

How to Comply with Federal Confidentiality Laws When Reviewing Comprehensive Clinical Assessments in Delinquency Cases

Comprehensive clinical assessments (CCA's) are frequently completed—and sometimes required—prior to ordering a disposition in a delinquency matter. [G.S. 7B-2502\(a2\)](#). You can find more information about when the statutory requirement is triggered in a [previous blog](#). CCA's contain information about the juvenile's mental health and they may also contain information about substance use disorder treatment. These kinds of information are covered by federal confidentiality laws that are not specifically addressed by the Juvenile Code. While the federal laws generally prohibit disclosure absent a valid patient authorization, courts can order disclosure after following the required procedure and making certain findings. The North Carolina Administrative Office of the Courts (NCAOC) recently released new and revised forms that are structured to provide the court access to CCA's while complying with the requirements of federal confidentiality laws. This post explains why and how to use the new and revised forms.

Federal Confidentiality Laws that Cover CCA's

Health information that is protected by the Health Insurance Portability and Accountability Act (HIPAA) includes, among other things, information that

- Identifies the individual,
- Is created or received by a health care provider, health plan, or public health authority, and
- that relates to the past, present, or future physical or mental health or condition of an individual. [45 C.F.R. 160.103](#).

The information in a CCA falls squarely within this definition. As protected health information, a CCA can only be disclosed if there is a valid authorization for that disclosure from the juvenile's parent, guardian, or custodian ([45 C.F.R. § 164.508](#)) or in response to a court order that specifically authorizes its release ([45 C.F.R. § 164.512\(e\)](#)).

Federal law contains an additional layer of privacy protection for substance use disorder patient records. [42 C.F.R. Part 2](#). This law generally restricts disclosure of patient records that identify the patient as having or having had a substance use disorder. [42 C.F.R. § 2.12\(a\)\(1\)](#). However, the federal regulations also provide a procedure for a court to order disclosure for noncriminal purposes under certain circumstances. [42 C.F.R. § 2.64](#). This structure can be used to order disclosure of substance use disorder information in a delinquency matter.

Step 1: Order Production of the CCA to the Court, to be Filed Under Seal

Because the CCA is subject to the privacy protections in HIPAA and 42 C.F.R. Part 2, it should not

be disclosed to the court without specific authorization from the juvenile and their parent, guardian, or custodian that complies with the applicable federal laws or without a specific court order that authorizes production of the CCA to the court.

CCA Completed Within 45 Days Prior to Adjudication

If there is a CCA that was completed within 45 days prior to adjudication in the case, then the court is not required to order the completion of a new CCA. G.S. 7B-2502(a2). However, the court does need to ensure compliance with federal privacy laws in obtaining access to that recent CCA. Side two of a new form, [AOC-J-477](#), should be used in this circumstance to order production of the completed CCA.

This order requires the provider who completed the CCA to provide the CCA to the court under seal. There are two requirements in 42 C.F.R. Part 2 that must be met *before* the court orders disclosure, which are best managed if the CCA comes under seal for court review.

1. The provider must have notice of the intent to disclose the record and an opportunity to object to that disclosure. (“Opportunity” means an opportunity to appear in person or to file a written response. A response is not required, and many times a provider will choose not to be heard on the question of whether an order to disclose should be issued.)
2. The court must make certain findings regarding good cause in order to require disclosure of the CCA. The court must therefore have the opportunity to review the necessity for disclosure of the CCA prior to authorizing its disclosure.

If the court orders production of the CCA, there will need to be a gap in time between the adjudication and disposition hearings. The court can be told about the timely CCA following adjudication. The court can then order the provider to produce the CCA, and the provider must have time to comply with that order and to prepare any potential objection. It is possible to avoid this pause in the case *if a party or the court subpoenas the CCA, to be produced to the court under seal, prior to adjudication.* In that circumstance, the provider will have notice of the subpoena and opportunity to object without the need for a pause between adjudication and disposition. If a timely CCA is already in the court file, under seal, at the time of adjudication, then the court will not need to use the AOC-J-477. The court can move to step 2: order disclosure of the CCA.

CCA Not Completed Within 45 Days Prior to Adjudication

If a CCA was not completed within 45 days prior to adjudication, the court **MUST** order DJJ to make a referral for a CCA following adjudication if the juvenile has a suspected mental illness, developmental disability, or intellectual disability. G.S. 7B-2502(a2). The front of the AOC-J-477 should be used to order completion and production of a CCA under this circumstance. This order also requires that the CCA be provided to the court under seal and it gives the provider who completed the CCA notice and an opportunity to object to disclosure, as required by federal law.

Step 2: Order Disclosure of the CCA

The [AOC-J-471](#) should be used to order disclosure of the CCA after that CCA has been produced to the court under seal. This form was revised to include the findings necessary for the court to order disclosure in compliance with federal privacy laws. It includes findings that

- the juvenile and the provider have been given notice and opportunity to be heard and
- that good cause exists for disclosure, as required by federal law.

If the court makes those findings, then the court can order disclosure of the CCA to the court and the parties for consideration of whether the court should convene a care review team. Absent a patient authorization that is valid under the federal privacy laws, this is the only way that the court and the prosecutor can have access to the CCA. The order also prohibits redisclosure of the CCA unless redisclosure is otherwise authorized by applicable confidentiality laws.

The AOC-J-471 should also be used to order a care review team if the court makes the necessary findings contained in the section of the form titled “Findings on review of Assessment.” [G.S. 7B-2502\(a3\)](#).

Ordering Disclosure of Other Expert Examinations Containing Mental Health and/or Substance Use Disorder Information

Expert examinations may also be ordered in delinquency cases outside of this CCA process. [G.S. 7B-2502\(a\)](#) allows the court to order an examination by any qualified expert as needed to determine the needs of the juvenile. Side two of form [AOC-J-476](#) should be used to order an expert examination in a delinquency matter. This form was also recently revised to include language that complies with any applicable federal privacy laws. Using the same structure in place when ordering a CCA, the form orders the provider to submit the evaluation to the court under seal and gives the provider notice and opportunity to object to disclosure of the examination.

Once the court receives the expert examination under seal, the bottom half of side one of the form provides the findings needed to order disclosure of the expert examination to the court and the parties. These are the same findings noted above in the AOC-J-471. If, on review of the sealed examination, the court can make the findings, then the court can order disclosure. The front of this form includes such an order. The order limits disclosure to the use permitted by G.S. 7B-2502(a)—to determine the needs of the juvenile. The order also limits redisclosure of the examination to redisclosure that is otherwise allowed or required under applicable confidentiality laws.

Keeping Track of This Process

If you have read this far, you may be feeling a little overwhelmed. There are many moving pieces

related to providing access to the assessments that may be needed to get to disposition in a delinquency case while complying with federal privacy laws. The basic structure to remember is:

- The court can order access to private mental health and substance use disorder information of a juvenile under certain circumstances.
- The court must first order production of the assessment under seal or the CCA can be subpoenaed for production to the court under seal.
- Then, if the court can make the required findings, the court can order disclosure of the assessment for the limited purpose necessary in the delinquency matter.

Thinking about this process early in the case and ensuring that the proper orders are issued at the appropriate time will help reduce the amount of time a case has to pause in order to comply with the requirements of federal privacy laws.

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