

Mental Health Reporting to the Firearms Background Check System

Under federal law, certain categories of individuals are prohibited from shipping, transporting, receiving, or possessing firearms. When an individual attempts to buy a firearm from a federally licensed dealer, the dealer can instantly query the National Instant Criminal Background Check System (NICS) to determine if the individual is prohibited from possessing a firearm. In addition to felons and fugitives, the law prohibits gun possession by people who have been involuntarily committed to a mental health institution, found incompetent to stand trial or not guilty by reason of insanity, or determined to have a serious mental condition that presents a danger (to themselves or others) or makes the person unable to manage their own affairs.¹ This rule does not apply to individuals who are in a mental institution for observation, admitted voluntarily, or simply receiving treatment for a mental health condition.

Who reports to NICS?

- Federal agencies (such as the Department of Veterans Affairs) are required to report prohibited individuals.
- States receive incentives to provide information voluntarily, although actual reporting practices vary by state. Some states require hospitals and mental health facilities to report to state databases, which are then used to report to NICS. Most reporting originates from the judicial system or state agencies.
- Because the law requires reporting when there has been an adjudication or other determination by a lawful authority (such as a state agency or board with the authority to order involuntary commitments), individual providers are not directly required to report mental health information.

What information is contained in the NICS database?

- Identifying information (names, social security numbers, and birth dates) and codes that identify the reporting entity and applicable prohibition.
- Individually identifiable health information, such as diagnoses and records of medical or mental health treatment, is not reported or maintained in the NICS database.

Does reporting to NICS violate the HIPAA Privacy Rule?

- Where a state has a law expressly requiring reporting to NICS, providers may report without violating HIPAA.
- Health care providers and health plans may disclose protected health information (PHI) without violating HIPAA where required by federal or state law, for law enforcement purposes, and to avert a serious threat to health or safety. However, providers and health plans are not required to report the information under federal law and may violate HIPAA by disclosing PHI under non-permitted circumstances.
- The U.S. Department of Health and Human Services Office for Civil Rights (OCR) is currently considering creating an express permission in the HIPAA Privacy Rule for providers and health plans to report relevant information to the NICS. This permission would apply to entities responsible for involuntary commitments (such as a mental hospital with the authority to involuntarily commit a dangerous patient) or that are designated by states to report to the NICS (which may include mental health facilities or providers).²

For more information on state and federal laws related to privacy, see www.healthinfo.org/topics/63. For more information about HIPAA, see www.healthinfo.org/federal-law/HIPAA. Follow us on Twitter at [@HealthInfoLaw](https://twitter.com/HealthInfoLaw)

¹ 27 CFR 478.11

² 78 Fed. Reg. 23873