67:11:01:03. Federal poverty level. For programs under Title 67, the department uses the ~~federal poverty level established in 82 Fed. Reg. 8831 (January 26, 2017)~~ poverty guidelines published by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2) (September 1, 2018).

Source: 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 11, effective August 4, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 109, effective March 5, 2000; 26 SDR 168, effective July 1, 2000; 28 SDR 1, effective July 18, 2001; 28 SDR 178, effective July 3, 2002; 30 SDR 26, effective September 3, 2003; 30 SDR 193, effective June 13, 2004; 32 SDR 33, effective August 31, 2005; 32 SDR 163, effective March 23, 2006; 34 SDR 322, effective July 1, 2008; 35 SDR 234, effective April 1, 2009; 37 SDR 182, effective March 25, 2011; 41 SDR 7, effective July 29, 2014; 41 SDR 218, effective June 30, 2015; 43 SDR 31, effective September 12, 2016; 44 SDR 94, effective December 4, 2017.

General Authority: SDCL 25-4-45.3, 28-1-61, 28-6-1(6), 28-6A-12, 28-7A-3, 28-7A-24.

Law Implemented: SDCL 25-4-45.3, 28-1-60, 28-6-1(6), 28-6A-2, 28-7A-3, 28-7A-20.

Cross-References:

Work activities -- Combined work and education, § 67:10:06:13.01.

Eligibility requirements, § 67:46:01:02.

~~Computation of community spouse's maintenance allowance and excess shelter allowance, § 67:46:07:12.~~

Eligibility requirements, § 67:46:10:04.

Household required to participate in child care costs, § 67:47:01:08.

~~Family pays costs when lump sum income exceeds federal poverty level, § 67:47:01:08.01.~~

67:16:25:04. Secure medical transportation -- Covered services. A participating secure medical transportation provider is eligible to receive payment for nonemergency transportation services. Recipients being transported must be confined to a wheelchair or must require transportation on a stretcher. Transportation must be from the recipient's home, place of work, or school to a medical provider for diagnosis or treatment, between medical providers when necessary, or from a medical provider to the recipient's home, place of work, or school.

At its discretion, the department may pay for transportation services not meeting the conditions of this section if paying for the services results in an overall cost savings for the department.

Source: 7 SDR 23, effective September 18, 1980; 6 SDR 76, effective February 11, 1981; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 16 SDR 234, effective July 1, 1990; 19 SDR 26, effective August 23, 1992; 44 SDR 94, effective December 4, 2017.

General Authority: SDCL 28-6-1(1)(2)(4).

Law Implemented: SDCL 28-6-1(1)(2)(4).

67:16:25:06.01. Transportation services provided by community transportation provider. Community transportation services are covered if the following requirements are met:

(1) The transportation provider is a governmental entity or registered as a nonprofit organization with the South Dakota Secretary of State;

(2) The transportation provider is domiciled in the State of South Dakota or enrolled as a Medicaid transportation provider in the entity or organization's state of domicile;

(3) The entity or organization has a signed transportation provider agreement with the department to furnish nonemergency medical transportation to recipients;

(4) Transportation is from an eligible recipient's residence, bus stop nearest to the recipient's residence, place of work, or school to a medical provider, between medical providers, or from a medical provider to the recipient's residence, bus stop nearest to the recipient's residence, place of work, or school. A recipient's residence does not include a hospital, penal institution, detention center, campus setting, nursing facility, an intermediate care facility for individuals with intellectual disabilities, or an institute for the treatment of an individual with a mental disease;

(5) Transportation is to or from medically necessary examinations or treatment when the services are covered under article 67:16 and are provided by a provider who is enrolled or eligible for enrollment in the medical assistance program; and

(6) Transportation is to the closest facility or medical provider capable of providing the necessary services, unless the recipient has a written referral or a written authorization from a medical provider in the recipient's medical community.

Source: 16 SDR 234, effective July 1, 1990; 17 SDR 201, effective July 1, 1991; 20 SDR 126, effective February 10, 1994; 25 SDR 69, effective November 12, 1998; 26 SDR 157, effective June 7, 2000; 35 SDR 253, effective May 12, 2009; 40 SDR 122, effective January 8, 2014; 44 SDR 94, effective December 4, 2017.

General Authority: SDCL 28-6-1(1)(2).

Law Implemented: SDCL 28-6-1(1)(2).

