



**Black Hills Special Services  
Cooperative Employee Handbook:  
*Personnel Policies and  
Procedures Manual***

**Adopted March 23, 2022**

**Latest Revision: June 28, 2023**

**Black Hills Special Services Cooperative  
Sturgis, South Dakota**

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## Welcome to Black Hills Special Services

Congratulations for joining Black Hills Special Services Cooperative (BHSSC). We believe our staff represent our greatest resources and wish you a long and successful career with our organization.

The *Personnel Policy and Procedures Manual* that follows has been prepared to guide you in better understanding our policies, procedures, and practices concerning employment matters. BHSSC is a diverse organization with multiple classifications of employees. Please pay particular attention to the section that references your employment classification. We encourage you to use this employee handbook as resource that you refer to periodically.

The manual is available online on the BHSSC website ([www.bhssc.org](http://www.bhssc.org)) and is updated as policies and procedures change. If a printed copy is desired, please request a copy from your Supervisor and one will be provided.

If you have any questions, please contact the business office or your Supervisor. Thank you for your commitment and dedication to BHSSC and our mission.

Sincerely,

A handwritten signature in black ink that reads "Joe Hauge". The signature is written in a cursive, flowing style.

Joe Hauge  
Executive Director

# Black Hills Special Services Cooperative History

Black Hills Special Services Cooperative (BHSSC) was organized in 1980 as a legal entity educational cooperative pursuant to South Dakota Codified Law 13:37. Since its establishment, BHSSC has grown from a small educational/vocational program with eight employees to a comprehensive, multi-service agency employing over 500 individuals. Its mission statement “**to build stronger communities by helping individuals and organizations reach their full potential**” (BHSSC Board approval 12/2014) supports activities across an array of programs that address unmet needs of individuals, schools, agencies, and communities.

BHSSC, as a public entity, operates under an elected board comprised of one board member from each of the 12-member school districts. The Executive Director and Business Manager work closely with the board to provide organizational leadership and administration for the organization’s five divisions. Each of the following divisions is overseen by the Executive Director, Business Manager, or a Division Director specifically assigned to that role by the Executive Director:

- **Community, Family, and Special Services (CFS)** – Since 1980, CFS makes possible programs that extend the school day and promote partnerships among families, educators, and community members. After-school learning, family education, and early childhood services are emphasized.
- **Developmental Disabilities (DD)** – Works in partnership with children and adults who have Developmental Disabilities, providing the services and supports they choose to help them live the lives they want. Direct services include Service Coordination, Education, Employment, Residential, Related Services, and Community Life. The division began its work in 1980.
- **Education and Workforce Development (EWD)** – Since 1982, the division has guided South Dakotans toward economic self-sufficiency through education and training leading to employment opportunities. Since 1982 programs have evolved to include alternative courses for high school students, adult basic education, GED preparation, National Career Readiness Certification, community education classes, career counseling and more.
- **Health and Human Services (HHS)** – Based in Pierre since 1987, Human Services provides program development and direct services for a variety of South Dakotans, including those seeking assistive technology to cope with disabilities or aging, those needing assistance to find employment, youth with disabilities transitioning to life beyond high school, and those hoping to live healthy and tobacco-free.
- **Technology and Innovation in Education (TIE)** – Launched in 1985, TIE advances effective educational technology statewide and leads South Dakota schools toward practices that improve instruction, assessment, professional development, and leadership. The annual TIE Conference is the state's largest professional development event for educators.

## Notice to All Employees

The Black Hills Special Services Cooperative (BHSSC) *Personnel Policy and Procedures Manual* provides employees with a common reference to the basic information that governs an individual's employment with the organization.

The authority to enforce the provisions set forth in this manual rests with the Executive Director. Supervisors are encouraged to adopt and enforce such policies and procedures as are unique to a specific division, but which are not inconsistent or in conflict with the policies and procedures adopted by the Executive Director.

This manual neither implies nor establishes a contract between BHSSC and the Employee. The contents of this *Personnel Policy and Procedures Manual* summarize current BHSSC policies and programs and are intended as guidelines only. BHSSC retains the right to change, modify, suspend, interpret, or cancel in whole or in part any of the published or unpublished personnel policies or practices of the company, without advance notice, without having to give cause or justification to any employee. Recognition of these rights and prerogatives is a term and condition of employment and continued employment. As such, the contents of this manual do not constitute the terms of an employment contract. Employment with this company is on an "at-will" basis; meaning that either party, employer, or employee, for any reason can terminate employment terms not expressly prohibited by law.



# Policy 1: Purpose and Use

## 1.0 Purpose of Policies and Procedures

Black Hills Special Services Cooperative, herein referred to as BHSSC, company, or organization, enacts the *Personnel Policy and Procedures Manual* to ensure all personnel issues are adhered to and to provide personnel administration. BHSSC has assigned all personnel issues to the Executive Director. In the event a question arises out of the manual, please forward any questions to the Supervisor or Division Director.

BHSSC enacts the policies and procedures for personnel administration to further the following goals:

- A. To provide uniform and sound personnel administrative systems throughout BHSSC;
- B. To inform employees of the general policies and procedures of BHSSC and the benefits and obligations of employment with BHSSC;
- C. To ensure that all personnel actions are based upon employee qualifications (knowledge, skills, and abilities) and job performance, and comply with federal and state law;
- D. To serve as written documentation of BHSSC's commitment to fair employment practices and equal employment opportunity;
- E. To assist managers in carrying out sound, equitable, and consistent personnel administration and in making effective use of human resources;
- F. To promote and encourage communication between the employer or Supervisor and the employee; and
- G. To protect the rights of the employee and employer throughout the employment relationship and to ensure that the responsibilities of both parties are carried out.

## 1.1 Applications

This *Personnel Policy and Procedures Manual* shall apply to all employees. In the event of a conflict between these policies and state or federal law, the terms and conditions of that law shall prevail.

## 1.2 Administration

The BHSSC Board has approved the adoption and implementation of this *Personnel Policies and Procedures Manual*. As such, the BHSSC Board:

- A. Reserves the exclusive right to hire, promote or release the Executive Director;
- B. Invests in the Executive Director the authority and responsibility for the selection of all other personnel or the Executive Director may delegate this authority and responsibility; *and*
- C. Invests in the Executive Director, or the delegate, the authority and responsibility for carrying out the policies, procedures, and intent of the manual to include power to employ, promote, assign duties and responsibilities, train, discipline, or reward employees within the guidelines of the manual.

Situations not covered by written policies will be the responsibility of the Executive Director. The Board must approve all changes or amendments to personnel policies.

## 1.3 Revision

BHSSC specifically reserves the right to repeal, modify, or amend any of these policies with or without notice.

## 1.4 Disclaimer

BHSSC recognizes that South Dakota is an employment at-will state and the intent of BHSSC is to maintain the employment at-will status of all employees.

This manual does not confer a contract of employment. The policies, procedures, rules, and benefits contained herein are subject to change. These policies are provided as a reference of present policies and not a guarantee of employment or specific employment benefits.

BHSSC does not recognize verbal or implied contracts for employment. Only the Executive Director or his/her designee and the Board have the authority to enter into any agreement of employment for a specified duration. Such employment agreements will only be valid and binding on BHSSC when the agreement is set forth in a written document signed by the employee, the Business Manager, and the Board President.

## **Policy 2: Equal Employment Opportunity**

### **2.0 Equal Employment Opportunity**

BHSSC is committed to providing equal employment opportunities for all persons regardless of religion, sex, age, national origin, or disability.

Equal opportunity extends to all aspects of the employment relationship, including hiring, transfers, recruiting, layoff and recall, promotions, training, terminations, working conditions, compensation, fringe benefits, retirement plans, disability leave, and other terms and conditions of employment.

BHSSC complies with federal and state equal employment opportunity laws and strives to keep the workplace free from all forms of harassment. BHSSC considers harassment and discrimination in all forms to be a serious offense. Employees who have been subject to prohibited discrimination or harassment should immediately report the incident to the employee's Supervisor, Division Director, or Title IX Coordinator.

### **2.1 Nondiscrimination**

It is the policy of BHSSC not to discriminate on the basis of any protected group status in its educational programs, activities, or employment policies and activities as outlined in section 2.0 as required by following state and federal laws and regulations. Inquiries regarding non-discriminatory policies in employment may be directed to the Equal Employment Officer (EEO), Personnel Specialist, Executive Director, and/or any Division Director.

### **2.2 Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) and its amendments provide comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs. Title II of the ADA states, in part, that *"no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination in programs or activities sponsored by a public entity."* BHSSC has adopted this policy to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA.

#### **2.2.1 Requesting an Accommodation**

Qualified individuals with disabilities may make requests for a reasonable accommodation to the employee's Supervisor. On receipt of an accommodation request, the Supervisor along with the Division Director will meet with the individual requesting the accommodation to discuss and identify the precise limitations resulting from the disability and the potential accommodation that BHSSC may make to accommodate the limitations. The Supervisor and Human Resources, along with the individual's doctor and other necessary professionals at BHSSC will determine the feasibility of the requested accommodation, considering various factors as permitted by law.

### **2.3 Harassment Policy**

BHSSC is committed to providing a work environment free of unlawful harassment based on race, color, religion or creed, national origin or ancestry, sex (including gender, pregnancy, sexual orientation, and gender identity), age, physical or mental disability, veteran status, genetic information, and citizenship. Any behavior that creates or contributes to an intimidating, hostile, or offensive environment is prohibited and will result in disciplinary action, up to and including termination. BHSSC will act to investigate all complaints of harassment and will discipline or take appropriate action against any BHSSC employee who is found to have violated this policy.

For the purpose of this policy, "BHSSC employee" includes all BHSSC employees and agents, volunteers, contractors, or persons subject to the supervision of BHSSC. This policy applies on all BHSSC owned-property or on non-owned property, while in any BHSSC-owned or leased vehicle and while attending or participating in all BHSSC sponsored, approved, or related activities at any location.

It shall be a violation of this policy for any BHSSC employee to harass another BHSSC employee, volunteers, guests, visitors or vendors through conduct or communication of a sexual nature of communication or disparaging race, color, religion or creed, national origin or ancestry, sex (including gender, pregnancy, sexual orientation, and gender identity), age, physical or mental disability, veteran status, genetic information, and citizenship.

Harassment is unwelcome conduct that is based on race, color, religion or creed, national origin or ancestry, sex (including gender, pregnancy, sexual orientation, and gender identity), age, physical or mental disability, veteran status, genetic information, and citizenship. Harassment, be it sexual or nonsexual harassment, becomes unlawful when:

- A. Enduring the offensive conduct becomes a condition of continued employment; *or*
- B. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Anti-discrimination laws also prohibit BHSSC employees from harassing and/or retaliating against individuals who file a discrimination charge, testify, or participate in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) may not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- A. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- B. The victim does not have to be the person harassed but can be anyone affected by the offensive conduct.
- C. Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Harassment generally falls into one of two categories: sexual or non-sexual harassment.

The following legal references have been researched in the development of the Harassment Policy section for this manual:

South Dakota Executive Order 81-08,  
Title VII of the Civil Rights Act of 1964,  
Title IX of the Education Amendments of 1972,  
The Civil Rights Act of 1991,  
The Age Discrimination in employment Act of 1968 (ADEA),  
The Equal Pay Act of 1963 (EPA),  
Title I and Title V of the American with Disabilities Act of 1990 (ADA),  
Sections 501 and 505 of the Rehabilitation Act of 1973, and  
Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

### **2.3.1 Sexual Harassment**

BHSSC does not discriminate on the basis of sex in employment. BHSSC is required by Title IX of the Education Amendments of 1972 and the regulations promulgated through the U.S. Department of Education not to discriminate in such a manner. Inquiries about the application of Title IX to BHSSC may be referred to BHSSC's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or both. BHSSC is committed to a work environment which is free from sexual harassment and conducive to all employees. Sexual harassment can inhibit an employee's work. Sexual harassment of BHSSC employees, volunteers, guests, visitors, and vendors of BHSSC shall also not be tolerated and is strictly prohibited.

All BHSSC employees, volunteers, guests, visitors, and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with BHSSC policies. This policy prohibiting sexual harassment shall apply to all employees, volunteers, guests, visitors, and vendors while on BHSSC property, while attending or participating in BHSSC activities, on BHSSC-owned property or on non-BHSSC property, while in any BHSSC-owned or leased vehicle, or when in a private vehicle located on BHSSC property.

Federal law defines sexual harassment as sexual conduct that demonstrates one or more of the following:

- A. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct, commonly referred to as quid pro quo;
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
- C. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30); and/or

- D. Sexually oriented words and actions which tend to annoy, alarm or be physically or verbally abusive toward another person and which serve no legitimate or valid purpose regardless of the intent of the person accused of the sexually harassing conduct, constitutes sexual harassment.

Sexual harassment is a specific type of harassment which is prohibited under this policy. Examples of sexual harassment include, but are not limited to:

1. Unwelcome sexual flirtations, advances, or propositions;
2. Verbal comments, jokes, or abuse of a sexual nature;
3. Graphic verbal comments about an individual's body;
4. Sexually degrading words used to describe an individual;
5. Displaying pornographic material; *and/or*
6. Physical contact or language of a sexually suggestive nature.

Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Any employee who believes that he or she has been or is being subjected to sexual harassment or has reason to suspect another person has been or is being subjected to sexual harassment may also report it to the employee's Supervisor or the BHSSC Executive Director. The report may be made verbally or in writing.

BHSSC's response shall treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with Title IX requirements before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

### **Designation of Title IX Coordinator**

The Board has designated the following BHSSC employee to coordinate its efforts to comply with its responsibilities, who shall be referred to as the "Title IX Coordinator."

Title IX Coordinator: Kelsey Smith  
Office Address: 2885 Dickson Drive, Sturgis, SD  
Email Address: ksmith@bhssc.org  
Office Telephone Number: 605.347.4467

BHSSC shall notify applicants for employment, employees, and all unions or professional organizations holding collective bargaining or professional agreements with BHSSC, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **Dissemination of Sexual Harassment Policy**

BHSSC shall notify persons entitled to the notification above that BHSSC does not discriminate on the basis of sex in employment, and that inquiries about the application of

Title IX to BHSSC may be referred to BHSSC's Title IX Coordinator, to the BHSSC Executive Director, or both.

BHSSC shall prominently display the contact information required to be listed for the Title IX Coordinator on its website, and in each handbook or catalog that it makes available to persons entitled to a notification.

### **2.3.2 Nonsexual Harassment**

Not all harassment falls within the definition of sexual harassment (i.e., harassment that is of a sexual nature). State and federal laws, regulations and policies also prohibit inappropriate or offensive conduct and provide a means for addressing such conduct should it occur.

Offensive conduct may include, but is not limited to:

- A. Offensive jokes, slurs, epithets, or name calling;
- B. Physical assaults or threats;
- C. Intimidation, ridicule or mockery, insults, or put-downs;
- D. Display of offensive objects or pictures; *and/or*
- E. Interference with work performance

### **2.3.3 BHSSC's Response to Sexual and Nonsexual Harassment**

Everyone at BHSSC is expected to avoid any behavior or conduct that could be interpreted as unlawful harassment. All employees should also understand the importance of informing the individual whenever that individual's behavior is unwelcome, offensive, in poor taste, or inappropriate. BHSSC must be aware of incidents of harassment to be able to take appropriate corrective measures. Sexual harassment complaints should be reported to the Title IX Coordinator. Nonsexual harassment complaints should be reported to the employee's Supervisor or Division Director.

