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Confidentiality and Use of Substance Use Disorder Treatment Information
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I. Introduction to Applicable Confidentiality Laws
II. Subpoenas and Court Orders
III. Patient Authorization to Disclose

Part I: Applicable Confidentiality Laws

I. State mental health law - G.S. 122C: The Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, G.S. Chapter 122C, governs providers of mental health, developmental disabilities, and substance use disorder services (MH/DD/SA services).

A. Covered providers: Any "facility"—meaning any individual, agency, company, area authority (local management entity), or state facility—at one location *whose primary purpose* is to provide services for the care, treatment, habilitation, or rehabilitation of persons with mental illness, intellectual/developmental disabilities, or substance use disorder.[1]

B. Confidential information: Any information, whether recorded or not, relating to an individual served by a facility and received in connection with the performance of any function of the facility is confidential and may not be disclosed except as authorized by G.S. 122C[2] and implementing regulations at 10A NCAC 26B.[3]

C. Duty: No "individual" having access to confidential information may disclose it except as authorized by G.S. 122C and the confidentiality rules.[4]

1. Unauthorized disclosure of confidential information is a Class 3 misdemeanor punishable by a fine up to $500.[5]
2. Employees of area and state facilities that are governed by the State Personnel Act are subject to suspension, dismissal, or other disciplinary action if they disclose information in violation of G.S. 122C and the confidentiality rules at 10A NCAC 26B.[6]

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[1]. *See* G.S. 122C-3(14) for the full definition, including examples, of "facilities".

[2] The pertinent statutes are G.S. 122C-51 through 122C-56.

[3] These regulations apply to area authorities (local management entities), state facilities, and the providers that contract with area and state facilities. The regulations also appear in a publication of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, entitled "Confidentiality Rules" (APSM 45-1).

[4]See G.S. 122C-52(b). Area and state facilities or individuals with access to or control over confidential information must take affirmative measures to safeguard such information in accordance with the state confidentiality rules, which require a secure place for storage of records, written policies and procedures regarding controlled access to paper and electronic records, and staff supervision of client review of records. See 10A NCAC 26B .0102 and .0107.

[5] See G.S. 122C-52(e).

[6] See 10 NCAC 26B .0104.

3. The unauthorized disclosure of confidential information could result in civil liability for the treatment facility or the employee disclosing the records.[7]

Note that the duty of confidentiality is not limited to MH/DD/SA treatment providers ("facilities"). The duty extends to any "individual having access to confidential information." G.S. 122C-52(b). Thus, the duty of confidentiality applies to departments of social services that receive confidential information from a facility, and these departments may not redisclose such information except as permitted or required by G.S. 122C-53 through G.S. 122C-56 (e.g., pursuant to patient consent, court order, or other provision of law). In this respect, the state law governing MH/DD/SA records is similar to the federal law governing substance use disorder records, for an "individual" having access to information protected by state law has a duty much like the duty of a "lawful holder" of information protected by 42 C.F.R Part 2. *See* section III, E, below, for the confidentiality duty of DSS as a lawful holder of protected substance use disorder information.

II. HIPAA[8] privacy rule – 45 CFR Parts 160, 164: The federal "privacy rule"[9]governs the privacy of health information.

A. Covered health care providers: Any "health care provider" that transmits any health information in electronic form in connection with a HIPAA transaction.[10] "Health care provider" is defined broadly to include any person who, in the normal course of business, furnishes, bills or is paid for care, services, or supplies related to the health of the individual.[11]

B. Protected health information: health information that is maintained in any form or medium (e.g., electronic, paper, or oral) that

1. is created or received by a health care provider, health plan, or health care clearing house
2. identifies an individual (or with respect to which there is a reasonable basis to believe the information can be used to identify an individual), and
3. relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual[12]

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[7] The unauthorized disclosure of a patient's confidences by a physician, psychiatrist, psychologist, marital and family therapist, or other health care provider constitutes medical malpractice. *See* Watts v. Cumberland County Hosp. System, Inc., 75 N.C. App. 1, 9-11, 330 S.E.2d 242, 248-250 (1985) (holding that malpractice consists of any professional misconduct or lack of fidelity in professional or fiduciary duties, including breach of duty to maintain confidentiality of patient information), *rev'd in part on other grounds*, 317 N.C. 321, 345 S.E.2d 201 (1986).

