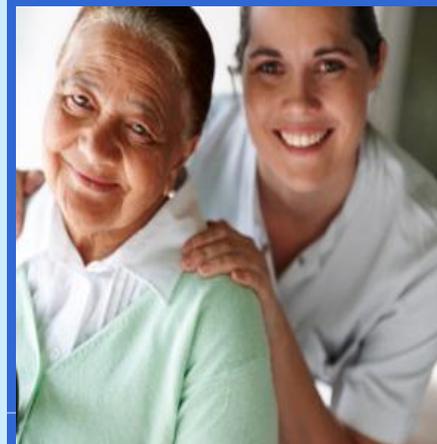
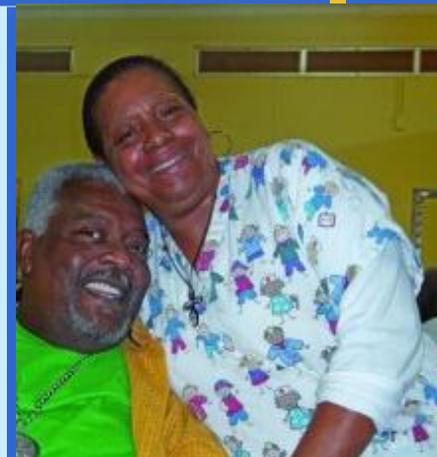


# Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (LTC)

## Section 1150B of the Social Security Act

May 1, 2012

Presented by:  
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# Agenda

- ◆ Today's presentation will include:
- ◆ Overview of Section 1150B of the Social Security Act
  - Key Features:
    - Statute
    - Long Term Care Facility Responsibilities
    - Covered Individual Reporting
    - Time Period for Individual Reporting
    - Discussion

# Elder Abuse: Scope of the Problem

- ◆ National Institute of Justice says 11 percent of those 60 and over suffer from some form of abuse.
- ◆ Senate Aging Committee in 2005 said 5 million cases of elder abuse occur each year.
- ◆ MetLife and the National Committee for the Prevention of Elder Abuse (NCPEA)—victims of elder financial abuse lose \$2.9 billion a year—a **12% increase from the \$2.6 billion estimated in 2008.**

# EJA: Main Provisions

- ◆ Bill authorizes \$777 million over 4 years.
- ◆ \$500 million of that would go to APS
- ◆ A total of \$72.5 million is authorized for the Long-Term Care Ombudsman program
- ◆ Elder Justice Coordinating Council
- ◆ Advisory Board on Elder Abuse, Neglect and Exploitation-Starting to see implementation here
- ◆ Data Collection
- ◆ Forensic Centers

# EJA Provisions Continued...

- ◆ National Training Institute for Surveyors
- ◆ Background Checks
- ◆ Nurse Aide Registry-Study
- ◆ Immediate Report of Crimes in Federally funded nursing homes and long-term care facilities.
- ◆ Guidelines issued by CMS

# Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (LTC) – Statute

Effective March 23, 2011

- ◆ Section 1150B of the Social Security Act (the Act), as established by section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), requires specific individuals in applicable long-term care facilities to report any reasonable suspicion of crimes committed against a resident of that facility.
- ◆ LTC facilities that receive at least \$10,000 in Federal funds during the preceding year to annually notify each covered individual of their obligation to report to the Secretary (now assigned to the SA) and at least one local law enforcement entity “any reasonable suspicion of a crime,” as defined by local law, committed against an individual who is a resident of, or is receiving care from, the facility. A “covered individual” is defined at section 1150B(a)(3) of the Act as each individual who is an owner, operator, employee, manager, agent, or contractor of such LTC facility.

## **Section 1150B of the Social Security Act provisions apply to the following Medicare and Medicaid Participating Providers:**

- ◆ Nursing facilities (NFs),
- ◆ Skilled nursing facilities (SNFs),
- ◆ Hospices that provide services in LTC facilities, and
- ◆ Intermediate Care Facilities for the Mentally Retarded (ICFs/MR).



# Facility Responsibilities

- **Determine Applicability:** Determine annually whether the facility received at least \$10,000 in Federal funds under the Act during the preceding fiscal year;
- **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.
- **Eschew Retaliation:** The facility may not retaliate against an individual who lawfully reports a reasonable suspicion of a crime under section 1150B.

