

# **Overview of North Carolina Communicable Disease Law**

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### *Author's Note*

This document originated as a collection of on-line resources providing an overview of North Carolina communicable disease laws. The information was drawn from a number of materials that I have previously published or disseminated, primarily *Coates Canons'* blog posts, Health Law Bulletins, and handout materials from training sessions. I assembled and updated these materials in order to provide easily accessible reference materials for North Carolina public health practitioners and their attorneys. The on-line version is organized by topic, with links that take the reader to an outline or narrative summary of state law related to each topic. Some of the topics have links to frequently asked questions as well.

These materials have benefitted tremendously from many years of close work with North Carolina state and local public health officials and attorneys. However, any errors are solely my responsibility. The materials may be updated as new knowledge about current outbreaks emerges, or in response to reader remarks. Readers with corrections, suggestions, or follow-up questions related to any of the materials, should send me an email.

In the on-line version, the dates of each topic's original posting and any subsequent updates are noted.

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## Introduction

Preventing and controlling the spread of communicable diseases is one of the core activities of public health systems throughout the world. Law provides part of the infrastructure that allows public health systems to detect and respond to these diseases and conditions. In North Carolina, the legal framework for communicable disease control includes provisions for:

- *Detection* of communicable diseases and conditions within the population
- *Investigation* of cases and outbreaks by public health officials
- *Communicable disease control measures* that specify the steps individuals, health care providers, public health officials, or others must take to control the spread of disease
- *Legal remedies* to enforce communicable disease laws
- Access to and protection of *confidential information* that is necessary to carry out communicable disease activities

## Communicable Diseases and Conditions

In our day-to-day communications, we may use the term “communicable disease” to refer only to illnesses that are contagious from person to person. North Carolina has a legal definition of communicable disease that includes those illnesses and goes further to pick up a number of illnesses that cannot be transmitted from one person to another. “Communicable disease” is defined by law in North Carolina as an illness caused by an infectious agent—usually a virus or bacterium—that can be transmitted from person to person, from an animal to a person, through an intermediate host or vector, or through the inanimate environment.<sup>1</sup> A person has a “communicable condition” if the person has been infected with a communicable agent but does not have symptoms of disease.<sup>2</sup> North Carolina’s communicable disease laws apply to both communicable diseases and communicable conditions.

## Roles of State and Local Public Health Officials and Agencies

Responsibility for communicable disease control in North Carolina is shared by state and local public health officials, but much of the legal framework is at the state level and in an outbreak state officials typically take the lead in developing and coordinating the response. State statutes and rules authorize and define the scope of local public health officials’ communicable disease activities. In an outbreak, state-provided materials—such as case definitions, control measures, guidance documents, or templates for isolation or quarantine orders—are important documents for local public health officials to consult to ensure their actions are consistent with both state communicable disease laws and current best practice recommendations.

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<sup>1</sup> N.C. Gen. Stat. § 130A-2(1c) (hereinafter G.S.). This definition is substantially similar to the definition of “communicable disease” found in *A Dictionary of Epidemiology*, 5<sup>th</sup> ed. (Oxford University Press, 2008), at 46.

<sup>2</sup> G.S. 130A-2(1b).

At the state level, the Commission for Public Health makes communicable disease control rules.<sup>3</sup> The state Secretary of Health and Human Services is charged with overseeing communicable disease prevention and control.<sup>4</sup> The Secretary appoints the state health director, a North Carolina-licensed physician who performs duties and exercises authority delegated by the Secretary.<sup>5</sup> The state health director also has multiple specific duties in the communicable disease realm. Among other things, he or she has the authority to examine patient records pertaining to communicable diseases<sup>6</sup> and to order isolation or quarantine in appropriate circumstances.<sup>7</sup> The state health director has additional authorities when there is a health threat that may have been caused by terrorism using nuclear, biological, or chemical agents.<sup>8</sup>

North Carolina also has a state epidemiologist, who is a medical doctor with an advanced degree in epidemiology. Among other duties, the state epidemiologist oversees the work of the Communicable Disease Branch, a component of the Division of Public Health within the state Department of Health and Human Services. The Communicable Disease Branch receives reports of cases of communicable diseases, coordinates and conducts disease surveillance and disease investigation activities, coordinates the public health response to outbreaks, provides assistance and support to local public health agencies responding to communicable disease, and provides public information about communicable diseases.<sup>9</sup> The State Laboratory of Public Health provides laboratory services that support the diagnosis of communicable diseases and conditions.<sup>10</sup>

At the local level, the directors of local health departments must receive reports of communicable diseases and conditions, investigate reported cases, ensure that communicable disease control measures prescribed by the Commission for Public Health have been explained to the appropriate parties, disseminate public health information, and advise local health officials about public health matters. Local health directors also are empowered to examine patient records pertaining to communicable disease and to exercise quarantine and isolation authority.<sup>11</sup>

In some counties, local public health services are provided through a consolidated human services agency (CHSA). When a county creates a CHSA and gives it the responsibility for local public health

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<sup>3</sup> G.S. 130A-147.

<sup>4</sup> G.S. 130A-5(2).

<sup>5</sup> G.S. 130A-3.

<sup>6</sup> G.S. 130A-144(b).

<sup>7</sup> G.S. 130A-145.

<sup>8</sup> G.S. 130A-476. Because some such agents could cause communicable diseases, it is possible there could be an event in which the communicable disease laws and public health bioterrorism laws would both be applicable.

<sup>9</sup> The Communicable Disease Branch is part of the Division of Public Health's Epidemiology Section. For more information about the branch, see its website: <http://epi.publichealth.nc.gov/cd/>.

<sup>10</sup> The State Laboratory of Public Health is also a component of the Division of Public Health. For more information about the state lab, see its website: <http://slph.ncpublichealth.com/>.

<sup>11</sup> See G.S. 130A-135 through 130A-139 (communicable disease reports); G.S. 130A-144 (communicable disease investigation and control); G.S. 130A-145 (isolation and quarantine authority); 130A-41 (general powers and duties of local health directors).

services, the director of the CHSA acquires the powers and duties of a local health director – including all of the duties related to communicable disease control. However, the communicable disease-related duties may be delegated to another person.<sup>12</sup> If the CHSA director does not have the education and experience that is required to be a local health director, the CHSA director must appoint an individual who does,<sup>13</sup> and it is customary to delegate local health director powers and duties to that person.

### **Role of Federal Government**

The federal government certainly has a stake in the control of communicable diseases within the United States, but its legal role is limited and in practice its role is usually supportive and advisory. Federal laws are focused on preventing the introduction of communicable disease into the United States and on preventing interstate spread of disease.<sup>14</sup> The greater role for the federal government is carried out by the Centers for Disease Control and Prevention (CDC), which develops case definitions for identifying communicable disease and guidelines for managing communicable disease. CDC guidelines serve as the basis for communicable disease control measures that are required by North Carolina law.<sup>15</sup> The federal government also provides technical assistance and in some instances sends personnel to assist states and local governments with their disease control efforts. The foundation for all of this work is the CDC's public health research and surveillance activities.

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<sup>12</sup> G.S. 153A-77(e) ("Except as otherwise provided by law, the human services director or designee shall have the same powers and duties as ... a local health director ..."); see also G.S. 130A-43(c) (a consolidated human services director has the powers and duties of a local health director provided by G.S. 130A-41); 130A-6 (authorizing a public official with authority under G.S. Chapter 130A to delegate that authority to another person).

<sup>13</sup> G.S. 153A-77(e)(9). The appointee must meet qualifications specified in G.S. 130A-40(a). The county manager must approve the appointment.

<sup>14</sup> For more information about these laws, see the section on isolation and quarantine.

<sup>15</sup> N.C. Admin. Code, tit. 10A, ch. 41A, § .0103(a) (hereinafter N.C.A.C.). See also the section on communicable disease control measures.

## **Detecting Communicable Disease in the Population**

### Communicable Disease Reporting

North Carolina law provides for both mandatory and voluntary communicable disease reporting, and both routine and non-routine reporting occasions. There are also special provisions in state law for reports of conditions that may have been caused by terrorism using nuclear, biological, or chemical agents. If a communicable disease is believed to have been caused by bioterrorism, both the usual communicable disease reporting requirements and the requirements that are specific to bioterrorism apply.

### **Routine Communicable Disease Reporting**

State laws require physicians and certain others to routinely report more than 70 communicable diseases and conditions.

### **Physicians**

A physician must make a report when the physician has reason to suspect that a person who has consulted him or her professionally—in other words, a patient—has a disease or condition that has been designated reportable.<sup>16</sup> The list of reportable communicable diseases is adopted as a rule by the Commission for Public Health and is published in the North Carolina Administrative Code.<sup>17</sup> The types of diseases on the list include those with public health significance, including tuberculosis, many vaccine-preventable diseases, laboratory-confirmed HIV, hepatitis, sexually transmitted infections, foodborne diseases, illnesses caused by contaminated water, mosquito- and tick-borne illnesses, novel influenzas, and diseases that may be caused by bioterrorism. The patient's permission is not required to make the report. To the contrary, the physician must make the report, even if the patient objects.

Reports must be made to the local health department<sup>18</sup> and within time frames prescribed by the Commission for Public Health. Some diseases and conditions must be reported immediately, some within 24 hours, and some within seven days.<sup>19</sup> The information to be reported is prescribed by the administrative rules. It always includes the patient's name and the disease or condition being reported. Additional information may be required as well, depending on the disease or condition.<sup>20</sup> The law specifically gives the duty to report to physicians and doesn't mention other types of health care

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<sup>16</sup> N.C. Gen. Stat. § 130A-135 (hereinafter G.S.).

<sup>17</sup> N.C. Admin. Code, tit. 10A, ch. 41A, § .0101(a) (hereinafter N.C.A.C.). The N.C. Administrative Code is available at <http://reports.oah.state.nc.us/ncac.asp>.

<sup>18</sup> The statute states that reports must be made to the local health director. In practice, it is likely that a communicable disease nurse or other appropriate health department staff member would receive the report.

<sup>19</sup> 10A N.C.A.C. 41A. 0101(a).

<sup>20</sup> 10A N.C.A.C. 41A. 0102(a).

providers, but if another practitioner—such as a nurse—suspects a reportable communicable disease in a patient, that practitioner should notify the supervising physician to ensure the report is made.

### **Other Reporters**

In addition to physicians, other entities and people who are required to make communicable disease reports include laboratories, operators of restaurants, and school principals and child day care operators. These reporters' legal duties are not exactly the same as the duties imposed on physicians. An administrative rule specifies the lab test results that trigger a laboratory's duty to report.<sup>21</sup> Laboratory reports may be made electronically via the North Carolina Electronic Disease Surveillance System.

A restaurant operator is required to report only when the operator has reason to suspect an outbreak of a foodborne illness associated with the operator's establishment, or when the operator has reason to suspect a food handler at the establishment has a foodborne illness or condition.<sup>22</sup> A state administrative rule specifies the seventeen diseases and conditions that restaurant operators must report. The report must be made to the local health department.

State law directs school principals and child care operators to report to the local health department when a person in the school or child care facility has any reportable disease.<sup>23</sup> However, if the report is about a student, a school principal's ability to report may be limited by the federal Family Educational Rights and Privacy Act (FERPA),<sup>24</sup> which permits such reports without prior parental consent only if the illness creates a health or safety emergency in the school.<sup>25</sup>

Medical facilities are authorized, but not required, to make a report to the local health department when a patient in the facility is reasonably suspected of having a reportable communicable disease or condition.<sup>26</sup> This may appear redundant because any physicians who work in the facilities are already required to make reports, but this provides another route to get the information if for some reason a physician's report is not made. In the absence of this law, the facilities may not be able to make such reports due to confidentiality laws.<sup>27</sup>

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<sup>21</sup> G.S. 130A-139; 10A N.C.A.C. 41A .0101(c).

<sup>22</sup> G.S. 130A-138; 10A N.C.A.C. 41A .0102(b) & (c).

<sup>23</sup> G.S. 130A-136.

<sup>24</sup> 20 U.S.C. 1232g; 34 C.F.R. Part 99.

<sup>25</sup> 34 C.F.R. 99.31 (10) (authorizing disclosures without prior consent in connection with health or safety emergencies as described in section 99.36); 34 C.F.R. 99.36 (authorizing disclosure when an educational agency or institution, considering the totality of the circumstances, determines there is an articulable and significant threat to the health or safety of the student or other individuals).

<sup>26</sup> G.S. 130A-137.

<sup>27</sup> For more information, see the section on confidentiality.



## Temporary Orders to Report

A state statute authorizes the state health director to issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information that may indicate the existence of a communicable disease or condition that threatens the public health.<sup>28</sup> Note that this authority is limited to the state health director. Local health directors may not issue such orders.

