

CONFIDENTIALITY RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

10A NORTH CAROLINA ADMINISTRATIVE CODE 26B



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SUBCHAPTER 26B – CONFIDENTIALITY RULES

SECTION .0100 – GENERAL RULES

10A NCAC 26B .0101 PURPOSE AND SCOPE

(a) The purpose of the rules in this Subchapter is to set forth requirements for those who collect, store and disseminate information on individuals who are served by facilities, AS DEFINED IN G.S. 122C-3. The rules shall be used in conjunction with the confidentiality requirements specified in G.S. 122C-51 through 122C-56. Area and State facilities shall comply with all Rules in this Subchapter; however, facilities, as defined in G.S. 122C-3, except Area and State facilities, shall comply only with Rules .0103(7) and .0111 of this Subchapter.

(b) Area and State facilities governed by these Rules include offices of the Division; regional psychiatric hospitals, mental retardation centers and alcohol and drug abuse treatment centers; State special care centers; schools for emotionally disturbed children; area programs and their contract agencies; and other public and private agencies, institutions or programs which are operated by or contract with the Division for Mental Health, Developmental Disabilities or Substance Abuse Services. All employees, students, volunteers or other individuals who have access to or control over confidential information in these facilities or programs shall abide by these Rules. However, local hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which contract with an area facility or provide services for a State facility shall be excluded from these Rules and the confidentiality policies of that accredited hospital shall apply. In addition, education records generated by Alcohol and Drug Education Traffic Schools (ADETS) and Drug Education Schools (DES) are excluded from these Rules since the records maintained by such schools are considered public records.

History Note: Authority G.S. 122C-52; 122C-55; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. November 2, 1992; February 1, 1991; February 1, 1986; July 15, 1980.

10A NCAC 26B .0102 GENERAL PROVISIONS

(a) Area or state facilities or individuals with access to or control over confidential information shall take affirmative measures to safeguard such information.

(b) Confidential information may not be released or disclosed except in accordance with G.S. 122C-51 through 122C-56 and the rules in this Subchapter.

(c) Confidential information regarding substance abusers shall be released or disclosed in accordance with the federal regulations 42 C.F.R. Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records", which are adopted by reference pursuant to G.S. 150B-14(c), unless the rules in this Subchapter are more restrictive in which case the rules in this Subchapter shall be followed.

(d) Confidential information regarding infants and toddlers receiving early intervention services who have or who are at risk for atypical development, developmental delay or developmental disability shall be released or disclosed in accordance with the federal regulations 34 C.F.R. Part 300, Subpart E, Sections 300.560 through 300.575, which are adopted by reference pursuant to G.S. 150B-14(c), unless the rules in this Subchapter are more restrictive in which case the rules in this Subchapter shall be followed.

(e) Questions regarding interpretation of these Rules shall be directed to the Client Records Consultant in the Institution Management Support Section of the Division.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147; 150B-14;
Eff. July 1, 1979;
Amended Eff. February 1, 1991; March 1, 1990; February 1, 1986; January 1, 1984.

10A NCAC 26B .0103 DEFINITIONS

(a) The following terms shall have the meanings specified in G.S. 122C-3, 122C-4 and 122C-53:

- (1) "Area board",
- (2) "Area facility",
- (3) "Confidential information",
- (4) "Guardian",
- (5) "Internal client advocate",
- (6) "Legally responsible person",

- (7) "Next of kin",
- (8) "Provider of support services",
- (9) "Secretary", and
- (10) "State facility".

