DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

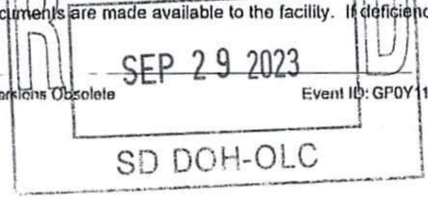
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	430016	A. BUILDING ______ B. WING ______	C 09/07/2023

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
AVERA MCKENNAN HOSPITAL & UNIVERSITY HEALTH CENTER	1325 S CLIFF AVE SIOUX FALLS, SD 57117

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
A 000	INITIAL COMMENTS A re-visit survey (SD00002014 and SD00002016) was conducted on 09/05/23, the facility was found in compliance with 42 CFR 482.25 - Pharmaceutical Services; subsequently a complaint survey (SD00002048) was conducted on 09/07/23 and it was determined that the facility demonstrated continued non-compliance with the condition 42 CFR 482.13 - Patient Rights.	A 000		
A 115	PATIENT RIGHTS CFR(s): 482.13 A hospital must protect and promote each patient's rights. This CONDITION is not met as evidenced by: Based on a review of the South Dakota Department of Health (SDDOH) complaint intake information, plan of correction (POC) review from the 7/13/23 complaint survey, interview, record review, and policy review, the provider failed to complete a full investigation on a grievance submitted by one of one sampled patient (1) who felt "violated" while receiving assistance from one of one personal care technician (PCT) (A). Findings include: This failure has the potential to cause harm to other patients since a full investigation to ensure all patients were safe and free from harm was not conducted. 1. Review of the provider's 9/5/23 final incident report investigation submitted to the SDDOH revealed: *The date of the event occurred on 9/4/23 at 10:30 p.m. between patient 1 and PCT A. *On 9/5/23 at 7:00 a.m. registered nurse (RN) B	A 115	Tag A 115 The Chief Nursing Officer is responsible for implementing the plan of correction and for overall and on-going compliance. The Chief Nursing Officer (CNO) held a meeting on September 11, 2023 including nurse managers, Senior Director - Medical Support Services, Quality Director, Quality Initiatives Director and Risk Manager to review the findings and provide direction for an effective plan of correction as follows: On September 13, 2023, a "Reporting Suspected Abuse Checklist" was drafted to provide guidance and direction for Nurse Leaders and Resource Registered Nurses (RRN). This checklist will be initiated immediately following any reported abuse. Content is as follows: 1) Complete before end of shift - date and time of incident, when staff made aware, when RRN notified, confirm	10/2/2023

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE	TITLE	(X6) DATE
[signature]	President + CEO	09/29/2023

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.



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A 115	Continued From page 1 reported to unit leaders that patient 1 felt uncomfortable with how PCT A had touched her during the care that was provided. -PCT A had touched her shoulder and the front part of her breast while he was checking on her fluid intake and obtaining vital signs. *The patient felt that a boundary had been crossed at that time and contacted patient care advocate C regarding the above concern. *The patient reported to patient care advocate C that: -PCT A had placed a hand on her shoulder and the upper part of her breast while discussing her fluid intake and obtaining vital signs. -He had also touched her husband's shoulder. -For fear of retribution from the PCT, she had not informed the nurse about what had happened and did not want to file a police report. *Patient care advocate C explained to her that Human Resources (HR) would be notified and unit leaders would be in to speak with her. *She explained the same above scenario to the unit leaders during their interview with her. *The unit leaders had: -Assured her that he would not be providing any further care to her. -Explained how his culture showed compassion and caring through physical touch. -Explained to the patient they would discuss with the PCT about appropriate communication and asking for permission to touch patients appropriately. *The patient was agreeable with their plan and felt better about the situation after discussing it with them. *HR was notified and advised the unit leaders to: -Meet with the PCT to discuss the event and coach him on what the next steps would be. *The unit leaders met with the PCT prior to his	A 115	incident report and nursing note were completed. 2) RRN/Unit Leader actions- Date and time of interview of staff member accused, and their removal from patient care, interview of patient documented in medical record, interview of other staff working at time of incident, and interview of other patients and/or family members. 3) Unit Leaders/Administration actions - Date and time that Human Resources and Risk Management notified. Determine further action regarding staff member accused, i.e... place on administrative leave. This checklist is not part of the medical record. This checklist, with all accompanying documentation, will be forwarded to the MCK Risk Management Distribution list. An accompanying policy, "Suspicion of Abuse/Neglect and Reporting Policy" was also created. On September 27, 2023, complaint survey findings, policy change and education plan was provided at the CNO Town hall.	10/2/2023

