

# NC Local Health Director Legal Authorities

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UNC SCHOOL OF GOVERNMENT  
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## Public Health Remedies

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### Public Health Remedies

Injunction	Public health nuisance	Imminent hazard	Embargo
Administrative penalties	Permit actions	Misdemeanor charge	Infraction (smoking only)

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## Public health remedies that are (almost) all-purpose

Injunction (civil) – G.S. 130A-18	Misdemeanor charge (criminal) – G.S. 130A-25
<ul style="list-style-type: none"> <li>What it is: A court order that compels someone to do something, or refrain from doing something. TRO, preliminary injunction, permanent injunction.</li> <li>When it can be used: When a person violates a NC public health statute or rule, or a local board of health rule.</li> <li>How to use this remedy: <ul style="list-style-type: none"> <li>Determine and document the violation</li> <li>Work with attorney to determine if injunctive relief is appropriate and what evidence needs to be assembled</li> <li>Attorney files the action in Superior Court</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>What it is: A criminal charge. Public health law violations are charged as class 1 misdemeanors.</li> <li>When it can be used: When a person violates any NC public health statute or rule <del>except</del> those pertaining to smoking in public places.</li> <li>How to use this remedy: <ul style="list-style-type: none"> <li>Determine and document the violation</li> <li>Consult with attorneys (assistant DA, department)</li> <li>Initiate charge with magistrate in county where violation occurred</li> <li>Magistrate issues criminal summons (arrest warrant possible but less likely)</li> <li>Prepare for trial in District Court</li> </ul> </li> </ul>

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## Public health remedies for dangerous conditions on property

Public Health Nuisance Order – G.S. 130A-19	Imminent Hazard Order – G.S. 130A-20
<ul style="list-style-type: none"> <li>What it is: An order directing a property owner or other person in charge of property to abate a public health nuisance.</li> <li>When it can be used: When a condition on property substantially and unreasonably interferes with the public health.</li> <li>How to use this remedy: <ul style="list-style-type: none"> <li>Determine and document conditions creating a public health nuisance</li> <li>Local health director issues abatement order</li> <li>If violator does not comply, local health director may work with attorney to enforce the abatement order in Superior Court</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>What it is: An order directing a property owner or other person in charge of property to abate an imminent hazard.</li> <li>When it can be used: When a condition on property is an imminent hazard, which is defined as a situation that is likely to cause any of the following: <ul style="list-style-type: none"> <li>Immediate threat to human life, or</li> <li>Immediate threat of serious physical injury, or</li> <li>Immediate threat of serious adverse health effects, or</li> <li>Serious risk of irreparable damage to the environment.</li> </ul> </li> <li>How to use this remedy: <ul style="list-style-type: none"> <li>Determine and document existence of imminent hazard</li> <li>Local health director may choose: order person in charge of property to abate the imminent hazard, or directly abate the imminent hazard</li> </ul> </li> </ul>

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Discussion Questions

Do these situations on property constitute:

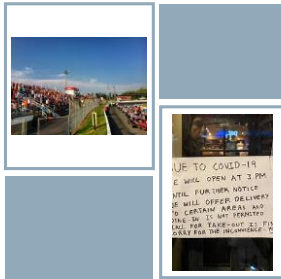
- An imminent hazard?
- A public health nuisance?
- Both?
- Neither?

Is the health department *allowed* to do anything about these conditions?

In your opinion, *should* the health department do anything?

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## Imminent hazard orders and the pandemic

Imminent hazard authority was used in different ways at different times:

- To close restaurants and bars in spring 2020
- To cancel events that exceeded statewide gathering limits
- To order public places to require customers/guests to wear masks indoors

A provision in the 2021 state budget would limit or prevent some of these uses of imminent hazard authority beginning in 2023 (see S.L. 2021-180, sec. 19E.6)

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## Public health remedies with narrower or more limited application

### Administrative penalties

- A monetary fine that may be imposed locally only for violations of local on-site wastewater rules, or for state or local smoking law violations.

### Permit actions

- Procedure for suspending or revoking a permit

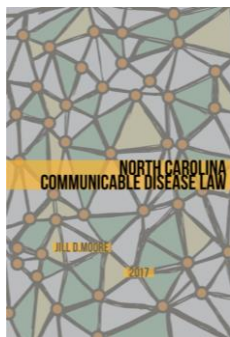
### Embargo

- An order to detain food or drink that is adulterated or misbranded

### Infraction (smoking only)

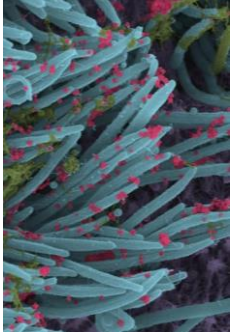
- A citation that may be issued to an individual who continues smoking in violation of smoking laws

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## NC Communicable Disease Law

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## Communicable Disease Control Measures

G.S. 130A-144(f) requires all persons to comply with control measures

G.S. 130A-144(g) authorizes the Commission for Public Health to adopt rules prescribing control measures

