Confidentiality in MH Records – NC General Statute 122C-52

- Information acquired in attending to or treating a client is confidential and is not a public record under Chapter 132 of the General Statutes.
- No individual having access to confidential information may disclose that information.
- Each client has the right that no confidential information acquired be disclosed by the facility.
- Unauthorized disclosure of confidential information is a Class 3 misdemeanor, and is punishable by a fine up to $500.

Exceptions to the rules on confidentiality, under 122C-53:

- may disclose confidential information if the client or their legally responsible person consents **in writing** to the release of information. The release is:
  - to a specified person
  - valid for a specific length of time, and
  - subject to revocation by the client.
- the fact of admission or discharge **may** be disclose to the client’s next of kin whenever the responsible professional determines that disclosure is in the best interest of the client.
- the client or their legally responsible person (except as provided by GS 90-21.4(b)) shall have access to confidential information in the client record **except** for information that would be injurious to the client’s physical or mental well being.
  - this determination is made by the attending physician or the facility director in the physician’s absence
  - if the refusal to disclose is based on this determination, the client may request that the information be sent to a physician or psychologist of the client’s choice.
  - if the client requests the information be sent to a physician or psychologist, the information shall be provided by the facility to that physician/psychologist.

**Client advocates** NC GS 122C-53(g)

- An internal advocate (e.g. DSS or a GAL) shall be granted, without the consent of the client or his legally responsible person, access to routine reports and other confidential information necessary to fulfill his monitoring and advocacy functions. The advocate may disclose the information received to:
  - the client involved,
  - the client’s legally responsible person
  - the director of the facility or his designee,
- other individuals within the facility who are involved in the treatment or habilitation of the client
- any further disclosure requires the **written consent** of the client and his legally responsible person

- An external advocate (e.g. NAMI) shall have access to confidential information only upon the **written consent** of the client and his legally responsible person.

**Client’s attorneys NC GS 122C-53(i)**
- A facility shall disclose to an attorney confidential information relating to a client, upon the request of the client or his legally responsible person.

**Court proceedings NC GS 122C-54**
- A facility shall disclose confidential information if a court of competent jurisdiction orders disclosure.
- a facility may disclose confidential information for the purposes of filing a petition for involuntary commitment or filing a petition for adjudication of incompetency if disclosure is determined to be in the best interest of the client by the facility director or his designee.
- if an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the court, the results of that exam may be sent to the Clerk of the Court, to the prosecutor, and to the attorney of record for the client.
- certified copies of written results of exams by physicians and records of voluntary or involuntary clients shall be furnished to the State’s attorney, the client’s counsel, and the Court in District Court commitment hearings.
- information disclosed during commitment hearings may be disclosed upon written motion and upon determination by the judge that disclosure is appropriate and if disclosure is in the best interest of the client or the public.
- the court records of commitment hearings for minors may be expunged:
  - upon request of the minor his legally responsible person
  - after the minor has been released and reached adulthood
- a state facility and the psychiatric service of UNC hospitals at Chapel Hill may disclose confidential information to staff attorneys of the Attorney General’s office whenever the information is necessary to the performance of the statutory responsibilities of the AG’s office.
- a facility may disclose information to an attorney who represents either the facility or an employee of the facility if such information is relevant:
  - to litigation
  - to the operations of the facility or
  - the provisions of services by the facility

An employee may discuss confidential information with his attorney or with an attorney representing the facility in which he is employed.
Documentation of disclosure
  ❖ name of recipient
  ❖ extent of information disclosed
  ❖ specific reasons
  ❖ date
  ❖ signature of individual making disclosure