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COVID-19: Applications of Public Health & Emergency Management Law in North Carolina

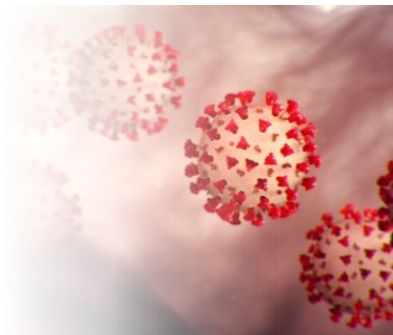
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Overview & Update

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Coronavirus Disease 2019
(COVID-19)

Caused by a *novel*
coronavirus, SARS-CoV-2
Characterized as an
emerging disease

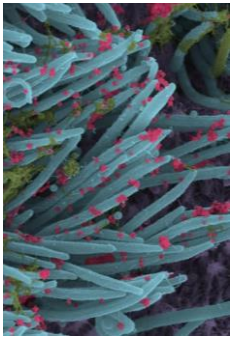


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COVID-19: Arrival in NC



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Metrics

Trends

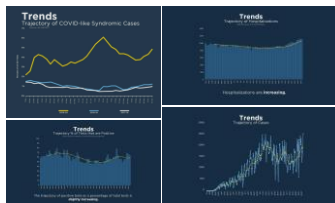
- Trajectory of COVID-like syndromic cases
- Trajectory of cases
- Trajectory of positive tests as a percentage of total tests
- Trajectory of hospitalizations

Capacity

- Testing
- Contact tracing
- Personal protective equipment

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October 15, 2020



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NC Law in a Public Health Emergency

Public health law

Detect cases/outbreaks in community
Investigate cases/outbreaks
Identify communicable disease control measures
Enforce communicable disease laws
Manage individually identifiable health information

Emergency management law

State of emergency declarations
Emergency restrictions ordered by Governor or cities/counties, such as:
➤ Business closures or restrictions
➤ Face coverings
➤ Mass gathering limits

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COVID-19 & Emergency Management Law

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COVID-19 & NC Public Health Law

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Reporting and Investigation

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Communicable Disease Reporting

Physicians and certain others are required by law to report specified diseases & conditions

- G.S. 130A-134 et seq.
- 10A NCAC 41A .0101

Reporting of COVID-19 Diagnostic Test Results

- 10A NCAC 41A .0107

State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of services, or other information (not to exceed 90 days)

- G.S. 130A-141.1

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Investigations

Local health director must investigate cases and outbreaks of communicable diseases and conditions

- G.S. 130A-144(a); 10A NCAC 41A .0103

Health care providers and other persons are required to give local or state public health officials access to records pertaining to:

- the diagnosis, treatment, or prevention of a communicable disease or condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition
- the investigation of a known or reasonably suspected outbreak of a communicable disease or condition.
- G.S. 130A-144(b)

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Control Measures

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Communicable Disease Control Measures

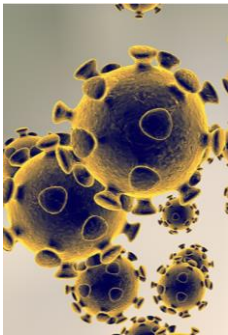
G.S. 130A-144(f) requires all persons to comply with control measures

G.S. 130A-144(g) authorizes the Commission for Public Health to adopt rules prescribing control measures

10A NCAC 41A. 0201 is the primary rule that applies to diseases for which control measures have not previously been established

- Incorporates by reference control measures specified in CDC guidelines & recommended actions (or APHA manual if no CDC guidelines)
- Sets out principles that must be used in applying control measures

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Control Measures: Emerging Diseases

- CDC guidelines and recommended actions are likely to be the source of NC's required control measures
- Challenges:
 - Evolution of control measures as understanding of the disease develops
 - Interpretation and implementation of CDC guidelines and recommended actions

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Isolation & Quarantine: Definitions (G.S. 130A-2)

Isolation (infected)

- Limit on freedom of movement or freedom of action of a person infected or suspected to be infected

Quarantine (exposed)

- Limit on freedom of movement or freedom of action of a person exposed or suspected of being exposed
- Limit on access to an area contaminated with infectious agent
- Limit on freedom of movement or action of an unimmunized person when immunizations required to control outbreak

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Isolation & Quarantine: Orders (G.S. 130A-145)

Who may order: Local health director or State Health Director

When order is authorized: when and so long as public health is endangered, all other reasonable means for correcting the problem exhausted, and no less restrictive alternative exists

Time limit on orders limiting freedom of movement: 30 calendar days maximum. If longer period needed to protect public health, health director must institute action in Superior Court seeking extension.