10A NCAC 41A. 0201 is the primary rule that applies to diseases for which control measures have not previously been established

- Incorporates by reference control measures specified in CDC guidelines & recommended actions
- Sets out principles that must be used in applying control measures

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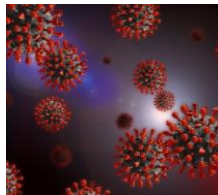
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## Control Measures: Emerging Diseases

### Challenges:

- Interpretation and implementation of CDC guidelines and recommended actions
- Evolution of control measures as understanding of the disease develops



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## Isolation & Quarantine: Definitions (G.S. 130A-2)

### Isolation (infected)

- Limit on freedom of movement or freedom of action of a person infected or suspected to be infected

### Quarantine (exposed)

- Limit on freedom of movement or freedom of action of a person exposed or suspected of being exposed
- Limit on access to an area contaminated with infectious agent
- Limit on freedom of movement or action of an unimmunized person when immunizations required to control outbreak

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## Isolation & Quarantine: Orders (G.S. 130A-145)

Who may order: Local health director or State Health Director

When order is authorized: when and so long as public health is endangered, all other reasonable means for correcting the problem exhausted, and no less restrictive alternative exists

Time limit on orders limiting freedom of movement: 30 calendar days maximum. If longer period needed to protect public health, health director must institute action in Superior Court seeking extension.

Person subject to order limiting freedom of movement may seek court review by instituting action in Superior Court:

- Hearing within 72 hours (excluding Saturday & Sunday)
- Person entitled to appointed counsel if indigent
- Court shall reduce or terminate unless it determines by preponderance of evidence that limitation is reasonably necessary to prevent or limit spread of disease

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## What exactly is it? Evaluating governmental COVID-19 policies and actions

REQUIREMENT OR RECOMMENDATION?	PREVENTIVE OR CONTROL MEASURE?
<b>Requirement (examples, not a complete list)</b> <ul style="list-style-type: none"> <li>Isolation or quarantine order (public health)</li> <li>Investment hazard abatement order (public health)</li> <li>Stay at home order, mass gathering restrictions, most business closures (emergency)</li> <li>Mask requirements (public health, emergency, other public or private entities)</li> <li>Employment-based vaccination requirements</li> </ul>	<b>Control measures</b> <ul style="list-style-type: none"> <li>Derived from CDC guidelines &amp; recommended actions, or devised based on criteria in state rule</li> <li>Local health director is responsible for giving control measures</li> <li>All persons must comply with control measures</li> <li>Legally enforceable – requirements, not recommendations</li> </ul>
<b>Recommendation (examples)</b> <ul style="list-style-type: none"> <li>Vaccinations for those not subject to employment requirements</li> <li>Hand hygiene</li> <li>Mask optional policies</li> </ul>	<b>Preventive measures</b> <ul style="list-style-type: none"> <li>Actions individuals or entities may take to prevent acquiring or spreading illness</li> <li>Not legally enforced – recommendations, not requirements</li> </ul>

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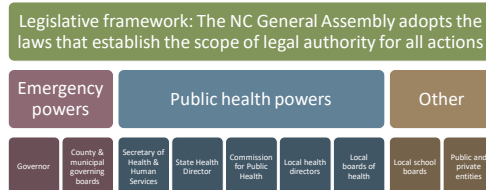
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## Who takes which legal actions in a communicable disease emergency under current law?



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## More detail on legal actions by local public health in a communicable disease emergency

### Local health director

- Isolation or quarantine orders
- Investigate and control communicable disease
- Administer public health programs
- Enforce public health laws & rules
- Abate imminent hazards
- Disseminate public health information and promote health
- Advise local officials

### Local board of health

- Rulemaking for the general public
- Policy-making for the health department

More info: <https://canons.sog.unc.edu/2020/12/taking-local-action-to-control-covid-19-what-can-a-north-carolina-local-health-department-do/>

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## HIPAA Highlights for Administrators



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THERE ARE MANY LAWS THAT APPLY TO HEALTH INFORMATION; HIPAA IS JUST ONE OF THEM

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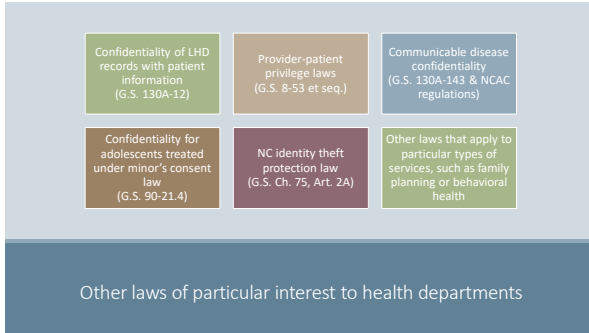
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WHO IS COVERED BY HIPAA? THE ANSWER IS IN PART A LOCAL DECISION

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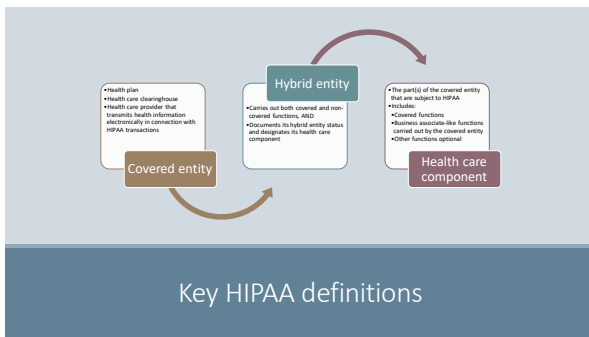
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## What to do with the hybrid entity designation?

