

Analysis of the HIPAA Privacy Rule And Selected North Carolina Statutes Version B: Sorted by State Statute

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**Approved for Public Distribution
December 11, 2001**

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* This analysis is intended to reflect the collective conclusions of the State Law Work Group and does not represent the opinions or conclusions of any of the organizations or agencies represented by individual members of the group.

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 7B-302— Child Protective Services Any person must report known or suspected child abuse or neglect, child dependency, and child deaths believed to be due to maltreatment to the county DSS.</p>	<p>160.203(c) Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or injury or child abuse. See 160.203(c). ▪ Even without the specific preemption exception, reporting would be permitted because <ul style="list-style-type: none"> o HIPAA permits disclosures that are required by law. See 164.512(a). o HIPAA permits disclosures for reporting child abuse and neglect under the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>160.203(c) 164.512(b)</p>
<p>GS 7B-302— Child Protective Services The DSS director or his representative may demand any records or information, including confidential medical information, that he believes may be relevant to a CPS investigation.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA specifically excepts from preemption laws that provide for the reporting of disease or injury or child abuse (160.203(c)), however this provision goes beyond reporting and permits the DSS director or his representative to demand confidential medical information. To the extent that the authority to demand the information implies for the person from whom it is demanded a duty to disclose it, disclosure would be permitted under HIPAA as a disclosure required by law. See 164.512(a). ▪ Even if it is determined that disclosure is not required by law, HIPAA's public health exception would permit disclosing PHI to public health authorities authorized by law to receive reports of child abuse and neglect. See 164.512(b). It is not clear whether HIPAA permits disclosure of PHI beyond the actual report. 	<p>Further analysis required</p>	<p>160.203(c) 164.512(b)</p>
<p>GS 7B-601— Child Protective Services Court-appointed guardian ad litem may demand any records or information, including confidential medical information, that she believes may be relevant to her representation of a child in a CPS case.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA specifically excepts from preemption laws that provide for the reporting of disease or injury or child abuse, however this provision goes beyond reporting and permits the guardian ad litem to demand confidential medical information. To the extent that the authority to demand the information implies for the person to whom it is demanded a duty to disclose it, disclosure would be permitted under HIPAA as a disclosure required by law. See 164.512(a). ▪ Assuming the disclosure is for a judicial or administrative proceeding, the covered entity would also need to ensure that disclosure complied with 164.512(e). The entity may 	<p>Further analysis required</p>	<p>164.512(e)</p>

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		<p>disclose PHI without individual permission (including, where applicable the authorization of the parent, guardian or person acting in loco parentis) in a judicial or administrative proceeding as follows:</p> <ul style="list-style-type: none"> o Pursuant to an order of a court or administrative tribunal o Pursuant to a subpoena, discovery request, or other lawful process that is not accompanied by an order if the entity receives satisfactory assurances that reasonable efforts have been made to notify the individual or secure a qualified protective order <p>See 164.512(e).</p>		
<p>GS 7B-1413— Child Fatality Reviews The State Child Fatality Prevention Team, the Local Teams (community child protection team) and the NC Child Fatality Task Force shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out its purposes, including health records, mental health records and social services records.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 8-53— Physician/surgeon privilege Authorizes a judge or the Industrial Commission to compel disclosure of otherwise privileged information if such disclosure is in the judge's opinion necessary to a proper administration of justice.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits a covered entity to disclose PHI without individual permission in response to an order of a court or an administrative tribunal (provided that the entity only discloses the PHI expressly authorized by such order). The Industrial Commission would likely be serving as an administrative tribunal. ▪ In addition, HIPAA permits a covered entity to disclose PHI without individual permission "as authorized by and to the extent necessary to comply" with workers' comp laws. See 164.512(j). 	<p>Consistent</p>	<p>164.512(j) 164.508(a)</p>
<p>GS 8-53— Physician and surgeon privilege</p> <ul style="list-style-type: none"> ▪ Physicians and surgeons shall not be required to disclose any information which they may have acquired in attending a patient ... and which was necessary to enable them to [care for the patient]. ▪ Information subject to this privilege may not be considered a public record. ▪ Confidential information obtained [sic] in medical records 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ The statement about information being furnished <i>only</i> on authorization could be interpreted as being more protective than HIPAA; however, this provision has never been construed to mean that confidential information may not be released when release is otherwise permitted or required by law and probably would not be so construed in the context of a large number of statutes (authorizing or requiring disclosures) that would thus be rendered meaningless. 	<p>Further analysis required</p>	

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shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or in the case of unadministered estates, the next of kin.		Should review in detail how this statute has been interpreted and applied in practice.		
<p>GS 8-53— Deceased Confidential information in medical records pertaining to patients shall be furnished only on the authorization of the patient, or if deceased, the executor or administrator, or in the case of unadministered estates, the next of kin.</p>	164.502(f) Uses and disclosures: deceased	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. <ul style="list-style-type: none"> ○ HIPAA requires that covered entities comply with the privacy regulation with respect to PHI of deceased individuals. HIPAA would permit many different disclosures without individual permission. ○ NC only permits PHI of a deceased individual to be disclosed pursuant to an authorization of executor, administrator, or next of kin. It is unlikely that this statute is construed so strictly as to prohibit all disclosures without such authorization. For example, other state statutes require disclosure such as GS 130A-385, disclosures to medical examiners. Should examine how this statute has been interpreted and is applied in practice. ○ A HIPAA consent obtained from the individual prior to death would permit use and disclosure to continue after the individual's death (e.g., for the covered entity's treatment, payment and health care operations). See 164.506. In addition, HIPAA permits many disclosures without consent or authorization. See 164.512. Not clear how this provision of the NC statute will interact with HIPAA. For example, one question is would the HIPAA consent be sufficient to satisfy the NC requirement for an authorization or vice versa (even if it is from the individual and not one of the persons named in the statute). Another question is whether disclosures that are permitted by other NC statutes and permitted by HIPAA would be prohibited without this authorization (because this state requirement may be more protective). See also 164.502(g)(4). 	Inconsistent	164.502(g) 164.506 164.512
<p>GS 8-53.1— Child Protective Services Physician-patient privilege is not grounds for excluding evidence regarding the abuse or neglect of a child under 16 or regarding an illness or injuries to such child in any judicial proceeding relating to a CPS report.</p>	164.512(e) Exceptions: Judicial/Admin	<ul style="list-style-type: none"> ▪ A covered entity may disclose PHI without individual permission (including, where applicable the authorization of the parent, guardian or person acting in loco parentis) in a judicial or administrative proceeding as follows: <ul style="list-style-type: none"> ○ Pursuant to an order of a court or administrative tribunal ○ Pursuant to a subpoena, discovery request, or other 	Further analysis required	164.501 164.508(a) 164.512(a)

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		<p>lawful process that is not accompanied by an order if reasonable efforts have been made to notify the individual or secure a qualified protective order</p> <ul style="list-style-type: none"> ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 		
<p>GS 8-53.3— Child Protective Services Psychologist-client privilege is not grounds for failing to report suspected child abuse or neglect.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for injury and child abuse reporting. This preemption exception may not be applicable because the NC statute is not requiring reporting but rather stating that privilege is not grounds for failing to report. Another statute specifically requires such reporting. See GS 108A-102(a). ▪ Even without the specific preemption exception, HIPAA’s public health exception would permit disclosures of PHI without individual permission to public health authorities authorized by law to receive reports of abuse or neglect. See 164.512(b) 	<p>Consistent</p>	<p>164.512(b)</p>
<p>GS 8-53.3— Adult protective services Psychologist-client privilege is not grounds for failing to report a disabled adult suspected to be in need of protective services.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for injury reporting. To the extent that the reporting requirement relates to reporting of injuries, it would most likely not be preempted. ▪ Even without the specific preemption exception, HIPAA’s abuse, neglect or domestic violence exception would permit disclosure in some circumstances. See 164.512(c). 	<p>Consistent</p>	<p>164.512(c)</p>
<p>GS 8-53.3— Psychologist privilege</p> <ul style="list-style-type: none"> ▪ Licensed psychologists and licensed psychological associates and their employees/associates shall not be required to disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him to her to practice psychology. ▪ Judge may order disclosure of information otherwise subject to psychologist-client privilege if in the judge’s opinion it is necessary to the proper administration of justice. 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Consistent</p>	<p>164.501 164.508(a) 164.512(a)</p>

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<p>GS 8-53.3— Child Protective Services Psychologist-client privilege is not grounds for excluding evidence regarding a child’s maltreatment in any judicial proceeding pertaining to that maltreatment.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ A covered entity may disclose PHI without individual permission (including, where applicable the authorization of the parent, guardian or person acting in loco parentis) in a judicial or administrative proceeding as follows: <ul style="list-style-type: none"> o Pursuant to an order of a court or administrative tribunal o Pursuant to a subpoena, discovery request, or other lawful process that is not accompanied by an order if reasonable efforts have been made to notify the individual or secure a qualified protective order ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Further analysis required</p>	<p>164.501 164.508(a) 164.512(a)</p>
<p>GS 8-53.3— Adult Protective Services Psychologist-client privilege is not grounds for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult in any judicial proceeding pertaining to that maltreatment.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ A covered entity may disclose PHI without individual permission (including, where applicable the authorization of the parent, guardian or person acting in loco parentis) in a judicial or administrative proceeding as follows: <ul style="list-style-type: none"> o Pursuant to an order of a court or administrative tribunal o Pursuant to a subpoena, discovery request, or other lawful process that is not accompanied by an order if reasonable efforts have been made to notify the individual or secure a qualified protective order ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Further analysis required</p>	<p>164.501 164.508(a) 164.512(a)</p>
<p>GS 8-53.5— Marital/family therapist privilege</p> <ul style="list-style-type: none"> ▪ Testimonial privilege for persons duly authorized as certified marital and family therapists and their employees/associates. ▪ Judge may order disclosure of information otherwise subject to marital and family therapist-client privilege if in the judge’s opinion it is necessary to the proper administration of justice 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent ▪ HIPAA would apply if the marital/family therapist is either: <ul style="list-style-type: none"> o a covered entity (i.e., a health care provider that transmits PHI in connection with a HIPAA transaction), or o a member of a covered entity’s workforce ▪ HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or 	<p>Consistent</p>	<p>164.501 164.508(a) 164.512(a)</p>

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		<p>administrative tribunal.</p> <ul style="list-style-type: none"> ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 		
<p>GS 8-53.7— Social worker privilege</p> <ul style="list-style-type: none"> ▪ Testimonial privilege for persons engaged in delivery of private social work services and certified pursuant to GS Ch. 90B. ▪ Judge may order disclosure of information otherwise subject to social worker-client privilege if in the judge’s opinion it is necessary to the proper administration of justice and such disclosure is not prohibited by other statute or regulation 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent ▪ HIPAA would apply if the social worker is either: <ul style="list-style-type: none"> o a covered entity (i.e., a health care provider that transmits PHI in connection with a HIPAA transaction), or o a member of a covered entity’s workforce ▪ HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Consistent</p>	<p>164.501 164.508(a) 164.512(a)</p>
<p>GS 8-53.8— Counselor privilege</p> <ul style="list-style-type: none"> ▪ Testimonial privilege for persons licensed as counselors pursuant to GS Ch. 90 Art. 24. ▪ Judge may order disclosure of information otherwise subject to counselor-client privilege if in the judge’s opinion it is necessary to the proper administration of justice and such disclosure is not prohibited by other statute or regulation. 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent ▪ HIPAA would apply if the counselor is either: <ul style="list-style-type: none"> o a covered entity (i.e., a health care provider that transmits PHI in connection with a HIPAA transaction), or o a member of a covered entity’s workforce ▪ HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Consistent</p>	<p>164.501 164.508(a) 164.512(a)</p>

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<p>GS 8-53.9— Optometrist privilege</p> <ul style="list-style-type: none"> ▪ Testimonial privilege for optometrists. ▪ Judge may order disclosure of information otherwise subject to optometrist-patient privilege if in the judge's opinion it is necessary to the proper administration of justice and such disclosure is not prohibited by other statute or regulation. 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 14-45.1(c)— Abortions</p> <p>DHHS shall prescribe and collect on annual basis from hospitals and clinics that perform abortions "such representative samplings of statistical summary reports concerning the medical and demographic characteristics of the abortions ...as it shall deem to be in the public interest." Hospitals and clinics shall be responsible for providing these reports to DHHS. "The reports shall be for statistical purposes only and the confidentiality of the patient relationship shall be protected."</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. ▪ In addition, HIPAA specifically excepts from preemption laws that provide for the conduct of public health surveillance, investigation, or intervention. See 160.203(c). It is possible that these reports would qualify as public health surveillance, investigation or intervention and therefore would not be preempted. 	<p>Consistent</p>	<p>160.203(a)</p>
<p>GS 20-9.1— Motor Vehicles</p> <p>Physicians or psychologists may, after consultation with the patient, disclose to Commissioner of Motor Vehicles information about a patient with a mental or physical disability that may affect the patient's ability to safely operate a motor vehicle. Disclosure must be limited to patient's name, address, date of birth, and diagnosis. Information provided to the Commissioner is confidential and to be used only for purposes of determining patient's qualification to drive. A physician or psychologist acting in good faith and disclosing or not disclosing pursuant to this section is immune from civil liability.</p>	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. HIPAA requires authorization for this type of disclosure. <ul style="list-style-type: none"> o Disclosures to the Commissioner would not be considered part of treatment, payment and health care operations and therefore would not be permitted pursuant to the consent. o Disclosure is not required by law o Disclosure is not otherwise permitted under HIPAA ▪ The NC statute already requires consultation with the patient so the provider could simply ask the individual to sign the authorization after the consultation. If, however the patient refuses to sign, it appears that the NC statute would still permit the provider to disclose (but HIPAA would not permit it). The consultation required by the NC statute is an added protection (HIPAA does not require covered entities to discuss disclosures or authorizations with the patient). ▪ With regard to redisclosure of information by the Commissioner, the Commissioner is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Inconsistent</p>	

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<p>GS 20-17.1— Motor Vehicles Commissioner of Motor Vehicles, upon being notified that a person has been adjudicated incompetent or has been involuntarily committed for treatment of alcoholism or drug addiction, must inquire into the facts to determine whether the person is competent to operate a motor vehicle. Persons in charge of institutions for the treatment of alcoholism or drug addiction must furnish such information as may be required for effective enforcement of this section. Such information shall be confidential. Any person or agency who provides the required information is immune from civil liability.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 32A-2(9)— Power of Attorney Authorizes attorney-in-fact to provide for medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, children, and other dependents of the principal. Provides that if an attorney-in-fact's health care decisions contradict the decisions of a health care agent (see NCGS 32A-19), the health care agent's decisions overrule the attorney-in-fact's decisions.</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; the attorney in fact has legal authority to act for the individual and thus would be treated as a personal representative under HIPAA. 	<p>Consistent</p>	
<p>GS 32A-19—Power of Attorney: Health Care Agent A principal may by health care power of attorney grant a health care agent full power and authority to make health care decisions to the same extent the principal could make those decisions for himself or herself if he or she had understanding and capacity.</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; the health care agent has legal authority to make health care decisions for the individual and thus would be treated as a personal representative with respect to those decisions under HIPAA. 	<p>Consistent</p>	
<p>GS 32A-28 et seq.— Unemancipated minors A custodial parent who is competent and 18 years of age or older may authorize another adult to consent to health care for the parent's child in the parent's absence.</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; the authorized adult has legal authority to consent to health care act for the child and thus must be treated as a personal representative with respect to consent to use or disclose PHI. 	<p>Consistent</p>	
<p>GS 50-13.2— Unemancipated minors Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; this provision may be contrary to HIPAA (164.502(g)) but would not be preempted because HIPAA specifically exempts from preemption "any State law to the extent that it authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or person acting <i>in loco parentis</i> of such minor." See 160.203(b) (preemption exception); 	<p>Consistent</p>	<p>160.202 160.203(b)</p>

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		<p>160.202 (Definition: More stringent).</p> <ul style="list-style-type: none"> ▪ This provision may not be contrary to HIPAA in that it may simply be ensuring equal access whatever that access may be. Should examine how this statute has been interpreted and applied in practice. 		
<p>GS 51-2A – Guardian ad Litem Provides for the mandatory appointment of a guardian ad litem for a person age 14-16 who seeks to marry. A person in that age range may only marry if she is pregnant or a mother or he is the putative father of a born or unborn child, and only if a district court issues an order authorizing the marriage.</p> <ul style="list-style-type: none"> ▪ The guardian ad litem has the authority to obtain any information or reports, whether or not confidential, that the guardian ad litem deems relevant to the case. No privilege other than attorney-client privilege may be invoked to prevent such access. ▪ The confidentiality of the information shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made by anyone except as ordered by the court or unless otherwise provided by law. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; disclosure to the guardian ad litem would be consistent; HIPAA permits disclosures without individual permission that are otherwise required by law. ▪ Redislosure of the information obtained by the guardian ad litem is likely beyond the scope of HIPAA (as the guardian ad litem would not be a covered entity). 	<p>Consistent</p>	
<p>GS 58-2-105—Information Held by Dept. of Insurance Patient medical records in the hands of the Dep't of Insurance are confidential and are not public records.</p>	<p>164.502(e) Uses and disclosures: Business associates</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; DOI is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	
<p>GS 58-2-185— Insurance record keeping All companies, agents, or brokers doing any kind of insurance business in NC must make and keep a full and correct record of their business, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from the records must be furnished to the Commissioner of Insurance on demand and the original books of records shall be open to the Commissioner's inspection on demand.</p>	<p>160.203(d) Preemption: Exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption state laws requiring health plans to report or provide access to information for purposes of management or financial audits, program monitoring and evaluation, or licensure/certification of facilities or individuals. ▪ Even without the specific preemption exception, disclosure without individual permission would be permitted because disclosure is required by law. See 164.512(a). Disclosure would likely also be permitted as an oversight activity. See 164.512(d). 	<p>Consistent</p>	<p>164.512(a) 164.512(d)</p>

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<p>GS 58-39-30— Insurance/Marketing An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.</p>	<p>164.514(e) Other reqmts: Marketing</p>	<ul style="list-style-type: none"> ▪ The NC statute applies when the insurer is obtaining information used solely for marketing or research purposes. In order to collect information for those purposes without authorization, the collection must be for use or disclosure as part of treatment, payment or health care operations or else fall within the exceptions identified by HIPAA. See, e.g., 164.512(i) (research). Marketing is considered part of health care operations as long as marketing communications to an individual comply with 164.514(e). ▪ HIPAA requires that covered entities make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure. See 164.502(b)(1). Given that the collection is intended “solely” for marketing or research, use or disclosure of information collected should be limited to the minimum necessary to accomplish those purposes. 	<p>Further analysis required</p>	<p>164.512(i) 164.502(b)</p>
<p>GS 58-39-35(1)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ comply with provisions of GS Ch. 58 Art. 38; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. Article 38 includes requirements for “readable insurance policies” such as minimum font size and calculation of a readability score. HIPAA is less specific in this regard because it only requires the authorization or consent to be written in “plain language.” See 164.508(c)(2); 164.506(c). 	<p>Inconsistent</p>	<p>164.506</p>
<p>GS 58-39-35(2)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ be dated; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA also requires authorizations and consents to include a date. See 164.508(c)(1)(vii); 164.506(c)(6). 	<p>Consistent</p>	<p>164.506</p>
<p>GS 58-39-35(3)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ specify the types of person authorized to disclose information about the individual; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Consistent with respect to authorizations; HIPAA requires the authorization to contain “[t]he name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.” See 164.508(c)(1)(ii). ▪ Inconsistent with respect to consents; if a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must use a consent 	<p>Consistent in part</p>	<p>164.506</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>form consistent with the HIPAA requirements. HIPAA requires the consent to explain that the entity may use or disclose health information for those three purposes (treatment, payment or health care operations). See 164.506(c)(1). It does not require further specific description of who within the entity may make a disclosure.</p>		
<p>GS 58-39-35(5)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ name the insurance institution or agent and identify by generic reference representatives of the institution to whom the individual is authorizing information to be disclosed; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Consistent with respect to authorizations; HIPAA requires the authorization to contain “[t]he name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.” See 164.508(c)(1)(iii). ▪ Inconsistent with respect to consents; if a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must use a consent form consistent with the HIPAA requirements. HIPAA does not require the consent to identify the intended recipient of the information. With respect to consents, therefore, the NC statute may be more protective. See 164.506(c)(1). 	<p>Consistent in part</p>	
<p>GS 58-39-35(8)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ advise the individual or a person authorized to act on behalf of the individual that the individual or the individual’s authorized representative is entitled to receive a copy of the authorization form. 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ If the covered entity is requesting the authorization, HIPAA requires the entity to provide the individual with a copy of the signed authorization. See 164.508(d)(2); 164.508(e)(2). HIPAA is most likely more protective in that NC only requires the insurance company to advise the individual (or legal representative) that s/he has the right to receive a copy. ▪ If the covered entity is not requesting the authorization, HIPAA does not require the entity to provide a copy. See 164.508(c). NC statute could be more protective in these instances because it requires the insurance company to advise the individual that they are entitled to receive a copy. It is also possible that the NC statute is consistent with HIPAA in this regard because HIPAA provides an individual right of access to a copy of his or her PHI which could include a copy of authorization forms (164.524) and HIPAA requires a covered entity to provide a notice of privacy practices which will notify individuals of their right to access (164.520). <ul style="list-style-type: none"> o Comparing the HIPAA provisions with the NC requirements, one could argue that they are consistent. 	<p>Further analysis required</p>	<p>164.506 164.520 164.524</p>

