

PUBLICATION

Nursing Home Reporting of Reasonable Suspicion of a Crime

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Nursing facilities, skilled nursing facilities, hospices that provide services in long term care facilities and independent living facilities that provide services for the developmentally disabled ("facilities") are required to report suspected crimes by defined "covered individuals" to the state survey agency and local law enforcement under the Affordable Care Act (ACA).¹ "Covered individual" includes an owner, operator, employee, manager, agent or contractor of the facility.² Any facility that received at least \$10,000 in federal funding during the preceding year is subject to the statute.

To ensure compliance, facilities should be aware of the following:

- facilities must develop policies and procedures for compliance with the statute;
- facilities must notify covered individuals of their reporting requirements by posting a notice for employees, and such notice should specify the employees' rights, including the right to file a complaint under the statute and how to file a complaint;
- facilities should document, on an annual basis, notice provided to covered individuals of their reporting obligations;
- covered individuals are subject to civil monetary penalties and exclusion sanctions for failure to timely meet the reporting requirements;
- facilities may not retaliate against an individual who lawfully reports suspicion of a crime; furthermore, facilities are subject to civil money penalties and exclusion sanctions for retaliation against an employee making a valid report;
- facilities employing excluded covered individuals (due to failure to meet the reporting requirements) will be ineligible for federal funds;
- facilities may be subject to an immediate jeopardy tag or other survey violations for failure to comply with the statutory requirements.

There are two applicable time frames with respect to the reporting obligations under the ACA. First, a covered individual must report reasonable suspicion of a crime that results in serious bodily injury to a resident within two hours of the event giving rise to the suspicion. Second, all other reasonable suspicions of a crime must be reported within 24 hours. The report must be made to both the state survey agency and local law enforcement.

The covered individual's reporting requirements differ from a facility's obligation to report incidents involving allegations of mistreatment, neglect or abuse, including injuries from an unknown source and misappropriation of resident property. These incidents are reported immediately (not to exceed 24 hours after discovery) to the administrator of the facility and to other officials under state law (including to the state survey and certification agency). Further, the results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with state law (including to the state survey and certification agency) within five working days of the incident. Corrective action also must be taken if the alleged violation is verified.

In certain instances, such as in the case of physical or sexual abuse of a resident, the facility and the covered individual may have the obligation to report the event to the appropriate authorities -- the facility reporting the incident itself and the covered individual reporting the reasonable suspicion of a crime.

CMS has provided guidance to State Survey Agency Directors on this topic in a policy memo referenced as [S&C: 11-30-NH, Revised 01.20.12](#).

¹ Section 1150B of the Social Security Act, as established by section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010 (ACA)

² Agent and contractor agreements should address the reporting requirements.