

44:70:01:01. Definitions. Terms used in this article mean:

- (1) "Abuse," shown by a criminal conviction for, or substantial evidence of:
 - (a) Emotional-~~or~~ and psychological abuse as defined in SDCL ~~22-46-1(4)~~ 22-46-1;
 - (b) Exploitation as defined in SDCL ~~22-46-1(5)~~ 22-46-1; or
 - (c) Physical abuse as defined in SDCL ~~22-46-1(7)~~ 22-46-1;
- (2) "Activities of daily living," the tasks of transferring, moving about, dressing, grooming, toileting, bathing, and eating performed routinely by a person to maintain physical functioning and personal care;
- (3) "Adequate staff," a sufficient number of qualified personnel to perform the duties required to meet the performance criteria established in this article;
- (4) "Administrator," a person appointed by the owner or governing body of a facility who is responsible for managing the facility and who maintains an office on the premises of the facility;
- (5) "Adult day care," a nonresident program in a licensed facility that provides health, social, and related support services;
- (6) "Communicable disease," as defined in § ~~44:20:01:01(8)~~ 44:20:01:01;
- (7) "Cognitively impaired," having a deficiency that results in a diminished ability to solve problems, to exercise good judgment in the context of a value system, to remember, and to be aware of and respond to safety hazards;
- (8) "Department," the South Dakota Department of Health;
- (9) "Developmental disability," ~~a severe, chronic disability of a person~~ as defined in SDCL 27B-1-18;
- (10) "Dietary manager," a person who is a dietitian, a graduate of an accredited dietetic technician or dietetic manager training program, a graduate of a course that provides one hundred twenty or more hours of classroom instruction in food service supervision, or a certified dietary manager recognized by the Certifying Board for Dietary Managers and who functions with

consultation from a dietitian;

(11) "Dietitian," a person who is registered with the ~~Academy of Nutrition and Dietetics and~~ holds a current license to practice in accordance with ~~SDCL chapter 36-10B~~ Commission on Dietetic Registration as a dietitian and holds a current license to practice in South Dakota pursuant to SDCL chapter 36-10B;

(12) "Distinct part," an entire ward or contiguous wards, wing, floor, or building, that is licensed at a specific level, ~~including all beds and related facilities in the unit;~~

(13) ~~"Emergency care," professional health services immediately necessary to preserve life or stabilize health due to the sudden, severe, and unforeseen onset of illness or accidental bodily injury;~~

~~——(14) "Exploitation," as defined in SDCL 22-46-1(5);~~

~~——(15) "Facility," the place of business licensed in accordance with SDCL chapter 34-12 to provide assisted living care for residents~~ an assisted living center as defined in SDCL 34-12-1.1 licensed in accordance with SDCL chapter 34-12;

~~(16)~~(14) "Governing body," an organized body of persons that is ultimately responsible for the quality of care in a ~~health care~~ facility, maintaining the financial viability of the facility, and formulating institutional policy;

~~(17)~~(15) "Healthcare personnel," any employee, staff, or individual working in a healthcare setting;

~~(18)~~(16) "Legend drug," any drug that requires a label bearing the statement, Caution: Federal law prohibits dispensing without prescription;

~~(19)~~(17) "Licensed health professional," a physician, physician assistant, nurse practitioner, physical therapist, speech-language pathologist, occupational therapist, physical or occupational therapy assistant, nurse, nursing facility administrator, dietitian, pharmacist, respiratory therapist, ~~psychologist~~, or social worker who holds a current license to practice in this state or privilege to

practice;

~~(20)~~(18) "Memory care unit," a distinct part of a facility in which the physical environment and design maximizes functioning abilities, promotes safety, and encourages independence for a defined specific population, that is staffed by persons with training to meet the needs of residents admitted to the unit;

~~——(21) "Misappropriation of resident property," the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;~~

~~(22)~~(19) "Neglect," as defined in SDCL 22-46-1;

~~(23)~~(20) "Nurse," a registered nurse or a licensed practical nurse who holds a current license to practice in this state in accordance with SDCL chapter 36-9;

~~——(24) "Nurse aide," a person as defined in § 44:74:01:01(16);~~

~~(25)~~(21) "Nurse practitioner," a person who practices as a nurse practitioner in accordance with SDCL chapter 36-9A;

~~(26)~~(22) "Pharmacist," a person ~~registered~~ licensed to practice pharmacy in accordance with SDCL chapter 36-11;

~~(27)~~(23) "Physician," a person licensed to practice medicine in accordance with SDCL chapter 36-4;

~~(28)~~(24) "Physician assistant," a person licensed in accordance with SDCL chapter 36-4A;

~~(29)~~(25) "Qualified personnel," persons with the specific education, license, or training to provide the health service for which they are employed;

~~——(30) "Regular diet," a nutritionally adequate diet using food items and written recipes that can be prepared and correctly served by a staff person;~~

~~——(31) "Rehabilitation services," physical therapy, occupational therapy, respiratory therapy, and speech therapy;~~

~~(32)~~(26) "Resident," a person not in need of acute care ~~with~~ and who has a valid order by a physician, physician assistant, or nurse practitioner for services in an assisted living center;

~~—— (33) "Resident advocate," an agency responsible for the protection and advocacy of any residents;~~

~~—— (34) "Respite care," care permitted within the scope of a facility license, with a limited stay no greater than thirty days for any one resident;~~

~~(35)~~(27) "Restraint," a physical, chemical, or mechanical device used to restrict the movement of a resident or the movement or normal function of a portion of the resident's body, excluding devices used for specific medical and surgical treatment;

~~(36)~~(28) "Self-administration of medications," the removal of the correct dosage from ~~the~~ a pharmaceutical container and self-injecting, self-ingesting, or self-applying the medication with no assistance or with assistance from qualified personnel of the facility for the correct dosage or frequency;

~~—— (37) "Terminal illness," a medical prognosis that the person's life expectancy is six months or less if the illness runs its normal course;~~

~~(38)~~(29) "Therapeutic diet," any diet ~~other than a regular diet, excluding low sodium diets, that is ordered by a physician, physician assistant, nurse practitioner, or dietitian as part of the treatment for a disease or clinical condition to increase, decrease, or eliminate certain substances in the diet, and~~ intervention ordered by a physician, physician assistant, or nurse practitioner, or a dietitian authorized by a physician, physician assistant, or nurse practitioner, that provides food, fluid, or nutrients via oral, enteral, or parenteral routes as part of the treatment for a disease or clinical condition to modify or eliminate micro-nutrients and macro-nutrients in the diet, or to alter food consistency;

~~—— (39) "Total assistance," full performance of an activity with no participation by the resident for any aspect of the activities of daily living;~~

~~(40)~~(30) "Transfer" or "discharge," the movement of a resident to a bed outside the distinct part or outside the facility; and

~~(41)~~(31) "Unlicensed assistive personnel," a person who is not licensed as a nurse in accordance with SDCL chapter 36-9 but who is trained to assist a nurse in the provision of nursing care to a resident as delegated by the nurse and authorized by the provisions of chapter 20:48:04.01.

Source: 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13, ~~34-12-32~~.

