

## **G.S. 108A-80 and Chapter 69 Regulations**

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### **§ 108A-80. Confidentiality of records.**

(a) Except as provided in subsections (b) and (b1) of this section, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties except for the purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and regulations, and the rules of the Social Services Commission or the Department.

(b) The Department shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all recipients of Work First Family Assistance in Standard Program Counties and State-County Special Assistance, their addresses, and the amounts of the monthly grants. An Electing County whose checks are not being issued by the State shall furnish a copy of the recipient check register monthly to its county auditor showing a complete list of all recipients of Work First Family Assistance in the Electing County, their addresses, and the amounts of the monthly payments. These registers shall be public records open to public inspection during the regular office hours of the county auditor, but the registers or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a Class 1 misdemeanor.

(b1) The Department may share confidential information concerning a person receiving public assistance or social services with a local school administrative unit and with the Department of Public Instruction. Disclosure is limited to that information necessary to establish, coordinate, or maintain appropriate educational services for the person receiving public assistance or social services.

(c) Any listing of recipients of benefits under any public assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed public assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a Class 1 misdemeanor.

(d) The Social Services Commission may adopt rules governing access to case files for social services and public assistance programs, except the Medical Assistance Program. The Secretary of the Department of Health and Human Services shall have the authority to adopt rules governing access to medical assistance case files.

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

### **SECTION .0100 – GENERAL PROVISIONS**

#### **10A NCAC 69 .0101 DEFINITIONS**

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

- (1) "Client" means any applicant for, or recipient of, public assistance or services, or someone who makes inquiries, is interviewed, or is or has been otherwise served to some extent by the agency. For purposes of this Subchapter, someone acting responsibly for the client in accordance with agency policy is subsumed under the definition of client.
- (2) "Agency" means the state Division of Social Services and the county departments of social services, unless separately identified.
- (3) "Client information" or "client record" means any information, whether recorded or not and including information stored in computer data banks or computer files, relating to a client which was received in connection with the performance of any function of the agency.
- (4) "Director" means the head of the state Division of Social Services or the county departments of social services.
- (5) "Delegated representative" means anyone designated by the director to carry out the responsibilities established by the rules in this Subchapter. Designation is implied when the assigned duties of an employee require access to confidential information.
- (6) "Court order" means any oral order from a judge or a written document from a judicial official which directs explicitly the release of client information.
- (7) "Service provider" means any public or private agency or individual from whom the agency purchases services, or authorizes the provision of services provided or purchased by other divisions of the Department of Human Resources.

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

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

### **SECTION .0200 – SAFEGUARDING CLIENT INFORMATION**

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

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

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

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

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

- (a) The agency shall provide a secure place with controlled access for the storage of records. Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized access to the storage area.
- (b) Only authorized individuals may remove a record from the storage area and the authorizing individual shall be responsible for the security of the record until it is returned to the storage area.
- (c) The agency shall establish procedures to prevent accidental disclosure of client information from automated data processing systems.

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

The director shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy to and provide training for all persons with access to client information.

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

- (a) Individuals employed by the agency and governed by the State Personnel Act are subject to suspension, dismissal or disciplinary action for failure to comply with the rules of this Subchapter.
- (b) Individuals other than employees, including volunteers and students who are agents of the Department of Health and Human Services who have access to client information and fail to comply with the rules in this Subchapter shall be denied access to confidential information and may be subject to dismissal or termination of relationship with the agency.
- (c) Individuals other than employees but including volunteers and students who are agents of the Department of Health and Human Services and who have access to client information shall be liable in the same manner as employees.

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

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

Confidentiality of information about himself is the right of the client. Upon written or verbal request the client shall have access to review or obtain without charge a copy of the information in his records with the following exceptions:

- (1) information that the agency is required to keep confidential by state or federal statutes or regulations.
- (2) confidential information originating from another agency as provided for in Rule .0102 of this Subchapter.
- (3) information that would breach another individual's right to confidentiality.

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

The agency shall provide access as defined in Rule .0301 of this Subchapter as promptly as feasible but no more than five working days after receipt of the request.

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

(a) When the director or a delegated representative determines on the basis of the exceptions in Rule .0301 of this Subchapter to withhold information from the client record, this reason shall be documented in the client record.

(b) The director or a delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in Rule .0301 of this Subchapter the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.

(c) When a delegated representative determines to withhold client information, the decision to withhold shall be reviewed by the supervisor of the person making the initial determination.

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

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

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

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

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

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

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

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

- (a) As a part of the application process for public assistance or services, the client shall be informed of the need for and give consent to the release of information necessary to verify statements to establish eligibility.
- (b) As a part of the application process for Aid to Families with Dependent children, and State or County Special Assistance for Adults, the client shall be informed of the requirement for listing of the public assistance recipient's name, address, and amount of the monthly grant in a public record open to public inspection during the regular office hours of the county auditor.
- (c) No individual shall release any client information which is owned by the state Division of Social Services or the county departments of social services, or request the release of information regarding the client from other agencies or individuals without obtaining a signed consent for release of information. Disclosure without obtaining consent shall be in accordance with Section .0500 of this Subchapter.

### **10A NCAC 69 .0402 CONSENT FOR RELEASE OF INFORMATION**

- (a) The consent for release of information shall be on a form provided by the state Division of Social Services or shall contain the following:
  - (1) name of the provider and the recipient of the information;
  - (2) the extent of information to be released;
  - (3) the name and dated signature of the client;
  - (4) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
  - (5) length of time the consent is valid.
- (b) The client may alter the form to contain other information which may include but is not limited to:
  - (1) a statement specifying the date, event or condition upon which the consent may expire even if the client does not expressly revoke the consent;
  - (2) specific purpose for the release.

### **10A NCAC 69 .0403 PERSONS WHO MAY CONSENT TO THE RELEASE OF INFORMATION**

The following persons may consent to the release of information:

- (1) the client;
- (2) the legal guardian if the client has been adjudicated incompetent;
- (3) the county department of social services if the client is a minor and in the custody of the county department of social services.

### **10A NCAC 69 .0404 INFORMED CONSENT**

Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- (1) contents to be released;
- (2) that there is a definite need for the information;
- (3) that the client can give or withhold the consent and the consent is voluntary;

- (4) that there are statutes and regulations protecting the confidentiality of the information.

#### **10A NCAC 69 .0405 PERSONS DESIGNATED TO RELEASE CLIENT INFORMATION**

Directors and their delegated representatives, as defined, may release client information in accordance with rules in Section .0400 of this Subchapter.

#### **10A NCAC 69 .0406 DOCUMENTATION OF RELEASE**

Whenever client information is released on the basis of a consent as defined in .0402 of this Subchapter, the director or delegated representative shall place a copy of the signed consent in the appropriate client record.

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

#### **10A NCAC 69 .0501 DISCLOSURE WITHIN THE AGENCY**

(a) Client information from the public assistance record may be disclosed without the consent of the client under the following circumstances:

- (1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;
- (2) to other county departments of social services when the client moves to that county and requests public assistance;
- (3) between the county departments of social services and the state Division of Social Services for purposes of supervision and reporting.

(b) Client information from the service record may be disclosed without the consent of the client under the following circumstances:

- (1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;
- (2) to another county department of social services when that county department of social services is providing services to a client who is in the custody of the county department of social services;
- (3) to another county department of social services to the extent necessary to facilitate the provision of a service requested by referring county department of social services;
- (4) between the county department of social services and the state Division of Social Services for purposes of supervision and reporting.

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

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

- (1) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices;
- (2) a description of how the study will be conducted and how the findings will be used;
- (3) a presentation of the individual's credentials in the area of investigation;

- (4) a description of how the individual will safeguard information;
- (5) an assurance that no report will contain the names of individuals or any other information that makes individuals identifiable.

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

Client information may be disclosed without the consent of the client to federal, state, or county employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose and that adequate safeguards are maintained to protect the information from re-disclosure.

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

Client information may be disclosed without the consent of the client for purposes of complying with other state and federal statutes and regulations.

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

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

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

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

**10A NCAC 69 .0507 DOCUMENTATION OF DISCLOSURE**

Whenever client information is disclosed in accordance with Section .0500 of this Subchapter, the director or delegated representative shall ensure that documentation of the disclosure is placed in the appropriate client record.

**10A NCAC 69 .0508 PERSONS DESIGNATED TO DISCLOSE INFORMATION**

Directors and their delegated representatives, as defined, may disclose client information in accordance with Section .0500 of this Subchapter.