



September 13, 2022

DHDTC DAL#: 22-08

Subject: UPDATED – NICS Reporting Guidance for PHL
Article 28 and MHL Article 31 Hospitals

Dear Chief Executive Officer/Administrator:

Background: The Federal National Instant Criminal Background Check System (NICS) Index is the Federal Bureau of Investigation (FBI) managed database containing information provided by Federal and state agencies about persons prohibited under Federal law from receiving or possessing a firearm.

Public Health Law Article 28 and Mental Health Law (MHL) Article 31 hospitals that provide inpatient psychiatric treatment to individuals admitted to the hospital on an involuntarily basis, are required by applicable laws to report such individuals to be included in the NICS. In New York State (NYS) this hospital reporting is accomplished via secure electronic submission of data to the NYS Department of Health (DOH), which then transmits the data to the NYS Office of Mental Health (OMH) where the data is added to other NYS facility records and then passed into the NICS.

Purpose: The NYS OMH and DOH are jointly issuing this guidance to clarify the State's requirements of NICS reporting hospitals regarding several issues related to the NICS:

- 1. Clarification of Qualifying Patients:** *OMH and DOH are clarifying that if a valid qualifying legal status order is written for a qualifying patient, that patient is considered admitted to your facility and should be reported.* The most common qualifying legal statuses are MHL 9.27 Involuntary admission on medical certification, also known as two physician certificate; MHL 9.37 Involuntary admission on certificate of a director of community services or his designee; and MHL 9.39 Emergency admission – substantial risk of harm to himself or others. Even if the patient is physically located outside of the inpatient psychiatric unit during the hospital stay (such as in the emergency department), if a qualifying legal status order is written, the patient is to be reported.
- 2. Age of Reportable Patients:** *Due to the passage of the Bipartisan Safer Communities Act on June 22, 2022, patients age 16 and older should be reported to NICS.* Previously reportable patients were 18 years of age or older on day of admission. The Bipartisan Safer Communities Act changes this age to 16 effective June 22, 2022. Your facility should change your processes to ensure this patient population is captured in your reporting streams. For Excel file upload and automated reporters, this will likely mean changes to your technical systems to capture these records. Reporting of these patients should begin as soon as possible but no later than January 1, 2023. We will accept submissions for patients age 16 and older retroactively to June 22, 2022.
- 3. Population of Middle Name or Initial:** *The FBI has changed reporting criteria to require population of middle name or initial if this identifier exists in your medical records.* Your facility must report middle name or initial if such information exists. If this information does not exist, you will attest to such.

4. **Retention of Records:** *OMH and DOH are informing hospitals that all admission records of individuals reported by the hospital to the NICS Index are required to be retained in perpetuity, unless otherwise instructed and notwithstanding any record retention policy to the contrary.*

Following the 2018 audit of NYS NICS data integrity (pursuant to 28 CFR § 25.5), the FBI informed OMH and DOH that its future audits will require retention of all admission records of individuals reported to the NICS Index to enable record verification and quality control checks. MHL § 31.11(5) provides in sum and substance that hospitals, as holders of OMH operating certificates, shall provide to OMH any records it needs related to persons who may be placed on the NICS Index.

Details of the admissions records that must be retained are included in the attachment to this letter. Hospitals should make necessary preparations and arrangements to ensure that the relevant admission records will be available to OMH upon request. Such records may be maintained in any manner that comports with applicable federal or State laws, rules, or regulations, so long as they are readily available.

DOH and OMH expect retention of such records in alignment with this guidance to commence immediately.

5. **Training for NICS Data Submission:** *All NICS Data Reporters must attend an annual NICS training session. Attendance by Directors of Behavioral Health and Directors of Risk Management is strongly encouraged. Sessions will be scheduled for September 2022.*

NYSDOH regularly monitors hospital NICS submissions and requires record audits when delays of submission are detected, or when there is other indication of inappropriate or incomplete record reporting.

A frequent finding of DOH audits is that there is an inconsistent understanding of the intent and appropriate use of MHL legal codes for involuntary patient admissions that has led to both under reporting of admissions and inappropriate reporting of non-qualified admissions to NICS.

Due to these errors, all hospitals currently providing NICS reports to DOH need to assure that their NICS staff participate in a training webinar conducted by DOH and OMH. Several training sessions will be made available to accommodate availability of hospital staff. More information regarding the training will be announced.

NYS DOH and OMH sincerely appreciate the work of the hospitals in performing this important reporting task and your participation will assure high quality data that preserves patient rights while helping to protect the health and safety of all New Yorkers.

Questions about this letter should be directed to nicssupport@health.ny.gov.

Attachment: NICS Records Retention Requirements

NICS Records Retention Requirements

Federal Requirements

18 USC 922(4)(d)

28 CFR § 25.5

State Requirements

MHL Sections 7.09.(j) and 31.11(5)

DOH and OMH Guidance

18 USC 922(4)(d) is the federal statute that makes it unlawful to sell or deliver firearms to individuals who are on the NICS Index.

Admission records that need to be retained shall include:

- (1) the Hospital intake form;
- (2) any physician or other professional certifications of involuntary hospitalizations; and
- (3) any court orders dealing with admission or retention.

The scope of what must be retained is subject to future modification by OMH, based on further input from the FBI. DOH and OMH recognize that the scope of all such records may not exist for every individual placed on the NICS Index.