



June 7, 2013

Leon Rodriguez
U.S. Department of Health and Human Services
Office of Civil Rights
Hubert H. Humphrey Building, Room 509F
200 Independence Ave. SW
Washington, DC 20201
Attention: HIPAA Privacy Rule

Re: ANPRM on HIPAA Privacy Rule and the National Instant Criminal Background Check System (NICS)

Dear Mr. Rodriguez:

NAMI, the National Alliance on Mental Illness, submits these comments in response to the Office of Civil Rights' (OCR) Advance Notice of Proposed Rulemaking (ANPRM) concerning the HIPAA Privacy Rule and the National Instant Criminal Background Check System (NICS). NAMI is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. NAMI advocates for access to services, treatment, supports and research and is steadfast in its commitment to raise awareness and build a community of hope for all of those in need.

NAMI shares the goal of reducing gun violence in America and believes that firearms and ammunition should not be easier to obtain than mental health care. At the same time, NAMI strongly advocates that people should not be treated differently with respect to firearms regulations based on stereotypical assumptions about mental illness and its relationship to violence. We believe that the current NICS law is based on faulty assumptions about the relationships between mental illness and violence, not grounded in science. We therefore do not support amending the HIPAA Privacy Rule to create a special exception for reporting of mental health records to the NICS database.

Research that has been conducted on the relationship between mental illness and violence shows that the majority of people living with mental illness are not violent. This research reveals that a small subset of individuals with mental illness may pose an increased risk of violence, specifically young males with untreated psychosis or paranoia who are also abusing alcohol and illegal drugs. Importantly, the research also shows that when these individuals receive appropriate treatment, they are no more violent than people without mental illness.¹

There is no evidence that the current mental health prohibitors in the NICS law are effective predictors of gun violence. Very few of the individuals who engaged in mass shootings in recent

¹ "Assessing the State of America's Mental Health System," Testimony of Thomas Insel, M.D., Director, National Institute of Mental Health, before the Committee on Health, Education, Labor and Pensions, U.S. Senate, January 24, 2013, <http://www.help.senate.gov/imo/media/doc/Insel.pdf>

years would have been included in the database under current reporting requirements. The fact that a person has been “adjudicated” at some point or another in their lives does not correlate with increased risks of violence. This is particularly true for individuals who may be adjudicated as temporarily unable to manage their own affairs or unable to independently manage their Veterans or Supplemental Security Income (SSI) benefits.

There has been little effort to amend the federal law that established NICS to create more accurate reporting requirements with regard to mental illness despite all of the focus on mental health background checks since the Virginia Tech tragedy in 2007. This is illustrated by the egregiously outdated and offensive terminology used in the law to this day, “persons adjudicated as mentally defective.”

Although NAMI opposes amending HIPAA to create a special exception for reporting of mental health records to the NICS database, if the decision is made to amend HIPAA in this way, we recommend that the basis for why a person’s name is included in the database should not be revealed either to the NICS system or to gun dealers accessing the system.

As stated in the ANPRM, information currently reported to the NICS system identifies individuals as being subject to the mental health prohibitor. It is not clear why this is necessary. Inclusion of the person’s name on the list, without additional information, should be sufficient to achieve the purposes of the NICS system. Were information strictly limited to the person’s name, there would be no HIPAA concerns because protected health information would not be disclosed. Most importantly, the risk of inappropriate disclosure or leaks of sensitive mental health information would be minimized.

Finally, NAMI joins the American Psychiatric Association in urging that if HIPAA is amended, the exception should be narrowly construed to apply only to federal reporting requirements. In recent months, several states have broadened state based reporting requirements to apply even to individuals who seek hospital based mental health treatment voluntarily. Knowledge that voluntarily seeking mental health care could subject someone to inclusion in a state or federal database will serve as a powerful deterrent for people to seek help when they need it the most.

Recent tragedies have focused attention on the fact that most people with serious mental illness do not have access to mental health treatment. Misguided policies that have the effect of further limiting access to care would be ill-advised and counterproductive to the goal of improving mental health treatment.

NAMI is eager to collaborate with OCR to further discuss these issues. Please contact Ron Honberg, NAMI’s Director of Policy and Legal Affairs, by email at RonH@nami.org or by telephone at (703) 516-7972 with any questions.

Sincerely,



Michael J. Fitzpatrick, MSW
Executive Director