

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1288\*

Short Title: Health Care Information Privacy.

(Public)

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Sponsors: Senators Gulley, Perdue; and Hartsell.

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Referred to: Judiciary.

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May 27, 1998

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT THE PRIVACY OF HEALTH INFORMATION, AS  
3 RECOMMENDED BY THE JOINT LEGISLATIVE HEALTH CARE OVERSIGHT  
4 COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes are amended by adding a new Chapter to read:

7 **"CHAPTER 132A.**

8 **"HEALTH INFORMATION PRIVACY ACT.**

9 **"ARTICLE 1.**

10 **"LEGISLATIVE FINDINGS AND DEFINITIONS.**

11 **"§ 132A-1-1. Legislative findings.**

12 (a) The General Assembly finds that health information is personal and sensitive  
13 information which, if inaccurately collected, documented, or improperly used or released  
14 may cause significant harm to a patient's interests in privacy and health care. Benefits of  
15 electronic health information include:

16 (1) Facilitating timely, authorized communications of more complete health  
17 information that is now available through paper-based systems;

18 (2) Improving the accuracy, integrity, and security of health information;

19 (3) Providing access to medical knowledge bases;

20 (4) Enhancing efficiencies of health care; and

1           (5) Facilitating health care research and health care quality improvement.  
2       (b) The General Assembly finds that it is in the public interest to establish  
3 legislative policies and guidelines to ensure that health information is:

- 4           (1) Secure, private, accurate, and reliable;  
5           (2) Properly disclosed or modified; and  
6           (3) Accessible only to those with a legitimate need for the information.  
7       (c) Certain types of information, such as information about HIV infection, AIDS,  
8 mental health, or substance abuse, are so highly sensitive that more strict requirements  
9 for disclosure are needed.

10 **"§ 132A-1-2. Definitions.**

11 As used in this Chapter, unless the context otherwise requires:

- 12       (1) 'Audit' means an assessment, communication evaluation, analysis  
13 determination, investigation, or prosecution of a custodian, provider, or  
14 facility, to identify, determine, evaluate, or monitor practices, services,  
15 or products concerning the applicability of, compliance with, or  
16 availability of:  
17       a. Legal, fiscal, quality assurance, quality control, risk  
18 management, utilization review, medical, professional, or  
19 scientific standards or practices, or aspects of performance or  
20 potential liability relating to:  
21           1. The delivery of or payment for present or future health  
22 care, health care services, health care products, or health  
23 care equipment;  
24           2. Health care fraud or fraudulent claims regarding health  
25 care, health care services or equipment, or related  
26 activities and items;  
27           3. Security of health information; and  
28           4. Coordination of or planning for present or future services  
29 among providers or facilities;  
30       b. Requirements for and oversight of licensing and professional  
31 discipline, accreditation, credentialing, or certification, including  
32 peer review; or  
33       c. Future health care services or health care products provided by  
34 the custodian, provider, or facility to, or case management related  
35 to, a patient currently or previously served by the custodian,  
36 provider, or facility.  
37       (2) 'Custodian' means any person operating in a business, professional, or  
38 governmental capacity that collects, creates, receives, obtains,  
39 maintains, uses, analyzes, or transmits identifying health information,  
40 including a college, employer, facility, payer, health oversight agency,  
41 health researcher, penal institution, provider, public health authority,  
42 school, State agency, third-party administrator, or university.

