ARTICLE 44:71

RURAL HEALTHCARE FACILITY RECRUITMENT ASSISTANCE PROGRAM

Chapter

CHAPTER 44:71:01

GENERAL PROVISIONS

Section

44:71:01:01. Definitions. Terms used in this article mean:

(1) "Application," a set of forms and related materials, as provided by § 44:71:02:01;

(2) "Certified medical laboratory professional," a medical technologist, medical laboratory technologist, clinical laboratory scientist, or medical laboratory scientist who is either certified by the American Society of Clinical Pathologists, the American Medical Technologists, or the American Association of Bioanalysts;

(3) "Complete application," an application that has been accepted for review and determined to be complete by the department;

(4) "Department," the Department of Health;

(5) "Eligible community," a community with a population of ten thousand or less according to the most recent United States Census data;

(6) "Employing facility," any South Dakota licensed hospital, nursing facility, or chemical dependency treatment facility licensed pursuant to SDCL chapter 34-12; or any federally qualified health center, home health agency, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, community support providers, community mental health center, or end stage renal dialysis facility certified under Title XVIII or XIX of the Social Security Act as amended through December 31, 2011;

(7) "Full-time," not less than 36 hours of professional services weekly for a minimum 48 weeks per year;

(8) "New employee," an eligible health professional who has been working as a health professional at the employing facility for no longer than nine months prior to the department's receipt of an application;

(9) "New graduate," any South Dakota licensed or certified eligible health professional who has graduated from an accredited health professional training program within twelve months of the date an application has been received by the department; and

(10) "Selected application," a complete application that has been selected by the department to enter into a rural healthcare facility recruitment assistance agreement involving the employing facility, eligible health professional, and department.

Source: 39 SDR 9, effective July 30, 2012.

General Authority: SDCL 34-12G-15.

Law Implemented: SDCL 34-12G-15.

ARTICLE 46:17

SOUTH DAKOTA DEVELOPMENTAL CENTER ~~– REDFIELD~~

(Readopted. 26 SDR 96, effective January 24, 2000)

ARTICLE 46:17

~~ICF/MR~~ ICF/IID

Chapter

CHAPTER 46:17:01

GENERAL PROVISIONS

Section

46:17:01:01. Definitions. Terms used in this article mean:

(1) "Active treatment," the implementation of a program of specialized and generic training, treatment, health services, and related services that lead to the acquisition of the behaviors necessary for the person supported to function with as much self-determination and independence as possible and to prevent regression or loss of current optimal functional status;

(2) "Behavior treatment plan," a written set of instructions for changing the behavior of the person supported;

(3) "Department," the Department of Human Services;

(4) "Developmental disability," as defined in SDCL 27B-1-18;

(5) "Division," the Division of Developmental Disabilities, a division of the Department of Human Services;

(6) "Highly restrictive procedures," physical restraint, psychotropic medications, time-out rooms, or other procedures with similar degrees of restriction or intrusion;

(7) "~~ICF/MR~~ ICF/IID," intermediate care facility for ~~persons with mental retardation~~ individuals with intellectual disabilities;

(8) "Informed consent," consent voluntarily, knowingly, and competently given without any element of force, fraud, deceit, duress, threat, or other form of coercion, after explanation of

all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding;

(9) "ISP," individual support plan. A planning document written in measurable outcomes detailing how an ~~ICF/MR~~ ICF/IID will provide or access needed supports for the person;

(10) "Person" or "person supported," an individual residing at an ~~ICF/MR~~ ICF/IID who is receiving services;

(11) "Physical restraints," any technique which restricts the free movement of, or normal functioning of, a portion or portions of a person's body and is not used for the purpose of achieving proper body position, balance, or alignment;

(12) "Positive behavioral supports," procedures that do not infringe on the rights of the person supported;

(13) "~~QMRP~~ QDDP," a qualified ~~mental retardation~~ developmental disability professional. A person who has at least one year experience working with individuals with developmental disabilities or ~~mental retardation~~ intellectual disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual who holds at least a bachelor's degree in a professional category specified within 42 C.F.R. § 483.430;

(14) "Restoration plan," a statement, written in clear, observable measures, developed by the interdisciplinary team to address how any rights limitation placed on the person supported will be lifted;

(15) "Time-out room," an enclosed area in which the person supported is placed contingent upon the exhibition of a maladaptive behavior, in which reinforcement is not available and from which egress is denied.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26, 42 C.F.R. § 483.410 (October 1, 2002).

CHAPTER 46:17:02

RIGHTS OF PERSONS SUPPORTED

Section

46:17:02:02. Grievance procedure. An ~~ICF/MR~~ ICF/IID shall have a written grievance procedure whereby the person supported, the parents if the person is under 18 years of age, a guardian or advocate, if any, may grieve a decision or action by the ~~ICF/MR~~ ICF/IID that affects the person in the areas of eligibility, modification, or termination of services or supports. The ~~ICF/MR~~ ICF/IID must provide assistance to the person in submitting a grievance if requested.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-52, 42 C.F.R. § 483.420 (October 1, 2002).

46:17:02:03. Termination of services -- Notification. At least ten calendar days before an ~~ICF/MR~~ ICF/IID terminates services to a person supported, the ~~ICF/MR~~ ICF/IID must provide notice of its intention both orally and in writing to the person. Accommodations shall be made for any person with communication difficulties. The ~~ICF/MR~~ ICF/IID shall provide written notice to the parent, if the person is under 18 years of age, or the guardian, if any, and the department. The written notice shall include:

(1) The reasons for the action;

(2) The appeal process;

(3) The availability of other services; and

(4) The right to appeal the decision to the secretary of the department.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-25.

Law Implemented: SDCL 27B-2-25.

46:17:02:04. Appeal of termination. The person supported, the guardian, if any, or the parent if the person is under 18 years of age, may appeal the decision of the ~~ICF/MR~~ ICF/IID to terminate services to the secretary of the department by submitting a written notice of appeal to the department within ten days after receipt of the notice to terminate services and requesting a fair hearing pursuant to SDCL chapter 1-26. The person shall continue receiving services from the ~~ICF/MR~~ ICF/IID until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-25.

Law Implemented: SDCL 27B-2-25.

46:17:02:05. Discharge summaries. At the time of the discharge, the ~~ICF/MR~~ ICF/IID shall develop a final summary of the person's developmental, behavioral, social, health, and nutritional status and, with the informed consent of the person supported, a parent if the person is under 18 years of age, or a legal guardian, if any, shall provide a copy to authorized persons and agencies. The ~~ICF/MR~~ ICF/IID shall provide a post-discharge plan of care that will assist the person to adjust to the new living environment.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.440 (October 1, 2002).

CHAPTER 46:17:03

ADMINISTRATIVE REQUIREMENTS

Section

46:17:03:01. Protection of records. The ~~ICF/MR~~ ICF/IID shall develop and maintain a record keeping system that includes a separate record for each person supported that documents the person's health care, active treatment, social information, and protection of the person's rights. The ~~ICF/MR~~ ICF/IID shall provide electronically-stored records with security to prevent access by unauthorized personnel. The ~~ICF/MR~~ ICF/IID shall keep confidential all information contained in the person's records, regardless of the form or storage method of the records. Policies and procedures governing the release of any information, including consents necessary from the person supported, a parent if the person is under 18 years of age, or the legal guardian, if any, must be written and executed.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-46 to 27B-8-49, 42 C.F.R. § 483.410 (October 1, 2002).

46:17:03:02. Management of personal finances. The ~~ICF/MR~~ ICF/IID may apply to become the representative payee of the person's finances after submitting a request for payeeship to the Social Security Administration.

The ~~ICF/MR~~ ICF/IID shall maintain a system that:

(1) Assures a full and complete accounting of the person's personal funds entrusted to the ~~ICF/MR~~ ICF/IID; and

(2) Precludes any commingling of the person's funds with the ~~ICF/MR~~ ICF/IID funds or with the funds of any person other than another person receiving services at the ~~ICF/MR~~ ICF/IID.

Each person's financial records shall be available upon request by the person supported, the parent if the person is under 18 years of age, or the legal guardian, if any.

To the extent of their capabilities and as determined by the interdisciplinary team, the person shall have access to his or her financial resources and shall be taught to manage his or her financial affairs.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.420 (October 1, 2002).

CHAPTER 46:17:04

SERVICE STANDARDS

Section

46:17:04:01. Interdisciplinary team -- Composition and meetings. Within 30 calendar days after admission, the ~~ICF/MR~~ ICF/IID shall identify an interdisciplinary team for each person supported. The interdisciplinary team must be composed of the person and the person's ~~QMRP~~ QDDP, the person's family, guardian, or advocate, if applicable, other ~~ICF/MR~~ ICF/IID staff, and any other individual chosen by the person. Meetings of the interdisciplinary team must be scheduled and conducted so they facilitate the active participation of all members of the team. The interdisciplinary team must meet at least annually; however, the person or any other member of the interdisciplinary team may request a team meeting at any time.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:02. Comprehensive functional assessment. Except as otherwise provided by law, within 30 calendar days after admission and at least annually thereafter, the person supported and the identified interdisciplinary team shall review existing assessment information and complete new assessments or reassessments. The purpose of the comprehensive functional assessment is to determine the appropriateness of continued supports by the ~~ICF/MR~~ ICF/IID. The assessments must include the following:

(1) A physical examination and health assessment;

(2) A dental examination that includes an oral health assessment;

(3) A social assessment that includes a social and developmental history, delineation of the type and frequency of social interactions, and descriptions of the person's social support network;

(4) A psychological assessment including the person's emotional and intellectual status;

(5) A behavioral assessment;

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

(7) A developmental, educational, or vocational assessment; and

(8) Nutritional assessment and vision, auditory, speech, and language screenings.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-3-25, 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:05. ~~QMRP~~ QDDP monitoring and coordination of ISP. A ~~QMRP~~ QDDP shall monitor on a monthly basis and coordinate all activities regarding the implementation of the ISP. A ~~QMRP~~ QDDP shall observe and revise the ISP and the delivery of supports and shall intervene as necessary to ensure implementation.

The ISP must be reviewed by the ~~QMRP~~ QDDP for relevancy and revised as necessary, including situations in which the person supported:

(1) Has successfully completed an objective identified in the ISP;

(2) Is regressing or losing skills already gained;

(3) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(4) Is being considered for supports or treatment toward new objectives.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:06. Professional program staff. The ~~ICF/MR~~ ICF/IID shall have available qualified professional staff to develop, implement, and monitor each person's ISP during the provision of active treatment in accordance with 42 C.F.R. § 483.440. These staff must participate as members of the interdisciplinary team process; must participate in ongoing staff development and training; and must be licensed, certified, or registered according to state licensure requirements, if applicable.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: 42 C.F.R. §§ 483.430, 483.440 (October 1, 2002).

46:17:04:07. Direct support professionals. The ~~ICF/MR~~ ICF/IID must maintain sufficient direct support professionals to provide adequate support and treatment for the person supported in accordance with the person's ISP. Minimum staff-to-person ratios must be maintained in accordance with 42 C.F.R. § 483.430.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: 42 C.F.R. § 483.430 (October 1, 2002).

46:17:04:09. Time-out rooms. Time-out rooms may be used only under continuous observation of the person supported by ~~ICF/MR~~ ICF/IID staff, may not be locked, and must allow for immediate staff entry. Time-out rooms may only be used as part of a behavior treatment plan approved by both the human rights and behavior support committees of the ~~ICF/MR~~ ICF/IID. Each use of time out may not exceed 15 minutes. The ~~ICF/MR~~ ICF/IID staff shall record any use of a time-out room.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-54 to 27B-8-56, 42 C.F.R. § 483.450 (October 1, 2002).

Cross-References: Behavior support committee, § 46:17:04:14; Human rights committee -- Composition, § 46:17:04:15.

46:17:04:12. Physical restraints. The ~~ICF/MR~~ ICF/IID may employ physical restraint only as an integral part of an ISP that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied, or as an emergency measure, but only if necessary to protect the person supported or others from injury.

Any authorization to use or extend restraints as an emergency must be in effect no longer than 12 consecutive hours and obtained as soon as the person is restrained. The ~~ICF/MR~~ ICF/IID may not issue orders for restraint on a standing or as needed basis.

Any person placed in restraint must be checked at least every 30 minutes or more frequently, as prescribed by the approved behavior treatment plan, by staff trained in the use of restraints, and released from the restraint as quickly as possible. Staff shall make a record of these checks and usage of the restraints.

Restraints must be designed and used so as not to cause physical injury to the person and so as to cause the least possible discomfort. If the person's range of motion is affected, the person shall be given an opportunity for motion and exercise for a period of not less than ten minutes within each two hour period in which the restraint is employed, and a record of such activity must be kept.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-55, 42 C.F.R. § 483.450 (October 1, 2002).

46:17:04:13. Management of maladaptive behaviors. The ~~ICF/MR~~ ICF/IID shall specify all behaviors and approved plans on a hierarchy from most positive to most restrictive. Prior to the development and implementation of a behavior treatment plan, records of maladaptive behaviors shall be maintained. These records shall document a functional assessment of behavior and the frequency and duration of the behavior.

The ISP of a person supported who exhibits maladaptive behavior must include provisions to teach the person the circumstances, if any, under which the behavior can be exhibited adaptively; to teach the person how to channel the behavior into similar but adaptive expressions; or to replace the behavior with behavior that is adaptive. Prior to the use of more restrictive procedures, the person's record must document that strategies incorporating the use of less restrictive procedures have been tried systematically and demonstrated to be ineffective.

Highly restrictive procedures may be used only in conjunction with positive behavioral procedures.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-54 to 27B-8-56, 42 C.F.R. § 483.450 (October 1, 2002).

46:17:04:14. Behavior support committee. The ~~ICF/MR~~ ICF/IID shall have a behavior support committee whose members are appointed by the administrator of the ~~ICF/MR~~ ICF/IID. The behavior support committee shall review the technical adequacy of all behavior treatment plans and approve any plan deemed clinically appropriate.

The behavior support committee shall be composed of psychologists, behavior therapists, and managers with experience or training regarding behavior supports and qualified to evaluate proposals for the use of highly restrictive behavior procedures.

The committee shall function as a safeguard against inhumane treatment and violation of the person's rights and assure the plan is clinically appropriate.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-50, 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:15. Human rights committee -- Composition. The ~~ICF/MR~~ ICF/IID shall have a human rights committee with a minimum of five members. The human rights committee shall be composed of qualified persons who have either experience or training in current practices to change inappropriate behavior of a person supported and others who have no ownership or controlling interest in the ~~ICF/MR~~ ICF/IID. Specific members for the committee must be selected from the personnel of the ~~ICF/MR~~ ICF/IID from positions deemed appropriate by the administrator and include at least one member who has training or experience with issues and decisions regarding human rights. At least one member of the committee must be a member of the community and not employed by the ~~ICF/MR~~ ICF/IID.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:16. Human rights committee -- Functions. The functions of the human rights committee for the person supported are as follows:

(1) Review, approve or disapprove, and monitor any behavior treatment plan designed to manage maladaptive behavior that involves limitations;

(2) Review any behavior treatment plan at least annually or sooner as deemed appropriate by the committee;

(3) Review and monitor limitations on a person's movement, any other potential limitation on human rights, including involuntary medication, limitation of privileges, and limitations on the use of a person's funds and other possessions;

(4) Ensure any behavior treatment plan to manage maladaptive behavior is employed with sufficient safeguards and supervision to ensure the safety, welfare, and civil and human rights of

the person are protected and not infringed upon for the convenience of staff, relatives, or the community, or as a substitute for active treatment;

(5) Ensure any behavior treatment plan is conducted only with the written informed consent of the person, the person's parent if the person is under 18 years of age, or the legal guardian, if any; and

(6) Review, monitor, and make suggestions about practices of the ~~ICF/MR~~ ICF/IID related to psychotropic medications, restraints, time-out rooms, highly restrictive procedures, protection of rights, and any other area the human rights committee believes needs to be addressed.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010; 37 SDR 131, effective January 10, 2011.

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

Law Implemented: SDCL 27B-8-54, 42 C.F.R. § 483.440 (October 1, 2002).

46:17:04:17. Staff orientation training. Within 30 days of employment, newly-hired staff must receive an orientation training program. Orientation shall include:

(1) Instruction in the ethical principles related to basic positive behavior supports or approaches;

(2) Definitions of abuse, neglect, and exploitation of persons supported;

(3) Techniques of identifying and observing signs of abuse, neglect, and exploitation;

(4) Procedures used in reporting, investigating, and documenting alleged instances of abuse, neglect, exploitation, or injury of unknown source;

(5) Disability awareness;

(6) The philosophy and mission of the ~~ICF/MR~~ ICF/IID;

(7) Emergency plans and procedures, including first aid; and

(8) Knowledge and understanding of the person's rights.

Those staff who work or are expected to work most closely with the person must receive training at least annually in courses including crisis intervention, behavior management, cardiopulmonary resuscitation, emergency evacuation, first aid techniques, safety and sanitation, and proper lifting and transferring techniques.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: SDCL 27B-2-27, 42 C.F.R. § 483.430 (October 1, 2002).

