

FAIRHAVEN COMMUNITY

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, Fairhaven Community 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 Fairhaven Community 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 Fairhaven Community shall judge itself.

Applicability

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

Policy

It is Fairhaven Community’s 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

Fairhaven Community 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 Fairhaven Community in the coming year. If the Administrator makes a determination that this policy is no longer applicable to Fairhaven Community, then he or she shall take reasonable steps to notify Covered Individuals of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

Fairhaven Community 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 Fairhaven Community's Administrator immediately. Failure of a Covered Individual to immediately notify Fairhaven Community of such a reasonable suspicion may result in termination of the relationship with Fairhaven Community.

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 Fairhaven Community's facility is located) against any individual who is a resident of, or receiving care from, Fairhaven Community's 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 Fairhaven Community's facility is located.

4. **Non-Retaliation.** Fairhaven Community 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 Fairhaven Community's facility.

5. Reporting to the Secretary

Fairhaven Community 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 Fairhaven Community's facility are required to be reported by Fairhaven Community to the State survey agency. That is, many of these events will trigger existing reporting requirements for abuse, neglect and misappropriation of resident property.

Fairhaven Community 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. Fairhaven Community 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 Fairhaven Community could cause such individuals harm.

Based on the foregoing, Fairhaven Community believes that it is reasonable to assume that the Secretary would find that the duty of the Covered Individuals is met by Fairhaven Community's report to the State survey agency. Thus, Fairhaven Community 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 Fairhaven Community.

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

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

While Fairhaven Community 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.