

Eli's Hospice Insider

Survey & Certification: Hospices Must Shoulder New SNF Crime Reporting Burden

Watch out for retaliation against your hospice if an employee reports.

Get ready to add an awkward new provision to your contracts with long-term care facilities.

In a June 17 Survey & Certification Memo, the **Centers for Medicare & Medicaid Services** directs its state survey agencies to enforce a crime reporting requirement for federally funded long-term care facilities. The 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," says memo S&C: 11-30-NH.

And guess who's on that list of "specific individuals" hospice staff who are working in long-term care facilities. Under the requirement, hospice staff who suspect a crime must report it to both surveyors and law enforcement.

Some parts of this requirement won't be new to many hospices, notes Washington, D.C.-based health care attorney **Elizabeth Hogue**. "Most states require individual practitioners and providers to report abuse, neglect, etc., already," Hogue says. "So hospices and their staff members are likely already required by state statute to make reports."

But "this reporting requirement is a bit broader" than some states' rules, points out attorney **Bob Markette Jr.** with **Benesch Dann Pecar** in Indianapolis. Under the requirement spelled out in the memo, a complaint "is made to the state survey agency as well as to law enforcement."

Take note: And the survey & cert memo spells out another new mandate. "The hospice and SNF/NF or ICF/MR must have a written agreement that includes a provision stating" the reporting requirement, CMS says in the memo. "Most hospice providers reported abuse and neglect as a matter of routine practice, but it was never spelled out in the contract," Markette tells **Eli**.

This new requirement could lead to some awkward situations with nursing home partners. Even though reporting can be anonymous, "a facility may suspect who made a report and may disagree that a situation was reportable," Markette cautions. "It might lead to a facility trying to exclude a provider from the premises or other behavior."

Bottom line: "Providers will need to be prepared to deal with such backlash from facilities." Markette warns. CMS does spell out in the memo that retaliation against employees who report crimes is not allowed. "Too bad that the language in this section does not include a specific prohibition against cancelling contracts with hospices in retaliation for reports that they may make involving SNFs," Hogue says.

Note: The CMS memo is at www.cms.gov/Surveyscertificationgeninfo/downloads/SCLetter11_30.pdf.