SOUTH DAKOTA: Summary of Fraud and Abuse Statutes and Regulations

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1) ANTI-KICKBACK

South Dakota has several statutes that generally address the same types of conduct to which the federal Anti-Kickback Statute applies.

S.D. Codified Laws § 22-45-4. Action of person aiding provider with goods or services or referring individuals to provider for which additional value received an offense.
A person commits an offense, punishable as a class 5 felony, for engaging in the following conduct: (1) Acting on behalf of a provider, purchasing or leasing goods, services, materials, or supplies for which payment may be made, in whole or in part, under the Medical Assistance program and soliciting or accepting anything of additional value in return for or in connection with such purchase or lease; (2) Selling or leasing to or for the use of provider, goods, services, materials, or supplies for which payment may be made, in whole or in part, under the Medical Assistance program, and offering, transferring, or paying anything of additional value in connection with or in return for such sale or lease; or (3) Referring an individual to a provider for the provision of a good or a service for which payment may be made, in whole or in part, under the Medical Assistance program, and soliciting or accepting anything of value in connection with such referral.

It is an exception to subdivisions (1) and (2) of this statute that the additional value transferred is a refund or discount made in the ordinary course of business and reflected by the books and records of the individual, corporation, or association.
There is also a separate section of South Dakota law that establishes an Anti-Kickback type statute with which hearing aid dispensers and audiologists must comply. Under S.D. CODIFIED LAWS § 36-24-39.1, conduct which endangers or is likely to “endanger the health, welfare or safety of the public” is grounds for disciplinary action. This conduct includes giving, or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or audiologist, or to influence persons to refrain from dealing the products of competitors. S.D. CODIFIED LAWS § 36-24-39.1(21).

The South Dakota Board of Hearing Aid Dispensers and Audiologists may impose disciplinary action for violations of this statute, including the following actions: (1) refuse to issue or renew a license; (2) issue a letter of reprimand or concern; (3) require restitution of fees; (4) impose probationary conditions; or (5) suspend or revoke a license. S.D. CODIFIED LAWS § 36-24-39.2. The Board also may seek injunctive relief to stop this conduct under S.D. CODIFIED LAWS § 36-24-42 and S.D. CODIFIED LAWS § 36-24-44.

2) PROHIBITIONS ON FEE SPLITTING

South Dakota has several statutory prohibitions against fee splitting, some of which are further addressed in the state’s Administrative Code. As discussed below, these provisions generally apply to specific types of health care practitioners, including nursing facilities, administrators of nursing facilities, pharmacies, pharmacists, physicians, optometrists and podiatrists.

S.D. CODIFIED LAWS § 34-12B-3. Acceptance by nursing facility of rebate, free equipment or fee from pharmacy as misdemeanor.
It is a Class 1 misdemeanor for any licensed nursing facility or nursing facility administrator to accept any rebate or free equipment from, or engage in splitting fees with any pharmacy department or pharmacist that is providing drugs or medicines to such home. Any violation of this statute is grounds for the suspension or revocation of the license of the pharmacy, pharmacist, nursing facility or nursing facility administrator by the appropriate licensing board or commission. S.D. CODIFIED LAWS § 34-12B-6.

S.D. CODIFIED LAWS § 34-12B-4. Pharmacy splitting fees or giving rebate or free equipment and services to nursing facility as misdemeanor.
It is a Class 1 misdemeanor for any licensed pharmacy or pharmacist to split fees with, or give a rebate of any type or furnish free equipment to any nursing facility or nursing facility administrator as an incentive to the nursing facility or nursing facility administrator to designate such pharmacy or pharmacist as an exclusive provider of drugs and medicines. Any violation of this statute is grounds for the suspension or
revocation of the license of the pharmacy, pharmacist, nursing facility or nursing facility administrator by the appropriate licensing board or commission. S.D. CODIFIED LAWS § 34-12B-6.

