



SUBMITTED VIA EMAIL: www.regulations.gov

March 7, 2014

Secretary Kathleen Sebelius
U.S. Department of Health and Human Services
and
Mr. Leon Rodriguez
Director, Office for Civil Rights
Attention: HIPAA Privacy Rule and NICS
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 509F
Washington, DC 20201

RE: Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the National Instant Criminal Background Check System (NICS)

Dear Secretary Sebelius and Mr. Rodriguez,

As an association representing hospitals and mental health and addiction treatment organizations, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking (NPR) on the “*Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the National Instant Criminal Background Check System (NICS)*” as published in the January 7, 2014, *Federal Register*.

Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations, including more than 700 psychiatric hospitals, addiction treatment facilities, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, outpatient networks, and other providers of care. Our members deliver all levels of care, including inpatient, residential, partial hospitalization, and outpatient services.

COMMENTS

We understand that the purpose of the proposed rulemaking is to create an express permission in the HIPAA Privacy Rule for reporting information relevant to the Federal mental health prohibitor to the NICS by those HIPAA-covered entities responsible for involuntary commitments, and other actions that would subject individuals to the Federal mental health prohibitor. We cannot comment from the perspective of individual states, but appreciate the opportunity to respond from a national perspective.

NAPHS fully supports the need to provide adequate and timely treatment to persons suffering from mental illness and addictive disorders. However, we believe that proposed and current laws and regulations that require reporting of an entire class of individuals (those who have been involuntarily

committed for mental health/addiction treatment) do not automatically diminish risks. We believe they can add to the stigma and reluctance that many have toward seeking help.

The actual facts of this regulation are one thing, but a much more important issue is the public perception of the regulation. We are concerned that the “take away” will be that if a person discloses certain information, thoughts, or feelings to a therapist, the therapist will be required to “report” the patient. This would potentially have a very chilling effect on one’s willingness to explore issues in treatment that may well lead to their resolution rather than their being acted upon.

What effect do these laws and regulations have on a spouse or parent who is debating the pros and cons of court-ordered commitment for a husband, wife, or child? How much greater is the impact if that family member is currently employed in a career in which a firearm is part of the job (such as the military or law enforcement)? Will fear that receiving mental health treatment could result in labeling that leads to loss of livelihoods prevent people from seeking help at all?

We are aware of the significant variance in commitment laws by states (see the Treatment Advocacy Center’s 2014 “Mental Health Commitment Laws: A Survey of the States” at www.TACReports.org/state-survey). Using involuntary commitment as the criteria for reporting someone to the NICS is by definition highly variable. In this case, state-determined definitions are used to meet a national requirement. In addition, the reason a person might be civilly committed may have nothing to do with a concern about firearms or their potential use. We know this regulation is not debating the merits of the definitions that guide it, but we want to make these two points explicit regarding the individuals potentially subject to the mental health prohibitor.

We are pleased to see that the entity responsible for reporting to the NICS, in almost every case, is a court, board, commission, or other lawful authority. It is very important that reporting to NICS is based on the decision of these entities and not the clinician.

We support comments made to the advanced notice of proposed rulemaking that emphasize the importance of establishing mechanisms to remove an individual’s name from the NICS when the basis for their inclusion no longer applies. The current process is unclear, and many individuals may never know they are on the list or that they need to take proactive steps to remove their name. Clear procedures, shared with both patients and caregivers, need to be a part of the final rule.

As the country looks for a balanced approach to improving public safety, we believe that needs to be done with a clearer understanding of the low risk of violence overall from those facing behavioral health disorders and with an ongoing dialogue on how to better zero in on risk factors for violence (among all Americans – not just those with mental and addictive disorders).

Thank you for the opportunity to provide our perspective. We look forward to continuing to work with the Department of Health and Human Services and the Office for Civil Rights to ensure that the millions of Americans living with mental and addictive disorders are encouraged to seek needed treatment without facing added discrimination or stigma.

Sincerely,

/s/

Mark Covall
President/CEO