

Annex 10

Legal Authority and Policy Issues

Policy Issues

Family Member Maximum Courses Pick-Up and Identification - The maximum number of courses that family members can pick up is 10. The minimum identification required at POD sites is a valid form of picture identification.

Unaccompanied Minors Picking up Medications - If underage clients present at the POD alone, a Mental Health worker will interview the client and evaluate the situation (making phone calls to parents, guardians, etc.) Based upon the available information gather by the Mental Health worker, the POD Medical Branch Director will determine the suitability of providing the needed medication/vaccination.

The POD Manager or designee may adjust the head of household, multiple regimen policy, unaccompanied minor and identification requirements:

The local dispensing site leadership has knowledge that the pick-up family member truly represents more than 10 family members.

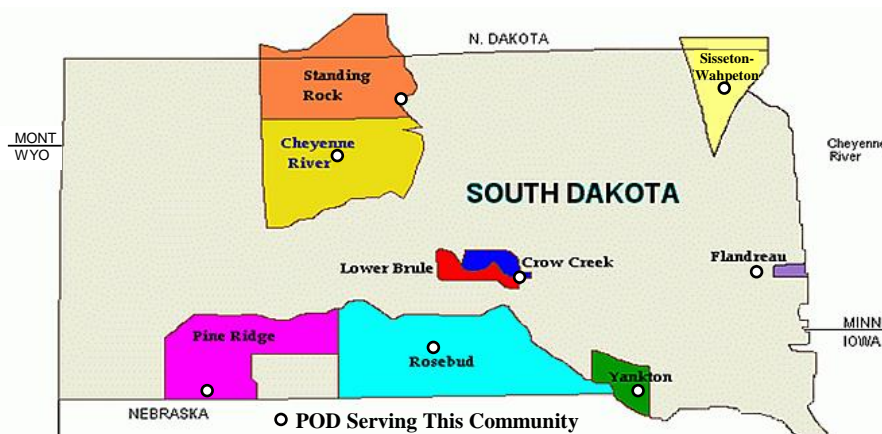
The local dispensing site leadership feels that the nature of the situation should warrant a local policy change as to not delay any distribution efforts due to local conditions.

The local dispensing site leadership has the authority to waive these recommendations on an individual case by case basis as needed.

Rules on Use of Force - Rules on Use of Force and procedures for law enforcement will follow the policies currently in effect by each individual agency. The South Dakota National Guard will follow existing protocols for National Guard members. At the state level, any changes or recommendations to the state rules on Use of Force will be released through the State Emergency Operations Center.

Native American Reservations - There are nine Native American reservation areas within South Dakota. Although Standing Rock’s tribal address is in North Dakota, it shares lands located in South Dakota.

- Cheyenne River
- Crow Creek
- Flandreau
- Lower Brule
- Pine Ridge
- Rosebud
- Sisseton-Wahpeton
- Standing Rock
- Yankton



Native American populations living on reservations will be counted as part of the total resident county population. The local POD dispensing site will receive the SNS assets for this population. The residents of Native American reservations will receive medications through the local POD. Additionally, local POD plans may include outreach programs to reach small population clusters that are geographically distant from a local dispensing site.

Penitentiaries - South Dakota has one federal minimal security Federal Prison Camp. The state has three large penitentiary facilities, three minimal units, and numerous smaller specialty facilities. The SDDOH is currently responsible for the health services within state correctional facilities. Federal, state, tribal, county or city inmates will be counted as part of the resident county population and medications will be delivered by the local POD to the correctional facility for dispensing. **Dispensing will be done by medical staff at the correctional facility.**

Eligibility to Receive SNS Medications and Services - All people are eligible for all SNS medications and services regardless of residency, or residency status. POD planners will take into consideration the number of people in addition to South Dakota residents that may be expected to present to the PODs for medications or services and adjust their plans accordingly. For all people, there are no other discriminatory factors. SNS medications are not to be used for animals, pets, livestock, etc, unless clearly stated by the SDDOH.

Priority to Receive SNS Medications and Services - During mass dispensing/vaccination operations, Receive, Stage and Store (RSS), Transportation, and POD personnel and their household members will have priority for treatment to ensure continuity of operations.

Legal Issues

Standing orders for medications from the state caches or SNS will be written and issued by the State Health Officer. Standing orders will be sent to the local health offices, PODs, hospital or medical clinics through the Health Alert Network (HAN), email, fax, or on paper with their SNS shipment. Local/County Health Officers or other local Medical Directors may also issue standing orders for the dispensing of local caches.

Select South Dakota Laws related to SNS Functions

This Annex lists the specific laws that support the authority and guidance for the state to carry out the South Dakota Strategic National Stockpile Plan and Operating Guide.

GOVERNOR

- 1-7-1 Powers and duties of Governor.
- 1-7-16 Use of state or federal armed forces to suppress riot or unlawful assembly.

JOINT EXERCISE OF GOVERNMENTAL POWERS

- 1-24-1 Definition of terms.
- 1-24-2. Joint exercise of powers authorized--Exceptions.

ACTIVE SERVICE OF NATIONAL GUARD

- 33-9-1 Authority of Governor to order active service--Application of other public officials.
- 33-9-8 Response to disasters--Suppression of riots--Duty to obey civilian officials.

EMERGENCY MANAGEMENT

- 34-48A-1 Definitions
- 34-48A-5 Authority of Governor in time of disaster, terrorist attack, or emergency
- 34-48A-19 Mutual aid arrangements with other states and between political subdivisions.
- 34-48A-21 Assignment of workers to reinforce local organization--Call to duty--Place of duty.
- 34-48A-22 Emergency management workers'--Rights, duties, and compensation.
- 34-48A-23 Civil immunity of persons requested to assist with hazardous material incidents--Exceptions.
- 34-48A-24 Scope of immunity extends to employers and other responsible parties.
- 34-48A-25 Reimbursement of local governments for employees' expenses and damages.
- 34-48A-26 Duty to utilize already existing facilities
- 34-48A-27 Secretary of public safety responsible for carrying out emergency management program
- 34-48A-45 Mutual aid arrangements of local organizations.
- 34-48A-46 Interstate mutual aid arrangements.
- 34-48A-49 Emergency management as governmental function--Exceptions--Worker's compensation.
- 34-48A-50 Exemption from licensing requirements during emergency.
- 34-48A-51 Civil defense shelters on private property--Immunity from liability.
- 34-48A-53 Uniform Emergency Management Assistance Compact.

STATE DEPARTMENT OF HEALTH

- 34-1-7.1 State health officer's position abolished--Performance of functions.

CONTAGIOUS DISEASE CONTROL

- 34-22-41 "Public health emergency" defined.
- 34-22-42 Secretary may declare public health emergency--Contents of order.
- 34-22-43 Department primarily responsible for public health emergency response--Scope of authority--Promulgation of rules.
- 34-22-44 Termination of declared emergency--Renewal.
- 34-22-45 Voluntary vaccination program for first responders--Exposure to infectious diseases at disaster locations.

NONPROFIT CORPORATIONS--MEMBERS, DIRECTORS, OFFICERS AND AGENTS

- 47-23-28 Definition of terms.
- 47-23-29 Immunity of volunteers of nonprofit organizations, free clinics, certain hospitals, and governmental entities.
- 47-23-30 Person not immune where negligent operation of vehicle caused injury.
- 47-23-31 Effect on other statutes concerning immunity.
- 47-23-32 Waiver of immunity to extent of risk sharing pool or liability insurance coverage--Volunteer serving as director, officer, or trustee exempt.

DEFINITIONS AND GENERAL PROVISIONS

62-1-5.1 Volunteers serving state or political subdivision without pay --Computing or imputing wage--Certain persons not deemed volunteers.

Select South Dakota Codified Laws - https://sdlegislature.gov/Statutes/Codified_Laws**SDCL 1-7-1. Powers and duties of Governor.**

The Governor shall possess the powers and perform the duties entailed upon him by the Constitution and by special provisions throughout this code and among others, but without limiting other prescriptions of his powers and duties, as follows:

- (1) He shall supervise the official conduct of all executive and ministerial officers;
- (2) He shall see that the laws of the state are faithfully and impartially executed;
- (3) He shall make appointments and fill vacancies in the public offices as required by law;
- (4) He is the sole official organ of communication between the government of this state and the government of any other state of the United States;
- (5) He shall issue patents for land as required by law and prescribed by the provisions of this code;
- (6) He may offer rewards, not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the penitentiary or for any person who has committed or is charged with the commission of an offense punishable with imprisonment for life;
- (7) He is authorized to appoint a private secretary and to employ such clerks and stenographers as he shall deem necessary for the proper discharge of his official duties, each of whom shall serve during the pleasure of the Governor and receive such compensation as shall be provided by the Legislature;
- (8) He shall have such other powers and must perform such other duties as are or may be devolved upon him by law.

Source: SDC 1939, § 55.1101.

SDCL 1-7-16. Use of state or federal armed forces to suppress riot or unlawful assembly.

The Governor, as commander-in-chief of the armed forces of the state, may call out armed forces to suppress any riot or unlawful assembly. If such armed forces are insufficient to suppress the riot or unlawful assembly, the Governor may apply to the military forces of the United States for a force sufficient to suppress such riot or unlawful assembly.

Source: SDC 1939 & Supp 1960, § 34.0204; SDCL, §§ 23-11-3, 23-11-4; SL 1976, ch 158, § 10-7; SDCL § 22-10-13; SL 2005, ch 120, § 351.

SDCL 1-24-1. Definition of terms. Terms used in this chapter mean:

- (1) "Participating public agency," any public agency which has elected to participate in a pool arrangement;

- (2) "Public agency," any county, municipality, township, school district, consumers power district or drainage district of the State of South Dakota; any agency of South Dakota state government or of the United States; any political subdivision of this state; any political subdivision of another adjacent state; and any Indian tribe;
- (3) "State," a state of the United States and the District of Columbia;
- (4) "State agency," each association, authority, board, commission, committee, council, department, division, office, officer, task force, or other agent of the state vested with the authority to exercise any portion of the state's sovereignty; provided that the term shall not include the legislative or judicial branch of the government of the state or units of local government, including but not limited to counties, townships, municipalities, chartered governmental units, or school or other special districts, or Indian tribes.

Source: SL 1966, ch 187, § 1; SL 1970, ch 9; SL 1974, ch 13; SL 1974, ch 14, § 1; SL 1975, ch 14, § 1; SL 1976, ch 12; SL 1991, ch 11, § 1.

SDCL 1-24-2. Joint exercise of powers authorized--Exceptions.

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of South Dakota state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by §§ 1-24-2 to 1-24-9, inclusive, upon a public agency. The provisions of this section do not apply to the power to tax or police powers, unless jointly held or otherwise authorized by law.

Source: SL 1966, ch 187, § 2; SL 1986, ch 19; SL 1990, ch 17.

SDCL 33-9-1. Authority of Governor to order active service--Application of other public officials.

In case of war, insurrection, rebellion, riot, invasion, resistance to the execution of the law of this state or of the United States, or in the event of public disaster or upon application of any marshal of the United States, or the mayor of any first or second class municipality or any sheriff in this state, the Governor may order into active service all or any portion of the national guard.

Source: SL 1887, ch 100, §§ 43, 44; CL 1887, §§ 1959, 1960; SL 1893, ch 117, § 14; SL 1901, ch 176, § 8; RPolC 1903, § 2497; SL 1903, ch 185, § 27; SL 1917, ch 297, § 37; RC 1919, § 10597; SDC 1939, § 41.0149; SL 1951, ch 206; SL 1992, ch 60, § 2.

SDCL 33-9-8. Response to disasters--Suppression of riots--Duty to obey civilian officials.

An armed force may be called out to respond to public disaster resulting from flood, conflagration, or tornado, or for the purpose of suppressing any tumult or riot, or for the purpose of dispersing any group of persons that is acting together by force with intent to commit any felony or to offer violence to persons or property, or that is acting with intent by force or violence to resist or oppose the execution of the laws of this state. Upon arrival at the place of such unlawful, riotous, or tumultuous assembly, the armed force shall obey any orders by the Governor for suppressing the riot or tumult or for dispersing and arresting all persons who are committing any such offenses.

The armed force shall also obey any such orders from any judge of a court of record, or from the sheriff of the county, and also any further orders for such purposes from any two of the magistrates or other officers mentioned in this section.

Source: SL 1917, ch 297, § 71; RC 1919, § 10631; SDC 1939, § 41.0179; SL 2007, ch 187, § 83.

SDCL 34-48A-1. (Emergency Management) Definitions. Terms used in this chapter mean:

- (1) "Secretary," the secretary of the Department of Public Safety;
- (2) "Disaster," any natural, nuclear, man-made, war- related, or other catastrophe producing phenomena in any part of the state which, in the determination of the Governor, causes damage of sufficient severity and magnitude to warrant all state assistance that is reasonably available, above and beyond emergency resource commitments;
- (3) "Emergency," any natural, nuclear, man-made, war- related, or other catastrophe producing phenomena in any part of the state which in the determination of the Governor requires the commitment of less than all available state resources to supplement local efforts of political subdivisions of the state to save lives and to protect property, public health, and safety or to avert or lessen the threat of a disaster;
- (4) "Emergency management," the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, fire, flood, snowstorm, windstorm, tornado, cyclone, drought, earthquake, or other natural causes and provide for the relief of distressed humans and livestock in areas where such conditions prevail whether affecting all or only a portion of the state. These functions include, without limitation, firefighting services, police services, medical and health services, hazardous materials, search and rescue, engineering, warning, communications, radiological, chemical, and other special weapons of defense, evacuation of persons or livestock, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian or livestock protection, together with other activities necessary or incidental to the preparation for any carrying out of the foregoing functions including cooperation with the federal government, county and tribal governments, national relief organizations, public or private organizations, and persons;
- (5) "Emergency management worker," any full or part- time paid, volunteer or auxiliary employee of this state, or other state, territory, possession, or the District of Columbia, of the federal government, or any neighboring county, or of any political subdivision thereof, or of any agency or organization, performing services at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof;

(6) "Hazardous material," any material, including but not limited to, explosives, flammable liquids, flammable compressed gas, flammable solids, oxidizing materials, poisons, corrosive materials, and radiological materials, the loss of control or mishandling of which could cause personal injury or death to humans or damage to property or the environment;

(7) "Local effort," the expenditure for emergency or disaster purposes within the twelve-month period preceding the date of the request, of an amount equal to two mills of the assessed valuation, exclusive of capital asset purchases, in each county for the assessment date preceding the date of the request under an emergency or disaster declaration by the Governor;

(8) "Local organization for emergency management," an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions;

(9) "Political subdivision," counties, townships, Indian tribes, and municipalities; and

(10) "Search and rescue," the preparation and carrying out of search for and rescue of persons.

Source: SL 1949, ch 236, § 3; SL 1951, ch 285, § 3; SL 1955, ch 236, § 2; SDC Supp 1960, § 41.01C03; SL 1972, ch 188; SL 1977, ch 271, § 1; SL 1985, ch 15, § 41; SL 1989, ch 30, § 59; SL 1992, ch 236, § 1; SL 2004, ch 17, § 185; SDCL § 33-15-1.

SDCL 34-48A-5. Authority of Governor in time of disaster, terrorist attack, or emergency.

Authority of Governor in time of disaster, terrorist attack, or emergency. In the event of disaster, war, act of terrorism as defined in state law, or emergency that is beyond local government capability, the Governor:

(1) May assume direct operational control over all or any part of the emergency management functions within the state which may affect all or any portion of the state;

(2) May declare an emergency or disaster to exist in the stricken area and employ emergency management to assist local authorities to affect relief and restoration;

(3) May call upon and use any facilities, equipment, other nonmedical supplies, and resources available from any source, other than personal or private funds, in order to carry out the purposes of this chapter by contributing to the expense incurred in providing relief in such amounts as the Governor shall determine. However, nothing in this subdivision may be construed to authorize the taking of firearms, as defined in subdivision 22-1-2(16), without the consent of the owner;

(4) May suspend the provisions of any rules of any state agency, if strict compliance with the provisions of the rule would in any way prevent, hinder, or delay necessary action in managing a disaster, war, act of terrorism, or emergency, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil spill, or

other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the Governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby;

(5) May control the ingress and egress in a designated disaster or emergency area, the movement of vehicles upon highways within the area, the movement of persons within the area, and the occupancy of premises within the area;

(6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;

(7) May appoint and prescribe the duties of such out-of-state health care providers as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;

(8) May provide for the examination and safe disposal of any dead body as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism; and

(9) May provide for the protection, construction or reconstruction, repair, and maintenance of public or private transportation facilities.

The powers granted to the Governor under this section shall remain in effect for a period of six months and may be restored for one or more successive six-month periods by declaration of the Governor that the conditions permitting such powers persist.

Source: SL 1949, ch 236, § 6; SL 1951, ch 285, § 6; SL 1955, ch 236, § 3; SDC Supp 1960, § 41.01C05 (1); SL 1977, ch 271, § 4; SL 1989, ch 283, § 1; SL 2002, ch 162, §§ 1, 2; SL 2004, ch 223, § 1; SDCL § 33-15-8.

SDCL 34-48A-19. Mutual aid arrangements with other states and between political subdivisions.

The secretary with the approval of the Governor may enter into mutual aid arrangements with other states and coordinate mutual aid plans between political subdivisions of this state.

Source: SL 1949, ch 236, § 6; SL 1951, ch 285, § 6; SDC Supp 1960, § 41.01C05 (2) (e); SL 1977, ch 271, § 13; SL 2004, ch 17, § 193; SDCL § 33-15-13.

SDCL 34-48A-21. Assignment of workers to reinforce local organization--Call to duty--Place of duty.

The secretary may assign emergency management workers, to be controlled by the secretary, as may be necessary to reinforce emergency management organizations in stricken areas. Emergency management workers shall be called to duty by orders of the secretary and shall perform their functions in any part of the state or without the state in compliance with mutual aid agreements.

Source: SL 1949, ch 236, § 7; SL 1951, ch 285, § 7; SDC Supp 1960, § 41.01C06 (1); SL 1977, ch 271, § 16; SL 1992, ch 236, § 4; SL 2004, ch 17, § 195; SDCL § 33-15-17.

SDCL 34-48A-22. Emergency management workers--Rights, duties, and compensation. An emergency management worker while on duty, whether within or without the state, shall:

- (1) If the worker is an employee of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to the worker's employment;
- (2) If the worker is an employee of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to the worker's employment;
- (3) If the worker is not an employee of the state or a political subdivision thereof, be compensated by the state at a rate set by rules promulgated pursuant to chapter 1-26 by the secretary, and have the same rights and immunities as are provided by law for the employees of this state; and
- (4) Be subject to the operational control of the authority in charge of emergency management activities in the area in which the worker is now serving.

Source: SL 1949, ch 236, § 7; SL 1951, ch 285, § 7; SDC Supp 1960, § 41.01C06 (2); SL 1977, ch 271, § 34; SL 1986, ch 272, § 16; SL 1992, ch 236, § 5; SL 2004, ch 17, § 196; SDCL § 33-15-18.

SDCL 34-48A-23. Civil immunity of persons requested to assist with hazardous material incidents-- Exceptions.

A person who provides assistance at the request of any emergency management agency in the event of an accident or other emergency situation involving the use, handling, transportation, transmission, or storage of hazardous material defined in subdivision 34-48A-1(6) is not liable in any civil action for damages as a result of his acts of commission or omission in rendering assistance. Nothing in this section grants immunity to a person causing damages as a result of his business activities or by his willful or wanton act of commission or omission in rendering assistance. Nothing in this section grants immunity to a person causing damages as a result of his business activities or by his willful or wanton act of commission or omission which takes place without the request of an emergency management agency.

Source: SL 1980, ch 235, § 1; SL 1987, ch 29, § 16; SL 1992, ch 236, § 6; SDCL § 33-15-18.1.

SDCL 34-48A-24. Scope of immunity extends to employers and other responsible parties.

The immunity granted by § 34-48A-23 shall extend to the employer of the person rendering such assistance, and to any other person, employer, partnership, or corporation legally responsible for the acts or omissions of such individual.

Source: SL 1980, ch 235, § 2; SDCL § 33-15-18.2.

SDCL 34-48A-25. Reimbursement of local governments for employees' expenses and damages.

The state shall reimburse a political subdivision for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of employees of such political subdivision while serving as emergency management workers, and for all payments for death, disability, or injury of such employees incurred in the course of such duty, and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of emergency management workers under state control.

Source: SL 1951, ch 285, § 7; SDC Supp 1960, § 41.01C06 (3); SL 1977, ch 271, § 35; SL 1992, ch 236, § 7; SDCL § 33-15-20.

SDCL 34-48A-26. Duty to utilize already existing facilities.

The Governor, the secretary, and the executive officers or governing bodies of the political subdivisions of the state shall utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies. Such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor, the secretary and to the emergency management organizations of the state upon request. A local political subdivision must exhaust its available resources prior to obtaining assistance from another political subdivision. The state must exhaust all available governmental resources prior to obtaining private resources.

Source: SL 1949, ch 236, § 12; SL 1951, ch 285, § 12; SDC Supp 1960, § 41.01C11; SL 1977, ch 271, § 15; SL 2004, ch 17, § 197; SDCL § 33-15-21.

SDCL 34-48A-45. Mutual aid arrangements of local organizations.

The director of a local emergency management organization may develop mutual aid arrangements consistent with state plans and programs. The provisions of such arrangements shall be implemented in the event of emergency or disaster.

Source: SL 1949, ch 236, § 9; SL 1951, ch 285, § 9; SDC Supp 1960, § 41.01C08 (1); SL 1977, ch 271, § 22; SL 1992, ch 236, § 20; SDCL § 33-15-34.

SDCL 34-48A-46. Interstate mutual aid arrangements.

The director of each local organization for emergency management may, subject to the approval of the Governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted.

Source: SL 1949, ch 236, § 9; SL 1951, ch 285, § 9; SDC Supp 1960, § 41.01C08 (2); SL 1977, ch 271, § 23; SL 1992, ch 236, § 21; SDCL § 33-15-35.

**SDCL 34-48A-49. Emergency management as governmental function--Exceptions--
Worker's compensation.**

All functions under this chapter and all other activities relating to emergency management are governmental functions. Neither the state nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with this

chapter, or any order, rule promulgated pursuant to the provisions of this chapter, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of this state, is liable for the death of or injury to persons, or damage to property, as a result of such activity. The provisions of this section do not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the worker's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.

Source: SL 1949, ch 236, § 10; SL 1951, ch 285, § 10; SL 1953, ch 288, § 6; SDC Supp 1960, § 41.01C09 (1); SL 1977, ch 271, § 38; SL 1992, ch 236, § 24; SDCL § 33-15-38.

SDCL 34-48A-50. Exemption from licensing requirements during emergency.

Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical, or other skill during a disaster or emergency.

Source: SL 1953, ch 288, § 6; SDC Supp 1960, § 41.01C09 (2); SL 1977, ch 271, § 39; SL 1992, ch 236, § 25; SDCL § 33-15-39.

