, it must include an "expiration date"), and
- b. that the order will terminate automatically before the expiration date if the state health director or local health director determines in writing that the limitation is no longer necessary to protect the public health.

In most cases, a court-ordered extension may not exceed 30 days. However, the new law allows for a longer period of limitation for persons with tuberculosis.

4. Court Can Order Longer Period of Limitation for Tuberculosis: North Carolina's communicable disease rules permit the physical isolation of some persons with tuberculosis.¹ In cases that fit the rules' criteria, the state health director or a local health director can issue an isolation order limiting the freedom of movement of the person with tuberculosis. The health director's order expires after 30 days, as described above. If a longer period of time is needed, the health director must ask a court to order an extension. The court may order an extension of up to one year.

¹ See 10A N.C.A.C. 41A.0205(f).

C. Due Process for Persons Substantially Affected by Orders Limiting Freedom of Movement or Access in a Bioterrorist Event (G.S. 130A-475(b))

The 2002 N.C. Public Health Bioterrorism Act (S.L. 2002-179 [H 1508]) gave the state health director the authority to issue orders limiting the freedom of movement of persons contaminated with (or reasonably suspected of being contaminated with) a nuclear, biological, or chemical agent; or limiting freedom of access to (1) an area or facility that is housing persons or animals whose movement has been limited because of such contamination, or (2) an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a nuclear, biological or chemical agent. These orders, which I will call “bioterrorism orders,” may only be issued by the state health director (not a local health director) and may only be issued in a bioterrorist event. The 2002 law also provided for “due process” protections for persons substantially affected by those orders. The new law amends the due process protections in ways that are substantially similar to the amendments to the communicable disease due process protections.

1. New Notice Requirement: The new law requires the state health director to give a person substantially affected by a bioterrorism order reasonable notice of his right to have a court review the order. As with isolation and quarantine orders under the communicable disease laws, this provision does not apply to orders limiting freedom of action.
2. 30-Day Limit on Orders Limiting Freedom of Movement or Access: In 2002, the General Assembly imposed a 10-day limit on bioterrorism orders that limit freedom of movement and access. In other words, the orders expired automatically after 10 days, regardless of whether the danger to the public health had subsided. If more than 10 days were needed to protect the public health, the state health director was required to ask a court to order an additional period of limitation. The new law extends the limit on the state health director’s initial order to 30 days. If a longer period of time is needed, the state health director must ask a court for an extension.
3. New Specifications for Court Orders Extending Limitations: The state health director may issue a bioterrorism order limiting freedom of movement or access without first seeking a court’s permission. However, as explained above, such an order may not exceed 30 days. The state health director does not have the authority to extend the order if more time is needed. Only a court can order an extension.

The new law requires a court that orders an extension to specify in the order:

- a. the period of time for which the limitation on freedom of movement or access is extended (essentially, it must include an “expiration date”), and
- b. that the order will terminate automatically before the expiration date if the state health director determines in writing that the limitation is no longer necessary to protect the public health.

The court-ordered extension may not exceed 30 days.

II. Changes to Laws Governing Health Information Confidentiality and Public Health Access to Health Information

A. Confidentiality of Local Health Department Records (G.S. 130A-12)

G.S. 130A-12 is the basic state law that makes local health departments' patient records confidential and exempt from the N.C. public records law. The new law made some significant changes to this law, but the general rule of confidentiality has been preserved.

1. Law Applies to Information Protected by HIPAA: Before it was amended, G.S. 130A-12 protected health department records containing "privileged" medical information. The HIPAA privacy rule protects a broader category of information called "protected health information" (PHI). Some patient information is PHI under HIPAA, but not "privileged" information under our state law. This created some questions and potential conflicts regarding just which health department records containing patient information were confidential and which were not (and therefore subject to the state public records act). The new law resolves these conflicts by extending state law protection to health department records containing information that is protected by HIPAA.
2. No Consent Required for TPO Disclosures: Under HIPAA, health departments are permitted to disclose patient information for purposes of treatment, payment, and health care operations (TPO) without first obtaining the patient's consent. However, state law did not always permit these disclosures to be made. For example, information subject to the state's communicable disease confidentiality law (G.S. 130A-143) could not be disclosed for TPO purposes without the written consent of the patient (or her personal representative). The new law authorizes local health departments to disclose patient information for TPO purposes without first obtaining consent. This makes state law and HIPAA consistent with respect to most health information.² For more information about this very significant change in the law, see the handout, "Frequently Asked Questions about New G.S. 130A-12."

B. Temporary Orders to Report Communicable Disease Symptoms (G.S. 130A-141.1)

This new statute authorizes the state health director to issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information that may indicate the existence of a communicable disease or condition that threatens the public health. The order must specify which health care providers must report, what information must be reported, and

² There are exceptions. For example, under a N.C. communicable disease rule, HIV information cannot be disclosed to third-party payers without the patient's consent. 10A N.C.A.C. 41A.0202(9).

the period of time for which reporting is required (not to exceed 90 days). If a period of longer than 90 days is necessary to protect the public health, the Commission for Health Services may adopt rules to continue the reporting requirement.

This authority belongs only to the state health director. Local health directors may not issue temporary reporting orders.

C. Public Health Access to Health Care Provider Records Pertaining to Communicable Disease Investigations (G.S. 130A-144(b))

Under previous law, physicians, medical facilities and laboratories were required to permit the state health director or a local health director to examine and copy medical records upon request, when those records pertained to the diagnosis or treatment of a communicable disease or condition. The new law makes several significant changes.

1. Extends to Any Records: Physicians and facilities now must provide access to *any* records the state or local health director determines are relevant, not just medical records.
2. Extends to Outbreaks/Suspected Outbreaks: Previously, physicians and facilities were required to provide access to records pertaining to the care of a person who was infected, exposed, or reasonably suspected of being infected or exposed. Under the new law, physicians and facilities now must provide access to records which the state or local health director determines pertain to the investigation of a known or suspected outbreak as well.

D. Public Health Access to Health Care Provider Records Pertaining to Investigations of Illness or Conditions Caused by Bioterrorism (G.S. 130A-476(c))

Under the state's public health bioterrorism laws, health care providers are *allowed* to report symptoms, conditions, or illnesses that may indicate a disease or condition caused by bioterrorism. Furthermore, the state health director is authorized to issue a temporary order *requiring* them to make such reports. Under previous law, health care providers, health care facilities and laboratories were required to permit the state health director or a local health director to examine and copy medical records upon request, when those records pertained to a voluntary or required report. Under the new law, the providers and facilities must provide access to records if, in the opinion of the state or local health director, the information is necessary for an investigation of a case or outbreak of an illness or condition that may have been caused by bioterrorism.