

NC Communicable Disease Law

Jill D. Moore, MPH, JD

Associate Professor of Public Law & Government

University of North Carolina at Chapel Hill

December 2013



UNC
SCHOOL OF GOVERNMENT

www.sog.unc.edu

Learning Objectives

- Locate NC communicable disease laws
- Identify laws giving public health officials access to records for investigations
- List sources of communicable disease control measures
- Describe options for enforcing communicable disease laws
- Describe NC's medical and religious exemptions to immunization requirements
- Explain informed consent for HIV testing under NC law



NC COMMUNICABLE DISEASE LAWS

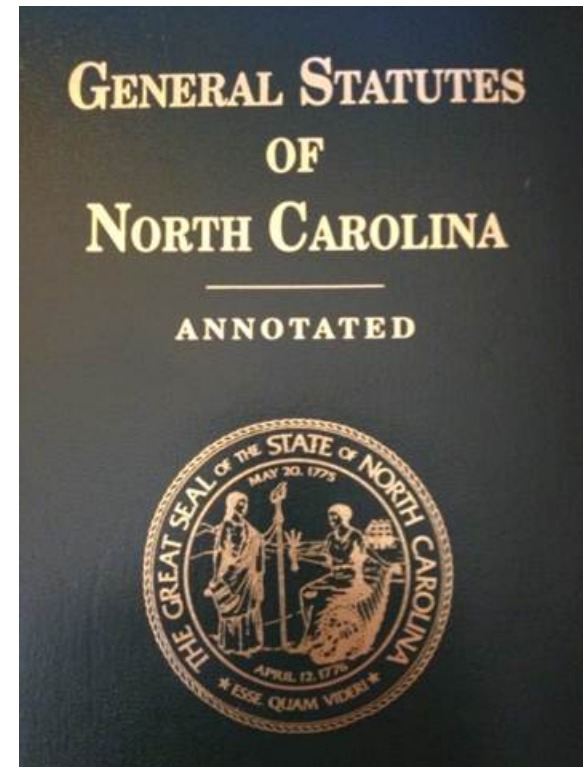
Sources of Law



- **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

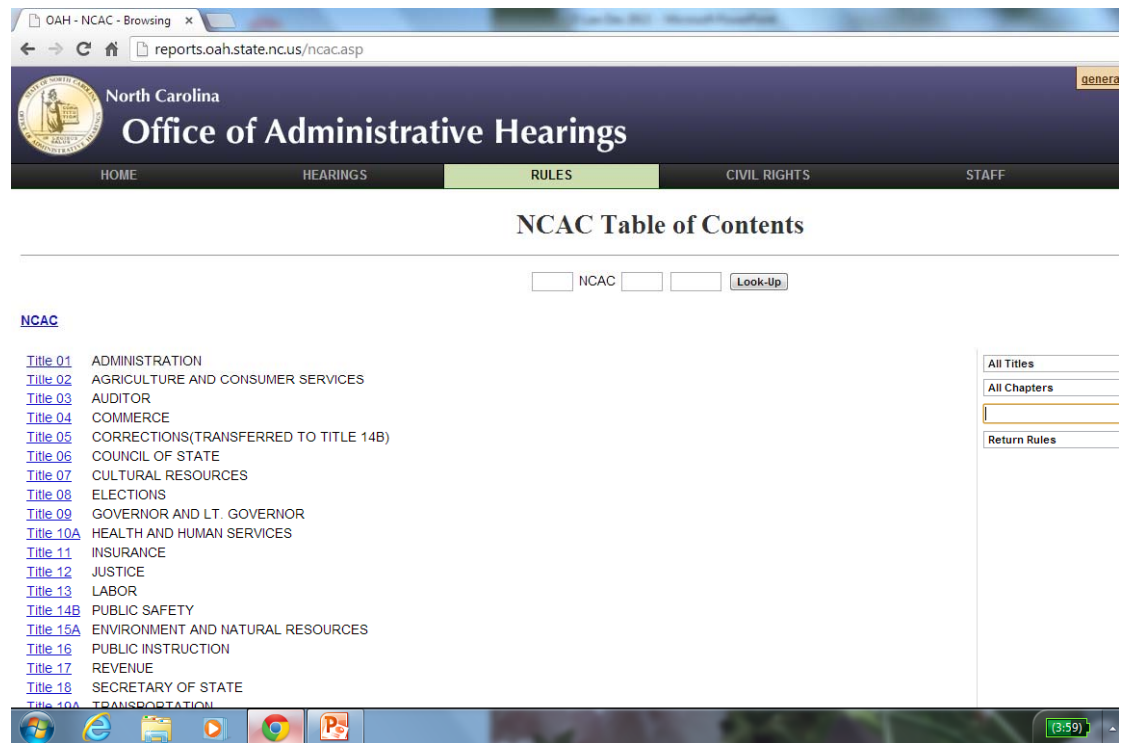
NC Communicable Disease Statutes

- Adopted by NC General Assembly
- Mostly in G.S. Chapter 130A, Article 6
 - Citation example: G.S. 130A-135
 - On-line at www.ncleg.net (click on link to General Statutes)
- Require CD reporting, authorize CD control measures, provide due process protections for persons isolated or quarantined, address confidentiality and informed consent, provide methods for enforcing CD laws



NC Communicable Disease Rules

- Adopted by NC Commission for Public Health
- NC Administrative Code, Title 10A, Subchapter 41A
 - Citation example: 10A NCAC 41A.0101
 - On-line at <http://reports.oah.state.nc.us/ncac.asp>
- Establish reportable diseases and specific control measures, provide procedures for bloodborne pathogen exposures, address HIV testing
- Also immunization schedule and immunization info-sharing rules



