

## CHAPTER 69 – CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS

### SECTION .0100 – GENERAL PROVISIONS

#### 10A NCAC 69 .0101 DEFINITIONS

As used in this Chapter, the following definitions shall apply:

- (1) "Client" means any applicant for, or recipient of, public assistance or services, or someone who makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency. For purposes of this Chapter, someone acting on behalf of the client in accordance with their right to act on the client's behalf under a legal order, federal or State law is included under the definition of client.
- (2) "Agency" means the State Division of Social Services and the county departments of social services, unless separately identified.
- (3) "Client information" or "client record" means any information received in connection with the performance of any function of the agency, including information stored in computer systems.
- (4) "Director" means the head of the State Division of Social Services or the county departments of social services.
- (5) "Delegated representative" means anyone designated by the director to carry out the responsibilities established by the rules in this Chapter. Designation is implied when the assigned duties of an employee require access to confidential information.
- (6) "Court order" means any order from a judge or a written document from a judicial employee that directs the release of client information.
- (7) "Service provider" means any public or private entity or individual from whom the agency purchases services, or authorizes the provision of services provided or purchased by other divisions of the Department of Health and Human Services.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

#### 10A NCAC 69 .0102 INFORMATION FROM OTHER AGENCIES

If the agency receives information from another entity or individual, then the information shall be treated as client information and disclosure thereof shall be governed by the rules of this Chapter.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

### SECTION .0200 – SAFEGUARDING CLIENT INFORMATION

#### 10A NCAC 69 .0201 CONFLICT OF LAWS

Whenever there is inconsistency between federal regulations or state statutes addressing confidentiality issues, the agency shall abide by the federal regulation or state statute which provides more protection for the client. The agency shall make the determination as to which regulation or statute provides more protection for the client.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Amended Eff. March 1, 1990;  
Readopted Eff. September 1, 2019.

#### 10A NCAC 69 .0202 OWNERSHIP OF RECORDS

- (a) All client information is the property of the agency, and employees of the agency shall keep this information confidential, except as provided by the rules of this Chapter.
- (b) Original client records shall not be removed from the premises by individuals other than agency staff authorized to access the client's records, except by a court order.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

#### **10A NCAC 69 .0203 SECURITY OF RECORDS**

- (a) The agency shall provide a secure place for the storage of client records. Only individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized access to the storage area. For the purpose of this Chapter, secure means fixed, fastened or locked.
- (b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be responsible for the security of the record until it is returned to the storage area.
- (c) The agency shall establish procedures to prevent accidental disclosure of client information from automated data processing systems.
- (d) The director or his or her designee shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy and provide training for all persons with access to client information.

*History Note:* Authority G.S. 108A-80; 143B-153; 45 CFR 205.60;  
Eff. October 1, 1981;  
Amended Eff. March 1, 1990;  
Readopted Eff. September 1, 2019.

#### **10A NCAC 69 .0204 ASSURANCE OF CONFIDENTIALITY**

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Repealed Eff. September 1, 2019.

#### **10A NCAC 69 .0205 LIABILITY OF PERSONS WITH ACCESS TO CLIENT INFORMATION**

- (a) Individuals employed by the agency and governed by the State Personnel Act are subject to suspension, dismissal, or disciplinary action for failure to comply with these Rules.
- (b) Individuals other than employees, including agents of the Department of Health and Human Services who have access to client information, shall be liable in the same manner as employees.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Amended Eff. February 1, 1986;  
Readopted Eff. September 1, 2019.

### **SECTION .0300 - CLIENT ACCESS TO RECORDS**

#### **10A NCAC 69 .0301 RIGHT OF ACCESS**

- (a) Confidentiality of information about himself or herself is the right of the client. Upon written or verbal request, the client shall be able to review or obtain without charge a copy of the information in his or her records with the following exceptions:
- (1) information that the agency is required to keep confidential by state or federal statutes, rules, or regulations;
  - (2) confidential information originating from another agency as provided for in Rule .0102 of this Chapter; or
  - (3) information that would breach another individual's right to confidentiality under State or federal statutes, rules, or regulations as determined by the agency.
- (b) The agency shall provide access to the client's records within five business days after the receipt of the request.

*History Note:* Authority G.S. 108A-80; 143B-153; 45 CFR 205.60;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

**10A NCAC 69 .0302 PROMPT RESPONSE TO REQUEST**

*History Note: Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Repealed Eff. September 1, 2019.*

**10A NCAC 69 .0303 WITHHOLDING INFORMATION FROM THE CLIENT**

- (a) When the director or a delegated representative determines on the basis of the exceptions in Rule .0301 of this Subchapter to withhold information from the client record, this reason shall be documented in the client record.
- (b) The director or a delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in Rule .0301 of this Subchapter the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.
- (c) When a delegated representative determines to withhold client information, the decision to withhold shall be reviewed by the supervisor of the person making the initial determination.

