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MEMORANDUM

TO: State Executive Directors

FROM: Lyn Bentley, MSW
Director of Regulatory Services

SUBJECT: CMS releases S&C Memo on Reporting Reasonable Suspicion of Crime

DATE: June 20, 2010

Following are key points addressed in the Survey & Certification Memo "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility:

1. Facilities will be responsible for notifying **annually** each covered individual of that person's reporting obligations related to a suspicion of a crime against an individual receiving care in a long term care facility. See S&C memo for definition of covered individual (owner, employees, contractors, or agents).
2. Facilities **may not** retaliate against any employee who reports the suspicion of a crime against an individual receiving care in a long term care facility.
3. If multiple covered individuals develop a suspicion of a crime, they may report this suspicion jointly, and all individuals identified on the report will be in compliance with the law. **However**, if a covered individual wishes to report their suspicion separately, they must be permitted to do so.
4. It is recommended that facilities have policies and procedures to comply with this law.
5. The S&C Memo is applicable to
 - a. Nursing facilities,
 - b. Skilled nursing facilities,
 - c. Hospices that provide services in long term care facilities, and
 - d. Intermediate Care Facilities for the Mentally Retarded.
6. There are significant penalties (prescribed by statute) imposed on covered individuals and facilities related to noncompliance with the provisions of this law.
7. There is considerable guidance to State Survey Agencies on how to proceed with the investigation of the report of a suspicion of crime against an individual receiving care in a long term care facility. Included in this information are possible deficiency citations against nursing facilities and hospice providers.

Attached to this memo are:

- 1) The CMS S&C Memo, which includes the relevant statutory provisions;
- 2) A template letter for communication with your State Attorney General, asking for assistance in reaching a manageable definition of the term "crime" that can be used state-wide; and
- 3) A template letter for communication between your members and their local law enforcement entities.

NOTE: We are preparing a template Policy & Procedure document, including a reporting form, which you can share with your members for their modification to make the documents facility-specific (based on templates developed by Health Care Association of Michigan).

If you have any questions or concerns, please let me know.



Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-30-NH

DATE: June 17, 2011

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (LTC):
Section 1150B of the Social Security Act

Memorandum Summary

- **Reporting Suspicion of a Crime:** Section 1150B of the Social Security Act (the Act), as established by section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), requires specific individuals in applicable long-term care facilities to report any reasonable suspicion of crimes committed against a resident of that facility.
- **Reporting to State Survey Agencies (SAs) and Law Enforcement:** Reports must be submitted to at least one law enforcement agency of jurisdiction and the SA (in fulfillment of the statutory directive to report to the Secretary).
- **Applicability of This Memo:** This memorandum discusses applicability of this provision to the following Medicare and Medicaid participating long-term care provider types that are collectively referred to as “facilities” or “LTC facilities” in this memorandum:
 - Nursing facilities (NFs),
 - Skilled nursing facilities (SNFs),
 - Hospices that provide services in LTC facilities, and
 - Intermediate Care Facilities for the Mentally Retarded (ICFs/MR).
- **Processing Reports about Suspected Crimes:** SAs should process reports received under Section 1150B of the Act in accordance with existing Centers for Medicare & Medicaid Services (CMS) and State policies and procedures for reporting incidents and complaints to SAs.
- **LTC Facility Policies and Procedures:** LTC facilities should have policies and procedures to comply with this law. The obligations of the facility are different than the obligations of a covered individual.

This memorandum informs SAs of the new section 1150B of the Act, which was established by section 6703(b)(3) of the Affordable Care Act and is entitled “Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities.”

In order to promote timely application of the protections offered by section 1150B of the Act for LTC facility residents, we are explaining now the current obligations of LTC facilities to comply with the law as it is plainly written, without any delay that might be occasioned by waiting for any administrative rule-making process that might further clarify application of the law.

A. Background

Section 6703(b)(3) of the Affordable Care Act, in part, amends Title XI of the Act by adding a new section 1150B. Section 1150B requires LTC facilities that receive at least \$10,000 in Federal funds under the Act during the preceding year to annually notify each covered individual of their obligation to report to the Secretary (now assigned to the SA) and at least one local law enforcement entity “any reasonable suspicion of a crime,” as defined by local law, committed against an individual who is a resident of, or is receiving care from, the facility. A “covered individual” is defined at section 1150B(a)(3) of the Act as each individual who is an owner, operator, employee, manager, agent, or contractor of such LTC facility.

