

ARTICLE 44:82
COMMUNITY LIVING HOME

Chapter

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CHAPTER 44:82:01
RULES OF GENERAL APPLICABILITY

Section

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44:82:01:01. Definitions. Terms defined in SDCL 34-12-1.1 have the same meaning in this article. In addition, terms used in this article mean:

- (1) “Abuse,” an intentional act toward an individual indicating that one or more of the following has occurred:
 - (a) A criminal conviction against a person for mistreatment toward an individual; or
 - (b) In the absence of a criminal conviction, substantial evidence that one or more of the following has occurred resulting in harm, pain, fear, or mental anguish:
 - (i) Misappropriation of a resident’s property or funds;
 - (ii) An attempt to commit a crime against a resident;
 - (iii) Physical harm or injury against a resident; or
 - (iv) Using profanity, making a gesture, or engaging in any other act made to or directed at a resident;
- (2) “Activities of daily living,” the tasks of transferring, moving about, dressing, grooming, toileting, bathing, and eating performed routinely by a person to maintain physical functioning and personal care;
- (3) “Care provider,” the owner, operator, or any paid person, but not including a family member of the resident, who provides care, support, and services to a resident under this chapter;
- (4) “Case manager,” a person, chosen by an individual receiving waiver services in a community living home, who provides ongoing monitoring of the individual’s provision of services, health, welfare, and monitors the implementation of the individual’s plan of care;
- (5) “Department,” the South Dakota Department of Health;

- (6) “Exploitation,” the wrongful taking or exercising of control over property of a person with intent to defraud that person;
- (7) “Home,” a community living home as defined in SDCL § 34-12-1.1(12);
- (8) “Health care,” services to assist residents pertaining to diagnosis and treatment and to preventive, rehabilitative, restorative, and nursing care performed at the direction of a physician on behalf of the injured, disabled, or sick person by a physician, nurse, dentist, or other health professional or technical health personnel;
- (9) “Healthcare worker,” any paid person working in a health-care setting;
- (10) “Individualized and independent residential community living supports,” supervisory care, assistance with activities of daily living and instrumental activities of daily living, homemaking, meals preparation, and other health-related services provided in a residential setting to a person with functional limitations;
- (11) “Instrumental activities of daily living,” tasks performed routinely by a person, utilizing physical and social environmental features, to manage life situations, including meal preparation, self-administration of medications, telephone use, housekeeping, laundry, handling finances, shopping, and use of transportation;
- (12) “Misappropriation of resident’s property,” the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent;
- (13) “Neglect,” harm to a person’s health or welfare, without reasonable justification, caused by the conduct of someone responsible for the person’s health or welfare, including offensive behavior made to or directed at a person, and the failure to provide timely, consistent, and safe services, treatment, or care necessary to avoid physical harm, mental anguish, or mental illness to the person;

- (14) “Outside healthcare provider,” a licensed, or otherwise appropriately credentialed, health care professional who provides services to residents but is not the owner or operator of the community living home;
- (15) “Operator,” the owner, or a designee of the owner, who is responsible for the overall supervision, support, and care of the home’s residents;
- (16) “Owner,” a person or organization that is the legal owner of the community living home and that, along with the operator, is responsible for the overall supervision, support, and care of the home’s residents;
- (17) “Qualified personnel,” persons with the specific education, license, and training to provide required services;
- (18) “Resident,” an adult who resides in a community living home, receives individualized and independent residential supports, and is not related to either the owner or operator;
- (19) “Self-administration of medications,” the removal of the correct dosage from the pharmaceutical container and self-injecting, self-ingesting, or self-applying the medication with no assistance or with limited assistance from qualified personnel.

Source:

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:82:01:02. Licensure of community living home. Any license issued shall denote the name and address of the community living home on the face of the license. The license certificate remains the property of the department.

Source:

General Authority: SDCL 34-12-7.

Law Implemented: SDCL 34-12-7.

