

## Health Reform Update: Clarification on Crime Reporting Requirements

- *NFs, SNFs, ICFs/MR, and hospices providing services in those facilities that received at least \$10,000 in federal funds during the preceding year must comply with the crime reporting provisions of the Elder Justice Act.*
- *Qualifying facilities must annually notify covered individuals of their obligations to report crimes, post an appropriate employee notice in their facility, and develop policies and procedures to implement the Act.*

We previously alerted our clients to crime reporting provisions contained in the Elder Justice Act portion of the health care reform law that have already gone into effect. Specifically, that Act provides that certain “covered individuals” in long-term care facilities must report “any reasonable suspicion of a crime” against a resident of the facility to the Secretary of HHS and to one or more local law enforcement entities within 24 hours of forming the suspicion, or within 2 hours if the event results in serious bodily injury.

While regulations implementing the crime reporting provisions of the Elder Justice Act have not yet been promulgated, CMS issued guidance to state survey agencies in a June 17, 2011 Memorandum (S&C 11-30-NH, Revised August 12, 2011), including a Questions and Answers document, that provides interim clarification and instructions for long-term care facilities.

**WHO IS COVERED.** “Long-term care facilities” affected by the Act include any nursing facility, skilled nursing facility, or intermediate care facility for the mentally retarded, or a hospice that provides services in such a facility, and that received at least \$10,000 in federal funds during the preceding year.

**REPORTING OBLIGATIONS.** The obligation to report suspicion of a crime falls on the covered individual, not the health care organization, and is distinct from the organization’s obligations to report abuse and neglect. CMS has indicated that reports “to the Secretary” should be made to the Ohio Department of Health, and reports to “law enforcement” may be made to police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators and coroners.

**ANTI-RETALIATION.** Long-term care facilities are prohibited from retaliating against any employee for making a report, with violations punishable by civil money penalties of up to \$200,000 and exclusion for a period of two years. The facility must post an employee notice specifying rights of employees to file a complaint if they believe the facility has violated this provision. While the Secretary has still not issued a template notice, CMS did provide facilities some additional instruction as to what the notice must contain.

**FACILITY OBLIGATIONS.** Long-term care facilities must annually notify covered individuals of their obligation to comply with its reporting requirements, and keep a record of such notification. Additionally, CMS encourages facilities to coordinate with their local law enforcement entities to

determine what constitutes a crime and to develop policies and procedures to ensure compliance with the Act.

**TEMPLATE MATERIAL.** To assist our clients, we have prepared template notices, letters, policies, etc. designed to comply with the Elder Justice Act.

Please contact us if you would like further information or assistance with these matters, or if you have any questions regarding this alert.

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*Please note that this alert is intended to be informational only, and is not intended to be nor should it be relied upon as legal advice. Rolf Goffman Martin Lang Co., LPA will not be responsible for any actions taken or arrangements structured based upon this alert.*

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