



QUESTIONS FROM THE FIELD

Question: When are we required to contact local law enforcement, in addition to the SA, for an allegation of abuse or a crime against a resident?

Answer: Section 6703 (b)(3) of the Affordable Care Act established the new section 1150B of the Social Security Act (the Act).

Section 1150B requires:

- i. LTC facilities that receive at least \$10,000 in Federal funds under the Act 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.*
- ii.
 1. *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;
 2. *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.

Serious Bodily Injury: The term “serious bodily injury” is defined in section 2011(19)(A) of the Act (as added by section 6703(a)(1)(C) of the Affordable Care Act) 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.

Crime: Section 1150B(b)(1) of the Act provides that a “crime” is defined by law of the applicable political subdivision where a LTC facility is located. Applicable facilities must coordinate with their local law enforcement entities to determine what actions are considered crimes within their political subdivision;

Many questions arose with the release of S&C: 11-30-NH. Some of the key questions and answers follow:

What is the difference between reporting incidents to the SA and reporting the suspicion of a crime to the SA and local law enforcement?

Current regulation requires a facility to report incidents: §483.13(c)(2)(F225) 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 “ also report the suspicion of a crime to the State Survey Agency and to local law enforcement.

Is abuse to be considered as part of this required reporting?

Under current requirements, abuse must always be reported to the State Agency; whether the alleged abuse rises to the level of a crime would depend on the Law of the applicable subdivision.

Is it sufficient to send notification of suspicious crime by fax to the State Survey Agency or is it required that we contact a person? If it is a person, will that individual be available on nights and weekends?

The State Survey Agency recommends covered individuals report suspicion of a crime to the SA as follows:

- Between the hours of 7:00 a.m.and12:00 Midnight - Contact the Adult Abuse Hotline at 1-800-392-0210

Please e-mail your “Questions from the Field” to Dave Walker walkerdavi@missouri.edu or Nicky Martin martincaro@missouri.edu, LTC Leadership Coach, Sinclair School of Nursing, University of Missouri



QUESTIONS FROM THE FIELD-CONTINUED

- Between Midnight and 7:00 a.m. fax a report to the Adult Abuse Hotline at 573-751-4386.

The reported information should include:

- The name of the person making the report and a phone number where they can be reached.
- The nature of the alleged crime.
- The date and time the alleged crime occurred.
- The name of the alleged perpetrator(s) of the alleged crime.
- The name of any residents who were victims of the alleged crime.
- The nature of any injuries or outcomes to the victims of the alleged crime
- The name of any witnesses to the alleged crime.
- Include any additional information available regarding the alleged crime.

This information should be readily available to all “covered individuals” in your facility.

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 under CMS regulations.

If a covered individual determines that he/she has a reasonable suspicion involving serious bodily injury and it is after business hours for the state agency or the weekend, what procedure should that individual follow?

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.

For example, if a reasonable suspicion of a crime that results in serious bodily harm occurs on a Saturday at 1:00 am, the timing obligation for reporting this would be satisfied if the individual who formed the suspicion both faxed a report to (573) 751-4386 **and** notified local law enforcement on that same day within two hours of forming the suspicion (the time limits are on page 1).

Please refer to the instructions noted above for “covered individuals” to meet the reporting requirements to the State Survey Agency.

The information above is derived from the CMS S&C: 11-30-NH which can be accessed at:

http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/scletter11_30.pdf

The Missouri Department of Health and Senior Services have resources available for anyone who suspects an elder has been abused, regardless of their living arrangements. Please visit

<http://health.mo.gov/seniors/abuse.php> for more information. **The Adult Abuse and Neglect Hotline for Missouri is 1-800-392-0210.**