



## **New HIPAA Exception Regarding Reporting Mental Health Information**

January 28, 2016

On January 6, 2016, the Department of Health and Human Services issued a final rule that modifies certain HIPAA provisions that should be carefully reviewed by healthcare providers. This change in the law will be especially important for mental health centers and others providing behavioral health services. The final rule is receiving greater attention because it has been issued in the middle of our national debate regarding the relationship between mental health services and gun violence.

The new rule allows certain covered entities to report limited personal health information about certain individuals to the National Incident Criminal Background Check System (“NICS”). Federal law has prohibited licensed gun dealers from selling/transferring firearms to certain individuals who have been (i) involuntarily committed, (ii) found incompetent to stand trial or not guilty by reason of insanity, or (iii) found by a court or other lawful authority to lack mental capacity to contract or manage their own affairs.

The new rule was issued because of a concern that information was not being fully reported by healthcare providers out of concern for violating restrictions under HIPAA. The rule is narrowly drawn in terms of the information to be disclosed and the affected covered entities, so it should be closely evaluated. In addition to state agencies designated to collect and report such information to NICS, the limited information is also to be disclosed by a court or other lawful authority involved in ordering an involuntary commitment or similarly covered adjudications.

There are some key features to be noted:

1. The new rule grants permission for the reporting of the information, as opposed to requiring such reporting.
2. The rule applies to involuntary commitment orders rather than individuals being observed, evaluated or seeking voluntary treatment.
3. The PHI to be disclosed is limited (demographic rather than clinical information) and disclosure can only be made to NICS or the state designated repository rather than directly to law enforcement agencies.

It will be important to monitor further developments in this area as discussion continues in the political arena about mental health services (and funding) and the relationship between gun violence and individuals receiving treatment. This also highlights the importance of evaluating policies related to confidentiality, disclosure and reporting requirements for individuals receiving behavioral health services.