

NOVEMBER 21, 2011

LTC PROVIDERS MUST BE AWARE OF EJA REPORTING REQUIREMENTS

The Elder Justice Act (EJA) was enacted as part of the Patient Protection and Affordable Care Act (PPACA) in March, 2010, and creates a duty for long-term care providers to swiftly report any reasonable suspicion of a crime committed against any individual who is a recipient of care from the facility, or face significant penalties.

Any "Covered Individual" (CI) who develops the reasonable suspicion that a crime has been committed against someone receiving care at the facility must report to 1) local law enforcement, and 2) the state survey agency. The EJA defines a CI as any owner, operator, employee, manager, agent, or contractor of a long-term facility. Additionally, the facility must receive at least \$10,000.00 in federal funds annually to be subject to the EJA.

Once a CI has developed a reasonable suspicion of a crime, they have a very limited window to report in order to comply with the EJA. For crimes that result in serious bodily injury, the CI must report within two hours of forming the suspicion. For all other crimes, the CI must report within 24 hours. Facilities are responsible for at-least annual notifications to CIs of their reporting responsibilities under the EJA.

Failure to report in compliance with the EJA will result in civil monetary penalties (CMPs) and the possibility of exclusion. The failure to report will subject the CI to a CMP of up to \$200,000.00; if that failure to report resulted in increased harm to the victim, the CI is subject to a CMP of up to \$300,000.00.

While enforcement actions against facilities and CIs for EJA violations have not been widespread, state survey agencies are equipping surveyors with tools specifically targeted at facilities compliance with the EJA.

For example, Indiana recently released a checklist for surveyors to use during surveys to make sure the facility is in compliance with the EJA.

The checklist prompts the surveyor to ask the administrator questions such as: how does the facility determine whether they receive at least \$10,000.00 of federal funds annually; how does the facility provide CIs annual notice of their reporting obligations how does the facility provide notification to new employees of their reporting obligation during orientation; and how does the facility document each CIs notifications?

Additionally, the checklist addresses the required notice postings, and a review of the facilities policies and procedures to ensure they include: processes for determining the amount federal funds received annually and providing annual notice to CIs; evidence of a plan for training CIs; procedures to address how the CI reports to local law enforcement and the state survey agency; and checks on the facility's anti-retaliation policy and notice poster.

CMS has posted an S&C Letter to address the EJA.

Should you have any questions, please contact:

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