Management & Supervision: Selected Legal Issues

Jill D. Moore, JD, MPH
University of North Carolina School of Government
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Game Plan

• Fundamentals of public health law
  – Sources of law
  – How laws interact
  – Finding the law and getting help
• Records & information:
  – Public records
  – Confidential records
• Current hot topics
  – HIPAA
  – Communicable disease

Sources of Law

• Statutes:
  Provide authority and guiding principles
• Rules:
  Fill in the details, specific actions
• Court cases:
  Particular cases or controversies, may result in new rules of law or clarification of statutes or administrative rules
NC Public Health Statutes

- Adopted by NC General Assembly
- Mostly in G.S. Chapter 130A
  - Citation example: G.S. 130A-135
- Mission and framework for public health system, powers and duties of public health boards and local health directors, public health programs, public health remedies, etc.
- On-line at www.ncleg.net

Legislation in NC

- Bill is introduced in Senate or House (1st reading)
- Bill is referred to committee(s)
- Committee discusses, may change (committee substitute)
- Two votes in chamber of introduction (2nd & 3rd readings)
- If bill passes 3rd reading, goes through same process in other chamber
- Chambers may have to negotiate differences (conference committee)
- If same version passes both chambers, goes to Governor
- Governor may sign, decline to sign, or veto.

Example: 2009 NC Legislation

- House Bill 2: Smoking in public places
  - Heard in committees, multiple modifications
- S.L. 2009-27: Smoke-free restaurants and bars, expanded local authority to regulate smoking
- Codified in General Statutes: G.S. 130A-492 thru 130A-498
**NC Public Health State Rules**

- Adopted by NC Commission for Public Health
- NC Administrative Code (NCAC)
  - Environmental health rules: Title 15A, Subchapter 18A
  - Other public health rules: Title 10A
  - Citation example: 10A NCAC 49B.0103

On-line at [http://reports.oah.state.nc.us/ncac.asp](http://reports.oah.state.nc.us/ncac.asp)

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**Administrative Law: Rules**

- Made by administrative bodies that *have been authorized by legislature* to make rules
- Due process requires public notice of rule-making and opportunity for public to comment
- Rule-making body adopts
- Rules Review Commission approves or objects
- Legislature may disapprove (reject) the rule
- If rule takes effect, it has “force of law”

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**Example: State rules**

<table>
<thead>
<tr>
<th>Statute</th>
<th>Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>“The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions …” GS 130A-144(g)</td>
<td>Specific communicable disease control measures are in the 10A NCAC 41A.</td>
</tr>
<tr>
<td>“The Commission shall … adopt rules establishing accreditation standards for local health departments.” GS 130A-34.1(e)</td>
<td>The accreditation standards are in 10A NCAC 48.</td>
</tr>
</tbody>
</table>
**NC Court Decisions**

- State courts: Local district & superior courts, NC Court of Appeals, NC Supreme Court
- Federal courts: NC federal district courts, 4th Circuit Court of Appeals, US Supreme Court

- Some public health issues addressed by NC courts:
  - Scope of state smoke-free restaurants/bars law
  - Board of health rulemaking authority
  - Liability of state, local health department, or local officials/employees

- [www.nccourts.org](http://www.nccourts.org)

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**Judge-Made Law: Cases**

- Judges decide how law applies to specific cases or controversies that arise
- Legal precedent arises from the reported (written) decisions/opinions of courts and establishes rules of law that lower courts must follow
- Jurisdiction depends on court: NC Supreme Court, 4th Circuit Court of Appeals, US Supreme Court, etc.

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**Example: NC Case Law**

- Smoking banned in NC restaurants & bars effective January 2, 2010
- Exemption for “private clubs,” defined in statute as non-profit entities
- Owner of bar that was for-profit but private under ABC laws thought it should be exempt
- Court disagreed, smoking ban applies to bars that are for-profit private clubs

*Liebes v. Guilford County Dept. of Public Health*
Administrative Law: Hearings

<table>
<thead>
<tr>
<th>State</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>• OAH-administrative law judge</td>
<td>• Local board of health</td>
</tr>
<tr>
<td>• Person aggrieved by state action</td>
<td>• Person aggrieved by local action</td>
</tr>
<tr>
<td>(enforcement of state rules, permit</td>
<td>(enforcement of local BOH rules or</td>
</tr>
<tr>
<td>actions or administrative penalties</td>
<td>administrative penalties imposed by</td>
</tr>
<tr>
<td>imposed by state)</td>
<td>local health director)</td>
</tr>
<tr>
<td>• Due process: NC Admin. Procedure Act</td>
<td>• Due process: procedures in GS 130A-24</td>
</tr>
</tbody>
</table>