The screenshot shows a web browser window with the address bar displaying "reports.oah.state.nc.us/ncac.asp". The page header features the North Carolina Office of Administrative Hearings logo and navigation tabs for HOME, HEARINGS, RULES (highlighted), CIVIL RIGHTS, and STAFF. Below the header is the "NCAC Table of Contents" section, which includes a search box with the text "NCAC" and a "Look-Up" button. A list of titles is displayed, including Title 01 through Title 18, with corresponding department names such as ADMINISTRATION, AGRICULTURE AND CONSUMER SERVICES, and HEALTH AND HUMAN SERVICES. A sidebar on the right contains links for "All Titles", "All Chapters", and "Return Rules". The Windows taskbar at the bottom shows various application icons and a system clock displaying 3:59.

NC Court Decisions

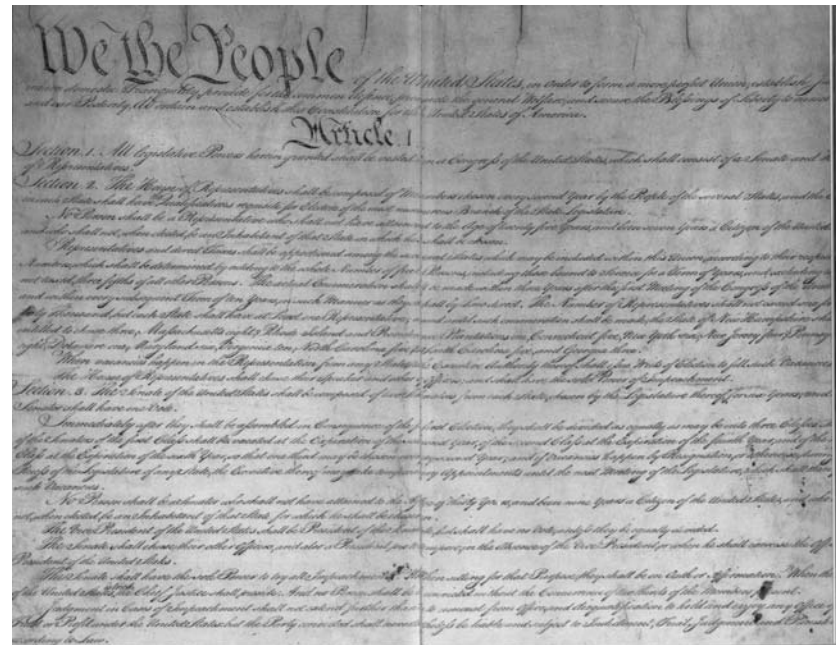


NC Supreme Court Chamber

- Law made by judges
- State courts: NC Court of Appeals, NC Supreme Court
- Federal courts: 4th Circuit Court of Appeals, US Supreme Court
- NC court decisions have upheld:
 - mandatory HIV reporting – *Act-Up Triangle v. Commission*
 - immunization requirements – *State v. Hay; In re Stratton*
 - authority to enforce CD laws – *Act-Up Triangle v. Commission*

Supremacy of Federal Law

- Under the US Constitution's supremacy clause, federal laws preempt conflicting state laws.
- In the CD law context, the main issue this affects is confidentiality of information. There are both federal and state confidentiality laws. When they are incompatible, the federal law controls.