### Document it

- No templates or required forms, but there are specifications in the rule [45 CFR 164.105(a)]

### Retain it

- No requirement to file it with anyone, but should know where to find it

### Use it:

- To inform HIPAA policies and procedures
- To ensure appropriate workforce training
- To help answer questions about uses and disclosures of information, breaches, etc.

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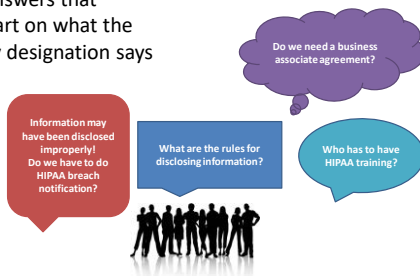
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FAQs with answers that depend in part on what the hybrid entity designation says



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Time for a reboot?

The hybrid entity designation should be reviewed periodically and revised as needed.

It is particularly important to revisit the hybrid entity designation when there is a significant change, such as:

- Health department structure changes (e.g., becoming part of a consolidated agency)
- Programs or services are added or discontinued

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DEPARTMENTS MUST  
HAVE ONE OR MORE  
HIPAA OFFICERS

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HIPAA Privacy Rule

- Governs the use and disclosure of protected health information (PHI)

HIPAA Security Rule

- Requires covered entities to have technical, physical, and administrative safeguards to protect PHI from unauthorized uses or disclosures

HIPAA Breach Notification Rule

- Requires notification of individuals, US DHHS, and sometimes the public when there is a breach resulting in the unauthorized disclosure of PHI

HIPAA officer(s) are responsible for compliance  
with key HIPAA regulations

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DEPARTMENTS  
SHOULD BE  
PREPARED TO  
RESPOND TO  
BREACHES

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## What is a breach and when is breach notification required?

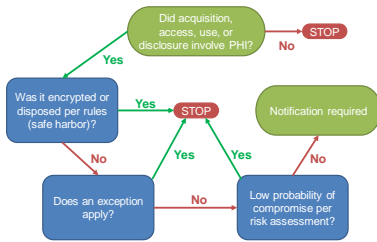
**Definition:** Breach is defined as the acquisition, access, use, or disclosure of **unsecured** protected health information (PHI) that is not authorized by the HIPAA privacy rule, and that compromises the privacy and security of the PHI.

**Safe harbor:** Breach notification is not required if the PHI was **secured**, meaning it was encrypted or had been disposed in keeping with HHS guidelines on secure disposal.

**Presumption:** Unauthorized acquisition, access, use, or disclosure of unsecured PHI is presumed to be a breach unless:

- A specific exception in the rule applies, or
- A risk assessment shows a low probability that PHI was compromised.

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\*This flowchart is a general guide to the process of analyzing a suspected breach. It is not a complete guide to all the steps that should be taken when a breach is suspected. In the event of a suspected breach of PHI, please consult the HIPAA breach notification rule.

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THERE ARE ONLINE HIPAA RESOURCES AND TRAINING MATERIALS, INCLUDING SOME THAT ARE NORTH CAROLINA-SPECIFIC

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## SOG Resources

The following resources are available at <https://www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/hipaa-and-medical-confidentiality>:

### Public Health HIPAA Training Series

- A set of online modules developed specifically for employees of North Carolina local health departments. Supported by the NC Institute for Public Health and the NC AHEC program.
- Optional completion certificate available (honor system).

### HIPAA Privacy Rule Summaries and Outlines – topics include:

- Using and Disclosing Protected Health Information (PHI): An Overview
- Disclosing PHI for Purposes of Treatment, Payment, or Health Care Operations
- Disclosing PHI to Law Enforcement Officials
- Overviews of selected HIPAA standards, including:
  - Minimum Necessary
  - Verification of Identity and Authority of Persons Requesting PHI
  - Personal Representatives

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## Key Federal Resources

Website: <https://www.healthit.gov/>

- Hosted by the Office of the National Coordinator for Health Information Technology.
- Information and resources about numerous topics related to health information technology, including health information exchange, patient access to records, patient identity and record matching, and HIPAA privacy and security.
- HIPAA materials include training resources and templates & tools for providers.

Website: <https://www.hhs.gov/hipaa/index.html>

- Hosted by U.S. DHHS' Office for Civil Rights (OCR), the agency that oversees and enforces HIPAA compliance.
- Click the "HIPAA for Professionals" link for summaries and guidance documents about key provisions of the HIPAA Privacy, Security, Breach Notification, and Enforcement rules.

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Questions?

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