- 1           (3) 'Directory information' means the following information concerning a  
2 patient who is an inpatient or outpatient or who is currently receiving  
3 emergency health care in a health care facility:  
4           a. The presence of the patient at the facility, including room, bed  
5 number, or telephone number;  
6           b. Date of admission; and  
7           c. The patient's health status whether 'critical', 'poor', 'fair', 'good',  
8 'excellent', or a term denoting a similar condition.  
9           (4) 'Electronic' means electrical, digital, magnetic, optical, electromagnetic,  
10 or other form of technology that entails capabilities similar to these  
11 technologies.  
12           (5) 'Electronic agent' means a computer program or other electronic or  
13 automated means used, selected, or programmed by a person to initiate  
14 or respond to electronic records or performances in whole or in part  
15 without review by an individual.  
16           (6) 'Electronic record' means a record created, stored, generated, received,  
17 or communicated by electronic means such as computer equipment or  
18 programs, electronic data interchange, electronic voice mail, facsimile,  
19 telex, telecopying, scanning, and similar technologies.  
20           (7) 'Electronic signatures' means any signatures in electronic form, attached  
21 to or logically associated with an electronic record, executed or adopted  
22 by a person or the person's electronic agent with an intent to sign the  
23 electronic record.  
24           (8) 'Facility' means any place where health care is regularly provided by a  
25 provider.  
26           (9) 'Health care' means:  
27           a. Preventive, diagnostic, therapeutic, rehabilitative, maintenance,  
28 investigational, experimental, cosmetic, reconstructive, or  
29 palliative care, including assistance with disease or symptom  
30 management and maintenance, counseling, service, laboratory  
31 test, or procedure:  
32           1. With respect to the physical or mental condition of a  
33 patient; or  
34           2. Affecting the structure or function of the human body or  
35 any part of the human body including the banking of  
36 blood, sperm, ova, organs, or any other tissue.  
37           b. Any sale or dispensing of a drug, device, durable or disposable  
38 goods or equipment, or other health care related item to a patient,  
39 or for the use of a patient pursuant to a prescription, a purpose  
40 specified in a. of this subdivision.  
41           (10) 'Health information' means any data, information, or orders, including  
42 advance directives, documents granting anatomical gifts, biological  
43 samples from the human body from which information can be drawn,

1 films, videotapes, consent forms, genetic sequences, digitized images,  
2 sound recordings, and demographic information recorded or stored in  
3 any form that:

4 a. Relates to a specific patient's past, present, or future health care  
5 or condition, including the patient's individual cells and their  
6 components or personal and family medical history;

7 b. Was created or obtained by a custodian in connection with health  
8 care diagnosis, treatment, screening, counseling, intake, or  
9 discharge of a patient or related to the application for, or  
10 enrollment of, a patient in a reimbursement plan, or for insurance  
11 use; or

12 c. Was obtained by or from a provider, a facility, a patient, a  
13 member of the patient's family, or any other person about a  
14 patient and in connection with a patient's health care.

15 (11) 'Health oversight agency' means a public agency or other person that  
16 receives a disclosure of, uses, maintains, or discloses health information  
17 while acting in the capacity of a person authorized by law or recognized  
18 by a government agency to perform or oversee the performance of an  
19 audit.

20 (12) 'Health research' means scientific, actuarial, survey, or statistical  
21 research based upon health information, including clinical investigations  
22 governed by the Code of Federal Regulations, Chapter I of Title 21.  
23 Health research does not include disclosure of health information for  
24 purposes of providing health care, peer review, audit functions, or  
25 reporting to State and federal authorities.

26 (13) 'Identifying health information' means a collection of health information  
27 that includes the name, address, social security number, unique  
28 identifier established by State or federal law, likenesses or other  
29 information which readily identifies a patient's personal identity, could  
30 be used or manipulated to identify a patient by foreseeable method with  
31 reasonable accuracy and speed, or could be linked or matched by a  
32 foreseeable method to any other information in order to identify a  
33 patient. Identifying health information includes information stored in a  
34 master person index authorized by G.S. 132A-3-5. Health information  
35 shall not be considered identifying health information solely based on  
36 the inclusion in a collection of health information of a code assigned to  
37 a patient by a custodian if that code does not consist of or contain  
38 symbols that could be used to readily identify a patient with reasonable  
39 accuracy and speed from sources external to the custodian.

