

**Indiana State Department of Health
Health Care Quality and Regulatory Commission**

Questions and Answers

Reporting Reasonable Suspicion of a Crime in a Long Term Care Facility

Program Advisory Letter Attachment D

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The following are questions and answers concerning the reporting of a reasonable suspicion of a crime. These answers were developed by the ISDH and are subject to change based on further Federal guidance.

QUESTION 1: May the facility require an individual to report an incident or concern that the individual has witnessed or suspects to his or her supervisor or the Administrator?

ANSWER: Yes. Under CFR Section 483.13(c)(2), the facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility. It is not required, nor advisable, that facility policy require an individual to disclose whether or not the individual reported the reasonable suspicion of a crime to local law enforcement entity and state survey agency. Reporting to a local law enforcement entity or state survey agency is a responsibility of the covered individual.

QUESTION 2: The regulation requires reporting within 2 hours or 24 hours depending on the scope of injury occurring. If the incident occurs over a weekend or holiday, must it still be reporting within that time frame or can it wait until Monday?

ANSWER: It must be reported immediately according to that time frame. Local law enforcement entities and the ISDH will monitor reporting systems for new reports.

QUESTION 3: A coworker observed a suspected theft of property from a resident. The coworker told me what happened. Am I required to report to the local law enforcement entity and ISDH?

ANSWER: An individual is required to report when the individual forms a reasonable suspicion of a crime against a resident. The answer to the question is therefore based on

whether you formed a reasonable suspicion that a crime occurred against a resident. The ISDH believes that an individual must have sufficient credible information to form a reasonable suspicion for the reporting requirement to occur. If you have what you believe is credible information and you suspect that a crime occurred, then you must report.

In its questions and answers, CMS suggested that reporting was not limited to individuals with first-hand knowledge. Based on the CMS guidance, the ISDH suggests that if the individual obtains knowledge of a criminal act that he or she has reason to believe is true, then there is a reasonable suspicion and it must be reported. When the coworker told you that he or she observed a suspected theft, if you found that comment credible and formed a suspicion of a crime, then you must report.

Likewise, let's say you heard about an incident but have doubts that something occurred. You probably do not have sufficient information to form a reasonable suspicion so are therefore not required to report. At a later time, you discover some information that you find credible and supports a suspicion that a crime occurred. Once you form that level of suspicion, you are then required to report.

Let's say that the office rumor mill is talking about something that occurred but you have no reason to know whether something actually occurred. That likely does not rise to the level of a reasonable suspicion so is not required to be reported. In other words, hearsay does not rise to the level of a reasonable suspicion. There must be something that you know that causes you to form a reasonable suspicion.

The ISDH notes that in your example your coworker is definitely required to report. Your coworker told you that he or she observed what he or she thought was a theft. The coworker formed a reasonable suspicion of a crime sufficient to convey to you so is required to report. For you, the question is whether that information was credible and reliable enough for you to form a reasonable suspicion of a crime.

QUESTION 4: What crimes are required to be reported to a local law enforcement entity and state survey agency? What suspected crimes are not required to be reported?

ANSWER: All suspected crimes against a resident are required to be reported. The number of potential "crimes" in Indiana is significant. Facilities are expected to coordinate with their local law enforcement entities to identify crimes in the jurisdiction and provide that information to covered individuals.

The ISDH suspects that most crimes against a resident will likely fall into the abuse, neglect, or misappropriation of resident property categories that currently exist in health care facility regulations. There are likely other potential crimes against a resident. For instance, an individual might become aware of fraudulent billing or assuming one's identity for wrongful reasons. These are likely crimes against a resident so would be reportable.

QUESTION 5: What is a “reasonable suspicion” of a crime?

ANSWER: The term “reasonable suspicion” was not defined by the regulation. Such terms generally refer to facts that would cause a reasonable person based on his or her education and experiences to suspect that a crime has been committed.

QUESTION 6: A law enforcement agency said to not report a suspicion of a theft unless the theft was greater than \$50. I saw someone take an inexpensive watch from a resident. Do I therefore not have to report that theft since its value was likely less than \$50?

ANSWER: The theft must be reported to the local law enforcement entity and ISDH in accordance with regulations. The regulation requires covered individuals to report all crimes against a resident. It does not limit or exempt crimes. It is then up to the local law enforcement entity to investigate and determine whether to pursue criminal charges.

QUESTION 7: I understand that I have to report all crimes. I saw a resident take fries off of another resident’s plate. That technically is theft so is it required to be reported?

ANSWER: No. The regulation anticipates a level of reason. Some general activities and actions are accepted as part of daily life and would not raise a reasonable suspicion in most people that a crime occurred. While it may not be particularly appropriate to take food off of another person’s plate, a reasonable person would likely not perceive such an action as criminal so it is not reportable. On the other hand, someone who is stealing private food supplies from resident closets might be perceived as criminal so is reportable.

QUESTION 8: Are visitors required to report suspicions of a crime?

ANSWER: No. The individuals required to report are an owner, operator, employee, manager, agent, or contractor of a nursing home, hospice agency providing services in a nursing home, and intermediate care facility (group home).