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

- (1) "Client Record" means any documentation made of confidential information. For the purpose of the rules in this Subchapter, this also includes confidential information generated on an individual who was not admitted but received a service from an area or state facility.
- (2) "Clinical Staff Member" means a mental health, developmental disabilities or substance abuse professional who provides active treatment/habilitation to a client.
- (3) "Confidential information" as defined in G.S. 122C-3 includes but is not limited to photographs, videotapes, audiotapes, client records, reimbursement records, verbal information relative to clients served, client information stored in automated files, and clinical staff member client files.
- (4) "Delegated Employee" means anyone designated by the facility head to carry out the responsibilities established by the rules in this Subchapter.
- (5) "Disclosure of Information" means the dissemination of confidential information without consent.
- (6) "Division" means Division of Mental Health, Developmental Disabilities and Substance Abuse Services.
- (7) "Legitimate role in the therapeutic services offered" means next of kin or other family member who, in the judgment of the responsible professional as defined in G.S. 122C-3, and after considering the opinion of the client, currently provides, or within the past 12 months preceding the current hospitalization, provided substantial time or resources in the care of the client.
- (8) "Minor Client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (9) "Parent" means the biological or adoptive mother or father of a minor. Whenever "parents" are legally separated or divorced or have never been married, the "parent" legally responsible for the minor shall be the "parent" granted custody or either parent when joint custody has been granted.
- (10) "Person Standing in Loco Parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (11) "Release of Information" means the dissemination of confidential information with consent.
- (12) "Signature" means signing by affixing one's own signature; or by making one's mark; or impressing some other sign or symbol on the paper by which the signature may be identified.

History Note: Authority G.S. 122C-3; 122C-4; 122C-52; 122C-55; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. November 2, 1992; February 1, 1991; March 1, 1990; February 1, 1986.

10A NCAC 26B .0104 LIABILITY OF PERSONS WITH ACCESS TO INFORMATION

- (a) Individuals employed in area and state facilities and employees governed by the State Personnel Act, G.S. Chapter 126, are subject to suspension, dismissal or disciplinary action for failure to comply with the rules in this Subchapter.
- (b) Individuals, other than employees but including students and volunteers, who are agents of the Department of Health and Human Services who have access to confidential information in an area or state facility who fail to comply with the rules in this Subchapter shall be denied access to confidential information by the facility.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986; July 15, 1980.

10A NCAC 26B .0105 OWNERSHIP OF RECORDS

- (a) All records, including those which contain confidential information which are generated in connection with the performance of any function of an area or state facility, are the property of the facility.
- (b) Original client records may be removed from an area or state facility premises only under the following conditions:

- (1) in accordance with a subpoena to produce document or object or other order of the court or when client records are needed for district court hearings held in accordance with Article 5 of Chapter 122C of the N.C. General Statutes;
 - (2) whenever client records are needed for treatment/habilitation or audit purposes, records may be transported within an area facility or between state facilities;
 - (3) in situations where the facility determines it is not feasible or practical to copy the client record or portions thereof, client records may be securely transported to a local health care provider, provided the record remains in the custody of a delegated employee;
 - (4) whenever a client expires at an area or state facility and an autopsy is to be conducted, the client record may be transported to the agency wherein the autopsy will be performed provided the agency complies with Rule .0108 of this Subchapter.
- (c) Area facilities shall develop written policies and procedures regarding fees for the reproduction of client records.
- (d) Except as otherwise provided in this Rule, state facilities shall charge uniform fees for the reproduction of client records which do not exceed the cost of reproduction, postage and handling. The uniform fee shall be five dollars (\$5.00) for up to three pages and fifteen cents (\$.15) for each additional page. State facilities shall not charge for the reproduction of client records in the following types of situations:
- (1) professional courtesy when records are requested by physicians, psychologists, hospital or other health care providers;
 - (2) third party payors when the state facility will derive direct financial benefits;
 - (3) providers of support services as defined in G.S. 122C-3;
 - (4) attorneys representing the Attorney General's office and Special Counsel;
 - (5) other situations determined by the state facility to be for good cause;
 - (6) when indigent clients request pertinent portions of their client records necessary for the purpose of establishing eligibility for SSI, SSADIB, Medicaid, or other legitimate aid; or
 - (7) whenever state facilities utilize private photocopy services wherein the photocopy service, rather than the state facility, bills the recipient of the information based on the usual and customary fee established by the copy service.

