
Appendix A: Confidentiality and Social Services

N.C. Institute of Government Bulletin

Social Services

Number 37 October 2002 (Revised July 2003)

CONFIDENTIALITY AND SOCIAL SERVICES (PART IV): AN ANNOTATED INDEX OF FEDERAL AND STATE CONFIDENTIALITY LAWS

■ John L. Saxon*

It is common knowledge that much of the information contained in the records of state and county social services agencies is “confidential.”

But what, exactly, does it mean to say that information is confidential?¹

- Does confidentiality mean that information² may *never* be disclosed to or shared with other agencies, the media, or the public?
- Are there exceptions to confidentiality that allow or require the disclosure of confidential information?
- When can social services agencies³ obtain confidential information from other agencies or individuals?
- What rules⁴ govern the acquisition, use, protection, and disclosure of confidential information by social services agencies and where do these rules come from ?

This is the fourth in a series of *Social Services Bulletins* that attempts to answer these and other questions regarding confidentiality and social services in North Carolina. *Social Services Bulletin No. 30* (February, 2001) discussed the general meaning, purposes, nature, scope, and limits of confidentiality. *Social Services Bulletin No. 31* (May, 2001) examined the legal and quasi-legal sources of rules governing the acquisition, use, protection, and disclosure of confidential information. *Social Services Bulletin No. 35* (April, 2002) outlined a process that social services agencies can use to analyze issues, solve problems, and answer questions involving the acquisition, use, protection, and disclosure of confidential information.

This *Social Services Bulletin* is an annotated index to federal and state confidentiality rules for state and local social services agencies. The index identifies and briefly summarizes many of the federal and state statutes and regulations that govern the use, protection, disclosure, and acquisition of confidential information by social services agencies.⁵ It does not, however, reproduce the text of those statutes or regulations verbatim, provide a detailed analysis or explanation of those statutes or regulations, or identify every federal or state confidentiality rule that may apply to or impact social services agencies.

Social Services Bulletin No. 37

Subsequent *Social Services Bulletins* in this series will examine the application of the new federal medical privacy rule to county social services departments and its impact on social services agencies; describe and analyze social services confidentiality rules in greater detail; and attempt to answer some of the questions regarding confidentiality that are frequently asked by social services employees, directors, and attorneys.

How to Use This Index

The purpose of this index is to assist state and county social services employees, social services directors, and social services attorneys in finding, analyzing, and applying the federal and state laws that govern the acquisition, use, and disclosure of information by state and county social services agencies and to briefly summarize these laws.

The index is organized alphabetically under the following subject headings:

- Adoption
- Adoption Assistance Payments
- Adult Care Homes
- Adult Protective Services
- Alcohol and Substance Abuse Treatment
- Attorneys
- Birth Records
- Child Day Care
- Child Protection and Child Fatality Teams
- Child Protective Services
- Child Support Enforcement
- Child Welfare Services
- Children’s Health Insurance Program (Health Choice)
- Criminal History Checks
- Employment Security Commission
- Energy Assistance
- Federal Agencies
- Financial Institutions
- Food Stamps
- Foster Care
- Foster Care Assistance Payments
- Human Services
- Illegal Aliens
- Juvenile Proceedings: Abused, Neglected, or Dependent Children
- Juvenile Proceedings: Delinquent or Undisciplined Children
- Law Enforcement Records
- Medicaid
- Medical Records and Health Information
- Mental Health
- Motor Vehicles
- Privileged Communications
- Public Employees
- Public Records
- Senior Citizens
- Social Security
- Social Services and Public Assistance
- Social Services Boards
- State-County Special Assistance
- Students and Schools
- Tax Records

- Temporary Assistance for Needy Families (TANF)

Federal and state statutes and regulations related to each subject are grouped under topical subheadings, cited, and summarized. The summaries describe the type of information to which the law applies and the circumstances under which the information must, may, or may not be disclosed to particular agencies or individuals.

Readers are encouraged to use the index primarily as a finding aid and quick reference, and should read the entire text of the applicable laws (including amendments and new laws enacted after September 30, 2002) rather than relying exclusively on this index.⁶

An appendix at the end of this bulletin provides a brief explanation of legal citations for nonlawyers and on-line links to the text of the federal and state statutes and regulations cited in the index.

Adoption

Adoption Hearings

G.S. 48-2-203

Judicial hearings in adoption proceedings must be held in closed court.

Adoption Records Maintained by State and County Agencies, Attorneys, Courts, and Service Providers

G.S. 48-9-102

All records created or filed in connection with an adoption (except the decree of adoption and the entry in the special proceedings index) in the possession of the court, an agency, the State, a county, an attorney, or a provider of professional services are confidential and may not be used or disclosed except as provided under the state’s adoption law.

The term “records” includes a consent or relinquishment for adoption, the adoption petition, transcript of an adoption proceeding, correspondence, and other written, tape-recorded, or electronically-recorded information, regardless of physical form, related to an adoption proceeding. All records filed with the clerk of superior court (other than the original petition and final decree) must be transferred to the state Division of Social Services along with a copy of the adoption petition and final decree after a final decree of adoption is entered.

During a proceeding for adoption, adoption records may be disclosed only by order of the court in which the

adoption proceeding is pending based on a finding that disclosure is necessary to protect the interest of the adoptee.

G.S. 48-9-104

Except as provided in G.S. 48-9-109(2) or under a court order issued pursuant to G.S. 48-9-105, no person or entity may release from sealed adoption records any information that reasonably could be expected to lead directly to the identity of an adoptee, the adoptee's adoptive parent, the adoptee's birth parent, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent.

G.S. 48-9-109

The state adoption law does not prevent a court, agency, or person from

1. inspecting confidential adoption records (other than records maintained by the state registrar) for the purpose of discharging an obligation under the state adoption law;
2. disclosing the name of the court where an adoption proceeding occurred or the name of an agency that placed an adoptee to an adoptee, an adoptive parent of an adoptee, an adoptee's birth parent, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent; or
3. using or disclosing information contained in sealed adoption records (other than those maintained by the state registrar) for statistical or research purposes if the disclosure will not result in the identification of a person who is the subject of the information.

In adoption proceedings involving agency placements, the parent or guardian placing a child for adoption and the adopting parents may sign a written consent prior to adoption authorizing the agency to release information that could reasonably be expected to lead directly to the identity of an adoptee, an adoptee's adoptive parent, or the adoptee's placing parent or guardian. The consent must be filed with the clerk of superior court pursuant to G.S. 48-2-305.

G.S. 48-10-105

Unauthorized disclosure of identifying or nonidentifying information contained in confidential adoption records is a class 1 misdemeanor.

A district court may enjoin a person who has unlawfully disclosed confidential information from making further unlawful disclosures.

An individual who is the subject of confidential information may bring a civil action for equitable or monetary relief or both against a person who has unlawfully disclosed confidential information.

Criminal History Checks of Prospective Adoptive Parents

G.S. 48-3-309(f); G.S. 114-19.7

Criminal history checks of prospective adoptive parents provided to the state Division of Social Services are not public records, are confidential and privileged, and may be used only by the division and other legally authorized persons.

Disclosure of Background and Nonidentifying Information

G.S. 48-3-205

Notwithstanding any other provision of law, an individual or agency that places a minor for adoption must provide to the prospective adoptive parent a written document containing specified background information about the child and the child's biological parents (for example, child's birth date and parents' ages, education, and general physical appearance) and all reasonably available nonidentifying information about the child, the child's biological parents, and other members of the child's family that is relevant to the child's health and development.

This information must be disclosed to the child, on request, after the child's 18th birthday, marriage, or emancipation.

G.S. 48-9-103

An agency that placed a child for adoption (or the state Division of Social Services) must provide, upon request, any background information transmitted under G.S. 48-3-205 and any additional nonidentifying health-related information about the adoptee's original family that was submitted to the agency, court, or division to an adoptive parent, an adoptee who is an adult at the time of the request, a minor adoptee who is a parent or an expectant parent, or the treating physician of a minor adoptee who is seeking medical treatment without the consent of the adoptee's parent or guardian.

Information disclosed under this section must be edited to exclude any information that could reasonably be expected to lead directly or indirectly to the identity of the adoptee or the adoptee's birth family and must refer to the confidentiality restrictions imposed by the state adoption law.

An agency may disclose, on request, nonidentifying background information about the adoptee’s present circumstances to the former parent, adult sibling, or guardian of a minor sibling of the adoptee.

Disclosure of Identifying and Other Nonidentifying Information

G.S. 48-9-105

The court that exercised original jurisdiction with respect to an adoption may, upon motion and notice, enter an order allowing the disclosure of identifying or nonidentifying information from confidential adoption records to any individual if the court finds that, considering the adoptee’s best interest, the interests of the adoptee’s original and adoptive families, and other specified criteria, disclosure of the information is necessary for the protection of the adoptee or the public.⁷

In determining whether to release this information, the court must consider

1. the reason the information is sought;
2. whether information can be provided without disclosing an individual’s identity;
3. whether the individual to whom the information pertains is alive or dead;
4. the known preferences of the adoptee, the adoptive parents and family, and the birth parents and family regarding disclosure and the possible effects of disclosure on those persons;
5. the adoptee’s age, maturity, and needs;
6. the recommendation of a person appointed by the court to assess the request for disclosure;
7. any other factor that is relevant with respect to determining whether the benefit of releasing the requested information is greater than the benefit of not releasing the information.

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive adoption services from county departments of social services.

Adoption Assistance Payments

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive federal or state adoption assistance payments from county departments of social services.

Title IV-E

42 U.S. Code §671(a)(8)

A state, as a condition of receiving federal funding for adoption assistance payments under Title IV-E of the Social Security Act, must establish safeguards that restrict the use or disclosure of information concerning individuals who receive adoption assistance payments.⁸

Information about an individual who receives federal adoption assistance may be disclosed to appropriate authorities if the individual may have been abused or neglected. Information regarding recipients of Title IV-E adoption assistance also may be used or disclosed for purposes directly connected with the administration of (a) a state’s Temporary Assistance for Needy Families, child welfare, child support enforcement, Medicaid, or Social Services Block Grant programs; (b) the federal Supplemental Security Income program; or (c) other federal or federally-assisted needs-based programs.

Adult Care Homes

Criminal History Checks of Prospective Adult Care Home Employees

G.S. 131D-40; G.S. 114-19.10

Criminal history checks of prospective adult care home employees that are provided by the state Department of Justice to licensed adult care homes are confidential and may not be disclosed to anyone other than the applicant.

Disclosure of Information to Public Agencies

G.S. 131D-2(b)

Notwithstanding state laws governing the confidentiality of medical records and privileged communications between patients and their physicians, a county social services employee who conducts a licensure inspection of an adult care home may review and copy any record regarding the admission, discharge, medication, care, medical condition, or history of a resident of the adult care home maintained by an adult care home or any other person involved in providing care or treatment at an adult care home unless the adult care home resident objects in writing to disclosure of his or her records.

Confidential or privileged information regarding an adult care home resident obtained by a social services agency under this section may not be disclosed without the written consent of the resident or the resident's personal representative.

A social services agency may not disclose the name of a person who has furnished information in connection with a licensure inspection without that person's consent.

Except as noted above, the state's public records law (G.S. Ch. 132) applies to all adult care home licensure and inspection records of county departments of social services and the state Department of Health and Human Services (DHHS).

G.S. 131D-27

The state DHHS and its agents are authorized to inspect the records of adult care home residents maintained at an adult care home when the inspection is necessary to investigate an alleged violation of a resident's rights under Article 3 of G.S. Ch. 131D.

DHHS must protect the confidentiality of all records inspected pursuant to this section, as well as the confidentiality of persons who register complaints with DHHS regarding alleged violations of the rights of adult care home residents.

G.S. 131D-32

A county adult care home advisory committee may not disclose the identity of a complainant or the identity of a resident involved in a complaint except as permitted under the federal Older Americans Act (summarized on page 26 of this bulletin).

Adult Protective Services

Disclosure of Information by Social Services Agencies

G.S. 108A-103(a); 10A N.C. Admin. Code 71A.0907

After completing an adult protective services investigation, the county social services department must notify the individual who reported the suspected abuse, neglect, or exploitation. This notice must include a statement of whether the report was substantiated and, if the report was substantiated, whether the agency is providing continued services. The notice may not include specific findings of the agency's investigation.

G.S. 108A-109; 10A N.C. Admin. Code 71A.0906

The county social services director must notify the district attorney when an adult protective services investigation finds evidence that a person has abused, neglected, or exploited a disabled adult.

10A N.C. Admin. Code 71A.0803

Specific findings regarding an adult protective services investigation may be disclosed without the consent of the disabled adult or disabled adult's caretaker to law enforcement officers or the district attorney, upon request, to assist in the criminal investigation or prosecution of abuse, neglect, or exploitation of the disabled adult.

10A N.C. Admin. Code 71A.0805

A county social services department may disclose the written report of its investigation of suspected abuse, neglect, or exploitation of a disabled adult to federal, state, or local law enforcement agencies when its investigation indicates violations of laws enforced by these agencies.

10A N.C. Admin. Code 71A.0806

Information from the state's adult protective services registry may be disclosed to law enforcement agencies to protect a disabled adult who needs protective services.

Disclosure of Information to Social Services Agencies

G.S. 108A-103(a)

A county social services employee who is investigating reported abuse, neglect, or financial exploitation of a

disabled adult under the state’s adult protective services law is authorized to review and copy any records related to the care and treatment of the disabled adult that have been maintained by an individual, facility, or agency acting as the disabled adult’s caretaker.

Identity of Persons Who Report Suspected Abuse, Neglect, or Exploitation

10A N.C. Admin. Code 71A.0802

Social services agencies must protect the confidentiality of persons who report suspected abuse, neglect, or exploitation of disabled adults or provide information related to an agency’s investigation of suspected abuse, neglect, or exploitation of disabled adults.

Information regarding the identity of these persons may be disclosed

1. pursuant to court order;
2. verbally to the state Division of Facility Services, on request, when necessary to conduct a licensure investigation; or
3. to law enforcement officers or prosecutors who are conducting a criminal investigation or prosecution involving the abuse, neglect, or exploitation of a disabled adult.

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who receive adult protective services from county departments of social services.

10A N.C. Admin. Code 71A.0803

A county social services department may disclose specific findings regarding an adult protective services investigation pursuant to a court order; with the disabled adult’s consent; to the extent necessary to provide protective services to the disabled adult; or as otherwise authorized by law.

10A N.C. Admin. Code 71A.0806

Information submitted by county departments of social services to the adult protective services registry maintained by the state Division of Social Services is confidential.

Information from the registry may be disclosed to county social services departments in connection with investigations of abuse, neglect, or exploitation of disabled adults. Information also may be disclosed

1. to social services agencies in other states to prevent abuse, neglect, or exploitation of a disabled adult;
2. to law enforcement agencies to protect a disabled adult who needs protective services;
3. for specified research studies; or
4. for other specified purposes.

10A N.C. Admin. Code 71A.0908

A county social services department must create a separate case record, or a separate section of an existing case record, containing information regarding adult protective services.

Alcohol and Substance Abuse Treatment

Patients of Federally-Assisted Alcohol and Substance Abuse Treatment Programs

42 U.S. Code §290dd-2; 42 C.F.R. 2.1 through 2.67

Federal law and regulations impose significant restrictions with respect to the disclosure of information about persons who receive alcohol or drug prevention or treatment services from a federally-assisted program.⁹

The federal law and regulations generally prohibit the disclosure of “patient identifying” information by federally-assisted programs and others.¹⁰ Disclosure, however, is permitted

1. with the patient’s written consent;¹¹
2. in response to a court order;¹²
3. to the extent necessary to comply with state laws requiring the reporting to appropriate state or local authorities of suspected child abuse or neglect; or
4. for other purposes specified in the federal law and regulations.

No state law may authorize or compel any disclosure that is prohibited by these federal rules.¹³ State law, however, may prohibit the disclosure of information that would be allowed under the federal law and regulations.

Attorneys

Privileged Communications and Confidential Client Information

27 N.C. Admin. Code 02, Rule 1.06

An attorney generally may not reveal (a) information protected by the attorney-client privilege, or (b) other information obtained in the professional attorney-client relationship that the client has requested not be disclosed or the disclosure of which would be embarrassing or detrimental to the client, except

1. with the client's consent;
2. as required by law;
3. pursuant to a court order; or
4. under other specified circumstances.

G.S. 132-1.1

Written communications to a state or local governmental body made within the scope of the attorney-client relationship by any attorney serving the public body concerning a claim against or on behalf of the public body or the prosecution, defense, settlement, or litigation of a judicial or administrative proceeding to which the public body is a party or by which it is or may be directly affected are not subject to public disclosure under the state's public records law for a period of three years after the date they were received by the public body.

G.S. 143-318.11(a)(3)

A county social services board or other public body subject to the state's open meetings law may hold a closed session to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege.

Disclosure of Information Regarding Suspected Child Abuse or Neglect

G.S. 7B-301, G.S. 7B-310

The attorney-client privilege does not excuse an attorney from reporting suspected child abuse, neglect, or dependency as required by G.S. 7B-301 unless the attorney's knowledge or suspicion of child abuse, neglect, or dependency is obtained from the attorney's client during the attorney's representation of the client in a juvenile proceeding involving abuse, neglect, or dependency.

The attorney-client privilege, however, may be asserted to exclude evidence of abuse, neglect, or

dependency in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse, neglect, or dependency is in issue.

G.S. 7B-302(e)

An attorney is not required to disclose information protected by the attorney-client privilege to a county social services department in connection with its investigation of a report involving child abuse, neglect, or dependency.

Birth Records

Disclosure of Information

G.S. 130A-93; G.S. 130A-99

The names of children and parents, the addresses of parents (other than county of residence and postal code), and the Social Security numbers of parents contained in birth records in the possession of the state DHHS, local health departments, or local register of deeds offices are not subject to public disclosure under the state's public records law (G.S. Ch. 132). All other birth data contained in birth records filed with the register of deeds is open to public examination.

Except as otherwise provided, the state registrar and other officials authorized to issue certified copies of vital records may provide certified copies of birth certificates and other vital records only to a person who is requesting a copy of his or her own vital records (or that of the person's spouse, sibling, direct ancestor or descendant, or stepparent or stepchild), a person seeking information for a legal determination of personal or property rights, an authorized agent, attorney or legal representative of a person described above.

Social Security Numbers

42 U.S. Code §405(c)(2)(C)(ii); G.S. 130A-101(g)

Parents are required to provide their Social Security numbers in connection with the registration of the birth of their child. Federal law, however, prohibits recording the parents' Social Security numbers on the child's birth certificate. State and local government agencies may use and disclose the parents' Social Security numbers only as allowed by G.S. 143-64.60 (summarized on page 27 of this bulletin) or for purposes of administering the child support enforcement program.

