

CHAPTER 44:04:18

NURSE AIDES

Section

44:04:18:01	Application of chapter.
44:04:18:02	Employment of qualified nurse aides required.
44:04:18:03	Exception for employment of unqualified nurse aides.
44:04:18:04	Multistate registry verification required.
44:04:18:05	Nursing facility required to maintain records.
44:04:18:06	Nursing facility required to pay costs of training and competency evaluation.
44:04:18:07	Approval and reapproval of nurse aide training programs.
44:04:18:08	Notice of change in approved training program.
44:04:18:09	Denial or withdrawal of approval of training program.
44:04:18:10	Qualifications of program coordinator.
44:04:18:11	Qualifications of primary instructor.
44:04:18:12	Qualifications of supplemental personnel.
44:04:18:13	Supervision of students.
44:04:18:14	Physical facilities.
44:04:18:15	Nurse aide curriculum.
44:04:18:16	Equivalency of education.
44:04:18:17	Nurse aide competency evaluation program standards.
44:04:18:18	Competency evaluation program administration standards.
44:04:18:19	Nursing facility proctoring of examination.
44:04:18:20	Notification to individual regarding successful or unsuccessful completion of competency evaluation program.
44:04:18:21	Operation of nurse aide registry.
44:04:18:22	Registry status by application.
44:04:18:23	Registry status by endorsement.
44:04:18:24	Registry content.
44:04:18:25	Renewal of registry status.
44:04:18:26	Grounds for revocation, denial, or suspension of nurse aide registry status.
44:04:18:27	Mandatory reporting of allegations.
44:04:18:28	Investigation of allegations.
44:04:18:29	Notice and hearing process.
44:04:18:30	Documentation of substantiated allegations on registry.
44:04:18:31	Procedure to remove of a finding of neglect from registry.

44:04:18:01. Application of chapter. Facilities defined in SDCL 34-12-1.1(7) must comply with §§ 44:04:18:02 to 44:04:18:30, inclusive.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:02. Employment of qualified nurse aides required. Nurse aides employed by a nursing facility must 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 §§ 44:04:18:07 and 44:04:18:17;

(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; and

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

Source: 21 SDR 118, effective January 2, 1995; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:03. Exception for employment of unqualified nurse aides. A nursing facility may employ for a maximum of four months an individual to provide nurse aide duties who has not met the qualifications of § 44:04:18:02 if the individual is enrolled in a training and competency evaluation program approved by the department pursuant to §§ 44:04:18:07 and 44:04:18:17 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 nursing facility must ensure that such an individual actually obtains registry status within the four-month period.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:04. Multistate registry verification required. A nursing facility must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:05. Nursing facility required to maintain records. A nursing facility must maintain employment records that verify the qualifications of the nurse aides as outlined in § 44:04:18:02.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:06. Nursing facility required to pay costs of training and competency evaluation. A nursing facility must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:07. Approval and reapproval of nurse aide training programs. The department must approve nurse aide training programs. To obtain approval, the entity providing the nurse aide training program must 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 must apply for reapproval. As part of the reapproval process, the department shall conduct an unannounced on-site visit to determine compliance with the requirements.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:08. Notice of change in approved training program. The entity offering an approved nurse aide training program must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:09. 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 44:04:04 or the nursing service requirements in chapter 44:04:06;

(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. Nurse aides currently enrolled in a program whose approval is withdrawn may complete the program with that entity.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:10. Qualifications of program coordinator. The program coordinator of a nurse aide training program must 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 must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:11. Qualifications of primary instructor. The primary instructor of a nurse aide training program must be a licensed nurse. The primary instructor is the actual teacher of course material. The primary instructor must 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 must have completed a course of instruction in teaching adults or must have experience in teaching adults within the past five years.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:12. 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:13. Supervision of students. Students 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:14. Physical facilities. Classrooms, conference rooms, laboratories, and equipment must be available in the number and size to accommodate the number of nurse aides enrolled in the training program. Programs must provide temperature control, lighting, and clean, safe conditions for instruction.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:15. Nurse aide curriculum. The curriculum of the nurse aide training program must address the medical, psychosocial, physical, and environmental needs of the patients or residents served by the nursing facility. Each unit of instruction must include behaviorally stated objectives with measurable performance criteria. The nurse aide training program must 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; and
- (e) Respecting patients' and residents' rights;

