

Mandatory Reporting Requirements: The Elderly South Dakota

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| Question | Answer |
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| Who is required to report? | <ul style="list-style-type: none"> • Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, podiatrist, religious healing practitioner, hospital intern or resident, nurse, paramedic, emergency medical technician, social worker, or any health care professional; • Any psychologist, licensed mental health professional, or counselor engaged in professional counseling; • Any state, county, or municipal criminal justice employee or law enforcement officer; or • Any staff member of a nursing facility, assisted living facility, adult day care center, or community support provider, or any residential care giver, individual providing homemaker services, victim advocate, or hospital personnel engaged in the admission, examination, care, or treatment of elderly or disabled adults. |
| When is a report required and where does it go? | <p>When is a report required?</p> <ul style="list-style-type: none"> • When someone who is required to report knows, or has reasonable cause to suspect, that an elder or adult with a disability has been or is being abused, neglected or exploited. <p>Where does it go?</p> <ul style="list-style-type: none"> • May be made orally or in writing to the state’s attorney of the county where the elder or disabled adult resides or is present, to the Department of Human Services office, or to law enforcement officers. The state’s attorney or law enforcement officer, upon receiving a report, shall immediately notify the Department of Human Services. • Staff of residential facilities for the elderly and disabled should notify the person in charge of the institution where the elderly or disable adult resides or is present, or the person in charge of the entity providing the service to the elderly or disabled adult, of the suspected abuse or neglect. The person in charge shall report the information. • See https://dhs.sd.gov/ltss/adultprotective.aspx for further information. |
| What definitions are important to know? | <ul style="list-style-type: none"> • “Adult with a disability” means a person 18 years of age or older who suffers from a condition of intellectual disability, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care. • “Caretaker” means a person or entity who is entrusted with the property of an elder or adult with a disability, or who is responsible for the health or welfare of an elder or adult with a disability, and who assumes the position of trust or responsibility voluntarily, by contract, by receipt of payment, or by order of the court. • “Elder” means a person 65 years of age or older. |

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| | <ul style="list-style-type: none"> • “Emotional and Psychological Abuse” means a caretaker’s willful, malicious, and repeated infliction of (1) a sexual act or the simulation of a sexual act directed at and without the consent of the elder or adult with a disability that involves nudity or is obscene; (2) unreasonable confinement; (3) harm or damage or destruction of the property of an elder or adult with a disability, including harm to or destruction of pets; or (4) ridiculing demeaning conduct, derogatory remarks, verbal harassment, or threats to inflict physical or emotional and psychological abuse, directed at an elder or adult with a disability. • “Exploitation” means the wrongful taking or exercising of control over property of an elder or adult with a disability with intent to defraud the elder or adult with a disability. • “Neglect” means harm to the health or welfare of an elder or an adult with a disability, without reasonable medical justification, caused by a caretaker, within the means available for the elder or adult with a disability, including the failure to provide adequate food, clothing, shelter, or medical care. <ul style="list-style-type: none"> • Neglect does not include a decision that is made to not seek medical care for an elder or adult with a disability upon the expressed desire of the elder or adult with a disability; a decision to not seek medical care for an elder or adult with a disability based upon a previously executed declaration, do-not-resuscitate order, or a power of attorney for health care; a decision to not seek medical care for an elder or adult with a disability if otherwise authorized by law; or the failure to provide goods and services outside the means available for the elder or disabled adult. • “Physical Abuse” means physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury. |
| <p>What timing and procedural requirements apply to reports?</p> | <ul style="list-style-type: none"> • Reports should be made within 24 hours of the obtaining of knowledge or suspicion of potential abuse, neglect, or exploitation. |
| <p>What information must a report include?</p> | <ul style="list-style-type: none"> • Name, age, address and contact information of (1) the elder or adult with a disability, (2) the person making the report, and (3) the elder or adult with a disability’s caretaker; • Name of the alleged perpetrator; • The nature and extent of the elder or adult with a disability’s injury, whether physical or financial, if any; • The nature and extent of the condition that required the report to be made; and • Any other pertinent information. |
| <p>Anything else I should know?</p> | <ul style="list-style-type: none"> • Any person who knowingly fails to make the required report is guilty of a Class 1 misdemeanor, punishable by a maximum of 1 year imprisonment, or \$2,000 fine, or both. • Any person who, in good faith, makes a report of abuse, neglect or exploitation of any elder or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the report. This immunity extends in a like manner to any public official involved in the investigation of abuse, neglect, or exploitation of any elder or disabled adult, or to any person or institution who in good faith cooperates with any public official in an investigation. These provisions do not extend to any person alleged to have committed any act of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any such act. • Any health care facility or related institution, or any employee, agent, or member of a medical or dental |

staff of such institution, who, in good faith, makes a report of abuse, exploitation or neglect of any elder or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the report. This immunity extends in a like manner to any public official involved in the investigation of abuse, exploitation or neglect of any elder or disabled adult, or to any person or institution who in good faith cooperates with any public official in an investigation. Immunity does not extend to any person alleged to have committed any act of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any such act.

Statutory
citation(s):

S.D.C.L. §§ 22-6-2, 22-46-1, 22-46-1.1, 22-46-7, 22-46-8, 22-46-9, 22-46-10, 22-46-12, 34-12-51.