**S.D. ADMIN. R. § 20:51:13:04. Splitting fees or rebates prohibited.**
The South Dakota Administrative Code expands slightly on the fee splitting prohibition discussed in S.D. CODIFIED LAWS § 34-12B-4. This section of the Code provides that the practice of splitting fees or making rebates for pharmaceutical services with other health practitioners or with health institutions providing patient care is contrary to the best interests of the patient and is therefore prohibited.

**S.D. ADMIN. R. § 20:51:16:04(4). The pharmacist’s relations to other health professions.**
An additional section of the Administrative Code addresses fee splitting arrangements involving pharmacists. This section provides that in the pharmacist's relations to other health professions, the pharmacist shall, among other things, not have clandestine arrangements either directly or indirectly with a practitioner of the health sciences or any person, partnership, or corporation by which fees are divided or in which secret or coded prescriptions are involved.

**S.D. CODIFIED LAWS § 36-4-30. Acts considered unprofessional conduct—Criminal prosecution.**
South Dakota law defines several types of conduct as unprofessional or dishonorable conduct if engaged in by physicians. Included among the types of things that are considered unprofessional conduct are employing what is known as cappers or steerers (S.D. CODIFIED LAWS § 36-4-30(2)), as well as splitting fees or giving to any person furnishing a patient any portion of the fees received from the patient, or paying or giving to any person consideration of any kind for furnishing a patient. S.D. CODIFIED LAWS § 36-4-30(10). Unprofessional conduct also includes consistently providing or prescribing medical services or treatments which are inappropriate or unnecessary. S.D. CODIFIED LAWS § 36-4-30(21). This statute goes on to clarify that no person may be criminally prosecuted for conduct described in the statute unless such conduct is otherwise unlawful. The Board of Medical and Osteopathic Examiners can impose disciplinary action against any physician, surgeon or osteopathic physician or surgeon for unprofessional conduct. S.D. CODIFIED LAWS § 36-4-29. The Board of Medical and Osteopathic Examiners is also empowered to seek an injunction to restrain any such practitioner from practicing medicine, osteopathy, surgery, or obstetrics if it appears to the Board that any licensee has engaged in unprofessional conduct. S.D. CODIFIED LAWS § 36-4-34.

Additionally, conduct engaged in by certain other health care practitioners that constitutes unprofessional conduct as defined in S.D. CODIFIED LAWS § 36-4-30 can also form the basis for disciplinary action against those practitioners. For example, the State Board of Medical and Osteopathic Examiners can take disciplinary action against physician assistants who engage in unprofessional conduct as defined in that section of South Dakota law. S.D. CODIFIED LAWS § 36-4A-37. The Board may
also take disciplinary action against advanced life support personnel based on unprofessional conduct as defined in S.D. CODIFIED LAWS § 36-4-30. S.D. CODIFIED LAWS § 36-4B-31.

S.D. CODIFIED LAWS § 36-10-40. Unprofessional or dishonorable conduct—Activities included.
South Dakota law defines several types of conduct as unprofessional or dishonorable conduct if engaged in by physical therapists. As is the case with physicians, employing what is known as cappers or steerers constitutes unprofessional conduct if engaged in by physical therapists. S.D. CODIFIED LAWS § 36-10-40(1). The Board of Medical and Osteopathic Examiners may cancel, revoke, or suspend the license of any physical therapist or the certificate of any physical therapist assistant issued under this chapter upon satisfactory proof of, among other things, such a licensee’s or certificate holder’s incompetence, or unprofessional or dishonorable conduct. S.D. CODIFIED LAWS § 36-10-39; See e.g., 1988 S.D. AG LEXIS 37 (Attorney General opinion on the scope of authority of the State Board of Medical and Osteopathic Examiners). This authority was exercised in In re Yemmanur. 447 N.W.2d 525 (Nov. 1, 1989) (providing that the South Dakota State Board of Medical and Osteopathic Examiners may cancel, revoke, suspend or limit the license of any physician, surgeon or osteopathic physician or surgeon upon satisfactory proof of such a licensee’s gross incompetence, or unprofessional or dishonorable conduct or proof of a violation of S.D. Codified Laws chapter 26 in any respect).

Other types of practitioners are also subject to potential disciplinary action for engaging in unprofessional conduct. The statutes that form the basis for disciplinary action do not rely on the definition of “unprofessional conduct” used in S.D. CODIFIED LAWS § 36-4-30 or § 36-4-40, however. Rather, these statutes use definitions of that term that are located elsewhere in South Dakota law, or are not specifically defined. Practitioners to which disciplinary action may be imposed for unprofessional conduct include:

- Physicians and Surgeons (S.D. CODIFIED LAWS §§ 36-4-28 (2013), 36-4-29)
- Physicians Assistants (S.D. CODIFIED LAWS §§ 36-4A-37; 36-4A-38)
- Advanced Life Support Personnel (S.D. CODIFIED LAWS § 36-4B-31)
- Respiratory Care Practitioners (S.D. CODIFIED LAWS §§ 36-4C-15, 36-4C-16)
- Optometrists (S.D. CODIFIED LAWS §§ 36-7-24(6), 36-7-25)
- Podiatrists (S.D. CODIFIED LAWS §§ 36-8-16 (1959); 36-8-17)
- Nurses (S.D. CODIFIED LAWS § 36-9-49(10))
- Certified Nurse Practitioners and Certified Nurse Midwives (S.D. CODIFIED LAWS § 36-9A-29(9))
- Certified Professional Midwives (S.D. CODIFIED LAWS § 36-9C-22(11))
- Physical Therapists (S.D. CODIFIED LAWS §§ 36-10-39, 36-10-41)
- Dieticians and Nutritionists (S.D. CODIFIED LAWS § 36-10B-13(5))
Likewise, a number of statutes provide that different types of health care practitioners can be subject to disciplinary action for “fraud” in the practice of their discipline. Practitioners to which disciplinary action may be imposed for fraud include:

- Practitioner of Health Arts in General (S.D. CODIFIED LAWS § 36-2-19) (prohibiting self-referral unless financial interest disclosed to patient)
- Physicians and Surgeons (S.D. CODIFIED LAWS § 36-4-30)
- Respiratory Care Practitioners (S.D. CODIFIED LAWS § 36-4C-15)
- Chiropractors (S.D. CODIFIED LAWS § 36-5-16)
- Dentists and dental hygienists (S.D. CODIFIED LAWS § 36-6A-59)
- Optometrists (S.D. CODIFIED LAWS § 36-7-25)
- Wholesale Drug Distributors (S. D. Codified Laws § 36-11A-46)
- Audiologists and Hearing Aid Dispensers (S.D. CODIFIED LAWS § 36-24-39.1)
- Social workers (S.D. CODIFIED LAWS § 36-26-32)
- Athletic Trainers (S.D. CODIFIED LAWS § 36-29-18)
- Occupational therapists (S.D. CODIFIED LAWS § 36-31-14)
- Professional counselors (S.D. CODIFIED LAWS § 36-32-29)
- Marriage and family therapists (S.D. CODIFIED LAWS § 36-33-19)
- Alcohol and drug professionals (S.D. CODIFIED LAWS § 36-34-21)
- Speech-Language Pathologists (S.D. CODIFIED LAWS § 36-37-23)
- Behavior Analysts (S.D. CODIFIED LAWS § 36-38-12)
The South Dakota Administrative Code addresses fee splitting arrangements involving chiropractors. Specifically, after discussing arrangements that constitute the unauthorized practice of chiropractic medicine, this section of the Code provides that no division of fees for services is allowed, except with another chiropractor or a person licensed under S.D. CODIFIED LAWS TITLE 36, and then based only upon the division of service or responsibility.