The state health director's order must specify which health care providers must report,<sup>29</sup> what information must be reported, and the period of time for which reporting is required. The period of time specified in the order may not exceed 90 days. If a longer period of is necessary to protect the public health, the Commission for Public Health may adopt rules to continue the reporting requirement.<sup>30</sup> This law provides a mechanism for public officials to act quickly to seek information about emerging illnesses. The North Carolina state health director has used this authority on a few occasions since the law was enacted, most recently in the summer of 2014 when orders were issued to require physicians and laboratories to report suspected or confirmed infections caused by chikungunya, a mosquito-borne virus, and suspected or confirmed cases of Middle Eastern respiratory syndrome (MERS).

## Local Health Directors

Local health directors are the recipients of communicable disease reports, but they are also mandated reporters. First, local health directors are responsible for forwarding all the reports that they receive to the state Division of Public Health. In most cases, this may be done electronically, via the North Carolina Electronic Disease Surveillance System, also known as NC EDSS.<sup>31</sup> However, there are administrative rules that require telephone reports of certain findings.<sup>32</sup> Second, if a local health department receives a report about a person who is a resident of a county served by a different local health department, the

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<sup>28</sup> G.S. 130A-141.1.

<sup>29</sup> The temporary order may require any of the following persons to report: "a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians." See G.S. 130A-141.1(b) (incorporating by reference the definition of "health care provider" in G.S. 130A-476(g)).

<sup>30</sup> G.S. 130A-141.1(a).

<sup>31</sup> G.S. 130A-40; see also 10A N.C.A.C. 41A .0103(a)(3) (describing the methods and time frames for forwarding reports to the state). For a brief description of the history and features of NC EDSS, see <http://epi.publichealth.nc.gov/cd/lhds/manuals/cd/ncedss/NCEDSS.pdf>.

<sup>32</sup> 10A NCAC 41A .0103(a)(3)(A) requires the local health director to make telephone reports of all cases of primary, secondary, and early latent syphilis to the regional office of the HIV/STD Prevention and Care Branch within 24 hours of either making the diagnosis at the health department or receiving a report of the diagnosis from a physician. 10A N.C.A.C. 41A .0103(a)(3)(B) requires the local health director to make a telephone report of all reactive syphilis serologies of pregnant women and certain others to the regional office of the Division of Public Health within 24 hours of receipt.

local health director who received the report must report the case and any laboratory findings to the local health director for the county where the person resides.<sup>33</sup>

The local health director must also make reports to the Division of Public Health In the event of an outbreak. If the outbreak involves a reportable disease, the local health director must submit a written report of the outbreak investigation, its findings, and the actions taken to control the outbreak within 30 days. If the outbreak involves a disease or condition that is not reportable, the health director must give appropriate control measures for the disease and inform the Division of Public Health about the circumstances of the outbreak within 7 days.<sup>34</sup>

### **Immunity from Liability for Reporters**

A person who makes any of the reports described above is immune from any liability that might otherwise be imposed for making the report under state law.<sup>35</sup> Reporters nevertheless sometimes worry about liability under other laws, such as HIPAA. However, the HIPAA Privacy Rule specifically permits disclosures of protected health information to public health authorities pursuant to laws requiring or authorizing reports about disease.<sup>36</sup> Please see the section on confidentiality for additional information about the interaction between HIPAA and state communicable disease laws.

### **Health Care-Associated Infections**

Since 2012, North Carolina hospitals have been required to participate in a surveillance system designed to monitor health care-associated infections.<sup>37</sup> Health care-associated infections are, in essence, infections that patients acquire from the environment in the facility itself. More specifically, they are defined as infections caused by infectious agents or toxins when there is no evidence that the patient was already infected before being admitted to the health care setting.<sup>38</sup> Hospitals must make monthly reports of such infections. The reports are made electronically through the National Healthcare Safety Network.<sup>39</sup>

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<sup>33</sup> G.S. 130A-40.

<sup>34</sup> 10A N.C.A.C. 41A .0103(c).

<sup>35</sup> G.S. 130A-142.

<sup>36</sup> 45 C.F.R. 164.512(a) and (b).

<sup>37</sup> G.S. 130A-150.

<sup>38</sup> The administrative rules define the term as “a localized or systemic condition in the patient resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) with no evidence that the infection was present or incubating when the patient was admitted to the health care setting.”

<sup>39</sup> For more information about the National Healthcare Safety Network, see <http://www.cdc.gov/nhsn/>.

## Reports Related to Nuclear, Biological, or Chemical Terrorism

### *Mandatory Reports*

The state health director may issue a temporary order requiring certain reports when the director determines reports are necessary to the conduct of an investigation or surveillance of an illness, condition, or health hazard that may have been caused by terrorism using nuclear, chemical, or biological agents.<sup>40</sup> Note that this authority is limited to the state health director. Local health directors may not issue such orders.

The temporary order may require health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information. The order must specify which health care providers must report,<sup>41</sup> what information must be reported, and the period of time for which reporting is required, not to exceed 90 days. If a period of longer than 90 days is necessary to protect the public health, the Commission for Public Health may adopt rules to continue the reporting requirement.

To date, no temporary orders have been issued under the authority of this statute—all of the state health director temporary orders of recent years have been under the authority of the communicable disease temporary order statute described above. A temporary order issued under the authority of this statute would supplement but not replace the usual requirements for reporting communicable diseases. Physicians and other mandatory reporters would still be required to comply with routine communicable disease reporting laws while the temporary order was in effect.

A person who makes a report pursuant to the State Health Director's temporary order is immune from any liability that might otherwise arise under North Carolina law.<sup>42</sup> Reporters nevertheless sometimes worry about liability under other laws, such as HIPAA. However, the HIPAA Privacy Rule specifically permits disclosures of protected health information to public health authorities pursuant to laws requiring or authorizing reports about disease.<sup>43</sup> Please see the section on confidentiality for additional information about the interaction between HIPAA and state communicable disease laws.

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<sup>40</sup> G.S. 130A-476(b).

<sup>41</sup> The temporary order may require any of the following persons to report: "a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians." See G.S. 130A-476(g).

<sup>42</sup> G.S. 130A-476(d).

<sup>43</sup> 45 C.F.R. 164.512(a) and (b).

## *Voluntary Reports*

North Carolina’s public health bioterrorism laws also authorize voluntary reports to public health officials in certain circumstances. Health care providers,<sup>44</sup> people in charge of health care facilities,<sup>45</sup> and units of state or local government may make voluntary reports of events that may indicate an illness, condition, or other health hazard that may have been caused by terrorism using nuclear, chemical, or biological agents. The 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 purchase of over-the-counter pharmaceuticals. The information may be reported to either the state health director or a local health director.<sup>46</sup>

A person or entity that makes a report under this provision must refrain from disclosing personally identifiable information, if practicable. The reference to what is “practicable” seems to recognize the possibility that some circumstances might require that a person’s identity be disclosed; however, if that information is not necessary it should not be disclosed. A person who makes a voluntary report in good faith is immune from liability that might otherwise arise under state law. A person who fails to make a report is also immune from liability, unless the person is a health care provider who had actual knowledge that a condition or illness was caused by the use of a nuclear, biological or chemical weapon of mass destruction.<sup>47</sup>

## Population Surveillance

Communicable disease reporting is one component of public health disease surveillance, which is “the ongoing, systematic collection, analysis and interpretation of the who, what, where, when and how of disease case occurrence in a population.”<sup>48</sup> In North Carolina, communicable disease reports from clinicians and laboratories are entered into an electronic system known as NC EDSS (North Carolina Electronic Disease Surveillance System).

Communicable disease surveillance is also conducted through an electronic system called NC DETECT, the North Carolina Disease Event Tracking and Epidemiologic Collection Tool. This system receives data daily from hospital emergency departments and the Carolinas Poison Center and allows public health

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<sup>44</sup> For purposes of this statute, “health care provider” is defined to include “a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians.” G.S. 130A-476(g)(1).

<sup>45</sup> For purposes of this statute, “health care facility” is defined to include “hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned.” G.S. 130A-476(g)(2).

<sup>46</sup> G.S. 130A-476(a).

<sup>47</sup> G.S. 130A-476(a).

<sup>48</sup> N.C. Division of Public Health, Communicable Disease Surveillance and Reporting, at <http://epi.publichealth.nc.gov/cd/report.html>.

officials to detect information that may indicate a communicable disease or other public health threat is present in the population, perhaps before it is otherwise recognized or reported.<sup>49</sup>

North Carolina also participates in a surveillance program that is specifically focused on the epidemics of flu that the United States experiences each year. The N.C. Influenza Sentinel Surveillance Program is part of a national network of public and private health care providers who assist public health officials in monitoring the extent of flu outbreaks and the strains of influenza viruses that are circulating. Health care providers and facilities that participate in the sentinel network make weekly reports to public health agencies. The reports include the total number of patient visits for the week, as well as the number of patients who had influenza-like illness (ILI). From this, public health officials can calculate the percentage of visits to sentinel providers that are the result of ILI. Sentinel providers also collect lab samples on a portion of the patients with ILI. Those samples are sent to the State Laboratory for Public Health, which tests the samples to determine whether influenza virus is present and if so which strain of the virus.<sup>50</sup>

During the U.S. influenza season, which is approximately October through May each year, weekly flu surveillance reports are prepared in North Carolina and made available to the public through the state's flu website, [flu.nc.gov](http://flu.nc.gov). The methods of monitoring flu activity in North Carolina cannot capture every case that occurs in the state, so the numbers reported represent only a small portion of the number of actual cases that are present during any given week. However, they provide information about the types of flu that are circulating and allow public health officials to advise clinicians and the public about the nature and extent of influenza activity in the state.

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<sup>49</sup> G.S. 130A-480, enacted in 2004, requires hospital emergency departments to participate in a syndromic surveillance system designed to detect public health threats resulting from bioterrorism or communicable disease outbreaks, by providing data electronically to the Division of Public Health. NC DETECT is the system that receives the data. A state administrative rule prescribes the data that must be submitted. 10A N.C.A.C. 41A .0105. For more information about NC DETECT, see <http://www.ncdetect.org/>.

<sup>50</sup> For more information about NC's flu sentinel program, see <http://www.epi.state.nc.us/epi/gcdc/flusentsurv.html>.

## North Carolina Statutes and Rules – Communicable Disease Reporting

### *Statutes*

#### Communicable diseases, generally

- [G.S. 130A-134 Reportable diseases and conditions.](#)
- [G.S. 130A-135 Physicians to report.](#)
- [G.S. 130A-136 School principals and child care operators to report.](#)
- [G.S. 130A-137 Medical facilities may report.](#)
- [G.S. 130A-138 Operators of restaurants and other food or drink establishments to report.](#)
- [G.S. 130A-139 Persons in charge of laboratories to report.](#)
- [G.S. 130A-140 Local health directors to report.](#)
- [G.S. 130A-141 Form, content, and timing of reports.](#)
- [G.S. 130A-141.1 Temporary order to report.](#)
- [G.S. 130A-142 Immunity of persons who report](#)
- [G.S. 130A-143 Confidentiality of records.](#)

#### Health care-associated infections

- [G.S. 130A-150 Statewide surveillance and reporting system.](#)

#### Bioterrorism

- [G.S. 130A-476 Access to health information.](#)

#### Population surveillance

- [G.S. 130A-480 Emergency department data reporting](#)

### *Rules*

#### Communicable diseases, generally

- [10A N.C.A.C. 41A .0101 Reportable Diseases and Conditions](#)
- [10A N.C.A.C. 41A .0102 Method of Reporting](#)
- [10A N.C.A.C. 41A .0103 Duties of Local Health Director: Report Communicable Diseases](#)
- [10A N.C.A.C. 41A .0104 Release of Communicable Disease Records: Research Purposes](#)
- [10A N.C.A.C. 41A .0105 Hospital Emergency Department Data Reporting](#)

#### Health care-associated infections

- [10A N.C.A.C. 41A .0106 Reporting of Health-Care Associated Infections](#)

#### Population surveillance

- [10A N.C.A.C. 41A .0105 Hospital Emergency Department Data Reporting](#)

## Controlling the Spread of Disease

### Investigating Cases and Outbreaks

Local health directors in North Carolina are required by law to investigate cases and outbreaks of communicable diseases and conditions.<sup>51</sup> They are assisted in this effort by state and regional public health officials. Among other things, the director's investigation must determine the identity of all persons for whom control measures are required. If control measures are required, the director must ensure that the measures are explained to the proper parties and that the parties comply.<sup>52</sup> The state Communicable Disease Branch has a number of manuals that go into detail about the step-by-step investigation process for different communicable diseases. Most of the manuals include a section with a title that refers to either disease investigation or investigation steps. The general communicable disease manual includes investigation steps for most of the reportable communicable diseases. There are also disease-specific manuals. In the event of an emerging illness, the Division of Public Health issues guidance documents that typically address investigation steps.