67:16:41:01. Definitions. Terms used in this chapter mean:

(1) "Certified social worker - PIP," an individual certified under SDCL 36-26-17;

(2) "Certified social worker – PIP candidate" an individual as defined in § 20:59:01:01 who is licensed as a certified social worker under SDCL 36-26-14 and is working toward becoming a certified social worker – PIP under an approved supervision agreement as required by § 20:59:05:05;

(3) "Clinical nurse specialist," an individual who is licensed under SDCL 36-9-85 to perform the functions contained in SDCL 36-9-87;

(4) "Collateral contact," telephone or face-to-face contact with an individual other than the recipient receiving treatment to plan appropriate treatment, to assist others in responding therapeutically regarding the recipient's difficulty or illness, or to link the recipient, family, or both to other necessary and therapeutic community support;

~~(3)~~ (5) "Diagnostic assessment," a written comprehensive evaluation of a set of symptoms which indicate a diagnosis of a mental disorder and which meet the requirements of § 67:16:41:04;

~~(4)~~ (6) "Family," a unit of two or more persons related by blood or by past or present marriage. A family may also include other individuals living either in the same household with the recipient, individuals who will reside in the home in the future, or individuals who reside elsewhere only if the individual's participation is necessary to accomplish treatment plan goals and are considered an essential and integral part of the family unit identified in the treatment plan;

~~(5)~~ (7) "Group," a unit of at least two but no more than ten individuals who, because of the commonality and the nature of their diagnoses, can derive mutual benefit from psychotherapy

and it can be demonstrated to be medically necessary for the individuals to jointly participate in order to accomplish treatment plan goals through a group psychotherapy session;

~~(6)~~ (8) "Licensed professional counselor - mental health" "LPC-MH," an individual certified ~~pursuant to~~ under SDCL 36-32-41 to 36-32-43, inclusive;

(9) “Licensed professional counselor working toward a mental health designation” an individual who is licensed as a licensed professional counselor under SDCL 36-32-13 and is working toward a mental health designation under the supervision required by SDCL 36-32-42;

(10) “Licensed marriage and family therapist” an individual licensed under SDCL 36-33-9 or 36-33-18;

~~(7)~~ (11) "Mental disorder," an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, or behavior;

~~(8)~~ (12) "Mental health services," nonresidential psychiatric or psychological diagnostic and treatment that is goal-oriented and designed for the care and treatment of an individual having a primary diagnosis of a mental disorder;

~~(9)~~ (13) "Mental health treatment," goal-oriented therapy designed for the care and treatment of an individual having a primary diagnosis of a mental disorder;

~~(10)~~ (14) "Psychologist," for services provided in South Dakota, a person licensed under SDCL 36-27A-12 or 36-27A-13; for services provided in another state, a person licensed as a psychologist in the state where the services are provided. For purposes of the medical assistance program, a person practicing under SDCL 36-27A-11 is specifically excluded;

~~(11)~~ (15) "Psychotherapy," the face-to-face treatment of a recipient through a psychological or psychiatric method. The treatment is a planned, structured program based on a primary diagnosis of mental disorder ~~determined from a diagnostic assessment~~ and is directed to

influence and produce a response for a mental disorder and to accomplish measurable goals and objectives specified in the recipient's individual treatment plan;

~~(12)~~ (16) "Psychotherapy session," a planned and structured face-to-face treatment episode between a mental health provider and one or more recipients; and

~~(13)~~ (17) "Treatment plan," a written, individual, and comprehensive plan which is based on the information and outcome of the recipient's diagnostic assessment and which is designed to improve the recipient's mental disorder.

Source: 22 SDR 6, effective July 26, 1995; 26 SDR 168, effective July 1, 2000; 37 SDR 53, effective September 23, 2010.

General Authority: SDCL 28-6-1(1)(2)(4).

Law Implemented: SDCL 28-6-1(1)(2)(4).

67:16:41:02. Mental health service requirements. To be covered under this chapter, mental health services are limited to services established in this chapter which meet all of the following requirements:

(1) The mental health provider has prepared a diagnostic assessment according to § 67:16:41:04;

(2) The diagnostic assessment contains a primary diagnosis of one of the mental disorders specified in § 67:16:41:05;

(3) The mental health provider has prepared an individual treatment plan which meets the requirements of §§ 67:16:41:06 and 67:16:41:07;

(4) The mental health provider provides treatment directly to the recipient or via collateral contact;

(5) The treatment is documented in the recipient's clinical record according to § 67:16:41:08; and

(6) The treatment is medically necessary according to § 67:16:01:06.02.

Failure to meet all of the above requirements is cause for the department to determine the mental health services to be noncovered services.

Source: 22 SDR 6, effective July 26, 1995.

General Authority: SDCL 28-6-1(1)(2).

Law Implemented: SDCL 28-6-1(1)(2).

67:16:41:03. Mental health provider. A mental health provider must be a psychologist, a licensed professional counselor - mental health, a licensed professional counselor working toward a mental health designation, a clinical nurse specialist, ~~or~~ a certified social worker-PIP, a certified social worker – PIP candidate, or a licensed marriage and family therapist who has a signed provider agreement with the department to provide mental health services.

A mental health provider must have a National Provider Identification (NPI) number and may not provide services under another provider's medical assistance provider NPI number.

An individual who does not meet the certification or licensure requirements of the applicable profession may not enroll as a mental health provider or participate in the delivery of mental health services.

Source: 22 SDR 6, effective July 26, 1995; 26 SDR 168, effective July 1, 2000; 37 SDR 53, effective September 23, 2010; 40 SDR 122, effective January 7, 2014.

General Authority: SDCL 28-6-1(1)(2)(4).

