

MEMORANDUM

TO: Local health directors
Public health nursing directors and supervisors
Local health department HIPAA coordinators
Local health department privacy officials

CC: Frances Q. Taylor, DPH HIPAA Consultant
Robert Martin, DPH HIPAA Support

FROM: Jill Moore and Aimee Wall, UNC Institute of Government
Chris Hoke and Joy Reed, NC Division of Public Health

SUBJECT: New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations

There has been an important change in state medical confidentiality law. Local health departments in North Carolina are no longer required to obtain consent to disclose patient health information for purposes of treatment, payment, or health care operations (TPO), as those terms are defined by the HIPAA privacy rule. (There are a couple of exceptions that are specific to HIV information. Those are described in more detail below.)

The changed law can be found in section 4 of SL 2004-80 (Senate Bill 582), the Public Health Preparedness Act. It became effective July 8, 2004. The law amends G.S. 130A-12, one of the statutes that makes local health departments' patient information confidential. The new wording of G.S. 130A-12 is attached to this memo.

A few important things to note about this new law:

- The new law addresses only disclosures made for purposes of treatment, payment, and health care operations, as those terms are defined by HIPAA. (See the attachment for those definitions.) If a disclosure is for another purpose, other laws will determine whether the disclosure may be made without consent or authorization.
- North Carolina's communicable disease rules contain a couple of significant exceptions to the new law for certain TPO disclosures of HIV/AIDS information:
 1. A local health department still must obtain specific written consent in order to bill a third-party payer for HIV testing or counseling. 10A N.C.A.C. 41A.0202(9).
 2. A local health department may disclose HIV/AIDS information to another health care provider for treatment purposes only when the local health department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released. 10A N.C.A.C. 41A.0202(11). Consent is still required for any disclosure of HIV/AIDS information for treatment purposes that do not fit within this circumstance.

- The new law applies only to local health departments in North Carolina. It does not affect other local agencies, other types of health care providers, or providers in other states.
- Local health departments still must disseminate their Notices of Privacy Practices and make a good faith effort to obtain the individual’s signature on a form or log that acknowledges receipt of the Notice of Privacy Practices. (This requirement applies only to patients who are being served by the health department for the first time since April 14, 2003.)

Some local health departments have been using DPH Form 3096 or a similar locally-developed two-part form. The bottom part of Form 3096 obtains permission to disclose the patient’s information for TPO purposes—this is the signature that is no longer needed. The top part of Form 3096 obtains acknowledgment of receipt of the Notice of Privacy Practices—this is the signature that local health departments still must make a good faith effort to obtain. We recommend that departments that have been using DPH Form 3096 replace it with a form that contains only the acknowledgment of receipt of the Notice. The Institute of Government has developed a sample form that can be used for that purpose (attached).

Other local health departments have been obtaining the signature acknowledging receipt of the Notice of Privacy Practices on a log rather than a form, and have been obtaining consent to disclose information for TPO purposes on a separate form. Those departments can continue to use their acknowledgment logs and may discontinue using forms that obtain consent to disclose information for TPO purposes.

This memo supercedes guidance that was issued by the UNC Institute of Government in December 2002 (“Using and Disclosing Patients’ Health Information for Treatment, Payment, and Health Care Operations: Recommendations for North Carolina Local Health Departments,” by Jill Moore and Aimee Wall). Please do not rely on that guidance any longer. This memo also supercedes the July 7, 2003 memo to local health directors from Chris Hoke and Joy Reed regarding “Clients Who Refuse to Sign the ‘Permission to Use and Disclose’ Form.”

We are available to answer any questions you may have about the new law. Our contact information is below.

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