

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251
Andrew M. Cuomo, Governor Greg Olsen, Acting Director
An Equal Opportunity Employer

TECHNICAL ASSISTANCE MEMORANDUM Number: 11-TAM-02

Supersedes

Expiration Date

DATE: December 13, 2011

TO: Local Ombudsmen Coordinators

SUBJECT: Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility under Section 1150B of the Social Security Act

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PURPOSE: To inform local Ombudsmen Coordinators of their responsibility and the responsibility of ombudsmen volunteers to report a reasonable suspicion of a crime in a long-term care facility under Section 1150B of the Social Security Act.

BACKGROUND:

As many of you are aware, Section 1150B of the Social Security Act was amended by the Patient Protection and Affordable Care Act of 2010. Among those amendments is a requirement that specific individuals in applicable long-term care facilities report any reasonable suspicion of crimes being committed against residents in the facility.

A question has been asked regarding whether or not Ombudsmen fall into the category of specific individuals who are required to report any reasonable suspicion of a crime being committed. Those that are required to report any reasonable suspicion of a crime are designated as Covered Individuals under the Act. A Covered Individual is defined under the Act as being an individual who is an owner, operator, employee, manager, agent or contractor of a long-term care facility. In addition, in order to be defined as a covered individual, that individual must be an owner, operator, employee, manager, agent or contractor of a long-term care facility that receives at least \$10,000 in Federal funds under the Social Security Act.

It is clear the Ombudsmen are not owners, operators, employees or managers of long-term care facilities. In addition, Ombudsmen are not viewed as agents or contractors of long-term care facilities. In order for an Ombudsman to be an agent or contractor of a long-term care facility, such Ombudsmen would have to have a fiduciary duty or contractual obligation to the long-term care facility and such duties or contractual obligations are not permitted under the Older Americans Act and the New York State Elder Law.

As a result, it is the conclusion of the New York State Long Term Care Ombudsman Program that Ombudsmen are not covered individuals under Section 1150B of the Social Security Act and are under no obligation as a result of the Act to report any reasonable suspicion of a crime against any individual who is a resident of, or receiving care from a facility.

PROGRAMS AFFECTED:

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| <input type="checkbox"/> Title III-D | <input type="checkbox"/> Title III-E | <input type="checkbox"/> Title III-B | <input type="checkbox"/> Title III-C-1 | <input type="checkbox"/> Title III-C-2 |
| <input type="checkbox"/> EISEP | <input type="checkbox"/> NSIP | <input type="checkbox"/> CSE | <input type="checkbox"/> SNAP | <input type="checkbox"/> Energy |
| <input type="checkbox"/> Other: | | <input type="checkbox"/> Title V | <input type="checkbox"/> HIICAP | <input checked="" type="checkbox"/> LTCOP |

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