

Public Health Law in North Carolina for Sexually Transmitted Diseases

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SLIDE 1 TITLE

SLIDE 2

My name is Vivian Mears and I am a nurse consultant with the North Carolina Division of Public Health Communicable Disease Branch. I work in the Technical Assistance and Training Program in the Medical Consultation Unit. My specialty is working with clients at risk for sexually transmitted diseases. This presentation is about N.C. Public Health Law for sexually transmitted diseases, also called sexually transmitted infections.

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The learning objectives for this unit are that you will know how to locate, read, and apply relevant N.C. laws and rules related to HIV/STD Control in the state of North Carolina, and ultimately, use this knowledge as registered nurse to practice according to all relevant N.C. laws, rules, and legal opinions in the scope of nursing practice.

SLIDE 4

As a registered nurse practicing in North Carolina, you want and need to know the answer to this question. “What are the relevant laws pertaining to HIV/STD Control for which I have a duty to uphold?”

From this slide you will see the content I will cover in the next 30 minutes.

SLIDE 5

General Statutes (laws) are made in the North Carolina General Assembly. The North Carolina Commission for Public Health writes the N.C. Administrative Code (rules). The General Assembly Building located on West Jones Street in downtown Raleigh is shown in this picture.

Elected state legislators (state senators and state representatives) make laws and **appointed** commissioners make rules. Laws and rules are enforceable in the N.C. Judicial system. As an STD ERRN, you need to know how to practice according to these laws and rules.

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The next 40 slides, unfortunately, are not designed to entertain you, but rather to inform you about many of these laws and rules. You should supplement this presentation by reviewing all of the laws and rules listed in the resource section of this course.

We will begin with the most important legislation: N.C. General Statute 130A-18. This statute allows enforcement of communicable disease law by court order: “If a person shall violate **any** provision of this Chapter, the rules adopted by the **Commission** or rules adopted by a **local board of health**, or a condition or term of a permit or order issued under this Chapter, the Secretary or a **local health director** may institute an action for injunctive relief, irrespective of all other remedies at law, in the **superior court of the county where the violation occurred or where a defendant resides.**”

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N.C. General Statute 130A-25 makes violation of Public Health Law a misdemeanor with up to two years imprisonment and possibly a fine. The reference to McCain Hospital is now part of history, however, since that hospital has now closed and medically fragile, control measure violators are now sent to a special unit at Cherry Hospital.

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N.C. General Statute 130A-12 deals with confidentiality of medical records. “All records containing privileged patient medical information...shall be confidential and shall not be public records ...the information contained in the records may be disclosed for purposes of treatment, payment, research, or health care operations...”

N.C. General Statute 130A-143 speaks specifically to AIDS and Communicable Disease: “All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential.”

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N.C. General Statute 130A-143 provides specific criteria for the release of information: the text of the law lists 8 criteria as listed in this slide. The two most important criteria for you are release for (1) specific medical or epidemiological information for statistical purposes in a way that no person can be identified; and (2) another federal, state or local public health agency for the purpose of preventing or controlling the spread of a communicable disease or communicable condition.

SLIDE 10

The North Carolina Administrative Code 10A NCAC 41A .0202(11) also addresses **confidentiality**. Specifically addressing HIV Infected individuals, this rule states that “A local health department ... may release information regarding an infected person ... only when the local health department ... has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.”

SLIDE 11

The Health Insurance Portability and Accountability Act (HIPAA) also addresses confidentiality. In fact many times you will be told that you, as a public health official, cannot have access to certain information because it is HIPAA protected. In fact, HIPAA **allows** health care providers to disclose protected information when required by another law and allows disclosure to a public health authority authorized by law to receive information for public health purposes. Communicable Disease Investigation is thereby **exempt from HIPAA** under these circumstances.

SLIDE 12

The next law to consider concerns HIV Testing. N.C. General Statute 130A-148 states that “Persons tested for AIDS virus infection **shall be notified of test results and counseled appropriately.**”

And

“A test for AIDS virus infection may also be performed upon any person solely by order of a physician licensed to practice medicine in North Carolina who is rendering medical services to that person when, in the **reasonable medical judgment of the physician, the test is necessary for the appropriate treatment of the person;** however, **the person shall be informed that a test for AIDS virus infection is to be conducted, and shall be given clear opportunity to refuse to submit to the test prior to it being conducted,** and further if informed consent is not obtained, the test may not be performed.”

And

“An unemancipated minor may be tested for AIDS virus infection without the consent of the parent or legal guardian of the minor when the parent or guardian has refused to consent to such testing and there is reasonable suspicion that the minor has AIDS virus or HIV infection or that the child has been sexually abused.”

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You are also reminded that North Carolina Administrative Code 10A NCAC 41A .0202 (9) deals with HIV TESTING & COUSELING IN LOCAL HEALTH DEPARTMENTS. “Local health departments shall provide **counseling and testing for HIV infection at no charge to the patient**. Third party payors may be billed for HIV counseling and testing when such services are provided and the patient provides written consent.”

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The North Carolina Administrative Code has a rule about Infant Testing for HIV infection. “If an infant is delivered by a woman with no record of the result of an HIV test conducted during the pregnancy and if the woman was not tested for HIV during labor and delivery, the fact that the mother has not been tested creates a reasonable suspicion pursuant to G.S. 130A-148(h) that the newborn has HIV infection and the infant shall be tested for HIV. An infant born in the previous 12 hours shall be tested using a rapid HIV test.”

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The NCAC also states that “Testing for HIV may be offered as part of routine laboratory testing panels using a general consent which is obtained from the patient for treatment and routine laboratory testing, so long as the patient is notified that they are being tested for HIV and given the opportunity to refuse.”

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The law states that “Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.” However, the key issue is **does the minor have the capacity to give consent?** Clinicians make that assessment and support that decision with documentation. **Agency must have a policy to support that assessment.**

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The law also provides for a means to detain a person for testing. N.C. General Statute 15A-534.3 specifies that if a judicial official “finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public

health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials...”

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N.C. General Statute 15A-615 also allows testing of defendants if there is probable cause that the defendant engaged in sexual assault or violated statutes regarding sexual intercourse with **minors**, and may have transmitted infection while doing so.

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We mentioned informed consent and the clinician’s assessment that the person giving consent has the *capacity* to give consent. Informed consent at a minimum means:

- Provide information orally and in writing:
- Identifying the testing to be done
- Stating the risks and benefits of testing
- Sharing the implications of test results
- Telling how test results will be communicated
- And giving the opportunity to ask questions

Also, remember that services that are considered to be standard of care, but refused, should be documented on a waiver of services tool.

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N.C. General Statute 130A – 139 reminds us that even though we have a physician-based reporting system in North Carolina, others are also required to report the reportable communicable diseases. In this law, a person in charge of a laboratory providing diagnostic service in this State shall report information required by the Commission to a public health agency. In North Carolina, like most states, we learn about reportable diseases mostly through laboratory testing results – about 99% of all cases – compared to initial reports from physicians.

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10A NCAC 41A .0101 This is my most favorite rule! In this list, the diseases and conditions made reportable by the Commission are listed.

10A NCAC 41A .0102 lists the method of reporting and the time frame for reporting (immediately, 24 hour, 7 days).

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Some of you will already be familiar with the state's electronic surveillance system that rolled out in 2008. NC EDSS – that stands for the North Carolina Electronic Disease Surveillance System – is a secure, Web-Based Reporting System

- All Reportable Communicable Diseases – from Rule 0101
- Jurisdiction (county/state)
- Roles and Permission (data entry, epidemiologist, clinician, state disease registrar, etc.)
- Electronic Laboratory Reporting (NC SLPH, LabCorp, Rex Healthcare, Carolinas Health System currently)
- Physicians Report on Paper/Telephone (and local or state users enter the case information)

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N.C. General Statute 130A-144 talks about Communicable Disease Investigation.

- local health director shall investigate
- local health director or the State Health Director to examine, review, and obtain a copy of medical or other records
- local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions

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N.C. General Statute 130A-145 describes the authority of the State Health Director and the Local Health Director with respect to Isolation and Quarantine.

