

Medical Confidentiality Laws & Communicable Disease Control in North Carolina

Jill Moore, MPH, JD
UNC Institute of Government
July 2005

I. Obtaining Confidential Patient Information for Communicable Disease Control Purposes

A. State laws requiring NC health care providers to disclose patient information to public health for communicable disease purposes

1. *Laws requiring reports:*

- a. Physicians must report known or suspected cases or outbreaks of reportable communicable diseases or conditions to the local health department. GS 130A-135.
 - i. The list of reportable communicable diseases and conditions is in the NC Administrative Code. 10A NCAC 41A.0101.
- b. The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in the use of health care services, or other health-related information when the information is necessary to investigate or conduct surveillance of illnesses or symptoms that may indicate a communicable disease or condition is endangering the public health. GS 130A-141.1.
- c. The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in the use of health care services, or other health-related information that the State Health Director determines is needed to conduct a public health investigation of a possible bioterrorist incident. GS 130A-476(b).

2. *Laws requiring health care providers to allow public health to inspect or obtain copies of records:*

- a. Either a local health director or the State Health Director may demand medical records pertaining to:
 - the diagnosis, treatment, or prevention of a communicable disease or condition for a person reasonably suspected of being infected or exposed to the disease or condition, or

- the investigation of a known or reasonably suspected outbreak of a communicable disease or condition.
GS 130A-144(b).

b. The NC Secretary of Health and Human Services may demand a copy or summary of patient records when the patient's physician and a DHHS physician agree that there is a "clear danger to the public health." GS 130A-5(2).¹

c. The State Health Director or a local health director may demand medical records that pertain to reports:

- Made pursuant to a State Health Director's temporary order under GS 130A-476(b) (requiring reports of symptoms, diseases, etc. for public health investigation of a possible bioterrorism incident—see I.A.1.c. above), or
- Made voluntarily pursuant to GS 130A-476(a) (authorizing reports of illnesses, conditions, etc. that may have been caused by bioterrorism—see I.B.2. below).

GS 130A-476(c).

B. State laws allowing (but not requiring) NC health care providers to disclose patient information to public health

1. *Medical facilities – communicable diseases.* Medical facilities are allowed—but not required—to report known or suspected communicable diseases or conditions. GS 130A-137.
2. *Health care providers – bioterrorism.* Health care providers are allowed—but not required—to report any event that may indicate an illness, condition, or health hazard caused by bioterrorism. Events that may be reported include unusual types or numbers of symptoms or illnesses, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter medications. To the extent practicable, the person reporting should not disclose personally identifiable information. GS 130A-476(a).

C. Sections of the HIPAA Privacy Rule that allow health care providers to disclose patient information to public health without first obtaining the patient's permission

1. *Disclosures that are required by law.* The HIPAA Privacy Rule specifically allows health care providers to disclose protected health

¹ This provision is not strictly limited to communicable disease or bioterrorism, but may also apply when the records are deemed necessary for investigation of other health hazards that pose a clear danger to the public health.

information (PHI)² when the disclosure is required by law. The health care provider is not required to obtain the patient's permission before making a "required by law" disclosure. 45 CFR 164.512(a)(1).

- a. The Privacy Rule defines "required by law" as "a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law." This includes (but is not limited to) statutes, regulations, and court orders. 45 CFR 164.103.
 - b. All of the laws listed under part I.A. of this outline meet the Privacy Rule's definition of "required by law." Thus, the HIPAA Privacy Rule expressly allows all of those disclosures.
2. *Disclosures to public health authorities for public health purposes.* The HIPAA Privacy Rule specifically allows health care providers to disclose PHI to a "public health authority" that is authorized by law to collect or receive the information for the purposes of disease reporting, disease prevention or control, or the conduct of public health surveillance, investigations, or interventions. The health care provider is not required to obtain the patient's permission before making this type of disclosure. 45 CFR 164.512(b).
- a. The Privacy Rule defines "public health authority" to include state and local agencies that are responsible for public health matters as part of their official mandate, and their employees, agents, contractors, or other persons or entities to whom they have granted authority. 45 CFR 164.501.
 - b. All of the laws listed under part I.B. of this outline fit under this provision of the Privacy Rule, because:
 - they authorize health care providers to disclose information to a person or agency that meets the Privacy Rule's definition of "public health authority," and
 - they authorize the "public health authority" to collect or receive the information for the purposes of disease reporting, disease prevention or control, or the conduct of public health surveillance, investigations, or interventions.