# Facility Posting Requirements

**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.

Requirements for posting should include the following:

- Individual's right to file a complaint with the SA if they feel the facility has *retaliated against an employee or individual who reported a suspected crime under this statute, and how to file such a complaint with the SA;*
- The sign may be posted in the same area that the facility posts other required employee signs, such as labor management posters.
- Size and type requirements for the sign should be no less than the minimums required for the other required employment-related signs.

# Facility Advisable Responsibilities

**Coordinate** with the facility's State and local law enforcement entities to determine what actions are considered crimes in their political subdivision.

**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** 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.

# Covered Individual Responsibilities

A “covered individual” is defined in section 1150B(a)(3) of the Act as anyone who is an owner, operator, employee, manager, agent or contractor of the LTC facility.

Covered individuals must submit reports to at least one law enforcement agency of jurisdiction and the State Survey Agency (in fulfillment of the statutory directive to report to the Secretary).



**C.13. Is it acceptable for a facility in its compliance policy to state that covered individuals may either (a) report reasonable suspicion of crime directly to the state survey agency and law enforcement, or (b) report reasonable suspicion of crime to the facility administrator who will then coordinate timely reporting to the state survey agency and law enforcement on behalf of all covered individuals who made the report to the administrator?**

Yes, covered individuals may (a) report reasonable suspicion of crime directly to the State Survey Agency and law enforcement, and/or (b) report reasonable suspicion of crime to the facility administrator who will then coordinate timely reporting to the state survey agency and law enforcement on behalf of all covered individuals who made the report to the administrator. ***Reporting to the administrator would suffice if an individual has clear assurance that the administrator is reporting it.*** Reports should be documented and the administrator should keep a record of the documentation. Everyone who saw a possible crime has the obligation to report it. The administrator could coordinate the reports submitted, but each person has to report. In addition, facilities cannot prohibit or circumscribe reporting directly to law enforcement even if they have a coordinated internal system.

## **B.5. Who are “excluded individuals” that we should not employ?**

If a long term care facility employs any covered individual who has been excluded from participating in any Federal health care program under sections 1150B(c)(1)(B) or (c)(2)(B) due to failure to meet the reporting requirements of this provision, then that facility will be ineligible to receive Federal funds under the Act. CMS is currently working with the Office of the Inspector General on a database that will include a list of such excluded individuals.

## **B. 6. Does section 1150B cover only those with first-hand knowledge of the suspicion of a crime?**

The law does not specify “first-hand knowledge.” The law states that each covered individual must report any reasonable suspicion of a crime against a resident of a long term care facility. However, if during the course of an investigation of a complaint or incident there is evidence gathered from individuals with first-hand knowledge of the suspicion of the crime, this additional information may be considered under section 1150B, even if those individuals did not file a separate report.

# Time Period for Individual Reporting

Section 1150B establishes two time limits for the reporting of reasonable suspicion of a crime, depending on the seriousness of the event that leads to the reasonable suspicion.

- ***Serious Bodily Injury – 2 Hour Limit: If the events that cause the reasonable suspicion result in serious bodily injury to a resident, the covered individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion;***
- ***All Others – Within 24 Hours: If the events that cause the reasonable suspicion do not result in serious bodily injury to a resident, the covered individual shall report the suspicion not later than 24 hours after forming the suspicion.***

Reporting may be done by telephone or by fax within the specified timeframes of the law. Unless otherwise specified, the State Survey Agency contact number is the State Agency that conducts the Medicare and Medicaid certification Surveys. It is important to keep in mind that the time frames for reporting the suspicion of a crime are different and more stringent than time frames related to reporting an incident.

Reporting requirements are based on real (clock) time, not business hours. Section 1150B(b)(2) provides that if the events that cause the suspicion result in serious bodily injury, the individual must report this immediately (but not later than 2 hours after forming the suspicion); otherwise, the individual must report the suspicion not later than 24 hours after forming the suspicion. State Survey Agencies should have a reporting mechanism available 24/7 (e.g., hotline, answering machine that may receive a message, live person, fax, etc.).

