

MEDICAL DEFENSE AND HEALTH LAW

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IN THIS ISSUE

Section 6703(b)(3) of the Affordable Care Act requires federally funded long-term care facilities to report crimes occurring within the facility to law enforcement. This article discusses the individuals who are required to report, what crimes must be reported, the penalties for failure to report, and compliance under Section 6703(b)(3).

Requirement to Report Suspected Crimes in Long Term Care Facilities

ABOUT THE AUTHORS



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ABOUT THE COMMITTEE

The Medical Defense and Health Law Committee serves all members who represent physicians, hospitals and other healthcare providers and entities in medical malpractice actions. The Committee recently added a subcommittee for nursing home defense. Committee members publish monthly newsletters and *Journal* articles and present educational seminars for the IADC membership at large. Members also regularly present committee meeting seminars on matters of current interest, which includes open discussion and input from members at the meeting. Committee members share and exchange information regarding experts, new plaintiff theories, discovery issues and strategy at meetings and via newsletters and e-mail.

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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Subtitle H of the Patient Protection and Affordable Care Act of 2010 (“ACA”) is also known as the Elder Justice Act of 2009. Located within this subtitle is Section 6703(b)(3) which adds section 1150B, entitled “Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities,” to the Social Security Act. Under this section, covered individuals in applicable long-term care facilities must report any reasonable suspicion of crimes committed against a resident or a receiver of care in that facility.

Section 6703(b)(3) pertains to residential care facilities that arrange for or directly provide long-term care, include nursing facilities, skilled nursing facilities, hospices that provide services in long-term care facilities, and intermediate care facilities for the developmentally disabled (“Facility”). If a Facility received at least ten thousand dollars (\$10,000) in federal funds under the ACA during the preceding fiscal year, then facility must notify each covered individual of its obligation to comply with the reporting requirements of this section. An owner, operator, employee, manager, agent, or contractor of these facilities is considered a “covered individual” under the section and therefore required to comply with the enumerated reporting requirements. Importantly, the reporting obligations fall on the covered individuals and not the Facility as an entity.

The section requires that a “covered individual” must report events that cause suspicion to the Secretary and one or more law enforcement entities where the facility is located within a precise time. Specifically, the section provides that if an event results in serious bodily injury then the individual is mandated to report the suspicion immediately, but no later than two hours after forming the

suspicion. If the event does not result in serious bodily injury, then the individual shall report the suspicion not later than twenty-four hours after the forming of the suspicion.

If the covered individual fails to comply with these requirements then the individual will be subject to hefty monetary and exclusionary penalties. Specifically, the individual is mandatorily subject to a civil monetary penalty which cannot exceed two hundred thousand dollars (\$200,000). This penalty increases, however, if there is a finding that the individual’s violation exacerbates the harm to the victim. In this instance, the covered individual shall be subject to a civil penalty not to exceed three hundred thousand dollars (\$300,000). The section declares that the Secretary may, in assessing the penalty amount, take into account the financial burden on individuals who provide services to underserved populations. The individual may also be excluded by the Secretary from participating in any Federal healthcare program. If a Facility employs an individual that has been excluded through this section then the Facility is ineligible to receive funds for the period that the excluded individual is employed.

A Facility is prohibited from retaliating against an employee who makes a report of such violation. A Facility is also required to post “conspicuously and in an appropriate location” information about employees’ rights, including the right to file a complaint if a Facility retaliates against anyone who files a report. If the Facility violates either of these provisions then it shall be subject to a civil penalty of not more than two hundred thousand dollars (\$200,000) or the Secretary may exclude the entity for a period of up to two years, or both.

Ultimately, Facilities should have a set procedure for annually notifying all covered



individuals of their reporting requirements and potential violations for non-compliance. The Facility should document that all covered individuals have been notified timely of these requirements. Examples of such documentation may include a copy of a notice or letter sent to covered individuals or a

completed training/orientation attendance sheet along with a copy of the training/orientation presentation and/or manual.

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