

# The Legal Framework for Social Services in North Carolina

## Discussion Examples

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### *Example #1: Medicaid*

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**Federal statute:** [42 U.S.C. § 1396a](#).

A State plan for medical assistance must-

...

(7) provide-

(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with-

(i) the administration of the plan; and

(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [[42 U.S.C. 1771 et seq.](#)] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [[42 U.S.C. 1751 et seq.](#)], in accordance with section 9(b) of that Act [[42 U.S.C. 1758\(b\)](#)], using data standards and formats established by the State agency; and

(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act under which the State shall establish procedures to ensure that- ...

**Federal regulation:** [42 C.F.R. Part 431, Subpart F](#)

§431.301 State plan requirements.

A State plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan.

§431.302 Purposes directly related to State plan administration.

Purposes directly related to plan administration include—

- (a) Establishing eligibility;
- (b) Determining the amount of medical assistance;
- (c) Providing services for beneficiaries; and
- (d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

**State statute ([G.S. 108A-80](#))**

(a) Except as provided in subsections (b) and (b1) of this section, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and regulations, and the rules of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of Work First Family Assistance in Standard Program Counties and State-County Special Assistance, their addresses, and the amounts of the monthly grants. An Electing County whose checks are not being issued by the State shall furnish a copy of the recipient check register monthly to its county auditor showing a complete list of all recipients of Work First Family Assistance in the Electing County, their addresses, and the amounts of the monthly payments. These registers shall be public records open to public inspection during the regular office hours of the county auditor, but the registers or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a Class 1 misdemeanor.

(b1) The Department may share confidential information concerning a person receiving public assistance or social services with a local school administrative unit and with the Department of Public Instruction. Disclosure is limited to that information necessary to establish, coordinate, or maintain appropriate educational services for the person receiving public assistance or social services.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission may adopt rules governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Health and Human Services shall have the authority to adopt rules governing access to medical assistance case files.

**State regulation: [10A NCAC 23H .0103](#)**

(a) Except as otherwise provided in these Rules it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit or acquiesce to the use of any list of names or other information concerning any client applying for or receiving Medicaid that may be directly or indirectly derived from the records, files, or communications of the agency, or acquired in the course of performing official duties except for purposes directly connected with the administration of the Medicaid program.

(b) Whenever federal or state statutes or regulations specifically address confidentiality issues, the agency shall disclose or keep confidential client information in accordance with those federal or state statutes or regulations.

(c) Whenever there is inconsistency between federal or state statutes or regulations specifically addressing confidentiality issues, the agency shall abide by the statute or regulation which provides more protection for the client.

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*Example #2: Child Protective Services*

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**Federal statute (CAPTA): [42 U.S.C. 5106a](#)**

...

(2) Contents -- A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including—

...

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—

...

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III of this chapter shall only be made available to—

- (I) individuals who are the subject of the report;
- (II) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);
- (III) child abuse citizen review panels;
- (IV) child fatality review panels;
- (V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and
- (VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

(ix) provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect;

...

## **Federal regulations**

There are no federal regulations connected to the confidentiality requirements in CAPTA. See 80 Fed. Reg. 16577 (Mar. 30, 2015) (repealing all CAPTA regulations effective June 29, 2015).

## **State statutes**

### [G.S. 7B-302\(a1\)](#)

...

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except under the following circumstances:

(1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(1a) The department shall disclose confidential information regarding the identity of the reporter to any federal, State, or local government entity or its agent with a court order. The department may only disclose confidential information regarding the identity of the reporter to a federal, State, or local government entity or its agent without a court order when the entity demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

(2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.

(3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.

(4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

#### G.S. 7B-2901

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office alleging abuse, neglect, or dependency. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the court.

The following persons may examine the juvenile's record maintained pursuant to this subsection and obtain copies of written parts of the record without an order of the court:

- (1) The person named in the petition as the juvenile;
- (2) The guardian ad litem;
- (3) The county department of social services; and
- (4) The juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the juvenile's parent, guardian, or custodian.

(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only in the following circumstances:

- (1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.
- (2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.
- (3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any

confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.

(4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700.

(c) In the case of a child victim, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim.

(d) The court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem.

## **State regulations**

### [10A NCAC Chapter 69](#)

#### 10A NCAC 69 .0501 Disclosure Within the Agency

(a) Client information from the public assistance record may be disclosed without the consent of the client under the following circumstances:

(1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;

(2) to other county departments of social services when the client moves to that county and requests public assistance;

(3) between the county departments of social services and the state Division of Social Services for purposes of supervision and reporting.

(b) Client information from the service record may be disclosed without the consent of the client under the following circumstances:

(1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;

(2) to another county department of social services when that county department of social services is providing services to a client who is in the custody of the county department of social services;

(3) to another county department of social services to the extent necessary to facilitate the provision of a service requested by referring county department of social services;

(4) between the county department of social services and the state Division of Social Services for purposes of supervision and reporting.

[10A NCAC 70 .0113](#) Confidentiality

(a) The county director shall not allow anyone outside of the county department of social services other than state and federal agency personnel carrying out their lawful responsibilities for program audit and review to examine a protective services case record as described in Rule .0112 of this Subchapter unless:

(1) the judge orders the county director to allow examination; or

(2) the child or the child's attorney requests to examine his own record.

(b) The county director in carrying out his duties may share information and a summary of documentation from the case record without a court order with public or private agencies or individuals that are being utilized to provide or facilitate the provision of protective services to a child.

(c) The county director shall allow the District Attorney or his designee access to the case record, including any information or documentation therein, which he needs to carry out his mandated responsibilities that result from a report of confirmed abuse or from the county director's decision not to file a petition.