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A 115	Continued From page 2 shift on 9/5/23 at 2:00 p.m. *He: -Denied any irregular interactions with the patient. -Confirmed that he had touched her shoulder when taking her vital signs for comfort but not the front part of her breast. -Recognized there was an opportunity to ask the patients he cared for if he could touch their shoulder or arm for comfort. *His culture showed comfort and compassion in that manner. *The unit leaders: -Coached him on how to communicate with the patients before touching them and asking for permission first. -Recognized he was a new employee with no other concerns and was a very engaged employee. -Reported they had no concerns with him and he was allowed to return to work that day. -Assigned him to work on a different floor. *There was no documentation to support the following: -The other patients that he had cared for during his shift on 9/4/23 had been interviewed to ensure their safety and mental health well-being had not been jeopardized. -If any other patients had any concerns with his care, approach, and comforting style. -An action plan had been implemented to determine how the provider was going to monitor and audit his interactions with other patients assigned to his care for their safety and well-being. Review of patient 1's electronic medical record (EMR) revealed: *She was admitted on 9/1/23. *Her admission diagnoses had been shortness of	A 115	Mandatory education was created for all Nurse Leaders and Resource Nurses. On September 28, 2023, the CNO communicated via email outlining the expectation that education be completed immediately. If staff members are currently on leave, they must complete the education prior to their next shift. Education content included how to complete a proper and detailed investigation of abuse by utilizing the "Suspicion of Abuse/Neglect and Reporting" policy and accompanying checklist. Each learner must complete a post test. This education has been added to new RRN and Nurse Leader orientation. Monitoring to identify any future noncompliance will include the following: Risk Manager, or designee, will review each abuse allegation and documentation to ensure adherence to policy. If allegation is substantiated, an action plan will be developed with Risk Manager and unit leader. Risk Manager or designee, will monitor action plans for 90 days.	10/2/2023

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A 115	Continued From page 3 breath, atrial fibrillation, and hypotension. *She was currently receiving radiation treatments for thyroid cancer. *She presented to the emergency department due to a hypotensive episode following her radiation treatment. *Her other co-morbidities were obesity, asthma, and sleep apnea. Interview on 9/7/23 at 11:50 a.m. with unit leader D and unit supervisor E regarding the incident between patient 1 and PCT A revealed: *They had been informed of the incident of inappropriate touching the next morning following the incident by RN B. *Patient 1 had requested to not have PCT A care for her again. *They interviewed the patient and were given conflicting stories on where he exactly touched her. -One time it was on the shoulder and then it was on her chest above her breast. *She did not want to have him take care of her again and she did not want to report the incident to the police. *They had followed-up with HR regarding the complaint of inappropriate touching by PCT A. *HR had instructed them to: -Interview the PCT prior to his shift that afternoon at 2:00 p.m. -Use the provider's corrective action policy and "coach" (verbal education) him because he had no prior complaints about his care technique. -Let him come back to work but he was to have been scheduled on a different floor on an acute care unit. *During the interview he denied any inappropriate interactions between the patient and himself. *It was part of his culture to offer comfort and	A 115	Risk Manager will report data quarterly to Patient Safety and Avera McKennan Quality Committees.	10/2/2023

