People, Pandemics, and Privacy

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A. INTRODUCTION

Individually identifiable health information is ordinarily considered private. A complex web of federal and state laws and regulations have developed to protect the privacy of individuals' health information, including the HIPAA Privacy Rule,[1] laws creating privileges for communications between health care providers and their patients,[2] laws protecting the confidentiality of medical records maintained by public agencies,[3] and laws that protect specific types of health information that is considered particularly sensitive—such as information about communicable diseases.[4]

Sometimes public health officials need to obtain or disclose individually identifiable health information in order to control the spread of diseases that threaten the public's health. Recognizing this, the statutory and regulatory schemes that provide privacy protection for individuals contain exceptions expressly allowing the disclosure of individually identifiable health information to public health officials, so that they may obtain it for disease control purposes. Among other things, these exceptions allow health care providers and others to comply with state laws that require them to report certain diseases to public health officials and to permit access to their records when necessary for public health investigation or control of cases or outbreaks. The same statutes and regulations also allow public health officials to disclose limited information in order to engage in activities such as contact tracing and notification, and to keep the public apprised of health conditions and threats in the community.

This paper addresses some of the issues that have arisen in North Carolina during the first nine months of the COVID-19 pandemic, as public health officials have had to make decisions about releasing information to the public or to particular individuals, such as law enforcement officers or employers. It reviews two confidentiality laws that provide much of North Carolina's legal framework for disclosures of individually identifiable health information that are necessary to protect the public health. It then explains how those laws apply to several types of disclosures that have been sought from or made by public health

[1] Code of Federal Regulations (hereafter C.F.R.) Title 45, Parts 160 and 164.
[2] E.g., N.C. Gen. Stat. (hereafter G.S.) § 8-53.
[3] E.g., G.S. § 130A-12.
[4] E.g., G.S. § 130A-143.

agencies during the COVID-19 pandemic. It concludes with a brief discussion of the balance the laws attempt to strike to allow public health officials to simultaneously protect individual privacy and the public's health.

B. LEGAL FRAMEWORK

This section will focus on two confidentiality laws that frequently apply to individually identifiable information about COVID-19: the federal HIPAA Privacy Rule, and North Carolina's communicable disease confidentiality law. Additional confidentiality laws may apply, depending on the provider or facility that possesses the information or other circumstances.

1. HIPAA Privacy Rule (45 C.F.R. Parts 160 & 164)

The HIPAA Privacy Rule governs how covered entities may use or disclose protected health information. The term *covered entity* is defined to include health plans, health care clearinghouses, and health care providers that transmit health information electronically in connection with a transaction that is subject to the HIPAA regulations. *Protected health information (PHI)* is defined as information created, received, or maintained by a covered entity that identifies an individual (or that can be used to identify an individual), and that relates to any of the following: an individual's health status or condition, provision of health care to an individual, or payment for the provision of health care to an individual. 45 C.F.R. § 160.103.

The general rule under HIPAA is that an individual's written authorization is required to disclose the individual's PHI. 45 C.F.R. § 164.508. However, there are a number of exceptions, including exceptions that allow disclosures without the individual's written authorization when disclosure is required by law, or made for particular public health activities, 45 C.F.R. § 164.512. Among other things, these exceptions allow covered entities to disclose information to public health authorities in order to comply with communicable disease reporting laws, and they allow public health authorities that are HIPAA-covered entities to disclose individually identifiable health information to prevent or control the spread of communicable disease, when such disclosure is authorized by state law.

HIPAA imposes a minimum necessary standard on many disclosures of PHI that are made without the individual's written authorization. 45 C.F.R. §§ 164.502(b); 164.514(d). In brief, the minimum necessary standard requires covered entities to limit uses and disclosures of PHI to the minimum amount that is needed to accomplish the purpose of the use or disclosure. The standard applies to disclosures made for public health activities under section 164.512(b).

2. North Carolina Communicable Disease Confidentiality Law (N.C. Gen. Stat. [hereafter G.S.] § 130A-143)

North Carolina's communicable disease confidentiality statute makes information and records that identify a person who has or may have a reportable communicable disease strictly confidential and not a public record. A communicable disease is covered by this law if it has been made reportable in administrative rules adopted by the North Carolina Commission for Public Health, or if it is the subject of a State Health Director's temporary order requiring reports.[5]

G.S. § 130A-143 allows disclosure ("release") of the information it protects only with the written consent of the individual identified, or in specified other circumstances. Disclosures that may be made without the written consent of the individual include:

- Disclosure of information for statistical purposes, provided no individual can be identified. G.S. 130A-143(1).

- Disclosure of information when necessary to protect the public health, provided the disclosure is made as provided in communicable disease control measure rules adopted by the Commission for Public Health. G.S. 130A-143(4).

- Disclosures made by a state or local public health official to a law enforcement official for any of the following purposes: (i) to prevent or lessen a serious or imminent threat to the health or safety of a person or the public, to the extent that such disclosure is allowed by section 164.512(j) of the HIPAA Privacy Rule and not otherwise authorized by G.S. 130A-143(4); (ii) to enforce the state communicable disease laws or the state public health bioterrorism laws; or to investigate a terrorist incident using nuclear, biological, or chemical agents. Law enforcement officials who receive information under this provision may re-disclose it only as provided in the law. G.S. 130A-143(7a).[6]

The law also authorizes disclosures among federal, state, local, and tribal public health authorities; disclosures for purposes of treatment, payment, research, or health care

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[5] *See* G.S. § 130A-134 (directing the Commission to establish by rule a list of reportable diseases and conditions); N.C. Admin. Code (hereafter N.C.A.C.) Title 10A, Subchapter 41A, sec. .0101 (list of reportable diseases and conditions); G.S. § 130A-141.1 (authorizing the State Health Director to issue a temporary order requiring health care providers to report specified information when necessary to the investigation or surveillance of a communicable disease that presents a danger to the public health).

[6] The provision authorizing disclosure of information to law enforcement was amended in April 2020 by S.L. 2020-3 (S 704), sec. 4.17. The legislation also made other technical and clarifying changes to N.C.G.S. 130A-143.

operations as provided in the HIPAA Privacy Rule; disclosures pursuant to a court order or subpoena issued by a judicial official; and disclosures for certain other limited purposes related to public health activities or research.

3. Interaction between HIPAA and state law

The HIPAA Privacy Rule partially preempts state laws that are contrary to it. 45 C.F.R. Part 160, Subpart B. A full discussion of HIPAA preemption is beyond the scope of this paper. In general, state laws that are less stringent than HIPAA are preempted, but state laws that are more stringent are not. In addition, state laws that provide for the reporting of disease or injury are not preempted, nor are state laws that provide for public health surveillance, investigation, or intervention. 45 C.F.R. § 160.203.

Both the HIPAA Privacy Rule and G.S. § 130A-143 may affect the disclosure of information about COVID-19, when the information is created, received, or maintained by a HIPAA-covered entity. In general, the state law is stricter than HIPAA regarding whether and to whom information may be disclosed, and is therefore a "more stringent" law that prohibits some disclosures that HIPAA would allow. On the other hand, HIPAA is sometimes more prescriptive than the state law regarding conditions that must be met before a disclosure authorized by the state law may be made. For example, G.S. §130A-143(2) allows disclosure of individually identifiable communicable disease information with the written permission of the individual, but it does not prescribe the form or procedure for obtaining written permission. If the entity making such a disclosure is also subject to HIPAA, the written permission should comply with HIPAA's requirements for obtaining written authorization on a form containing particular elements.[7] HIPAA covered entities must adhere to their obligations under both HIPAA and the state law when disclosing individually identifiable information about reportable communicable diseases such as COVID-19.

