

Reporting Reasonable Suspicion of a Crime in Long Term Care Facilities

A. Background

A.1. What are the provisions in section 6703 of the Affordable Care Act, part of the Elder Justice Act?

Subtitle H of the Patient Protection and Affordable Care Act (Affordable Care Act) of 2010 is also known as the Elder Justice Act of 2009. Section 6703(b)(3) of the Affordable Care Act (which is located in this subtitle) amends the Social Security Act (the Act) by establishing new section 1150B of the Act entitled, "Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities." Section 1150B of the Act requires certain individuals in federally funded long-term care facilities to timely report any reasonable suspicion of a crime committed against a resident of that facility. Those reports must be submitted to at least one law enforcement agency of jurisdiction and the State Survey Agency (SA), in fulfillment of the statutory directive to report to the Secretary. Individuals who fail to report under section 1150B(b) shall be subject to various penalties, including civil monetary penalties. Section 1150B(d) of the Act also prohibits a long-term care facility from retaliating against any individual who makes such a report.

A.2. What is the effective date of the section 6703(b)(3) requirements?

The amendments made to Title XI of the Act by section 6703(b)(3) of the Affordable Care Act became effective on March 23, 2011. Therefore, the requirements and provisions of that section are currently in effect.

B. Facility Responsibilities

B.1. What are a long term care facility's responsibilities under section 1150B of the Act?

There are three specified responsibilities for long term care facilities in section 1150B of the Act: (1) to notify covered individuals annually of their reporting obligations, (2) to prevent retaliation if an employee makes a report, and (3) to post information about employee rights, including the right to file a complaint if a long term care facility retaliates against anyone who files a report. Reporting obligations of crimes themselves fall on covered individuals, not the facility as an entity. In other words, each owner, operator, employee, manager, agent or contractor of a long term care facility is responsible to meet the reporting requirements of this provision.

Facility policies and procedures should address the mechanism for documenting that all covered individuals have been notified annually of their reporting obligations. Examples of such documentation may include a copy of a notice or letter sent to covered individuals or a completed training/orientation attendance sheet specifying reporting obligations.

B.2. Section 1150B requires long term care facilities to conspicuously post notice of employee rights posters in a form specified by the Secretary- is this form available?

There is no specified template or form for the posting of this information at this time.. Rather, the required information and elements to be included in such a sign are described in CMS's survey and certification memorandum S&C: 11-30-NH dated June 17, 2011. This S&C Memo is available online at:

http://www.cms.gov/Surveyscertificationgeninfo/downloads/SCLetter11_30.pdf

B.3. What types of facilities must conform to the requirements under section 1150B of the Act?