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Title 44@ Department of Health

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Article 44:73@ Nursing facilities

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Chapter 44:73:01@ Rules of general applicability

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Section 44:73:01:01@ Definitions

44_73_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 patient's or resident's property or funds; (ii) An attempt to commit a crime against a patient or resident; (iii) Physical harm or injury against a patient or resident; or (iv) Using profanity, making a gesture, or engaging in any other act made to or directed at a patient or resident;

(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 patient's or resident's property or funds; (ii) An attempt to commit a crime against a patient or resident; (iii) Physical harm or injury against a patient or resident; or (iv) Using profanity, making a gesture, or engaging in any other act made to or directed at a patient or resident;

(i)

Misappropriation of a patient's or resident's property or funds;

(ii)

An attempt to commit a crime against a patient or resident;

(iii)

Physical harm or injury against a patient or resident; or

(iv)

Using profanity, making a gesture, or engaging in any other act made to or directed at a patient or resident;

(2)

"Activities coordinator," a person who is a therapeutic recreation specialist or activity professional eligible for certification from the National Certification Council of Activity Professionals, who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a patient or resident activities program in a health care setting, or who is a qualified occupational therapist or occupational therapy assistant under SDCL chapter 36-31 or who has completed a training program, or has similar qualifications as determined by the department;

(3)

"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;

(4)

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

(5)

"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;

(6)

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

(7)

"Client advocate," any agency responsible for the protection and advocacy of residents, including the department, the state ombudsman, the protection and advocacy network, and the Medicaid fraud control unit;

(8)

"Clinical Nurse Specialist," a person who practices the nurse specialty of a clinical nurse specialist as authorized pursuant to SDCL chapter 36-9;

(9)

"Cognitively impaired," a 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 hazards;

(10)

"Department," the South Dakota Department of Health;

(11)

"Developmental disability," a severe, chronic disability of a person as defined in SDCL 27B-1-18 or a disability which:(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) Is manifested before the person attains age 22; (c) Is likely to continue indefinitely; (d) Results in substantial functional limitations in three or more of the following areas of major life activity:(i) Self-care; (ii) Receptive and expressive language; (iii) Learning; (iv)

Mobility; (v) Self-direction; (vi) Capacity for independent living; and (vii) Economic self-sufficiency; and (e) Reflects the persons need for an array of generic services, met through a system of individual planning and supports over an extended time, including those of a life-long duration;

(a)

Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b)

Is manifested before the person attains age 22;

(c)

Is likely to continue indefinitely;

(d)

Results in substantial functional limitations in three or more of the following areas of major life activity:(i) Self-care; (ii) Receptive and expressive language; (iii) Learning; (iv) Mobility; (v) Self-direction; (vi) Capacity for independent living; and (vii) Economic self-sufficiency; and

(i)

Self-care;

(ii)

Receptive and expressive language;

(iii)

Learning;

(iv)

Mobility;

(v)

Self-direction;

(vi)

Capacity for independent living; and

(vii)

Economic self-sufficiency; and

(e)

Reflects the persons need for an array of generic services, met through a system of individual planning and supports over an extended time, including those of a life-long duration;

(12)

"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 120 or more hours of classroom instruction in food service supervision, or a certified dietary manager recognized by the National Certifying Board of Dietary Managers and who functions with consultation from a dietitian;

(13)

"Dietitian," a person who is registered with the Academy of Nutrition and Dietetics and holds a current license to practice in South Dakota pursuant to SDCL chapter 36-10 B;

(14)

"Dining assistant," a person who has successfully completed a dining assistant program approved pursuant to § 44:73:07:17;

(15)

"Direct contact," any activity that requires physically touching a resident;

(16)

"Distinct part," an identifiable unit, such as an entire ward or contiguous wards, wing, floor, or building, which is licensed at a specific level. It consists of all beds

and related facilities in the unit;

(17)

"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;

(18)

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

(19)

"Facility," the place of business licensed by the department as a nursing facility used to provide health care for residents;

(20)

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

(21)

"Healthcare worker," any paid person working in a health-care setting;

(22)

"Hospice services," a coordinated interdisciplinary program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family. The needs arise out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component;

(23)

"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;

(24)

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

(25)

"Licensed health professional," a physician; physician's 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 South Dakota;

(26)