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		<p>The NC statute is probably more protective, however, because it is more specific and because there are no exceptions to the right to receive a copy of the authorization whereas there are several exceptions to the right of access under HIPAA. See 164.524.</p> <ul style="list-style-type: none"> ▪ Note that if a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must comply with the HIPAA consent requirements. HIPAA does not require the plan to provide individuals with a copy of the consent form (or advise them of that right). See 164.506(c). With respect to consents, therefore, it appears that the NC statute may be more protective. 		
<p>GS 58-39-35(6)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ specify the purposes for which the information is collected; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective with respect to authorizations. If the covered entity is requesting the authorization, HIPAA requires the authorization to contain a “description of each purpose of the requested use or disclosure.” See 164.508(d)(1)(ii); 164.508(e)(1)(i). If the covered entity has not requested the authorization (which seems unlikely), HIPAA does not require a description of the purpose so it would appear that NC statute may be more protective because it always requires a description of the purpose. ▪ Note that if a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must use a consent form consistent with the HIPAA requirements. HIPAA requires the consent to inform the individual that PHI may be used or disclosed for those three purposes (treatment, payment or health care operations). See 164.506(c)(1). 	<p>Inconsistent</p>	<p>164.506</p>
<p>GS 58-39-35(7)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ specify the length of time such authorization shall remain valid, which shall be no longer than <ul style="list-style-type: none"> o for authorizations signed for the purpose of collecting information in connection with an application, a reinstatement, or a request for a change in policy benefits, 30 months from the date the authorization is 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA requires the authorization to contain “[a]n expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.” See 164.508(c)(1)(iv). The NC statute is consistent with HIPAA in that it requires an expiration but it goes even further in that it actually specifies a maximum period of validity in certain circumstances. ▪ Note that if a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must use a consent form consistent with the HIPAA requirements. HIPAA does not require the consent 	<p>Inconsistent</p>	<p>164.506(c)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>signed if the application/request involves life, health, or disability insurance</p> <ul style="list-style-type: none"> o for authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy, the term of coverage of the policy if the claim is for a health insurance benefit, or the duration of the claim if the claim is not for a health insurance benefit; 		<p>to have an expiration date or event. For consents, therefore, the NC statute may be more protective as well. See 164.506(c).</p>		
<p>GS 58-39-35(4)— Insurance Disclosure authorization forms or statements authorizing the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance support organization must:</p> <ul style="list-style-type: none"> ▪ specify the nature of the information to be disclosed; 	<p>164.508(c) Authorization: requirements</p>	<ul style="list-style-type: none"> ▪ Inconsistent. ▪ HIPAA may be more protective with respect to authorizations. NC only requires the authorization to specify the “nature of the information” whereas HIPAA requires the authorization to contain “[a] description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.” See 164.508(c)(1)(i). ▪ NC statute may be more protective with respect to consents. If a health plan elects to obtain consent for use or disclosure related to treatment, payment or health care operations, it must use a consent form consistent with the HIPAA requirements. HIPAA does not require the consent to specify the information to be disclosed. See 164.506(c). 	<p>Inconsistent</p>	
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures by a consumer reporting agency, provided they are to a person other than an insurance institution or agent. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA’s scope; “Consumer reporting agencies” are most likely not covered entities therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to an insurance institution, agent, insurance-support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits health plans to use and disclose health information for payment purposes without individual permission. 	<p>Consistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>necessary</p> <ul style="list-style-type: none"> o For either institution to perform its function in connection with an insurance transaction involving the individual 				
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a medical-care institution or medical professional for <ul style="list-style-type: none"> o verifying insurance coverage or benefits, o informing an individual of a medical problem of which the individual may not be aware, or o conducting an operations or services audit, <p>provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; All three of these purposes are likely included in treatment, payment or health care operations and therefore HIPAA would permit the insurance institution to make the disclosure without consent or authorization as long as disclosure was for the health plan’s own treatment, payment or operations. ▪ Provision that limits the amount of information disclosed is in terms of “reasonably necessary” to accomplish the purpose appears to be consistent with HIPAA’s “minimum necessary to accomplish the intended purpose”; plan must comply with additional minimum necessary provisions. See also 164.502(b) and 164.514(d) (minimum necessary) 	<p>Consistent</p>	<p>164.502(b) 164.514(d)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a governmental authority for the purpose of determining the individual’s eligibility for health benefits for which the governmental authority may be liable. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; disclosures for eligibility determinations are considered part of the payment function and therefore would be permitted (by plans) without individual consent or authorization. See 164.501(definition of payment) 	<p>Consistent</p>	<p>164.501</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures authorized in writing by the individual, provided that certain requirements are satisfied 	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ Consistent; disclosure permitted with an individual’s authorization provided that the authorization (or consent) is also valid under HIPAA. See 164.506 (consent) 	<p>Consistent</p>	<p>164.506</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to authorized personnel of the DMV upon requests pursuant to GS 20-309(c) or 20-309(f). 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> This provision relates to liability insurance, not health insurance. Even so, if the entity is a covered entity and the information contained in the record is PHI, the first cited statutory section directs insurance companies to respond to the DMV and therefore this disclosure would be permitted under HIPAA as “required by law.” See 164.512(a). The second cited statutory section relates to the rulemaking authority of the Commissioner and therefore further analysis of the rules would be required to determine the relationship with HIPAA (if applicable). 	<p>Further analysis required</p>	
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to DHHS of immunization information described in GS 130A-153. 	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> Consistent; HIPAA specifically excepts from preemption state laws which “provide[] for the ... conduct of public health surveillance, investigation, or intervention.” Even without the specific preemption exception, HIPAA would permit disclosure without individual permission to DHHS under the public health exception. 164.512(b). 	<p>Consistent</p>	<p>164.512(b)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to an insurance regulatory authority. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> May be consistent depending on the purpose and authority of the request from the insurance regulatory authority. If the disclosure to an insurance regulatory authority is required by law, disclosure permitted under 164.512(a). If the disclosure is not required by law, it still may be permitted as an oversight function under 164.512(d). In addition, 160.203(d) specifically excepts from preemption any State law requiring a plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation.... Secretary may also make determinations that specific laws are not preempted if they are found to be necessary to prevent fraud and abuse, to ensure appropriate State regulation of insurance and health insurance, for State reporting on health care delivery or costs or for purposes of serving a compelling need related to public health, safety or welfare. The Secretary will only make such a determination upon request. See 160.203(a). 	<p>Further analysis required</p>	<p>164.512(d) 160.203(a) 160.203(d)</p>

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<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a law-enforcement or other government authority: <ul style="list-style-type: none"> o to protect the interests of the institution in preventing or prosecuting the perpetration of fraud upon it or o if the institution reasonably believes illegal activities have been conducted by the individual 	<p>164.512(f) Exceptions: Law enforcement</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI without individual permission to law enforcement officials in a variety of circumstances, however the permitted disclosures are primarily focused on the covered entity's response to an inquiry from law enforcement. See 164.512(f). The NC statute seems to also encompass situations where the insurance institution reports information to law enforcement. If the reporting is otherwise required by law, then disclosure of PHI would be permitted. See 164.512(a). HIPAA specifically permits a covered entity to disclose PHI to law enforcement if the covered entity believes in good faith that the PHI constitutes evidence of criminal conduct that occurred on the premises of the entity. See 164.512(f)(5). ▪ HIPAA also permits covered entities to disclose PHI to oversight agencies without individual permission. See 164.512(d). Oversight is defined broadly and may include the disclosures encompassed by this provision of the NC statute (including criminal investigations). However, HIPAA does not permit disclosure of PHI for an oversight investigation of an individual unless the investigation (or other activity) relates to the receipt of health care, a claim for public benefits related to health, or qualification for public benefits. See 164.512(d)(2). 	<p>Further analysis required</p>	<p>164.512(a) 164.512(d)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures in response to a facially valid administrative or judicial order, including a search warrant or subpoena. 	<p>164.512(f) Exceptions: Law enforcement</p>	<ul style="list-style-type: none"> ▪ HIPAA permits disclosure of PHI without individual permission in response to compulsory process (including a court ordered warrant, a subpoena issued by a judicial or administrative officer). See 164.512(f)(1). If it is an administrative request, additional conditions must be satisfied. See 164.512(f)(1)(C). ▪ In the course of a judicial or administrative proceeding, a covered entity may disclose PHI without individual permission: <ul style="list-style-type: none"> o Pursuant to an order of a court or administrative tribunal o Pursuant to a subpoena, discovery request, or other lawful process that is not accompanied by an order if the reasonable efforts have been made to notify the individual or secure a qualified protective order <p>See 164.512(e)</p> ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is "required by law" 	<p>Further analysis required</p>	<p>164.501 164.508 164.512(a) 164.512(e)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>which would include court orders and court-ordered search warrants and subpoenas. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”).</p>		
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution’s or agent’s operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit. 	<p>164.504(f) Uses and disclosures: Group health plans</p>	<ul style="list-style-type: none"> ▪ If it is a “group health plan”, the plan may only disclose PHI to the plan sponsor without authorization if the “plan documents” outline the allowable uses and disclosures of the PHI (except if the plan is disclosing summary health information for the purpose of obtaining premium bids or modifying the group health plan). See 164.504(f). If it is not a “group health plan”, disclosure of PHI to a group policyholder (e.g., employer) would only be permitted with the individual’s authorization. ▪ Health care operations includes “conducting or arranging for...auditing functions.” See 164.501 (health care operations). It is possible that the disclosures would be considered part of health care operations and therefore the health plan would not be required to obtain consent. See 164.506(a)(2). 	<p>Further analysis required</p>	<p>164.501 164.506(a)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p>	<p>164.502(e) Uses and disclosures: Business associates</p>	<ul style="list-style-type: none"> ▪ Each of the specific permitted disclosures is addressed separately elsewhere in this matrix. Each of these disclosures is “permitted” rather than required. ▪ Note that “insurance support organizations” as defined in 58-39-15 may be business associates of health plans. 	<p>Further analysis required</p>	<p>164.504(e)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a person other than an insurance institution, agent, or insurance-support organization, provided disclosure is reasonably necessary to enable such person to provide information to the disclosing institution for the purpose of <ul style="list-style-type: none"> o determining eligibility; or 	<p>164.502(e) Uses and disclosures: Business associates</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Inconsistent if the disclosure is to a business associate in that a business associate agreement is required by HIPAA. If the disclosure is for the disclosing entity’s own treatment, payment or health care operations (TPO) purposes, disclosure may be made to another entity subject to a business associate agreement (no agreement necessary for disclosures to providers concerning treatment or to plan sponsors of group health plans). The business associate would be limited by the terms of the agreement – and could probably not disclose (without authorization) as “is reasonably necessary... to enable...” if beyond the scope of 	<p>Consistent in part</p>	<p>160.203(a) 164.504(e) 164.508 164.512(d) 164.512(f)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<ul style="list-style-type: none"> o detecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. 		<p>what the covered entity could disclose under HIPAA. See 164.502(e) and 164.504(e) (business associates); 164.508 (authorizations).</p> <ul style="list-style-type: none"> o Payment would include eligibility determinations. o Health care operations would include fraud detection activities. <ul style="list-style-type: none"> ▪ Consistent to the extent that the disclosure is to an oversight agency or a law enforcement official and the disclosure is consistent with the applicable requirements of HIPAA. See 164.512(d)(oversight); 164.512(f)(law enforcement). ▪ Secretary may also make determinations that specific laws are not preempted if they are found to be necessary to prevent fraud and abuse, to ensure appropriate State regulation of insurance and health insurance, for State reporting on health care delivery or costs or for purposes of serving a compelling need related to public health, safety or welfare. The Secretary will only make such a determination upon request. See 160.203(a) 		
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional. 	164.502(a) Uses and disclosures: general rules	<ul style="list-style-type: none"> ▪ Peer review may be part of health care operations (“reviewing the competence ...of health care professionals, evaluating ... provider performance...”), however, unless the insurance company is disclosing information to the PRO for its <i>own</i> health care operations (and not those of the medical care facility) individual authorization would be required. See 164.508 (authorization); 164.501 (definition of health care operations). 	Further analysis required	164.501 164.508
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution/agent as having a legal or beneficial interest in a policy of insurance, provided the information disclosed is limited to that reasonably necessary to permit such person to protect its interest in such policy. 	164.502(a) Uses and disclosures: general rules	<ul style="list-style-type: none"> ▪ It is possible that such disclosures would be permitted without individual permission as part of health care operations (e.g., business management, general administrative activities). See 164.502. It is also possible that a lienholder, assignee, etc. would have a legally enforceable interest in the insurance organization such that disclosure could be considered “required by law” (depending on the relationship and the applicable laws). See 164.512(a). If neither of the above apply, individual authorization would be required to disclose PHI. See 164.508. 	Further analysis required	164.502 164.508 164.512(a)

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<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the institution/agent/support organization, provided: <ul style="list-style-type: none"> o before sale/other transaction is consummated, only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the transaction, and o the recipient agrees not to disclose the information unless the disclosure would be otherwise permitted by this section if made by an institution/agent/support organization 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ HIPAA recognizes that disclosure is necessary to conduct due diligence in connection with the sale or transfer of assets and therefore includes it as “health care operations” so long as the potential successor is a covered entity or will become a covered entity after the sale/transfer. See 164.501 (definition of health care operations). ▪ The NC provision about limiting the information disclosed to that which is “reasonably necessary ...to make business decisions” appears to be consistent with the minimum necessary requirement. See 164.502(b); 164.514(d). ▪ If the successor is not a covered entity prior to the sale/transfer, the NC provision about redisclosure may be more protective (under HIPAA, the institution would not necessarily need to enter into an agreement with a non-covered entity to protect the information because the successor is not acting as a business associate). 	<p>Further analysis required</p>	<p>164.501 164.502(b) 164.514(d)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures otherwise permitted or required by law. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Disclosures otherwise <u>permitted</u> by law is only consistent to the extent that the disclosure permitted is also permitted by HIPAA. ▪ Disclosures otherwise <u>required</u> by law is consistent with 164.512(a). 	<p>Further analysis required</p>	
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures made for the purpose of conducting actuarial or research studies, provided: <ul style="list-style-type: none"> o no individual may be identified in any actuarial or research report, o materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed, and o the actuarial or research organization agrees not to 	<p>164.512(i) Exceptions: Research</p>	<ul style="list-style-type: none"> ▪ Some actuarial or research studies that are not “designed to develop or contribute to generalizable knowledge” may be considered health care operations and therefore permitted by health plans under HIPAA without consent or authorization. See 164.502. Disclosure to the researcher or actuarial firm would most likely require a business associate agreement, the terms of which would be consistent with the requirements identified in the NC statute. If the study were designed to contribute to generalizable knowledge, the disclosure would need to comply with the research provisions. ▪ Secretary may also make determinations that specific laws are not preempted if they are found to be necessary to prevent fraud and abuse, to ensure appropriate State regulation of insurance and health insurance, for State 	<p>Further analysis required</p>	<p>164.502 160.203(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
disclose the information unless the disclosure would otherwise be permitted by this section if made by an institution/agent/support organization.		reporting on health care delivery or costs or for purposes of serving a compelling need related to public health, safety or welfare. The Secretary will only make such a determination upon request. See 160.203(a).		
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a person whose only use of such information will be in connection with the marketing of a product or service, provided: <ul style="list-style-type: none"> o no medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed, o the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has not so indicated, and o the person receiving such information agrees not to use it except in connection with the marketing of a product or service. 	164.514(e) Other reqmts: Marketing	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Both the NC statute and HIPAA permit disclosures to a business associate for marketing purposes (NC statute appears envision a “business associate” –like entity who is performing marketing activities on behalf of the insurance institution). In both cases, the business associate must limit its use of such information to marketing purposes. HIPAA also requires a business associate agreement. See 164.502(e); 164.504(e). ▪ HIPAA may be more protective if the disclosure is to a person/entity other than a business associate. In such case, HIPAA would require an authorization. See 164.514(e)(2)(ii); 164.508 (authorizations) ▪ HIPAA may be more protective in that it carefully proscribes the circumstances where marketing may occur without authorization. See 164.514(e)(1). ▪ The NC statute may be more protective in that it prohibits the disclosure of certain information. ▪ The NC statute and HIPAA may be consistent in that each requires the entity to provide the individual with an opportunity to opt-out. HIPAA is more prescriptive in this regard and includes exceptions for newsletters and other general communications. 	Consistent in part	164.502 164.504 164.508
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> ▪ Disclosures to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. 	164.502(a) Uses and disclosures: general rules	<ul style="list-style-type: none"> ▪ Consistent to the extent that the certificate holder or policyholder is the individual (or the individual's personal representative). HIPAA permits (and even requires in many instances) disclosure to the individual. See 164.502(a)(1)(i); 164.524 (access). ▪ If the certificate holder or policyholder is not the individual (or the individual's personal representative), disclosure may be permitted without individual permission as part of payment. 	Further analysis required	164.524

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to a person other than an insurance institution, agent, or insurance-support organization, provided disclosure is reasonably necessary to enable such person to perform a business, professional or insurance function for the disclosing institution and such person agrees not to disclose further without authorization unless the disclosure would have been permitted if made by the original institution or “is reasonably necessary...to perform its function for the disclosing ...institution...” 	<p>164.502(e) Uses and disclosures: Business associates</p>	<ul style="list-style-type: none"> Inconsistent; HIPAA may be more protective. If the disclosure is for the disclosing entity’s own purposes and the covered entity had already obtained the appropriate consent or authorization (if necessary), disclosure may be made to another entity subject to a business associate agreement (no agreement necessary for disclosures to providers concerning treatment or to plan sponsors of group health plans). The business associate would be limited by the terms of the agreement – and could probably not disclose (without authorization) as “is reasonably necessary... to perform...” if beyond the scope of what the covered entity could disclose under HIPAA. See 164.502(e) and 164.504(e) (business associates); 164.508 (authorization). If the disclosure is not for the entity’s own purposes, it must either be made subject to an authorization or else be otherwise permitted under HIPAA without individual permission. See 164.508 (authorization). 	<p>Inconsistent</p>	<p>164.504(e) 164.508</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to an affiliate whose only use of the information will be in connection with an audit of the institution/agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> Inconsistent; HIPAA may be more protective. Disclosure to an affiliate for auditing purposes may be health care operations and therefore be permitted under HIPAA without individual permission. HIPAA would likely require a business associate agreement (unless the entities designate themselves as “affiliated” such that they become a single covered entity under the rule. See 164.504(d) (affiliated entities)). If the affiliates are not designated as a single entity, then disclosure for marketing purposes of the disclosing entity will also be considered health care operations and will require a business associate agreement. The use of the information by the affiliate would need to be in compliance with the HIPAA marketing provisions. See 164.502(e) and 164.504(e) (business associates); 164.514(e)-(f) (marketing). 	<p>Inconsistent</p>	<p>164.504(d) 164.502(e) 164.504(e) 164.514(e) 164.514(f)</p>
<p>GS 58-39-75—Insurance Generally prohibits insurance institutions, agents, and insurance-support organizations from disclosing personal or privileged information about an individual collected or received in connection with an insurance transaction, except in specified circumstances.</p> <ul style="list-style-type: none"> Disclosures to an insurance institution, agent, insurance- 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> Inconsistent; HIPAA may be more protective. In order to disclose PHI to another entity that is <i>not</i> an oversight agency for the purpose of detecting or preventing fraud, etc., the activity would need to be on behalf of the covered entity (i.e., as part of health care operations) and the entity would need to enter into a business associate agreement with the other entity. Important to note that a business associate 	<p>Inconsistent</p>	<p>160.203(a) 164.502(e) 164.504(e) 164.504(f) 164.508</p>