44:82:01:03. Community living home capacity. The community living home may not serve more than four residents. The community living home capacity shall be established at the time of licensure. The department shall be notified of any capacity adjustments.

Source:

General Authority: SDCL 34-12-7.

Law Implemented: SDCL 34-12-7.

44:82:01:04. Community living home staffing requirements. The community living home shall provide and maintain adequate staffing levels of care providers to effectively and appropriately meet the needs of its residents.

Source:

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:82:01:05. Personnel. Community living home owners, operators, and care providers shall meet the following criteria:

- (1) Community living home owners, operators, and care providers shall have the capacity and ability to provide appropriate care and supports pursuant to each resident's care plan;
- (2) Community living home owners, operators, care providers, and family members residing at the residence, may not have a conviction for abusing or neglecting another person; and
- (3) Any person providing supervisory care and support in the community living home shall be at least 18 years of age.

Source:

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:82:01:06. Resident evaluation and plan of care. The owner or operator shall ensure that an evaluation of each resident's individualized and independent residential community living support needs is documented at the time of application for residency in the home, at least annually thereafter, and upon a significant change in condition requiring notification pursuant to § 44:82:06:04, to determine how the community living home can meet the needs of each resident and what services should be included in a plan of care jointly developed by the operator and the resident. The evaluation and plan of care shall be documented on a form approved by the department and maintained in each resident's record.

Source:

General Authority: SDCL 34-12-7, 34-12-13(5).

Law Implemented: SDCL 34-12-7, 34-12-13(5).

44:82:01:07. Joint occupancy. The use of a portion of a building for a purpose other than that covered by the license may be approved by the department only if it can be shown that joint occupancy is not detrimental to the welfare of the residents. The area shall be open to inspection by the department.

Source:

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:82:01:08. Reports. Each owner or operator shall provide the pertinent data necessary to comply with the requirements of all applicable administrative rules and statutes.

Each owner or operator shall report any incident or event where there is reasonable cause to suspect abuse or neglect of any resident by any person within 24 hours of becoming informed of the alleged incident or event. The owner or operator shall report each incident or event orally or in writing to the state's attorney of the county in which the home is located, to the Department of Human Services, or to a law enforcement officer. The owner or operator shall report each incident or event to the department within 24 hours, and conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the event.

Each owner or operator shall report to the department within 24 hours of the event any death resulting from other than natural causes originating on home property such as accidents or suicide. The owner or operator shall conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the event.

Each owner or operator shall report a missing resident to the department within 48 hours of incident. The owner or operator shall conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the incident.

Each owner or operator shall also report to the department as soon as possible any fire with damage or where injury or death occurs; any partial or complete evacuation of the home resulting from natural disaster; or any loss of utilities, such as electricity, natural gas, telephone services, fire alarm, and other critical equipment necessary for operation of the community living home for more than 24 hours.

Each owner or operator shall notify the department of any anticipated closure or discontinuation of service at least 30 days in advance of the effective date.

Source:

General Authority: SDCL 34-12-13(14).

Law Implemented: SDCL 34-12-13(14).

44:82:01:09. Plans of correction. Within ten days of the receipt of the statement of deficiencies, each owner or operator shall submit to the department a written plan of correction for the citation of noncompliance with licensure requirements. The plan of correction shall be signed, dated, and on the original forms provided by the department. The department may reject the plan of correction if there is no evidence the plan will cause the community living home to attain or maintain compliance with SDCL chapter 34-12 and this article.

Source:

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:82:01:10. Scope of article. Nothing in this article limits or expands the rights of any healthcare worker or care provider to provide services within the scope of the professional's license, certification, or registration as provided by South Dakota law.

Source:

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

CHAPTER 44:82:02

PHYSICAL ENVIRONMENT AND SAFETY

Section

44:82:02:01	Sanitation.
44:82:02:02	Pets.
44:82:02:03	Household furnishings.
44:82:02:04	Plumbing.
44:82:02:05	Water supply.
44:82:02:06	Occupant protection.
44:82:02:07	Physical plant changes.
44:82:03:08	Insect and rodent control.
44:82:02:09	Location.
44:82:02:10	Reasonable accommodations.
44:82:02:11	Other hazardous conditions.