46:17:04:18. Communication with parents or legal guardian. The ~~ICF/MR~~ ICF/IID shall notify the person's parent if the person supported is under 18 years of age or the legal guardian, if any, of any significant incidents or changes in the condition of the person including the following:

(1) Serious illness;

(2) Serious accident;

(3) Death;

(4) Alleged instances of abuse or neglect; or

(5) Unauthorized absence.

An ~~ICF/MR~~ ICF/IID shall have written procedures defining communication between the agency and the parent if the person is under 18 years of age or legal guardian, if any.

Source: 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-8-53 to 27B-8-56, 42 C.F.R. § 483.420(c)(6) (October 1, 2002).

HEALTH CARE SERVICES

Section

46:17:05:06 Dietary services.

46:17:05:01. Licensure. Health care service personnel providing services at the ~~ICF/MR~~ ICF/IID, including physicians, physicians assistants, registered nurses, licensed practical nurses, certified nurse practitioners, dieticians, occupational and physical therapists, dentists, dental hygienists, pharmacists, and audiologists, must have a license to practice in the State of South Dakota.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: SDCL 27B-2-26(1), 42 C.F.R. § 483.460 (October 1, 2002).

46:17:05:02. Physician services. The ~~ICF/MR~~ ICF/IID shall ensure the availability of physician services 24 hours a day. The ~~ICF/MR~~ ICF/IID shall provide or obtain preventive and general medical care as well as annual physical examinations of each person supported that, at a minimum, include the following:

(1) Evaluation of vision and hearing;

(2) Immunizations; and

(3) Tuberculosis control.

The ~~ICF/MR~~ ICF/IID may utilize physician assistants and certified nurse practitioners to provide physician services. The physician, physician's assistant, or certified nurse practitioner must participate in the establishment of each newly-admitted person's ISP. A physician must participate as part of the interdisciplinary team process, either in person or through a written report to the interdisciplinary team. The physician, physician's assistant, or certified nurse practitioner must develop a medical care plan of treatment if the person requires 24-hour licensed nursing care.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: SDCL 27B-3-17, 27B-8-39, 42 C.F.R. § 483.460 (October 1, 2002).

46:17:05:03. Nursing services. The ~~ICF/MR~~ ICF/IID must provide any person supported with nursing services in accordance with the person's needs. These services include:

(1) Participation in the interdisciplinary team process, as indicated by the person's needs;

(2) Development with a physician, physician's assistant, or certified nurse practitioner of a medical care plan of treatment if it has been determined by the physician, physician's assistant, or certified nurse practitioner that the person requires such a plan;

(3) Other nursing care as prescribed by the physician, physician's assistant, certified nurse practitioner, or dentist, or as identified by the person's needs; and

(4) Implementation with other members of the interdisciplinary team, of appropriate protective and preventive health measures that include:

(a) Training the person and staff in appropriate health and hygiene methods;

(b) Control of communicable diseases and infections; and

(c) Training staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the person's health needs.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: SDCL 27B-8-39, 42 C.F.R. § 483.460 (October 1, 2002).

46:17:05:04. Dental services. The ~~ICF/MR~~ ICF/IID shall provide or make arrangements for comprehensive diagnostic and treatment services for each person supported from qualified personnel, including licensed dentists and dental hygienists.

A complete oral examination using all diagnostic aids to evaluate mouth health must be completed within 30 days for each newly-admitted person.

If appropriate, dental professionals must participate in the development, review, and update of an ISP as part of the interdisciplinary process, either in person or through written report, to the interdisciplinary team.

The ~~ICF/MR~~ ICF/IID must provide education and training in the maintenance of oral health and ensure comprehensive dental treatment services that include:

(1) Periodic examination and diagnosis performed at least annually;

(2) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(3) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

The ~~ICF/MR~~ ICF/IID must keep a permanent dental record for each person.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1).

Law Implemented: SDCL 27B-8-39, 42 C.F.R. § 483.460 (October 1, 2002).

46:17:05:05. Pharmacy services. All medications must be labeled according to current pharmacological practices, including precautionary and accessory instruction. Outdated drugs or those with worn labels or those that have been discontinued by a physician, physician assistant, or certified nurse practitioner must be removed from the medication supply of the person supported. The ~~ICF/MR~~ ICF/IID shall provide or make arrangements for the provision of routine and emergency medication to any person it serves. A pharmacist, with input from the interdisciplinary team, shall review the drug regimen of each person at least quarterly, report any irregularities in the person's drug regimens, and prepare a record of the drug regimen for each person, which the ~~ICF/MR~~ ICF/IID shall maintain.

An individual medication administration record must be maintained for each person. As appropriate, the pharmacist shall participate in each person's support plan, either in person or through a written report to the interdisciplinary team.

The ~~ICF/MR~~ ICF/IID shall have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure compliance with SDCL chapter 36-11. This system must also address drug administration errors, reporting process, and correction procedures.

Those staff administering medications must have completed an approved medication administration course. All medication must be administered in compliance with the physician's, physician assistant's, certified nurse practitioner's, or dentist's orders.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000; 37 SDR 69, effective October 18, 2010.

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

Law Implemented: 42 C.F.R. § 483.460 (October 1, 2002).

PRIVATE ~~ICF/MR~~ ICF/IID

Section

46:17:06:02. Scope. Each section in this article applies to a private ~~ICF/MR~~ ICF/IID.

Source: 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1)(2)(3)(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(5)(9)(10).

46:17:06:04. Occupancy of homes used by persons supported. No more than eight persons may reside in any one home managed by an ~~ICF/MR~~ ICF/IID receiving initial approval after January 1, 2011. Each home must consist of single occupancy bedrooms.

Source: 37 SDR 69, effective October 18, 2010.

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

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

46:17:06:05. Division visits. The division may review an ~~ICF/MR~~ ICF/IID at any given time without prior notice for the purposes of verifying compliance with this article and chapter 67:54:03. The ~~ICF/MR~~ ICF/IID must grant the division access to any facility, activity, and record necessary to determine compliance.

