

TITLE 46

Department of Human Services

ARTICLE 46:04

Community Services

CHAPTER 46:04:01

Shared Living Homes

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46:04:01:01. Definitions. Terms in this chapter mean:

- (1) “Division,” as defined in subsection 46:11:01:01(8);
- (2) “Emergency placement,” placement that occurs before a two week notice has been given to the contractor and provider;
- (3) “Independent contractor” or “contractor,” a person who provides the shared living service to a participant who may or may not be a family member;
- (4) “Individualized service plan” or “ISP,” as defined in subsection 46:11:01:01(12);
- (5) “Participant,” as defined in subsection 46:11:01:01(18);
- (6) “Provider,” as defined in subsection 46:11:01:01(25);
- (7) “Shared living home,” or “home”, an arrangement of services provided in the private home of a participant, or a family, in which care is provided to a participant; and

(8) "Respite care," shared living services provided for a period of time, not to exceed 30 calendar days for a participant in a calendar year, because of the absence of, or need for relief of, the independent contractor.

Source:

General Authority: SDCL 27B-2-26(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:02. Letter of compliance required. Prior to providing shared living or emergency respite services to a participant, a contractor shall meet the requirements of this chapter for the issuance of a letter of compliance.

(1) A letter of compliance, issued to a contractor by the provider, shall specify the location, maximum capacity of the shared living home and that the home is not owned or leased by the provider;

(2) Any letter issued shall denote the name of the independent contractor and address on the face of the letter; and

(3) Each provider administering one or more shared living homes shall have a sample of their homes inspected by the division as part of the biennial certification.

(4) Each provider issuing a letter of compliance shall be certified under article 46:11.

Source:

General Authority: SDCL 27B-2-26(2)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

Cross Reference: Biennial review for compliance with rules, § 46:11:02:09.

46:04:01:03. Shared living home capacity. A shared living home may not serve more than two participants. The shared living home capacity shall be established at the time of issuance of the letter of compliance. The division shall be notified of any capacity adjustments.

Source:

General Authority: SDCL 27B-2-26(2)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:04. Exceptions. An exception for a specific section, subsection, or paragraph of this chapter may be requested by writing to the division 30 days before the implementation of the exception. An exception will be considered if the following criteria are met:

- (1) The exception does not jeopardize the health, safety, or well-being of any participants in the home;
- (2) The exception is based on the best interests and needs of the participant;
- (3) Noncompliance with the regulation is of greater benefit to the participant than compliance with the regulation;
- (4) There is an alternative method for meeting the intent of the regulation;
- (5) There are special circumstances that make this home different from other homes complying with the regulation;
- (6) The exception does not violate any other State regulation or statute;
- (7) The exception is not requested for §§ 46:04:01:02 and 46:04:01:03 relating to general provisions; and
- (8) In the event the participant requires respite care or emergency placement, the contractor

may implement an exception immediately. The contractor shall request the exception from the provider within 24 hours of the participant moving into the home. The written request to the division shall be made within one business day.

Source:

General Authority: SDCL 27B-2-26(2)(3)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:05. Responsibility for compliance. The provider certifying the shared living home is responsible for meeting the requirements within this chapter.

Source:

General Authority: SDCL 27B-2-26(2)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:06. Critical incident reports. The contractor and the provider are required to report pursuant to § 46:11:03.02.

Source:

General Authority: SDCL 27B-2-26(2)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:07. Screening. Each provider must have a policy that addresses criminal background checks, felony convictions, sex offender registry check, and drug screenings for any independent contractors that provide shared living to participants. The policy must include the following:

- (1) A description of the system used for background checks, and sex offender registry checks;
- (2) A description of felony conviction checks for independent contractors utilizing the

Office of Inspector General; and

(3) A description of any drug screening utilized.

Before a participant is living or receiving respite care in the home, a criminal history background check and a sex offender registry check shall be completed for individuals 14 years of age or older who reside in the home. All screening results shall be maintained by the provider.

Source:

General Authority: SDCL 27B-2-26(4)(9).

Law Implemented: SDCL 27B-2-26(4)(9)(10).

46:04:01:08. Shared living provider responsibilities. Each provider shall ensure the following:

(1) Training of independent contractor, including the content of health and safety needs, relevant to each participant; and

(2) Providing oversight of the shared living home and ensuring that health and safety requirements are being met.

Source:

General Authority: SDCL 27B-2-26(2)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(4)(9)(10).

46:04:01:09. Contractor services. The contractor shall provide services, including assistance, support, and guidance, in life domain areas such as daily living, safety and security, community living, healthy lifestyle, social and spirituality, and citizenship and advocacy. The contractor shall provide age appropriate services to the participant as specified in the participant's ISP.

Source:

General Authority: SDCL 27B-2-26(3)(9)(10).

Law Implemented: SDCL 27B-2-26(3)(9)(10).

46:04:01:10. Day services. Day services such as employment, education, training, volunteer, civic-minded, and other meaningful opportunities shall be provided to the participant. Day services and activities shall be provided at a location other than the shared living home where the participant lives, unless one of the following conditions exists:

(1) There is written annual documentation by a licensed physician that it is medically necessary for the participant to complete day services at the shared living home; or

(2) There is written annual documentation by the team that it is in the best interest of the participant to complete day services at the shared living home.

Source:

General Authority: SDCL 27B-2-26(3)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:11. Recreational and social activities. The contractor shall provide recreational and social activities outside of the home.

Source:

General Authority: SDCL 27B-2-26(3)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:12. Use of personal funds and property. A participant's personal funds or property may not be used as a reward or punishment. A participant's personal funds or property may not be used as payment for damages unless the participant consents to make restitution for the damages, and it is specified in the participant's ISP. Any payment for fixtures added to the

contractor's shared living home, by the participant, must be agreed upon and approved in writing by the provider, case manager, and the participant or the participant's guardian, if any.

Source:

General Authority: SDCL 27B-2-26(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

Cross Reference: Case manager, § 46:11:05:05.

46:04:01:13. Emergency information. Emergency information for a participant shall be easily accessible at the home. Emergency information for a participant shall include the following:

(1) The name, address, telephone number, and relationship of a designated person to be contacted in case of emergency;

(2) The name, address, and telephone number of the participant's physician or source of health care;

(3) The name, address, and telephone number of the person able to give consent for emergency medical treatment, if applicable;

(4) A copy of the participant's most recent annual physical examination and a list of most current medications; and

(5) A copy of the participant's current insurance information.

Source:

General Authority: SDCL 27B-2-26(2)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:14. Supervision. A participant may be left unsupervised for specified periods of time if the absence of direct supervision is consistent with the participant's assessment, is part

of the participant's ISP, and as an outcome which requires the achievement of a higher level of independence. A participant requiring direct supervision may not be left under the supervision of a person under the age of 18. A participant may not be left unsupervised solely for the convenience of the contractor.

A participant shall receive an assessment and training in accessing the contractor, provider, or emergency services as determined by the participant's team and shall be documented.

Source:

General Authority: SDCL 27B-2-26(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:15. Training required for contractors. Contractors shall meet the following training requirements:

(1) Before a participant resides in a shared living home, the contractor is required to complete an initial orientation that includes the following:

(a) Emergency procedures concerning fire prevention, accident prevention, and response to emergencies; and

(b) Techniques of identifying and reporting abuse, neglect, and exploitation.

(2) Within 30 days of a participant's residence in a shared living home, the contractor shall be trained in the following:

(a) Contractor's role in promoting positive outcomes for participants; and

(b) Participant's rights in accordance with § 46:11:03.

(3) Within six months of the participant's residence in a shared living home, the contractor shall be trained in the following:

(a) Training before the actual implementation of positive behavior support plan specified in the ISP;

(b) First aid;

(c) Cardiopulmonary resuscitation;

(d) Disability awareness; and

(e) Use of adaptive and augmentative devices used to support participants, as necessary.

Source:

General Authority: SDCL 27B-2-26(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:16. Training required for respite care providers and anyone over the age of 18 living in the home. Within 30 days of a participant moving into a shared living home, respite care providers and anyone over the age of 18 living in the home shall receive training in disability awareness and the participant's ISP.

Source:

General Authority: SDCL 27B-2-26(3)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:17. Record of training. Records of training, including the training source, content, dates, length of training, copies of certificates received, if applicable, and persons attending, shall be kept by the provider.