44:82:02:01. Sanitation. The community living home shall be kept clean, neat, and free of litter and rubbish. Hazardous cleaning solutions, chemicals, and poisons shall be labeled, stored in a safe place, and kept in an enclosed cabinet.

Source:

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

44:82:02:02. Pets. No pet kept in or visiting the community living home may negatively affect the well-being of any resident.

Source:

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

44:82:02:03. Household furnishings. The owner or operator shall provide all basic and necessary household furnishings and supplies for the residents, including furniture; bedding; towels; kitchen furnishings such as pots, pans, dishes, and utensils; daily supplies such as toilet paper; and other items commonly found in a private residence.

Source:

General Authority: SDCL 34-12-13(1) and (4).

Law Implemented: SDCL 34-12-13(1) and (4).

44:82:02:04. Plumbing. The community living home's plumbing system shall be designed, installed, and operated in accordance with state and local laws and regulations.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:82:02:05. Water supply. The community living home's water supply shall be obtained from a public water system or, in its absence, from a supply approved by the Department of Environment and Natural Resources. Any private water supply shall have a water sample bacteriologically tested at least annually and the testing results shall be provided to the department at the time the test results are available. The volume of water shall be sufficient for the needs of the community living home. The hot water system shall be capable of supplying the work and resident areas with water at the required temperatures. Maximum hot water temperatures at

plumbing fixtures used by residents may not exceed 125 degrees Fahrenheit (52 degrees centigrade). The minimum temperature of hot water for resident use shall be at least 100 degrees Fahrenheit (38 degrees centigrade).

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:82:02:06. Occupant protection. Each home shall be constructed, arranged, equipped, maintained, and operated to avoid injury or danger to any occupant. The extent and complexity of occupant protection precautions are determined by the services offered and the physical needs of any resident admitted to the community living home. The community living home shall take at least the following precautions:

- (1) Provide securely constructed and conveniently located grab bars in all toilet rooms and bathing areas used by residents;
- (2) Provide grounded or double-insulated electrical equipment or protect the equipment with ground fault circuit interrupters. Ground fault circuit interrupters shall be provided in wet areas and for outlets within six feet of sinks;
- (3) Any use of a portable space heater, portable halogen lamp, household-type electric blanket, or household-type heating pad shall be used in accordance with the manufacturers recommendations; and
- (4) The storage and transfilling of oxygen cylinders or containers shall meet the requirements of the NFPA 99 Standard for Health Care Occupancies, 2012 Edition. A resident may store in the resident's room a maximum of three E-cylinders or 72 cubic feet (2.040 cubic meters) of oxygen on an as needed basis in addition to oxygen in use by the resident.

Source:

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

Reference: NFPA 99 Health Care Facilities, 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: \$67.05.

44:82:02:07. Physical plant changes. The owner or operator shall submit any proposed change including significant new construction or remodeling of the home to the department. The department shall approve any significant change before it is made. A written narrative describing the proposed change shall be provided to the department. The department may require plans and specifications to be provided upon request.

Source:

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:82:02:08. Insect and rodent control. An owner or operator shall keep the community living home and premises free of rodents and insects. Any door or window used for outside ventilation shall have a screen.

Source:

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

44:82:02:09. Location. The location of the community living home shall promote the health, comfort, safety, and well-being of its residents, and may not create barriers to integration

and participation in the broader community. Easy access for care providers, visitors, first responders, and fire-fighting services shall be maintained.

Source:

General Authority: SDCL 34-12-13(1), (3), and (14).

Law Implemented: SDCL 34-12-13(1), (3), and (14).

44:82:02:10. Reasonable accommodations. Accessible and usable accommodations shall be available to meet the needs of residents with disabilities.

Source:

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

44:82:02:11. Other hazardous conditions. An owner or operator may be directed to remove or correct any hazardous condition not covered in this chapter if the department considers the condition to have the potential to cause injury or illness.

Source:

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

CHAPTER 44:82:03

FIRE SAFETY AND CONSTRUCTION STANDARDS

Section

44:82:03:01 General fire safety.

44:82:03:02 Evacuation plan.

44:82:03:03 Exits.

44:82:03:04 New construction.

44:82:03:05 Ventilation.

44:82:03:01. General fire safety. Each community living home shall meet the applicable fire safety standards of One- and Two- Family Dwellings in the Life Safety Code in NFPA 101 Life Safety Code, 2012 edition. Each community living home shall be constructed, arranged, equipped, maintained, and operated to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the structure in case of fire or other emergency. Compliance with this section does not eliminate or reduce the necessity for other provisions for safety of persons using the structure under normal occupancy conditions.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

Reference: NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Phone: 1-800-344-3555. Cost: \$ 101.00.

44:82:03:02. Evacuation plan. An owner or operator shall have a written evacuation plan, and shall inform the residents of the plan and conduct fire safety drills on an annual basis.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:82:03:03. Exits. There shall be two exits remote from each other on each level used for the care of residents. Each of these exits shall provide unobstructed access to the outside. One of these exits shall be a door or stairway which leads to the outside of the building at ground level. The other exit may be a window if it meets the following requirements:

- (1) It can be easily opened from the inside without the use of tools;
- (2) It provides a clear opening with a minimum dimension of at least 20 inches in width by 24 inches in height, is at least five and seven-tenths square feet in area, with a sill at 44 inches, and provides a safe means of escape; and
- (3) If a storm window, screen, or burglar guard is used, it has a quick-opening device which can be easily opened from the inside.

A ladder, folding stairs, or trap door may not be the only access to a bedroom.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:82:03:04. New construction. The provisions of this section apply to all newly licensed community living homes and to any renovation, addition, and change in space use of currently approved existing homes.

An automatic sprinkler system is not required in a community living homes unless required by the local municipality issuing the building permit.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:82:03:05. Ventilation. Electrically powered exhaust ventilation shall be provided in all newly constructed or renovated toilet rooms.

Source:

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

CHAPTER 44:82:04

OWNERS, OPERATORS, AND CARE PROVIDERS

Section

44:82:04:01 Daily operations.

44:82:04:02 Care providers.

44:82:04:03 Infection control.

44:82:04:04 Care of the residents.

44:82:04:01. Daily operations. The community living home owner or operator is responsible for the daily overall operation of the home. The owner shall notify the department in writing of any change of ownership or change of location.

The community living home owner, operator, or a care provider shall be available in the home as needed to effectively and appropriately meet the needs of the residents according to their respective care plans.

Source:

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:82:04:02. Care providers. The community living home shall have a sufficient number of care providers to provide individualized and independent residential community living supports.

Source:

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:82:04:03. Infection control. Each owner, operator and care provider shall take appropriate precautions to prevent the potential spread of communicable disease to the residents. An owner, operator, or care provider with a reportable communicable disease that may endanger the health of a resident shall minimize contact with the residents until such time as the owner, operator, or care provider is determined by an appropriate health care professional to no longer be infectious.

Source:

General Authority: SDCL 34-12-13(1), (5), and (14).

Law Implemented: SDCL 34-12-13(1), (5), and (14).

44:82:04:04. Care of the residents. An owner, operator, or care provider shall provide, or arrange for, appropriate care and supervision for the residents as needed to meet the needs of the

residents according to their care plans, and shall be cooperative with state staff in carrying out the residents' care plans. Healthcare services may also be provided by qualified personnel of an outside healthcare provider.

Source:

General Authority: SDCL 34-12-13(14).

Law Implemented: SDCL 34-12-13(14).

CHAPTER 44:82:05

MEDICATIONS AND RESIDENT RECORDS

Section

44:82:05:01 Medication labeling, storage, and disposal.