Source: 37 SDR 69, effective October 18, 2010.

General Authority: SDCL 27B-2-26(1)(2)(3)(4)(5)(9)(10).

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(5)(9)(10).

46:17:06:06. Inventory for client and agency planning (ICAP). To determine the level of a person's functional limitations, an ~~ICF/MR~~ ICF/IID must submit a completed ICAP to the division, using the ICAP Compuscore software. The division must receive this data within 11 months following the annual on-site review and inspection. For a person's record to be valid, the evaluation date may not be more than 13 months old.

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 this chapter and, for persons over four years of age, the person 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 this chapter and, for persons over four years of age, the person speaks (ICAP item A7=3);

(3) Learning/cognition: The person ~~is not mentally retarded~~ does not have an intellectual disability (ICAP item C1=1);

(4) Mobility: The person walks (ICAP item C9=1) and, for persons 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, GM1>-11), the person's community living skills domain score exceeds the age-related criterion in Appendix A at the end of this chapter, and there is no psychiatric diagnosis (neither ICAP items B11 nor B12 checked;

(6) Independent living: The person's community living skills domain score exceeds the age-related criterion in Appendix A at the end of this chapter and, for persons 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 person's recommended daytime program (ICAP item G2) is "competitive employment."

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

Source: 37 SDR 69, effective October 18, 2010.

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

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

Editor's Note: Appendix A was omitted when this rule was promulgated. It will be added at a later date.

Reference: Compuscore for the ICAP, Bradley K. Hill, 1999, Riverside Publishing Company, 3800 Golf Rd, Ste. 100, Rolling Meadows, IL 60008; cost $334.

46:17:06:07. Rights. Any person supported has rights guaranteed pursuant to § 46:17:02:01 and this section:

(1) To be able to communicate in the primary language or primary mode of communication of the person;

(2) To be able to refuse or discontinue services;

(3) To have access to, read, and challenge any information contained in the person's record compiled by the ~~ICF/MR~~ ICF/IID; and

(4) To have access to an advocate as defined in subdivision 46:17:06:01(1) or an employee of the state's designated protection and advocacy system.

The private ~~ICF/MR~~ ICF/IID shall provide the person supported a document describing the person's rights in an accessible format and if necessary shall provide training on those rights.

Source: 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-2-26(4), 42 C.F.R. § 483.420 (October 1, 2002).

46:17:06:10. Policy on abuse, neglect, exploitation, or injury of unknown source. The ~~ICF/MR~~ ICF/IID shall have a policy approved by the division that prohibits abuse, neglect, or exploitation of a person supported. The policy must contain the following:

(1) A definition of abuse, neglect, and exploitation pursuant to SDCL 22-46-1;

(2) A requirement to report to the division pursuant to § 46:17:06:12;

(3) A requirement to report any abuse, neglect, exploitation, or injury of unknown source immediately to the administrator;

(4) A requirement to report to the Department of Social Services pursuant to SDCL 26-8A-3 to 26-8A-8, inclusive;

(5) A procedure for disciplinary action to be taken if staff has engaged in abuse, neglect, or exploitation of any person supported;

(6) A procedure to inform the guardian, if any, or the parent if the person supported is under 18 years of age, and any advocate, of any allegations of abuse, neglect, or exploitation and any information not otherwise prohibited by law about the action taken within 24 hours after the alleged incident unless the guardian, parent, or advocate is accused of the alleged incident;

(7) A procedure to document the actions to be implemented to reduce the likelihood of or prevent repeated incidents or abuse, neglect, or exploitation if the allegations are substantiated;

(8) A procedure to inform the person supported, or the parent if the person is under 18 years of age, and the guardian or advocate, if any, in writing or in an accessible format, of the rights of the person as outlined in § 46:17:06:08 upon admission and annually thereafter; and

(9) A procedure for training the person on self reporting of any abuse, neglect, or exploitation by another.

Source: 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 26-8A-3, 27B-2-26(2)(3)(4), 42 C.F.R. § 483.420 (October 1, 2002).

46:17:06:11. Investigation of abuse, neglect, exploitation, or injury of unknown source. Any allegations of abuse, neglect, exploitation, or injury of unknown source shall be thoroughly investigated by the ~~ICF/MR~~ ICF/IID.

The results of the investigation shall be reported to the administrator or designated representative and the division within five working days of the incident. If the allegations are substantiated, appropriate corrective action must be taken.

Source: 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-2-26(2)(3)(4), 42 C.F.R. § 483.420 (October 1, 2002).

46:17:06:12. Critical incident reports -- Submission to division. The ~~ICF/MR~~ ICF/IID shall give verbal notice of any critical incident involving a person supported to the division no later than the end of the division's next working day from the time the ~~ICF/MR~~ ICF/IID becomes aware of the incident. The ~~ICF/MR~~ ICF/IID shall submit a written critical incident report utilizing the division's on-line reporting system within seven calendar days after the initial notice is made. A report must be submitted for the following:

(1) Death;

(2) Life-threatening illness or injury;

(3) Alleged instance of abuse, neglect, or exploitation against or by the person supported;

(4) Injury of unknown source;

(5) Change in health or behavior that may jeopardize continued services;

(6) Any serious medication error. A serious medication error is the inappropriate administration of a medication to the person by ~~ICF/MR~~ ICF/IID personnel that results in emergency medical treatment, hospitalization, or death;

(7) Illness or injury that resulted from unsafe or unsanitary conditions;

(8) Any illegal activity involving the person that involves law enforcement;

(9) Any use of physical or mechanical restraint or chemical intervention not part of an approved plan;

(10) Any bruise or injury resulting from the use of a physical or mechanical restraint or chemical intervention; or

(11) Any diagnosed case of a reportable communicable disease involving the person.