44:70:01:05. Acceptance and retention of residents. A facility may only accept and retain residents based on the facility's capabilities to meet the needs of the residents. The facility may accept or retain residents in accordance with the services provided by the facility, determined by the governing body, and with written policies and procedures for the following:

- (1) A resident accepted for care by a facility must be housed within the facility;
- (2) A facility may not accept or retain residents who require care in excess of the facility's licensure classification;
- (3) Healthcare personnel and other personnel essential to maintaining adequate staff may not leave a facility during the personnel's tour of duty in the facility to provide services to persons who are not residents of the facility, with the exception of providing emergency care on premises contiguous to the facility's property;
- (4) Each facility that accepts or retains a resident with developmental disabilities or mental illness shall provide facilities and programs consistent with the needs of the resident;
- (5) If any person other than a resident is accepted for care or to participate in any program, service, or activity, that person must be included in the evaluation of central use, activity, and dining spaces; staffing of nursing, dietary, and activity programs; and the provision of an infection control program. No service provided to the person may infringe upon the needs of the residents; and
- (6) A facility may admit and retain any resident who is able to:
 - (a) Complete activities of daily living of mobility or ambulation; dressing; toileting, including the provision of incontinence, catheter, or ostomy care; personal hygiene; and bathing independently or with assistance of personnel. Assistance may be provided according to the provisions of § 44:70:05:06;
 - (b) Feed oneself with set up or supervision. Assistance may be provided according to the provisions of § 44:70:06:18;

(c) Complete the resident's medication administration, including injections, or have medications administered by qualified personnel;

(d) Remain free from the need for restraints, except for admission to a memory care unit;

(e) Receive skilled services that may be provided by the facility nurse, a licensed or otherwise appropriately credentialed therapist, Medicare-certified home health agency personnel, or a Medicare-certified hospice provider; and;

(f) Maintain conditions that are stable and controlled that do not require frequent nursing care or frequent visits or notifications to a physician, physician assistant, or nurse practitioner.

For purposes of this section, “emergency care” means professional health services immediately necessary to preserve life or stabilize health due to the sudden, severe, and unforeseen onset of illness or accidental bodily injury.

Source: 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023; 50 SDR 139, effective June 2, 2024.

General Authority: SDCL 34-12-7, 34-12-13(5).

Law Implemented: SDCL 34-12-7, 34-12-13.

44:70:04:11. Care policies. Each facility shall establish and maintain policies, procedures, and practices that follow accepted standards of professional practice to govern care, and related medical or other services necessary to meet the residents' needs. Each facility shall establish and maintain policies and procedures for the management of adult day care clients and respite care residents if the facility offers those services.

For purposes of this section, “respite care” means care permitted within the scope of a facility license, with a limited stay no greater than thirty days for any one resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:70:05:04. Intermittent nursing care. A facility shall limit nursing services or rehabilitation services provided to a resident to less than eight hours per day and twenty-eight hours each week. The facility shall maintain documentation of the skilled nursing services or rehabilitation services to ensure the needs of the resident are addressed, including a planned completion date based on the assessments conducted. Unlicensed personnel of a facility may not accept any delegated skilled tasks from any nonemployed, noncontracted skilled nursing or therapy providers licensed pursuant to SDCL chapters 36-9, 36-10, and 36-31.

For purposes of this section, “rehabilitation services” means physical therapy, occupational therapy, respiratory therapy, and speech therapy.

Source: 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13(7).

Law Implemented: SDCL 34-12-13.

44:70:05:05. Hospice services. Each facility offering hospice services, as defined in § 44:79:01:01(14), shall provide services to a terminally ill person and arrange for those services from a Medicaid-certified hospice agency under a written care plan established and periodically reviewed by the person's attending physician, physician assistant, or nurse practitioner. Unlicensed personnel of a facility may not accept any delegated skilled tasks from any hospice providers licensed under SDCL chapter 36-9.

A facility that admits or retains a resident who has requested hospice services shall have an order identifying the terminal illness. The facility shall have unlicensed assistive personnel on duty to administer medications to a resident receiving hospice services. At least two personnel must be on duty at all times if the care needs of the resident require additional staffing or if the resident is not capable of self-preservation. Family members may assist with the care of the resident. The facility and hospice agency shall develop a written care plan or service plan that delineates responsibilities. The facility must be equipped with an automatic sprinkler system if a resident becomes incapable of self-preservation. A facility without an automatic sprinkler system shall implement discharge planning to a safe environment prior to the resident becoming incapable of self-preservation.

For purposes of this section, “terminal illness” means a medical prognosis that the person's life expectancy is six months or less if the illness runs its normal course.

Source: 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13(5)(14).

Law Implemented: SDCL 34-12-13.

44:70:05:06. Total activities of daily living assistance. A facility may admit or retain a resident who requires one or two personnel for total assistance with completing activities of daily living. Each direct care personnel ~~shall complete an approved certified nurse aide training program pursuant to article 44:74 or an equivalent program approved by the department~~ must be registered, in accordance with chapter 20:48:16, as a certified nurse aide before assisting a resident who requires total assistance. ~~In the facility, the registered nurse may be the program coordinator and the primary instructor.~~ The registered nurse shall conduct and document a nursing assessment for the resident's need of total assistance ~~initially upon requiring the services~~ at the initiation of such services, upon ~~a~~ any observed or reported significant change in the resident's condition, and at least semi-annually. The facility shall have a nurse to work the day shift at least thirty-two hours per week when any resident requires the assistance of two personnel. A nurse must be on call at all times. A facility that provides total assistance is not eligible for a staffing exception allowed under § 44:70:03:02.01.

~~_____ If a mechanical lift is used, the lift must be operated by at least two personnel with training on the use of the mechanical lift.~~ If a resident requires the use of a mechanical lift for mobility, the lift must be operated by at least two trained personnel. The facility must document training provided to personnel on the use of the lift.

~~_____ A resident toileting room and bathing room must be large enough to accommodate two-person assistance.~~

~~_____ For purposes of this section, "total assistance" means full performance of an activity with no participation by the resident.~~

Source: 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13(5)(14).

Law Implemented: SDCL 34-12-13.

44:70:07:04. Storage and labeling of medications. All medications must be stored in a well illuminated, locked storage area that is well ventilated, maintained at a temperature appropriate for medication storage, and inaccessible to residents and visitors at all times. Medications suitable for storage at room temperature must be maintained between fifty-nine and eighty-six degrees Fahrenheit, or between fifteen and thirty degrees centigrade. Medications that require refrigeration must be maintained between thirty-six and forty-six degrees Fahrenheit, or between two and eight degrees centigrade. Poisons and medications prescribed for external use must be stored separately from medications prescribed for internal use, locked, and made inaccessible to residents and visitors.

The medications or drugs of each resident for whom a medication is facility-administered must be stored in the container in which it was originally received and may not be transferred to another container. Single dose medication received by a resident from a physician, physician assistant, or nurse practitioner must be identified as single dose. Each prescription medication container, including manufacturer's complimentary samples, must be labeled with the resident's name; the name of the resident's physician, physician assistant, or nurse practitioner; medication name and strength; directions for use; and prescription date.

A container with a medication that will not be used within thirty days of issue or with contents that expire in less than thirty days of issue must bear an expiration date. If a single-dose system is used, the medication name and strength, expiration date, and a control number must be on the unit dose packet.

If a facility is co-located with a nursing facility or hospital, or has a nurse present at the facility twenty-four hours per day, the facility may procure and stock, including in bulk form, nonlegend ~~medications~~ drugs and administer them in accordance with written policies and procedures that provide for oversight by qualified personnel.

Any container with a worn, illegible, or missing label must be destroyed pursuant to § 44:70:07:06. Licensed pharmacists are responsible for the labeling, relabeling, or altering of labels on medication containers.

Source: 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13.

44:70:09:03. Facility to provide information on available services, procedures, and policies. A facility shall provide the following information in writing to each resident:

(1) A list of items and services available in the facility and the charges for the items and services, and items and services for which the resident may not be charged, those other items and services that the facility offers and for which the resident may be charged;

(2) A description of how a resident may protect personal funds;

(3) A list of names, addresses, and telephone numbers of resident advocates;

(4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident property;

(5) A description of how the resident can contact the resident's physician, physician assistant, or nurse practitioner;

(6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United States Social Security Administration;

(7) A description of the bed-hold policy that indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(8) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

A signed and dated admission agreement between the resident or the resident's legal representative and the facility must include information described in subdivisions (1) through (8), inclusive. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. The agreement must be printed in a manner to ensure ease of

reading by the resident prior to signing. Any change in the admission agreement must be signed and dated by the resident or the resident's legal representative as an addendum to the original agreement.

