

# Internal Sharing of Information Within a County Department of Social Services

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In North Carolina, county social services directors are responsible for administering and providing a wide variety of economic and social services. For a variety of reasons, staff for these programs and services often want to share information internally with their colleagues. This might include referring eligible clients for benefits, investigating fraud, consulting across programs on challenging cases, or coordinating services for clients. Department of social services (DSS) directors are placed in the challenging position of having to determine when and how information can be shared within their departments.

This bulletin discusses the framework of federal and state laws that govern when information can be shared *internally* within a DSS. DSS directors and staff often associate confidentiality laws with determining whether information can be disclosed *externally*—for example, to a DSS

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in a different county, to law enforcement, to another government agency, or to an individual who received services from a DSS. However, the laws governing disclosures of confidential information also apply to *internal* disclosures. Internal disclosures may occur when DSS staff share information across programs or between units or internal departments within the DSS.<sup>1</sup> For example, income maintenance staff<sup>2</sup> may ask the DSS director if they can review information about a family receiving child welfare services in order to assess a case of potential benefits fraud. Child welfare staff may request information from adult protective services (APS) staff for purposes of determining a case plan for a parent and a child. APS staff may ask for information from income maintenance staff to ensure that proper economic services are being provided to a vulnerable older adult. Each of these situations requires an analysis of whether an internal disclosure of the requested information is permissible.

## The Legal Framework

Why is it so difficult to determine when DSS staff can share information internally? A county DSS is subject to an intricate web of state and federal statutes and regulations, some of which do not harmonize neatly with one another. By way of example, let's look at a few of the primary confidentiality laws that impact a county DSS in North Carolina.<sup>3</sup>

### Federal Laws

- Each county DSS is subject to a multitude of federal laws and regulations that are specific to particular funding streams. Each federally funded program or social service (e.g., Medicaid, Food and Nutrition Services, Work First, Title IV-E of the Social Security Act) has its own set of associated regulations protecting the confidentiality of information about individuals who receive services or assistance.
- Outside of a DSS, other agencies and entities that receive federal funding may also be subject to federal laws and regulations that restrict the disclosure of confidential information. When those entities provide information or records to a DSS, the DSS becomes bound by those same restrictions. For example, federal law stringently restricts

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1. Some North Carolina departments of social services are consolidated with other agencies performing human services functions (e.g., public health, domestic violence services, transportation, etc.) to form a *consolidated human services agency*. For purposes of this bulletin, readers should assume that references to “internal” disclosures or information sharing are describing disclosures that occur within a DSS itself, not with or between other functions or programs that have been consolidated with the DSS as part of a consolidated human services agency. Consolidated human services agencies are discussed in more detail in the “Internal Information Sharing Permitted Under State Law” section of this bulletin, *infra*.

2. Each county DSS (or consolidated human services agency) in North Carolina uses different terms for its various divisions and units. With respect to staff who work with programs involving means-tested benefits, departments commonly use the terms “income maintenance” or “economic services.” Both terms will be used in this bulletin.

3. For more on the application of confidentiality laws to social services information, see AIMEE N. WALL, [DISCLOSING PROTECTIVE SERVICES INFORMATION: A GUIDE FOR NORTH CAROLINA SOCIAL SERVICES AGENCIES](#) (UNC School of Government, 2015). The book discusses many of the state and federal laws regarding disclosures of information in more detail than this bulletin.

the disclosure of information regarding individuals who receive alcohol or substance use disorder prevention or treatment services from federally assisted programs.<sup>4</sup> The county DSS is typically not the entity directly administering these programs or receiving this stream of federal funding. However, if the DSS *received information or records from* a federally assisted alcohol- or substance-use disorder treatment program, the DSS is then bound by the confidentiality requirements imposed on that program with respect to the handling of such information or records.

- A DSS may also be subject to federal confidentiality requirements that are not tied to particular funding streams. For example, in certain instances, a DSS may be subject to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule with respect to disclosures of certain protected health information.<sup>5</sup> A DSS will also be subject to restrictions in the Internal Revenue Code regarding the disclosure of federal tax information.

### State Laws

- Chapter 108A, Section 80 of the North Carolina General Statutes (G.S.) is the overarching state confidentiality statute for social services information. Under G.S. 108A-80, it is unlawful for any person to disclose or use information regarding individuals applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files, or communications of a county DSS or acquired in the course of performing official duties, except for purposes directly connected with the administration of programs of public assistance and social services in accordance with federal law and the rules of the Social Services Commission. The implementing regulations for G.S. 108A-80, found at Chapter 69 of Title 10A of the North Carolina Administrative Code (N.C.A.C.), provide more specific rules for exactly when and how social services information can be shared. Both G.S. 108A-80 and 10A N.C.A.C. Chapter 69 broadly apply to *all* social services information, including economic, child protective, and adult protective services information.
- North Carolina law contains additional statutes and regulations specific to the confidentiality of child protective services (CPS) information and adult protective services (APS) information.<sup>6</sup> In certain cases, the state laws specific to CPS and APS information are *more restrictive* than G.S. 108A-80 and 10A N.C.A.C. Chapter 69, which broadly apply to all social services information.
- Other North Carolina confidentiality laws that are not specific to social services may also apply to a DSS. For example, North Carolina law limits disclosure of information from facilities that provide mental health, developmental disability, and substance use disorder

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4. 2 U.S.C. § 290ee-3; 42 U.S.C. § 290dd-3; 42 C.F.R. pt. 2.

5. Discussing when and how HIPAA may apply to a county DSS is beyond the scope of this bulletin. A DSS director should contact the county attorney or the department's attorney to discuss whether the DSS constitutes a "covered entity" under HIPAA. For more information on this topic, see Aimee Wall, *Should a Local Government Be a HIPAA Hybrid Entity?*, COATES' CANNONS: NC LOC. GOV'T LAW Blog (UNC School of Government, Apr. 28, 2015), <https://canons.sog.unc.edu/should-a-local-government-be-a-hipaa-hybrid-entity/>.

6. See, e.g., G.S. 7B-302(a1) and -2901(b) and 10A N.C.A.C. Ch. 70 (governing CPS information), and G.S. 108A-116(d) and 10A N.C.A.C. Ch. 71A (governing APS information).

treatment services.<sup>7</sup> State law also prohibits disclosure of information identifying a person who has or may have a reportable communicable disease or condition, subject to certain exceptions.<sup>8</sup> A DSS is subject to these confidentiality requirements as well.

## Untangling the Web

To untangle the many laws and regulations that impact internal information sharing within a DSS, it is important to understand the relationship between federal and state laws. The analysis begins with federal law. If a DSS is *prohibited* from disclosing information under federal law, that DSS should not disclose such information, even if it would be permitted under state law. Conversely, if a DSS is *allowed* to disclose information under federal law but is *prohibited* from disclosing such information under state law, the DSS should not disclose such information, even though it would be permitted under federal law. However, if federal law *requires*—not simply allows—disclosure, the information should be disclosed despite state law prohibiting disclosure.

Table 1 provides a framework for thinking about how federal and state law interact.

**Table 1. Interplay Between State and Federal Confidentiality Laws**

Federal Law	State Law	Result
Disclosure Allowed	Disclosure Allowed	DSS Can Disclose
Disclosure Allowed	Disclosure Prohibited	DSS Cannot Disclose
Disclosure Prohibited	Disclosure Allowed	DSS Cannot Disclose
Disclosure Prohibited	Disclosure Required	DSS Cannot Disclose
Disclosure Required	Disclosure Prohibited	DSS Must Disclose

The starting point for questions regarding internal information sharing is (1) determining what is allowed under federal law, then (2) figuring out whether state law prohibits what federal law allows.