The report must contain a description of the incident, specifying what happened, when it happened, and where it happened, the status of the person, and any action taken by the ~~ICF/MR~~ ICF/IID. The division may request further information or follow-up related to the critical incident.

The ~~ICF/MR~~ ICF/IID shall notify the parents, if the person is under 18 years of age, or the guardian or advocate, if any, that a critical incident report has been submitted and the reason why unless the parent, guardian, or advocate, is accused of the incident.

Source: 37 SDR 69, effective October 18, 2010.

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

Law Implemented: SDCL 27B-2-26(2)(3)(4).

46:17:06:13. Individual support plan -- Person centered planning. An ~~ICF/MR~~ ICF/IID must demonstrate how each supported person's preferences are identified and prioritized during the ISP planning process. The preference and priorities shall be documented in the person's ISP.

Source: 37 SDR 69, effective October 18, 2010.

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

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

ARTICLE 67:12

ASSISTANCE PAYMENTS

Chapter

CHAPTER 67:12:01

ASSISTANCE APPLICATIONS AND ELIGIBILITY

Section

67:12:01:03.01 Client has right to be assisted or represented.

67:12:01:04 Repealed.

67:12:01:05 Method of determining initial and continuing eligibility.

67:12:01:06 Determination of eligibility within 45 days.

67:12:01:06.01 Applicant to provide information promptly.

67:12:01:07 Prompt determination of continuing eligibility.

67:12:01:08 Proper application of time standards.

67:12:01:09 Case record to contain facts on eligibility decisions.

67:12:01:10 Applicants to be informed in writing and orally.

67:12:01:11 Date entitlement for financial assistance begins.

67:12:01:12 Recipient to report change of circumstances.

67:12:01:12.01 Repealed.

67:12:01:13 Full determination of continuing eligibility.

67:12:01:14 Citizenship and alienage.

67:12:01:14.01 Deeming of sponsor's income and resources to alien when sponsor is an individual -- Cooperation of sponsor is condition of eligibility.

67:12:01:14.02 Aliens exempt from sponsor deeming.

67:12:01:14.03 Eligibility of alien sponsored by public or private organization or agency – Cooperation of sponsor is condition of eligibility.

67:12:01:15 Determination of residence of child in AFDC program.

67:12:01:16 Residence determination for applicants or recipients who leave the state.

67:12:01:17 Eligibility of applicant or recipient who receives assistance from another state.

67:12:01:18 Termination to result if caseworker cannot locate recipient applicant.

67:12:01:19 Age requirements for AFDC.

67:12:01:20 Repealed.

67:12:01:21 "Regularly attending school" defined.

67:12:01:22 "Full-time" and "half-time" student defined.

67:12:01:23 Medical-only coverage for certain children and pregnant women.

67:12:01:23.01 and 67:12:01:24 Repealed.

67:12:01:25 Beginning of eligibility when only year of birth known.

67:12:01:26 Repealed.

67:12:01:27 Specific degree of relationship between child and parent or relative.

67:12:01:28 Repealed.

67:12:01:29 Deprivation of parental support or care because of continued absence from the home.

67:12:01:30 Absence of parent because of employment, seeking employment, or attending school.

67:12:01:31 Absence of parent due to hospitalization, imprisonment, and deportation.

67:12:01:32 Absence of parent due to uniformed service.

67:12:01:33 Absence of parent if mother not married to father of child.

67:12:01:34 Absence of parent due to divorce or separate maintenance decrees.

67:12:01:35 Absence of parent by mutual agreement of separation.

67:12:01:36 Repealed.

67:12:01:37 Absence of parent in unstable family situation.

67:12:01:38 Repealed.

67:12:01:39 Deprivation of parental support or care because of physical or mental incapacity of parent.

67:12:01:40 Determination of incapacity by disability/incapacity consultation team.

67:12:01:41 Definition of "physical or mental incapacity."

67:12:01:42 Patient's consent for release of medical information.

67:12:01:43 Medical examinations if information not available -- Choice of examiners.

67:12:01:44 Psychiatric reports and records from mental hospital may be sufficient.

67:12:01:45 Basis for payments for medical examinations and reports -- Authorization required for intensive procedures.

67:12:01:46 Incapacity related to ability to carry full-time job.

67:12:01:47 Repealed.

67:12:01:48 Parents receiving disability payments under other programs.

67:12:01:48.01 Eligibility of parents participating in vocational rehabilitation training programs.

67:12:01:49 Cessation of incapacity.

67:12:01:50 Temporary absence of child or payee relative.

67:12:01:51 Emergency payee.

67:12:01:52 Unsuitable home.

67:12:01:53 Man not married to mother and living in household.

67:12:01:54 Inclusion of caretaker relative other than parent in AFDC grant.

67:12:01:55 Eligibility of second parent in AFDC grant.

67:12:01:56 Repealed.

67:12:01:57 Confidentiality of client's records.

67:12:01:58 and 67:12:01:59 Repealed.

67:12:01:60 Date of entitlement for medical coverage.

67:12:01:61 Transferred.

67:12:01:61.01 Continued medical coverage -- Child support.

67:12:01:61.02 Transferred.

67:12:01:62. Incapacity based on blindness or visual impairment -- Medical findings required.

67:12:01:63 to 67:12:01:65 Repealed.

67:12:01:66 Cooperation of caretaker relative as condition of eligibility.

67:12:01:66.01 Cooperation of applicant or recipient not required.

67:12:01:66.02 Applicant or recipient to establish good cause.

67:12:01:66.03 Applicant or recipient to provide timely evidence -- Extensions -- Failure to respond.

67:12:01:66.04 Evidence of good cause.

67:12:01:66.05 Department to investigate good cause claims.

67:12:01:66.06 Additional evidence may be required.

67:12:01:66.07 Departmental contact with absent parent.