For purposes of this section, “misappropriation of resident property” means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

For purposes of this section, “resident advocate” means an agency responsible for the protection and advocacy of any residents.

Source: 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13.

44:73:01:01. Definitions. Terms used in this article mean:

(1) "Abuse," a criminal conviction for, or substantial evidence of:

(a) Emotional-~~or~~ and psychological abuse as defined in SDCL-subdivision ~~22-46-1(4)~~ 22-46-1;

(b) Exploitation as defined in SDCL-subdivision ~~22-46-1(5)~~ 22-46-1; or

(c) Physical abuse as defined in SDCL-subdivision ~~22-46-1(7)~~ 22-46-1;

(2) "Activities program," a diversional program under the direction of a therapeutic recreation specialist or activity professional eligible for certification from the National Certification Council-~~of~~ for Activity Professionals, or a qualified occupational therapist or occupational therapy assistant licensed pursuant to SDCL chapter 36-31;

(3) "Adequate staff," a sufficient number of qualified personnel to perform the duties required to meet the performance criteria established by this article;

(4) "Administrator," a person licensed pursuant to SDCL chapter 36-28 and who maintains an office on the premises of the facility;

(5) "Adult day care," a nonresident program in a licensed facility that provides health, social, and related support services;

(6) "Clinical nurse-Specialist specialist," a person who practices the specialty of a clinical nurse specialist and who is licensed pursuant to SDCL chapter 36-9;

(7) "Department," the South Dakota Department of Health;

(8) "Dietary manager," a person who is a dietitian, a graduate of an accredited dietetic technician or dietetic manager training program, a graduate of a course that provides one hundred twenty or more hours of classroom instruction in food service supervision, or a certified dietary manager recognized by the Certifying Board for Dietary Managers and who functions with consultation from a dietitian;

(9) "Dietitian," a person who is registered with the Commission on Dietetic Registration as a

~~dietician~~ dietitian and holds a current license to practice in South Dakota pursuant to SDCL chapter 36-10B;

(10) "Distinct part," an entire ward or contiguous wards, wing, floor, or building, that is licensed at a specific level and all beds and related facilities thereof;

(11) ~~"Exploitation," as defined in subdivision 22-46-1(5);~~

~~—(12) "Facility," a place of business licensed in accordance with SDCL chapter 34-12 to provide health care for residents~~ a nursing facility as defined in SDCL 34-12-1.1 licensed in accordance with SDCL chapter 34-12;

~~(13)~~ (12) "Governing body," an organized body of persons that is responsible for the quality of care in a health care facility, credentialing and granting privileges to the medical staff, maintaining the financial viability of the facility, and formulating institutional policy;

~~(14)~~ (13) "Healthcare personnel," any employee, staff, or individual working in a facility;

~~(15)~~ (14) "Interdisciplinary team," a group of persons selected from multiple health disciplines who have a diversity of knowledge and skills and who function as a unit to collectively address the medical, physical, mental or cognitive, and psychosocial needs of a resident;

~~(16)~~ (15) "Legend drug," any drug that requires the label bearing the statement, Caution: Federal law prohibits dispensing without prescription;

~~—(17) "Licensed health professional," a physician, physician assistant, nurse practitioner, physical therapist, speech language pathologist, occupational therapist, physical or occupational therapy assistant, nurse, nursing facility administrator, dietitian, pharmacist, respiratory therapist, or social worker who holds a current license to practice in this state or privilege to practice;~~

~~(18)~~ (16) "Medical staff," practitioners ~~that~~ who operate under bylaws approved by the governing body and are responsible for reviewing the qualifications of practitioners applying for clinical privileges, and for the provision of medical care to residents in a ~~health care~~ facility;

~~(19)~~ (17) "Memory care unit," a distinct part of a facility in which the physical environment

and design maximizes functioning abilities, promotes safety, and encourages independence for a defined population, and is staffed by persons with training to meet the needs of residents admitted to the unit;

~~——(20) "Misappropriation of resident property," the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;~~

~~(21)~~(18) "Neglect," as defined in SDCL ~~subdivision 22-26-1(6)~~ 22-46-1;

~~(22)~~(19) "Nurse," a registered nurse or a licensed practical nurse who holds a current license to practice in this state in accordance with SDCL chapter 36-9;

~~(23) "Nurse aide," as defined in subdivision 44:74:01:01(16);~~

~~——(24)~~(20) "Nurse practitioner," a person who practices the specialty of a nurse practitioner in accordance with SDCL chapter 36-9A;

~~(25)~~(21) "Pharmacist," a person ~~registered~~ licensed to practice pharmacy pursuant to SDCL chapter 36-11;

~~(26)~~(22) "Physician," a person licensed to practice medicine pursuant to SDCL chapter 36-4;

~~(27)~~(23) "Physician assistant," a person licensed pursuant to SDCL chapter 36-4A;

~~(28)~~(24) "Practitioner," one of the following:

(a) A physician;

(b) A dentist licensed pursuant to SDCL chapter 36-6A;

(c) A podiatrist licensed pursuant to SDCL chapter 36-8;

(d) An optometrist licensed pursuant to SDCL chapter 36-7;

(e) A chiropractor licensed pursuant to SDCL chapter 36-5;

(f) A pharmacist;

(g) A physical therapist licensed pursuant to SDCL chapter 36-10;

(h) An occupational therapist licensed pursuant to SDCL chapter 36-31;

(i) A nurse practitioner;

(j) A physician assistant; or

(k) A speech-language pathologist licensed pursuant to SDCL chapter 36-37;

~~(29)~~(25) "Qualified personnel," persons with the specific education or training to provide the health service for which they are employed;

~~(30) "Regular diet," a nutritionally adequate diet using food items and written recipes that can be prepared and correctly served by a staff person~~

~~(31)~~(26) "Resident," a person not in need of acute care ~~with~~ and who has a valid order by a physician, physician assistant, or nurse practitioner for services in a nursing facility;

~~(32)~~(27) "Restraint," a physical, chemical, or mechanical device used to restrict the movement of a resident or the movement or normal function of a portion of the resident's body, excluding devices used for specific medical and surgical treatment;

~~(33)~~(28) "Self-administration of medications," the removal of the correct dosage from the pharmaceutical container and the self-injecting, self-ingesting, or self-applying of the medication by the resident with no assistance or with assistance from qualified personnel of the facility for the correct dosage or frequency;

~~(34)~~(29) "Social worker," a person who is licensed as a social worker pursuant to SDCL chapter 36-26;

~~——(35) "Social service designee," a person who has a degree in a behavioral science field, two years of previous supervised experience in a behavioral science field, is a licensed nurse, or has similar qualifications;~~

~~(36)~~(30) "Therapeutic diet," any diet intervention ordered by a physician, physician assistant, or nurse practitioner, or a dietitian authorized by a physician, physician assistant, or nurse practitioner, that provides food, fluid, or nutrients via oral, enteral, or parenteral routes as

part of the treatment for a disease or clinical condition to modify or eliminate micro-nutrients and macro-nutrients in the diet, or to alter food consistency;

~~(37)~~(31) "Transfer" or "discharge," the movement of a resident to a bed outside a distinct part or outside a facility;

~~(38)~~(32) "Treatment," a medical aid provided for the purposes of palliating symptoms, improving functional level, or maintaining or restoring health; and

~~(39)~~(33) "Unlicensed assistive personnel," a person who is not licensed as a nurse in accordance with SDCL chapter 36-9 but who is trained to assist a nurse in the provision of nursing care to a resident as delegated by the nurse and authorized by chapter 20:48:04.01.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 15 SDR 155, effective April 20, 1989; 17 SDR 122, effective February 24, 1991; 19 SDR 95, effective January 7, 1993; 21 SDR 118, effective January 2, 1995; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002; 30 SDR 84, effective December 4, 2003; 31 SDR 62, effective November 7, 2004; 32 SDR 128, effective January 30, 2006; 38 SDR 115, effective January 9, 2012; transferred from § 44:04:01:01, 42 SDR 51, effective October 13, 2015; 51 SDR 53, effective November 11, 2024.