Effective implementation of section 1150B of the Act may promote a timely response to potential crimes, thereby protecting residents of such facilities. The statute requires that:

- Covered individuals timely report any reasonable suspicion of a crime against a resident of, or who is receiving care from, a LTC facility;
- If the events that cause the reasonable suspicion result in serious bodily injury, the report must be made immediately after forming the suspicion (but not later than two hours after forming the suspicion). Otherwise, the report must be made not later than 24 hours after forming the suspicion;
- Covered individuals are subject to civil money penalty and exclusion sanctions for failure to meet the reporting obligations of the statute;
- LTC facilities are ineligible to receive Federal funds for any period that they employ an individual classified as an excluded individual under sections 1150B(c)(1)(B) or 1150B(c)(2)(B) of the Act; and
- LTC facilities are also subject to civil money penalty and exclusion sanctions for retaliating against any employee who makes a lawful report, causes a lawful report to be made, or for taking steps in furtherance of making a lawful report pursuant to the statute.

B. LTC Facility Responsibilities

1. Required Functions: A Medicare- or Medicaid-participating LTC facility must:
 - a) *Determine Applicability*: Determine annually whether the facility received at least \$10,000 in Federal funds under the Act during the preceding fiscal year;

- b) ***Notify Covered Individuals:*** Annually notify each covered individual of that individual's reporting obligations described in section 1150B(b) of the Act, if the facility determines that it received at least \$10,000 in Federal funds under the Act during the preceding fiscal year.
 - c) ***Post Conspicuous Notice:*** Conspicuously post, in an appropriate location, a notice for its employees specifying the employees' rights, including the right to file a complaint under this statute. The notice must include a statement that an employee may file a complaint with the SA against a LTC facility that retaliates against an employee as specified above, as well as include information with respect to the manner of filing such a complaint.
 - d) ***Eschew Retaliation:*** The facility may not retaliate against an individual who lawfully reports a reasonable suspicion of a crime under section 1150B. A LTC facility may not discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee, or file a complaint or a report against a nurse or other employee with the appropriate state professional disciplinary agency because of lawful acts done by the nurse or employee.
2. **Additional Advisable Functions:** A facility that effectively implements section 1150B will:
- a) ***Coordinate with Law Enforcement:*** Coordinate with the facility's State and local law enforcement entities to determine what actions are considered crimes in their political subdivision.
 - b) ***Review Adherence to Existing CMS Policies:*** Review existing facility protocols and procedures to ensure adherence to existing CMS and State policies and procedures for reporting incidents and complaints. For example, participating nursing homes are already required to have policies and procedures in place to report abuse, neglect or misappropriation of resident property. During the course of a standard survey or complaint investigation, the identification of a possible crime may trigger a review of the LTC facility's policies and procedures for reporting as required under the Federal conditions and requirements for that provider type, and a review of the actions taken to make any required incident report.
 - c) ***Develop Policies and Procedures for Section 1150B:*** Develop and maintain policies and procedures that ensure compliance with section 1150B, including the prohibition of retaliation against any employee who makes a report, causes a lawful report to be made, or takes steps in furtherance of making a lawful report pursuant to the requirements of the statute.

C. Covered Individual Reporting

SAs receiving more than one report regarding the same incident may process and/or investigate the allegation as a single complaint or incident. Multiple covered individuals, each of whom has a reporting responsibility, may file a single report that includes information about the suspected crime from each covered person. It remains the responsibility of each covered individual to ensure their individual reporting responsibility is fulfilled, so it is advisable for any multiple-person report to include identification of all individuals making the report.

If, after a report is made regarding a particular incident or suspicion of a crime, additional covered individuals become aware of the same incident or form a similar suspicion based on the same reported events, the original report may be supplemented with additional information including the names of the additional covered individuals along with the date and time of their awareness of such incident or suspicion.

However, in no way will a single or multiple-person report preclude a covered individual from making an individual report separately, in his/her own words, to the SA and at least one law enforcement entity. While facilities may establish an efficient process for avoiding unnecessary duplication and easing administrative burdens, they cannot prohibit individual reporting directly by a covered individual.

SAs will follow the standard CMS protocols for assessing and, as appropriate, investigating all reported complaints and incidents.

D. Time Period for Individual Reporting

Section 1150B establishes two time limits for the reporting of reasonable suspicion of a crime, depending on the seriousness of the event that leads to the reasonable suspicion.

1. ***Serious Bodily Injury – 2 Hour Limit:*** If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion;
2. ***All Others – Within 24 Hours:*** If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion.

E. Survey Guidance

It is useful to distinguish between three types of possible allegations;

1. ***Events Giving Rise to a Suspected Crime:*** As SAs receive reports of suspected crimes under this requirement, they must intake, record information about the event(s) giving rise to the suspicion, prioritize the complaints based on those underlying, alleged events, and, and as appropriate, investigate in accordance with existing CMS policies and

procedures for addressing complaints or incidents. Any deficiency citations against a LTC facility that may result will be ones that are currently specified in existing CMS regulations and guidance.

2. ***Allegations of Individual Failure to Report:*** With regard to any allegation that a covered individual had a duty to report under this requirement, but did not do so, SAs must take certain actions focused on the underlying event(s) that gave rise to the allegation:
 - a) ***Intake:*** SAs must intake and record the allegation according to existing CMS policies and procedures for complaints or incident reporting. An allegation that a covered individual failed to report a reasonable suspicion of a crime will generally contain some information about the health and safety conditions in the LTC facility at issue. The SA must assess the allegation with respect to what it may reveal about those underlying conditions and the facility's compliance with existing CMS conditions and requirements.
 - b) ***Prioritize and Investigate:*** If the allegation contains sufficient information, then the SA must prioritize and, as appropriate, investigate the facility's compliance with CMS conditions and requirements in accordance with existing CMS policies and procedures for addressing complaints or incidents (per part E.1 above).
3. ***Allegations of Facility Failure to Comply with Section 1150B:*** With respect to any allegation that a LTC facility failed to comply with any of the requirements of section 1150B (outlined in part B.1 of this Memorandum), SAs must take certain actions focused on determining the facility's compliance with existing CMS conditions and requirements.
 - c) ***Intake:*** SAs must intake and record the allegation according to existing CMS policies and procedures for complaints or incident reporting. An allegation of facility failure to comply with this requirement will generally contain some information about the health and safety conditions in the LTC facility and facility management or actions. The SA must assess the allegation with respect to what it may reveal about the facility's compliance with existing CMS regulations.
 - d) ***Prioritize and Investigate:*** If the allegation contains sufficient information, then the SA must prioritize and, as appropriate, investigate the facility's compliance with CMS conditions and requirements in accordance with existing CMS policies and procedures for addressing complaints or incidents (per part E.1 above).

For example, an allegation that covered individuals did not report or were not informed of their duty to report under 1150B of the Act could lead to a determination that the facility did not comply with existing Federal requirements for reporting incidents, or provide training and have certain policies and procedures in place. For example, possible deficiency citations in a SNF/NF, might include, but are not limited to:

- §483.13(c)-F226- Failure to develop and/or implement its policies and procedures for reporting abuse/neglect;
- §483.75(d)-F493- Governing body – failure to establish/implement facility policies regarding the management and operation of the facility.

For example, possible deficiency citations for a hospice provider might include, but are not limited to:

- §418.52(b)(4)-L508-The hospice must ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator.
- §418.112 (c)(8)-L771-The hospice and SNF/NF or ICF/MR must have a written agreement that includes a provision stating that the hospice must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the SNF/NF or ICF/MR administrator within 24 hours of the hospice becoming aware of the alleged violation.

For example, potential deficiency citations in an ICF/MR might include, but are not limited to:

§483.420 (d)(2)-W153-The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

At the present time there are no CMS regulations that apply specifically to section 1150B responsibilities of covered individuals or facilities. Consequently, SAs will focus on (a) the events giving rise to reports made under this requirement and (b) the LTC facility's responsibilities under existing CMS conditions and requirements to report incidents, prevent abuse or neglect, provide quality care and a safe environment, train staff, and similar duties of direct relevance to safety and quality of care.