History Note: Authority G.S. 122C-52; 122C-54; 122C-224.3; 122C-268; 122C-286; 131E-67; 143B-147; Eff. July 1, 1979; Amended Eff. February 1, 1991; March 1, 1990; February 1, 1986.

10A NCAC 26B .0106 ALTERATIONS IN THE CLIENT RECORD

A client or a client's legally responsible person may contest the accuracy, completeness or relevancy of information in the client record and may request alteration of such information. Alterations shall be made as follows:

- (1) whenever a clinical staff member concurs that such alteration is justified, the area or state facility shall identify the contested portion of the record and allow the insertion of the alteration as an addendum to the contested portion of the client record; however, the original portion of the written record may not be deleted; or
- (2) whenever a clinical staff member does not concur that such alteration is justified, the area or state facility shall identify the contested portion of the record and allow a statement relative to the contested portion to be added to the client record which shall be recorded on a separate form and not on the original portion of the record which is being contested. Such statement shall be made a permanent part of the client's record and shall be released or disclosed along with the contested portion of the record.

History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6); Eff. July 1, 1979; Amended Eff. March 1, 1990; February 1, 1986.

10A NCAC 26B .0107 SECURITY OF CONFIDENTIAL INFORMATION

- (a) Each area or state facility that maintains records with confidential information shall provide a secure place for the storage of records and shall develop written policies and procedures regarding controlled access to those records.
- (b) Each area or state facility shall ensure that only authorized employees or other individuals authorized by the facility director have access to the records.

(c) Each area or state facility director shall ensure that a clinical staff member is present in order to explain and protect the record when a client or a client's legally responsible person comes to the facility to review the client record. A delegated employee shall document such review in the client's record.

(d) Each area or state facility that maintains confidential information in an automated data processing system shall develop written policies and procedures regarding the provision of safeguards to ensure controlled access to such information.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. February 1, 1986.

10A NCAC 26B .0108 ASSURANCE OF CONFIDENTIALITY

(a) The area or state facility director shall make known to all employees, students, volunteers and all other individuals with access to confidential information the provisions of the rules in this Subchapter and G.S. 122C-52 through 122C-56.

The facility shall develop written policies and procedures in accordance with the rules of this Subchapter and applicable statutes and provide training to all individuals with access to confidential information.

(b) Such individuals shall indicate an understanding of the requirements governing confidentiality by signing a statement of understanding and compliance. Employees shall sign such statement upon employment and, again, whenever revisions are made in the requirements. Such statement shall contain the following information:

- (1) date and signature of the individual and his title;
- (2) name of area or state facility;
- (3) statement of understanding;
- (4) agreement to hold information confidential; and
- (5) acknowledgement of civil penalties and disciplinary action for improper release or disclosure.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986; July 15, 1980.

10A NCAC 26B .0109 REVIEW OF DECISIONS

Clients, clients' legally responsible persons or employees may request a review of any decisions made under the rules in this Subchapter by the area or state facility director, or, if elsewhere within the Division, by the Division director.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147(a)(6);
Eff. February 1, 1986.

10A NCAC 26B .0110 INFORMATION RECEIVED FROM OTHER AGENCIES/INDIVIDUALS

Whenever an area or state facility receives confidential information from another facility, agency or individual, then such information shall be treated as any other confidential information generated by the area or state facility. Release or disclosure of such information shall be governed by the rules of this Subchapter.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147;
Eff. February 1, 1986;
Amended Eff. March 1, 1990.

10A NCAC 26B .0111 INFORMATION PROVIDED TO FAMILY/OTHERS

Information shall be provided to the next of kin or other family member, who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person in accordance with G.S. 122C-55(j) through (l).

History Note: Authority G.S. 122C-52; 122C-55; 131E-67; 143B-147;
Eff. November 2, 1992.