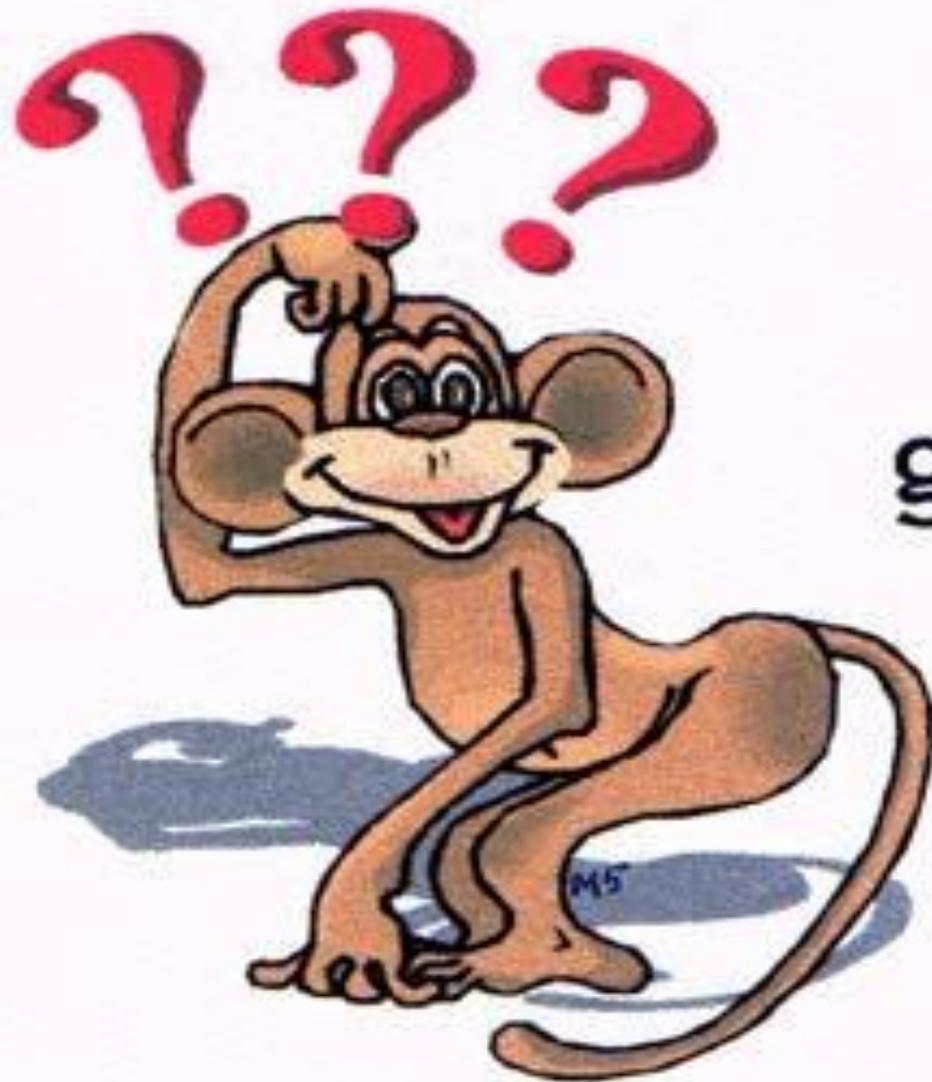
For example, if a reasonable suspicion of a crime that results in serious bodily harm occurs on a Saturday, the timing obligation for reporting this would be satisfied if the individual who formed the suspicion both left a message on the State Survey Agency answering machine and notified local law enforcement on that same day within two hours of forming the suspicion.

## **C.2. If a covered individual reports a suspicion of a crime directly to law enforcement and the survey agency, can the facility's policy require that individual to report the concern/incident to his/her facility supervisor or the administrator as well?**

It would be prudent that a facility policy not require disclosure of whether or not a covered individual has reported a suspicion of a crime to local law enforcement and the State Survey Agency. It is important to note, however, that Federal regulations do require SNFs and NFs to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency) (42 C.F.R. § 483.13(c)(2)).

**C.9. If a suspicion of a crime is reported by a covered individual, and the occurrence also meets the requirements for incident reporting, must the facility report the incident using the usual incident reporting mechanisms?**

Current regulation requires a facility to report incidents: § 483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency). This requirement has not changed and the mechanics of complying with this regulation are the same as they have been. Reporting the suspicion of a crime is the responsibility of “covered individuals.” There may be instances where an occurrence will require both the facility to report the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and “covered individuals “ must report the suspicion of a crime to the State Survey Agency and to local law enforcement.



Questions  
are  
guaranteed in  
life;  
Answers  
aren't.