The Division's manuals may be accessed on-line through the [state website](#), or by using these individual links:

- [NC Division of Public Health Communicable Disease Manual](#) (most reportable diseases)
- [Hepatitis B Program Manual](#)
- [Rabies Control Manual](#)
- [Sexually Transmitted Diseases Program Manual](#)
- [Tuberculosis Policy Manual](#)

In the course of a disease investigation, public health officials will obtain information from a number of sources, including but not limited to the infected person, if possible; other exposed persons, if they are known; health care providers involved in the diagnosis and treatment of the infected persons; and potentially business owners or others as well. Specific state laws authorize public health officials to obtain even confidential information when certain conditions are met. This is addressed in more detail in the section on access to confidential information, below.

### **Contact Tracing and Partner Notification**

Contact tracing is the term that is used to describe the public health activity of identifying individuals who may have been exposed to someone who is infected with a communicable disease or condition. For infections that are transmitted sexually, partner notification programs include both identifying contacts

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<sup>51</sup> N.C. Gen. Stat. 130A-144(a) (hereinafter G.S.); N.C. Admin. Code tit. 10A, ch. 41A,.0103(a) and (b) (hereinafter N.C.A.C.).

<sup>52</sup> 10 N.C.A.C. 41A .0103.

and ensuring that exposed persons are notified either by the partners that exposed them or by public health officials.

When contact tracing or partner notification is a communicable disease control measure, individuals are required by North Carolina law to comply with it.<sup>53</sup> North Carolina administrative rules expressly require individuals who are infected with certain communicable diseases or conditions to identify or notify contacts or partners, which may include household or other contacts, sexual partners, or needle-sharing partners.<sup>54</sup> The Division of Public Health conducts a partner notification program to assist in notifying and counseling the partners of individuals with HIV.<sup>55</sup>

Contact tracing may also be a required control measure for other communicable diseases. For more information on how to determine the appropriate control measures for a disease that is not specifically addressed in the North Carolina Administrative Code, see the section on communicable disease control measures.

### **Access to Information for Investigations**

Physicians, persons in charge of medical facilities, and persons in charge of laboratories are required by law to permit public health officials to examine, review, and obtain a copy of medical records pertaining to the diagnosis, treatment, or prevention of communicable diseases or conditions. Other persons may be required to make other types of records available as well.<sup>56</sup> For example, in the investigation of a foodborne illness, public health officials may request the names of individuals who dined at a particular food establishment from credit card receipts. The public health official must request the information and show proper identification.<sup>57</sup>

A similar law requires health care providers and persons in charge of health care facilities or laboratories to permit public health officials to examine, review, and obtain a copy of records containing information that is protected by HIPAA or another confidentiality law when the information is necessary for a public health investigation into an illness or public health threat that may have been caused by terrorism using nuclear, chemical, or biological agents.<sup>58</sup>

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<sup>53</sup> G.S. 130A-144(f) (requiring all persons to comply with communicable disease control measures established by the Commission for Public Health).

<sup>54</sup> See 10A N.C.A.C. 41A .0202 (HIV); .0203 (hepatitis B); .0204(c) (syphilis, lymphogranuloma venereum, granuloma inguinale, chancroid); .0205 (tuberculosis); .0214 (hepatitis C).

<sup>55</sup> 10A N.C.A.C. 41A .0202(13).

<sup>56</sup> G.S. 130A-144(b).

<sup>57</sup> The law specifies that the state health director or a local health director shall have access to the information upon request and proper identification. However, the person making the request may be a person with delegated authority from the state or local health director. See G.S. 130A-6 (authorizing a public official with authority under G.S. Chapter 130A to delegate that authority to another person).

<sup>58</sup> G.S. 130A-476(c).



Persons who permit the examination, review, or copying of records in accordance with these laws are immune from civil or criminal liability that might otherwise be imposed.<sup>59</sup> Health care providers may still worry about liability under other laws, such as HIPAA. However, the HIPAA Privacy Rule specifically permits disclosures of protected health information to public health authorities pursuant to laws requiring or authorizing reports about disease.<sup>60</sup> For more information on confidentiality laws and communicable disease activities, see the section on confidential information.

### Communicable Disease Control Measures, Generally

North Carolina law authorizes the Commission for Public Health to adopt communicable disease control measures and requires all persons to comply with them.<sup>61</sup> The Commission's rules are published in Title 10A, Subchapter 41A of the North Carolina Administrative Code.<sup>62</sup> The term "communicable disease control measures" is not defined in state law, but it has the meaning common sense would suggest: measures or steps that are taken to control the spread of a communicable disease.

Local health directors are responsible for ensuring that communicable disease measures are "given"<sup>63</sup>— which in practice often simply means ensuring that people who may spread the disease are informed about the required control measures, but it could also mean instructing other persons or entities to take particular steps to prevent the spread of disease. Failure to comply with control measures is a misdemeanor punishable by a sentence of up to two years.<sup>64</sup>

The Commission has adopted rules specifying the communicable disease control measures for only a few communicable diseases and conditions: HIV, hepatitis B and C, sexually transmitted diseases, tuberculosis, smallpox/vaccinia, and SARS.<sup>65</sup> For other communicable diseases, the required control measures are those that are specified in guidelines and recommended actions published by the federal Centers for Disease Control and Prevention (CDC), or if no such materials are available, from the guidelines and recommendations that appear in the *Control of Communicable Diseases Manual*, a publication of the American Public Health Association. Both the CDC documents and the APHA manual are incorporated by reference into the Commission's rules.<sup>66</sup>

The Commission also has prescribed general principles to be followed in applying the manual's control measures, and in devising control measures for communicable diseases and conditions for which there are no specific control measures. Among other things, those principles state that control measures must

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<sup>59</sup> G.S. 130A-144(c) (communicable disease investigations); 130A-476(d) (investigations related to terrorism).

<sup>60</sup> 45 C.F.R. 164.512(a) and (b).

<sup>61</sup> G.S. 130A-144.

<sup>62</sup> G.S. 130A-2(1c). The term "communicable condition" is defined separately as "the state of being infected with a communicable agent but without symptoms." G.S. 130A-2(1b). For example, asymptomatic HIV infection is a communicable condition.

<sup>63</sup> G.S. 130A-144(e).

<sup>64</sup> G.S. 130A-25. For more information on the misdemeanor charge, see the section on enforcement and remedies.

<sup>65</sup> 10A N.C.A.C. 41A.0202-.0205, .0208, .0213, .0214.

<sup>66</sup> 10A N.C.A.C. 41A.0201(a).

be reasonably expected to decrease the risk of transmission and must be consistent with recent scientific and public health information.<sup>67</sup>

### **Duties of Physicians**

While most of North Carolina's body of communicable disease control law addresses the authorities and responsibilities of the public health system, portions create legal obligations for private parties as well. Physicians in particular have several important legal duties. Physicians must:

- Report communicable diseases and conditions to the local health director.<sup>68</sup>
- Instruct individuals with communicable diseases and conditions in the disease control measures that are required by law.<sup>69</sup>
- Cooperate with communicable disease investigations by making records and information available to public health officials who properly request them.<sup>70</sup>

### **Control Measures for Emerging Illnesses**

Emerging illness is a term that is used to describe two different types of diseases: those that are entirely new to a population, as HIV was in the early 1980s, or known diseases that begin to increase in frequency or geographic spread, as West Nile virus did in the early 2000s. When an emerging illness approaches or appears in North Carolina, the relevant disease control measures will likely be derived from the documents incorporated by reference into the administrative rules—that is, the guidelines and recommended actions published by the CDC. In the absence of CDC guidelines, control measures may be derived from the American Public Health Association's *Control of Communicable Diseases Manual*, if it addresses the disease in question,<sup>71</sup> or devised in accordance with the principles in 10A N.C.A.C. 41A .0201(a). Control measures for emerging illnesses typically are determined by the state Division of Public Health and disseminated to local health departments to apply.

By incorporating the CDC documents into North Carolina's communicable disease rules, the Commission for Public Health has attempted to ensure that the control measures required by state law are aligned with up-to-date scientific understanding about emerging illnesses. However, this presents a challenge: it is not unusual for control measures for an emerging illness to change as understanding about the illness develops. This makes sense, as there may be many unknowns: In what ways does the disease spread, and how readily? How severe is it? Are existing treatments effective, or is something new required? Are certain people more susceptible than others? The answers to all these questions are relevant to developing appropriate control measures and as answers emerge the control measures may change. This means, however, that public health officials must be diligent in keeping up with the changes and

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<sup>67</sup> 10A N.C.A.C. 41A .0201(b).

<sup>68</sup> G.S. 130A-135.

<sup>69</sup> 10A N.C.A.C. 41A .0210.

<sup>70</sup> G.S. 130A-144(b).

<sup>71</sup> 10A N.C.A.C. 41A .0201(a).

effective in communicating those changes to the public—tasks that are neither simple nor easy. For example, at the outset of the 2009 H1N1 pandemic CDC guidance advised school closure if any student or staff member developed the flu. But very shortly thereafter, CDC rescinded that guidance and replaced it with recommendations for schools that did not include closure in most circumstances. This created confusion and posed a significant communication challenge for public health and school officials throughout the United States, including in North Carolina, where a school closure occurred right before the guidance changed.

Public health officials also must keep people who are subject to control measures apprised of any changes. It is important to keep a record of what the control measures are on the day they are given, just in case they change. If a public health official must give control measures based on electronic guidance posted on the CDC or DPH website, the official should save or print a copy of the guidance document, date it, and keep careful records that clearly identify the date of the CDC document the official relied on when the control measures were given. This could be important if the official later must justify the control measures that were given on the particular date.

### Isolation and Quarantine

Isolation and quarantine are legal tools the public health system uses to control the spread of communicable diseases and conditions. The use of these tools in North Carolina is not extraordinary. Isolation and quarantine are used on a regular basis to control the spread of endemic diseases such as tuberculosis, as well as to cope with more unusual outbreaks, such as the rubella outbreak the state experienced in 1996<sup>72</sup> or the pertussis (whooping cough) outbreaks that occasionally affect North Carolina schools. On rare occasions, the isolation and quarantine authority have been used to control a more unusual event, such as the SARS case the state experienced in 2003. Public health officials need to be aware of their authority to isolate and quarantine, and know how to exercise it within the limits of the law.

### **Definitions of Terms**

The terms isolation and quarantine are often used in conjunction, and they do have common elements. Both are communicable disease control measures—that is, means of preventing or containing the spread of disease. In general, medical and public health professionals use the term “isolation” to refer to disease control measures applied to people who are infected with a disease, while “quarantine” refers to control measures applied to people who appear well but may nevertheless pose a risk of disease to others—usually because they have been exposed to an ill person.

North Carolina’s legal definitions of isolation and quarantine include but go beyond these general definitions. In North Carolina, “isolation authority” is the authority to limit the freedom of movement or

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<sup>72</sup> See Centers for Disease Control and Prevention, *Rubella and Congenital Rubella Syndrome—United States, 1994-1997*, 46 Morbidity and Mortality Weekly Report 350 (April 25, 1997).

freedom of action of a person or animal who has (or is suspected of having) a communicable disease or condition.<sup>73</sup> The definition of “quarantine authority” has three parts. It most often refers to the authority to limit the freedom of movement or action of a person or animal that has been exposed (or is suspected of having been exposed) to a communicable disease or condition. However, it also means the authority to limit access by any person or animal to an area or facility that is contaminated with an infectious agent. Finally, quarantine authority may be used to limit the freedom of movement or action of unimmunized persons during an outbreak.<sup>74</sup> For example, in the event of a measles outbreak, quarantine authority could be used to require children who are exempt from the state’s immunization requirements to stay home from school.<sup>75</sup>

Both the isolation and quarantine authorities permit the limitation of a person’s *freedom of movement* or *freedom of action*. The definition of quarantine also authorizes limits on *freedom of access*. No law defines these terms, but several other laws make important distinctions between orders that limit freedom of action and orders that limit freedom of movement or access. For example, G.S. 130A-145, the main isolation and quarantine statute, provides specific procedures for a person to obtain judicial review of an isolation or quarantine order—but only if it is an order limiting freedom of movement or access. It is therefore important to understand how the limitations differ.

- An order limiting *freedom of movement* essentially prohibits an individual from going somewhere. It may confine the person to a particular place, such as his home or a health care facility. Or it may prohibit the person from entering a particular place. For example, it may prevent a person from returning to school or work during the period of communicability.
- An order limiting *freedom of action* limits specific behaviors, but not the ability to move freely in society. For example, a person who is required to refrain from sexual activity during the course of treatment for gonorrhea has had his or her freedom of action restricted.
- An order limiting *freedom of access* prohibits a person from obtaining access to a certain place. For example, a quarantine order could be issued to prohibit a person from entering an area where infected people are being treated during an outbreak.

The use of these terms in North Carolina’s statutory definitions also means that, in this state, an isolation or quarantine order does not necessarily require a person to be physically separated from the

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<sup>73</sup> N.C. Gen. Stat. § 130A-2(3a) (hereinafter G.S.).