Local laws

Local ordinances
• Adopted by county or city elected governing board
• Limited territorial jurisdiction
• Broad authority to adopt ordinances to protect the health, safety, and welfare of the public, or the peace and dignity of the county or city

Local public health rules
• Adopted by a local board of health (or board of county commissioners that has assumed board of health duties)
• Territorial jurisdiction includes counties and cities served by board
• Rules must be related to protection and promotion of health and are subject to some other limits

INTERACTION OF LAWS
Supremacy & Preemption

- Under the US Constitution’s supremacy clause, federal laws preempt conflicting state laws.
- Similarly, state laws may preempt local laws/rules.

Hierarchy of laws

Federal

State

Local

FINDING & GETTING HELP WITH THE LAW
Finding the law

- Many resources (statutes, regulations, cases) are now available online
  - www.ncleg.net: NC General Assembly website – bills, session laws, General Statutes
  - http://reports.oah.state.nc.us/ncac.asp: NC Administrative Code
  - www.nccourts.org: North Carolina cases – Court of Appeals & Supreme Court

Other sources of legal info

- NC Attorney General Advisory Opinions
- Agency policies or guidance regarding how laws will be enforced
  - Federal Office for Civil Rights
  - State Division of Public Health
- UNC School of Government publications, blog posts, and websites
  - www.ncphlaw.unc.edu
  - www.sog.unc.edu

A final source: legal advice

- FAQ: “Where is the law that says that?”
- Sometimes there is no statute, rule, or case that answers a legal question, but you need a lawyer’s advice on what to do.
Help!

- County attorney
- NC Dept of Justice, Health and Public Assistance
- NC Division of Public Health, Office of Legal and Regulatory Affairs
- UNC School of Government

PUBLIC HEALTH RECORDS AND INFORMATION
LHDs & information

Health departments are government agencies. The public has an interest in public agency records.

Health departments are health care providers. People expect personal health information to be kept private.

North Carolina law accommodates both of these concerns.

Public records – 2 issues, 2 laws

G.S. Chapter 132
• Public’s right to access and inspect records held by public agencies

G.S. Chapter 121
• Public agencies’ obligation to retain records according to a schedules developed by the NC Department of Cultural Resources

PUBLIC ACCESS
Public records general rule

Any record made or received in the transaction of public business is subject to public access unless an exception applies.

Exceptions: Two Kinds

An exception may provide that records
– need not be provided, but you may do so
  • Examples: Economic development information
– shall not be provided, and you may not do so
  • Examples: Social security numbers, trade secrets, personnel information

Examples of LHD records that are …

<table>
<thead>
<tr>
<th>Open for public inspection</th>
<th>Not open to public</th>
</tr>
</thead>
<tbody>
<tr>
<td>• HIPAA policies manual</td>
<td>• Patient medical records</td>
</tr>
<tr>
<td>• Administrative memos</td>
<td>• Records related to the child lead program</td>
</tr>
<tr>
<td>• Board of health meeting minutes</td>
<td>• Information or records identifying a person who has or may have a reportable communicable disease</td>
</tr>
<tr>
<td>• Agency reports</td>
<td></td>
</tr>
<tr>
<td>• Records relating to food and lodging inspections</td>
<td></td>
</tr>
</tbody>
</table>
Top ten things to know:

1. General rule: Public has a right to access records related to transaction of public business.
2. Email and other electronic records are covered.
3. Records that don’t involve transaction of public business are not covered.
4. The record’s content, not its form or location, determines whether it is subject to public access.
5. Right of access includes right to inspect and obtain a copy.
6. Purpose or motive of record-seeker is irrelevant.
7. Duty is to provide access to existing records, don’t have to create records to respond to information request.
8. Records are subject to public disclosure unless a specific exception applies.
9. No exception for drafts. Records of short-term value may be discarded.
10. Charge only actual costs. Think you have "extensive" costs? Get advice.

Obligations if public records

- Provide records
  - to anyone who requests them
  - "as promptly as possible"
  - in the medium requested if possible
  - charge only direct costs (usually excludes labor costs)
  - retain as required by G.S. Ch. 121

RECORDS RETENTION
Records Retention

- Records retention schedules:
  - Dictate what must be kept and for how long
  - Provide legal authority to destroy
- Records of "short term value" need not be retained
  - Personal messages not related to official business
  - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives


Questions?

