



Managing the Changing Legal Landscape:
**Reporting Suspected Crimes in Nursing
Homes and Long-Term Care Facilities**

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New Rules--Reporting Suspected Crimes in LTC Facilities

- Elder Justice Act –part of PPACA of 2010
- Section 6703 (b) (3) of PPACA requires certain LTC facilities to report reasonable suspicion of crimes committed against residents of the LTC facility
- EJA --New Section 1150B of the Social Security Act
- Codified at 42 USC 1320b-25
- Effective March 23,2010
- Recent guidance--CMS Memo to Surveyors--June 17 2011



What facilities must comply?

- Applies to LTC facilities receiving at least \$10,000 in federal funds during the previous year
- LTC facility defined as a residential care provider that arranges or directly provides LTC
- LTC is defined as supportive and health services for individuals who need assistance because of a loss of capacity for self-care due to illness, disability or vulnerability

What facilities must comply?

- CMS states that the new rules apply to: 1) nursing facilities (NFs); 2) skilled nursing facilities (SNFs); 3) hospices providing care in LTC facilities; and 4) ICF/MRs

Covered individuals:

- Determine first whether LTC facility received over \$10,000 in federal funding last year

Rx: Compliance measures

- Owner or operator must annually notify each covered individual -- owner, operator, employee, manager, agent, or contractor-- of the LTC facility's reporting obligations
- Conspicuously post a notice: including rights and process to file a complaint , including a complaint for retaliation for reporting employees
- Refrain from retaliation against an individual that lawfully reports a reasonable suspicion of a crime



Rx: Further compliance measures

- Coordinate with local law enforcement to determine what actions are criminal in the particular local
- Review existing protocols for reporting incidents and complaints
- Develop and maintain policies and procedures that ensure compliance with Section 1150B including no retaliation



What must I report?

- Must timely report reasonable suspicion of a crime against a resident of a LTC facility
- Must report retaliation for filing a complaint
- Must report failure to report violations
- Must report other violations of Section 1150B

Who must I report a suspected crime to?

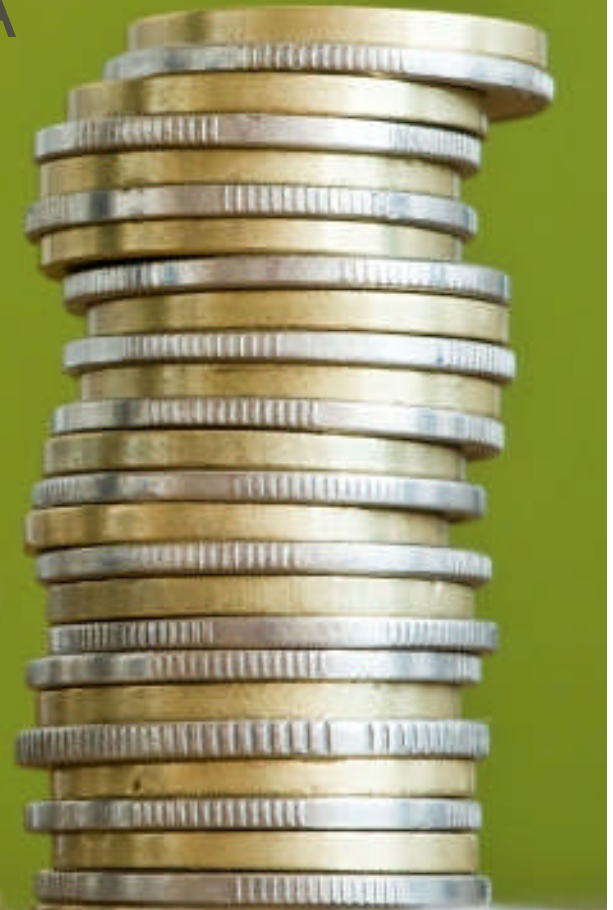
- Covered individuals must timely report suspected crimes or violations of Section 1150B to SA (OHFLAC) and also to at least 1 local law enforcement agency

When must I report the suspected crime?