Child Day Care

Criminal History Checks of Child Care Providers

G.S. 110-90.2; G.S. 114-19.5

All information received by the state DHHS related to criminal history checks of child care providers is “privileged,” is not a public record, and may be used only by DHHS and persons authorized to receive information under these sections.

G.S. 114-19.3

Criminal record checks of employees, applicants for employment, and volunteers provided by the state Department of Justice to licensed residential child care facilities, licensed child care facilities, and regulated child care homes are confidential and may not be disclosed by those organizations.

Residential Child Care Facilities

10A N.C. Admin. Code 711.0305

Residential child care facilities licensed by DHHS must adopt policies restricting the disclosure of confidential information.

Smart Start Agencies

G.S. 143B-168.14(a)(2)

Local Smart Start partnerships must adopt policies comparable to those contained in the state’s public records and open meetings laws.

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who receive child day care services from county departments of social services.

Child Fatality and Child Protection Teams

Disclosure of Information to Teams

G.S. 7B-1413; 10A N.C. Admin. Code 70A.0203

For the purpose of carrying out their legal responsibilities with respect to child protection and investigation of child fatalities, the state child fatality task force, the state child fatality prevention team, and community child protection and child fatality prevention teams may obtain medical records, hospital records, and other records (including police investigative records, medical examiner records, health records, mental health records, and social services records other than those identifying a person who reported suspected child abuse or neglect) maintained by state, county, or local agencies.

Team Meetings

G.S. 7B-1413; 10A N.C. Admin. Code 70A.0203

Meetings of the state team and community teams generally are not subject to the state’s open meetings law. Persons who attend state or community team meetings generally may not testify about what transpired at a team meeting or information presented at a meeting. Members of community teams and participants at community team meetings must sign a statement acknowledging applicable confidentiality requirements and the potential civil and criminal consequences of disclosing confidential information.

Use, Protection, and Disclosure of Information

42 U.S. Code §5106a(c)

Citizen review panels established pursuant to the federal Child Abuse Prevention and Treatment Act may not disclose any identifying information about any specific child protection case that the panel reviews and may not make public any other information unless authorized by state law.

G.S. 7B-1413; 10A N.C. Admin. Code 70A.0203

All otherwise confidential information and records obtained or created by the state task force, state team, and community teams in the exercise of their

responsibilities are confidential, are not subject to discovery or admissible as evidence in any legal proceeding, and may be disclosed only as necessary to carry out the purposes of the state task force, state team, or community teams. Agency representatives may share information regarding current agency clients and referred cases with their agencies on a need to know basis. Reports by the team to the board of county commissioners may not reveal confidential information about children and families.

Child Protective Services

Abused or Neglected Children and Their Parents

42 U.S. Code §5106a(b)(2)

The federal Child Abuse Prevention and Treatment Act [CAPTA] (as amended in 1996) requires North Carolina, as a condition of receiving federal CAPTA and Title IV-B funding for child protective services, to adopt and enforce state laws, policies, and procedures that protect the privacy rights of abused or neglected children and their parents or guardians. These state laws, policies, and procedures must ensure that child protective services reports and records are used only for purposes related to child abuse and neglect prevention and treatment and are disclosed only

1. to an individual who is the subject of a child protective services report;
2. to federal, state, or local government agencies that need information in order to carry out their legal responsibilities to protect children from abuse and neglect;
3. to child abuse citizen review panels;
4. to child fatality review panels;
5. to a grand jury or court, upon a finding that disclosure of the requested information is necessary for the determination of an issue before the court or grand jury;
6. to other agencies or individuals that are authorized by state statute to receive the requested information for a legitimate state purpose.¹⁴

CAPTA also requires state laws regarding the confidentiality of child protective services cases to include provisions allowing public disclosure of findings or information about a child abuse or neglect case involving a child fatality or near fatality.¹⁵

G.S. 7B-302(a); 10A N.C. Admin. Code 70A.0106(i); 10A N.C. Admin. Code 70A.0113

All information received by a county department of social services in connection with its investigation of reports involving suspected child abuse, neglect, or dependency under the Juvenile Code “shall be held in strictest confidence by the department.”

In conducting a child protective services investigation, the county social services department must exercise discretion in contacting collateral sources and disclosing information in order to protect the privacy of the child and child’s family.

Unless otherwise authorized by law, a county social services department may not disclose information from a child protective services record except

1. to public or private agencies or individuals who are providing protective services to a child;
2. to the child or the child’s attorney, upon request;
3. to federal or state agency personnel engaged in authorized program audit and review activities; or
4. pursuant to a valid court order.¹⁶

G.S. 7B-302(f), (g); 10A N.C. Admin. Code 70A.0109.

The social services department generally must notify a person who reports suspected child abuse or neglect whether the report has been accepted for investigation, whether the report has been referred to state or local law enforcement agencies, whether the department found abuse, neglect, or dependency, whether the department is taking action to protect an abused, neglected, or dependent child, and what action the department is taking to protect an abused, neglected, or dependent child.

G.S. 7B-307; G.S. 7B-301; 10A N.C. Admin. Code 70A.0107(f)

The county social services department must notify the district attorney and the appropriate local law enforcement agency if it finds evidence that a juvenile has been abused.

The department must notify the district attorney and the appropriate local law enforcement agency if it receives information that a juvenile may have been physically harmed in violation of a criminal statute by a person other than the juvenile’s parent, guardian, custodian, or caretaker.

The department must notify the state DHHS if it receives a report of suspected child abuse or neglect in

a child day care facility or finds evidence that a child has been abused or neglected in a child day care facility. The department also must notify the State Bureau of Investigation when it receives a report of or has reason to suspect sexual abuse of a juvenile in a child care facility.

G.S. 7B-311; 10A N.C. Admin. Code 70A.0102

All information submitted by a county department of social services to the central registry of child abuse, neglect, dependency, and fatality cases maintained by the state DHHS is confidential and may be used or disclosed only pursuant to rules adopted by the state Social Services Commission. Information from the central registry may not be used at any hearing or court proceeding unless it is based on a final court judgment.

Information from the central registry may be disclosed to a county social services department in order to identify whether a child who is the subject of a child protective services investigation has been the subject of a previous report of child abuse, neglect, or dependency or is a member of a family in which another child died as the result of suspect child abuse or neglect. Certain information also may be disclosed to

1. a county social services department or a social services agency in another state to prevent or protect a child from abuse or neglect;
2. law enforcement agencies, licensed physicians, and physician extenders to assist a county social services department in providing child protective services; or
3. law enforcement agencies and the chief medical examiner's office in connection with investigation of child fatalities due to possible child abuse or neglect.

G.S. 7B-2902

Notwithstanding any other provision of law, a county social services department or other public agency must disclose (subject to certain exceptions and restrictions) to the public, upon request, certain findings and information related to a child fatality or near fatality when a person has been criminally charged with having caused the child fatality or near fatality or the district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for the person's death.

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) also may prohibit the unauthorized use or disclosure of information regarding persons who receive child protective services from county departments of social services.¹⁷

Disclosure of Information to Social Services Agencies

G.S. 7B-302(e)

A county social services department may make a written demand for any information or reports, whether or not confidential, that may be relevant to the department's investigation of child abuse, neglect, or dependency or the provision of child protective services.

Upon the department's request, any public or private agency must provide the department with access to and copies of confidential information and records (other than information protected by the attorney-client privilege) relevant to a child protective services case to the extent permitted by federal law and regulations.

A court may order that information regarding a criminal investigation be withheld from the department if disclosure of the information would undermine an ongoing or future investigation or would jeopardize the State's right to prosecute a defendant or the defendant's right to a fair trial.

Duty to Report Suspected Abuse or Neglect

G.S. 7B-310

State laws protecting privileged communications generally do not excuse an individual's failure to report suspected child abuse, neglect, or dependency as required by G.S. 7B-301.

This provision does not apply with respect to knowledge or suspicion that is gained by an attorney from the attorney's client while the attorney is representing the client in a juvenile abuse, neglect, or dependency case.

Identity of Persons Who Report Suspected Abuse or Neglect

42 U.S. Code §5106a(b)(2)

The federal Child Abuse Prevention and Treatment Act (CAPTA) allows, but does not require, a state to refuse to disclose identifying information concerning an individual who makes a report or complaint alleging suspected child abuse or neglect, except when a court orders disclosure after the court reviews the record in

camera and finds reason to believe that the reporter knowingly made a false report.

G.S. 7B-302(a); 10A N.C. Admin. Code 70A.0203

County social services departments must hold the identity of a person who reports suspected child abuse, neglect, or dependency “in strictest confidence.”

A county social services department may not disclose the identity of a person who reported suspected child abuse or neglect to a community child protection or child fatality team that is reviewing the child protective services case in which the report was made.

G.S. 7B-303(e)

In a hearing to prevent an individual’s or agency’s interference with an investigation of suspected child abuse, neglect, or dependency, a court may order the department of social services to reveal the identity of the person who reported the suspected child abuse, neglect, or dependency.

Child Support Enforcement

Title IV-D

42 U.S. Code §654(26); 45 C.F.R. 307.13

Title IV-D of the federal Social Security Act requires North Carolina and other states, as a condition of receiving federal funding, to implement policies and procedures in connection with confidential information handled by the state’s child support enforcement (IV-D) agencies in order to protect the privacy rights of the parties involved in child support enforcement cases.

These policies and procedures must include:

1. safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support, or to make or enforce a child custody determination;
2. prohibitions against the release of information on the whereabouts of a party or the child to another party against whom a protective order with respect to the former party or the child has been entered; and
3. prohibitions against the release of information on the whereabouts of a party or the child to another person if the State has reason to believe that the release of the information to

that person may result in physical or emotional harm to the party or the child.¹⁸

IV-D Agency Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) also prohibit the unauthorized use or disclosure of information regarding persons who receive child support enforcement services from county departments of social services.

G.S. 110-129.1(a)(1)

Information obtained pursuant to an administrative subpoena issued by the Secretary of the state DHHS in connection with a child support enforcement case is confidential and may be used only by the child support enforcement program in conjunction with a legal proceeding to establish paternity or to establish or enforce a child support order.

G.S. 110-129.2(i)

Information contained in the state directory of new hires maintained by the state DHHS is confidential and may be used only by the state child support enforcement program or as otherwise allowed by law.

G.S. 110-139(b)

Nonjudicial records maintained by the state DHHS pertaining to child support enforcement are confidential and may be disclosed only to authorized representatives of social services agencies, public officials with duties related to child support enforcement, and members of legislative committees.

G.S. 110-139.1

Nonjudicial records maintained by the state DHHS’ parent locator service are confidential and may be disclosed only to persons directly connected with the child support enforcement program or to judges, court clerks, and prosecuting attorneys, upon request, for the purpose of enforcing federal or state laws regarding the unlawful taking or restraint of a child, entering or enforcing a court order regarding child custody or visitation, establishing paternity, or establishing, enforcing, or modifying child support orders. DHHS may not disclose information from the parent locator service if there is reasonable evidence of domestic violence or child

abuse and disclosure of the information would harm the child or the child's custodial parent.

Judicial Proceedings

G.S. 8-57.2

Whenever the issue of paternity of a child born or conceived during a marriage arises in a civil or criminal proceeding, the child's presumed father and mother are competent to give evidence as to any relevant matter regarding paternity of the child, including nonaccess to the present or former spouse, regardless of any privilege which may otherwise apply.

G.S. 52C-3-311

Upon a finding that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a court must order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a paternity or child support proceeding under the Uniform Interstate Family Support Act.

G.S. 96-4(t)(1)(v)

Upon receipt of a subpoena in a proceeding involving child support, the Employment Security Commission must release information regarding unemployment compensation benefits paid to a claimant.

Disclosure of Information to IV-D Agencies

G.S. 20-7(b2)(2)

Social security numbers obtained by the state Division of Motor Vehicles may be disclosed to the state DHHS for the purpose of establishing or enforcing a child support order.

G.S. 93-14(1)

Social security numbers of applicants submitted to state occupational licensing boards are confidential but may be disclosed to the state DHHS, upon request, for the purpose of enforcing a child support order.

G.S. 110-129.1(a)(2)

For the purposes of locating persons, establishing paternity, or enforcing child support orders, the state

child support enforcement program may obtain any information contained in a data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration or by a law enforcement agency for law enforcement purposes, including information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states.

G.S. 110-139

Notwithstanding any provision of law making such information confidential, all state, county, and city employees must provide pertinent information to the state DHHS regarding the location, income, and property of parents who have deserted or abandoned their children.¹⁹

Notwithstanding any other provision of law making such information confidential, an employer doing business or incorporated in North Carolina must provide the following information to the state DHHS when it is needed to locate a parent for the purpose of collecting child support or to enforce a child support order: full name, Social Security account number, date of birth, and home address of an employee; wages, existing or available medical, hospital, and dental insurance coverage; and number of dependents listed for tax purposes.

Notwithstanding any other provision of law making this information confidential, a utility company (other than a telecommunication utility or provider of electronic communication service to the general public), cable television company, or financial institution (including federal, state, commercial, or savings banks, savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies) doing business or incorporated in North Carolina must provide the following information to the state DHHS when the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce a child support order: full name, Social Security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company, cable television company, or financial institution.

Child Welfare Services

Foster Children

10A N.C. Admin. Code 70E.0202(a)(5)

Licensed foster parent must agree to preserve the confidentiality of information received from a child placing agency regarding a foster child and to discuss that information only with appropriate agency staff or other professionals designated by the agency.

Title IV-B

45 C.F.R. 1355.21(a)

As a condition of receiving federal funding for child welfare services under Title IV-B of the Social Security Act, a state must establish safeguards that restrict the use of or disclosure of information concerning individuals who receive child welfare services.²⁰ Information regarding clients may be used or disclosed only

1. for purposes directly connected with the administration of state Temporary Assistance for Needy Families, child welfare, adoption, and foster care assistance, child support enforcement, Medicaid, or Social Services Block Grant programs, or the federal Supplemental Security Income program, or other federal or federally-assisted needs-based programs; or
2. to report or provide information to appropriate authorities with respect to known or suspected abuse or neglect of a child who receives services or assistance under Title IV-B or Title IV-E of the Social Security Act.

Children's Health Insurance Program (Health Choice)

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

45 C.F.R. 164

State health insurance and social services agencies that administer a state's child health insurance program must comply with the federal HIPAA privacy rule (summarized on pages 21–22 of this bulletin) governing use and disclosure of health information by covered health plans.

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information obtained by county social services departments with respect to families and children who apply for or are enrolled in the state's child health insurance (Health Choice) program.

Criminal History Checks

Adoptive and Foster Parents

G.S. 48-3-309(f); G.S. 114-19.7

Criminal history checks of prospective adoptive parents provided to the state Division of Social Services are not public records, are confidential and privileged, and may be used only by the division and other legally authorized persons.

G.S. 131D-10.3A(g); G.S. 114-19.4

Criminal history checks of licensed foster parents, applicants for foster parent licenses, and adults living in foster care homes provided to the state DHHS are not public records and may be used only by DHHS and other legally authorized persons.

Adult Care Home Employees

G.S. 131D-40 and G.S. 114-19.10

Criminal history checks of prospective employees of adult care homes that are provided by the state Department of Justice to licensed adult care homes are confidential and may not be disclosed to anyone other than the applicant.

Child Care Employees

G.S. 110-90.2; G.S. 114-19.5

All information received by the state DHHS related to criminal history checks of child care providers is "privileged," is not a public record, and may be used only by DHHS and persons authorized to receive information under this section.

G.S. 114-19.3

Criminal history checks of employees, applicants for employment, and volunteers provided by the state Department of Justice to licensed child placing agencies, licensed residential child care facilities, licensed child care facilities, regulated child care homes, and other specified organizations are confidential and may not be disclosed by those organizations.

DHHS and DJJDP Employees

G.S. 114-19.6

Criminal record checks of employees, applicants for employment, and supervisors of employees of the state Department of Health and Human Services or the state Department of Juvenile Justice and Delinquency Prevention who provide direct care for clients, patients, students, residents, or wards of those departments are confidential and privileged and may be used only by those departments.

Employment Security Commission

Disclosure of Information to Social Services and IV-D Agencies

42 U.S. Code §503(d)

Upon request, the state Employment Security Commission must disclose to any state agency administering the Food Stamp program wage, benefit, employment, and other specified information regarding claimants for unemployment benefits.

42 U.S. Code §503(e)

Upon request, the state Employment Security Commission must disclose to a state or local child support enforcement agency specified information regarding claimants for unemployment benefits.

42 U.S. Code §§503(f) and 1320b-7

The state Employment Security Commission must share wage and other information with state and local agencies for purposes of determining eligibility under the Temporary Assistance for Needy Families, Medicaid, and Food Stamp programs.²¹

42 U.S. Code §503(h)

The state Employment Security Commission must share wage and other information with the U.S. DHHS for use in the federal parent locator service established pursuant to 42 U.S. Code §653.

G.S. 96-4(t)

Except as otherwise provided by law, it is unlawful for any person to obtain, disclose, or use any information which is obtained from an employer, individual, or governmental unit pursuant to the administration of the state's employment security law or the First Stop employment program established pursuant to G.S. 108A-29.

Information from employment security records must be disclosed, however, to any agency or public official for any purpose for which disclosure is required by statute or regulation, and may permit, in its sole discretion, the use of information in its possession by public officials in the performance of their public duties. The Employment Security Commission also must release information regarding the payment of unemployment benefits upon receipt of a subpoena in a proceeding involving child support.

Energy Assistance

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive low-income energy assistance from county departments of social services.

Federal Agencies

Individual Information in Federal Agency Records

5 U.S. Code §552(b)(6)

The federal Freedom of Information Act (FoIA) allows a federal agency to refuse to disclose information or records concerning an individual if

1. disclosure would constitute a clearly unwarranted invasion of the individual's privacy;
2. disclosure is prohibited by another federal law (other than the federal Privacy Act); or

3. the information is exempted from disclosure under the FoIA.

The FoIA does not apply with respect to the disclosure of information *by* state or local government agencies but may limit the disclosure of information *to* state or local government agencies.

5 U.S. Code §552a

The federal Privacy Act prohibits the disclosure of personal information contained in federal agency records without the written consent of the individual to whom the record pertains, unless the disclosure is

1. for a purpose that is compatible with the purpose for which the information was collected;
2. to officers or employees of the agency who need the record to perform their duties;
3. for specified civil or criminal law enforcement activities;
4. required by the federal Freedom of Information Act;
5. pursuant to a lawful court order; or
6. expressly allowed by the federal Privacy Act.

The federal Privacy Act applies primarily to the acquisition, use, and disclosure of personal information by federal agencies. Except as noted below, it does not apply to the use or disclosure of personal information contained in the records of state or local government agencies.²²

The federal Privacy Act does restrict the use and redisclosure of personal information that is disclosed by federal agencies to state or local government agencies in connection with computerized data matching programs related to federally-funded public assistance or social services programs administered by state or local social services agencies.

Financial Institutions

Disclosure of Information to Government Agencies

G.S. 53B-1 through G.S. 53B-10

Notwithstanding any other provision of law, a state or local government agency may not review or obtain information from the financial record of a customer of a financial institution (a bank, savings and loan association, credit union, etc.) unless the record is described with reasonable specificity and is sought pursuant to (a) the customer's authorization; (b) a search warrant; (c) a writ of execution; (d) pending litigation between the government agency and the

customer; (e) subpoena or court order; or (f) other specified conditions.

A financial institution, however, may disclose a financial record to a government authority to the extent permitted by the federal Right to Financial Privacy Act (12 U.S. Code §3403(d)), and may disclose a customer's name and address and the existence of the customer's account to a government agency upon request.

Financial institutions that violate the restrictions contained in G.S. Chapter 53B may be held liable to the customer for \$1,000 plus compensatory and punitive damages. Government agencies that induce, participate in, or solicit a violation of the financial privacy act are subject to the same penalties unless they acted in good faith in obtaining and relying on legal process.

Food Stamps

Social Services Client Records

7 U.S. Code §2020(e)(8); 7 C.F.R. 272.1(c)

State and local social services agencies that administer the federal Food Stamp program must adopt safeguards to limit the use or disclosure of information obtained from households that apply for or receive Food Stamp benefits.

Information obtained from applicants and recipients may be used or disclosed only

1. for purposes directly connected with the administration and enforcement of the Food Stamp program;
2. for purposes directly connected with the administration of other federal assistance programs, federally-assisted means-tested state programs, or other specified government programs (including the child support enforcement program); or
3. as otherwise permitted by federal law or regulation.

Notwithstanding any other provision of law, the address, Social Security number, and photograph of any member of a household must be made available, on request, to any federal, state, or local law enforcement officer if the household member (a) has been charged with or convicted of a felony and is a fugitive or escapee or has violated probation or parole, or (b) has information about a household member who has been charged with or convicted of a felony and is a fugitive or escapee or has violated probation or parole.

A state or local social services agency also must disclose information to the federal Immigration and

Naturalization Service regarding household members who have been determined ineligible for Food Stamp benefits because they are in the United States in violation of the federal Immigration and Naturalization Act.

Upon written request of a responsible household member, a social services department must allow the household member, the household's authorized representative, or a person acting on the household's behalf to review information in a household's Food Stamp record. The agency, however, is not required to disclose confidential information such as the names of individuals who have disclosed information about the household without the household's knowledge or information concerning the nature or status of pending criminal prosecutions.

42 U.S. Code §503(d)

Wage, benefit, employment, and other specified information regarding claimants for unemployment benefits provided by a state unemployment compensation agency to a state or local social services agency administering the federal Food Stamp program may be used only for the purpose of determining an individual's eligibility or benefits under the Food Stamp program.

42 U.S. Code §1320b-7

State and local social services agencies that administer the Food Stamp program must share information with

1. state and local agencies administering the child support enforcement program;
2. state and local agencies for purposes of determining eligibility and benefits under the Temporary Assistance for Needy Families, Medicaid, and unemployment compensation programs; and
3. the Social Security Administration for purposes of determining eligibility and benefits under the Social Security and Supplemental Security Income programs.

Information may be shared only to the extent necessary to meet the valid administrative needs of the agency receiving the information and must be protected against unauthorized use or disclosure for other purposes.

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive Food Stamp benefits from county departments of social services.

Foster Care

Criminal History Checks

G.S. 131D-10.3A(g) and G.S. 114-19.4

Criminal history checks of licensed foster parents, applicants for foster parent licenses, and adults living in foster care homes provided to the state DHHS are not public records and may be used only by DHHS and other legally authorized persons.

Foster Care Assistance Payments

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive federal or state foster care assistance payments from county departments of social services.

Title IV-E

42 U.S. Code §671(a)(8)

As a condition of receiving federal funding for foster care assistance payments under Title IV-E of the Social Security Act, a state must establish safeguards that restrict the use and disclosure of information concerning individuals who receive adoption assistance payments.²³ Information may be used or disclosed only

1. for purposes directly connected with the administration of state Temporary Assistance for Needy Families, child welfare, child support enforcement, Medicaid, or Social Services Block Grant programs, the federal Supplemental Security Income program, or other federal or federally-assisted needs-based programs; or
2. to report or provide information to appropriate authorities with respect to known or suspected abuse or neglect of a child who receives services or assistance under Title IV-B or Title IV-E of the Social Security Act.

Human Services

Common Data Base and Consolidated Case Management System

G.S. 153A-77.1

A county may establish a common data base and a consolidated case management system for county human services programs (social services, public health, and mental health) but may not violate a client's legal rights with respect to confidentiality in doing so.

Illegal Aliens

Disclosure of Information by Social Services Agencies

7 U.S. Code §2020(e)(16); 42 U.S. Code §611a

State and local social services agencies that administer the Food Stamp and Temporary Assistance for Needy Families (TANF) programs are required to notify the federal Immigration and Naturalization Service when they determine that a person is present in the United States in violation of the federal Immigration and Naturalization Act.²⁴

8 U.S. Code §1644

Notwithstanding any other federal, state, or local law to the contrary, a state or local government entity may not be prohibited from providing information to the federal Immigration and Naturalization Service with respect to the unlawful immigration status of an alien in the United States.

Juvenile Proceedings: Abused, Neglected, or Dependent Children

Disclosure of Information to or by a Child's Guardian ad Litem

G.S. 7B-601(c)

A guardian ad litem appointed for a juvenile who is alleged to be abused, neglected, or dependent has the authority to obtain any information or reports, whether or not confidential or privileged (other than information protected by the attorney-client privilege), that may in the guardian ad litem's opinion be relevant to the pending juvenile proceeding.

The guardian ad litem must protect the confidentiality of information or reports he or she obtains and may not disclose any information or

reports except pursuant to a court order or as otherwise provided by law.

Information Sharing Among Agencies

G.S. 7B-2901

In cases involving a child victim, the juvenile court may order public agencies to share information that the court determines is necessary to reduce the trauma to the victim.

G.S. 7B-3100(a); 28 N.C. Admin. Code 01A.0301 and 01A.0302

State law requires the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to adopt rules designating local agencies that will be required to share information concerning juveniles who are alleged to be abused, neglected, dependent, delinquent, or undisciplined.²⁵

Agencies that may be designated under the DJJDP rules include local mental health facilities, local health departments, local social services departments, local school administrative units, local law enforcement agencies, the district attorney's office, the DJJDP, and the office of juvenile guardian ad litem services. Temporary rules adopted by DJJDP designate these agencies and any local agency designated in an administrative order entered by the chief district court judge in the district in which the agency is located as "designated" agencies that are required to share information under G.S. 7B-3100.

Except as otherwise provided, a designated agency must share, upon request of another designated agency, information that is in the agency's possession that is relevant to any pending juvenile proceeding involving an abused, neglected, dependent, delinquent, or undisciplined child who is subject to the juvenile court's jurisdiction. Nothing in G.S. 7B-3100 or any other law precludes the necessary sharing of information among agencies. Information in the possession of a district attorney is not required to be shared or disclosed.

Information may be disclosed and used under G.S. 7B-3100 and the DJJDP rules only to protect the juvenile or others or to improve the juvenile's educational opportunities.

Any information shared among agencies pursuant to G.S. 7B-3100 and the DJJDP rules remains confidential, must be withheld from public inspection, and may be released only in accordance with the provisions of the federal Family Educational Rights and Privacy Act (summarized on page 30 of this bulletin).

Juvenile Court Hearings

G.S. 7B-310

Laws regarding privileged communications (other than the attorney-client privilege) are not sufficient grounds for excluding evidence of abuse, neglect, or dependency in any juvenile, civil, or criminal proceeding in which a juvenile’s abuse, neglect, or dependency is at issue or in any judicial proceeding resulting from reported child abuse, neglect, or dependency under the Juvenile Code.

G.S. 7B-801

Unless a juvenile requests that a juvenile proceeding be open, the juvenile court judge must determine whether a hearing in a juvenile proceeding involving abuse, neglect, or dependency will be open or closed. In determining whether to close the hearing or any part of the hearing, the court must consider the nature of the allegations against the juvenile’s parent, guardian, custodian or caretaker; the juvenile’s age and maturity; the benefit to the juvenile of confidentiality; the benefit to the juvenile of an open hearing; and the extent to which the confidentiality afforded the juvenile’s record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

G.S. 7B-808

A judge in a juvenile proceeding may refuse to allow a juvenile’s guardian ad litem or the juvenile to inspect a predisposition report and may order counsel not to disclose parts of the report to the guardian ad litem, the juvenile, or the juvenile’s parent, guardian, or custodian if he or she determines that disclosure of the report would seriously harm the juvenile’s treatment or violate a promise of confidentiality given to a source of information.

Juvenile Court Records

G.S. 7B-2901

Juvenile court records maintained by the clerk of superior court in cases involving abuse, neglect, or dependency are not open to public inspection and may be examined only pursuant to court order or as otherwise provided by law.

The following persons may examine and copy the court record of a juvenile without a court order:

1. the juvenile;
2. the juvenile’s guardian ad litem;
3. the county social services department;
4. the juvenile’s parent, guardian, or custodian;
5. the attorney for the juvenile or the juvenile’s parent, guardian, or custodian.

G.S. 7B-3100(b)

Except as otherwise provided, disclosure of information concerning a juvenile who is under investigation or alleged to be within the juvenile court’s jurisdiction that would reveal the juvenile’s identity (other than pictures of runaways published with the permission of the juvenile’s parents) is prohibited.

Social Services Client Records

G.S. 7B-2901

The county social services department’s records involving abused, neglected, or dependent juveniles who are in the department’s protective custody or placed with the department pursuant to court order may be examined only pursuant to court order or as otherwise provided by law. The juvenile and the juvenile’s guardian ad litem may examine these social services records without a court order.

Juvenile Proceedings: Delinquent or Undisciplined Children

DJJDP and Law Enforcement Records

G.S. 7B-3001

Records of juvenile court counselors regarding juveniles under their supervision and all other records and files maintained by DJJDP under the Juvenile Code are not subject to public inspection and may be examined or copied only pursuant to a court order or as otherwise provided by law. The juvenile, the juvenile’s attorney, the juvenile’s parent, guardian, or custodian or authorized representative of the juvenile’s parent, guardian, or custodian, juvenile court counselors, and DJJDP professionals who are directly involved in a juvenile’s case may examine and copy these records without a court order.

All law enforcement records regarding delinquent juveniles (other than those whose cases are transferred to superior court) must be maintained separate from law enforcement records regarding adults, are not subject to public inspection, and may be examined only pursuant to a court order or as otherwise provided by law. These records may be examined and copied without a court order by the following persons:

1. the juvenile;
2. the juvenile’s parent, guardian, or custodian;
3. an authorized representative of the juvenile’s parent, guardian, or custodian;
4. the district attorney or prosecutor;
5. juvenile court counselors;

6. law enforcement officers.²⁶

Federally-Funded Delinquency Prevention Programs

42 U.S. Code §5676

Except as otherwise authorized by law, records that identify an individual juvenile served by a program funded under subchapter II of the federal Juvenile Justice and Delinquency Prevention Act may be disclosed only to the extent necessary to administer the program or with the consent of the juvenile or the juvenile's legally authorized representative. Program reports and findings available for public dissemination may not contain the actual names of juveniles who receive services.

Information Sharing Among Agencies

G.S. 7B-3100(a); 28 N.C. Admin. Code 01A.0301 and 01A.0302

G.S. 7B-3100(a) and the rules adopted by the Department of Juvenile Justice and Delinquency Prevention (DJJDP) under that section (summarized above) authorize designated local agencies to share information concerning delinquent and undisciplined juveniles.

Juvenile Court Hearings

G.S. 7B-2402

All juvenile court proceedings involving delinquent or undisciplined children are open to the public unless the juvenile court judge determines, for good cause, that all or part of the hearing should be closed. In making this determination, the judge must consider the nature of the allegations against the juvenile; the juvenile's age and maturity; the benefit to the juvenile of confidentiality; the benefit to the juvenile of an open hearing; and the extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.²⁷ The hearing may not be closed if the juvenile requests that it remain open. If the court closes all or part of the hearing, the court may permit any victim, any member of a victim's family, any law enforcement officer, any witness, or any other person directly involved in the hearing to be present.

Juvenile Court Records

G.S. 7B-3000

Juvenile court records maintained by the clerk of superior court in cases involving delinquent or undisciplined children are not open to public inspection and may be examined only pursuant to court order or as otherwise provided by law. The juvenile's court record may be examined without a court order by the following persons:

1. the juvenile;
2. the juvenile's parent, guardian, or custodian;
3. an authorized representative of the juvenile's parent, guardian, or custodian;
4. juvenile court counselors;
5. the prosecutor.

A prosecutor may share information obtained from the juvenile's record with a law enforcement officer (but may not permit the officer to photocopy the record) unless the record has been sealed by the court.

Sealed portions of juvenile records may be examined only by court order.

G.S. 7B-3100(b)

Except as otherwise provided, disclosure of information concerning a juvenile who is under investigation or alleged to be within the juvenile court's jurisdiction that would reveal the juvenile's identity (other than pictures of runaways published with the permission of the juvenile's parents) is prohibited.

Law Enforcement Records

Disclosure of Arrest and Investigation Records

G.S. 132-1.4

Except as otherwise provided, records of criminal investigations conducted by public law enforcement agencies are not public records. Law enforcement agencies, however, must release, upon request, certain information about criminal incidents and the arrest of persons for criminal offenses contained in criminal incident and arrest reports, as well as other information specified in this section or as otherwise required by law or court order.²⁸

Juvenile Delinquency Records

G.S. 7B-3001

All law enforcement records regarding delinquent juveniles (other than those whose cases are transferred to superior court) must be maintained separate from

law enforcement records regarding adults, are not subject to public inspection, and may be examined only pursuant to a court order or as otherwise provided by law. These records may be examined and copied without a court order by the following persons:

1. the juvenile;
2. the juvenile's parent, guardian, or custodian;
3. an authorized representative of the juvenile's parent, guardian, or custodian;
4. the district attorney or prosecutor;
5. juvenile court counselors;
6. law enforcement officers.²⁹

Medicaid

HIPAA Privacy Rule

45 C.F.R. 164

The state Division of Medical Assistance and the private contractor that processes Medicaid claims on behalf of the state Medicaid program must comply with the provisions of the federal HIPAA privacy rule (summarized on pages 21–22 of this bulletin) governing use and disclosure of health information by covered health plans.

Disclosure of Information by Social Services Agencies

42 U.S. Code §1320b-7

State and local social services agencies that administer the Medicaid program must share information with

1. state and local agencies administering the child support enforcement program;
2. state and local agencies for purposes of determining eligibility and benefits under the Temporary Assistance for Needy Families, Food Stamp, and unemployment compensation programs; and
3. the Social Security Administration for purposes of determining eligibility and benefits under the Social Security and Supplemental Security Income programs.

Information may be shared only to the extent necessary to meet the valid administrative needs of the agency receiving the information and must be protected against unauthorized use or disclosure for other purposes.

10A N.C. Admin. Code 21A.0401 et seq.

A county social services department may disclose information concerning an individual who applies for or receives Medicaid

1. to that individual;
2. with the individual's consent;
3. to county social services employees for the purpose of determining eligibility, making referrals, consultation, or supervision;
4. to another county social services department when the client moves and applies for Medicaid;
5. to the state Division of Medical Assistance for purposes of supervision and reporting;
6. to federal, state, or county employees for the purpose of monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs if the information is protected from further disclosure;
7. to the extent necessary to comply with federal or state laws, regulations, or court orders;
8. for approved research studies if individually-identifiable information will not be reported and other conditions are met.

Social Services Client Records

42 U.S. Code §1396a(a)(7); 42 C.F.R. 431.300

State and local social services agencies that administer the Medicaid program must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients (including names and addresses of recipients, medical services provided, medical data, social and economic data, etc.) to purposes directly connected with the Medicaid program (establishing eligibility, determining amount of medical assistance, providing services to recipients, conducting investigations or civil or criminal proceedings related to administration of the program).

G.S. 108A-80

G.S. 108A-80 (summarized on pages 27–29 of this bulletin) prohibits the unauthorized use or disclosure of information regarding persons who apply for or receive Medicaid through county departments of social services and DHHS. The rules promulgated by the state Social Services Commission pursuant to G.S. 108A-80, however, do not apply with respect to information obtained by DHHS or county social services departments concerning Medicaid applicants and recipients.

Medical Records and Health Information

EMS Records

G.S. 143-518

Medical records compiled by emergency medical services (EMS) providers and the state DHHS in connection with the dispatch, response, treatment, or transport of individual patients or in connection with the statewide trauma system are not public records, are strictly confidential, and may be disclosed only

1. with the written consent of the patient or the patient's guardian;
2. to health care personnel providing medical care to the patient;
3. pursuant to court order; or
4. as otherwise required by law.

Charges, accounts, credit histories, and other personal financial records compiled by EMS providers or DHHS in connection with the admission, treatment, and discharge of individual patients are strictly confidential and may not be released.

Health Care Facility Medical Records

G.S. 131D-21; G.S. 131E-117

Personal and medical records of adult care home residents and nursing home patients are confidential and may be disclosed only

1. with the resident's or patient's written consent;
2. to members of the patient's family;
3. when needed in connection with a patient's transfer;
4. to the resident's treating physician;
5. in connection with emergency medical services provided to a resident; or
6. as required by third party payment contract or law.

G.S. 131D-27; G.S. 131E-124

DHHS must protect the confidentiality of persons who file complaints regarding violations of the rights of adult care home residents and nursing home patients and preserve the confidentiality of medical records inspected during the investigation of these complaints.

G.S. 131E-97

Personal financial and medical records maintained by hospitals, long-term care facilities, home health

agencies, and other health care facilities in connection with the admission, treatment, and discharge of individual patients are not subject to public inspection under the state's public records law (G.S. Ch. 132).

HIPAA Privacy Rule

45 C.F.R. 164

Federal regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) limit the use and disclosure of protected health information by covered health care providers, health care clearinghouses, and health plans.³⁰

Protected health information is defined as any information (in any form) that is created or received by a covered health care provider or other specified entity related to the health care, payment for health care, or physical or mental condition of an identifiable individual.

Under the federal HIPAA privacy rule, a covered health care provider generally may disclose protected health information only

1. with the authorization of the individual or the individual's personal representative;
2. to other health care providers, health plans, or others for the purpose of treatment, payment, or health care operations;
3. as otherwise required by law;
4. to report suspected child abuse or neglect to an authorized government agency;
5. to report suspected abuse, neglect, or domestic violence (other than child abuse or neglect) to an authorized government agency subject to specified conditions;
6. to an authorized government agency in connection with health oversight activities;
7. to a public health authority for specified public health activities;
8. in response to a court order;
9. to law enforcement officers in specified circumstances;
10. to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; or
11. as otherwise expressly permitted or required by the federal privacy rule.

The federal HIPAA privacy rule generally preempts state laws to the extent they are inconsistent with the federal rule. A state law that permits the use or disclosure of protected health information by a covered health care provider is inconsistent with the federal rule if the federal rule neither requires nor permits the use or disclosure of protected health information in the situation addressed by the state law.

A state law, however, is not inconsistent with the federal rule if the state law requires the disclosure of protected health information or if the state law imposes more stringent requirements with respect to privacy than the federal rule.

If a county social services department has been designated as a “hybrid entity,” the federal HIPAA privacy rule will apply only to the use or disclosure of protected health information by those units that have been designated as covered health care components and will not affect the use or disclosure of health information by other units of the department. The HIPAA privacy rule, however, also will have some impact on the ability of social services agencies to obtain protected health information from covered health care providers when federal or state law does not require health care providers to disclose information to the county social services department.

HIV/AIDS and Communicable Diseases

G.S. 130A-143

All information and records, whether publicly or privately maintained, that identify a person as being infected by the HIV/AIDS virus or any communicable disease that must be reported under G.S. 130A-134 are “strictly confidential” and may be disclosed only

1. with the individual’s consent;
2. to health care personnel providing medical care to the individual;
3. pursuant to court order;
4. for specified public health purposes;
5. pursuant to laws that specifically authorize or require the release of information or records related to AIDS; or
6. as otherwise provided under G.S. 130A-143.

Minors

G.S. 7B-2901(d); G.S. 90-21.8(d)

Court proceedings and court records involving consent for an abortion for an unemancipated minor pursuant to G.S. 90-21.7 are not public records, must be maintained separately from juvenile records, must be withheld from public inspection, and may be examined only by the minor or the minor’s attorney or guardian ad litem or pursuant to a court order.

G.S. 90-21.4(b)

When an unemancipated minor child gives consent for the prevention, diagnosis, or treatment of pregnancy,

alcohol or substance abuse, emotional disturbance, or venereal disease or other diseases reportable under G.S. 130A-134, a physician may not disclose information concerning the minor’s treatment to the minor’s parent, guardian, or custodian without the minor’s consent unless notification is essential to the minor’s life or health or the minor’s parent, guardian, or custodian contacts the physician regarding the treatment.

Pharmacy Records

G.S. 90-85.36(a)

Written prescription orders on file in a pharmacy may be disclosed only

1. to the patient or the patient’s legally authorized representative;
2. to a licensed practitioner who issued the prescription or is treating the patient;
3. with the written authorization of the patient or the patient’s legal representative;
4. pursuant to a subpoena, court order, or statute;
5. when necessary to protect the life or health of any person; or
6. as otherwise provided in this section.

Physician-Patient Privilege and Physician Medical Records

G.S. 8-53; G.S. 8-53.1

Information obtained by a physician in connection with the physician-patient relationship is privileged. A physician may not be required to disclose privileged information in connection with a legal proceeding unless

1. the privilege is waived by the patient;
2. disclosure is ordered by the court in the interest of justice; or
3. disclosure is otherwise required by law.

The physician-patient privilege, however, is not a ground for excluding evidence regarding the abuse or neglect of, or illness or injury suffered by, a child under the age of 16 in a juvenile court proceeding involving abuse, neglect, or dependency.³¹

Confidential information contained in medical records is not subject to public inspection under the state’s public records law (G.S. Ch. 132) and generally may be disclosed only

1. with the patient’s authorization;
2. with the authorization of the patient’s personal representative or next of kin if the patient is deceased;
3. pursuant to court order;

4. or as otherwise allowed by law.

G.S. 130A-12

“Privileged patient information” in the possession of DHHS or local public health departments is confidential and is not subject to public inspection under the state’s public records law (G.S. Ch. 132).

G.S. 143B-139.6

All privileged patient medical records in the possession of the state DHHS are confidential and are not subject to public disclosure under the state’s public records law (G.S. Ch. 132).

Mental Health

Alcohol and Substance Abuse

42 U.S.C. 290dd-2; 42 C.F.R. 2

Federal law and regulations (summarized on page 6 of this bulletin) impose significant restrictions with respect to the disclosure of information about persons who receive alcohol or drug prevention or treatment services from a federally assisted program.

HIPAA Privacy Rule

45 C.F.R. 164

Mental health facilities, programs, and professionals who are covered health care providers subject to the federal HIPAA privacy rule (summarized on pages 21–22 of this bulletin) must comply with the rule’s provisions governing use and disclosure of protected health information.

Patients Treated by Mental Health Facilities

G.S. 122C-52 et seq.

Any information, whether or not recorded, relating to services provided to an identifiable individual by a mental health facility is confidential and may not be disclosed except as authorized by law.

Information may be disclosed

1. with the written consent of the client or a legally responsible person acting on behalf of the client;
2. to the client or a legally responsible person acting on behalf of the client unless disclosure

would be injurious to the client’s physical or mental well-being;

3. for the purpose of filing involuntary commitment or guardianship proceedings if in the client’s best interest;
4. to coordinate a client’s care and treatment;
5. when there is an imminent danger to the health or safety of the client or another person or a likelihood that a felony or violent misdemeanor will be committed; or
6. as otherwise permitted under G.S. 122C-53 through 122C-56.

Information must be disclosed

1. in response to a court order compelling disclosure;
2. to the extent necessary to comply with state laws requiring the reporting of abuse or neglect of children or disabled adults;
3. as required by other federal or state laws.

Motor Vehicles

Disclosure of Personal Information

18 U.S. Code §2721 et seq.; G.S. 20-43.1

The federal Driver’s Privacy Protection Act of 1994 limits the disclosure of personal information from state motor vehicle records. Personal information includes an individual’s name, address, telephone, Social Security number, driver identification number, photograph, medical or disability information, and other information that identifies the individual, other than information on a driver’s status, vehicle accidents, and driving violations. G.S. 20-43.1 implements these federal restrictions.

Personal information may be disclosed under these laws

1. for use of any government agency;
2. in connection with legal proceedings; or
3. with the express consent of the person to whom the information applies.

Personal information other than an individual’s photograph, Social Security number, and medical or disability information may be disclosed for other specified purposes.

Disclosure of Social Security Numbers

G.S. 20-7(b2); G.S. 20-52

The Social Security number of an applicant for a drivers license is not a public record and may be

disclosed by the state Division of Motor Vehicles (DMV) only

1. for the purpose of administering the state's motor vehicle laws;
2. to the state Department of Health and Human Services in connection with the child support enforcement program; or
3. to the state Department of Revenue to verify taxpayer identity.

DMV may disclose the Social Security number of a motor vehicle owner only for the purpose of administering the state's motor vehicle registration laws.

Privileged Communications

Attorneys

27 N.C. Admin. Code 2.1, Rule 1.6

Although several state statutes and rules refer to the attorney-client privilege, this privilege is established under the common law and court decisions rather than by state statutes and rules.³²

Clergy, Counselors, Domestic Violence Programs, Journalists, Optometrists, and Social Workers

G.S. 8-53.2

Unless the privilege is waived by the communicant, communications by a person seeking spiritual counsel and advice made to an ordained minister, priest, rabbi, accredited Christian Science practitioner, or other clergy person of an established church are privileged if they are entrusted to the clergy person and necessary to enable the clergy person to carry out his or her official functions according to usual religious practice or discipline.³³

G.S. 8-53.4 through G.S. 8-53.12

State law recognizes qualified evidentiary privileges with respect to confidential communications to and confidential information obtained by

1. certified school counselors;
2. licensed marriage and family therapists;
3. licensed or certified social workers;
4. licensed professional counselors;
5. optometrists;
6. peer support counselors;
7. agents of rape crisis centers and domestic violence programs; and

8. journalists.

Physicians and Psychologists

G.S. 8-53; G.S. 8-53.1

Unless the privilege is waived by the patient, a physician may not be compelled to disclose information obtained by the physician in connection with the professional physician-patient relationship. A court may order the physician to disclose privileged information if it finds that disclosure is "necessary to a proper administration of justice." The privilege does not apply with respect to evidence in regarding the abuse or neglect of, or an illness or injury suffered by, a child under the age of 16 in a judicial proceeding related to reports of child abuse or neglect pursuant to the Juvenile Code.

G.S. 8-53.3

The psychologist-patient privilege is similar to the physician-patient privilege established by G.S. 8-53. The privilege is not a ground for failing to report the suspected abuse or neglect of a child or disabled adult as required by state law or for excluding evidence of the abuse or neglect of a child or disabled adult or illness or injury suffered by a child or disabled adult in judicial proceedings related to reports of suspected abuse or neglect of a child or disabled adult. A court may order disclosure of privileged information if disclosure is "necessary to a proper administration of justice."

Spouses

G.S. 8-56 through G.S. 8-57.2

A spouse may testify for or against his or her spouse in a civil proceeding. A spouse generally may not be compelled to testify for the State against his or her spouse in a criminal proceeding. This prohibition does not apply with respect to criminal nonsupport proceedings involving the spouses' children.

A spouse generally may not be compelled in a civil or criminal proceeding to disclose any confidential communication between the spouses during their marriage. This privilege is not a ground for excluding evidence regarding the abuse or neglect of a child or illness or injury suffered by a child in a judicial proceeding related to a report of suspected child abuse or neglect pursuant to the Juvenile Code. The privilege does not apply with respect to evidence relevant to a child's paternity in

a civil or criminal action in which paternity is at issue.

Public Employees

Personnel Records

G.S. 153A-98

Except as otherwise provided, personnel files of county social services employees (and other county employees) are confidential and are not subject to public inspection under the state's public records law (G.S. Ch. 132).³⁴ Personnel files of former county employees are subject to similar restrictions. Personnel files of applicants for county employment are subject to more stringent restrictions.³⁵

The term "personnel file" is defined broadly to include "any information in any form gathered by the [employer] ... relating to [the employee's] application, selection or nonselection, promotions, demotions, transfers, suspension, and other disciplinary actions, evaluation forms, leave, salary, and termination of employment."

Upon request by any person, the county social services department must release the following information concerning social services employees:

1. the employee's name and age (but not the name or age of an applicant for employment);
2. the employee's current position title, current office or station assignment, and date of original employment;
3. the employee's current salary and the date and amount of the most recent increase or decrease in the employee's salary;
4. the date of the employee's most recent promotion, demotion, transfer, suspension, separation, or change in position classification.

A social services employee generally has the right to review any information contained in his or her personnel file (except letters of reference solicited before he or she was hired and information concerning medical disabilities that a prudent physician would not disclose to a patient).

Employee personnel files also may be

1. reviewed and used by a government official who supervises the employee;
2. disclosed to federal or state agency officials, members of the agency's governing board, and the board's attorney if disclosure is necessary and essential to the pursuance of a

proper function of the agency, board, or attorney;

3. disclosed pursuant to an employee's written release;
4. disclosed pursuant to a court order to a party to a judicial or administrative proceeding involving the employee; or
5. disclosed as otherwise required by law.

The county manager, with the concurrence of the board of county commissioners, also may release information regarding a county social services employee's employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination (and the reasons for these personnel actions) when release of this information is essential to maintaining public confidence in the administration of county services or maintaining the level and quality of county services.

Public Records

Public Review and Disclosure of State and Local Government Records

G.S. 132-1

North Carolina's public records law (G.S. Ch. 132) generally applies to all state and local government agencies, including county social services departments.³⁶

Except as otherwise provided by federal or state law, the public records law requires state and local government agencies to disclose information contained in "public records" (as defined by the law) to any person, upon request. If a public record contains information that is subject to disclosure under the law and information that is not subject to disclosure, the agency must segregate the public information in the record from the nonpublic information and release the public information contained in the record. The public records law does not require a government agency or employee to release information that is not recorded in a public record (as defined by the law).

A number of state statutes expressly exempt certain information and records from the state public records law. Agencies are not required to release information or records that are expressly exempted from public disclosure. A statute that merely exempts information or records from public disclosure, however, does not necessarily prohibit disclosure. An agency, therefore, may have the authority and discretion to release information or records even though the public records law does not require public disclosure.

Some state statutes provide that information or records are confidential and are not subject to public disclosure under the state's public records law. In these instances, agencies are prohibited from releasing the information or records unless expressly authorized by a statute other than the state public records act.

A state statute (or a federal statute that preempts state law) that designates certain information or records as confidential generally is sufficient, standing alone, to exempt the information or records from public disclosure under the state public records law.

A federal law that imposes confidentiality restrictions on state or local government agencies as a condition of receiving federal funding, however, may not be sufficient, in and of itself, to exempt the information or records from public disclosure under the state's public records law.³⁷

Senior Citizens

Older Americans Act and State Division of Aging Programs for Senior Citizens

45 C.F.R. 1321.51

State aging agencies, area aging agencies, and providers who provide programs or services to senior citizens funded under the federal Older Americans Act may not disclose information about, or received from, a senior citizen in a form that identifies that individual unless

6. the individual or the individual's legal representative consents to the disclosure;
7. the disclosure is for the purpose of program monitoring by authorized federal, state, or local agencies; or
8. disclosure is required by court order.

G.S. 143B-181.20

The confidentiality restrictions in 45 C.F.R. 1321.51 (summarized above) apply with respect to the disclosure by state and regional long-term care ombudsman offices from the records of patients residing in long-term care facilities.

The state or regional long-term care ombudsman office, however, must notify the county social services department pursuant to G.S. 108A-102 if the subject of a complaint involves suspected abuse, neglect, or exploitation of a disabled person.

10A N.C. Admin. Code 5J.0101 et seq.

Except as otherwise provided by law, the state Division of Aging, area aging agencies, and providers who provide programs or services to senior citizens administered under the supervision of the state Division of Aging may not disclose information about, or received from, a senior citizen in a form that identifies that individual unless

1. the individual or the individual's legal representative consents to the disclosure;
2. the disclosure is for the purpose of program monitoring by authorized federal, state, or local agencies; or
3. disclosure is required by court order.

Social Security

Social Security and SSI Benefit Records

42 U.S. Code §1306; 20 C.F.R. 402.100; 20 C.F.R. 401.100 through 401.195

The names and addresses of individuals who have applied for or are receiving Social Security or Supplemental Security Income (SSI) benefits, claims for Social Security or SSI benefits, medical records related to disability-based Social Security or SSI claims, Social Security earnings records, Social Security and SSI payment records, and other personal information contained in the records of the federal Social Security Administration (SSA) are not subject to public disclosure under the federal Freedom of Information Act and may be disclosed only to the extent allowed by the federal Privacy Act (discussed on page 15 of this bulletin).

The SSA may disclose personal information about Social Security and SSI beneficiaries

1. with the written consent of the individual to whom the information pertains;
2. for "routine uses" (including disclosure of eligibility and benefit information to state or local government agencies in connection with their administration of income maintenance programs); or
3. as otherwise permitted by the federal Privacy Act or other federal laws.

Social Security Numbers

5 U.S. Code §552a (note); G.S. 143-64.60(a)

State and local government agencies may not require an individual to disclose his or her Social Security number as a condition of exercising any legal right or

privilege or receiving any benefit provided by law unless

1. disclosure of the individual's Social Security number is required or permitted by an applicable federal statute; or
2. disclosure is required pursuant to a federal or state law or regulation enacted prior to January 1, 1975 to verify the individual's identity in connection with a system of records established before January 1, 1975.

42 U.S. Code §405(c); 42 U.S. Code §1320b-7

Individuals who apply for or receive assistance under the Temporary Assistance for Needy Families, Medicaid, and Food Stamp programs are required to disclose their Social Security numbers to state or local social services agencies that administer these programs.

Federal law allows a state or local government agency to require an individual to disclose his or her Social Security number in connection with the agency's administration of public assistance, tax, drivers' license, and motor vehicle registration laws. Unless otherwise allowed by federal law, a state or local government agency that requires an individual to disclose his or her Social Security number in connection with its administration of a public assistance, drivers' license, or motor vehicle registration law may not use or redisclose the individual's Social Security number for other purposes.

Social security numbers that are obtained by state or local government agencies pursuant to a law enacted after September 30, 1990, are confidential and may not be disclosed.

Social Services and Public Assistance

Applicants and Recipients of Social Services and Public Assistance

G.S. 108A-80(a); 108A-80(d)

Except as otherwise provided by law, it is unlawful ... for any person to obtain, disclose or use ... any list of names or other information concerning persons applying for or receiving public assistance or social services that may be directly or indirectly derived from the records, files or communications of the Department [of Health and Human Services] or the ... county departments of social services or acquired [by these agencies] in the course of performing [their] official duties except [as otherwise allowed by law, or] for ...

purposes directly connected with the administration of the programs of public assistance and social services in accordance with federal law, rules and regulations, and the rules of the Social Services Commission ...

Violation of G.S. 108A-80 is a class 1 misdemeanor.

The state Social Services Commission is authorized to adopt rules (summarized below) governing access to social services and public assistance case files (other than Medicaid case files).

In order for information to be considered confidential under G.S. 108A-80, it must meet *both* of the following criteria:

1. The information must relate to an individual who has applied for, has received, or is receiving public assistance or social services (that is, a "client" of a state or county social services agency).
2. The information must be derived directly or indirectly from the records or communications of a state or county social services agency *or* obtained by a state or county social services agency in the performance of its official duties with respect to the administration of public assistance or social services programs.

If information regarding a social services client meets these two criteria, the *form* in which the information is maintained does *not* affect its confidentiality. Thus, information "contained" in oral communications to or by social services employees or derived from the personal observations of social services employees—as well as information contained in forms, memos, notes, recordings, official records or case files, and computer data bases—may be confidential under G.S. 108A-80.³⁸

The confidentiality restrictions of G.S. 108A-80 apply to "any person" who obtains, uses, or discloses confidential information regarding a social services client. G.S. 108A-80, therefore, applies not only to *all* employees and officials of state or county social services agencies (including county social services board members)³⁹ but also to other local, state, and federal government agencies, employees, and officials, law enforcement officers, volunteers who work for social services agencies, individuals and agencies who contract with social services agencies, individuals and agencies who receive confidential information from social services agencies, the media, and the public at large.

Use, Protection, and Disclosure of Information About Social Services Clients

G.S. 108A-80

G.S. 108A-80 does not prohibit the use or disclosure of information about social services clients for purposes that are directly connected with the administration of public assistance and social services programs.⁴⁰

G.S. 108A-80(b) requires the state DHHS to furnish monthly to each county auditor a complete list of the names and addresses of county residents who receive Work First Family Assistance or State-County Special Assistance for Adults as well as the amount of financial assistance paid to each recipient. These lists are public records and must be open for examination by any person upon request during regular business hours. Information obtained from these lists, however, may not be used for any commercial or political purpose.⁴¹

10A N.C. Admin. Code 69.0101 through 69.0605

The rules adopted by the state Social Services Commission pursuant to G.S. 108A-80(d) apply to “client information” that is received by a county department of social services or the DHHS Division of Social Services in the performance of any agency function (except the state Medicaid program).

The rules define “client information” as any information (in any form) that (a) relates to a “client” and (b) was received in connection with the performance of any function of a county social services department or the state Division of Social Services. The rules define “client” as anyone who applies for or receives public assistance or social services (other than Medicaid) or who makes inquiries, is interviewed, or is otherwise served to some extent by a county social services department or the Division of Social Services. In some instances, a person who is “acting responsibly” for a client is included within the definition of “client.”

The rules require state and county social services agencies to provide a secure place with controlled access for the storage of client records and to establish procedures to prevent the accidental disclosure of client information from automated data processing systems. Only those social services employees or other individuals who need client information in order to carry out their assigned duties may enter the records storage area or remove client records. Original client records may be removed from the premises only by “authorized” staff or pursuant to a court order. Client records are considered to be property of the agency and may be destroyed only in accordance with applicable federal and state statutes, regulations, policies, and schedules governing the records of social services agencies.⁴²

The rules prohibit social services agencies from redisclosing client information received from another agency or individual if redisclosure is prohibited by the agency or individual who provided the information. When federal or state statutes or regulations regarding the confidentiality of client information are inconsistent, the rules require the agency to abide by the statute or regulation that provides more protection for the client.

The rules require social services agencies, upon the written or verbal request of a client, to allow the client, or his or her personal representative or attorney, to review or obtain without charge a copy of his or her client record. Information in the client’s record may be withheld from the client if (a) disclosure of the information to the client is prohibited by a federal or state statute or regulation; (b) the information was obtained from another agency or individual under conditions that prohibit redisclosure of the information to the client; or (c) disclosure of the information would violate another individual’s right to confidentiality. If the client contests the accuracy, completeness, or relevancy of information in his or her record, he or she may request that the information be corrected.

The rules allow the disclosure of client information with the client’s consent. The client’s consent for the release of confidential information must be reflected in a written document or form that

1. identifies what information may be released;
2. identifies the individual or agency to whom the information may be released;
3. indicates the length of time for which the consent is valid;
4. includes a statement recognizing the client's right to revoke consent any time before information is released;
5. indicates the date on which the client signed the consent; and
6. is signed by the client.

When client information is released on the basis of the client's consent, a copy of the client's consent must be maintained in the client's case file. If a client has been adjudicated incompetent, his or her guardian may consent, on the client's behalf, to the disclosure of client information. If a client is a minor child in the custody of the county social services department, the county social services director may consent to the disclosure of information regarding the client.

The rules allow a state or county social services agency to disclose client information without a client's consent

1. to other employees of the agency for the purpose of making referrals, supervision, consultation, or determination of eligibility;
2. to another county social services agency in connection with the provision of assistance or services to the client;
3. to public or private agencies or individuals that provide services to or on behalf of a state or county social services agency to the extent necessary to determine service requirements, to meet the needs of the client, or to provide eligibility information for reporting purposes;
4. between the county social services department and the state Division of Social Services for the purpose of supervision and reporting;
5. for approved research studies if individually-identifying information is safeguarded and the research reports will not contain the names of individual clients or other individually-identifying information;
6. to federal, state, or county employees for the purpose of "monitoring, auditing, evaluating, or facilitating the administration of other state and federal programs" if the need for the information is justified and adequate safeguards are maintained to protect the information from redisclosure;
7. for the purpose of complying with other state or federal statutes or regulations;

8. pursuant to a court order (or a subpoena signed by a judicial official) that explicitly directs the release of client information.

When client information is disclosed without the client's consent, the client must be notified of the disclosure and the disclosure must be documented in the client's case file.

Similar confidentiality requirements apply to public and private agencies and individuals who provide social services to clients on behalf of or under contracts with state or county social services agencies.

Social services employees who fail to comply with the state confidentiality rules may be subject to disciplinary action, suspension, or dismissal.

Social Services Boards

Inspection of Social Services Client Records

G.S. 108A-11

Members of the county board of social services are authorized to "inspect and examine" any record of the county social services department relating to applications for or provision of public assistance or social services under G.S. Chapter 108A.⁴³ Social services board members, however, are expressly prohibited from disclosing or making public any information they acquire through examining these records.

Meetings and Minutes

G.S. 143-318.9 through G.S. 143-318.18

County social services boards are subject to the state's open meetings law.⁴⁴

A social services board may meet in closed session (that is, a portion of the board's meeting from which the public is excluded) when the closed session is

1. required to prevent the disclosure of information that is confidential or privileged under federal or state law;
2. required to preserve the attorney-client privilege with respect to communications between the board and the board's attorney;
3. required to consider the qualifications, competence, performance, fitness, conditions of appointment or initial employment of an individual public officer or employee or prospective public officer or employee or to hear or investigate a complaint, charge, or grievance by an individual public officer or employee; or

4. (d) authorized by other provisions in the state's open meetings law.

The board may not consider general issues regarding agency personnel or policies or the qualifications, competence, performance, character, fitness, appointment, or removal of social services board members or members of other public bodies during a closed session.

The board, acting through the social services director as its secretary, must keep full and accurate minutes of all official board meetings (including closed sessions of board meetings) and a general account of all closed sessions. Minutes and general accounts of closed sessions may be withheld from public inspection for so long as public inspection would frustrate the purpose of the closed session.

State-County Special Assistance

Social Services Client Records

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive state-county special assistance payments.

Notwithstanding G.S. 108A-80(a), the state DHHS is required to furnish monthly to each county auditor a complete list of the names and addresses of county residents who receive state-county special assistance as well as the amount of financial assistance paid to each recipient. These lists are public records and must be open for examination by any person upon request during regular business hours. Information obtained from these lists, however, may not be used for any commercial or political purpose.⁴⁵

Students and Schools

Abused, Neglected, and Delinquent Children

G.S. 115C-400

Public school personnel are required to report suspected child abuse or neglect pursuant to G.S. 7B-301.

G.S. 115C-404

Information about juveniles obtained by public schools under G.S. 7B-3100 and G.S. 7B-3101 is confidential and is not subject to public inspection and disclosure under the state's public records law (G.S. Ch. 132).

This information must be secured in a separate locked storage area, may not be copied, and may not be included in a student's official record under G.S. 115C-402. The information may be used only to improve the student's educational opportunities or to protect the student or others, and must be destroyed when the juvenile court's jurisdiction terminates, the juvenile court orders that the records be expunged, or the information is no longer needed to improve the student's educational opportunities or to protect the student or others.

Student Records

20 U.S. Code §1232g; 34 C.F.R. 99

The federal Family Educational Rights and Privacy Act (FERPA), enacted in 1974, protects the confidentiality of student records maintained by federally-funded educational institutions (public elementary and secondary schools and virtually all public and private colleges and universities).⁴⁶

FERPA defines "education records" broadly to include all files, documents, tapes, photographs, or other records maintained by a federally-funded educational institution that contain information directly related to a student. Education records does not include oral information based on personal observation or knowledge.

FERPA generally prohibits the oral, written, or electronic disclosure of personally identifiable information about a student from the student's education records without the prior written consent of a minor student's parent or guardian or a person acting as the student's parent in the absence of a parent or guardian. (A student who is at least 18 years old may consent to the disclosure of his or her education records.)

FERPA, however, allows the disclosure of information from educational records without consent of the student's parent when the disclosure is

1. to other school officials for legitimate educational purposes;
2. to state and local agencies in compliance with a state law related to the juvenile justice system's ability to serve a juvenile prior to adjudication;
3. in compliance with a judicial order or lawfully issued subpoena;
4. in connection with a health or safety emergency;

5. "directory" information (students' names, addresses and telephone numbers, dates and places of birth, photographs, and other information the release of which would not harm the student or constitute an invasion of the student's privacy) unless a student's parent or eligible student withholds consent after receiving notice regarding the school's policy regarding disclosure of directory information;
6. from a school's law enforcement unit records; or
7. otherwise allowed under FERPA.

State and local government agencies that obtain student records without the consent of a student's parent or eligible student generally must agree to use the information only for the purpose for which it was disclosed and that they will not redisclose the information for any purpose not allowed by FERPA.

G.S. 115C-402(e)

The official records of students enrolled in public schools are not subject to public inspection and disclosure under the state's public records law (G.S. Ch. 132).

Tax Records

Federal Tax Records

26 U.S. Code §6103(l)

Information contained in federal income tax returns is confidential and may not be disclosed except as authorized by law.

The federal Internal Revenue Service and Social Security Administration may disclose certain information about taxpayers (Social Security number, address, income, etc.) to state and local child support enforcement agencies. State and local child support enforcement agencies may not use or redisclose federal tax information for purposes not related to the child support enforcement program.

The federal Internal Revenue Service and Social Security Administration may disclose information regarding a taxpayer's reported income to state and local social services agencies to determine an individual's eligibility or benefits under the Temporary Assistance for Needy Families, Food Stamp, or Medicaid programs. State and local child social services agencies may not use or redisclose federal tax information for

purposes not directly related to the administration of these programs.

State and Local Tax Records

G.S. 105-259

State agencies may disclose state tax returns and other state tax information concerning individual taxpayers only when required by court order or as otherwise provided by law.

G.S. 153A-148.1; G.S. 160A-208.1

Local tax records that contain information about a taxpayer's income or receipts are not subject to public inspection and disclosure under the state's public records law (G.S. Ch. 132) and may not be disclosed unless required by court order or as otherwise required by law.

Temporary Assistance for Needy Families (TANF)

Use, Protection, and Disclosure of Information About Families

42 U.S. Code §602(a)(1)(A)(iv)

A state's plan for the Temporary Assistance for Needy Families (TANF) program must indicate how the state will take reasonable steps, as the state deems necessary, to restrict the use and disclosure of information about individuals and families that receive federally-funded assistance under the state's TANF program.

42 U.S. Code §611a

A state or local social services agency that administers the Temporary Assistance for Needy Families (TANF) program must disclose to the federal Immigration and Naturalization Service the name, address, and other identifying information of any person who is known to be an alien who is unlawfully residing in the United States.

42 U.S. Code §1320b-7

State and local social services agencies that administer the state's Work First (TANF) program must share information with (a) state and local agencies administering the child support enforcement program; (b) state and local agencies for purposes of determining eligibility and benefits under the Medicaid, Food Stamp, and unemployment compensation programs; and (c) the Social Security Administration for purposes of determining eligibility and benefits under the Social

Security and Supplemental Security Income programs. Information may be shared only to the extent necessary to meet the valid administrative needs of the agency receiving the information and must be protected against unauthorized use or disclosure for other purposes.

G.S. 108A-80

G.S. 108A-80 and rules promulgated by the state Social Services Commission under that section (summarized on pages 27–29 of this bulletin) prohibit the unauthorized use or disclosure of information regarding persons who apply for or receive assistance or services under the state’s Work First (TANF) program.

Appendix: How to Find Federal and State Laws

The purpose of this appendix is to assist nonlawyers in finding the federal and state statutes and regulations that are cited in this index.

The federal statutes cited in the index are collected in a set of books called the United States Code. Legal citations to these federal laws give the number of the code title in which the law is contained and the section number of the law. For example, the citation “42 U.S. Code §1983” means that the cited statute is found in section 1983 of title 42 (public health and welfare) of the United States Code. Statutes included in the United States Code are available on-line at <http://www4.law.cornell.edu/uscode/>.

Federal regulations are codified in a set of books called the Code of Federal Regulations (C.F.R.). Citations to these federal regulations give the number of the title in which the regulation is contained and the part and section number of the regulation. For example, the citation “45 C.F.R. 1355.30” means that the cited regulation is found in section 30 of part 1355 of title 45 (public welfare) of the Code of Federal Regulations. The Code of Federal Regulations is available on-line at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

Most state statutes enacted by the North Carolina General Assembly are codified in a set of books called the General Statutes of North Carolina (G.S.). Citations to statutes included in the General Statutes give the chapter and section number of the cited law. For example, the citation “G.S. 108A-80” means that the cited law is found in section 80 of chapter 108A (Social Services) of the General Statutes. North Carolina’s General Statutes are available on-line at <http://www.ncga.state.nc.us/Statutes/Statutes.html>.

Administrative rules adopted by state agencies in North Carolina are codified in a set of books called the North Carolina Administrative Code (N.C. Admin.

Code). Citations to these rules give the title, chapter, and section number of the rule. For example, the citation “10A N.C. Admin. Code 69.0505” means that the rule is found in section 505 of chapter 69 of title 10A (Department of Health and Human Services) of the North Carolina Administrative Code. The North Carolina Administrative Code is available on-line at <http://ncrules.state.nc.us/ncadministrativ/default.htm>.

Notes

* Mr. Saxon is a professor of public law and government at the Institute of Government, UNC-Chapel Hill. His areas of responsibility include social services, child support, and elder law. This bulletin was revised by Jane Smith of the North Carolina Division of Social Services in July, 2003, to update the citations to North Carolina’s revised Administrative Code.

¹ While employees of state and county social services agencies understand that personal information in their agencies’ records is confidential, they too often have only a scanty or inaccurate knowledge of the legal and professional rules governing the confidentiality of social services records and may not fully appreciate the complex nature of confidentiality. Suanna J. Wilson, *Confidentiality in Social Work* (New York: Free Press, 1978), 202.

² This bulletin generally uses the term “information” to refer to any type of information, data, communication, or record, regardless of its form or content.

³ This bulletin generally uses the term “social services agencies” to refer to state social services agencies (for example, the state Department of Health and Human Services and its Division of Social Services) and county social services agencies (for example, county departments of social services). Although this series of *Social Services Bulletins* focuses primarily on the confidentiality rules that apply to (or are commonly encountered by) county departments of social services, other public human services agencies may find it useful in analyzing questions, issues, and problems regarding the acquisition, use, and protection of confidential information.

⁴ This bulletin generally uses the term “rule” to refer to any law, regulation, professional code, standard, requirement, or restriction regarding the acquisition, use, protection, or disclosure of confidential information.

⁵ Federal laws governing or affecting the acquisition, use, and disclosure of confidential information by social services agencies that administer child welfare programs are also summarized and discussed in Alice Bussiere, Abigail English, and Catherine Teare, *Sharing Information: A Guide to Federal Laws on Confidentiality and Disclosure of Information for Child Welfare Agencies* (Washington, D.C.: American Bar Association, 1997).

⁶ Readers also are reminded that, in some instances, more than one law may apply with respect to the acquisition, use, or disclosure of a particular type of information, and that, in some cases, these laws may conflict with each other. County social services employees are encouraged to seek advice from their agency attorney, director, or state officials if they have questions with respect to which law applies in a particular situation or how the applicable laws should be interpreted or applied.

⁷ See *In re Spinks*, 32 N.C.App. 422, 232 S.E.2d 479 (1977).

⁸ See also 45 C.F.R. 1355.30 and 45 C.F.R. 205.50.

⁹ The federal law and regulations regarding the confidentiality of information regarding alcohol and substance abuse treatment are discussed in detail in *Confidentiality and Communication: A Guide to the Federal Drug and Alcohol Confidentiality Law* (New York: Legal Action Center, 2000).

¹⁰ Definitions of “patient identifying” information and “federally-assisted” programs are contained in 42 C.F.R. 2.11 and 2.12(a)(1)(i).

¹¹ Federal law imposes specific requirements with respect to a patient’s consent to the disclosure of information. See 42 C.F.R. 2.31 and 2.32.

¹² Federal law imposes specific requirements with respect to court orders allowing the disclosure of information. See 42 C.F.R. 2.61 through 2.67.

¹³ See 42 C.F.R. 2.20.

¹⁴ The federal regulations promulgated by the U.S. DHHS pursuant to CAPTA (45 C.F.R. 1340.14(i)) have not been revised to reflect the 1996 CAPTA amendments regarding confidentiality.

¹⁵ See N.C. Atty. Gen. Advisory Opinion to Kevin M. Fitzgerald (April 4, 1997) [1997 WL 613032].

¹⁶ See also *Ritter v. Kimball*, 67 N.C.App. 333, 313 S.E.2d 1 (1984).

¹⁷ See 47 N.C. Atty. Gen. Op. 211 (1978); 49 N.C. Atty. Gen. Op. 198 (1980).

¹⁸ A federal regulation promulgated by the U.S. DHHS (45 C.F.R. 303.21, repealed 1999) formerly allowed state and local child support enforcement agencies to disclose information concerning applicants for and recipients of federally-funded child support enforcement services for purposes related to the AFDC or TANF programs, child welfare and foster care programs, child support enforcement program, supplemental security income program, Social Services Block Grant program, Medicaid program, or other federal or federally-assisted need-based program. It also allowed the reporting to an appropriate agency or official of information regarding known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child enforcement activity under circumstances that indicate that the child’s health or welfare is threatened thereby.

¹⁹ See also 48 N.C. Atty. Gen. Op. 85 (1979).

²⁰ See also 45 C.F.R. 1355.30 and 45 C.F.R. 205.50.

²¹ See also 26 U.S. Code §3304(a)(16).

²² See *St. Michael’s Convalescent Hospital v. California*, 643 F.2d 1369, 1373–74 (9th Cir. 1981) (holding that the federal Privacy Act does not apply to a state government agency that administers the federal-state Medicaid program).

²³ See also 45 C.F.R. 1355.30 and 205.50.

²⁴ These laws are discussed in more detail in Alison Brown, “When Should Agencies Inquire About Immigration Status?” *Popular Government* 65(Fall 1995):29.

²⁵ Legislation (S 1282) amending G.S. 7B-3100 to codify rules for the sharing of juvenile information among agencies was approved by North Carolina’s Senate but was not enacted during the 2002 legislative session.

²⁶ See 58 N.C. Atty. Gen. Op. 33 (1988).

²⁷ See also Janet Mason, “Confidentiality in Juvenile Delinquency Proceedings,” *Popular Government* 60(Fall 1994): 2.

²⁸ The public disclosure of information contained in law enforcement records is discussed in more detail in chapter 7 of David M. Lawrence, *Public Records Law for North Carolina Local Governments* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1997).

²⁹ See 58 N.C. Atty. Gen. Op. 33 (1988).

³⁰ The HIPAA privacy rule (45 C.F.R. 164) is discussed in detail in the materials included on the Institute’s HIPAA web site (<http://www.medicalprivacy.unc.edu>).

³¹ See also *State v. Etheridge*, 319 N.C. 34, 352 S.E.2d 673 (1987).

³² See *Scott v. Scott*, 106 N.C.App. 606, 417 S.E.2d 818 (1992).

³³ See *State v. Andrews*, 131 N.C.App. 370, 507 S.E.2d 305 (1998); *State v. West*, 317 N.C. 219, 345 S.E.2d 186 (1986); *State v. Barber*, 317 N.C. 502, 346 S.E.2d 441 (1986).

³⁴ Similar statutory provisions apply with respect to the personnel records of state employees, municipal employees, public school employees, area mental health employees, and community college employees. See G.S. 126-22 et seq.; G.S. 160A-168; G.S. 115C, Art. 21A; G.S. 122C-158; and G.S. 115D, Art. 2A. G.S. 153A-98 and these statutes are discussed in more detail in chapter 2 of Stephen Allred, *Employment Law: A Guide for North Carolina Public Employers* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1999).