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A 115	Continued From page 4 compassion through touch. *He had received verbal education on how to ask for permission first prior to touching a patient. *He had assured them that he would ask the patients first prior to touching them and was allowed to go back to work. *HR had not been a part of the interview because it was just a "coaching" corrective action. *HR would not have been involved with the interviewing process of the staff until it became a written and final warning. *Unit supervisor E stated: -"So the corrective action process is coaching, verbal warning, written warning, then final written warning which could mean termination." -"Written warning is when a note will go to HR for the employee's file." -"Final written warning, well HR will be present for that meeting." -"The coaching won't go in his HR file unless they ask for it." *They had not interviewed any of the other patients that he had cared for to ensure there were no further safety concerns regarding his care technique. *Unit leader D stated: -"The patient care advocate talked with the [patient 1]. She might have talked with them, but we didn't." -"There's no formal or written plan on how we will make sure his patients are okay." -"We did put him on a unit where the patient staff ratio is less and the patient rooms have windows in the doors so we can view and watch him easier." -"He will probably stay there, but he still has the capability of being moved to another unit depending on staffing needs." -"I think we will just keep him there."	A 115		

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A 115	Continued From page 5 *There had not been any staff re-education on abuse/neglect stemming from that incident nor since the complaint survey completed on 7/13/23 regarding a similar patient grievance of inappropriate touching by a PCT. *Unit leader D stated: -"This was an isolated incident so, no there was no re-education done since you were here last." -"We will discuss it randomly at staff line-up in the morning or sporadically throughout the week." -"We just remind them to tell their patients what they are doing." -"No, I didn't chart anything in her EMR yet about this." -"I typically would put the interview in the patient's notes, but I just haven't had the opportunity to do this one yet." -"I have no excuse, it's been crazy and just didn't get it done." -"[Night nurse name] would be in there." -"I'll make a late entry." Interview on 9/7/23 at 1:35 p.m. with patient care advocate C regarding patient 1 revealed: *The patient had left a message on her phone regarding the incident with PCT A and wanted to speak to her. *She had a meeting on 9/5/23 at 10:00 a.m. with her supervisor, RN H, and RN I. *She had stopped at the meeting prior to talking with the patient. *She had informed the leadership staff about the incident and that she was on her way to visit with the patient. *She stated: -"I wanted them to know so they could do what they needed to do right away to get this fixed. Especially if the PCT was scheduled to work that day."	A 115		

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A 115	Continued From page 6	A 115		

-"I figured they would need to talk to HR and I did direct them to talk to HR to get things going."
-"The patient was much calmer when I visited with her in person. She was teary when I called her before I went to her room."
-"Apparently, [PCT name] came into her room to do vitals and check on how much fluids she drank."
-"[PCT name] apparently, reached across her to point at the amount on her pitcher and while doing so he touched her breast."
-"Apparently, he had been touching her husband earlier too and that was just a lot of touching for her."
-"She told the nurse, and the nurse assured her he wasn't working the rest of the night."
-"She didn't want to call the police and report it."
-"I didn't notice any confusion with her. She was very alert and oriented."
-"I don't talk with the other patients or staff to see if they had concerns with his care and interactions with the patient."
-"I leave that up to the nurse leaders."
*She would have typed up a summary of her conversation with the patient and provided a copy to the quality leaders.
-That note would not have been a part of the patient's medical record.
*She stated:
-"I typed up a summary and gave it to the risk manager [RN H's name]."
-"I'm not sure what [RN I's name] does with it and I typically don't hear back from them."
-"My expectation would be for the staff to reach back out to me, so it closes up the loop on this and I know what happened."

Interview on 9/7/23 at 2:05 p.m. with RN B regarding patient 1 revealed:

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A 115	Continued From page 7 *She had been the nurse working the night of the incident between the patient and PCT A. *When she answered the patient's call light, the patient had asked if PCT A was still here. *The patient had informed her the PCT was very "touchy" and that he had touched both her and her husband's shoulders and the top part of her breast. *The patient did not want to report the incident to the police nor discuss it any further. *The PCT had made her feel uncomfortable and she was scared he would find her home and retaliate against them. *She: -Reassured her that the PCT was no longer working and that he would not be assigned to her care during the rest of her stay. -Reported the incident right away the next morning to both unit leader D and the unit supervisor E. *She stated: -"I told the unit supervisor not to schedule him up there on that unit anymore." -"He was gone before she said anything to me." -"I've worked with him before, but not a lot." -"I've never had any complaints about him from other patients and some of them could have if they wanted to." -"He helped me take care of a patient with C.Diff [Clostridium difficile (and is highly contagious)] and he was not overly touchy with her. I didn't see anything inappropriate with his care." -"Yes, I did make a note in her chart about the complaint." -"We were reminded of AIDIT [acknowledge, introduce, duration, explanation, and thank you] again but nothing more than that." Continued review of patient 1's 9/5/23 EMR	A 115		

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A 115	Continued From page 8 revealed: *There was no documentation to support the following: -The patient had reported to RN B her complaint of feeling violated by PCT A to her and the RN's follow-up. -Unit leader D had visited with the patient regarding the complaint reported to RN B. *There was documentation to support a late entry that was created by: -Unit leader D on 9/7/23 at 12:36 p.m. regarding the incident between patient 1 and PCT A. That late entry was created after her interview with the surveyors. -RN B on 9/7/23 at 1:28 p.m. regarding the incident and complaint between patient 1 and PCT A. That late entry was created a half hour prior to her interview with the surveyors. Interview on 9/7/23 at 2:15 p.m. with PCT A regarding patient 1 revealed: *He had been employed with the provider since 7/24/23. *His training included how to introduce himself to the patients and how to explain what he was going to do beforehand. *He was aware that a patient had complained about how he had taken care of her and was touching her. *He stated: -"Unit leader D and unit supervisor E talked to me before my shift the next day." -"They wanted to hear my side of the story and coach me to be sure to ask the female patients if they are comfortable with me taking care of them." -"I knew who the patient was because when I checked on all my patients before I left she was the only one who didn't respond."	A 115		

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A 115	Continued From page 9 -"I had five patients that night and three of them were female." -"I actually spent the least amount of time with her because she was independent." -"I even stood outside the door for privacy when she was in the bathroom and would ask if she was okay." -"In my culture we touch for comfort, to help make feel safe like on the shoulder." -"Only thing I recall is when I was taking her blood pressure. I had to wrap the cuff around her arm, and it was close to her breast on the side of it. She didn't lift it very high as I recall. But I never touched touched it. Maybe brushed it trying to get the cuff around her arm but no touch." -"Like I said, everyone thanked me but her." -"I was able to keep working and was put on a different unit." Interview on 9/7/23 at 2:30 p.m. with HR partner F regarding the incident with PCT A and patient 1 revealed she: *Worked in HR and her role was employee relations and support for the nursing department. *Was made aware of the complaint mid-morning on 9/5/23. *Had worked with both unit leader D and unit supervisor E on how to proceed with the investigation. *Had directed them to ensure the following: -The nurse had completed an occurrence report. -That he was assigned a different floor so he would not have potential contact with the patient. -To ask him if he had touched the patient and her husband and if yes, clarify that it was for comfort. -To re-educate him on the proper process for touching patients. *Stated:	A 115		

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A 115	Continued From page 10 -"We didn't send him home because he was very honest and up-front with us." -"This was his first occurrence and that starts with coaching." -"And our investigation was complete before and after his interview." -"There was no need to send him home during the investigation because it was done." -"We don't have a formal written plan in place to make sure the patients he takes care of remain safe." *Stated: -"I told the unit leader [D] and unit supervisor [E] to keep-up on anything going forward." -"They will talk with his patients to stay on top of this." -"But no there is nothing in written form." -"This will go in his supervisory folder to watch for any other concerns that might come up." -"I don't do any of the investigation work, that is up to the unit leaders." -"Both I and the risk manager [H] received an email from the unit leaders on their conversation with PCT A." Interview on 9/7/23 from 3:15 p.m. through 3:50 p.m. with RN H, RN I, RN J, and CNO G revealed: *They were aware of the complaint and grievance that patient 1 had voiced to her nurse, the patient care advocate, and the unit leader regarding the care she had received from PCT A. -The patient felt uncomfortable with the way PCT A had touched her during care. *There was no response from anyone when asked if they were aware of that complaint and investigation prior to the revisit survey completed on 9/5/23. -On 9/5/23 at 2:30 p.m. the surveyors entered the	A 115		

