

46:30:09:03. Eligibility criteria. To be eligible for services through the TED program, the applicant must:

- (1) Be a resident of South Dakota;
- (2) Be deaf, deaf/blind, hard of hearing, or have a speech impairment;
- (3) Have a household income at or below ~~300%~~ 400% of the federal poverty level, if applicable;
- (4) Have a demonstrated need for specialized telecommunications equipment;
- (5) Have access to telecommunication services; and
- (6) Have not received a telecommunication device or services from this program within three years prior to the date of application unless independent living status has changed or the severity of the disability has made previous equipment or services inadequate to meet the applicants telecommunication needs.

Source: 41 SDR 53, effective October 8, 2014.

General Authority: SDCL 28-9-44, 49-31-56.1.

Law Implemented: SDCL 28-9-44, 49-31-47.

46:30:10:03. Eligibility criteria. To be eligible for services through the TAD program, the applicant must:

- (1) Be a resident of South Dakota;
- (2) Have a disability that other than deafness, deaf/blind, hard of hearing, or speech impairment;
- (3) Have a household income at or below ~~300%~~ 400% of the federal poverty level, if applicable;
- (4) Have a demonstrated need for specialized telecommunication equipment;
- (5) Have access to telecommunication services; and
- (6) Have not received a telecommunication device or services from this program within three years prior to the date of application unless independent living status has changed or the severity of the disability has made previous equipment or services inadequate to meet the applicant's telecommunication needs.

Source: 41 SDR 53, effective October 8, 2014.

General Authority: SDCL 28-9-44, 49-31-56.1.

Law Implemented: SDCL 28-9-44, 49-31-47.

46:30:12:01. Purpose. The purpose of the communication assistance services program is to provide communication support services to eligible individuals who are deaf, ~~and~~ hard of hearing, or speech impaired to achieve increased integration into the community and workplace.

Source: 41 SDR 53, effective October 8, 2014.

General Authority: SDCL 28-9-44, 49-31-56.1.

Law Implemented: SDCL 28-9-44, 49-31-47.

46:30:12:03. Eligibility criteria. To be eligible for services through the communication assistance service program, the applicant must:

- (1) Be a resident of South Dakota;
- (2) Be deaf, ~~or~~ hard of hearing, or speech impaired;
- (3) Have barriers that inhibit community and employment inclusion; and
- (4) Have a demonstrated need for communication assistance services.

Source: 41 SDR 53, effective October 8, 2014.

General Authority: SDCL 28-9-44, 49-31-56.1.

Law Implemented: SDCL 28-9-44, 49-31-47.

46:31:01:05. Denial, suspension, or revocation of certificate. The department may suspend, deny, or revoke a registration or a certificate for any of the following causes:

- (1) The interpreter is convicted of a felony which makes the interpreter unfit to serve the public as an interpreter;
- (2) The interpreter impersonates another person holding registration or interpreter certification with the department;
- (3) The interpreter allows another person to use the interpreter's registration or certificate;
- (4) The interpreter uses fraud, deception, or misrepresentation in the registration or certification process;
- (5) The interpreter is adjudicated mentally incompetent by a court of competent jurisdiction;
- (6) The interpreter ~~may not harass~~ harasses, ~~abuse~~ abuses, or ~~threaten~~ threatens anyone while ~~acting in the capacity as an~~ providing interpreter services;
- (7) The interpreter intentionally divulges confidential information relating to the certification process, including content, topic, vocabulary, skills, or any other testing materials;
- (8) The interpreter does not keep all information in any interpreting situation in strictest confidence;
- (9) The interpreter knowingly does not transmit all messages accurately and convey the content and mood of the speaker;
- (10) The interpreter does not provide interpreting services that are competent, impartial, and professional;

(11) The interpreter counsels, advises, or interjects personal opinions in any interpreting situation; or

(12) The interpreter does not provide to the consumer information on consumer's rights and the role and appropriate use of interpreting services when requested;

(13) The interpreter was the subject of substantiated complaints prior to achieving South Dakota interpreter certification, or has lost or been denied certification or registration in another jurisdiction;

~~(13)~~ (14) The interpreter fails to meet the minimum requirements for certification or recertification as provided in this chapter; or

~~(14)~~ (15) The interpreter fails to adhere to the Code of Professional Conduct, effective July 1, 2005, as adopted by the National Association of the Deaf and the Registry of Interpreters for the Deaf.