<sup>74</sup> G.S. 130A-2(7a). The term “quarantine” is also used to describe the local health director’s authority to declare an area “under quarantine against rabies” when there is a rabies outbreak extensive enough to endanger the lives of humans. G.S. 130A-194. This bulletin does not address rabies quarantines. For information about rabies quarantines, see Aimee N. Wall, *An Overview of North Carolina’s Rabies Control Laws*, Local Government Law Bulletin No. 125 (Oct. 2011), at <http://sogpubs.unc.edu/electronicversions/pdfs/lglb125.pdf>.

<sup>75</sup> All children in North Carolina are required to be immunized against certain diseases, including measles. G.S. 130A-152. The complete list of required immunizations is in the North Carolina Administrative Code. N.C. Admin. Code, tit. 10A, ch. 41A, § .0401 (hereinafter N.C.A.C.). Children who have not received the immunizations may not attend public or private day care centers or schools. G.S. 130A-155. However, a child may be exempt from the requirements if an immunization is medically contraindicated, G.S. 130A-156, 10A N.C.A.C. 41A.0404, or if the child’s parent has a bona fide religious objection to immunization, G.S. 130A-157, 10A N.C.A.C. 41A.0403.

public. Rather, it directs the individual to comply with communicable disease control measures, which vary by disease and which may constitute limitations on freedom of movement, action, or access. For example, the control measures for a person with rubella (“German measles”) require the person to be isolated for seven days after the onset of the rash.<sup>76</sup> In contrast, the control measures for a person with HIV do not require physical separation from society but instead affect the individual’s behavior.<sup>77</sup> Among other things, a person with HIV must notify sexual partners of his HIV status and must refrain from donating blood or sharing needles.<sup>78</sup> However, an order directing a person to comply with control measures for either condition is called an “isolation order.” Similarly, an order directing a person who has been exposed to a communicable disease but is not yet sick is called a “quarantine order,” whether it requires the person’s physical separation from the public, or simply directs the person to take (or refrain from taking) specific actions.

## **Ordering Isolation or Quarantine**

### *Authority to Order Isolation or Quarantine*

North Carolina law permits either the state health director or a local health director to order isolation or quarantine.<sup>79</sup> This authority may be delegated to another public official or employee.<sup>80</sup> Isolation or quarantine orders are permitted only (1) when and for so long as the public health is endangered, (2) when all other reasonable means for correcting the problem have been exhausted, and (3) when no less restrictive alternative exists.<sup>81</sup>

There is no law in North Carolina that interprets the terms “all other reasonable means” or “less restrictive alternative.” The plain words of the statute make clear that, if there are reasonable means of controlling the public health threat short of issuing an isolation or quarantine order, those means should be tried first. But what constitutes “reasonable” means? The word “reasonable” could be interpreted to mean at least a couple of different things. It almost certainly should be interpreted to mean that the only other methods that must be tried are those that are likely to be effective at controlling the public

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<sup>76</sup> Centers for Disease Control and Prevention, Manual for Surveillance of the Vaccine-Preventable Diseases, Chapter 14: Rubella (2012). Available at <http://www.cdc.gov/vaccines/pubs/surv-manual/chpt14-rubella.html>.

<sup>77</sup> North Carolina law specifically prohibits public health officials from requiring a person with HIV to remain at home or otherwise be physically separated from the general public. 10A N.C.A.C. 41A.0201(d) provides that isolation or quarantine orders for HIV may be no more restrictive than the control measures established in the North Carolina Administrative Code. The control measures for HIV do not include physical isolation. See 10A N.C.A.C. 41A.0202.

<sup>78</sup> 10A N.C.A.C. 41A.0202.

<sup>79</sup> G.S. 130A-145(a).

<sup>80</sup> G.S. 130A-6. The statute states that a public official granted authority under G.S. Chapter 130A may delegate that authority to “another person authorized by the public official.” Because isolation and quarantine are exercises of the state’s police power, such a delegation should be made to another public official, not to a private person or entity. As part of their planning for responding to public health emergencies, local health directors in North Carolina have been strongly encouraged to designate health department staff members who are authorized to exercise the isolation or quarantine authority in the event the health director is unavailable.

<sup>81</sup> G.S. 130A-145(a).

health threat. (It may be in some cases that there are no other means believed to be effective.) It could also be interpreted to mean that public health need not try means that might be effective but that are unduly expensive or burdensome compared to isolation or quarantine.

Assuming other reasonable means have been exhausted, when is isolation or quarantine the least restrictive alternative? There is no case law on this in North Carolina, but the issue has been addressed by the courts of other states. Some conclusions those courts have reached include:

- Isolation or quarantine limiting freedom of movement should not be ordered if there is something else, such as directly observed therapy, that could protect the public health as effectively.<sup>82</sup>
- Isolation or quarantine restricting freedom of movement may be ordered when a person demonstrates unwillingness or inability to comply with less restrictive measures.<sup>83</sup>
- Isolation or quarantine should not be ordered unless the person poses an actual danger to others.<sup>84</sup>

If a North Carolina court were called upon to determine when isolation or quarantine is the least restrictive alternative, it is likely the court would consider other states' conclusions in evaluating North Carolina law, but it may or may not reach the same conclusions.

Individuals in North Carolina are legally obliged to comply with communicable disease control measures regardless of whether an isolation or quarantine order has been issued to them.<sup>85</sup> Failure to comply is a misdemeanor.<sup>86</sup> Still, health directors often issue isolation or quarantine orders to ensure that a person who is subject to communicable disease control measures is aware of the measures and of the legal obligation to comply. It is also common for a health director to issue an isolation or quarantine order to an individual who is not complying with control measures, as part of an effort to gain compliance.

The authority to order isolation or quarantine is not limited to reportable diseases or conditions. However, for the isolation or quarantine authority to be available, the illness must satisfy the statutory definition of *communicable disease* or *communicable condition*.

#### *How Isolation or Quarantine is Ordered*

There is no North Carolina statute or rule that sets forth specific steps to follow in ordering isolation or quarantine of a person, but considering all the various laws together, it is possible to reach a few conclusions about how to proceed.

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<sup>82</sup> See, e.g., *City of Newark v. J.S.*, 652 A.2d 265 (N.J. 1993).

<sup>83</sup> See, e.g., *City of New York City v. Doe*, 614 N.Y.S.2d 8 (App. Div. 1994) (confinement in hospital for treatment of tuberculosis upheld when the evidence showed that the patient had a history of refusing to cooperate with directly observed therapy).

<sup>84</sup> See *City of Newark v. J.S.*, 652 A.2d 265 (N.J. 1993). This is consistent with G.S. 130A-145(a), which states that isolation or quarantine authority may be exercised only when and so long as the public health is endangered.

<sup>85</sup> G.S. 130A-144(f).

<sup>86</sup> G.S. 130A-25.

1. A local health director or the state health director should ensure that he or she is authorized to exercise isolation or quarantine authority in the particular situation. Specifically:
  - If the person is to be isolated, he or she must be infected or reasonably suspected of being infected with a communicable disease or condition.
  - If the person is to be quarantined, he or she must have been exposed or reasonably suspected of having been exposed, to a communicable disease or condition.<sup>87</sup>
  - The public health must be endangered as a result.
  - All other reasonable means for controlling the disease must have been exhausted, and
  - There must be no less restrictive means to protect the public health.
  
2. The local or state health director must determine which communicable disease control measures the recipient of the order will be subject to.
  - Control measures for HIV, hepatitis B, sexually transmitted diseases, tuberculosis, smallpox/vaccinia disease, SARS, and hepatitis C are published in the North Carolina Administrative Code.<sup>88</sup>
  - Control measures for other diseases are derived from recommendations and guidelines issued by the Centers for Disease Control and Prevention (CDC). If there are no CDC guidelines on point, control measures are derived from the American Public Health Association's *Control of Communicable Diseases Manual*. A public health official may also devise control measures if necessary, in accordance with principles set out in a state rule.<sup>89</sup>
  
3. The local or state health director must communicate to the person that he or she is being placed under an isolation or quarantine order. Although the law does not state that an isolation or quarantine order must be in writing, it would be unwise to rely solely on an oral order. However, it may be reasonable in some circumstances to issue an oral order and then follow it with a written order as soon as practicable.
  
4. The order should include:
  - The name of the person who is subject to the order.
  - The names of the health department and the health director issuing the order.
  - A statement of the required communicable disease control measures.
  - A statement that the control measures have been explained to the person.
  - If the order limits the person's freedom of movement or freedom of access, a statement that the person has a right to have a court review the order.

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<sup>87</sup> This applies to the most typical situation in which isolation or quarantine is ordered, but quarantine may also be ordered in two additional circumstances: to limit access to an area or facility that may be contaminated by an infectious agent, or to limit the freedom of movement of unimmunized persons in an outbreak. See G.S. 130A-2(7a).

<sup>88</sup> 10A N.C.A.C. 41A .0202 (HIV), .0203 (hepatitis B), .0204 (sexually transmitted diseases), .0205 (tuberculosis), .0208 (smallpox and vaccinia disease), .0213 (SARS), .0214 (hepatitis C).

<sup>89</sup> 10 N.C.A.C. 41A.0201(a).

- A statement describing the penalties that may be imposed if the person fails to comply with the order.<sup>90</sup>
- The signature of the health director or official with delegated authority who issued the order.
- The date and time the order was issued.

The North Carolina Division of Public Health often provides template isolation and quarantine orders during an outbreak. For example, during the SARS outbreak of 2003, the Division sent template orders to all local health directors by e-mail. Template orders that may be used in the event of a flu pandemic have been developed and are available on the Internet.<sup>91</sup>

### **Duration of Isolation or Quarantine Orders**

#### *Public Health Official's Order*

The basic limitation on the duration of an isolation or quarantine order is contained in G.S. 130A-145(a), which states that isolation and quarantine may be ordered only when *and for so long* as the public health is endangered. The period of time is therefore likely to vary depending upon the communicable disease or condition and possibly other circumstances.

There is no maximum time limit for orders limiting *freedom of action*, other than the statute's requirement that the orders end when the public health is no longer endangered. So, for example, an order directing a person with HIV to refrain from donating blood could be in place for years.<sup>92</sup> On the other hand, an order directing a person with a suspected low-risk exposure to the Ebola virus to participate in symptom monitoring would last only for the incubation period of the virus, which is presently recognized to be 21 days following the last exposure.<sup>93</sup>

Orders limiting *freedom of movement* or *freedom of access* are subject to a statutory maximum period of 30 days.<sup>94</sup> This is *in addition to* the requirement that the order last only for so long as the public health is endangered. As previously noted, an order limiting freedom of movement or access might be for less than 30 days—if, for example, it was a quarantine order issued to a person with an incubation period of 21 days—but it may never exceed 30 days, even if the person is still a threat to the public health at the end of that period.

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<sup>90</sup> 10A N.C.A.C. 41A.0201(d).

<sup>91</sup> The documents are part of the North Carolina Pandemic Influenza Plan. The plan is available at <http://epi.publichealth.nc.gov/cd/flu/plan.html>. The model orders are in Appendix L.

<sup>92</sup> 10A N.C.A.C. 41A.0202(a)(3) establishes this control measure.

<sup>93</sup> See [http://www.apha.org/~media/files/pdf/pubs/ccdm\\_ebola.ashx](http://www.apha.org/~media/files/pdf/pubs/ccdm_ebola.ashx).

<sup>94</sup> G.S. 130A-145(d).



### *Petitions to Extend an Order beyond 30 Days*

In some instances, the state or a local health director may determine that a person's freedom of movement must be restricted for more than 30 days in order to protect the public health. However, the health director does not have the authority to extend the initial order or issue a second order to the same individual for the same communicable disease event. Instead, the director may petition a superior court to extend the order. Ordinarily, this action is instituted in the superior court in the county in which the limitation on freedom of movement was imposed. However, if the individual who is the subject of the order has already sought review of the order in Wake county superior court (see the next section on due process rights), then the action must be instituted in Wake county.<sup>95</sup>

The public health official has the burden of producing sufficient evidence to support the extension. If the court determines by a preponderance of the evidence that the limitation of freedom of movement is reasonably necessary to prevent or limit the spread of the disease or condition, the court shall continue the limitation for a period of up to 30 days for any communicable disease or condition but tuberculosis. For tuberculosis, the court may extend the order for up to one year.

When necessary, the state health director or local health director may return to court and ask the court to continue a limitation for additional periods of up to 30 days each (or up to one year each if the person has tuberculosis).

### **Due Process Rights of Isolated or Quarantined Persons**

North Carolina law explains specifically how a person who is substantially affected by a limitation on freedom of movement or access may obtain a review of the order.<sup>96</sup> The person may institute an action in superior court seeking review of the limitation, and the court must respond by conducting a hearing within 72 hours (excluding Saturdays and Sundays). The person is entitled to an attorney. If he or she is indigent, a court-appointed attorney must be provided.

