

# New York State Office of Mental Health HIPAA Preemption Analysis

NYS Statute	HIPAA Regulation (45 CFR Parts 160, 164)	Preemption Analysis
<b>MHL Article 7 - Office of Mental Health</b>		
<p><b>Access to Criminal History Information:</b></p> <p><b>MHL §7.09(j):</b> The Commissioner of OMH is authorized to have access to criminal history information contained in the central data facility established by DCJS; summary reports can be included in patient records for purposes of making decisions regarding care and treatment, health and safety, privileges and discharge planning for patients admitted to/retained in hospitals operated by OMH.</p> <p><b>Submission of information: National Instant Criminal Background Check System (NICS)</b></p> <p>(j)(1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records: (i) to the division of criminal justice services, or to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3) in accordance with applicable</p>	<p><b>§160.103: Covered entity</b> means: (1) a health plan; (2) a health care clearinghouse; (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. benefits.</p> <p><b>§164.512(a)</b></p> <p>(a) Standard: Uses and disclosures required by law.</p> <p>(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p>(2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law</p>	<p><b>No preemption:</b></p> <p>(1) Access to criminal history information: Assuming DCJS is not a covered entity under HIPAA, there are no HIPAA restrictions on its disclosures to OMH. OMH is authorized to receive criminal justice information by State law.</p> <p>(2) Disclosures to the FBI pursuant to the NICS system are permitted as they are required by law.</p>

<p>federal laws or regulations, or (ii) to the division of criminal justice services, which may re-disclose such data and records only for determining whether a license issued pursuant to §400 of the Penal Law should be denied, suspended or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records, which may not be used for any other purpose, shall include only names and other non-clinical identifying information of persons who have been involuntarily committed to a hospital pursuant to article nine of this chapter, or Section 402 or Section 508(2) of the Correction, or article seven hundred thirty or Section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act, or to a secure treatment facility pursuant to article ten of this chapter.</p>		