Person subject to order limiting freedom of movement may seek court review by instituting action in Superior Court:

- Hearing within 72 hours (excluding Saturday & Sunday)
- Person entitled to appointed counsel if indigent
- Court shall reduce or terminate unless it determines by preponderance of evidence that limitation is reasonably necessary to prevent or limit spread of disease

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Enforcement

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Public Health Remedies

Public health remedies may be used to enforce Chapter 130A and public health administrative rules, including:

- Isolation and quarantine orders issued under G.S. 130A-145
- Compliance with communicable disease control measures prescribed by the Commission for Public Health under G.S. 130A-144

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Misdemeanor (G.S. 130A-25)

Violation of communicable disease statutes or rules is a misdemeanor

- Class 1 misdemeanor (G.S. 14-3)
- Trial in District Court
- Convictions may be appealed to Superior Court (trial *de novo*)

Special sentencing & imprisonment provisions

- Sentence of up to 2 years
- Imprisonment in particular facilities
- No early release unless District Court determines no danger to public health, after receiving recommendations from confinement facility and public health officials

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Injunction (G.S. 130A-18)

Local health director or NC Secretary of Health & Human Services may institute an action for injunctive relief in Superior Court when person violates public health statutes or rules

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COVID-19 & Confidentiality Law

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Managing information

Confidentiality laws balance interests:

- Public: protection of public health; public agency transparency
- Private: Maintaining privacy of personal information; personal autonomy

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G.S. 130A-143 (as amended by S.L. 2020-3, sec. 4.17): Communicable disease confidentiality

Information that identifies an individual who has or may have a reportable communicable disease is confidential and not a public record.

Information may be released only as provided in the statute, including but are not limited to:

- Release with written consent
- Release for purposes of treatment, payment, or health care operations (as defined in HIPAA)
- Release to law enforcement for particular purposes, with restrictions on redisclosure
- Release is necessary to protect the public health and is made as provided in the NC communicable disease control rules
- Release of statistics or epidemiological information, provided no individual can be identified

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Disclosures to law enforcement G.S. 130A-143(7a)

NC DHHS or a local health department may release information to a law enforcement official for any of the following 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 covered by G.S. 130A-143(4) (necessary to public health and made as provided in communicable disease rules)
- To enforce communicable disease control laws or public health bioterrorism laws in G.S. Ch. 130A, or
- To investigate terrorism using nuclear, biological or chemical agents.

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When does HIPAA allow disclosure to prevent or lessen a serious or imminent threat?

45 C.F.R. 164.512(j)

- Disclosing entity must have a good faith belief that disclosure of protected health information (PHI) is necessary to prevent a serious or imminent threat to a person or the public, and must act consistently with law and ethical standards.
- May disclose to a person reasonably able to prevent or lessen the threat, including the target of the threat.

Disclosure must be limited to the minimum necessary amount of PHI required to accomplish the purpose of the disclosure [45 C.F.R. 164.514(d)]

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Limitations on redisclosure by law enforcement

A law enforcement official who receives information under G.S. 130A-143(7a) shall not disclose it further except:

When necessary to enforce communicable disease control laws or public health bioterrorism laws (G.S. Ch. 130A), or

When necessary to investigate a terrorist incident using nuclear, biological, or chemical agents, or

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

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Disclosures to employers and certain others

10A NCAC 41A .0211

A local health director may reveal the identity and diagnosis of individual(s) with certain reportable communicable diseases, including COVID-19, to any of the following people, when necessary to prevent transmission in the facility or establishment for which the person is responsible:

- Public or private school principals
- Employers
- Superintendents or directors of public or private institutions, hospitals, or jails
- Child day care providers

The health director must instruct the person to protect the confidentiality of the information.

The person must require the individual(s) they are notified about to comply with any control measures the health director specifies to prevent transmission in the facility or establishment.

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Disclosures of data

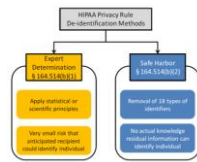
HIPAA:

Data derived from PHI protected by HIPAA must be de-identified

- Safe harbor method: Remove 18 identifiers
- Expert determination method: Person with expertise applies statistical or scientific principles to determine data de-identified

State law:

Information protected by G.S. 130A-143 may be released for statistical purposes provided no person may be identified



Source: US DHHS, Guidance on De-Identification of Protected Health Information (Nov. 2012)

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