General Authority: SDCL 34-12-7, 34-12-13.

Law Implemented: SDCL 34-12-13, ~~34-12-32~~.

~~**Note:** National Certification Council of Activity Professionals, <https://www.nccap.org>.~~

44:73:04:06. Personnel health program. The facility shall have a personnel health program for the protection of the residents. Before assignment to duties or within fourteen days after employment, a licensed health professional must evaluate all personnel to ensure no personnel is infected with any reportable communicable disease that poses a threat to others. The evaluation must include an assessment of previous vaccinations and tuberculin skin tests. The facility may not allow anyone with a communicable disease, during the period of communicability, to work in a capacity that would allow spread of the disease. Personnel absent from duty because of a reportable communicable disease that may endanger the health of residents, and fellow personnel may not return to duty until the personnel is determined by a physician, physician's designee, physician assistant, nurse practitioner, or clinical nurse specialist to no longer have the disease in a communicable stage.

For purposes of this section, “licensed health professional” means a physician, physician assistant, nurse practitioner, physical therapist, speech-language pathologist, occupational therapist, physical or occupational therapy assistant, nurse, nursing facility administrator, dietitian, pharmacist, respiratory therapist, or social worker who holds a current license to practice in this state or privilege to practice.

Source: SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; transferred from § 44:04:04:06, 42 SDR 51, effective October 13, 2015; 51 SDR 53, effective November 11, 2024.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

Cross-Reference: Definitions and reportable diseases and conditions, chapter 44:20:01.

CHAPTER 44:73:06

NURSING AND RELATED CARE SERVICES

Section

- 44:73:06:01 Repealed.
- 44:73:06:02 Repealed.
- 44:73:06:03 Director of nursing.
- 44:73:06:04 Nursing policies and procedures.
- 44:73:06:05 Resident care plans and programs.
- 44:73:06:06 Repealed.
- 44:73:06:07 Nursing service staffing.
- 44:73:06:08 Intermittent nursing care, Repealed.
- 44:73:06:09 Hospice services.
- 44:73:06:10 Resident assessments.
- 44:73:06:11 Repealed.
- 44:73:06:12 Repealed.
- 44:73:06:13 Nurse aides, Repealed.
- 44:73:06:14 Use of certified nurse aides -- Registration required -- Exception.
- 44:73:06:15 Use of certified nurse aides -- Facility required to pay costs of training and competency evaluation -- Exception.

44:73:06:07. Nursing service staffing. A facility shall maintain a ~~licensed~~ nurse in charge of nursing activities during each tour of duty. The director of nursing may not serve as charge nurse in a facility with an average daily occupancy of sixty or more residents. The facility shall have adequate staff to meet the ~~resident's~~ residents' total care needs at all times. The ratio of ~~licensed~~ nurses to certified nurse aides must be sufficient to ensure professional guidance and supervision in the nursing care of the residents.

For purposes of this section, "certified nurse aide" means a person registered as a certified nurse aide pursuant to chapter 20:48:16.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 31 SDR 62, effective November 7, 2004; transferred from § 44:04:06:09, 42 SDR 51, effective October 13, 2015; 51 SDR 53, effective November 11, 2024.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:73:06:14. Use of certified nurse aides -- Registration required -- Exception. Except as otherwise permitted in § 20:48:04.01:23, a facility must not allow an individual to practice in the role of a nurse aide unless the individual is registered as a certified nurse aide in accordance with chapter 20:48:16.

Before allowing an individual to practice as a certified nurse aide in the facility, the facility shall:

(1) Seek information from the registry operated pursuant to chapter 20:48:16 to verify active, unencumbered registry status;

(2) If the individual is awaiting registration, pursuant to subdivision 20:48:04.01:23(2), verify that the individual is added to the registry within four months from the individual's first day in the facility in the role of a nurse aide;

(3) Seek information from any other state registry, operated by the appropriate licensing authority, that the facility believes will include information on the individual, to verify registry status; and

(4) Evaluate the nurse aide to determine if the individual is competent to perform the duties of a nurse aide, as documented by the nurse aide's supervisor.

Source:

General Authority: SDCL 34-12-13, 34-12-29.

Law Implemented: SDCL 34-12-13, 34-12-29.

~~44:74:02:06~~ 44:73:06:15. Use of certified nurse aides -- Facility required to pay costs of training and competency evaluation -- Exception. ~~A nursing~~ Except as otherwise provided in this section, a facility shall pay all costs of nurse aide training and competency evaluation or reimburse the nurse aide for the cost incurred in completing the program if the facility employs the aide within twelve months following completion of the ~~training~~ program. Reimbursement ~~may~~ must be made during the first twelve months of the nurse aide's employment by installments.

~~_____ A nursing~~ facility is not required to pay for the cost of training and competency evaluation of a training program, conducted by an online or ~~non-nursing home based~~ non-facility-based nurse aide training program, if the nurse aide leaves employment or is terminated before completing the facility's probationary period of employment. The ~~nursing~~ facility's probationary period for nurse aides ~~shall~~ must be similar to other facility employees ~~of the nursing home~~. A ~~nursing~~ facility ~~shall~~ may not seek restitution for ~~these~~ installments already paid to the nurse aide prior to termination. The nurse aide ~~shall~~ may not seek payment of training costs ~~if costs~~ that have already been paid by another facility ~~where previously employed~~.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:06, 42 SDR 51, effective October 13, 2015; transferred from § 44:74:02:06.

General Authority: SDCL 34-12-13(7), 34-12-29.

Law Implemented: SDCL 34-12-13, 34-12-29.

44:73:08:04. Storage and labeling of medications. A facility shall store all medications in a well-illuminated, locked storage area that is well-ventilated, maintained at a temperature appropriate for medication storage, accessible to those with authority to administer medications, and inaccessible to residents and visitors at all times. Medications suitable for storage at room temperature must be maintained between fifty-nine and eighty-six degrees Fahrenheit, or fifteen and thirty degrees centigrade. Medications that require refrigeration must be maintained between thirty-six and forty-six degrees Fahrenheit, or two and eight degrees centigrade. Poisons and medications prescribed for external use must be stored separately from medications prescribed for internal use, locked, and made inaccessible to residents and visitors.

Any resident medication that is facility-administered must be stored in the container in which it was originally received and may not be transferred to another container. Single dose medication received by a resident from a physician, physician assistant, or nurse practitioner must be identified as single dose. Each prescription medication container, including manufacturer's complimentary samples, must be labeled with the resident's name; the name of the resident's physician, physician assistant, or nurse practitioner; the medication name and strength; the directions for use; and the prescription date.

A container with a medication that will not be used within thirty days of issue or with contents that expire in less than thirty days of issue must bear an expiration date. If a single-dose system is used, the medication name and strength, expiration date, and a control number must be on the unit dose packet.

A facility may procure and stock, including in bulk form, ~~nonlegend-medications~~ drugs and administer them in accordance with written policies and procedures that provide for oversight by qualified personnel.

Any container with a worn, illegible, or missing label must be destroyed pursuant to § 44:73:08:06. A licensed pharmacist is responsible for the labeling, relabeling, or altering of a label on a medication container.