Source: 14 SDR 54, effective October 15, 1987; transferred from § 71:04:01:05, SL 1989, ch 21, § 5, effective July 1, 1989; provision on denial of level of certification transferred to § 46:31:01:03.01, 19 SDR 68, effective November 8, 1992; 23 SDR 16, effective August 8, 1996; 24 SDR 190, effective July 16, 1998; 28 SDR 84, effective December 20, 2001; 33 SDR 107, effective December 26, 2006; 37 SDR 111, effective December 7, 2010.

General Authority: SDCL 1-36A-12.

Law Implemented: SDCL 1-36A-12.

Cross-Reference: License proceeding treated as contested case, SDCL 1-26-27.

Reference: **NAD-RID Code of Professional Conduct.** A copy may be obtained free of charge on-line from the following website: <http://www.rid.org/ethics/code/index.cfm>

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,~~ the location services are provided in the private home of a participant, or a family, in which care is provided to a participant; ~~and~~
- (8) ~~"Shared Living Provider", a person who provides the shared living service to a participant who may or may not be a family member;~~
- (8) (9) ~~"Respite care," "Relief care" shared living services provided for a period of time, not to exceed 30 calendar days for a participant in a calendar year by a person other than the assigned shared living provider, for an intermittent period of time, because of the absence of, or need for relief of, the independent contractor~~ Shared Living Provider.

Source: 44 SDR 93, effective December 4, 2017.

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 relief services to a participant, a ~~contractor~~ shared living provider shall meet the requirements of this chapter for the issuance of a letter of compliance.

(1) A letter of compliance, issued to a ~~contractor~~ shared living provider 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~~ shared living provider 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.

(5) Each provider must annually report to the division the number and names of people in the home, including shared living participants.

Source: 44 SDR 93, effective December 4, 2017.

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

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

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

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; and

(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~~

No exception will be granted for any variance from the requirements in §§ 46:04:01:02 and 46:04:01:03.

~~(8)~~ In the event the participant requires ~~respite~~ relief care or emergency placement, the ~~contractor~~ shared living provider may implement an exception immediately. The ~~contractor~~ shared living provider shall ~~request the exception from~~ notify the provider of the exception within 24 hours of the participant moving into the home. ~~The w~~Written ~~request~~ notice to the division shall be made within one business day.

Source: 44 SDR 93, effective December 4, 2017.

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

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

46:04:01:06. Critical incident reports. The ~~contractor~~ shared living provider and the provider are required to report pursuant to § 46:11:03:02.

Source: 44 SDR 93, effective December 4, 2017.

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

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

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

(1) ~~Training of independent contractor~~ Ensure that each shared living provider has appropriate training, including the content of health and safety needs, relevant to each participant; and

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

Source: 44 SDR 93, effective December 4, 2017.

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

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

46:04:01:09. ~~Contractor~~ Shared living provider services. The ~~contractor~~ shared living provider 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~~ shared living provider shall provide age appropriate services to ~~the~~ each participant as specified in the participant's ISP.

Source: 44 SDR 93, effective December 4, 2017.

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.~~

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~~—— **Source:** 44 SDR 93, effective December 4, 2017.~~

~~—— **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~~ shared living provider shall provide recreational and social activities outside of the home.

Source: 44 SDR 93, effective December 4, 2017.

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 provider'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: 44 SDR 93, effective December 4, 2017.