CONFIDENTIAL RECORDS AND INFORMATION
Confidential information

Federal
- HIPAA
- Program-specific regulations (such as Title X)
- Others (such as FERPA)

State
- Public health patient confidentiality
- Privilege laws
- Communicable disease confidentiality

Lots of defined terms

- Protected health information (PHI)
- Use
- Disclosure
- Treatment
- Payment
- Health care operations
- Workforce

Protected health information (PHI)

Information or records in any form (paper, electronic, spoken) that identifies an individual and relates to any of the following:
- Physical or mental health status or condition
- Provision of health care
- Payment for provision of health care
Use vs. disclosure

HIPAA governs both the use and the disclosure of PHI.

Rule-of-thumb distinction:
- Use: sharing of information within the entity
- Disclosure: release of information outside the entity

Disclosing PHI

- General rule: Authorization required

- Exceptions
  Law allows disclosure without authorization in a number of circumstances

General rule: Authorization

- First question: Should we get authorization?
- Often easiest way to resolve a disclosure question, but sometimes authorization not required and it doesn’t make sense to seek it
Authorization required?

Report child abuse to DSS?
Send records to another provider?
Talk to local newspaper about my illness?

Authorization forms

• Must be written
• Must contain specific elements
• DHHS 4056 – English & Spanish
• Who signs?

Personal representatives

Individual
• The person who is the subject of the protected health information
• In other words, the patient or client

Personal representative
• A person authorized by law to make health care decisions for someone who can’t make their own decisions
• Parent of minor child*
• Substitute decision-maker for incapacitated adult
Personal representatives

• A personal representative fills in for the individual:
  – When doing things required by HIPAA, such as signing an authorization form when it is required
  – When exercising rights conferred by HIPAA, such as the right to access the individual’s protected health information

Two concepts

Legal capacity
• Legal recognition of a class of individuals’ authority to give informed consent to treatment
• Not individualized; if you’re in the class you have legal capacity to consent

Decisional capacity
• Particular individual is capable of making and communicating his or her own health care decisions
• Individualized determination: is this person capable of making and communicating this decision?

Informed consent – adults

Legal capacity
• Adults (persons ≥ age 18) have legal capacity to consent to treatment

Decisional capacity
• Rebuttable presumption that adults have decisional capacity
• Start with assumption that any given adult has it
• Because it’s rebuttable, indications that an adult may lack decisional capacity are significant
Does an adult lack decisional capacity if he or she …

- Has a minimal education?
- Cannot read or write?
- Does not speak English?
- Makes a decision a health care provider disagrees with?
- Has developmental disabilities that affect the ability to learn and understand?
- Cannot speak because of a stroke affecting language ability?
- Is in a coma?

Substitute decision-makers for adults: G.S. 90-21.13

- Substitute decision-makers, in order:
  - Person named in health care power of attorney
  - Court-appointed guardian
  - Person named in general power of attorney and specifically given authority to make health care decisions
  - Spouse
  - Majority of patient's reasonably available parents & children who are age 18+
  - Majority of reasonably available siblings age 18+
  - Other person with established relationship with patient who can reliably convey patient's wishes and is acting in good faith on patient's behalf

Husband and wife

- Husband lacks capacity, wife makes health care decisions
- Wife may sign authorization form to release husband's PHI
- If wife wants access to husband's PHI, she can have it
Mother and child

- Mother makes health care decisions
- Mother may sign authorization form to release child’s PHI
- If mother wants access to child’s PHI, she can have it

Mother and child

- Who makes the health care decisions now?

Do minors have legal capacity?

<table>
<thead>
<tr>
<th>General Rule</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minors lack legal capacity, consent must be obtained from parent or guardian</td>
<td>Emancipated minors have legal capacity</td>
</tr>
<tr>
<td>Laws may give unemancipated minors legal capacity to consent in particular circumstances</td>
<td></td>
</tr>
</tbody>
</table>
Minor’s consent law: GS 90-21.5

- Gives all minors legal capacity to consent to services for prevention, diagnosis, or treatment of:
  - Sexually transmitted infections and other reportable communicable diseases
  - Pregnancy (but minors may not receive abortions or medical sterilization on their own consent)
  - Emotional disturbance (but minors may not consent to admission to a 24-hour facility, except in emergencies)
  - Abuse of controlled substances or alcohol (with the same restriction on admission to 24-hour facilities)

Do minors have decisional capacity?

