

**2014 Summer Conference for Social Services Attorneys  
July 17-18, 2014 Asheville, North Carolina**

**RESPONDING TO A FEDERAL GRAND JURY SUBPOENA FOR  
FOOD AND NUTRITION AND MEDICAID RECORDS**

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Friday, July 18, 2014**

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**Responding to a Federal Grand Jury Subpoena for  
Food and Nutrition and Medicaid Records**

***Issue: How should a Department of Social Services respond to a Federal Grand Jury Subpoena commanding the production of Food and Nutrition Records/Medicaid Records?***

***Step 1: Is a Grand Jury Subpoena adequate to overcome the limited disclosure options in the Federal and State codes?***

*Answer: Yes. (See, In re Grand Jury Subpoena Duces Tecum Served Upon Dr. Jenaro Collazo Collazo 527 F. Supp. 972; (1981) )*

In sum, the restriction on the state agency set forth by regulation limiting those persons to whom it may disclose information given by an applicant household cannot be interpreted as a prohibition on disclosure to an investigative body such as a federal grand jury without unduly hampering its role as an instrument of law enforcement and without the enforcement of the criminal provisions of the Food Stamp Act itself. . . . Neither the statute nor the regulations shelter a beneficiary who is being investigated for possible abuse of the Food Stamp Program in the manner urged by petitioner.

Step 2: Determining which provision of State Code authorizes release of the information.

Answer: Code section 10A NCAC 69.0100

- Do you have the client's consent to release?
  - The assumption is you do not; therefore, order controls, as do the rules under disclosure without release.

***10A NCAC 69 .0505 DISCLOSURE PURSUANT TO A COURT ORDER***

*Client information may be disclosed without the consent of the client in response to a court order, as defined.*

*Definition of court order:*

*(6) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.*

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

- If no consent, see § .0500 for disclosure without client release.
- Court order seems to be best fit for subpoena. See definition of court order
  - The Medicaid manual says must be signed by Judge. Definition in code differs.

Step 3: Actions to take after disclosure:

- You must let client know that you disclosed information pursuant to court order. See § .0506 (see sample letter: Appendix A-1).
- The disclosure must be documented in the Client's file. See § .0507

***10A NCAC 69 .0506 NOTICE TO CLIENT***

*When information is released without the client's consent, the client shall be informed to the extent possible, of the disclosure. The method of informing the client of the disclosure shall be documented in the appropriate record.*

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

- Can you wait to disclose? Maybe.
  - Manual for Medicaid allows 10 day delay if requested, not a similar delay in the Food and Nutrition Manual.

***Adult Medicaid Manual MA-300 CONFIDENTIALITY***

***VII. RELEASE OF INFORMATION TO FEDERAL, STATE AND COUNTY LAW ENFORCEMENT***

*The client must be informed to the extent possible of the disclosed information. The county may honor a law enforcement request to delay notification of the client of the disclosure for a reasonable amount of time not to exceed 10 calendar days. Document in the Medicaid eligibility case record, that a subpoena or court order was received and the method of informing the client of the disclosed information.*

Possible scenarios:

- The Feds say that they don't want me to disclose, or have never heard of anyone else disclosing, or want their request to be honored.
  - *The code requires the disclosure and the conflict of laws provision means you must side on the highest protection of the Client. See § .0201.*
  
- The Feds say that their request on the grand jury subpoena is serious and the consequences are serious.
  - They probably are serious to the people that the law requires to keep the grand jury confidential, but that's not DSS. See Rule 6 of the Federal Rules of Criminal Procedure.
  - [http://www.law.cornell.edu/rules/frcrmp/rule\\_6](http://www.law.cornell.edu/rules/frcrmp/rule_6)
  - However, note rule 6(e)(3)(A)(ii). It's possible that the US Attorney could cite this rule as a mechanism to keep DSS quiet; however, it falls back to the conflict of laws provision in the code.
  
- USDA agent contacts your client direction to request records. He/She can do that with a written request and only to investigate food stamp violations, not as an end run around confidentiality.

FEDERAL RULES OF CRIMINAL PROCEDURE:  
RULE 6. THE GRAND JURY

(d) WHO MAY BE PRESENT.

(1) *While the Grand Jury Is in Session.* The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device.

(2) *During Deliberations and Voting.* No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(e) RECORDING AND DISCLOSING THE PROCEEDINGS.

(1) *Recording the Proceedings.* Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) *Secrecy.*

(A) No obligation of secrecy may be imposed on any person except in accordance with [Rule 6\(e\)\(2\)\(B\)](#).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under [Rule 6\(e\)\(3\)\(A\)\(ii\)](#) or [\(iii\)](#).

(3) *Exceptions.*

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

- (i) an attorney for the government for use in performing that attorney's duty;
- (ii) any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or
- (iii) a person authorized by 18 U.S.C. §3322.

(B) A person to whom information is disclosed under [Rule 6\(e\)\(3\)\(A\)\(ii\)](#) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) An attorney for the government may disclose any grand-jury matter to another federal grand jury.

## **APPENDIX**

A-1: Sample disclosure letter to client

A-2: Title 10A- Health and Human Services > Chapter 69 – Confidentiality and Access to Client Records

A-3: Link to Federal Rules of Criminal Procedure, Rule 6. The Grand Jury

A-3: Link to *Adult Medicaid Manual*

A-3: Link to *Food and Nutrition Services Manual*



[Date]

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

[Recipient Address]

Mr. \_\_\_\_\_,

On March 27, 2014, the Buncombe County Department of Health and Human Services (“Department”) was required to disclose a copy of your confidential client record to a third party. This disclosure was required by a court order as authorized by 10A NCAC 69.0505.

Pursuant to 10A NCAC 69.0506, the Department is required to give you notice of any disclosures without your consent. This letter serves as your actual notice of the disclosure. A copy of this letter will be placed in your client record.

I hope you have a relaxing and enjoyable summer.

Kind regards,

[DSS Attorney]

**CHAPTER 69 – CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS**

**SECTION .0100 – GENERAL PROVISIONS**

**10A NCAC 69 .0101 DEFINITIONS**

As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (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 Subchapter, someone acting responsibly for the client in accordance with agency policy is subsumed 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, whether recorded or not and including information stored in computer data banks or computer files, relating to a client which was received in connection with the performance of any function of the agency.
- (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 Subchapter. Designation is implied when the assigned duties of an employee require access to confidential information.
- (6) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.
- (7) "Service provider" means any public or private agency or individual from whom the agency purchases services, or authorizes the provision of services provided or purchased by other divisions of the Department of Human Resources.

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

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

If the agency receives information from another agency or individual, then such information shall be treated as any other information generated by the state Division of Social Services or the county departments of social services, and disclosure thereof will be governed by any condition imposed by the furnishing agency or individual.

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

**SECTION .0200 – SAFEGUARDING CLIENT INFORMATION**

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

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.

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

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

- (a) All client information contained in any records of the agency is the property of the agency, and employees of the agency shall protect and preserve such information from dissemination except as provided by the rules of this Subchapter.
- (b) Original client records may not be removed from the premises by individuals other than authorized staff of the agency, except by an order of the court.
- (c) The agency shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Division of Archives and History, rules of the Division of Social Services, and state and federal statutes and regulations.

*Eff. October 1, 1981.*

**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.*

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

The director or his delegated representative shall be present when the client reviews the record. The director or his delegated representative must document in the client record the review of the record by the client.

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

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

A client may contest the accuracy, completeness or relevancy of the information in his record. A correction of the contested information, but not the deletion of the original information if it is required to support receipt of state or federal financial participation, shall be inserted in the record when the director or his delegated representative concurs that such correction is justified. When the director or his delegated representative does not concur, the client shall be allowed to enter a statement in the record. Such corrections and statements shall be made a permanent part of the record and shall be disclosed to any recipient of the disputed information. If a delegated representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.

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

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

Upon written request from the client, his personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in his record. The client may permit the personal representative to have access to his entire record or may restrict access to certain portions of the record. Rules .0301 through .0305 of this Subchapter shall apply.

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

**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 Aid to Families with Dependent children, and 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 which 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

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

**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;
- (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.

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

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

Client information may be disclosed without the consent of the client to individuals requesting approval to conduct studies of client records, provided such approval is requested in writing and the written request will specify and be approved on the basis of:

- (1) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices;
- (2) a description of how the study will be conducted and how the findings will be used;
- (3) a presentation of the individual's credentials in the area of investigation;
- (4) a description of how the individual will safeguard information;
- (5) an 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;  
Eff. October 1, 1981.*

**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 facilitating the administration of other state and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose and that adequate safeguards are maintained to protect the information from re-disclosure.

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

A-2: Title 10A-Health and Human Services > Chapter 69-  
Confidentiality and Access to Client Records

- (a) The county department of social services shall disseminate written policy and assure that all private agency and individual service providers from whom they purchase services are informed of the confidential nature of client information.
- (b) Public agency service providers shall abide by written policy promulgated by their cognizant state agency, if any. If written policy has not been issued, Paragraph (a) of this Rule shall apply.
- (c) The Department of Human Resources shall disseminate written policy and assure that all service providers from whom the county departments of social services authorize the provision of services to clients understand the confidential nature of client information.

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

**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.

**Federal Rules of Criminal Procedure, Rule 6**

[http://www.law.cornell.edu/rules/frcrmp/rule\\_6](http://www.law.cornell.edu/rules/frcrmp/rule_6)

**Adult Medicaid Manual**

<http://info.dhhs.state.nc.us/olm/manuals/dma/abd/man/>

**Food and Nutrition Services Manual**

<http://info.dhhs.state.nc.us/olm/manuals/dss/ei-30/man/>