



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

January 6, 2016

Privacy Rule Amended to Permit Reporting to National Criminal Background Check System

This morning the Department of Health and Human Services formally¹ published an amendment to the HIPAA Privacy Rule, permitting certain covered entities to use and disclose protected health information for purposes of reporting individuals who are not entitled to possess firearms under Federal law to the National Instant Criminal Background Check System (NICBCS). The amendment is among a number of President Obama's executive actions "aimed at curbing gun violence across the nation [and] to strengthen the national background check system," including removing "unnecessary legal barriers . . . that may prevent States from making information available to the background check system."

The amendment is unlikely to affect health plans, as it applies only to (i) State agencies, (ii) entities designated by a State to report or collect information for the NICBCS, and (iii) courts or other lawful authorities that determine individuals are "mental defectives" or commit individuals to a mental institution (making them ineligible to possess firearms under Federal law). The Department of Health and Human Services stresses that the amendment is permissive—it does not **require** covered entities to disclose protected health information to NICBCS.

The only change to the Privacy Rule is a single paragraph addressing the National Instant Criminal Background Check System added to 45 C.F.R. § 164.512—"Uses and disclosures for which an authorization or opportunity to object is not required. See 45 C.F.R. § 164.512(k)(7) on page 105 of my compiled rule.

The final rules are published at 81 *Federal Register* 382 ([click here](#)). [Click here](#) for my compilation of HIPAA Administrative Simplification Rules incorporating the amendment into previously-published HIPAA rules (*see* the last bullet under "Compiled Rules") (or see the "Resources" page at tbixbylaw.com).

¹ The Department informally published the Privacy Rule amendment and released it to the public on January 4 when it was filed with the Office of the Federal Register.

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