- If there is reasonable suspicion that serious bodily injury to a resident has occurred — must report immediately but not later than 2 hours after forming the suspicion
- If there is no reasonable suspicion as to serious bodily injury — must report within 24 hours after forming the suspicion

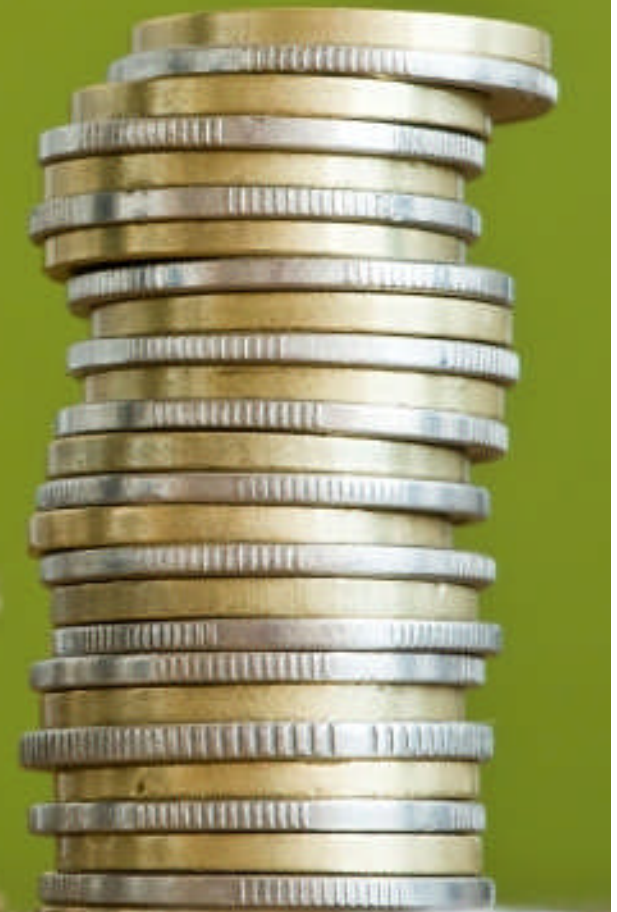
Penalties:

- Failure to timely report to SA and 1 law enforcement agency---up to \$200,000



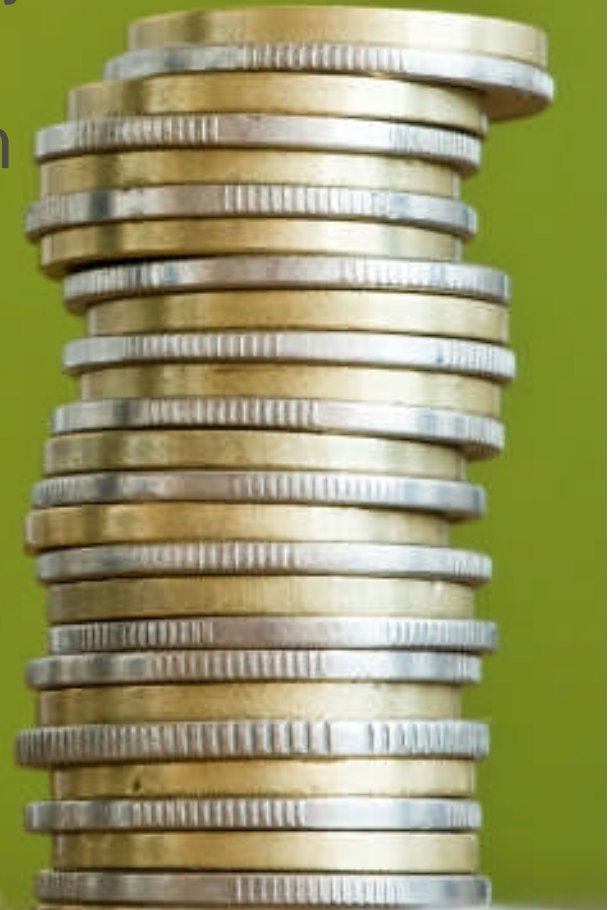
Penalties:

- Secretary can exclude the covered individual from Medicare and Medicaid



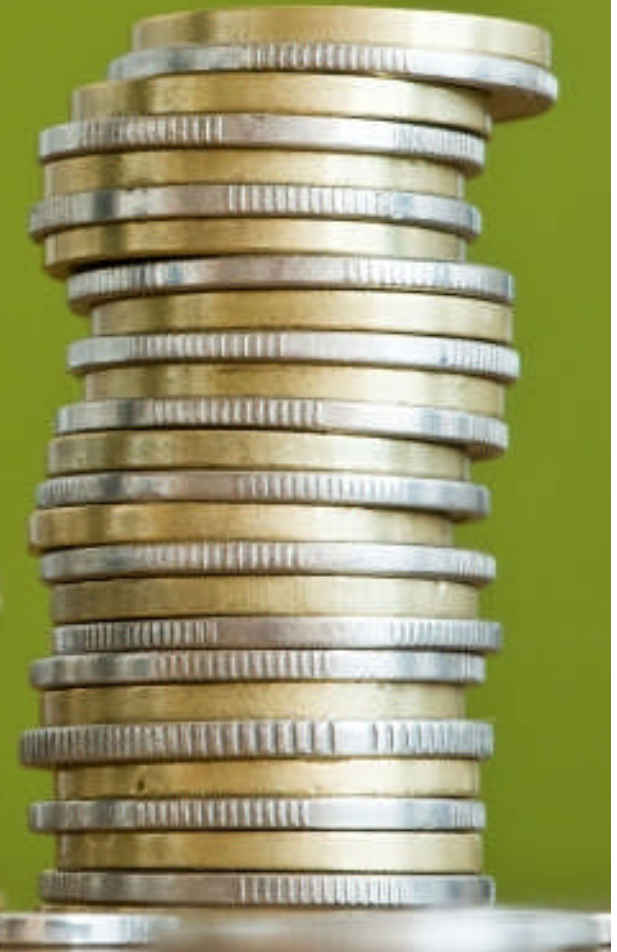
Penalties:

- If violation for failure to timely report results in increased harm to the resident or harm to another, the penalty can be up to \$300,000 and exclusion



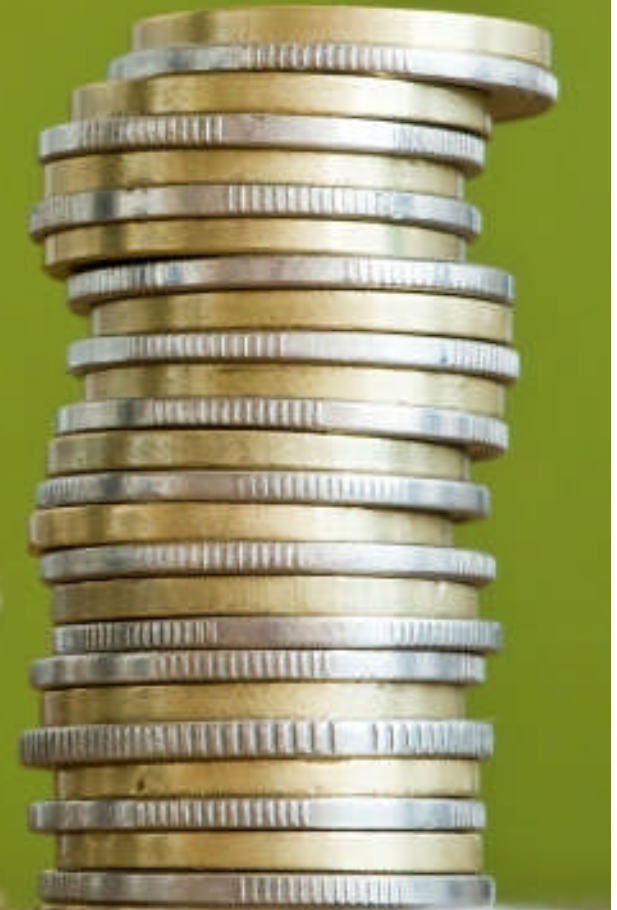
Penalties:

- Violations for employing an excluded individual – LTC ineligible to receive federal funds during the period of employment



Penalties:

- Retaliation—up to \$200,000 or excluded for 2 years



Other sanctions:

- There are further sanctions available to the SA in the form of deficiencies during complaint and regular licensure review

Prevent a Violation:

- Develop comprehensive policies to address reporting of suspected crimes
- Train employees and contractors on compliance with reporting requirements
- Post notice of requirements
- Avoid retaliation for reporting violations or suspected crimes
- Standardized complaint form

Proactive measures:

- Develop policies for compliance with Section 1150B
- Train staff on Section 1150B policies and reporting obligations
- Review past incidents and evaluate for potential reportable suspected crimes and random sample of other records
- Make sure all reporting obligations are consistent



Proactive measures:

- Meet with local law enforcement officials
- Develop consensus on what actions constitute reportable crimes
- Discuss reporting form and how processed
- Develop a contact person and procedures for clarifying novel situations
- Discuss investigation procedures to minimize disruption and to maximize privacy

Crimes to be reported?

- Resident reports that aide struck other resident
- Resident reports that aide stole resident's tape player
- Resident strikes a nurse
- Resident flashes roommate
- Nurse curses resident
- Resident steals roommate's food
- Relative claims other relative embezzled resident funds

Crimes to be reported?

- Family members engage in fisticuffs in the reception area
- Drugs for resident are diverted by nurse
- Resident shoves other resident causing a fall
- Family members bring in illegal drugs to resident
- Guardian falsifies application for Medicaid benefits
- Resident bites a social worker

Nursing Home Transparency Act:

- Subtitle B Nursing Home Transparency and Improvement
- Disclosure of ownership, governing body, additional disclosable parties, and organizational structure
- Establish a comprehensive compliance and ethics program(5 or more facilities more intensive program)
- Quality assurance and performance improvement standards issued by December 31, 2011

Nursing Home Transparency Act:

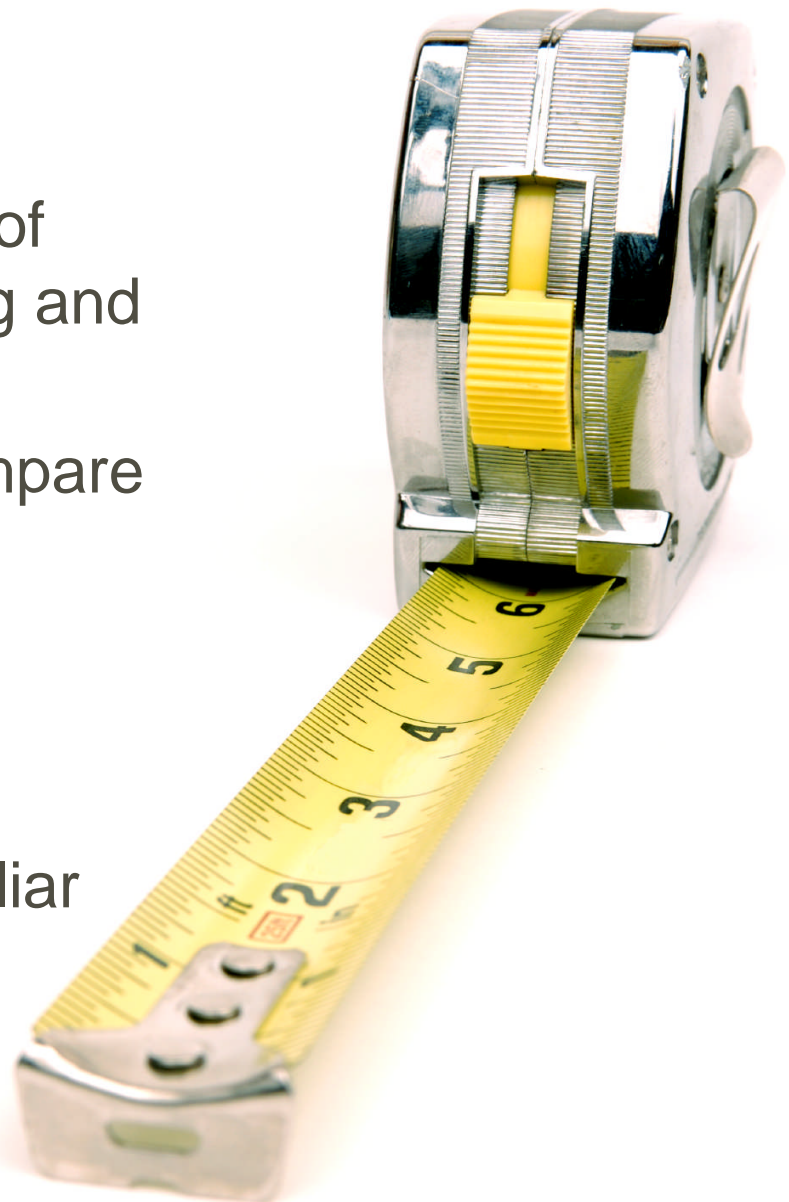
- Nursing Home Compare Website:
- Data as to Staffing
- Links to State inspection reports
- Standardized complaint form
- Disclosure of adjudicated criminal violations
- Consumer rights

Nursing Home Transparency Act:

- National Demonstration Project on Culture Change and Use of Information Technology in Nursing Homes
- National Independent Monitor Demonstration Project
- Dementia and Abuse Prevention training
- Sixty days notice of facility closure

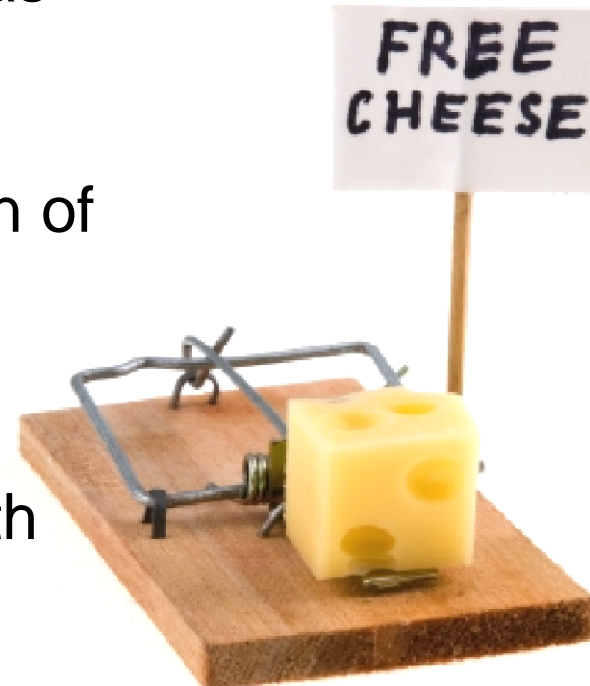
Compliance audit:

- Conduct an internal review of compliance policies, training and incident reporting
- Plan for Nursing Home Compare disclosures
- Carefully monitor patient satisfaction surveys and complaints
- Have a contact person familiar with compliance policies to address issues



Risk management issues:

- Check insurance coverage for criminal acts of employees — you will be reporting more incidents as suspicious crimes
- Qualify reports as mandatory reporting of reasonable suspicion of a crime — not yet adjudicated
- Timely report, thoroughly investigate and document
- Discuss significant incidents with counsel and insurance representative







Thanks!!!

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