Law Implemented: SDCL 28-6-1(1)(2)(4).

Cross-Reference: Provider requirements, ch 67:16:33.

67:16:41:09. Covered mental health services -- Limits -- Payments. Payment for mental health services is the lesser of the provider's usual and customary charge or the fee listed on the department's fee schedule website. If no fee is listed, payment is 40 percent of the provider's usual and customary charge.

Mental health services and associated rates of payment are subject to review and amendment under the provisions of § 67:16:01:28.

Payment for psychiatric therapeutic procedures is limited to those recipients who have been determined to have a primary diagnosis of a mental disorder ~~according to the findings of the diagnostic assessment~~.

Time units are for face-to-face session times with the recipient or collateral contact and do not include time used for traveling, reporting, charting, or other administrative functions outside the scope of covered procedure codes.

~~If a recipient receives a combination of individual, family, or group psychotherapy, the~~ The maximum allowable coverage for all psychotherapy services may not exceed ~~the payment allowed for~~ 40 hours of ~~individual~~ therapy in a 12-month period. For purposes of this limit, procedure codes without an associated time will be considered 1 hour.

The services covered under this chapter for children under the age of 21 are not subject to the limits contained in this section.

Source: 22 SDR 6, effective July 26, 1995; 25 SDR 104, effective February 17, 1999; 35 SDR 49, effective September 10, 2008; 37 SDR 53, effective September 23, 2010; 42 SDR 51, effective October 13, 2015.

General Authority: SDCL 28-6-1(1)(2)(4).

Law Implemented: SDCL 28-6-1(1)(2)(4), 28-6-1.1.

67:16:41:10. Noncovered services. The department does not cover and the provider may not submit a claim for any of the following noncovered services:

(1) Mental health services not specifically listed in this chapter;

(2) Mental health treatment provided without the recipient physically present in a face-to-face session with the mental health provider, except for collateral contact;

(3) Treatment for a diagnosis not contained in § 67:16:41:05;

(4) Mental health treatment provided before the diagnostic assessment is completed;

(5) Mental health treatment provided after the fourth face-to-face session with the recipient if a treatment plan has not been completed;

(6) Mental health treatment provided if a required review has not been completed;

(7) Court appearance, staffing sessions, or treatment team appearances;

(8) Mental health services provided to a recipient incarcerated in a correctional facility;

(9) Mental health services provided to a recipient in an IMD or ICF/IID institution;

(10) Mental health treatment provided which does not demonstrate a continuum of progress toward the specific goals stated in the treatment plan. Progress must be made within a reasonable time as determined by the peer review entity;

(11) Mental health treatment provided which is not listed in the treatment plan or documented in the recipient's clinical record even though the service is allowable under this chapter;

(12) Mental health treatment provided to a recipient who is incapable of cognitive functioning due to age or mental incapacity or is unable to receive any benefit from the service;

(13) Mental health services performed without relationship to evaluations or psychotherapy for a specific condition, symptom, or complaint;

(14) Time spent preparing reports, treatment plans, or clinical records outside the scope of covered procedure codes;

(15) A service designed to assist a recipient regulate a bodily function controlled by the autonomic nervous system by using an instrument to monitor the function and signal the changes in the function;

(16) Alcohol or drug rehabilitation therapy;

(17) Missed or canceled appointments;

(18) Interpretation or explanation of results of psychiatric, other medical examinations and procedures, or other accumulated data to family or another responsible person ~~or advising them how to assist the recipient~~;

(19) Medical hypnotherapy;

(20) Field trips and other off-site activities;

(21) Consultations or meetings between an employer and employee;

(22) Review of work product by the treating mental health provider;

(23) Telephone consultations with or on behalf of the recipient, except for collateral contact;

(24) Educational, vocational, socialization, or recreational services or components of services of which the basic nature is to provide these services, which includes parental counseling or bonding, sensitivity training, marriage enrichment, assertiveness training, growth groups or marathons, and psychotherapy for nonspecific conditions of distress such as job dissatisfaction or general unhappiness, activity group therapy, family counseling, recreational therapy, rolfing or structural integration, occupational therapy, consciousness training, vocational counseling, marital counseling, peer relations therapy, day care, play observation, sleep

observation, sex therapy, milieu therapy, training disability service, primal scream, bioenergetics therapy, guided imagery, Z-therapy, obesity control therapy, dance therapy, music therapy, educational activities, religious counseling, tape therapy, and recorded psychotherapy;

(25) Mental health treatment delivered in excess of the prescribed frequency as outlined in the treatment plan; and

(26) Mental health services provided by any medical assistance provider other than the recipient's primary care provider under the provisions of § 67:16:39:08, unless the recipient has been formally diagnosed as severely emotionally disturbed or severely and persistently mentally ill.

Source: 22 SDR 6, effective July 26, 1995; 26 SDR 168, effective July 1, 2000; 37 SDR 53, effective September 23, 2010; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1(1)(2).

Law Implemented: SDCL 28-6-1(1)(2).