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<p>support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably necessary</p> <ul style="list-style-type: none"> o To detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or o For either institution to perform its function in connection with an insurance transaction involving the individual 		<p>agreement is <i>not</i> required for disclosures from a group health plan to the plan sponsor to the extent that the requirements of 164.504(f) apply and are met. If disclosure is not for the entity's own health care operations, an individual's authorization would likely be required (assuming again that the recipient is not an oversight agency). See 164.502(e) and 164.504(e) (business associates); 164.508 (authorizations).</p> <ul style="list-style-type: none"> ▪ Secretary may also make determinations that specific laws are not preempted if they are found to be necessary to prevent fraud and abuse, to ensure appropriate State regulation of insurance and health insurance, for State reporting on health care delivery or costs or for purposes of serving a compelling need related to public health, safety or welfare. The Secretary will only make such a determination upon request. See 160.203(a). 		
<p>GS 58-50-61(n)— Insurance Insurers and UROs must maintain records of reviews and appeals. Maintenance of the records, including electronic duplication and storage, is governed by rules adopted by the Insurance Commissioner. Records must be retained for three years or until the Commissioner has adopted a final report of a general examination that contains a review of the records for that calendar year, whichever is later.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ HIPAA specifically excepts from preemption laws that require a health plan to report, or to provide access to, information for purposes of management or financial audits, program monitoring and evaluation, or licensure/certification of facilities or individuals. See 160.203(d). It is possible that this statute would fall within that exception. ▪ If not specifically excepted from preemption, disclosure to the Commissioner would most likely be permitted without individual permission as an oversight activity. See 164.512(d). 	<p>Further analysis required</p>	<p>164.512(d)</p>
<p>GS 58-67-180—Information Held by HMOs Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider...shall be held in confidence and shall not be disclosed to any person except</p> <ul style="list-style-type: none"> ▪ in litigation between the HMO and the enrollee or applicant 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits a plan to use and disclose PHI without consent or authorization for treatment, payment and health care operations. Health care operations is defined to include "conducting or arranging for ... legal services." See 164.501. ▪ HIPAA also permits disclosures in the course of judicial and administrative proceedings under certain circumstances. See 164.512(e). 	<p>Consistent</p>	<p>164.501 164.512(e)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 58-67-180—Information Held by HMOs Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider...shall be held in confidence and shall not be disclosed to any person except</p> <ul style="list-style-type: none"> ▪ pursuant to court order for the production of evidence... 	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ HIPAA permits disclosure without individual permission in response to an order of a court or an administrative tribunal. Not clear whether the NC statute also encompasses orders of an administrative tribunal. If not, the NC statute may be more protective. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Further analysis required</p>	<p>164.501 164.508(a) 164.512(a)</p>
<p>GS 58-67-180—Information Held by HMOs Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider...shall be held in confidence and shall not be disclosed to any person except:</p> <ul style="list-style-type: none"> ▪ to the extent that it may be necessary to carry out the purposes of this Article; or ▪ upon the express consent of the enrollee or applicant; or ▪ pursuant to statute; or ▪ pursuant to court order for the production of evidence...; or ▪ in the litigation between the HMO and the enrollee or applicant. <p>A HMO shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the HMO is entitled to claim.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Each of these permitted disclosures is analyzed separately elsewhere in this matrix. In general, however, the NC statute may be more protective than HIPAA in that it permits disclosure of certain health information (which would presumably include PHI) in far fewer instances than would HIPAA. However, the first exception (“to the extent necessary...”) is fairly broad. It could be interpreted to be consistent with disclosures for treatment, payment and health care operations. Further analysis is necessary to determine how this exception has been interpreted and applied in practice. 	<p>Further analysis required</p>	
<p>GS 58-67-180—Information Held by HMOs Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider...shall be held in confidence and shall not be disclosed to any person except</p> <ul style="list-style-type: none"> ▪ upon the express consent of the enrollee or applicant. 	<p>164.506 Consent</p>	<ul style="list-style-type: none"> ▪ Consistent to the extent that HIPAA also permits disclosure with the individual’s permission (either consent or authorizations). If the consent is needed for a use or disclosure related to treatment, payment or health care operations, the state law may be more protective because HIPAA does not require health plans to obtain consent for those purposes. See 164.506. ▪ If the HMO does obtain an “express consent,” it must comply with the applicable HIPAA consent or authorization requirements, as appropriate. See 164.506; 164.508. 	<p>Further analysis required</p>	<p>164.508</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 58-67-180—Information Held by HMOs Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider...shall be held in confidence and shall not be disclosed to any person except</p> <ul style="list-style-type: none"> ▪ pursuant to statute. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ NC may be more protective; HIPAA permits disclosures without individual permission where “required by law” and “required by law” is defined to include more than simply statutes (e.g., regulations, Medicare conditions of participation, etc.). Should examine how this statute is applied in practice (i.e., is it interpreted to include more than statutes?). 	<p>Further analysis required</p>	
<p>GS §90-8— Medical Board Officers may administer oaths, and subpoena witnesses, records and other materials. The president and secretary of the (Medical) Board ... may summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Board. The Board may order that any patient records, documents or other material concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for inspection, notwithstanding any other provisions of law providing for the application of any physician-patient privilege with respect to such records, documents or other material. All records, documents, or other material compiled by the Board are subject to the provisions of G.S. 90-16. Notwithstanding the provisions of G.S. 90-16, in any proceeding before the Board, in any record of any hearing before the Board, and in the notice of charges against any licensee, the Board shall withhold from public disclosure the identity of a patient including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. See 164.512(d). ▪ It is possible that this statute could be interpreted to require disclosure. If so, HIPAA would permit disclosure as one otherwise required by law. See 164.512(a). ▪ It is possible that Board hearings would be considered administrative proceedings and that the Board would be considered an administrative tribunal. If so, a covered entity would only be permitted to disclose PHI to the Board subject to the requirements applicable to judicial and administrative proceedings. See 164.512(e). ▪ With respect to the protections against redisclosure by the Board, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Further analysis required</p>	<p>164.512(a) 164.512(e)</p>
<p>GS 90B-11— Board/Social Work Records and other documents collected in the course of a social worker certification, licensure, or disciplinary proceeding are not public records. Notices and decisions rendered in connection with a hearing are public records, but information that identifies a client who has not consented to public disclosure must be deleted from the public record. All other documents containing information collected or compiled by or on behalf of the NC Social Work Certification and Licensure Board are public records, but information that identifies a client who has not consented to public disclosure must be deleted from the public record.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA’s scope; the Board is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 90-16— Medical Board</p> <ul style="list-style-type: none"> ▪ NC Medical Board may in a closed session receive evidence concerning the treatment of a patient, without that patient's express or implied consent, as may be necessary for protection of the patient's rights, the accused physician's rights, and the full presentation of relevant evidence. ▪ All records, papers and other documents containing information collected and compiled by the Board...as a result of investigations...conducted in connection with a licensing or disciplinary matter shall not be considered public records... [except] ▪ In any proceeding before the Board, in any record of any hearing ...and in the notice of the charges...the Board may withhold the identity of a patient who has not expressly or impliedly consented to the public disclosure... 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. ▪ It is possible that Board hearings would be considered administrative proceedings and that the Board would be considered an administrative tribunal. If so, a covered entity would only be permitted to disclose PHI to the Board subject to the requirements applicable to judicial and administrative proceedings. See 164.512(e). ▪ With respect to the protections against redisclosure by the Board, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Further analysis required</p>	<p>164.512(e)</p>
<p>GS 90-21.20— Reporting of Wounds/Illnesses</p> <p>Requires physicians and directors/administrators of hospitals and other medical institutions to report to the chief of police or police authorities the following: every case of a bullet wound, gunshot wound, powder burn or any other injury caused or apparently caused by the discharge of a firearm; every case illness apparently caused by poisoning; every case of a wound or injury caused by a knife or other sharp or pointed instrument if it appears that a criminal act was involved; every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the treating physician or surgeon that the wound, injury, or illness resulted from a criminal act of violence. Reports must give personally identifying information about the ill or injured person and information about the character and extent of the illness/injury.</p>	<p>164.203(c) Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption any provision of State law that provides for the reporting of injury. See 160.203(c). ▪ Even without the specific preemption exception, these injury reports would be permitted under HIPAA because they are "required by law." See 164.512(a). If the report relates to child abuse or neglect the entity would be permitted to disclose PHI to a public health or other authority authorized to receive reports of child abuse or neglect. See 164.512(b). If the report relates to other abuse, neglect, or domestic violence the entity must comply with 164.512(c) (abuse, neglect or domestic violence), which includes specific requirements relating to informing the individual that such a report has been made. 	<p>Consistent</p>	<p>160.203(c) 164.512(b) 164.512(c)</p>
<p>GS 90-21.22— Medical Board</p> <p>NC Medical Board may enter into agreements with specified others for purposes of conducting peer review activities, including investigation, review, and evaluation of records, reports, complaints, litigation and other information about the practices and practice patterns of physicians and PAs licensed/approved by the Board. Any confidential patient information acquired, created or used in such activities shall remain confidential and not be subject to discovery or subpoena</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. See 164.512(d). If the Board contracts with other organizations to conduct some of its oversight activities, a covered entity may still disclose PHI to that organization because a health oversight agency or authority is defined to include "contractors or persons or entities to whom it has granted authority." See 164.501 (definition of health oversight 	<p>Further analysis required</p>	<p>164.501 164.512(e)</p>

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<p>in a civil case. <i>See generally Article 1D of Chap. 90, Peer Review</i></p>		<p>agency)</p> <ul style="list-style-type: none"> ▪ It is possible that Board hearings would be considered administrative proceedings and that the Board would be considered an administrative tribunal. If so, a covered entity would only be permitted to disclose PHI to the Board subject to the requirements applicable to judicial and administrative proceedings. See 164.512(e). ▪ With respect to the protections against redisclosure by the Board and its contractors, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 		
<p>GS 90-21.4(b)— Unemancipated minors A physician who treats a minor upon the minor’s own consent, as provided in GS 90-21.5(a), shall not notify a parent, guardian, person standing in loco parentis, or other legal custodian of the minor’s treatment without the minor’s permission, except in two circumstances: (1) if the situation in the opinion of the attending physician indicates that such notification is essential to the life or health of the minor; (2) if the parent/guardian/person in loco parentis/other legal custodian contacts the physician concerning the treatment provided to the minor. GS 90-21.5 authorizes unemancipated minors to consent to medical health services for the prevention, diagnosis, and treatment of reportable communicable diseases, pregnancy (but not sterilization or abortion), emotional disturbance or abuse of alcohol or controlled substances (but not non-emergency admission to a 24-hour MH/DD/SA facility).</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; this provision may be contrary to HIPAA (164.502(g)) but would not be preempted because HIPAA specifically exempts from preemption “any State law to the extent that it authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or person acting <i>in loco parentis</i> of such minor.” See 160.203(b) (preemption exception); 160.202 (Definition: More stringent). 	<p>Consistent</p>	<p>160.202 160.203(b)</p>
<p>GS 90-21.7(a) Unemancipated minors Requires the consent of a parent (or specified other persons) for an unemancipated minor’s abortion. GS 90-21.7(b) authorizes a pregnant minor to petition the district court judge for a waiver of the consent requirement. GS 90-21.8(d) provides that such court proceedings are confidential. GS 90-21.8(e) specifies when the parental consent requirement will be waived.</p>	<p>164.502(g) Uses and disclosures: personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; The relevant provisions of these four statutory sections pertain to the disclosure of an unemancipated minor’s PHI to a parent, guardian, or person standing in loco parentis; they would not be preempted because of the specific exception to preemption for “any State law to the extent that it authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or person acting <i>in loco parentis</i> of such minor.” See 160.202 (Definition: More stringent). 	<p>Consistent</p>	<p>160.202</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 90-41.1(c)— Board of Dental Examiners The Board and the person upon whom ...notice is served shall have the right to conduct adverse examinations, take depositions, and engage in such further discovery proceedings as are permitted by the laws of this State in civil matters. The Board is hereby authorized and empowered to issue such orders, commissions, notices, subpoenas, or other process as might be necessary or proper to effect the purposes of this subsection...</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. See 164.512(d). ▪ It is possible that Board hearings would be considered administrative proceedings and that the Board would be considered an administrative tribunal. If so, a covered entity would only be permitted to disclose PHI to the Board subject to the requirements applicable to judicial and administrative proceedings. See 164.512(e). 	<p>Further analysis required</p>	<p>164.512(e)</p>
<p>GS 90-48.2— Board of Dental Examiners</p> <ul style="list-style-type: none"> ▪ The Board may, under rules adopted by the Board..., enter into agreements with special impaired dentist peer review organizations formed by the NC Dental Society. Peer review activities...shall include investigation, review and evaluation of practices and practice patterns of dentists licensed by the Board... ▪ Agreement with peer review organizations shall include provisions for the PRO to receive relevant information from the Board and other sources, conduct any investigation, review and evaluation... provide assurances of confidentiality of nonpublic information and of the peer review process... ▪ Confidential patient information acquired, created, or used by an impaired dentist peer review organization shall remain confidential and not be subject to discovery or subpoena in a civil case. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. If the Board contracts with other organizations to conduct some of its oversight activities, a covered entity may still disclose PHI to that organization because a health oversight agency or authority is defined to include "contractors or persons or entities to whom it has granted authority." See 164.501 (definition of health oversight agency) ▪ Peer review activities are also considered part of health care operations when conducted/sponsored by the covered entity. See 164.501 (definition of health care operations). These peer review activities are conducted by a state-sponsored Board and therefore it is likely that this would fall within the oversight exception rather than under health care operations. ▪ With respect to the protections against redisclosure by the Board and its contractors, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Further analysis required</p>	<p>164.501</p>
<p>GS 90-85.35— Pharmacists Pharmacists employed in health care facilities have access to patient records maintained by those facilities when necessary to provide pharmacy services.</p>	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ Consistent in part; may be inconsistent in part. ▪ If the pharmacist is an employee of the health care facility (a covered entity), he or she may have access to information consistent with the consents and/or authorizations obtained by the facility (and consistent with the principle of minimum necessary). ▪ If the pharmacist is not an employee of the covered entity, this statute would still be consistent to permit the pharmacist to have access to medical records without individual consent or authorization as long as the pharmacist has an indirect 	<p>Consistent in part</p>	<p>164.501 164.504(d) 164.520</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>treatment relationship with the individual (i.e., a hospital pharmacist filling inpatient prescriptions).</p> <ul style="list-style-type: none"> o An "indirect treatment relationship" is one in which (1) the provider delivers health care to the individual based on the orders of another health care provider, and (2) the provider typically provides services or products, or reports the diagnosis or results associated with health care, directly to another provider, who provides the services or products or reports to the individual. o HIPAA provides that providers (including pharmacists) are not required to obtain a consent for treatment, payment and health care operations if they have an indirect treatment relationship with the individual. See 164.506(a)(2)(i). The pharmacist would need to develop and maintain a notice of privacy practices (to be made available upon request). See 164.520. <ul style="list-style-type: none"> ▪ If the pharmacist is not employed by the covered entity and he or she has a direct treatment relationship with the individual, s/he may be required to obtain a separate consent and provide a separate notice. ▪ If the pharmacist is not employed by the covered entity, the facility and the pharmacist (as well as other providers associated with the facility) may choose to designate themselves as a single covered entity (i.e., "affiliated covered entities") or as an organized health care arrangement. See 164.501; 164.504(d). If a single entity or an organized health care arrangement, the single consent and notice would need to cover all of the uses and disclosures by all affiliated entities. 		
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ legal representative of deceased patient 	<p>164.502(g) Uses and disclosures: Personal representatives</p>	<ul style="list-style-type: none"> ▪ Consistent; the legal representative of a deceased person has legal authority to act for the individual and thus must be treated as a personal representative under HIPAA. 	<p>Consistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ any person with a signed authorization from patient or patient’s legal representative 	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ Consistent; disclosure permitted with an individual's authorization provided that the authorization is also valid under HIPAA. 	<p>Consistent</p>	
<p>GS 90-85.36—Pharmacies (a) Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ the patient or his/her legal guardian ▪ an emancipated minor or his/her legal guardian ▪ an unemancipated minor when the minor able to consent to the treatment for which prescription issued ▪ the patient’s parent or person standing in loco parentis if unemancipated minor not able to consent 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; disclosures to the individual are required under HIPAA (subject to limited exceptions where the pharmacy <i>may</i> deny access) whereas NC statute provides that the disclosure is discretionary. See 164.524. Disclosures are also permitted to personal representatives under HIPAA. See 164.502(g). 	<p>Consistent</p>	<p>164.502(g)</p>
<p>GS 90-85.36—Pharmacies (a) Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ the practitioner issuing the prescription ▪ the practitioner treating the patient ▪ a pharmacist who is providing services to the patient 	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part ▪ Inconsistent for providers with direct treatment relationships. HIPAA requires consent for these (treatment, payment or health care operations) disclosures if the pharmacy has a direct treatment relationship with the individual (subject to limited exceptions). ▪ Consistent for providers with indirect treatment relationships. If the pharmacy has an indirect treatment relationship (e.g., a hospital pharmacy dispensing only inpatient prescriptions), consent would not be required for these treatment, payment or health care operations disclosures. 	<p>Consistent in part</p>	
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ company responsible for paying for patient’s care 	<p>164.506 Consent: Payment</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Inconsistent for providers with direct treatment relationships. HIPAA requires consent to use or disclose PHI for payment purposes if the pharmacy has a direct treatment relationship with the individual (subject to limited exceptions). Once it has obtained this consent, it may disclose PHI to the “company responsible for paying for the patient’s care” as part of payment. 	<p>Consistent in part</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<ul style="list-style-type: none"> ▪ Consistent for providers with indirect treatment relationships. If the pharmacy does not have a direct treatment relationship with the individual (such as a hospital pharmacy dispensing only inpatient medication), it could disclose information for payment purposes without consent or authorization as long as the direct provider (hospital in this example) obtained consent. 		
<p>GS 90-85.36—Pharmacies (a) Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p>	164.502(a) Uses and disclosures: general rules	<ul style="list-style-type: none"> ▪ Each of the permitted disclosures is analyzed separately elsewhere in this matrix. In general the NC statute may be more protective than HIPAA in that it permits pharmacies to disclose certain health information (which would presumably include PHI) in fewer instances than would HIPAA. 	Further analysis required	
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ any person authorized by subpoena, court order or statute 	164.512(a) Exceptions: Required by law	<ul style="list-style-type: none"> ▪ <i>Statute and court order.</i> Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. ▪ <i>Subpoena:</i> HIPAA permits disclosures without individual permission pursuant to a subpoena in some circumstances. The disclosure may be subject to additional protections depending on the nature of the subpoena. See e.g., 164.512(e) (judicial or administrative proceedings); 164.512(f) (law enforcement). 	Further analysis required	164.512(e) 164.512(f)
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ a member or employee of the Board of Pharmacy 	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ HIPAA permits disclosures of PHI without individual permission to health oversight agencies for health oversight activities authorized by law. Depending upon the particular circumstances, the Board of Pharmacy may be acting as a health oversight agency. See 164.501 (definition of health oversight agency). 	Further analysis required	164.501
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ researchers and surveyors who have approval from the Board (approval when determined that there are adequate safeguards to protect the confidentiality of the info and that 	164.512(i) Exceptions: Research	<ul style="list-style-type: none"> ▪ Assuming that the research qualifies as “research” within the HIPAA definition (and is not, for example, health care operations), the pharmacy could not disclose PHI to the researchers unless <ul style="list-style-type: none"> o It obtains individual authorization; or o It obtains documentation that an IRB or privacy board has approved the research; or o For reviews preparatory to research, it obtains certain 	Further analysis required	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
the researcher will not disclose identifiable information)		<ul style="list-style-type: none"> o representations from the researcher; or o For research using decedent's information, it obtains certain representations and documentation from the researcher. 		
<p>GS 90-85.36(b)—Pharmacies A pharmacist may disclose any information to any person "only when he reasonably determines that the disclosure is necessary to protect the life or health of any person"</p>	164.512(j) Exceptions: Avert a serious threat to health or safety	<ul style="list-style-type: none"> ▪ In order for the pharmacy to disclose information to another person (not otherwise permitted by HIPAA) in order to "protect the life or health of any person" as provided in the NC Statute, HIPAA requires that the disclosure: <ul style="list-style-type: none"> o Be made to a person reasonably able to prevent or lessen the threat (including the target of the threat) or o Be necessary for law enforcement authorities to identify or apprehend an individual under certain circumstances 	Further analysis required	
<p>GS 90-85.36(a)—Pharmacies Written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and may be divulged only under specifically defined statutory circumstances:</p> <ul style="list-style-type: none"> ▪ pharmacy owner 	164.506 Consent	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. Depending on the circumstances, disclosure to (or use by) the pharmacy owner could be considered part of treatment, payment and health care operations. As a health care provider, the pharmacy would be required to obtain consent prior to use or disclosure of the information to the pharmacy owner. ▪ If the use or disclosure is not for treatment, payment or health care operations (and not otherwise permitted under HIPAA), authorization would be required. See 164.508. 	Inconsistent	164.508
<p>GS 90-85.41(e)— Board of Pharmacy</p> <ul style="list-style-type: none"> ▪ The Board may, under rules adopted by the Board..., enter into agreements with special impaired pharmacist peer review organizations. Peer review activities...shall include investigation, review and evaluation of practices and practice patterns of dentists licensed by the Board... ▪ Agreement with peer review organizations shall include provisions for the PRO to receive relevant information from the Board and other sources, conduct any investigation, review and evaluation... provide assurances of confidentiality of nonpublic information and of the peer review process... ▪ Confidential patient information acquired, created, or used by an impaired dentist peer review organization shall remain confidential and not be subject to discovery or subpoena in a civil case... 	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. If the Board contracts with other organizations to conduct some of its oversight activities, a covered entity may still disclose PHI to that organization because a health oversight agency or authority is defined to include "contractors or persons or entities to whom it has granted authority." See 164.501 (definition of health oversight agency) ▪ Peer review activities are also considered part of health care operations when conducted/sponsored by the covered entity. See 164.501 (definition of health care operations). These peer review activities are conducted by a state-sponsored Board and therefore it is likely that this would fall within the oversight exception. ▪ With respect to the protections against redisclosure by the Board and its contractors, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	Further analysis required	164.501