KEY LEGAL ISSUES IN COMMUNICABLE DISEASE CONTROL

Confidentiality: Basic Principles

HIPAA

- Allows disclosures **required** by state law
- Allows disclosures **permitted** by state law for certain public health purposes

State PH laws

- **Requires** certain disclosures: mandatory reports; access to records in outbreaks
- **Permits** certain voluntary reports
- **Protects** communicable disease information obtained by public health by limiting uses and re-disclosure

Other laws

- Be aware that while HIPAA and state public health laws support access to information for communicable disease activities, other laws may inhibit access

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	What to report, when, & to whom
Physicians GS 130A-135	<ul style="list-style-type: none"> • 70+ diseases/conditions listed in 10A NCAC 41A.0101(a) • Time frame varies from immediately to within 7 days • Report to local health director
Schools/Child day care GS 130A-136	<ul style="list-style-type: none"> • 70+ diseases/conditions (10A NCAC 41A.0101(a); schools subject to FERPA may report if health/safety emergency) • Time frame varies from immediately to within 7 days • Report to local health director
Food/drink establishments GS 130A-138	<ul style="list-style-type: none"> • Suspected outbreaks of foodborne illness in customers or employees; suspected case of a reportable foodborne illness in an employee • Report within 24 hours to local health director as specified in 10A NCAC 41A.0102(b)
Laboratories GS 130A-139	<ul style="list-style-type: none"> • Positive tests as specified in 10A NCAC 41A.0101(c) • Time frames vary, see 10A NCAC 41A.0102(d) • Report to local or state officials as specified in 10A NCAC 41A.0102(d)

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

G.S. 130A-144

- Authorizes Commission for Public Health to adopt rules prescribing control measures
- Requires all persons to comply with control measures

10A NCAC 41A.0201 - .0214

- Prescribes control measures for HIV, hepatitis B, hepatitis C, STDs, tuberculosis, smallpox/vaccinia, and SARS
- For all other CDs, state rules incorporate control measures specified in:
 - CDC guidelines & recommended actions, or
 - APHA's Control of Communicable Diseases Manual

Control Measures: Isolation & Quarantine



- How are isolation & quarantine defined and what distinguishes them?
- Who may order?
- How long does an order last?
- How can it be enforced?

Control Measures: Isolation & Quarantine

Isolation

- Limit on freedom of movement or freedom of action of a person infected (or suspected of being infected)

Quarantine

- Limit on freedom of movement or freedom of action of a person exposed (or suspected of being exposed)
- Limit on access to an area contaminated with infectious agent
- Limit on freedom of movement or action of an unimmunized person

Control Measures: Isolation & Quarantine

- Who may order?
 - Local health director or state health director
- How long does order last?
 - Limits on freedom of action:
 - So long as public health endangered, no other limits in law
 - Limits on freedom of movement or access:
 - So long as public health is endangered but with a maximum of 30 days for initial order
 - If public health still endangered when order expires, may be extended by a Superior Court judge

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 advised 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.



Immunization

G.S. 130A-153

- Every child present in NC must be immunized against specific diseases.
- Parents/guardians responsible for making sure child is immunized.

10A NCAC 41A.0401

- Required immunizations and schedule for getting them set forth in state regulations.

Immunization: Exemptions

Medical (G.S. 130A-156)

- Child exempt from immunization requirements when an immunization is medically contraindicated.
- Physician must certify the medical contraindication.
- Contraindication must be recognized by the Advisory Committee on Immunization Practices (ACIP).

Religious (G.S. 130A-157)

- Child exempt when the bona fide religious beliefs of the parent or guardian are contrary to immunization requirements.
- Parent writes a statement of religious objection for each child for whom exemption claimed.
- No exemption for objection based on a belief that is not religious in nature.

