



Communicable Disease & Medical Confidentiality Laws

Jill Moore

UNC Institute of Government

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Two key issues

- Obtaining confidential medical information for communicable disease control purposes
- Maintaining the confidentiality of the information that is obtained



Key laws

- Federal law
 - HIPAA Privacy Rule (45 CFR Parts 160 & 164)
- State laws
 - Physician & nurse privilege laws (GS 8-53, 8-53.13)
 - General confidentiality law for health department records (GS 130A-12)
 - Communicable disease confidentiality law (GS 130A-143)



Obtaining information

- NC health care providers are required by state law to:
 - Make certain reports to public health
 - Allow public health access to records under certain circumstances
- When state law *requires* HCPs to release or provide access to medical information, HIPAA *allows* them to.



When must NC HCPs make reports?

- Routine CD/CC reports
- Reports pursuant to State Health Director's temporary order:
 - Symptoms, conditions, trends, etc. that may indicate CD/CC endangering public health
 - Symptoms, conditions, trends, etc. that may indicate illness/health hazard caused by bioterrorism
- Attending physician has reasonable cause to suspect person with HIV not following control measures



Does HIPAA prohibit HCPs from making required reports?

- No. HIPAA Privacy Rule section 164.512(a) specifically allows HCPs to disclose information when the disclosure is required by another law, such as a state law.
- ***The patient's permission is not required.***



When must NC HCPs allow access to records?

- HCPs must allow public health to inspect or obtain a copy of records pertaining to:
 - The diagnosis, treatment or prevention of a CD/CC for a person reasonably suspected of being infected or exposed
 - The investigation of a known or suspected outbreak of a CD/CC



When must NC HCPs allow access to records? (cont.)

- HCPs must allow public health to inspect or obtain a copy of records pertaining to:
 - A report made pursuant to a temporary order of the State Health Director
 - A report made voluntarily under the public health bioterrorism law



Does HIPAA prohibit HCPs from allowing required access?

- No. HIPAA Privacy Rule section 164.512(a) specifically allows HCPs to disclose information when the disclosure is required by another law, such as a state law.
- ***The patient's permission is not required.***



What if HCP refuses to make a disclosure that's required?

- Explain that HIPAA specifically allows disclosures required by state law.
- Explain that state law requires the disclosure.
- Give HCP a copy of State Health Director's memo.
- Be prepared to verify your identity and authority to receive the information.



When are NC HCPs *allowed* to disclose information to PH?

- Medical facilities are allowed to report CD/CCs.
- HCPs are allowed to report events that may indicate illness/health hazard caused by bioterrorism (unusual symptoms, trends, etc.).
- When a person who is not the attending physician has reasonable cause to suspect someone with HIV is not following control measures, person may notify LHD.



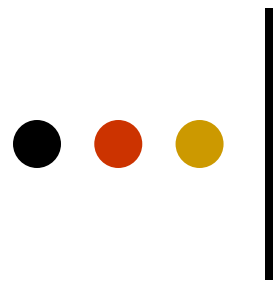
Does HIPAA prohibit allowed disclosures?

- No. HIPAA Privacy Rule section 164.512(b) specifically allows HCPs to disclose information to “public health authorities” authorized by law to collect or receive the information for specific purposes:
 - Disease reporting, prevention, or control
 - Conduct of public health surveillance, investigation, or intervention
- ***The patient’s permission is not required.***



What if HCP refuses to make disclosure that's allowed?

- Explain that HIPAA allows the disclosure.
- Explain the state law that allows it.
- Be prepared to verify your identity and authority to receive the information.
- But also be prepared to take no for an answer – can't insist on a disclosure that's allowed but not required.



Maintaining confidentiality of CD information

- Key state laws:

- GS 130A-12
- GS 130A-143



GS 130A-12: All LHD records

- LHD or DHHS records that contain privileged medical information or protected health information (as defined by HIPAA) are confidential and are not public records.
- Can be disclosed only as authorized or required by state or federal law.
 - Both state and federal law specify that you can disclose with patient consent.
 - If subject to HIPAA, consent must be on HIPAA-compliant authorization form.



GS 130A-12 (cont.)

- LHDs can disclose info (including CD info) without patient consent for purposes of treatment, payment, or health care operations (TPO).
 - Pre-July 2004, we said LHDs should get written consent for TPO disclosures because of *state* law. HIPAA doesn't require consent for TPO disclosures. In July 2004, state law changed—now same as HIPAA.
 - LHDs don't need patient consent to disclose info for TPO, but some still ask for patients' consent. If you ask, and if patient doesn't consent, then you can't disclose for TPO.



GS 130A-143: CD confidentiality law

- “All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential.”



GS 130A-143 (cont.)

- Applies to:
 - Public *and* private information and records
 - *All* reportable communicable diseases & conditions
 - Individuals who *may* have a CD/CC as well as those known to have a CD/CC



GS 130A-143 (cont.)

- General rule: Need individual's written permission to disclose information
- Exceptions for CD control:
 - Disclosures necessary to protect public health and made in accordance with the CD control rules
 - Disclosures made pursuant to other provisions of CD statutes



GS 130A-143 (cont.)

- Exceptions for CD control (cont.):
 - Disclosures to courts or law enforcement for purpose of enforcing CD or BT laws
 - Law enforcement may not disclose further except as necessary to enforcement/investigation or to assist PH with disease control
 - Disclosures to other public health agencies (federal, state, or local) for purpose of preventing or controlling CD



Additional restrictions on disclosures of HIV info

- LHDs & DHHS may release HIV information to health care personnel providing medical care only when:
 - LHD/DHHS provided direct medical care to the patient, and
 - LHD/DHHS referred the patient to the HCP or consults with the HCP.



Additional restrictions on disclosures of HIV info

- LHD may not charge patients for HIV testing & counseling.
- LHD may charge third-party payer, but only with patient's written consent.



Minor's Consent Rule (GS 90-21.5)

- Gives unemancipated minors the legal authority to consent to treatment for the prevention, diagnosis, or treatment of:
 - Reportable communicable diseases
 - Pregnancy
 - Abuse of controlled substances or alcohol
 - Emotional disturbance



GS 90-21.4(b): Minors' information

- The physician shall not notify a parent, legal guardian, person standing in loco parentis ... without the permission of the minor, concerning the medical health services set out in GS 90-21.5(a), unless the situation in the opinion of the attending physician indicates that notification is essential to the life or health of the minor. If the parent ... contacts the physician concerning the treatment ... the physician may give information.



GS 90-21.4(b) (cont.)

- General rule: Need minor's consent to disclose info about the treatment to minor's parent/guardian/person in loco parentis.
- Two exceptions:
 - If notifying the parent is essential to the life or health of the minor, *should* notify.
 - If parent contacts the health care provider and asks about the treatment, *may* notify (but don't have to).
 - Some LHDs have policy that they won't do this.