## Internal Sharing Permitted Under Federal Law

Each major source of federal funding received by a county DSS has an associated set of federal statutes and regulations governing confidentiality. A few examples of the major sources of funding for county DSS programs and the associated laws that might allow for *internal* information sharing are discussed below. However, this is by no means an exhaustive discussion of all federally funded programs or services that a DSS may administer or provide. **Note that many of these federal laws have numerous exceptions permitting other types of disclosures (for example, external disclosures outside the DSS) that are beyond the scope of this bulletin.**

7. G.S. 122C-51 to -56; 10A N.C.A.C. Subch. 26B.

8. G.S. 130A-143.

***The Child Abuse Prevention and Treatment Act (CAPTA)***<sup>9</sup>

Reports and records made and maintained pursuant to the purposes of CAPTA may be made available to the following:

- Any entities or classes of individuals statutorily authorized by the State<sup>10</sup> to receive such information pursuant to a legitimate State purpose.
- Any local government entity, or any agent of such entity, that has a need for the information to carry out its responsibilities under law to protect children from child abuse and neglect (note that this is a *required* disclosure, not merely a permitted one).<sup>11</sup>

***Title IV-A (Temporary Assistance for Needy Families (TANF)),<sup>12</sup> Title IV-B (Child and Family Services), and Title IV-E (Foster Care and Adoption Assistance) of the Social Security Act (SSA)***<sup>13</sup>

Information concerning individuals assisted through the plans and programs established under these parts of Title IV may be disclosed for purposes connected with the following:

- The administration of programs under Title IV-A (TANF), Title IV-B (Child and Family Services), or Title IV-E (Foster Care and Adoption Assistance).
- The administration of programs under Title IV-D (Child Support Enforcement) or under certain other subchapters of SSA Title I (Old-Age Assistance); Title II (Old-Age, Survivors, and Disability Insurance); Title X (Aid to the Blind); Title XIV (Aid to the Permanently and Totally Disabled); Title XVI (Social Security Income Program); Title XIX (Medicaid); or Title XX (Block Grants and Programs for Social Services and Elder Justice).
- Any investigation conducted in connection with the administration of those federally funded plans or programs; the administration of any other Federal or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need.
- Any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency authorized by law to conduct such audit or activity.
- Reporting and providing information to appropriate authorities with respect to known or suspected child abuse or neglect.

Titles IV-B and IV-E relate to children involved with child protective services. Unlike CAPTA, which also applies to children involved with child protective services, Titles IV-B and IV-E do not allow disclosures simply because they are “statutorily authorized by the State.”<sup>14</sup> Accordingly, some disclosures allowed under state law and permitted by CAPTA could be *prohibited* by Title IV-B or Title IV-E. When considering disclosures regarding child welfare information, keep in mind that the list of permitted disclosures under Titles IV-B and IV-E is more limited than what

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9. 42 U.S.C. § 5106a(b)(2)(B)(viii).

10. Author’s note: The capitalization of certain terms in this bulletin, e.g., “State,” reflects capitalization conventions used in relevant statutes and regulations.

11. See 42 U.S.C. § 5106a(b)(2)(B)(ix).

12. North Carolina’s TANF program is called Work First.

13. See 42 U.S.C. §§ 602(a)(1)(A)(iv); 1320b-7; 671(a)(8); 45 C.F.R. §§ 205.50; 1355.21(a)–(b).

14. See the statutes and regulations cited *supra* note 13.

is allowed under CAPTA and state law. If a disclosure is allowed by CAPTA and state law but not explicitly allowed under Title IV-B or Title IV-E, an agency contemplating disclosure should comply with the Title IV requirements, unless the disclosure is explicitly *required* by CAPTA.<sup>15</sup>

***Title IV-D (Child Support Enforcement)***<sup>16</sup>

Data in the computerized Title IV-D child support enforcement system may be disclosed as follows:

- To the extent necessary to carry out the State IV-D program.
- To State agencies administering programs under (1) Title IV (TANF, Child and Family Services, Foster Care and Adoption Assistance); Title XIX (Medicaid); and Title XXI (Children’s Health Insurance Program) of the SSA or (2) SNAP, to the extent necessary to assist the agencies in carrying out their responsibilities under such programs.

***Food and Nutrition Services (SNAP benefits)***<sup>17</sup>

Information obtained from SNAP applicant or recipient households may be disclosed to the following:

- Persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act, other Federal assistance programs, or federally assisted State programs providing assistance on a means-tested basis to low-income individuals.<sup>18</sup>
- Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in 7 C.F.R. § 272.8(a)(2), to the extent the SNAP information is useful in establishing or verifying eligibility or benefit amounts under those programs.<sup>19</sup>
- Persons directly connected with the administration of the Child Support Enforcement Program under Title IV-D in order to assist in the administration of that program.

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15. To the extent that the records of a Title IV-B agency contain child abuse and neglect reports and records, such information is subject to the confidentiality requirements of CAPTA (42 U.S.C. §§ 5106a(b)(2)(B)(viii), (ix), and (x) and 5106a(c)(4)(B)). If a disclosure is *allowed* by CAPTA but prohibited by Title IV-B, the agency should comply with Title IV-B. However, if a disclosure is *required* by CAPTA, the agency should make the disclosure, even if it is prohibited from doing so by Title IV-B. For example, under CAPTA, DSS is required to share information with any local government entity (or its agent) that has a need for the information to carry out its responsibilities under law to protect children from child abuse and neglect. See U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAMS., *Questions & Answers* § 7.2, in CHILD WELFARE POLICY MANUAL (last visited Apr. 26, 2022), [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp\\_pf.jsp?citID=55](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=55).

16. 42 U.S.C. § 654(26); 45 C.F.R. § 307.13.

17. 7 U.S.C. § 2020(e)(8); 7 C.F.R. § 272.1(c).

18. “Federal assistance program” is not defined in the Food and Nutrition Services regulations. However, a related regulation defines the term “federal assistance program” to mean a program included in the Catalog of Federal Domestic Assistance where funds are transferred from the Federal government to a state. See 31 C.F.R. § 205.2. The Catalog of Federal Domestic Assistance website is now defunct and has been replaced with the System for Award Management (<https://sam.gov/content/assistance-listings>). The System for Award Management lists many assistance programs that would be relevant to a county DSS, including grants to states under CAPTA and Titles IV-B IV-D, and IV-E.

19. Programs required to participate in IEVS include TANF; Medicaid; Unemployment Compensation; and any state program administered under a plan approved under Title I (Old-Age Assistance), Title X (Aid to the Blind), Title XIV (Aid to the Permanently and Totally Disabled—adult categories only), or Title XVI (Social Security Income Program) of the SSA.

**Medicaid**<sup>20</sup>

The use or disclosure of information concerning Medicaid applicants and recipients must be restricted to purposes “directly connected with the administration of the [Medicaid] plan.”<sup>21</sup> Medicaid program administration includes (1) establishing eligibility; (2) determining the amount of medical assistance; (3) providing services for recipients; and (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medicaid plan.<sup>22</sup>

Certain Medicaid information may also be released for purposes of verifying income, eligibility, and the amount of assistance for certain other federally funded programs, subject to an appropriate data-exchange agreement as specified in 42 C.F.R. § 435.945(i). Specifically, a county DSS is required to provide income and eligibility information, as needed for verifying eligibility, to the following programs: TANF; SNAP; Title IV-D Child Support Enforcement; any State program under a plan approved under various subchapters of the SSA (Title I (Old-Age Assistance); Title II (Old Age, Survivors, and Disability Insurance program); Title X (Aid to the Blind); Title XIV (Aid to the Permanently and Totally Disabled); and Title XVI (Social Security Income Program)); and any other insurance-affordability programs.<sup>23</sup> Certain Medicaid-eligible individuals must also be referred to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which may involve some limited information sharing in the case of a county with a consolidated human services agency.<sup>24</sup>

**Children’s Health Insurance Program (CHIP; known in North Carolina as NC Health Choice for Children)**<sup>25</sup>

Individual medical records, and any other health and enrollment information maintained with respect to CHIP enrollees, which identifies particular enrollees can only be disclosed in accordance with the Medicaid confidentiality regulations at 42 C.F.R. §§ 431.300 *et seq.*, described above.