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 90-109.1(c) Controlled Substance Use Information Practitioners who treat or provide rehabilitation services to a person dependent upon drugs shall make periodic statistical reports to the Secretary of HHS. Report to include the number of persons treated as inpatients, as outpatients, and the total number treated; each person's county of residence and age; and the number treated who had received previous treatment, and any other data required by the Secretary. The reports will be compiled by the Secretary into periodic reports; the periodic reports are public records.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 90-109.1(a) Controlled Substance Use Information A person may request treatment and rehabilitation for drug dependence from a practitioner, and such practitioner or employees thereof shall not disclose the name of such person to any law enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A practitioner may undertake the treatment and rehabilitation of such person or refer such person to another practitioner for such purpose and under the same requirement of confidentiality.</p>	<p>164.512(f) Exceptions: Law enforcement</p>	<ul style="list-style-type: none"> Inconsistent; NC statute may be more protective. HIPAA would permit disclosures of PHI (which includes the name of a patient) to law enforcement officials under various circumstances where NC statute would not. See e.g., 164.512(f) (law enforcement); 164.512(j) (avert a serious threat to health or safety); 164.510 (facility directories). 	<p>Inconsistent</p>	<p>164.510 164.512(j)</p>
<p>GS 90-113.34— Board/Substance Abuse Professionals The NC Substance Abuse Professional Certification Board may receive evidence regarding the provision of substance abuse treatment/services to a client without the client's express or implied consent, as necessary to protect the client's rights, the accused substance abuse professional's rights, or the full presentation of relevant evidence. Documents collected and compiled by the Board as a result of investigations, interviews, or inquiries conducted in connection with a certification or disciplinary matter are not public records unless and until it is received and admitted in evidence in a hearing before the Board. The Board may withhold from public disclosure the identity of a client who has not expressly or impliedly consented to disclosure of information about his treatment.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. See 164.512(d). It is possible that Board hearings would be considered administrative proceedings and that the Board would be considered an administrative tribunal. If so, a covered entity would only be permitted to disclose PHI to the Board subject to the requirements applicable to judicial and administrative proceedings. See 164.512(e). With respect to the protections against redisclosure by the Board, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Further analysis required</p>	<p>164.512(e)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 90-128.1— Board/Optomety NC State Board of Examiners in Optometry may enter into agreements with the NC State Optometric Society for the purpose of conducting peer review activities. Such agreements shall include provisions for the Society to receive relevant information from the Board and other sources, provide assurance of confidentiality of nonpublic information and of the review process, and make reports to the Board. Any confidential patient information acquired, created, or used in good faith by the Society pursuant to this section shall remain confidential and not be subject to discovery or subpoena in a civil case.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes licensure or disciplinary actions. If the Board contracts with other organizations to conduct some of its oversight activities, a covered entity may still disclose PHI to that organization because a health oversight agency or authority is defined to include “contractors or persons or entities to whom it has granted authority.” See 164.501 (definition of health oversight agency) ▪ Peer review activities are also considered part of health care operations when conducted/sponsored by the covered entity. See 164.501 (definition of health care operations). These peer review activities are conducted by a state-sponsored Board and therefore it is likely that this would fall within the oversight exception rather than under health care operations. ▪ With respect to the protections against redisclosure by the Board and its contractors, it is likely that the Board is not a covered entity and therefore those provisions would be beyond the scope of HIPAA. 	<p>Further analysis required</p>	<p>164.501</p>
<p>GS 90-270.15(e)— Psychology Practice Act</p> <ul style="list-style-type: none"> ▪ In disciplinary proceedings, records of hearings, complaints or notices of charges against licensees or applicants for licensure, or decisions rendered, NC Psychology Board may withhold from public disclosure the identity of clients/patients who have not consented to public disclosure of psychological services having been provided by the licensee or applicant. ▪ Board may close its hearings to the public and receive in closed session evidence regarding the treatment of or delivery of psychological services to a patient/client who has not consented to the public disclosure of such treatment or services. ▪ Records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries or interviews conducted in connection with licensing or disciplinary matters are not public records, except that notices or statements of charges or decisions rendered in connection with a hearing in any proceeding are public records, notwithstanding that they may contain such information. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA’s scope; the NC Psychology Board is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. ▪ The NC statute provides that the Board may receive information about the treatment or delivery of services to a patient/client who has not consented to such disclosure. HIPAA would most likely permit disclosure without the individual’s authorization to the Board as either part of a disclosure for health care operations or for oversight <ul style="list-style-type: none"> o A covered entity may use/disclose PHI for treatment, payment and health care operations. Most providers are required to obtain consent for such uses and disclosures. Health care operations includes “reviewing the competence or qualifications of health care professionals...certification, licensing, or credentialing activities....” See 164.502(a). o A covered entity may disclose PHI to a health oversight agency without the individual’s authorization. Health oversight activities include “licensure or disciplinary actions.” See 164.512(d). It is important to note that most providers will have 	<p>Beyond scope</p>	<p>164.501 164.502(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>However, identifying information concerning a patient/client who has not consented to public disclosure of such information may be deleted.</p>		<p>been required to obtain consent before treating the individual therefore the disclosure would not be without “consent” as provided in the NC statute but rather without “authorization.”</p>		
<p>GS 97-25— Workers’ compensation Notwithstanding the provisions of GS 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this chapter may obtain records of the treatment without the express authorization of the employee.</p>	<p>164.512(f) Exceptions: Workers’ comp.</p>	<ul style="list-style-type: none"> ▪ HIPAA permits a covered entity to disclose PHI “as authorized by and to the extent necessary to comply” with workers’ compensation laws. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law,” See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). It is possible that this statute could be interpreted as “requiring” disclosure to the employer without authorization. 	<p>Further analysis required</p>	<p>164.501 164.508 164.512(a)</p>
<p>GS 97-27— Workers’ compensation Employees seeking compensation must submit to medical examinations. Notwithstanding the provisions of GS 8-53, no fact communicated to or otherwise learned by any physician or surgeon or hospital or hospital employee who may have attended or examined the employee or been present at any examination shall be privileged in any workers’ compensation case.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; it is possible that this statute could be interpreted to require disclosure of PHI during a workers’ compensation case. If so, HIPAA would permit the disclosure because it is otherwise required by law. ▪ Alternatively, HIPAA would permit the disclosure because it permits a covered entity to disclose PHI “as authorized by and to the extent necessary to comply” with workers’ compensation laws. See 164.512(f). 	<p>Consistent</p>	<p>164.512(f).</p>
<p>GS 97-80(b) — Workers’ compensation Industrial commission has power to compel testimony, compel production of books and records.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent; the Industrial Commission would likely be serving as an administrative tribunal and HIPAA permits a covered entity to disclose PHI in response to an order of an administrative tribunal (provided that the entity only discloses the PHI expressly authorized by such order). ▪ In addition, HIPAA permits a covered entity to disclose PHI “as authorized by and to the extent necessary to comply” with workers’ comp laws. See 164.512(f). ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Consistent</p>	<p>164.512(f)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 108A-80. Public Assistance Records Confidentiality of records (see generally Chap. 108A): (a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of 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 or the county boards of social services, or county departments of social services or acquired in the course of performing official duties <u>except for the 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 or the Department.</u> (b) [establishes an exception for check records of grants provided through the Work First program]</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; agencies that <i>only</i> make "public assistance" (e.g., Medicaid) eligibility determinations are not covered entities and therefore this statute is beyond HIPAA's scope. 	<p>Beyond scope</p>	
<p>GS 108A-102— Adult Protective Services Requires any person with reasonable cause to believe that a disabled adult is in need of protective services to report such information to the director of social services. Report must include name and address of the disabled adult, name and address of the caretaker, age of disabled adult, nature and extent of the injury or condition resulting from abuse/neglect, any other pertinent information. Grants qualified immunity to those who report pursuant to statute, testify in judicial proceedings arising from report, or participate in required evaluations.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part ▪ The reporting requirement is consistent with HIPAA because HIPAA permits disclosures without individual permission that are otherwise required by law. See 164.512(a). ▪ HIPAA may be more protective in that it also requires that for disclosures about victims of abuse, neglect or domestic violence that are required by law, the disclosure comply with and be limited by the relevant requirements of the State law. See 164.512(c). ▪ HIPAA also specifically excepts from preemption laws that provide for injury reporting. See 160.203(c). To the extent that the reporting requirement relates to reporting of injuries, it would most likely not be preempted. 	<p>Consistent in part</p>	<p>160.203(c) 164.512(c)</p>
<p>GS 108A-103— Adult Protective Services</p> <ul style="list-style-type: none"> ▪ Authorizes director of social services, upon receipt of abuse/neglect report, to conduct an evaluation to determine whether and which protective services are needed. ▪ Evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the case. 	<p>164.512(c) Exceptions: Abuse/neglect</p>	<ul style="list-style-type: none"> ▪ Director of DSS may not be a covered entity and therefore would not be directly regulated by HIPAA. ▪ HIPAA permits covered entities to disclose PHI about an individual whom the entity reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority authorized by law to receive reports. Even if this statute can be interpreted to "require" disclosure, PHI may 	<p>Further analysis required</p>	<p>164.512(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<ul style="list-style-type: none"> ▪ When necessary for a complete evaluation, director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility, or agency acting as a caretaker to the adult—including, but not limited to, records maintained by facilities licensed by NC DHHS. Use of information so obtained is subject to and governed by the provisions of GS 108A-80 and GS Ch. 122C Art. 3. ▪ Requires director to make a written report after completing the evaluation and to notify the reporter of his determination as to whether the adult needs protective services. ▪ Directs staff and physicians of local health departments, area MH/DD/SA authorities, and other public or private agencies to cooperate fully with the director in performance of his duties. 		<p>only be disclosed if the individual is notified of the disclosure (with limited exceptions) and</p> <ul style="list-style-type: none"> o If the individual agrees to the disclosure, or o If the entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm; or o If the individual is unable to agree due to incapacity, the Director represents that the PHI is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. <ul style="list-style-type: none"> ▪ It also possible that the provision requiring various professionals to “cooperate” with the DSS director could be interpreted to mean that sharing of confidential information is required. Therefore this provision may fall within the “required by law” exception and therefore be permitted under HIPAA. See 164.512(a). 		
<p>GS 111-8.1— Reportable Eye Examinations Persons who conduct eye examinations and superintendents of institutions where such examinations are conducted must report to DHHS results of examinations that find that a person has no vision or vision with glasses that is so defective as to prevent the performance of ordinary activities for which eyesight is essential.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or injury or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because disclosure is required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 114-40— Inspector General Authorizes Inspector General to investigate alleged fraud, abuse, and waste in means-tested public assistance programs (which includes Medicaid) and to review the activities of DHHS, Divisions of Medical Assistance & Social Services. ... The IG shall have access to any records, data, or other information of DHHS and local county agencies the IG believes necessary to carry out the IG’s duties. The IG may request any information or assistance as may be necessary from the Department or from any federal, state, or local government entity.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent ▪ With respect to the statutory requirement for “access” by the IG, HIPAA would permit the disclosure as it is otherwise required by law. See 164.512(a). ▪ With respect to discretionary disclosures (if there are any under this statute), HIPAA would likely permit the disclosures under the oversight exception (except if the IG is investigating an individual under certain circumstances). HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law, however, investigations of individuals are not considered oversight activities under HIPAA unless the investigation arises out of and is directly related to <ul style="list-style-type: none"> o The receipt of health care o A claim for public benefits related to health; or o Qualification for, or receipt of, public benefits or services 	<p>Consistent</p>	<p>164.512(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>when a patient's health is integral to the claim for public benefits or services. See 164.512(d).</p>		
<p>GS 120-186— Commission on Aging Access Commission on Aging has authority to obtain medical record information by request or subpoena, provided patient identifying information is removed.</p>	<p>164.502(d) Uses and disclosures: de-identified PHI</p>	<ul style="list-style-type: none"> ▪ HIPAA only applies to individually identifiable health information and therefore, if the information is de-identified as required by HIPAA, the NC statute would be beyond HIPAA's scope. See 164.502(d); 164.514(a)-(c). ▪ If the information is not de-identified as provided in HIPAA <ul style="list-style-type: none"> ○ disclosure would not be permitted without individual permission pursuant only to a "request" by the Commission unless the Commission qualified as a public health authority or a "health oversight agency" or unless the disclosure was for research and all of the requirements related to research were satisfied. See 164.512(b); 164.512(d); 164.512(i). ○ Disclosure without individual permission pursuant to a subpoena may be subject to additional protections under HIPAA depending on the nature of the subpoena. See, e.g., 154.512(a) (subpoenas issued by a court); 164.512(e)(1)(ii) (subpoenas issued in the course of judicial and administrative proceedings); 164.512(f) (various subpoenas for law enforcement purposes); 164.512(d) (oversight activities "authorized by law"). 	<p>Further analysis required</p>	<p>164.512(a) 164.512(b) 164.512(d) 164.512(e) 164.512(f) 164.512(i) 164.514(a) 164.514(b) 164.514(c)</p>
<p>GS 122C-25— MH/DD/SA Facilities</p> <ul style="list-style-type: none"> ▪ In the course of MH/DD/SA facility inspections authorized by this section, the Secretary of HHS or her representative may review any record concerning the admission, discharge, medication, treatment, medical condition, or history of past or present patients, residents, or clients of the facility. ▪ Secretary or DHHS employee must not disclose confidential or privileged information obtained in the course of a facility inspection, unless the client or legally responsible person authorizes disclosure in writing. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes inspections and licensure activities. See 164.512(d). ▪ With respect to the protections against redisclosure by DHHS without individual authorization, it is possible that this oversight function is not part of one of DHHS's health care components. If so, DHHS would not be required to comply with HIPAA with respect to information received and maintained by that component. 	<p>Consistent</p>	
<p>GS 122C-25(b)— Information Held by DHHS Confidential/privileged information obtained by DHHS in the course of a MH/DD/SA facility inspection is exempt from public records act.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; provides added protection for the information by exempting it from public records law. 	<p>Consistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-52—Information Held by MH/DD/SA</p> <ul style="list-style-type: none"> ▪ Confidential information acquired in attending or treating a MH/DD/SA client is not a public record and may not be disclosed except as provided by GS 122C-53 through –56. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ First part of sentence provides added protection for the information by exempting it from public records law. ▪ Exceptions provided in GS 122C-53 through –56 are considered elsewhere in this matrix. 	<p>Further analysis required</p>	
<p>GS 122C-52—Information Held by MH/DD/SA</p> <p>No provision permitting disclosure of confidential information may apply to records of a client when federal statutes or regulations applicable to that client prohibit disclosure.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Appears to require federal preemption of any law permitting disclosure of confidential information ▪ Further analysis is required to determine how this statute has been interpreted in practice. 	<p>Further analysis required</p>	
<p>GS 122C-53(a)— MH/DD/SA</p> <p>A MH/DD/SA facility may disclose confidential information if the client or his legally responsible person consents in writing to the release of information to a specified person. Release is valid for specified length of time and is subject to revocation.</p>	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ The NC statute is similar to HIPAA’s provisions relating to authorization. HIPAA permits disclosure of PHI with an individual’s authorization, but establishes several requirements for such authorization. Comparing the requirements of the NC statute and HIPAA: <ul style="list-style-type: none"> o Both HIPAA and NC require the consent/authorization to be in writing o NC requires the release to be to a “specified person” whereas the HIPAA authorization can designate either a specific person or a “class of persons” o NC requires that the consent for release is valid for a specified length of time whereas HIPAA requires that the authorization have either an expiration date or event o Both HIPAA and NC permit the individual to revoke the consent/authorization. HIPAA provides exceptions to the right of revocation if either the covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy. o HIPAA imposes several additional detailed requirements on authorizations ▪ The “legally responsible person” identified in the NC statute is comparable to HIPAA’s “personal representative.” A personal representative is treated as the individual under HIPAA (subject to limited exceptions). See 164.502(g). ▪ It is important to note that consents under HIPAA for treatment, payment and health care operations are significantly different from “consent” in the NC statute. HIPAA does not require that the disclosure be to a specified person or that there be an expiration date. See 164.506. 	<p>Further analysis required</p>	<p>164.502(g) 164.506</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-53(b)— MH/DD/SA A MH/DD/SA facility may disclose the fact of admission or discharge of a client to the client’s next of kin whenever the responsible professional determines the disclosure is in the best interest of the client</p>	<p>164.510(b) Agree or object: involved in care</p>	<ul style="list-style-type: none"> ▪ HIPAA permits disclosures without written consent or authorization to other persons involved in the individual’s care (including next of kin) as long as the individual is informed of the disclosure and has had the opportunity to agree or object to the disclosure (or agreement may reasonably be inferred). See 164.510(b)(1)(i) and (b)(2). If the individual is not present or it is not practicable to provide the opportunity to agree or object, HIPAA permits disclosure if the covered entity, in the exercise of professional judgment, determines whether the disclosure is in the best interests of the individual. See 164.510(b)(3). ▪ It seems more appropriate to consider this NC statute in conjunction with the HIPAA provision for facility directories. HIPAA permits disclosure of facility directory information (including name, location, condition) to any person who asks for the individual by name. The entity must inform individuals of the directory disclosures and provide them with an opportunity to restrict or prohibit such disclosures (subject to limited exception for emergency circumstances). See 164.510(a). However, a comparison of this NC statute to 164.510(b) suggests that HIPAA may be more protective in instances where the individual is present or when it is practicable to provide an opportunity to agree or object. The NC statute appears to be more protective in that facilities may only disclose admission/discharge information: <ul style="list-style-type: none"> o To a more limited class of persons (next of kin only) o When the professional determines that disclosure is in the best interest of the client. ▪ Further analysis is necessary to determine how this statute interacts with 122C-55(j), (k) and (l). 	<p>Further analysis required</p>	
<p>GS 122C-53(g)— MH/DD/SA Facilities</p> <ul style="list-style-type: none"> ▪ An internal client advocate (i.e., client advocate employed or contracted by the facility) shall be granted, without consent of client or legally responsible person, access to routine reports and other confidential information necessary to advocate’s monitoring and advocacy functions. ▪ Advocate may also disclose confidential information to the client, his legally responsible person, the facility director or designee, other individuals within the facility involved in the client’s treatment, or to the Secretary in accordance with 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ The first provision requires disclosure to the internal client advocate; HIPAA permits disclosures that are otherwise required by law. See 164.512(a). ▪ The internal advocate, assuming that it is part of the entity’s workforce or a business associate, may only use and disclose PHI to the extent that the covered entity could use and disclose it. All of the disclosures identified in the NC statute would probably be permitted under HIPAA, with disclosure to the Secretary permitted as “required by law” (depending on the Commission rules) or pursuant to the 	<p>Further analysis required</p>	<p>164.512(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>rules of the Commission. Any further disclosure requires written consent of the client or legally responsible person.</p>		<p>oversight exception. 164.512(a) (required by law); 164.512(d) (oversight). The NC statute may be more protective for other disclosures because it requires written authorization. It is possible that the written consent required by this statute could be interpreted to include the consent signed by the individual for treatment, payment and health care operations. If so, the entity (including the advocate) may continue to make all disclosures it otherwise would have. If not, it may be difficult to segregate the PHI that is subject to this additional protection and the PHI that is not.</p>		
<p>GS 122C-53(g)— MH/DD/SA Facilities An external client advocate (i.e., not employed/contracted by facility but acting on behalf of a particular client with written authorization) shall have access to confidential information only upon the written consent of the client and his legally responsible person and may use the information only as authorized by the client and his legally responsible person.</p>	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ It appears that the NC statute may be more protective in that it requires the authorization of both the individual <u>and</u> the individual's legal representative. Should examine how this has been interpreted and is applied in practice. ▪ An authorization for disclosure to an external client advocate would be required to comply with HIPAA authorization specifications. 	<p>Further analysis required</p>	
<p>GS 122C-53(h)— MH/DD/SA A MH/DD/SA facility, in accordance with GS 122C-205, shall notify the appropriate individuals upon the escape from and subsequent return of clients to a 24-hour facility.</p> <ul style="list-style-type: none"> ▪ GS 122C-205(a) and (b) specify the circumstances under which a person's departure from a facility triggers the law enforcement notification requirements. The responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the county where the facility is located and any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agencies under the particular circumstances involved in order to assure the expeditious return of the client...and protect the general public. ▪ GS 122C-205(c) provides that the facility must first notify the agency by telephone and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the 	<p>164.512(f) Exceptions: Law enforcement</p>	<ul style="list-style-type: none"> ▪ The NC statute ((a)-(d)) requires facilities to notify law enforcement and others of an escape and therefore the disclosure without individual permission is permitted under HIPAA as "required by law." See 164.512(a) (required by law); 164.512(f)(1) (law enforcement). The NC statute explains that the responsible professional shall determine which information should be disclosed. HIPAA does not specify which information should be disclosed when the disclosure is required by law except that psychotherapy notes may not be disclosed without the individual's authorization. 164.512(f)(2) (excepting disclosures required by law). ▪ HIPAA would also permit disclosure of PHI without individual permission to law enforcement where the covered entity has a good faith belief that disclosure is necessary for law enforcement authorities to identify or apprehend an individual because it appears that the individual has escaped from a correctional institution or from lawful custody (which includes "persons committed to mental institutions through the criminal justice system"). See 164.512(j)(1)(ii)(B). NC law may be more protective in this regard. ▪ Law enforcement officials are likely not covered entities and 	<p>Further analysis required</p>	<p>164.508 164.512(a) 164.512(j)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible after the notification, the facility should provide written authorization for law enforcement to take the client into custody... The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary ...to ensure the return of the client...and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message into either the DCI or the NCIS</p> <ul style="list-style-type: none"> ▪ GS 122C-205(d) The responsible professional shall also notify or cause to be notified about the escape the following persons as soon as practicable: <ul style="list-style-type: none"> o The next of kin or legally responsible person for the client; o The clerk of superior court of the county of commitment of the client; o The physician or psychologist who performed the first examination for a commitment of the client, if appropriate; and o Any official who has placed a detainer on a client. 		<p>therefore the provisions of 122C-205(c) that address the authority of law enforcement officials to further disclose PHI received through such notification is beyond the scope of HIPAA (law enforcement agencies are not covered entities).</p>		
<p>GS 122C-54(a)— MH/DD/SA/Court order A MH/DD/SA facility shall disclose confidential information if a court of competent jurisdiction issues an order compelling disclosure.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is “required by law” which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of “required by law”). 	<p>Consistent</p>	<p>164.501 164.508(a) 164.512(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-54(a1)— MH/DD/SA/Commitment and competency A MH/DD/SA facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client, or for purposes of filing a petition for the adjudication of incompetency of a client.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ The exception applicable to judicial and administrative proceedings only applies when the disclosure is in response to an order or other type of request; it does not appear to apply to petitions to the court. ▪ It is not clear where disclosures related to these two petitions will fall under HIPAA. <ul style="list-style-type: none"> o Disclosure may be considered part of treatment and therefore permitted with the individual's consent (or his or her personal representative). See 164.506. o Disclosure may be permitted under 164.512(j) which provides that a covered entity may disclose PHI when the entity, in good faith, believes use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. See 164.512(j). o Disclosure would likely be permitted with the authorization of the individual's personal representative. See 164.508 (authorization); 164.502(g) (personal representatives). 	<p>Further analysis required</p>	<p>164.502(g) 164.506 164.508 164.512(j)</p>
<p>GS 122C-54(b)— MH/DD/SA When a court orders a mental examination of a criminal defendant, a MH/DD/SA facility may provide a report of the examination to the clerk of court, the DA, and the defendant's attorney.</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. It is possible that these discretionary disclosures ("<i>may provide</i>") would be permitted under this exception, however it would be preferable if the court order specifically directed the facility to disclose the report to those three parties. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is "required by law" which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of "required by law"). 	<p>Further analysis required</p>	<p>164.501 164.508 164.512(a)</p>
<p>GS 122C-54(c)— MH/DD/SA A MH/DD/SA facility may furnish information concerning clients who are voluntarily admitted or involuntarily committed and facing district court hearings and rehearings to the client's counsel, the attorney representing the state's interest, and the court. Confidentiality of client information shall be preserved in</p>	<p>164.512(e) Exceptions: Judicial/Admin</p>	<ul style="list-style-type: none"> ▪ The exception applicable to judicial and administrative proceedings only applies when the disclosure is in response to an order or other type of request; the NC statute does not appear to require a court order or other type of request and therefore it is possible that HIPAA may be more protective. ▪ It is not clear where these disclosures will fall under HIPAA: 	<p>Further analysis required</p>	<p>164.502(g) 164.506 164.508 164.512(j)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
all matters except those pertaining to the necessity of admission or continued stay in the facility or commitment under review.		<ul style="list-style-type: none"> o Disclosure may be considered part of treatment and therefore permitted with the individual's consent (or his or her personal representative). See 164.506. o Disclosure may be permitted under 164.512(j) which provides that a covered entity may disclose PHI when the entity, in good faith, believes use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public. See 164.512(j). o Disclosure would likely be permitted with the authorization of the individual's personal representative. See 164.508 (authorization); 164.502(g) (personal representatives). 		
<p>GS 122C-54(d)— MH/DD/SA District court judge may order disclosure of confidential MH/DD/SA information to any individual who files a motion in the cause in a proceeding under GS 122C Art. 5, if the judge finds that disclosure is in the best interest of the individual who is the subject of the information or of the public.</p>	164.512(e) Exceptions: Judicial/Admin	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits a covered entity to disclose PHI without individual permission in a judicial or administrative proceeding in response to an order of a court or administrative tribunal. ▪ Authorization would be required for disclosure of psychotherapy notes <i>unless</i> disclosure is "required by law" which would include court orders. See 164.508(a)(2) (authorizations for psychotherapy notes); 164.512(a) (required by law exception); 164.501 (definition of "required by law"). 	Consistent	164.501 164.508 164.512(a)
<p>GS 122C-54(f)— MH/DD/SA MH/DD/SA facilities and the UNC Hospitals' psychiatric service may disclose confidential information to staff attorneys of the AG's office when such disclosure is necessary to performance of the AG's statutory duties or to AG's performance when acting as attorney for the state facility or the UNC Hospital psychiatric service.</p>	164.506 Consent: Health care operations	<ul style="list-style-type: none"> ▪ "Necessary to the AG's statutory duties": Depending on the statutory duties, disclosure may be permitted by HIPAA because it is required by law. 164.512(a). Alternatively, disclosure may fall within one of several other categories of disclosure permitted by HIPAA without individual permission. See e.g., 164.512(d) (oversight); 164.512(e) (judicial and administrative proceedings); 164.512(f) (law enforcement). ▪ "Necessary to the AG's performance when acting as attorney for the facility": <ul style="list-style-type: none"> o HIPAA requires a provider with a direct treatment relationship to obtain consent for use/disclosure for treatment, payment or health care operations. Health care operations includes conducting or arranging for legal services. o HIPAA requires an authorization for the use of psychotherapy notes except in the process of defending 	Further analysis required	164.502(e) 164.504(e) 164.512(a) 164.512(d) 164.512(e) 164.512(f)

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>a legal action brought by an individual or other proceeding. See 164.508(a)(2).</p> <ul style="list-style-type: none"> ▪ Disclosures of PHI to an attorney who is not employed by the facility (which may include the AG) would likely require a business associate agreement. See 164.502(e); 164.504(e). 		
<p>GS 122C-54(g)— MH/DD/SA A MH/DD/SA facility or employee thereof may disclose confidential information to an attorney representing the facility or the employee if the information is relevant to litigation, facility operations, or the facility's provision of services.</p>	<p>164.506 Consent: Health Care Operations</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. ▪ HIPAA requires a provider with a direct treatment relationship to obtain consent for use/disclosure for treatment, payment or health care operations. Health care operations would most likely include all of the functions identified in the NC statute (litigation, facility operations, and the facility's provision of services). ▪ HIPAA requires an authorization for the use of psychotherapy notes except certain circumstances including in the process of defending a legal action brought by an individual or other proceeding. See 164.508(a)(2). ▪ Disclosures of PHI to an attorney who is not employed by the facility would likely require a business associate agreement. See 164.502(e); 164.504(e). ▪ The NC statute reflects an implicit minimum necessary standard (information must be relevant to the three listed functions). This standard would most likely be consistent with HIPAA's minimum necessary standard. See 164.502(b); 164.514(d). 	<p>Inconsistent</p>	<p>164.502(b) 164.502(e) 164.504(e) 164.508(a) 164.514(d)</p>
<p>GS 122C-54(h)— Child Protective Services/ MH/DD/SA A MH/DD/SA facility shall disclose confidential information for purposes of complying with GS Ch. 7B Art. 3 (child protective services).</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 122C-54(h)— Adult Protective Services A MH/DD/SA facility shall disclose confidential information for purposes of complying with GS Ch. 108A Art. 6 (adult protective services).</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. HIPAA also requires that for disclosures about victims of abuse, neglect or domestic violence that are required by law, the disclosure comply with and be limited by the relevant requirements of the State law. See 164.512(c). 	<p>Inconsistent</p>	<p>164.512(c)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-55(a)— MH/DD/SA Authorizes area or state MH/DD/SA facilities and UNC psychiatric service to share confidential information regarding their clients with each other when necessary to coordinate care and when failure to share the information would be detrimental to care. Consent of client or legally responsible person is not required and information may be furnished over client's objections.</p>	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. HIPAA requires consent for most health care providers to share information for treatment, payment or health care operations (subject to limited exceptions). This statute provides that information may be shared without the individual's consent (and even over the individual's objection). Exceptions to the consent requirement include emergency treatment situations, when the provider is required by law to treat the individual, and when substantial communication barriers exist and consent may be inferred. ▪ If the information includes psychotherapy notes, HIPAA requires that the entity obtain an authorization in addition to the consent (subject to limited exceptions). See 164.508(a)(2) (authorization). 	<p>Inconsistent</p>	<p>164.508(a)</p>
<p>GS 122C-55(a1)— MH/DD/SA Authorizes area or state MH/DD/SA facilities and UNC psychiatric service to share confidential information regarding their clients with the Secretary of HHS when necessary to coordinate care and when failure to share the information would be detrimental to care. Consent of client or legally responsible person is not required and information may be furnished over client's objections.</p>	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. Assuming disclosure is not for oversight purposes, HIPAA requires consent for health care providers to share information for treatment, payment or health care operations. This statute provides that information may be shared without the individual's consent (and even with the individual's objection). Exceptions to the HIPAA consent requirement include emergency treatment situations, when the provider is required by law to treat the individual, and when substantial communication barriers exist and consent may be inferred. ▪ It is possible that disclosure would be permitted without consent or authorization in some circumstances (except for psychotherapy notes) if the facilities/UNC and DHHS could be considered a "government agency administering a government program providing public benefits" and disclosure "is necessary to coordinate the covered functions [of the facility/UNC and DHHS] or to improve administration and management relating to the covered functions." See 164.512(k)(6)(ii). ▪ If the information includes psychotherapy notes, HIPAA requires that the entity obtain an authorization in addition to the consent (subject to limited exceptions). See 164.508(a)(2) (authorization). 	<p>Inconsistent</p>	<p>164.508 164.512(k)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-55(b)— MH/DD/SA Authorizes MH/DD/SA facilities, physicians, and other persons responsible for evaluation, management, supervision, or treatment of respondents involuntarily committed to request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.</p>	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ HIPAA requires consent for health care providers to share information for treatment, payment or health care operations. Exceptions to the consent requirement include emergency treatment situations, when the provider is required by law to treat the individual, and when substantial communication barriers exist and consent may be inferred. The question is whether involuntary commitment qualifies as an “emergency treatment situation” or if in some circumstances the facility would be “required by law to treat.” In either instance, the entity would need to attempt to obtain consent as soon as practicable after treatment and, if the attempt fails, document such attempt. ▪ It is possible that the patient may have a legal guardian (either court-appointed or otherwise). If so, consent would have to be obtained from the guardian. See 164.502(g) (personal representatives). ▪ If the information includes psychotherapy notes, HIPAA requires that the entity obtain an authorization in addition to the consent (subject to limited exceptions). See 164.508(a)(2) (authorization). Exceptions to this requirement include use by the originator of the notes for treatment, payment or health care operations, use or disclosure required by law and use or disclosure necessary to avert a serious threat to health or safety. ▪ The NC statute reflects an implicit minimum necessary standard (“to the extent necessary”). This standard would most likely be consistent with HIPAA’s minimum necessary standard. See 164.502(b); 164.514(d). 	<p>Further analysis required</p>	<p>164.502(b) 164.502(g) 164.508 164.514(d)</p>
<p>GS 122C-55(c)— MH/DD/SA</p> <ul style="list-style-type: none"> ▪ Authorizes DOC to furnish confidential information to the facility about treatment DOC provided to a present or former inmate, if the inmate is seeking treatment from the facility or has been involuntarily committed to the facility. ▪ Consent of client or inmate not required and information shall be furnished over client/inmate’s objection. ▪ Information so disclosed is restricted from further disclosure. 	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ This will depend on DOC’s status. If DOC is not a covered entity, then this statute is beyond the scope of HIPAA. If DOC, or a component of DOC is a covered entity (e.g., provider): <ul style="list-style-type: none"> o HIPAA would allow disclosure with respect to present inmates. HIPAA allows an inmate’s provider to disclose PHI created or received in the course of providing treatment for the purpose of treatment, payment or health care operations without the inmate’s consent. See 164.506(a)(2)(ii). In addition, HIPAA permits disclosure without consent to a correctional institution or a law enforcement official having lawful custody of an 	<p>Further analysis required</p>	<p>164.512(k)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>inmate for a variety of reasons including the provision of health care, the health and safety of the individual, other inmates, or transport officers, law enforcement on the premises, and the administration and maintenance of the safety, security and good order of the institution. See 164.512(k)(5)</p> <ul style="list-style-type: none"> o With respect to “former inmates,” HIPAA may not permit a provider with a direct treatment relationship with a patient to disclose PHI without consent. ▪ The last provision of the NC statute relates to redisclosure by DOC. Again, whether this provision interacts with HIPAA will depend on DOC’s status (i.e., is it a covered entity). 		
<p>GS 122C-55(c)— MH/DD/SA</p> <ul style="list-style-type: none"> ▪ Authorizes MH/DD/SA facilities to furnish confidential information to DOC regarding a client who is an inmate who has been determined by DOC to be in need of MH, DD, or SA treatment. ▪ Consent of client or inmate not required and information shall be furnished over client/inmate’s objection. ▪ Information so disclosed is restricted from further disclosure. 	<p>164.512(k) Exceptions: Government functions</p>	<ul style="list-style-type: none"> ▪ This will depend on DOC’s status. If DOC is a correctional institution, HIPAA would likely permit disclosure without consent or authorization. In addition, HIPAA permits disclosure without consent to a correctional institution or a law enforcement official having lawful custody of an inmate for a variety of reasons including the provision of health care, the health and safety of the individual, other inmates, or transport officers, law enforcement on the premises, and the administration and maintenance of the safety, security and good order of the institution. See 164.512(k)(5) ▪ It is possible (but unlikely) that this disclosure would fall within the oversight exception. DOC would need to fall within the definition of health oversight agency which includes agencies “authorized by law to oversee the health care system ... or government programs in which PHI is necessary to determine eligibility or compliance, or to enforce civil rights laws...” See 164.501 (definitions); 164.512(d) (oversight exception). ▪ The last provision of the NC statute relates to redisclosure by DOC. Again, whether this provision interacts with HIPAA will depend on whether DOC is a covered entity. 	<p>Further analysis required</p>	<p>164.501 164.512(d)</p>
<p>GS 122C-55(d)— Imminent Danger A responsible MH/DD/SA professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual.</p>	<p>164.512(j) Exceptions: Avert a threat to health or safety</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Consistent to the extent that HIPAA permits disclosure without individual permission when the entity, in good faith, believes use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person 	<p>Consistent in part</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<ul style="list-style-type: none"> ▪ NC statute may be more protective in that HIPAA permits disclosure if necessary to prevent or lessen a serious and imminent threat to the health or safety of <i>the public</i>. ▪ HIPAA may be more protective in that it requires that the disclosure be made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. 		
<p>GS 122C-55(d)— Crime A responsible MH/DD/SA professional may disclose confidential information when in his opinion there is a likelihood of the commission of a felony or violent misdemeanor.</p>	<p>164.512(f) Exceptions: Law enforcement</p>	<ul style="list-style-type: none"> ▪ Consistent in part; HIPAA permits a provider to initiate contact with a law enforcement official and disclose PHI without individual permission <ul style="list-style-type: none"> o when the provider is providing emergency care if the disclosure appears necessary to alert law enforcement to the commission and nature of a crime, the location of such crime or the victim(s) and the identity, description, and location of the perpetrator (except when the provider believes that the medical emergency is the result of abuse, neglect or domestic violence in which case the requirements of 164.512(c) apply). See 164.512(f)(6). o When the provider has a suspicion that an individual's death resulted from criminal conduct. See 164.512(f)(4). o When the provider believes in good faith that the PHI constitutes evidence of criminal conduct that occurred on the premises of the covered entity. See 164.512(f)(5). ▪ The NC statute may be more protective in that disclosure is limited to incidents involving the commission of a felony or violent misdemeanor whereas HIPAA is more general (i.e., "criminal conduct"). ▪ Different rules apply if the provider is responding to a request from law enforcement (rather than initiating the contact). See, e.g., 164.512(f)(2); 164.512(f)(3). 	<p>Consistent in part</p>	<p>164.512(c)</p>
<p>GS 122C-55(e)— MH/DD/SA</p> <ul style="list-style-type: none"> ▪ Authorizes responsible MH/DD/SA professional to exchange confidential information with a physician or other HCP who is providing emergency medical services to a MH/DD/SA client. ▪ Limits disclosure to that necessary to meet the emergency 	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ Like the NC statute, HIPAA allows a provider to use/disclose PHI in emergency treatment situations without the individual's consent. ▪ HIPAA requires that the provider must try to obtain consent as soon as possible after the treatment has been delivered. 	<p>Consistent in part</p>	<p>164.502(b) 164.514(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
as determined by the responsible professional.		<p>HIPAA therefore may be more protective in this regard.</p> <ul style="list-style-type: none"> ▪ The NC statute includes an explicit minimum necessary standard. This standard would most likely be consistent with HIPAA's minimum necessary standard. See 164.502(b); 164.514(d). 		
<p>GS 122C-55(e2)— MH/DD/SA Authorizes responsible MH/DD/SA professional to disclose an advance instruction or confidential information from an advance instruction for MH treatment to a physician, psychologist, or other qualified professional when the responsible professional determines disclosure is necessary to give effect to or provide treatment in accordance with the advance instruction.</p>	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ HIPAA may be more protective because it may require consent. Disclosure of an advance instruction or information from an advance instruction would most likely be considered a disclosure for treatment purposes; if so, a provider with a direct treatment relationship would only be permitted with the consent of the individual (subject to limited exceptions). ▪ If the disclosure also includes psychotherapy notes (which is highly unlikely), an authorization will be required. See 164.508(a)(2). 	Further analysis required	164.508(a)
<p>GS 122C-55(f)— MH/DD/SA Authorizes MH/DD/SA facility to disclose confidential information to a provider of support services when the facility has a written agreement with the provider and the agreement includes a provision in which the provider agrees to safeguard and not further disclose the information.</p>	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ To the extent the support services are treatment related, the NC statute may be more protective than HIPAA. The NC statute requires a written confidentiality agreement between the covered entity and the organization providing support services before the covered entity may release individual treatment information to the supplier of support services. Under HIPAA, if a patient gives consent to treatment, a business associate/confidentiality agreement is not required between the covered entity and the support service providing treatment. See 164.502(e)(1)(ii)(A). ▪ When the support services are not treatment related, the confidentiality agreement required by the NC statute would need to comply with HIPAA's business associate requirements. However, HIPAA has more detailed requirements for the disclosure/use of information by business associates than does the NC statute. See 164.502(e)(1)(ii) 	Further analysis required	164.502(e) 164.504(e)
<p>GS 122C-55(g)— MH/DD/SA Authorizes MH/DD/SA facility to disclose confidential information to a state or federal agency when there is reason to believe a client is eligible for financial benefits through the agency. Limits disclosures to the confidential information necessary to establish benefits. After benefits are established, consent of client or</p>	164.506 Consent: Payment	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ HIPAA may be more protective because it requires a provider with a direct treatment relationship to obtain consent for uses/disclosures related to treatment, payment or health care operations; eligibility determinations are considered part of payment. 	Consistent in part	164.502(b) 164.514(d)

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
legally responsible person is required for further release of information.		<ul style="list-style-type: none"> ▪ The NC statute includes an explicit minimum necessary standard. This standard would most likely be consistent with HIPAA's minimum necessary standard. See 164.502(b); 164.514(d). 		
<p>GS 122C-55(h)— MH/DD/SA Within a MH/DD/SA facility, employees, students, consultants, or volunteers involved in a client's care may exchange information as needed to carry out their responsibilities in serving the client.</p>	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ HIPAA requires providers to obtain consent to use PHI for treatment, payment and health care operations. As long as the facility has obtained the consent, the employees, students, and volunteers would be able to use PHI for treatment, payment and health care operations. HIPAA also permits these workforce members to disclose PHI for treatment, payment and health care operations. ▪ Consultants, however, could be considered business associates (depending on their function and responsibilities) and a business associate agreement may be necessary. 164.502(e); 164.504(e). <ul style="list-style-type: none"> o If the consultant is a health care provider and the disclosure is related to the individual's treatment, an agreement would not be required. o If an agreement is required and if disclosure is still only for treatment, payment or health care operations (as is suggested by the NC statute), the consent would be sufficient to authorize disclosure to the business associate. If the disclosure is for other purposes not otherwise permitted by HIPAA, an authorization would be required. See 164.502(e)(1) and 164.504(e)(2) & (3). o Also possible that the consultant and the facility could be participating in an organized health care arrangement, in which case they may comply using "joint consent.". See 164.501; 164.506(f). 	Further analysis required	164.501 164.502(e) 164.504(e) 164.506(f)
<p>GS 122C-55(i)— MH/DD/SA Upon specific request, a responsible MH/DD/SA professional may release confidential information to a physician or psychologist who referred a client to the MH/DD/SA facility.</p>	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ Consistent in part and inconsistent in part. ▪ This disclosure to the referring provider would most likely be considered a disclosure for treatment purposes. Assuming the professional has a direct treatment relationship, HIPAA would permit disclosure only with individual consent (subject to limited exceptions). Therefore, for providers with direct treatment relationships, HIPAA may be more protective. If the professional has an indirect treatment relationship, then disclosure for treatment purposes is permitted without consent or authorization. 	Consistent in part	164.508(a)