- A. **Employees** – If an employee believes that he/she has been subject to harassment or any unwanted attention, he/she should:
  1. Make his/her unease and/or disapproval directly and immediately known to the alleged harasser;
  2. Make a written record of the date, time, and nature of the incident(s) and the names of any witnesses; *and*
  3. Report the incident to the employee's immediate Supervisor, Division Director and/or the Executive Director.

All incidents of harassment or inappropriate conduct must be reported regardless of their seriousness. Publicizing information about alleged harassment without following the reporting procedures or filing a formal complaint might be considered evidence of a vexatious intent on part of the accuser.

- B. **Supervisors/Division Directors** – Supervisors/Division Directors must deal expeditiously and fairly with allegations of harassment within their divisions, whether or not there has been a written or formal complaint. Supervisors/Division Directors must:
  1. Act promptly to investigate harassment;
  2. Ensure that harassment or inappropriate conduct is reported to the Supervisor/Division Director/Executive Director; *and*
  3. Take corrective action to prevent prohibited conduct from reoccurring.
  4. Supervisors who knowingly allow or tolerate harassment are in violation of this policy and are subject to discipline.
- C. **Prohibition Against Retaliation** – BHSSC prohibits and will discipline any individual who retaliates against any person who reports alleged harassment or who retaliates

against any person who testifies, assists, or participates in any investigation, proceeding, or hearing related to a harassment complaint. During the investigation, all parties directly involved in the complaint may have legal or other representation. If any party elects to be represented at any step of the complaint procedure, the name of the representative must be declared in writing to the Executive Director. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Retaliation is itself a violation of federal and state laws prohibiting discrimination and may lead to separate disciplinary action against an individual. If BHSSC employee who has filed a complaint or has testified, assisted, or participated in the investigation of harassment believes that he or she has been retaliated against because of his or her participation, he or she should follow the procedures set forth above.

- D. **False Charges** – Charges found to have been intentionally dishonest or made maliciously without regard for truth may subject complainants to disciplinary action.
- E. **Uncomfortable Situations** – BHSSC recognizes that not every uncomfortable situation constitutes harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory employment effect requires a determination based on all the facts and surrounding circumstances.

### **Confidentiality**

BHSSC shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

BHSSC shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of BHSSC to provide the supportive measures.

BHSSC shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of BHSSC to provide the supportive measures.

### **Recordkeeping**

For a period of seven years, BHSSC shall maintain records of:

- A. Each harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's BHSSC program or activity;
- B. Any appeal and the result therefrom;
- C. Any informal resolution and the result therefrom; *and*
- D. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

For each response required, BHSSC shall create and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment; document the basis for its conclusion that its response was not deliberately indifferent; and document that it has taken measures designed to restore or preserve equal access to the recipient's program or activity. If the complainant is not provided with supportive measures, BHSSC shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **2.4 Complaint Procedure: Sexual and Non-Sexual Harassment and Discrimination**

It has been, and shall continue to be, BHSSC's policy to comply with the letter and spirit of applicable federal, state, and local laws, ordinances and statutes concerning equal employment opportunity and nondiscrimination. BHSSC pledges that it will make a determined and sustained effort to prevent and eliminate any discrimination within the organization, in part by implementing the affirmative action measures outlined below. This commitment also extends to giving full consideration to the employment of persons with disabilities for work for which they are qualified.

BHSSC has adopted this procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the Equal Employment Opportunity Commission (EEOC). Any individual who believes that he/she or a specific class of individuals has been subjected to unlawful discrimination may, by him or herself or by any authorized representative, file a complaint.

### **2.4.1 Complaint Report and Appeal Forms**

Complain forms and appeal forms are provided in Appendix A beginning on page 50: one set is for nonsexual harassment and/or discrimination and another set is for sexual harassment. There also sets of forms for the appeals process to the Executive Director and to the BHSSC Board. The following process will be the same for each. Note that the Title IX Coordinator will only be involved in sexual harassment complaints and appeals.

A complaint must be filed in writing and must contain:

- A. The date the form is completed;
- B. The name of the person completing the form;
- C. The name of the person reporting the harassment;
- D. The address and phone number of the person reporting the harassment, and the nature of the complaint in detail; *and*
- E. The signature of the complainant or authorized representative.

Complaints filed on behalf of third parties must describe or identify the alleged victims of the discrimination.

1. Initial complaints should be directed to the individual's immediate Supervisor. The Supervisor, the Division Director, or Title IX Coordinator, and the individual complainant should attempt to resolve the complaint at this level. The Supervisor, Division Director, or Title IX Coordinator shall have 10 working days from the date he/she was made aware of the complaint in official written form to provide a written proposed resolution for the complaint to the complainant. *NOTE: In the event that the employee does not feel comfortable going to the immediate Supervisor, the employee should pass over this step and begin this process at Step 3.*
2. In the event the complainant is not satisfied with the action of the immediate Supervisor, the Division Director, or Title IX Coordinator, the complainant shall have 10 working



- days from receipt of the formal written proposed resolution from the immediate Supervisor to appeal the decision to the Executive Director.
3. The Complaint Appeal Form to the Executive Director must be completed and is attached to this employee handbook or may be obtained from any supervisor or the Title IX Coordinator. The Executive Director will appoint an investigating committee to carry out the review process. The investigating committee will consist of the Executive Director, Title IX Coordinator, and/or additional members as appropriate. If the Title IX Coordinator is the alleged harasser, the Executive Director will select an impartial replacement. If the Executive Director is the alleged harasser, the President of the BHSSC Board of Directors will select an impartial replacement to carry out this procedure. Under such circumstances, additional time must be anticipated for the Board to exercise its responsibilities. The committee shall have 20 working days to provide a written proposed resolution to the complainant regarding the complaint.
  4. The complainant reviews the written decision of the investigating committee; if satisfied, the matter is concluded. If not satisfied, the complainant may submit Complaint Appeal Form to the BHSSC Board of Directors within 15 working days of receipt of the committee's final decision for a formal meeting with the BHSSC Board. The Complaint Appeal to the BHSSC Board form must be completed and is attached to this employee handbook or may be obtained from any Supervisor or the Title IX Coordinator.
  5. Upon receipt of a Complaint Appeal Form, the Board shall promptly conduct a thorough investigation of the complaint. All interested parties shall be afforded an opportunity to submit evidence relevant to the complaint. In most cases, a neutral third party will be utilized in the conduct of this investigation to ensure impartiality and proper proceedings. The BHSSC Board will allow 30 calendar days to ensure adequate opportunity for all involved parties to present information and to ensure that the investigating authorities have sufficient opportunity to prepare findings of facts and conclusions. At the end of this time, the investigator shall provide his/her findings of facts and conclusions to the Executive Director. Upon receipt of this information the Executive Director shall have 10 working days to provide a formal written proposed resolution to the complainant; again, this may be written by the neutral party who investigated the complaint. Recommendations for corrective action will be submitted to the Executive Director for review and appropriate disposition.
  6. The Title IX Coordinator or the Appeal Decision Maker, will inform the complainant and the appropriate supervisor.
  7. The Business Office shall maintain files and records of all complaints filed for seven years.

#### **2.4.2 Appeal Processes**

Both parties have the right to appeal the Supervisor's determination to the Executive Director, and the Executive Director's determination to the BHSSC Board. Both parties also have the right to appeal the dismissal of a formal complaint or any allegations therein, on the following basis:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; *and/or*
- C. The Title IX Coordinator, investigator(s), and/or decision-maker(s) had a conflict of interest or bias for or against complainant(s) or respondent(s) that affected the outcome of the matter.

As to all appeals, the Title IX Coordinator (in appeals regarding Sexual Harassment) or Appeal Decision Maker (in appeals regarding Nonsexual Harassment or Discrimination) shall:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome; *and*
3. Ensure that a written decision is issued describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

The Title IX Coordinator and Appeal Decision Maker will not be involved in the original determination regarding responsibility or dismissal. The Title IX Coordinator and Appeal Decision Maker must comply with the standard of evidence as required in this policy.

### **Consolidation of Formal Sexual and Nonsexual Complaints**

BHSSC may consolidate formal complaints as to allegations of harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of harassment arise out of the same facts or circumstances.

### **Dismissal of Formal Sexual and Nonsexual Complaints**

BHSSC must investigate the allegations in formal complaints. If the conduct alleged in the formal complaint would not constitute harassment as defined in this policy even if proven, did not occur in a BHSSC program or activity, or did not occur against a person in the United States, then BHSSC must dismiss the formal complaint with regard to that conduct for purposes of harassment; however, the dismissal does not preclude action under another provision of BHSSC's code of conduct.

BHSSC may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- A. A complainant notifies the Title IX Coordinator or Appeal Decision Maker in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- B. The respondent is no longer employed by BHSSC; *and/or*
- C. Specific circumstances prevent BHSSC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

BHSSC shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

## **Policy 3: Employee Conduct**

**Employee Responsibility:** All BHSSC employees are expected to act ethically in the workplace. It is BHSSC employees' responsibility to report to their Supervisor any convictions that would disqualify them from employment or inhibit the performance of their job duties.

### **3.0 Drug and Alcohol Policy**

The safety of people supported/served and employees is a paramount concern to BHSSC. Employees under the influence of alcohol, drugs, or controlled substances are a serious risk to themselves, to people supported, to other employees, and to the community. In the event there are specific differences between programs, employees of those programs will be notified and presented with the policy of that program.

### **3.0.1 Drug and Alcohol Abuse Policies**

Following are the policies of BHSSC regarding drug and alcohol abuse:

- A. The unlawful manufacture, distribution, dispensing, possession or use of controlled drugs or substances is prohibited and is proper cause for termination;
- B. Any illegal controlled drug or substance possessed while on duty by employees will be turned over to the appropriate criminal justice agencies and may result in criminal prosecution;
- C. It is not permissible for an employee to be under the influence of controlled drugs or substances or alcohol on the job, except as provided for in item 4 below;
- D. The legal use of controlled drugs or substances prescribed by a licensed physician is not prohibited, but employees in a position where side effects of the prescribed medication could affect performance and safety on the job are required to disclose such use to his or her Supervisor;
- E. The illegal use, sale, and possession of controlled drugs or substances while off duty and off BHSSC premises that results in a criminal conviction is unacceptable; off-duty, drug and/or alcohol-related criminal convictions may be proper cause for termination.

### **3.0.2 Parameters for Testing for Drugs and Alcohol**

BHSSC may request that an employee undergo drug and alcohol testing for various reasons to include, but not limited to, random testing, pre-employment, post-incident, or “reasonable suspicion” that the employee is under the influence of drugs or alcohol during work hours. “Reasonable suspicion” means an articulate belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Circumstances, which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- A. A pattern of abnormal or erratic behavior which is so unusual that it warrants summoning a Supervisor or other individual for assistance;
- B. Information provided by a reliable and credible source with personal knowledge;
- C. Direct observation of drug and alcohol use;
- D. Presence of the physical substance of drug and/or alcohol use (including but not limited to alcohol odor on breath, slurred speech, poor coordination);
- E. Possession of substances in violation of BHSSC drug and alcohol policy.

### **3.0.3 Employee Responsibility**

- A. An employee must not report to work at any time while his/her ability to perform his/her job duties are impaired due to alcohol and/or drug use. An employee must notify his/her immediate Supervisor/Division Director of any drug and/or alcohol related conviction while employed by BHSSC.
- B. An employee who suspects or witnesses drug use by another employee must report such knowledge to the immediate Supervisor.

- C. Any employee who violates this policy will be subject to disciplinary action, which may include termination. Each employee of BHSSC is hereby notified that, as a condition of employment, the employee must abide by the terms of this policy and will report to the Supervisor any criminal drug statute convictions for a violation occurring in or on the premises of the BHSSC, or while engaged in regular employment.

#### **3.0.4 Management Responsibility**

Supervisors/Division Directors shall not physically search the employee nor shall they search the employee's personal possessions without consent and in the presence of the employee. Supervisors/Executive Director shall notify the proper law enforcement agency when he/she has reasonable suspicion as defined in 3.0.2.

Within 30 days after receipt of information concerning a violation of this policy, BHSSC will take appropriate disciplinary action, which may include termination of employment or requiring the Employee to participate in drug abuse assistance or rehabilitation programs.

#### **3.0.5 Testing Procedure**

Where "reasonable suspicion" or post-incident circumstances exist, employees may be asked to submit to blood and/or urine testing by a qualified medical physician at BHSSC's expense. An employee who refuses to consent to a drug and alcohol test in accordance with this policy may be subject to disciplinary action.

A positive test result may result in disciplinary action. If positive, all documentation and results will be filed in a sealed confidential envelope with need-to-know access only. Disclosure to any other person, agency, or other organization is prohibited unless written authorization is obtained from the Employee.

#### **3.0.6 Drug and Alcohol Treatment**

The BHSSC Board recognizes that employees who have a drug abuse problem should be encouraged to seek professional assistance. An employee who requests assistance shall be referred to a treatment facility or agency in the community if such a facility or agency is available.

#### **3.0.7 Alcohol and Black Hills Special Services Cooperative Events**

BHSSC recognizes that there may be official events which employees are required or encouraged to attend which may involve serving or consumption of alcohol. Employees promoting BHSSC services, networking, or participating in BHSSC events in or out of town where alcohol is provided or served are expected to use discretion and good judgment at all times, recognizing that each employee represents BHSSC.

### **3.1 Abuse and Neglect Policy**

BHSSC defines abuse and neglect as they relate to individuals, children, and adults, who are served and supported within BHSSC programs. The following describe actions that are deemed to fall within the definition of abuse and neglect:

- A. **Verbal** – Verbal abuse is defined as name-calling or making demeaning statements, which may intimidate or demoralize a person. These statements could include ridiculing a person's family, background, culture, race, or disability. Verbal abuse could also include shouting or swearing at people served/supported by the agency.

- B. **Physical** – Inappropriate or excessive use of physical intervention; corporal punishment; inappropriate or excessive use of isolation and/or seclusion.
- C. **Sexual** – Sexual abuse and exploitation occurs when inappropriate touch, sexual contact or explicit sexual dialogue is non-consensual or occurs between persons who are of significantly different age, ability, or position.
- D. **Psychological** – Psychological abuse occurs when staff fails to provide an emotionally nurturing environment for people supported. This could include ridiculing a person’s family, background, culture, race, or disability. Psychological abuse could also include treating one person or members of a peer group unequally or unfairly.
- E. **Neglect** – Neglect is defined as failure to provide for basic physical, medical, emotional needs of people supported. This also includes failure to provide for basic needs such as food, clothing, and shelter; and failure to provide proper supervision to the extent that the person could harm themselves or others.
- F. **Exploitation** – Exploitation is defined as the wrongful taking or exercising of control over property of a person supported or served with intent to defraud him/her of it.

### 3.1.1 Policy Statements

- A. BHSSC has zero tolerance for Abuse/Neglect of people supported or served by the agency.
- B. Abuse and neglect as defined are prohibited at the BHSSC.
- C. Physical and emotional well-being of the people supported and served will be considered the top priority

### 3.1.2 Reporting Procedures

All employees of BHSSC are mandated to immediately report to their immediate Supervisor any reasonable cause to suspect abuse/neglect as defined in this policy. The employee may also be required to complete an incident report. Abuse/neglect reports can be generated from incidents that occur in the agency or in the community.