44:82:05:02 Resident records.

44:82:05:01. Medication labeling, storage, and disposal. The requirements for medications in community living homes include the following:

- (1) Medications and biologicals kept on the premises shall be labeled with the drug name, strength, and expiration date;
- (2) Medications shall be kept in a secure location or in the resident's room to prevent unauthorized access;
- (3) Medications requiring refrigeration may be stored in a refrigerator used for food storage if the drugs are stored in a sealed container and placed on the top rack or tray;
- (4) Medications shall be self-administered only by residents and family members, or by qualified personnel or care providers licensed or authorized to administer drugs; and

(5) Outdated or discontinued medication shall be properly destroyed or disposed.

Source:

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:82:05:02. Resident records. The owner or operator shall ensure confidentiality and safeguarding of resident records. Records for each resident shall be maintained while the resident is residing in the home and for an appropriate amount of time thereafter. The home may arrange storage or transfer of resident records with another licensed home, or at the request of the resident, relinquish records to the resident or the resident's legal representative, or arrange storage of remaining medical records with a third party vendor who undertakes such a storage activity. At least 30 days before closure, the owner or operator shall notify the department in writing indicating the provisions for the safe preservation of resident records and their location. If ownership of the community living home is transferred, the new owner shall maintain the resident records as if there was not a change in ownership. Resident records at a minimum shall include the following:

- (1) Current basic health information including a list of medications, allergies, diet requirements, and daily health needs;
- (2) The name and contact information of the resident's physician and other health care professionals involved with the resident's care;
- (3) The name and contact information of the resident's preferred emergency contacts, immediate family members, and health care representative or power of attorney;
- (4) An evaluation of the resident's individualized and independent residential community living support needs completed within the past year, or upon a significant change in the resident's condition requiring notification pursuant to § 44:82:06:04, that is recorded on a form approved by the department;

- (5) A current plan of care, as agreed to by the resident or the resident's legal representative and the owner or operator, updated at least annually;
- (6) Any reports of suspicion of abuse or neglect reported to the department;
- (7) Disposition of medications that were outdated or disposed; and
- (8) Discharge information including disposition of medications.

Source:

General Authority: SDCL 34-12-13(10).

Law Implemented: SDCL 34-12-13(10).

CHAPTER 44:82:06

RESIDENT RIGHTS

Section

- 44:82:06:01 Application of chapter – Resident rights.
- 44:82:06:02 Owner or operator to inform resident of rights.
- 44:82:06:03 Residential agreement.
- 44:82:06:04 Notification when resident's condition changes.
- 44:82:06:05 Right to manage financial affairs.
- 44:82:06:06 Choice in planning care.
- 44:82:06:07 Privacy and confidentiality.
- 44:82:06:08 Quality of life.
- 44:82:06:09 Grievances.
- 44:82:06:10 Availability of survey results.
- 44:82:06:11 Right to refuse to perform services.

- 44:82:06:12 Self-administration of drugs.
- 44:82:06:13 Admission, transfer, and discharge policies.
- 44:82:06:14 Spiritual needs.

44:82:06:01. Application of chapter – Resident rights. An owner, operator, or care provider shall conduct practices consistent with this chapter to protect and promote the rights of each resident.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:02. Owner or operator to inform resident of rights. Prior to or at the time of admission, an owner or operator shall inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the home. Any subsequent modifications to the resident's rights and rules governing the resident's conduct and responsibilities shall be communicated, both orally and in writing, to the resident. The information shall contain the following:

- (1) The resident's ability to exercise the resident's rights as a resident of the home and as a citizen of the United States;
- (2) The resident's right to be free of interference, coercion, discrimination, and reprisal from the home in exercising the resident's rights;
- (3) The resident's right to have a person appointed to act on the resident's behalf. If a resident has been adjudged incompetent or incapacitated, the resident's rights shall be exercised by the person appointed under state law to act on the resident's behalf. If a resident has not been adjudged to be incompetent or incapacitated, the resident's rights may be exercised by the legal surrogate recognized under state law, whether statutory

or as recognized by the courts of the state to act on the resident's behalf. The home shall record and keep up to date the appointed person's address and phone number;