Q--There appears to be a real disconnect between this and the abuse reporting requirements. We can find no circumstance that would be reportable as a potential crime for which the abuse reporting requirement is not mandated. Can you help me understand in what circumstances an employee would call on a reasonable suspicion of a crime where they would not also be compelled by the abuse reporting requirement to report to management?

A--Current regulation requires a facility to report incidents: § 483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency). This requirement has not changed and the mechanics of complying with this regulation are the same as they have been. Reporting the suspicion of a crime is the responsibility of “covered individuals.” There may be instances where an occurrence will require both the facility to report the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and “covered individuals “ must report the suspicion of a crime to the State Survey Agency and to local law enforcement.



### Open Discussion – How would you handle?

- ✓ A sexual encounter between residents that may be consensual?
- ✓ A resident to resident altercation?
- ✓ A staff to resident sexual encounter that may be consensual?
- ✓ A resident and visitor sexual encounter that may be consensual?
- ✓ What if your facility also has a day care center and you suspect child abuse?

# Discussion

- ◆ One of our dementia residents in a psychological therapeutic session relayed information that in a previous stay at ANOTHER LTC Facility in a different state six months prior to her coming to us was raped by a male employee, (identity unknown). Are we required to report this to Law enforcement under the Elder Justice Act.
- ◆ A. This should be reported to BOTH law enforcement and to the state survey agency in that State.
- ◆ You questioned whether the reporting reasonable suspicion of crime in a long term care facilities requirement applies to swing beds (Transitional Care) level of care that is allowed in Critical Access Hospitals of 25 beds or less. In response to your question, the requirement does not apply to swing beds as they do not meet the definition of a long term care facility.
- ◆ In response to your question about whether “contractor” under the definition of “covered individual” includes services such as plumbing, heat and air, or pharmacist consultants, etc. Individuals working in the above referenced capacities would not be considered covered individuals as these individuals do not have direct involvement in the day-to-day operations of the facility and direct contact with the residents/patients.

# Discussion

## Part 1 of Question--

- ◆ Q&A. In your inquiry you requested affirmation that “the SA does not have any authority over covered individuals who are required to report under the Act. Therefore, the SA will not be fining individuals or even monitoring if they met the timeframes.”

Please note that CMS is not asking the States to enforce 1150B. The memo was intended to inform the States of this new requirement and that they would be receiving the reports and treating them as incidents/complaints. The SAs will be analyzing and investigating these reports as allegations of noncompliance under the federal requirements. Some key points to consider are:

- Existing Conditions of Participation (CoP) require that reports of abuse, neglect and misappropriation of property must be reported; the majority of reports made under 1150B will likely fall into this type of reporting. SAs are not being asked to investigate crimes - the SAs will continue to investigate the reports under existing CoPs. Law enforcement will also receive a copy of the report and will investigate any criminal activities under their jurisdiction. SAs will continue to refer any investigated complaints to the appropriate agency for appropriate action (SOM 5075.6) which would include law enforcement.

Also, under 1819(g), States are required, under their 1864 agreements, to certify compliance with subsections (b), (c), and (d) of 1819 of the Act. Under 1819(d)(4)(A), facilities are required to be in compliance with all applicable federal laws; this would include any requirements under 1150B for facilities.

- CMS is just requiring the States to investigate the incidents that are reported as a result of 1150B under existing guidance and policies.

Q. Additionally, you questioned whether “there is a requirement that law enforcement and the SA work together on these reports”.

A. Although there is no requirement for the SAs to work together with law enforcement, SAs should interact with law enforcement in the same manner as they normally would when reporting incidents that warrant law enforcement involvement. CMS strongly encourages community partnerships through discussions between SAs and local law enforcement. We also encourage the participation of long term care ombudsmen, resident advocates, and worker representative.