<table>
<thead>
<tr>
<th>Emancipated minors</th>
<th>Unemancipated minors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Presumption that they <strong>have</strong> decisional capacity</td>
<td>• Presumption that they <strong>lack</strong> decisional capacity</td>
</tr>
<tr>
<td>• Presumption is rebuttable (same as adults)</td>
<td>• Needs to be an individualized determination that a particular minor has the ability to consent</td>
</tr>
</tbody>
</table>

Confidentiality of minor’s consent information: G.S. 90-21.4(b)

- Need **the minor** to authorize disclosure of information about treatment under minor’s consent rule unless:
  - Essential to minor’s life or health to notify parents, then may disclose to parents
  - Disclosure otherwise required by HIPAA and other confidentiality laws that apply to it (e.g., to report child abuse or neglect, etc.)
Mother and child

• Who made the health care decisions?
• Person who made health care decisions may sign authorization form to release child’s PHI.
• If mother wants access to child’s PHI, whether she can have it depends on who made health care decisions.

Disclosing PHI

• General rule: Authorization required

• Exceptions
  Law allows disclosure without authorization in a number of circumstances

Exceptions: No authorization

• LHDs may disclose PHI without authorization in quite a few situations.
  Three that come up a lot:
  – Disclosures for purposes of treatment, payment, or health care operations*
  – Disclosures in response to court orders, search warrants, subpoenas*
  – Disclosures that are required by law

*Handouts on these topics are available at www.ncphlaw.unc.edu
Required by law

Rule:
• LHD may disclose PHI without authorization when the disclosure is required by law.

Two types of situations:
• Sometimes someone has the legal authority to demand information from the LHD.

• Sometimes the LHD has the legal duty to initiate a disclosure of PHI.

Required by law

• The most common required-by-law disclosures that a LHD initiates are:
  – Reports to child protective services
  – Reports to adult protective services
  – Reporting communicable disease information to state and sometimes to other LHDs
  – Reports to law enforcement that are specifically required by GS 90-21.20
    • See the law enforcement handout on www.ncphlaw.unc.edu

Demands for information

• LHD receives a letter requesting copies of a 5-year-old child’s records. The letter states that the records are needed for a child protective services assessment. It is on DSS letterhead and has been signed by a department employee.
Before disclosing PHI, verify two things:

<table>
<thead>
<tr>
<th>Identity</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Verify the identity of the person requesting the PHI, if it is not already known to the health department</td>
<td>• Verify the authority of the person to receive the PHI, if it is not already known to the health department</td>
</tr>
</tbody>
</table>

Verification

Identify of a public official is verified:

• If the request is made in person, person presents agency ID badge or other official credentials or proof of government status
• If the request is made in writing, the request is on appropriate government letterhead

Authority of a public official is verified:

• If public official presents written statement of legal authority to receive the PHI (if a written statement is impracticable, the statement may be oral)
• If the public official has a subpoena, warrant, etc., it is sufficient to verify legal authority for purposes of HIPAA, but still must comply with state laws before disclosing (see handouts on law enforcement and subpoenas).

Demands for information

• LHD receives a letter requesting copies of a 5-year-old child’s records. The letter states that the records are needed for a child protective services assessment. It is on DSS letterhead and has been signed by a department employee.
HIPAA Highlights

Hybrid entities

Dealing with breaches

PHI and public health

Who is covered by HIPAA?

<table>
<thead>
<tr>
<th>Covered entity</th>
<th>Business associate</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Health care provider that transmits health information electronically in connection with a HIPAA transaction</td>
<td>• Creates, receives, maintains, or transmits PHI on behalf of a covered entity (for a HIPAA covered function or activity), or</td>
</tr>
<tr>
<td>• Health plan</td>
<td>• Provides services involving PHI (legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial)</td>
</tr>
<tr>
<td>• Health care clearinghouse</td>
<td></td>
</tr>
</tbody>
</table>

What is a hybrid entity?

A covered entity with both covered and non-covered functions can be a hybrid entity.

Covered functions are:

• Activities or functions that, standing alone, would meet the definition of covered entity

• Activities or functions that would create a business associate relationship if they were carried out by a separate entity
**What is a hybrid entity?**

The entity must designate its covered component.

The covered component must include covered functions and may include non-covered functions.

The covered component must comply with HIPAA. The non-covered component is not required to comply with HIPAA (though it may be subject to other confidentiality laws).

