

## Draft Template Policy & Procedure

[NOTE: This template has **not** been approved by CMS or any other federal/state agency or law enforcement office and is provided to assist facilities respond to the new Elder Justice Act (EJA) about staff requirements to report a suspicion of a crime. Facilities **MUST** modify this template policy & procedure to comply with their local and state reporting laws about suspected crimes and to be consistent with the facilities other policies & procedures. ]

### **POLICY & PROCEDURE FOR REPORTING SUSPECTED CRIMES UNDER THE FEDERAL ELDER JUSTICE ACT**

#### **POLICY:**

It is [FACILITY NAME] policy to comply with the Elder Justice Act (EJA) about reporting a reasonable suspicion of a crime under Section 1150B of the Social Security Act, as established by the Patient Protection and Affordable Care Act (ACA), § 6703(b)(3). Specifically, it is [FACILITY NAME] policy to:

- a. annually notify all “*covered individuals*” (as that term is defined under the EJA) of their reporting obligations under the EJA to report a suspicion of a crime to the state survey agency (SSA) and *local law enforcement* for the *political subdivision* in which [FACILITY NAME] is located;
- b. refrain from *retaliating against any employee* who reports a suspicion of a crime against an individual receiving care in [FACILITY NAME];
- c. post a notice in a conspicuous location that informs all “*covered individuals*” of
  - o their reporting obligation under the EJA to report a suspicion of a crime to the SSA and *local law enforcement*; and
  - o their right to file a complaint with the state survey agency if they feel the [FACILITY NAME] has *retaliated against an employee* who reported a suspected crime under this statute;
- d. refrain from employing any individual who has been prohibited from working in a long term care facility because of failure to report a suspicion of a crime against a resident of a long term care facility; and
- e. [NOTE: Facilities are not required to report to either SSA or *local law enforcement* under this act; only individuals are required to report. However, facilities may be required to report certain incidents under other Federal, state or local laws and regulations such as reporting to SSA abuse, *neglect* or misappropriation of resident property. OPTIONAL: Facilities may choose but are not required under this act to adopt a policy that it will report a suspected crime against a resident to the SSA and one or more *local law enforcement* entities for the *political subdivision* in which the facility is located.]

#### **Statutory and CMS Policy References**

- §1150B of the Social Security Act, as established by §6703(b)(3) of the Patient Protection and Affordable Care Act of 2010; and
- CMS S&C: 11-30-NH.

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### Definitions (from CMS S&C: 11-30-NH):

“*Covered Individual*” means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility.

“*Suspicion of a Crime*” is defined by law of the applicable *political subdivision* where a LTC facility is located. Applicable facilities must coordinate with their state and *local law enforcement* entities to determine what actions are considered crimes within their *political subdivision*.

“*Political subdivision*” means a city, county, township or village.

“*Local law enforcement*” means the full range of potential responders to elder abuse, *neglect*, and exploitation including: police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators, and coroners.

“*Neglect*” is the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder or *self-neglect*.

“*Self-Neglect*” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.

“*Serious bodily injury*” is 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. In the case of “criminal sexual abuse” which is defined as serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is relating to aggravated sexual abuse or relating to sexual abuse.

“*Retaliate against an employee*” is when the employer discharges, demotes, suspends, threatens, harasses, or denies a promotion or any other employment-related benefit to an employee, or in any other manner discriminates against an employee within the terms and conditions of employment because the employee has met their obligation to report a suspicion of a crime.

### PROCEDURE:

#### A. Staff Reporting Requirements

1. When staff ( “staff” herein refers to *covered individuals*) suspect a crime has occurred against a resident at [FACILITY NAME], they must report the incident to SSA and *local law enforcement*.

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2. Staff must report a *suspicion of a crime* to the state survey agency and at least one *local law enforcement* entity within a designated time frame by e-mail, fax or telephone. The individual does not need to determine which *local law enforcement* entity to report a suspicion of crime; but, must report to at least one *local law enforcement* entity. This will meet the individual's obligation to report.
3. Staff can use the facility form to report a *suspicion of a crime*. There is no requirement to use the form.
4. Staff can either report the same incident as a single complaint or multiple individuals may file a single report that includes information about the suspected crime from each staff person using the facility form.
5. If, after a report is made regarding a particular incident, the original report may be supplemented by additional staff who become aware of the same incident. The supplemental information may be added to the form and must include the name of the additional staff along with the date and time of their awareness of such incident or suspicion of a crime. However, in no way will a single or multiple person report preclude an individual from reporting separately. Either an individual or joint report will meet the individual's obligation to report.
6. If the reportable event results in *serious bodily injury*, the staff member shall report the suspicion immediately, but not later than 2 hours after forming the suspicion.
7. If the reportable event does not result in *serious bodily injury*, the staff member shall report the suspicion not later than 24 hours after forming the suspicion.
8. Failure to report in the required time frames may result in disciplinary action, including up to termination.
9. Staff must report the suspicion of an incident to the <insert appropriate person> [Note: facilities should determine the appropriate person within the facility for reporting a suspicion of a crime such as the staff's supervisor, Director of Nursing (DON) or administrator].

### B. Staff Notification

1. Staff (i.e., "*covered individual*") will annually receive a copy of their obligation to comply with the law and these policies and procedures.
2. [Note: facilities need to determine how they will provide and document that they provided notification annually to all *covered individuals*]
3. All new staff, as part of their orientation to work at the facility, shall receive a copy of their obligation to comply with the law and this policy and procedure.

### C. Posting Requirements

1. [FACILITY NAME] will post conspicuously in an appropriate location a sign specifying the rights of employees under the EJA. This sign shall include both
  - a. the reporting requirements of each staff member; and

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- b. a statement that an employee may file a complaint with the state survey agency against a long-term care facility that *retaliates against an employee* for filing, and information how to file such a complaint to the SSA.
2. The sign should be posted in the same area that [FACILITY NAME] posts other required employee signs, such as wage/hour and OSHA posters. These are found in [list the location in the facility].
3. Size and type requirements for the sign should be no less than the minimums required for the other required employment-related signs.

### D. Facility Reporting [OPTIONAL]

[NOTE: Facility reporting is optional and not required as part of this EJA act; only individuals are required to report suspicion of a crime. However, Federal, state or local laws may require facility reporting. For example, Federal regulations require facilities to report abuse, *neglect* or misappropriation of resident property to the SSA.]

1. OPTIONAL: [FACILITY NAME] will file a report to SSA and *local law enforcement* using the attached form when becoming aware of a suspicion of a crime.
2. OPTIONAL: [FACILITY NAME] on behalf of staff will file a report to SSA and *local law enforcement* using the attached form when staff becomes aware of a suspicion of a crime.
3. OPTIONAL [FACILITY NAME] shall keep a record of these reports.