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

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

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

46:04:01:15. Training required for ~~contractors~~ shared living providers. ~~Contractors~~ Shared living providers shall meet the following training requirements:

(1) Before a participant resides in a shared living home, the ~~contractor~~ shared living provider 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~~ shared living provider shall be trained in the following:

(a) ~~Contractor's~~ Shared living provider's role in promoting positive outcomes for participants; and

(b) ~~Participant's~~ Participants' rights in accordance with § 46:11:03;

(3) Within six months of the participant's residence in a shared living home, the ~~contractor~~ shared living provider 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: 44 SDR 93, effective December 4, 2017.

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~~ respite relief care providers and anyone over the age of 18 living in the home. Prior to delivering shared living services, ~~respite~~ respite relief care providers shall receive training in disability awareness, the participant's ISP, and identifying and reporting abuse, neglect, and exploitation. Anyone over the age of 18 living in the home shall receive training in disability awareness, the participant's ISP, and identifying and reporting abuse, neglect, and exploitation, within 30 days of the participant moving into the home. Anyone living in the home who turns 18 and anyone over the age of 18 who moves into the home after the participant moves into the home shall receive the same training within ~~44~~ 30 days.

Source: 44 SDR 93, effective December 4, 2017; 46 SDR 66, effective November 27, 2019.

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

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

46:04:01:21. Participant training for emergencies. ~~Contractor~~ A shared living provider 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: 44 SDR 93, effective December 4, 2017.

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

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

46:04:01:24. Medication training. A ~~contractor~~ shared living provider, ~~or~~ and 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: 44 SDR 93, effective December 4, 2017.

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

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

46:04:01:27. Representative payee. A ~~contractor~~ shared living provider may not be the representative payee for the participant.

Source: 46 SDR 66, effective November 27, 2019.

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

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

46:11:01:01. Definitions. Terms used in this article mean:

- (1) "Advocate," any individual designated by a participant to support that participant by speaking or acting on the participant's behalf;
- (2) "Certification," the department decision following procedures in chapter 46:11:02 which entitles an organization to receive government funds and provide services to participants;
- (3) "Chemical intervention," any medication used for the purpose of managing a participant's maladaptive behavior;
- ~~(4)~~ "Community services provider" or "SP," a for-profit or a not-for-profit provider of services, as defined in SDCL subdivision 27B-1-17(4);
- ~~(4)~~ (5) "Community support provider" or "CSP," a nonprofit provider of services as defined in SDCL subdivision 27B-1-17(4);
- ~~(5)~~ (6) "Conservator," as defined in SDCL subdivision 29A-5-102(2);
- ~~(6)~~ (7) "Department," the Department of Human Services;
- ~~(7)~~ (8) "Developmental disability," a disability as defined by SDCL 27B-1-18;
- ~~(8)~~ (9) "Direct home and community-based services" or "direct HCB services;" any waiver service provided by a CSP, SP, or a qualified provider in the community, except for case management.
- ~~(9)~~ (10) "Division," the Division of Developmental Disabilities, a division of the Department of Human Services;
- ~~(10)~~ (11) "Family," a person or a group of people who are related to the participant by blood, marriage, or adoption, or as defined by the participant as a family based upon bonds of affection. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

~~(10)~~ (12) "Group home," a congregate residential setting or home facility, ~~other than a supervised apartment~~, for individuals with developmental disabilities;

~~(11)~~ (13) "Guardian," as defined in SDCL subdivision 29A-5-102(4);

~~(12)~~ (14) "Individualized service plan" or "ISP," a single plan for the provision of services and supports to the participant that is person centered, directed by the participant, oriented around personal outcomes measures, and is intended to specify all needed assessments, supports, and training;

(15) "Intellectual Disability," as defined by SDCL 27B-1-18.1;

~~(13)~~ (16) "ISP team," a team composed of the service coordinator, the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, the case manager, the direct HCB services provider, and anyone else the participant desires;

~~(14)~~ "Mechanical intervention," ~~any device used for the purpose of restricting movement by the participant~~;

~~(15)~~ (17) "National quality assurance organization," a national accrediting organization approved by the division;

~~(16)~~ (18) "Organization," an administrative and functional structure such as a business;