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**Covered because meets covered entity definition**

**Covered because performs BA-like functions**

**Hybrid entity**

**Covered by local option**

**Not covered**

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**Where you are in the entity affects ...**

- Policies for sharing information
- Obligations such as distributing the notice of privacy practices
- Training requirements
- Management of breaches
- And more
Hybrid entity resources

- HIPAA regulations: 45 CFR 164.105(a)

- US DHHS resources for covered entities and business associates:
  http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/

HIPAA Highlights

Hybrid entities

Dealing with breaches

PHI and public health

What is a breach?

- Breach: unauthorized acquisition, access to, use of, or disclosure of PHI, which compromises the privacy and security of the information.

- HIPAA requires notifying individuals and certain others of breaches, unless:
  - A specific exception in the breach rule applies, or
  - A risk analysis shows a low probability that PHI was compromised, or
  - The PHI was encrypted or had been disposed securely.
Safe Harbor

• Don’t have to notify if:
  – PHI was encrypted, or
  – PHI was disposed in keeping with HHS guidance on secure disposal

When is notification not required?

<table>
<thead>
<tr>
<th>Specific exceptions</th>
<th>Risk analysis factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>PHI could not reasonably be retained</td>
<td>Nature and extent of PHI, including types of identifiers &amp; likelihood of re-identification</td>
</tr>
<tr>
<td>PHI access is unintentional and by a workforce member or business associate acting in good faith</td>
<td>Unauthorized person who received disclosure or used PHI</td>
</tr>
<tr>
<td>Inadvertent disclosure is made to another person within the CE or BA who is authorized to access PHI</td>
<td>Whether PHI was actually acquired and viewed</td>
</tr>
<tr>
<td></td>
<td>Extent to which any risk to PHI has been mitigated</td>
</tr>
</tbody>
</table>

Recipients & timing of notice

• Affected individuals – within 60 days
• US DHHS – if > 500 individuals involved, contemporaneous notice; otherwise annual report
• Media, if > 500 involved – within 60 days.

Content of notice

• Description of incident, PHI involved, advice to individuals to minimize harm, actions you’ve taken to investigate and mitigate, contact information for more info.

Method of notice

• Written letter (standard); email if prior agreement to email notification obtained; telephone if urgent (but also send written)
State Law on Breaches

- Breach: unauthorized access to or acquisition of records or data with “personal information,” which means name plus something that could be used to commit ID theft or threaten finances (SSN, DL number, financial account numbers, etc.)
- State law requires breach notification, if:
  - Illegal use of the information has occurred, or
  - Illegal use of the information is reasonably likely to occur, or
  - The incident creates a material risk of harm to a consumer.

Checklist for breach follow-up

- Determine if notification required under HIPAA and/or state law.
- Mitigate harm caused by the breach.
- Note disclosure in accounting log.
- If workforce member involved, apply sanctions policy.
- Consider whether incident points to a need for changes in safeguards, policies, training, etc.

Breach resources

- HIPAA regulations: 45 CFR 164, subpart D (sections 164.400 – 164.414)
- US DHHS resources:
  http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/
COMMUNICABLE DISEASE

Reporting

Mandatory

- Routine – physicians and certain others are required by law to routinely report specified diseases & conditions
- Non-routine – health care providers may be required to temporarily report symptoms, diseases, conditions, trends in use of services, or other information in response to state health director’s order (not to exceed 90 days)

Voluntary

- Routine – health care facilities are allowed (but not required) to report the same diseases/conditions that physicians are required to report
- Non-routine – health care providers are allowed to report unusual types or numbers of symptoms, illnesses, trends in health care visits, trends in prescriptions, or other events that could indicate a health condition caused by nuclear, chemical, or biological terrorism

Reporter

<table>
<thead>
<tr>
<th>What to report, when, &amp; to whom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physicians GS 130A-135</td>
</tr>
<tr>
<td>• 70+ diseases/conditions listed in 10A NCAC 41A.0101(a)</td>
</tr>
<tr>
<td>• Time frame varies from immediately to within 7 days</td>
</tr>
<tr>
<td>• Report to local health director</td>
</tr>
<tr>
<td>Schools/Child care GS 130A-136</td>
</tr>
<tr>
<td>• 70+ diseases/conditions (10A NCAC 41A.0101(a); schools subject to FERPA may report if health/safety emergency)</td>
</tr>
<tr>
<td>• Time frame varies from immediately to within 7 days</td>
</tr>
<tr>
<td>• Report to local health director</td>
</tr>
<tr>
<td>Food/drink establishments GS 130A-138</td>
</tr>
<tr>
<td>• Suspected outbreaks of foodborne illness in customers or employees; suspected case of a reportable foodborne illness in an employee</td>
</tr>
<tr>
<td>• Report within 24 hours to local health director as specified in 10A NCAC 41A.0102(b)</td>
</tr>
<tr>
<td>Laboratories GS 130A-139</td>
</tr>
<tr>
<td>• Positive tests as specified in 10A NCAC 41A.0101(c)</td>
</tr>
<tr>
<td>• Time frames vary, see 10A NCAC 41A.0102(d)</td>
</tr>
<tr>
<td>• Report to local or state officials as specified in 10A NCAC 41A.0102(d)</td>
</tr>
</tbody>
</table>
Confidentiality: Mandatory and Voluntary Reporting

- HIPAA allows reports to public health that are either required or permitted by state law; everything discussed in this section is either required or permitted.
- State laws provide immunity from liability for disclosures of information made in accordance with mandatory and voluntary reporting laws.
- A state communicable disease confidentiality law (G.S. 130A-143) limits public health officials’ redisclosure of information that is reported.

Investigations: Obtaining Records

G.S. 130A-144(b) requires health care providers to give local or state public health officials access to:
- Records pertaining to a mandatory or voluntary report.
- Records the public health official determines are relevant to an investigation of a case or outbreak of a communicable disease or condition.

G.S. 130A-476(c) requires health care providers to give local or state public health officials access to:
- Records the public health official determines are relevant to a report or an investigation of a case or outbreak of a health condition that may have been caused by nuclear, chemical, or biological terrorism.

Confidentiality: Records Obtained in Investigations

- HIPAA allows disclosures to public health that are required by state law; G.S. 130A-144(b) and 130A-476(c) are laws requiring disclosure.
- G.S. 130A-144(c) and 130A-476(d) provide immunity from liability for disclosures of information made in accordance with these laws.
- G.S. 130A-143 and/or 130A-476(e) limits public health officials’ redisclosure of information that is obtained in an investigation.
**Control Measures: General**

<table>
<thead>
<tr>
<th>G.S. 130A-144</th>
<th>10A NCAC 41A.0201 - .0214</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Authorsizes Commission for Public Health to adopt rules prescribing control measures</td>
<td>• Prescribes control measures for HIV, hepatitis B, hepatitis C, STDs, tuberculosis, smallpox/vaccinia, and SARS</td>
</tr>
<tr>
<td>• Requires all persons to comply with control measures</td>
<td>• For all other CDs, state rules incorporate control measures specified in:</td>
</tr>
<tr>
<td></td>
<td>• CDC guidelines &amp; recommended actions, or</td>
</tr>
<tr>
<td></td>
<td>• APHA's Control of Communicable Diseases Manual</td>
</tr>
</tbody>
</table>

**Control Measures: Emerging Illnesses**

• In emerging illness, the CDC is likely to be the source of control measures and they may evolve as understanding of the illness develops.
• Example: 2009 H1N1 outbreak
  – At outset, CDC guidance advise school closure if any student or staff member had flu.
  – Very early in outbreak, guidance modified – school closures still occurred for operational reasons but not as a control measure.

**Control Measures: Isolation & Quarantine**

• May not order physical separation from others unless it’s a control measure for the particular disease
• May be ordered by state or local health director
• Order may last only as long as public health is endangered, to a maximum of 30 days for physical separation orders (can seek court order if longer period needed)
Enforcement

- While any violation of NC communicable disease laws may be enforced using civil or criminal legal remedies, those remedies are most commonly used for violations of control measures.
- Seek compliance through education first.
- Issue written orders as appropriate.
- Document evidence of noncompliance.
- Seek assistance of an attorney.

Enforcement

<table>
<thead>
<tr>
<th>Criminal (GS 130A-25)</th>
<th>Civil (GS 130A-18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charge with misdemeanor in district court</td>
<td>Seek injunction in superior court</td>
</tr>
<tr>
<td>May be sentenced for up to two years</td>
<td>Failure to comply → contempt of court</td>
</tr>
<tr>
<td>Work with district attorney</td>
<td>Work with county attorney</td>
</tr>
</tbody>
</table>

- More information about these legal remedies and the procedures to follow is available on ncphlaw.unc.edu, under the topic heading “Public Health Remedies”

Jill Moore
UNC School of Government
919.966.4442
moore@sog.unc.edu