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20. 42 U.S.C. § 1396a(a)(7); 42 C.F.R. §§ 431.300 *et seq.* A Medicaid managed care confidentiality regulation, found at 42 C.F.R. § 438.224, provides that managed care organizations, prepaid inpatient health plans, and prepaid ambulatory health plans must use and disclose individually identifiable health information in accordance with the requirements of the HIPAA Privacy Rule (45 C.F.R. parts 160 and 164, subparts A and E) to the extent that these requirements are applicable. However, 45 C.F.R. § 164.512(k)(6) provides exceptions to certain HIPAA requirements for health plans sharing information with government agencies administering public benefit programs.

21. 42 C.F.R. § 431.301.

22. 42 C.F.R. § 431.302.

23. 42 U.S.C. § 1320b-7(b); 42 C.F.R. § 435.945. There are many requirements regarding the release of this income and eligibility verification information set forth at 42 C.F.R. Part 431, *id.* §§ 435.940 through 435.960, and 42 U.S.C. § 1320b-7. These requirements include the use of secure electronic interfaces to exchange information and ensuring that information is adequately protected against unauthorized disclosure for other purposes. However, a full discussion of these requirements is beyond the scope of this bulletin.

24. 42 C.F.R. §§ 431.635(c)(1)–(3).

25. 42 C.F.R. § 457.1110; *id.* §§ 431.300 *et seq.* In North Carolina, the children’s health insurance program is known as NC Health Choice for Children (Health Choice).

### ***Child Care Subsidy–Child Care and Development Fund (CCDF)***<sup>26</sup>

Confidential information about children and families receiving CCDF assistance and child care providers receiving CCDF funds may be disclosed for purposes of the administration or enforcement of CCDF or other Federal, State, or local programs (subject to any confidentiality requirements imposed by the North Carolina Department of Health and Human Services’ Division of Child Development and Early Education (DCDEE) acting as the “Lead Agency” for CCDF administration).<sup>27</sup>

The funding-related confidentiality requirements for each of the programs described above provide that otherwise protected information may be disclosed for purposes of administering the program at issue. For example, data in the Title IV-D child support enforcement system may be disclosed “to the extent necessary to carry out the State IV-D program.” Likewise, information about individuals receiving TANF (Work First) benefits may be disclosed for purposes of administering the TANF program, while Medicaid information may be disclosed for purposes of providing services for Medicaid recipients. Note that with the exception of the Medicaid regulations, the applicable federal statutes and regulations for other federally funded programs provide very little guidance on what would constitute “administration” of a particular program.

### **Limitation on Internal Sharing of Federal Tax Information**

One important limitation on internal information sharing comes from the Internal Revenue Code, rather than from federal statutes or regulations that are specific to funding for a particular public assistance program or social service. County DSS agencies are permitted to obtain federal tax information (FTI) under various disclosure authorities in the Internal Revenue Code.<sup>28</sup> However, that FTI may not be shared across programs or accessed by employees for unauthorized program uses.<sup>29</sup> Specifically, FTI may only be used for (1) establishing and collecting child support obligations from, and locating, individuals owing such obligations or (2) determining eligibility for, or the correct amount of, benefits under TANF (Work First), Medicaid, SNAP, and certain veterans’ benefits programs.<sup>30</sup> All FTI must be kept confidential, and no employee of a DSS (or local child support enforcement agency, if separate from a DSS) may disclose any tax return or return information obtained in the course of the employee’s work

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26. 45 C.F.R. § 98.15(b)(13) requires a State Plan for CCDF to certify that “[t]here are in effect policies to govern the use and disclosure of confidential and personally identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.” The preamble to the final rule provides further clarification: “[M]any Lead Agencies are working on data sharing across Federal and State programs and it is not our intention to make these efforts more challenging by introducing a new set of confidentiality requirements. This regulatory addition is not intended to preclude the sharing of individual, case level data among Federal and State programs that can improve the delivery of services . . . . It is important that personal information not be used for purposes outside of the administration or enforcement of CCDF, or other Federal, State or local programs[.]”

27. See N.C. DEP’T OF HEALTH & HUM. SERVS., CHILD CARE AND DEVELOPMENT FUND (CCDF) PLAN FOR NORTH CAROLINA FFY 2019-2021, [https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/2/2019-2021\\_Child\\_Care\\_and\\_Development\\_Fund\\_Plan\\_Approved.pdf?ver=2019-02-04-090519-383](https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/2/2019-2021_Child_Care_and_Development_Fund_Plan_Approved.pdf?ver=2019-02-04-090519-383).

28. 26 U.S.C. §§ 6103(l)(6), (7), (8).

29. See Internal Revenue Service, *Protecting Federal Tax Information (FTI) In Integrated Eligibility Systems (IES)*, IRS.GOV (last updated Mar. 30, 2022), <https://www.irs.gov/privacy-disclosure/protecting-federal-tax-information-fti-in-integrated-eligibility-systems-ies>.

30. See *id.*; see also 26 U.S.C. §§ 6103(l)(6), (7), (8), (10).



responsibilities.<sup>31</sup> Additionally, a DSS is not permitted to contract for services that involve the disclosure of FTI to contractors, except for limited disclosure of certain FTI to contractors for child support enforcement purposes.<sup>32</sup>

Table 2 is designed to remind readers of some of the terms and acronyms associated with various federal funding streams.

**Table 2. Quick-Reference Guide to Terms and Acronyms**

<b>CAPTA</b>	The Child Abuse Prevention and Treatment Act
<b>Title IV-A/TANF</b>	Temporary Assistance for Needy Families (known in North Carolina as Work First)
<b>Title IV-B</b>	Child and Family Services
<b>Title IV-D</b>	Child Support Enforcement Program
<b>Title IV-E</b>	Foster Care and Adoption Assistance
<b>SNAP</b>	Supplemental Nutritional Assistance Program (Food and Nutrition Services, formerly known as the Food Stamp Program)
<b>CHIP</b>	Children’s Health Insurance Program (known in North Carolina as NC Health Choice for Children)
<b>CCDF</b>	Child Care and Development Fund (Child Care Subsidy)
<b>FTI</b>	Federal tax information

### What Internal Disclosures Are Allowed by the Funding-Related Federal Laws?

When reading through the various federal requirements for disclosures of information, it can be challenging to determine what the federal funding-related laws described above ultimately allow and how they interact with each other. At a high level, these laws allow the following disclosures with respect to internal information sharing:

1. **Title IV.** Information compiled under Title IV-A, Title IV-B, Title IV-D, and Title IV-E can generally be shared internally for purposes of program administration related to any of those programs and certain other federally funded needs-based assistance programs, subject to the limitation on disclosing FTI. Note that disclosures permitted under Title IV-D to non–Title IV programs are a bit more limited than those permitted under Title IV-A, Title IV-B, and Title IV-E.
2. **CAPTA.** Reports and records made and maintained under CAPTA may be shared internally as permitted by state law or for purposes of carrying out legal responsibilities to protect children from child abuse and neglect. Unlike the regulations for the Title IV programs and SNAP, the CAPTA regulations do not explicitly authorize sharing CAPTA information with Title IV programs or other federally funded needs-based assistance programs. However, CAPTA does allow disclosure of information to “entities or classes of individuals statutorily authorized by the State to receive such information

31. 26 U.S.C. § 6103(a).

32. INTERNAL REVENUE SERV., TAX INFORMATION SECURITY GUIDELINES FOR FEDERAL, STATE AND LOCAL AGENCIES: SAFEGUARDS FOR PROTECTING FEDERAL TAX RETURNS AND RETURN INFORMATION, IRS Publication 1075 (rev. Nov. 2021), <https://www.irs.gov/pub/irs-pdf/p1075.pdf>. Sections 2.C.11.1 and 2.C.11.2 of this IRS publication address restrictions on disclosure of FTI by child support enforcement agencies and local human services agencies.

pursuant to a legitimate State purpose.”<sup>33</sup> In North Carolina, this includes internal sharing of information “from the service record” of a DSS client to other DSS employees for purposes of referrals, supervision, consultation, or determination of eligibility.<sup>34</sup>

3. **SNAP.** Subject to the limitations on disclosing FTI, SNAP information may be shared internally for purposes of administering (a) other Federal assistance programs (including those funded under Title IV-A (TANF), Title IV-B (Child and Family Services), or Title IV-E (Foster Care and Adoption Assistance) of the SSA or under CAPTA); (b) federally assisted State programs providing means-based assistance; (c) the Title IV-D child support enforcement program; or (d) any other programs required to participate in IEVS (if useful in establishing or verifying eligibility or benefit amounts).
4. **Medicaid and NC Health Choice for Children.** Medicaid and NC Health Choice for Children information can only be shared internally in connection with the administration of those programs, with the exception of some permitted disclosures of income and eligibility information for purposes of verifying eligibility for certain other federally funded programs.
5. **Child Care Subsidy.** Subject to DCDEE policies and the limitations on disclosing FTI, information about children and families receiving CCDF assistance and child care providers receiving CCDF funds may be shared internally for purposes of administering or enforcing CCDF or other federal, state, or local programs.

Federal guidance suggests that in many cases, federal law is not intended to be a barrier to appropriately sharing information between federally funded programs. For example, a guidance document from the U.S. Department of Health and Human Services explains:

We also remind title IV-B and IV-E child welfare agencies that there are no specific federal barriers to child welfare agencies exchanging information with TANF agencies. State and tribal child welfare agencies must adhere to specific confidentiality requirements when administering the title IV-B and IV-E programs, but federal statute and regulations for titles IV-B and IV-E allow agencies to disclose confidential information if the disclosure is limited to the specific purposes enumerated in the law (section 471(a)(8) of the Social Security Act and 45 CFR 1355.30(p)(3)). This includes purposes related to the administration of TANF . . . .

Information sharing between TANF jurisdictions and child welfare agencies will foster coordination and collaboration and maximize the resources and services available to families served by both programs. For example, TANF workers may have access to different family contact information than a child welfare agency has, which can help a child welfare worker locate relatives who may be able to provide a temporary or permanent home for a child at risk of

33. 42 U.S.C. § 5106a(b)(2)(viii)(VI).

34. See 10A N.C.A.C. 69, § .0501(b)(1). Though 10A N.C.A.C. 69, § .0501 is a regulation, all regulations must be based upon authority granted by statute. Accordingly, any disclosure authorized by regulation is also technically authorized by statute. The most reasonable interpretation of the “statutorily authorized” language in the CAPTA regulations is that it encompasses regulations that are lawfully promulgated pursuant to statutory authority.

being removed from his or her home or who is placed in foster care. Data sharing will also allow TANF workers to identify if a family is being served by the child welfare agency and therefore prevent duplicative services.<sup>35</sup>

With the exception of FTI, Medicaid information, and NC Health Choice for Children information, federal law provides fairly broad leeway for a county DSS to share information internally between federally funded programs for purposes of program administration, including benefits eligibility determinations. However, some of the disclosures allowed under federal law may be prohibited under North Carolina state law. Federal law is the starting point, but it is not the end of the analysis.

## Internal Information Sharing Permitted Under State Law

### General Rules for Internal Disclosures: The Chapter 69 Regulations

The regulations found in 10A N.C.A.C. Chapter 69 (“the Chapter 69 regulations”) allow for certain internal sharing of social services information for program administration purposes. Under 10A N.C.A.C. 69, § .0501, DSS staff may share confidential information internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Similarly, 10A N.C.A.C. 69, § .0503 allows for information sharing with other county employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs. Under 10A N.C.A.C. 69, § .0503, a DSS is required to evaluate a request for information and only make the disclosure if (1) the need for disclosure is justifiable for the purpose and (2) adequate safeguards are maintained to protect the information from re-disclosure.

Since the Chapter 69 regulations apply broadly to all social services information, a DSS director can allow internal disclosures of information as permitted under 10A N.C.A.C. 69, §§ .0501 and .0503, *unless otherwise prohibited by federal or state law*. Because of the additional protection from disclosure under other federal or state laws, the broad Chapter 69 regulations must be read together with the federal or state law applicable to the specific information at issue. When internal disclosures are permitted under the Chapter 69 regulations, the disclosure should be limited in scope and should only include the minimum information necessary to perform a task permitted under the Chapter 69 regulations (for example, making referrals, determining eligibility, or monitoring a program).

There may be some cases in which the internal information sharing permitted under the Chapter 69 regulations may be prohibited by federal law. For example, the federal regulations governing Medicaid and CHIP (NC Health Choice for Children) information do not allow the majority of a client’s information to be shared for purposes of the administration of *other*

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35. U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILDREN AND FAMILIES, OFF. OF FAM. ASSISTANCE, TANF-ACF-IM-2015-02 (DATA SHARING BETWEEN TANF AND CHILD WELFARE AGENCIES) (Sept. 25, 2015), <https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-im-2015-02-data-sharing-between-tanf-and-child-welfare-agencies>.

federally funded programs—only for the administration of the relevant program itself.<sup>36</sup> Likewise, some internal information sharing permitted under the Chapter 69 regulations may be limited by the prohibition on sharing FTI across programs.<sup>37</sup>

For the most part, however, the funding-specific federal laws described above allow for internal information sharing for purposes of administering other federally funded programs and services, in a manner that generally aligns with the Chapter 69 regulations. For example, the state regulations allowing internal information sharing under Chapter 69 are not in conflict with CAPTA or Title IV of the SSA because both CAPTA and Title IV allow information sharing with other federally funded government programs for administrative purposes (including establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients).<sup>38</sup> This means that federal law and the Chapter 69 regulations would generally allow internal information sharing within a DSS for program administration purposes from a federally funded economic services program to a federally funded child welfare program, or from a federally funded child welfare program to a federally funded economic services program.

However, as discussed below, other North Carolina laws *outside of* the Chapter 69 regulations may restrict internal sharing of certain categories of social services information that would otherwise be allowed under federal law and the Chapter 69 regulations.

#### **Additional Information Sharing Considerations for Consolidated Human Services Agencies**

The analysis regarding the permissibility of internal disclosures becomes more complex when a county's DSS is part of a consolidated human services agency (CHSA), since in these cases there may be requests for information across different human services functions within the CHSA (e.g., public health, transportation, and veterans' services). When DSS staff share information with a different function or department within a CHSA, it should generally be treated more like an *external* disclosure to a different agency. This is because 10A N.C.A.C. 69, § .0501—which allows internal disclosures for referrals, supervision and consultation, or eligibility determinations—only speaks of sharing information with “other employees of the county department of social services.” However, DSS staff working in a CHSA could look to 10A N.C.A.C. 69, § .0503, which allows for information sharing with other *county* employees (not only DSS employees) for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs. If the disclosure is permitted under 10A N.C.A.C. 69, § .0503 (and not otherwise prohibited by other state or federal law), DSS staff could share information with a different function or department within the CHSA.<sup>39</sup> In some

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36. There is an exception to this general rule for Medicaid, as certain information can be shared for purposes of verifying income, eligibility, and the amount of assistance for certain other federally funded programs, subject to an appropriate data-exchange agreement. *See supra* note 23.

37. *See supra* note 30.

38. *See* 42 U.S.C. § 5106(a)(b)(2)(B)(viii)(VI) (CAPTA regulation allowing disclosure pursuant to state statute); 45 C.F.R. § 205.50(1)(i) (regulation aligned with Title IV that allows disclosures related to administration and auditing of government programs). The Title IV regulations explicitly allow this type of information sharing, while CAPTA does so by means of allowing disclosures that are statutorily authorized by a state (which could include 10A N.C.A.C. 69, § .0501 or § .0503).