Source: SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1977; 5 SDR 29, effective October 22, 1978; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 15 SDR 155, effective April 20, 1989; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000; 28 SDR 83, effective December 16, 2001; 38 SDR 115, effective January 9, 2012; transferred from § 44:04:08:04, 42 SDR 51, effective October 13, 2015; 51 SDR 53, effective November 11, 2024.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:73:08:06. Documentation of medication disposal. A facility shall ensure that a legend ~~medication~~ drug not controlled under SDCL chapter 34-20B is destroyed or disposed of by a nurse and another witness. Destruction or disposal of medication controlled under SDCL chapter 34-20B must be witnessed by two persons, both of whom must be a nurse or pharmacist, as designated by facility policy. The following are authorized methods of destruction or disposal:

(1) Using a professional waste hauler to take the medications to a permitted medical waste facility or by facility disposal at a permitted municipal solid waste landfill. Prior to disposal all medications must be removed from original containers and made unpalatable by the addition of adulterants and alteration of solid dosage forms by dissolving or combination into a solid mass;

(2) Return to the dispensing pharmacy for destruction according to federal and state regulations;

(3) Return to an authorized reverse distributor company licensed by the South Dakota Board of Pharmacy; or

(4) Release to resident upon discharge after authorization by the resident's prescribing practitioner.

The facility shall document destruction or disposal of medications in the resident's record. The documentation must include the method of disposition, the medication name and strength, prescription number, quantity, date of disposition, and the name of any person who witnessed the destruction or disposal.

A facility may return medication, excluding those controlled under SDCL chapter 34-20B, contained in unit dose packaging meeting the requirements of § 20:51:13:02.01 to the dispensing pharmacy for credit and redispensing.

Any medication held for disposal must be physically separated from the medications being used in the facility and locked in an area accessible to nursing and pharmacy personnel only. The

facility shall establish a system to reconcile, audit, and monitor medication held for disposal to prevent diversion.

Source: 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; transferred from § 44:04:08:04.02, 42 SDR 51, effective October 13, 2015; 51 SDR 53, effective November 11, 2024.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

ARTICLE 44:74

NURSE AIDE

(Repealed or transferred)

Chapter

44:74:01 Rules of General Applicability, Repealed.

44:74:02 Nurse Aides, Repealed or transferred.

CHAPTER 44:74:01
RULES OF GENERAL APPLICABILITY

(Repealed)

Section

44:74:01:01 Definitions, Repealed.

44:74:01:02 Scope of Article, Repealed.

44:74:01:01. Definitions. ~~Terms defined in SDCL 34-12-1.1 have the same meaning in this article. In addition, terms used in this article mean:~~

~~—— (1) "Abuse," an intentional act toward an individual indicating that one or more of the following has occurred:~~

~~—— (a) A criminal conviction against a person for mistreatment toward an individual; or~~

~~—— (b) In the absence of a criminal conviction, substantial evidence that one or more of the following has occurred resulting in harm, pain, fear, or mental anguish:~~

~~—— (i) Misappropriation of a resident's property or funds;~~

~~—— (ii) An attempt to commit a crime against a resident;~~

~~—— (iii) Physical harm or injury against a resident; or~~

~~—— (iv) Using profanity, making a gesture, or engaging in any other act made to or directed at a resident;~~

~~—— (2) "Activities of daily living," the tasks of transferring, moving about, dressing, grooming, toileting, bathing, and eating performed routinely by a person to maintain physical functioning and personal care;~~

~~—— (3) "Cognitively impaired," a patient or resident with a mental deficiency which result in a diminished ability to solve problems, to exercise good judgment in the context of a value system, to remember, and to be aware of and respond to a safety hazard;~~

~~—— (4) "Department," the South Dakota Department of Health;~~

~~—— (5) "Direct contact," any activity that requires physically touching a patient or resident;~~

~~—— (6) "Emergency care," professional health services immediately necessary to preserve life or stabilize health due to the sudden, severe, and unforeseen onset of illness or accidental bodily injury;~~

~~—— (7) "Endorsement," the process of formally recognizing for the purpose of employment in a licensed health care facility in South Dakota the qualifications of a person trained and evaluated in another state as a nurse aide;~~

~~—— (8) "Equivalency," training of another or different type that is determined by the department to be equal to department approved training;~~

~~—— (9) "Exploitation," the wrongful taking or exercising of control over property of a person with intent to defraud that person;~~

~~—— (10) "Facility," the place of business used to provide health care for patients or residents;~~

~~—— (11) "Healthcare worker," any paid person working in a healthcare setting;~~

~~—— (12) "Misappropriation of resident property," the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent;~~

~~—— (13) "Mistreatment," an action that causes harm or has the potential to cause harm whether or not harm to the individual was intended. The inappropriate use of an individual's property with the individual's consent obtained through coercion, solicitation, or persuasion;~~

~~—— (14) "Neglect," harm to a person's health or welfare, without reasonable justification, caused by the conduct of someone responsible for the person's health or welfare, including offensive behavior made to or directed at a patient or resident, and the failure to provide timely, consistent, and safe services, treatment, or care necessary to avoid physical harm, mental anguish, or mental illness to the person;~~

~~—— (15) "Nurse," a registered nurse or a licensed practical nurse who holds a current license to practice in South Dakota pursuant to SDCL chapter 36-9;~~

~~—— (16) "Nurse aide," an individual providing nursing or nursing related services who is not a licensed health professional, or someone who volunteers to provide such services without pay who is either:~~

~~—— (a) "Qualified," recognized as an individual who has successfully completed a training and competency evaluation program. May be acknowledged as a certified nurse assistant (CNA); or~~

~~—— (b) "Unqualified," recognized as an entry level individual enrolled in a training and~~

~~competency evaluation program;~~

~~—— (17) "Nursing personnel," staff which includes registered nurses, licensed practical nurses, nurse aides, restorative aides, and orderlies;~~

~~—— (18) "Patient," a person with a valid order by a practitioner for diagnostic or treatment services in a hospital, specialized hospital, critical access hospital, swingbed, ambulatory surgery center, or chemical dependency treatment facility;~~

~~—— (19) "Personal care," assistance given by an adult foster care home owner in those areas of daily living when a resident has difficulty functioning because of a physical, mental, or emotional condition;~~

~~—— (20) "Registry," a computerized record of all nurse aides who have completed the minimum nurse aide training and competency evaluation requirements in article 44:74 to obtain registry status as a nurse aide;~~

~~—— (21) "Resident," a person not in need of acute care with a valid order by a practitioner for services in a nursing facility;~~

~~—— (22) "Restorative nursing," a part of nursing directed toward assisting a patient to achieve and maintain an optimal level of self-care and independence and which offers assistance to a patient in learning or relearning of skills needed in everyday activities;~~

~~—— (23) "Restraint," a physical, chemical, or mechanical device used to restrict the movement of a patient or resident or the movement or normal function of a portion of the patient's or resident's body, excluding devices used for specific medical and surgical treatment;~~

~~—— (24) "Supervised practical training," training in a laboratory or other setting in which the nurse aide performs health-related tasks on a patient or resident while under the direct supervision of a licensed nurse; and~~

~~—— (25) "Treatment," a medical aid provided for the purposes of palliating symptoms, improving functional level, or maintaining or restoring health Repealed.~~

Source: 42 SDR 51, effective October 13, 2015.

~~— **General Authority:** SDCL 34-12-13.~~

~~— **Law Implemented:** SDCL 34-12-13.~~

44:74:01:02. Scope of article. ~~Nothing in article 44:74 limits or expands the rights of any healthcare worker to provide services within the scope of the professional's license, certification, or registration, as provided by South Dakota law~~ Repealed.