SDCL 34-48A-51. Civil defense shelters on private property--Immunity from liability.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice attack or other disaster or emergency as defined within this chapter shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises for loss of, or damage to, the property of such person.

Source: SL 1953, ch 288, § 6; SDC Supp 1960, § 41.01C09 (5); SL 1992, ch 236, § 26; SDCL § 33-15-41.

SDCL 34-48A-53. Uniform Emergency Management Assistance Compact.

The Uniform Emergency Management Assistance Compact is hereby enacted into law and entered into by the State of South Dakota with all other states legally joining the compact, in the form substantially as follows:

ARTICLE I--PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide the mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made

disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II--GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies of the capability of delivering resources to areas where emergencies exist. The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III--PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

- i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.
- ii. Review party states individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.
- iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.
- iv. Assist in warning communities adjacent to or crossing the state boundaries.

- v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.
- vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
- vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

- i. A description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
- ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
- iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV--LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces

will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the Governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V--LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI--LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII--SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII--COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this

compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX--REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses may not be reimbursable under this provision.

ARTICLE X--EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI--IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII--VALIDITY

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby

ARTICLE XIII--ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of title 18, United States Code.

Source: SL 1996, ch 210; SDCL § 33-15-48.

SDCL 34-1-7.1. State health officer's position abolished--Performance of functions.

The position of state health officer is abolished, and all its functions shall be administered by the secretary of health as provided by § 1-43-2.

Source: SL 1974, ch 3, § 27.

SDCL 34-22-41. "Public health emergency" defined.

For the purposes of §§ 34-3-26, 34-16-22 to 34-16-25, inclusive, and 34-22-41 to 34-22-44, inclusive, a public health emergency is an occurrence or imminent threat of an illness, health condition, or widespread exposure to an infectious or toxic agent that poses a significant risk of substantial harm to the affected population.

Source: SL 2002, ch 168, § 1.

SDCL 34-22-42. Secretary may declare public health emergency--Contents of order.

The secretary of health, with the consent of the Governor, may declare a public health emergency as defined by § 34-22-41. In declaring a public health emergency, the secretary shall issue an order that specifies:

- (1) The nature of the public health emergency;
- (2) The geographic area subject to the declaration;
- (3) The conditions that have brought about the public health emergency; and
- (4) The expected duration of the state of public health emergency, if less than thirty days.

Source: SL 2002, ch 168, § 2.

SDCL 34-22-43. Department primarily responsible for public health emergency response--Scope of authority--Promulgation of rules.

The department shall have primary jurisdiction, responsibility, and authority for responding to a public health emergency declared pursuant to § 34-22-42 including:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness, and response;
- (2) Coordinating public health emergency response between state and local authorities;
- (3) Collaborating with relevant federal, state, tribal, and local authorities; and
- (4) Organizing public information activities regarding public health emergency response operations.

The Department of Health may promulgate rules, pursuant to chapter 1-26, to implement the provisions of this section.

Source: SL 2002, ch 168, § 3.

SDCL 34-22-44. Termination of declared emergency--Renewal.

Any public health emergency declared pursuant to § 34-22-42 shall be terminated automatically after thirty days unless renewed by the secretary under the same standards and procedures set forth in § 34-22-42.

Source: SL 2002, ch 168, § 4.

SDCL 34-22-45. Voluntary vaccination program for first responders--Exposure to infectious diseases at disaster locations.

(The provisions of this section are effective on the date federal funding is received for administering vaccinations for first responders pursuant to SL 2005, ch 185, § 2.) Voluntary vaccination program for first responders--Exposure to infectious diseases at disaster locations. The Department of Health shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. For purposes of this section, the term, first responder, means state and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to sites of bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and other disasters. The vaccinations shall include vaccinations for hepatitis B, diphtheria, tetanus, influenza, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Agency policy. Immune globulin shall be made available if necessary. Participation in the vaccination program is voluntary.