~~(17)~~ (19) "Organized health care delivery system" or "OHCDS," a certified provider designated by the department that provides at least one waiver service directly to participants using the provider's employees;

~~(18)~~ (20) "Participant," a person receiving services or supports under the provisions of this article;

~~(19)~~ (21) "Physical ~~intervention~~ Restraints," ~~the methods that are intended to restrict the movement of a participant; any manual hold or mechanical device that the participant cannot remove easily,~~ and which restricts the free movement of, normal functioning of, or normal access to a portion or portions of a participant's body

~~(20)~~ (22) "Plan of correction," a plan to correct a deficiency identified as a result of an investigation of an incident or event by the division that has placed or has the immediate potential to place a participant or the participant's health and safety in jeopardy;

~~(21)~~ (23) "Plan of enhancement," a plan to improve a deficiency identified by the division as a result of the division's review of a provider's compliance with this article;

~~(22)~~ (24) "Problem behavior," requires the attention of others in the person's environment because the behavior must be stopped or minimized;

(25) "Provider," a CSP or a SP;

~~(23)~~ (26) "Termination," the imminent cessation of provider services to a participant because of the inability of the provider to address the participant's needs;

~~(24)~~ "Community services provider" or "SP," a for profit or a not for profit provider of services, as defined in SDCL subdivision 27B-1-17(4);

~~(25)~~ "Provider," a CSP or a SP;

~~(26)~~ "Direct home and community-based services" or "direct HCB services," any waiver service provided by a CSP, SP, or a qualified provider in the community, except for case management.

Source: 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26.

46:11:02:05.01. Enrollment requirements for providers. Any organization seeking certification as a provider by the department must provide the following to the division:

- (1) A written statement requesting certification by the department;
- (2) A copy of a certificate from the South Dakota secretary of state that demonstrates that the for-profit or not-for-profit entity is organized or recognized under the laws of the state of South Dakota;
- (3) A copy of the organization's bylaws or other legal documents approved by its board of directors;
- (4) A copy of the organization's policies that meet the requirements of this article;
- (5) A certificate of good standing or equivalent document from the South Dakota secretary of state dated within one month of the statement required in subdivision 46:11:02:05:01(1);
- (6) A copy of the organization's insurance policy as required in § 46:11:04:07; and
- (7) ~~A copy of the organization's medication administration curriculum~~ A copy of the organization's medication administration curriculum, unless the organization will only provide case management services.

The organization may receive provisional certification pursuant to § 46:11:02:06 upon the department's approval.

Source: 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

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

Law Implemented: SDCL 27B-2-26.

46:11:02:06. Provisional certification. To obtain provisional certification an organization shall meet the requirements in § ~~46:11:02:05~~ or 46:11:02:05.01. The provisional certification is effective for no more than two years. The organization shall:

- (1) Have a signed provider agreement with the department and a signed provider agreement with the Department of Social Services;
- (2) Provide at least one service listed in § 67:54:04:14 to participants; and
- (3) Be reviewed pursuant to § 46:11:02:09 and be accredited by a national quality assurance organization, designated by the division, prior to the expiration of the provisional certification.

If the requirements for a two-year certification are not achieved, the division may extend the organization's provisional status by three months and conduct a second review. If the division determines the organization will not meet provisional certification requirements, the division shall obtain services for participants within three months of that determination.

If the organization completes the provisional certification requirements in this section, the organization shall be certified as a provider pursuant to § 46:11:02:07.

Source: 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

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

Law Implemented: SDCL 27B-2-26.

Cross-Reference: Covered services, § 67:54:04:14.

46:11:02:07. Certification requirements. When a provider meets the requirements pursuant to ~~chapters 46:11:01 to 46:11:08, inclusive~~ of this article, the division shall issue a certificate.

Source: 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26.

