

**MYTH:** The federal background check database for firearm purchases contains mental health records.

**FACT:** The National Instant Criminal Background Check System (NICS) contains only identifying information and the fact that the individual identified is subject to a prohibitor that bars the firearm transaction.

The National Instant Criminal Background Check System (NICS) is a federal database containing the names of individuals prohibited under federal law from purchasing a firearm. Under the Brady Handgun Violence Prevention Act, several categories of individuals are prohibited from engaging in the shipment, transport, receipt, or possession of firearms. Barred individuals include felons, fugitives, domestic violence offenders, illegal drug users, and “individuals who have been involuntarily committed to a mental health institution, found incompetent to stand trial or not guilty by reason of insanity, or otherwise adjudicated as having a serious mental condition that results in the individuals presenting a danger to themselves or others or being unable to manage their own affairs.”<sup>1</sup> This “mental health prohibitor” does not apply to individuals who are in a mental institution for observation, admitted voluntarily, or simply receiving treatment for a mental health diagnosis.

Recently, the Department of Health and Human Services (HHS) announced a proposed rule amending the HIPAA regulations (governing the privacy and security of individually identifiable health information) to expressly permit certain covered entities (e.g., health care providers, health plans) to disclose information about individuals subject to the mental health prohibitor. (For more on the proposed rule, see the related Fast Facts.) Some have expressed concern that the NICS database contains mental health records or that an individual querying the database would have access to mental health information about others.

The NICS, administered by the Federal Bureau of Investigation (FBI), receives information from federal agencies and states that voluntarily report information about individuals prohibited from possessing a firearm under federal or state law. The database contains identifying information about the individual (i.e., name, birth date, gender), codes indicating the applicable prohibitor and the submitting entity, and (in some cases), supporting records. If the individual is subject to the federal mental health prohibitor, the NICS contains only the code indicating the mental health prohibitor. It does not contain individually identifiable protected health information, such as underlying diagnoses or treatment records.

When an individual attempts to purchase a gun from a licensed firearms dealer, the dealer contacts the NICS (electronically, by phone, or through a state point-of-contact) and provides information about the prospective buyer. Within 30 seconds, the dealer is told whether the transaction can proceed or is delayed because the information matches a record in the database. If the transaction is delayed, an NICS examiner reviews the record and, within three days, advises the dealer whether the transaction may proceed or is barred. The dealer querying NICS never learns the reason for a delay or denial.

**For More Information:**

- [See](#) the Fast Facts on the January 2014 HHS Notice of Proposed Rulemaking.
- [Learn](#) about laws related to privacy.
- [Read](#) our overview of HIPAA and related resources.

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<sup>1</sup> 27 CFR 478.11