39. Information sharing for purposes of making referrals and determining eligibility is permitted under 10A N.C.A.C. 69, § .0501, but not explicitly permitted under 10A N.C.A.C. 69, § .0503. However, 10A N.C.A.C. 69, § .0503 does allow information to be disclosed for the purpose of “facilitating the administration of other state and federal programs.” One reasonable interpretation of this language is

rare instances, DSS staff could be *required* by federal law to disclose information to a different department or function within the CHSA. For example, Medicaid regulations require that certain eligible individuals must also be referred to the WIC program, which could involve DSS staff sharing limited information to public health staff within a CHSA for referral purposes.<sup>40</sup>

## Limitations on Internal Information Sharing Under State Law

### Specific Statutes and Rules Limiting Disclosure of CPS and APS Information

If a DSS director determines that internal information sharing is allowed under federal law and under the N.C.A.C Title 10A, Chapter 69 regulations that broadly apply to all social services information, the next step is to determine whether any other state laws might *prohibit* such information sharing.

This determination is the most difficult when it involves CPS information and certain APS information, which receive heightened confidentiality protections under North Carolina law. North Carolina law does not explicitly address how the more protective restrictions for CPS information and APS information are meant to be read in tandem with the disclosures allowed under 10A N.C.A.C. 69, §§ .0501 and .0503. These statutes are *in pari materia* and should be read together and harmonized with one another.<sup>41</sup> Applying that reading, the state statutes and regulations requiring heightened protection for CPS information and certain APS information *override* the general authority for internal information sharing provided under the Chapter 69 regulations.

### Child Protective Services Information

G.S. 7B-302(a1) requires that *all* CPS information be held “in the strictest confidence.” The confidentiality requirement of this statute applies as soon as DSS receives a report of suspected child abuse, neglect, dependency, or death due to maltreatment. It covers (1) all information obtained in the report, (2) the reporter’s identity, and (3) all information gathered by DSS following the report. CPS information can only be disclosed in certain limited circumstances identified in G.S. Chapter 7B (e.g., exceptions enumerated in G.S. 7B-302(a1), (e); G.S. 7B-2901(b); G.S. 7B-3100) and 10A N.C.A.C. Chapter 70. Program administration is not one of the permitted circumstances, meaning that some of the broader exceptions for internal DSS information sharing in 10A N.C.A.C. 69, §§ .0501 and .0503 arguably do not apply to CPS information.

When might internal sharing of CPS information within a DSS be permitted?

- **Protection of a juvenile.** One key exception to the prohibition on disclosure in G.S. 7B-302(a1) is that DSS can and should disclose CPS information to any federal, state, or local government entity (or any agent of such an entity) to protect a child from abuse or

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that it also permits information sharing for the purpose of referrals and eligibility determinations, as such activities are a significant part of program administration. However, this is a determination that should be made on a case-by-case basis and with the advice of an attorney.

40. 42 C.F.R. §§ 431.635(c)(1)–(3).

41. See *in pari materia*, BLACK’S LAW DICTIONARY 944 (11th ed. 2019) (“[S]tatutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject.”).

neglect.<sup>42</sup> This could include internal sharing of information for purposes of protecting a child. Any confidential information disclosed for purposes of protecting a child must remain confidential with the party to whom it is disclosed and must only be re-disclosed for purposes directly connected with carrying out that party's mandated responsibilities.<sup>43</sup>

- **Assessment of a report or provision of protective services.** Another important exception to the basic prohibition on disclosure in G.S. 7B-302(a1) allows internal information sharing for purposes of providing or arranging protective services for a child. Under G.S. 7B-302(e), DSS may consult with any agency or individual when performing any duties related to the (1) assessment of an abuse, neglect, or dependency report or (2) provision or arrangement for protective services.<sup>44</sup> Under 10A N.C.A.C. 70A, § .0113(b), DSS may, without a court order, share information from the protective services case record with agencies or individuals that provide or facilitate the provision of protective services to a child.<sup>45</sup> These provisions in the law allow CPS staff to share information with other programs or units within DSS as necessary for providing protecting services for a child or assessing a report of abuse, neglect, or dependency.<sup>46</sup>

#### **Adult Protective Services Information**

APS information is subject to the general confidentiality protections that apply to all social services information under G.S. 108A-80, meaning that it can typically be shared internally in a limited fashion for program administration purposes as permitted under 10A N.C.A.C. 69, §§ .0501 and .0503. However, there are a few specific categories of APS information that receive heightened confidentiality protection under other regulations or statutes.

- **Information about the identity of the reporter (or about anyone who provides information to DSS in the course of an APS investigation).** 10A N.C.A.C. 71A, § .0802 only allows DSS to disclose the reporter's identity in three specific situations: (1) when a court orders disclosure; (2) when the disclosure is to the Division of Health Service Regulation in response to Division staff requesting information to carry out an investigation; and (3) when the disclosure is to the district attorney's office or to law enforcement officials involved with a criminal investigation of alleged abuse, neglect, or exploitation of a disabled adult.
- **Any "specific findings" included in DSS's evaluation report, when evaluating any report of abuse, neglect, or exploitation.** Per 10A N.C.A.C. 71A, § .0803, these specific findings can only be disclosed (1) pursuant to the disabled adult's authorization; (2) pursuant to a

42. G.S. 7B-302(a1)(1). Notably, the statute uses the phrase "a juvenile" rather than "the juvenile," meaning that CPS information may be disclosed when necessary to protect *any* child, not merely the child who is the subject of the information being disclosed.

43. *Id.*

44. "Protective services" include the screening of reports and the performance of assessments, casework, or other counseling services to help parents, guardians, or other caretakers and the court to prevent abuse or neglect; to improve the quality of child care; to be more adequate parents, guardians, or caretakers; and to preserve and stabilize family life. G.S. 7B-300.

45. The contents of the protective services case record are described at 10A N.C.A.C. 70A, § .0112.

46. Though this bulletin focuses on internal information sharing, note that G.S. 7B-302(e) also provides a mechanism for DSS staff to *obtain* confidential information from any public or private agency or individual if that information may, in the director's opinion, be relevant to the assessment or provision of protective services, unless the information is protected by attorney-client privilege or such disclosure is prohibited by federal law.

court order; (3) to other persons or agencies as necessary to provide protective services; (4) to the district attorney or law enforcement agencies upon request, but only if evidence of abuse, neglect, or exploitation is found; (5) to federal, state, and law enforcement agencies when the results of the protective services evaluation indicate violations of other laws enforced by those agencies; or (6) to certain agencies within the North Carolina Department of Health and Human Services (NCDHHS) when a county DSS has substantiated a report of abuse, neglect, or exploitation. The regulations do not define what constitutes “specific findings.” It is likely that this refers to some (or all) of the Community Evaluation form developed and circulated to counties by NCDHHS’s Division of Aging and Adult Services.<sup>47</sup> At a minimum, it likely includes the Case Findings section of the Community Evaluation form, which includes determinations about disability status, abuse, neglect, or exploitation, and whether the individual is in need of protective services. However, a more-conservative approach would be to treat all (or the vast majority) of the form as “specific findings” subject to 10A N.C.A.C. 71A, § .0803, given that the entire form involves detailed assessments of the individual’s functioning, mental and physical capacity, medications, living environment, and potential evidence of abuse, neglect, and exploitation.

- **Any copies of a disabled adult or older adult’s financial records.** Per G.S. 108A-116(d), these records may only be disclosed pursuant to court order.