40 (14) 'Identifying provider information' means the collection of health  
41 information that includes the name, address, social security number,  
42 medical billing number, employer identification number, likenesses, or  
43 other information by which the identity of a health care provider can

1 readily be determined with reasonable accuracy and speed, or could be  
2 linked or matched by a foreseeable method to any other information in  
3 order to identify a provider. The term does not include a unique  
4 identification code assigned to a provider by a custodian and used and  
5 disclosed only internally to the custodian if that code does not consist of  
6 or contain symbols that could be used to identify readily a health care  
7 provider with reasonable accuracy and speed from sources external to  
8 the custodian.

9 (15) 'Master person index' means an index indicating the existence and  
10 general location of medical records of patients held by a custodian to  
11 facilitate the request for the information under circumstances permitted  
12 by this Chapter.

13 (16) 'Medical record' means identifying health information which is  
14 maintained in a health information collection, storage, and retrieval  
15 system of the custodian in the usual course of health care in accordance  
16 with applicable standards of practice.

17 (17) 'Patient' means an individual who is requesting, receives, or has received  
18 health care, or another person legally empowered to authorize the  
19 disclosure of a patient's identifying health information to the extent  
20 necessary to effect the terms or purposes of the individual's grant of  
21 authority.

22 (18) 'Payer' means a person acting in a business capacity who undertakes to  
23 furnish health insurance, disability insurance, life insurance, workers'  
24 compensation insurance, or otherwise to pay for all or some of health  
25 care services rendered to the patient.

26 (19) 'Person' means an individual, government, governmental subdivision,  
27 agency or authority, association, corporation, firm, limited liability  
28 company, partnership, society, estate, trust, joint venture, or any other  
29 legal entity.

30 (20) 'Provider' means:

31 a. A person licensed, certified, registered, or otherwise authorized  
32 by State or federal law to provide health care in the ordinary  
33 course of business or practice of profession;

34 b. A State or federal program that directly provides health care; or

35 c. A student training to provide health care acting under the  
36 supervision of a provider described in a. of this subdivision.

37 (21) 'Sign' means the execution or adoption of a signature by a person or the  
38 person's electronic agent.

## **"ARTICLE 2.**

### **"PATIENT INTERESTS.**

#### **"§ 132A-2-1. Patient's examination and copying of health information.**

42 (a) Upon a written request from a patient to examine or copy the patient's medical  
43 record, a custodian who is a provider or facility shall, within a reasonable time of the

1 receipt of the request, at the custodian's option, make the patient's medical record  
2 available for examination during regular business hours or provide a copy to the patient.

3 (b) If, in the professional judgment of the provider, it would be injurious to the  
4 mental or physical health of the patient who is the subject of the health information or in  
5 violation of the provider's professional ethical responsibilities to disclose, pursuant to  
6 subsection (a) of this section, certain identifying health information to the patient; the  
7 provider is not required to provide the information to the patient, but shall upon written  
8 request of the patient disclose the information to another provider designated by the  
9 patient.

10 (c) A patient shall not have a right of access to health information compiled and  
11 used by a custodian solely for purposes of audit, peer review, or other administrative  
12 functions, to information protected by an evidentiary privilege of a person other than the  
13 patient, or information collected about the patient for or during a clinical trial monitored  
14 by an institutional review board when such trial is not complete.

15 **"§ 132A-2-2. Request for amendment.**

16 (a) A patient or provider treating a patient may request that a facility or provider  
17 amend identifying health information in a patient's medical record maintained by the  
18 provider or facility.

19 (b) Upon a request for an amendment, the custodian shall either amend the  
20 medical record or inform the patient or provider in writing of the reasons for refusal to  
21 amend the medical record. If the custodian refuses to amend the record, the patient or  
22 provider shall be entitled to add a statement about the disagreement to the disputed  
23 identifying health information.

24 (c) When amending a medical record, the custodian shall add the amending  
25 information to the patient's identifying health information without affecting the original  
26 information.

27 **"§ 132A-2-3. Health information confidentiality; public records.**

28 (a) A custodian shall maintain, as confidential, identifying health information.  
29 Disclosures of identifying health information may be made only as authorized by this  
30 Chapter.