46:11:02:09. Biennial review for compliance with rules. The division shall conduct a biennial review of services and operations of providers, and their subcontractors, if any, that includes the following:

(1) A review of compliance with the requirements ~~in chapter 46:11:01 to 46:11:09, inclusive of this article;~~ for providers, and the following:

(a) Fiscal review by the department's Division of Budget and Finance; and

(b) A review of services provided to a representative sample of participants;

(2) ~~A review of compliance with the requirements in chapters 46:11:10 and 46:11:11 for providers, if applicable.~~

Source: 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

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

Law Implemented: SDCL 27B-2-26.

46:11:02:10. Statement of any deficiency and plan of enhancement. The division shall provide a statement of deficiencies to the provider when the division determines ~~that~~ the provider ~~is in less than full~~ is not in compliance with a given requirement.

Within 15 calendar days after the receipt of the statement of deficiencies, the provider shall submit a plan of enhancement for each deficiency including those identified in the fiscal review which specifies the measures to be taken and the date of completion for each deficiency. If the plan of enhancement is not received by the division within 15 calendar days, the division shall notify the provider in writing that the provider's certification will be revoked in 15 calendar days unless the plan is received by the division.

Within 15 calendar days after the receipt of the plan of enhancement, the division shall notify the provider in writing of its decision regarding the approval of the plan of enhancement and the certification of the provider.

Source: 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

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

Law Implemented: SDCL 27B-2-26.

46:11:03:00. Participant's rights. A participant has rights guaranteed under the constitution and laws of the United States and the state including:

- (1) To be free from abuse, neglect, and exploitation;
- (2) To have privacy, dignity, confidentiality, and humane care;
- (3) To be able to communicate in private;
- (4) To be able to communicate in the participant's primary language or primary mode of communication;
- (5) To be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies, or exercising a legal right;
- (6) To be able to maintain contact with family and friends, unless contact has been legally restricted;
- (7) To be able to refuse or discontinue services;
- (8) To have access to, read, and challenge any information contained in the participant's record;
- (9) To have access to an advocate as defined in subdivision 46:11:01:02(1) or an employee of the state's designated protection and advocacy system;
- (10) To be provided choice among waiver services and providers;
- (11) To be informed of the provider's grievance procedures pursuant to § 46:11:03:06; and
- (12) To have a written residential lease agreement that meets the requirements of applicable state law, ~~contained in SDCL chapter 43-22.~~

Written notice of the participant's rights shall be provided to the participant in an accessible format. If the participant is a minor under SDCL subdivision 29A-5-102(8) or a protected person under SDCL subdivision 29A-5-102(4) the notice shall also be provided to the participant's parent

or guardian, respectively. The notice may be provided to the participant's advocate upon the request of the participant and parent or guardian, if applicable.

The notice and training on the participant's rights shall be provided upon admittance to the provider and annually thereafter.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

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

46:11:04:04. Retention of records. A provider must maintain records for six years or supervise the maintenance of records including:

(1) Any applications for a person that was accepted and is receiving services including any supporting documents;

(2) Any documents that determine eligibility;

(3) Any documents pertaining to the provision of services;

(4) Any documents on administrative costs; and

(5) Any fiscal documentation or other records, and information necessary for reporting and accountability as required by the division.

(6) If a participant changes direct HCB service providers, their records will be transferred to the new provider of HCB services.

~~A provider shall maintain medical and financial records for at least six years after the last claim is paid or denied pursuant to § 67:16:34:05.~~ A provider shall maintain all records relating to provision of service to a participant for six years. Each provider must have a written procedure for destruction of records.

Source: 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26.

Cross-Reference: Record retention, § 67:16:34:05.

46:11:05:02. Assessments. Within 30 calendar days after initiation of services and at least annually thereafter, the participant and the case manager shall review ~~existing~~ assessment information and identify when an updated assessment is necessary.