67:42:03:07.06. Orientation. The provider and each helper shall have documented completion of orientation training within 90 days after the date of registration or date of hire in at least the following areas:

(1) Prevention and control of infectious diseases;

(2) Prevention of sudden infant death syndrome and use of safe sleep practices;

(3) Administration of medication;

(4) Prevention of and response to an emergency due to food and allergic reactions;

(5) Building and physical premises safety;

(6) Prevention of shaken baby syndrome and abusive head trauma;

(7) Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;

(8) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(9) Precautions in transporting a child;

(10) Recognition and reporting of child abuse and neglect; ~~and~~

(11) First aid; and

(12) Child Development.

In addition, a provider shall become certified in cardiopulmonary resuscitation (CPR) prior to initial registration. A helper shall become certified in CPR before being left alone with a child. A helper shall become certified in CPR within 90 days after the date of hire. CPR training shall include hands-on skill testing. CPR certification shall remain valid at all times.

Orientation training may count toward the required annual training for the provider in the initial year of registration, and for each helper or substitute during the first year of employment.

Source: 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16(1)(3).

67:42:10:06.01. Staff orientation. The program shall provide for orientation of all staff, and documentation of such, to occur within 90 days after the date of employment, in at least the following areas:

(1) Prevention and control of infectious diseases;

(2) Prevention of sudden infant death syndrome and use of safe sleep practices;

(3) Administration of medication;

(4) Prevention of and response to an emergency due to food and allergic reactions;

(5) Building and physical premises safety;

(6) Prevention of shaken baby syndrome and abusive head trauma;

(7) Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;

(8) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(9) Precautions in transporting a child;

(10) Recognition and reporting of child abuse and neglect;

(11) First aid; ~~and~~

(12) Cardiopulmonary resuscitation (CPR). CPR certification is required prior to a staff member being left unsupervised to care for children; and

(13) Child development.

Orientation training may count toward the required annual training for each staff person during the person's first year of employment.

Source: 31 SDR 40, effective September 29, 2004; 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16(1)(3)(6)(10).

Cross-References: Staff development and training, § 67:42:10:06; Staff person trained in first aid and CPR must be on site during hours of operation, § 67:42:10:25.

67:42:10:09. Staff records and hiring requirements. A program shall maintain a record on each staff member. The record must include the staff member's name, age, address, telephone number, education and work experience, in-service and orientation training, hours of work, and dates of employment and separation. The program shall make the personnel records available to the department for verification of the contents. The program shall retain personnel records for six months after the staff member's employment ends.

Before hiring an individual, the program shall contact at least three references which may include the individual's former employers. The contacts must relate to the individual's character and competence. The references may not be related to the prospective staff member and must be individuals who have known the prospective staff member prior to the time of application. References must be in the form of a documented conversation or written letter and must be on record before hiring the individual.

Before hiring an individual to work at the center, the center shall comply with the screening requirements of §§ 67:42:16:04 ~~and 67:42:16:05~~.

Source: SL 1975, ch 16, § 1; transferred from § 67:14:19:29, 4 SDR 10, effective August 28, 1977; transferred from § 67:41:04:20, 7 SDR 66, 7 SDR 89, effective July 1, 1981; 12 SDR 209, effective July 6, 1986; 20 SDR 223, effective July 7, 1994; 21 SDR 206, effective June 4, 1995; 24 SDR 76, effective December 11, 1997; 31 SDR 40, effective September 29, 2004; 39 SDR 220, effective June 27, 2013.

General Authority: SDCL 26-6-16(1).

Law Implemented: SDCL 26-6-16(1), 26-6-23.2.

67:42:14:12. Staff orientation. The center shall provide for orientation of all staff, and documentation of such, to occur within 90 days after the date of employment, in at least the following areas:

(1) Prevention and control of infectious diseases;

(2) Prevention of sudden infant death syndrome and use of safe sleep practices;

(3) Administration of medication;

(4) Prevention of and response to an emergency due to food and allergic reactions;

(5) Building and physical premises safety;

(6) Prevention of shaken baby syndrome and abusive head trauma;

(7) Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;

(8) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(9) Precautions in transporting a child;

(10) Recognition and reporting of child abuse and neglect;

(11) First aid; ~~and~~

(12) Cardiopulmonary resuscitation (CPR)<u>. CPR certification is required prior to a staff member being left unsupervised to care for children; and</u>

<u>(13) Child development</u>.

Documentation of the completed orientation training must be kept in the staff member's personnel file. Orientation training may count toward the required annual training for each staff person during their first year of employment.

Source: 27 SDR 63, effective December 31, 2000; 31 SDR 40, effective September 29, 2004; 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16(1)(3).

Cross Reference: Staff training, § 67:42:14:13.

CHAPTER 67:46:05

LONG-TERM CARE RESOURCE REQUIREMENTS

Section

67:46:05:08. Life estate value. A life estate is considered other real property and is considered a resource to the individual applying for or receiving long-term care services or medical assistance. The value of a life estate is calculated by using the table contained in this section. If the individual has a life estate, find the individual's age on the table and multiply the corresponding figure in the life estate column by the fair market value of the property. The result is the value of the life estate and the amount considered a resource to the individual. If the individual has a remainder interest in the estate, use the applicable figure from the remainder column to compute the value.

AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505

27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.343902
68	.63610	.363690
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739

73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

~~If the individual thinks that the life estate value determined by this table is inappropriate, another value may be established by using one of the methods specified in § 67:46:05:04~~ If the individual thinks that the value established by this table is inaccurate due to the individual's life expectancy, a written statement from a physician, physician assistant, or nurse practitioner which

establishes an alternate, estimated life expectancy may be submitted to the Department. The estimated life expectancy will be used, in conjunction with the Social Security Actuarial Life Table, to determine the comparable age for application of the life estate and remainder interest table.

Source: 8 SDR 170, effective June 21, 1982; 17 SDR 187, effective June 3, 1991; transferred from § 67:16:20:02.03, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:05:54. Treatment of annuities. ~~The department shall treat an annuity as a resource countable toward the resource limit established in § 67:46:05:30. If the fair market value of the annuity does not cause ineligibility under § 67:46:05:30, the department considers the purchase of an annuity by or on behalf of an applicant or recipient after February 7, 2006, to be a transfer of an asset for less than fair market value unless it meets the requirements of 42 U.S.C. § 1396p(c)(1)(G), as amended to August 1, 2006, and one of the following additional requirements:~~

~~(1) The department is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or~~

~~(2) The state is named as the remainder beneficiary in the second, third, or fourth position after the noninstitutionalized spouse or a minor or disabled child and the state is named in the first position if the spouse or child, or their representative, disposes of any such remainder for less than fair market value.~~

~~The department considers the purchase of an annuity by or on behalf of a community spouse after February 7, 2006, to be a transfer of an asset for less than fair market value unless it meets subdivision (1) or (2) of this section~~ Repealed.

Source: 33 SDR 44, effective August 31, 2006; 35 SDR 166, effective December 24, 2008.

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**Cross-Reference:** Requirement for state to be named as a remainder beneficiary, 42 U.S.C. § 1396p(c)(1)(F).~~

CHAPTER 67:46:07

COMMUNITY SPOUSES

Section

67:46:07:03. Determination of spousal share. ~~The spousal share of resources may not exceed the greatest of the following:~~

~~(1) Twenty-four thousand one hundred eighty dollars;~~

~~(2) One-half of the value of the total aggregate nonexempt resources of the community spouse and the institutionalized spouse up to $120,900;~~

~~(3) An amount determined in a fair hearing; or~~

~~(4) An amount determined by the circuit court under SDCL 25-7-1 to 25-7-5, inclusive.~~

~~Pursuant to subdivision (3) or (4) of this section, the hearing officer or the court may increase the spousal share of resources if it is determined to be inadequate to support the community spouse~~ Repealed.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:03, effective August 23, 1992; 30 SDR 166, effective July 1, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009; 41 SDR 7, effective July 29, 2014; 41 SDR 218, effective June 30, 2014; 41 SDR 218, effective June 30, 2015; 44 SDR 94, effective December 4, 2017.

~~**General Authority:** SDCL 28-6-1, 28-6-18.~~

~~**Law Implemented:** SDCL 28-6-1, 28-6-18.~~

~~**Cross-References:**~~

~~Community spouse resource allowance defined, 42 U.S.C. § 1396r-5(f)(2).~~

~~Fair hearings, ch 67:17:02.~~

CHAPTER 67:46:11

QUALIFIED MEDICARE BENEFICIARIES (QMB)

67:46:11:10. Resource limit. ~~The maximum resource limit for a QI, QMB or SLMB is $7,390 for a single individual and $11,090 for an individual with a spouse effective January 1, 2017. The resource limit is adjusted on January 1 of each year, based upon the change in the annual consumer price index since September of the previous year. For a married couple living together, their combined resources are considered available to each other and shared equally~~ Repealed.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:10, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 41 SDR 7, effective July 29, 2014; 41 SDR 93, effective December 3, 2014; 41 SDR 218, effective June 30, 2015; 44 SDR 94, effective December 4, 2017.

~~**General Authority:** SDCL 28-6-1(4)(6).~~

~~**Law Implemented:** SDCL 28-6-1(4)(6).~~

~~**Cross Reference:** Premium and cost-sharing subsidies for low-income individuals -- Maximum resource level annual adjustment, 42 U.S.C. § 1395w-114(a)(3).~~

CHAPTER 67:47:01

ASSISTANCE WITH CHILD CARE COSTS

67:47:01:08.01. Family pays cost when lump sum income exceeds federal poverty level. ~~If a family's nonrecurring lump-sum income exceeds 175 percent of the federal poverty level for the family's size, as established in § 67:11:01:03, the family must pay 100 percent of its child care costs for the number of full months determined by dividing the lump sum by 175 percent of the federal poverty level applicable to the family's size~~ Repealed.

Source: 22 SDR 188, effective July 8, 1996; 24 SDR 30, effective September 14, 1997; 33 SDR 152, effective April 4, 2007; 37 SDR 236, effective June 28, 2011.

~~**General Authority:** SDCL 28-1-61(2).~~

~~**Law Implemented:** SDCL 28-1-60.~~

67:47:01:09. Ineligibility when household fails to make copayments. ~~A household that fails to pay its share of child care costs is ineligible for child care services as long as it owes back costs to a provider unless the household has made arrangements with the provider to make payment and the department is satisfied with those arrangements~~ Repealed.

Source: 18 SDR 112, effective January 9, 1992.

~~**General Authority:** SDCL 28-1-61.~~

~~**Law Implemented:** SDCL 28-1-60.~~

67:47:01:09.01. Cooperation with Division of Child Support as condition of eligibility. Recipients of child care assistance must cooperate with the department in identifying and locating the absent parent or parents, obtaining support payments, establishing paternity, or obtaining any other payments or resources legally due applicants or recipients. A recipient must complete an application for enforcement services with the Division of Child Support ~~within six months after applying~~ as a condition of eligibility for child care services. Failure to comply with this requirement or failure to maintain an active enforcement case ~~will~~ may be considered an intentional program violation and may result in ineligibility for child care assistance services.

The provisions of this rule do not apply if the recipient can establish good cause for refusing to cooperate. Good cause is determined according to §§ 67:10:01:27 to 67:10:01:34, inclusive.

Source: 22 SDR 188, effective July 8, 1996; 24 SDR 30, effective September 14, 1997; 37 SDR 236, effective June 28, 2011.

General Authority: SDCL 28-1-61(1).

Law Implemented: SDCL 28-1-60.

67:47:01:10. Maximum rates payable for child care service costs. ~~Child care costs paid by the department are based on a local market rate survey. Every two years the department shall seek information concerning the type of licensure or certification held by the provider, the number of children in care, the number of children in care who have special needs, the age groups of the children in care, the average number of hours that children spend in care, the days and hours of operation, the types of care offered, the number of child care slots each provider has, and the rates charged for each age group in care.~~

~~To ensure that eligible families have equal access to child care services when compared to those child care services provided to families not eligible for child care assistance, the department shall set the rates at the seventy-fifth percentile of the rates charged by those providers responding to the survey subject to the availability of funds. The established rates are available on the department's website at: http://www.dss.sd.gov/childcare/subsidyprogram/.~~

~~If a child is not in care because the child is ill or on vacation or because the child's parent failed to report an absence, the department may reimburse the child care provider for a maximum of 36 hours a month, for the time the child is not in care. If a child is not in care because the child is attending Head Start or a preschool operated by or under contract with a school district, the department may reimburse the child care provider up to four hours a day for the time the child is not in care. In no case may the department reimburse a provider for more than 210 hours a month for each child in care~~ Repealed.

Source: 18 SDR 112, effective January 9, 1992; 19 SDR 102, effective January 18, 1993; 22 SDR 188, effective July 8, 1996; 24 SDR 30, effective September 14, 1997; 27 SDR 43,

effective October 26, 2000; 28 SDR 111, effective February 20, 2002; 33 SDR 152, effective April 4, 2007; 37 SDR 236, effective June 28, 2011.

~~**General Authority:** SDCL 28-1-61(2).~~

~~**Law Implemented:** SDCL 28-1-60.~~

~~**Cross-Reference:** Payment rates established, 45 C.F.R. § 98.43(b).~~

67:47:01:10.02. Maximum rates payable for family day care provider choosing to care for infants and toddlers and limit the number of children in care to six or less. A family day care provider who chooses to care for infants and toddlers up to age three and limit the number of children in care to six or less may receive a rate of reimbursement that is 25 percent higher than the family day care rates established under § 67:47:01:10. The maximum rate of reimbursement is available on the department's website: ~~http://www.dss.sd.gov/childcare/subsidyprogram/~~ http://dss.sd.gov/childcare/childcareassistance/eligible.aspx. The provider must inform the department so the provider's registration certificate may be adjusted to reflect the reduced number of children.

Source: 24 SDR 30, effective September 14, 1997; 27 SDR 43, effective October 26, 2000; 28 SDR 111, effective February 20, 2002; 33 SDR 152, effective April 4, 2007; 37 SDR 236, effective June 28, 2011; 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 28-1-61(2).

Law Implemented: SDCL 28-1-60.

67:47:01:11.01. Time limits for meeting provider eligibility requirements -- Beginning date of payment. Payment of benefits begins with the date the department receives the completed application if the provider is licensed or registered or in the process of being licensed or registered. The department shall discontinue payments if the required license or registration is not obtained within the 120-day limit.

A relative provider has ten days to complete, sign, and return the home health and safety checklist, the child care services authorization form, immunization verification form, and the Internal Revenue Service W-9 form required in § 67:47:01:13. Payment of benefits begins the date the department receives these correctly completed forms. The home health and safety checklist must also contain the applicant's signature. The signatures of the provider and the applicant on the home health and safety checklist are acknowledgements that the provider has fulfilled the requirements of the health and safety checklist. The completed forms must be postmarked within ten days from the date the department mailed the forms to the provider. ~~The provider has 30 days to send to the department a verification that the children in care meet the Department of Health's immunization standards. The verification must be postmarked within 30 days from the date the department mailed the forms to the provider. Payment to a relative provider may begin as early as the first day of the 30-day period if the completed and signed forms are returned within the specified time limits.~~

An in-home or informal provider must comply with the requirements of § 67:47:01:13.01 ~~in order to receive payment~~. Payment for services begins the date the department receives the completed intent to provide services form, results of the state criminal fingerprint check, and verified completion of CPR training.

Source: 22 SDR 188, effective July 8, 1996; 24 SDR 30, effective September 14, 1997; 27 SDR 43, effective October 26, 2000; 33 SDR 152, effective April 4, 2007; 37 SDR 236, effective June 28, 2011; 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 28-1-61(1),(4).

Law Implemented: SDCL 28-1-60.

67:47:01:13.01. Requirements for in-home or informal provider. An in-home or informal provider shall:

(1) Be at least 18 years old;

(2) Submit to a background check and comply with the requirements of 67:42:16:04 for any individual who cares for or supervises a child, or has unsupervised access to a child;

(3) Have documented orientation training within 90 days after the receipt of the application in at least:

(a) Prevention and control of infectious diseases;

(b) Prevention of sudden infant death syndrome and use of safe sleep practices;

(c) Administration of medication;

(d) Prevention of and response to an emergency due to food or allergic reaction;

(e) Building and physical premises safety;

(f) Prevention of shaken baby syndrome and abusive head trauma;

(g) Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;

(h) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(i) Precautions in transporting a child;

(j) Recognition and reporting of child abuse and neglect;

(k) First aid; ~~and~~

(l) Cardiopulmonary resuscitation (CPR). CPR training shall include hands-on skill testing as part of the training. CPR certification is required prior to a staff member being left unsupervised to care for children. CPR certification shall remain valid at all times; and

(m) Child development.

(4) Submit to an annual inspection and meet health and safety standards included in the topics listed in subdivision (3) of this section; and

(5) Complete a minimum of three hours per year of on-going training and provide verification of completion. Training may include any of the orientation training categories and may include requirements relating to: nutrition; access to physical activity; caring for a child with special needs; any other subject area determined to be necessary to promote child development or to protect a child's health and safety.

Source: 43 SDR 31, effective September 12, 2016; 44 SDR 42, effective September 11, 2017.

General Authority: SDCL 28-1-61(1)(11).

Law Implemented: SDCL 28-1-60, 28-1-61(1)(11).

67:47:01:19. Redetermination of eligibility and copayment. The department shall determine a recipient's eligibility for child care assistance and the amount of the recipient's copayment once every twelve months. If during the twelve-month period one of the following situations occurs, the department shall reevaluate program eligibility:

(1) The ~~recipient failed to make the required copayment~~ recipient's child(ren) has excessive unexplained absences from the child care program in excess of 10 consecutive days;

(2) The recipient ~~failed to pay back an over-issuance~~ has moved out of the state of South Dakota;

(3) ~~The recipient failed to cooperate with the Division of Child Support~~ There has been a substantiated fraud or intentional program violation that invalidates the recipient's prior eligibility determination; or

(4) The ~~recipient failed to report or reported incorrect information relating to a change in the recipient's circumstances;~~ recipient's household income has increased and now exceeds 85 percent of the state median income.

~~(5) The recipient's provider failed to submit to the department required documentation;~~

~~(6) The recipient's provider failed to obtain a license or registration certificate or failed to initiate an application for licensure or registration;~~

~~(7) The recipient is receiving assistance from another program;~~

~~(8) The department has information which verifies that the assistance paid exceeded the amount of benefits payable;~~

~~(9) The TANF recipient receiving child care assistance becomes ineligible for TANF.~~

A household that reapplies for child care assistance within 30 days immediately following a month of eligibility and whose income now exceeds 175 percent of the federal poverty level may receive up to an additional ~~two~~ twelve months of child care assistance.

Source: 18 SDR 112, effective January 9, 1992; 19 SDR 102, effective January 18, 1993; 27 SDR 43, effective October 26, 2000; 28 SDR 111, effective February 20, 2002; 37 SDR 236, effective June 28, 2011; 43 SDR 31, effective September 12, 2016.

General Authority: SDCL 28-1-61(1)(2)(11).

Law Implemented: SDCL 28-1-60.

Cross-References:

~~Application for child care services, § 67:47:01:02.~~

~~Ineligibility when household fails to make copayments, § 67:47:01:09.~~

~~Cooperation with Division of Child Support as condition of eligibility, § 67:47:01:09.01.~~

~~Provider eligibility, § 67:47:01:11.~~

~~Time limits for meeting provider eligibility requirements -- Beginning date of payment, § 67:47:01:11.01.~~

~~Requirements for relative provider, § 67:47:01:13.~~

~~Requirements for in-home or informal provider, § 67:47:01:13.01.~~

Recovery of overpayments, § 67:47:01:22.

