

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 826\*  
Senate Judiciary II Committee Substitute Adopted 6/9/03

Short Title: Amend MH Confidentiality Statutes.

(Public)

Sponsors:

Referred to:

April 1, 2003

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.** 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 or more clients of the area authority or county program. ~~A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only.~~ Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
- b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day

1 services offered to the same individual for a period of three  
2 hours or more during a 24-hour period, or residential services  
3 provided for 24 consecutive hours or more. When the services  
4 offered are provided to individuals who are substance abusers,  
5 these services shall include all outpatient services, day services  
6 offered to the same individual for a period of three hours or  
7 more during a 24-hour period, or residential services provided  
8 for 24 consecutive hours or more. Facilities for individuals who  
9 are substance abusers include chemical dependency facilities;

- 10 c. A "private facility", which is a facility that is either a licensable  
11 facility or a special unit of a general hospital or a part of either  
12 in which the specific service provided is not covered under the  
13 terms of a contract with an area authority;
- 14 d. The psychiatric service of the University of North Carolina  
15 Hospitals at Chapel Hill;
- 16 e. A "residential facility", which is a 24-hour facility that is not a  
17 hospital, including a group home;
- 18 f. A "State facility", which is a facility that is operated by the  
19 Secretary;
- 20 g. A "24-hour facility", which is a facility that provides a  
21 structured living environment and services for a period of 24  
22 consecutive hours or more and includes hospitals that are  
23 facilities under this Chapter; and
- 24 h. A Veterans Administration facility or part thereof that provides  
25 services for the care, treatment, habilitation, or rehabilitation of  
26 the mentally ill, the developmentally disabled, or substance  
27 abusers."

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

29 **"§ 122C-54. Exceptions; abuse reports and court proceedings.**

30 ...

31 (b) If an individual is a defendant in a criminal case and a mental examination of  
32 the defendant has been ordered by the ~~court~~, court as provided in G.S. 15A-1002, the  
33 facility ~~may~~ shall send the results or the report of the mental examination to the clerk of  
34 court, to the district attorney or prosecuting officer, and to the attorney of record for the  
35 defendant as provided in G.S. 15A-1002(d)."

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

37 **"§ 122C-55. Exceptions; care and treatment.**

38 (a) Any area or State facility or the psychiatric service of the University of North  
39 Carolina Hospitals at Chapel Hill may share confidential information regarding any  
40 client of that facility with any other area or State facility or the psychiatric service of the  
41 University of North Carolina Hospitals at Chapel Hill when necessary to coordinate  
42 appropriate and effective care, treatment or habilitation of ~~the client and when failure to~~  
43 ~~share this information would be detrimental to the care, treatment or habilitation of the~~  
44 client. the client. For the purposes of this subsection, coordinate means the provision,

1 coordination, or management of mental health, developmental disabilities, and  
2 substance abuse services and related services by one or more facilities and includes the  
3 referral of a client from one facility to another. Under the circumstances described in  
4 this subsection, the consent of the client or legally responsible person is not required for  
5 this information to be furnished, and the information may be furnished despite objection  
6 by the client.

7 (a1) Any State or area facility or the psychiatric service of the University of North  
8 Carolina Hospitals at Chapel Hill may share confidential information regarding any  
9 client of that facility with the Secretary, and the Secretary may share confidential  
10 information regarding any client with an area or State facility or the psychiatric service  
11 of the University of North Carolina Hospitals at Chapel Hill when the responsible  
12 professional or the Secretary determines that disclosure is necessary to coordinate  
13 appropriate and effective care, treatment or habilitation of the client and that failure to  
14 share this information would be detrimental to the care, treatment or habilitation of the  
15 client. Under the circumstances described in this subsection, the consent of the client or  
16 legally responsible person is not required for this information to be furnished, and the  
17 information may be furnished despite objection by the client.

18 (a2) Any area or State 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 any other area facility or State facility or the psychiatric  
21 service of the University of North Carolina Hospitals at Chapel Hill when necessary to  
22 conduct payment activities relating to an individual served by the facility. Payment  
23 activities are activities undertaken by a facility to obtain or provide reimbursement for  
24 the provision of services and may include, but are not limited to, determinations of  
25 eligibility or coverage, coordination of benefits, determinations of cost-sharing amounts,  
26 claims management, claims processing, claims adjudication, claims appeals, billing and  
27 collection activities, medical necessity reviews, utilization management and review,  
28 precertification and preauthorization of services, concurrent and retrospective review of  
29 services, and appeals related to utilization management and review.

30 (a3) Whenever there is reason to believe that a client is eligible for benefits  
31 through a Department program, any State or area facility or the psychiatric service of  
32 the University of North Carolina Hospitals at Chapel Hill may share confidential  
33 information regarding any client of that facility with the Secretary, and the Secretary  
34 may share confidential information regarding any client with an area facility or State  
35 facility or the psychiatric services of the University of North Carolina Hospitals at  
36 Chapel Hill. Disclosure is limited to that information necessary to establish initial  
37 eligibility for benefits, determine continued eligibility over time, and obtain  
38 reimbursement for the costs of services provided to the client.

39 (a4) An area authority or county program may share confidential information  
40 regarding any client with any area facility, and any area facility may share confidential  
41 information regarding any client of that facility with the area authority or county  
42 program, when the area authority or county program determines the disclosure is  
43 necessary to develop, manage, monitor, or evaluate the area authority's or county  
44 program's network of qualified providers as provided in G.S. 122C-115.2(b)(1)b., G.S.

1 122C-141(a), the State Plan, and rules of the Secretary. For the purposes of this  
2 subsection, the purposes or activities for which confidential information may be  
3 disclosed include, but are not limited to, quality assessment and improvement activities,  
4 provider accreditation and staff credentialing, developing contracts and negotiating  
5 rates, investigating and responding to client grievances and complaints, evaluating  
6 practitioner and provider performance, auditing functions, on-site monitoring,  
7 conducting consumer satisfaction studies, and collecting and analyzing performance  
8 data.

9 (a5) Any area facility may share confidential information with any other area  
10 facility regarding an applicant when necessary to determine whether the applicant is  
11 eligible for area facility services. For the purpose of this subsection, the term "applicant"  
12 means an individual who contacts an area facility for services.

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

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

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

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

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

43 (e2) A responsible professional may disclose an advance instruction for mental  
44 health treatment or confidential information from an advance instruction to a physician,

1 psychologist, or other qualified professional when the responsible professional  
2 determines that disclosure is necessary to give effect to or provide treatment in  
3 accordance with the advance instruction.

4 (f) A facility may disclose confidential information to a provider of support  
5 services whenever the facility has entered into a written agreement with a person to  
6 provide support services and the agreement includes a provision in which the provider  
7 of support services acknowledges that in receiving, storing, processing, or otherwise  
8 dealing with any confidential information, he will safeguard and not further disclose the  
9 information.

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

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

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

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

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

42 (l) In response to a written request of the next of kin or other family member  
43 who has a legitimate role in the therapeutic services offered, or other person designated  
44 by the client, for additional information not provided for in subsections (j) and (k) of

1 this section, and when such written request identifies the intended use for this  
2 information, the responsible professional shall, in a timely manner:

3 (1) Provide the information requested based upon the responsible  
4 professional's determination that providing this information will be to  
5 the client's therapeutic benefit, and provided that the client or his  
6 legally responsible person has consented in writing to the release of the  
7 information requested; or

8 (2) Refuse to provide the information requested based upon the  
9 responsible professional's determination that providing this  
10 information will be detrimental to the therapeutic relationship between  
11 client and professional; or

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

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

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