Source: 42 SDR 51, effective October 13, 2015

~~— **General Authority:** SDCL 34-12-13.~~

~~— **Law Implemented:** SDCL 34-12-7, 34-12-13.~~

CHAPTER 44:74:02

NURSE AIDES

(Transferred from Chapter 44:04:18, effective October 13, 2015)

(Repealed or transferred)

Section

- 44:74:02:01 Application of chapter, Repealed.
- 44:74:02:02 Employment of qualified nurse aides required, Repealed.
- 44:74:02:03 Exception for employment of unqualified nurse aides, Repealed.
- 44:74:02:04 Multistate registry verification required, Repealed.
- 44:74:02:05 Facilities required to maintain records, Repealed.
- 44:74:02:06 Nursing facility required to pay costs of training and competency evaluation,
Transferred.
- 44:74:02:07 Approval and reapproval of nurse aide training programs, Repealed.
- 44:74:02:08 Notice of change in approved training program, Repealed.
- 44:74:02:09 Denial or withdrawal of approval of training program, Repealed.
- 44:74:02:10 Qualifications of program coordinator, Repealed.
- 44:74:02:11 Qualifications of primary instructor, Repealed.
- 44:74:02:12 Qualifications of supplemental personnel, Repealed.
- 44:74:02:13 Supervision of students, Repealed.
- 44:74:02:14 Physical facilities, Repealed.
- 44:74:02:15 Nurse aide curriculum, Repealed.
- 44:74:02:16 Equivalency of education, Repealed.
- 44:74:02:17 Nurse aide competency evaluation program standards, Repealed.
- 44:74:02:18 Competency evaluation program administration standards, Repealed.
- 44:74:02:19 Facility proctoring of examination, Repealed.

- 44:74:02:20 Notification to individual regarding successful or unsuccessful completion of competency evaluation program, Repealed.
- 44:74:02:21 Operation of nurse aide registry, Repealed.
- 44:74:02:22 Registry status by application, Repealed.
- 44:74:02:23 Registry status by endorsement, Repealed.
- 44:74:02:24 Registry content, Repealed.
- 44:74:02:25 Renewal of certification, Repealed.
- 44:74:02:26 Grounds for revocation, denial, or suspension of nurse aide certification, Repealed.
- 44:74:02:27 Mandatory reporting of allegations, Repealed.
- 44:74:02:28 Investigation of allegations, Repealed.
- 44:74:02:29 Notice and hearing process, Repealed.
- 44:74:02:30 Documentation of substantiated allegations on registry, Repealed.
- 44:74:02:31 Procedure to remove of a finding of neglect from registry, Repealed.

44:74:02:01. Application of chapter. ~~Facilities defined in SDCL 34-12-1.1 must comply with §§ 44:74:02:02 to 44:74:02:31, inclusive~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:01, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:02. Employment of qualified nurse aides required. ~~Nurse aides shall meet the following minimum qualifications of training, competency evaluation, registry status, and performance:~~

~~—— (1) Successful completion of a training program and a competency evaluation program approved by the department pursuant to §§ 44:74:02:07 and 44:74:02:17;~~

~~—— (2) Verification from the department of current registry status or eligibility for inclusion on the registry;~~

~~—— (3) Acceptable employment performance as a nurse aide as documented by the aide's supervisor;~~

~~—— (4) Annual attendance at a minimum of 12 hours of in-service education related to results of performance review and of special resident needs; and~~

~~—— (5) Minimum age of 16 years old at time of employment Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; 29 SDR 81, effective December 11, 2002; transferred from § 44:04:18:02, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:03. Exception for employment of unqualified nurse aides. ~~A facility may employ for a maximum of four months an individual to provide nurse aide duties who does not meet the qualifications of § 44:74:02:02 if the individual is enrolled in a training and competency evaluation program approved by the department pursuant to §§ 44:74:02:07 and 44:74:02:17 or if the individual can prove that approved training and competency evaluation has been completed and the individual has not yet been included on the registry. The facility shall ensure that such an individual actually obtains registry status within the four month period~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:03, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:04. Multistate registry verification required. ~~A facility shall seek information from every state registry that the facility has reason to believe has information on the individual before allowing the individual to work as a nurse aide. A nurse aide shall apply for endorsement through the South Dakota Board of Nursing within 30 days of employment. A facility may not employ a nurse aide for more than 60 days unless the aide provides proof the endorsement has been requested.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:04, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:05. Facilities required to maintain records. ~~A facility shall maintain employment records that verify the qualifications of the nurse aides as outlined in § 44:74:02:02 Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:05, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:06. Nursing facility required to pay costs of training and competency evaluation. ~~A nursing facility shall pay all costs of nurse aide training and competency evaluation or reimburse the nurse aide for the cost incurred in completing the program if the facility employs the aide within twelve months following completion of the training program. Reimbursement may be made during the first twelve months of employment by installments. A nursing facility is not required to pay the cost of training and competency evaluation of a training program, conducted by an online or non-nursing home based nurse aide training program, if the nurse aide leaves employment or is terminated before completing the facility's probationary period of employment. The nursing facility's probationary period for nurse aides shall be similar to other employees of the nursing home. A nursing facility shall not seek restitution for those installments already paid to the nurse aide prior to termination. The nurse aide shall not seek payment of training costs if costs have already been paid by another facility where previously employed~~ Transferred to § 44:73:06:15.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:06, 42 SDR 51, effective October 13, 2015.

~~— **General Authority:** SDCL 34-12-29.~~

~~— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:07. Approval and reapproval of nurse aide training programs.~~The department shall approve nurse aide training programs. To obtain approval, the entity providing the nurse aide training program shall submit to the department an application on a form provided by the department that contains information demonstrating compliance with requirements specified in this chapter. The department shall respond within 90 days after receipt of the application. The department may grant approval for a maximum of two years.~~

~~At the end of the approval period, the entity shall apply for reapproval. As part of the reapproval process, the department shall conduct an unannounced on-site visit to determine compliance with the requirements Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:07, 42 SDR 51, effective October 13, 2015.

~~**General Authority:** SDCL 34-12-29.~~

~~**Law Implemented:** SDCL 34-12-29.~~

44:74:02:08. Notice of change in approved training program. ~~The entity offering an approved nurse aide training program shall submit to the department, within 30 days after the change, any substantive changes made to the program during the two-year approval period. The department shall notify the entity of its approval within 90 days after receipt of the information~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:08, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:09. Denial or withdrawal of approval of training program.~~The department may deny or withdraw approval of a nurse aide training program if one of the following conditions applies to the nursing facility within the 24 months preceding the current survey:~~

~~—— (1) The facility has been found to be out of compliance with the provision of care requirements in chapter 44:73:04 or the nursing service requirements in chapter 44:73:06;~~

~~—— (2) The facility has been issued a probationary license;~~

~~—— (3) The facility refuses to permit an unannounced visit by the department;~~

~~—— (4) The facility fails to maintain a 75 percent pass rate on the competency evaluation for the two year approval period;~~

~~—— (5) There is evidence that the facility has charged the nurse aide a fee for a portion of the training or competency evaluation.~~

~~—— The department shall notify the entity in writing of the reason for withdrawal or denial of approval. A nurse aide currently enrolled in a program whose approval is withdrawn may complete the program with that entity Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:09, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:10. Qualifications of program coordinator.~~The program coordinator of a nurse aide training program shall be a registered nurse. The program coordinator is responsible for the general supervision of the program. General supervision means providing guidance for the program and maintaining ultimate responsibility for the course. The program coordinator shall have a minimum of two years of nursing experience, at least one year of which is in the provision of long-term care services. The director of nursing of a facility may serve simultaneously as the program coordinator but may not perform training while serving as the director of nursing~~Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:10, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:11. Qualifications of primary instructor. ~~The primary instructor of a nurse aide training program shall be a licensed nurse. The primary instructor is the actual teacher of course material. The primary instructor shall have a minimum of two years of nursing experience, at least one year of which is in the provision of long term care services. The primary instructor shall have completed a course of instruction in teaching adults or shall have experience in teaching adults within the past five years~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:11, 42 SDR 51, effective October 13, 2015.

—— ~~**General Authority:** SDCL 34-12-29.~~

—— ~~**Law Implemented:** SDCL 34-12-29.~~

44:74:02:12. Qualifications of supplemental personnel. ~~Supplemental personnel may assist with the instruction of nurse aides. One year of experience in the individual's respective field of practice is required.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:12, 42 SDR 51, effective October 13, 2015.