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

Criminal (GS 130A-25)	Civil (GS 130A-18)
Charge with misdemeanor in district court	Seek injunction in superior court
May be sentenced for up to two years	Failure to comply → contempt of court
Work with district attorney	Work with county attorney

- More information about these legal remedies and the procedures to follow is available at <http://www.sog.unc.edu/node/1031> under the subheading “Enforcement”

Confidentiality: Communicable Disease Enforcement

- ✓ HIPAA allows disclosures made pursuant to state laws authorizing disclosures for public health activities such as disease control
- ✓ G.S. 130A-143 authorizes disclosure to court officials for purposes of enforcing communicable disease laws
- ✓ Work with attorney and court officials to limit the amount of information entered into public court records

HIV TESTING

CDC Recommendations (2006)

- Overarching goal: Make HIV screening in health care settings routine
- Specific objectives:
 - Increase screening in health care settings
 - Foster early detection of HIV infection
 - Identify and counsel persons with unrecognized HIV infection & link to services
 - Reduce perinatal transmission

HIV Testing Laws

G.S. 130A-148(h)

- Establishes general rule that informed consent for test is required, with a couple of exceptions.
- One of the exceptions: authorizes Commission for Public Health to adopt rules requiring tests.

10A NCAC 41A.0202

- Requires tests in some circumstances.
- Also allows tests pursuant to a general consent to treatment.

HIV Rules – Most Routine Tests*

Before 2006 Recommendations	After Amendments (November 1, 2007)
Pre-test counseling required.	Pre-test counseling <i>not</i> required.
Form of informed consent not addressed.	New section specifically allowing test pursuant to a general consent to treatment/labs, “so long as the patient is notified that they are being tested for HIV and given the opportunity to refuse.”
Individualized post-test counseling required.	Individualized post-test counseling required <i>if test is positive</i> ; must include referrals & control measures.

*There are separate rules for pregnant women and newborns—see next slides.

HIV Testing Rules – Pregnant Women

Before 2006 Recommendations	After Amendments (November 1, 2007)
<p><u>Prenatal testing</u>: Physician required to offer pre-test counseling “as early in the pregnancy as possible,” and test after informed consent obtained, unless the woman refused.</p>	<p><u>Prenatal testing</u>:</p> <ul style="list-style-type: none"> • Physician must offer test at first prenatal visit and in third trimester. • Test “shall” be conducted “unless the pregnant woman refuses to provide informed consent pursuant to GS 130A-148(h).” (i.e., must be informed that test is to be conducted and given clear opportunity to refuse)
<p><u>Labor & delivery</u>: Not addressed. (Could offer test, but not required.)</p>	<p><u>Labor & delivery</u>: If no record of HIV test result during current pregnancy, physician must:</p> <ul style="list-style-type: none"> • Inform woman test will be performed and explain reasons • Conduct rapid test <i>without consent</i> unless test can’t be performed safely. (Alternative: test existing specimen.)

HIV Tests – Newborns

Before 2006 Recommendations	After Amendments (November 1, 2007)
Not addressed	If there is no record of the result of an HIV test conducted on the mother either during the pregnancy or during labor & delivery, the newborn shall be tested.
	“The fact that the mother has not been tested creates a reasonable suspicion pursuant to G.S. 130A-148(h) that the newborn has HIV infection ...”
	Significance of quoted statement: Suggests that HCP may test newborn even if parent refuses to consent.

HIV Tests for Minors (< 18)

General rule: Need consent of parent or guardian to test a minor for HIV

Exception:

Minor with decisional capacity may consent on his or her own.

GS 90-21.5

NC law allows a minor who has the capacity to make health care decisions to consent for medical health services for the prevention, diagnosis, or treatment of specified conditions, including reportable communicable diseases/conditions, including HIV.

Exception:

May test minor even if parent refuses to consent if there is reasonable suspicion minor has HIV or has been sexually abused.

GS 130A-148(h)

NC law allows a physician to test a minor without parental consent in these circumstances.

- Parent must be given opportunity to consent.
- If parent refuses, physician may still order test if reasonable suspicion of HIV infection or sexual abuse.
 - Rule for newborns says reasonable suspicion exists if mother not tested.
 - Reasonable suspicion in other circumstances: case-by-case determination.

Resources

- www.ncleg.net
North Carolina General Assembly website. Contains NC General Statutes, as well as legislation in progress (bills).
- <http://reports.oah.state.nc.us/ncac.asp>
North Carolina Administrative Code.
- www.ncphlaw.unc.edu
SOG website on North Carolina public health law. Click on Legal Information by Topic, then Communicable Disease.

Jill D. Moore, MPH, JD
UNC School of Government
919-966-4442
moore@sog.unc.edu