(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;

(c) 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:16. Equivalency of education. An individual may meet the 75-hour training requirement by equivalency of education. A nursing facility shall make a request to the department in writing for an equivalency determination, including proof of training with the request.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:17. Nurse aide competency evaluation program standards. A nurse aide competency evaluation program must meet the following standards:

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

(2) The evaluation must consist of two elements:

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

- (i) Include each curriculum requirement specified in § 44:04:18:15;
- (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 must consist of a minimum of five tasks randomly selected from a pool of tasks generally performed by nurse aides. The pool of skills must include all of the personal care skills listed in subdivision 44:04:18:15(3)(b). The skills demonstration tasks must be performed on a live person.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:18. Competency evaluation program administration standards. The competency evaluation may be administered by a nursing facility. The entity that administers competency evaluations must meet the requirements of this section and must have the approval of the department:

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

(2) The skills demonstration must 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 must be conducted in a nursing facility or laboratory setting comparable to the setting in which the nurse aide functions and must accommodate the number of nurse aides enrolled in the competency evaluation program.

Source: 21 SDR 118, effective January 2, 1995; 30 SDR 84, effective December 4, 2003.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:19. Nursing facility proctoring of examination. The written, oral, or skills demonstration examination may be conducted in a nursing facility and proctored by facility personnel if the facility obtains department approval before giving the examinations. The nursing facility must ensure that the examination is secure from tampering. Department approval may be withdrawn if there is evidence of tampering. Scoring of the examination must be done by the professional testing company under contract with the department to administer the examination.

Source: 21 SDR 118, effective January 2, 1995; 30 SDR 84, effective December 4, 2003.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:20. Notification to individual regarding successful or unsuccessful completion of the competency evaluation program. The facility offering the examination must 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 must 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 must advise the nurse aide of the areas failed. The nurse aide may have two additional opportunities to complete evaluation successfully.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:21. 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.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:22. Registry status by application. A nurse aide seeking registry status must 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 must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:23. Registry status by endorsement. A nurse aide seeking registry status by endorsement from another state registry must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:24. 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 § 44:04:18:30.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:25. Renewal of registry status. Registry status expires two years from the date of initial registration. To renew registry status, the nurse aide must submit to the department a verification of employment for a minimum of eight hours during the preceding 24 months. An individual who has not performed any nursing or nursing-related services for monetary compensation during the preceding 24 consecutive months must complete a new competency evaluation program.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:26. Grounds for revocation, denial, or suspension of nurse aide registry status. The department may revoke a nurse aide's current registry status 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 or neglect as those terms are defined in § 44:04:01:01. The department may deny registry status to a nurse aide applying for registration if the nurse aide was convicted of criminal charges related to abuse or neglect of an individual. Registry status may be suspended by the department during the investigation of an allegation of abuse or neglect by a nurse aide following due process as outlined in § 44:04:18:29.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:27. Mandatory reporting of allegations. A nursing facility must 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.

Source: 21 SDR 118, effective January 2, 1995.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:28. Investigation of allegations. After an allegation of abuse or neglect, the facility must take steps to prevent further incidents of abuse or neglect from occurring, investigate allegations thoroughly, and take any corrective action necessary. The facility must 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.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:29. 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 or neglect 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 or neglect 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 10 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 10 days waives the right to a hearing.

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.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:30. Documentation of substantiated allegations on registry. If, after a hearing on the matter, the nurse aide is found to have committed abuse or neglect of an individual, the department shall update the registry with documentation within 60 days from the date of the ruling. If a waiver of hearing is received, the department shall update the registry by flagging the nurse aide's name on the registry. 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.

Source: 21 SDR 118, effective January 2, 1995; 26 SDR 96, effective January 23, 2000; 30 SDR 84, effective December 4, 2003.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.

44:04:18:31. 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 § 44:04:18:29.

Source: 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-29.

Law Implemented: SDCL 34-12-29.