² "Protected health information" (PHI) means individually identifiable information in any form (written, electronic, or oral) that relates to one of the following: (1) the individual's mental or physical health or condition; (2) the past, present, or future provision of health care to the individual; or (3) the past, present, or future payment for the provision of health care to the individual.

D. Health care providers must comply with HIPAA's verification rules before making the above disclosures

1. *Verification of identity & authority.* Health care providers who are covered by HIPAA must comply with the verification requirements of the HIPAA Privacy Rule (§ 164.514(h)) before disclosing protected health information to public health workers. In general, this means the health care provider must verify the identity of the individual requesting the information and their legal authority to obtain the information.³

II. **Maintaining the Confidentiality of Communicable Disease Information**

A. North Carolina's communicable disease confidentiality law (GS 130A-143)

1. *General rule of strict confidentiality.* All information and records that identify a person who has or may have a reportable communicable disease is strictly confidential in North Carolina. It may be disclosed only with the written consent of the individual or in a very few other circumstances that are specifically described in the law.
 - a. Note: This law applies to *all* reportable communicable diseases, not just HIV.

2. *Disclosures of information for communicable disease purposes.* GS 130A-143 specifically allows disclosures of communicable disease information to help achieve communicable disease control, including:

- Releases of information that are necessary to protect the public health and that are made in accordance with the communicable disease control rules.
- Releases of information to courts or law enforcement officials for the purposes of enforcing the communicable disease laws or the public health bioterrorism laws.
- Releases to other federal, state, or local public health agencies for the purpose of preventing or controlling the spread of a communicable disease or condition.

These disclosures do not require the patient's written consent. See GS 130A-143 for the complete list of circumstances under which reportable communicable disease information may be released.

3. In some cases, the communicable disease rules impose additional restrictions on releases of information by public health agencies. For example:

³ For detailed information about the verification requirements, see *Verifying the Identity and Authority of a Person to Whom PHI is Disclosed*, by Jill Moore, available on the Internet at <http://www.medicalprivacy.unc.edu/pdfs/verification.pdf>.

- a. GS 130A-143(3) allows disclosure of information without specific written consent when the information is released to health care personnel providing medical care to the patient. However, there is an important restriction on this provision that applies only to local health departments & DHHS. Local health departments & DHHS are allowed to release information about HIV+ persons to health care personnel providing medical care to the patient *only when*:
 - i. the local health department or DHHS has provided direct medical care to the infected person, and
 - ii. the local health department or DHHS refers the person to or consults with the health care provider to whom the information is released.
 10A NCAC 41A.0202(11).
- b. Another state law, GS 130A-12, allows local health departments to bill third-party payers without patients' written consent. However, there is an exception to this general rule when the service being billed is HIV testing or counseling. Local health departments are not permitted to bill the patients themselves for HIV testing and counseling, but they may bill third-party payers. However, they must get patient's specific written consent to bill the third-party payer. 10A NCAC 41A.0202(9).

B. HIPAA and public health in North Carolina

1. *HIPAA applies to NC local health departments.* Every local health department in North Carolina is subject to the HIPAA Privacy Rule. Some local health departments are "hybrid entities" for HIPAA purposes, meaning that they have determined that some of their programs or activities are not required to comply with the Privacy Rule. When this happens, we say those programs or activities have been "carved out" of HIPAA coverage.
 - a. For many (if not most) local health departments, it is unlikely that communicable disease services are eligible to be "carved out" of HIPAA coverage. As a result, in most cases, local health department communicable disease staff must comply with the HIPAA Privacy Rule as well as the state communicable disease confidentiality law.
2. *GS 130A-143 is the primary law to consider when deciding whether communicable disease information may be controlled.* The HIPAA Privacy Rule is intended to be a federal "floor" of privacy protection. States are allowed to have laws that provide greater confidentiality protection. States usually are not allowed to have laws that provide less confidentiality protection, but there is a very narrow exception to this rule

that allows states to have less protective laws when they serve certain public health purposes.

- a. Most of GS 130A-143 provides more confidentiality protection than the HIPAA Privacy Rule. In other words, there are some circumstances in which the Privacy Rule would allow a health care provider (including a public health agency) to disclose information, but GS 130A-143 does not allow the disclosure if the information identifies a person who has or may have a communicable disease. The more stringent law prevails; therefore, even if the Privacy Rule allows a particular disclosure of information that identifies a person who has or may have a communicable disease or condition, the provider must not disclose the information unless GS 130A-143 also allows the disclosure.
- b. There are a couple of provisions of GS 130A-143 that are less strict than the Privacy Rule, but those provisions fit into the narrow exception that allows less strict state laws.