Questions concerning this memorandum may be addressed to Alice Bonner at alice.bonner@cms.hhs.gov or Akosua Ghailan at Akosua.Ghailan2@cms.hhs.gov.

Effective Date: Immediately. Please ensure that all appropriate staff members are fully informed within 30 days of the date of this memorandum. CMS is drafting guidance about the civil money penalty component of 1150B and information will be forthcoming.

Training: The information contained in this letter should be shared with all survey and certification staff, their managers, nursing homes, and the State/RO training coordinators.

/s/
Thomas E. Hamilton

Attachments

cc: Survey and Certification Regional Office Management

Appendix One

Definitions Included in the Affordable Care Act or Referenced from Other Sources for Purposes of Section 1150B of the Act

Covered Individual: A “covered individual” is defined in section 1150B(a)(3) of the Act as anyone who is an owner, operator, employee, manager, agent or contractor of the LTC facility;

Crime: Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where a LTC facility is located. Applicable facilities must coordinate with their local law enforcement entities to determine what actions are considered crimes within their political subdivision;

Excluded Entity: An “excluded entity” means a long term care facility that been determined by the Secretary under section 1150B(d)(2) of the Act to be excluded for a period of 2 years pursuant to section 1128(b) of the Act;

Excluded Individual: An “excluded individual” means a covered individual who has been determined by the Secretary to be excluded from participation in any Federal health care program (as defined in section 1128B(f) of the Act) under sections 1150B(c)(1)(B) or 1150B(c)(2)(B) of the Act;

Exploitation: The term “exploitation” is defined in section 2011(8) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets;

Law Enforcement: “Law enforcement” is defined in section 2011(13) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) as the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners;

Long-Term Care: The term “long-term care” is defined in section 2011(14) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) and means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability;

Long-Term Care (LTC) facility: A “long-term care facility” is defined in section 2011(15) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) as a residential care provider that arranges for, or directly provides long term care;

Loss of capacity for self care: The term “loss of capacity for self-care” is defined in section 2011(14)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) and means an inability to engage in one or more activities of daily living, including eating, dressing, bathing, management of one's financial affairs, and other activities the Secretary determines appropriate;

Neglect: The term “neglect” is defined in section 2011(16) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) as —(A) the failure of a caregiver or fiduciary to

provide the goods or services that are necessary to maintain the health or safety of an elder; or (B) self-neglect. “Neglect” is also defined at 42 CFR 488.301 as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness;

Self-Neglect: The term “self-neglect” is defined in section 2011(18)(A) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) to mean an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

- (A) obtaining essential food, clothing, shelter, and medical care;
- (B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or
- (C) managing one’s own financial affairs;

Serious Bodily Injury: The term “serious bodily injury” is defined in section 2011(19)(A) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) as an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation;

In the case of “criminal sexual abuse” which is defined in section 2011(19)(B) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act), serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or section 2242 (relating to sexual abuse) of Title 18, United States Code, or any similar offense under State law.

**Appendix Two - Excerpts – Section 6703 - Elder Justice Act
–Reporting Reasonable Suspicion of a Crime**

**REPORTING TO LAW ENFORCEMENT OF CRIMES OCCURRING IN FEDERALLY
FUNDED LONG-TERM CARE FACILITIES**

Section 6703(b)(3) LONG-TERM CARE FACILITIES.—Part A of title XI of the **Social Security Act** (42 U.S.C. 1301 et seq.), as amended by section 6005, is amended by inserting after section 1150A the following new section: **SEC. 1150B**

(a) DETERMINATION AND NOTIFICATION.—

(1) DETERMINATION.—The owner or operator of each long term care facility that receives Federal funds under this Act shall annually determine whether the facility received at least \$10,000 in such Federal funds during the preceding year.

(2) NOTIFICATION.—If the owner or operator determines under paragraph (1) that the facility received at least \$10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual’s obligation to comply with the reporting requirements described in subsection (b).

(3) COVERED INDIVIDUAL DEFINED.—In this section, the term ‘covered individual’ means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

(b) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

(2) TIMING.—If the events that cause the suspicion—

(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

(c) PENALTIES.—

(1) IN GENERAL.—If a covered individual violates subsection (b)—

(A) the covered individual shall be subject to a civil money penalty of not more than \$200,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

(2) INCREASED HARM.—If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual—42 USC 1320b–25.

