

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

February 14, 2013

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20221

Dear Secretary Sebelius:

Pursuant to House Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining a range of programs and issues, including mental health, that have been raised in the wake of the Newtown, Connecticut, tragedy.

One matter that has been brought to the Committee's attention is the applicability of the Health Insurance Portability and Accountability Act (HIPAA) and the HIPAA Privacy Rule on the ability of State and local governments to share mental health records with the National Instant Criminal Background Check System (NICS). As you are aware, it is unlawful for individuals who have been involuntarily committed to a mental health facility or adjudicated by a court as mentally ill to possess a firearm. In 2007, Congress enacted the NICS Improvement Amendments Act to facilitate the sharing of mental health records by States with NICS. According to several news reports and a recent Government Accountability Office report,<sup>1</sup> several States as well as the District of Columbia do not provide mental health records to NICS over concerns that providing such records violates the HIPAA Privacy Rule.

To help our understanding of the HIPAA Privacy Rule and the impact it plays on restricting States from producing information to NICS, we ask that you answer the following questions, provide any documents, and brief the Committee on or before February 22, 2013:

1. When did the Department of Justice (DOJ) request that your agency consider a change to the HIPAA Privacy Rule that would specifically allow disclosure of mental health records for NICS reporting purposes?

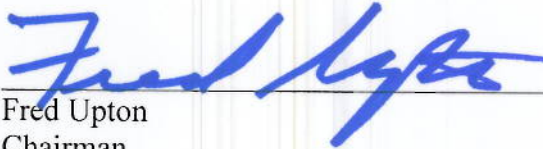
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<sup>1</sup> See Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks, (GAO-12-684), Jul 16, 2012.

2. Where is HHS in the process of reviewing the HIPAA Privacy Rule issue as it relates to the reporting of mental health records to the NICS database, and have you made a decision to pursue a proposed change to the HIPAA Privacy Rule for mental health records reporting?
3. What analysis has your agency completed on the barriers that States face when disclosing mental health records to the NICS system?
4. Specifically, does 45 C.F.R. § 164.512(f) permit a State to disclose mental health records to the Federal Bureau of Investigations for inclusion in the NICS system?
5. Did you make any recommendation to the Vice President's gun control taskforce relating to the HIPAA Privacy Rule?

We appreciate your prompt attention to this request. To arrange for a staff briefing and to discuss your responses, please contact Carl Anderson of the Majority Committee staff at (202) 225-2927.

Sincerely,



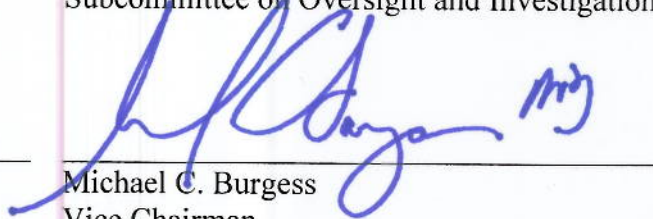
Fred Upton  
Chairman



Tim Murphy  
Chairman  
Subcommittee on Oversight and Investigations



Marsha Blackburn  
Vice Chairman



Michael C. Burgess  
Vice Chairman  
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations