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March 10, 2014

Leon Rodriguez, JD
Director, Office of Civil Rights
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Re: HIPAA Privacy Rule and the National Instant Criminal Background Check System

Dear Mr. Rodriguez:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to comment on the above-referenced Office of Civil Rights' (OCR) Notice of Proposed Rulemaking (NPRM), published in the Federal Register on January 7, 2014. The purpose of the NPRM is to modify the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to expressly permit certain HIPAA-covered entities to disclose to the National Instant Criminal Background Check System (NICS) the identities of individuals who are subject to a federal "mental health prohibitor" that disqualifies them from shipping, transporting, possessing, or receiving a firearm.

The AMA's approach to the issue of reporting to the NICS is governed by our *Code of Medical Ethics* and longstanding policies adopted by our policymaking body, the House of Delegates, which support strong protections for patient privacy and, in general, require physicians to keep patient medical records strictly confidential. AMA policy and ethical opinions on patient privacy and confidentiality provide that a patient's privacy should be honored unless waived by the patient in a meaningful way or in rare instances when strong countervailing interests in public health or safety justify invasions of patient privacy or breaches of confidentiality. When breaches of confidentiality are compelled by concerns for public health and safety, those breaches must be as narrow in scope and content as possible, must contain the least identifiable and sensitive information possible, and must be disclosed to the fewest possible to achieve the necessary end.

The AMA's policies and ethical opinions are designed not only to protect patient privacy, but also to preserve the patient-physician relationship. This is particularly important in the mental health arena, where striking the correct balance is critical in encouraging individuals with mental illness and/or substance use disorders to seek treatment. We appreciate OCR's recognition of the importance of protecting the patient-physician relationship.

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The AMA believes that OCR strikes the appropriate balance in the NPRM between protecting public safety and preserving the patient-physician relationship by narrowly defining the scope of who can be reported to the NICS and by which HIPAA-covered entities. We support the NPRM's clarification that to be eligible for being reported to NICS under the mental health prohibitor, an individual must meet federal definitions of having been involuntarily committed to a mental institution or having been adjudicated as a mental defective by a court, board, commission, or other lawful authority. In addition, we support the proposed limitation on the HIPAA-covered entities permitted to report to the NICS, e.g., only covered entities with lawful authority to make adjudication or commitment decisions that make individuals subject to the federal mental health prohibitor, or that serve as repositories of information for NICS reporting purposes. We reiterate our previous comments to OCR, which were submitted in June 2013 in response to an Advance Notice of Proposed Rulemaking, that direct reporting of firearms-related adjudications by physicians, hospitals, and other HIPAA-covered provider entities would be inappropriate and should not be permitted. Moreover, we strongly support the NPRM's restriction on the type of information that can be disclosed, which is limited to certain demographic and other information and which does not include diagnostic or clinical information.

We appreciate your consideration of our comments. If you have any questions, please do not hesitate to contact Margaret Garikes, Director of Federal Affairs, at margaret.garikes@ama-assn.org or (202) 789-7409.

Sincerely,

James L. Madara, MD