67:12:01:66.08 Department to determine good cause and notify applicant or recipient – Contents of notice.

67:12:01:66.09 Appeal of good cause determination.

67:12:01:66.10 Criteria for basing good cause on emotional harm.

67:12:01:66.11 Biannual redetermination of good cause -- Notice of rescindment.

67:12:01:67 and 67:12:01:68 Repealed.

67:12:01:69 Individuals who must be included in assistance unit.

67:12:01:70 Cooperation of applicant or recipient.

67:12:01:71 Denial of AFDC benefits to strikers.

67:12:01:72 Pregnant women referred to Department of Health.

67:12:01:73 Assistance unit randomly assigned to groups.

67:12:01:74 Eligibility determinations for assigned groups.

67:12:01:44. Psychiatric reports and records from mental hospital may be sufficient. Psychiatric reports and records from a mental hospital may be sufficient for determination of disability without additional medical reports. However, if the patient also has a physical disability, a medical report on this shall also be obtained. If a disability is based on ~~mental retardation~~ intellectual disability, it is necessary to have a medical report in addition to the evidence of ~~retardation~~ intellectual disability for the initial determination of eligibility. Specific information on mental ability shall be obtained in all cases in which the question of mental inadequacy may have a bearing on the eligibility determination. Likewise, copies of records from a mental hospital or reports from mental health clinics shall be considered important sources of information, and shall be obtained even though there are additional physical reasons for the application. The exception to this is the individual who is so severely physically disabled that eligibility seems to be without question.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-7-2.

Law Implemented: SDCL 28-7-1.

ARTICLE 67:16

COVERED MEDICAL SERVICES

67:16:05 Home health services.

67:16:06 Dental services.

67:16:07 Podiatric services.

67:16:08 Optometric and optical services.

67:16:09 Chiropractic services.

67:16:10 Rehabilitation hospital services, Repealed.

67:16:11 Early and periodic screening.

67:16:12 Family planning services.

67:16:13 Clinic services.

67:16:14 Prescription drugs.

67:16:15 Long-term care supplements, Repealed.

67:16:16 Facilities for the mentally impaired.

67:16:17 Application for long-term care, Transferred.

67:16:18 Long-term care eligibility, Transferred.

67:16:19 Long-term care income requirements, Transferred.

67:16:20 Long-term care resource requirements, Transferred.

67:16:21 Budgeting for long-term care, Transferred.

67:16:22 Long-term care notice requirements, Transferred.

67:16:23 Chronic renal disease program, Transferred.

67:16:24 Personal care services.

67:16:25 Transportation services.

67:16:26 Third-party liability.

67:16:27 Home and community-based services, Transferred.

CHAPTER 67:16:02

PHYSICIAN AND OTHER HEALTH SERVICES

Section

67:16:02:01 Definitions.

67:16:02:01.01 Fee schedules for physician services.

67:16:02:02 Repealed.

67:16:02:03 Rate of payment.

67:16:02:03.01 Reimbursement for multiple surgeries.

67:16:02:03.02 Reimbursement for services containing modifier codes.

67:16:02:03.03 Required modifier codes.

67:16:02:04 Physician's services covered.

67:16:02:05 Other health services covered.

67:16:02:05.01 Physical therapy services covered.

67:16:02:05.02 to 67:16:02:05.07 Repealed.

67:16:02:05.08 Requirements for hyperbaric oxygen therapy.

67:16:02:05.09 Prior authorization for hyperbaric oxygen therapy.

67:16:02:05.10 Breast reconstruction.

67:16:02:05.11 Repealed.

67:16:02:05.12 Cochlear implant -- Prior authorization required.

67:16:02:05.13 Hyperbaric oxygen therapy for individual with diabetes.

67:16:02:05.14 Hyperbaric oxygen therapy -- Individual with diabetes -- Course of standard wound care.

67:16:02:05.15 Occupational therapy.

67:16:02:06 Health services not covered.

67:16:02:07 Utilization review for physician, laboratory, and X-ray services.

67:16:02:08 Repealed.

67:16:02:09 Sterilization.

67:16:02:10 Refractions and eyeglasses.

67:16:02:11 Cost sharing.

67:16:02:12 Transferred.

67:16:02:13 Audiological and speech pathology services.

67:16:02:14 Reimbursement for services provided by nurse midwife or nurse anesthetist.

67:16:02:15 Reimbursement for services provided by nurse practitioner, clinical nurse specialist, or physician's assistant.

67:16:02:16 Billing requirements -- Modifier codes -- Provider identification numbers.

67:16:02:16.01 Billing requirements -- Implantable contraceptive capsules and obstetrical services.

67:16:02:17 Claim requirements.

67:16:02:18 Certain services exempt from diagnosis code requirements.

67:16:02:19 Application of other chapters.

Appendix A List of Physician Nonlaboratory Procedures, repealed, 34 SDR 68, effective September 12, 2007.

Appendix B List of Physician Laboratory Procedures, repealed, 34 SDR 68, effective September 12, 2007.

Appendix C Physician Medical Procedures -- Medicare Maximum Allowance; repealed, 34 SDR 68, effective September 12, 2007.

Appendix D List of Modifier Codes for Physician Services, transferred to § 67:16:02:03.03, effective September 12, 2007.

Appendix E Clozaril Enrollment Information Form, repealed, 31 SDR 214, effective July 6, 2005.