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<ul style="list-style-type: none"> ▪ NC statute may be more protective in that it appears to only permit this disclosure pursuant to a specific request (presumably a request from the referring physician). ▪ If the disclosure also includes psychotherapy notes, an authorization will be required (except in limited circumstances). See 164.508(a)(2). 		
<p>GS 122C-55(j)— MH/DD/SA</p> <ul style="list-style-type: none"> ▪ Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin or other family member or the designee with the dosage of the medications prescribed, the side effects of the medications prescribed, if any, and the progress of the client, provided that the client or his legally responsible person has consented in writing, or the client has consented orally in the presence of a witness selected by the client, prior to the release of this information. ▪ Both the client's or the legally responsible person's consent and the release of this information shall be documented in the client's medical record. ▪ This consent shall be valid for a specified length of time only and is subject to revocation of the consenting individual. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. <ul style="list-style-type: none"> ○ NC statute requires a consent (either orally or in writing). HIPAA requires that the disclosure "required by law" be consistent with the requirements of such law. ○ HIPAA also permits disclosures subject to an individual's "consent" (for treatment, payment and health care operations) or "authorization." If the "consent" (as that term is used in the NC statute) is in writing and it complies with all of the applicable "authorization" or "consent" requirements under HIPAA, disclosure would also be permitted under either 164.506 or 164.508. ▪ The requirement in the NC statute that the disclosure be documented in the medical record is consistent with HIPAA in that HIPAA creates an individual's right to an accounting of disclosures of PHI. In order to provide an accounting, the disclosure would need to be documented. See 164.528(a)(1)(iii). 	<p>Further analysis required</p>	<p>164.502(b) 164.514(d) 164.528</p>
<p>GS 122C-55(k)— MH/DD/SA</p> <p>Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin, or family member, or the designee, notification of the client's admission to the facility, transfer to another facility, decision to leave the facility against medical advice, discharge from the facility, and referrals and appointment information for treatment after discharge, after notification to the client that this information has been requested.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. NC statute requires notification. HIPAA requires that the disclosure "required by law" be consistent with the requirements of such law (i.e., notification) ▪ Some of the PHI that NC would permit to be disclosed is also potentially PHI that would be included in a facility's directory (e.g., location in the facility/transfer). HIPAA permits disclosure of facility directory information without consent or authorization. HIPAA does, however, require that individuals be informed of potential disclosures from facility directories and that they have the opportunity to agree or object to such disclosures (except in the case of incapacity or emergency treatment situations). See 164.510(a). The NC statute does not require the covered entity to provide the individual with 	<p>Further analysis required</p>	<p>164.510(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>an opportunity to agree or object – it only requires notification upon the request of next of kin or other family member. The question is whether the general HIPAA notification upon admission that facility directory information may be disclosed is sufficient to satisfy the NC requirement for notification.</p>		
<p>GS 122C-55(l)— MH/DD/SA Describes how responsible MH/DD/SA professional must respond to requests of next of kin, family member, or other person designated by the MH/DD/SA client when: (1) that person has a legitimate role in the therapeutic services offered, and (2) the person seeks information other than the information addressed in 122C-55(j) and (k). Responsible professional shall:</p> <ul style="list-style-type: none"> ▪ Provide the requested information if both of the following apply: <ul style="list-style-type: none"> o the professional determines that it will be to the client's therapeutic benefit, and o the client or legally responsible person has consented in writing. ▪ Refuse to provide the information if either of the following apply: <ul style="list-style-type: none"> o the professional determines that doing so will be detrimental to the therapeutic relationship, or o the professional determines that the person requesting the information does not have a legitimate need for it. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. NC statute outlines several requirements for making such disclosures. HIPAA requires that the disclosure "required by law" be consistent with the requirements of such law. 	<p>Further analysis required</p>	
<p>GS 122C-55(e1)— MH/DD/SA Facilities MH/DD/SA facility may furnish client-identifying information to DHHS for purpose of maintaining an index of clients served in state facilities, which may be used by state facilities only if that information is necessary for the appropriate and effective evaluation, care and treatment of the client.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ <i>Area facilities disclosing PHI to DHHS:</i> Area facilities may be permitted to disclose PHI to DHHS without consent to the extent that the purpose of the disclosure is to achieve appropriate oversight of (i) the health care system; (ii) beneficiary eligibility under government health programs; and (iii) entities subject to government regulatory programs (for which PHI is necessary...) 164.512(d)(1)(i)-(iii). ▪ <i>State facilities disclosing PHI to DHHS:</i> DHHS is likely a hybrid entity. State facilities are likely to be considered health care components of this hybrid entity. Health care components may only disclose PHI to other components in circumstances where HIPAA would permit disclosure if the two components were separate and distinct legal entities. Therefore, the state facilities would be able to disclose PHI to other components of DHHS in the same way that area 	<p>Further analysis required</p>	<p>164.502(b) 164.504(c) 164.514(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>facilities would be permitted to disclose (see above). It is likely that state facilities will be sharing PHI with DHHS for purposes other than oversight as well.</p> <ul style="list-style-type: none"> ▪ <i>DHHS disclosing the index to the facilities for their use:</i> The use of the index of clients by the facilities for the “appropriate and effective evaluation, care and treatment of the client” seems to be a disclosure by DHHS of information about clients in facilities other than the one caring for the individual. <ul style="list-style-type: none"> o DHHS may not be obtaining and maintaining this PHI as part of a covered health care component and if so, HIPAA would not restrict when DHHS may disclose such information to the facilities. o If DHHS is a covered entity, it is likely that it could not disclose the entire index to every facility because such a disclosure would violate the principle of minimum necessary. See 164.502(b); 164.514(d). o The facilities (as covered entities) may not be permitted to use such information because it could violate the minimum necessary standard. 		
<p>GS 122C-56(a)— Secretary Access to MH/DD/SA Information The Secretary may receive confidential information from State and area facilities when specifically required by other State or federal law</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 122C-56(a)— Secretary Access to MH/DD/SA Information</p> <ul style="list-style-type: none"> ▪ Authorizes Secretary of HHS to require state and area MH/DD/SA facilities to provide information that does not identify clients for purposes of preparing statistical reports of activities and services, and for planning and study. 	<p>164.502(d) Uses and disclosures: de-identified PHI</p>	<ul style="list-style-type: none"> ▪ HIPAA only applies to individually identifiable health information and therefore, if the information is de-identified as required by HIPAA, the NC statute would be beyond HIPAA’s scope. See 164.502(d); 164.514(a)-(c). ▪ Even if the information is not de-identified as provided in HIPAA, disclosure may still be permitted if the Secretary “requires” the disclosures by regulation or if the disclosure qualifies as a “health oversight activity.” See 164.512(a) (required by law) and 164.512(d) (oversight). May also qualify as a public health activity. See 164.512(b). 	<p>Further analysis required</p>	<p>164.512(a) 164.512(d) 164.512(b) 164.514(a) 164.514(b) 164.514(c)</p>
<p>GS 122C-56(b)— MH/DD/SA Secretary of HHS may have access to confidential information from public or private agencies or agents for purposes of research and evaluation in the areas of MH/DD/SA. Further</p>	<p>164.512(i) Exceptions: Research</p>	<ul style="list-style-type: none"> ▪ Disclosures for “research” could fall into several different categories including health care operations, public health (surveillance and investigation), and research. See 164.501 (definition of health care operations); 164.512(b) (public 	<p>Further analysis required</p>	<p>164.501 164.512(b) 164.512(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
disclosure of the information is prohibited.		health); 164.512(i) (research). In addition, disclosures to DHHS may fall within the oversight exception. See 164.512(d) (oversight). Disclosures would need to comply with the applicable HIPAA requirements. For example, if the disclosure is actually for "research" as defined in HIPAA, the entity may disclose PHI to a researcher if the entity obtains documentation that an IRB or privacy board has approved the research or in certain other circumstances.		
<p>GS 122C-56(c)— MH/DD/SA Facilities Facilities may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for the information. A person receiving the information may not directly or indirectly identify any client in any report or otherwise disclose client identity.</p>	164.512(i) Exceptions: Research	<ul style="list-style-type: none"> ▪ General research: Inconsistent; HIPAA requires covered entities to comply with specific review and documentation requirements prior to disclosing PHI for research. ▪ Clinical, financial, or administrative audits: Depending on the nature of the audit, the disclosure may be permitted without individual authorization as part of health care operations or as an oversight activity. See 164.506 (health care operations); 164.512(d) (oversight) ▪ With respect to redisclosure by the recipient, consistency with HIPAA would depend on the identity of the recipient (Workforce member? Another covered entity? Business associate?) and the purpose of disclosure. 	Further analysis required	164.506 164.512(d)
<p>GS 122C-56(c)— MH/DD/SA MH/DD/SA facility may disclose confidential information to persons responsible for conducting general research or clinical, financial, or administrative audits if there is a justifiable documented need for the information. Persons receiving the information may not directly or indirectly identify any client in any report or audit or otherwise.</p>	164.512(i) Exceptions: Research	<ul style="list-style-type: none"> ▪ Disclosures for "research" could fall into several different categories including health care operations, public health (surveillance and investigation), and research. See 164.501 (definition of health care operations); 164.512(b) (public health); 164.512(i) (research). Disclosures for audits are likely to fall within either health care operations or health oversight. See 164.501 (definition of health care operations); 164.512(d) (oversight). Disclosures would need to comply with the applicable HIPAA requirements. For example, if the disclosure is actually for "research" as defined in HIPAA, the entity may disclose PHI to a researcher if the entity obtains documentation that an IRB or privacy board has approved the research or in certain other circumstances. 	Further analysis required	164.501 164.512(b) 164.512(d)
<p>GS 122C-57(d1)— Unemancipated minors Except as provided in GS 90-21.4 (provision re: disclosure when the minor has consented to his or her own care), discharge of a voluntarily admitted minor from treatment shall include notice to</p>	164.502(g) Uses and disclosures: personal representatives	<ul style="list-style-type: none"> ▪ This chapter of the NC statutes defines "legally responsible person" for minors as to be "a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a 	Further analysis required	160.202 160.203(b) 164.510

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minors' request alone.</p>		<p>custody order to consent for medical care, including psychiatric treatment." See 122C-3(20)(ii).</p> <ul style="list-style-type: none"> ▪ To the extent the "legally responsible person" is a parent, guardian, or person standing in loco parentis, this provision requiring notice and consultation (which would presumably include PHI) would not be preempted because HIPAA specifically exempts from preemption "any State law to the extent that it authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or person acting in loco parentis of such minor." See 160.203(b) (general rule; more stringent); 160.202 (Definition: More stringent). ▪ If the legally responsible person is not a parent, guardian, person standing in loco parentis (i.e., a "legal custodian..."), disclosure may be permitted under HIPAA if the person is involved in the minor's care and if the minor has had an opportunity to agree or object to the disclosure (subject to some exceptions). See 164.510. 		
<p>GS 122C-66— Adult Protective Services Makes employees and volunteers of MH/DD/SA facilities criminally liable (class 1 misdemeanor) for knowingly causing pain or injury to a client or borrowing or taking personal property from a client. Requires facility employees who witness or have knowledge of such incidents or of an accidental injury to a client to make a report to authorized personnel. Provides additional protection to the identity of persons who report or cooperate in the investigation.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. HIPAA also requires that for disclosures about victims of abuse, neglect or domestic violence that are required by law, the disclosure comply with and be limited by the relevant requirements of the State law. See 164.512(c). ▪ In addition, HIPAA specifically exempts from preemption state laws that provide for injury reporting. See 160.203(c). The NC statute is more expansive in that it requires reporting for both pain and injury. It is possible, however, that "injury" under HIPAA could be interpreted to include "pain." If so, it is unclear whether the additional requirements in HIPAA would continue to apply. 	<p>Further analysis required</p>	<p>160.203(c) 164.512(c)</p>
<p>GS 122C-191(e)(2)— MH/DD/SA Facilities Proceedings of a MH/DD/SA quality assurance committee, records/material it produces, and material it considers are confidential, not public records, and not subject to discovery or introduction into evidence in any civil action against a facility or provider that results from matters that are the subject of evaluation and review by the committee.</p>	<p>164.506 Consent: Health care operations</p>	<ul style="list-style-type: none"> ▪ NC statute may be more protective. HIPAA permits a covered entity to use/disclose PHI for quality assurance activities as part of health care operations. See 164.506. The quality assurance committee will either be part of the covered entity or a business associate of the entity. In both cases, the PHI held by the committee would continue to be protected along with all other PHI maintained by the entity (and also subject to the same discretionary disclosures). NC statute may be more protective in that it provides that the information is confidential and not subject to discovery or introduction into evidence in certain situations. 	<p>Further analysis required</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 122C-191(e)(3)— MH/DD/SA Facilities Confidential peer review information may be released to a professional standards review organization that contracts with a state or federal agency to perform any accreditation or certification function. The information released must be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Such information remains confidential and is not subject to discovery or use in any civil actions. Standards review organization must keep the information confidential.</p>	<p>164.502(a) Uses and disclosures: General rules</p>	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective in that it requires a business associate agreement. ▪ The peer review process is considered part of health care operations. A provider with a direct treatment relationship may only use/disclose the information for health care operations with the individual's consent. See 164.501; 164.506. ▪ An accreditation organization would be considered a business associate and therefore a valid business associate agreement would be required in order to disclose PHI contained in the peer review records to such an organization. See 164.502(e); 164.504(e). The business associate agreement will specify how the accreditation organization may use and disclose the PHI. The NC statute requires that the organization keep the information confidential so the agreement will need to specify that requirement. ▪ Whistleblowers (members of the entity's workforce) may make disclosures without individual permission to accreditation agencies in certain circumstances and the covered entity will not be held liable for the disclosure. See 164.502(j)(1). 	<p>Inconsistent</p>	<p>164.501 164.502(e) 164.502(j) 164.504(e) 164.506</p>
<p>GS 122C-192— MH/DD/SA Facilities</p> <ul style="list-style-type: none"> ▪ For quality assurance purposes, Secretary (DHHS) may review any record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of a MH/DD/SAS area authority or state facility. ▪ Except as required by law, Secretary may not disclose confidential or privileged information so obtained without written authorization from the client. ▪ Information obtained by the Secretary is not a public record. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ <i>Area facilities disclosing PHI to DHHS:</i> <ul style="list-style-type: none"> ○ It is not clear whether the quality assurance activities governed by this statute would be considered oversight activities or health care operations. ○ If the activities are oversight activities, HIPAA would permit disclosure of PHI to oversight agencies without individual permission. See 164.512(d). With respect to the protections against redisclosure by DHHS without individual authorization, it is possible that DHHS's oversight functions are not covered functions and therefore those protections would be beyond the scope of HIPAA. ○ If the activities are health care operations, the additional protection provided under the NC statute for these records may be more protective than HIPAA in that disclosure would only permitted when required by law and with the individual's authorization. ▪ <i>State facilities disclosing PHI to DHHS:</i> DHHS is likely a hybrid entity. State facilities are likely to be considered 	<p>Further analysis required</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>health care components of this hybrid entity. Health care components may only disclose PHI to other components in circumstances where HIPAA would permit disclosure if the two components were separate and distinct legal entities. Therefore, the state facilities would only be able to disclose PHI to other components of DHHS in the same way that area facilities would be permitted to disclose.</p>		
<p>GS 130A-5— Unspecified danger to public health The Secretary of HHS may see patient records when the patient’s physician and a DHHS physician agree that there is a clear danger to public health.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the conduct of public health surveillance, investigation or intervention. See 160.203(c). ▪ Even without the specific preemption exception, disclosure would likely be permitted under HIPAA under either 164.512(b)(uses and disclosures for public health activities) or 164.512(j) (uses and disclosures to avert a serious threat to health or safety). 	<p>Consistent</p>	<p>164.512(b) 164.512(j)</p>
<p>GS 130A-12— Information Held by DHHS or LHD Records containing privileged patient medical information that are in the possession of DHHS or a local health department are confidential and are not public records.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ DHHS may be a hybrid entity and only certain health care components will be required to comply with HIPAA. DHHS may possess PHI in one of its non-health care component functions and therefore that component would not necessarily be required to comply with HIPAA with respect to such PHI. See 164.504 (hybrid entity and health care component). With respect to those entities, the NC statute may be more protective (because they would at least be covered by this general state statute). ▪ First part of sentence (“records...are confidential”) is vague; could be interpreted to provide more protection than HIPAA by not allowing many of the disclosures that are otherwise permitted by law. ▪ Second part of the sentence provides added protection for the information by exempting it from public records law. 	<p>Further analysis required</p>	
<p>GS 130A-45.8—Information Held by Public Health Authorities Medical records compiled and maintained by public health authorities are not public records.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; NC statute provides added protection for the information by exempting it from public records law. ▪ Note that “public health authority” is defined differently in HIPAA and NC statute. Compare GS 130A-45.01 with HIPAA 164.501. 	<p>Consistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-93— Confidentiality of Information Held by Various Parties Access to original vital records is restricted. The following birth data in the possession of DHHS, a local health department or local register of deeds office is not public record: names of children and parents, addresses of parents (other than county and zip code), SSNs of parents. All other birth data are public records.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ The local register of deeds is likely not a covered entity and therefore redisclosure by the register would be beyond the scope of HIPAA. ▪ DHHS may maintain vital records in a non-health care component and therefore the PHI would not necessarily be protected under HIPAA. ▪ Consistent with respect to those entities/components that are covered (including local health departments) <ul style="list-style-type: none"> o HIPAA specifically excepts from preemption laws “providing for the reporting of ...birth or death.” See 160.203(c). This statute, however, is not requiring reporting but rather protecting information that has been reported. Nonetheless, this preemption exception could be interpreted to apply. o Alternatively, the fact that birth data is “public record” could be interpreted to be “required by law.” See 164.512(a). The NC statute provides added protection for the listed information by exempting it from public records law. 	<p>Further analysis required</p>	<p>160.203(c) 164.512(a) 164.512(b)</p>
<p>GS 130A-112— Notification of death. Funeral director or person acting as such who first assumes custody of a dead body shall notify registrar in county where death occurred.</p>	<p>164.512(g) Exceptions: Decedents</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA’s scope; funeral directors are most likely not covered entities and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	
<p>GS 130A-117— Vital Statistics Public and private hospitals and other institutions to which persons “resort for confinement or treatment of diseases or to which persons are committed by process of law” shall record information for birth and death certificates and information regarding the release of a dead body or fetus over 20 weeks. The institution is required to maintain the records for not less than three years and the records must be made available for inspection by the State Registrar upon request.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ HIPAA specifically excepts from preemption any provision of State law that provides for the reporting of birth or death. See 160.203(c). ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information to the State Registrar because disclosure is required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 130A-135— Communicable Disease Physician must make report to local health director when the physician has reason to suspect that a person about whom the physician has been consulted professionally has a reportable communicable disease or condition. Reportable communicable diseases are determined by rule of the Commission for Health Services.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because disclosure is required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-136— Communicable Disease School principals and child day care operators must report to the local health director when they have reason to suspect a person in the school or child day care facility has a reportable communicable disease or condition.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ A school (and perhaps a child day care operator) may have a health care component that may be a covered entity if, for example, if it bills Medicaid for school health services. ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. See 160.203(c). ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because disclosure is required by law. See 164.512(a) 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 130A-137— Communicable Disease A medical facility in which there is a patient reasonably suspected of having a reportable communicable disease or condition may make a report to the local health director.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, HIPAA would likely permit medical facilities to disclose PHI without individual permission under the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>160.203(c)</p>
<p>GS 130A-139— Communicable Disease A person in charge of a laboratory providing diagnostic services must make a report to a public health agency specified by the Commission for Health Services when the laboratory has findings indicative of specified communicable diseases.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a) o disclosure would be consistent with the public health exception. See 164.512(b) 	<p>Consistent</p>	<p>164.512(a) 164.512(b)</p>
<p>GS 130A-140— Communicable Disease Local health directors must report cases of reportable diseases, conditions, and laboratory findings to DHHS and, when applicable, to the local health director of the county where the person with the reportable disease, condition, or laboratory finding resides.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a). o disclosure is consistent with the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(a) 164.512(b)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made of specific medical or epidemiological information for statistical purposes in a way that no person can be identified. 	<p>164.502(d) Uses and disclosures: de-identified information</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; HIPAA only applies to individually identifiable health information and therefore, if the information is de-identified as required by HIPAA, the NC statute is beyond HIPAA's scope. See 164.502(d); 164.514(a)-(c). 	<p>Beyond scope</p>	<p>164.514(a) 164.514(b) 164.514(c)</p>
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made pursuant to GS 130A-144(b) (requiring physicians and persons in charge of medical facilities or clinical or pathological laboratories to permit inspection of records by a local health director or the state health director for communicable disease control purposes). 	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption those laws that provide for the conduct of public health surveillance, investigation or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because disclosure is required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made pursuant to subpoena or court order. Upon request of patient, ...shall be reviewed in camera... trial judge may...[close the courtroom] 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent ▪ HIPAA permits disclosures pursuant to a court order. See 164.512(a) (required by law); 164.512(e) (judicial and administrative proceedings); 164.512(f) (law enforcement). ▪ Disclosures pursuant to a subpoena may be subject to additional protections under HIPAA depending on the nature of the subpoena. See, e.g., 164.512(e)(1)(ii) (judicial and administrative proceedings); 164.512(d) (oversight). ▪ NC provides additional protections in court (non-covered entity) (e.g., in-camera review, closed courtroom). 	<p>Consistent</p>	<p>164.512(e) 164.512(f) 164.512(d)</p>
<p>GS 130A-143— Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is necessary to protect the public health and is made as provided by the Commission for Health Services in 	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption state laws that provide for the reporting of disease and that provide for the conduct of public health surveillance, investigation or intervention. ▪ Even without the specific preemption exception, HIPAA would likely permit disclosure <ul style="list-style-type: none"> o to public health authorities pursuant to the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(a) 164.512(b) 164.512(j)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
its rules regarding communicable disease/condition control measures.		<ul style="list-style-type: none"> o when necessary to avert a serious threat to health or safety. See 164.512(j). o if the Commission rules require disclosure, disclosure would be permitted because HIPAA permits disclosure without individual permission where otherwise required by law. See 164.512(a). 		
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made by DHHS or a local health department to another state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or condition. 	160.203 Preemption exceptions	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption state laws that provide for the reporting of disease and that provide for the conduct of public health surveillance, investigation or intervention. ▪ Even without the specific preemption exception, HIPAA would likely permit disclosure when <ul style="list-style-type: none"> o Disclosure is consistent with the public health exception. See 164.512(b). o Disclosure is necessary to avert a serious threat to health or safety. See 164.512(j). 	Consistent	164.512(b) 164.512(j)
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made by DHHS or a local health department to a court or law enforcement officer for the purpose of enforcing the provisions of GS Ch. 130A Art. 6. 	160.203(c) Preemption exceptions	<ul style="list-style-type: none"> ▪ HIPAA specifically excepts from preemption laws that provide for the conduct of public health surveillance, investigation, or intervention. See 160.203(c). Given that Art. 6 relates to fundamental public health surveillance, investigation and intervention activities (communicable diseases), it is possible that this law could be excepted from preemption. ▪ HIPAA also permits disclosure without individual permission when required by law, for law enforcement, and in the course of judicial or administrative proceedings. Depending on the circumstances, one of these exceptions might apply. See 164.512(a) (required by law); 164.512(f) (law enforcement); 164.512(e) (judicial and administrative proceedings). 	Further analysis required	164.512(a) 164.512(e) 164.512(f)
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made ... with the written consent of the patient or his/her guardian 	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ HIPAA requires that health care providers with direct treatment relationships obtain consent for uses and disclosures related to treatment, payment and health care operations. See 164.506. This consent could be sufficient to satisfy the NC consent requirement but only with respect to disclosures for treatment, payment and health care operations. HIPAA permits disclosure with authorization, but specific requirements apply to the authorization. See 	Further analysis required	164.502(g) 164.508 164.512