~~— **General Authority:** SDCL 34-12-29.~~

~~— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:13. Supervision of students. ~~A student in a nurse aide training program may not perform any services unless they have been trained and found to be proficient by the instructor. Students in a training program may perform services only under the supervision of a licensed nurse~~
Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:13, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:14. Physical facilities. ~~Classrooms, conference rooms, laboratories, and equipment shall be available in the number and size to accommodate the number of nurse aides enrolled in the training program. Programs shall provide temperature control, lighting, and clean, safe conditions for instruction~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:14, 42 SDR 51, effective October 13, 2015.

~~General Authority:~~ SDCL 34-12-29.

~~Law Implemented:~~ SDCL 34-12-29.

44:74:02:15. Nurse aide curriculum.~~The curriculum of the nurse aide training program shall address the medical, psychosocial, physical, and environmental needs of the patients or residents served by the nursing facility. Each unit of instruction shall include behaviorally stated objectives with measurable performance criteria. The nurse aide training program shall consist of at least 75 hours of classroom and clinical instruction, including the following:~~

~~—— (1) Sixteen hours of training in the following areas before the nurse aide has any direct contact with a patient or resident:~~

~~—— (a) Communication and interpersonal skills;~~

~~—— (b) Infection control;~~

~~—— (c) Safety/emergency procedures, including the Heimlich maneuver;~~

~~—— (d) Promoting patients' and residents' independence;~~

~~—— (e) Respecting patients' and residents' rights; and~~

~~—— (f) Abuse, neglect, and misappropriation of resident property;~~

~~—— (2) Sixteen hours of supervised practical training, with enough instructors to ensure that nursing care is provided with effective assistance and supervision. The ratio may not be less than one instructor for each eight students in the clinical setting;~~

~~—— (3) Instruction in each of the following content areas:~~

~~—— (a) Basic nursing skills:~~

~~—— (i) Taking and recording vital signs;~~

~~—— (ii) Measuring and recording height and weight;~~

~~—— (iii) Caring for the patients' or residents' environment;~~

~~—— (iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and~~

~~—— (v) Caring for patients or residents when death is imminent;~~

~~—— (b) Personal care skills, including the following:~~

- ~~———— (i) Bathing;~~
- ~~———— (ii) Grooming, including mouth care;~~
- ~~———— (iii) Dressing;~~
- ~~———— (iv) Toileting;~~
- ~~———— (v) Assisting with eating and hydration;~~
- ~~———— (vi) Feeding techniques;~~
- ~~———— (vii) Skin care; and~~
- ~~———— (viii) Transfers, positioning, and turning to include the use of mechanical lift or movement devices;~~
- ~~———— (e) Mental health and social services:~~
 - ~~———— (i) Modifying aides' behavior in response to patients' or residents' behavior;~~
 - ~~———— (ii) Awareness of developmental tasks associated with the aging process;~~
 - ~~———— (iii) How to respond to patients' or residents' behavior;~~
 - ~~———— (iv) Allowing the patient or resident to make personal choices, providing and reinforcing other behavior consistent with the patient's or resident's dignity; and~~
 - ~~———— (v) Using the patient's or resident's family as a source of emotional support;~~
- ~~———— (d) Care of cognitively impaired patients or residents, including the following:~~
 - ~~———— (i) Techniques for addressing the unique needs and behaviors of individuals with dementia;~~
 - ~~———— (ii) Communicating with cognitively impaired patients or residents;~~
 - ~~———— (iii) Understanding the behavior of cognitively impaired patients or residents;~~
 - ~~———— (iv) Appropriate responses to the behavior of cognitively impaired patients or residents; and~~
 - ~~———— (v) Methods of reducing the effects of cognitive impairments;~~
- ~~———— (e) Basic restorative nursing services, including the following:~~

- ~~————— (i) Training the patient or resident in self care according to the patient's or resident's abilities;~~
- ~~————— (ii) Use of assistive devices in transferring, ambulation, eating, and dressing;~~
- ~~————— (iii) Maintenance of range of motion;~~
- ~~————— (iv) Proper turning and positioning in bed and chair;~~
- ~~————— (v) Bowel and bladder control care training; and~~
- ~~————— (vi) Care and use of prosthetic and orthotic devices;~~
- ~~————— (f) Residents' rights, including the following:~~
 - ~~————— (i) Providing privacy and maintaining confidentiality;~~
 - ~~————— (ii) Promoting the patients' or residents' right to make personal choices to accommodate their needs;~~
 - ~~————— (iii) Giving assistance in reporting grievances and disputes;~~
 - ~~————— (iv) Providing needed assistance in getting to and participating in resident and family groups and other activities;~~
 - ~~————— (v) Maintaining care and security of patients' or residents' personal possessions;~~
 - ~~————— (vi) Promoting the patient's or resident's right to be free from abuse, mistreatment, and neglect and understanding the need to report any instances of such treatment to appropriate facility staff;~~
 - ~~————— (vii) Avoiding the need for restraints Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:15, 42 SDR 51, effective October 13, 2015.

~~————— **General Authority:** SDCL 34-12-29.~~

~~————— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:16. Equivalency of education. ~~An individual may meet the 75-hour training requirement by equivalency of education. A facility shall make a request to the department in writing for an equivalency determination, including proof of training with the request~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:16, 42 SDR 51, effective October 13, 2015.

~~General Authority: SDCL 34-12-29.~~

~~Law Implemented: SDCL 34-12-29.~~

44:74:02:17. Nurse aide competency evaluation program standards.~~A nurse aide competency evaluation program shall meet the following standards:~~

~~—— (1) The nurse aide shall be informed by the facility that a record of successful completion of the evaluation will be included in the registry;~~

~~—— (2) The evaluation shall consist of two elements:~~

~~—— (a) The competency evaluation component may be offered as either a written or oral examination. This component of the evaluation shall:~~

~~—— (i) Include each curriculum requirement specified in § 44:74:02:15;~~

~~—— (ii) Be developed from a pool of test questions, with no more than 20 percent of prior questions used on a succeeding examination;~~

~~—— (iii) Use a system that prevents disclosure of the content of the examination; and~~

~~—— (iv) If oral, be read from a prepared text in a neutral manner;~~

~~—— (b) The skills demonstration component shall consist of a minimum of five tasks randomly selected from a pool of tasks generally performed by nurse aides. The pool of skills shall include all of the personal care skills listed in subdivision 44:74:02:15(3)(b). The skills demonstration tasks shall be performed on a live person.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:17, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:18. Competency evaluation program administration standards.~~—The competency evaluation may be administered by a facility. The entity that administers competency evaluations shall meet the requirements of this section and shall have the approval of the department:~~

~~—— (1) The written or oral examination shall be administered by an individual with previous group testing experience;~~

~~—— (2) The skills demonstration shall be administered by a registered nurse who has at least one year's experience in providing care for the elderly or the chronically ill and who has taken a skills demonstration rater training course;~~

~~—— (3) The skills demonstration shall be conducted in a facility or laboratory setting comparable to the setting in which the nurse aide functions and shall accommodate the number of nurse aides enrolled in the competency evaluation program~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:18:18, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:19. Facility proctoring of examination. ~~The written, oral, or skills demonstration examination may be conducted in a facility and proctored by facility personnel if the facility obtains department approval before giving the examinations. The facility shall ensure that the examination is secure from tampering. Department approval may be withdrawn if there is evidence of tampering. Scoring of the examination shall be done by the professional testing company under contract with the department to administer the examination~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:18:19, 42 SDR 51, effective October 13, 2015.

—— **General Authority:** ~~SDCL 34-12-29.~~

—— **Law Implemented:** ~~SDCL 34-12-29.~~

44:74:02:20. Notification to individual regarding successful or unsuccessful completion of the competency evaluation program. ~~The facility offering the examination shall advise in advance any individual who takes a competency evaluation that a record of the successful completion of the evaluation will be included in the registry. To be listed in the registry, a nurse aide shall pass the written or oral portion and the skills demonstration portion of the competency evaluation with a score of at least 75 percent. If the nurse aide does not achieve a score of 75 percent, the facility shall advise the nurse aide of the areas failed. The nurse aide may have two additional opportunities to complete evaluation successfully~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:20, 42 SDR 51, effective October 13, 2015.