31 (b) Unless otherwise provided by this section or by other law, identifying health  
32 information is not a public record.

33 (c) No recipient of identifying health information shall use or redisclose  
34 identifying health information except for the purpose and authority under which the  
35 disclosure was made, or as otherwise authorized in this Chapter.

36 (d) A custodian's employees, agents, and contractors shall be subject to this  
37 Chapter to the same extent as the custodian.

38 (e) No person shall use health information that is not identifying health  
39 information for the purpose of identifying an individual patient unless the person is  
40 authorized under this Chapter to receive disclosures of the information as identifying  
41 health information.

42 (f) No person shall use health information that is not identifying provider  
43 information for the purpose of identifying an individual provider unless the person is

1 authorized under this Chapter to receive disclosures of the information as identifying  
2 provider information.

3 (g) The records established pursuant to G.S. 132A-3-4(a)(4) may only be disclosed  
4 as follows:

5 (1) To a patient, subject to G.S. 132A-2-1(c);

6 (2) To a custodian for audit functions, except for records recording peer  
7 review functions;

8 (3) To health oversight agencies to the extent these records relate to the  
9 performance of authorized audit function; or

10 (4) By order pursuant to G.S. 132A-3-3(b)(4).

11 (h) When practicable, disclosures of identifying health information shall be limited  
12 only to information which the disclosing party reasonably believes is necessary to  
13 accomplish the purpose of the disclosure, except to the extent that disclosure is  
14 authorized by a patient or compelled by G.S. 132A-3-2(b) or G.S. 132A-3-3(b)(4), in  
15 which case all information so authorized or compelled to be disclosed shall be disclosed.

16 (i) A disclosing custodian may in good faith rely upon representations made by a  
17 requesting person pursuant to this Chapter as to the authority and purpose for which a  
18 disclosure is being sought. A requesting person is in violation of this Chapter for  
19 misrepresenting the authority and purpose for which a disclosure is being sought, for  
20 seeking a disclosure for a purpose that is not authorized by this Chapter, or for seeking a  
21 disclosure for a purpose that is authorized by this Chapter but that does not apply to the  
22 role, position, or authority of the requesting person.

### 23 "ARTICLE 3.

### 24 "HEALTH INFORMATION COMMUNICATIONS.

#### 25 "§ 132A-3-1. Authorization to disclose health information.

26 (a) Except for disclosures otherwise authorized by this Chapter, a custodian may  
27 disclose a patient's identifying health information only with authorization of the patient.  
28 A custodian shall not condition coverage or treatment of a patient based on the patient's  
29 refusal to authorize disclosures not permitted by this Chapter, except when this disclosure  
30 is essential to the health and safety of the provider or to the patient's treatment, coverage,  
31 or payment.

32 (b) A custodian shall retain a patient's authorization to disclose identifying health  
33 information with the patient's health information. A patient's authorization, to be valid,  
34 shall have the following:

35 (1) The patient's identity;

36 (2) A dated written or electronic signature of the patient;

37 (3) A description of the health information to be disclosed;

38 (4) The name or title of a person or either (i) the description of a group to  
39 whom the information is to be disclosed or (ii) the description of the  
40 class of persons to whom the information is to be disclosed; and

41 (5) A statement of the purposes for which the information is to be used.

42 (c) A patient's authorization to disclose identifying health information may also  
43 include any of the following:

1           (1) Any limitation on the scope of disclosure that may be made by the  
2 recipient in carrying out the authorized purpose for which the disclosure  
3 is requested;

4           (2) An acknowledgment from the patient that the patient understands that  
5 the authorization is valid for the time period stated unless revoked; or

6           (3) Any other information believed by the custodian to be needed to  
7 facilitate the authorization or to inform the patient as to the patient's  
8 rights with respect to the authorization.

9           (d) A patient may revoke or amend an authorization at any time, except to the  
10 extent that the custodian has acted in reliance on the authorization.