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>164.508. HIPAA also permits disclosures without consent or authorization (See 164.512); for those disclosures that are permitted by HIPAA but not permitted by the NC statute, an authorization would be required.</p> <ul style="list-style-type: none"> ▪ Plans, clearinghouses and certain types of providers are not required to obtain consent for treatment, payment and health care operations and for certain other types of disclosures. See 164.506; 164.508. For those disclosures that are permitted by HIPAA but not permitted by the NC statute, the entity would need to obtain a consent or an authorization depending on the specific circumstances. ▪ On its face, the NC statute limits the class of persons other than the patient who may consent to release to guardians. This necessarily excludes other types of legal representatives such as health care power of attorney and administrators of estates. HIPAA does not define who the legal representative authorized to sign consents or authorizations will be; rather the regulation defers to the states. 164.502(g). Should examine how this statute is interpreted and applied in practice. 		
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under several specific circumstances.</p>	<p>164.502(a) Uses and disclosures: General rules</p>	<ul style="list-style-type: none"> ▪ Each of the permitted disclosures is analyzed separately in this matrix. ▪ In general <ul style="list-style-type: none"> o NC statute has broader application because it covers all information (public or private) rather than just certain information maintained by HIPAA covered entities. o For other disclosures that are permitted by HIPAA, but not permitted by the NC statute, the NC statute may be more protective. 	<p>Further analysis required</p>	
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ HIPAA will not interfere with any laws that “require” disclosure (See 164.512(a)) but for laws that “authorize” disclosure, the disclosure must be otherwise permitted under another section of HIPAA or else have the individual’s authorization. 	<p>Further analysis required</p>	<p>164.512(a)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-143— Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> Release is made pursuant to other provisions of GS Ch. 130A Art. 6. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> This provision is fairly broad and would require further analysis. G.S. 130A Art. 6 relates to communicable diseases. Many of the disclosures permitted by provisions in Art. 6 would be permitted under HIPAA as “required by law” and others would be permitted because they are either be excepted from preemption or otherwise permitted under HIPAA.. 	<p>Further analysis required</p>	
<p>GS 130A-143— Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances:</p> <ul style="list-style-type: none"> Release is made to health care personnel providing medical care to the patient 	<p>164.502(a) Uses and disclosures: General rules</p>	<ul style="list-style-type: none"> Consistent in part and inconsistent in part. Inconsistent with respect to providers with direct treatment relationships; HIPAA may be more protective. HIPAA requires a provider with a direct treatment relationship to obtain consent in order to use and disclose PHI for treatment, payment and health care operations. See 164.506. When a direct treatment provider discloses PHI to “health care personnel providing medical care to the patient” for treatment, payment or health care operations, HIPAA may be more protective than the NC statute because consent is required. When a direct treatment provider discloses PHI to “health care personnel providing medical care to the patient” for purposes <i>other than</i> treatment, payment or health care operations, authorization may be required for the disclosure or, in some instances, disclosure may be permitted by HIPAA without individual permission (e.g., research). Consistent with respect to other providers and other covered entities (plans and clearinghouses); those entities may disclose such information without consent or authorization for treatment, payment and health care operations. If the disclosure is for purposes for purposes <i>other than</i> treatment, payment or health care operations, HIPAA may be more protective – authorization may be required for the disclosure or, in some instances, disclosure may be permitted by HIPAA without individual permission (e.g., research). Note that HIPAA applies to both use and disclosure of PHI whereas the NC statute only appears to apply to disclosure. 	<p>Consistent in part</p>	<p>164.502(a) 164.506</p>
<p>GS 130A-143— Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> Disclosures otherwise <u>required</u> by law is consistent with 164.512(a). Disclosures otherwise <u>authorized</u> by law are only consistent to the extent that the disclosure permitted is also permitted 	<p>Further analysis required</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>confidential and may not be released or made public except under the following circumstances: ... (11) Release is made pursuant to any other provisions of law that authorize or require the release of information or records related to AIDS.</p>		<p>by HIPAA.</p>		
<p>GS 130A-143—Communicable Disease All information or records, whether publicly or privately maintained, that identify a person with AIDS or another reportable communicable disease or condition are strictly confidential and may not be released or made public except under the following circumstances: ▪ Release is made by DHHS for bona fide research purposes. The Commission shall adopt rules providing for the use of the information for research purposes.</p>	<p>164.512(i) Exceptions: Research</p>	<ul style="list-style-type: none"> ▪ DHHS may be a hybrid entity and only certain health care components will be required to comply with HIPAA. When DHHS obtains communicable disease information, it may possess the information in one of its non-health care component functions and therefore that component would not necessarily be required to comply with HIPAA with respect to such PHI. ▪ If DHHS is a covered entity with respect to this function, HIPAA permits use and disclosure without individual permission for research purposes only under specific circumstances. Unless the Commission rules are more protective than HIPAA, the rules would need to permit compliance with HIPAA. 	<p>Further analysis required</p>	
<p>GS 130A-144(b)— Communicable Disease Physicians and persons in charge of medical facilities or clinical or pathological laboratories must permit a local health director or the state health director to examine, review, and obtain a copy of records pertaining to the diagnosis, treatment, or prevention of a communicable disease/condition for a person infected, exposed, or reasonably suspected of being exposed to such disease or condition.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a). o disclosure is consistent with the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(a) 164.512(b)</p>
<p>GS 130A-153(c)— Communicable Disease/Immunization Records Immunization certificates and information concerning immunizations contained in medical or other health records shall, upon request, be shared with DHHS, local health departments, and the patient's attending physician.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a). o disclosure is consistent with the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(a) 164.512(b)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-153(c)— Communicable Disease/Immunization Records An insurance institution ... may share immunization information with DHHS.</p>	<p>164.512(b) Exceptions: Public health</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the conduct of public health surveillance, investigation, or intervention. It is likely that immunization information would be considered part of public health surveillance. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure would be consistent with the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>160.203(c) 164.512(b)</p>
<p>GS 130A-153(c)— Communicable Disease/Immunization Records The Commission may provide by rule that other persons may have access to immunization information, in whole or in part.</p>	<p>164.512(b) Exceptions: Public health</p>	<ul style="list-style-type: none"> ▪ Further analysis of Commission rules is necessary to evaluate the interaction of this provision with HIPAA. It is likely that disclosures required or authorized by the Commission rules would also be permitted by HIPAA because either <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a). o disclosure is consistent with the public health exception. See 164.512(b). 	<p>Further analysis required</p>	<p>164.512(a)</p>
<p>GS 130A-212—Information Held by Cancer Registry Clinical records or reports of individuals in the state cancer registry are confidential and not public records.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; the state or DHHS, as custodian of the cancer registry, is most likely not a covered entity with respect to this function and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	
<p>GS 130A-212— Cancer Registry Commission for Health Services shall provide by rule for use of cancer registry records and reports in research.</p>	<p>164.512(i) Exceptions: Research</p>	<ul style="list-style-type: none"> ▪ Interaction of this statute with HIPAA would depend on content of Commission rules. Disclosures for research (unless required by law) would need to comply with 164.512(i). See 164.512(a) (required by law). 	<p>Further analysis required</p>	<p>164.512(a)</p>
<p>GS 130A-309— Cancer Health care facilities and health care providers that detect, diagnose, or treat cancer must report each diagnosis of cancer to a central registry in accordance with rules of the Commission for Health Services.</p>	<p>160.203 Preemption exceptions</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or for the conduct of public health surveillance, investigation, or intervention. ▪ Even without the specific preemption exception, covered entities would be permitted to disclose this information because <ul style="list-style-type: none"> o disclosure is required by law. See 164.512(a). o disclosure is consistent with the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(a) 164.512(b)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-373— State Center for Health Statistics</p> <ul style="list-style-type: none"> ▪ Authorizes SCHS to collect, maintain and analyze health data on: <ul style="list-style-type: none"> ○ The extent, nature and impact of illness and disability on the population of the State ○ The determinants of health and health hazards ○ Health resources, including the extent of available work power and resources ○ Utilization of health care ○ Health care costs and financing and ○ Other health or health-related matters. ▪ Authorizes SCHS to undertake and support research, demonstrations and evaluations respecting new or improved methods for obtaining data. ▪ Authorizes SCHS to collect health data on behalf of other governmental or nonprofit organizations. ▪ Specifies that SCHS must collect data only on a voluntary basis except when specific legal authority makes reporting mandatory. ▪ When collecting data on a voluntary basis, SCHS shall give the person a statement in writing explaining the purpose of the collection and that the collection is voluntary. ▪ Subject to the provisions of 130A-374 (Security of health data), SCHS may share health data with other persons, agencies and organizations. ▪ SCHS shall ... publish, make available and disseminate statistics on as wide a basis as practical. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ SCHS is most likely not a covered entity and therefore use and disclosure of this information by SCHS would be beyond the scope of HIPAA. ▪ For mandatory disclosures, covered entities would be permitted to disclose this information because disclosure is required by law. See 164.512(a). ▪ For voluntary disclosures, covered entities would be permitted to disclose PHI to SCHS as long as the disclosure would otherwise be permitted under HIPAA (e.g., public health, research, oversight). ▪ It is possible that the reports to SCHS could be excepted from preemption. HIPAA specifically excepts laws that <ul style="list-style-type: none"> ○ provide for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention. See 160.203(c). ○ require a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure of certification of facilities or individuals. See 160.203(d). <p>HIPAA also provides that a State may request that the Secretary of the U.S. DHHS make a specific exception for State laws that are necessary</p> <ul style="list-style-type: none"> ○ for State reporting on health care delivery or costs or ○ for purposes of serving a compelling need related to public health, safety, or welfare and the intrusion into privacy is warranted when balanced against the need to be served. <p>See 160.203(a).</p>	<p>Further analysis required</p>	<p>160.203(a) 160.203(c) 160.203(d)</p>
<p>GS 130A-374— State Center for Health Statistics</p> <p>Individual medical records held by State Center for Health Statistics (SCHS) are confidential and not public records. Records may be disclosed only if</p> <ul style="list-style-type: none"> ▪ the disclosure is for bona fide research purposes (subject to Commission for Health Services rules). <p>SCHS must take appropriate measures to protect security of health data.</p>	<p>164.512(i) Exceptions: Research</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; SCHS is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	<p>164.512(b)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-374—Information Held by SCHS</p> <ul style="list-style-type: none"> ▪ Individual medical records held by State Center for Health Statistics (SCHS) are confidential and not public records. ▪ Records may be disclosed only if the individual described in the record has authorized the disclosure or the disclosure is for bona fide research purposes (subject to Commission for Health Services rules). ▪ SCHS must take appropriate measures to protect security of health data. 	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; SCHS is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	<p>164.512(i)</p>
<p>GS 130A-374— State Center for Health Statistics</p> <p>Individual medical records held by State Center for Health Statistics (SCHS) are confidential and not public records. Records may be disclosed only if</p> <ul style="list-style-type: none"> ▪ the individual described in the record has authorized the disclosure <p>SCHS must take appropriate measures to protect security of health data.</p>	<p>164.508(a) Authorization: General rule</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; SCHS is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	<p>164.506</p>
<p>GS 130A-383 – Medical examiner</p> <p>Notification of medical examiner required for deaths under certain circumstances.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when required by law. In addition, HIPAA specifically permits covered entities to disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death or other duties as authorized by law. See 164.512(g)(1). 	<p>Consistent</p>	<p>164.512(g)</p>
<p>GS 130A-385— Medical examiner</p> <p>The chief medical examiner or a county medical examiner is authorized to inspect and copy the medical records of a decedent whose death is under examination.</p>	<p>164.512(g) Exceptions: Decedents</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically permits covered entities to disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death or other duties as authorized by law. See 164.512(g)(1). ▪ It is possible that this statute could be interpreted to require disclosure of PHI. If so, HIPAA would permit disclosure as otherwise required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 130A-395— Communicable disease</p> <p>Attending physician required to notify persons who have handled bodies known to have specified infectious diseases.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 130A-406— Organ donation</p> <ul style="list-style-type: none"> ▪ Provides how individuals can make gifts of their bodies or body parts for research, transplantation, etc. ▪ States that the making of a gift authorizes the donee to review any medical records of the donor after his or her death. A “donee” may be an individual who is to receive a transplant, a physician, a medical school...depending upon whether and to whom the donor made a designation. 	<p>164.512(h) Exceptions: Organ donation</p>	<ul style="list-style-type: none"> ▪ HIPAA specifically permits covered entities to use or disclose PHI without individual permission to organ procurement organizations or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating donations or transplantation. See 164.512(h). Unless the donee is an organ procurement agency or other entity as specified by HIPAA, this statute is not consistent with the exception for organ, eye and tissue donation. HIPAA would likely only permit the disclosure with an authorization from the individual or the individual’s personal representative. See 164.508. ▪ The NC statute would permit the donee to have access to <i>all</i> medical records of the donor. Such broad access may violate the principle of minimum necessary. See 164.502(b). ▪ It is possible that this statute could be interpreted to require disclosure of PHI. If so, HIPAA would permit disclosure as otherwise required by law. See 164.512(a). 	<p>Further analysis required</p>	<p>164.502(b) 164.508 164.512(a)</p>
<p>GS 130A-412.1 — Organ donation</p> <ul style="list-style-type: none"> ▪ (a)(1) requires the hospital to notify its designated procurement agency of all deaths and impending brain deaths meeting the requirements for notification as established by the organization. ▪ (b) requires each hospital to provide the designated organ procurement organizations and tissue banks “reasonable access to patient’s medical records for the purpose of determining organ or tissue donation potential.” ▪ (d) requires each hospital to provide its federally-designated organ procurement organization with reasonable access during regular business hours to medical records of deceased patients for purposes of determining the hospital’s organ and tissue donation potential, assessing the educational needs of the hospital in regard to organ and tissue donation process, and providing documentation to the hospital to evaluate the effectiveness of the hospital’s efforts 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. ▪ In addition, HIPAA specifically permits covered entities to use or disclose PHI without individual permission to organ procurement organizations or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating donations or transplantation. See 164.512(h). 	<p>Consistent</p>	<p>164.512(h)</p>
<p>GS 130A-412.2(e)— Organ donation Prohibits the organ/tissue agency from using the patient’s medical information (or any other information from the hospital) for purposes other than evaluating the donor’s suitability for</p>	<p>164.512(h) Exceptions: Organ donation</p>	<ul style="list-style-type: none"> ▪ Beyond HIPAA’s scope; organ procurement agencies are most likely not covered entities and therefore this statute is beyond the scope of HIPAA. 	<p>Beyond scope</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
donation, assessing the hospital's educational needs with respect to donation, and providing documentation to the hospital to evaluate the effectiveness of the hospitals' efforts.				
<p>GS 130A-456 – Occupational Injury/Disease A physician who treats a person for an occupational injury that occurred while working on a farm or an occupational disease or illness declared by the Commission to be reportable shall report the information required by the Commission to the Department.</p>	164.512(a) Exceptions: Required by law	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption state laws that provide for the reporting of disease or injury. See 160.203(c). ▪ Even without the specific preemption exception, HIPAA permits disclosures without individual permission that are otherwise required by law. See 164.512(a). 	Consistent	160.203(c)
<p>GS 130A-457 – Occupational Injury/Disease A medical facility in which there is a patient who has an occupational injury that occurred while working on a farm or an occupational disease or illness declared by the Commission to be reportable may report the information required by the Commission to the Department.</p>	160.203(c) Preemption exception	<ul style="list-style-type: none"> ▪ Consistent; HIPAA specifically excepts from preemption laws that provide for the reporting of disease or injury. 	Consistent	
<p>GS 131D-2— Adult Care Homes In the course of inspecting an adult care home, DHHS may review any record concerning the admission, discharge, medication, care, medical condition, or history of a past or present resident, unless the resident objects in writing to such review. Any person involved in caring or for treating residents may disclose information to a DHHS representative, unless the resident objects in writing to such disclosure.</p>	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual may object to – and thereby prevent – the disclosure. HIPAA requires that individual have the right to request restrictions on disclosures but even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions). ▪ Some adult care homes may not conduct electronic transactions and therefore they would not be covered entities. See 160.102(a)(3). For those homes, this statute would be beyond the scope of HIPAA. 	Inconsistent	160.102(a) 164.520 164.522
<p>GS 131D-21(6)— Adult Care Homes</p> <ul style="list-style-type: none"> ▪ Personal and medical records of a resident must be kept confidential and cannot be disclosed without written consent, except when required by law or third party contract. ▪ Records may be provided to the treating physician without consent, unless the resident objects in writing. ▪ Records may also be disclosed to those rendering emergency services to the resident without written consent 	164.506 Consent: Health Care Operations	<ul style="list-style-type: none"> ▪ As a covered entity under HIPAA, the adult care home would be permitted to disclose PHI for a variety of reasons without the individual's authorization (e.g., research). The NC statute may be more protective in that it would only permit disclosure without authorization when required by law or third party contract, to the treating physician, and in emergency treatment situations. ▪ Any disclosures required by a third party contract would need to be permitted by and consistent with HIPAA. 	Further analysis required	164.502(b) 164.514(d)

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>of the resident. Disclosure of information is limited to that which is necessary to meet the emergency.</p>		<ul style="list-style-type: none"> ▪ HIPAA requires a provider with a direct treatment relationship to obtain consent to use/disclose PHI for treatment, payment and health care operations. Therefore, the provision permitting disclosure to the treating physician without consent is contrary to HIPAA. ▪ HIPAA and the NC statute are consistent in that a provider may disclose PHI without consent in emergency treatment situations. HIPAA, however, requires the provider to attempt to obtain consent as soon as possible after the care has been delivered. See 164.506(a)(3)(i)(A) ▪ NC statute contains explicit minimum necessary requirement with respect to emergency treatment situations. Under HIPAA, however, the minimum necessary principle does not apply in treatment situations and therefore the NC statute provides additional protection. See 164.502(b); 164.514(d). 		
<p>GS §131D-21.1— Adult Care Homes It is not a violation of GS 131D-21(6) (individual right of confidentiality) for medical records to be disclosed to a private peer review committee if:</p> <ul style="list-style-type: none"> ▪ The peer review committee has been approved by the Department ▪ The purposes of the committee are to survey facilities, resolve written complaints, and develop a basic knowledge of care and standards useful in establishing a means of measuring quality of care; and ▪ The committee keeps such records confidential. 	<p>164.506 Consent: Health care operations</p>	<ul style="list-style-type: none"> ▪ Disclosure for these peer review activities may be permitted without authorization as either part of health care operations or oversight, depending on the origin and control of the activities. <ul style="list-style-type: none"> o Health care operations: Covered entities may conduct peer review activities as part of health care operations (conducting quality assessment and improvement, evaluating practitioner and provider performance, etc.). A provider with a direct treatment relationship may only use/disclose the information for health care operations with the individual's consent (subject to limited exceptions). HIPAA also allows disclosure of such information for a variety of other purposes (see 164.512) but the NC statute is apparently more protective in that it requires hospitals to keep such records (including any PHI contained in such records) confidential. o Oversight: HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. Oversight includes inspection and licensure activities. See 164.512(d). An oversight agency must be a public agency or authority or a person/entity that has contracted with a public agency or authority. If the DHHS contracts with the private peer review organizations to conduct some of its oversight activities, a covered entity may disclose PHI to that 	<p>Further analysis required</p>	<p>164.501 164.512(d)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<p>organization. See 164.501 (definition of health oversight agency)</p> <ul style="list-style-type: none"> ▪ With respect to the protections against redisclosure by the committee, if the disclosure is for health care operations, then the covered entity remains responsible and the requirement that the information be kept confidential may be more protective than HIPAA. If the disclosure is for oversight, the committee may be a covered entity and therefore any redisclosure protections would be beyond the scope of HIPAA. 		
<p>GS 131D-27— Adult Care Homes DHHS may inspect adult care home residents' records when necessary to investigate an alleged violation of the residents' bill of rights. DHHS must maintain confidentiality of all records inspected.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. ▪ It is possible that this statute could be interpreted to require adult care homes to disclose PHI. HIPAA would permit such disclosures as they are otherwise required by law. See 164.512(a). ▪ With respect to the protections against redisclosure by DHHS, it is possible that this oversight function of DHHS is not part of a health care component and therefore PHI obtained and maintained by this component would not be subject to HIPAA. 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 131E-80— Hospitals To determine compliance with Hospital Licensure Act and rules, DHHS has authority to review any record pertaining to admission, discharge, medication, treatment, medical condition, or history of past or present patients</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. ▪ It is possible that this statute could be interpreted to require hospitals to disclose PHI. HIPAA would permit such disclosures as they are otherwise required by law. See 164.512(a). 	<p>Consistent</p>	<p>164.512(a)</p>
<p>GS 131E-95(b)— Hospitals The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records.... Information, documents or records ... are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee.</p>	<p>164.506 Consent: Health Care Operations</p>	<ul style="list-style-type: none"> ▪ The peer review process is considered part of health care operations. A provider with a direct treatment relationship may only use/disclose the information for health care operations with the individual's consent (subject to limited exceptions). ▪ The requirement in the NC statute that the information be "confidential" is rather vague and may be interpreted to be more protective than HIPAA in that it may prohibit many of the disclosures that are permitted by HIPAA without consent or authorization. 	<p>Further analysis required</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 131E-95(c)— Hospitals Medical review committee records can be released to a professional standards review organization for reviews relating to licensing and credentialing. Information released ... shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released ... retains its confidentiality and is not subject to discovery or use in any civil actions ... and the standards review organization shall keep the information confidential ...</p>	<p>164.506 Consent: Health Care Operations</p>	<ul style="list-style-type: none"> ▪ Licensing, credentialing, accreditation and certification activities are considered part of health care operations. See 164.501 (definition of health care operations). A provider with a direct treatment relationship may only use/disclose the information for health care operations with the individual's consent (subject to limited exceptions). ▪ An accreditation organization would be considered a business associate and therefore a valid business associate agreement would be required in order to disclose PHI contained in the peer review records to such an organization. See 164.502(e); 164.504(e). The business associate agreement would specify how the accreditation organization may use and disclose the PHI. ▪ The requirement in the NC statute that the information be "confidential" is rather vague and may be interpreted to be more protective than HIPAA in that it may prohibit many of the disclosures that are permitted by HIPAA without consent or authorization. ▪ Whistleblowers (members of the entity's workforce) may make disclosures without authorization to accreditation agencies in certain circumstances and the covered entity will not be held liable for the disclosure. See 164.502(j)(1). 	<p>Further analysis required</p>	<p>164.501 164.502(e) 164.502(j) 164.504(e)</p>
<p>GS 131E-97—Information Held by Public Hospitals Medical records held by public hospitals are not public records.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; provides added protection for the information by exempting it from public records law. 	<p>Consistent</p>	
<p>GS 131E-97.2— Public Hospitals Credentialing and peer review information held by public hospitals, or by persons acting for or on their behalf, is not public record.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Consistent; NC statute provides added protection for the information by exempting it from public records law. 	<p>Consistent</p>	
<p>GS 131E-98— Inmates Hospital does not breach patient confidentiality by providing to DOC medical records of inmates treated at the hospital while in the custody of DOC; hospital is immune from civil liability for releasing inmate's medical records to DOC under these circumstances</p>	<p>164.506 Consent: Treatment</p>	<ul style="list-style-type: none"> ▪ HIPAA allows an inmate's provider to disclose PHI created or received in the course of providing treatment for the purpose of treatment, payment or health care operations without the inmate's consent. See 164.506(a)(2)(ii). Disclosures to DOC may be necessary for payment purposes and therefore disclosure would be permitted. It may also be arguable that disclosure to DOC should be considered part of treatment when disclosure is necessary to ensure continuity of care if different providers will be caring for the inmate. 	<p>Further analysis required</p>	<p>164.501 164.512(k)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<ul style="list-style-type: none"> ▪ HIPAA also permits disclosure without consent or authorization to a correctional institution or a law enforcement official having lawful custody of an inmate for a variety of reasons including the provision of health care, the health and safety of the individual, other inmates, or transport officers, law enforcement on the premises, and the administration and maintenance of the safety, security and good order of the institution. See 164.512(k)(5). Whether this exception will apply depends whether DOC (or a component of DOC) is a “correctional institution.” See 164.501 (definition). ▪ Immunity from civil liability is beyond the scope of HIPAA. The hospital would not be liable under HIPAA for this disclosure but HIPAA does not speak to liability under other theories. 		
<p>GS 131E-105— Nursing Homes To determine compliance with Nursing Home Licensure Act and rules, DHHS may review any record pertaining to admission, discharge, medication, treatment, medical condition, or history of past or present patients, unless the patient objects in writing to such review.</p>	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). It is possible that this statute could be interpreted to require nursing homes to disclose PHI. HIPAA would permit such disclosures as they are otherwise required by law. See 164.512(a). NC statute may be more protective in that the individual may object to – and thereby prevent – the disclosure. 	<p>Inconsistent</p>	<p>164.512(a)</p>
<p>GS 131E-108— Nursing Homes Medical records of a nursing home can be disclosed to a private peer review committee; committee must keep such records confidential.</p>	<p>164.506 Consent: Health Care Operations</p>	<ul style="list-style-type: none"> ▪ The peer review process is considered part of health care operations. A provider with a direct treatment relationship may only use/disclose the information for health care operations with the individual’s consent (subject to limited exceptions). ▪ If the peer review committee is a separate entity from the nursing home, it would be considered a business associate and therefore a valid business associate agreement would be required in order to disclose the medical records to the entity. See 164.502(e); 164.504(e). The business associate agreement would specify how the committee may use and disclose the PHI. ▪ The requirement in the NC statute that the information be “confidential” is rather vague and may be interpreted to be more protective than HIPAA in that it may prohibit many of the disclosures that are permitted by HIPAA without consent or authorization. 	<p>Further analysis required</p>	<p>164.502(e) 164.504(e)</p>