Any BHSSC staff who has observed any form of abuse or has reasonable cause to suspect abuse has occurred must immediately report those suspicions to his/her Supervisor who reports the information to the Supervisor, Division Director, and/or Executive Director.

The Division Director/Executive Director must immediately report the information to the Division of Social Services, Child Protection Services, and/or the Division of Human Services. BHSSC can attempt to determine whether there is reasonable cause to suspect that the alleged incident occurred, but actual investigation is not allowed, as that is the role of the Division of Social Services. Law enforcement will also be contacted if alleged incident involves someone over the age of 18.

If applicable, the parents/guardian/or advocate will be contacted and informed of the incident by the person’s Program Coordinator or by the BHSSC administration within 24 hours, unless the person to be notified is accused of the incident.

Allegations of abuse/neglect will be compiled and reviewed quarterly by the BHSSC Leadership Team. This information will be presented to the management team by the Director of Developmental Disabilities Program for review and analysis. The results will be referred to the Human Rights Committee for further review.

### **3.1.3 Consequences**

In situations where abuse has occurred or is suspected to have occurred between any staff and any person supported or served, the following consequences will be imposed:

If the employee has an allegation of abuse/neglect, the employee's Supervisor along with the Division Director/Executive Director may choose to dismiss, suspend, or place the employee on probation. Suspension and probation will include a plan of correction. The duration of suspension or probation will be determined by the Division Director/Executive Director in the written summary signed by all parties and entered in the employee's record.

### **3.2 Abuse/Neglect Outside Black Hills Special Services Cooperative**

BHSSC staff will report any suspected abuse/neglect of any children within the community/communities served by BHSSC. Reporting procedures will be in keeping with South Dakota law.

### **3.3 Outside Employment**

It is the policy of BHSSC that employees may work at outside jobs whenever not scheduled. Exempt employees may accept outside employment provided the outside employment does not constitute a conflict of interest with the business interests of BHSSC. The Executive Director should be notified if there is a question of conflict of interest.

BHSSC asks these employees to remember that, despite any outside employment, their position with BHSSC is their primary responsibility. BHSSC reminds employees that working extended hours might adversely affect their health, endurance, and productivity. All employees holding outside employment must inform their Supervisor of the nature of the work and the hours when they work. If an employee's Supervisor determines that the outside employment interferes with the employee's performance or creates an actual or apparent conflict of interest, the employee may be asked to terminate the outside employment.

BHSSC does not consider outside employment to be an excuse for poor job performance, tardiness, absenteeism, or refusal to work overtime. If outside employment leads to these problems, disciplinary action may occur, up to and including termination.

### **3.4 Tobacco Policy**

All areas of the workplace and property are tobacco-free, without exception. This pertains to any tobacco product including the use of smokeless or spit tobacco and applies to both employees and non-employee visitors of our organization.

Use of tobacco products will not be allowed within the facilities of BHSSC at any time. The decision to not provide designated smoking areas outside the building will be at the discretion of management or another decision-making body.

### **3.5 Conflict of Interest**

Employees will not use privileged information obtained through work at BHSSC for business dealings or for other means of personal gain. Any employee involved in the selection of new employees will not participate in the selection process should a family member apply for a position.

Employees should not supervise immediate family members who are also employed by the agency.

All employees must avoid activities or relationships that conflict with BHSSC's interests or adversely affect BHSSC's reputation. The types of activities and relationships employees must avoid include but are not limited to:

- A. Accepting or soliciting a gift, favor, or service that is intended to, or might appear to, influence the employee's decision-making or professional conduct;
- B. Accepting, agreeing to accept, or soliciting money or other tangible or intangible benefit in exchange for the employee's favorable decisions or actions in the performance of his or her job;
- C. Accepting employment or compensation or engaging in any business or professional activity that might require disclosure of BHSSC's confidential information; or
- D. Accepting employment or compensation that could reasonably be expected to impair the individual's independent judgment in the performance of official duties.

Employees must disclose actual or potential conflicts to the Executive Director as soon as they become aware of them. Failure to make required disclosures or resolve conflicts of interest satisfactorily can result in discipline up to and including termination of employment.

Professionals serving on the agency's governing body should not be under contract to the agency to provide services.

### **3.6 Confidentiality**

It is the policy of BHSSC to ensure all employees maintain confidentiality regarding all business and client information. Furthermore, BHSSC has the responsibility to ensure the privacy of people supported and as such will act according to the following:

- A. All information generated about people supported will be treated as confidential and will not be shared beyond the BHSSC's employees who need to know, and parent/guardian, without proper authorization.
- B. BHSSC will not forward any information received from other agencies regardless of releases obtained. Only first party information can be forwarded.
- C. Breach of confidentiality may be grounds for disciplinary action.
- D. Access to file information is limited by agency policy.
- E. Funding and regulatory agencies may access records; however, they must sign a record of access form located in all individual files.

### **3.7 Absenteeism and Tardiness**

Employees are expected to be on the job, on time, every day that they are scheduled to work. Unscheduled absences, late arrivals, and early departures are grounds for disciplinary action.

Any employee absent from work due to illness or disability shall notify his/her immediate Supervisor as soon as possible. If an emergency situation exists, indicate the nature of the situation and the expected length of absence. If an employee is absent without proper notification, he/she will be considered to have voluntarily resigned his/her position. After three (3) consecutive sick days, medical doctor approval may be necessary prior to an employee's return to work. However, the Supervisor may request a physician's notice at any time. Any employee found to have abused his/her attendance and/or benefit privileges may be subject to disciplinary action.

### **3.8 Computer Usage**

BHSSC's computer system will be used in a manner that protects the confidentiality of information regarding employees and people supported in BHSSC, in accordance with the confidentiality protection requirements of federal law, state law, and BHSSC policy. (See 3.6 and 6.1.)

BHSSC will cooperate fully with local, state, and/or federal officials in any investigations concerning or relating to any illegal activities conducted through BHSSC computer or communication systems.

Employees will not deliberately engage in any breaches of security which may include but are not limited to sharing confidential data.

All files and data processed by BHSSC systems are the records of BHSSC and are subject to review and monitoring to ensure that they are consistent with federal law, state law, and BHSSC policy.

Any user who suspects misuse of BHSSC resources should notify their Supervisor, Division Director, or the Executive Director of BHSSC.

### **3.8.1 Software**

The BHSSC Tech Department must approve and/or install all software. Employees must use software in accordance with the software's license agreement and Terms of Use. The BHSSC Tech Department can authorize software that can be downloaded/installed by the employee. Division Directors can authorize software for initial preview purposes prior to final installation.

### **3.8.2 Internet**

When using BHSSC equipment, employees may access the Internet for personal use in strict compliance with the other terms stated in this policy.

Connections to BHSSC's local network infrastructure from other Internet service providers are not allowed unless approved and appropriately safeguarded by a commercial security solution approved by the BHSSC Tech Department. Examples might include but are not limited to remote access to BHSSC's computers or a virtual private network (VPN).

BHSSC does not guarantee that its implementation of content safeguards, including the technology protection measures, will fully protect against access to material or people that may be considered inappropriate as defined by the Children's Internet Protection Act or by BHSSC policies. The BHSSC Tech Department advises all users to be aware that the truth or accuracy of information on the Internet and in email communications should be considered suspect and should be approached with caution, especially when the BHSSC employee is not familiar with the sender. Employees should also be aware that sensitive material transferred over the Internet may be at risk of inspection by a third party. Therefore, employees must exercise caution and care when transferring such material in any form.

All digital services used for organizational activities or projects will be registered with BHSSC managed accounts, adhere to standards outlined by BHSSC policies, and must be approved by the BHSSC Tech Department or a Division Director.

### **3.8.3 User Accounts**

A BHSSC account owner is defined as the user for whom the account was created. Account owners are responsible for all actions taken by their account.



Employees may not publish or share their user account password with another person. Nor, may employees leave an open file (e.g., on their laptop) or session unattended or unsupervised.

### **3.8.4 Security**

All devices connected to the BHSSC network shall be continually running approved and up-to-date malware prevention software unless exempt by BHSSC Computer Usage policy (page 22).

Employees will not knowingly engage in any disruption of network communication. The intentional introduction of malware, malicious tampering with any computer system, or taking of actions that may disrupt or jeopardize the security or effective performance of BHSSC's network or the Internet, is expressly prohibited.

Only devices approved by the BHSSC IT Department will be allowed on the BHSSC Internal network. Outside devices, such as personal devices or those from other organizations, are only allowed on guest networks, if available.

Organization equipment must not be used for illicit activities including, but not limited to, those defined by State and Federal law and policies in this handbook.

All employees must complete assigned security training within the timeframe designated by BHSSC Tech Department.

### **3.8.5 Electronic Communication**

Electronic communication will be provided for employees as required by their job responsibilities as well as people supported/served as deemed necessary to access BHSSC services. Work-related communication should be conducted through these BHSSC communication services. BHSSC employees are required to conduct themselves professionally when using BHSSC communication tools. BHSSC retains the right to place reasonable restrictions on data transmitted through BHSSC-provided communication services. In addition, employees will be provided with individual email accounts unless such accounts are supplied by the organization under which they are contracted.

## **3.9 Employment of Relatives**

The general policy of BHSSC is to hire, promote, and otherwise employ people on the basis of their job qualifications and individual merit. BHSSC does not prohibit the employment of relatives; however, where the hiring or employment of an employee's relative would result in the type of prohibited employment relationship, BHSSC will not consider or accept such applications for employment. Therefore, in the event a direct Supervisor/subordinate relationship is created between two related persons, BHSSC will not consider for employment. For the purposes of this policy, relatives include the following: spouse, parent, child, and/or sibling.

## **3.10 Political Activity**

BHSSC has adopted a formal policy regarding staff participation in political activities. The BHSSC Board recognizes that employees of BHSSC have the same fundamental civic responsibilities and privileges as other citizens. Such activities may include campaigning for elective public office and holding an elective or appointive public office.

An employee who intends to campaign for an elective public office will notify the Executive Director in writing as soon as possible and will discuss with the Executive Director whether to continue employment and under what terms and conditions. An employee seeking an extended leave of absence for campaigning, office-holding, or other time-consuming activities connected with government service will apply for such leave in writing.

The Business Manager is authorized to guard BHSSC funds from being used for political purposes. It is further understood that all payments made by BHSSC are submitted to the Board for approval prior to payment, are incorporated into the Minutes of the meeting, and are published in the legal newspaper for public view.

At the time BHSSC Board Minutes are signed, the Business Manager is attesting that all information, including the claims for payment have been examined, and to the best of his/her knowledge is true and correct and does not contain claims pertaining to political activity.

### **3.11 Intellectual Properties**

BHSSC desires to obtain reasonable protection against unfair competition and reasonable protection of its proprietary and confidential trade secrets, inventions, and other business information that have been developed and acquired at substantial company expense.

BHSSC has agreed to employ the employee subject to the terms and conditions of this policy and the employee has agreed to become an employee of BHSSC subject to the terms and conditions set forth in this policy.

#### **3.11.1 Inventions Defined**

The term Invention includes any discovery, improvement, and/or idea (whether or not in writing or reduced to practice) or works of authorship (whether or not they can be patented or copyrighted) that the employee makes, authors, or conceives (either alone or with others) and that:

- A. Concerns directly BHSSC's business or BHSSC's present or anticipated future research and development;
- B. Results from any work the employee performs for BHSSC;
- C. Uses BHSSC's equipment, supplies, facilities, or trade secret information; *or*
- D. Is developed during the time the employee is performing employment duties for BHSSC.

#### **3.11.2 Inventions as BHSSC Property**

The employee agrees that all Inventions made, authored, or conceived by the Employee during the term of the employee's employment with BHSSC will be BHSSC's sole and exclusive property.

The employee will, with respect to any Invention:

- A. Keep current, accurate, and complete records, which will belong to BHSSC and will be kept and stored on BHSSC's premises while the employee is employed by BHSSC;
- B. Promptly and fully disclose the existence and describe the nature of the Invention of the Company in writing (and without request);

- C. Assign to BHSSC the employee's rights to the Invention, any application the Employee makes for patents or copyrights in any country, and any patents or copyrights granted to the employee in any country; *and*
- D. Acknowledge and deliver promptly to BHSSC any written instruments, perform any other acts necessary in the Company's opinion to preserve property rights of the Invention against forfeiture, abandonment, or loss and to obtain and maintain letters patent and/or copyrights in the invention and to vest the entire right and title to the Invention to the BHSSC.

### **3.11.3 Exceptions**

The requirements of subsection **3.11.2** do not apply to an Invention for which no equipment, supplies, facility, or trade secret information of BHSSC was used and which was developed entirely on the employee's own time, and which does not:

- A. Relate directly to BHSSC's business or to BHSSC's actual or demonstrably anticipated research or development; *or*
- B. Result from any work the employee performed for BHSSC.

### **3.11.4 Upon Employee's Exit**

Following termination of employment, the employee will promptly and fully disclose the existence and describe the nature of any Invention as defined in this subsection. The employee shall assign and immediately deliver to the BHSSC:

- A. Any and all of the employee's rights to the Invention;
- B. Any applications the employee has made for patents or copyrights in any country;
- C. Any patents or copyrights granted to the employee in any country; *and*
- D. Any and all files, correspondence, programs, disks, hardware, and software related to employment by BHSSC.

## **3.12 Driving Policy**

All employees who operate BHSSC vehicles must have a valid driver's license. Employees are encouraged to maintain a safe driving record. A safe driving record is determined by reviewing driving history for frequency of moving violations and DUI (Driving Under the Influence) convictions. Failure to demonstrate the ability to drive safely constitutes an unsafe driving record and may result in loss of the benefit to drive a BHSSC vehicle. If driving a BHSSC vehicle is an integral function of employment, an unsafe driving record may be grounds for termination of employment. To verify driving records, a random check of drivers' license records will be done by BHSSC's insurance carrier. A check of drivers' license records may also be done at the request of the Executive Director. BHSSC vehicles are available only for BHSSC business, within the scope of employment. Personal use of these vehicles is not permitted.

## **3.13 Transportation of People Supported/Served**

BHSSC employees transporting individuals in a 15+ passenger yellow school bus are required to obtain a bus driver's license (Commercial Driver's License or CDL) and follow the applicable state laws as they pertain to driving bus. Before any employee can transport a BHSSC student or other people supported in a BHSSC vehicle, they must be listed on the agency's insurance by showing a valid driver's license.

Occasionally, employees may be asked to transport students or people supported/served in employee-owned vehicles. Any employee has the right to refuse to transport students or other people supported in employee-owned vehicles. Employees may be required to provide proof of insurance.

### **3.14 Damage of Employee Property**

BHSSC is not responsible for employee property, which may be damaged or stolen at work. Employees are encouraged to leave valuables at home. Employees who allow students or other people supported use of or access to any personal property will be responsible for any damage expenses. Employees are encouraged to lock their vehicles while at work. Reimbursement for work-related damage to clothing, eyeglasses, vehicles, or other personal property will be considered by the Executive Director on an individual basis.

### **3.15 Consensual Relationships**

Dating or sexual relationships that might be appropriate in other circumstances have inherent dangers when they occur between a staff member, Supervisor, or other BHSSC employee and any person for whom he or she has a professional responsibility. These dangers can include situations where employees may:

- A. Feel coerced into an unwanted relationship because they fear that refusal to enter into the relationship will adversely affect their education/training program or employment;
- B. Result in a conflict of interest when a staff member, Supervisor, or other BHSSC employee is required to evaluate the work or make personnel or academic decisions with respect to an individual with whom he or she is having a romantic relationship; *or*
- C. Perceive that a co-worker who is involved in a romantic relationship will receive an unfair advantage; and that if the relationship ends in a way that is not amicable, either or both parties may wish to take action to injure the other party.