SECTION .0200 – RELEASE OF CONFIDENTIAL INFORMATION WITH CONSENT

10A NCAC 26B .0201 CONSENT FOR RELEASE

Area or state facility employees may not release any confidential information until a Consent for Release form as described in Rules .0202 and .0203 of this Section has been obtained. Disclosure without authorization shall be in accordance with G.S. 122C-52 through 122C-56 and Section .0300 of this Subchapter.

*History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. February 1, 1986.*

10A NCAC 26B .0202 CONSENT FOR RELEASE FORM

(a) When consent for release of information is obtained by an area or state facility covered by the rules in this Subchapter, a Consent for Release form containing the information set out in this Paragraph shall be utilized. The consent form shall contain the following information:

- (1) client's name;
- (2) name of facility releasing the information;
- (3) name of individual or individuals, agency or agencies to whom information is being released;
- (4) information to be released;
- (5) purpose for the release;
- (6) length of time consent is valid;
- (7) a statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
- (8) signature of the client or the client's legally responsible person; and
- (9) date consent is signed.

(b) Unless revoked sooner by the client or the client's legally responsible person, a consent for release of information shall be valid for a period not to exceed one year except under the following conditions:

- (1) a consent to continue established financial benefits shall be considered valid until cessation of benefits; or
- (2) a consent for release of information to the Division, Division of Motor Vehicles, the Court and the Department of Correction for information needed in order to reinstate a client's driving privilege shall be considered valid until reinstatement of the client's driving privilege.

(c) A consent for release of information received from an individual or agency not covered by the rules in this Subchapter does not have to be on the form utilized by area or state facilities; however, the receiving area or state facility shall determine that the content of the consent form substantially conforms to the requirements set forth in this Rule.

(d) A clear and legible photocopy of a consent for release of information shall be considered to be as valid as the original.

(e) Confidential information relative to a client with HIV infection, AIDS or AIDS related conditions shall only be released in accordance with G.S. 130A-143. Whenever authorization is required for the release of this information, the consent shall specify that the information to be released includes information relative to HIV infection, AIDS or AIDS related conditions.

*History Note: Authority G.S. 122C-52; 122C-53; 130A-143; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. July 1, 1993; February 1, 1991; March 1, 1990; February 1, 1986.*

10A NCAC 26B .0203 PERSONS WHO MAY SIGN CONSENT FOR RELEASE

The following persons may sign a consent for release of confidential information:

- (1) a competent adult client;
- (2) the client's legally responsible person;
- (3) a minor client under the following conditions:

- (a) pursuant to G.S. 90-21.5 when seeking services for venereal disease and other diseases reportable under G.S. 130A-135, pregnancy, abuse of controlled substances or alcohol, or emotional disturbances;
- (b) when married or divorced;
- (c) when emancipated by a decree issued by a court of competent jurisdiction;
- (d) when a member of the armed forces; or
- (4) personal representative of a deceased client if the estate is being settled or next of kin of a deceased client if the estate is not being settled.

History Note: Authority G.S. 28A-13.3; 90-21.5; 122C-52; 122C-53; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. January 1, 1996; January 1, 1994; March 1, 1990; February 1, 1986.

10A NCAC 26B .0204 VERIFICATION OF AUTHORIZATION IN CASES OF DOUBT

Whenever the validity of an authorization is in question, an area or state facility employee shall contact the client or the client's legally responsible person to confirm that the consent is valid. Such determination of validity of the consent shall be documented in the client record.

History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. February 1, 1986.

10A NCAC 26B .0205 INFORMED CONSENT

Prior to obtaining a consent for release of confidential information, a delegated employee shall inform the client or his legally responsible person that the provision of services is not contingent upon such consent and of the need for such release. The client or legally responsible person shall give consent voluntarily.

History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. February 1, 1986; July 15, 1980.