Source: SL 2005, ch 185, § 1.

SDCL 47-23-28. Definition of terms. Terms used in §§ 47-23-28 to 47-23-32, inclusive, mean:

- (1) "Free clinic," a clinic in which health care services are offered voluntarily through a nonprofit corporation by health care professionals licensed or certified under the laws of this state to patients without charge or at a charge based on a sliding fee scale or the ability to pay;
- (2) "Governmental entity," any county, municipality, township, school district, chartered governmental units, other special districts, or any association, authority, board, commission, division, office, officer, task force, or other agency of the State of South Dakota;
- (3) "Nonprofit corporation," any corporation organized under chapters 47-22 to 47-28, inclusive, and which is exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a);
- (4) "Nonprofit organization," any organization which is exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c) as amended;
- (5) "Volunteer," an individual performing services for a nonprofit organization, a nonprofit corporation, a hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

Source: SL 1987, ch 344, § 1; SL 1993, ch 340, § 1.

SDCL 47-23-29. Immunity of volunteers of nonprofit organizations, free clinics, certain hospitals, and governmental entities.

Any volunteer of a nonprofit organization, a nonprofit corporation, a free clinic, any hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity shall be immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

- (1) The individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization, the nonprofit

- corporation, the free clinic, a hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity; and
- (2) The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Source: SL 1987, ch 344, § 2; SL 1993, ch 340, § 2.

SDCL 47-23-30. Person not immune where negligent operation of vehicle caused injury.

No immunity provided in §§ 47-23-28 to 47-23-32, inclusive, extends to any person causing personal injury or wrongful death resulting from the negligent operation of a motor vehicle.

Source: SL 1987, ch 344, § 3.

SDCL 47-23-31. Effect on other statutes concerning immunity.

Sections 47-23-28 to 47-23-32, inclusive, shall not be construed to constitute a modification or repeal of §§ 33-15-18.1, 33-15-18.2, 20-9-3, 20-9-4, and 20-9-4.1.

Source: SL 1987, ch 344, § 4.

SDCL 47-23-32. Waiver of immunity to extent of risk sharing pool or liability insurance coverage-- Volunteer serving as director, officer, or trustee exempt.

To the extent that any volunteer, nonprofit corporation, nonprofit organization, governmental entity, or hospital organized pursuant to chapter 34-8, 34-9, or 34-10 participates in a risk sharing pool or purchases liability insurance and to the extent that coverage is afforded thereunder, the immunity provided by § 47-23-29 is deemed to have been waived and may not be raised by way of affirmative defense. This section does not apply to a volunteer serving as a director, officer, or trustee.

Source: SL 1987, ch 344, § 5.

SDCL 62-1-5.1. Volunteers serving state or political subdivision without pay--Computing or imputing wage--Certain persons not deemed volunteers.

Any volunteer worker rendering services in or for any agency, department, institution, or instrumentality of the state or of any of its political subdivisions, including counties, townships, school districts, or municipalities, whose services have been duly recommended to the officer or governing body responsible for employment of personnel for the respective entity and duly appointed thereto by such officers or governing body, shall for purposes of this title be deemed an employee of the state or the political subdivision, as the case may be. The appointment shall be entered into the official records or minutes of the entity.

In the event of injury or death, for the purposes of computing compensation for volunteer workers other than volunteer firefighters, a volunteer uncompensated worker's employment earnings from all sources during the last six months of employment shall be used. In the event the volunteer uncompensated worker has never been employed, the worker shall be considered to be earning the state minimum wage over a forty-hour week. The worker's average weekly wage shall be calculated by one of the methods in §§ 62-4-25 to 62-4-27, inclusive. In no event may payments to volunteer uncompensated workers exceed the maximum limitations for benefits as set out in this title. No local prisoner, state inmate, or federal inmate providing services to the state or any of its political subdivisions may be considered a volunteer worker under this section.

Source: SL 1971, ch 278, § 1; SL 2001, ch 292, § 1.