



## Office of Health Innovation

### Proposed Rule: HIPAA Privacy Rule and the National Instant Criminal Background Check System (NICS)

**Description:** Among the persons disqualified from possessing or receiving firearms under Federal law are individuals who have been involuntarily committed to a mental institution; found incompetent to stand trial or not guilty by reason of insanity; or otherwise have been determined, through a formal adjudication process, to have a severe mental condition that results in the individuals presenting a danger to themselves or others or being incapable of managing their own affairs. Concerns have been raised that, in certain states, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule may be a barrier to States' reporting the identities of individuals subject to the mental health prohibitor to the NICS. HHS is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comments on such barriers to reporting and ways in which these barriers can be addressed.

### Background and Provisions

The NICS Improvement Amendments Act (NIAA) of 2008 requires Federal agencies to report to the National Instant Criminal Background Check System (NICS) the identities of individuals known by the agencies to be subject to one or more prohibitors, and it authorizes incentives for States to provide such information when it is in their possession. Individuals who are subject to the mental health prohibitor are ineligible to purchase a firearm because they have been involuntarily committed to a mental institution, have been found incompetent to stand trial or not guilty by reason of insanity, or otherwise have been determined through an adjudication process to have a severe mental condition resulting in the individuals presenting a danger to themselves or others or being unable to manage their own affairs.

Because of the variety of State laws, there may be State agencies, boards, commissions, or other lawful authorities outside the court system that are involved in some involuntary commitments or mental health adjudications. At this time, there is insufficient data regarding to what extent these State agencies, boards, commissions, or other lawful authorities that order involuntary commitments or conduct mental health adjudications are also HIPAA covered entities.

HHS is considering creating an express permission in the HIPAA rules for reporting the relevant information to the NICS by those HIPAA covered entities responsible for involuntary commitments or the formal adjudications that would subject individuals to the mental health prohibitor, or that are otherwise designated by the States to report to the NICS. In addition, HHS is soliciting comments on the best methods to disseminate information on relevant HIPAA policies to State level entities that originate or maintain information that may be reported to NICS. Finally, HHS is soliciting public input on whether there are ways to mitigate any unintended adverse consequences for individuals seeking needed mental health services that may be caused by creating express regulatory permission to report relevant information to NICS.