### The Need for Internal Firewalls Around Protective Services Information

The North Carolina CPS and APS statutes and regulations referenced above generally only refer to “the department” keeping records and information confidential. There is no mention of particular units or divisions *within* a DSS, so it is unclear how these heightened confidentiality standards should apply to internal sharing of information. The most prudent and cautious interpretation of these state laws is that a DSS should have an internal firewall around CPS information and certain APS information. In other words, a disclosure from the CPS or APS unit to another unit within DSS (for example, CPS to Economic Services) should be treated more like an *external* disclosure and should have to meet one of the exceptions under state law for permissible disclosures of CPS or APS information. For example, CPS information could be disclosed internally within a DSS in order to protect a child from abuse or neglect or to facilitate the provision of protective services.<sup>48</sup> Similarly, the “specific findings” of an APS evaluation report could be disclosed as necessary to provide protective services to a vulnerable adult.<sup>49</sup> However, even with those permitted disclosures, the information shared internally should be as limited as possible and narrowly tailored to the purpose of protecting the child or adult.<sup>50</sup>

47. N.C. Dep’t of Health & Hum. Servs., Div. of Aging & Adult Servs., *Policies and Manuals*, “Community Evaluation” (DAAS-0005) NCDHHS.GOV (rev. Mar. 2021) (downloadable form), [https://policies.ncdhhs.gov/divisional/aging-and-adult/adult-protective-services/forms/adult-protective-services-electronic-forms/daas-0005\\_communityevaluation\\_electronic\\_03-24-21.docx/view](https://policies.ncdhhs.gov/divisional/aging-and-adult/adult-protective-services/forms/adult-protective-services-electronic-forms/daas-0005_communityevaluation_electronic_03-24-21.docx/view).

48. G.S. 7B-302(a1)(1); -302(a1)(e); 10A N.C.A.C. 70A, § .0113(b).

49. 10A N.C.A.C. 71A, § .0803.

50. Though this concept is not explicitly stated in the applicable state statutes and regulations regarding social services information, HIPAA provides a helpful mental framework for thinking through how to make disclosures of other types of sensitive and/or confidential information. Under HIPAA, a covered entity “must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.” 45 C.F.R. § 164.502(b). Even in situations where HIPAA is inapplicable, it provides a helpful guiding principle: to ask first whether

A prudent, cautious approach would be to act as if information firewalls exist around each particular unit or program within a DSS (particularly around CPS and APS) and then to evaluate internal information sharing requests on a case-by-case basis to determine what is allowed based on the type of information and type of request at issue.

What about 10A N.C.A.C. 69, §§ .0501 and .0503, which allow internal sharing of confidential social services information for purposes of making referrals, providing supervision and consultation, determining eligibility for services or programs, or facilitating program administration? A conservative reading is that these regulations do not authorize disclosures of CPS information (or of the specific categories of APS information described above) where such disclosures are not explicitly permitted by the statutes and regulations that give CPS and APS information heightened confidentiality protection. For example, 10A N.C.A.C. 69, § .0503 allows social services information to be shared within a DSS for purposes of “facilitating the administration of other state and federal programs,” but G.S. 7B-302(a1) has no such exception for the disclosure of CPS information. Accordingly, one could argue that G.S. 7B-302(a1) prohibits the CPS unit of a DSS from disclosing CPS information to DSS employees working on other programs (e.g., Medicaid, Work First, SNAP) if the disclosure is merely for purposes of administering those programs, even though such a disclosure appears at first blush to be permitted by 10A N.C.A.C. 69, § .0503.

Basic principles of statutory interpretation support the argument that the heightened protections for CPS information and certain APS information override the general authority for internal information sharing provided under the Chapter 69 regulations. As mentioned previously, according to the canon of construction known as *in pari materia*, different statutes dealing with the same subject matter must be read together and “reconciled, if possible, so that effect may be given to each.”<sup>51</sup> Both G.S. 108A-80 (the enabling statute for the Chapter 69 regulations) and G.S. 7B-302(a1) deal with the same subject matter: the confidentiality of social services information. However, G.S. 7B-302(a1) governs a specific *subset* of social services information—CPS information—and provides more narrow limitations on when such information can be disclosed. Both statutes and their associated regulations must be read in tandem to determine when disclosures of CPS information are permitted.

Another canon of statutory interpretation, *expressio unius est exclusio alterius*, provides that the mention of specific exceptions in a statute implies the exclusion of others not mentioned.<sup>52</sup> Accordingly, G.S. 7B-302(a1) should be read as prohibiting the disclosure of CPS information in circumstances that are not explicitly addressed as exceptions in the statute—including circumstances in which disclosure would otherwise be allowed under the broader Chapter 69 regulations. G.S. 7B-302(a1) lists several exceptions allowing the disclosure of CPS information in specific circumstances but does *not* include such an exception for program administration purposes. Conversely, G.S. 108A-80 *does* allow confidential social services information to be disclosed for “purposes directly connected with the administration of the programs of public assistance and social services.” When read together and reconciled, G.S. 7B-302(a1) serves as a *limitation* on the broader information sharing allowed under G.S. 108A-80 and the Chapter 69 regulations. In other words, DSS should only make internal disclosures of CPS information

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the information being disclosed is “the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.”

51. See *Great S. Media, Inc. v. McDowell Cty.*, 304 N.C. 427, 430–31 (1981).

52. See *Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 303 (1987).

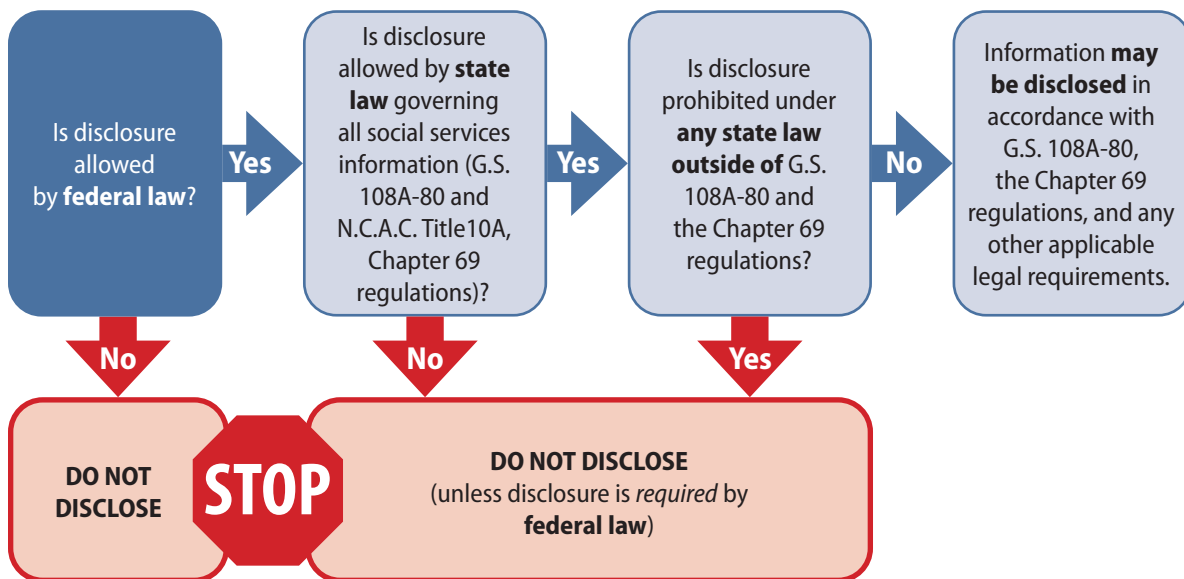


if the exceptions in those regulations also align with one of the exceptions for disclosure found in G.S. 7B-302(a1), G.S. 7B-302(e), G.S. 7B-2901, G.S. 7B-3100, or in 10A N.C.A.C. 70A, § .0113. Likewise, in the APS context, G.S. 108A-116(d) and 10A N.C.A.C. 71A, §§ .0802 and .0803 should generally be read as *limitations* on the internal information sharing that is otherwise allowed pursuant to the Chapter 69 regulations.

Further support for this interpretation is found in a 1995 North Carolina Attorney General's opinion, which concluded that certain disclosures permitted by G.S. Chapter 108A (the overarching social services statutes) would not include CPS case files.<sup>53</sup> The opinion stated that DSS board members do not have a right to access CPS files, despite the fact that G.S. 108A-11 specifically grants the DSS board access to *all* social services records.<sup>54</sup> The 1995 opinion lends credence to the interpretation that a disclosure which is permitted solely for "administrative purposes" under the Chapter 69 regulations (the implementing regulations for G.S. 108A-80) would be prohibited in the case of CPS information or certain APS information, which is subject to heightened standards of confidentiality.