11           (e) An authorization under subsection (b) of this section shall remain effective for  
12 the time specified by the patient in the authorization. If no time is specified, an  
13 authorization shall remain effective for one year.

14 **"§ 132A-3-2. Disclosures and uses of health information.**

15           (a) When a disclosure authorized pursuant to this section, other than as authorized  
16 by the patient or mandated by other law, may be accomplished without undue burden by  
17 disclosing health information that is not identifying health information, a custodian shall  
18 in good faith use reasonable efforts to disclose only health information that is not  
19 identifying health information.

20           (b) A custodian shall disclose identifying health information to federal, State, or  
21 local law enforcement authorities or to other federal or State authorities only as provided  
22 in G.S. 132A-3-3 or pursuant to mandatory disclosure obligations as otherwise provided  
23 by State or federal law.

24           (c) A custodian may disclose identifying health information about a patient  
25 without the patient's authorization if the disclosure is to be to the patient or:

26           (1) To a provider currently providing authorized health care to a patient or  
27 to a referring provider who continues to provide authorized health care  
28 to a patient if the information is necessary to provide health care to the  
29 patient, and the patient does not object to the disclosure. This  
30 subdivision shall not impose on the custodian a duty to inquire of or  
31 inform the patient of the disclosure either before or after the disclosure  
32 is made;

33           (2) To another provider in the same group practice or provider network, or  
34 to a custodian under contract with the group practice or provider  
35 network, for the purpose of providing patient health care within the  
36 practice or network;

37           (3) To a provider with a need for information to treat a condition that poses  
38 an immediate threat to a patient's health;

39           (4) Unless otherwise limited by G.S. 90-21.4, to a member of a patient's  
40 immediate family, a legal guardian of a patient, or to a person with  
41 whom the patient is known to have a close personal relationship, when  
42 the attending provider reasonably believes that notification is necessary



- 1           to avoid serious jeopardy to the health of a patient and the patient lacks  
2           the capacity to authorize the disclosure;
- 3           (5) Necessary because in a provider's opinion, a person is in serious and  
4           imminent danger or a person is likely to commit a violent felony or  
5           violent misdemeanor. This subdivision shall not impose a duty upon the  
6           provider to disclose health information;
- 7           (6) To a custodian that originally disclosed the information;
- 8           (7) To a health oversight agency performing authorized audit functions;
- 9           (8) To perform internal audit functions within a custodian's organization;
- 10          (9) To agents, employees, and contractors of a custodian for the purpose of:  
11           a. Providing health care to a patient; or  
12           b. Performing administrative services for or on behalf of a  
13           custodian;
- 14          (10) If not prohibited by federal or State law, to a health researcher for health  
15          research;
- 16          (11) To a provider to confirm a past method or outcome of a course of  
17          treatment performed by the provider;
- 18          (12) To a successor in interest of a custodian that is or was a provider,  
19          facility, or payer for the patient whose information is being disclosed;
- 20          (13) To a payer for the purpose of conducting an audit of provider's  
21          operation or service related to services billed or care provided; and
- 22          (14) Directory information, unless the patient has instructed the custodian  
23          not to make the disclosure or unless the disclosure of the location of the  
24          patient would reveal that the patient may be receiving mental health or  
25          substance abuse treatment. This subdivision shall not impose on the  
26          custodian a duty to inquire of or inform the patient of the disclosure  
27          either before or after the disclosure is made.

28 None of the limitations prescribed in this section shall relieve any person of any  
29 mandatory disclosure obligation concerning health information as otherwise prescribed  
30 by law.

31 **"§ 132A-3-3. Subpoenas, search warrants, requests for discovery, and court orders.**

32       (a) The provisions of G.S. 1A-1, Rule 45(c), shall apply to all identifying health  
33 information authorized to be disclosed under subdivisions (1) and (2) of subsection (b) of  
34 this section as if this information were hospital medical records. If this authorization is  
35 refused or is not obtainable, the requesting party must obtain an order as provided in  
36 subdivision (4) of subsection (b) of this section requiring disclosure before identifying  
37 health information may be released by the custodian for use in discovery, a hearing, or a  
38 trial except when this information is to be disclosed pursuant to subdivision (3) of  
39 subsection (b) of this section.

