



ADMINISTRATIVE MEMORANDUM #2013-01

To: Executive Directors of Voluntary Provider Agencies
Directors of Developmental Disabilities Regional Offices
Directors of Developmental Disabilities State Operations Offices

From: Megan O'Connor-Hebert, Deputy Commissioner
Division of Quality Improvement

Date: February 8, 2013

Re: Elder Justice Act- **Reporting Reasonable Suspicion of a Crime in an Intermediate Care Facility (ICF)/ Long-Term Care Facility (LTC)**

Applicability:

All community based ICFs surveyed by OPWDD

Background:

The Elder Justice Act (EJA, or the "Act") section 6703(b)(3), which adds section 1150B to Title XI of the Social Security Act, imposes notification and reporting requirements that apply to long-term care facilities, which includes intermediate care facilities (ICFs), receiving at least \$10,000 in annual federal funds during the prior year.

- Each covered individual, defined as an owner, operator, employee, manager, agent or contractor of a long-term care facility, **must report to the U.S. Department of Health and Human Services (HHS) and local law enforcement, "any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility."**
- **In addition, owners and operators of facilities must annually notify covered individuals of their reporting obligations and must "conspicuously" post a sign describing employee rights under the EJA.**
- **Finally, facilities are prohibited from retaliating against employees who report possible crimes under the Act.**

Purpose:

The purpose of this memorandum is to remind ICF providers of the EJA requirements and to provide you with the posting required by the EJA containing all the required elements. Please amend the attached to reflect specific information for each ICF location by inserting contact information for local law enforcement as well as to answer questions. The poster is meant to

explain a covered individual's right to file a complaint with the state survey agency if they believe that the facility has retaliated against an employee or individual who reported a suspected crime under the EJA, and how to file such a complaint with the state survey agency. The sign should be posted in the same area that you post other required employee notifications. In addition, employees of ICFs should be notified of the above reporting requirements on an annual basis.

In addition, CMS recommends the following additional advisable functions:

- Coordinate with Law Enforcement to determine what actions are considered crimes
- Review Adherence to Existing CMS Policies for reporting incidents and complaints.
- Develop Policies and Procedures for Section 1150B-including the prohibition of retaliation against any employee who makes a report, causes a lawful report to be made or takes steps in furtherance of making a lawful report pursuant to the requirements of the statute.

Attachment

cc: Central Office Leadership Team