

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE DRS75144-LN-102\* (3/24)

Short Title: Amend MH Confidentiality Statutes.

(Public)

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Sponsors: Senator Metcalf.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONFIDENTIALITY PROVISIONS OF CHAPTER  
122C OF THE GENERAL STATUTES TO PERMIT IMPLEMENTATION OF  
MENTAL HEALTH SYSTEM REFORM.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 122C-3 is amended by inserting the following term in  
alphabetical order to read:

**"§ 122C-3. Definitions.**

As used in this Chapter, unless another meaning is specified or the context clearly  
requires otherwise, the following terms have the meanings specified:

(1) 'Applicant' means an individual who contacts an area facility for  
services.

..."

**SECTION 1.(b)** G.S. 122C-3(14) reads as rewritten:

**"§ 122C-3. Definitions.**

As used in this Chapter, unless another meaning is specified or the context clearly  
requires otherwise, the following terms have the meanings specified:

...

(14) "Facility" means any person at one location whose primary purpose is  
to provide services for the care, treatment, habilitation, or  
rehabilitation of the mentally ill, the developmentally disabled, or  
substance abusers, and includes:

- a. An "area facility", which is a facility that is operated by or  
under contract with the area ~~authority~~authority or county  
program. For the purposes of this subparagraph, a contract is a  
contract, memorandum of understanding, or other written  
agreement whereby the facility agrees to provide services to one

1 or more clients of the area authority or county program. A  
2 facility that is providing services under contract with the area  
3 authority is an area facility for purposes of the contracted  
4 services only. Area facilities may also be licensable facilities in  
5 accordance with Article 2 of this Chapter. A State facility is not  
6 an area facility;

- 7 b. A "licensable facility", which is a facility that provides services  
8 for one or more minors or for two or more adults. When the  
9 services offered are provided to individuals who are mentally ill  
10 or developmentally disabled, these services shall be day  
11 services offered to the same individual for a period of three  
12 hours or more during a 24-hour period, or residential services  
13 provided for 24 consecutive hours or more. When the services  
14 offered are provided to individuals who are substance abusers,  
15 these services shall include all outpatient services, day services  
16 offered to the same individual for a period of three hours or  
17 more during a 24-hour period, or residential services provided  
18 for 24 consecutive hours or more. Facilities for individuals who  
19 are substance abusers include chemical dependency facilities;
- 20 c. A "private facility", which is a facility that is either a licensable  
21 facility or a special unit of a general hospital or a part of either  
22 in which the specific service provided is not covered under the  
23 terms of a contract with an area authority;
- 24 d. The psychiatric service of the University of North Carolina  
25 Hospitals at Chapel Hill;
- 26 e. A "residential facility", which is a 24-hour facility that is not a  
27 hospital, including a group home;
- 28 f. A "State facility", which is a facility that is operated by the  
29 Secretary;
- 30 g. A "24-hour facility", which is a facility that provides a  
31 structured living environment and services for a period of 24  
32 consecutive hours or more and includes hospitals that are  
33 facilities under this Chapter; and
- 34 h. A Veterans Administration facility or part thereof that provides  
35 services for the care, treatment, habilitation, or rehabilitation of  
36 the mentally ill, the developmentally disabled, or substance  
37 abusers."

38 **SECTION 2.** G.S. 122C-54(b) reads as rewritten:

39 **"§ 122C-54. Exceptions; abuse reports and court proceedings.**

40 ...

41 (b) If an individual is a defendant in a criminal case and a mental examination of  
42 the defendant has been ordered by the ~~court~~, court as provided in G.S. 15A-1002, the  
43 facility ~~may~~ shall send the results or the report of the mental examination to the clerk of

1 court, to the district attorney or prosecuting officer, and to the attorney of record for the  
2 defendant as provided in G.S. 15A-1002(d)."

3 **SECTION 3.** G.S. 122C-55 reads as rewritten:

4 **"§ 122C-55. Exceptions; care and treatment.**

5 (a) Any area or State facility or the psychiatric service of the University of North  
6 Carolina Hospitals at Chapel Hill may share confidential information regarding any  
7 client of that facility with any other area or State facility or the psychiatric service of the  
8 University of North Carolina Hospitals at Chapel Hill when necessary to coordinate  
9 appropriate and effective care, treatment or habilitation of ~~the client and when failure to~~  
10 ~~share this information would be detrimental to the care, treatment or habilitation of the~~  
11 ~~client.~~ the client. For the purposes of this subsection, coordinate means the provision,  
12 coordination, or management of mental health, developmental disabilities, and  
13 substance abuse services and related services by one or more facilities and includes the  
14 referral of a client from one facility to another. Under the circumstances described in  
15 this subsection, the consent of the client or legally responsible person is not required for  
16 this information to be furnished, and the information may be furnished despite objection  
17 by the client.

