Minors and Reproductive Health Services: NC Law

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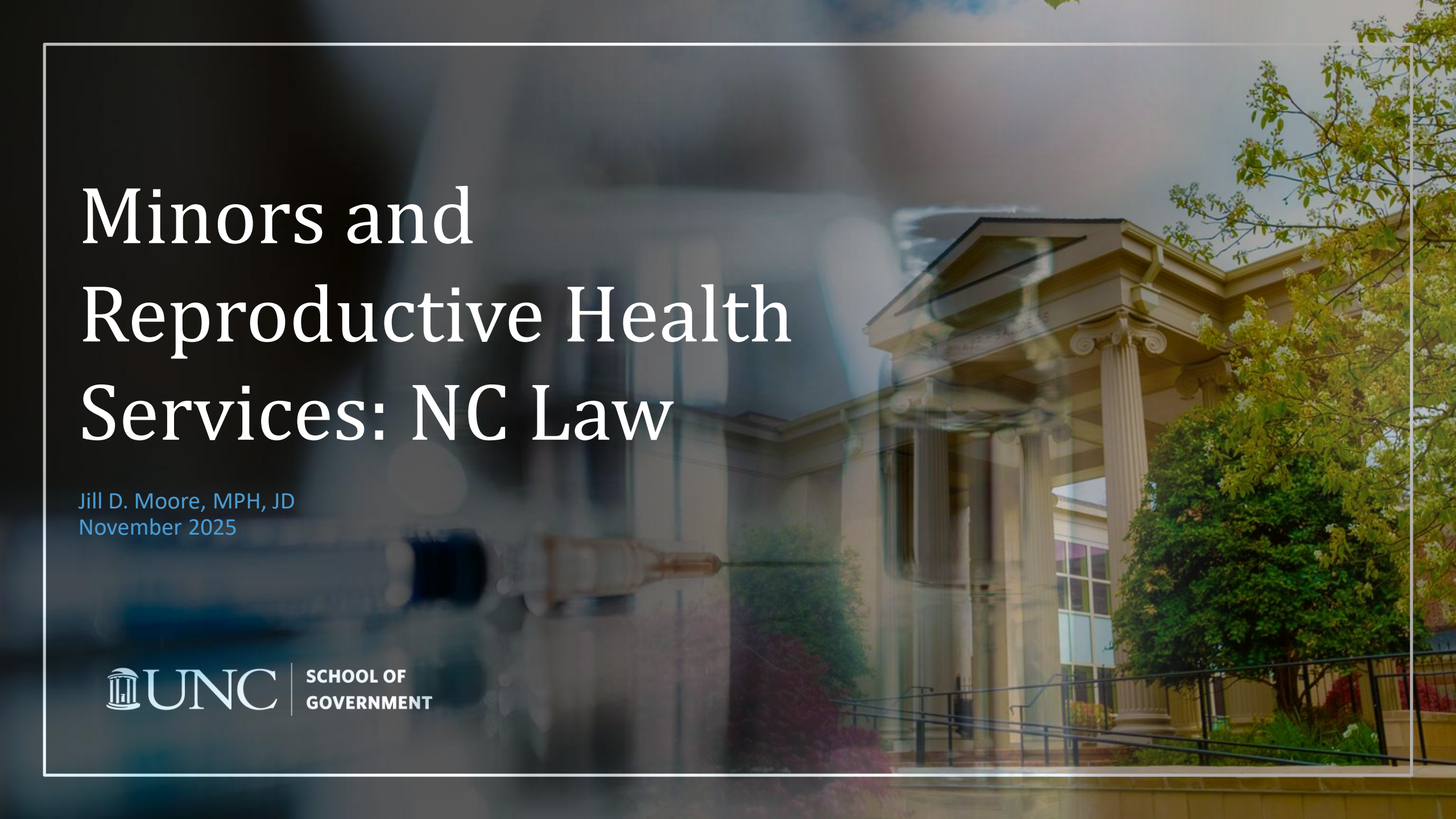

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Introductions

Jill Moore (MPH, JD) is Associate Professor of Public Law and Government at the UNC School of Government. She teaches, consults with, and researches and writes for North Carolina public health officials and agencies and other stakeholders on issues related to public health law. Her current areas of work include communicable disease law, reproductive health law, child and adolescent immunization law, selected issues in medical confidentiality and HIPAA, public health legal authority, and public health remedies. She can be reached at moore@sog.unc.edu.

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Road map

Consent for reproductive health services for a minor

Confidentiality of information about minor's reproductive health services

Discussion/Q&A

Consent for reproductive health services for a minor

In NC, who gives consent for heath services for a minor?