The court must terminate or reduce the limitation if it determines by the preponderance of the evidence that the limitation is not reasonably necessary to prevent or limit the spread of the disease or condition. The burden of producing sufficient evidence to show that the limitation is not reasonably necessary is on the person affected by the order. The person has a choice of where to file this action: either in the superior court of the county where the limitation is imposed, or in the Wake county superior court. What about a person who is subject to a limitation on freedom of action? Such an individual has a right to due process, which includes the opportunity for his or her objections to the order to be heard. However, North Carolina law does not spell out how a person subject to this kind of limitation may

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<sup>95</sup> G.S. 130A-145(d).

<sup>96</sup> G.S. 130A-145(d). The statute does not define the term "substantially affected person." It seems clear that the person who is the subject of the order would be a substantially affected person, but whether the term might include others is an open question.

exercise this right. Most likely, the person would file an action in superior court seeking a declaratory judgment about the validity of the order, or an injunction barring enforcement of the order.

### **Communicable Disease Outbreaks Caused by Terrorism**

It is possible that a communicable disease outbreak could be caused by an act of bioterrorism. If this were to occur, all the usual communicable disease laws would still apply, including the authority to order isolation or quarantine. However, some additional legal authorities become effective when the state health director reasonably suspects that a public health threat may exist and may have been caused by a terrorist incident using nuclear, biological, or chemical agents.<sup>97</sup> These additional authorities may be exercised only by the *state* health director. The additional authorities that are most likely to apply in a communicable disease outbreak that may have been caused by terrorism are:

- The state health director may require any person or animal to submit to examinations and tests to determine possible exposure to nuclear, biological, or chemical agents.
- The state health director may limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a nuclear, biological, or chemical agent that may be conveyed to others. This sounds like isolation or quarantine authority, but it is different because it applies to persons or animals who are *contaminated* rather than persons who are infected or exposed to a communicable disease.<sup>98</sup>
- The state health director may limit access by any person or animal to an area or facility that is housing persons or animals whose freedom of movement or action has been limited because they are contaminated with a nuclear, biological or chemical agent. The director may also limit access by any person or animal to an area or facility that is contaminated with such an agent.

All of these authorities may be exercised only when and for so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. There is a 30-day limitation on the period of time a person's freedom of movement or access may be limited that parallels the 30-day limitation on isolation or quarantine orders limiting freedom of movement or access. A person who is substantially affected by the state health director's order may institute an action for review of the order in superior court. If the state health director determines that additional time is needed, the director may institute an action in superior court for an additional 30-day period (and additional 30-day extensions may be sought as needed).

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<sup>97</sup> G.S. 130A-475.

<sup>98</sup> The distinction may not matter much in practice when the agent is one that causes communicable disease, such as anthrax spores. A person who is contaminated with such an agent probably has also been exposed to communicable disease, so quarantine authority would also apply.

## North Carolina Statutes and Rules

### *Statutes*

#### Investigating Cases and Outbreaks

- [G.S. 130A-144 Investigation and control measures.](#)
- [G.S. 130A-476 Access to health information.](#)

#### Control Measures, Generally

- [G.S. 130A-144 Investigation and control measures.](#)

#### Isolation and Quarantine

- [G.S. 130A-2 Definitions.](#)
- [G.S. 130A-6 Delegation of authority.](#)
- [G.S. 130A-25 Misdemeanor.](#)
- [G.S. 130A-144 Investigation and control measures.](#)
- [G.S. 130A-145 Quarantine and isolation authority.](#)
- [G.S. 130A-475 Suspected terrorist attack.](#)

### *Rules*

#### Investigating Cases and Outbreaks

- [10A N.C.A.C. 41A .0103 Duties of Local Health Director: Report Communicable Diseases](#)

#### Control Measures, Generally

- [10A N.C.A.C. 41A .0201 Control Measures – General](#)
- [10A N.C.A.C. 41A .0202 Control Measures – HIV](#)
- [10A N.C.A.C. 41A .0203 Control Measures – Hepatitis B](#)
- [10A N.C.A.C. 41A .0204 Control Measures – Sexually Transmitted Diseases](#)
- [10A N.C.A.C. 41A .0205 Control Measures – Tuberculosis](#)
- [10A N.C.A.C. 41A .0206 Infection Prevention – Health Care Settings](#)
- [10A N.C.A.C. 41A .0207 HIV and Hepatitis B Infected Health Care Workers](#)
- [10A N.C.A.C. 41A .0208 Control Measures – Smallpox; Vaccinia Disease](#)
- [10A N.C.A.C. 41A .0209 Laboratory Testing](#)
- [10A N.C.A.C. 41A .0210 Duties of Attending Physician](#)
- [10A N.C.A.C. 41A .0211 Duties of Other Persons](#)
- [10A N.C.A.C. 41A .0212 Handling and Transportation of Bodies](#)
- [10A N.C.A.C. 41A .0213 Control Measures – SARS](#)
- [10A N.C.A.C. 41A .0214 Control Measures – Hepatitis C](#)

#### Isolation and Quarantine

- [10A N.C.A.C. 41A .0201 Control Measures – General](#)

## **Enforcement: Remedies for Communicable Disease Law Violations**

There are two public health remedies that may be used to enforce the communicable disease laws: one criminal, and one civil. On the criminal side, a person who violates any of North Carolina's communicable disease statutes or rules may be charged with a class 1 misdemeanor. The laws may also be enforced through a civil action—a local health director may file an action for injunctive relief in a superior court. While any violation of the North Carolina communicable disease laws may be enforced using these remedies, in practice they are most commonly employed to address violations of communicable disease control measures or violations of isolation or quarantine orders.

### **Criminal Enforcement: Misdemeanor**

A person may be charged with a class 1 misdemeanor for violating any of North Carolina's public health statutes or rules except for those pertaining to smoking.<sup>99</sup> In the communicable disease context, a misdemeanor charge may be brought when:

- A person fails to comply with communicable disease control measures established by the Commission for Public Health in violation of G.S. 130A-144(f),<sup>100</sup> or
- A person violates an isolation or quarantine order issued by a local health director or the state health director pursuant to G.S. 130A-145.

### **Initiating a Misdemeanor Charge**

To initiate a misdemeanor charge, a judicial official (ordinarily a magistrate) must determine that there is probable cause that a crime has been committed. Public health officials and employees are likely to be the people involved in assembling the information that the magistrate needs to make this decision. They will need to assemble information about the applicable laws as well as the facts that establish the violation. Magistrates are, of course, familiar with criminal law and know how to charge a misdemeanor. However, communicable disease law violations are uncommon compared to other crimes that the judicial system deals with, so instituting this particular charge is probably not a routine procedure for any given judicial official. Further, the explanation of exactly which law has been violated is complicated, because it involves not only the two statutes cited above, but also the rules in the N.C. Administrative Code that specify communicable disease control measures, and potentially other documents from which control measures have been derived, such as CDC guidance documents that have been incorporated by reference into the rules. Here are two examples to illustrate this complexity:

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<sup>99</sup> G.S. 130A-25(a). This statute does not prescribe the classification for the misdemeanor, so under G.S. 14-3 it is classified as a class 1.

<sup>100</sup> G.S. 130A-144(f) requires all persons to comply with the control measures the Commission for Public Health establishes. The specific control measure(s) that are required are disease-specific and are set out in the North Carolina Administrative Code 10A N.C.A.C. 41A .0201 - .0214. For more information about how control measures are determined, see the section titled Communicable Disease Control Measures, Generally.

*Violation of HIV control measures.* Mr. Smith was diagnosed with HIV in 2010. At that time, he was informed that he is required to comply with the HIV control measures established by North Carolina law. He signed a document that listed the control measures and included a statement affirming that he understood the control measures and his obligation to comply with them. The control measures listed in the document included notifying sexual partners of his HIV infection and using condoms during sexual intercourse. In 2014, two persons who are newly diagnosed with HIV identify Mr. Smith as a sexual partner and tell public health officials that he did not tell them he had HIV and did not use condoms during sexual intercourse. If these allegations are true, Mr. Smith has violated G.S. 130A-144(f), the statute that requires compliance with control measures, and 10A N.C.A.C. 41A .0202, the rule that specifies the HIV control measures that were listed on the document Mr. Smith signed. G.S. 130A-25(a) makes these violations a misdemeanor.

*Violation of rubella control measures.* Ms. Williams works as a server in a family restaurant. Shortly after returning from a trip to Europe, Ms. Williams becomes ill and is diagnosed with rubella (“German measles”).<sup>101</sup> The county communicable disease nurse informs Ms. Williams that she is required to be isolated for 7 days after the onset of her rash to protect others, especially pregnant women, as the disease poses a particular risk to fetuses. Ms. Williams is only mildly ill and does not need to be hospitalized, so she is instructed to remain at home. She agrees and signs a document to that effect. However, the communicable disease nurse sees Ms. Williams working in the family restaurant the very next day. In order to demonstrate that Ms. Williams violated G.S. 130A-144(f), public health officials would need to show that she violated control measures established by the Commission for Public Health. The Commission’s rules do not contain a specific section for rubella, but they incorporate by reference CDC guidelines and recommended actions for communicable disease control. 10A N.C.A.C. 41A .0201(a). The CDC guidelines on rubella state that patients should be isolated for seven days after rash onset.<sup>102</sup> The allegations against Ms. Williams are therefore that she violated G.S. 130A-144(f) and 10A N.C.A.C. 41A .0201. These violations are made a misdemeanor by G.S. 130A-25(a).

Because of this complexity and the relative rarity of these types of cases, a public health official who wishes to initiate a misdemeanor charge against a person who violates communicable disease laws should assemble the relevant laws, rules, and guidance documents establishing the control measures, as

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<sup>101</sup>North Carolina law requires children to be vaccinated against rubella, G.S. 130A-152. The disease has been eliminated from the United States, meaning it no longer originates here, but cases may be imported by travelers to areas where it is still endemic. Because it is unlikely a vaccinated person would acquire rubella, the person in this hypothetical likely was not vaccinated—perhaps because she qualified for a medical or religious exemption to the vaccine requirements. See G.S. 130A-156; 130A-157. Regardless of her vaccination status or the reasons for it, once she was known or suspected of being infected or exposed, she would be required to comply with disease control measures.

<sup>102</sup>McLean H., Redd S., Abernathy E., Icenogle J., Wallace G. *Ch. 14. Rubella*, in *MANUAL FOR SURVEILLANCE OF VACCINE-PREVENTABLE DISEASES* (April 1, 2014).

well as evidence to support probable cause that the person has violated control measures and/or an isolation or quarantine order.<sup>103</sup>

If the magistrate finds probable cause to believe the communicable disease laws have been violated, the magistrate may charge the individual with a misdemeanor and issue a warrant for the person's arrest or a criminal summons.<sup>104</sup>

## **Trial and Sentencing**

The case is heard in the district court of the county where the offense occurred.<sup>105</sup> If the person is convicted, he or she may appeal to superior court for trial de novo.<sup>106</sup> Notice of appeal must be given within 10 days of the conviction in district court.

If a person is convicted of violating communicable disease control measures or violating an isolation or quarantine order, North Carolina's structured sentencing laws do not apply and the person may be sentenced for a period of up to two years.<sup>107</sup> The sentence must be served in one of several facilities specified in state law.<sup>108</sup> A person sentenced under this provision may not be released before the term of imprisonment is completed, unless a district court determines that the person's release would not endanger the public health. Before reaching such a conclusion, the court must receive recommendations from the medical consultant for the confinement facility, in consultation with local health director for the county of the person's residence.<sup>109</sup>

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<sup>103</sup> In a case involving a communicable disease law violation, the evidence required to support probable cause is likely to be confidential under one or more laws. The applicable confidentiality laws expressly allow disclosure of information to judicial officials in order to enforce the communicable disease laws; however, public health and judicial officials should be aware that the information is confidential and take appropriate steps to protect the information from public disclosure. See the section on communicable disease confidentiality for more information.

<sup>104</sup> A criminal summons (<http://www.nccourts.org/Forms/Documents/13.pdf>) orders the defendant to appear in court on a certain date to answer to the charges, but the person is not arrested. An arrest warrant (<http://www.nccourts.org/Forms/Documents/1.pdf>) requires law enforcement to arrest and detain the defendant until conditions for pretrial release are set.

<sup>105</sup> G.S. 15A-131(a).

<sup>106</sup> Trial de novo means that the case is re-tried anew. The superior court is not limited to reviewing the trial court's decision to determine whether there were errors of law; it rehears the case completely, including any disputes about facts as well as applicable laws.

<sup>107</sup> G.S. 130A-25(b).

<sup>108</sup> *Id.* The specific facilities are McCain Hospital, the North Carolina Correctional Center for Women, or another confinement facility designated for this purpose by the state secretary of public safety after consultation with the state health director. The purpose of this requirement is to ensure the defendant serves the sentence in a facility that is equipped to address the defendant's medical needs and protect against the further spread of disease within the confinement facility.

