

Long-Term Care Survey Alert

Legal Requirements: Don't Let This Tough New Reporting Duty Catch You Off Guard

Failure to report 'reasonable suspicion of a crime' could cost you big time.

Facilities that don't regularly check for new survey and cert memos may have missed an exceptionally important one in mid-June.

In the memo (S&C: 11-30 NH), CMS relays how the Affordable Care Act requires so-called "covered individuals" in nursing facilities to report "a reasonable suspicion" of a crime against a care recipient to local law enforcement and the Secretary of HHS. Except CMS says you should report it to the survey agency instead of HHS, the memo directs.

CMS notes that the ACA defines "covered individual" as "an owner, operator, employee, manager, agent, or contractor" of a long-term care facility. The reporting mandate applies not only to SNFs and nursing facilities, but also intermediate care facilities (ICFs) for the mentally retarded, and hospices providing services in long-term care facilities, according to the memo. For the requirements to apply, the facility must have received at least \$10,000 in federal reimbursement during the previous fiscal year, the memo states.

Know the reporting timeframe: "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," the memo instructs.

Noncompliance doesn't pay: Covered individuals who fail to report can receive CMPs and be excluded from federal programs, CMS warns.

The memo doesn't define a "reasonable suspicion of a crime." It does, however, direct facilities to "coordinate the facility's State and local law enforcement entities to determine what actions are considered crimes in their political subdivision."

In addition, long-term care facilities can end up with CMPs or program exclusion if they retaliate against an employee who lawfully meets their reporting obligation or takes steps to do so.

The memo directs facilities to "develop and maintain policies and procedures that ensure compliance" with the ACA provisions, including the prohibition against retaliation.

What to do now: At a minimum, facilities "should read the survey and certification memo and make sure they have policies and procedures in place and can document their non-retaliation policies," says attorney **Paula Sanders**, with Post & Schell in Harrisburg, Pa. She also advises giving "all covered individuals (including contractors and agents) a notice of their reporting obligation." The notice should indicate that "the individuals are not required to file individual reports of suspected crimes if the individuals are identified in a facility filing." However, the individuals "may file separately if they choose to do so."

More bad news: "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 points out in the memo.

Editor's note: Download the memo at www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf.