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>GS 131E-117(5)— Nursing homes Nursing home patient records are confidential and written consent is required to release them except:</p> <ul style="list-style-type: none"> ▪ when release is required by law 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	<p>Consistent</p>	
<p>GS 131E-117(5)— Nursing Homes Nursing home patient records are confidential and written consent is required to release them to <i>anyone other than family</i> or except in certain circumstances.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> ▪ Provision that allows release to family without written consent is very broad and may be contrary to HIPAA however: <ul style="list-style-type: none"> o HIPAA does permit disclosures without consent to individuals involved in the patient's care (could be family); there must be an opportunity for the patient to agree or object to the disclosure (subject to certain exceptions). See 164.510(b). o in some instances family members will qualify as personal representatives under HIPAA and therefore will have the same rights to the information as the patient so disclosure would be permitted. See § 164.502(g). ▪ Other circumstances where disclosure is permitted are addressed elsewhere in this matrix. 	<p>Further analysis required</p>	<p>164.502(g) 164.510(b)</p>
<p>GS 131E-117(5)— Nursing homes Nursing home patient records are confidential and written consent is required to release them except:</p> <ul style="list-style-type: none"> ▪ to family 	<p>164.506 Consent: Payment</p>	<ul style="list-style-type: none"> ▪ May be inconsistent in part; the NC statute would permit disclosure to family without consent (or authorization). HIPAA would permit disclosure to family without consent in at least two circumstances: <ul style="list-style-type: none"> o If the family member is a personal representative. See 164.502(g). o If the family is involved in the individual's care (including payment for such care) and the nursing facility has provided the individual with the opportunity to object to the disclosure as provided in 164.510. The facility may only disclose PHI relevant to the family member's involvement in the care. 	<p>Further analysis required</p>	<p>164.502(g) 164.510</p>
<p>GS 131E-117(5)— Nursing homes Nursing home patient records are confidential and written consent is required to release them except:</p> <ul style="list-style-type: none"> ▪ To family ▪ For patient transfer purposes ▪ When release is required by law, or ▪ For insurance payments. 	<p>164.506 Consent: Payment</p>	<ul style="list-style-type: none"> ▪ In general, the NC statute is inconsistent. ▪ The NC statute may be more protective in that it only permits disclosure of nursing home patient records without consent in four limited circumstances. It is possible that this statute could be interpreted to require consent or authorization for all other disclosures (except those required by law). If so, any disclosures that are permitted (but not required) by HIPAA would not be permitted by the NC statute (e.g., research). 	<p>Inconsistent</p>	

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		<ul style="list-style-type: none"> ▪ It is less protective in that certain of the disclosures permitted by the NC statute without consent are not permitted by HIPAA without consent (e.g., payment, patient transfer purposes) ▪ Each of the disclosures permitted without consent under the NC statute is analyzed separately elsewhere in this matrix. 		
<p>GS 131E-117(5)— Nursing homes Nursing home patient records are confidential and written consent is required to release them except:</p> <ul style="list-style-type: none"> ▪ for patient transfer purposes 	164.506 Consent: Treatment	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. HIPAA requires providers with direct treatment relationships to obtain consent for use/disclosure for treatment, payment or health care operations (subject to limited exceptions). “Transfers” may be considered part of treatment and therefore HIPAA would require consent. 	Inconsistent	
<p>GS 131E-117(5)— Nursing homes Nursing home patient records are confidential and written consent is required to release them except:</p> <ul style="list-style-type: none"> ▪ for insurance payments. 	164.506 Consent: Payment	<ul style="list-style-type: none"> ▪ Inconsistent; HIPAA may be more protective. In order for a nursing home to use and disclose PHI for payment, it must obtain a consent (subject to limited exceptions). NC statute is less protective in that it would permit disclosure for “insurance payments” without consent. HIPAA consent will be necessary in order to simply treat the individual and that same consent would also permit the disclosures for payment purposes. 	Inconsistent	
<p>GS 131E-124(b)— Nursing Homes DHHS may inspect nursing home patients’ medical records when necessary to investigate violations of the Nursing Home Patients’ Bill of Rights Act.</p>	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law. ▪ It is possible that this statute could be interpreted to require nursing homes to disclose PHI. HIPAA would permit such disclosures as they are otherwise required by law. See 164.512(a). 	Consistent	164.512(a)
<p>GS 131E-124(c)— Nursing Homes A person who files a complaint under the Nursing Home Patients’ Bill of Rights Act may have access to information about the complaint investigation if written authorization is obtained from the resident, legal representative, or responsible party.</p>	164.508(a) Authorization: General rule	<ul style="list-style-type: none"> ▪ Assuming that a DHHS component (or another organization) is holding the information regarding the complaint investigation, the DHHS component or the other organization may not be required to comply with HIPAA and therefore this statute would be beyond the scope of HIPAA. ▪ Assuming instead that a covered entity – including the nursing home -- is holding the information regarding the complaint and assuming that the information includes PHI, 	Further analysis required	164.502(g)

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
		disclosure would be permitted under HIPAA provided that the authorization complies with HIPAA requirements and the “responsible party” is a personal representative of the individual under law. See 164.502(g) (personal representative).		
<p>GS 131E-124(c)— Nursing Homes DHHS must maintain the confidentiality of all medical records inspected during a nursing home investigation.</p>	164.506 Consent: Health Care Operations	<ul style="list-style-type: none"> ▪ DHHS may be a hybrid entity and only certain health care components will be required to comply with HIPAA. When DHHS obtains PHI in the course of an inspection, it may possess the information in one of its non-health care component functions and therefore that component would not necessarily be required to comply with HIPAA with respect to such PHI. ▪ If DHHS is a covered entity, DHHS would be required to protect information consistent with HIPAA; it is possible that the NC statute may be more protective in that it requires the information to be kept confidential whereas HIPAA would permit disclosure without individual permission for various purposes (e.g., research). ▪ Because DHHS would be an oversight agency performing health oversight functions, the nursing home would be permitted to disclose the records for inspection without the individual’s authorization. See 164.512(d). 	Further analysis required	164.512(d)
<p>GS 131E-128— Nursing Homes Establishes community advisory committees for nursing homes. Each committee shall apprise itself of the general conditions under which persons are residing in the homes and shall work for the best interests of the residents, which may include assisting persons who have grievances with the home. Each committee shall visit the nursing home it serves quarterly. Each home shall cooperate with the committee as it carries out its duties.</p>	164.512(a) Exceptions: Required by law	<ul style="list-style-type: none"> ▪ It is not clear from the statute whether these committees are expected to have access to PHI. If PHI is necessary, it could be argued that the requirement that “each home shall cooperate” is a mandate and therefore disclosure falls within the “required by law” exception. See 164.512(a). It is also possible that disclosures to these committees would fall within the oversight exception (however disclosures for oversight activities must be to a health oversight agency or a person acting under a grant of authority or contract from such agency). See 164.512(d). 	Further analysis required	164.512(d)
<p>GS 131E-141— Home Care Agencies</p> <ul style="list-style-type: none"> ▪ DHHS must inspect home care agencies to determine compliance with the law. DHHS representatives making such inspections may review any record pertaining to the admission, discharge, medication, treatment, medical 	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be advised in 	Inconsistent	164.520 164.522

NC Statutes	HIPAA	Analysis	Summary	HIPAA Cross-ref
<p>condition, or history of the home care agency's past or present clients.</p> <ul style="list-style-type: none"> ▪ Authorizes physicians, psychiatrists, nurses, and others involved in treatment to disclose information to DHHS representatives making inspections, notwithstanding the privilege statutes. ▪ Requires DHHS to keep information obtained confidential and not disclose it without written authorization of the client or legal representative, or a court order. Exempts confidential and privileged information from public records law. ▪ Before information is released or inspections are allowed, clients must be advised in writing and given an opportunity to object in writing to release of information or review of the client's records. 		<p>writing prior to the disclosure and may object to – and thereby prevent – the disclosure. HIPAA does not require an individual to be notified prior to a disclosure for oversight. HIPAA does require that the notice of privacy practices identify this as a potential disclosure and the individual has the right to request restrictions on disclosures. However, even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions).</p> <ul style="list-style-type: none"> ▪ With respect to the protections against redisclosure by DHHS, it is possible that this oversight function of DHHS is not part of a health care component and therefore PHI obtained and maintained by this component would not be subject to HIPAA. 		
<p>GS 131E-150— Ambulatory Surgical Facilities</p> <ul style="list-style-type: none"> ▪ DHHS must inspect ambulatory surgical facilities as necessary. DHHS representatives making such inspections may review any record pertaining to the admission, discharge, medication, treatment, medical condition, or history of past or present patients of the facility being inspected. ▪ Authorizes physicians, psychiatrists, nurses, and others involved in treatment to disclose information to DHHS representatives making inspections, notwithstanding the privilege statutes. ▪ Requires DHHS to keep information obtained confidential and not disclose it without written authorization of the client or legal representative, or a court order. Exempts confidential and privileged information from public records law. ▪ Before information is released or inspections are allowed, clients must be advised in writing and given an opportunity to object in writing to release of information or review of the client's records. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be advised in writing prior to the disclosure and may object to – and thereby prevent – the disclosure. <ul style="list-style-type: none"> o <i>Advised in writing:</i> HIPAA requires that individual receive a notice of privacy practices which must identify potential disclosures (including disclosures for oversight) but it does not require notification of a <i>specific</i> disclosure prior to making it. o <i>Objection to disclosure:</i> HIPAA also provides that individuals have the right to request restrictions on <i>disclosures</i> but even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions). ▪ With respect to the protections against redisclosure by DHHS, it is possible that this oversight function of DHHS is not part of a health care component and therefore PHI obtained and maintained by this component would not be subject to HIPAA. 	<p>Inconsistent</p>	<p>164.520 164.522</p>

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<p>GS 131E-154.8— Nursing Pools</p> <ul style="list-style-type: none"> ▪ In the course of an inspection conducted pursuant to GS 131E-154.5 (requiring inspections of nursing pools to determine compliance with law), DHHS representatives may review any record concerning the admission, discharge, medication, treatment, medical condition, or history of any past or present nursing pool patient ▪ Before information is released or inspections are allowed, patients must be notified of right to object in writing to release of information or review of information. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be notified prior to the disclosure and may object to – and thereby prevent – the disclosure. HIPAA does not require an individual to be notified prior to a disclosure for oversight. HIPAA does require that the notice of privacy practices identify this as a potential disclosure and the individual has the right to request restrictions on disclosures. However, even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions). 	<p>Inconsistent</p>	<p>164.520 164.522</p>
<p>GS 131E-170— Cardiac Rehabilitation Certification Programs</p> <ul style="list-style-type: none"> ▪ DHHS may inspect cardiac rehabilitation certification programs. DHHS representatives who make the inspections may review any record pertaining to the admission, discharge, medication, treatment, medical condition, or history of past or present patients of the program being inspected, unless the patient objects in writing to review of the patient's records. ▪ Before releasing information, program must advise patients in writing of the right to object to release of information or review of records. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be notified prior to the disclosure and may object to – and thereby prevent – the disclosure. HIPAA does not require an individual to be notified prior to a disclosure for oversight. HIPAA does require that the notice of privacy practices identify this as a potential disclosure and the individual has the right to request restrictions on disclosures. However, even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions). 	<p>Inconsistent</p>	<p>164.520 164.522</p>
<p>GS 131E-207— Hospices</p> <ul style="list-style-type: none"> ▪ In the course of an inspection of a hospice authorized by GS 131E-204, DHHS may review any record concerning the admission, discharge, medication, treatment, medical condition, or history of any past or present hospice patient. Any person involved in treating a patient at or through a hospice may disclose information to a DHHS representative ▪ Before releasing information or allowing inspections, the hospice must inform each affected patient in writing of the right to object to release of information/review of records. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> ▪ Inconsistent; NC statute may be more protective. HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be notified in writing prior to the disclosure and may object to – and thereby prevent – the disclosure. HIPAA does not require an individual to be notified prior to a disclosure for oversight. HIPAA does require that the notice of privacy practices identify this as a potential disclosure and the individual has the right to request restrictions on disclosures but even if the 	<p>Inconsistent</p>	<p>164.520 164.522</p>

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		entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions).		
<p>GS 131E-214.2— Hospitals/Statewide data processor Except as prohibited by federal law or regulation, each hospital and freestanding ambulatory surgical facility must submit patient data to a statewide data processor within 60 days after the close of each calendar quarter for patients that were discharged or died during that quarter.</p>	164.512(a) Exceptions: Required by law	<ul style="list-style-type: none"> ▪ Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. 	Consistent	
<p>GS 131E-214.3— Statewide data processor The following are not public records: (1) data furnished to and maintained by the statewide data processor; (2) compilations of data prepared for release or dissemination by the statewide data processor; (3) patient data furnished by the statewide data processor to the state (but compilations of data in this latter group that are prepared by the state for release or dissemination are public records). 131E-214.3.</p>	164.502(a) Uses and disclosures: general rules	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; the statewide data processor is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	Beyond scope	
<p>GS 131E-214.4(a)(7)— Information Held by a State Data Processor Patient data collected by a state data processor from hospitals and ambulatory surgery facilities must be kept confidential and patient-identifying information generally cannot be disclosed.</p>	164.502(e): Uses and disclosures: Business associates	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope. State data processor is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. 	Beyond scope	164.512(b)
<p>GS 131E-214.4— Hospitals/Statewide data processor</p> <ul style="list-style-type: none"> ▪ The statewide data processor must protect the confidentiality of patient records and comply with applicable laws and regulations concerning patient confidentiality. ▪ The statewide data processor shall not disclose patient-identifying information unless (1) the information was originally submitted by the party requesting disclosure or (2) the State Health Director requests specific individual records for the purpose of protecting and promoting the public health under GS Ch. 130A and the disclosure is not otherwise prohibited by federal law or regulation. Records made available to the State Health Director are not public records. 131E-214.4(7). 	164.512(d) Exceptions: Oversight	<ul style="list-style-type: none"> ▪ Beyond HIPAA's scope; statewide data processor is most likely not a covered entity and therefore this statute is beyond the scope of HIPAA. ▪ NC statute provides added protection for the information by protecting it against redisclosure in some instances by the processor. 	Beyond scope	

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<p>GS 135-37—Information Held by State Health Plan</p> <ul style="list-style-type: none"> Information may be disclosed to State Auditor, Attorney General, or members of the Plan’s Oversight Team in furtherance of their statutory duties. 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> Depending on the circumstances and the specific “statutory duties” implicated, HIPAA would likely permit disclosures to State Auditor, AG, or Oversight Team as a disclosure to an oversight agency. It is also possible that, depending on the “statutory duties,” HIPAA may permit the disclosure as one otherwise required by law. See 164.512(a). 	<p>Further analysis required</p>	<p>164.512(a)</p>
<p>GS 135-37—Information Held by State Health Plan</p> <p>Information may also be disclosed to persons or organizations designated or approved by Executive Administrator and Board of Trustees of Plan—such persons shall hold it confidential.</p>	<p>164.502(e) Uses and disclosures: Business associates</p>	<ul style="list-style-type: none"> Depending on the circumstances, the plan may have a business associate relationship with these persons/organization so disclosure would need to be consistent with the BA provisions. See 164.502(e); 164.504(e). 	<p>Further analysis required</p>	<p>164.504(e)</p>
<p>GS 135-37—Information Held by State Health Plan</p> <p>Information concerning individuals, including medical and insurance claim information, in the possession of the Teachers’ and State Employees’ Comprehensive Major Medical Plan is confidential and not a public record.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> Requirement that the information is “confidential” is rather vague. “Confidential” is not defined in Ch. 135. Could be interpreted to prevent many of the discretionary disclosures permitted by HIPAA. Provision exempting from public records act is consistent; NC statute provides added protection by creating this exemption. 	<p>Further analysis required</p>	
<p>GS 143B-139.6—Information Held by DHHS</p> <p>All privileged patient medical records in the possession of DHHS shall be confidential and shall not be public records pursuant to G.S. 132-1.</p>	<p>164.502(a) Uses and disclosures: general rules</p>	<ul style="list-style-type: none"> Consistent; NC statute provides added protection for the information by exempting it from public records law. 	<p>Consistent</p>	
<p>GS 143B-150.20— Child Fatality Reviews</p> <p>State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by public agencies as necessary to carry out its duties, including ... health records, mental health records, and social services records. Members of the team may share information within their knowledge in official meetings of the team as necessary to carry out its duties.</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. Disclosure may also be permitted under the public health exception. See 164.512(b). 	<p>Consistent</p>	<p>164.512(b)</p>
<p>GS 143B-181.20— Long-Term Care Ombudsman</p> <p>A LTC ombudsman in pursuit of his function may enter any LTC facility and have access to the residents, may communicate with them, and shall have access to patient records as permitted</p>	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> Consistent; HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. It is possible that the ombuds-function is an oversight activity 	<p>Consistent</p>	

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<p>under the federal Older Americans Act and under state procedures. An ombudsman who discloses information thus obtained is guilty of a Class 1 misdemeanor.</p>		<p>and would also be permitted under 164.512(d). The Older Americans Act, 42 USC 3058g, (referred to in NC statute) outlines the circumstances when an ombudsman may have access to the records and in some instances disclosure requires the individual's permission. Additional analysis is required comparing HIPAA and OAA to determine which laws are applicable.</p> <ul style="list-style-type: none"> With respect to the protections against redisclosure by the ombudsman, it is likely that the ombudsman is not a covered entity and therefore those protections may be beyond the scope of HIPAA. 		
<p>GS 143B-403.1— Persons with Disabilities</p> <ul style="list-style-type: none"> Governor's Advocacy Council for Persons with Disabilities must investigate complaints made by or on behalf of incompetent disabled persons who reside in facilities for the developmentally or mentally disabled and have no legal guardian or whose guardian is the state. In conducting the investigation, Council shall have access to the individual and the individual's records. However, if the facility director believes the individual to be competent, the person must have the opportunity to deny access to his records by making a specific objection to disclosure to the Council. 	<p>164.512(a) Exceptions: Required by law</p>	<ul style="list-style-type: none"> HIPAA permits covered entities to disclose PHI without individual permission when otherwise required by law. Disclosure must be consistent with the requirements of such law, which means that in some instances a person must have the opportunity to deny access. 	<p>Further analysis required</p>	
<p>GS 153A-222— Jails</p> <ul style="list-style-type: none"> Notwithstanding the provisions of GS 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, DHHS representatives inspecting jails may review any record pertaining to the admission, discharge, medication, treatment, medical condition, or history of past or present inmates. Providers are authorized to disclose information to DHHS inspectors notwithstanding the existence of the physician-patient privilege in GS 8-53 or any other rule of law; provided that the patient, resident or client has not made written objection to such disclosure. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of 	<p>164.512(d) Exceptions: Oversight</p>	<ul style="list-style-type: none"> Inconsistent; NC statute may be more protective. Assuming that the jail is a covered entity (or the jail health center a covered health care component), HIPAA permits covered entities to disclose PHI to health oversight agencies for oversight activities authorized by law without individual authorization. See 164.512(d). NC statute may be more protective in that the individual must be advised in writing prior to the disclosure and may object to – and thereby prevent – the disclosure. HIPAA does not require an individual to be notified prior to a disclosure for oversight. HIPAA does require that the notice of privacy practices identify this as a potential disclosure and the individual has the right to request restrictions on disclosures but even if the entity agrees to such restriction, the restriction is not effective to prevent disclosures for oversight purposes. See 164.520 (notice); 164.522 (right to request restrictions). 	<p>Inconsistent</p>	<p>164.520 164.522</p>

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<p>his records and that by an objection in writing he may prohibit the inspection or release of his records.</p> <ul style="list-style-type: none"> ▪ DHHS must keep confidential any confidential information thus obtained and not disclose it without the inmate's written authorization or a court order for disclosure. Confidential/privileged information obtained by DHHS is not a public record. Inmate must be advised in writing of the right to object in writing to such releases of information/reviews of records; such objection prohibits release of information/review of records. 		<ul style="list-style-type: none"> ▪ With respect to the protections against redisclosure by DHHS, it is possible that this oversight function of DHHS is not a covered function and therefore those provisions may be beyond the scope of HIPAA. 		