## **Policy 4: Employee Classifications and Status Changes**

### **4.0 General**

Proper classification of employees is important to administering salaries, determining eligibility under BHSSC employee benefits plan, and complying with employment and tax laws. BHSSC offers full-time and part-time employment and may offer temporary employment opportunities to meet a variety of staffing requirements and accommodate employee needs and preferences.

All employees, whether full-time, part-time, or temporary, are classified as exempt or nonexempt for overtime and minimum wage requirements.

### **4.1 Employee Classifications**

#### **4.1.1 Full-Time Employee**

A full-time employee is an employee who is employed by BHSSC who regularly works more than 20 hours per week or 116 days or more in a fiscal year. A full-time employee may be exempt or nonexempt and may be eligible for certain benefits depending on the Class.

- A. **Class 1** – A full-time exempt employee hired in anticipation of working a set number of days and a set compensation schedule. Class 1 employees will be paid on a semimonthly schedule. A Class 1 employee shall be eligible for employee benefits according to eligibility qualifications and other provisions as defined in each plan. For definition

purposes and in accordance with BHSSC funding sources, days worked are recorded in increments of a ½ day or 1 day. Class 1 employees’ work schedule, including time away from work, will be approved by their Supervisor.

1. **Class 1 Certified** – A certified employee is one whose position requires a teaching certificate or other professional certificate and who provides direct instruction in a classroom setting.
- B. **Class 2** – A full-time nonexempt employee hired in anticipation of working a set number of hours with a set schedule at an hourly rate of pay. Class 2 employees will be paid on a biweekly schedule. A Class 2 employee shall be eligible for employee benefits according to eligibility qualifications and other provisions as defined in each plan.
- C. **Class 4 Hourly** – A full-time nonexempt employee hired in anticipation of working a number of hours scheduled per pay period at an hourly rate of pay. These employees may or may not have the same scheduled hours each pay period. Class 4 Hourly employees will be paid on a biweekly schedule. A Class 4 Hourly employee shall be eligible for employee benefits according to eligibility qualifications and other provisions as defined in each plan.
- D. **Class 5** – An exempt employee hired in anticipation of working at one of the locations that contract with BHSSC. Employees in this classification will be required to follow the policies and guidelines of the agency for which he/she works. A Class 5 employee shall be eligible for employee benefits according to eligibility qualifications and other provisions as defined by contracting agency.

#### 4.1.2 Part-Time Employee

Part-time employees, which include seasonal, substitute or temporary employees, may be exempt or nonexempt and are not eligible for retirement or paid personal leave (PPL) benefits.

- A. **Class 1 Part-Time Daily** – A Class 1 part-time employee is an exempt employee who works less than 116 days in a fiscal year. Exempt part-time employees may be paid a daily rate. Days worked are recorded in increments of a ½ day or 1 day. Class 1 part-time daily employees will be paid on a biweekly schedule.
- B. **Class 4 Part-Time** – A Class 4 part-time employee is a nonexempt employee who works fewer than 20 hours per workweek. Nonexempt part-time employees will be paid on an hourly basis. Class 4 part-time employees will be paid on a biweekly schedule.

CLASS	BENEFITS						
	Group Health, Dental, & Life	Retirement	Worker Comp	Annual Leave	Sick Leave	Paid Personal Leave	Supplemental Ins. paid by Employee
Class 1 = 116 days or more	YES	YES	YES	NO	YES	NO	YES
Class 1 < 116 days	NO	NO	YES	NO	NO	NO	NO
Class 2 = 40 hrs./wk.	YES	YES	YES	YES	YES	NO	YES
Class 4 Hourly = average 20 to 29.75 hrs./wk. (1040-1547 hours per fiscal year)	NO	YES	YES	NO	NO	YES	YES
Class 4 Hourly = average 30 hrs./wk. or more (more than 1560 hours per fiscal year)	YES	YES	YES	NO	NO	YES	YES

Class 4 Part-Time < 20 hrs./wk. (less than 1039 hours per fiscal year)	NO	NO	YES	NO	NO	NO	NO
Class 5	Follow benefits as identified by contracting agency.						

#### 4.2 Nonexempt and Exempt Status

BHSSC classifies each employee or position as exempt or nonexempt.

- A. **Exempt Status** – Exempt employees are not subject to federal and state overtime requirements. An employee is exempt if determined to be an executive, an administrative or professional employee, a computer specialist, or an outside sales representative as defined by the Fair Labor Standards Act.
- B. **Nonexempt Status** – Nonexempt employees are entitled to overtime pay of at least 1½ times their regular rate for hours worked in excess of 40 in any workweek. Any employee who is not classified as exempt is nonexempt.

#### 4.3 Chain of Command

All employees will be made aware of their immediate Supervisor. The employee should be aware that this Supervisor reports to one of the Division Directors and the Division Director reports to the Executive Director. The Executive Director reports to the Board. In the absence of the Executive Director, the employee’s Division Director would be designated as next in command.

As all employees are hired conditionally on the basis of continuing fitness or need, these status categories or anything contained in these policies and procedures do not guarantee employment for any specified length of time. Rather, employment is at the mutual **consent** of the employee and BHSSC and can be terminated at-will by the Employee or BHSSC.

If an employee requested a change in schedule that would change that employee’s eligibility for benefits, such a request must be submitted to the Supervisor in writing. The Supervisor’s approval, along with the employee’s written request, should be submitted to the Business Office prior to the beginning of the pay period that the change is to be effective.

## Policy 5: Recruitment, Hiring, and Promotion

#### 5.0 General Policy

It is the policy of BHSSC to recruit and fill job vacancies with the most qualified applicant for the position. BHSSC has two methods of recruiting qualified applicants to fill job vacancies: internal and external. If, in the best interest of BHSSC, promotions or transfers of individuals already employed with BHSSC shall be given first consideration. This consideration, however, does not entitle the individual to an automatic promotion or transfer.

BHSSC will not discriminate in its recruitment, hiring, and promotion practices on the basis of any protected group status. A protected group member is an individual who falls within a group that is qualified for protection under equal employment laws.

#### 5.1 Applications for Employment

Individuals interested in applying for a specific position with BHSSC must complete and submit a BHSSC application form and/or provide a resume.

## **5.2 Eligibility**

To be eligible for employment with BHSSC, applicants must be legally eligible to be employed in the United States as proven on the required I-9 form. Certain positions may be required to be screened through the Division of Social Services Central Registry, Sex Offender Registry, and Office of Inspector General (OIG) Excluded Provider List.

## **5.3 Qualifications**

BHSSC job descriptions establish the minimum required levels of education and experience necessary to qualify for appointment. Each description may also detail desired skills or qualifications which are preferred by BHSSC and will be given foremost consideration.

## **5.4 Disqualification**

BHSSC may disqualify an applicant from employment if he/she does not meet the minimum qualifications, knowingly has made a false statement on the application form or resume, has committed fraud during the selection process, and/or has not successfully met the requirements of the background check or reference check.

## **5.5 Employment References**

To be considered a qualified applicant, all candidates for positions with BHSSC must provide the names, addresses, and the name of a Supervisor or contact person for previous employment – where possible. Job candidates should be made aware that BHSSC's evaluation of his/her qualifications and suitability for employment normally includes contacting these employment references to verify information provided in application forms, interviews, or resumes.

## **5.6 Background Checks**

It is the policy of BHSSC to perform criminal background investigations, which include, but are not limited to, the use of fingerprint background checks. All employees who are selected for employment are employed conditionally until the employee successfully passes all company and state regulations. BHSSC has elected not to share criminal history record information (CHRI) results. All persons directly associated with the accessing, maintaining, processing, dissemination, or destruction of CHRI will be trained. The Criminal Justice Information Services (CJIS) Security Training must be completed within six months of initial assignment and biennially thereafter. BHSSC does not store CHRI electronically and CHRI results are shredded in-house within 60 days of employment.

## **5.7 Employment Offers**

Once the candidate for the position is identified, the hiring Supervisor with the Executive Director agrees on the starting salary that will be offered to the individual. Normally, the hiring Supervisor makes a verbal offer of employment to the candidate which, if accepted, is followed by a written confirmation of employment terms. The candidate will be made fully aware of his/her at-will employment status regarding employment with BHSSC. Both the verbal and written offers of employment are conditional offers inasmuch as they are contingent on BHSSC's verification of reference information, completion of any background check, and the submission of satisfactory employment eligibility required documentation required and approval by the BHSSC Board.

## **5.8 Acceptance of Employment**

After an individual has accepted employment with BHSSC, the Supervisor shall ensure that the necessary and proper paperwork is filed within the Employee's personnel file.

## **5.9 Promotion**

All promotions are based on a comparative review of interested applicant qualifications, ability and aptitude, and quality of past work performance. Only job-related factors are considered. In all its selection and employment processes, including promotion/transfer decisions, BHSSC makes every effort to ensure all individuals receive equal employment opportunities.

## **5.10 Assignment and/or Transfer**

Each employee may be assigned and/or transferred to a specific position at the discretion of their Supervisor, Division Director, or the Executive Director.

# **Policy 6: Personnel Records**

## **6.0 Personnel Records**

In collecting, maintaining, and disclosing personnel information, BHSSC makes every effort to protect employees' privacy rights and interests and prevents inappropriate or unnecessary disclosures of information from any employee's file or record. While complying with its governmental reporting and record keeping requirements, BHSSC strives to ensure that it handles all personal and job-related information about employees in a secure, confidential, and appropriate fashion in accordance with the principles and procedures outlined below.

### **6.1 Confidentiality of Information**

BHSSC treats personal information about employees as confidential and respects the need for protecting each employee's privacy by enforcing secure information handling procedures on the part of all personnel whose job duties involve gathering, retaining, using, or releasing personal information about the organization's employees. BHSSC collects and retains only such personal information as it needs to effectively conduct business and administer its employment and benefit programs. BHSSC takes all possible steps to make sure that all personal and job-related information about employees is accurate, complete, and relevant for its intended purpose. Wherever possible, BHSSC notifies affected employees if it needs additional personal information and gives these employees an opportunity to supply the requested data.

### **6.2 Security and Storage**

All paper-based documents relating to BHSSC's personnel record system are kept in secure locked files in the Sturgis office. These files are accessible only to authorized personnel with a demonstrable, valid need to obtain specific information from an employee's personnel record. Employees are also granted access to their own personnel files and records in accordance with the access procedures outlined below. Authorized personnel may, on occasion, have a need to remove personnel files from the Business Office for official purposes. If files are removed, they will be secured in a locked area until returned to the Business Office. If an individual with an authorized need to know requires copies of the information in an employee's personnel file, the Business Office will make these copies available on written request. All confidential information (e.g., medical records, garnishments, Family Medical Leave Act documentation, references) relating to an employee is kept in the separate records system files maintained by the Business Office. Ordinarily,



medical information about an employee is supplied only to the employee's designated physician in accordance with the employee's written specific request. Questions or issues about the application or enforcement of these security measures should be addressed to the Division Director, Business Manager, or Personnel Specialist.

### **6.3 External Disclosures**

On occasion, BHSSC must provide information and data from its personnel records and files to federal, state, and local government agencies in accordance with record keeping and reporting requirements imposed by such agencies. In instances where a government agency requests information beyond that which it normally requires, BHSSC ordinarily advises the affected employees of the agency's information request. However, if an agency's information request occurs in the course of an agency investigation or if an agency asks BHSSC to keep such a request confidential, BHSSC, at its discretion, may comply with the agency's request. BHSSC complies with subpoenas demanding production of information with respect to any employee as prohibited by law.

The Personnel Specialist will not release employee information to an individual, outside organization, or a non-government entity without a written request/authorization for the disclosure from that employee.

### **6.4 Employees' Access Rights to Personnel File Information**

Any employee can review the information contained in the employee's personnel file, although BHSSC reserves the right to remove certain sensitive documents, such as letters of reference, management planning documents, and succession or promotion plans. Any employee interested in reviewing the contents of the employee's personnel file should contact the Business Office and provide at least two days' notice of the employee's desire to schedule a mutually convenient time for an appointment. BHSSC retains documents in accordance with record retention requirements under federal and state law. After the expiration of the applicable retention period, the records are destroyed. Consequently, certain historical documents might not be available for review.

#### **6.4.1 Records for Review**

Employees generally have access to the following types of records:

- A. Employment applications
- B. Personnel action forms, including those for hiring, promotions, salary changes, and job title changes
- C. Performance appraisals
- D. Awards and commendations
- E. Warnings and reprimands (excluding documents prepared in connection with investigations or other documentation to support reprimands)
- F. Fringe benefit enrollment and election forms, including designation of beneficiary forms

BHSSC retains documents in accordance with record retention requirements under federal and state law. After the expiration of the applicable retention period, the records are destroyed. Consequently, certain historical documents might not be available for review.

The following types of documents are not part of an employee's general personnel records and are not accessible to employees:

1. Pre-employment reference information, including letters, telephone notes, and memoranda secured from the employee's prior employers or persons who are not current employees of BHSSC
2. Medical records that an employee can obtain directly from his or her physician or directly from a health care provider
3. Records relating to investigations of policy violations, prohibited conduct, or criminal offenses
4. Documents developed or prepared for use in grievance or court procedures
5. Documents relating to staff planning or business planning, including management succession plans, management bonus plans, and job assignment plans
6. Form I-9, Employment Eligibility Verification Form, and other documents relating to employment eligibility

## **6.5 Accuracy of Employee Information**

To ensure that BHSSC's personnel files are up-to-date and contain accurate, complete information, employees are required to notify the Business Office of any changes that need to be made in the following categories: name, phone number, home address, marital status, number of dependents, and beneficiary designations. The employee should also notify his/her Supervisor of scholastic achievements and changes to applicable contact information (i.e., name, phone number, address).

## **6.6 Correction or Deletion of File Information**

Employees can request correction or deletion of information in the employee's personnel records as appropriate by submitting a written request to the Executive Director. The Executive Director ordinarily checks with the Division Director where the record originated. Within 30 calendar days of receipt of a written request to amend a record, the Executive Director notifies the employee in writing that the amendment will be made as requested or that the amendment request has been denied. In cases where a requested amendment is denied, the Executive Director must explain the reasons for refusing to make the change. A copy of the response must be placed in the individual's record if the request is denied. If the Executive Director refuses to amend or delete the record, the individual has the right to enter into the record a statement setting forth the reasons for the individual's disagreement.

## **6.7 Information**

No material reasonably derogatory to the employee's conduct, service, character, or personality shall be placed in the employee's personnel file unless the employee has had an opportunity to review the material. The employee should acknowledge he/she has had the opportunity to review such material by affixing the employee's signature to the copy to be filed.

# **Policy 7: Hours of Work and Compensation**

## **7.0 General Policy**

It is the intent of the Executive Director to create a standard workweek within which an employee is expected to perform BHSSC services. The Executive Director also realizes that emergency and extenuating circumstances may arise in which an employee is required to work variable hours. Nothing within this policy is meant as a guarantee to the number of hours, either daily or weekly, that an employee may be required to work. However, it is the Executive Director's intent that every employee be treated equally and fairly when expected to work odd or extended hours.

## **7.1 Standard Workweek**

The standard 40-hour workweek, unless otherwise stated, for the purpose of calculating pay and overtime, shall begin at 12:00 AM Sunday and end at 11:59 PM Saturday.