Parent, guardian, or person acting in loco parentis (PILP)

As a general rule, consent for a minor's health care is given by a parent, guardian, or person acting in loco parentis (PILP).

- GS Ch. 90-21.10A; 90-21.10B

Minor's consent

A NC statute authorizes minors to consent on their own to certain medical health services, including some reproductive health services. Services provided under this law do not require the consent of a parent, guardian, or PILP.

- GS 90-21.5; 90-21.10B

When may a minor consent to their own health services?

NC Minor's Consent Law (GS 90-21.5)

An unemancipated minor with decisional capacity may consent to medical health services for the prevention, diagnosis, or treatment of:

- Venereal diseases and reportable communicable diseases,
- Pregnancy,
- Abuse of controlled substances or alcohol, and
- Emotional disturbance.

However, the minor's consent law does not authorize an unemancipated minor to consent on their own to an abortion or to reproductive sterilization.

Which reproductive health services fall under the minor's consent law?

Prevention, diagnosis, or treatment of pregnancy	• Family planning/contraceptives • Pregnancy tests • Prenatal care
Prevention, diagnosis or treatment of venereal diseases and reportable communicable diseases	• Testing and treatment for sexually transmitted infections (STIs) • Prevention of STIs (such as prophylactic care or immunization)

What about …

HPV vaccination?

(a) Subject to subsection (a1) of this section, any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.

What about …

Mpox vaccination?

(a) Subject to subsection (a1) of this section, any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.

(a1) Notwithstanding any other provision of law to the contrary, a health care provider shall obtain written consent from a parent or legal guardian prior to administering any vaccine that has been granted emergency use authorization and is not yet fully approved by the United States Food and Drug Administration to an individual under 18 years of age.

What about …

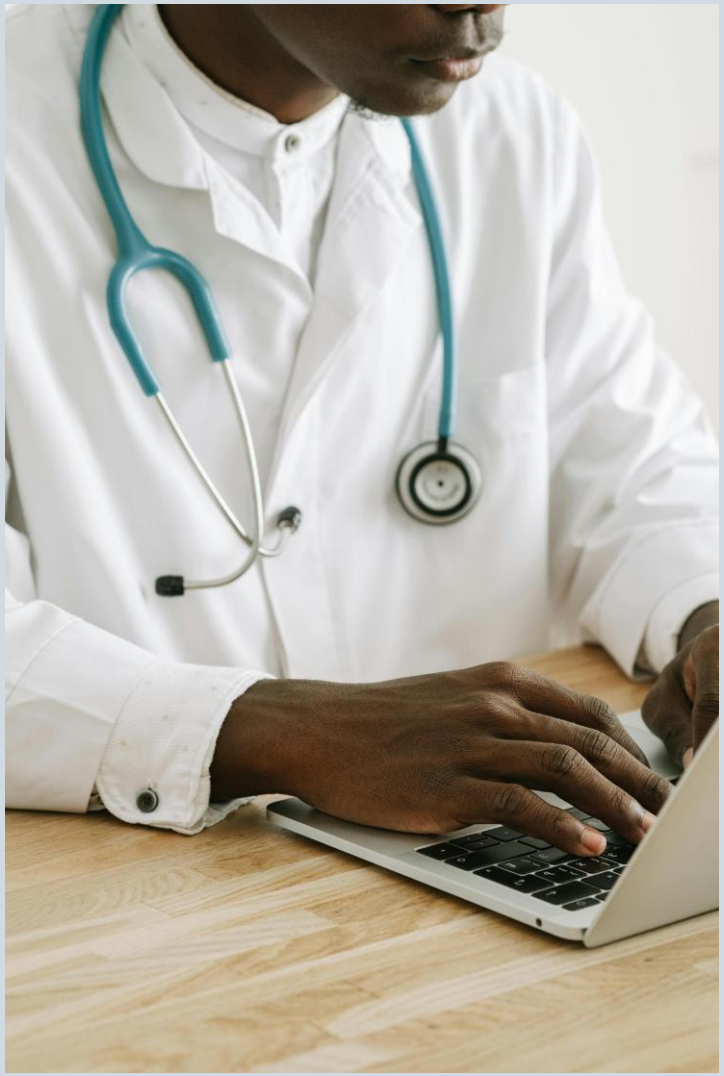
Emergency contraception?

(a) Subject to subsection (a1) of this section, any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.