- (a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

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10A NCAC 41A .0202 has most of the control measures for HIV. (01) talks about infected persons:

Infected persons shall:

- (a) **refrain from sexual intercourse unless condoms are used**; exercise caution when using condoms due to possible condom failure;

- (b) **not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;**
- (c) **not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;**
- (d) **have a skin test for tuberculosis;**
- (e) **notify future sexual intercourse partners of the infection;**
- (f) if the time of initial infection is known, **notify persons who have been sexual intercourse and needle partners since the date of infection;** and,
- (g) if the date of initial infection is unknown, **notify persons who have been sexual intercourse and needle partners for the previous year.**

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Attending physicians have a duty. 10A NCAC 41A .0202 **(2)**

- Give the control measures
- Attempt to notify the spouse
- Advise infected persons concerning clean-up of blood and other body fluids;
advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding

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Needle Stick Rule! 10A NCAC 41A .0202 (4)

“When health care workers or other persons have a needle stick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:

Test the source of exposure and inform the exposed of the test results. Test for up to a year to determine if transmission has occurred.

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The attending physician – or any person - shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not

following or cannot follow control measures and is thereby causing a significant risk of transmission.

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The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection. But it also alerts Correctional facilities to identify HIV infected inmates that may not be following control measures while incarcerated.

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Local health departments shall provide counseling and testing for HIV infection at no charge to the patient.

HIV pre-test counseling is not required. Post-test counseling for persons infected with HIV is required, must be individualized, and shall include referrals for medical and psychosocial services and control measures. People who provide this counseling should have CTR training – Counseling Testing and Referral Training from an approved provider such as Whetstone Consultations in N.C. Other training may be acceptable and every LHD is required to have at least 2 people trained to provide this counseling.

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The Division of Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. Regionally based Disease Intervention Specialists assist LHD staff in fulfilling the requirements of this Rule.

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Every pregnant woman shall be offered HIV testing by her attending physician at her first prenatal visit and in the third trimester.

If there is no record at labor and delivery of an HIV test result during the current pregnancy for the pregnant woman, the attending physician shall inform the pregnant woman that an HIV test will be performed, explain the reasons for testing, and the woman shall be tested for HIV without consent using a rapid HIV test

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10A NCAC 41A .0203 gives us “Hepatitis B Control Measures”.

- refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;
- (2) not share needles or syringes;
- (3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
- (4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;
- (5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control measures; and for the duration of the infection, notify the local health director of all new sexual intercourse partners;
- (6) identify to the local health director all current household contacts;
- (7) be tested six months after diagnosis to determine if they are chronic carriers

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The essence of 10A NCAC 41A .0204 is that local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. **These services shall be provided upon request and at no charge to the patient.**

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This means that clients presenting to local health departments with symptoms or history suggestive of sexually transmitted disease, exposure to sexually transmitted disease, or a desire to be screened for sexually transmitted disease cannot be billed directly for the services needed for screening, diagnosis, or management of problem.

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Clarification from the Office of the Attorney General reminds us that this applies to screening and diagnostic testing of diseases not mentioned in the law (e.g., herpes, trichomoniasis, bacterial vaginosis, HIV) because the diagnostic processes and often symptoms are the same.

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Clients requesting syphilis blood tests for marriage in another state cannot be billed for this service (other states require that this testing be done and certified by the N.C. State Public Health Lab).

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There are a few exceptions: Asymptomatic clients who request screening for non-reportable STDs (e.g., herpes serology, hepatitis C) can be billed.

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And also, clients who request STD testing not offered by the state may be billed for testing and screening according to local billing policies.

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And another exception, clients who receive follow up treatment for warts after the diagnosis has been established can be billed.

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The initial visit to establish the wart diagnosis would be without charge since the standard of practice requires screening for STDs as part of the assessment.

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And finally, clients who present for screening as an employment requirement may be billed for the service.

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Turning to syphilis control measures, 10A NCAC 41A .0204 discusses “Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid. These persons must refrain from sexual intercourse, be tested, and give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual partners

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All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

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Last but not least is a very very important rule!

All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation and at delivery. Hospitals shall determine the syphilis serologic status of the mother prior to discharge of the newborn so that if necessary the newborn can be evaluated and treated as provided in (c)(2) of this rule. Pregnant women 25 years of age and younger shall be tested for chlamydia and gonorrhea in the third trimester or at delivery if the woman was not tested in the third trimester.

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Thank you for your contribution to N.C. Public Health.
Remember the Law and Rules!