C. PUBLIC HEALTH AUTHORITY TO ACQUIRE INFORMATION ABOUT COVID-19

1. Communicable disease reporting

North Carolina law requires physicians, laboratories, and specified others to report communicable diseases and conditions identified by the state Commission for Public Health to public health officials. It also allows, but does not require, medical facilities to make such reports. A person who makes a report is immune from any civil or criminal liability that might otherwise arise under state law. G.S. § 130A-134 et seq.; 10A N.C.A.C. 41A .0101-.0107.

[7] *See* 45 C.F.R. § 164.508.

The HIPAA Privacy Rule expressly allows HIPAA-covered entities to disclose PHI in order to make the reports that are authorized or required by these state laws. One provision of the rule specifically authorizes disclosures that are required by law, including state statutes and regulations, provided the covered entity limits the disclosure to that which is required. 45 C.F.R. § 164.512(a); *see also* § 160.103 (defining "required by law"). The Privacy Rule also allows HIPAA-covered entities to make certain disclosures for public health activities, specifically including disclosures to public health authorities that are "authorized by law to collect or receive such information for the purpose of preventing or controlling disease … including, but not limited to, the reporting of disease." 45 C.F.R. § 164.512 (b)(1)(i).

COVID-19 is an emerging disease, which means that it is new to human populations. When it was first identified in late 2019, it was not included in North Carolina's list of reportable diseases and conditions because it was previously unknown. North Carolina law provides a mechanism for quickly making emerging diseases or syndromes reportable: the State Health Director may issue a temporary order requiring health care providers to make reports. G.S. § 130A-141.1. On February 3, State Health Director Elizabeth Tilson issued a temporary order requiring physicians and laboratories to report suspected or confirmed novel coronavirus infections.[8] (COVID-19 is caused by infection with a novel coronavirus known as SARS-CoV-2.) On March 23, Dr. Tilson issued another temporary order, requiring physicians to report suspected or confirmed deaths from novel coronavirus infection.[9] Such temporary orders expire after 90 days but allow time for administrative rulemaking processes to take place if a disease or condition needs to be made permanently reportable. Emergency, temporary, and permanent rulemaking processes followed, and novel coronavirus infections and deaths are now included in the list of reportable communicable diseases and conditions.[10]

The validity of North Carolina's mandatory disease reporting scheme was challenged in *Act-Up Triangle v. Comm'n for Health Services*,[11] which challenged an administrative rule change that required the names of individuals who tested positive for HIV to be reported to public health officials. Previously, information about positive tests had been reported

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[8] The February 3, 2020 order is archived at https://epi.dph.ncdhhs.gov/cd/coronavirus/SHD%20Order%20-%20novel%20coronavirus%20signed.pdf.

[9] The March 23, 2020 order is archived at https://files.nc.gov/covid/documents/guidance/healthcare/SDH-order---novel-coronavirus-causing-death---final.pdf.

[10] Rulemaking is governed by the North Carolina Administrative Procedure Act. G.S. Ch. 150B, Art. 2A. For more information about the process of making an emerging disease reportable, see Jill D. Moore, *How will we know if COVID-19 is in North Carolina? A look at the state's communicable disease reporting laws*, Coates' Canons NC Local Government Law Blog (March 2, 2020), at https://canons.sog.unc.edu/how-will-we-know-if-covid-19-is-in-north-carolina-a-look-at-the-states-communicable-disease-reporting-laws/.

[11] 345 N.C. 699 (1997).

anonymously. The N.C. Supreme Court upheld the name-reporting requirement, concluding that the disclosure of information it required did not constitute an impermissible violation of individuals' privacy.[12]

2. Communicable disease investigations

A North Carolina statute requires health care providers and others to allow public health officials to examine and copy records in their possession, including medical records, if the State Health Director or a local health director determines that the records pertain to

- The diagnosis, treatment, or prevention of a communicable disease or condition for a person who is infected, exposed, or reasonably suspected of having been infected or exposed; or
- The investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

G.S. § 130A-144(b).

