

Mandatory Reporting of Crimes Under the Elder Justice Act

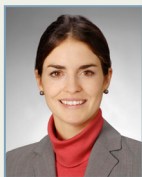
1. Previously, federal law regarding reporting of elder abuse only pertained to acts committed within a facility and required the facility to ensure that individuals reported to facility administrators and that reports were then made “in accordance with state law” (42 CFR 483.13).
2. The Elder Justice Act (“EJA”) statute requires that all “covered individuals” report to the Secretary of HHS and local law enforcement any “reasonable suspicion” of a crime against a resident or person who is receiving care from a “federally funded long-term care facility”.
3. Applies to long term facilities if they:
 - a. Receive over \$10,000 in federal funds annually. “Federal Funds” includes funding received under Social Security Act (“SSA”), e.g. Medicare and Medicaid.
 - b. AND provide services for “residents” with an “inability to engage in one or more activities of daily living”.
 - c. If a facility receives over \$10,000 in federal funds, the reporting obligation exists with regard to all residents, not just those on whose behalf the facility receives federal funds.
4. Covered Individuals.
 - a. Includes owners, operators, employees, managers, agents, and contractors of a long-term care facility.
 - b. Obligation not satisfied by only informing the owner or operator.
 - c. Statutory language requires each individual to report, although subsequent regulations may clarify whether one report per facility will suffice.
5. Both individual and facility must report “reasonable suspicion” of crime (as determined by local/state law) against long term care resident to local law enforcement and CMS.
 - a. No guidance as to what constitutes “reasonable suspicion”.
 - b. Subsequent regulations may offer additional clarity.
 - c. Err on the side of reporting.
 - d. Crime is defined by the law of the applicable political subdivision.
 - e. Broader than just typical elder abuse (e.g., embezzlement).
6. Strict timelines for reporting.
 - a. Quicker than most existing requirements.
 - b. Within 2 hours after forming the suspicion if the event results in serious bodily injury to a resident.
 - c. Within 24 hours otherwise.
7. Unclear how report must be made.
 - a. Statute requires report to be made to both:
 - i. Secretary of HHS AND
 - ii. Local law enforcement.

- b. Content of report is unclear.
 - c. Method for reporting is unclear: writing, phone, online?
 - d. CMS will be implementing EJA so will probably receive report. Watch for further guidance.
 - e. Suggestion for now: brief letter to regional CMS office stating suspected crime, the victim, and naming all individuals with knowledge who are required to report.
8. Stiff monetary penalties for failing to report.
- a. Up to \$300,000 if failure to report exacerbated harm, up to \$200,000 otherwise.
 - b. Possible exclusion from the federal programs.
 - c. During any period for which a covered individual is classified as an excluded individual, a facility that employs such individual shall be ineligible to receive Federal funds under this Act.
9. Covered facility must notify individuals of reporting requirement.
- a. Notify individuals immediately and then annually thereafter.
 - b. Consider asking local law enforcement to educate personnel regarding what constitutes a crime.
10. Covered facility must post conspicuous sign stating employees who report will be free from retaliation.
- Form of sign still to be determined.
11. CMS to issue initial guidance to states soon; additional memo and guidance to providers will follow later in 2011.

For more information or if you would like to schedule a consultation, please contact:



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