40       (b) A patient's medical record or other health information shall be disclosed by a  
41 custodian pursuant to a civil, criminal, or administrative subpoena, search warrant, or  
42 request for discovery in any federal or State judicial or administrative investigation or  
43 proceeding only if:

- 1           (1) The patient, or the patient's attorney, acting with the consent of the  
2 patient, has authorized the disclosure in writing;  
3           (2) The patient is deceased and the disclosure is authorized in writing by the  
4 executor or administrator of the patient's estate, or, if the estate is  
5 unadministered, by the next of kin;  
6           (3) The information disclosed is to be used in the patient's involuntary  
7 commitment, adjudication of incompetency, or guardianship  
8 proceeding;  
9           (4) A federal or State court or an administrative agency having subpoena  
10 power over the custodian and having jurisdiction of a matter in which  
11 the health information may be relevant, orders the disclosure as  
12 necessary for the proper administration of justice or health oversight as  
13 required by law, in which case, unless an original is compelled, a copy  
14 of the medical record shall suffice; or  
15           (5) The information is disclosed to a presiding judge or designee by a  
16 presiding judge pursuant to G.S. 1A-1, Rule 45, for purposes of  
17 determining use of identifying health information in discovery or at  
18 trial. This information shall not be open for inspection or copying by  
19 any person, including the parties to a case, until the order has been  
20 entered and then only in accordance with the order.

21           (c) Nothing in this section shall be construed to waive the privilege between a  
22 patient and a provider or to require any communications privileged under law to be  
23 disclosed, unless a patient's authorization or court order pursuant to subdivision (4) of  
24 subsection (b) of this section is obtained.

25 **"§ 132A-3-4. Responsibilities of custodians as to disclosures.**

26           (a) Custodians shall adopt and implement technical, contractual, and physical  
27 policies and safeguards to effect the requirements of this Chapter and shall undertake to  
28 carry out these policies and safeguards to protect against reasonably anticipated threats to  
29 the confidentiality, security, accuracy, and integrity of health information maintained,  
30 used, or disclosed by the custodian. These policies and safeguards shall include:

- 31           (1) Providing for internal disciplinary and corrective measures for  
32 violations of the custodian's policy for implementing the requirements  
33 of this Chapter;  
34           (2) Requiring that each employee, agent, or contractor having access to  
35 identifying health information sign a statement agreeing to comply with  
36 the policies and safeguards adopted by the custodian;  
37           (3) Providing periodic training of employees, agents, and contractors  
38 having access to identifying health information as to their obligations  
39 and liabilities under this Chapter;  
40           (4) Maintaining a record of the creation, revision, or disclosure of  
41 identifying health information, including without limitation to whom an  
42 authorized disclosure is made; and

1           (5) Limiting, to the extent practicable, the disclosure to that which is  
2           legitimately needed to be known in order to perform authorized  
3           functions.

4       (b) A custodian need not maintain a record of:

5           (1) Access or disclosures made pursuant to G.S. 132A-3-2(c)(1), (2), (9), or  
6           (14) unless the information is maintained as an electronic record; or

7           (2) Oral disclosures made to a patient or made pursuant to G.S. 132A-3-  
8           2(c)(1), (2), (4), or (9)a.

9       **"§ 132A-3-5. Master person index.**

10       (a) A custodian may maintain or participate in and use, directly or through a  
11 contractor, a master person index. A custodian utilizing a master person index shall  
12 disclose or permit access to the index only to a custodian who has entered into a written  
13 agreement requiring protection of confidentiality of health information as required in this  
14 Chapter with the disclosing custodian. A master person index may utilize a unique  
15 identifier to identify patients and custodians.