[8] "HIPAA" stands for The Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-1320d(8). This act directed the U.S. Department of Health and Human Services to develop regulations governing the privacy of health information.

[9] The term "privacy rule" in this outline refers to the final rule published in Volume 67, Number 157 of the Federal Register on August 14, 2002, and as amended thereafter.

[10] 45 CFR 160.103, 164.500. "Transaction" means the transmission of information between two parties to carry out financial or administrative activities related to health care. Examples of HIPAA transactions include transmitting claims information to a health plan to obtain payment and transmitting an inquiry to a health plan to determine if an enrollee is covered by the health plan.

[11] 45 CFR 160.103.

[12] See the definitions of "protected health information" and "individually identifiable health information" at 45 CFR 160.103.

C. Duty: A covered entity, including a covered health care provider, may use and disclose PHI only as permitted or required by the privacy rule.

1. **Monetary penalties.** The Office of Civil Rights (OCR) in U.S. DHHS enforces the privacy rule, investigates complaints, conducts compliance reviews, and may impose civil monetary penalties for violations. State attorneys' general may bring a civil action to enforce the HIPAA Privacy Rule in order to (1) enjoin further violations or (2) obtain damages for individuals harmed (calculated pursuant to a statutory formula).
2. **Filing complaint**. Any person or organization may file a complaint with OCR by mail or electronically. Individuals may also file a complaint with the covered entity.

III. Federal substance use disorder records law - 42 C.F.R. Part 2: Restricts the use and disclosure of patient information received or acquired by a federally assisted alcohol or drug abuse program. (42 U.S.C. 290dd-2; 42 C.F.R. Part 2).

A. Covered programs: The federal law applies to any person or organization that, in whole or in part, holds itself out as providing and does provide alcohol or drug abuse diagnosis, treatment, or referral for treatment with direct or indirect federal financial assistance.[13] Applies to:

1. Any free-standing substance use disorder (SUD) facility or independent SUD program, including
    - an outpatient SUD clinic
    - a residential drug or alcohol treatment facility
    - an independent physician or other therapist with a specialty in substance use disorder treatment or diagnosis
2. Any part of a broader organization that is identified as providing SUD services, e.g.,
    - a school-based program, but not an entire school or school system;
    - a detox unit or substance use disorder program of a general hospital, but not the entire hospital.[14]
3. Not only treatment programs, but also programs providing diagnosis or referral for treatment, e.g.,

[13] See 42 CFR 2.11 for definition of "program" and "part 2 program." The regulations apply only to programs that receive, directly or indirectly, federal financial assistance, including programs that receive federal grants or Medicare or Medicaid reimbursement; through federal revenue sharing or other forms of assistance, receive federal funds which could be (but are not necessarily) spent for an alcohol or drug abuse program (e.g., programs operated or funded by state or local government); are licensed or certified by the federal government (e.g., certification of provider status under the Medicare program, authorization to conduct methadone treatment, or registration to dispense a controlled substance for SUD treatment); and organizations exempt from federal taxation.

[14] A general medical care facility (general hospital) is not a "program" unless it (1) has an identified unit that holds itself out as providing and does provides alcohol or drug abuse diagnosis, treatment, or referral for treatment, or (2) has staff whose primary function is to provide SUD services and who are identified as such providers. In this case, only the identified unit or staff would constitute a "program." 42 C.F.R. 2.11. For example, these regulations do not apply to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment, or referral and they are identified as providing such services, or the emergency room has promoted itself to the community as a provider of such services. 42 C.F.R. 2.12(e)(1).

- employee assistance programs that provide no treatment but evaluate whether a person has an SUD and then refer the person to treatment at an independent program.
- a managed care company that evaluates whether a person has a drug or alcohol problem and then refers the person to treatment at an independent program that has a contract with the managed care company.

B. Confidential information—Prohibition against *Disclosure* of patient-identifying information: The federal prohibition against *disclosure*, except where permitted by 42 C.F.R. 2 itself, applies to any information, whether recorded or not, that:

1. would "identify" a "patient"—one who has applied for or been given substance use disorder treatment, diagnosis, or referral for treatment—as person with a substance use disorder (SUD)
2. is alcohol or drug abuse information obtained by a federally assisted alcohol or drug abuse "program"
3. for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment. 42 C.F.R 2.12(a)(1).