A public health official who seeks to examine or copy records under this provision must present proper identification and should also be prepared to show and explain the law that permits the official to have access.[13] A health care provider who permits access to records pursuant to this statute is immune from any civil or criminal liability that might otherwise be imposed under state law. G.S. § 130A-144(c). The disclosure is allowed under HIPAA as a disclosure that is required by law, 45 C.F.R. § 164.512(a), and as a disclosure to public health authorities that are authorized by law to collect or receive such information for the purpose of preventing or controlling disease, 45 C.F.R. § 164.512 (b)(1)(i).

D. PUBLIC HEALTH AUTHORITY TO DISCLOSE INFORMATION ABOUT COVID-19

Public health officials who obtain communicable disease information for public health purposes must maintain the confidentiality of the information in accordance with G.S. § 130A-143 and any other laws that may apply to it, potentially including HIPAA if the information is received or maintained by a HIPAA-covered entity.[14] These laws do not

[12] *Id.* at 712 ("we do not find that the proposed confidential testing program violates plaintiffs' privacy rights in their personal medical information").
[13] G.S. 130A-144(f); see also 45 C.F.R. 164.514(h), the HIPAA provision that requires covered entities to verify the identity and authority of a person requesting PHI.
[14] North Carolina local health departments may be hybrid entities for HIPAA compliance purposes, meaning that some of their activities and functions are covered by HIPAA but others are not. Those activities and functions constitute the covered component of the entity. A full explanation of hybrid entities is beyond the

prohibit all disclosures, however. To the contrary, they specifically allow certain disclosures that are necessary to protect the health of the public or an individual. They also provide for disclosure of information that has been de-identified.

1. Disclosures that are necessary to protect public health

Public health officials sometimes determine that they need to disclose information about a communicable disease or outbreak in order to protect the public health. A disclosure may need to be made to a particular individual, such as a person who has been specifically identified through contact tracing as a close contact of a person with COVID-19. Or a disclosure may need to be made to a larger group of people, if necessary to allow individuals who may have been exposed to self-identify so that they can seek testing and take other appropriate actions. For example, when several cases are associated with a mass gathering, a health department may notify the public of the outbreak so that those in attendance at the mass gathering can learn of their potential exposure. When such notifications are made, public health officials limit the amount of the information that is disclosed to that which is necessary to satisfy the purpose of the disclosure.

The HIPAA Privacy Rule allows disclosure of PHI to persons who may be at risk of contracting a disease, but only if such disclosure is authorized by law. 45 C.F.R. § 164.512(b)(1)(iv). North Carolina law authorizes disclosures of communicable disease information when necessary to protect the public health, provided such disclosure is made as provided by the communicable disease control rules adopted by the Commission for Public Health. G.S. § 130A-143(4). Because COVID-19 is an emerging disease, at present there are no communicable disease control measure rules that are specific to it. However, that does not mean there are no rules that apply.[15] There are two general control measure rules that are likely to apply when determining whether a disclosure fits under this provision of the state's communicable disease confidentiality law.

The first of these is a rule that allows public health officials to disclose information to certain persons if the disclosure is necessary to prevent the spread of disease within a facility or establishment for which the person is responsible. 10A N.C.A.C. 41A .0211. This rule

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scope of this paper; for more information, see 45 C.F.R. 164.105. A health department that is a hybrid entity must comply with HIPAA as well as G.S. 130A-143 when disclosing information, if the information is created, received, or maintained by a covered component.

[15] *See* Jill Moore, *How Does North Carolina Law Provide for Communicable Disease Control Measures for Emerging Diseases Like COVID-19?*, Coates' Canons NC Local Government Law Blog (July 10, 2020), at https://canons.sog.unc.edu/how-does-north-carolina-law-provide-for-communicable-disease-control-measures-for-emerging-diseases-like-covid-19/.

allows the name and diagnosis of a person with certain reportable communicable diseases—excluding sexually transmitted diseases and HIV, but including COVID-19—to be disclosed to an employer, a school principal, a child day care operator, or the superintendent or director of a private or public institution, hospital, or jail, when necessary to prevent the spread of disease within the facility or establishment. The recipient of the information must be instructed in protecting the confidentiality of the information and may not disclose it further except as provided by G.S. § 130A-143.