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A 115	Continued From page 11 facility to complete the revisit survey stemming from the complaint survey conducted on 7/13/23. -The 7/13/23 survey included the review of a patient who had filed a grievance with the SDDOH about feeling violated while receiving personal care during their hospitalization. -On 9/5/23 the provider was asked if there had been grievances submitted to them regarding patients feeling violated or inappropriately touched while under their care since the POC completion date of 8/22/23. The surveyors were told no. *It was the responsibility of the HR department and the unit leaders to investigate, document, and follow-up with other staff or patients as appropriate. *They would not have been involved in any of that process. *Risk manager H was the middle person to whom all the information was submitted. -She would have completed the report with the information that she had received from the unit leaders, the patient advocate, and HR. Then submitted it to the SDDOH. *Everyone kind of looked at the documentation in the patient's EMR to make sure the staff put a note in the chart. -If there was no note in the chart, the staff would have been directed to put in a late entry in the EMR. *They were not aware: -Unit leader D and RN B had not put an entry in the patient's EMR involving the complaint of being inappropriately touched until after the surveyors had interviewed unit leader D on 9/7/23. -Other patients had not been interviewed to ensure their safety was maintained while under the care of PCT A. -There was no plan or monitoring process put in	A 115		

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	430016	A. BUILDING ______ B. WING ______	C 09/07/2023

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
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A 115	Continued From page 12 place to ensure that the patient's PCT A cared for in the future remained safe and free from harm. -There was no plan in place to monitor PCT A to ensure he understood the coaching he had received on how to approach and touch patients that he cared for. *RN I stated: -"That's a good question, but I don't think we have gotten that far yet." -"The biggest piece was to make sure everyone was educated after the survey [the 7/13/23 complaint survey]." -"It is mainly up to the unit leaders and HR." *The leadership team goes out every day on their units and would have touched base with the patients to ensure their needs were met. -That would have been an appropriate time for the patients to voice any concerns they had. *They would have relied upon the unit leaders to make sure that PCT A's patients were taken care of appropriately and safely. The provider had no policy and process in place for the staff to follow regarding: -Investigation of complaints that had been submitted to their leadership for review to support that a root cause analysis had been completed. -Development and implementation of a plan to monitor the patients to ensure they remained safe and free from harm after a root cause analysis had been completed. Review of the provider's April 2023 Corrective Action policy revealed: *"Avera had a right and responsibility to establish standards of behavior and performance for its employees." *"Avera understands that addressing employee behavior is necessary for effective, efficient, and	A 115		

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A 115	Continued From page 13 safe operation." *"Avera expects all employees to conduct themselves in a manner that does not interfere with Avera operations, does not bring discredit to Avera, and is not harmful to patients........" *"Leaders and/or HR must complete an investigation prior to initiating any corrective action. In addition, having the appropriate documentation in place prior to delivering corrective action is imperative. Avera will take appropriate corrective action steps after review of the current issue/concern, overall performance, and past issues." *Immediate Dismissal Guidelines: -"The following non-exclusive list includes examples of unsatisfactory behavior that, due to the serious nature of such conduct, may result in immediate termination: --b. Neglect or abuse of a patient. --g. Mental or physical abuse of the patient. --m. Behaviors that create an unsafe work environment or behaviors that are inappropriate or unprofessional." Review of the provider's February 2022 documentation policy revealed: *"To accurately record the continuum of events that occur during a patient's stay; to provide for continuity of care in the inpatient settings." *"In addition, a patient note should be made at the time of event....."	A 115		

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

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	430016	A. BUILDING ______ B. WING ______	R-C **10/03/2023**

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
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{A 000}	INITIAL COMMENTS An onsite revisit survey was conducted on 10/3/23 for compliance with 42 CFR Part 482, Subparts A-D; and Subsection 482.66 requirements for hospitals for all previous deficiencies cited on 9/7/23. All deficiencies have been corrected and no new non-compliance was found. Avera McKennan Hospital & University Health Center was found in compliance with all regulations surveyed.	{A 000}		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE　　　TITLE　　　(X6) DATE

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.