(A) the covered individual shall be subject to a civil money penalty of not more than \$300,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1128B(f)).

(3) EXCLUDED INDIVIDUAL.—During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this Act.

(4) EXTENUATING CIRCUMSTANCES.—

“(A) IN GENERAL.—The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

“(B) UNDERSERVED POPULATION DEFINED.—In this paragraph, the term ‘underserved population’ means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include—

(i) areas or groups that are geographically isolated (such as isolated in a rural area);

(ii) racial and ethnic minority populations; and

(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

(d) ADDITIONAL PENALTIES FOR RETALIATION.—

(1) IN GENERAL.—A long-term care facility may not—

(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee, for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

(2) PENALTIES FOR RETALIATION.—If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than

\$200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1128(b), or both.

(3) REQUIREMENT TO POST NOTICE.—Each long-term care facility shall post conspicuously in an appropriate location a sign (in a form specified by the Secretary) specifying the rights of employees under this section. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint.

(e) PROCEDURE.—The provisions of section 1128A (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under this section in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(f) DEFINITIONS.—In this section, the terms ‘elder justice’, ‘long term care facility’, and ‘law enforcement’ have the meanings given those terms in section 2011.

Date

(Local police chief or county sheriff's office)

Re: Reporting of Crimes in Long Term Care Facilities

Dear _____:

Please be advised that certain individuals associated with long term care facilities, (specifically nursing facilities, hospices that provide services in long term care facilities, and Intermediate Care Facilities for the Mentally Retarded), including _____, are subject to new federal requirements with respect to reporting the suspicion of a crime against a resident. The stated purpose of the law is to assure that serious offenses against nursing home residents are promptly and appropriately reported and investigated. Under this law, "covered individuals"* – defined below – must report a reasonable suspicion of a crime, as defined by the applicable political subdivision. The report of the suspicion of a crime must be made to local law enforcement within two hours (in cases of serious bodily injury) or twenty-four hours (no serious bodily injury) of becoming aware of a suspicion of crime against a resident.

Each "covered individual" present in the long term care facility who has a reasonable suspicion of a crime against a resident must submit a report to local law enforcement. In instances when multiple individuals develop the same reasonable suspicion, they may submit a joint notice.

Covered individuals associated with nursing facilities will be providing the same report to the agent of the Secretary of the U. S. Department of Health and Human Services, the State Survey Agency that is responsible for assuring nursing facilities' compliance with state and federal regulations.

You are likely to begin receiving numerous notifications from individuals who have a reasonable suspicion of a crime against a long term care facility resident. Should you have questions about this new requirement, we encourage you to contact the State Attorney General's office for additional clarification.

Sincerely,

- * "Covered Individuals" means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that in the preceding year received at least \$10,000 in Federal funds.

Draft Template Policy & Procedure

[NOTE: This template has **not** been approved by CMS or any other federal/state agency or law enforcement office and is provided to assist facilities respond to the new Elder Justice Act (EJA) about staff requirements to report a suspicion of a crime. Facilities **MUST** modify this template policy & procedure to comply with their local and state reporting laws about suspected crimes and to be consistent with the facilities other policies & procedures.]

POLICY & PROCEDURE FOR REPORTING SUSPECTED CRIMES UNDER THE FEDERAL ELDER JUSTICE ACT

POLICY:

It is [FACILITY NAME] policy to comply with the Elder Justice Act (EJA) about reporting a reasonable suspicion of a crime under Section 1150B of the Social Security Act, as established by the Patient Protection and Affordable Care Act (ACA), § 6703(b)(3). Specifically, it is [FACILITY NAME] policy to:

- a. annually notify all “*covered individuals*” (as that term is defined under the EJA) of their reporting obligations under the EJA to report a suspicion of a crime to the state survey agency (SSA) and *local law enforcement* for the *political subdivision* in which [FACILITY NAME] is located;
- b. refrain from *retaliating against any employee* who reports a suspicion of a crime against an individual receiving care in [FACILITY NAME];
- c. post a notice in a conspicuous location that informs all “*covered individuals*” of
 - o their reporting obligation under the EJA to report a suspicion of a crime to the SSA and *local law enforcement*; and
 - o their right to file a complaint with the state survey agency if they feel the [FACILITY NAME] has *retaliated against an employee* who reported a suspected crime under this statute;
- d. refrain from employing any individual who has been prohibited from working in a long term care facility because of failure to report a suspicion of a crime against a resident of a long term care facility; and
- e. [NOTE: Facilities are not required to report to either SSA or *local law enforcement* under this act; only individuals are required to report. However, facilities may be required to report certain incidents under other Federal, state or local laws and regulations such as reporting to SSA abuse, *neglect* or misappropriation of resident property. OPTIONAL: Facilities may choose but are not required under this act to adopt a policy that it will report a suspected crime against a resident to the SSA and one or more *local law enforcement* entities for the *political subdivision* in which the facility is located.]

Statutory and CMS Policy References

- §1150B of the Social Security Act, as established by §6703(b)(3) of the Patient Protection and Affordable Care Act of 2010; and
- CMS S&C: 11-30-NH.

Draft Template Policy & Procedure

[NOTE: This template has **not** been approved by CMS or any other federal/state agency or law enforcement office and is provided to assist facilities respond to the new Elder Justice Act (EJA) about staff requirements to report a suspicion of a crime. Facilities **MUST** modify this template policy & procedure to comply with their local and state reporting laws about suspected crimes and to be consistent with the facilities other policies & procedures.]

Definitions (from CMS S&C: 11-30-NH):

“*Covered Individual*” means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility.

“*Suspicion of a Crime*” is defined by law of the applicable *political subdivision* where a LTC facility is located. Applicable facilities must coordinate with their state and *local law enforcement* entities to determine what actions are considered crimes within their *political subdivision*.

“*Political subdivision*” means a city, county, township or village.

“*Local law enforcement*” means the full range of potential responders to elder abuse, *neglect*, and exploitation including: police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators, and coroners.

“*Neglect*” is the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder or *self-neglect*.

“*Self-Neglect*” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.

“*Serious bodily injury*” is an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In the case of “criminal sexual abuse” which is defined as serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is relating to aggravated sexual abuse or relating to sexual abuse.

“*Retaliate against an employee*” is when the employer discharges, demotes, suspends, threatens, harasses, or denies a promotion or any other employment-related benefit to an employee, or in any other manner discriminates against an employee within the terms and conditions of employment because the employee has met their obligation to report a suspicion of a crime.

PROCEDURE:

A. Staff Reporting Requirements

1. When staff (“staff” herein refers to *covered individuals*) suspect a crime has occurred against a resident at [FACILITY NAME], they must report the incident to SSA and *local law enforcement*.

Draft Template Policy & Procedure

[NOTE: This template has **not** been approved by CMS or any other federal/state agency or law enforcement office and is provided to assist facilities respond to the new Elder Justice Act (EJA) about staff requirements to report a suspicion of a crime. Facilities **MUST** modify this template policy & procedure to comply with their local and state reporting laws about suspected crimes and to be consistent with the facilities other policies & procedures.]

2. Staff must report a *suspicion of a crime* to the state survey agency and at least one *local law enforcement* entity within a designated time frame by e-mail, fax or telephone. The individual does not need to determine which *local law enforcement* entity to report a suspicion of crime; but, must report to at least one *local law enforcement* entity. This will meet the individual's obligation to report.
3. Staff can use the facility form to report a *suspicion of a crime*. There is no requirement to use the form.
4. Staff can either report the same incident as a single complaint or multiple individuals may file a single report that includes information about the suspected crime from each staff person using the facility form.
5. If, after a report is made regarding a particular incident, the original report may be supplemented by additional staff who become aware of the same incident. The supplemental information may be added to the form and must include the name of the additional staff along with the date and time of their awareness of such incident or suspicion of a crime. However, in no way will a single or multiple person report preclude an individual from reporting separately. Either an individual or joint report will meet the individual's obligation to report.
6. If the reportable event results in *serious bodily injury*, the staff member shall report the suspicion immediately, but not later than 2 hours after forming the suspicion.
7. If the reportable event does not result in *serious bodily injury*, the staff member shall report the suspicion not later than 24 hours after forming the suspicion.
8. Failure to report in the required time frames may result in disciplinary action, including up to termination.
9. Staff must report the suspicion of an incident to the <insert appropriate person> [Note: facilities should determine the appropriate person within the facility for reporting a suspicion of a crime such as the staff's supervisor, Director of Nursing (DON) or administrator].