Finally, there is also an ethical argument to be made for keeping CPS information and certain APS information subject to heightened internal protection. This information is often highly safety-sensitive. An overly broad internal disclosure could lead to a real risk of harm to the child or adult at issue. Moreover, keeping this information subject to strict internal protections also helps to maintain the public's trust in a county DSS. A loss of public trust related to disclosure of sensitive information could make some individuals hesitant to report suspected abuse or neglect or cause others to be less cooperative and forthcoming in a CPS or APS investigation. Strong internal safeguards and information sharing procedures within a DSS serve to protect a county's most vulnerable residents and allow the agency to better serve the community at large.

**Figure 1. Process for Making Information Sharing Determinations**



53. Access to Records by Social Services Boards, Advisory Op. N.C. Att'y Gen. Michael F. Easley (Apr. 20, 1995), <https://ncdoj.gov/opinions/access-to-records-by-social-services-board/>.

54. *Id.*

## Hypothetical Information Sharing Scenarios

For purposes of exploring the interplay between federal and state laws regarding confidentiality in the context of internal information sharing, consider the hypothetical scenarios below. These cases are intended for illustrative purposes only, since determinations of this nature are highly fact-specific. Accordingly, DSS directors and staff should consult with their agency's attorney regarding information disclosure questions, even if those questions arise in circumstances that are similar to these scenarios.

### Scenario 1

Income Maintenance caseworkers become suspicious that there is a high rate of fraud in their county among individuals accessing SNAP (Food and Nutrition Services) and TANF (Work First) benefits. Accordingly, the caseworkers ask the DSS director for access to all CPS case files and request to sit in on CPS staff meetings regarding CPS cases. The Income Maintenance caseworkers believe that this access to information about CPS cases will assist them in determining whether some of the individuals involved in those cases may be committing benefits fraud. Is this permissible?

### Discussion of Scenario 1

No, this is not permissible because the information sharing is prohibited by G.S. 7B-302(a1). The analysis used to make this determination may follow this path:

#### *Step 1: Federal Law*

Arguably, sharing Title IV-B (Child and Family Services) information with TANF and SNAP programs could be permitted under the Title IV-B regulations, though this would require a conclusion that fraud detection is part of "program administration" for the TANF and SNAP programs. It could also be permitted under CAPTA, but only if it is "statutorily authorized" by North Carolina law (see below).

#### *Step 2: State Law Generally Applicable to All Social Services Information (G.S. 108A-80 and the Chapter 69 Regulations)*

- 10A N.C.A.C. 69, § .0501(b) allows DSS staff to share confidential information "from the service record" internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Does fraud detection fall within those limited permitted purposes? Likely not.<sup>55</sup>
- 10A N.C.A.C. 69, § .0503 allows for information sharing with other county employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs, provided that the need for disclosure of confidential information is justifiable for the purpose. Fraud detection could potentially fall within the definition of "monitoring" or "facilitating the administration of" the SNAP or TANF program. However, is the need for this broad disclosure of confidential CPS information "justifiable for the

<sup>55</sup> In order for this exception to be applicable, one would have to stretch the interpretation of "determination of eligibility" as a permitted purpose for disclosure. This phrase is most likely intended to address initial eligibility determinations, not after-the-fact investigations of eligibility in the nature of a fraud investigation.

purpose”? No, not in this scenario. These Income Maintenance caseworkers are asking for broad access to CPS staff meetings and CPS files where highly sensitive information regarding vulnerable children is being shared. In other words, this is not even a targeted request for specific information—it is a fishing expedition for fraud, casting a wide net in hopes of rooting out relevant information.

### ***Step 3: Other State Laws Outside of G.S. 108A-80 and the Chapter 69 Regulations***

The analysis of this disclosure request could probably stop at Step 2, above, since the disclosure is likely not permitted under 10A N.C.A.C. 69, §§ .0501(b) or .0503. However, even if this disclosure was hypothetically permitted under one of those exceptions, it is prohibited under G.S. 7B-302(a1), which requires that *all* CPS information be held “in the strictest confidence” and only be disclosed in certain limited circumstances.

### **Scenario 2**

APS staff within a DSS are investigating a case involving suspected abuse and financial exploitation of Cindy, an adult with a disability. As part of the investigation, DSS petitions the district court to issue a subpoena directing Cindy’s bank to provide Cindy’s financial records to DSS. The bank complies and provides DSS with the financial records. Later, Income Maintenance staff ask APS staff for access to those same financial records for purposes of determining Cindy’s eligibility for SNAP (Food and Nutrition Services) benefits. May APS staff share the financial records internally without Cindy’s consent?

### **Discussion of Scenario 2**

No, APS staff may not share the financial records. The analysis used to make this determination may follow this path:

#### ***Step 1: Federal Law***

Confidentiality of APS information is governed primarily by state law. Counties may receive some funding to support APS programs through the federal Social Services Block Grant, but this funding does not appear to impose any legal duties to protect the confidentiality of information collected or maintained by APS programs. Accordingly, federal law does not provide an answer to this question.

#### ***Step 2: State Law Generally Applicable to All Social Services Information (G.S. 108A-80 and the Chapter 69 Regulations)***

10A N.C.A.C. 69, § .0501(b) allows DSS staff to share confidential information “from the service record” internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Sharing these financial records for purposes of determining Cindy’s eligibility would likely fit within this exception. However, that is not the end of the analysis.

### ***Step 3: Other State Laws Outside of G.S. 108A-80 and the Chapter 69 Regulations***

This is an instance where a state law *other than* G.S. 108A-80 and the Chapter 69 regulations provides heightened protection for the records at issue. Per G.S. 108A-116(d), financial records obtained from a disabled adult's bank by DSS in the course of investigating suspected financial exploitation can only be disclosed pursuant to a court order. Accordingly, APS staff should *not* share these records with Income Maintenance staff for purposes of determining Cindy's eligibility for benefits.

### **Scenario 3**

Following a report of child neglect to the CPS unit of a DSS, a social worker is arranging in-home services for a family. These in-home services are primarily funded by Title IV-E of the SSA. The social worker needs to determine whether the family is currently receiving SNAP (Food and Nutrition Services) benefits, TANF (Work First), and/or Medicaid so that she can connect the family with these benefits if they are not already receiving them. May the Economic Services Division of the same DSS share this information with the social worker?

### **Discussion of Scenario 3**

It is probably permissible for the Economic Services Division to share this information with the social worker. The analysis used to make this determination may follow this path:

#### ***Step 1: Federal Law***

Multiple federal requirements are involved here because of the many different funding sources for the programs at issue. Each one must be examined in turn.

- **Title IV-E.** Presumably, the social worker will have to disclose the names of the family receiving in-home services to the Economic Services Division in order to receive information about whether the family is currently receiving benefits. The confidentiality regulations for Title IV-E allow such information to be shared for purposes of administering Title IV-E itself, as well as for purposes of administering Title IV-A (TANF), Title XIX (Medicaid), and any other federal program which provides assistance directly to individuals on the basis of need. This would include SNAP. Accordingly, Title IV-E's confidentiality requirements do not prohibit this disclosure.
- **TANF.** Information regarding TANF recipients can be shared for purposes of administering the Title IV-E program, meaning that federal law allows the Economic Services Division to share with the social worker whether the family is receiving TANF benefits.
- **SNAP.** Information regarding SNAP benefit recipients can be shared with persons directly connected with the administration of "other Federal assistance programs," which would include Title IV-E services. Therefore, federal law allows the Economic Services Division to share with the social worker whether the family is receiving SNAP benefits.
- **Medicaid.** Information regarding whether the family is currently enrolled in Medicaid may be shared for purposes of Medicaid program administration, which includes establishing eligibility and providing services for recipients. Therefore, federal law arguably allows the Economic Services Division to share with the social worker whether the family is currently enrolled in Medicaid.