(1) The initial and annual ISP team shall document the results of the assessment review;

(2) If assessment updates cannot be completed prior to the initial or annual ISP meeting then the reason why and scheduled date of the assessment shall be documented in the ISP; and

(3) The case manager will assign, review, and approve the following assessments, unless there is documented evidence that the assessment is unnecessary:

(a) A physical examination performed by a licensed physician or a specially trained physician's assistant or nurse practitioner who is supervised by a licensed physician;

(b) An analysis of medication including psychotropic medications and any interactions, as documented by the ~~human rights committee~~ behavior support committee and behavior intervention committee;

(c) A dental examination that includes assessment of oral hygiene practices;

(d) A social evaluation that includes a social and developmental history, delineation of the type and frequency of social interactions, and descriptions of the participant's social support network;

(e) A personal outcome assessment to identify and prioritize each participant's preferences;

(f) A psychological evaluation by a qualified examiner that includes an assessment of the participant's emotional and intellectual status;

(g) An assessment of adaptive behavior or independent living skills that includes functional assessment of skills in the areas of mobility and personal health care;

- (h) A developmental, educational, or vocational evaluation;
- (i) A medication and immunization history documented through interviews and a review of records from previous placements;
- (j) Nutritional, vision, auditory, speech, and language screenings;
- (k) Physical and occupational therapy evaluations;
- (l) An assistive technology assessment; and
- (m) A safety assessment that addresses the participant's safety risks in the areas of environment, health, and personal vulnerability.

Source: 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26.

46:11:05:05. Case manager. Each participant must have a designated conflict-free case manager. ~~Providers shall provide support to each participant who desires to be the case manager for the participant's own ISP.~~

Source: 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26.

46:11:05:05.01. Case manager responsibilities -- Quarterly ISP assessment. The case manager shall coordinate the ISP initially and annually. The case manager shall be responsible to complete a quarterly review of the ISP. The quarterly ISP review shall include information in the following areas:

- (1) Monitoring and coordination of implementation of the ISP;
 - (2) Observation and documentation of the services as described in § 46:11:08:01 and any necessary intervention to ensure the appropriate delivery of ISP services and necessary revisions of the ISP;
 - (3) Review of all instances of abuse, neglect, or exploitation;
 - (4) Review of the participant's health and safety;
 - (5) Monitoring of the participant's progress toward goals or changes to the participant's health, safety, restrictive procedures, or behavior support plans;
 - (6) Review of all pertinent information;
 - (7) Documentation of the participant's involvement in the ISP quarterly monitoring process;
- and
- (8) Documentation of the date completed and by whom;

The case manager shall provide the written quarterly review within 15 calendar days of the review ~~end of the quarter~~ to the ISP team and document the outcome of the review and any recommendations regarding the status of the ISP.

~~During the period of transition into conflict-free case management, if the participant's service coordinator provides a service directly to the participant, another service coordinator shall complete a quarterly assessment regarding that service.~~

Source: 40 SDR 201, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26.

46:11:05:05.02. Behavior support plan policy. Each provider of direct HCB services shall have a policy approved by the division that addresses behavior support plans. This policy shall include the following requirements:

(1) Compliance with the requirements in SDCL 27B-8-51, 27B-8-52, 27B-8-53, 27B-8-54, and 27B-8-55, including, but not limited to completing a functional behavioral analysis, shall be met prior to implementing the behavior support plan;

(2) Implementation and documentation of positive behavioral approaches prior to approving and implementing more restrictive procedures;

(3) Implementation of behavioral supports by staff with prior training and demonstrated competency;

(4) A participant only receives the amount of behavior and chemical intervention necessary to prevent harm to the participant or others;

(5) The behavior support plan documents that the severity of the behavior justifies incorporating highly restrictive procedures;

(6) The technical aspects of highly restrictive procedures are reviewed prior to implementation;

(7) Highly restrictive procedures are regularly reviewed for any adverse effects;

(8) Participants may not be subjected to highly restrictive procedures or punishment for the convenience of staff or in lieu of a behavior support plan;

(9) Due process, which includes review by the human rights committee, the behavior support committee, appeal through the provider of direct HCB services grievance process, and consent of the participant or the participant's legally authorized representative, prior to implementation; and

(10) The ISP team's consensus that the benefit of any highly restrictive procedures outweigh any harmful side effects shall be documented in the participant's ISP.