Legal differences: emergency contraception and medication abortion

Emergency Contraception	Medication Abortion

• *Label*
  • Intended to prevent pregnancy
  • Used after unprotected intercourse
  • Contraindicated for patient who is pregnant
• *Regulation*
  • Available OTC or by prescription in accordance with FDA regulations
  • Not subject to requirements of NC abortion laws
	• *Label*
	  • Intended to terminate pregnancy
	  • Used after pregnancy is established
	  • Not indicated for patient who isn't pregnant
	• *Regulation*
	  • Available only by prescription and in accordance with FDA REMS program
	  • Subject to requirements of NC abortion laws



Information about reproductive health services provided to minors

Information about medical health services for minors is confidential

HIPAA

- Governs the use and disclosure of protected health information (PHI) held by HIPAA-covered entities
- Creates the general rule that individuals must give permission for the disclosure of PHI, and creates exceptions to the general rule
- Creates the individual right of access to PHI
- Addresses when a personal representative may act in place of the individual

Title X regulations

- Provide heightened protection for information related to Title X-funded services

NC laws

- GS 90-21.4(b) addresses when a physician may notify parents of services a minor received upon their own consent
- GS 130A-143 provides heightened protection for information about STIs and other reportable diseases

Other laws or regulations may apply in particular cases

Two questions

Who may authorize disclosure of a minor's confidential reproductive health information, when authorization is required?

May a minor's parent have access to the minor's confidential reproductive health information?

HIPAA: Individuals and personal representatives

The person who may access protected health information (PHI) or authorize its disclosure is the "individual," or if the individual is unable to make their own health care decisions, the "personal representative."

Individual – the person who is the subject of the PHI (the patient). 45 CFR 160.103.

Personal representative – a person who is authorized by law to make health care decisions for the individual, when the individual can't make their own health care decisions. 45 CFR 164.502(g).

Who is the personal representative (PR) for an unemancipated minor?

Rule of thumb: In general, the person who has legal authority to consent to an individual's treatment is the individual's personal representative.

This means that a person who is a parent, guardian, or PILP for an unemancipated minor is usually the minor's personal representative, <u>when a personal representative is required.</u>

When is a parent, guardian, or PILP ***not*** a PR for an unemancipated minor?

HIPAA outlines three circumstances when the parent/guardian/PILP is not the PR:

When the minor consents to the health care service and no other consent is required by law.

- Example: A minor receives services on their own consent under G.S. 90-21.5.

When the minor may lawfully obtain the health care service without the consent of a parent, guardian, or PILP, and the minor, a court, or other person authorized by law consents.

- Example: Consent to a minor's abortion is provided by someone other than a parent pursuant to G.S. 90-21.7.

When a parent, guardian, or PILP assents to an agreement of confidentiality between the minor and the health care provider with respect to a health care service.

- Example: A pediatrician asks for permission to consult with an adolescent privately and the parent agrees.

Deciding not to treat a person as a PR: The abuse and endangerment exception

Even when a person meets the criteria to be considered a personal representative, a HIPAA-covered entity may choose not to treat the person as a PR when:

1. The covered entity has a reasonable belief that either:
   - The individual has been or might be subjected to domestic violence, abuse, or neglect ***by the personal representative***, or
   - The individual could be otherwise endangered ***by treating the person as a personal representative***;

AND

2. The covered entity, using professional judgment, decides it is ***not in the best interest of the individual*** to treat the person as the individual's PR.

When may a parent have access to a minor's reproductive health information?

Parent/guardian/PILP is personal representative

- Parent/guardian/PILP has a right to access the minor's PHI
- 45 CFR 164.502(g) (PR rule); 164.524 (right of access rule).

Parent/guardian/PILP is not a PR

- HIPAA defers to state or other applicable law to determine whether the minor's PHI may be disclosed to the parent/guardian/PILP.
- 45 CFR 164.502(g)(3)(ii).

HIPAA: Disclosing information to parent/guardian/PILP who is not a PR

If state or other applicable law:	The HIPAA covered entity:
Requires disclosure to a parent, guardian, or PILP	Must disclose
Prohibits disclosure to parent/guardian/PILP	Must not disclose
Allows but does not require disclosure to parent/guardian/PILP	Disclosure is discretionary
Is silent on the issue	Disclosure is discretionary

What does state law say about minor's consent information?

"The physician shall not notify a parent, legal guardian, [or] person standing in loco parentis … without the permission of the minor, concerning the medical health services set out in G.S. 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 a parent, legal guardian, [or] person standing in loco parentis … contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information."