10A NCAC 26B .0206 PERSONS DESIGNATED TO RELEASE CONFIDENTIAL INFORMATION

The area or state facility director shall be responsible for the release of confidential information but may delegate the authority for release to other persons under his supervision. The delegation shall be in writing.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986.

10A NCAC 26B .0207 DOCUMENTATION OF RELEASE

Whenever confidential information is released with consent, a delegated employee shall ensure that the release is placed in the client record.

History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. January 1, 2005; February 1, 1986.

10A NCAC 26B .0208 PROHIBITION AGAINST REDISCLOSURE

- (a) Area or state facilities releasing confidential information shall inform the recipient that redisclosure of such information is prohibited without client consent.
- (b) A stamp may be used to fulfill this requirement.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147(a)(6);
Eff. July 1, 1979;
Amended Eff. February 1, 1986.

10A NCAC 26B .0209 RELEASE TO HUMAN RIGHTS COMMITTEE MEMBERS

(a) Human Rights Committee members may have access to confidential information only upon written consent of the client or the client's legally responsible person.

(b) A delegated employee shall release confidential information upon written consent to Human Rights Committee members only when such members are engaged in fulfilling their function as set forth in 10A NCAC 28A .0207, and when involved in or being consulted in connection with the training or treatment of the client.

History Note: Authority G.S. 122C-52; 122C-53; 122C-64; 131E-67; 143B-147(a)(6);
Eff. July 15, 1980;
Amended Eff. February 1, 1986.

10A NCAC 26B .0210 RELEASE TO AREA BOARD MEMBERS

Area board members may have access to confidential information only upon written consent of the client or the client's legally responsible person or pursuant to other exceptions to confidentiality as specified in G.S. 122C-53 through 122C-55. Area board members may have access to non-identifying client information.

History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147;
Eff. February 1, 1991.

10A NCAC 26B .0211 RELEASE OF INFORMATION BY INTERNAL CLIENT ADVOCATES

Upon request by the Secretary, internal client advocates may disclose to the Secretary or his designee confidential information obtained while fulfilling monitoring and advocacy functions.

History Note: Authority G.S. 122C-53; 131E-67; 143B-147;
Eff. February 1, 1991.

SECTION .0300 – DISCLOSURE OF CONFIDENTIAL INFORMATION WITHOUT CONSENT**10A NCAC 26B .0301 NOTICE TO CLIENT**

(a) Each area or state facility that maintains confidential information shall give written notice to the client or the legally responsible person at the time of admission that disclosure may be made of pertinent information without his expressed consent in accordance with G.S. 122C-52 through 122C-56. This notice shall be explained to the client or legally responsible person as soon as possible.

(b) The giving of notice to the client or legally responsible person shall be documented in the client record.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986; July 15, 1980.

10A NCAC 26B .0302 PERSONS DESIGNATED TO DISCLOSE CONFIDENTIAL INFORMATION

The area or state facility director shall be responsible for the disclosure of confidential information but may delegate the authority for disclosure to other persons under his supervision. Such delegation shall be in writing.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986; July 15, 1980.

10A NCAC 26B .0303 DOCUMENTATION OF DISCLOSURE

History Note: Authority G.S. 122C-52; 122C-55; 131E-67; 143B-147;
Eff. July 1, 1979;
Amended Eff. March 1, 1990; February 1, 1986; July 15, 1980;
Repealed Eff. January 1, 2005.

10A NCAC 26B .0304 PROHIBITION AGAINST REDISCLOSURE

- (a) Agencies disclosing confidential information pursuant to G.S. 122C-52 through G.S. 122C-56 shall inform the recipient that redisclosure of such information is prohibited without client consent.
- (b) A stamp may be used to fulfill this requirement.

History Note: Authority G.S. 122C-52; 131E-67; 143B-147(a)(6);
Eff. January 1, 1984;
Amended Eff. February 1, 1986.