Source: 40 SDR 201, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

Law Implemented: SDCL 27B-2-26(3)(4), 27B-8-51, 27B-8-52, 27B-8-53, 27B-8-54, 27B-8-55.

Cross-References:

Use of aversive intervention techniques prohibited, SDCL 27B-8-51.

Restriction or suspension of rights only after due process, SDCL 27B-8-52.

Use of restraints, SDCL 27B-8-53.

Behavior intervention programs -- Prerequisites to implementation, SDCL 27B-8-54.

Highly restrictive procedures -- Limitations on use, SDCL ~~27B-8-5.5~~ 27B-8-55.

~~**46:11:06:03. Minimum separation between buildings.** The minimum separation allowed between all buildings exclusively serving participants is 300 feet. This section applies only to structures the certified provider of direct HCB services began construction on or was purchased after June 14, 1984. The provider of direct HCB services shall obtain prior approval from the division before leasing or purchasing a building that does not meet the requirement of this section.~~

~~—— **Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.~~

~~—— **General Authority:** SDCL 27B-2-26.~~

~~—— **Law Implemented:** SDCL 27B-2-26.~~

46:11:07:16. Preventive health care -- Early detection. The provider of direct HCB services shall offer education to a participant and assist the participant in obtaining preventive health care evaluations consistent with the American Cancer Society Guidelines for Early Detection of Cancer. The provider of direct HCB services will assist a participant in implementing any recommendations based on the preventive health care evaluations.

The provider of direct HCB services must ~~provide the participant~~ or assist the participant in obtaining any immunization as recommended by the most current available Immunization Schedule from the Centers for Disease Control and Prevention, unless the participant or their guardian declines a particular immunization. The provider of direct HCB services shall keep a record of the participant's immunization status.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

General Authority: SDCL 27B-2-26(3), 36-9-28(10).

Law Implemented: SDCL 27B-2-26(3), 36-9-28(10).

References: **American Cancer Society Guidelines for Early Detection of Cancer.** A copy may be obtained free of charge on-line at www.cancer.org then search for early detection of cancer.

Immunization Schedule, current version available on-line at www.cdc.gov/vaccines.

46:11:08:01. Description of services. CHOICES waiver services shall be tailored to the preferences and priorities of each participant. Each participant must receive at least one of the following waiver services each month:

- (1) Case management to include:
 - (a) Developing the individualized support plan (ISP) utilizing the state's standardized ISP;
 - (b) Promoting and documenting participant involvement in the ISP monitoring process;
 - (c) Documenting the team meeting and making sure scheduling facilitates participation of all members;
 - (d) Observing, monitoring, and documenting the implementation of the ISP at least quarterly;
 - (e) Meeting minimally, for one face-to-face visit per quarter with each participant;
 - (f) Ensuring implementation and revisions of the ISP;
 - (g) Reviewing critical incident reports;
 - (h) Reviewing instances of abuse/neglect/exploitation (ANE), participant health and safety or other pertinent information;
 - (i) Submitting monthly quality reports summarizing case management activities;
 - (j) Assisting participants in finding paid and unpaid natural supports;
 - (k) Arranging, reviewing, and approving assessments;
 - (l) Administering the inventory for client and agency planning (ICAP);
 - (m) Conducting person centered planning;
 - (n) Assisting participants in selecting services and supports;
 - (o) Assisting participants to identify individual budgets;

(p) Assessing individual eligibility status and referring individuals to necessary eligibility resources;

(q) Assisting individuals to access integrated community employment;

(r) Ensuring human rights committee (HRC)/behavior ~~intervention~~ support committee (~~BIC~~) (BSC) has afforded due process; and

(s) Developing emergency backup plans in the event the case manager is out of the office or is unavailable when the participant or their family is in need of case management services; or

(2) Day services to include:

(a) Services to assist the participant to gain opportunities for meaningful life experiences, in coordination with the participant's personal goals and supports, and agreed upon by the ISP team;