GS 90-21.4(b)

Summary: Disclosing minor's consent information to parents/guardians/PILPs

When a minor receives services on their own consent pursuant to GS 90-21.5, the minor's parent/guardian/PILP is not the personal representative and therefore does not have a right of access to information about those services.

HIPAA defers to state law on whether a parent/guardian/PILP may have access.

GS 90-21.4(b) establishes the general rule that the physician shall not notify a parent about services provided under the minor's consent law without the minor's permission.

There are two exceptions to this general rule:

- If parental notification is essential to the life or health of the minor, or
- If the parent contacts the physician and inquires about the treatment.

Other applicable laws may prohibit or inhibit making the disclosures allowed by the exceptions.

Did you say other applicable law??

Confidentiality of information about Title X-funded family planning services

Title X-funded family planning programs must :

- Encourage family participation in the decision of minors to seek family planning services,
- Provide counseling to minors on how to resist sexual coercion, and
- Comply with state laws requiring reporting of child abuse, child molestation, sexual abuse, rape, or incest.

However, Title X projects may not require a minor client to obtain the consent of a parent or guardian, nor may project staff notify a parent or guardian before or after a minor has requested or received Title X services.

42 CFR 59.10(b)

Confidentiality of communicable disease information

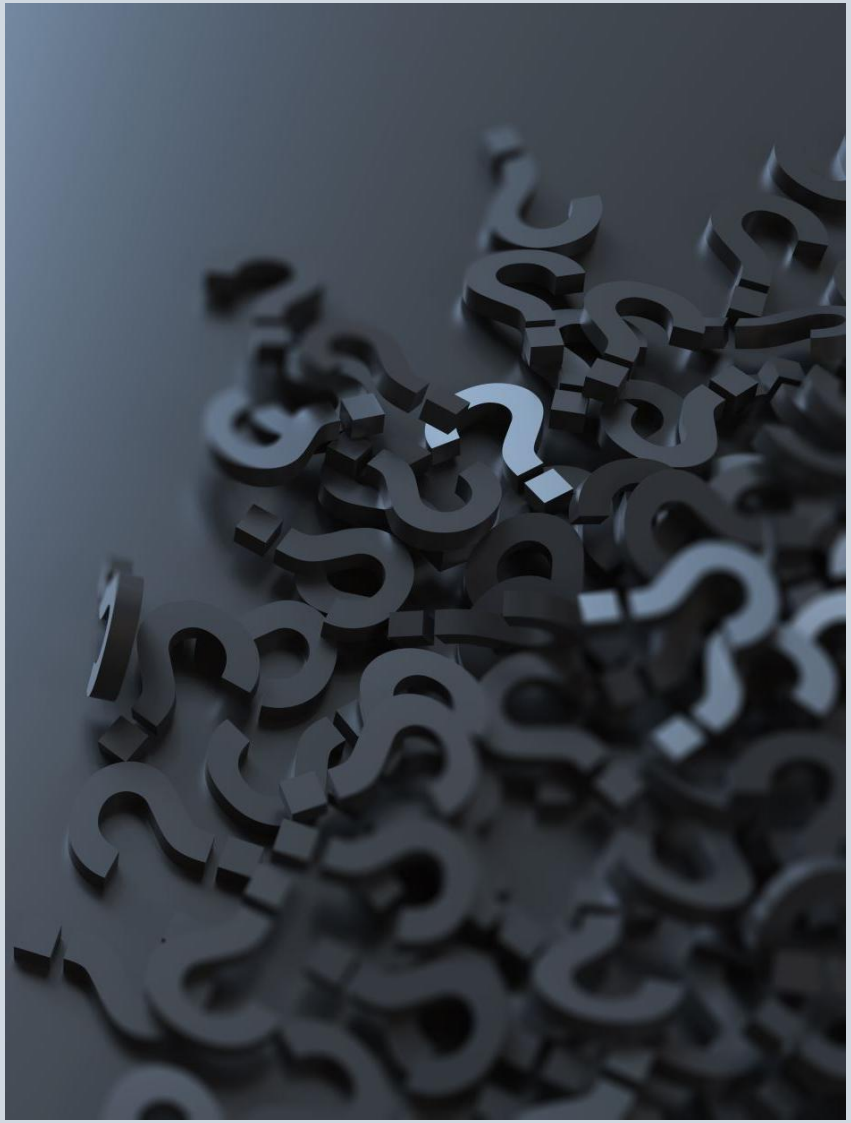
State law restricts the disclosure of information that identifies a person who has or may have a reportable communicable disease. This includes many STIs.

In general, disclosure of the information requires the individual's written consent.

