

Long-Term Care Survey Alert

Tool: Check Out These Q&As From CMS' Jan. 20 Survey Memo

CMS' recently modified survey memo, "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility," provides a number of Q&As. Here are three of them:

Question: "In reference to the duty of covered individuals to timely report a suspicion of a crime, I see there are two timelines that must be followed. I also see (if I'm reading the memo correctly) that a covered individual must report not only to law enforcement but also to State Survey agencies. Law enforcement operates 24/7. However, if a covered individual determines that he/she has a reasonable suspicion involving serious bodily injury and it is after business hours for the state agency or the weekend, what procedure should that individual follow to ensure that he/she will not be held responsible for not reporting to the state w/in the 2 hour timeline? Also, is reporting to the law enforcement in addition to reporting of State and FEDS (1 day, 15 day, Immediate and 5 day)?"

CMS' Answer: "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.

Please note: Both types of reporting (incident report to State and crime reporting to LE/SA) must be done if both situations are met.

Reporting requirements are based on real (clock) time, not business hours. Section 1150B(b)(2) provides that if the events that cause the suspicion result in serious bodily injury, the individual must report this immediately (but not later than 2 hours after forming the suspicion); otherwise, the individual must report the suspicion not later than 24 hours after forming the suspicion. State Survey Agencies should have a reporting mechanism available 24/7 (e.g., hotline, answering machine that may receive a message, live person, fax, etc.). For example, if a reasonable suspicion of a crime that results in serious bodily harm occurs on a Saturday, the timing obligation for reporting this would be satisfied if the individual who formed the suspicion both left a message on the State Survey Agency answering machine and notified local law enforcement on that same day within two hours of forming the suspicion."

Please note the State and Federal requirements are listed below:

F225, §483.13(c)(2) The facility must ensure all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with state law through established procedures (including to the state survey and certification agency).

F225, §483.13(c)(4) 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 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Immediately: per CMS means as soon as possible but ought not to exceed 24 hours after discovery of the Incident. "As such, states may not eliminate the obligation for any of the above violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property) to be reported, nor can the state establish longer time

frames for reporting than mandated in the regulations...".

Nursing homes must comply with requirements for participation, including reporting requirements set out in 42 C.F.R. §§483.13(c)(2) and (4). Please note: No state law can override the obligation of a nursing home to fulfill the requirements under 42 C.F.R. §483.13(c), as long as Medicare/Medicaid certification is in place."

Question: "If a suspicion of a crime is reported by a covered individual, and the occurrence also meets the requirements for incident reporting, must the facility report the incident using the usual incident reporting mechanisms?"

CMS answer: "Current regulation requires a facility to report incidents: §483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency). This requirement has not changed and the mechanics of complying with this regulation are the same as they have been. Reporting the suspicion of a crime is the responsibility of 'covered individuals.' There may be instances where an occurrence will require both the facility to report the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and 'covered individuals' must report the suspicion of a crime to the State Survey Agency and to local law enforcement."

Question: "To what number or numbers is the suspicion of abuse reported? Are there different numbers for reporting when there has been serious injury?"

CMS' Answer: "Reporting may be done by telephone or by fax within the specified timeframes of the law. Unless otherwise specified, the State Survey Agency contact number is the State Agency that conducts the Medicare and Medicaid certification Surveys. It is important to keep in mind that the time frames for reporting the suspicion of a crime are different and more stringent than time frames related to reporting an incident."

Source: Excerpted verbatim from the Jan. 20 survey and cert memo available online at www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf.