

REPORTING OF INJURIES OF UNKNOWN SOURCE AND REASONABLE SUSPICION OF A CRIME

When an **injury of unknown source or an allegation of a reasonable suspicion of a crime*** has been reported or discovered by staff or another individual, a reasonable suspicion does not have to be first-hand knowledge. Attorneys define reasonable suspicion as: **a legal standard of proof that is more than a hunch but less than probable cause.**

A reasonable suspicion would include observation, previous experience, and reports by residents and family members.

In the event an injury of unknown source or an allegation of a reasonable suspicion of a crime has been reported or discovered; take immediate and necessary actions to provide appropriate medical care and appropriate interventions for the resident(s).

The seriousness of the event that leads to reasonable suspicion establishes two time limits for reporting:

1. Serious Bodily Injury* - 2 Hour Limit
2. All Others** - Within 24 Hour

The reporting timeline is based on clock time, not business hours. After business hours, on weekends and holidays, the report continues to be forwarded to the state survey agency (SSA).

The report must go to both the SSA and local law enforcement. An individual (facility employee) may report per policy a reasonable suspicion of a crime to the facility administrator (provided an individual has clear assurance the administrator is reporting it), who will then coordinate reporting to the SSA and local law enforcement as required. The facility may not retaliate against any individual that reports a crime.

Either of the above timelines also requires a thorough investigation and the investigative findings forwarded in a report to the SSA within 5 working days.

Resident-to-Resident Altercations:

In the event a resident-to-resident altercation has been alleged; take immediate and necessary actions to intervene while providing appropriate supervision and monitoring to protect the resident and other resident(s).

Did the resident act willfully in the altercation? *“Willful”* means that the individual intended the action itself that he/she knew or should have known could cause physical harm, pain, or mental anguish. Even though a resident may have cognitive impairment, he/she could still commit a willful act.”

- If NOT a willful act, it is NOT reportable as Abuse at this time. Do investigate, review, and revise care plan as necessary.
- If the act was willful and resulted in the “infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish,” this is reportable. Do investigate and report per appropriate timeline.

Fall(s):

NOT all falls are reportable. Those falls that involve injury of a serious nature should be reported.

If a fall occurs and the provider determines there were no injuries at the time but later there is discovery of an injury and it is of a serious nature, then the fall should be reported.

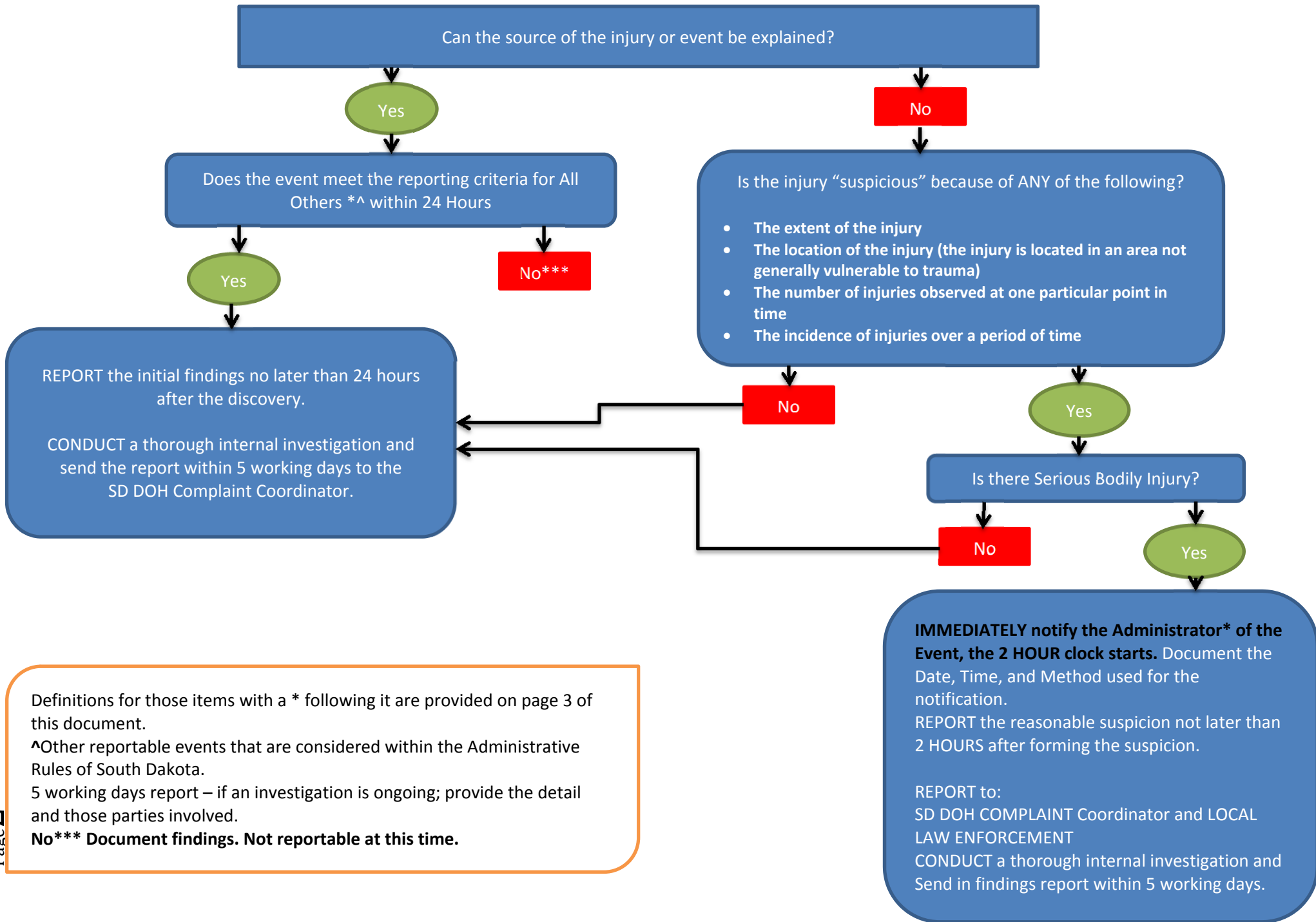
All falls whether reportable or not should reflect a thorough internal investigation. The investigation should ascertain if there were injuries, appropriate treatment, and a determination if there may have been contributing factors, including any review or revision of individual care plan or facility practices.

You may reference the prepared tool on page 2 of this document to assist in determining the appropriate timeline for reporting in South Dakota.

You may reference page 4 of this document to assist in conducting and documenting a thorough investigation.

IF USED, THE ACCOMPANYING TOOL IS TO BE USED IN CONJUNCTION WITH APPLICABLE FEDERAL NURSING HOME REGULATIONS & ADMINISTRATIVE RULES OF SOUTH DAKOTA

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Definitions for those items with a * following it are provided on page 3 of this document.

^Other reportable events that are considered within the Administrative Rules of South Dakota.

5 working days report – if an investigation is ongoing; provide the detail and those parties involved.

No* Document findings. Not reportable at this time.**

IMMEDIATELY notify the Administrator* of the Event, the 2 HOUR clock starts. Document the Date, Time, and Method used for the notification.

REPORT the reasonable suspicion not later than 2 HOURS after forming the suspicion.

REPORT to:

SD DOH COMPLAINT Coordinator and LOCAL LAW ENFORCEMENT

CONDUCT a thorough internal investigation and Send in findings report within 5 working days.

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DEFINITIONS -

Crime: Section 1150B (b)(1) of the Affordable Care Act provides that a “crime” is defined by law of the applicable political subdivision where a LTC facility is located. Applicable facilities must coordinate with their local law enforcement entities to determine what actions are considered crimes within their political subdivision.

Political subdivision – CMS believes it would be a city, county, township or village, or any local unit of government created by or pursuant to State law.

Serious Bodily Injury: Section 2011 (19)(A) of the Affordable Care Act provides that “serious bodily injury” is defined as an injury with:

- extreme physical pain;
- with the possibility of loss or impairment of a bodily member, mental faculty, or organ;
- a risk of death; or
- that may require surgery, hospitalization, or rehabilitation.

When in doubt with regard to whether an injury qualifies as “serious bodily injury” report using the earlier timeline.

Abuse: The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. This included deprivation of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.

Physical Abuse: Hitting, slapping, pinching, and kicking. Also includes controlling behavior through corporal punishment. From 483.13 (b)(c)

Neglect: The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. From 483.13 (b)(c).

Misappropriation of resident property: The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent. From Administrative Rules of South Dakota (ARSD).

All Others per ARSD:

- any death resulting from other than natural causes originating on facility property such as accidents, abuse, negligence, or suicide;
- any missing resident – individual away from facility without staff knowledge of department or exit time and destination;
- any fire with structural damage or where injury or death occurs;
- any partial or complete evacuation of the facility resulting from natural disaster; or
- any loss of utilities, such as electricity, natural gas, telephone, emergency generator, fire alarm, sprinklers, and other critical equipment necessary for the operation of the facility for more than 24 hours.

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CONDUCTING AND DOCUMENTING AN INVESTIGATION -

When conducting and documenting an investigation, focus on the “problem.” Clearly identify it, stay on message, say it clearly, and keep it simple. Use simple terminology whenever possible.

Answer the following:

Who – identify resident(s) involved (please use names not initials or numbers), staff observers or staff who may be involved or[+] implicated ([+]please provide Date of hire, Social Security Number, Date of birth, Address, and Phone contact information, Licensure or Certification information, Any previous disciplinary action, Date of termination if applicable) , family or other visitors. **Review staff schedules to ascertain that all possible individuals that may have knowledge of the event are interviewed.**

What – describe the event, use all senses, be objective.

See/Sight – pallor, sweating, deformities, bruises, edema, redness, body fluid color, pupil reaction.

Feel – dampness, localized heat, localized coldness, pulses.

Hear – complaints of pain, moaning, breathing pattern, heart sounds, blood pressure.

Smell – fruity odors, fecal or urine odors, foul smelling drainage, alcohol breath.

When – document the time. Accuracy is critical. If taking information from the electronic medical record (EMR) ensure, when entries are made at a later time, staff record the actual time of the occurrence as the EMR system generally time stamps the entry time.

Where – document the location, be as descriptive as possible.

How – description of how the event may have occurred with the acquired information from those interviewed if there were no witnesses and/or the individual is not a good historian. Do review the resident’s BIMs score.

Why – other particulars such as care plan not followed, staff not available, resident contributing factors, etc. These are areas that may be fruit for litigation, but also a great opportunity for review of the system and education.

Conclusion – This is a summary statement that indicates an allegation or suspicion of abuse/neglect was either substantiated or not substantiated. Termination of an employee or having them terminate themselves does not automatically indicate whether the provider was able to substantiate an allegation; for example – With completion of internal investigation, we were able to substantiate the allegation that (name) made inappropriate advances toward (name), it was our administrative decision to terminate (name’s) employment and the Board of Nursing was notified; the provider made changes to a policy/procedure; education/re-education was provided to staff; care plans were reviewed/revised as necessary; a plausible explanation was gained for how an injury of unknown source occurred, personal property was found or restitution was made.

In the event reporting of other reportable events, these are times where a staff “debriefing” maybe needed and is an opportunity to evaluate system processes and provide a learning/education opportunity.