

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Policy Brief: Requirements for Reporting to Law Enforcement When There is a Suspicion of a Crime Against a Nursing Home Resident

Statutory Authority: 42 U.S.C. 1320b–25 (also Social Security Act §1150B, enacted as §6703(b)(3) of the Patient Protection and Affordable Care Act of 2010).

Status: In effect since March 23, 2010.

2017 Updates:

1. The potential fines for violations of the law are subject to adjustment for inflation. The fines indicated below are current as of September 2017.
2. New CMS guidelines for these (and other) requirements are in effect as of November 28, 2017. A summary of the guidelines for reporting can be found at the end of this brief. The full federal Guidance can be found on the CMS website:
<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Advance-Appendix-PP-Including-Phase-2-.pdf>.

Overview:

The law broadens and strengthens the requirements for crime reporting in all long term care facilities (including Nursing Facilities, Skilled Nursing Facilities, LTC Hospices, and Intermediate Care Facilities for the Mentally Retarded) that receive \$10,000 or more in federal funds per year. The facility must inform the individuals covered under the law - its employees, owners, operators, managers, agents, and contractors - of their duty to report any "reasonable suspicion" of a crime (as defined by local law) committed against a resident of the facility. After forming the suspicion, covered individuals have twenty-four hours to report the crime to both the State Survey Agency and to a local law enforcement agency. If the suspected crime resulted in physical harm to the resident, the report must be made within two hours.

Failure to report carries a fine of up to \$221,048; if the failure results in increased harm to the original victim, or harm to another resident, the fine can be up to \$331,752. The facility is required to post these requirements conspicuously, informing employees of their duty to report

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and their right to be free from retaliation. If a facility is found to have retaliated against an employee in any way for reporting suspicion of a crime, it is subject to a fine of up to \$221,048.¹

Provider Requirements:

- Ensure that anyone who is an owner, operator, employee, manager, agent or contractor of the facility is informed as to his or her obligations under the law.
- Report any suspicion of a crime against a resident to local law enforcement as well as to the state agency, within twenty-four hours of forming the suspicion, or within two hours if the act or incident suspected to be a crime resulted in physical injury to a resident.
- Provider is prohibited from retaliating against an individual who lawfully reports a reasonable suspicion of a crime. A long term care facility may not discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against such employee.

Fines:

- Failure to report can incur fines up to \$331,752.
- Retaliation against someone for reporting can result in a fine of up to \$221,048.

LTCCC Recommendations:

The law creates a duty for employees and other workers in long term care facilities to quickly report any reasonable suspicion of crimes against residents and provides substantial penalties for failing to do so. Though the President and Congress clearly intended to send a strong message about taking crimes against long term care residents seriously and responding to them quickly, these intentions will not be realized without effective oversight and enforcement. The reporting process can fail to produce the desired benefits for residents at many points along the way. For instance, a token phone call to an officer who makes a minimal investigation might comply with the letter of the law, but does not fulfill its intent. Unless the state survey and law enforcement agencies implement these requirements vigorously, the opportunities this reform presents to address nursing home crimes slip away.

Following are our recommendations for the state survey agency, providers and consumers.

The State Should:

1. **Train surveyors** to be aware of this requirement and to survey for compliance with it. Always raise these requirements as an issue when there is indication that an employee had an unreported suspicion that a resident was being harmed. Emphasize, again, that this requirement applies to *all* crimes, including crimes like neglect.
2. **Provide educational outreach** to long term care facilities and employees. Remind facilities to post required notices. Make sure employees know the process for

¹ Examples cited in the law include: firing, demoting, suspending, threatening and denying a promotion or any other benefit of employment.

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appropriately reporting suspicion of a crime, including which law enforcement agency to contact, and the penalty for failing to report.

3. **Partner with and assist law enforcement.** Conduct outreach to local police precincts and offices to increase awareness of nursing home abuse and neglect and the role of law enforcement in protecting nursing home residents. Outreach could include a variety of activities, some as simple as holding a class or webinar to raise awareness among officers about signs of elder abuse or the rights of residents in LTC facilities. Facilitate good communication and the effective use of law enforcement resources. For example, encourage precincts to identify officers with ties to the long term care community, or who have expressed an interest in elder justice, and request that they be the ones to field reports from facility employees. Involve law enforcement in other ways as well, such as by asking for an officer to co-teach a seminar on detecting crimes or inviting representatives from the state or local police to attend surveyor trainings.

Providers Should:

1. **Educate staff about their responsibilities** and train them in detecting the most common crimes against long term care residents.
2. **Establish a system for informing non-staff workers** in the nursing home (such as contract staff, consultants and independent contractors) about the requirement and how to report suspicion of a crime.
3. **Prominently post information** on the requirement, including contact information for law enforcement agencies, the penalties for failing to report suspicion of a crime and the prohibition against retaliation for reporting of suspicion of a crime.
4. **Invite law enforcement to present to staff** and/or participate in dialogue with staff on identifying possible crimes in nursing homes: what comprises a crime, indicators or actions that might raise suspicion of a crime, processes for reporting, etc....

Long Term Care Ombudsmen, Residents, Families, and Advocates Should:

1. **Educate themselves and the residents they know** about these requirements. Residents and those who have close contact with residents are in the best position to know when long term care employees have not reported suspected crimes in a timely manner.
2. **Alert the state and a law enforcement agency** if they have suspicion that a crime has been committed. Advocates can generate cases in situations where the violation might otherwise have gone unnoticed.

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Summary of CMS guidelines:

Below is a chart summarizing the basic reporting requirements for reporting resident abuse, neglect and suspicion of a crime against a resident followed by selected points and definitions from the guidelines in the CMS State Operations Manual, Appendix PP (effective Nov. 28, 2017).

I. Chart: Required Policies & Procedures

Regulation	42 CFR 483.12(b)(5) [And §1150B of the Act]	42 CFR 483.12(c)
F-tag	F608	F609
What	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is required to report?	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
To whom	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When	Serious bodily injury- Immediately but not later than 2 hours after forming the suspicion. No serious bodily injury- not later than 24 hours. [Note: "Reporting requirements under this regulation are based on real (clock) time, not business hours"]	All alleged violations-Immediately but not later than (1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury or (2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.

II. Selected Points and Definitions from CMS

Please note: (1) This following is not a conclusive list; (2) Many of these requirements existed prior to November 2017. As noted at the beginning of this brief, the complete Guidance is available on the CMS website.

Facility responsibilities include ensuring reporting of crimes occurring in their facilities utilizing written policies and procedures and within prescribed timeframes.

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Covered individuals include each and every “owner, operator, employee, manager, agent or contractor of the facility.”

Law enforcement includes: “the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners.”

“Serious bodily injury” means an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; requiring medical intervention such as surgery, hospitalization, or physical rehabilitation; or an injury resulting from criminal sexual abuse.

Handling evidence. “Once an individual suspects that a crime has been committed, facility staff must exercise caution when handling materials that may be used for evidence or for a criminal investigation. It has been reported that some investigations were impeded due to washing linens or clothing, destroying documentation, bathing or cleaning the resident before the resident has been examined, or failure to transfer a resident to the emergency room for examination including obtaining a rape kit, if appropriate.”

Reporting through an Administrator. “Some facilities may have policies and procedures where the administrator could coordinate timely reporting to the State Survey Agency and law enforcement on behalf of covered individuals who choose to... report to the administrator. ...Reports should be documented and the administrator should keep a record of the documentation. It remains the responsibility of each covered individual to ensure that his/her individual reporting responsibility is fulfilled, so it is advisable for any multiple-person report to include identification of all individuals making the report. In addition, a facility cannot prohibit or circumscribe a covered individual from reporting directly to law enforcement even if it has a coordinated internal system.”

For Further Information:

1. CMS Letter to State Survey Agency Directors, "Reporting Reasonable Suspicion of a Crime in a Long-Term Care (LTC) Facility: Section 1150B of the Social Security Act," (June 17, 2011), *available at* https://www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf.
2. OIG “Early Alert” on reporting resident abuse and neglect, including suspicion of crimes against nursing home residents (August 24, 2017). Available at <https://oig.hhs.gov/oas/reports/region1/11700504.pdf>.

The Long Term Care Community Coalition (LTCCC) is a non-profit organization dedicated to improving care and quality of life for residents in nursing homes and other residential care settings.

Visit our homepage, www.nursinghome411.org, to learn about our work to improve nursing home care, policies and enforcement; access information on nursing home quality of care and other indicators; and for our free consumer fact sheets on resident rights, dementia care and more.