~~Department may withhold payments, § 67:47:01:24.~~

Department to investigate report -- Notice of action -- Review -- Final determination, § 67:47:01:25.

67:54:04:06. Preplacement assessment. Before HCBS is approved for an individual, the proposed HCBS provider shall complete an ICAP. The ICAP shall indicate a substantial functional limitation in at least three of the seven areas listed in § 67:54:03:04. The proposed HCBS provider shall submit the ICAP to the Division of Developmental Disabilities, Department of Human Services, using the ICAP Compuscore software. The division shall receive this data ~~annually by~~ upon the initiation of HCBS, as changes to the data occur, and every three years on January 15th. For an individual's record to be valid, the evaluation date may not be more than ~~13~~ 36 months old. The Compuscore software generates standardized domain scores for each of its adaptive behavior sections: motor skills, social and communication skills, personal living skills, and community living skills.

No deficit exists if the following criteria are met:

(1) Self care: The personal living skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals over four years of age, the individual has no arm/hand limitations in daily activities (ICAP item C8=1);

(2) Language: The social and communication skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals over four years of age, the individual speaks (ICAP item A7=3);

(3) Learning/cognition: The individual does not have an intellectual disability (ICAP item C1=1);

(4) Mobility: The individual walks (ICAP item C9=1) and, for individuals over four years of age, no mobility assistance is needed (ICAP item C10=1);

(5) Self-direction: The general maladaptive index is in the normal range (ICAP, GMI> -11), the individual's community living skills domain score exceeds the age-related criterion in

Appendix A at the end of chapter 67:54:03, and there is no psychiatric diagnosis (neither ICAP items B11 nor B12 checked);

(6) Independent living: The individual's community living skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals 18 years of age and older, the recommended residential placement is "independent in own home or rental unit" (ICAP, page 10, F2="3"); and

(7) Economic self-sufficiency: The individual's recommended daytime program (ICAP item G2) is "competitive employment."

A substantial deficit is present if the preceding criteria are not met.

Source: 10 SDR 79, effective February 1, 1984; 15 SDR 154, effective April 9, 1989; transferred from § 67:16:27:06, effective August 23, 1992; 21 SDR 34, effective August 29, 1994; 22 SDR 188, effective July 8, 1996; 26 SDR 150, effective May 21, 2000; SL 2013, ch 128, § 4, effective July 1, 2013; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1(1)(4)(6).

Law Implemented: SDCL 28-6-1(1)(4)(6).

Reference: Inventory for Client and Agency Planning (ICAP), 1986, published by Riverside Publishing Company, 425 Spring Lake, Itasca, Illinois 60134-2079; 25 response booklets $45.

67:54:04:18.01. Redetermination of level of care. The level of care shall be reviewed and completed annually for each participant receiving waiver services. The ~~CSP~~ HCBS provider shall update the ICAP data ~~annually~~ as changes occur and every three years and submit it to the division. The QDDP, as defined in SDCL subdivision 27B-1-17(14), shall review the ICAP data annually to ensure continued eligibility that indicates at least three substantial functional limitations. The QDDP shall forward a copy of the completed Level of Care Determination form to the CSP and the Department of Social Services upon completion of the review.

Source: SL 2013, ch 128, § 15, effective July 1, 2013; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1(1)(4)(6).

Law Implemented: SDCL 28-6-1(1)(4)(6).

67:54:09:12. Eligibility for family support services. The department shall apply the provisions of chapters 67:16:01, 67:46:01 through 67:46:05, inclusive, 67:46:07, and 67:46:08 when determining eligibility for services provided under this chapter. The individual shall be receiving SSI or be aged, blind, or disabled and have income less than 300 percent of the SSI standard benefit amount. In addition, the following requirements shall also be met:

(1) The division has determined that the individual meets developmental disability criteria pursuant to § 67:54:03:03 or, if the individual is age birth through two years of age, the division has documentation from the Department of Education that indicates the child has been identified as needing prolonged assistance as defined in § 24:05:24.01:15;

(2) For individuals age four and above, the division has determined that the individual has substantial deficits as exhibited by completion of an Inventory for Client and Agency Planning (ICAP) pursuant to § ~~67:54:04:06~~ 67:54:03:04;

(3) The division has determined that the individual is in need of and eligible for placement in an intermediate care facility for individuals with intellectual disabilities based on the division's finding that the individual has a substantial functional limitation in three or more of the functional areas listed in § ~~67:54:04:06~~ 67:54:03:04; and

(4) The division has an ISP for the individual that has been prepared under the provisions of § 67:54:09:15.

Source: 34 SDR 271, effective May 7, 2008; SL 2013, ch 128, § 32, effective July 1, 2013; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 28-6-1(1)(2).

Law Implemented: SDCL 28-6-1(1)(2).

~~**Cross-Reference:** SSI standard benefit amount, subdivision 67:46:04:13(2).~~