S.D. CODIFIED LAWS § 36-7-25. Acts defined as unprofessional conduct—No basis for criminal prosecution.
South Dakota defines several types of conduct as unprofessional conduct if engaged in by optometrists. Included among the types of things that are considered unprofessional conduct are employing what is known as cappers or steerers to obtain business (S.D. CODIFIED LAWS § 36-7-25(3)), as well as splitting or dividing fees or compensation with any person or corporation (S.D. CODIFIED LAWS § 36-7-25(4)). This type of conduct cannot form the basis for criminal prosecution unless the conduct is otherwise unlawful. S.D. CODIFIED LAWS § 36-7-25. The Board of Examiners may impose disciplinary action for violations of this statute. S.D. CODIFIED LAWS § 36-7-24(6). The Board exercised this authority and affirmed an injunction to prevent “capping” and “steering” in Kelley v. Duling Enters., 84 S.D. 427 (S.D. 1969).

S.D. ADMIN. R. § 20:50:04:09. Division of fees—payments to employees.
This section of the Administrative Code expands on S.D. CODIFIED LAWS § 36-7-25. It states that an optometrist may not directly or indirectly divide, share, split, or allocate a fee for optometric services or materials with a layperson, firm or corporation, or another optometrist or licensed medical practitioner except on the basis of a division of service or responsibility. This section does not prohibit any of the following: (1) An optometrist from paying an employee in the regular course of employment; (2) A practice established under the terms of S.D. CODIFIED LAWS CH. 47-11B; or (3) An optometrist from being employed on a salary, with or without a bonus arrangement, by an optometrist or licensed medical practitioner, regardless of the amount of supervision exerted by the employer over the office in which the employee works. However, this bonus arrangement may not be based on the business or income of an optical company.

To ensure that the services provided by an optometrist to a patient are based solely on the optometrist's professional judgment and not influenced by other business considerations, the following business relationships are prohibited: (1) An office rental, lease, or office space-sharing arrangement which by virtue of location causes the optometrist to be in violation of S.D. CODIFIED LAWS § 36-7-17 by being directly employed by or connected with another person or entity other than an optometrist, ophthalmologist, or other licensed healing arts professional or in which the optometrist's office, location, or place of practice is owned, operated, supervised, staffed, directed, or attended by any other person, corporation, or entity not licensed to practice optometry, ophthalmology, or other healing arts in the state of South
Dakota; and (2) An arrangement or agreement, express or implied, with any firm, business, corporation, person, or other entity not licensed to practice optometry in this state which would interfere with the optometrist's independent ability to provide professional care for patients without outside influence.

Nothing in S.D. ADMIN. R. § 20:50:04:11 shall be construed to prohibit a practice established under the terms of S.D. CODIFIED LAWS CH. 47-11B or affect referrals between persons authorized to practice medicine or optometry in the state of South Dakota.

**S.D. CODIFIED LAWS § 36-8-17. Acts constituting unprofessional or dishonorable conduct — No basis for criminal prosecution.**

South Dakota law defines several types of conduct as unprofessional or dishonorable conduct if engaged in by podiatrists. Included among the types of things that are considered unprofessional conduct are offering, giving, promising, either directly or indirectly, any gift in return for the procurement of a patient or patients for podiatric treatment (S.D. CODIFIED LAWS § 36-8-17(1)), as well as requesting, listing, accepting, or receiving any rebates or commissions for prescribing or recommending any footwear, drug, medicine, or any other article, to his or her patients. S.D. CODIFIED LAWS § 36-8-17(2). This type of conduct cannot form the basis for criminal prosecution unless the conduct is otherwise unlawful. Violations of S.D. CODIFIED LAWS § 36-8-17 may result in the revocation or suspension of a practitioner's license to practice podiatry by the Board of Podiatry Examiners. S.D. ADMIN. R. § 20:55:06:01; S.D. CODIFIED LAWS § 36-8-16.

3) **PROHIBITIONS ON SELF-REFERRAL**

South Dakota has a general prohibition on referrals by “practitioners of the healing arts” to entities in which the referring provider has a financial interest that exceeds a specific amount without disclosing that interest at the time of referral.

**S.D. CODIFIED LAWS § 36-2-19. Practitioner prohibited from referring patient to certain unaffiliated health care facilities.**

It is unprofessional for a practitioner of the healing arts to refer a patient to an “unaffiliated health care facility” in which the practitioner, his or her immediate family, or a corporation or limited liability company owned in whole or in part by the practitioner has a “substantial financial interest” without disclosing the general nature of this interest to the patient, or the patient’s parent or guardian, at the time of the referral.

**Who is a practitioner of the healing arts?**

A “practitioner of the healing arts” is an individual or groups of individuals who engages in one or more of the following: “any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or practice for the ascertainment, cure, relief, palliation, adjustment, or
correction of any human disease, ailment, deformity, injury, unhealthy or abnormal physical or mental condition.” S.D. CODIFIED LAWS § 36-2-1(3), (5) (1986).

**What constitutes a substantial financial interest?**
“Substantial financial interest” means an ownership interest of twenty-five percent or more, a direct creditor’s interest in twenty-five percent or more of the facility’s debt, or a direct lessor’s interest in twenty-five percent or more of a lease to the facility. S.D. CODIFIED LAWS § 36-2-19. “Immediate family” means that spouse and children of the practitioner. S.D. CODIFIED LAWS § 36-2-19.

**What constitutes as an unaffiliated health care facility?**
An “unaffiliated health care facility” is defined as “both a health care facility licensed pursuant to chapter 34-12 and any imaging center, pharmacy, surgical center, laboratory, supplier of durable medical equipment, home health agency, rehabilitation facility, or similar facility or business providing services or products intended for the diagnosis or treatment of any human ill.” S.D. CODIFIED LAWS § 36-2-18 (2014).

**S.D. CODIFIED LAWS § 36-2-12. Injunction to prevent violations—Election of remedies.**
A private citizen or the state’s attorney of the county wherein the violation occurred may bring a suit for injunctive relief against any person violating the provisions of the chapter, including the prohibition against referring patients to unaffiliated health care facilities as defined in 36-2-19. “The Board of Examiners shall be empowered to commence actions for injunctions for violation of this chapter as an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.” S.D. CODIFIED LAWS § 36-2-12 (1972).

**4) FALSE CLAIMS/FRAUD & ABUSE**

South Dakota does not have a false claims act statute that closely tracks the federal False Claims Act. There are, however, various provisions in South Dakota law that address fraud and abuse and false claims in the state Medical Assistance (Medicaid) program, along with others that prohibit certain types of health care practitioners from filing false claims.

**S.D. CODIFIED LAWS § 22-45-2. Action by which claimant commits an offense—Violation a felony.**
A person commits an offense if he: (1) makes or causes to be made a claim, knowing the claim to be false, in whole or in part, by commission or omission; (2) makes or causes to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide a good or a service, knowing the statement or representation to be false, in whole or in part, by commission or omission; (3) makes or causes to be made a statement or representation for use by another in obtaining a good or a service under the Medical Assistance program,
knowing the statement or representation to be false, in whole or in part, by commission or omission; or (4) makes or causes to be made a statement or representation for use in qualifying as a provider of a good or a service under the Medical Assistance program, knowing the statement or representation to be false, in whole or in part, by commission or omission. Violations of S.D. CODIFIED LAWS § 22-45-2 constitute a class 5 felony.

A “claim” is any communication, whether oral, written, electronic, or magnetic which is used to identify a good, item, or service as reimbursable under the program. S.D. CODIFIED LAWS § 22-45-1(2). A “person” means any individual, corporation, limited liability company, partnership, association, or other legal entity. S.D. CODIFIED LAWS § 22-45-1(3). Other definitions may be found at S.D. CODIFIED LAWS § 22-45-1.

**S.D. CODIFIED LAWS § 22-45-3. Application to participate as provider—Perjury for submitting false statements.**

Each application to participate as a provider in the Medical Assistance program, each report stating income or expense upon which rates of payment are or may be based, and each invoice for payment for a good or a service provided to the recipient shall contain a statement that all matters stated therein are true and accurate, signed by the individual responsible for the provider, under the penalty of perjury. A person commits perjury if he signs or submits, or causes to be signed or submitted, such a statement, and he knows, or should have known, that the application, report, or invoice containing information is false, in whole or in part, by commission or omission. A violation of this section is a Class 5 felony.

**S.D. CODIFIED LAWS § 22-45-5. Offense of acceptance of amount in addition to amount legally payable under program.**

A person commits an offense if he, acting on behalf of a provider providing a good or a service to a recipient under the Medical Assistance program, charges, solicits, accepts, or receives anything of additional value in addition to the amount legally payable under the Medical Assistance program in connection with a provision of such a good or a service. A violation of this section is a Class 5 felony.

**S.D. CODIFIED LAWS § 22-45-6. Failure to keep necessary records.**

A person commits an offense if he: (1) Having submitted a claim for or received payment for a good or a service under the program, intentionally fails to maintain such records as are necessary to disclose fully the nature of all a good or a service for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years following the date on which payment was received; or (2) Knowingly destroys such records within six years from the date payment was received. A violation of this section is a Class 1 misdemeanor.
S.D. CODIFIED LAWS § 22-45-7. Liability for receipt of payment by person not entitled thereto.
Any person who receives payment for furnishing a good or a service under the Medical Assistance program, which the person is not entitled to receive by reason of offenses under S.D. CODIFIED LAWS §§ 22-45-2 to 22-45-6, inclusive, may in addition to any other penalties provided by law, be liable for civil penalties of: (1) payment of interest on the amount of the excess payment at the rate provided for pursuant to the official state interest rates under S.D. CODIFIED LAWS § 54-3-16, category B, from the date upon which payment was made to the date upon which repayment is made to the Medical Assistance program; (2) payment of up to three times the amount of damages sustained, including the cost of investigation and litigation; and (3) payment in the sum of two thousand dollars for each false or fraudulent claim, statement, or representation submitted for providing a good or a service. A criminal action need not be brought against the person for liability to attach under this section of South Dakota law.

S.D. CODIFIED LAWS § 22-45-8. Suspension or exclusion from participation as provider of person convicted of committing offense.
Any person providing a good or a service under the program who has been determined to have committed an offense under S.D. CODIFIED LAWS §§ 22-45-2 to 22-45-7, inclusive, may be suspended or excluded from participation as a provider or an employee of a provider for a period to be determined by the single-state agency. A criminal action need not be brought against the person before suspension or exclusion under this section.

S.D. CODIFIED LAWS § 22-45-10. Use of other civil or criminal remedy not precluded.
The provisions of this chapter are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy.

No civil action may be brought under this chapter more than six years after the cause of action accrues.

S.D. ADMIN. R. § 20:41:10:05.02. Actions which may warrant sanctions.
The Board of Chiropractic Examiners may impose sanctions based upon fourteen categories of actions, including fraud, misrepresentation, or deception. This section of the Code defines fraud, misrepresentation or deception to include (a) Practicing or attempting to practice chiropractic under a false or assumed name; (b) Aiding, assisting, or advising another in the unlicensed practice of chiropractic; (c) Fraud or deceit in obtaining a license to practice chiropractic; (d) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of chiropractic; (e) Failing to report past, present, or pending disciplinary action by another licensing board or current status of final administrative disposition of a matter. A licensee is required to report any compromise or settlement of 

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disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure; (f) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so; or (g) Submitting to any insurer or third-party pay or a claim for a service or treatment which was not actually provided to a patient.