- "Identify" means a communication, either written or oral, of information that identifies someone as a substance user, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.
- "Patient"—The restrictions on disclosure apply only to information that would identify a "patient"—one who has applied for or been given substance use disorder treatment, diagnosis, or referral for treatment—as a substance user or a recipient of SUD services. A SUD program may provide information about a particular, identified person if doing so would not identify that person, directly or indirectly, as an alcohol or drug abuser or a recipient of alcohol or drug services.
    - Example—An SUD counselor who works at Triangle Behavioral Healthcare (a provider of mental health, developmental disabilities, and substance use disorder services) wants to report to DSS that an SUD patient of hers appears to be a disabled adult in need of protective services. The employee knows that a state law, G.S. 108A-102, requires any person having reasonable cause to believe that a disabled adult is in need of protective services to report such information to the department of social services. While the HIPAA Privacy Rule and the state mental health confidentiality law (G.S. 122C) permit such a disclosure, the federal law, 42 C.F.R 2, does not permit the disclosure of "patient-identifying information" for this purpose. Yet, the employee may comply with both the mandatory reporting law and 42 C.F.R. 2. The Triangle employee can disclose that Triangle has a client that needs protective services and can name the client. Because the employee works at Triangle Behavioral Healthcare (a "health care provider" and a G.S. 122C "facility"), she has disclosed information that is confidential under HIPAA and state mental health law (see Sections I and II, above). However, as long as the employee does not identify the individual as someone who is receiving SUD services,

the employee has not disclosed information protected by 42 C.F.R. Part 2. If, on the other hand, the employee works at a program that provides substance use disorder services only, identifying the adult as a client of the named program would identify the adult as recipient of SUD services. That would be a disclosure of patient identifying information, something that 42 C.F.R. 2 does not permit for purposes of complying with the APS reporting statute.

- Example—A child is receiving mental health services due to emotional and physical abuse perpetrated by a parent in the home. When the mother accompanied the child to the initial mental health services intake and appointment, the mother described events in the home, including child abuse, that occurs when a parent in the home is under the influence of alcohol or crack cocaine. The intake therapist records this information in the social/family history section of the child mental health record. This information is not governed by 42 C.F.R. Part 2 restrictions on disclosure because it is not information obtained by a Part 2 program for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment. Further, the information does not identify the mother or other individual as a "patient."

- "Diagnosis" means any reference to an individual's alcohol or drug abuse, or to a condition that is identified as having been caused by that abuse, which is made for the purpose of treatment or referral for treatment.
  a. Includes any record of a diagnosis prepared in connection with treatment or referral for treatment of SUD but which is not so used.
  b. Does not include a diagnosis that is made solely for the purpose of providing evidence for use by law enforcement authorities, or a diagnosis of drug overdose or alcohol intoxication that clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

C. Confidential information—Restrictions on *Use* of Information. (Currently applies only to criminal cases but will apply to civil cases when 42 C.F.R. Part 2 is modified to implement the March 2020 **CARES Act.** Regulations are forthcoming at this time.) In addition to restricting disclosure, the federal regulations restrict the "use" of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient. Any information which is

- alcohol or drug abuse information obtained by a federally assisted SUD program
- for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment

cannot be used to criminally investigate or prosecute a patient without a court order authorizing the disclosure and use of the information for that purpose. See 42 C.F. R. 2.12(a)(2) and 2.65.

- Example—Parent receiving SUD treatment from a Part 2 treatment program is suspected of physical abuse of a child living with the parent. Law enforcement seeks the parent's SUD record as part of a criminal investigation. Out of a concern for the child living in the

home and a desire to cooperate with law enforcement, the Part 2 program discloses the parent's treatment record to law enforcement. Law enforcement and the prosecutor's office would be barred from using the information for purposes of criminal investigation or prosecution without a court order authorizing the use of the information for that purpose. (See D., below).

