

Disclosing COVID-19 Information to the Public

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Some of the relevant laws

- NC Public Records Law: G.S. Ch. 132
- HIPAA Privacy Rule: 45 C.F.R. Parts 160 & 164
- State confidentiality laws, including G.S. 130A-12 (health department records with PHI) and 130A-143 (communicable disease confidentiality)

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NC Public Records Law (G.S. Ch. 132)

- As a general rule, a NC local government agency's records are public.
- There are some exceptions to this general rule in the NC General Statutes.
- NC public health statutes contain some exceptions for some local health department records, including exceptions for:
 - Records that contain information that is protected by HIPAA (G.S. 130A-12).
 - Records that contain individually identifiable communicable disease information (G.S. 130A-143).
- When there is an exception, a record is not required to be disclosed pursuant to a public records request.

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HIPAA Privacy Rule (45 C.F.R. Parts 160 & 164)	
Rule basics <ul style="list-style-type: none"> Applies to covered entities or covered components of a hybrid entity. Defines protected health information (PHI). Provides the rules for when PHI may be used or disclosed for different purposes, including public health purposes. Provides the rules for how PHI may be de-identified. 	Definition of protected health information (PHI) <ul style="list-style-type: none"> Individually identifiable information that relates to any of the following: <ul style="list-style-type: none"> An individual's health status or condition Provision of health care to an individual Payment for the provision of health care to an individual Information is individually identifiable if there is a reasonable basis to believe the information can be used to identify an individual. PHI is protected for 50 years from the individual's date of death.

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State Confidentiality Laws

G.S. 130A-12 (Local health department records generally)

- Health department records containing privileged medical information or PHI protected by HIPAA are confidential and not public records.
- Disclosure rules generally aligned with HIPAA.
- PHI in the records is protected for 50 years from the date of the individual's death.

G.S. 130A-143 (Communicable disease records & information)

- Records and information that identify a person who has or may have a reportable communicable disease are strictly confidential and not a public record.
- Disclosure rules are set out in the statute and are generally stricter than HIPAA.
- Does not apply to information about deceased persons.

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Disclosures allowed by G.S. 130A-143 (partial list)

- Disclosures with the written consent of the individual the record/information identifies.
- Disclosures of information for statistical purposes, provided no person can be identified.
- Disclosures for treatment, payment, or health care operations, on the same terms as HIPAA allows those disclosures.
- Disclosures that:
 - Are necessary to protect the public health, **and**
 - Are made in accordance with NC's rules establishing communicable disease control measures.

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Hybrid entity

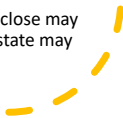
- A HIPAA-covered entity that has both covered functions and non-covered functions
- In other words, the entity has some programs/services/activities/functions that have to comply with HIPAA and some that don't

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Hybrid entity designations & COVID-19 disclosures

- Individually identifiable health information is covered by HIPAA **only if** it is created, received, or maintained by a HIPAA covered entity (or BA) or a covered component of a hybrid entity.
- Local health departments have some discretion in what to include in their covered components, so HIPAA coverage may vary from one department to the next.
- What local departments may disclose may also be different from what the state may disclose.



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Long-term care facilities

- Issue: Whether to release facility names and data about outbreaks
- Key question: Will the information identify an individual, or could it reasonably be used to identify an individual who has or may have COVID-19? If yes:
 - G.S. 130A-143 applies. The information is not a public record but may be disclosed if disclosure is necessary to protect the public health and is made in accordance with the communicable disease control measure rules.
 - HIPAA and G.S. 130A-12 may also apply if the information is created, received or maintained by a HIPAA covered component. Such information may be disclosed by a public health authority for public health purposes that are authorized by law (see 45 CFR 164.512(b)).

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Disclosing information to employers

- Question: Can a local health department tell an employer that an employee has COVID-19, in order to control the spread of disease within the employer's facility or establishment?
- Answer: Yes.

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10A NCAC 41A .0211

- A local health director may reveal the identity and diagnosis of a person with COVID-19 to an employer when necessary to prevent transmission in the facility or establishment for which the employer is responsible.
- The health director must instruct the employer to protect the confidentiality of the information.
- The employer must require the employee to comply with any control measures the health director gives the employee.

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Disclosing county data

- HIPAA-covered entities/components must de-identify information that is derived from PHI.

HIPAA Privacy Rule De-identification Methods

- Expert Determination § 164.514(d)(1)**
 - Apply statistical or scientific techniques
 - Very small risk that anticipated recipient could identify individual
- Safe Harbor § 164.514(b)(2)**
 - Removal of 18 types of identifiers
 - No actual knowledge related information can identify individual

Source: US DHHS, Guidance on De-identification of Protected Health Information (November 2012)

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**De-identification:
Safe harbor
method**

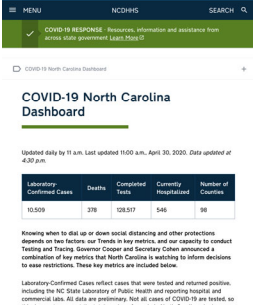
Requires stripping 18 specific identifiers, including all of the following:

- Names & addresses
- **Geographic subdivisions smaller than a state**
- Dates related to individual (birthdate, treatment date(s), others)
- Telephone & fax numbers
- E-mail, URLs, IP address
- SSN, medical record number, other numbers
- And more—see the rule

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How can county data be shared?

- A local health department may share county data received from state
- A local health department that is a hybrid entity may be able to share data, provided it is not created, received, or maintained by a covered component
- A local health department may be able to de-identify county data using the expert determination method



Laboratory Confirmed Cases	Deaths	Completed Tests	Currently Hospitalized	Number of Counties
10,509	278	108,517	546	98

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Resources

School of Government

- COVID-19 resources: sog.unc.edu/coronavirus
- Coates' Canons Local Government Law Blog: canons.sog.unc.edu

NC Department of Health and Human Services

- Data dashboard: <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count>
- All resources: ncdhhs.gov/coronavirus

US DHHS Office for Civil Rights, HIPAA & COVID-19

- <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

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