

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 26, 2010

Opinion No. 10-56

Patient's Right to Privacy

QUESTION

Does Tenn. Code Ann. § 16-10-213 conflict with a patient's right to privacy?

OPINION

No. Tennessee Code Annotated § 16-10-213 does not conflict with the patient privacy protections of either Tenn. Code Ann. Title 33 or the Health Insurance Portability and Accountability Act ("HIPAA") privacy provisions.

ANALYSIS

Tennessee Code Annotated § 16-10-213 requires the circuit and criminal courts in Tennessee that order persons committed to a mental institution pursuant to Tenn. Code Ann. Title 33, Chapters 6 or 7, or that adjudicate a person as a "mental defective," to enter a standing and continuing order instructing the court clerk to collect and periodically report certain information to the Federal Bureau of Investigation-NCJS Index and the Tennessee Department of Safety for the purpose of complying with the NICS Improvement Amendments Act of 2007, P.L. 110-180.¹ The NICS Improvement Amendments Act of 2007 prohibits the possession of a firearm by and the sale of a firearm to persons "adjudicated as a mental defective or . . . committed to any mental institution." 18 U.S.C. § 922(d)(4) and (g)(4). Pursuant to Tenn. Code Ann. § 16-10-213(c), the court order would require the court clerk to collect and report the complete name, including all aliases, and the date of birth, if known, of every person judicially committed or adjudicated as a mental defective; the case or docket number and the date of the judicial commitment or adjudication as a mental defective; and the private or state hospital or treatment resource to which the person was judicially committed. Tennessee Code Annotated § 16-10-213 was enacted in 2009 and became effective January 1, 2010. You ask whether Tenn. Code Ann. § 16-10-213 conflicts with a patient's right to privacy.

¹ Tennessee Code Annotated §§ 16-10-206 and 16-16-120 place the same requirements on the chancery courts and the county or probate courts in Tennessee, respectively. Clerks of the general sessions courts in Tennessee must also provide the same information pursuant to Tenn. Code Ann. § 16-15-303.

Tennessee Code Annotated Title 33 provides the statutory protections for patient privacy pertaining to mental health information under Tennessee law. Tennessee Code Annotated § 33-3-103 makes confidential and prohibits disclosure “except in compliance with this part” of “[a]ll applications, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, provided under, or regulated” under Title 33 that directly or indirectly identify a present or former service recipient. However, Tenn. Code Ann. § 33-3-115 creates a pertinent exception to these confidentiality requirements. Tennessee Code Annotated § 33-3-115(a) requires any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution pursuant to Chapter 6 or 7 to disclose the information listed in Tenn. Code Ann. § 16-10-213(c) to the Federal Bureau of Investigation-NCJS Index and the Tennessee Department of Safety in accordance with the procedures outlined in Tenn. Code Ann. Title 16 for the purpose of complying with Tenn. Code Ann. §§ 39-17-1316, 39-17-1351, and 39-17-1352,² and the NICS Improvement Amendments Act of 2007. Based on this exception, Tenn. Code Ann. § 16-10-213 does not conflict with the patient privacy protections of Title 33.

The Health Insurance Portability and Accountability Act (“HIPAA”) privacy provisions also protect individually identifiable health information from disclosure. 45 C.F.R. Parts 160 and 164. However, only a “covered entity” is subject to HIPAA. 45 C.F.R. § 164.500. A “covered entity” includes a health plan, a health care clearinghouse, and a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA. 45 C.F.R. §160.103. Tennessee circuit and criminal courts are not covered entities subject to HIPAA.

Therefore, HIPAA does not govern information obtained by the court in the course of proceedings before the court, and Tenn. Code Ann. § 16-10-213 does not conflict with HIPAA.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

² Tennessee Code Annotated § 39-17-1316 prohibits the sale of firearms to persons who have been judicially committed to a mental institution pursuant to Title 33 or adjudicated as a mental defective. Tennessee Code Annotated § 39-17-1351 requires persons applying for a handgun carry permit to disclose any such judicial commitment or adjudication. Tennessee Code Annotated § 39-17-1352 requires the suspension or revocation of the handgun permit of a person judicially committed to a mental institution pursuant to Title 33 or adjudicated as a mental defective.

PAMELA A. HAYDEN-WOOD
Senior Counsel

Requested by:

Honorable Hamilton V. Gayden, Jr.
Judge, First Circuit Court
1 Public Square
502 Metropolitan Courthouse
Nashville, TN 37201