<sup>109</sup> G.S. 130A-25(c). This procedure is typically followed for persons who are convicted of violating tuberculosis control measures and sentenced to two years. Ordinarily, if the convicted person complies with medical treatment for tuberculosis while incarcerated, he or she will recover and no longer pose a threat to the public health after six to nine months. The North Carolina Tuberculosis Control Policy Manual addresses the procedure for incarceration and release of a tuberculosis law violator in Chapter IV, Part Q ([http://epi.publichealth.nc.gov/cd/lhds/manuals/tb/Chapter\\_IV.pdf](http://epi.publichealth.nc.gov/cd/lhds/manuals/tb/Chapter_IV.pdf)).

## Special Considerations for Arrest and Detention

If a health director decides to pursue criminal enforcement of the communicable disease laws, the director should consider whether following the normal procedures for arresting and detaining the person creates a risk of spreading disease to others. This could be an issue when a defendant has (or has been exposed to) a disease that can spread through a type of contact that is likely to occur during arrest or detention. For example, this concern would likely exist for a defendant who violates a quarantine order related to a novel influenza or Ebola; however, it would not be a concern for a person charged with violating control measures for a disease or condition that requires intimate contact, such as HIV or syphilis.

To address these concerns, legislation in 2002 amended North Carolina's criminal procedure laws to allow for arrests and detentions that minimize the exposure of others to the arrested person.<sup>110</sup> A law enforcement officer who arrests an individual for violating an isolation or quarantine order *that limits freedom of movement or access* may detain the person in an area designated by the state health director or a local health director, until the individual's first appearance before a judicial official.<sup>111</sup> At the first appearance, the judicial official must consider whether the person poses a threat to the health and safety of others.<sup>112</sup> If the judicial official determines by clear and convincing evidence that the person does pose a threat, the official must deny pretrial release and order the person to be confined in an area the official designates after receiving recommendations from the state health director or local health director. The burden to produce sufficient evidence to support the determination that the person poses a threat is on the health director. These provisions do not apply to isolation or quarantine orders limiting *freedom of action*.

### Civil Enforcement: Injunction

The communicable disease statutes and rules may also be enforced through a civil action—a local health director or the state health director may request an injunction from the superior court in the county in which violation of the order occurred.<sup>113</sup> A health director pursuing this remedy must follow the normal Rules of Civil Procedure. *If a health director wishes to pursue this remedy, it is essential to engage the health department's attorney in the process.* At the outset, the attorney can help the director evaluate whether it is an appropriate course of action in the specific case. If it is, the attorney will be needed to prepare the appropriate documents and take the steps required to get the matter before the court.

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<sup>110</sup> S.L. 2002-179.

<sup>111</sup> G.S. 15A-401(b)(4).

<sup>112</sup> G.S. 15A-534.5.

<sup>113</sup> G.S. 130A-18.

## Procedure for Using this Remedy<sup>114</sup>

The following list summarizes the general process and steps that the health director may anticipate. However, an attorney with litigation experience will be familiar with the process of initiating a civil action and may not follow these steps precisely. A local health director should not substitute this description for the advice of the department's attorney.

1. To initiate this remedy, the health department's attorney must prepare a civil complaint. There is no official form for a basic civil complaint, but an attorney with litigation experience will be able to produce this document. The text of the complaint should include at least all of the following:
  - The county of residence of the person who has violated the public health statute or rule (the defendant);
  - A statement of the facts establishing that the person has violated the public health statute or rule;
  - A recitation of the statute or rule the person has violated;
  - The county where the violation was committed;
  - A statement of the local health director's authority to bring the action for injunctive relief; and
  - A request for injunctive relief.
2. The health department's attorney must file the complaint with the clerk of superior court in the county where the violation occurred or where the defendant resides.
3. The local health department's attorney may then move for a temporary restraining order (TRO) from a superior court judge at the time the complaint is filed. Requesting a TRO is the method for obtaining quick action under G.S. 130A-18. Otherwise, the case will proceed under the normal time frames in the Rules of Civil Procedure. Those time frames require serving the complaint on the public health law violator (which may take several days), and allowing the violator 30 or more days to file a response. The process of having a hearing on a TRO varies from courthouse to courthouse. In some areas the clerk of court's office may be able to assist the attorney in making arrangements for an ex parte hearing on the TRO. The procedure and standards for obtaining a TRO are found in Rule of Civil Procedure 65.<sup>115</sup> They must be strictly followed for the TRO to be valid. Rule 65 requires that a TRO include specific written findings by the court, and the order must be filed with the clerk of court as soon as it is granted. For this reason, it may also be a good idea to have a template TRO prepared in advance if you anticipate using this civil remedy.

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<sup>114</sup> I am indebted to my colleague Ann Anderson, who provided a draft of this section. Among other things, Professor Anderson specializes in the law of civil procedure.

<sup>115</sup> G.S. 1A-1, Rule 65 [[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_1A/GS\\_1A-1,\\_Rule\\_65.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_1A/GS_1A-1,_Rule_65.html)].



4. If a TRO is granted, it is effective for 10 days (which may be extended by the court for good cause shown). Once the TRO is filed with the clerk, the health department's attorney should serve it upon the defendant as soon as possible. If the defendant violates the TRO, the local health department's attorney may make a motion to enforce the TRO. This typically involves seeking an order of civil contempt. The procedure and standards for holding someone in civil contempt and are governed by G.S. 5A-21 through 23. The procedures include a 5-day notice requirement for the violator "unless good cause is shown." The remedy for civil contempt is imprisonment "as long as the contempt continues."
5. The action may proceed to a hearing for a preliminary injunction (a short-term order that may be issued while the action is pending) or a permanent injunction (the court's final order to the individual to cease the violation of the law). The local health director must continue to work with the department's attorney to pursue these orders.

### **Using this Remedy for Communicable Disease Law Violations**

This remedy may be used to enforce the communicable disease laws. The violations that are most likely to arise are:

- *Failure to comply with communicable disease control measures.* All persons are required to comply with the control measures adopted by the Commission for Public Health.<sup>116</sup> The Commission's control measures are adopted by rule and published in the North Carolina Administrative Code.<sup>117</sup> Some control measures are in the Code itself; but many will be found in CDC guidelines and recommended actions, which are incorporated by reference into the Code.<sup>118</sup>
- Failure to comply with an isolation or quarantine order issued under the authority of G.S. 130A-145.

There are a couple of special considerations when this remedy is used in the communicable disease context.

*Timeliness.* Quick action may be needed to protect the public health if a person violates a communicable disease control measure or an isolation or quarantine order. For this reason, it would be a good idea to have template documents drafted in advance. A local health director may wish to work with his or her attorney to develop a template complaint and a template TRO.

*Detaining a person who violates a TRO or injunction.* A person who violates a court's order could potentially be held in civil contempt. The remedy for civil contempt is imprisonment as long as the contempt continues. Ordinarily imprisonment is in the local jail. However, this may be problematic in

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<sup>116</sup> G.S. 130A-144(f).

<sup>117</sup> 10A N.C.A.C. 41A .0201 - .0214.

<sup>118</sup> 10A N.C.A.C. 41A .0201(a); *see also* the section on communicable disease control measures, generally.

the communicable disease context, especially if the disease is one that spreads without intimate contact. If the local jail is not equipped to keep the person confined in a manner that is safe for all involved—including the jail staff and the other inmates—the local health department should be prepared to identify and request to the court an alternative location for the person to be detained. This may also require working closely with the local sheriff or jail administrator to obtain a “safekeeper” order,<sup>119</sup> allowing the defendant to be transferred from the local jail to another facility.

#### **North Carolina Statutes**

- [G.S. 130A-18. Injunction.](#)
- [G.S. 130A-25. Misdemeanor.](#)

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<sup>119</sup> G.S. 162-39 authorizes a sheriff to seek an order from a superior court judge to transfer a local inmate to another local jail or a state prison facility when necessary for the safety of the inmate or the security of the local jail. An inmate who is transferred under this provision is called a “safekeeper.”

## Communicable Disease and Confidentiality Law

Information about communicable diseases or conditions is health information. There are several laws that protect the confidentiality of health information. The best known and arguably most significant is the HIPAA Privacy Rule,<sup>120</sup> a federal law. There are also a number of state laws addressing medical confidentiality in North Carolina, including laws that are particular to certain professionals<sup>121</sup> or specific to different types of health care facilities.<sup>122</sup> However, the most significant state law in this context is a statute that is specific to information and records that identify a person who has or may have a reportable communicable disease, G.S. 130A-143 (hereafter “state communicable disease confidentiality law”).

A full treatment of all of these confidentiality laws is well beyond the scope of this document. Indeed, a full treatment of every issue that arises just in the communicable disease realm is beyond the scope of an overview. However, most practical questions that public health agencies have about the confidentiality of communicable disease information can be answered by considering the HIPAA Privacy Rule in conjunction with the state communicable disease confidentiality law. This section describes those two laws and then discusses their application to two key issues: how public health officials may obtain confidential communicable disease information for public health purposes, and public health officials’ obligation to maintain the confidentiality of the communicable disease information they acquire.

### The HIPAA Privacy Rule and the State Communicable Disease Confidentiality Law

#### Overview and Comparison of the Two Laws

Both HIPAA and the state communicable disease confidentiality law affect public health communicable disease control activities. They both allow public health officials to acquire, use, and disclose the information that is needed to carry out those activities. 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 it pertains. The combination of permissions (allowing the acquisition, use and disclosure) and restrictions (limits on uses and disclosures) thus strikes a balance between individuals’ interest in privacy and the public interest in controlling the spread of disease.<sup>123</sup>

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<sup>120</sup> 45 C.F.R. Parts 160 and 164.

<sup>121</sup> *See, e.g.*, G.S. 8-53 (creating physician-patient privilege and articulating a general rule of confidentiality for medical records and information); 8-53.13 (nurse-patient privilege); 143-518 (confidentiality of information acquired by emergency medical services providers).

<sup>122</sup> *See, e.g.*, G.S. 130A-12 (making patient information maintained by local health departments confidential); 131E-97 (confidentiality of patient medical and financial records maintained by hospitals generally).

<sup>123</sup> *See Act-Up Triangle v. Commission for Health Services*, 345 N.C. 699 (1997) (upholding the state’s HIV reporting requirement after concluding the state communicable disease confidentiality law was sufficient to guard against unauthorized public disclosure of the information).

The two laws are different in several significant ways. First, there is a difference in the entities to whom they apply. The HIPAA Privacy Rule applies only to *covered entities*—a term that captures most health care providers, as well as some (but not all) public health programs.<sup>124</sup> In contrast, the state communicable disease confidentiality law applies to *any* public or private entity that has information or records that identify a person who has or may have a reportable communicable disease.

Second, the laws differ in the information they cover. The HIPAA Privacy Rule applies to *protected health information* (PHI), defined as individually identifiable health information that relates to an individual's health status or condition, the provision of health care to the individual, or payment for the provision of health care to the individual.<sup>125</sup> HIPAA thus covers a wide range of health information, including but not limited to information about communicable disease. The state communicable disease confidentiality law applies only to information or records that identify a person who has or may have a communicable disease or condition that the state Commission for Public Health has made reportable. It doesn't apply to other types of health information, but it is nevertheless a law with a wide reach, as there are more than 70 reportable communicable diseases and conditions in North Carolina.<sup>126</sup>

Third, the two laws have different rules regarding when information about communicable disease may be disclosed. In general, the state communicable disease confidentiality law is stricter than HIPAA about whether and to whom information may be disclosed. However, HIPAA is sometimes more prescriptive than the state law about the conditions that must be met before a disclosure is made. It is therefore important to consider both HIPAA and state law together when deciding whether and how communicable disease information may be disclosed.

### **Overview of Relevant Provisions of the HIPAA Privacy Rule**

The general rule under HIPAA is that an individual's written authorization is required before PHI may be disclosed.<sup>127</sup> However, there are several exceptions that expressly allow disclosure of PHI without the individual's authorization. Two of these exceptions in particular are relevant to communicable disease control.

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<sup>124</sup> Every local public health agency in North Carolina is either a stand-alone HIPAA-covered entity or part of a HIPAA-covered entity. The state Department of Health and Human Services is also covered by HIPAA. However, the HIPAA Privacy Rule may not cover all of a covered entity's functions and activities, if the entity has determined it is a *hybrid entity* and has excluded some of its programs, functions, or activities from HIPAA coverage. A full treatment of this complex subject is beyond the scope of this section. For a description of the hybrid entity concept and its applicability to local government agencies in North Carolina, see Aimee N. Wall, *Should a Local Government be a HIPAA Hybrid Entity?*, Coates Canons' Local Government Law Blog (April 28, 2015), at <http://canons.sog.unc.edu/?p=8084>. The specific HIPAA rules that address hybrid entities are 45 C.F.R. 164.103 (defining hybrid entity and related terms) and 164.105 (describing hybrid entity designation and the applicability of the HIPAA regulations to a hybrid entity).

<sup>125</sup> 45 C.F.R. 160.103.

<sup>126</sup> For more information, see the section on communicable disease reporting.

<sup>127</sup> 45 C.F.R. 164.508(a).

*Disclosures required by law.*<sup>128</sup> A HIPAA-covered entity may disclose PHI when the disclosure is required by law, so long as the disclosure complies with and is limited to the law’s requirements. The term “required by law” is defined to include statutes or regulations that require the production of information. In North Carolina, there are several state laws that require the disclosure of information to public health officials for communicable disease control purposes.

*Disclosures for public health purposes.*<sup>129</sup> A HIPAA-covered entity may disclose PHI to public health officials or agencies that are authorized by law to receive the information for various public health purposes, including preventing or controlling disease. This HIPAA provision expressly extends to disease reporting, public health surveillance, public health investigations, and public health interventions.

The provision also expressly allows public health officials in HIPAA-covered entities to disclose information to persons who may be at risk of contracting a disease, but *only if* public health officials are authorized by law to make that disclosure. In North Carolina, this disclosure is authorized only if it satisfies the state communicable disease confidentiality law’s requirement that the disclosure (1) be necessary to protect the public health, and (2) be made in accordance with the state communicable disease control rules.

### **Overview of the State Communicable Disease Confidentiality Law**

The state communicable disease confidentiality law has a general rule that is similar to HIPAA’s—ordinarily, written consent is required to disclose information covered by the law.<sup>130</sup> Like HIPAA, the state communicable disease confidentiality law contains a number of exceptions to the general rule that written consent is required. Information that is subject to the state law may be disclosed without written consent:

- When disclosure is necessary to protect the public health and is made in accordance with the communicable disease control measure rules adopted by the Commission for Public Health.
- When disclosure is made pursuant to other provisions of G.S. Chapter 130A, Article 6 (the state statutes that set out the legal framework for communicable disease reporting, investigation, and control).
- When disclosure is made by a public health official to a court or a law enforcement official for purposes of enforcing the state communicable disease or public health bioterrorism laws.<sup>131</sup> A law enforcement official who receives the information is prohibited from disclosing it further, except (1) when necessary to enforce the communicable disease or public health bioterrorism laws; or (2) to investigate a terrorist incident involving a nuclear, biological, or chemical agent;

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<sup>128</sup> 45 C.F.R. 164.512(a).

<sup>129</sup> 45 C.F.R. 164.512(b).

<sup>130</sup> G.S. 130A-143. Written consent may be provided by the person identified in the record or the person’s legal guardian.

<sup>131</sup> The public health bioterrorism laws are found in G.S. Chapter 130A, Article 22. For an overview of those laws, see Jill Moore, *New North Carolina Public Health Bioterrorism Law*, Health Law Bulletin No. 79 (Feb. 2003), available at <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/200302MooreNewBTLaw.pdf>.

or (3) when a public health official seeks the law enforcement official's assistance in preventing or controlling the spread of disease *and* expressly authorizes the law enforcement official to make disclosures as necessary to that purpose.

- When disclosure is made by a public health official to another federal, state, or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or condition.
- When disclosure is made pursuant to a subpoena or court order, provided that upon the request of the person who is identified in the record, the record is reviewed in camera.<sup>132</sup>
- For purposes of treatment, payment, or health care operations, as those terms are defined by HIPAA and subject to the same conditions on those disclosures that HIPAA imposes.<sup>133</sup>
- For purposes of research, subject to limitations in HIPAA and state law.<sup>134</sup>

### **Disclosure of Information that is Not Identifiable**

Both HIPAA and the state communicable disease confidentiality law allow disclosure of information that is not individually identifiable. The state law expressly authorizes release of "specific medical or epidemiological information for statistical purposes in a way that no person can be identified."<sup>135</sup> The HIPAA Privacy Rule allows disclosure of de-identified information and sets out very specific criteria that must be applied to determine whether information may be considered de-identified. In general, those criteria require one of two things: either a person who has been trained in statistical methodology must apply the appropriate methods and determine the information has been de-identified, or particular identifiers must be stripped from the information. Before concluding that information has been de-identified and may be released, it is imperative to consult the relevant HIPAA provision to ensure that information has been de-identified properly.<sup>136</sup>

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<sup>132</sup> HIPAA and North Carolina privilege laws also affect the disclosure of information pursuant to subpoenas or court orders. For more information, see John Rubin and Aimee Wall, *Responding to Subpoenas for Health Department Records*, Health Law Bulletin No. 82 (Sept. 2005), at <http://sogpubs.unc.edu/electronicversions/pdfs/hlb82.pdf>.

<sup>133</sup> See 45 C.F.R. 164.506 (uses and disclosures for purposes of treatment, payment, and health care operations). For more information about disclosures for treatment, payment, and health care operations, see <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/TPO-May%202013.pdf>.

<sup>134</sup> There are two provisions in the state communicable disease law that address research. One allows any entity with information protected by the law to disclose the information for purposes of research, as that term is defined by HIPAA and subject to the same conditions on research disclosures that HIPAA imposes. See 45 C.F.R. 164.512(i) (uses and disclosures for research purposes). The other allows the state department of health and human services to disclose information for bona fide research purposes in accordance with laws adopted by the Commission for Public Health. See 10A N.C.A.C. 41A .0104.

<sup>135</sup> G.S. 130A-143(1).

<sup>136</sup> 45 C.F.R. 164.514(a).

## Obtaining Communicable Disease Information for Public Health Purposes

### **Obtaining Information through Communicable Disease Reports**

Several statutes and rules require physicians and specified others to report known or suspected communicable diseases to public health officials.<sup>137</sup> Medical facilities are permitted, but not required, to make reports as well.<sup>138</sup> A person who makes a report is immune from any civil or criminal liability that might otherwise arise under state law.<sup>139</sup> A HIPAA-covered entity that makes a report need not worry about violating HIPAA either, as the HIPAA Privacy Rule expressly allows these disclosures. Most communicable disease reports are required by state statutes and rules, so they fit under the HIPAA provision that authorizes disclosures that are required by law. Reports by medical facilities are *permitted* but not *required*, so they do not fit under the required-by-law provision, but they do fit under the HIPAA provision that permits disclosures to public health officials who are authorized by law to receive the information for public health purposes including disease reporting.<sup>140</sup>

### **Obtaining Information Relevant to a Case or an Outbreak Investigation**

A North Carolina statute requires health care providers and others to provide access to records or information to public health officials 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 expected of having been infected or exposed; or
- The investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.<sup>141</sup>

A public health official who seeks access to records or information under this provision must present proper identification and should also be prepared to show and explain the law that permits him or her to have access.<sup>142</sup> 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.<sup>143</sup> The

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<sup>137</sup> G.S. 130A-135 – 130A-141.1; 10A N.C.A.C. 41A .0101 - .0106. For more information, see the section on communicable disease reporting.

<sup>138</sup> G.S. 130A-157.

<sup>139</sup> G.S. 130A-142.

<sup>140</sup> 45 C.F.R. 164.512(b). HIPAA-covered entities should note that disclosures made pursuant to this section are subject to HIPAA's minimum necessary standard. 45 C.F.R. 164.502(b); 164.514(d). Disclosures that are required by law *are not* subject to the minimum necessary standard.

<sup>141</sup> G.S. 130A-144(b).

<sup>142</sup> *Id.*; 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.

<sup>143</sup> G.S. 130A-144(c).

provider need not fear that he or she is violating HIPAA either, since the HIPAA Privacy Rule expressly allows disclosures that are required by law.<sup>144</sup>

### Public Health Officials' Obligation to Maintain the Confidentiality of Communicable Disease Information

Public health officials who obtain communicable disease information for public health purposes must maintain the confidentiality of the information in accordance with the state communicable disease confidentiality law and any other laws that may apply to it, including HIPAA.

### **HIPAA and Communicable Disease Information Held by Public Health Agencies**

If a public health entity that has communicable information is a HIPAA-covered entity (or a HIPAA-covered component of a hybrid entity), then the HIPAA Privacy Rule applies to information that it acquires, maintains, uses, or discloses for public health purposes. This does not mean that the information may not be used or disclosed; it just means that the information may be used or disclosed only as permitted by the HIPAA Privacy Rule.

Every local public health agency in North Carolina is subject to the HIPAA Privacy Rule. Some local agencies have completed a hybrid entity designation for either their department or their county, meaning that they have determined that some of their programs or activities are not required to comply with the HIPAA Privacy Rule. If a local agency has determined that some or all of its communicable disease activities are not part of the HIPAA-covered component, then HIPAA may not apply to *those particular activities in that particular locality. Decisions about this are made locally*, so it is not possible to make an across-the-board statement about the applicability of HIPAA to communicable disease activities in *every* local public health agency in North Carolina. Each local agency should have this information on file and should clearly communicate to its staff members what functions or activities are covered components. Information acquired, maintained, used, or disclosed by HIPAA-covered components is subject to the HIPAA Privacy Rule.

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<sup>144</sup> 45 C.F.R. 164.512(a). Arguably this statute also fits under the provision authorizing disclosures to public health officials who are authorized by law to receive the information for public health purposes, including disease investigation control. 45 C.F.R. 164.512(b). However, disclosures that fit into the second category are subject to HIPAA's minimum necessary standard, while disclosures that are required by law are not. 45 C.F.R. 164.502(b)(2)(v). The application of the minimum necessary standard could frustrate the purpose of the statute requiring the disclosure, as well as create significant administrative burdens for both the disclosing entity and the receiving public health official. See 45 C.F.R. 164.514(d). It therefore seems unwise to place this in a category that would require application of the standard.



## State Communicable Disease Confidentiality Law and Public Health Activities

The state communicable disease confidentiality law applies to all public health agencies, activities, and employees, regardless of whether HIPAA also applies. As the overview of the law that appears earlier in this section makes clear, public health is authorized to disclose communicable disease information in a number of circumstances in order to carry out public health purposes. However, it is important to keep in mind that the law does not authorize unrestrained disclosure; any given disclosure needs to fit one or more of the particular circumstances specified in the statute.

The state law also specifies that any records that identify an individual who has or may have a reportable communicable disease are “strictly confidential” and not public records for purposes of G.S. Chapter 132 (the state law that gives the public access to most government records). This means that when a public agency has information that is subject to the state communicable disease confidentiality law in its records, the agency may not disclose that information in response to a public records request, even if the record is otherwise a public record that the public has a right to access.<sup>145</sup> However, sometimes the record in which the information is contained may be disclosed after the communicable disease information is redacted. A public agency should consult with its attorney to determine how to respond to a request for records that may be subject to this protection.

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<sup>145</sup> This is particularly significant because, if the record *were* subject to public access under G.S. Chapter 132, then HIPAA alone would not prohibit the disclosure of the information. The general rule for public agency records in North Carolina is that they must be made available to the public unless a specific statute excepts them from public access. The HIPAA Privacy Rule treats this as a “required by law” disclosure that is permitted under 45 C.F.R. 164.512(a). *See* [http://www.hhs.gov/ocr/privacy/hipaa/faq/disclosures\\_for\\_law\\_enforcement\\_purposes/506.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/disclosures_for_law_enforcement_purposes/506.html). Absent this protection in state law, the public records law would appear to compel the disclosure and HIPAA would not prevent it. Several North Carolina public health and health care statutes contain provisions stating that different categories of patient medical and financial records are not public records for purposes of G.S. Chapter 132. *See, e.g.,* G.S. 130A-12 (records containing privileged or protected patient information maintained by local health departments or the state Department of Health and Human Services are confidential and not public records as defined in G.S. 132-1); 131E-97 (medical records and patient financial records compiled and maintained by public hospitals and other public health care facilities are not public records as defined by G.S. Ch. 132).

## North Carolina Statutes and Rules

### Statutes

- [G.S. 130A-142. Immunity of persons who report.](#)
- [G.S. 130A-143. Confidentiality of records.](#) *[State communicable disease confidentiality law]*
- [G.S. 130A-144. Investigation and control measures.](#)

### Rules

- [10A N.C.A.C. 41A .0101. Reportable diseases and conditions.](#)
- [10A N.C.A.C. 41A .0102. Method of reporting.](#)
- [10A N.C.A.C. 41A .0103. Duties of local health director: Report communicable diseases.](#)
- [10A N.C.A.C. 41A .0104. Release of communicable disease records: Research purposes.](#)
- [10A N.C.A.C. 41A .0105. Hospital emergency department data reporting.](#)
- [10A N.C.A.C. 41A .0106. Reporting of health care-associated infections.](#)

## Appendix 1. Frequently Asked Questions

### Communicable Disease Reporting

#### **1. Which communicable diseases and conditions are reportable in North Carolina?**

A communicable disease is reportable if it appears on the NC Commission for Public Health's [list of reportable communicable diseases](#), or if it is the subject of a [state health director temporary order to report](#).