The primary communicable disease control measure rule that applies to diseases for which specific control measure rules have not been established is 10A N.C.A.C. 41A .0201. This rule allows communicable disease control measures to be derived from other sources, usually guidelines or recommended actions published by the U.S. Centers for Disease Control & Prevention (CDC). It also allows control measures to be devised by public health officials, who must adhere to certain principles set out in the rule.[16]

CDC guidelines sometimes address the disclosure of information about a communicable disease. For example, contact tracing guidelines specifically direct contact tracers not to disclose an infected person's name:

> Efforts to locate and communicate with clients and close contacts must be carried out in a manner that preserves the confidentiality and privacy of all involved. This includes never revealing the name of the client to a close contact unless permission has been given (preferably in writing), and not giving confidential information to third parties (e.g., roommates, neighbors, family members).[17]

Another example of CDC guidance addressing disclosure of information about COVID-19 is discussed in the section that follows on disclosures to law enforcement. In most circumstances, however, CDC guidelines are silent about disclosure of information and public health officials must rely on state control measure rules such as 10A N.C.A.C. 41A. 0211, or

[16] 10A N.C.A.C. 41A .0201(b). Among other things, the principles state that control measures must be reasonably expected to decrease the risk of disease transmission, must be consistent with recent scientific and public health information, and must be appropriate to the particular disease's route(s) of transmission. For example, physical isolation is identified as an appropriate control measure for a disease that is transmitted by the airborne route, but not for a disease that is transmitted by the bloodborne route.
[17] Centers for Disease Control and Prevention, Case Investigation and Contact Tracing Guidance, Confidentiality and Consent, at https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/Confidentiality-Consent.html.

on state or locally devised control measures based on the principles set out in 10A N.C.A.C. 41A .0201.

2. Disclosures to law enforcement

First responders, including law enforcement officials, may be at particular risk of being exposed to the virus that causes COVID-19. First responders need information about using personal protective equipment (PPE) or other actions they should take to protect their own health and safety, as well as the health and safety of those they interact with as part of their work. In order to assure this protection, first responders sometimes need specific information about the health status of a person with whom they interact. The amount of information that is needed varies, and the amount that is allowed to be disclosed under confidentiality laws varies accordingly.

Early in the COVID-19 pandemic, the CDC published a guidance document for 911 and other emergency call centers on its website.[18] The document addressed screening questions that should be asked before emergency services are dispatched and the PPE that first responders should use when responding to calls involving individuals who were known or suspected to have COVID-19 or their residences. The document also concluded that 911 call centers and similar public safety answering points (PSAPs) could provide information about an individual's known or suspected coronavirus infection to first responders on a per-call basis. The CDC guidance did not analyze confidentiality laws in reaching this conclusion. In North Carolina, it was nevertheless possible to conclude that disclosures made in accordance with the CDC guidance were permitted under G.S. 130A-143(4), because they were necessary to the public health and could be made in accordance with the state communicable disease control measure rule that incorporates by reference CDC guidance.[19]

In late March, the U.S. DHHS's Office for Civil Rights (OCR), the HIPAA oversight agency, also released guidance that included information about disclosures of individually

[18] The original guidance was published on the CDC's website in March 2020 and is on file with the author. For an updated version of the guidance, see *Interim Recommendations for Emergency Medical Services (EMS) Systems and 911 Public Safety Answering Points/Emergency Communication Centers (PSAP/ECCs) in the United States During the Coronavirus Disease (COVID-19) Pandemic* (updated July 15, 2020), at https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html.