³⁵ See *Elkin Tribune, Inc. v. Yadkin County Board of Commissioners*, 331 N.C. 735, 417 S.E.2d 465 (1992).

³⁶ The state public records law is discussed in detail in David M. Lawrence, *Public Records Law for North Carolina Local Governments* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1997).

³⁷ See *Troutt Brothers, Inc. v. Emison*, 841 S.W.2d 604 (Ark. 1992).

³⁸ See 10A N.C. Admin. Code 69.0101(3)client information means “any information, whether recorded or

not and including information stored in computer data banks or computer files.”

³⁹ Although county social services board members are authorized to examine the records of persons who apply for or receive public assistance or social services, they are expressly prohibited from disclosing or making public any information obtained through their examination of these records.

⁴⁰ See 49 N.C. Atty.Gen.Op. 61 (1979) (county social services department may disclose public assistance and social services records to the state DHHS in connection with its evaluation of social services programs); 49 N.C. Atty.Gen.Op. 198 (1980) (county social services department may not disclose information regarding child protective services cases to a community advisory group unless the disclosure is for purposes directly connected with the administration of the child protective services program); 53 N.C. Atty.Gen.Op. 108 (1984) (county social services department may disclose client information to law enforcement agencies investigating fraud related to public assistance or social services programs).

⁴¹ G.S. 108A-80(b) does not allow publication of the list of public assistance recipients in a newspaper because such publication is for a commercial purpose. See 45 N.C. Atty.Gen. Op. 273 (1976).

⁴² The state Department of Cultural Resources’ draft records retention and destruction schedule for county social services departments is available online at: <http://www.ah.dcr.state.nc.us/sections/archives/rec/local/DraftDSSSchedule-bml3.pdf>

⁴³ The Attorney General’s office has issued two advisory opinions concluding that G.S. 108A-11 does *not* apply to child abuse, neglect, and dependency or child support enforcement case files maintained by the county social services department. Memorandum from Robert J. Blum to Albert E. Thompson, Jr., August 23, 1993; Advisory Opinion to Kevin M. FitzGerald, April 20, 1995.

⁴⁴ The state open meetings law is discussed in more detail in David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 2002).

⁴⁵ G.S. 108A-80(b) does not allow publication of the list of public assistance recipients in a newspaper because such publication is for a commercial purpose. See 45 N.C. Atty.Gen. Op. 273 (1976).

⁴⁶ FERPA is discussed in more detail in Michael L. Medaris, Ellen Campbell, and Bernard James, *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 1997). The U.S. Department of Education may withhold federal educational funding from educational institutions that fail to comply with FERPA’s confidentiality requirements. FERPA, however, does not create a legal right to privacy that may be enforced by individual students

and their parents. See *Girardier v. Webster College*, 563 F.2d 1267 (8th Cir. 1977); *Gonzaga University v. Doe*, 536 U.S. ___, 153 L.Ed.2d 309 (2002).

Social Services Bulletin is published on an occasional basis by the Institute of Government to address issues of special interest to county and state social services employees and officials. It is distributed to a variety of local and state social services and other human services officials. (Corrections to mailing lists should be sent to the Institute’s publications division.)

Public agencies and officials may photocopy this publication if

- it is copied in its entirety
- it is copied solely for distribution within a public human services agency or to human services officials or employees, and
- copies are not sold or used for commercial purposes.

Others should contact the editor regarding permission to duplicate any issue or portion thereof. Copies of the *Bulletin* may be purchased from the Institute of Government for \$3.00-\$5.00 per copy, plus tax.

To order copies of the *Bulletin*, to request inclusion on the distribution list, or to request a catalog of other Institute of Government publications, write to the Publications Office, Institute of Government, CB# 3330 Knapp Building, UNC–Chapel Hill, Chapel Hill, NC 27599-3330, or call (919) 966–4119.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 533 copies of this public document at a cost of \$884.90 or \$1.66 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs. To order copies of the *Bulletin* or to request a catalog of other Institute of Government publications, write to the Publications Marketing and Sales Office, CB# 3330 Knapp Building, UNC-Chapel Hill, Chapel Hill, NC 27599-3330, or call (919) 966-4119 for price information.

©2002

Institute of Government. The University of North Carolina at Chapel Hill

Printed in the United States of America

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.

Appendix B: Write a Media Policy

Before your employees get a call from a reporter, they should know how to handle such a call. Take a little time to write a media policy and make sure all staff are aware of it. Below is the full text of the media policy **and** of the crisis communication policy for the NC Department of Health and Human Services

DHHS Media Policy (General)

Purpose of this Policy

We encourage staff to talk with reporters about our issues. The media can help us get the word out about what we do for our state's families. We need to help them as much as possible.

Who does this policy apply to?

All employees are encouraged to talk with reporters about their areas their expertise. But, if you aren't comfortable talking with reporters, no one is going to make you. If you don't want to talk to the media, please refer them to the public affairs office or someone who is comfortable talking with the media. Don't ignore the media call.

What should you say?

You should provide reporters with factual information only. Don't speculate or give opinions. Stick to your area of expertise. Feel free to refer the reporter to other people with different areas of expertise.

If a reporter calls you, what do you do?

If the reporter is calling about your area of expertise, feel free to provide him or her with the information requested. You don't have to get any prior approval for talking with a reporter about your area of expertise. Remember to stick with facts--not opinion or speculation. If you are dealing with a particularly controversial issue or have questions about how to handle the request, please consult with the public affairs office about the proper response.

If you don't feel comfortable talking with a reporter, then refer them to someone who can help them. Any media call can be referred to public affairs. Please don't give false excuses to reporters. Don't tell them that you're not allowed to talk or that they have to talk with public affairs first. Explain that you're not comfortable talking to them and refer them to someone who will talk with them.

Do you need to report that you've talked to a reporter?

Yes. You don't have to get permission from the Public Affairs Office to talk with a reporter, but you do need to make sure that the Public Affairs Office is notified as quickly as possible after you have talked with a reporter. You can either email or phone us to let us know that you have talked with a reporter. Please make this notification immediately after talking with a reporter.

DHHS Crisis Communication Policy

Not the Norm:

Under normal circumstances, we encourage DHHS employees to talk freely with reporters about areas of their expertise. That's not the case in a crisis. Coordination of communication--ensuring that we are giving out correct information with one voice--is essential during a crisis.

What is a Crisis?

The dictionary defines a crisis as an unstable condition in which an abrupt or decisive change is impending, or a crucial or decisive point or situation. We immediately recognize certain events as crises. Hurricanes and tornadoes are certainly crises. But, crisis can be on a smaller scale, as well. A leaking underground storage tank that is contaminating a community's drinking water is certainly a crisis for the people involved. Outbreaks of disease like rubella or e-coli and pfiesteria-related fish kills are also crises. Specific crisis communication plans may be developed for particular events.

How Do We Communicate During a Crisis?

During a crisis, we revert to our crisis---or emergency---communication plan. The basic element of this plan is coordination of information. It is essential that we make sure that everyone is speaking with one voice and giving out information that is absolutely correct. For that reason, all requests for media information need to come to one point--the Office of Public Affairs. Staff will determine who needs to respond and what information is available. Regular news releases will be issued. Where appropriate, media briefings will be held to give reporters access to high-level officials and field staff.

How Do We Prepare For a Crisis?

The Office of Public Affairs will maintain a regular listing of emergency numbers, including after-hours numbers for members of the media and DHHS staff. You may prepare specific notification lists and priorities for a particular issue.

Public Affairs can work with individual offices to develop crisis communication plans for specific problems. That way, you'll have something to follow during a time when there is a lot breaking loose. You might develop draft news releases that you can use during crises.

How Do We Learn From Our Experiences?

After the crisis has passed, hold a post-mortem to determine what worked and what didn't. Use this analysis to determine future communications in similar circumstances.

Appendix C: Examples of Good Stories

Sometimes a “good” story is one that treats bad news fairly.

These articles are reprinted with permission from the publishers.

DSS aims to build professionalism, halt turnover

Shana Bretzius
Star Managing Editor

SHELBY — A new program is cutting turnover among Department of Social Services child protective services workers by recruiting them before they graduate.

People in the program are obligated to work in child protective services for a year in North Carolina to “repay” some of their college costs.

The effort started a couple of years ago when the Jordan Institute for Families at Chapel Hill and the state’s DSS looked at turnover and ways to recruit qualified people. The result was the Child Welfare Educational Collaborative.

“It’s our mission to increase the number of professionally educated social workers who are specially trained to work in public child welfare,” said Karen Ellis, DSS program administrator of family and children’s services.

To stem turnover, DSS agencies across the state, including Cleveland County, have resorted to hiring college graduates with no social services background. The county’s DSS also is looking to the Internet as a recruitment tool, recently drawing workers from California, New York and Minnesota.

The new program is open to students seeking a bachelor’s degree in social work and requires a five-month unpaid internship before graduation.

DSS Director John Wasson said child protective services workers are the hardest to retain.

“I think one of the problems statewide with child protective services is that DSSs have tried to do things on a shoestring,” said Wasson, adding that with a little bit of investment, “we could reduce the time that vacancies are left unfilled.”

Wasson called the program a “Godsend.”

“It’s nearly an impossible job and I salute the people who do it.”

So far, four students have taken advantage of the program in Cleveland County — two from Appalachian State and two from N.C. State.

What enticed them?

“For me, being a single parent, and the amount of money we were offered to do that,” said Kim Mask, who graduated in from Appalachian State in December 2001.

Ms. Mask grew up in Morganton, where she continues to live. She started working nine years ago in Burke County DSS’ mailroom before returning to school to become a social worker.

One of the perks is added income.

Typically, someone who holds a bachelor’s degree in social work begins at a social worker one status. But these applicants start out as a level two. That bumps their starting pay from \$24,000 to \$26,000 a year.

If candidates stay a year and their work is satisfactory, Ms. Ellis said the county gives them a two-step pay increase instead of a one-step jump in hopes of keeping them.

Anna White, an N.C. State graduate, grew up in Durham and has worked for Cleveland County’s DSS for four months.

“Like Kim, I knew this is what I wanted to do,” said Ms. White.

Cleveland County’s DSS coordinates with Appalachian, UNC, N.C. State and UNC at Charlotte to find candidates.

“And we have a contact person at each university and they will call us,” said Ms. Ellis. “They have to recommend a person.”

Ms. White said the required internship helped acclimate her to the type of clients she would be helping.

Ms. White said there was a larger population and more money available for clients at her internship in Wake County. Here, she said, social workers find creative ways — including non-profit groups and churches — to find help for clients.

Ms. Ellis said the required internship, “gives the student the complete flavor of DSS and gives them the opportunity to discover what a hard and difficult job it is.”

Since they are required to complete preservice training as part of their education, participants have another leg up on their first day of work.

“They’re prepared and ready to go to work,” said Ms. Ellis. “They’re really sure when they’re hired.”

Candidates in the program are advised they might have to relocate for a job.

DSS also is using three paid internships to help field new candidates. Social work students are preferred, but DSS looks at other human service fields to find qualified candidates.

“We’ve employed at least three of the paid interns upon graduation.”

Both candidates say the program helps them form tighter bonds with clients.

“I think everybody has more invested,” Ms. White. “The people who profit are the clients we serve.”

“I think the people who actually oversee the implementation in the universities work really hard,” said Ms. White. She said the state recognized a program and came up with a solution.

Ms. Mask said she’s encouraged by the fact that quite a few collaborative students have been promoted at the county’s DSS.

“If you’re obligated to be here for a year, chances are you’ll stay longer too.”

Avoiding child support is unlawful: Wednesday, October 8, 2003

By BARBIE MORSE BURNETTE Staff Writer

Susan Howard doesn't give up until she's found her man.

Howard is an enforcement case manager for Child Support Enforcement, a privatized agency housed within the Beaufort County Department of Social Services. She is charged with overseeing cases once a court order has been established by a judge or a voluntary support agreement has been signed by a parent.

There are currently 4,000 cases in the Beaufort County Enforcement unit, Howard reported.

On a daily basis, Howard may not deal with the cases that receive regular payments, but once a parent becomes 30 days behind on a payment, the individual can be taken to court, she said. A judge has the authority to require immediate payment of unpaid child support and can send the parent to jail if the money is not paid, Howard said.

After a case becomes delinquent 90 days, Howard has the authority to revoke an individual's driver's license. Parents can also be denied hunting, fishing and boating licenses and stand to lose their passports for delinquent child support payments, Howard said.

The agency is also able to freeze a bank account of a parent who owes \$1,000 or more in child support monies.

One of the most effective collection methods, she said, is the agency's ability to intercept tax refunds to pay delinquent child support payments.

"That's probably the one we get the most calls about," Howard commented. There is no relief for paying child support, Howard said. Even unemployed parents are responsible for making their payments, and the agency can seek 25 percent of a parent's unemployment benefits.

"The only circumstance in which it's absolved is if they go to jail," Howard said. And even then, parents will again be responsible for the payments when released, Howard said. It's up to the absent parent to file a motion with the courts to try to renegotiate child support payments, she noted.

North Carolina is one of the few states that does not charge interest on delinquent child support payments, Howard commented.

Parents who flee to other states can face federal prosecution for willfully neglecting to pay child support, Howard said.

"That's when they know they're supposed to pay, and they leave so they don't have to," she explained.

Howard currently has five such cases in Beaufort County, adding, "That's a lot for Beaufort County."

Parents who fall \$5,000 behind on their child support payments, in such cases, can face a misdemeanor charge. Going into arrears by more than \$10,000, in those cases, can be considered a felony, she said.

Working such cases keeps Howard juggling her day-to-day duties. She could be on the phone with clients or noncustodial parents. She may be dealing with an individual's employer or may be involved in tracking an absent parent who has moved to another state.

"My day changes constantly. Each case has a different issue," she commented.

"The economy plays a big role in what we do on a daily basis. Just because we're trying to enforce it, doesn't mean it's being paid in full."

Her biggest collection to date involved a Florida man who owed more than \$30,000 in child support payments. Howard was able to collect half of that sum from a trust fund the man had opened in his son's name when he asked his son to sign paperwork closing out the account.

"It took six months to a year to get that," she commented.

Child support payments are deducted from a parent's paycheck by an employer and sent to a centralized collection agency. That agency then cuts another check to the custodial parent of the child. Child support is collected until the child is age 18 or until he or she graduates from high school, Howard said, unless past due payments are still owed. After 10 years, the debt can be turned into a judgment, she added.

"This job is very stressful, very demanding, but at times, very rewarding," she remarked.

Howard, in some cases, has reunited families and says she has even received thank-you cards from noncustodial parents.

"I haven't found anything that's beaten this so far," she said of her job. "I've loved all of it from the first day I walked in this door."

***Murals brighten Social Services lobby**

By Claudia Assis : The Herald-Sun
cassis@heraldsun.com <mailto:cassis@heraldsun.com>

Jan 9, 2003 : 9:08 pm ET

DURHAM -- During the yearlong process to adopt 17-month-old Amber, Colette Smith spent more time than she cared to count in the lobby of the Durham County Department of Social Services.

But Smith and Amber were in for a surprise Thursday, when Smith stopped by to drop off some adoption papers.

Like the new mother, about 2,000 people a month go to the Social Services building on East Main Street to ask for or offer help. Now three large, brightly colored murals depicting everyday life in Durham will greet them, adorning the lobby's once-drab white walls.

"This makes it look a whole lot better," Smith said, admiring the paintings while Amber sipped fruit punch and enjoyed the attention of several social workers and DSS employees gathered to celebrate the murals. "It gives a sense that Social Services is a service for the people. It is a nice approach."

In one painting, men appear engrossed in a game of checkers. On another, a mother and daughter walk by the corner of Parrish and Mangum streets, toward the Central Carolina Bank building. And on another, children of various races play together in a sandbox.

The art was the result of a collaboration with N.C. Central University. DSS employees contacted the university's art department in late summer to beautify their headquarters and make it more welcoming, they said.

The murals are the work of Thomas Poole, 43, an art education major at NCCU and an Elizabeth City native. Poole walked around Durham and took pictures of its landmarks and people to absorb more of the community spirit, he said. He then presented sketches to DSS officials.

"I wanted to put that in an art form," he said. "I wanted it to be bright. We wanted it to brighten the atmosphere of the place."

The painting depicting the children in the sandbox is the largest mural, more than 9 feet by 7 feet. The other two are smaller, about 7 by 5 feet.

Poole spent three months on the artwork, while taking classes at NCCU. "It is not something that you can leap right on to," he said.

DSS covered his supplies, but Poole volunteered his time.

The experience will help him throughout his career, said NCCU professor Rosie Thompson. Poole was chosen because he had already done a similar work in Durham, she said.

The murals were created as part of the art department's Community Services Learning Program. Other agencies and business may become interested in

launching a similar project and providing other students the experience, Thompson said. DSS officials approved of the result.

"What's impressive about this is that it is just like looking down the street," DSS Director Dan Hudgins said. "I've been here for 25 years, and I think this is the best this place has ever looked."

***New group focuses on elder abuse**

Jefferson Post
by Fawn Roark
Staff Reporter
Tuesday, February 11, 2003

A new group of agency representatives formed Thursday will meet each month and work together to help address domestic abuse of the elderly in Ashe County. The group will be called the Elder Violence and Abuse Prevention Team and was formed following training held at the Jefferson Methodist Church by the Rockingham County Elder Abuse Team.

Facilitators for the training were from the Help, Inc. Center Against Violence, the Rockingham County Adult Protective Services of the Rockingham DSS and a detective from the Rockingham County Sheriff's Department. These individuals provided an overview of how the group helps them in their county and the difference it makes there.

Older individuals may have more than one abuser as elderly victims can fall prey to abusive spouses, adult children, grandchildren, other relatives or caregivers. Often these individuals are dependent on their abuser and feel they have nowhere else to go, the facilitators explained. The National Elder Abuse Incidence Study found in 1998 that the perpetrator was a family member in almost 90 percent of the cases.

About 25 people from local agencies attended the meeting and learned about the Rockingham Domestic Elder Abuse Program and the benefits of collaboration between county agencies.

"I am very happy and really pleased about this. This will be targeted just toward elderly adults who are at risk because we sometimes overlook these people," Services Supervisor John Eller of Ashe County Department of Social Services explained.

There seems to be a need for this in Ashe County as currently Ashe is 13th in the state in the number of elderly population per capita and is projected to move up to fifth in the state by the year 2005, Eller said.

“There is so much focus put on kids and that is very important, but we are in an aging county and we should focus on both and have a good balance. When you talk about domestic violence, everybody seems to think about young kids and young parents, but it can also be cases of elderly spousal abuse or a child abusing their aging parent,” he continued. “I am really excited we are all getting involved because this happens in our county—we hate to admit it, but it does. I think this is a good step in the right direction. All of these different agencies meeting together will have to make a difference and if one agency cannot do something to help, another one might. A lot of us may be dealing with the same clients and I just think this will be a very good thing. I am very proud of this and an hour spent doing this each month is a great investment.”

