



COMMISSIONER
Chris Traylor

January 26, 2012

To: Hospice Agencies, Intermediate Care Facilities for Persons with Intellectual Disability (ICFs/ID) and Nursing Facilities (NFs)

Subject: **Provider Letter 12-07** – Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (Replaces Provider Letter 12-06)

This letter clarifies how to apply the provisions of the Centers for Medicare and Medicaid Services Survey and Certification (S&C) Letter 11-30-NH in the context of the Department of Aging and Disability Services' (DADS) current incident reporting requirements. If you have not already done so, please read S&C Letter 11-30-NH carefully to understand the measures that must be taken to comply with new Section 1150B of the Social Security Act. Section 1150B applies to NFs, ICFs/ID, and hospices that provide services in long-term care facilities. S&C Letter 11-30-NH is available on the DADS website at <http://www.dads.state.tx.us/providers/communications/2011/sc/cmssc11-30.pdf>.

Here are some points of guidance with regard to applying the provisions of S&C 11-30-NH in the context of DADS' current incident reporting requirements:

- Section 1150B requires reporting of “any reasonable suspicion of a crime” to at least one local law enforcement agency of jurisdiction and to DADS. Reports to DADS (and the Department of Family and Protective Services, if appropriate) must also be made in accordance with current reporting guidelines as outlined in Provider Letter 06-12 and 40 TAC §97.249 (Hospice), Provider Letter 06-43 (NF), Provider Letter 09-02 (non-licensed ICF/ID) and Provider Letter 10-24 (licensed ICF/ID).
- Facilities, per page 3 of S&C 11-30, should coordinate with local law enforcement entities to determine what actions are considered crimes within their political jurisdiction. In the event more than one local law enforcement entity may have jurisdiction, such as a local police or sheriff's department, DADS recommends facilities confirm which law enforcement entity should receive reports. DADS also recommends that owners, operators, employees, managers, agents or contractors of facilities and agencies review the Texas Penal Code, in particular the offenses in Chapters 22 (Assaultive Offenses), 31 (Theft) and 32 (Fraud). The Texas Penal Code is available on the Texas Legislature's website at <http://www.statutes.legis.state.tx.us/>. Incidents of abuse, neglect and exploitation reported to law enforcement may result in a criminal investigation for one or more of the offenses in Chapters 22, 31 or 32.

- Section 1150B sets out two time frames for reporting reasonable suspicion of a crime to the local law enforcement agency of jurisdiction and DADS: events that result in “serious bodily injury” (as defined in Appendix One of S&C 11-30-NH) must be reported within two hours; all other events must be reported within 24 hours. For some reportable events, the Section 1150B time frames will differ from the time frames outlined in Provider Letters 06-12, 06-43, 09-02 and 10-24. All events should be reported in accordance with the shortest applicable time frame, i.e., either the time frame per Section 1150B or the time frame in the applicable provider letter. Prompt reporting and investigation of possible criminal acts is critical.
- Section 1150B requires facilities to conspicuously post a notice (see page 3 of S&C Letter 11-30-NH) for employees that specifies employees’ rights, including the right to file a complaint under the statute. The notice must include a statement that an employee may file a complaint with DADS (by calling 1-800-458-9858) against a facility/agency that retaliates against an employee who makes a lawful report. For immediate use, facilities should create and post a suitable notice. DADS intends to develop a poster that it will provide to facilities; we will send out notification when this poster is available.

If you have questions about the information in this letter or about S&C Letter 11-30-NH, please contact a program specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

[signature on file]

Veronda L. Durden
Assistant Commissioner
Regulatory Services

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