



Elder Justice Act Provisions: How to Report Suspicion of a Crime

by [Cory Kallheim](#) Published On: Jul 26, 2011

The Centers for Medicare and Medicaid Services (CMS) recently issued guidance ([S & C: 11-30-NH, June 17, 2011](#)) on the reporting of a suspicion of a crime in long term care facilities required under Section 1150B of the Social Security Act. This section was established under the Elder Justice Act (EJA), Section 6703 of the Patient Protection and Affordable Care Act of 2010 (ACA). It is the first federal attempt to prevent and prosecute crimes against nursing home residents.

Facilities Covered Under the Elder Justice Act

The EJA provisions apply to the following long term care providers that received at least \$10,000 in federal funds in the previous year:

- Nursing facilities (NF).
- Skilled nursing facilities (SNF).
- Inpatient hospices.
- Intermediate care facilities for the mentally retarded (ICF-MR).
- Assisted living facilities are not included under the statute.

Responsibilities of Facilities Under the Elder Justice Act

There are 4 responsibilities for long-term care providers under the EJA:

1. Notify Covered Individuals: Providers must annually notify each covered individual (see below) of their reporting obligations.
2. Post Notice: Providers must post, in an appropriate location, a notice for its employees specifying their rights, including the right to file a complaint under the statute with the state survey agency.
3. Refrain from Retaliation: Providers may not retaliate against an individual who lawfully reports a reasonable suspicion of a crime under the EJA.
4. Employment: Providers may not employ or contract with an individual that has violated the EJA reporting requirements

Reporting Responsibilities of Covered Individuals

Under Section 1150B(a)(3), the “covered individuals” that have reporting obligations under the EJA are owners, operators, employees, managers, agents and contractors of long-term care facilities.

Covered individuals must report any reasonable suspicion of a crime against facility residents or individuals receiving care at the facility. Reports must be made to the state survey agency and to one or more local law enforcement entities.

There are 2 reporting timeframes depending on whether the resident suffers serious bodily injury. Serious bodily injury is defined as 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; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. If the resident suffers serious bodily injury, it must be reported within two hours of the event. If there is no serious bodily injury, then a report must be filed within 24 hours of the event.

Penalties for an individual's failure to report can result in a fine up to \$200,000 and more importantly, exclusion from participation in federal health care programs. When a violation exacerbates harm to the crime victim or harms another person, the fine can increase to \$300,000.

Defining "Crime"

The EJA provides that a "crime" is defined by the law of the applicable political subdivision in which the facility is situated. Thus, crimes are defined by local and state laws.

CMS Advisable Functions

The Centers for Medicare and Medicaid Services (CMS) advises that a facility that effectively complies with the Elder Justice Act provisions in section 1150B should do the following:

1. **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.
2. **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.
3. **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.