16       (b) Notwithstanding subsection (a) of this section, the existence of the following  
17 medical records shall not be disclosed in a master person index unless the requesting  
18 party has authority under State or federal law to receive a disclosure of the information:

19           (1) Confidential information as defined in G.S. 122C-3(9);

20           (2) Information and records regulated by G.S. 130A-143; and

21           (3) Identifying health information that is otherwise maintained by a health  
22 care provider or health care facility and is identified by the provider as  
23 being related to a patient's evaluation, diagnosis, or treatment of HIV  
24 infection, AIDS, substance abuse, or mental health condition.

25       (c) Access to an entry in a master person index indicating the existence of  
26 identifying health information shall not be permitted except to the extent that the  
27 disclosure of the information sought is authorized pursuant to G.S. 132A-3-1, 132A-3-2,  
28 or 132A-3-3.

29       **"§ 132A-3-6. Electronic and other medical records.**

30       Notwithstanding any other State law, if a custodian maintains and preserves health  
31 information or signatures utilizing electronic, optical, or other technology and media, a  
32 custodian shall not be required to maintain a separate paper copy of the health  
33 information or signatures. However, if a person receiving a disclosure requests the  
34 disclosure in a paper form, the custodian shall not refuse to provide the requested  
35 information in a paper form, unless another medium is required by State or federal law.

36       **"§ 132A-3-7. Authentication of persons and information; electronic signatures.**

37       (a) When used in connection with health information, health care delivery, or  
38 transactions involving health care, health care services, equipment, or supplies, or  
39 payments therefor, electronic signatures shall have the same legal effect as written  
40 signatures. Other authentication techniques recognized as having comparable or superior  
41 reliability to written or electronic signatures shall be acceptable for identification of any  
42 individual, entity, or health information associated with an individual or entity.

1 (b) All individuals authorized by a custodian to authenticate health information  
2 utilizing an authentication technique requiring a secure code shall sign an agreement with  
3 the custodian to the effect that only the individual will use or permit access to the code  
4 assigned to the individual.

5 **"ARTICLE 4.**

6 **"GENERAL PROVISIONS.**

7 **"§ 132A-4-1. Safe harbors.**

8 (a) Notwithstanding any other provision of this Chapter, no custodian or  
9 employee, agent, or contractor of a custodian shall be liable for actions authorized to be  
10 taken under this Chapter when the custodian or employee, agent, or contractor of the  
11 custodian:

12 (1) Acted in good faith and in reliance upon health information disclosed  
13 consistent with this Chapter;

14 (2) Disclosed health information in good faith and in reliance upon a  
15 request for disclosure when the request identified a purpose for which  
16 disclosure is authorized under this Chapter;

17 (3) Disclosed health information as authorized by this Chapter, and the  
18 transmission of the information was interrupted, or an error in the  
19 transmission otherwise was caused, by a common carrier or enhanced  
20 service provider while facilitating the disclosure;

21 (4) Disclosed identifying health information in good faith reliance on an  
22 authorization provided by this Chapter;

23 (5) Is protected by a statutory immunity related to identifying health  
24 information; or

25 (6) Acted in good faith and in reliance upon recommendations, guidelines,  
26 or specifications implemented by the custodian that address the subject  
27 matter of this Chapter and that are designed to protect patients from the  
28 damages complained of, in whole or in part, and which  
29 recommendations, guidelines, or specifications are:

30 a. Adopted by the United States Secretary of Health and Human  
31 Services; or

32 b. To the extent not preempted by or inconsistent with  
33 recommendations, guidelines, or specifications authorized by  
34 subdivision (1) of subsection (a) of this section,  
35 recommendations, guidelines, or specifications recommended by  
36 the following organizations as model standards or specifications  
37 if adopted by the Office of State Planning or the Department of  
38 Health and Human Services pursuant to the rule-making  
39 procedures of the Administrative Procedures Act, Chapter 150B  
40 of the General Statutes, which agency may rely on the temporary  
41 rule-making procedures to utilize technology on a timely basis:

42 1. The National Committee on Vital and Health Statistics;

43 2. The National Uniform Billing Committee;

3. The National Uniform Claim Committee;
4. The North Carolina Health Care Information and Communications Alliance, Inc.;
5. The Workgroup for Electronic Data Interchange; or
6. Other public purpose organizations created under section 501(c) of the Internal Revenue Code and certified by Executive Order of the Governor as having the technical capability and breadth of representation in the health care community to address the subject matter of this Chapter in the public interest.