Eller said Tricia Dawes of DSS had also been working very hard to get this committee started. The group will be meeting on the first Tuesday of every month at the Department of Social Services for one hour. All area service providers and law enforcement are encouraged to participate and each agency can present a profile of services to educate team members and to set the course for future activities that can help victims. Team members can also present difficult cases at the meeting so feedback from the group can be provided. A.S.H.E., A Safe Home for Everyone, will also be directly involved in this process.

***Social Services developing plan to work with non-English speakers**

By Cortney L. Hill, Salisbury Post

To stay in compliance with the state Limited English Proficiency policy, Rowan County Department of Social Services is helping workers better assist Spanish-speaking clients who come in after hours.

The state requires Social Services to make an interpreter available any time a non-English-speaking client comes to the agency.

But before Tuesday, Social Services didn't have a written policy, and workers sometimes didn't know who to call to get translation assistance.

On Tuesday night, the Rowan County Social Services Board approved written guidelines telling after-hours Child Protective Services workers how to deal with non-English-speaking clients.

"This policy will provide guidelines to follow when a need for CPS services is received outside regular office hours and an interpreter is needed," said Social Services Director Sandra Wilkes. "We had not had anything written in the past that on-call workers could refer to."

Wilkes, who established the policy Tuesday, presented the guidelines during the Rowan County Social Services Board meeting Tuesday night.

"One concern was that when a CPS worker has a case come in after hours, and the person doesn't speak English, how would the on-call worker handle such a case," Wilkes said.

"If the investigator cannot understand the caller on the phone because of a language barrier, the investigator will locate an interpreter by phone while the caller remains on the phone," Wilkes said. "The investigator will proceed with a three-way conversation with the caller and the interpreter."

The investigator has four interpreters to choose from but will contact Zully Hardaway, Social Services' Spanish interpreter, first.

"If she falls through, then the investigator will contact the agency's contracted interpreter," Wilkes said. "And if that falls through, an interpreter from the Law Enforcement Access List will be contacted."

The on-call worker's last resort would be to contact a Social Services staffer who has conversational bilingual skills.

If the Child Protective Services investigator determines that he needs to meet the caller, the investigator and interpreter will meet the client together.

"In our budget, we are requesting funds to purchase Nextel phones to use as walkie talkies," said Tom Brewer, Children's Services program administrator. "That way, the on-call worker could communicate with the interpreter and be able to facilitate."

Brewer said officials with the Salisbury Police Department would be willing to cooperate with the on-call worker and client, as long as Social Services can arrange to get the client to the station.

If the Child Protective Services investigator and a law enforcement officer are working together and need an interpreter, "the investigator and officer must decide which interpreter to call," Wilkes said. "Depending on the nature of the situation, the officer may determine if it is appropriate to have a law enforcement interpreter on-site or not."

Social Services Board Chairman Zell Setzer asked Wilkes if she has trying to recruit bilingual staff.

"We have had none to come up that has met all requirements," Wilkes said. "But the ones who check off they are bilingual, we do interview them first."

Pat Spears, income maintenance supervisor for Social Services, said that applicants may say they're bilingual when they really aren't.

"We get some in who may only know two words. Then others do that just so they can get the interview," Spears said.

Wilkes said the department has to pass over some bilingual applicants who lacked skills in other areas.

"Their references may have been poor, or they just didn't quite meet the other requirements," Wilkes said.

Board member Leda Belk said the department must start somewhere.

"We have got to bring more bilingual staffers on board," Belk said. "We've got to give them a chance, and see how they'll do. We'll never get ahead if we don't at least try."

Board member Jeff Morris would like to see Social Service follow the example of Union County's Department of Social Services.

"This is a great start here, and we're ahead of a lot of counties except for Union, who has at least one bilingual person in each department," Morris said. "The Hispanic population is growing here. Just last year, 23 percent of the live births in Rowan County were Hispanic."

Contact Cortney L. Hill at 704-797-4249 or chill@salisburypost.com

State lets families down - Private agencies cannot overcome public failure, and families still suffer

By Matt Epstein, Philanthropy Journal, <http://www.philanthropyjournal.org/>

When things work as designed, the state of North Carolina provides core services that nonprofits enhance by developing new approaches and filling in the cracks.

When the state fails, private agencies bear the weight, competing with each other to survive. Despite yeoman efforts, private groups cannot overcome public failure, and families will continue to suffer.

Families and professionals agree that our public systems have failed, not because of a lack of good, caring people but because of a poorly designed system based on outmoded assumptions and supported by illogical policies that undermine their morale and frustrate their efforts.

Hundreds of public entities at multiple levels leave no shortage of people to answer to, just a shortage of what is needed when it is needed.

Yet no public agency has the mission of helping families in need. Break the law, become seriously mentally ill or fail in school, and you might get something, not what you need but something. Otherwise, good luck.

Our prisons, mental hospitals and homeless shelters tell the story. Ineffective systems are never good but unconscionable with a large deficit that will reduce services even further.

Real improvement would require streamlining existing agencies and refocusing on outcomes rather than process. It would save hundreds of millions but may be beyond our political will.

But even minor policy changes would have dramatic impacts.

We rely heavily, for example, on group homes for children with mental health, family and juvenile-justice issues. They come home to the same environment even less able to cope.

Research shows that intensive family-focused services produce far better results at a fraction of the cost.

Instead, families deteriorate, children suffer, and we waste \$30 million to \$50 million every year.

But it is not all bleak.

The state Division of Social Services is instituting “multiple response systems” at the county level that are more family-friendly and service-oriented than the traditional investigative approach.

And the state Department of Public Instruction is instituting “positive behavioral supports” in local schools to help children with behavior problems.

Both initiatives are well-researched, effective and money-saving.

In Durham, local public and private agencies are picking up the “system-of-care” mantle, dropped by the state, that integrates all services across agencies through a family-centered approach that has had excellent results in other states.

But unless the state takes a hard look at its own policies, agency structures and services, and puts needed changes into effect, isolated positive initiatives will be overwhelmed by general system failures.

Matt Epstein is executive director of the Durham-based Center for Child and Family Health—North Carolina.

Satellite DSS offices proposed

Wilmington Star
By Ken Little, Staff Writer

LaVaughn Nesmith wants the New Hanover County Department of Social Services to be more accessible to clients.

With that in mind, the new director of the 268-employee agency envisions satellite offices offering a range of DSS services in locations like downtown Wilmington and Carolina Beach. It's just one of the concepts Mr. Nesmith is exploring four weeks into his tenure.

Currently, all programs are offered out of the DSS complex at 1650 Greenfield St. Cooperative ventures with other groups or agencies are also a possibility, Mr. Nesmith said.

"What I would like to do is let the enrollment numbers or programs dictate where we need to go," said Mr. Nesmith, who started his job last month after a social services career in South Carolina covering nearly 30 years.

"Why make them travel when you have enough people to justify outpatient staff?" Mr. Nesmith said.

The proposal has a supporter in client Gina Bell, who needs a ride to Greenfield Street when she conducts business.

"I think it's a good idea. It would be more convenient because I live all the way out on Gordon Road," Ms. Bell said Wednesday outside DSS headquarters.

Programs offered at satellite locations could include Medicaid, food stamps, classes in parenting and job development, crisis intervention, and foster parent recruitment and training. Mr. Nesmith sees the Wilmington Housing Authority, churches and area schools as potential partners.

Al Lerch, assistant superintendent of student support services with New Hanover County Schools, said a partnership with DSS could be beneficial to students and their parents.

"We would certainly be interested in having the social workers on site at some of our school centers," Mr. Lerch said. "They have a lot of different services that involve the students and the families together. As long as the student can stay on site, it's just more efficient."

Mr. Nesmith enthusiastically seeks community input on all DSS policies. Transportation to satellite centers, for example, might be a topic of discussion.

"The formal way of doing this is to have forums across the county to share information with the public. Let them be an integral part of planning and development," he said.

DSS Board of Directors Chairman Sherman Criner said the board is supportive of Mr. Nesmith as he settles into the director's post.

"He is obviously new to the county and he brings a lot of good ideas and a lot of energy," Mr. Criner said. "I think, basically, he's in a brainstorming process at this time."

The satellite office concept must be studied to determine its feasibility in New Hanover County, Mr. Criner said.

"It needs more investigation first to see if it would be a more efficient use of the resources," he said. "At this point, I think it's a little too early to tell."

DSS has an annual budget of about \$216 million, much of which is dedicated to the Medicaid program.

"It's very important that I see what the taxpayers of this county want and what their interests are," Mr. Nesmith said.

Ken Little: 343-2389 ken.little@wilmingtonstar.com

Food stamp program praised

Sunday, May 25, 2003 - 01:30:10 PM EDT

By Cortney L. Hill, Salisbury Post

The Rowan County Department of Social Services has received national recognition for management of its food stamp program.

The U.S. Department of Agriculture's Food and Nutrition Service honored the Rowan County department and other Social Services agencies at its annual \$6 Million Club Annual Payment Accuracy and Access Conference in Charleston, S.C.

The USDA \$6 Million Club honors counties that issue more than \$6 million in food stamp benefits each year and also adhere to high standards of accuracy and timeliness in the food stamp application processes.

"The food stamp program is one of those supportive services for people who are just earning minimum wage," said Rowan Social Services Director Sandra Wilkes.

"We receive this honor every year, and I am proud of our staff for the hard work they do and encourage anyone or family who thinks they qualify to come in and fill out an application," Wilkes said.

Rowan County is one of 21 North Carolina counties who earned membership in the \$6 Million Club.

Rowan's accuracy rate for fiscal year 2002 was 98.25 percent.

"There are about 8,500 individuals in Rowan County receiving food stamps, and an average of 3,500 food stamp cases," Wilkes said. "We process 575 applications per month and issue about \$675,000 worth of food stamps each month."

Social Services food stamp case workers have 30 days to process applications, or less in cases of emergency applications.

For more information about the food stamp program, call 704-633-4921.

Job losses, lack of insurance put increased demands on Social Services

By MICHAEL ROESSLER
Mooresville Tribune
Friday, June 6, 2003

An unhealthy economy means business is booming at Iredell County's Department of Social Services. The county agency responsible for helping to feed the hungry, providing healthcare to the uninsured and assisting working families with the costs of living has seen a boom in demand for its services - most of it, department officials say, because of a poorly performing economy.

The number of Medicaid recipients in Iredell increased 16 percent from December 2001 to March 2003, from 4,830 people to 5,589 people. Demand for cash assistance to help pay for daycare continues to grow, exceeding the funding for the program and resulting in a waiting list that has been as high as 600 children. Rolls for the food stamps program increased 25 percent from December 2001 to December 2002.

The county's Work First program - cash assistance to the unemployed that represents the program most people think of when they think of welfare - has dropped steadily over the last eight years, but those who have left the rolls often find themselves seeking other kinds of assistance from DSS, according to department officials.

"It's basically the economy," said Don Wall, director of the county's Department of Social Services, of the increase in demand for services. "It continues to increase because of the economy. People are losing their jobs, suffering medical crises."

Other department officials agree.

"Nothing but the economy," said Kathy Dobbins, income maintenance worker.

"The labor market certainly drives (the Work First) program, and over the last two years the unemployment rate has held up there at 6.4 (percent) or higher," said Linda Bledsoe, Work First supervisor.

The unemployment rate in Iredell County for April 2003, the most recent data available, was 6.5 percent. It was 6.3 percent in March 2003.

The most expensive program for DSS to run is its Medicaid program, which accounts for \$95.5 million of the department's proposed \$121.2 million budget for 2003-04. Iredell County's proposed share of the department's total budget is nearly \$11 million.

As demand increases, the burden of funding the program has shifted. "The federal government keeps decreasing their share, and the state's passing more onto the county," said Wall.

North Carolina is one of only six states that require county governments to participate in the funding of Medicaid, according to the N.C. Association of County Commissioners. The remaining states fund the program without a local contribution.

In the 2003-04 proposed budget, the county's share of Medicaid funds is \$5.4 million. The state will pay \$30.1 million and the federal government \$60 million.

The tax cuts and jobs package recently signed by President Bush contained funding for states that could lessen the county's share of Medicaid funding. North Carolina is slated to receive \$273.7 million.

Despite the exploding cost of Medicaid, which is proving difficult to meet for governments across the country, Wall said the program is worthwhile. "If you read some of these (recipients') situations, they'll tear your heart out," he said.

One trend facing DSS is the enrollment of the working poor in the department's assistance programs.

The department spent \$4.5 million, including \$3.9 million from the state and about \$600,000 from the Iredell County Partnership for Young Children, in 2002-03 to help parents buy daycare in the private sector for their children. In May 2003, the department helped purchase daycare for 1,200 children. Another 308 were on the department's waiting list at the end of the month.

The county assists with the program's administrative costs, but does not contribute directly to the daycare program.

"We're adding a hundred children a month to the waiting list. It just grows tremendously, and we have had up to 600-and-some on the waiting list," said Aliesa Bowman, daycare coordinator.

The majority of families who receive daycare assistance from DSS have people in the home who are working, she said. "I would say over 90 percent, or at 90 percent, are working families that we're servicing." The problem, she said, is that many working people are still unable to earn enough money to make ends meet.

And the demand for the program continues to grow. "Certainly so. Yes, it continues to increase," said Bowman.

Despite the increasing demand for daycare assistance - the families receiving help from the county must contribute as much as 10 percent to the cost of daycare, which amounted to nearly \$879,000 between June 2002 and April 2003 - proposed state funding for the program is down in 2003-04 to \$3.4 million.

The state might contribute more funding at a later date, as it did when it provided an additional \$588,000 in the middle of this budget year, but those funds can't be counted on, said Wall. "The state helps us out a lot, but we can't depend on them. We're really taking a risk." The department recently requested an additional \$2.2 million from the state to help meet the program's demand.

A shortage in funding sometimes means that families on the waiting list no longer need the service once the dollars are available to offer it to them. "Some families do not need the daycare when we send the letters (offering it to them) because they might have to quit their jobs, they may have to move. You know, all kinds of things happen because they cannot afford to pay for their daycare (when they first request assistance)," said Bowman.

Another program that has seen an increase in demand is food stamps.

In March 2003, 620 people in households receiving public assistance received food stamps. Another 5,199 in households not receiving public assistance - what Wall called "working people" - also received benefits. The total value of the food stamps provided that month was almost \$485,000. In April 2003, the total number of people receiving assistance fell slightly, to 5,459, but the total value of food stamps distributed increased slightly to about \$488,000.

The proposed food stamp budget for 2003-04, which is funded solely through federal money, is \$6.2 million.

"Every month, the total cases goes up," said Anita Buck, food stamp supervisor.

The maximum amount of food stamps that can be received monthly by a single person with no income is \$139, she said. Food stamp distributions in April 2003 averaged 99 cents per meal per person.

Like some of the department's other programs, food stamps are often distributed to people who have jobs but who "work in low income jobs and they don't have any benefits," said Wall. "They're busting their butts trying to make a living."

He added that the people receiving food stamps who are not working are overwhelmingly elderly or children. In April 2003, 362 participants in the program were over the age of 60, while 2,832 were under the age of 18.

It's the elderly on fixed incomes, said Buck, who need the most help, but who cannot get it because of the Social Security benefits they receive. "Those are the people that can't hardly get any food stamps. I mean, they might get \$10 a month and they're the ones that need it," she said. "They're the ones that suffer."

Wall added that food stamps are designed only as a supplement. "It's not to provide total nutrition. They have to bring something to the table," he said. "Of course, these kids can't bring anything," he added.

Unlike Medicaid, daycare assistance and food stamps, Iredell County's Work First program has seen a drop in rolls in recent years.

In 1995, 1,250 people were collecting benefits from the program. Now there are only 300 cases.

"This is the most critiqued program in our agency or nationwide," said Wall. "When they started talking about welfare reform, that's what they were talking about."

In response to federal welfare reform in the mid-1990s, Iredell County was one of several counties in North Carolina to develop local rules and procedures governing the Work First program, which has a proposed budget next year of \$776,000.

The plan, which Wall described as "real conservative," provides cash assistance to people in need while also insisting that they work to find a job. "The plan that we developed for someone who comes in and applies for a check, we didn't talk about a check the first time. We talked about employment," he said.

"The name of the program is 'Work First.' We wanted them to work first, so we would refer them to the Employment Security Commission or we would send them to child support to seek support from (delinquent) parents."

In North Carolina, people can collect benefits for 24 months before being cut off. After that, they are not eligible to receive benefits for three years. The federal government also mandates that no person can collect more than five years of benefits in a lifetime, according to Bledsoe, the program's supervisor.

Iredell County has successfully moved people out of the Work First program despite a poorly performing economy in recent years because the job market here is diversified, said Bledsoe. "We have service entry jobs. We have retail. We have agricultural, some manufacturing," she said. "So we have diversity, which has helped us."

But even those that find jobs and no longer need assistance from Work First sometimes still need help from DSS. "The jobs that seem to be out there, of course, are the jobs that families struggle to maintain a living wage," explained Bledsoe. "They're lower paying jobs."

When families leave the rolls of Work First and take a job that provides a low wage, she said DSS tries to stay in touch with them. "Those are the families we still try to keep connected with food stamps, to try to keep their Medicaid going, subsidize childcare, talk with them about the Earned Income Tax Credit so they can hopefully bring home more in their paychecks so they can stretch it as far as they can," she said.

For people who are ineligible for Work First, but who find themselves in need, DSS offers emergency assistance to help pay people's utility bills and rent. "We have been busy in that program," said Bledsoe. "People who aren't making that much, it's just hard to always make ends meet."

The county's 2003-04 proposed budget includes \$192,000 to meet such emergency needs.

Another effect of the weak economy is that more people who would typically be considered middle class - "people who aren't used to \$6 and \$7 an hour jobs," said Bledsoe - are calling to inquire about assistance.

"We have seen more phone calls and had more inquiries. I wouldn't say we've necessarily put those people on the rolls," she said.

Often, she added, the amount of assistance such people can get through Work First - the maximum monthly payment is \$215 - is not enough to meet their needs, like high mortgages.

"They get appalled about the meager assistance they can get, too," said Wall. "They're very frustrated because they have paid into the system and they feel it's their time to benefit from that," added Bledsoe.

The best hope for such people, said Bledsoe, is that the economy will improve. "Basically, for them, it's that labor market that's got to pick up."

Program helps residents off welfare rolls

Whiteville News Reporter - 6-12-03
By RAY WYCHE

A fitting title for Al McKenzie's work would be "barrier remover."

McKenzie is supervisor of the Work First program at the Columbus County Department of Social Services, and it's his task to find employment for people on public assistance rolls in the county.

“We’re trying to eliminate barriers to employment for these people,” he says. “The folks we work with are people who are receiving a monthly check.”

