From: Grady Kickul, DRS Director

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To: Homecare Services of South Dakota
Homewatch Caregiver of South Dakota
Preferred Home Health
Prairie Freedom Center
Innovative Home Health

Subject: Assistive Daily Living Services Program – Incidents of Abuse, Neglect and Exploitation

This Program Guide provides direction for policy for the Assistive Daily Living Services provider agencies for reporting Alleged Incidents of Abuse, Neglect and Exploitation. Questions pertaining to this program guide should be directing to the DRS Program Specialist.

Definition of Term
“Service provider,” any person or agency providing qualified services which are reimbursed by the Assistive Daily Living Services Program.

Purpose
To ensure:
1) all allegations are reported;
2) the best interest of people on the ADLS program are protected;
3) state agencies do not duplicate investigative efforts or interfere with investigations being conducted by other state agencies; and
4) Service providers receive prompt, consistent responses to reported incidents and are informed of any entities that may be investigating reported incidents.
REPORTING PROCEDURES
Service providers that are providing services to any person on the ADLS program will report alleged incidents of abuse, neglect and exploitation by a phone call, fax or email to the Division of Rehabilitation Services within 48 hours of the incident or the next working day, whichever comes first. An Incident Report form (DRS-ADLS-101) must be submitted within seven calendar days following the incident. Also call the nearest Department of Social Services/Office of Adult Services and Aging and for criminal activity you must also contact the local law enforcement agency.

Members of South Dakota's Indian Tribes should note that Tribal Ordinances may have different definitions of abuse, neglect, exploitation and different reporting requirements. Check with authorities in your area.

South Dakota Codified Law (SDCL)

SDCL. 22-46-1. Definition.
“Abuse,” physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on a disabled adult;

“Disabled adult,” a person eighteen years of age or older who suffers from a condition of mental retardation, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunction to the extent that the person is unable to protect himself or herself or provide for his or her own care;

“Exploitation,” the wrongful taking or exercising of control over property of a disabled adult with intent to defraud that disabled adult; and

“Neglect,” harm to a disabled adult’s health or welfare, without reasonable medical justification, caused by the conduct of person responsible for the adult’s health or welfare, within the means available for the disabled adult, including the failure to provide adequate food, clothing, shelter or medical care;

SDCL. 22-46-2. Abuse or neglect of disabled adult--Felony.
Any person who abuses or neglects a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony.

Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of a disabled adult, and having been entrusted with the property of that disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A.

SDCL. 22-46-5. Investigating violations.
In investigating violations of this chapter, law enforcement agencies shall cooperate with and assist the Department of Social Services.

SDCL. 34-12-51. Immunity from liability for reporting abuse or neglect of disabled adults.
Any institution regulated pursuant to chapter 34-12 and any employee, agent, or member of a medical or dental staff thereof who, in good faith, makes a report of abuse, exploitation, or neglect of a disabled adult, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from such report. Immunity also extends in a like manner to public officials involved in the investigation of abuse, exploitation, or neglect of disabled adults, or to any person or institution provided herein who in good faith
cooperates with such public officials in an investigation. The provisions of this section may not be extended to any person alleged to have committed any act of abuse or neglect of an adult with a disability.

What to Report?
- Name, age and address of the adult who is in danger.
- Date of the incident
- Names and addresses of relatives, if known.
- Names of other people in the dwelling and the relationship to the adult, if any.
- Description of the situation causing the danger and any other information which establishes the cause of the situation and the manner in which it occurred.

Signs of Abuse, Neglect or Exploitation
Some things to look for which may mean an adult needs protection are:
- Signs of physical injury such as bruises and welts, burns, lacerations, scars, broken bones or serious internal injuries.
- Injuries that do not seem to fit the explanation given by the caretaker.
- Multiple injuries and injuries which are repeated or untreated.
- Use of forcible restraint or confinement for extended periods of time.
- Unreasonable refusal to allow travel or visits by friends.
- Lack of adequate clothing and good hygiene; the person may be dressed poorly for the weather, have persistent illnesses or is seldom bathed.
- Lack of adequate medical care or poor nutrition.
- Misuse of money or property for another person’s monetary or personal gain.
- Unauthorized sale of real or personal property.
DRS should be notified of all alleged incidents of abuse, neglect, or exploitation by phone or fax within 48 hours or the next working day. A written report shall follow the phone/fax report within 7 days.

Date of Incident: ____________________          Age adult who is in danger: ____________________

Name adult who is in danger: ______________________________________________________________

Address: _______________________________________________________________________________
______________________________________________________________________________________

Names and addresses of relatives, if known: ___________________________________________________
______________________________________________________________________________________

Names of other people in the dwelling and the relationship to the adult, if any: ________________________
______________________________________________________________________________________

Describe the situation causing the danger, and any other information which establishes the cause of the situation and the manner in which it occurred.
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As appropriate, the agency should review the alleged incident to identify possible causes and suggestions, plans, or actions for the prevention of similar incidents in the future. Information relating to the incident, not available when the initial written report was sent, may be submitted as an addendum to this report.

Who was contacted? ____________________________________________  Date __________________

Report prepared by ____________________________________________  Date

Please send to: Division of Rehabilitation Services, E Hwy 34 Hillsview Plaza, c/o 500 East Capitol, Pierre, SD 57501-5070