*History Note: Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.*

**10A NCAC 69 .0304 PROCEDURES FOR REVIEW OF RECORDS**

- (a) The director or his or her delegated representative shall be present when the client reviews the record. The director or his or her delegated representative must document in the client record the review of the record by the client.
- (b) A client may contest the accuracy, completeness, or relevancy of the information in his or her record. If the Division or county department of social services determines correction is required by federal statute or regulation to support receipt of State or federal participation, the correction of the contested information shall be accomplished by inserting it in the record when the director or his or her designee concurs that such correction is justified. When the director or his or her designee does not concur, the client shall be allowed to enter a statement in the record. Deletion of the contested information is not permitted. If a designee decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision. All corrections and statements shall be made a permanent part of the record and shall be disclosed to any recipient of the disputed information.
- (c) Upon written request from the client, his or her personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in his or her record. The client may permit the personal representative to have access to his or her entire record or may restrict access to certain portions of the record.

*History Note: Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;  
Amended Eff. September 1, 2019.*

**10A NCAC 69 .0305 CONTESTED INFORMATION**

**10A NCAC 69 .0306 REVIEW OF RECORD BY PERSONAL REPRESENTATIVES**

*History Note: Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Repealed Eff. September 1, 2019.*

**SECTION .0400 - RELEASE OF CLIENT INFORMATION**

**10A NCAC 69 .0401 PROCEDURE FOR OBTAINING CONSENT FOR RELEASE OF INFORMATION**

- (a) As a part of the application process for public assistance or services, the client shall be informed of the need for and give consent to the release of information necessary to verify statements to establish eligibility.

- (b) As a part of the application process for Work First Family Assistance, or State or County Special Assistance for Adults, the client shall be informed of the requirement for listing of the public assistance recipient's name, address, and amount of the monthly grant in a public record open to public inspection during the regular office hours of the county auditor.
- (c) No individual shall release any client information that is owned by the State Division of Social Services or the county departments of social services, or request the release of information regarding the client from other agencies or individuals, without obtaining a signed consent for release of information. The procedure for disclosure without obtaining consent shall be in accordance with Section .0500 of this Subchapter.
- (d) The consent for release of information shall be on a form provided by the agency or shall contain the following:
- (1) The name of the provider and the recipient of the information;
  - (2) The extent of information to be released;
  - (3) The name and dated signature of the client;
  - (4) A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent; and
  - (5) The length of time the consent is valid.
- (e) The client may alter the form to contain other information, including:
- (1) A statement specifying the date, event, or condition upon which the consent may expire even if the client does not expressly revoke the consent; or
  - (2) A specific purpose for the release.
- (f) The following persons may consent to the release of information:
- (1) The client;
  - (2) The legal guardian if the client has been adjudicated incompetent; or
  - (3) The county department of social services if the client is a minor and in the custody of the county department of social services.
- (g) Prior to obtaining a consent for release of information, the director or delegated representative shall explain the meaning of informed consent. The client shall be told the following:
- (1) Contents to be released;
  - (2) That the information is needed to verify eligibility;
  - (3) That the client can give or withhold the consent and the consent is voluntary; and
  - (4) That there are statutes, rules, and regulations protecting the confidentiality of the information.
- (h) Directors and their delegated representatives shall release client information in accordance with the Rules of this Section, court orders, and any applicable State statutes or federal regulations.
- (i) Whenever client information is disclosed, in accordance with rules of this Section, the director or delegated representative shall document the reason for the disclosure in the client record including placing a copy of the signed consent in the client record.

*History Note:* Authority G.S. 108A-80; 143B-153;  
 Eff. October 1, 1981;  
 Amended Eff. March 1, 1990;  
 Readopted Eff. September 1, 2019.

<b>10A NCAC 69 .0402</b>	<b>CONSENT FOR RELEASE OF INFORMATION</b>
<b>10A NCAC 69 .0403</b>	<b>PERSONS WHO MAY CONSENT TO THE RELEASE OF INFORMATION</b>
<b>10A NCAC 69 .0404</b>	<b>INFORMED CONSENT</b>
<b>10A NCAC 69 .0405</b>	<b>PERSONS DESIGNATED TO RELEASE CLIENT INFORMATION</b>
<b>10A NCAC 69 .0406</b>	<b>DOCUMENTATION OF RELEASE</b>

*History Note:* Authority G.S. 108A-80; 143B-153;  
 Eff. October 1, 1981;  
 Repealed Eff. September 1, 2019.