After the appropriate procedural process has been completed, the following sanctions may ultimately be imposed by the board: (1) Formal reprimand; (2) Probation of license to practice chiropractic in the state of South Dakota; (3) Suspension of license to practice chiropractic in the state of South Dakota; (4) Revocation of license to practice chiropractic in the state of South Dakota; or (5) Restitution and payment of all expenses of the investigation and proceedings. S.D. ADMIN. R. § 20:41:10:05.05. Finally, any sanction imposed by the board upon a licensee must be reported to the central reporting agency of which the board is currently a member at the time of the imposition of the sanction for the purpose of disseminating sanctioning information to licensing boards of other states. Id.

5) UNFAIR BUSINESS PRACTICES

S.D. CODIFIED LAWS § 37-24-6(1). Deceptive acts or practices—Each act a misdemeanor or felony.
It is a deceptive act or practice for any person to knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived or damaged thereby.

South Dakota law defines “merchandise” as “any object, wares, goods, commodity, intangible, instruction or service.” S.D. CODIFIED LAWS § 37-24-1(7). A “person” includes a natural person or his legal representative, a partnership, a limited liability company (domestic or foreign), a corporation (domestic or foreign), a trust, an incorporated or unincorporated association, and any other legal entity. S.D. CODIFIED LAWS § 37-24-1(8). Under state law, any person who claims to have been adversely affected by any act or a practice declared unlawful by S.D. CODIFIED LAWS § 37-24-6 is permitted to bring a civil action for the recovery of actual damages suffered as a result of such act or practice. S.D. CODIFIED LAWS § 37-24-31.

In Nygaard v. Sioux Valley Hosps. & Health, 731 N.W. 2d 184 (S.D. Apr. 4, 2007), a group of uninsured patients sued the hospital system seeking damages for being charged an undiscounted amount for healthcare services. Plaintiffs alleged the hospitals were engaging in unfair business practices since they were billed for services at a rate that was higher than the rates negotiated by Medicare or private insurance companies. The trial court granted, and the South Dakota Court of Appeals and South Dakota Supreme Court affirmed, the hospital’s motion to dismiss.
and found that the plaintiffs failed to plead that their economic damages were caused by one or more of the alleged violations of S.D. CODIFIED LAWS § 37-24-31.


If the Attorney General has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by S.D. CODIFIED LAWS § 37-24-6, and he believes it to be in the public interest that an investigation should be made to ascertain whether such is the case, the Attorney General has authority to issue investigative demands to any person believed to have information, documentary material or physical evidence relevant to the alleged violation. S.D. CODIFIED LAWS § 37-24-12.

**S.D. CODIFIED LAWS § 37-24-23. Attorney General’s action for injunction.**

Additionally, if the Attorney General has reason to believe that any person is using, has used, or is about to use any act or practice declared unlawful by S.D. CODIFIED LAWS § 37-24-6, the Attorney General may bring an action against such person to restrain by temporary or permanent injunction the use of such act or practice. S.D. CODIFIED LAWS § 37-24-23. The Attorney General, if the prevailing plaintiff in the injunctive action, may also recover reasonable attorney’s fees and costs. S. D. CODIFIED LAWS § 37-24-23.

An Attorney’s General’s actions under S.D. CODIFIED LAWS § 37-24-23 may be brought in the circuit courts for the county in which the alleged violator resides or has his place of business or in the circuit for Hughes County, South Dakota. S.D. CODIFIED LAWS § 37-24-25.

In the event an injunction is issued pursuant to state law, the Attorney General, upon petition to the court, may recover on behalf of the state, a civil penalty of not more than $5,000 per violation from any person who violates the terms of an injunction issued under S.D. CODIFIED LAWS § 37-24-25. S.D. CODIFIED LAWS § 37-24-26.

