



# Client Alert



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## Health Reform Contains New Laws to Protect the Elderly

Health reform legislation enacted under the Patient Protection and Affordable Care Act (PPACA), signed into law by President Obama on March 23, 2010, contains provisions aimed at increasing protections for the elderly. Among these provisions are the Elder Justice Act, which contains new reporting requirements already in effect, and the Patient Safety and Abuse Prevention Act, which establishes a nationwide system to run background checks and screens for employees of long-term care providers. Below is an overview of these provisions and their impact on long-term care providers.

This article is a continuation of a series of articles on the impact of PPACA on long-term care providers. To view our previous article on nursing home ownership disclosures, click [here](#).<sup>1</sup> To view our previous articles on nursing home transparency and improvement initiatives, click [here](#)<sup>2</sup> and [here](#).<sup>3</sup>

### Elder Justice Act

With the enactment of the Elder Justice Act contained in PPACA, elder abuse, neglect and exploitation prevention efforts will be coordinated at the federal level. Long-term care facilities, defined as “residential care provider[s] that arrange for or directly provide, long-term care,” should be aware that new reporting requirements under PPACA are already in effect and are applicable to facilities that received at least \$10,000 in federal funds during the preceding year.

Facilities are required to report to the Department of Health and Human Services (HHS) and one or more local law enforcement entities any reasonable suspicion of a crime against a resident. If the suspicious incident resulted in serious bodily injury, the facility must report the incident immediately, but not later than two hours after forming the suspicion. If the incident does not result in serious bodily injury, the facility must report the suspicion within 24 hours. Facilities must annually notify each individual who is an “owner, operator, employee, manager, agent, or contractor” of that individual’s reporting obligation. Violation of the reporting requirements will result in civil monetary penalties up to \$300,000 and possible exclusion from participation in federal healthcare programs. There are similar penalties for retaliating against an employee for lawful acts.

- 1 [http://www.agg.com/media/interior/publications/Rubinger\\_Burgar-Nursing\\_Home\\_Ownership\\_Disclosures\\_Expand.pdf](http://www.agg.com/media/interior/publications/Rubinger_Burgar-Nursing_Home_Ownership_Disclosures_Expand.pdf)
- 2 [http://www.agg.com/media/interior/publications/Rubinger\\_Grozine-Health\\_Reform\\_Brings\\_Nursing\\_Home\\_Transparency.pdf](http://www.agg.com/media/interior/publications/Rubinger_Grozine-Health_Reform_Brings_Nursing_Home_Transparency.pdf)
- 3 [http://www.agg.com/media/interior/publications/Rubinger\\_Burgar-Patient\\_Protection\\_and\\_Affordable\\_Care\\_Act.pdf](http://www.agg.com/media/interior/publications/Rubinger_Burgar-Patient_Protection_and_Affordable_Care_Act.pdf)

The legislation contains additional provisions aimed at coordinating abuse, neglect and exploitation prevention efforts. Part I of the Elder Justice Act focuses on national coordination of elder justice activities and research. The legislation establishes the Elder Justice Coordinating Council (the Council) within HHS, which is charged with making recommendations to HHS, the Department of Justice, and other federal, state, and private agencies and entities relating to elder abuse, neglect and exploitation. The Council will also report to Congress every two years on its activities and will make recommendations for legislation, model laws or other action. The legislation also establishes the Advisory Board on Elder Abuse, Neglect and Exploitation to create strategic plans for the development of the field of elder justice and to advise the Council. The legislation makes federal funding available for research grants for the collection of data surrounding elder abuse.

The legislation also establishes stationary and mobile forensic centers to “assist in determining whether abuse, neglect or exploitation occurred and whether a crime was committed and to conduct research” to describe and disseminate information on the detection of abuse and intervention.

Part II of the Elder Justice Act establishes grant programs to promote elder justice. The programs are intended to improve long-term care staffing and to provide training and assist providers in management practices that utilize methods that promote the retention of direct care individuals. HHS is authorized to make grants to providers to offset the cost of adopting electronic health record technologies designed to improve patient safety. The legislation also establishes and enhances state adult protective services programs and provides grants to support state long-term care ombudsmen in expanding the capacity to respond to and resolve complaints regarding elder abuse and neglect. HHS will also establish ombudsman training programs, as well as a National Training Institute for federal and State surveyors who investigate allegations of elder abuse in long-term care facilities.

Finally, HHS is required to consult with government agencies and private sector organizations and conduct a study on the establishment of a Nurse Aide Registry that would collect information regarding federal and state law violations by individuals included in the registry.

## **Patient Safety and Abuse Prevention Act: Nationwide Background Checks**

PPACA contains the Patient Safety and Abuse Prevention Act which expands an HHS pilot program that created a national criminal background check system for employees of long-term care facilities and providers. The program will be an extension of that pilot program, created under section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 and will prohibit the hiring of abusive workers and authorize the of imposition of penalties for violations. For information on the pilot program, click [here](#).<sup>4</sup>

The program is conducted through agreements between the states (Participating States) and HHS. States are encouraged through Federal funding to participate in the program, but they are not required to do so. Currently, background checks on long-term care employees are a function of state law and do not detect crimes committed across state lines. For example, Georgia law requires a nursing home to perform a criminal record check from the Georgia Crime Information Center (GCIC) prior to hiring an applicant for a position in a facility.

<sup>4</sup> [http://www.agg.com/media/interior/publications/Rubinger\\_Grozone-LINK-PilotProgram.pdf](http://www.agg.com/media/interior/publications/Rubinger_Grozone-LINK-PilotProgram.pdf)

Under PPACA, HHS is required to establish a program to identify procedures for long-term care facilities or providers to conduct nationwide criminal background checks on direct patient access employees. The term “Direct Patient Access Employee” is defined as follows:

[A]ny individual who has access to a patient or resident of a long-term care facility or provider through employment or through contract with such facility or provider and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program.

Participating States will be required to establish procedures requiring long-term care facilities to conduct background checks, which will include fingerprinting. The following provider-types will be subject to the nationwide background check program in Participating States:

- Skilled Nursing Facilities
- Nursing Facilities
- Home Health Agencies
- Hospice Providers
- Personal Care Providers
- Adult Day Care Providers
- Certain Residential Care/Assisted Living Providers
- Intermediate Care Facilities for the Mentally Retarded
- Any other provider of long-term care services as the state determines appropriate

## **Conclusion**

With the new legislation’s focus on patient safety and elder abuse, providers will certainly see increased scrutiny both at the state and federal level with respect to these issues. Providers should be attuned to these issues and should become familiar with the reporting and screening requirements to ensure compliance with the new law.

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