Source:

General Authority: SDCL 27B-2-26(2)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:18. Safety and sanitation. The shared living home shall meet all of the following requirements:

- (1) The shared living home and premises shall be free of rodents and insects;
- (2) Bedrooms located in the basement must have at least one egress window, which meets code as outlined in the Life Safety Code in NFPA 101 Life Safety Code, 2012 edition;
- (3) Floors, walls, ceilings, and other surfaces shall be free of hazards;
- (4) A landline telephone shall be present in the home to access emergency services;
- (5) Participant bed linens, towels, washcloths, and clothing shall be kept clean;
- (6) Stairways, hall, doorways, and exits from rooms and from the home shall be unobstructed;
- (7) Food shall be protected from contamination while being stored and prepared;
- (8) Hazardous cleaning solutions, chemicals, and poisons shall be labeled and secured in an enclosed cabinet; and
- (9) Removal of any condition that may have the potential to cause injury or illness.

Source:

General Authority: SDCL 27B-2-26(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

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.

46:04:01:19. Heat sources. If there are heat sources, such as hot water pipes, fixed space heaters, hot water heaters, radiators, or wood and coal burning stoves and fireplaces, exceeding

120 degrees Fahrenheit, that are accessible to participants, the provider and contractor shall have documentation of the participant's understanding of the hazard.

Source:

General Authority: SDCL 27B-2-26(2)(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:20. Smoke and carbon monoxide detectors. A home shall have a minimum of one operable automatic smoke detector and carbon monoxide detector provided on each floor, including the basement and attic. Smoke detectors and carbon monoxide detectors shall be located in common areas or hallways.

Source:

General Authority: SDCL 27B-2-26(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:21. Participant training for emergencies. Contractor shall have a written fire and safety plan and shall inform participants of the plan. Fire, tornado, and severe weather drills shall be conducted on an annual basis. Documentation shall be kept of each drill completed.

Source:

General Authority: SDCL 27B-2-26(2)(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:22. Firearms. Firearms shall be kept unloaded in a locked cabinet. Ammunition shall be kept in a locked cabinet that is separate from firearms.

Source:

General Authority: SDCL 27B-2-26(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:23. Medication, labeling, storage, and disposal. The requirements for medications in shared 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 participant'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; and

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

Source:

General Authority: SDCL 27B-2-26(2)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:24. Medication training. A contractor, or anyone over the age of 18 living in the shared living home, administering medications to a participant, or assisting a participant in the self-administration of medications, must meet the same requirements as employees of providers who perform similar tasks as provided in chapter 46:11:07. Documentation of the training shall be kept by the provider.

Source:

General Authority: SDCL 27B-2-26(1)(2)(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:25. Refusal of treatment. If a participant refuses routine medical or dental examination or treatment, the refusal and continued attempts to train the participant about the need for health care, shall be documented in the participant's record. If a participant has a serious

medical or dental condition which requires immediate treatment, reasonable efforts shall be made to obtain consent from the participant or substitute consent in accordance with applicable law.

Source:

General Authority: SDCL 27B-2-26(2)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

46:04:01:26. Emergency placement. The case manager shall coordinate a team meeting before the end of the first 30 day period of the participant residing at the emergency placement home. The minutes of the team meeting shall document that a review of the ISP and medication requirements of the participant were discussed.

Source:

General Authority: SDCL 27B-2-26(2)(3)(4)(9)(10).

Law Implemented: SDCL 27B-2-26(9)(10).

Cross Reference: Case manager, § 46:11:05:05.

CHAPTER 46:11:10

FAMILY SUPPORT SERVICES

46:11:10:06. Statewide family support program. The statewide family support program is available to a family who has a child or adult who meets eligibility criteria as defined in § 46:11:10:07 and who is not receiving services from a local family support program, or a CSP. The statewide program does not provide service coordination to families. The division determines eligibility and authorizes payment for items and supplies that are requested by eligible families.

Source: 40 SDR 102, effective December 3, 2013.

General Authority: SDCL 27B-2-26(7).

Law Implemented: SDCL 27B-2-26(3)(7).

46:11:10:07. Statewide family support eligibility. An individual must meet the following criteria to be eligible to receive items and services under the statewide family support program:

(1) The individual must be a resident of South Dakota;

(2) The individual must ~~be under the age of 22 and has~~ have a developmental disability as defined in SDCL 27B-1-18 or be a child, birth through two years of age, who has been identified by the Department of Education as a child needing prolonged assistance as defined in § 24:05:24.01:15; and

(3) If the individual is under 18 years of age, the individual must be living in a home with a parent or guardian.

Source: 40 SDR 102, effective December 3, 2013.

General Authority: SDCL 27B-2-26(7).

Law Implemented: SDCL 27B-2-26(7).

Cross-Reference: Prolonged assistance defined, § 24:05:24.01:15.