D. Applicability to recipients of information. 42 C.F.R. 2.12(d)

- **Use:** The restriction on "use" of information to initiate or substantiate any criminal charges against a patient or to conduct a criminal investigation of a patient applies to any person who obtains that information from a federally assisted SUD program regardless of the status of the person obtaining the information or whether the information was obtained in accordance with the regulations. Without a court order authorizing use for this purpose, the information cannot be so used.
    - The restriction on use bars the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime.
    - Information obtained by undercover agents or informants is subject to the restriction on use.
- Note: It appears that, due to changes to law made by the CARES Act, that 42 C.F.R Part 2 will be modified to extend the "use" restriction to *civil* proceedings conducted by any federal, state, or local authority against the patient. However, this restriction will also be changed to permit use not only by court order, but also by *patient consent*.

- **Disclosure:** The restrictions on "disclosure" apply substance use disorder programs *and* to persons who receive records directly from an SUD program and who are notified of the restrictions on redisclosure of the records ("lawful holders"). See 42 C.F.R. 2.12(d) and 2.32. Notice to recipients of information must accompany any disclosure made with the patient's written consent. *See* E., below, for applicability to departments of social services.

E. Duty imposed by federal SUD records law. The regulations prohibit the disclosure and use of patient records except as permitted by the regulations themselves. Anyone who violates the law is subject to a criminal penalty in the form of a fine (up to $500 for first offense, up to $5,000 for each subsequent offense).[15]

Lawful holders of protected information: It is important for social services departments, guardians ad litem (GALs), and others who receive substance use disorder (SUD) information from a "program" to understand that the duty of confidentiality imposed by the federal regulations may extend to them. For example, when a department of social services receives SUD information from a treatment program pursuant to the patient's written authorization, the department becomes a "lawful holder" of protected information that may not be redisclosed

[15] A SUD program must maintain records in a secure room, locked file cabinet, safe or other similar container when not in use; the program must adopt written policies and procedures to regulate and control access to records. *See* 42 C.F.R. §§ 2.3 and 2.16.

except as permitted or required by the federal law. The restrictions on disclosure apply to individuals and entities who receive patient information directly from a program or other lawful holder of information if they are notified of the prohibition on redisclosure in accordance with section 2.32 of the regulations. That section requires a program that discloses information pursuant to the patient's written consent to notify the recipient that the information continues to be protected by 42 C.F.R. Part 2 and may be redisclosed only as permitted by the regulations. The recipient, a lawful holder of protected information, is bound by the restrictions on disclosure in the same way that a Part 2 program is bound.

IV. Relationship of federal SUD law to state law.

A. 42 C.F.R 2 controls where it is more restrictive: No state law may authorize or compel any disclosure prohibited by the federal drug and alcohol confidentiality law. Where state law authorizes or compels disclosure that the 42 CFR 2 prohibits, 42 CFR 2 must be followed. 42 C.F.R. § 2.20.

Example: The department of social services is required to assess every abuse, neglect, and dependency report that falls within the scope of the Juvenile Code. G.S.7B-302. This state law says that the director of social services (or the director's representative) may make a *written* demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to *the assessment* or to *the provision of protective services*. Upon such demand, the law requires an agency to provide access to and copies of confidential information to the extent permitted by federal law.

- State mental health law says that providers are required to disclose confidential information when necessary to comply with G.S. 7B-302(e). See G.S. 122C-54(h).
- No provision of the federal SUD records law permits disclosure of patient identifying information for purposes of complying with G.S. 7B-302. Thus, absent the patient's written *consent* or a *court order* issued pursuant to 42 C.F.R. 2, the federal law prohibits disclosure of confidential information in response to a DSS demand for information under G.S. 7B-302.

B. State law controls where it is more restrictive: The federal drug and alcohol confidentiality law does not require disclosure under any circumstances. If the federal law permits a particular disclosure, but state law prohibits it, the state law controls. 42 C.F.R. § 2.20.

Part II: Subpoenas and Court Orders

I. Subpoenas. A subpoena, alone, does not permit the disclosure of MH/DD/SA records. Generally, the disclosure of records relating to MH/DD/SA services is not permitted unless a court specifically orders disclosure, the person who is the subject of the records consents to the disclosure, or the applicable confidentiality law makes a specific exception to confidentiality under the particular circumstances. A court is not entitled to a patient's treatment information merely because the court ordered the patient into treatment.