(b) Services not limited to fixed site facilities; and

(c) Services that pay no wages for participation in activities; or

(3) Career exploration to include:

(a) Services that are designed to assist participants in identifying and developing skills that prepare them for integrated competitive jobs and compensation at or above minimum wage, but not less than customary wage and level of benefits paid by the employer for similar work performed by employees without disabilities;

(b) Services that are time limited; and

(c) Services intended to result in paid employment and work experience to further career development and individual integrated community-based employment; or

(4) Residential habilitation to include:

(a) Services provided to a participant living in their own home, including those living with other family members; and

(b) Assistance with acquisition, retention, or improvement in:

(i) Activities of daily living;

(ii) Food preparation;

(iii) Money management;

(iv) Safety skills; and

(v) Social and adaptive skills necessary to enable the participant to reside in a non-institutional setting; or

(5) Supported employment to include services that are intensive with ongoing supports which enable the participant for whom competitive employment, at or above the minimum wage, is unlikely absent the provision of supports and who, because of their disabilities, need supports to perform in a regular work setting; or

(6) Medical equipment and drugs may include devices, controls, or appliances, specified in the ISP which enable a participant to increase the participant's ability to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live; or

(7) Nursing services limited to those nursing services which are not available under the Medicaid state plan and are limited to:

(a) Screenings and assessments;

(b) Nursing diagnosis treatment;

(c) Staff training;

(d) Monitoring of medical care and related services;

(e) Policy and procedure development; and

(f) Review and response to medical emergencies, tuberculin tests, and phlebotomy for hepatitis screening; or

(8) Other medically related services to include:

(a) Speech, hearing, and language services;

(b) Direct therapies, treatment, and services limited to those not available under the Medicaid state plan and provided by:

(i) Physicians;

(ii) Psychiatrists;

(iii) Physician assistants;

(iv) Speech, physical, or occupational therapists;

(v) Pharmacists;

(vi) Optometrists;

(vii) Dentists or dental hygienists;

(viii) Audiologists;

(ix) Podiatrists;

(x) Chiropractors; or

(xi) Dietitians;

(c) Services, therapies, and treatments provided directly to the participant as indicated in the ISP; and

(d) Evaluations, program design, direct services, staff training, policy, and procedure review unless covered by the Medicaid state plan.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 45 SDR 83, effective December 17, 2018.

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

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

46:11:08:02. Participant's record. Any entry in the participant's record shall be dated and signed and shall include information that is accurate, complete, timely, and relevant to the participant's need for services or supports.

A copy of the participant's record shall be in a format accessible to the participant. If abbreviations, symbols, acronyms, or jargon are used, a key shall be provided.

The participant's record shall be held in hard copy or electronic copy in a location accessible to the provider, division, and case management staff, ~~and staff of the provider of direct HCB services~~ and shall include:

- (1) The participant's full name;
- (2) The participant's social security number;
- (3) The date of home and community-based service eligibility;
- (4) The address of the participant at the time of entry into the division's service system and current address and phone number;
- (5) A summary of health insurance, financial support, and entitlements;
- (6) Any identification of family, guardian, conservator, or other interested persons, including current addresses and telephone numbers;
- (7) The status of legal capacity;
- (8) Any provider of services or supports including any subcontractors during the past two years;
- (9) Any employment history, including a list of employers, dates of employment, and any position held;
- (10) The current assessment reports;
- (11) Any critical incident reports;

- (12) The identity of the party responsible for managing the participant's funds;
- (13) Any quarterly assessments pursuant to § 46:11:05:05.01; and
- (14) The participant's current ISP.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016.

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

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

46:11:11:05. Payment for CTS. CTS shall be provided cost-free to an eligible participant whose ~~gross~~net income is less than 185 percent of the federal poverty level or is a recipient of or eligible for Supplemental Security Income. If the participant's income equals or exceeds 185 percent of the federal poverty level, the participant shall pay 100 percent of the costs of services received.

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

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

Law Implemented: SDCL 27B-2-26.