~~General Authority: SDCL 34-12-29.~~

~~Law Implemented: SDCL 34-12-29.~~

44:74:02:21. Operation of nurse aide registry. ~~The department is accountable for the operation of the nurse aide registry and may designate an entity to maintain the registry. A nurse aide is listed on the registry through application or by endorsement. The department shall provide a copy of all information contained in the registry on an individual upon request. The public may contact the department at South Dakota Department of Health, Office of Licensure and Certification, 615 East 4th Street, Pierre, South Dakota 57501, or by calling 605-773-3356, to obtain information from the registry between the hours of 8:00 a.m. and 5:00 p.m. central time, Monday through Friday, except for state and federal holidays.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; transferred from § 44:04:18:21, 42 SDR 51, effective October 13, 2015.

~~General Authority: SDCL 34-12-29.~~

~~Law Implemented: SDCL 34-12-29.~~

44:74:02:22. Registry status by application. ~~A nurse aide seeking registry status shall submit to the department an application, completed by the program coordinator or primary instructor, documenting successful completion of an approved training program. The entity responsible for scoring the nurse aide competency evaluation program shall submit documentation of successful completion of the written or oral examination and the skills demonstration of the competency evaluation to the department within 30 days after the administration of the evaluation~~
Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:22, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:23. Registry status by endorsement. ~~A nurse aide seeking registry status by endorsement from another state registry shall submit to the department the following information:~~

- ~~—— (1) A completed application;~~
 - ~~—— (2) Written documentation indicating successful completion of another state's approved nurse aide training and competency evaluation program;~~
 - ~~—— (3) Verification of initial listing on the nurse aide registry in another state;~~
 - ~~—— (4) Verification of listing on a nurse aide registry from the state of most recent employment;~~
- and

~~—— (5) Documentation of employment as a nurse aide within the last 24 consecutive months~~
Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:23, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:24. Registry content. ~~The registry contains the following information for each nurse aide who has gained registry status:~~

- ~~—— (1) The full name of the nurse aide, including maiden name and any surnames used;~~
- ~~—— (2) The last known home address;~~
- ~~—— (3) The registration number;~~
- ~~—— (4) The date the registry status expires;~~
- ~~—— (5) The date of birth;~~
- ~~—— (6) The most recent employment;~~
- ~~—— (7) The date of successful completion of the examination and skills demonstration components of the competency evaluation;~~
- ~~—— (8) The name and address of the professional testing service that scored the competency evaluations taken by the nurse aide; and~~
- ~~—— (9) Any disciplinary proceedings against the nurse aide, including findings of abuse, neglect, or misappropriation of patient or resident property as specified in § 44:74:02:30 Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:24, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:25. Renewal of certification. ~~Certification expires two years from the date of initial registration. To renew certification, the nurse aide shall submit to the department a verification of a minimum of 12 hours of training per year as required in § 44:74:02:02(4) and a minimum of 12 hours of monetary compensation as a nurse aide during the preceding 24 months. An individual who has not performed the training and the required nursing or nursing-related services for monetary compensation during the preceding 24 consecutive months shall complete a new competency evaluation program. The department may grant an exception to § 44:74:02:25 for a nurse aide called to active military service. The nurse aide shall provide evidence of active duty, such as a copy of duty orders. The exemption for renewal ceases six months after discharge from active military service~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:25, 42 SDR 51, effective October 13, 2015.

~~— **General Authority:** SDCL 34-12-29.~~

~~— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:26. Grounds for revocation, denial, or suspension of nurse aide certification.

~~The department may revoke, deny, or suspend a nurse aide's certification if the department determines after a contested case hearing pursuant to SDCL chapter 1-26 that the nurse aide has violated the meaning of abuse, neglect, or misappropriation of resident property as those terms are defined in § 44:74:01:01. The department may also revoke, deny, or suspend a nurse aide's certification if the nurse aide waives his or her right to a case hearing in accordance with § 44:74:02:29. Certification may be suspended by the department during the investigation of an allegation of abuse, neglect, or misappropriation of resident property by a nurse aide following due process as outlined in § 44:74:02:29. The department may revoke, deny, or suspend a nurse aide's certification, following due process as outlined in § 44:74:02:29, if the department determines the nurse aide's certification has been revoked, suspended, or denied in another state Repealed.~~

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; transferred from § 44:04:18:26, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:27. Mandatory reporting of allegations. ~~A facility licensed by the department shall notify the department in writing, within 48 hours, of any alleged misconduct by a nurse aide related to abuse or neglect of an individual or to misappropriation of a patient's or resident's property~~
Repealed.

Source: 21 SDR 118, effective January 2, 1995; transferred from § 44:04:18:27, 42 SDR 51, effective October 13, 2015.

~~General Authority: SDCL 34-12-29.~~

~~Law Implemented: SDCL 34-12-29.~~

44:74:02:28. Investigation of allegations. ~~After an allegation of abuse, neglect, or misappropriation of resident property, the facility shall take steps to prevent further incidents of abuse, neglect, or misappropriation of resident property from occurring, investigate allegations thoroughly, and take any corrective action necessary. The facility shall report its findings to the department within five working days. The department, or another agency of state government, may conduct its own investigation in addition to the facility's investigation.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000; transferred from § 44:04:18:28, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:29. Notice and hearing process.~~The department shall follow the contested case procedure found in SDCL chapter 1-26 if a hearing is conducted:~~

~~—— (1) To determine if a nurse aide has engaged in abuse, neglect, or misappropriation of resident property of an individual; or~~

~~—— (2) When the department denies a petition to remove a finding of neglect from the registry.~~

~~—— If the department has determined abuse, neglect, or misappropriation of resident property of an individual has occurred, a notice of the right to a hearing will be sent to the nurse aide. The notice shall state the aide has 30 days from receipt of the notice to respond. The notice shall include a waiver of hearing. Failure to return the waiver or failure to request a hearing within 30 days waives the right to a hearing.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; 29 SDR 81, effective December 11, 2002; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:18:29, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:30. Documentation of substantiated allegations on registry. ~~If, after a hearing on the matter, the nurse aide is found to have committed abuse, neglect, or misappropriation of resident property of an individual, the department shall update the registry with documentation within 10 days from the date of the ruling. If a waiver of hearing is received, the department shall update the nurse aide's registry status. The documentation remains on the registry permanently and includes the following:~~

- ~~—— (1) A summary of the allegation;~~
- ~~—— (2) A summary of the department's investigative report;~~
- ~~—— (3) The statement by the nurse aide, if one is provided;~~
- ~~—— (4) The department's decision;~~
- ~~—— (5) The waiver of the hearing, if any; and~~
- ~~—— (6) A date of the hearing, findings of fact, and conclusions of law, and the outcome, if a hearing is held.~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:18:30, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~

44:74:02:31. Procedure to remove of a finding of neglect from registry. ~~A certified nurse aide may petition for a removal of a finding of neglect after one year beginning on the date on which the finding was placed on the certified nurse aide registry.~~

~~—— If the department determines the employment and personal history of the certified nurse aide does not reflect a pattern of abusive behavior or neglect and the neglect in the original finding was a singular occurrence, the department may remove the finding from the registry.~~

~~—— The department may deny the petition if the employment and personal history of the certified nurse aide reflects a pattern of abusive behavior or neglect and the neglect involved in the original finding was not a singular occurrence. The department shall follow the procedure as provided in § 44:74:02:29 Repealed.~~

Source: 29 SDR 81, effective December 11, 2002; transferred from § 44:04:18:31, 42 SDR 51, effective October 13, 2015.

~~—— **General Authority:** SDCL 34-12-29.~~

~~—— **Law Implemented:** SDCL 34-12-29.~~