**SECTION .0500 - DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT**

**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; or
  - (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 client consent 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 a different county department of social services is providing services to a client;
  - (3) to another county department of social services to the extent necessary to facilitate the provision of a service requested by a referring county department of social services; or
  - (4) between the county department of social services and the State Division of Social Services for purposes of supervision and reporting.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Amended Eff. March 1, 1990;  
Readopted Eff. September 1, 2019.

#### **10A NCAC 69 .0502 DISCLOSURE FOR THE PURPOSE OF RESEARCH**

Client information may be disclosed without client consent to individuals approved by the Department of Health and Human Services to conduct studies of client records. The request to conduct a study shall be in writing and be approved based upon:

- (1) an explanation of how the findings of the study may expand knowledge and improve professional practices;
- (2) a description of how the study will be conducted and how the findings will be used;
- (3) a description of the individual's credentials in the area of research;
- (4) a description of how the individual will safeguard information; and
- (5) a written assurance that no report will contain the names of individuals or any other information that makes individuals identifiable.

*History Note:* Authority G.S. 108A-80; 143B-153; 45 CFR 205.50;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

#### **10A NCAC 69 .0503 DISCLOSURE FOR PURPOSES OF ACCOUNTABILITY**

Client information may be disclosed without the consent of the client to federal, State, or county employees for the purpose of monitoring, auditing, evaluating, or to facilitate the administration of other State and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose, as determined by the agency, and that safeguards, as described in 45 CFR 205.50, which is incorporated by reference with subsequent amendments and editions and available free of charge at <https://www.ecfr.gov/>, are maintained to protect the information from re-disclosure.

*History Note:* Authority G.S. 108A-80; 143B-153; 45 CFR 205.50;  
Eff. October 1, 1981;  
Amended Eff. March 1, 1990;  
Readopted Eff. September 1, 2019.

#### **10A NCAC 69 .0504 DISCLOSURE PURSUANT TO OTHER LAWS**

(a) Client information may be disclosed without the consent of the client for purposes of complying with the rules of this Section, court orders, and any applicable State and federal regulations.

(b) When information is released without the client's consent, the client shall be informed of the disclosure in writing to explain what information was released, how it was released, and how to contact the privacy official. The writing informing the client of the disclosure shall be documented in the record.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

**10A NCAC 69 .0505 DISCLOSURE PURSUANT TO A COURT ORDER**  
**10A NCAC 69 .0506 NOTICE TO CLIENT**  
**10A NCAC 69 .0507 DOCUMENTATION OF DISCLOSURE**  
**10A NCAC 69 .0508 PERSONS DESIGNATED TO DISCLOSE INFORMATION**

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981;  
Repealed Eff. September 1, 2019.

**SECTION .0600 - SERVICE PROVIDERS**

**10A NCAC 69 .0601 INFORMATION NEEDS OF SERVICE PROVIDERS**

Agencies may disclose client information to service providers only to the extent necessary to determine the service requirements, and to provide eligibility information for reporting purposes.

*History Note:* Authority G.S. 108A-80; 143B-153; 45 CFR 205.60;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

**10A NCAC 69 .0602 CONTRACT RESTRICTION**

As a part of every contract for the purchase of services, the service provider will agree to restrict the use or disclosure of information obtained in connection with the administration of the state's programs for the provision of services concerning clients to purposes directly connected with the administration of the service program.

*History Note:* Authority G.S. 108A-80; 143B-153;  
Eff. October 1, 1981.

**10A NCAC 69 .0603 ASSURANCE OF CONFIDENTIALITY**

(a) The State Division of Social Services shall provide written notification to county departments of social services, private agencies, and individual service providers of the confidential nature of client information as set forth in the Rules of this Chapter and the applicable State and federal laws.

(b) The county departments of social services shall provide written notification to private agencies and individual service providers of the confidential nature of client information as set forth in the rules of this Chapter and the applicable State and federal laws, when written notification has not been provided by the State Division of Social Services.

*History Note:* Authority G.S. 108A-80; 143B-153; 42 CFR 205.50; 42 CFR 205.60;  
Eff. October 1, 1981;  
Readopted Eff. September 1, 2019.

**10A NCAC 69 .0604 OWNERSHIP OF RECORDS**

(a) All client information contained in records of the service provider is the property of the service provider, and the service provider and employees of the service provider shall protect and preserve such information in accordance with the terms of their contract.

(b) Any information furnished by the county department of social services shall be protected from re-disclosure.

*History Note:* Authority G.S. 108A-80; 143B-153;

*Eff. October 1, 1981.*

**10A NCAC 69 .0605      LIABILITY OF SERVICE PROVIDERS**

Failure to comply with the rules in Section .0600 of this Subchapter shall constitute a breach of contract and shall be grounds to terminate the contract.

*History Note:      Authority G.S. 108A-80; 143B-153;*  
*Eff. October 1, 1981.*