

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 654*

Short Title: Amend MH Confidentiality Statutes.

(Public)

Sponsors: Senator Metcalf.

Referred to: Health & Human Resources.

April 1, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CONFIDENTIALITY PROVISIONS OF CHAPTER
3 122C OF THE GENERAL STATUTES TO PERMIT IMPLEMENTATION OF
4 MENTAL HEALTH SYSTEM REFORM.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 122C-3. Definitions.**

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

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

13 ..."

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

15 "**§ 122C-3. Definitions.**

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

18 ...

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

23 a. An "area facility", which is a facility that is operated by or
24 under contract with the area ~~authority~~ authority or county
25 program. For the purposes of this subparagraph, a contract is a
26 contract, memorandum of understanding, or other written
27 agreement whereby the facility agrees to provide services to one
28 or more clients of the area authority or county program. A
29 ~~facility that is providing services under contract with the area~~

1 authority is an area facility for purposes of the contracted
 2 services only. Area facilities may also be licensable facilities in
 3 accordance with Article 2 of this Chapter. A State facility is not
 4 an area facility;

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

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

37 **"§ 122C-54. Exceptions; abuse reports and court proceedings.**

38 ...

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

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

1 **"§ 122C-55. Exceptions; care and treatment.**

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

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

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

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

1 eligibility for benefits, determine continued eligibility over time, and obtain
2 reimbursement for the costs of services provided to the client.

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

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

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

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

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

42 (e) A responsible professional may exchange confidential information with a
43 physician or other health care provider who is providing emergency medical services to

1 a client. Disclosure of the information is limited to that necessary to meet the
2 emergency as determined by the responsible professional.

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

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

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

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

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

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

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

42 (k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206, upon
43 request of the next of kin or other family member who has a legitimate role in the
44 therapeutic services offered, or other person designated by the client or his legally

1 responsible person, the responsible professional shall provide the next of kin, or family
2 member, or the designee, notification of the client's admission to the facility, transfer to
3 another facility, decision to leave the facility against medical advice, discharge from the
4 facility, and referrals and appointment information for treatment after discharge, after
5 notification to the client that this information has been requested.

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

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

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

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

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

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