B. Staff Notification

1. Staff (i.e., "*covered individual*") will annually receive a copy of their obligation to comply with the law and these policies and procedures.
2. [Note: facilities need to determine how they will provide and document that they provided notification annually to all *covered individuals*]
3. All new staff, as part of their orientation to work at the facility, shall receive a copy of their obligation to comply with the law and this policy and procedure.

C. Posting Requirements

1. [FACILITY NAME] will post conspicuously in an appropriate location a sign specifying the rights of employees under the EJA. This sign shall include both
 - a. the reporting requirements of each staff member; and

Draft Template Policy & Procedure

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- b. a statement that an employee may file a complaint with the state survey agency against a long-term care facility that *retaliates against an employee* for filing, and information how to file such a complaint to the SSA.
2. The sign should be posted in the same area that [FACILITY NAME] posts other required employee signs, such as wage/hour and OSHA posters. These are found in [list the location in the facility].
3. Size and type requirements for the sign should be no less than the minimums required for the other required employment-related signs.

D. Facility Reporting [OPTIONAL]

[NOTE: Facility reporting is optional and not required as part of this EJA act; only individuals are required to report suspicion of a crime. However, Federal, state or local laws may require facility reporting. For example, Federal regulations require facilities to report abuse, *neglect* or misappropriation of resident property to the SSA.]

1. OPTIONAL: [FACILITY NAME] will file a report to SSA and *local law enforcement* using the attached form when becoming aware of a suspicion of a crime.
2. OPTIONAL: [FACILITY NAME] on behalf of staff will file a report to SSA and *local law enforcement* using the attached form when staff becomes aware of a suspicion of a crime.
3. OPTIONAL [FACILITY NAME] shall keep a record of these reports.

FACILITY SUSPECTED CRIME REPORT UNDER ELDER JUSTICE ACT
Draft AHCA Template

INSTRUCTIONS: Submit this completed form to local law enforcement and your state survey agency by fax or email within **2 hours** (if there is serious bodily injury) or **24 hours** (if there is not serious bodily injury) of forming a reasonable suspicion that a crime may have been committed against any individual who is a resident of, or is receiving care from [FACILITY NAME].

[FACILITY NAME] CONTACT:

[ADMINISTRATOR] _____
 [ADDRESS] _____
 [PHONE] _____
 [FAX] _____
 [EMAIL] _____

Reported to State Survey Agency? Yes No

Date Reported: / / Time: _____

[STATE SURVEY AGENCY] CONTACT:

[ADDRESS] _____

 [PHONE] _____
 [FAX] _____
 [EMAIL] _____

Reported to the Local Law Enforcement? Yes No

Date Reported: / / Time: _____

[LOCAL LAW ENFORCEMENT] CONTACT:

[ADDRESS] _____

 [PHONE] _____
 [FAX] _____
 [EMAIL] _____

SUMMARY OF SUSPECTED CRIME INVOLVING [RESIDENT NAME] and [DATE OF BIRTH], as well as a brief description of the location of the incident and, if available, the names of any individuals involved in the suspected crime. (Attach additional sheets if necessary. No. of pages attached ___)

Was there serious bodily injury? No ___ YES ___ (must be reported within 2 hours)

INDIVIDUAL[S] REPORTING

THIS REPORT IS MADE BY THE FACILITY ON BEHALF OF ALL COVERED INDIVIDUALS LIST BELOW.

Name:	Date/time individual became aware of suspected crime
1.	Date: / / Time: _____
2.	Date: / / Time: _____
3.	Date: / / Time: _____
4.	Date: / / Time: _____
5.	Date: / / Time: _____
6.	Date: / / Time: _____
7.	Date: / / Time: _____
8.	Date: / / Time: _____

NOTE: This report is required by law where a suspicion of crime has occurred and is in no way an admission by the person[s] submitting the report that a crime has actually occurred.