18 (a1) Any State or area facility or the psychiatric service of the University of North  
19 Carolina Hospitals at Chapel Hill may share confidential information regarding any  
20 client of that facility with the Secretary, and the Secretary may share confidential  
21 information regarding any client with an area or State facility or the psychiatric service  
22 of the University of North Carolina Hospitals at Chapel Hill when the responsible  
23 professional or the Secretary determines that disclosure is necessary to coordinate  
24 appropriate and effective care, treatment or habilitation of ~~the client and that failure to~~  
25 ~~share this information would be detrimental to the care, treatment or habilitation of the~~  
26 ~~client. Under the circumstances described in this subsection, the consent of the client or~~  
27 ~~legally responsible person is not required for this information to be furnished, and the~~  
28 ~~information may be furnished despite objection by the client.~~ client.

29 (a2) Any area or State facility or the psychiatric service of the University of North  
30 Carolina Hospitals at Chapel Hill may share confidential information regarding any  
31 client of that facility with any other area facility or State facility or the psychiatric  
32 service of the University of North Carolina Hospitals at Chapel Hill when necessary to  
33 conduct payment activities relating to an individual served by the facility. Payment  
34 activities are activities undertaken by a facility to obtain or provide reimbursement for  
35 the provision of services and may include, but are not limited to, determinations of  
36 eligibility or coverage, coordination of benefits, determinations of cost sharing amounts,  
37 claims management, claims processing, claims adjudication, claims appeals, billing and  
38 collection activities, medical necessity reviews, utilization management and review,  
39 precertification and preauthorization of services, concurrent and retrospective review of  
40 services, and appeals related to utilization management and review.

41 (a3) Whenever there is reason to believe that a client is eligible for benefits  
42 through a Department program, any State or area facility or the psychiatric service of  
43 the University of North Carolina Hospitals at Chapel Hill may share confidential  
44 information regarding any client of that facility with the Secretary, and the Secretary

1 may share confidential information regarding any client with an area facility or State  
2 facility or the psychiatric services of the University of North Carolina Hospitals at  
3 Chapel Hill. Disclosure is limited to that information necessary to establish initial  
4 eligibility for benefits, determine continued eligibility over time, and obtain  
5 reimbursement for the costs of services provided to the client.

6 (a4) An area authority or county program may share confidential information  
7 regarding any client with any area facility, and any area facility may share confidential  
8 information regarding any client of that facility with the area authority or county  
9 program, when the area authority or county program determines the disclosure is  
10 necessary to develop, manage, monitor, or evaluate the area authority's or county  
11 programs network of qualified providers as provided in G.S. 122C-115.2(b)(1)b., G.S.  
12 122C-141(a), the State Plan, and rules of the Secretary. For the purposes of this  
13 subsection, the purposes or activities for which confidential information may be  
14 disclosed include, but are not limited to, quality assessment and improvement activities,  
15 provider accreditation and staff credentialing, developing contracts and negotiating  
16 rates, investigating and responding to client grievances and complaints, evaluating  
17 practitioner and provider performance, auditing functions, on-site monitoring,  
18 conducting consumer satisfaction studies and collecting and analyzing performance  
19 data.

20 (a5) Any area facility may share confidential information with any other area  
21 facility regarding an applicant when necessary to determine whether the applicant is  
22 eligible for area facility services.

23 (b) A facility, physician, or other individual responsible for evaluation,  
24 management, supervision, or treatment of respondents examined or committed for  
25 outpatient treatment under the provisions of Article 5 of this Chapter may request,  
26 receive, and disclose confidential information to the extent necessary to enable them to  
27 fulfill their responsibilities.

28 (c) A facility may furnish confidential information in its possession to the  
29 Department of Correction when requested by that department regarding any client of  
30 that facility when the inmate has been determined by the Department of Correction to be  
31 in need of treatment for mental illness, developmental disabilities, or substance abuse.  
32 The Department of Correction may furnish to a facility confidential information in its  
33 possession about treatment for mental illness, developmental disabilities, or substance  
34 abuse that the Department of Correction has provided to any present or former inmate if  
35 the inmate is presently seeking treatment from the requesting facility or if the inmate  
36 has been involuntarily committed to the requesting facility for inpatient or outpatient  
37 treatment. Under the circumstances described in this subsection, the consent of the  
38 client or inmate shall not be required in order for this information to be furnished and  
39 the information shall be furnished despite objection by the client or inmate. Confidential  
40 information disclosed pursuant to this subsection is restricted from further disclosure.

41 (d) A responsible professional may disclose confidential information when in his  
42 opinion there is an imminent danger to the health or safety of the client or another  
43 individual or there is a likelihood of the commission of a felony or violent  
44 misdemeanor.

1 (e) A responsible professional may exchange confidential information with a  
2 physician or other health care provider who is providing emergency medical services to  
3 a client. Disclosure of the information is limited to that necessary to meet the  
4 emergency as determined by the responsible professional.

5 (e1) A State facility may furnish client identifying information to the Department  
6 for the purpose of maintaining an index of clients served in State facilities which may  
7 be used by State facilities only if that information is necessary for the appropriate and  
8 effective evaluation, care and treatment of the client.

9 (e2) A responsible professional may disclose an advance instruction for mental  
10 health treatment or confidential information from an advance instruction to a physician,  
11 psychologist, or other qualified professional when the responsible professional  
12 determines that disclosure is necessary to give effect to or provide treatment in  
13 accordance with the advance instruction.

14 (f) A facility may disclose confidential information to a provider of support  
15 services whenever the facility has entered into a written agreement with a person to  
16 provide support services and the agreement includes a provision in which the provider  
17 of support services acknowledges that in receiving, storing, processing, or otherwise  
18 dealing with any confidential information, he will safeguard and not further disclose the  
19 information.

20 (g) Whenever there is reason to believe that the client is eligible for financial  
21 benefits through a governmental agency, a facility may disclose confidential  
22 information to ~~State~~ State, local, or federal government agencies. ~~Disclosure~~ Except as  
23 provided in G.S. 122C-55(a3), disclosure is limited to that confidential information  
24 necessary to establish financial benefits for a client. After establishment of these  
25 benefits, the consent of the client or his legally responsible person is required for further  
26 release of confidential information under this subsection.

27 (h) Within a facility, employees, students, consultants or volunteers involved in  
28 the care, treatment, or habilitation of a client may exchange confidential information as  
29 needed for the purpose of carrying out their responsibility in serving the client.

30 (i) Upon specific request, a responsible professional may release confidential  
31 information to a physician or psychologist who referred the client to the facility.

32 (j) Upon request of the next of kin or other family member who has a legitimate  
33 role in the therapeutic services offered, or other person designated by the client or his  
34 legally responsible person, the responsible professional shall provide the next of kin or  
35 other family member or the designee with notification of the client's diagnosis, the  
36 prognosis, the medications prescribed, the dosage of the medications prescribed, the  
37 side effects of the medications prescribed, if any, and the progress of the client,  
38 provided that the client or his legally responsible person has consented in writing, or the  
39 client has consented orally in the presence of a witness selected by the client, prior to  
40 the release of this information. Both the client's or the legally responsible person's  
41 consent and the release of this information shall be documented in the client's medical  
42 record. This consent shall be valid for a specified length of time only and is subject to  
43 revocation by the consenting individual.

1 (k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206, upon  
2 request of the next of kin or other family member who has a legitimate role in the  
3 therapeutic services offered, or other person designated by the client or his legally  
4 responsible person, the responsible professional shall provide the next of kin, or family  
5 member, or the designee, notification of the client's admission to the facility, transfer to  
6 another facility, decision to leave the facility against medical advice, discharge from the  
7 facility, and referrals and appointment information for treatment after discharge, after  
8 notification to the client that this information has been requested.

9 (l) In response to a written request of the next of kin or other family member  
10 who has a legitimate role in the therapeutic services offered, or other person designated  
11 by the client, for additional information not provided for in subsections (j) and (k) of  
12 this section, and when such written request identifies the intended use for this  
13 information, the responsible professional shall, in a timely manner:

14 (1) Provide the information requested based upon the responsible  
15 professional's determination that providing this information will be to  
16 the client's therapeutic benefit, and provided that the client or his  
17 legally responsible person has consented in writing to the release of the  
18 information requested; or

19 (2) Refuse to provide the information requested based upon the  
20 responsible professional's determination that providing this  
21 information will be detrimental to the therapeutic relationship between  
22 client and professional; or

23 (3) Refuse to provide the information requested based upon the  
24 responsible professional's determination that the next of kin or family  
25 member or designee does not have a legitimate need for the  
26 information requested.

27 (m) The Commission for Mental Health, Developmental Disabilities, and  
28 Substance Abuse Services shall adopt rules specifically to define the legitimate role  
29 referred to in subsections (j), (k), and (l) of this section."

30 **SECTION 4.** This act is effective when it becomes law.