McKenzie and his fellow workers in the Work First program have achieved success in their barrier-removal efforts; in June 1995, when the Work First program was started, Columbus County had 1,391 people on the rolls for public assistance.

“Since then, as of April 2003, we have reduced that number to 497,” McKenzie says.

The 64.27 percent decrease in the number of people receiving Social Service checks monthly came as the result of hard work and know-how.

“We have come further than a lot of departments in the state,” says Marva Scott, county director of Social Services, who supervised the Work First program in Wayne County Social Services, where she worked before assuming the Columbus County position.

The barriers that keep people unemployed are many but McKenzie and his staff have developed procedures to take care of most of the reasons people are unable to secure employment.

If an applicant for public assistance says she is unable to hold a job because of a new baby at home, McKenzie can arrange daycare for any child more than one year old.

“We refer them to our day care unit. They have to pay a small fee,” he says, but the child is in a supervised daycare setting that frees the parent to hold down a job outside the home.

Lack of transportation keeps many of the clients away from the workplace.

“One of our major barriers has been lack of transportation,” McKenzie says. That barrier has been removed through a contract with L and D Transport Service of Chadburn, a company that moves workers to and from their workplaces, including a daily roundtrip to the Myrtle Beach area.

If a client claims that he or she has no clothes suitable for wearing to work, Work First has funds to buy proper clothes. McKenzie says the department has bought many nurses¹ assistants¹ uniforms as many of the clients find employment as nurses¹ assistants.

If a client's barrier is illiteracy (the ability to read and write is required for most positions) and the applicant is lacking in this area, he is sent to Southeastern Community College's Basic Skills class to overcome this deficiency.

The Job Links program at SCC also provides training in social skills—how to get along with others in a workplace, how to report for work each scheduled day—if the client needs this training.

Some clients suffered from physical disabilities that prevent them from being employed, and in these cases, McKenzie and his crew send the applicant to Vocational Rehabilitation for evaluation and possible help.

Another barrier is lack of experience in any kind of working situation, and McKenzie has a plan for this type of roadblock. The client is assigned to an employer to work at no cost to the employer.

“They (the clients) learned what employers expect,” McKenzie says. “It's a real benefit. We provide them with a person to give that person work experience.”

McKenzie and his staff get information about people applying for assistance from intake specialists of the department. If it appears that the applicant is suitable for the Work First program the process starts with an interview.

“We assess them to see what their situation is,” he says.

If the interview shows that the client is employable “as is,” without the need of any corrective measures, the client is sent to the Employment Security Commission offices to check out the local job openings for which he may be qualified.

McKenzie spends much of his time serving as an employment agent for his clients.

“I actually contact employers,” he says, to see if there is an opening that his client may be able to fill. “I ask, ‘What kind of employee do you want?’”

McKenzie is picky about the jobs he places people in. Temporary jobs such as seasonal farm work are not ideal, as most clients want to join the workforce as permanent employees. And McKenzie and his staff are careful not to place a client in a position for which he is not qualified, a policy that bears fruit later on.

“It keeps us from setting him up to fail.”

Most of the clients enter the work force in entry-level positions and McKenzie encourages them to advance to higher rated jobs. Some people who were placed in nurses¹ assistant positions initially have moved on to earn certification as registered nurses.

“We try to talk to them about moving up — to use that job as a stepping stone,” he says. He is proud of those who have advanced from their first jobs.

“They used the program the way it was meant to be used,” he says.

Finding a job in Columbus County right now is difficult, McKenzie says, with the economic situation being what it is, and Social Services could use some help in attempting to place people in the employment ranks.

“Unfortunately, with our economy, there are not a lot of jobs in Columbus County. We want the community of Whiteville and Columbus County to help us. We can’t do it all by ourselves,” he says.

To explain the kind of help Work First can use, a workshop is being planned for next month, McKenzie says, “to give out information about our program and to let them (the public) know of the problems some of our citizens have.”

In his battles against barriers to employment, McKenzie has run into one he cannot remove: a felony conviction on a client’s record. Most beach hotels, a favorite spot for placing workers in first-time jobs, refuse to hire a housekeeper with a record showing a felony.

“That’s one barrier within itself that we can’t get around,” he says.

Not everyone who comes to Work First for help is accepted in the program. There are certain conditions that must be met.

“We say no if you don’t meet our criteria,” he says.

Work First is aimed at getting people off public assistance and into the workforce and there’s an intangible benefit to finding a person a job, McKenzie says.

“Our focus is to provide for them to gain employment and to be responsible. And we’ve seen some whose whole attitude changed as a result of finding a job,” McKenzie says.

An unemployed parent who is placed in a job has an effect other than material on children in the home, he says.

“It’s an incentive for children to stay in school,” he says.

McKenzie, raised in the Mt. Olive community northwest of Whiteville, is a graduate in social work from N.C. A&T University and has been with the Columbus County Department of Social Services since 1991. He is married to the former Tahitian McQueen who teaches in Bladen County schools.

***Social Services may let staff handle emergency funds**

Wednesday, Jul 16, 2003 - 12:51:02 pm EDT

By Cortney L. Hill, Salisbury Post

The Rowan County Department of Social Services is considering having its own staff handle emergency assistance funds for needy residents.

Currently, Social Services contracts with an outside agency to hand out those funds to local residents to pay for such things as rent, utilities and prescription medication.

By administering the program directly, Social Services could save 10 percent, which would mean more money to assist people in emergency situations.

"If we get the four extra staff members the county has already budgeted for, the extra money wouldn't have to go towards administration costs," said Sandra Wilkes, Social Services director, during the Rowan County Board of Social Services meeting Tuesday night.

"It could be used in conjunction with food stamps, Medicaid and keeping families off of Work First."

"We are exploring how we can handle these funds once we get the additional staff in October," said Pat Spears, income maintenance supervisor. To qualify for the Emergency Assistance Program, residents must have children in the home and have incomes less than the federal poverty income guideline.

Last year, Social Services received \$133,738 in emergency assistance funds, Spears said. The money comes from the federal government.

"The emergency assistance program was a contract handled by the Salvation Army last year," Wilkes said. "In the middle of the year, DSS decided to end the contract with the Salvation Army and gave it to Rowan Helping Ministries to finish out."

Wilkes would not say why Social Services ended the contract with the Salvation Army, but between them, the two agencies got 10 percent of the total for administering the service.

Rowan Helping Ministries, a nonprofit agency, already has a contract agreement with Social Services to distribute Crisis Intervention Program funds.

"These are funds that assist families with paying heating and cooling(bills),"Wilkes said. "We received \$86,000 last year for this program."

The board approved Rowan Helping Ministries handling this contract for another year.

Both the Crisis Intervention funds and the Emergency Assistance funds are renewed annually.

Social Services has until September to decide whether to administer the emergency assistance money.

"If we're not able to handle the contract, then we'll ask the board to approve another agency handling it," Wilkes said.

"If managing the contract here means more money, I'm all for doing it here," said board member Leda Belk. "That extra money would help us to assist more people."

Before the agency can agree to handle the funds, "I must make sure we'll have the staff to handle the extra money," Spears said.

Contact Courtney L. Hill at 704-797-4249 or chill@salisburypost.com.

DSS worker implements two interests - language and law enforcement

Donkel uses background to help Hispanics

BY ANDREW MACKIE

Hickory Daily Record Staff Writer

Monday, July 21, 2003

HICKORY - Having spent more than a decade in Central and South America, Rick Donkel has a special understanding of the Hispanic culture.

A child support agent with the Catawba County Department of Social Services, Donkel enforces court orders and explains its requirements to his clients, many of whom are Hispanic.

He lived 14 years in Panama and traveled extensively throughout the region during the 1980s and '90s as a security specialist with the U.S. Army military police.

"Being aware of the culture makes it much easier to manage the cases," he said. Two years ago, Donkel started a program geared toward offering child support services to Hispanics in an effort to make them more self-sufficient.

The program earned Donkel an excellence in service award from the North Carolina Child Support Council in May.

Donkel helped to translate state application forms for child support into Spanish, after realizing many Hispanics didn't understand the documents.

He also reviewed DSS' Hispanic cases and works to educate the Hispanic community about the agency's services.

Since the beginning of the program, DSS officials say the number of Hispanics receiving child support services has risen along with improved communication and better child support collection.

In addition to using his language skills in serving the county's Hispanic population, Donkel also interprets occasionally for area law enforcement agencies and other DSS programs.

His role with DSS allows Donkel to implement his two interests, language and law enforcement.

Donkel comes from a three-generation Army family.

He received Spanish language training while in the Army and was stationed in Panama from the mid-1980s to the late 1990s.

After retiring from the Army in 1997, he worked with several international companies as a security consultant.

In 1999, Donkel and his wife decided to move back to United States.

He worked one year in Mecklenburg County as a child support agent. The following year, Donkel landed his current job with DSS.

"I couldn't keep my hands out of law enforcement," he said.

With an extensive experience in law enforcement and military security training, Donkel went back to school to get his basic law enforcement certification. Along with his DSS duties, he works security part-time at Catawba Valley Medical Center.

"It makes me feel good to have taken military training and put it to use here after I'm retired and be of benefit to Catawba County," Donkel said.

amackie@hickoryrecord.com | 322-4510 x252

Appendix D: Correspondence Regarding Release of Information in Child Fatalities

December 1, 1999, to Attorney General Michael Easley from Charles C. Harris, Chief, Children's Services Section

January 7, 2000, to Charles C. Harris, Chief, Children's Services Section from Assistant Attorney General David Gordon



North Carolina Department of Health and Human Services
Division of Social Services

325 North Salisbury Street • Raleigh, North Carolina 27603
Courier # 56-20-25

James B. Hunt, Jr., Governor
H. David Bruton, M.D., Secretary

Kevin M. FitzGerald, Director
(919) 733-3055

December 1, 1999

Attorney General Michael Easley
Post Office Box 629
Raleigh, North Carolina 27602

Dear Mr. Easley:

In the process of conducting child fatality reviews in accordance with G.S. 143B-150.20, the Division of Social Services has encountered several questions related to confidentiality on which we would like to have a legal opinion. Please consider these issues and provide a response as soon as possible.

First, the current law regarding child fatality reviews conducted by the Division requires us to make the findings and recommendations public. The law specifically states that the purpose of these reviews is to: (1) implement a team approach to identifying factors which may have contributed to conditions leading to the fatality; (2) to develop recommendations for improving coordination between local and state entities which might have avoided the threat of injury or fatality; and (3) to identify appropriate remedies.

As we have published the findings and recommendations from the child fatality reviews, we have encountered concern from advocates, the press, and community members about the lack of background information about the child and his/her circumstances prior to the death. Specifically, the public wants to know:

- a) living situation of the child at the time of death, including address and identity of other household members;
- b) specific information about how the child died ("story" behind the death);
- c) list of agencies involved in the child and family's life;
- d) list of DSS reports of child abuse and neglect with dates, whether accepted for investigation or not, and whether or not the report(s) were substantiated;
- e) was the report accepted under the proper statutory definition;
- f) content of interviews conducted as part of the investigation of these reports;
- g) basis for decision to accept for investigation or not and to substantiate or not;
- h) why the child was not removed from the home;
- i) use of collaterals, including medical/psychological assessment specialists, during the investigation;

Dear Michael Easley
December 1, 1999
Page 2

- j) involvement of law enforcement during the investigation;
- k) services provided by DSS and other agencies following the investigation;
- l) referrals made by DSS to other agencies to assist the child and/or family.

These concerns present us with the dilemma of balancing the public's need to have information for the purpose of preventing future fatalities and the protection of case-specific information as required in G.S. 7B.302. Please provide us with clear guidance about what constitutes "case specific information". As part of the response, please advise us about the extent to which each of the items listed above can be disclosed in a public child fatality review report.

Secondly, the consistent findings of the child fatality review teams have included the need for improved information sharing among agencies that are involved with the same families. Time and again, the review teams find a need for greater coordination of effort among local agencies working with the same family. These agencies frequently tell review team members that they are prevented by confidentiality requirements from sharing information unless they have the written consent of the family or have sufficient information to make a formal report of child abuse or neglect. G.S. 7B.302 clearly allows the DSS to request information from other agencies as part of providing child protective services. Can a representative of a local public or private human service, medical, mental health, or law enforcement agency that is actively involved in providing services to a family, make inquiry to another agency about whether or not the second agency is also providing services to the family, without the written consent of the family? The purpose of this inquiry would be to share information about the nature and scope of services being provided in order to assure coordination of effort. Please provide us with clear guidance on this question.

We greatly appreciate your attention to this request for clarification and guidance. The Division of Social Services is interested in making sure that our statutes and policies regarding confidentiality do not hinder our capacity to protect children. Our capacity to protect children is enhanced when communities have the information that they need to prevent child fatalities and when local agencies coordinate their efforts to provide services to families.

Please call me if you have any questions or need clarification of our request. My number is (919) 733-9467. Thank you for your careful consideration of our request for interpretation and guidance.

Sincerely,



Charles C. Harris, Chief
Children's Services Section

Cc: Sara Anderson Mims



State of North Carolina
Department of Justice

MICHAEL F. EASLEY
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH
27602-0629

MAILING ADDRESS
C/O DHR EASTERN REGIONAL OFFICE
DIVISION OF SOCIAL SERVICES
404 ST. ANDREWS DRIVE
GREENVILLE, N.C. 27834-6896
(919) 355-9038

January 7, 2000

Charles C. Harris, Chief
Children's Services Section
Division of Social Services

Re: Release of Information in a Child Fatality Review Report

Dear Chuck:

The Attorney General received your letter dated December 1, 1999, concerning the disclosure of information in a child fatality review report, and he has referred it to me for a response.

As you are aware, after reviewing pertinent federal and state law and regulations in effect at the time, we concluded in our November 21, 1991, opinion to then Counsel for the Governor, James R. Trotter, that case-specific information contained within a child fatality review report was not subject to the Public Records Act. We further concluded, however, that in balancing the public's right to know against the privacy interests of third parties, the following categories of information could be released by the Division of Social Services upon its review of a child fatality:

1. The name of the deceased child;
2. The fact that an investigation was conducted by the county DSS;
3. The fact that the State DSS reviewed the county DSS procedures;
4. The result of that review to the extent that it does not disclose any case-specific information; and
5. Matters of public record by reference to the public record, such as a conviction for child abuse.

What constitutes case-specific information as that term is used above requires an analysis of the facts and circumstances of each case. In ordinary usage, "case" means "situation", "event", "happening", or "circumstances". Synonyms for "specific" are "special" or "explicit". See, *Webster's New Collegiate Dictionary* (1977 Edition). Thus, in my opinion, case-specific information is any unique or distinct fact or circumstance pertaining to a particular child fatality.

Later, in our April 4, 1997, opinion to Kevin FitzGerald, Director of the Division of Social Services, we concluded that in a child fatality case, a director of a county department of social services could also release the same five categories of information when the county DSS has had prior protective services involvement with the family and

the Division will be conducting a formal review. In that opinion, we referenced one of the 1996 Amendments to the Child Abuse Prevention and Treatment Act (CAPTA) set forth in 42 U.S.C.A. 5106a(b)(2)(A)(vi) which provides that a state, in order to be eligible for CAPTA grants-in-aid, must certify that it has in effect and is enforcing a state law, or has in effect and is operating a statewide program relating to child abuse and neglect that includes, "provisions which allow for public disclosure of the findings and information about the case of child abuse or neglect which has resulted in a child fatality or near fatality". We concluded, however, that while the Amendment could have a future impact, there had been no changes at that time in our state law or regulations cloaking protective services information with a mantle of strict confidentiality.

Since the above opinions were rendered, our General Assembly has enacted legislation, effective August 29, 1997 and now codified as N.C.G.S. § 7B-2902, which pertains to the disclosure of information in child fatality or near fatality cases. This statute basically provides that subject to the limitations set forth in subsections (c) through (f), when there is a child fatality or near fatality and a person is criminally charged or the district attorney certifies that a person would have been charged but for that person's prior death, a public agency, upon request, shall disclose a written summary of its findings and information related to a child fatality or near fatality. Effective July 1, 1998, our General Assembly also established through legislation a State Child Fatality Review Team with a specific purpose, powers and duties. See, N.C.G.S. § 143B-150.20. This statute basically provides for in-depth reviews of any child fatalities that have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the child fatality. It further provides that the Division of Social Services shall make public **the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities.** (Emphasis Added). Other provisions of this statute, however, provide that confidential information and records acquired or created by the Team are confidential...and may only be disclosed as necessary to carry out the purposes of the Team, that the Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive action, and that minutes or other information generated during any executive session shall be sealed from public inspection. It also specifically provides that the Team shall consult with the appropriate district attorney in accordance with G.S. 7B-2902(d) prior to the public release of its findings and recommendations.

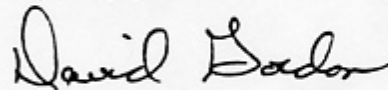
Reading the above statutes together, I conclude that what information State DSS (including the Team) or a county DSS can disclose or not disclose relating to a child fatality, or how a child fatality review report must be drafted, depends in large part upon whether someone is criminally charged with the particular child fatality reviewed or the district attorney certifies that a person would have been charged but for that person's prior death. If nobody has been criminally charged or the district attorney is not in a position to make the above certification, then State DSS (including the Team except for its findings and recommendation relating to improving coordination between local and State entities) or a county DSS, is limited by confidentiality provisions of federal and state law to the five things set forth in the prior Attorney General's opinions. If the situation is otherwise, then State DSS (including the Team) or a county DSS, after consulting with the district attorney, shall provide, upon request, a written summary of its findings and information, as defined in N.C.G.S. § 7B-2902(d), pertaining to the child fatality or near fatality. In such a case, the findings and information contained within the child fatality review report of the Team, in my opinion, may include most of information

you listed in sections a. through l. of your letter as to what the public wants to know. However, I caution against listing in the child fatality review report every agency involved in the child and family's life nor would I identify by name all household members, interviewees, collaterals, including medical/psychological specialists, or include any other information specifically limited by subsections (c) through (f) of the statute.

Finally, you have asked whether a representative of a local public or private human services, medical, mental health, or law enforcement agency that is actively involved in providing services to a family, can make inquiry of another agency, without the written consent of the family, as to whether or not the second agency is also providing services to the family. Since your inquiry is broad and depends upon various and sundry federal and state confidentiality requirements applicable to each particular agency, there is no way for me to give you clear guidance. I can state, however, from my years of providing legal services in the child welfare services areas that, I, too, am aware of the constraints on the sharing of client information. I am also aware that in general, until there has been a child abuse and neglect report, or the filing of a juvenile petition when certain designated local agencies can share information pursuant to new N.C.G.S. § 7B-3100, many of the agencies you mention are subject to similar restrictions on the sharing of their client's information as a local department of social services.

If you have any questions concerning the above, please feel free to call on me. Note that this is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Very truly yours,



David Gordon
Assistant Attorney General

MDG/