[19] For a discussion of whether North Carolina's communicable disease confidentiality law permitted disclosures to first responders based this CDC guidance document, see Jill Moore, *Disclosing Information about People with COVID-19 to First Responders,* Coates' Canons NC Local Government Law Blog (March 24, 2020), at https://canons.sog.unc.edu/disclosing-information-about-people-with-covid-19-to-first-responders/.

identifiable information in emergency circumstances.[20] Among other things, the OCR guidance stated that individually identifiable information about a person with known or suspected COVID-19 could be released to first responders, including law enforcement, under a provision of the HIPAA Privacy Rule that allows disclosures of PHI that are necessary to prevent or lessen a serious and imminent threat to a person or the public. At the time OCR's guidance was released, North Carolina's communicable disease confidentiality law did not provide for disclosures of communicable disease information in order to prevent or lessen a serious or imminent threat. Because the state law is more stringent than HIPAA, it appeared a disclosure that relied on this particular provision was not allowed.

In May 2020, the North Carolina General Assembly amended the state statute to address this issue.[21] As it now reads, G.S. 130A-143(7a) allows the state Department of Health and Human Services or a local health department to release information to a law enforcement official for any of three purposes:

- To prevent or lessen a serious or imminent threat to a person or the public, to the same extent such disclosure is permitted by HIPAA and not otherwise permitted by G.S. 130A-143(4) (allowing disclosures that are necessary to protect public health and made as provided in communicable disease rules);
- To enforce the communicable disease control laws or public health bioterrorism laws in G.S. Ch. 130A; or
- To investigate terrorism using nuclear, biological or chemical agents.

The law restricts redisclosure by law enforcement officials who receive information under this provision, providing that the official shall not disclose the information further except when necessary to enforce the communicable disease control laws or public health bioterrorism laws in G.S. Ch. 130A; when necessary to conduct an investigation of a terrorist incident using nuclear, biological or chemical agents; or when state or local public health

[20] U.S. Department of Health & Human Services, Office for Civil Rights, *COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, other first responders and public health authorities* (undated), at https://www.hhs.gov/sites/default/files/covid-19-hipaa-and-first-responders-508.pdf.

[21] N.C. Session Law 2020-3 (S 704), sec. 4.17. For more information about the legislative changes, see Jill Moore, *New Legislation: Disclosing Communicable Disease Information to Law Enforcement to Prevent or Lessen a Serious Threat,* Coates' Canons NC Local Government Law Blog (May 13, 2020), at https://canons.sog.unc.edu/new-legislation-disclosing-communicable-disease-information-to-law-enforcement-to-prevent-or-lessen-a-serious-threat/.

officials seek the law enforcement official's assistance in preventing or controlling the spread of the disease and expressly authorize the disclosure as necessary to that purpose.

Disclosures to law enforcement to prevent or lessen a serious or imminent threat are allowed only to the same extent that such disclosure would be permitted by 45 C.F.R. 164.512(j), a provision of the HIPAA Privacy Rule. Under this HIPAA provision, protected health information (PHI) may be disclosed when the disclosing entity has a good faith belief that disclosure of the information is necessary to prevent a serious or imminent threat to a person or the public, and the disclosing entity acts consistently with law and ethical standards. Such a disclosure may be made to a person reasonably able to prevent or lessen the threat, including the target of the threat. A separate HIPAA provision known as the minimum necessary standard applies to a disclosure made under 45 C.F.R. 164.512(j). That standard states that disclosure of information protected by HIPAA must be limited to the minimum amount of information necessary to accomplish the purpose of the disclosure.

3. Disclosure of information that is not identifiable

Public health officials are responsible for keeping other government officials and the general public informed about health conditions in the community. This may include disclosing statistical information about communicable diseases. Both HIPAA and the North Carolina communicable disease confidentiality law allow disclosure of information that does not identify individuals. However, whether information is individually identifiable can be a complicated question.

a. HIPAA

If the entity that discloses the information is a HIPAA-covered entity and the information is derived from PHI, the information must be de-identified in accordance with HIPAA's de-identification standard. 45 C.F.R. 164.514(a).[22] The de-identification standard provides two methods for de-identifying PHI, which are commonly known as the "safe harbor" method and the "expert determination" method.