#### **2. Who is required to report communicable diseases and conditions?**

NC law requires the following people to make reports to the local health director:

- [Physicians](#)
- [School principals and child care operators](#)
- [Operators of restaurants/other food or drink establishments](#)
- [Persons in charge of laboratories](#)

[Medial facilities](#) are allowed, but not required, to make reports.

[Local health directors](#) are required to make reports to the state, and to other local health directors when the reported person resides in another health department's jurisdiction.

#### **3. Must a physician wait for lab reports confirming the communicable disease or condition before making the report?**

Usually no. Sometimes the reporting requirement may specify that reports are required only after a disease or condition has been confirmed through laboratory testing. For example, only confirmed HIV is reportable. But in most cases, a report is required when the physician has *reason to suspect* that a person about whom the physician has been professionally consulted has a communicable disease or condition.

#### **4. Suppose there is an outbreak of an emerging illness that is not yet on the reportable communicable disease list. Can physicians be required to report it?**

Yes, if the state health director issues an order requiring such reports. North Carolina laws authorize the state health director to issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information, in either of two circumstances:

- When the information is needed for the investigation or surveillance of an illness, condition, or symptoms that may indicate a communicable disease ([G.S. 130A-141.1](#)), or

- When the information is needed for the investigation or surveillance of an illness, condition, or symptoms that may indicate an illness or condition caused by bioterrorism [[G.S. 130A-476\(b\)](#)].

A temporary order issued under the authority of one of these laws is valid for up to 90 days.

**5. Does HIPAA prohibit physicians or health care facilities from making communicable disease reports?**

No. To the contrary, HIPAA specifically allows physicians and facilities that are HIPAA-covered entities to make these reports. There are two sections of the HIPAA privacy rule that expressly allow covered entities to report communicable diseases or conditions to public health officials:

- [Section 164.512\(a\)](#) allows health care providers to disclose protected health information when the disclosure of information is required by another law, such as a state law. North Carolina state laws that require physicians to report fit into this category.
- [Section 164.512\(b\)](#) specifically allows health care providers to disclose protected health information to a public health authority that is authorized by law to receive the information for public health purposes, including the investigation or control of diseases. A North Carolina state law authorizing but not requiring medical facilities to report fits into this category.

**6. Is a person who reports communicable diseases or conditions liable for violating state confidentiality laws?**

[G.S. 130A-142](#) provides immunity from liability for persons who make reports in good faith.

Communicable Disease Investigations

**1. May local health department employees obtain access to medical records, if they are necessary for an investigation of a disease report or an outbreak?**

Yes. Physicians, persons in charge of medical facilities, and persons in charge of laboratories must make confidential medical records available to public health officials if the public health official determines the records pertain to any of the following:

- Diagnosis, treatment, or prevention of a person who is infected, exposed, or suspected of being infected or exposed to a communicable disease or condition, or
- Investigation of a known or suspected outbreak of a communicable disease or condition, or
- A report, case, or outbreak of an illness, condition, or health hazard that may have been caused by terrorism using nuclear, chemical, or biological agents.

[G.S. 130A-144\(b\)](#); [130A-476\(c\)](#). These laws authorize either the state health director or a local health director to examine, review, and obtain a copy of such records upon request and presentation of proper identification. The state health director or local health director may delegate this authority to another public health employee. [G.S. 130A-6](#).

A person who provides access to records or information pursuant to these laws is immune from civil or criminal liability that might otherwise be imposed under state law. [G.S. 130A-144\(c\)](#); [130A-476\(d\)](#).

**2. Does HIPAA prohibit a health care provider or a person in charge of a health care facility or laboratory from providing access to records pursuant to these laws?**

No. The HIPAA privacy rule specifically permits covered entities to disclose protected health information pursuant to laws that require or authorize disclosure to public health authorities for the purpose of controlling disease. [45 C.F.R. 164.512\(a\) and \(b\)](#).

### Communicable Disease Control Measures

**1. May public health officials impose additional control measures, on top of those in the North Carolina Administrative Code, CDC guidelines, or the APHA manual?**

A state administrative rule states that isolation or quarantine orders for diseases or conditions “for which control measures have been established shall require compliance with applicable control measures and shall state penalties for failure to comply. These isolation and quarantine orders *may be no more restrictive than the applicable control measures.*” [10A N.C.A.C. 41A .0201\(d\)](#) (emphasis added). All persons are required to comply with communicable disease control measures regardless of whether an isolation or quarantine order has been issued, [G.S. 130A-144\(f\)](#), and failure to comply may result in a misdemeanor charge, [G.S. 130A-25](#). However, an isolation or quarantine order directing a person to comply with control measures is typically issued (if practicable) before enforcement proceedings are initiated. Since more restrictive control measures than the established measures may not be included in such an order, it seems reasonable to conclude additional control measures may not be required. However, public health officials may request voluntary compliance with additional, appropriate control measures.

The rule is unclear about what constitutes an “established” control measure. The term seems clearly to include control measures that the Commission for Public Health has adopted as rules. The Commission has adopted rules establishing the control measures for HIV, hepatitis B, sexually transmitted diseases, tuberculosis, smallpox/vaccinia disease, SARS, and hepatitis C. The control measures for other diseases and conditions are derived from other sources—primarily the guidelines and recommendations of the Centers for Disease Control and Prevention (CDC), or in the absence of CDC materials, the [American Public Health Association’s Control of Communicable Diseases Manual](#). Public health officials are also authorized to devise control measures that follow several general principles that are set out in [10A N.C.A.C. 41A. 0201\(b\)](#). Those principles are:

- Control measures must be reasonably expected to decrease the risk of transmission and be consistent with recent scientific and public health information.

- Control measures for diseases/conditions transmitted by the airborne route must require physical isolation for the duration of infectivity.
- Control measures for diseases/conditions transmitted by the fecal-oral route must require exclusion from situations in which transmission can reasonably be expected to occur, such as food-handling work, for the duration of infectivity.
- Control measures for diseases/conditions transmitted by sexual or bloodborne routes must include prohibitions on donating blood or tissue, needle-sharing, and sexual contact in a manner likely to result in transmission for the duration of infectivity.

It is unclear when control measures derived from other sources or devised in accordance with the above principles are “established” for purposes of determining what may be included in an isolation or quarantine order. In practice, it is probably wise to consider the “established” control measures to be those that appear in the state communicable disease control manuals, or any that are issued by the state Division of Public Health in the course of responding to an outbreak or emerging illness.

**2. May public health officials give control measures for communicable diseases or conditions that are not reportable?**

Yes. A local health director has the duty to ensure that control measures are given for both reportable communicable diseases and “any other communicable disease or communicable condition that represents a significant threat to the public health.” [G.S. 130A-144\(e\)](#). While giving the control measures is the local health director’s duty, if there is a communicable disease or condition representing a significant threat to the public health in North Carolina, it is likely that the state Division of Public Health will be involved in devising and disseminating the control measures.

**3. Are individuals legally required to comply with communicable disease control measures?**

Yes. [G.S. 130A-144\(f\)](#) states: “All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission [for Public Health,]” subject to some limitations related to HIV testing. Failure to comply with control measures is a misdemeanor and is punishable by a sentence of up to two years. [G.S. 130A-25](#).

Isolation and Quarantine

**1. What is the key difference between isolation and quarantine?**

Isolation limits the freedom of movement or action of a person or animal who *is infected* (or is reasonably suspected of being infected) with a communicable disease or condition. [G.S. 130A-2\(3a\)](#). Quarantine limits the freedom of movement or action of a person or animal who *has been exposed* (or is reasonably suspected of having been exposed) to a communicable disease or condition. Under North Carolina law, quarantine also can be used in two additional circumstances: (1) to limit access by a person

or animal to an area or facility that may be contaminated with an infectious agent; or (2) to limit the freedom of movement or action of unimmunized persons in an outbreak. [G.S. 130A-2\(7a\)](#).

**2. What is the difference between an order limiting freedom of movement and an order limiting freedom of action?**

An order limiting freedom of movement essentially prohibits an individual from going somewhere. It may confine the person to a particular place, such as his home or a health care facility. Or it may prohibit the person from entering a particular place—for example, it may prevent a person from returning to school or work during the period of communicability. In contrast, an order limiting freedom of action limits specific behaviors, but not the ability to move freely in society. For example, a person who is required to refrain from sexual activity during the course of treatment for gonorrhea has had his or her freedom of action restricted.

**3. In North Carolina, who has the authority to order isolation or quarantine?**

Either the state health director or a local health director may order isolation or quarantine. [G.S. 130A-145](#).

**4. Suppose a county has a consolidated human services agency that is responsible for public health, instead of a local health department. Who is authorized to order isolation or quarantine in such a county?**

When a county creates a consolidated human services agency (CHSA) that includes public health, the CHSA director acquires the powers and duties of a local health director, including the power to order isolation or quarantine. [G.S. 153A-77\(e\)](#); [130A-43\(c\)](#). The CHSA director may exercise the isolation or quarantine authority directly or delegate it to another appropriate person. Note that if the CHSA director does not have the education and experience that is required to be a local health director, the CHSA director must appoint an individual who does. [G.S. 153A-77\(e\)](#). It is customary to delegate local health director powers and duties to that person.

**5. May the state health director or local health director delegate isolation or quarantine authority to another public official?**

Yes. A public official granted authority under G.S. Chapter 130A may delegate that authority to “another person authorized by the public official.” [G.S. 130A-6](#). Because isolation and quarantine are exercises of the state’s police power, such a delegation should be made to another public official, not to a private person or entity.

**6. May an isolation or quarantine order be made orally, or must it be in writing?**

An isolation or quarantine order may be issued orally. An oral order should be followed up with a written order as soon as practicable.

**7. May the state health director or a local health director issue a “standing order” for isolation to a community partner, such as a hospital, to prevent an individual suspected of being infected from leaving against medical advice and creating a risk to the public health?**

There is no authority to issue standing orders and such orders may well be an improper delegation of the public health official’s police power. The better practice would be for the health director to identify in advance other appropriate public officials who may exercise the isolation and quarantine authority when the director is unavailable and ensure that community providers have a means to reach such persons by telephone at any hour of any day. The person may issue an oral order over the telephone if necessary, and follow it with a written order as soon as practicable.

**8. Is an isolation or quarantine order issued by a local health director “portable”? That is, can it follow a person from one local health department’s jurisdiction to another?**

Local health directors may exercise their legal powers and duties only in the single- or multi-county areas that are served by their local health departments. An isolation or quarantine order issued by a local health director is probably not valid outside the local health director’s jurisdiction. *However, this does not mean that a person who is subject to an order is relieved of the obligation to comply with the terms of the order—the control measures—when he or she crosses the county line.* [G.S. 130A-144\(f\)](#) requires all persons to comply with communicable disease control measures adopted by the Commission for Health Services. This law applies throughout the state. So, if a person is diagnosed with tuberculosis in Orange county and told of the control measures while there, he is still obligated to comply with those control measures when he moves to Chatham county. Furthermore, if he violates control measures while in Chatham county, an Orange county isolation order could be used as evidence that he knew he had tuberculosis and was subject to control measures. Thus, for practical purposes, whether the order is "portable" may not matter much.



## Appendix 2. Definitions of Terms

Communicable disease control has its own vocabulary. Many of the terms public health officials use have common meanings or medical definitions in addition to the legal definitions provided here. However, the statutory and regulatory definitions that follow are the ones that apply to the practice of communicable disease control by public health officials in North Carolina.

*Communicable condition* – “the state of being infected with a communicable agent but without symptoms.” G.S. 130A-2(1b).

*Communicable disease* – “an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.” G.S. 130A-2(1c).

*Health care-associated infection* – “a localized or systemic condition in the patient resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) with no evidence that the infection was present or incubating when the patient was admitted to the health care setting.” 10A N.C.A.C. 41A .0106(a)(3).

*Household contacts* – “any person residing in the same domicile as the infected person.” 10A N.C.A.C. 41A .0201(g).

*Isolation authority* – “the authority to issue an order to limit the freedom of movement or freedom of action of persons or animals that are infected or reasonably suspected to be infected with a communicable disease or communicable condition for the period of communicability to prevent the direct or indirect conveyance of the infectious agent from the person or animal to other persons or animals who are susceptible or who may spread the agent to others.” G.S. 130A-2(3a).

*Outbreak* – “an occurrence of a case or cases of a disease in a locale in excess of the usual number of cases of the disease.” G.S. 130A-2(6a).

*Quarantine authority* – “the authority to issue an order to limit the freedom of movement or action of persons or animals which have been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease. Quarantine authority also means the authority to issue an order to limit access by any person or animal to an area or facility that may be contaminated with an infectious agent. The term also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease.” G.S. 130A-2(7a)