



150 State Street, Suite 301 Albany, New York 12207-1698 Telephone (518) 449-2707 Fax (518) 455-8908 Web www.nyahsa.org

MEMORANDUM

TO: RHCF Members

FROM: Elliott Frost, Senior Policy Analyst

DATE: June 30, 2011

SUBJECT: **Reporting Reasonable Suspicion of a Crime in a LTC Facility**

ROUTE TO: Administrator, Directors of Nursing and Social Work

ABSTRACT: CMS outlines reporting obligations of LTC facilities under Affordable Care Act.

Section 1150B of the Social Security Act established in the Affordable Care Act of 2010 requires specific individuals in long-term care facilities to report any reasonable suspicion of crimes committed against a resident of the facility. In a recently issued *Survey and Certification* letter (*S&C 11-30*) CMS has outlined the responsibilities that long-term care facilities must take to be in compliance with this requirement.

The CMS letter outlines the following facility responsibilities:

- **Notify Covered Individuals:** Annually notify each covered individual of that individual's reporting obligations described in section 1150B (b) of the Act, if the facility determines that it received at least \$10,000 in Federal funds under the Act during the preceding fiscal year.
- **Post Conspicuous Notice:** Conspicuously post, in an appropriate location, a notice for its employees specifying the employees' rights, including the right to file a complaint under this statute. The notice must include a statement that an employee may file a complaint with the SA against a LTC facility that retaliates against an employee as specified above, as well as include information with respect to the manner of filing such a complaint.
- **Coordinate with Law Enforcement:** Coordinate with the facility's State and local law enforcement entities to determine what actions are considered crimes in their political subdivision.
- **Review Adherence to Existing CMS Policies:** Review existing facility protocols and procedures to ensure adherence to existing CMS and State policies and procedures for

reporting incidents and complaints. For example, participating nursing homes are already required to have policies and procedures in place to report abuse, neglect or misappropriation of resident property. During the course of a standard survey or complaint investigation, the identification of a possible crime may trigger a review of the LTC facility's policies and procedures for reporting as required under the Federal conditions and requirements for that provider type, and a review of the actions taken to make any required incident report.

- ***Develop Policies and Procedures for Section 1150B:*** Develop and maintain policies and procedures that ensure compliance with section 1150B, including the prohibition of retaliation against any employee who makes a report, causes a lawful report to be made, or takes steps in furtherance of making a lawful report pursuant to the requirements of the statute.

The CMS letter goes on to state that “at the present time there are no CMS regulations that apply specifically to section 1150B responsibilities of covered individuals or facilities. Consequently, SAs (State Survey Agencies) will focus on (a) the events giving rise to reports made under this requirement and (b) the LTC facility's responsibilities under existing CMS conditions and requirements to report incidents, prevent abuse or neglect, provide quality care and a safe environment, train staff, and similar duties of direct relevance to safety and quality of care.” All nursing homes currently have policies and procedures related to harm against residents, reporting incidents, and the training of staff to identify and investigate incidents against residents. However, none of the existing policies refer specifically to Section 1150B and it would appear that inclusion of the reference to 1150B, the posting requirements identified, and the education of staff to the existence of the statute would be indicated.

NYAHSA has reached out to DOH to determine if there are potential survey implications related to the CMS letter. In addition, NYAHSA is planning an audio session within the next few weeks where the legal implications of the statute will be discussed. Click [here](#) to access *CMS S&C letter11-30*.

Members with questions or comments may contact Elliott Frost at 518-867-8832, or via e-mail at efrost@nyahsa.org.