A. State confidentiality law governing MH/DD/SA records. GS 122C does not permit the disclosure of confidential information in response to a subpoena alone. A subpoena compels

disclosure of confidential information only if it is accompanied by the client's authorization to disclose or a court order to disclose (or some other legal mandate, such as a statute or regulation that requires disclosure under the circumstances).

B. **HIPAA privacy rule.** The privacy rule permits a covered entity to disclose protected health information in response to a subpoena if the covered entity receives *satisfactory assurance* from the party seeking the information that reasonable efforts have been made by the party to:
   1. ensure that the individual who is the subject of the information has been given notice of the request, or
   2. secure a qualified protective order. *See* 45 CFR 164.512(e).

   Satisfactory assurance of notice means a written statement and accompanying documentation that the party requesting records has made a good faith attempt to provide written notice to the individual that includes sufficient information about the proceeding to permit the individual to raise an objection to the court or administrative tribunal and the time for the individual to raise objections has elapsed and either no objections were filed or all objections filed were resolved by the court or tribunal and the disclosures being sought are consistent with such resolution.

   *Satisfactory assurance of a qualified protective or*der means a written statement and accompanying documentation demonstrating that the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or tribunal, or the party seeking the information has requested a qualified protective order. (*See* 45 CFR 1.64.512(e) for definition, or terms, of protective order.)

   Caveat: Because HIPAA does not preempt more stringent state and federal confidentiality laws, and because the state mental health confidentiality law and federal SUD records law do not permit disclosure in response to a subpoena alone, information that is governed not only by HPAA but also by the state mental health or federal SUD law cannot be disclosed pursuant to a subpoena alone.

C. Federal SUD confidentiality law. A person holding records may not disclose the records in response to a subpoena unless a court of competent jurisdiction enters an authorizing order under Subpart E of 42 CFR Part 2 (or the regulations explicitly make an exception to confidentiality under the circumstances).

II. Court Order—State confidentiality law. A facility must disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure. GS 122C-54(a).

A. Standard: GS 122C-54(a) provides no guidance to the court for determining whether to order disclosure, nor is there any case law interpreting the provision.
B. The evidentiary privilege statutes for psychologists and other mental health professionals, however, provide that a judge may order disclosure of privileged information when "necessary to

the proper administration of justice."[16] See 8-53.3 (psychologists), 8-53.5 (marital and family therapists), and 8-54.7 (social workers) and case annotations.

III. Court Order—HIPAA privacy rule. A covered provider may disclose protected health information in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the information expressly authorized by the order. 45 CFR 164.512(e). However, records that are also governed by the federal SUD confidentiality law (42 CFR Part 2) should not be disclosed pursuant to court order unless the court order complies with Subpart E of 42 CFR Part 2 (outlined below).

IV. Court Order—Federal SUD records law. Under Subpart E of the federal regulation, a federal, state, or local court may issue an order requiring an alcohol or drug treatment program to disclose patient-identifying information only after following certain procedures and making particular findings. See 42 C.F.R. §§ 2.63-2.67.

A. Application. An application may be filed separately or as part of a pending action and must use a fictitious name, such as John Doe, to refer to any patient and may not contain or disclose any patient identifying information unless the court orders the record of the proceeding sealed from public scrutiny. [17] Where an application is deficient because it contains the patient's name or other patient-identifying information the deficiency may be cured by the court ordering the record to be sealed. See unpublished opinion, *S M. K v. J F*, 2005 WL 4674284 (Del.Fam.Ct). An order authorizing disclosure for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure.

B. Notice and opportunity to respond. When the information is sought for non-criminal purposes, the patient and person holding the records must be given (a) adequate notice in a manner that will not disclose patient identifying information to other persons, and (b) an opportunity to file a written response to the application or to appear in person for the limited purpose of providing evidence on the legal criteria for issuance of the court order. 42 C.F.R. § 2.64.

C. *In camera* review. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner that ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record. The judge may examine the records before deciding.

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[16] Judges should not hesitate where it appears to them that disclosure is necessary in order that the truth be known and justice done. Flora v. Hamilton, 81 F.R.D 576 (M.D.N.C 1978). The statute affords the trial judge wide discretion in determining what is necessary for the proper administration of justice. State v. Efird, 309 N.C. 802, 309 S.E.2d 228 (1983) (interpreting the analogous physician-patient privilege statute, GS 8-53).

[17] When applying for disclosure for non-criminal purposes, the patient's name or other patient-identifying information may be disclosed if the patient is the applicant or has given written consent to the disclosure. 42 C.F.R. § 2.64(a). When applying for disclosure to investigate or prosecute a program or person holding the records, the patient's name or other patient-identifying information may be disclosed if the patient has given written consent to the disclosure. 42 C.F.R. § 2.66(a).

D. Criteria. To order disclosure, the court must determine that "*good cause*" exists for the disclosure. For an order authorizing disclosure for purposes other than criminal investigation or prosecution, the court must find that:

1. Other ways of obtaining the information are not available or would not be effective, and
2. The public interest and need for disclosure outweigh the potential injury to the patient, the patient's-program relationship, and the program's ongoing treatment services. 42 C.F.R. § 2.64.

E. Limiting disclosure. Any order authorizing disclosure must (i) limit disclosure to those parts of the patient record that are essential to fulfill the objective of the order (ii) limit disclosure to persons whose need for the information forms the basis for the order, and (iii) include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship, and the treatment services (e.g., sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has be ordered).

F. Confidential communications. A court may order disclosure of "confidential communications" made by a patient to a program in the course of diagnosis, treatment, or referral to treatment only if the disclosure is

1. Necessary to protect against an existing threat to life or serious bodily injury, including circumstances that constitute suspected child abuse and neglect and verbal threats against third parties; or
2. Necessary to the investigation or prosecution of an extremely serious crime, such as one that causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect; or
3. The disclosure is in connection with litigation or an administrative hearing in which the patient offers testimony or other evidence pertaining to the content of the confidential communications. 42 C.F.R. § 2.63.

Part III: Patient Authorization to Disclose

I. General Rules

A. Rules applicable to all three confidentiality laws: Before disclosing confidential information, a provider of health, mental health, or substance use disorder services *must* obtain an individual's written authorization for disclosure of confidential information, unless the use or disclosure is required by court order or otherwise permitted or required by the applicable law.

1. The authorization must be in writing.
2. The individual's authorization must be *voluntary*.
3. The individual's authorization must be *informed*. That means the individual signing the authorization must understand what information will be exchanged, with whom it will be shared, and for what purpose.

4. An authorization to disclose confidential information *permits*, but does not require, the covered provider to disclose the information. [Disclosure is mandatory only when the patient requests disclosure to an attorney. G.S. 122C-53(i).]
5. When a covered provider obtains or receives an authorization for the disclosure of information, such disclosure must be consistent with the authorization. This means that covered providers are bound by the statements provided in the authorization.
6. An individual may revoke the authorization at any time except to the extent that the covered provider has taken action in reliance on the authorization.

B. Content: Each of the three primary confidentiality laws specify the required content for a valid consent form. See, 10A NCAC 26B.0202 (state law), 45 C.F.R. § 164.508(c) (HIPAA), and 42 C.F.R. 2.31 (federal SUD records law).

C. Recipient obligation on redisclosure:

1. G.S. 122C: No individual having access to confidential information may disclose it except as authorized by G.S. 122C and the confidentiality rules.[18] The rule applies to any "individual" having access to information, not only the facilities that create or acquire information for treatment purposes.

2. 42 C.F.R. 2: Each disclosure made with the patient's written authorization must be accompanied by a written notice prohibiting any further disclosure unless further disclosure is expressly permitted by the written authorization of the person to whom it pertains or as otherwise permitted by the federal regulations. 42 C.F.R. 2.32. Persons who receive records directly from a SUD program and who are notified of the restrictions on redisclosure of the records are bound by the federal confidentiality regulations. See 42 C.F.R. § 2.12(d).

3. HIPAA Privacy Rule: Unlike the state mental health law and federal SUD records law, once the recipient has received the information, the HIPAA privacy rule contains no prohibition against the recipient redisclosing the information unless the recipient happens to be a covered provider under HIPAA. If the recipient is not a covered provider under HIPAA, the privacy law does not bind the recipient, and the recipient may further disclose the information.

[18] See G.S. 122C-52(b).