Additionally, in an action brought under S.D. CODIFIED LAWS § 37-24-23, if the court finds that a person is intentionally using or has intentionally used an act or practice declared to be unlawful by S.D. CODIFIED LAWS § 37-24-6, the Attorney General may seek to recover a civil penalty of not more than $2,000 per violation. S.D. CODIFIED LAWS § 37-24-27. Under state law, an intentional violation occurs when the party committing the violation knew or should have known that his conduct was a violation of S.D. CODIFIED LAWS § 37-24-6. *Id.*

6) **GENERAL WHISTLE-BLOWER PROTECTIONS**

South Dakota has whistleblower protections that apply to public employees and to staff who report certain conduct involving people with developmental disabilities. S.D. CODIFIED LAWS § 3-6D-22. Grievance for retaliation against whistleblower.
An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee’s department, to the attorney general’s office, the State Government Accountability Board, or because the employee has filed a suggestion pursuant to this section. An “employee” is “any person working for state government, paid by the State of South Dakota, or remunerated by other funds raised, appropriated, or otherwise generated by the state. An “employee” is not any person working for any authority authorized by law. S.D. CODIFIED LAWS § 3-6C-1(16).

S.D. CODIFIED LAWS § 1-56-12. Grievance for retaliation for reporting violation of state law
Pursuant to S.D. CODIFIED LAWS § 3-6D-22, an employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law.

S.D. CODIFIED LAWS § 3-16-9. Retaliation prohibited for reporting violations, abuse, or danger to public
No department, bureau, board, or commission of the state or any of its political subdivisions may dismiss, suspend from employment, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports in good faith to an appropriate authority a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, or substantial and specific danger to public health or safety, unless the report is specifically prohibited by law.

The provisions of this section do not apply to any employee who knows the report is false or was made in a reckless disregard for the truth. A state employee who is the subject of retaliation under this section may file a grievance with the Civil Service Commission pursuant to S.D. CODIFIED LAWS § 3-6D-22. For purposes of an employee of a political subdivision, an appropriate authority includes any human resources department of that political subdivision, if any, any state’s attorney, or the Attorney General.

S.D. CODIFIED LAWS § 27B-8-43. Retaliation against whistle-blower forbidden.
No agency, community service provider, facility or school may retaliate against staff who reports in good faith suspected abuse, neglect or exploitation, or against any person with a developmental disability with respect to any report. State law provides that there is a rebuttable presumption of retaliation for any adverse actions taken within ninety days of a report of abuse, neglect or exploitation, and defines “adverse action” to include only those adverse actions arising solely from the filing of an abuse report, and to mean any action taken by a community service provider or facility against the person making the report or against the person with a developmental disability because of the report and includes: (1) Discharge or transfer from the community service provider or facility except for clinical reasons; (2) Discharge from or termination of employment; (3) Demotion or reduction in
remuneration for services; or (4) Restriction on prohibition of access to services and supports or the persons served. State law defines a “community service provider” to mean any person or entity, whether for-profit or not-for-profit, which receives compensation for providing services to persons with developmental disabilities. S.D. CODIFIED LAWS § 27B-1-17(4). A “facility” means the South Dakota Developmental Center, which is located in Redfield, South Dakota. S.D. CODIFIED LAWS § 27B-1-17(10).

S.D. CODIFIED LAWS § 34-23A-11. Counselor or social worker not liable for arranging abortion – Retaliation from employer prohibited.
No counselor, social worker, or anyone else who may be in such a position where the abortion question may appear as a part of their workday routine, shall be liable to any person for damages allegedly arising from advising or helping to arrange for or for refusal to arrange or encourage abortion, and there shall be no retaliation from any agency or institution with which such person may be affiliated or by which he may be employed.

7) HELPFUL LINKS
- South Dakota Statutes and Administrative Code
- South Dakota Department of Health
- South Dakota Department of Social Services
- South Dakota Office of the Attorney General