

Long-Term Care Survey Alert

Compliance: Be Aware of This Elder Justice Act Exclusion Provision

Find out what CMS & the OIG are up to, according to a revised survey & cert memo.

A June CMS survey & cert memo says "covered individuals" have to let local law enforcement and the state survey agency know if they develop "any reasonable suspicion of crimes committed against a resident ...". A covered individual is "an owner, operator, employee, manager, agent, or contractor" of a federally funded long-term care facility, according to an excerpt in the survey memo from the Elder Justice Act in the Affordable Care Act.

The memo also states: "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."

CMS clarified that statement in an August Q&A added to the survey memo, which included the question: "Who are excluded individuals that we should not employ?"

CMS' answer: "If a long term care facility employs any covered individual who has been excluded from participating in any Federal health care program under sections 1150B(c)(1)(B) or (c)(2)(B) due to failure to meet the reporting requirements of this provision, then that facility will be ineligible to receive Federal funds under the Act. CMS is currently working with the Office of the Inspector General on a database that will include a list of such excluded individuals."

Bottom line: "Those who do not report can be excluded -- and the facility employing or contracting with the excluded individual could lose all potential federal program reimbursement," warns attorney **Wayne J. Miller**, with Compliance Law Group in Los Angeles. "We are not aware of any facility being hit with this penalty yet, which we expect won't happen until individuals are excluded for not complying with the Elder Justice Act notice requirement," Miller adds.

Difference: The EJA provision "is separate from existing law on individuals excluded for allegedly committing fraud, which already applies to all healthcare facilities under Medicare," says Miller. "Facilities ensnared under [that] current law usually have to repay reimbursement that is attributable in whole or part due to the excluded individual's services."

Editor's note: To review additional Q&As from the memo, see below of this issue.