- ◆ You requested confirmation “ that the SAs will be looking at 3 issues related to the facility: 1) policies and procedures and training annually, 2) posting of information; and 3) any retaliation on the part of the facility. You also stated since this is not included in QIS, the SAs would only get involved if a complaint occurred and then deficiencies would be issued under current related F-Tags and; the SA would handle the reports according to the current triage process as required under the SOM.” In response to your assessment, S&C 11-30 indicates there are three likely types of allegations related to this requirement: 1) events giving rise to a suspected crime; 2) allegations of individual failure to report; 3) allegations of facility failure to comply with Section 1150B. In each of these cases, CMS guidance to State Survey Agencies requires the SA to assess reports received under section 1150B following CMS protocols for processing incident reports or complaints, and investigate such reports as appropriate to those protocols.
- ◆ This is correct, in addition, SAs must assess the LTC facility’s compliance with the facility obligations of section 1150B if either of the following are triggered: (a) during the course of a standard survey or complaint investigation the survey team identifies a report of a suspicion of a crime against an individual who is a resident of, or is receiving care from, the LTC facility, and the incident has not been previously reported to the State SAs, or (b) the SAs receives a specific allegation of noncompliance with section 1150B by the facility and the SAs assesses the allegation to be credible and serious (including credible allegations of retaliation against an individual who has reported suspicion of a crime). In such a case the SAs must review both facility responsibilities under this section and the responsibilities of a covered individual.

**States often stated that they were not criminal investigators and voiced concerned about enforcement based on suspicion of crimes.**

- ◆ CMS is not asking States to enforce § 1150B, however, we expect States to make assessments under the current complaint process. We are not requiring States to make a determination on whether a crime has been committed. SAs must assess reports received under section 1150B following CMS protocols for processing incident reports or complaints, and investigate such reports as appropriate to those protocols.
- ◆ In addition, SAs must assess the long-term care facility's compliance with the facility obligations of section 1150B if either of the following are triggered: (a) during the course of a standard survey or complaint investigation the survey team identifies a report of a suspicion of a crime against an individual who is a resident of, or is receiving care from, the LTC facility, and the incident has not been previously reported to the State SA, or (b) the SA receives a specific allegation of noncompliance with section 1150B by the facility and the SA assesses the allegation to be credible and serious (including credible allegations of retaliation against an individual who has reported suspicion of a crime). In such a case the SA must review both facility responsibilities under this section and the responsibilities of a covered individual.



- ◆ You questioned whether you need to track all contractors who have direct contact or access to residents. In response to your question, you could track contractors who provide care or have direct access to the residents in a long term care facility or you could add an addendum or language in their contracts stating, in order to adhere to guidelines under the Elder Justice Act, they should notify the Administrator or contact the State Agency and law enforcement (providing contact numbers would be helpful) in the event they have a reasonable suspicion of crime while they are working in the facility.
- ◆ In response to your question regarding annual requirements. It is not necessary that the annual requirements take place exactly one year after the previous year's training. It could take place any time during that year (it should not exceed the year). In addition, it would be a good practice to keep a record of perspective training dates once the training is planned and keep records of attended training.
- ◆ You inquired whether certain contractors would need to attend a training session on the reporting suspicion of crimes requirement. In response you your question, certain contracted staff would not need training. For example, the landscaper, snow blower, roof repairman, plumber, electrician since they rarely come in direct contact with or provide care to the residents in a long term care facility. Contracted staff that would not have direct contact or access to residents or provide care to residents would not need training. However, it would be advisable to state to your contractors that if they see anything suspicion that may raise concerns, to bring it to the attention of facility staff so it can be reported to your local State Agency and law enforcement as required.

Does this include misdemeanors and felonies or just felonies?  
Misdemeanors are crimes and must be reported. If ever in doubt, report.

Isn't the definition of exploitation similar to the definition of misappropriation of resident property? Yes.

If the family of a LTC resident is not paying their nursing home room and board, for medications, etc., but they are receiving the residents check should this be reported as a crime with the appropriate calls to the SA and the police?

Failure to make payments may not rise to a “reasonable suspicion” of a crime. You would need to contact the responsible party and ask where the money went and try to get proof if they said they used it to pay the resident's other bills. You may also want to report to the Social Security Administration if they are a “representative payee”

Does the definition of Self-Neglect mean that if a resident goes home from a LTC facility and the facility believes that the resident is incapable of caring for themselves that not only APS is called, but the reporting a crime is completed with the appropriate calls, etc. to the SA?

You do not need to report this as a crime. The resident is not in the nursing facility. Report only reasonable suspicions of a crime in the NF.

Does the definition of Serious Bodily Injury mean that every time a resident falls or has an injury that requires hospitalization the crime form must be filled out with a call to the SA and the police?

No. A resident fall is not a crime unless someone purposely causes it, in which case you would report it as a crime (battery). “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 hospitalization is required, it would need to be reported within 2 hours.

# Thank you for your attention and participation

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