- (4) The resident's right to access the resident's own records;
- (5) The resident's right to be fully informed of the resident's total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments;
- (6) The resident's right to refuse treatment and to refuse to participate in experimental research. A resident's right to refuse treatment does not absolve an owner, operator, or care provider from responsibility to provide for necessary medical services and treatment. Any resident who refuses treatment shall be informed of the results of that refusal, plus any alternatives that may be available;
- (7) The resident's right to formulate a durable power of attorney for health care as provided in SDCL chapter 59-7 and a living will declaration as provided in SDCL chapter 34-12D; and
- (8) The resident's right to receive visitors. Visiting hours and policies of the home shall permit and encourage the visiting of residents by friends and relatives.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:03. Residential agreement. The owner or operator shall provide a written residential agreement to each resident. The department shall develop and make available a template for the residential agreement which can be used at the owner's or operator's discretion. If the model template is not used, at a minimum, the residential agreement shall include:

- (1) A list of services available in the home and the charges for those services. The owner or operator shall specify items and services that are included in the services for which the resident may not be charged, those other items and services that the home offers and for which the resident may be charged, and the amount of any charges;
- (2) A description of how a resident may protect personal funds;
- (3) A list of names, addresses, and telephone numbers of resident advocates;
- (4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident's property;
- (5) A description of how the resident can contact the resident's physician, physician's assistant, or nurse practitioner, including the name and specialty of the physician;
- (6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the address and telephone number of the nearest office of the South Dakota Department of Social Services and of the United State Social Security Administration;
- (7) A description of the bed-hold policy that indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and
- (8) A description explaining the responsibilities of the resident regarding self-administered medication.

A signed and dated residential agreement between the resident or the resident's legal representative and the owner or operator shall include subdivisions (1) to (8), inclusive, of this section. The residential agreement shall be completed either before or at the time of admission, and before the resident has made a commitment for payment for proposed or actual care. The agreement may not include ambiguous or misleading information and may not be in conflict with this chapter. Any

change in the information shall be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:04. Notification when resident's condition changes. The owner, operator, or care provider shall immediately inform the resident, consult with the resident's care provider or health care professional, and notify the resident's legal representative or family members, and if applicable the resident's case manager, when any of the following occurs:

- (1) An accident involving the resident that results in injury or has the potential for requiring intervention by a physician;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the home.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:05. Right to manage financial affairs. A resident may manage the resident's own personal financial affairs.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:06. Choice in planning care. A resident may choose the resident's own health care providers, be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being, and, unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care or treatment.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:07. Privacy and confidentiality. An owner or operator shall take reasonable steps to provide for privacy and confidentiality for the resident, including the resident's accommodations, medical treatment, written and telephone communications, care, and visits. A resident shall have the right to:

- (1) Send and receive unopened mail and to have access to stationery, postage, and writing implements at the resident's own expense;
- (2) Privately access and use a telephone or computer;
- (3) Visit a spouse or friend, if both are residents of the same home, to share a room with the spouse or friend, within the capacity of the home, upon the consent of both residents;
- (4) Except in an emergency, have room doors locked and to require knocking and permission before entering the resident's room;
- (5) Have only authorized staff or other individuals of the resident's choosing present during treatment or activities of personal hygiene;
- (6) Retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;

- (7) Meet, associate, and communicate with any person of the resident's choice in a private place within the home;
- (8) To come and go from the home as the resident chooses, consistent with any restrictions related to specific assessed needs identified in the plan of care; and
- (9) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the home.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:08. Quality of life. A community living home shall provide care and an environment that contributes to the resident's quality of life, including:

- (1) A safe, clean, comfortable, and homelike environment;
- (2) Maintenance or enhancement of the resident's ability to preserve individuality, to preserve autonomy, to exercise self-determination, to control the physical environment, to have everyday physical and social needs met, to perform daily activities, and to interact with whomever the resident chooses;
- (3) Freedom from physical or chemical restraints unless ordered and implemented by qualified, trained personnel on an emergency basis, in order to protect the resident or others from immediate bodily injury;
- (4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;
- (5) Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6) Support and coordination to assure pain is recognized and addressed appropriately.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:09. Grievances. A resident may voice grievances without discrimination or reprisal. A grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. An owner or operator shall adopt a grievance process and make the process known to each resident and to each resident's immediate family on an annual basis. The grievance process shall include the owner's or operator's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

On an annual basis, the owner or operator shall also provide to each resident, and to each resident's immediate family, written contact information for the local ombudsman office.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:10. Availability of survey results. A resident may examine the results of the department's most recent survey of the home and any plan of correction in effect. The owner or operator shall make available results of the department's most recent survey to a resident or a resident's legal representative upon request.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:11. Right to refuse to perform services. A resident may refuse to perform services on behalf of the home, unless otherwise agreed to in the resident's plan of care. The resident may perform services for the home if the following conditions are met:

- (1) The plan of care includes documentation of the need or desire for work;
- (2) The nature of the services performed is specified, including whether the services are voluntary or paid;
- (3) Compensation for paid services is at or above prevailing rates; and
- (4) The resident agrees to the work arrangement.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:12. Self-administration of drugs. A resident may self-administer and store drugs in the resident's room if an appropriate health care practitioner has determined the practice to be safe.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:13. Admission, transfer, and discharge policies. An owner or operator shall establish and maintain policies and practices for admission, discharge, and transfer of residents that

prohibit discrimination based upon payment source. The owner or operator shall notify each resident at or before the time of admission of these policies and practices. The policies and practices shall include the following provisions:

- (1) The resident may remain in the home and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the home, the safety or health of persons in the home is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the home ceases to operate;
- (2) The owner or operator shall notify the resident and a family member or resident advocate, in writing, at least 30 days before the transfer or discharge unless a change in the resident's health requires immediate transfer or discharge. The written notice shall specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;
- (3) The conditions under which the resident may request or refuse transfer within the home; and
- (4) A description of how the resident may appeal a decision by the owner or operator to transfer or discharge the resident.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:82:06:14. Spiritual needs. The owner or operator shall provide for the spiritual needs of the resident as appropriate. Any resident's request to see a clergyman shall be honored. No specific religious beliefs or practices may be imposed on any resident contrary to the resident's choice.

Source:

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

CHAPTER 44:82:07
NUTRITION SERVICES

Section

44:82:07:01 Food service.

44:82:07:02 Nutrition requirements.

44:82:07:03 Food quality – storage.

44:82:07:01. Food service. The community living home shall have the space, equipment, and supplies for efficient, safe, and sanitary food preparation. Safe and sanitary food preparation, handling, and storage practices shall be used. If a community living home's food service is contracted out, the contractor shall either be a licensed food service establishment or a licensed health care facility.

Source:

General Authority: SDCL 34-12-13(5) and (8).

Law Implemented: SDCL 34-12-13(5) and (8).

44:82:07:02. Nutrition requirements. Each resident shall be offered a minimum of three meals a day and have access to food at any time. Whenever possible, each meal shall include portions from each of the five basic food groups listed in the MyPlate, "Dietary Guidelines for Americans," 2010, U.S. Department of Agriculture. The owner or operator shall ensure that residents with special diets or dietary restrictions shall be fully accommodated.

Source:

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

44:82:07:03. Food quality -- Storage. Food shall be free from spoilage and contamination and shall be safe for human consumption. Unless its identity is unmistakable, a bulk food such as cooking oil, syrup, salt, sugar, or flour not stored in the product container or package in which it was obtained shall be stored in a container identifying the food by its common name.

Source:

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).