Disclosure of identifiable information may be made without written consent :

- For treatment, payment, health care operations, or research, as provided by HIPAA
- When the public health requires it and disclosure is in accordance with NC communicable disease rules
- Limited other circumstances related to controlling the spread of disease or court proceedings

GS 130A-143



Questions?

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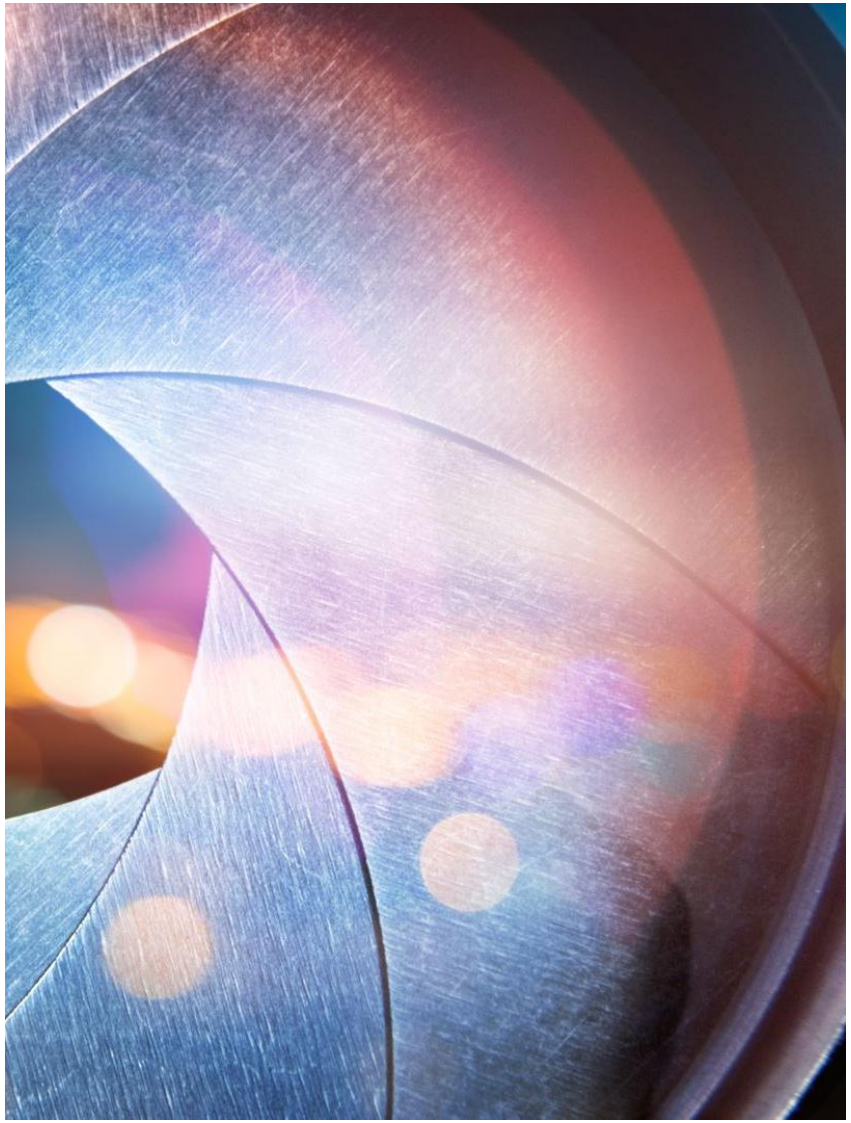

Images in this presentation

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- pexels.com
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References

North Carolina General Statutes (available at ncleg.gov)

N.C. Gen. Stat. Ch. 90, Art. 1A. Treatment of Minors.

N.C. Gen. Stat. 130A-143 (confidentiality of communicable disease information).

Federal Regulations (available at ecfr.gov)

HIPAA Privacy Rule. Code of Federal Regulations, Title 45, Parts 160, 162, and 164.

Title X Family Planning Regulations. Code of Federal Regulations, Title 42, Part 59.

Other Resources

U.S. Department of Health and Human Services, Guidance: Personal Representatives (Jan. 5, 2024).

Kirsten Leloudis, Consent to Care for Minor Patients: An Update on the Legal Landscape After S.L. 2023-106, Part III. *Health Law Bulletin No. 92.* University of North Carolina School of Government; 2024.

Kirsten Leloudis, Who is a "Person Standing in Loco Parentis" and When Can They Consent to Health Care for a Minor? Coates' Canons Local Government Law Blog, March 24, 2023.

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