"Medical staff," an organized staff composed of practitioners that operates under bylaws approved by the governing body and which is responsible for reviewing the qualifications of practitioners applying for clinical privileges and for the provision of medical care to patients and residents in a health care facility;

(27)

"Memory care unit," a distinct area of a facility in which the physical environment and design maximizes functioning abilities, promotes safety, and encourages independence for a defined unique population, which is staffed by persons with training to meet the needs of residents admitted to the unit;

(28)

"Mental disease," a mental condition that causes a person to lack sufficient understanding or capacity to make the responsible decisions to meet the ordinary

demands of life, as evidenced by the person's behavior, or that causes a person to be a danger to self or others;

(29)

"Misappropriation of resident or patient property," the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a residents or patients belongings or money without the residents or patients consent;

(30)

"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;

(31)

"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;

(32)

"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;

(33)

"Nurse practitioner," a person who practices the specialty nurse practitioner as authorized pursuant to SDCL chapter 36-9 A;

(34)

"Nursing personnel," staff which includes registered nurses, licensed practical nurses, nurse aides, and restorative aides;

(35)

"Nursing unit," a patient unit that is limited to one floor of a health care facility and has all patient room entrances and exits within sight or control of nursing personnel;

(36)

"Pharmacist," a person registered to practice pharmacy pursuant to SDCL chapter 36-11;

(37)

"Physician," a person who is licensed or approved to practice medicine pursuant to SDCL chapter 36-4;

(38)

"Physician assistant," a health care professional qualified and licensed to SDCL Chapter 36-4 A;

(39)

"Practitioner," one of the following: (a) A physician or surgeon licensed or approved to practice medicine pursuant to SDCL chapter 36-4; (b) A dentist licensed pursuant to SDCL chapter 36-6; (c) A podiatrist licensed pursuant to SDCL chapter 36-8; (d) A optometrist licensed pursuant to SDCL chapter 36-7; (e) A chiropractor licensed pursuant to SDCL chapter 36-5; (f) A pharmacist licensed pursuant to SDCL chapter 36-11; (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 licensed pursuant to SDCL chapter 36-9 A; (j) A physician assistant licensed pursuant to SDCL chapter 36-4 A; or (k) A speech-language pathologist pursuant to SDCL chapter 36-37:

(a)

A physician or surgeon licensed or approved to practice medicine pursuant to SDCL chapter 36-4;

(b)

A dentist licensed pursuant to SDCL chapter 36-6;

(c)

A podiatrist licensed pursuant to SDCL chapter 36-8;

(d)

A optometrist licensed pursuant to SDCL chapter 36-7;

(e)

A chiropractor licensed pursuant to SDCL chapter 36-5;

(f)

A pharmacist licensed pursuant to SDCL chapter 36-11;

(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 licensed pursuant to SDCL chapter 36-9 A;

(j)

A physician assistant licensed pursuant to SDCL chapter 36-4 A; or

(k)

A speech-language pathologist pursuant to SDCL chapter 36-37:

(40)

"Protection and advocacy network," agencies responsible for the protection and advocacy of individuals with developmental disabilities or mental illness, established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402 (October 30, 2000), codified at 42 U.S.C. § 15041 to 15045, and the Protection and Advocacy for Persons with Mental Illness Act of

2000, Pub. L. No. 106-310 (October 17, 2000), codified at 42 U.S.C. §§ 10801 to 10851, inclusive;

(41)

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

(42)

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

(43)

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

(44)

"Respite care," care permitted within the scope of a facility license, with a limited stay no greater than 30 days for any one resident;

(45)

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

(46)

"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 resident's body, excluding devices used for specific medical and surgical treatment;

(47)

"Self-administration of medications," the removal of the correct dosage from the

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;

(48)

"Social worker," a person who is licensed pursuant to SDCL chapter 36-26;

(49)

"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;

(50)

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

(51)

"Supplemental personnel," individuals who assist the primary instructor in the training of nurse aides;

(52)

"Therapeutic diet," any diet other than a regular diet that is ordered by a physician, physician assistant, or nurse practitioner as part of the treatment for a disease or clinical condition to increase, decrease, or to eliminate certain substances in the diet, and to alter food consistency;

(53)

"Transfer or discharge," the movement of a resident to a bed outside the distinct part or outside the facility;

(54)

"Treatment," a medical aid provided for the purposes of palliating symptoms,

improving functional level, or maintaining or restoring health; and

(55)

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