(b) Until the time that these recommendations, specifications, or guidelines are adopted as set forth in sub-subdivision b. of subdivision (6) of subsection (a) of this section, the recommendations, guidelines, or specifications recommended by the organizations set forth in this sub-subdivision as model standards or specifications shall constitute prima facie evidence of an appropriate standard of care that may be relied on by a custodian.

**"§ 132A-4-2. Civil remedies.**

(a) Subject to G.S. 132A-4-1 and Chapter 1D of the General Statutes, a custodian or an employee, agent, or contractor of a custodian shall be subject to civil liability for damages incurred by a person with respect to the patient's identifying health information to the extent that these damages arise out of the intentional or negligent act or omission of a custodian in violation of the requirements of this Chapter.

(b) If a patient believes that a custodian, employee, agent, or contractor of a custodian has failed to comply with its obligations under this Chapter with respect to the patient's identifying health information, a patient may apply to a court of competent jurisdiction for appropriate equitable relief.

(c) Any agreement purporting to limit the liability arising from violations of this Chapter, other than pursuant to a settlement agreement, is void.

**"§ 132A-4-3. Conflicting laws.**

(a) This Chapter does not restrict a custodian from complying with obligations imposed by federal health care payment programs, federal law, or State law compelling disclosure. This Chapter shall not apply if and to the extent portions of it may be preempted by the Employee Retirement Income Security Act of 1974. To the extent the provisions of this Chapter conflict with other State law, the provisions of this Chapter shall control unless the other State law specifically states that it is an exception to a specific provision of this Chapter unless this Chapter conflicts with another State statute governing the nondisclosure of identifying health information held by a health oversight agency for the purposes of peer review, professional review, or other professional disciplinary or corrective action. In these two cases, that other statute shall control.

(b) G.S. 132A-2-1, 132A-2-2, 132A-3-4(a)(4), and 132A-4-2 shall not apply to disclosures of identifying health information regulated by Article 39 of Chapter 58 of the General Statutes. Health information regulated by Article 39 of Chapter 58 of the

1 General Statutes may also be disclosed as permitted by that Article or G.S. 132A-3-1 and  
2 G.S. 132A-3-2(b) and (c).

3 (c) G.S. 132A-2-1 and G.S. 132A-3-2(c) shall not apply to disclosures of  
4 identifying health information regulated by Chapter 122C of the General Statutes.

5 (d) G.S. 132A-3-2(c) shall not apply to disclosures of identifying health  
6 information regulated by G.S. 130A-143 when a custodian is acting pursuant to that  
7 section.

8 (e) This Chapter does not apply to a telecommunications common carrier or an  
9 enhanced service provider if they are certified or subject to regulation:

10 (1) Under Chapter 62 of the General Statutes; or

11 (2) By the Federal Communications Commission pursuant to federal law.

12 (f) Except as provided in G.S. 132A-2-3(e) and (f), this Chapter does not regulate  
13 the disclosure of health information that is not identifying health information.

14 **"§ 132A-4-4. Rules of construction.**

15 Except as otherwise required by law, this Chapter does not require the disclosure of  
16 trade secrets or other commercial information."

17 Section 2. This act becomes effective July 1, 2000, except that G.S. 132A-3-3,  
18 132A-3-5, 132A-3-6, and 132A-3-7 become effective when this act becomes law.  
19 Custodians who comply with this act prior to its effective date may rely on G.S. 132A-4-  
20 1 as to causes of action that accrue after their compliance.