North Carolina General Assembly Permits Greater Information Sharing Between Health and Mental Health Providers

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Under a new state law that became effective January 1, 2012, the North Carolina General Assembly allows mental healthcare providers to share client information with other mental healthcare providers without having to obtain client consent. To a lesser extent it also permits mental healthcare providers to disclose client information without client consent to other healthcare providers. And, the law relieves healthcare providers—those generally governed only by the HIPAA Privacy Rule—from having to follow the state confidentiality law that applies to mental health, developmental disabilities, and substance abuse (MH/DD/SA) services when healthcare providers receive client information from mental healthcare providers.

The state confidentiality law governing MH/DD/SA services, G.S. 122C-52 through 122C-56, applies to "facilities," a term that, at first blush, might mislead some mental health professionals into thinking that the law does not apply to them. But, "facility" is defined broadly to mean any person, individual, firm, partnership, corporation, company, association, or agency at one location "whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers." Thus, the state confidentiality law applies to all MH/DD/SA service providers, including publicly-funded agencies and private practice clinicians.

Until Session Law 2011-314 (S 607) became effective this past January, the state confidentiality law generally required the client's written authorization before a provider treating the client could disclose client information to another provider who was treating the same client. There was an exception to this rule: area MH/DD/SA authorities (also known as "local management entities" or "LMEs") and their contracted service providers could share client information related to LME clients without client consent "when necessary to coordinate appropriate and effective care, treatment or habilitation of the client." The new law expands this exception by making it applicable to all MH/DD/SA providers and their clients. Now, all MH/DD/SA providers may share confidential client information without client consent when necessary to carry out treatment-related activities. (Providers of substance abuse services are still subject to the federal law governing substance abuse treatment records, 42. C.F.R. Part 2, which generally requires client consent for treatment-related disclosures to other providers.)

The new law also permits any MH/DD/SA provider that follows certain procedures to share confidential information with one or more "HIPAA covered entities or business associates" (for example, primary care providers, hospitals, home health, or specialists) when necessary to coordinate care and treatment of a client or to conduct "quality assessment and improvement activities." These activities are defined to include "case management and care coordination, disease management, outcomes evaluation, the development of clinical guidelines and protocols, the development of care management plans and systems, population-based activities relating to improving or reducing health care costs, and the provision, coordination, or management of" MH/DD/SA services. (In 2009, the North Carolina General Assembly amended the law to authorize MH/DD/SA providers and the Community Care of North Carolina Program to share client information without client consent for the same purposes.) While the client's written consent is not required for this information sharing, before making such disclosures, MH/DD/SA providers must inform the client (or legally responsible person) that the provider may make such disclosures unless the client objects in writing or signs a non-disclosure form supplied by the provider. If the client objects in writing or signs the non-disclosure form, the disclosure is prohibited.

A third and perhaps less obvious but more consequential change to the state MH/DD/SA confidentiality law is one that relieves health care providers who are not "facilities" from having to follow the MH/DD/SA confidentiality law whenever they receive client information from MH/DD/SA providers. Before enactment of the law, a provider of general health care services that did not fall within the definition of "facility" would nevertheless have to follow the confidentiality law if the healthcare provider received MH/DD/SA client from another provider. The state confidentiality law attached to, and followed, the client information as it was transmitted from the mental healthcare provider to the healthcare provider, even if the healthcare provider was not a "facility" under the state law. For example, this healthcare provider's obligation to apply and follow the state confidentiality law would arise if a mental health professional disclosed client information to the healthcare provider under any one of the several specific circumstances where state confidentiality permits such disclosure: with client consent, in a medical emergency, pursuant to an advance instruction for mental health treatment, or when a physician refers a patient to a mental health professional. Although some healthcare providers may not have known it, the receipt of such information meant the healthcare provider was required to apply the state law confidentiality law to the MH/DD/SA information and not further disclose it except as permitted by that law.

Now, "a HIPAA covered entity or business associate receiving confidential information that has been disclosed pursuant to G.S. 122C-53 through G.S. 122C-56 may use and disclose such information as permitted or required" by the HIPAA Privacy Rule. See G.S. 122C-52(b). For healthcare providers who are accustomed to following only the HIPAA Privacy Rule, this is significant because

the Privacy Rule permits information sharing in many circumstances where G.S. 122C would not. There is, however, one caveat. When the healthcare provider receives client information from a MH/DD/SA provider for purposes of quality improvement activities or coordinating treatment (because the client did not opt out of the disclosure after being informed that such disclosures would be made unless the client objected in writing), the statute prohibits the information from being "used or disclosed for discriminatory purposes including, without limitation, employment discrimination, medical insurance coverage or rate discrimination, or discrimination by law enforcement officers." See G.S. 122C-55(a7). (This notice and opportunity to object is not required when MH/DD/SA providers disclose information for care coordination and quality assessment and improvement purposes to the Community Care of NC networks, whose information sharing is governed by a separate statutory provision.)