

FOUR WINDS NURSING FACILITY

Reporting of Crimes Pursuant to the Elder Justice Act

NOTE: This policy has been adopted in an attempt to comply with provisions of the Elder Justice Act that became effective on March 23, 2010. At the time that this policy was adopted, the Department of Health and Human Services (DHHS) had not published regulations implementing the new law. Thus, without such necessary guidance, Four Winds has made a good faith effort to adopt a reasonable interpretation of the law. This policy may be subject to revision when the DHHS publishes its implementing regulations.

Purpose

The purpose of this policy is outline how Four Winds will seek to comply with legal requirements that it notify certain individuals of their duty to report crimes to the Secretary of the Department of Health and Human Services (“Secretary”) and to law enforcement.

To the extent that this policy exceeds applicable legal requirements, those measures are not meant to act as a basis for determining compliance with any laws or to establish any standard of care. Any self-imposed protocols are meant to operate only as an internal guidepost against which Four Winds shall judge itself.

Applicability

This policy shall be in effect and applicable to Four Winds when in the preceding calendar year Four Winds received at least ten thousand dollars (\$10,000) in federal funding.

Policy

It is Four Winds’ policy to notify owners, operators, employees, managers, agents and contractors (collectively referred to as “Covered Individuals” and individually as a “Covered Individual”) of their duty to report reasonable suspicions of crimes to the Secretary and law enforcement.

Procedure

Four Winds shall implement the above policy as follows:

1. Determination of Applicability

At the end of each calendar year, the Administrator shall make a determination of whether this policy shall be applicable to Four Winds in the coming year. If the Administrator makes a determination that this policy is no longer applicable to Four Winds, then he or she shall take reasonable steps to notify Covered Individuals of that determination. Unless affirmatively notified of the policy’s inapplicability, all Covered Individuals should assume that the policy continues to be applicable to them.

2. Notification of Duty to Report

Four Winds shall take steps to ensure that Covered Individuals are notified annually of their duties to report under the Social Security Act. Those steps may include, but are not necessarily limited to, the following:

- a. Placing a notification in the employee handbook.
- b. Conspicuously posting the sign specified by the Secretary for this purpose in an appropriate location.
- c. Inservice education.
- d. Sending a notification letter.
- e. Placing a notification provision in a service contract.

Notifications to Covered Individuals will require that all reasonable suspicions are communicated to Four Winds' Administrator immediately. Failure of a Covered Individual to immediately notify Four Winds of such a reasonable suspicion may result in termination of the relationship with Four Winds.

3. Reporting by Covered Individuals

- a. **What.** Covered Individuals are required to report any reasonable suspicion of a crime (as defined by the laws of the political subdivision where Four Winds' facility is located) against any individual who is a resident of, or receiving care from, Four Winds' facility.
- b. **When.** The timeframe in which Covered Individuals must make reports is dependent upon whether the person receiving care was seriously injured.
 - i. **Serious bodily injury – within 2 hours.** If the person receiving care incurred seriously bodily injury, then a Covered Individual is required to report the suspicion *immediately*, but no later than two (2) hours after forming the suspicion.

“*Serious bodily injury*” means an injury: 1) involving extreme physical pain; 2) involving substantial risk of death; 3) involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or 4) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.
 - ii. **No serious bodily injury – within 24 hours.** If the person receiving care did not incur seriously bodily injury, then a Covered Individual is required to report the suspicion no later than twenty four (24) hours after forming the suspicion.

- c. **Who.** Covered Individuals must report to the Secretary and to one or more law enforcement entities for the political subdivision in which Four Winds' facility is located.

4. **Non-Retaliation.** Four Winds will not:

- a. discharge, demote suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or
- b. file a complaint or report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee.

for making a report, causing a report to be made, or for taking steps in furtherance of making a report to the Secretary or law enforcement of a reasonable suspicion of a crime against an individual residing in or receiving care from Four Wind's facility.

5. **Reporting to the Secretary**

Four Winds recognizes that many of the events that may lead a Covered Individual to form a reasonable suspicion that a crime has been committed against an individual who is a resident of or receiving services from Four Winds' facility are required to be reported by Four Winds to the State survey agency. That is, many of these events will trigger existing reporting requirements for abuse, neglect and misappropriation of resident property.

Four Winds believes that it is reasonable to interpret that the duty to report to the Secretary will be satisfied by reporting to the State survey agency.

If all Covered Individuals independently report an event to the Secretary, this would likely lead to unnecessary inefficiency and redundancy for the receiving entity. Four Winds believes that the Secretary would prefer not to receive multiple redundant reports all arising from the same occurrence. In addition, if all Covered Individuals were to make independent reports, then such time taken away from the care of individuals receiving services from Four Winds could cause such individuals harm.

Based on the foregoing, Four Winds believes that it is reasonable to assume that the Secretary would find that the duty of the Covered Individuals is met by Four Winds' report to the State survey agency. Thus, Four Winds believes that it is reasonable to assume that the Secretary will not require Covered Individuals to make a duplicative report to the Secretary when such a report has been or will be made by Four Winds.

While Four Winds believes that its interpretation of the law is reasonable, it is not making any guarantees or warranties regarding how the Secretary will act. Thus, a Covered Individual should his or her own decision as to whether to make a duplicative report directly to the Secretary.

6. Reporting to Law Enforcement on Behalf of Covered Individuals

If a Covered Individual notifies Four Winds of its suspicion of a crime (as defined by the laws of the political subdivision where Four Winds' facility is located) against any individual who is a resident of, or receiving care from, Four Winds' facility, then Four Winds will report that suspicion to law enforcement on the Covered Individual's behalf. If Four Winds receives multiple reports of the same incident, it will only report the incident once to law enforcement.

Assuming a Covered Individual notifies Four Winds in a timely manner, Four Winds believes that its reporting to law enforcement should satisfy the Secretary that the Covered Individual has complied with the law.

While Four Winds believes that its interpretation of the law is reasonable, it is not making any guarantees or warranties regarding how the Secretary will act. Thus, a Covered Individual should his or her own decision as to whether to make a duplicative report to law enforcement.