## **7.2 Standard Workday**

BHSSC nonexempt Class 2 and Class 4 employees will be provided with a work schedule. While every attempt is made to keep staff schedules consistent, BHSSC reserves the right to schedule an employee for any shift. If an employee has a conflict with a particular shift, he or she needs to follow the policy for using leave.

BHSSC Class 1 employees are scheduled for duties according to the position. This schedule may vary by duty and be flexible to meet the needs of BHSSC and the project(s) the employee is working on. The Executive Director may delegate the schedule for certified and exempt employees to the Division Director under which the employee is assigned.

## **7.3 Pay Period and Pay Day**

BHSSC Class 1 Daily, Class 2, and Class 4 employees will have paychecks direct deposited every other Wednesday on a bi-weekly schedule. BHSSC Class 1 Salaried employees, and eligible Class 5 employees, will be paid on a semi-monthly schedule and will have paychecks direct deposited on or around the 15th and the 30<sup>th</sup> of every month. Should the 15th or 30th fall on a weekend or holiday, direct deposit may be done the preceding workday.

## **7.4 Time Distribution**

Nonexempt Class 2, 4, and eligible Class 5 employees are required to complete a daily time distribution to keep a record of all hours worked, including, but not limited to annual leave, sick leave, and paid personal leave (PPL), for the purpose of calculating and issuing pay checks. Class 1 and eligible Class 5 employees will be required to keep a timesheet/time distribution record to track activities and/or project each day. Every employee and his/her Supervisor must verify the timesheet/time distribution records for accuracy. Intentional falsification of timesheet/time distribution records may result in disciplinary action.

## **7.5 Payroll Deductions**

BHSSC is required to withhold Federal Income Tax, Social Security, and Medicare from each employee's paycheck. Other deductions may include contribution to the employee's South Dakota Retirement System's (SDRS) Supplemental Retirement, group health coverage, dental insurance, life insurance, and other withholdings required by law.

## **7.6 Wages and Job Descriptions**

The wage of any individual employed by BHSSC is dependent on approval by the BHSSC Board. BHSSC job description will identify the Typical Duties and Responsibilities, the minimum qualifications required to obtain the position, any pertinent certifications necessary, as well as detailed information on skills and abilities necessary to fulfill the position.

## **7.7 Overtime**

Nonexempt employees may be required to work overtime when determined necessary by their Supervisor, Division Director, or the Executive Director. Overtime is defined as time that is worked in excess of the standard 40-hour workweek but does not include hours paid but not worked, such as holidays, annual leave time, sick leave, and personal leave.

All overtime must be authorized by the employee's Supervisor prior to the working of such hours except in an emergency. Overtime is to be authorized only if the work cannot be otherwise done during the normal working hours. Insofar as possible, the opportunity to work overtime shall be distributed as equally as practical among employees in the department. Accrual of overtime without prior authorization may result in disciplinary action.

Overtime compensation for all nonexempt employees shall be at the rate of 1½ times the employee's regular hourly rate unless otherwise authorized by the Executive Director. All overtime must be documented on timesheets when it is worked and paid as overtime. BHSSC does not recognize overtime for exempt employees.

## **7.8 Flextime**

When possible, a regular full-time employee who works more hours than the normally scheduled workday may arrange to take flextime. In addition, the Supervisor may, at his/her discretion, rearrange an employee's schedule to eliminate any overtime liability for the workweek. All such hours that skew from the normally scheduled workday must be approved by the Supervisor. To maintain the budget, the Supervisor may utilize flextime for those employees who are scheduled to work on the weekends. Flextime must be used during the same 40-hour workweek and cannot accumulate and will not carry over into the next workweek.

## **7.9 Direct Deposit**

BHSSC processes employees pay via direct deposit to the employees' specified account. Direct deposit is required for all employees.

## **7.10 Expense Reimbursement**

BHSSC shall reimburse an employee for all necessary expenses incurred by employee while traveling pursuant to employer's discretion. Employees can elect to have their reimbursements directed deposited. For more information regarding direct deposit of reimbursements, please contact the Business Office.

### **7.10.1 Travel**

Employees will travel on authorized BHSSC business in BHSSC vehicles, if available. All employees who travel on authorized BHSSC business in their own vehicles will be reimbursed for the miles traveled at the rate established by BHSSC Board. BHSSC reserves the right to deny reimbursement for use of personal vehicles if BHSSC vehicles are available. Out-of-area travel requires prior approval from the Executive Director or Division Director. BHSSC will cover the cost of coach air fare.

### **7.10.2 Meal Expense**

All employees who travel on authorized BHSSC business and have to stay overnight will be reimbursed for meals in accordance with per diem policy established by BHSSC Board. With approval of Executive Director or Division Director, meals paid for during meetings may be reimbursed by original receipts submitted.

### **7.10.3 Lodging Expense**

All employees who travel on authorized BHSSC business and have to stay overnight shall be reimbursed for the actual cost of the lodging. All employees should attempt to stay at places which offer state rates.

### **7.11 Pay Transparency Nondiscrimination Provision**

As required by the U.S. Code of Federal Regulations, federal contractors will not discharge or in any other manner discriminate against employees because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or change, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the contractor's legal duty to furnish information. See 41 CFS 60-1.35(c) from the U.S. Code of Federal Regulations.

## **Policy 8: Benefits**

### **8.0 Insurance, Retirement, and Workers' Compensation**

The following benefits are those offered by BHSSC. Please refer to the necessary employee classification, as some or most of the benefits are afforded to the respective individual employee classification. Full details of the group insurance plan can be obtained from the Business Office.

BHSSC offers a comprehensive and competitive benefits package to all employees. Participation with any of the benefit programs is a decision of each individual employee.

#### **8.0.1 Group Health Coverage and Group Dental Insurance**

Regular full-time Class 1, Class 2, Class 4 Hourly, and eligible Class 5 averaging a minimum of 30 hours or a minimum of 116 days per fiscal year are eligible for group health coverage, group dental insurance and life coverage under BHSSC's group health plan. The elected benefits will begin on the first of the month following the first calendar month of employment with BHSSC. BHSSC will provide a designated amount for coverage; however, employees will need to pay the difference for self and dependents at their expense.

BHSSC shall annually determine the amount of BHSSC's contribution toward the eligible employees' group health coverage, group dental insurance, and group life insurance.

Employees may choose to opt out of group health coverage provided by BHSSC. Delta Dental requires 100% participation of those employees eligible for benefits. Employees who opt out of BHSSC group health coverage will not receive their portion of the group health coverage contribution otherwise paid by BHSSC. BHSSC assumes no liability or responsibility for the adequacy or inadequacy of the insurance coverage or other medical bills, or expenses not otherwise covered by this plan.

#### **8.0.2 Continuation of Health Coverage (COBRA)**

In the event of an employee's termination of employment (except for gross misconduct) or reduction of hours, the employee, spouse, and dependent children are entitled by law to purchase continuing health coverage under BHSSC's group health plan for up to 18 months. In the event of an employee's death, divorce, or legal separation, under BHSSC's group health plan, the spouse and dependent children of the employee have the option of purchasing continuing coverage under BHSSC's group health plan for up to 36 months.

If the employee or any family member is disabled, the disabled individual and non-disabled family members are entitled to an additional 11 months of continuation coverage. During the 11 months of extended coverage for disabled employees or their family members, the cost of the coverage contribution rate may increase.

Qualified or eligible beneficiaries electing extended coverage through COBRA are responsible for paying the cost of the extended health care coverage. The purchase price of continuing coverage is the full cost of the coverage contribution BHSSC pays for similarly situated active employees, plus administrative costs.

This continuing coverage terminates before the expiration of the 18-, 29-, or 36-month period if the employee or qualifying family members become covered under another group health plan that provides comparable benefits and does not penalize the newly covered individual(s) for preexisting conditions. BHSSC's continuing coverage also terminates if coverage contributions are not paid on time or if BHSSC discontinues its group health plans for all employees.

The previously offered extended retiree coverage is no longer available. However, retirees and/or their spouses and dependent children who enrolled prior to 8-1-19 will continue to have coverage.

In order for BHSSC to meet its legal obligations in providing continuing group health care coverage, the employee must inform his/her Supervisor within 31 days of a change in status such as divorce or legal separation. It is also essential that the Supervisor have a current address for all employees and family members. This policy statement is a brief description of the Health Care Continuation Plan and does not fully explain employees' rights. Each employee should read the notice he/she receives when he/she first enrolls in the group health plan or the Summary Plan Description for a full explanation. Copies of the notice and Summary Plan Description can be obtained from the Personnel Specialist.

### **8.0.3 Life Insurance**

All regular full-time Class 1, 2, and 4 Hourly employees who average 30 hours or more per week and eligible Class 5 salaried employees are provided with life insurance coverage.

### **8.0.4 Retirement Benefit**

Full-time employees are enrolled in the South Dakota Retirement System (SDRS). Eligible employees are required to contribute a percentage of their wages to the SDRS plan. BHSSC will contribute a matched percentage to eligible employee's SDRS plan. Employee and employer percentages are determined by SDRS.

### **8.0.5 Workers' Compensation**

- A. **First Report of Injury Required** – South Dakota Worker's Compensation Law requires that an employee report all work-related injuries or illnesses to BHSSC as soon as possible but no later than six (6) days after its occurrence. Any employee involved in an on-duty accident shall immediately report the accident and any physical injury sustained to his/her Supervisor or the Personnel Specialist at the BHSSC Business Office. Employees shall complete a First Report of Injury which is available from the Supervisor, the Business Office, and the BHSSC website. The employee can request a copy of the First Report of Injury that is submitted to the employer. Failure to comply with this policy may be grounds for disciplinary action by BHSSC. All employees shall also immediately report all safety hazards to the employee's Supervisor.
- B. **Compensation and Benefits** – In cases where workers' compensation reimbursement is paid, employees may utilize leave to subsidize the difference between workers' compensation benefits and the amount of their regular wage. Additional accumulation of PPL, sick, or annual leave will not be permitted while the Employee is on a workers' compensation leave. BHSSC shall not participate in retirement benefits for an employee while the employee is absent from work because of a work-related illness or injury. All benefits will continue upon return to work. Employees will be required to provide sufficient certification or signed medical release to return to work.

**8.1 Annual Leave**

All regular full-time Class 2 employees accrue annual leave according to the schedule outlined below. Employees are encouraged to take annual leave each year, as it promotes rejuvenation and a positive work environment. Employees scheduled for less than 40 hours will accrue leave on a prorated basis depending on the number of hours scheduled. Annual leave will be given at a rate according to the following schedule per pay period:

<u>Length of Service</u>	<u>Length of Leave</u>	<u>Class 2</u>
1 <sup>st</sup> through 5 <sup>th</sup> year	80 hours annually	3.08 hours
6 <sup>th</sup> through 10 <sup>th</sup> year	120 hours annually	4.62 hours
11 <sup>th</sup> and additional years	160 hours annually	6.15 hours

- A. **Accruing Annual Leave** – Accrual of annual leave begins on the first day after the completion of the first day of employment. Annual leave shall be earned and credited to employees at the rate shown above. The accrual date for annual leave is based on the employee's anniversary date.
- B. **Scheduling of Annual Leave** – Annual leave must be scheduled with the employee's Supervisor at the earliest possible time prior to the use of such leave preferably within two-weeks of the requested days. BHSSC reserves the right, within reason, to disapprove requested time for leave for the purposes of maintaining the workforce during heavily scheduled work periods. However, BHSSC will make every effort to accommodate employees' requests for time off. Annual leave will be assigned on a first-request basis.
- C. **Annual Leave Accumulation** – Annual leave shall be carried over from one fiscal year to the next. However, employees shall not accumulate more than 160 hours. Once the balance is obtained, the employee will not be able to accrue additional leave.
- D. **Termination of Employment** – Employees will be paid for their accrued annual leave balance upon termination of employment with BHSSC at their current rate of pay.
- E. **Wages in Lieu of Annual leave** – Employees who terminate, retire, or who are placed on a leave of absence may receive pay for earned but unused annual leave. In the event of death,

- earned but unused annual leave will be paid to that employee's estate. Active employees are not eligible for salary in lieu of annual leave, unless approved by the Executive Director.
- F. **Minimum Annual Leave Used** – Regular full-time employees must take annual leave in no less than .25-hour increments.
  - G. **Family Medical Leave (FMLA)** – Employees must use all accrued leave while on FMLA and prior to going on an unpaid FMLA.
  - H. **Leave of Absence** – Employees on a leave of absence without pay or suspensions without pay who are absent a full pay period do not accrue annual leave benefits.
  - I. **Change of Classification** – Annual leave will be converted to PPL when an employee changes from a classification accruing annual leave to a classification accruing PPL.

## 8.2 Paid Personal Leave (PPL)

All regular full-time Class 4 Hourly employees that are eligible for SDRS shall accrue PPL on a biweekly schedule. PPL is defined as hours accrued in accordance with the below schedule. Employees accrue PPL to cover both discretionary time off as well as non-discretionary time off, and can include leave for the following reasons: sick, vacation, disability, floating holidays, bereavement, sabbaticals, military, jury duty, doctor appointments, or any other leave determined as PPL by BHSSC. Employees are encouraged to take PPL each year, as it promotes rejuvenation and a positive work environment.

PPL will accrue at a rate according to the following schedule:

<u>Length of Service</u>	<u>Hourly Accrual Up to 40 Hours</u>
1 <sup>st</sup> through 5 <sup>th</sup> year	0.07 per hour
6 <sup>th</sup> and additional years	0.09 per hour

Paid Personal Leave (PPL) is defined as hours accrued in accordance with the above schedule. Employees accrue PPL to cover time off from work. PPL is intended to maintain the employee's normally scheduled hours up to 40 hours per week. A combination of hours worked and PPL cannot exceed 40 hours per week.

- A. **Accruing PPL** – Accrual of PPL begins on the first day of employment.
- B. **Scheduling of PPL** – PPL must be scheduled with the employee's Supervisor at the earliest possible time prior to the use of such leave preferably within two-weeks of the requested days. BHSSC reserves the right, within reason, to disapprove requested time for leave for the purposes of maintaining the workforce during heavily scheduled work periods. However, BHSSC will make every effort to accommodate employees' requests for time off. PPL will be assigned on a first-request basis.
- C. **PPL Accumulation** – PPL shall be carried over from one calendar year to the next. However, employees shall not accumulate more than 240 hours. Once the maximum is obtained, the Employee will not be able to accrue additional leave hours.
- D. **Termination of Employment** – Employees will be paid for their accrued PPL balance upon termination of employment with BHSSC at their current rate of pay.
- E. **Wages in Lieu of PPL** – Employees who terminate, retire, or who are placed on a leave of absence may receive pay for earned but unused PPL. In the event of death, earned but unused PPL will be paid to that employee's estate. Active employees are not eligible for wages in lieu of PPL, unless approved by the Executive Director.
- F. **Minimum PPL Used** – Regular full-time employees must take PPL in no less than .25-hour increments.
- G. **Family Medical Leave** – Employees must use all accrued leave while on FMLA and prior to going on an unpaid FMLA.



H. **Change of Classification** – PPL will be converted to Annual Leave when an employee changes from a classification accruing PPL to a classification accruing Annual Leave.

### 8.3 Sick Leave

An employee absent from work due to illness or disability shall notify his/her immediate Supervisor before scheduled to work, or as soon as possible. If an emergency situation exists, indicate the nature of the situation and the expected length of absence. If an employee is absent without proper notification, he/she may be considered to have voluntarily resigned his/her position. After three consecutive sick days, medical doctor approval may be necessary prior to an employee's return to work. However, the Supervisor may request a physician's approval at any time. In the event an employee uses 3 sick days within a 3-month period, that employee may be counseled regarding attendance. Any employee found to have abused his/her sick leave privileges may be subject to disciplinary action.

All regular full-time Class 1 employees will accrue sick leave days on the 1<sup>st</sup> of July each year according to the schedule outlined below.

<u>Number of Wage Agreement Days</u>	<u>Number of Sick Leave Days</u>
170 or more days	10 days
131 – 169 days	7.5 days
116 – 130 days	5 days

Class 5 employees will receive sick days on the 1<sup>st</sup> of July as specified by their contracting agency.

Regular full-time Class 2, employees shall accrue sick leave at a rate of 3.07 per pay period not to exceed 80 hours annually based on a 40 hour per week schedule.

#### 8.3.1 Administrative Guidelines

- A. **Sick Leave Pay** – Sick leave benefits shall be paid at the employee's regular rate of pay at any time the leave is taken.
- B. **Using Sick Leave** – Employee shall be allowed, at the discretion of the Executive Director, to take sick leave in order to care for a sick immediate family member and/or household member requiring attention or to take them to a medical appointment. Immediate family members shall include employee's spouse and for both the Employee and the employee's spouse: children, parents, and any other family member the Executive Director approves. Household members, which are also defined as immediate family, shall include others living with the employee in a familial situation (foster children, stepchildren, and stepparents).
  - 1. Class 1 and eligible Class 5 employees must use sick leave in ½ or 1-day increments.
  - 2. Class 2 employees must use sick leave in no less than .25-hour increments.
- C. **Leave of Absence** – Employees on a leave of absence without pay or suspensions without pay who are absent a full pay period do not accrue sick leave benefits.
- D. **Carry-Over of Sick Leave** – Sick leave benefits not used during the fiscal year in which they were earned may be carried over and used during the succeeding fiscal years. Accumulation may not exceed 480 hours (60 days for Class 1) for those employees who are not certified and 80 days for those employees who are certified.

- E. **Transfer of Sick Leave** – Occasionally, employees of BHSSC encounter catastrophic illnesses or accidents that dictate prolonged recovery. Under these special conditions, the Executive Director may allow the transfer of sick leave between employees. A formal request for the transfer must be made to the Executive Director indicating the number of hours/days requested to be transferred.
- F. **Family Medical Leave** – Employees must use all accrued leave while on FMLA and prior to going on an unpaid FMLA.

## 8.4 Family Medical Leave

Please see the [www.dol.gov](http://www.dol.gov) website, BHSSC Personnel Specialist, or immediate Supervisor for more information regarding the Family Medical Leave Act (FMLA). Anything not covered by federal or state regulations will be adhered to according to the law.

The Family and Medical Leave Act of 1993 (FMLA) guarantees the right of eligible employees to take up to a total of 12 weeks of leave per year, either in one continuous absence or on an intermittent basis, for one or more of the following reasons:

- A. Upon the birth of the employee's child;
- B. Upon the placement of a child with the employee for adoption or foster care
- C. When the employee is needed to care for a child, spouse, or parent who has a serious health condition; and/or
- D. When the employee is unable to perform the functions of his/her position because of a serious health condition.

The employee must use accrued leave during the 12-week FMLA event.

### 8.4.1 Definitions

**Child** – An adopted child, a foster child, stepchild, ward of person who is under age 18 or is over age 18 but incapable of self-care because of a mental or physical disability and of whom the employee has custody.

**12-month period** – The calendar year commences the first day of the leave and ends upon the completion of a full year. It is a calendar year measuring forward. For example, if the leave starts January 1, the 12-month period is January 1 through December 31 of the same year; if the leave takes place on May 13, then the 12-month period is May 13, through May 12, of the following year.

**Serious Health Condition** – An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, residential medical care facility, or continuing treatment by a doctor.

**Health Care Provider** – A Doctor of Medicine or Doctor of Osteopathy who is authorized to practice medicine or surgery by the State of South Dakota, or any person determined by the U.S. Secretary of Labor to be capable of providing health care services.

### 8.4.2 Employees Eligible for Absence

To be eligible for absence under the FMLA, the employee must have been continuously employed by BHSSC for a 12-month period immediately preceding the employee's request for absence and during that 12-month period must have worked at least 1,250 hours. The onset of the leave will commence after 3 consecutive absences and in accordance with FMLA standards.

### **8.4.3 Notice of Absence**

Employee is required to provide BHSSC with a 30-day notice of absence when the absence can be reasonably foreseen.

### **8.4.4 Certification of Requests**

Requests for leave due to a serious health condition of the employee or qualified member of employee's family shall be verified by the certification of a qualified health care provider. This certification shall contain the following:

- A. The date when the serious health condition began;
- B. The probable duration of the condition;
- C. The appropriate medical facts within the knowledge of the health care provider regarding the condition;
- D. If the leave is due to the employee's serious health condition, the certificate must include a statement that the employee is unable to perform the functions of his or her position;
- E. If planned medical treatment is the reason for the leave and employee wants intermittent leave or leave on a reduced time schedule, the certificate must include the date when the treatment begins and the estimated duration of the treatment; and
- F. If the leave request is necessitated by a serious health condition of the employee or the employee's child, spouse or parent, the certificate shall state that there is a medical necessity for the leave and an estimate of how long the leave will be.

The employee may be required to obtain a second opinion at the employer's cost from a second health care provider of the employer's choice. If the second opinion conflicts with the first opinion, the employer may request a third opinion at the employer's cost. The employer and the employee must jointly agree on the person providing the third opinion. The third opinion is final and binding. Employees should obtain the Certification Form from the Personnel Specialist.

### **8.4.5 Effect on Pay and Benefits**

During the term of unpaid Family or Medical Leave, no pay or other benefits shall accrue, with the exception of any group health care benefits that were in effect at the time of commencement of such leave or new group health care benefits which are provided by the Employee during the FMLA leave. Group health care shall be continued in force for the duration of family or medical leave and BHSSC shall continue to pay that portion of benefits normally paid by the employer. The employee shall be responsible for payment of any group health care deductions that he/she normally pays through payroll deductions. Such payments must be made by mail or in person to reach the Business Office of BHSSC no later than the last working day of the month prior to the next following month of group health care coverage.

During the term of paid Family Medical Leave, the employee shall accrue annual leave and sick leave. Employee group health care benefits shall continue to be in effect with or without pay. BHSSC shall continue to pay their portion of benefits normally paid by the employer. The employee shall be responsible for payment of any group health care deduction that he/she normally pays through payroll deductions. Such payments must be made by mail or in person to reach the Business Office no later than the last working day of the month prior to the next following month of group health coverage.

#### **8.4.6 Failure to Provide Certification**

Employee may lose eligibility of the FMLA if proper certification is not completed prior to onset of leave or within 5 days of the onset of the serious health condition.

#### **8.4.7 Return to Work**

When an employee is out on FMLA due to a serious health condition, the employee is required to provide a medical certificate attesting to his/her fitness for duty before being restored to employment. Failure to provide this certificate may delay an employee's return to work.

#### **8.4.8 Failure to Return to Work**

If the employee fails to return to active BHSSC employment upon the expiration of the maximum 12 weeks of leave provided under this section, the employee shall be responsible for repayment of any BHSSC-paid group health care contribution unless the failure to return is based upon the continuance, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control. In such instances, the employee must provide, in a timely manner, a certification by a health care provider attesting to the employee's inability to return to active employment.

#### **8.4.9 Effect of Reemployment and Other Rights**

Upon expiration of a duly authorized absence under this section, the employee shall be reinstated to the same position held at the time such leave commenced or an equivalent position with the same or an increase in pay, benefits, and other terms and conditions of employment. No employee shall be interfered with, discriminated against, disciplined, or otherwise restrained from exercising his/her rights under the FMLA.

### **8.5 Medical/Parental Leave**

For those employees who are not eligible for FMLA, BHSSC has a Medical/Parental Leave policy. Medical/Parental Leave, defined as an extended leave from work due to illness, injury, or childbirth, is available to BHSSC employees who earn and accumulate sick leave. Employees are also eligible to use annual leave time and/or leave without pay for Maternity/Paternity Leave by arrangement with the Executive Director or his/her designee.

An employee requesting Medical/Parental Leave must submit to his/her immediate Supervisor a statement from a physician that identifies the reason for the leave request as well as the date the leave is to begin and the date the employee can be expected to return to work. BHSSC reserves the right to request, at its expense, an additional opinion from another physician.

Medical leave request for maternity/paternity reasons should be submitted to the Employee's Supervisor by the sixth month of pregnancy. This statement from the physician should indicate the projected delivery date. Employees are eligible to use earned leave for maternity reasons.

### **8.6 Leave Without Pay**

Any employee who has not earned leave benefits but wishes to take time off may request time without pay. The Executive Director or his/her designee needs to approve this leave prior to its

being taken. Employees must use their available leave before they can begin taking additional leave off without pay.

### **8.7 Changing Shifts**

Any nonexempt employee who wishes to exchange a working shift for another will need to find someone with whom to switch. Prior approval needs to be obtained from Supervisor before the switch can take place.

### **8.8 Jury and Witness Duty**

BHSSC recognizes the need for employees to perform their civic duty and serve on jury duty. Furthermore, BHSSC encourages employees to accept jury duty with pride. Employee's performing this duty will receive their regular pay from BHSSC. An employee who is to be absent due to jury or witness duty must notify his/her Supervisor in advance. Annual leave and sick leave benefits shall accrue at the normal rate for eligible employees.

Employees will not be paid by BHSSC for time taken for court appearances in cases in which they are personally involved or in which they appear on a voluntary basis. This time may be taken as annual leave, PPL, or unpaid leave.

### **8.9 Voting Time**

BHSSC employees whose work schedules do not enable time to vote during the times the polls are open shall be allowed up to two (2) consecutive hours to vote. Such time shall be treated as regular work time for the purposes of pay and accrual of leaves.

### **8.10 Military Service**

Employees serving in the Military Reserve, National Guard, or Naval Militia will be granted an unpaid leave of absence when they are called out for active service. There will be no loss of seniority for purposes of rate of pay and annual leave accrual. Employees may utilize their accrued annual leave. Medical benefits will be extended for 30 days for all military personnel called to active duty. In the event leave exceeds the 30-day period, then said employee may utilize his/her COBRA rights (Section 8.0.2).

In accordance with state and federal law, regular part-time and full-time employees who enlist in the military service are placed on a military leave of absence. A military leave of absence is without pay. The immediate Supervisor must approve all applications for military leave and a signed copy of the military orders must accompany the request. Upon completion of the active duty, employees must comply with the state and federal law.

### **8.11 Funeral Leave**

It is the policy of BHSSC, to allow those Class 1 and 2 employees to use up to 5 days of accrued sick leave for the death of an immediate family member (defined for employee and employee's spouse as parents, spouse, children, siblings, grandparents, grandchildren, stepchildren, stepparents) or any other individual not identified here but approved by the Executive Director.

### **8.12 Holidays**

BHSSC offices close for the following holidays: Independence Day, Labor Day, Native American's Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas, New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, and Juneteenth.

When a holiday falls on a Saturday, the preceding Friday is observed as the holiday. When a holiday falls on a Sunday, the following Monday is observed as the holiday.

### **8.13 Holiday Pay**

BHSSC recognizes and observes the holidays as paid holidays for all regular full-time Class 2 employees.

Allowed holiday pay for nonexempt Class 2 employees shall be defined as the employee's normal scheduled working hours of compensation based on employee's regular rate of pay. Holiday pay shall not be used in the computation of overtime.

A Class 2 employee on annual leave during a holiday will receive holiday pay and will not be charged for that day as annual leave.

An employee who is on unpaid leave of absence will not be eligible for holiday pay for a designated holiday observed during the unpaid leave of absence.

#### **8.13.2 Class 4 Nonexempt Direct Support**

Any regular nonexempt Class 4 employees of BHSSC who work direct support on a board approved Class 4 nonexempt holiday, from 12:00AM (midnight) to 12:00AM (midnight) will receive double time pay. The BHSSC Board has approved the following holidays for double time pay: Independence Day, Labor Day, and Native American's Day, Veteran's Day, Thanksgiving Day, Christmas Eve Day, Christmas Day, New Year's Day, Martin Luther King Day, Presidents Day, Easter, Memorial Day, and Juneteenth. Each of the above listed holidays will have up to 24 hours of available holiday pay. Double time will be paid for time worked during the holiday, regardless of when the shift begins and/or ends.

Holiday work schedules must have prior approval by Division Directors or their designees. Holiday shifts will not receive the additional differential pay.

### **8.14 Differential Pay – Class 4 Nonexempt Direct Support**

Differential rates will be approved by the BHSSC Board. Regular nonexempt Class 4 employees of BHSSC who work direct support may be eligible for differential pay. Shifts may contain both differential and regular pay.

Differential work schedules must have prior approval by Division Directors or their designees.

## **Policy 9: Safety and Occupational Health**

### **9.0 General Policy**

BHSSC makes every effort to assure that places of employment are free from recognized hazards that are causing or are likely to cause death or serious harm to employees. Employees must comply with all occupational safety and health standards, rules and regulations, and orders issued that apply to their own actions and conduct on the job.

Employees are expected to take an active role in promoting workplace safety. If an employee witnesses an accident or an unsafe working situation, then he/she must report it promptly to the immediate Supervisor. Employees should pay special attention to where the fire extinguishers, first-aid kits, and emergency exits are located in the department. For more information on safety and health procedures, employees should consult their immediate Supervisor or Division Director.

## **9.1 Health Examinations**

For staff required to have a health examination by state law, a health certificate is required upon entering employment. BHSSC will be responsible for the cost of a standard physical examination as defined by a form, which BHSSC will give to the employee.

If at any time there is reasonable cause to believe an employee is suffering from an illness detrimental to the health or wellbeing of other BHSSC employees or people supported, the BHSSC Board may require a new certificate of health, the expense of such to be assumed by BHSSC.

Each employee may be required to submit a statement of examination from a licensed physician as to any physical or mental condition noted that is likely to prevent the person examined from performing all duties and responsibilities of the position sought or occupied, or a statement that no such condition exists. All costs acquired by the examination will be assumed by BHSSC. Once employed, the cost of any physical required by regulation will be assumed by BHSSC.

# **Policy 10: Separation from Service**

BHSSC recognizes that South Dakota is an employment at-will state and the intent of BHSSC is to maintain the employment at-will status of all employees. Employment with this company is on an at-will basis, meaning that employment terms can be terminated for any reason not expressly prohibited by law.

## **10.0 General Procedures**

On an employee's last day of employment, he/she is required to return all BHSSC property to his/her Supervisor. BHSSC makes every effort to ensure that all terminations and separations from employment are conducted in accordance with all provisions and requirements of applicable federal and state laws.

## **10.1 Definitions**

- A. **Voluntary Separation** – Written resignation, absence without proper notification, or retirement. The employee initiates voluntary separation.
- B. **Involuntary Separation** – Layoff or discharge of an employee. An employee does not initiate involuntary separation.

## **10.2 Return of BHSSC Property**

Employees are expected to return all BHSSC property at the time of their departure from service. BHSSC reserves the right to withhold from the Employee's final paycheck the amount for any property that is not returned or for which there is no explanation for the absence of the property. BHSSC may take further action if necessary to recover BHSSC property.

### **10.3 Separation**

Throughout this manual, there have been references to length of pay periods, performance evaluations, and disciplinary action. Nothing contained in this manual, or in any oral statements or representations made to you by any employee of this company, shall be deemed to waive the right of the company to invoke termination of employment as an option with any employee. Nothing contained in this manual should be construed, and is not intended, to create any contractual obligation, or any modification of the employment at-will doctrine. Any listing of rules or infractions which are stated to form the basis for corrective or disciplinary action, are examples only, and BHSSC reserves the right to invoke discipline or termination for any additional reasons which are sufficient to justify termination. BHSSC may, but is not required to, provide reasons for termination. BHSSC reserves the right to invoke termination as an appropriate option, without the necessity of providing any statement of reasons, orally or in writing.

Since BHSSC is involved in programs of the state and federal government, any and all rules, policies or procedures adopted by the state or federal government involving programs of BHSSC, are applicable to the employment relationship, whether or not specifically set out in detail in this handbook.

#### **10.3.1 Resignation**

A BHSSC employee may resign from BHSSC service by giving the employee's Supervisor written notification of his/her resignation at least two weeks in advance of his/her leaving BHSSC service. In extenuating circumstances, the Supervisor may accept the employee's resignation as taking effect immediately. Appropriate paperwork will be completed prior to the employee's last working day, including but not limited to final timesheet and retirement.

#### **10.3.2 Unnotified Absence**

If an employee is absent without proper notification, he/she shall be considered to have voluntarily resigned his/her position with BHSSC. Reinstatement upon presentation of extenuating circumstances or reason for such absence shall be at the discretion of the Executive Director.

#### **10.3.3 Retirement**

An employee is asked to notify his/her immediate Supervisor in writing at least one month before the employee's planned retirement date.

#### **10.3.4 Contract Termination**



Certified personnel may not terminate their contracts, except with the mutual consent of BHSSC. Should a certified employee initiate termination of his/her contract prior to its termination date, without the consent of BHSSC, BHSSC may assess liquidated damages as specified in the contract for breach of contract.

#### **10.3.5 Reduction in Force**

When, in the judgment of the BHSSC Board, it is advisable to reduce the staff employed by BHSSC, the BHSSC Board may consider all relevant matters in determining which staff members are reduced.

# Appendix

**Appendix A: Harassment Forms**..... Error! Bookmark not defined.  
Harassment and/or Discrimination Complaint Report Form ..... Error! Bookmark not defined.  
Harassment and/or Discrimination Complaint Appeal Form to the Executive Director.. Error! Bookmark not defined.  
Harassment and/or Discrimination Complaint Appeal Form to the BHSSC Board ..... Error! Bookmark not defined.  
Sexual Harassment Complaint Report Form ..... Error! Bookmark not defined.  
Sexual Harassment Complaint Appeal Form to the Executive Director..... Error! Bookmark not defined.  
Sexual Harassment Complaint Appeal Form to the BHSSC Board ..... Error! Bookmark not defined.  
**Appendix B: Development Disabilities Division Drug and Alcohol Policy** ..... Error! Bookmark not defined.  
**Appendix C: Transportation Drug and Alcohol Policy**..... Error! Bookmark not defined.  
**Appendix D: False Claims Liability, Anti-Retaliation Protections for Reporting Wrongdoing, and Detecting and Preventing Fraud, Waste, and Abuse** ..... Error! Bookmark not defined.

**Appendix A: Harassment Forms**



**Black Hills Special Services Cooperative  
Harassment and/or Discrimination Complaint Report Form**

Date Form Completed: \_\_\_\_\_

Form Completed by (please type or print): \_\_\_\_\_

Person Reporting the Harassment and/or Discrimination (please type or print):  
\_\_\_\_\_

Address and Phone # of the Person Reporting the Harassment and/or Discrimination:

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Phone #: \_\_\_\_\_

Nature of Complaint: (With specificity, identify the person(s) alleged to have harassed and/or discriminated, factual details of the event(s) which is the basis of the complaint, when/where the event(s) occurred, the person(s) alleged to have sexually harassed, witnesses, and any other pertinent information):

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\_\_\_\_\_

(Use additional sheets if needed)

\_\_\_\_\_  
Print Name of BHSSC Employee Completing this form. \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Person Reporting the Harassment and/or Discrimination. \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
Black Hills Special Services Cooperative, June 28, 2023



**Black Hills Special Services Cooperative  
Harassment and/or Discrimination Complaint Appeal Form to the Executive Director**

I/We Appeal the Supervisor and Division Director’s action for the following reason(s): (With specificity, Complainant should state how or why she/he believes the Supervisor and Division Director’s decision is wrong).

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(Use additional sheets if needed)

Attach a copy of the Complaint Form and the Supervisor and Division Director’s Decision.

\_\_\_\_\_  
Print Name of Complainant

\_\_\_/\_\_\_/\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Supervisor

\_\_\_/\_\_\_/\_\_\_  
Date Received

\_\_\_\_\_  
Signature





**Black Hills Special Services Cooperative  
Sexual Harassment Complaint Report Form**

Date Form Completed: \_\_\_\_\_

Form Completed by (please type or print): \_\_\_\_\_

Person Reporting the Sexual Harassment (please type or print): \_\_\_\_\_

Address and Phone # of the Person Reporting the Sexual Harassment:

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Phone #: \_\_\_\_\_

Nature of Complaint: (With specificity, identify the person(s) alleged to have sexually harassed, factual details of the event(s) which is the basis of the complaint, when/where the event(s) occurred, the person(s) alleged to have sexually harassed, witnesses, and any other pertinent information):

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(Use additional sheets if needed)

\_\_\_\_\_  
Print Name of BHSSC Employee Completing this form

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Person Reporting the Sexual Harassment

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

\_\_\_\_\_  
Signature



**Black Hills Special Services Cooperative  
Sexual Harassment Complaint Appeal Form to the Executive Director**

I/We Appeal the Supervisor and Division Director’s action for the following reason(s): (With specificity, Complainant should state how or why she/he believes the Supervisor and Division Director’s decision is wrong).

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(Use additional sheets if needed)

Attach a copy of the Complaint Form and the Supervisor and Division Director’s Decision.

\_\_\_\_\_  
Print Name of Complainant

\_\_\_/\_\_\_/\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Supervisor

\_\_\_/\_\_\_/\_\_\_  
Date Received

\_\_\_\_\_  
Signature



**Black Hills Special Services Cooperative  
Sexual Harassment Complaint Appeal Form to the BHSSC Board**

I/We Appeal the Executive Director’s decision for the following reason(s): (With specificity, Complainant should state how or why she/he believes the Executive Director’s decision is wrong).

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(Use additional sheets if needed)

Attach a copy of the complaint form, the complaint appeal to the Executive Director, and the Executive Director’s decision. Send to BHSSC Board of Directors President.

\_\_\_\_\_  
Print Name of Complainant

\_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Business Manager

\_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Date Received

\_\_\_\_\_  
Signature



## **Appendix B: Development Disabilities Division Drug and Alcohol Policy**

### **I. Policy Statement**

The safety of people supported and employed by this agency is of primary concern to BHSSC. Employees under the influence of alcohol, drugs or controlled substances are a serious risk to themselves, to people supported, to other employees and to the community. BHSSC enforces a zero-tolerance drug and alcohol policy.

Section 3.0 of the BHSSC Personnel Procedures and Policies Manual outlines the overall agency policy relating to drug and alcohol use by employees. It is expected that all staff be familiar with and understand this policy.

The Developmental Disabilities Division of BHSSC is further mandated by South Dakota law (SDCL 27B-1) to have and enforce a drug screening policy for prospective and current employees.

*Any adjustment training center shall have a drug screening policy for applicants seeking employment whose primary duty includes patient or resident care or supervision.*

*Any adjustment training center shall have a drug screening policy for employees whose primary duty includes patient or resident care or supervision, based upon reasonable suspicion of illegal drug use by such employee.*

### **II. Applicability**

This policy applies to all prospective and current DD employees whose primary duty includes direct support or supervision of people supported by the agency. This includes:

Residential Direct Support Professionals, Residential Instructors, Classroom Teachers, Classroom Assistants, Vocational Instructors, Job Coaches, Life Skills Instructors, Nurses, Individual Program Coordinators, Foster Parents, Residential Coordinator, Day Program Coordinator, and the Director.

### **III. Substances to be Screened**

- A. Marijuana
- B. Opiates
- C. Cocaine
- D. Amphetamines
- E. Phencyclidines
- F. Any other controlled substance as defined by federal or state law

### **IV. Drug Screening Procedures for Applicants and for Employees Based on Reasonable Suspicion**

- A. Urine will be the required substance and will be collected under controlled circumstances in a medical setting.
- B. The urine is positive for a substance if the substance is present in an amount greater than an established minimum threshold.
- C. A medical review officer will contact the Employee if there is a positive result
- D. The medical review officer will report the results to BHSSC

### **V. Refusal to Submit**

An applicant or employee is determined to have refused to submit to testing if:

- A. There is a refusal to take the test.
- B. There is an inability to produce urine, after 40 oz. of fluid are allowed.
- C. False information has been provided by the Employee.
- D. The Employee fails to report within the required time period for testing.
- E. A dilute specimen is submitted for testing.

*Refusal is viewed as constituting a positive test and is subject to the same consequences of a positive test.*

#### **VI. Confidentiality**

Applicant and employee confidentiality will be protected. Screening services are purchased from a licensed clinical laboratory subject to all confidentiality laws. All documentation and test results if positive will be filed in a sealed confidential envelope with need-to-know access only. Negative results will be maintained in the Employee's personnel file to verify screening.

#### **VII. Consequences of Valid Positive Test**

- A. Any applicant having a positive drug screening will not be considered for employment.
- B. Any employee having a valid positive drug screening will be subject to disciplinary action, which may include termination

#### **VIII. Referral for Education or Treatment/Return to Work**

BHSSC recognizes that employees who have a drug abuse problem should be encouraged to seek professional assistance. An employee who requests assistance shall be referred to a treatment facility or agency in the community if such an agency or facility is available.

Should an employee agree to obtain the services of a substance abuse professional and abide by his or her recommendations for treatment, a negative drug test must be obtained at the Employee's expense prior to return to duty. Follow up testing will include at least six drug tests in the 12 months following the completion of treatment or rehabilitation. Follow up testing will be conducted at the Employee's expense.

## Appendix C: Transportation Drug and Alcohol Policy

The following policy is only for employees with a Commercial Driver's License (CDL).

### I. POLICY OBJECTIVE

"To comply with applicable Federal Regulation governing workplace drug and alcohol abuse and misuse. Part 382."

### II. APPLICABILITY

This Policy applies to Black Hills Special Services Cooperative employees hired to operate commercial motor vehicles.

### III. REGULATED SUBSTANCES

#### A. Controlled Substances

1. Marijuana
2. Opiates
3. Cocaine
4. Amphetamine
5. Phencyclidine
6. Any other controlled substance defined by federal or state law.

#### B. Alcohol

### IV. PROHIBITED USE

#### A. Alcohol: No driver shall, or employer having knowledge of, shall permit a driver to:

1. Report for duty or remain on duty requiring performance of safety sensitive functions while having an alcohol concentration of 0.02 or greater.
2. Use alcohol while performing safety sensitive functions.
3. Perform safety sensitive functions within four (4) hours of alcohol use.
4. Possess alcohol while on duty or operating a commercial motor vehicle.
5. Use alcohol within eight (8) hours of an accident (if required to be tested), or until testing is completed.

#### B. Controlled Substances: No driver shall, or employer having knowledge of, shall permit a driver to:

1. Report or remain on duty requiring performance of safety sensitive functions when using any controlled substance.  
**EXCEPTION:** If the use is pursuant to instructions of a physician who has advised the Employee that the substance does not adversely affect the ability to safely operate a motor vehicle.
2. Report for duty or remain on duty or perform a safety sensitive function having tested positive for controlled substances.

### V. REQUIRED TESTING CIRCUMSTANCES

Before performing a test under this rule, the employer must notify the driver that the test is required by this part.

#### A. Pre-employment:

Anyone hired to operate commercial motor vehicles must undergo and have a verified negative controlled substance test result prior to performing a safety sensitive function for the first time.

#### B. Post-accident testing:

Employees will be tested for alcohol and controlled substances as soon as possible following an accident involving loss of life. Also, if a citation for a moving violation was issued, AND any

vehicle required towing from the scene, or any injury requiring medical care away from the scene.

The Employee will report the accident to their Supervisor or the Director.

The Employee will report to Occupational Health Network or call their service number to arrange alcohol testing within two (2) hours, and by at least eight (8) hours after the accident or citation.

The Employee will submit to a controlled substance test within thirty-two (32) hours of such accident. BHSSC will arrange transportation to the testing site.

C. Random testing:

Annual rate of 25% for alcohol and 50% of average number of drivers for controlled substance testing. Tests are unannounced and spread through the year. Each driver has an equal chance of testing at each selection.

BHSSC is enrolled in the Occupational Health Network consortium for random testing. This selection is done by scientifically valid computer method. Once notified of selection, the Employee will proceed at once to the lab for testing.

D. Reasonable suspicion:

Black Hills Special Services will have the Employee tested when there is reasonable suspicion to believe that a covered employee has violated the prohibitions of this policy. The determination will be made by a Supervisor, and must be based upon specific, immediate, and obvious observations concerning the appearance, behavior, speech, or body odors of the covered employee.

E. Return to duty:

If any of the testing events results in a positive result, the Employee agrees to obtain the service of a substance abuse professional and abide by his or her recommendation to rehabilitate before resuming any safety sensitive functions.

F. Follow-up:

Employees who test positive will be subject to disciplinary action which may include dismissal. The Employee will be subject to unannounced follow-up as directed by a substance abuse professional. BHSSC will encourage employees with chemical dependency issues to seek professional assistance. The Employee will be solely responsible for costs incurred for treatment.

## VI. TESTING PROCEDURES

Testing shall be conducted in a manner to assure adherence to standards of confidentiality, privacy, accuracy, and reliability as approved by the Dept. of Health and Human Services and the Dept. of Transportation.

Testing will take place at Occupational Health Network or at a NIDA approved lab of BHSSC selection.

A. Controlled Substance Testing

1. Urine will be the required substance and will be collected under controlled circumstances.
2. Urine shall be divided into split specimens (2 containers) and each shall be labeled thoroughly to preserve identity.
3. Specimens are transported to a Division of Health and Human Services approved testing lab.
4. Specimens undergo testing by an initial screening procedure which is followed by confirmation by GC/MS testing, if necessary.
5. The urine is positive for a substance if the substance is present in an amount greater than the minimum threshold.
6. A medical review officer will contact the employer if there is a positive result, to verify the result.
7. The medical review officer reports the results to the employer.

8. The medical review officer gives the Employee the option of testing the remaining split specimen at a NIDA certified lab of their choice at their expense.

B. Alcohol

1. Breath is tested for alcohol.
2. Test is conducted by a certified Breath Alcohol Technician.
3. Tester uses an approved Evidential Breath Testing device.
4. The initial test must give results of less than 0.02 or a retest (confirmation) test must be done following a 15-minute wait.
5. If the confirmation reveals a concentration of greater than 0.02, the Employee is in violation of this policy.

Post-accident breath or blood testing may be conducted by Federal, State, or local official having independent authority, if the results can be obtained by the employer.