**Step 2: State Law Generally Applicable to All Social Services Information (G.S. 108A-80 and the Chapter 69 Regulations)**

- 10A N.C.A.C. 69, § .0501(b) allows DSS staff to share confidential information “from the service record” internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Accordingly, the social worker could disclose the names of the family members to the Economic Services Division for purposes of referring them to the TANF, SNAP, and Medicaid programs and determining their eligibility for those programs.
- Likewise, 10A N.C.A.C. 69, § .0501(a) allows DSS staff to share confidential information “from the public assistance record” internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Additionally, 10A N.C.A.C. 69, § .0503 allows for internal information sharing for the purpose of facilitating the administration of other state and federal programs. Accordingly, staff members in the Economic Services Division could share information with the social worker for purposes of ensuring that the family was receiving (or was eligible for) TANF, SNAP, and/or Medicaid programs.

**Step 3: Other State Laws Outside of G.S. 108A-80 and the Chapter 69 Regulations**

- The only potential limitation on the social worker’s ability to share the names of the family members with the Economic Services Division would be G.S. 7B-302(a1), which requires that all CPS information received by DSS be held in the strictest confidence. Arguably, though, G.S. 7B-302(a1) does not prohibit the narrow internal disclosure described in this scenario. The social worker would not have to disclose any confidential information regarding the child, the report of neglect, the reporter, the subsequent investigation of the report, or the types of services being provided to the family to determine from the Economic Services Division whether this family is eligible for or receiving economic services.<sup>56</sup>
- Even if the names of the family members were protected from such an internal disclosure under G.S. 7B-302(a1), the social worker should be able to share this information with the Economic Services Division pursuant to G.S. 7B-302(e) and 10A N.C.A.C. 70A, § .0113(b). Under G.S. 7B-302(e), DSS is allowed to consult with any agency or individual when performing any duties related to the (1) assessment of an abuse, neglect, or dependency report or (2) provision or arrangement for protective services. Under 10A N.C.A.C. 70A, § .0113(b), DSS may, without a court order, share information from the case record with agencies or individuals that provide or facilitate the provision of protective services to a child.

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<sup>56</sup> Drawing this conclusion involves a challenging question of interpretation regarding how G.S. 7B-302(a1) is intended to apply and what type of information it covers, as well as how it interacts with 10A N.C.A.C. 69, § .0501(b). However, a contrary interpretation concluding that G.S. 7B-302(a1) would prohibit even the most-narrow possible disclosure for program referral purposes in a case with facts like this one would severely impede delivery of necessary services to children and families and would prevent collaborations across government programs (including collaboration that is expressly encouraged by federal agencies). *See supra* note 36.

#### Scenario 4

Miriam goes to DSS to apply for SNAP (Food and Nutrition Services) benefits for herself and her 4-year-old son, Sam. While gathering information from Miriam to determine SNAP eligibility, an Income Maintenance caseworker learns that Sam's biological father is living in a different home and is not paying child support. Can the caseworker provide information about Miriam and Sam to the Child Support Enforcement (Title IV-D) Division within the DSS where she works?

#### Discussion of Scenario 4

Yes, the caseworker may share information about Miriam and Sam with the Child Support Enforcement Division of the DSS. The analysis used to make this determination may follow this path:

##### ***Step 1: Federal Law***

Under 7 C.F.R. § 272.1(c)(iv), information obtained from SNAP applicant or recipient households may be disclosed to persons directly connected with the administration of the Child Support Enforcement Program under Title IV-D in order to assist in the administration of the Child Support Enforcement Program. Accordingly, Title IV-D's confidentiality requirements do not prohibit this disclosure.

##### ***Step 2: State Law Generally Applicable to All Social Services Information (G.S. 108A-80 and the Chapter 69 Regulations)***

10A N.C.A.C. 69, § .0501(b) allows DSS staff to share confidential information "from the public assistance record" internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs. Sharing information gathered during the application process for SNAP benefits for purposes of referring Miriam to child support enforcement services would be permitted under this provision.

##### ***Step 3: Other State Laws Outside of G.S. 108A-80 and the Chapter 69 Regulations***

Under these facts, no report of abuse, neglect, or dependency has been made regarding Sam, so the heightened confidentiality protections for CPS information found in G.S. Chapter 7B (e.g., G.S. 7B-302(a1)) are not applicable. Likewise, Miriam has no involvement with APS, so the heightened confidentiality protections for APS information in G.S. 108A-116(d) and 10A N.C.A.C. 71A, §§ .0802 and .0803 are not applicable. There is also nothing in this fact pattern to suggest that other North Carolina confidentiality laws (such as those governing disclosure of certain mental health records or communicable disease information) would be implicated. Accordingly, since sharing this information is permitted under federal and state law, the caseworker may make the internal disclosure to the Child Support Enforcement Division.

## Conclusion

Decisions about when and how to share confidential information within a DSS are remarkably complex. This area of the law is often unclear and subject to varying interpretations. Moreover, each decision to make an internal disclosure is highly fact-specific. Questions to ask include the following:

- Which program, service, or funding source is involved?
- Who will be receiving the information within DSS?
- Why is this information being requested?
- Who is making the disclosure?
- What kind of information is at issue?
- How will the information be used?

These are all questions that a DSS director should be asking when determining whether a staff member can internally share information across units, divisions, or programs. Most importantly, a DSS director should always consult with the department's attorney for legal advice regarding how state and federal confidentiality laws apply to specific situations.

## Appendix. Other Resources

There are resources available for navigating the complex web of federal and state laws applicable to internal sharing of confidential information within a DSS. Please keep in mind that some of these resources do not reflect recent updates to federal and state law, including changes to Chapter 69 of Title 10A of the N.C.A.C. that occurred in 2019. Accordingly, please cross-check all citations to statutes and regulations against current law.

The Administration for Children and Families has developed a [Confidentiality Toolkit](https://www.acf.hhs.gov/sites/default/files/documents/acf_confidentiality_toolkit_final_08_12_2014_0.pdf) to help states and local jurisdictions navigate a number of federal laws that impact the disclosure and sharing of social services information. U.S. DEP'T OF HEALTH & HUM. SERVS. ADMIN. FOR CHILD. & FAMS., CONFIDENTIALITY TOOLKIT: A RESOURCE TOOL FROM THE ACF INTEROPERABILITY INITIATIVE (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/documents/acf\\_confidentiality\\_toolkit\\_final\\_08\\_12\\_2014\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/documents/acf_confidentiality_toolkit_final_08_12_2014_0.pdf).

The [Social Services Confidentiality Research Tool](#) maintained by the School of Government is a searchable database of legal resources and authorities relevant to the confidentiality of social services information.

School of Government faculty member Aimee N. Wall addresses when DSS can disclose confidential social services information in [DISCLOSING PROTECTIVE SERVICES INFORMATION: A GUIDE FOR NORTH CAROLINA SOCIAL SERVICES AGENCIES](#) (UNC School of Government, 2015).

School of Government faculty member Sara DePasquale addresses confidentiality and sharing of CPS information in Chapter 14 of [ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS IN NORTH CAROLINA](#) (UNC School of Government 2022).

Former School of Government faculty member John L. Saxon addresses issues involving confidentiality of social services information in a series of bulletins published by the School of Government:

- [Confidentiality and Social Services \(Part I\): What Is Confidentiality?](#), SOC. SERVS. LAW BULL. No. 30 (UNC Institute of Government, Feb. 2001)
- [Confidentiality and Social Services \(Part II\): Where Do Confidentiality Rules Come From?](#), SOC. SERVS. LAW BULL. No. 31 (UNC Institute of Government, May 2001)
- [Confidentiality and Social Services \(Part III\): A Process for Analyzing Issues Involving Confidentiality](#), SOC. SERVS. LAW BULL. No. 35 (UNC Institute of Government, Apr. 2002)