Safe harbor. The safe harbor method requires a covered entity to remove 18 specific identifiers from the PHI. The identifiers that must be removed include (but are not limited to) names, birth dates, addresses, telephone numbers, email addresses and similar unique

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[22] See also U.S. DHHS, Office for Civil Rights, Guidance Regarding Methods for De-Identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability (HIPAA) Privacy Rule, at https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html.

identifiers, and all geographic subdivisions smaller than a state (with a limited exceptions for partial zip codes, provided a population threshold is met).

Expert determination. The expert determination method requires a person who has knowledge and experience in generally accepted statistical and scientific principles and methods for rendering information not individually identifiable. The expert must apply the statistical and scientific principles and methods to determine whether PHI has bee de-identified to a degree that "the risk is very small that the information could be used, alone or in conjunction with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information." 45 C.F.R. 164.514(a)(1)(i). The expert must document the methods used and the results of the analysis.

b. State law

The North Carolina communicable disease confidentiality law allows release of medical or epidemiological information for statistical purposes, provided that no person can be identified from the information released. N.C.G.S. 130A-143(1). Unlike HIPAA, the state law does not specify methods that can be used for rendering information de-identified.

E. BALANCING INDIVIDUAL PRIVACY AND PUBLIC INFORMATION NEEDS

Public health officials sometimes need to disclose information about communicable disease in order to protect the public from a specific threat, such as a case or outbreak of COVID-19 associated with a mass gathering. Public health officials also routinely make information about diseases in the population available to health care providers, elected officials, or the general public, as part of their role in assessing the community's health and keeping the public informed.

At the same time, public health officials must protect individual privacy. This is both a legal and an ethical obligation.[23] Communicable disease information can be highly sensitive. There are many examples in history of communicable diseases of all types carrying stigma or resulting in adverse consequences for individuals.[24] Because of this, people who suspect they have a communicable disease may be reluctant to seek diagnosis or treatment if they

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[23] For more information about ethics in a pandemic, see UNC Professor James Thomas' Pandemic Ethics dashboard, at pandemicethics.org. The ethics associated with public communications, including the ethical obligation to protect the rights of individuals, are addressed at https://pandemicethics.org/communication-with-the-public/.

[24] *See, e.g.,* Williams J., Gonzalez-Medina D, & Le Q, *Infectious diseases and social stigma,* 4 Applied Technologies & Innovations 58 (April 2011) (reviewing the history of stigma and assessing stigma during the 2009 novel H1N1 influenza pandemic).

fear the information will become public.[25] Maintaining confidentiality can therefore be seen as a kind of communicable disease control measure in itself, because it promotes the detection of communicable disease—an essential step in controlling its spread.[26]

F. CONCLUSION

Both HIPAA and the North Carolina communicable disease confidentiality law allow public health officials to acquire, use, and disclose information to carry out communicable disease control activities, including investigations and interventions. However, they also establish limits on the use and disclosure of individually identifiable information in order to protect the privacy of the individuals to whom the information pertains. This combination of permissions and restrictions strikes a balance between individuals' interest in privacy and the public's interest in remaining informed about significant public health threats.

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[25] *See, e.g.,* Gostin L.O. & Friedman E.A., *A retrospective and prospective analysis of the western African Ebola virus epidemic*, 385 Lancet 1902 (May 2015) (addressing reluctance to seek health care during the 2014 Ebola epidemic in western Africa).

[26] Indeed, in 1997, the North Carolina Supreme Court made clear North Carolina's confidentiality law was a critical element of the state's overall communicable disease control program. In *Act-Up Triangle v. Comm'n for Health Services*, 345 N.C. 699, 712 (1997), the Court upheld a state rule requiring the reporting of the names of individuals with HIV only *after* concluding that the state confidentiality law was sufficient to guard against unauthorized public disclosure of the information. ("We conclude that the statutory security provisions are adequate to protect against potential unlawful disclosure which might otherwise render the confidential HIV testing program confidentially infirm.").