VII. REFUSAL TO SUBMIT

An employee is determined to have refused to submit to testing if:

- A. He/she refused to take the test.
- B. There is an inability to produce urine, after 24 ounces of fluid are ingested and two (2) hours have passed, or cannot give enough breath sample with an absence of a valid medical explanation.
- C. False information has been provided by the Employee.
- D. The Employee fails to report within the required time period for testing.
- E. The Employee tampers with the specimen in an attempt to mask any drugs that may be in the specimen.

This refusal constitutes a positive test and the Employee is subject to the consequence and must not perform safety sensitive functions.

VIII. CONSEQUENCES

Employees who engage in prohibited conduct as stated in section IV will be subject to the following consequences:

1. Any violation or refusal requires the Employee be removed from any safety sensitive function and, except in the case of pre-employment testing, be advised of the resources available for evaluating and resolving misuse.  
(382.501)
2. A referral to a Substance Abuse Professional to evaluate and resolve the misuse will be given even if termination is the decision. This will not be paid by the employer/BHSSC. The referral will be in the form of names, addresses and phone numbers of Substance Abuse Professionals and counseling and treatment programs.  
(382.505)
3. If return to performing the safety sensitive functions is desired and permitted by the employer, the Employee must undergo return to duty testing with a verified negative result and, if identified by the Substance Abuse Professional as needing assistance in resolving misuse, must have been evaluated by the SAP for compliance with the rehabilitation. The Employee is then subject to unannounced follow-up testing as directed by the SAP. This is at least six (6) tests in the first twelve (12) months. BHSSC will pay for all follow-up testing.  
(382.605)
4. In the case of alcohol testing, if the Employee has an alcohol level of greater than 0.02, he/she must be removed from performance of safety sensitive functions for twenty-four (24) hours.  
(382.505)

IX. ADULTERANT TESTING

Adulteration is the tampering of a urine specimen in an attempt to mask any drug that may be in the system. Because the incidence of adulteration in drug-free workplace programs is continuing to rise, BHSSC will have all specimens tested for adulteration beginning June 1, 1999.

If an employee's specimen is found to have been adulterated, it will automatically be a positive test. Adulteration and substitution are considered pre-meditated actions to deceive the employer, therefore are treated as a more severe violation of this policy than a positive test result. The consequence for adulteration or substitution will be immediate dismissal.

X. HEMP

Recently a number of products have appeared on the market which are advertised as hemp products. The hemp contained in these products is Cannabis Sativa, or Marijuana. The legal counsel for the Division of transportation has issued the following guidance regarding hemp products. Whatever else it may be, consuming hemp food products is not a legitimate medical explanation for a prohibited substance or metabolite in an individual's specimen. BHSSC will not accept an assertion of consumption of a hemp food product as a basis for verifying a marijuana test result.

XI. RECORDS

All records must be made available at the place of business within two (2) days of a request by the FHA. Not all records must be kept on site; some may be the responsibility of the consortium or testing site. (382.403)

A. Retention Period

1. Five (5) Years  
Verified positive results  
Alcohol results over 0.02  
Documentations of refusals  
Employee referrals to the SAP  
Annual management system information reports
2. Two (2) Years  
Records related to all processes and employees training
3. One (1) Year  
Records of negative drug and alcohols less than 0.02

B. Types of Records

1. Collection Processes:  
Log Books (if used)  
Random selection documents  
Calibration documents (EBT)  
BAT training documents  
Reasonable suspicion documents  
Post-accident decision documents  
Documents verifying medical inability to provide adequate breath and/or urine  
MIS reports
2. Test Results:  
Employers copy of alcohol test  
Employers copy controlled substance chain of custody  
Documents from MRO  
Documents related to refusal to submit  
Documents presented by driver to dispute refusal to submit
3. Evaluations:

Determinations by the SAP of assistance needed to resolve misuse.  
Compliance with SAP

4. Education and Training:
  - Materials on misuse awareness, including the policy
  - Driver's signed receipt of education materials
  - Documents of Supervisor training to qualify for making reasonable suspicion of judgments
5. Agreements with collection sites, labs, MROs, consortiums  
(382.401)

A. Access to Records

The Employee is entitled to the record, as are officials with regulatory authority or the NTSB, and subsequent employers and others upon specific written request from the driver.  
(382.405 - 382.413)

XII. TRAINING

- A. Those designated to determine if reasonable suspicion exists must receive sixty (60) minutes of alcohol and sixty (60) minutes of controlled substance training which covers the physical, behavioral, speech, and performance indicators of misuse.  
(382.603)
- B. Each covered employee will be provided with the Information for Employee Pamphlet-Controlled Substances & Alcohol Use and Testing materials and this policy and the name of the person who can answer questions about the material.
- C. Each employee must sign a certificate of receipt of the materials:
  1. Pamphlet
  2. Policy
  3. Name of person who can answer questions.  
(382.601)

## **Appendix D: False Claims Liability, Anti-Retaliation Protections for Reporting Wrongdoing, and Detecting and Preventing Fraud, Waste, and Abuse**

The purpose of this policy is to abide by the requirements of Section 6032, of the Deficit Reduction Act of 2005, to implement and enforce Black Hills Special Services Cooperative's (BHSSC) policies and procedures, to detect and prevent fraud, waste and abuse with respect to payments to BHSSC from federal or state healthcare programs, and to provide protections for those who report actual or suspected wrongdoing.

This policy applies to all employees, management, contractors and agents of BHSSC, and shall be distributed to all employees, current and new board members, vendors, independent contractors, and agents of BHSSC.

This policy includes the following information related to applicable fraud and abuse laws; the rights of employees to be protected as whistleblowers and BHSSC policies and procedures for detecting and preventing fraud, waste and abuse.

- I. A summary of the Federal False Claims Act including a summary of protections for employees (qui tam/whistleblowers) who report suspected violations of these federal laws.
- II. A summary of administrative remedies found in the Program Fraud Civil Remedies Act
- III. State False Claim Acts
- IV. The role of federal and state laws in preventing and detecting fraud, waste, and abuse in federal and state health care programs
- V. BHSSC existing policies and procedures for preventing and detecting fraud, waste and abuse
- VI. BHSSC prohibitions against retaliation and whistleblower rights and protections

### **I. Federal False Claims Act 31 U.S.C. §§ 3729 - 3733**

The federal False Claims Act, also known as the "Lincoln Law," was first enacted during the Civil War to address fraudulent activity in supplying goods to the Union Army. The law now applies to any federally funded contract or program and establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the United States government for payment. In 1986, the False Claims Act was expanded to include Medicare and Medicaid programs.

#### **Summary of Provisions**

The False Claims Act prohibits knowingly making a false claim against the government. False claims can take the form of overcharging for a product or service, delivering less than the promised amount or type of service, delivering less than the promised amount or type of goods or services, underpaying money owed to the government and charging for one thing while providing another.

The False Claims Act imposes civil liability on any person or entity who:

- knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or
- Conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

"Knowingly" means:

- actual knowledge that the information on the claim is false;
- acting in deliberate ignorance of whether the claim is true or false; or
- acting in reckless disregard of whether the claim is true or false.



## **Penalties**

The False Claims Act is not a criminal statute and thus imposes civil penalties. No proof of specific intent is required. A person or entity, such as a hospital, found liable under the False Claims Act is subject to a civil money penalty of between \$5,500 and \$11,000 plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

## **Qui Tam "Whistleblower" Provision**

To encourage individuals to come forward and report misconduct involving false claims, the FCA includes a qui tam or whistleblower provision. Anyone may bring a qui tam action under the federal False Claims Act in the name of the United States in federal court. A qui tam action is defined as a claim brought by an informer/relater under a statute which establishes a penalty for the commission or omission of a certain act. Part of the penalty paid by the wrongdoer is paid to the informer with the remainder going to the government.

## **Qui Tam Procedure**

The case is initiated by an informer filing his or her lawsuit in a federal district court on behalf of the government for false or fraudulent claims submitted by an individual or an entity doing business with, or reimbursed by the United States government. The lawsuit is filed "under seal" and is not served on (presented to) the defendant at this time to enable the government to investigate the claim. The government has 60 days to investigate and decide whether it will pursue the action, in which case the complaint is unsealed and the Department of Justice or a United States Attorney's office begins prosecuting the claim. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own. The government may join the action at a later date if it can demonstrate good cause for doing so. Any case must be brought within six years of the filing of the false claim.

## **Qui Tam Whistleblower Awards**

If the government proceeds with the lawsuit and is successful, the person who filed the action will receive between 15 and 25 percent of any monies recovered for the government plus attorney fees and costs. The amount of the award depends on the contributions of the individual to the success of the case. If the government declines to pursue the case, the qui tam whistleblower will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney's fees and costs awarded against the defendant. The award may be reduced, however, if the court finds that the whistleblower planned and initiated the violation.

## **Qui Tam Whistleblower Anti-Retaliation Protections**

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under the law. Whistleblowers initiating a qui tam action may not be discriminated or retaliated against in any manner by their employer. Employees, who are discharged, demoted, harassed, or confront discrimination in furtherance of a qui tam action or as a consequence of whistle blowing activity, are entitled to all relief necessary to make the Employee whole.

## **II. Federal Program Fraud Civil Remedies Act 31 U.S.C. §§ 3801 – 3812**

The Program Fraud Civil Remedies Act of 1986 (PFCRA) provides administrative remedies for making false claims to certain federal agencies, including the Department of Health and Human Services (HHS) separate from and in addition to, the judicial or court remedy for false claims provided by the Civil False Claims Act. Black Hills Special Services Cooperative, June 28, 2023

Claims Act. The Act is quite similar to the Civil False Claims Act in many respects, but is broader and more detailed, with differing penalties. The Act deals with submission of improper "claims" or "written statements" to a federal agency. PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less.

### **Summary of Provisions**

The PFCRA imposes liability on people or entities who file a claim that they know or have reason to know:

- is false, fictitious, or fraudulent;
- includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
- includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
- is for payment for property or services not provided claimed Penalties.

A violation of this section of the PFCRA is punishable by a \$5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement which they know or should know:

- asserts a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

Violations are investigated by the HHS Office of the Inspector General and enforcement actions must be approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be recovered through a civil action brought by the Attorney General or through an administrative offset against "clean" claims. Because of the availability of other criminal, civil and administrative remedies, cases are not routinely prosecuted under PFCRA.

### **III. State False Claims Acts**

#### **South Dakota State False Claims Laws**

The South Dakota false claims and fraud and abuse laws and regulations impose liability on persons or organizations that make or cause to be made false Medicaid claims to the government for payment, or who make or cause to be made a false record or statement to get a claim or Invoice paid by the government. These South Dakota laws apply to Medicaid reimbursement and prohibit, among other things:

- Making a false claim to the State for payment;
- Making any false representation in order to obtain authorization to provide a good or service;
- Making any false representation for use by another in order to obtain a Medicaid good or service;
- Making a false statement to qualify as a Medicaid provider;
- Submitting any Medicaid enrollment application, cost report or invoice for payment that contains a false material statement;
- Participating in kickbacks or rebates; and
- Intentionally failing to retain the necessary records upon which a Medicaid claim or payment rate is based.

## Civil and Criminal Penalties for False Claims or Statements

A violation of these South Dakota laws may result in civil penalties including payment of interest on the amount of the excess payment, as well as a civil penalty of \$2,000 for each false claim or statement and/or up to three times the amount of damages sustained by the State government, including the cost of investigation and litigation.

In addition, violations of these laws are punishable as a Class 5 felony. The intentional failure to retain the necessary records upon which a Medicaid claim or payment rate is based is a Class 1 misdemeanor. Violations of any of these laws may also result in termination from participation in the Medicaid program. These penalties are in addition to any other available civil or criminal remedies.

## Civil Lawsuits

Currently, unlike the Federal False Claims Act, South Dakota law appears to allow civil lawsuits to recover monetary damages to be filed only by the state government and not by private citizens or employees. Such civil actions must be filed within six years from the time that the cause for action accrues. There is no provision for a private citizen to share a percentage of any monetary recoveries.

## No Retaliation- Whistleblower Protection

Like federal law and BHSSC policy, various South Dakota laws prohibit public employers and certain private employers from retaliating against employees because of their good faith disclosure of information about a violation of a law, or a violation that poses a risk to public or patient health, safety or welfare. The State anti-retaliation laws allow public employees to file a grievance for retaliation against them for reporting a violation of state law, and prohibit certain private employers from retaliating against either staff members who report suspected abuse, neglect or exploitation against any person with developmental disabilities, or against the person with the disability. South Dakota law does not appear to contain similar protections for other private employers.

Any employee, who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of BHSSC policies, or (2) refused to violate BHSSC policies or a government law or regulation, will be subject to disciplinary action up to and including termination of employment.

## Copies of South Dakota Laws

The South Dakota laws summarized above include: (1) false claims, fraud and abuse laws and criminal and civil penalties, S.D. Codified. Laws §§ 22-45-1 — 22-45-11; and Anti-Retaliation laws, S.D. Codified Laws §§ 3-6A-52 and 27B-8-43.

## IV. The Role of False Claims Laws

The laws described in this policy create a comprehensive scheme for controlling waste, fraud and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in criminal, civil and administrative forums. This provides a broad spectrum of remedies to battle this problem.

In addition, whistleblower statutes and anti-retaliation policies protect individuals who in good faith report waste, fraud, and abuse. Whistleblower statutes, such as the federal Civil False Claims Act create reasonable incentives for this purpose. Employment protections create a level of security employees need to help in prosecuting these cases.

## **V. BHSSC Policies and Procedures for Detecting and Preventing Fraud**

BHSSC has implemented a Compliance Plan to detect and prevent fraud, abuse and waste with respect to federal and state health care programs. A copy of BHSSC's Compliance Plan can be accessed through the internal website (Intranet). Under BHSSC's compliance policies, all employees have a responsibility to comply with the law and to report in the good faith belief, any violation of compliance policies. Any employee who has a good faith belief, based on objective information, that a false claim has been or will be made, must report the alleged violation to his or her Supervisor, the Compliance Officer, the HR Coordinator or the CEO.

Failure to report based upon a good faith belief that a false claim will be or has been made will result in disciplinary action up to and including termination. Upon receiving a report based upon a good faith belief that a false claim will or has been made, BHSSC will promptly investigate the complaint and work with all parties involved to correct any non-compliance. For more detailed information regarding BHSSC's policies, please refer to the BHSSC Compliance Plan.

### **BHSSC Prohibitions Against Retaliation and Whistleblower Rights and Protections**

Federal and state law and BHSSC policy prohibit any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government. Employees who in good faith believe that BHSSC has violated state or federal laws have the right to contact a regulatory agency directly. This right is protected by federal law and BHSSC policies. Although employees have the right to contact regulatory agencies directly and are protected from retaliation, BHSSC's preference is that any employee who believes there has been a compliance violation will first notify BHSSC in order to provide us with the opportunity to do the right thing and promptly investigate, verify, and correct the noncompliance. This preference is not motivated by a desire to "cover up" any non-compliance; rather, we believe that it is best to internally correct non-compliance without the expense, delay, adverse publicity, and disruption that can be caused by external investigations and lawsuits. BHSSC's Compliance Plan is designed to encourage and allow employees to report issues and concerns regarding any potential or actual violations. Therefore, anyone who in good faith believes that he or she has been subject to any such retribution or retaliation should report this to, the Compliance Officer, the HR Coordinator or the CEO.