

Reporting Suspected Crimes Under the Federal Elder Justice Act

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POLICY: Residents have the right to be free from abuse, neglect, and misappropriation of property. To further protect those rights, Congress has enacted the Elder Justice Act (the “EJA”), which sets forth certain reporting requirements. Therefore, it is the policy of this facility to: (a) notify “covered individuals” (as that term is defined under the EJA) of their reporting obligations under the EJA; and (b) report crimes as required by the EJA.

Definitions

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

“Law enforcement entity” means a police department or sheriff department of a political subdivision.

“Owner or Operator” means the individual(s) or entity(ies) which own the license of the facility, OR the entity which manages the facility on behalf of the owner.

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

“Secretary” means the Secretary of the U.S. Department of Health and Human Services. Acting as their agent is the Michigan Department of Licensing and Regulatory Affairs (LARA)/Bureau of Health Systems

"Serious bodily injury" means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In addition, "serious bodily injury" is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse.

Obligation of the Owner or Operator

The EJA requires that the owner or operator of a long-term care facility that receives federal funds to annually determine whether the facility received at least \$10,000 in federal funds the preceding year.

Reporting Obligation of the Covered Individual: Please note that these reporting requirements are in addition to those required by state law and those required by Medicare and Medicaid certification.

The EJA requires:

Each covered individual shall report to the Michigan Department of Licensing and Regulatory Affairs (LARA)/Bureau of Health Systems (acting as the agent for the Secretary of the U.S. Department of Health and Human Services) and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

Timing

If the events that cause the suspicion—

result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

Posting Requirements

The facility will post conspicuously in an appropriate location a sign specifying the rights of employees under the EJA. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint. The sign should be posted in the same area that the facility posts other required employee signs, such as wage/hour and OSHA posters. To be posted where facility routinely post other required state and federal employee signs Size and type requirements for the sign should be no less than the minimums required for the other required employment-related signs.

PROCEDURE:

1. If the Owner or Operator determines that the facility received at least \$10,000 in federal funds, the Owner or Operator shall annually notify each Covered Individual of that individual's obligation to comply with the EJA's reporting requirements. (See Covered Individual Annual Notification Form)
2. The Covered Individual should make the report in writing to the facility, within the designated time frames above, and should do so if possible in writing following the facility's policy for reporting abuse, neglect, and misappropriation as well as unusual occurrences.
3. Upon receiving the report from the Covered Individual, the facility assumes the responsibility for reporting the matter to the required authorities. The facility should immediately report the matter to the Michigan Department of Licensing and Regulatory Affairs (LARA)/Bureau of Health Systems, acting as the agent for the Secretary of the U.S. Department of Health and Human Services.
4. The report should specifically state that the facility is reporting the matter on behalf of the Covered Individual, as well as on the facility's own behalf. The form to be used is attached to this policy.
5. The facility should also immediately report the matter to local law enforcement, again specifically stating that the facility is reporting the matter on behalf of the Covered Individual, as well as on the facility's own behalf. The form to be used is attached to this policy. The facility should keep a record of this report (for example, a fax transmission receipt, e-mail receipt, and/or copy of the e-mail).

Covered Individual Annual Notification Form

[name and address of facility]

[date]

[name and address of Covered Individual]

RE: POLICY & PROCEDURE FOR REPORTING SUSPECTED CRIMES UNDER THE FEDERAL ELDER JUSTICE ACT

Dear _____:

Effective March 23, 2010, Congress enacted the Elder Justice Act (“EJA”), which required long term care facilities to notify “Covered Individuals”, as defined in the EJA, of their obligation to report to local law enforcement, and to the Secretary of Health and Human Services, their reasonable suspicion of crimes committed against nursing home residents. The EJA defines a Covered Individual as each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility. This facility regards you as a Covered Individual, and the purpose of this Notice is to make you aware of your obligations under the EJA and to provide you with a copy of our facility Policy and Procedure on reporting crimes under the EJA.

The EJA requires:

Each covered individual shall report to the Michigan Department of Licensing and Regulatory Affairs (LARA)/Bureau of Health Systems (acting as the agent for the Secretary of the U.S. Department of Health and Human Services) and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

Timing

If the events that cause the suspicion—

- (A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and
- (B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

Please see the enclosed Policy and Procedure for complete details. Thank you.

Sincerely,

[name of facility and title]

IF YOU HAVE REASONABLE SUSPICION THAT A CRIME HAS OCCURRED AGAINST A RESIDENT OR PERSON RECEIVING CARE AT THIS FACILITY, FEDERAL LAW REQUIRES THAT YOU REPORT YOUR SUSPICION DIRECTLY TO BOTH LAW ENFORCEMENT AND THE STATE SURVEY AGENCY

If you believe the crime involves serious bodily injury including criminal sexual abuse to the resident, you must report it immediately, but no later than 2 hours after forming the suspicion.

OR

If the crime does not appear to cause serious bodily injury to the resident you must report it within 24 hours after forming the suspicion.

WHO MUST REPORT

- Individuals who must comply with this law are: owner(s), operators, employees, managers, agents or contractors of this LTC facility. This law applies to the above individuals associated with nursing facilities, skilled nursing facilities, hospices that provide services in LTC facilities, and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR).

PENALTIES FOR NOT REPORTING

- **Individuals** – Who fail to report are subject to a civil monetary penalty of up to \$300,000 and possible exclusion from participation in any Federal health care program as an “excluded individual.”

NO PENALTIES FOR REPORTING

- **This home cannot punish or retaliate against you for lawfully reporting a crime under this law.**
Examples of punishment or retaliation include: firing/discharge, demotion, threatening these actions, harassment, and denial of a promotion or any other employment-related benefit or any discrimination against an employee in the terms and conditions of employment. In addition, a facility may not file a complaint or a report against a nurse or other licensed individual or employee with the state professional disciplinary agencies because the individual lawfully reports the suspicion of a crime.
- Employees can file a complaint with the state survey agency against the facility if there is retaliation for reporting, causing a report to be made, or for taking steps in furtherance of making a report of a reasonable suspicion of a crime to the appropriate authorities.

HOW DO I REPORT

- Individuals reporting suspicion of a crime must call, fax, or email both local law enforcement and the state survey agency.

- Multiple individuals can report a suspicion of a crime jointly and will be considered in compliance with the law. However, an individual may report the suspicion separately if he/she chooses to do so and the facility may not prevent an individual from reporting.

Contact the following agencies regarding the suspicion of a crime at this home.

<name> (local law enforcement agency) <telephone #>

Michigan Department of Licensing and Regulatory Affairs, by one of the following methods:

1. Complete and submit the complaint online using the [BCHS Health Facility Online Complaint Form](#).
2. Call the **toll-free Complaint Hotline, 1-800-882-6006**.
3. Mail or fax a completed Nursing Home Complaint Form (BCHS-OPS-361) for nursing homes or submitting a letter to the BCHS address:

Michigan Department of Licensing and Regulatory Affairs
Bureau of Community and Health Care Systems (BCHS), Health Facility Complaints
P.O. Box 30664; Lansing, Michigan 48909

Complaint Hotline: 1-800-882-6006;

Fax Number: (517) 241-0093

Email: BCHS-Complaints@michigan.gov

To file a complaint because you believe you have been punished or retaliated against for reporting the suspicion of a crime, contact the Michigan Department of Licensing and Regulatory Affairs using any of the methods listed above.
