



North Carolina Department of Health and Human Services
Division of Health Service Regulation

2701 Mail Service Center • Raleigh, North Carolina 27699-2701

<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

Jeff Horton, Chief Operating Officer
Phone: 919-855-3757
Fax: 919-733-2757

MEMORANDUM

July 1, 2011

TO: Long Term Care Facility providers - Nursing Homes, Intermediate Facilities for the Mentally Retarded (ICFs/MR) and Hospice Agencies

FROM: Jeff Horton

SUBJECT: June 17, 2011 memorandum from the Centers for Medicare and Medicaid Services (CMS) concerning "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (LTC); Section 1150B of the Social Security Act

The purpose of this memorandum is to inform you of the above referenced memo from CMS regarding "Reporting Reasonable Suspicion of a Crime in a LTC facility," which is enclosed. We recommend you carefully read the memo in order to assure your facility or agency is in full compliance with Section 1150B of the Social Security Act. Since North Carolina's process for reporting incidents and complaints is unique, we would like to point out how to apply the provisions of the CMS memo in the context of the current systems in place within the Division of Health Service Regulation (DHSR).

- If the incident involves an unlicensed healthcare personnel (See in G.S. 131E-256(c)) allegedly committing an act of abuse, neglect, misappropriation of property, etc. (See G.S. 131E-256(a)(1), that may constitute "any reasonable suspicion of crimes committed against a resident of the facility" as defined by state law, the incident should be reported to the DHSR Health Care Personnel Registry Section in accordance with N.C. General Statute 131E-256 – Health Care Personnel Registry (<https://www.ncnar.org/nchepr.html>). The facility or agency continues to be responsible for assuring policies and procedures are in place and implemented for reporting and investigating allegations of abuse, neglect and misappropriation of property in accordance with existing federal requirements.
- For all other incidents, which may constitute "any reasonable suspicion of crimes against a resident of the facility" as defined by state law, such incidences should be reported to the DHSR Complaint Intake Unit (<http://www.ncdhhs.gov/dhsr/ciu/complaintintake.html>).
- For posting a conspicuous notice for employees that specifies employees' rights, including the right to file a complaint (see "c" on Page 3 the CMS memo), DHSR has developed a notice, which can be found at <http://www.ncdhhs.gov/dhsr/ciu/complaintintake.html>.



To reiterate a few key points in the CMS memo as noted under “2” on Page 3:

“A facility that effectively implements section 1150B will:

- a) ***Coordinate with Law Enforcement:*** Coordinate with the facility’s State and local law enforcement entities to determine what actions are considered crimes in their political subdivision (including how to report crimes).
- b) ***Review Adherence to Existing CMS Policies:*** Review existing facility protocols and procedures to ensure adherence to existing CMS and State policies and procedures for reporting incidents and complaints. For example, participating nursing homes are already required to have policies and procedures in place to report abuse, neglect or misappropriation of resident property. During the course of a standard survey or complaint investigation, the identification of a possible crime may trigger a review of the LTC facility’s policies and procedures for reporting as required under the Federal conditions and requirements for that provider type, and a review of the actions taken to make any required incident report.
- c) ***Develop Policies and Procedures for Section 1150B:*** Develop and maintain policies and procedures that ensure compliance with 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.”

If additional information from CMS is issued on this topic, it will be disseminated to LTC facility providers accordingly. Thank you in advance for your cooperation in this matter and if you have questions concerning this memo, please do not hesitate to contact this office.

Enclosures

Cc: N.C. Department of Justice, Medicaid Investigations Unit
N.C. Division of Aging and Adult Services
N.C. Division of Medical Assistance
N.C. Health Care Facilities Association
N.C. Association for Home and Hospice Care
Carolinas Center for Hospice & End of Life Care
N.C. Sheriffs’ Association
N.C. Association of Chiefs of Police
N.C. Justice Academy
N.C. District Attorney’s Association
N.C. Providers Council
N.C. Association of Community – Based ICF/MR and CAP Services Providers

