

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: South Dakota

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect
and Abuse and Misappropriation of Resident Property

The State has in effect the following process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide or a resident in a nursing facility or by another individual used by the facility in providing services to such a resident.

REPORTING OF ALLEGATIONS

1. Mandatory reporting:

A nursing facility must notify the Director of Licensure and Certification, or the Director's designee, in writing, of any alleged misconduct by a nurse aide or other individual utilized by the facility to provide services to a resident related to abuse, neglect, or misappropriation of resident property within 48 hours of knowledge of such activity.

2. Elective reporting:

Other concerned individuals (i.e. residents, resident families or representatives, nursing facility employees, agencies) may notify the Director of Licensure and Certification, or the Director's designee, of any alleged misconduct by a nurse aide or by another individual utilized by the facility in providing services to a resident related to abuse, neglect, or misappropriation of resident property. The Department of Health will request the allegations be presented in writing.

Investigative Action

The Director of Licensure and Certification, or their designee, shall act as the Department Investigator on all complaints against a nurse aide. The Investigator shall log each complaint against a nurse aide by recording: (a) the name, home address, and telephone number of the nurse aide; (b) the name, address, and telephone number of the nurse aide's employing facility; (c) the name, address, and telephone number of the complainant; (d) the date of the complaint; and (e) a brief statement of the complaint. The ultimate disposition on the complaint must be recorded when the matter is concluded.

The Investigator shall send a letter to the complainant which: (a) acknowledges receipt of the complaint; (b) identifies the Investigator;

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(c) informs the complainant that the allegations against the nurse aide will be provided to the nurse aide; and (d) informs the complainant that disposition on the complaint will be reported to the complainant.

The Investigator shall conduct a preliminary investigation of all complaints. The Investigator shall contact the nurse aide. The Investigator must inform the nurse aide that the Department has received a complaint against the aide and inform the aide of the substance of the complaint. The Investigator shall contact the complainant for additional information when necessary. The Investigator will transmit copies of the allegation to the State Ombudsman and to the Medicaid Fraud Control Unit for simultaneous review of the allegations.

After conducting a preliminary investigation, the Investigator must determine whether a hearing is warranted, the complaint should be dismissed for lack of sufficient evidence, or the matter should be resolved by an agreed disposition.

(a) If the Investigator finds that there is reason to believe that the nurse aide abused or neglected a resident, or that the nurse aide misappropriated a resident's property, then a Notice of Hearing shall be sent to the nurse aide. The Notice of Hearing shall be prepared, pursuant to SDCL 1-26, by legal counsel for the Department of Health. After the hearing, the Department of Health will send a report of the hearing and results to the nurse aide.

(b) If the Investigator believes that the complaint should be dismissed for lack of evidence, then the Investigator must submit to the Director of the Division of Public Health, or their designee, written reasons and a recommendation for the dismissal. The Director, or their designee, shall promptly send a dismissal letter to the complainant and the nurse aide when in agreement with the dismissal recommendation of the Investigator.

(c) If the Investigator believes that the matter should be resolved by an agreed disposition between the Department of Health and the nurse aide, then the Investigator must submit, in writing, to the Director of the Division of Public Health, or their designee, the proposed disposition with supporting reasons. The State will not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual. The Director, or their designee, when in agreement with the recommendation of the Investigator, shall promptly send a letter of agreed disposition to the complainant and the nurse aide.

Disciplinary Action

If the facility or the Department of Health verifies that there is abuse or neglect of a resident, or misappropriation of a resident's property, the complaint shall be referred to the Medicaid Fraud Control Unit for concurrent action.

The Department of Health shall refer all materials to their attorney for action. The attorney will assist the Department of Health through the hearing

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process set forth in SDCL 1-26 and refer the matter for any criminal proceedings that may be necessary.

The following information on any finding by the Department of Health of abuse or neglect, or misappropriation of a resident's property, by a nurse aide shall be placed in the Nurse Aide Registry:

(a) Documentation of the Department's investigations, including the nature of the allegations and the evidence that led the Department to conclude the allegation was valid;

(b) The date of the hearing if the individual chose to have one, and it's outcome;

(c) A statement by the individual disputing the allegation, if he or she chooses to make one. This information shall be placed in the Registry within 10 working days of the finding and shall remain as permanent information unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

If the allegation is not verified, the complaint will be filed for 18 months by the agency in a complaint suspense file which is not made available to the public.

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