

# Firearms Debate Triggers OCR Request for Comments

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Gun violence is a hot topic in the wake of the Newtown shootings and the aftermath of last week's Boston Marathon bombings, and now health privacy has joined the debate.

Among President Obama's 23 Executive Actions aimed at curbing gun violence across the nation is an [initiative](#) to improve the National Instant Criminal Background Check System ("NICS") to "[a]ddress unnecessary legal barriers, particularly relating to the Health Insurance Portability and Accountability Act [HIPAA], that may prevent states from making information available to the background check system."

The NICS maintains a database of individuals who are prohibited from possessing or receiving firearms, including individuals with specific mental health issues. Concerns have arisen that the HIPAA Privacy Rule's restrictions on disclosure of protected health information may discourage some states from reporting information from mental health records to the NICS.

Recognizing this inconsistency and the dangers that may arise when information is not reported to the NICS, the Department of Health and Human Services Office for Civil Rights ("OCR") issued an advance notice of proposed rulemaking to solicit public comments on barriers to reporting created by HIPAA and how to best address these barriers.

OCR is considering an express permission that would allow covered entities holding information relevant to the NICS to report this information, including certain mental health information, to the NICS. In developing an express permission, OCR may limit the disclosed information to the minimum data necessary for NICS purposes. The disclosure of an individual's medical record or other clinical or diagnostic information would not be permitted.

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**“Through the public comment process, we will use the data and information provided by states, health providers, patient advocates and others to determine how best to remove unnecessary barriers to NICS reporting while protecting patient privacy,” said OCR Director Leon Rodriguez.**

Comments can be submitted to <http://www.regulations.gov/> and will be due 45 days following publication of the notice in the Federal Register, or approximately early June. Covered entities, members of law enforcement, state agencies, individuals, and consumer and advocacy groups should all consider commenting on this advance notice of proposed rulemaking.

## Authors



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Theresa advises clients on all aspects of the pharmaceutical supply chain, including counseling industry stakeholders on a range of business, legal, transactional, and compliance matters. She provides clients with strategic counseling and creative business modeling that considers legal restrictions and regulatory risk in light of innovation and business goals.



**Dianne Bourque**