67:16:02:04. Physician's services covered. Physician's services covered are limited to the following professional services, which must be medically necessary and provided by a physician to a recipient:

(1) Medical and surgical services;

(2) Services and supplies furnished incidental to the professional services of a physician;

(3) Psychiatric services;

(4) Drugs and biologicals administered in a physician's office which cannot be self-administered;

(5) Routine physical examinations;

(6) Routine visits to a nursing facility, a home and community-based service provider, an intermediate care facility for ~~the mentally retarded or developmentally disabled~~ individuals with intellectual disabilities, or a home and community-based waiver service provider;

(7) Cosmetic surgery when incidental to prompt repair following an accidental injury or for the improvement of the functioning of a malformed body member;

(8) Family planning services;

(9) Pap smears;

(10) Dialysis treatments;

(11) Hysterectomies as authorized under 42 C.F.R. §§ 441.250 to 441.259, inclusive (October 1, 1989); and

(12) Hyperbaric oxygen therapy if the requirements of §§ 67:16:02:05.08 and 67:16:02:05.09 are met.

Source: SL 1975, ch 16, § 1; 4 SDR 88, effective June 26, 1978; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 11 SDR 26, effective August 21, 1984; 15 SDR 204, effective July 6, 1989; 16 SDR 234, effective July 2, 1990; 17 SDR 200, effective July 1, 1991; 19 SDR 26, effective August 23, 1992; 20 SDR 144, effective March 10, 1994.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:
Home and community-based services, ch 67:54:04.

Home and community-based waiver services, ch 67:44:03.
Covered services must be medically necessary, § 67:16:01:06.02.

67:16:02:06. Health services not covered. In addition to the services not specifically listed in § 67:16:02:05, the following health services and items are not covered under the medical assistance program:

(1) Medical equipment for a resident in a nursing facility or an intermediate care facility for ~~the mentally retarded or developmentally disabled~~ individuals with intellectual disabilities;

(2) Self-help devices, exercise equipment, protective outerwear, and personal comfort or environmental control equipment, including air conditioners, humidifiers, dehumidifiers, heaters, and furnaces;

(3) Any weight loss program or activity;

(4) Agents to promote fertility;

(5) Procedures to reverse a previous sterilization; and

(6) Removal of implanted contraceptive capsules if done to reverse the intent of the original implant.

Source: SL 1975, ch 16, § 1; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 164, effective June 30, 1983; 11 SDR 86, effective December 30, 1984; 16 SDR 234, effective July 2, 1990; 17 SDR 200, effective July 1, 1991; 19 SDR 26, effective August 23, 1992; 19 SDR 165, effective May 3, 1993; 20 SDR 144, effective March 10, 1994; 37 SDR 53, effective September 23, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Medical equipment, ch 67:16:29; Services not covered, § 67:16:01:08.

CHAPTER 67:16:04

NURSING FACILITY RATE SETTING

Section

67:16:04:02 Repealed.

67:16:04:03 Transferred.

67:16:04:04 and 67:16:04:04.01 Repealed.

67:16:04:05 to 67:16:04:07.07 Transferred.

67:16:04:07.08 Repealed.

67:16:04:08 and 67:16:04:08.01 Transferred.

67:16:04:08.02 and 67:16:04:08.03 Repealed.

67:16:04:08.04 to 67:16:04:08.09 Transferred.

67:16:04:09 Repealed.

67:16:04:09.01 Transferred.

67:16:04:10 to 67:16:04:12 Repealed.

67:16:04:13 and 67:16:04:14 Transferred.

67:16:04:15 to 67:16:04:18 Repealed.

67:16:04:19 and 67:16:04:20 Transferred.

67:16:04:20.01 Repealed.

67:16:04:20.02 Transferred.

67:16:04:21 to 67:16:04:29 Repealed.

67:16:04:30 to 67:16:04:32 Transferred.

67:16:04:33 Definitions.

67:16:04:34 Required financial reports.

67:16:04:35 Deadline extensions.

67:16:04:36 Record retention.

67:16:04:37 Audits -- Appeal provisions.

67:16:04:38 Time limits for requesting hearing.

67:16:04:39 Notification of per diem rates.

67:16:04:40 Absence of regulations -- Allowable costs based on CMS-15.

67:16:04:41 Routine services.

67:16:04:42 Nonroutine services.

67:16:04:43 Repealed.

67:16:04:44 Allowable costs of related-party transactions.

67:16:04:45 Rent paid to related-party organization not allowable -- Cost of ownership used.

67:16:04:46 Depreciation.

67:16:04:47 Costs not allowed.

67:16:04:48 Repealed.

67:16:04:49 Occupancy.

67:16:04:50 Return on net equity.

67:16:04:51 Ceilings.

67:16:04:52 Maximum capital cost for leased facility.

67:16:04:53 Repealed.

67:16:04:54 Method of establishing per diem rates.

67:16:04:54.01 Method of establishing per diem rates -- Case mix adjusted direct care costs.

67:16:04:54.02 Method of establishing per diem rates -- Nondirect care costs of health and subsistence, plant/operational, and other operating costs.

67:16:04:54.03 Method of establishing per diem rates -- Nondirect care costs of administration.

67:16:04:55 Provisional per diem rates.

67:16:04:61. Preadmission screening. No payment may be made in behalf of a resident of a nursing facility who is mentally ill~~,~~ or intellectually or developmentally disabled~~, or mentally retarded~~ and who was admitted to the facility after December 31, 1988, and did not receive the preadmission screening as required by § 1919(b)(3)(F) of the Social Security Act as amended by § 4211 of Pub. L. No. 100-203, (101 Stat. 1330-183), January 1, 1989.

Source: 16 SDR 26, effective August 13, 1989; transferred from § 67:16:04:30, 21 SDR 8, effective July 25, 1994.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:05

HOME HEALTH SERVICES

67:16:05:05.01. Service restrictions. Home health services must meet the following criteria:

(1) They must be provided by a home health agency employee who is qualified to perform the required service;

(2) They must be prescribed by the attending physician and contained in the home health agency's written plan of care;

(3) They must be provided at the individual's place of residence, which does not include a hospital, penal institution, detention center, school, nursing facility, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution which treats individuals for mental diseases;

(4) They must be provided to an individual who has a medical condition caused by an illness or injury and for whom leaving the home would require a considerable effort and the assistance of another individual or the aid of supportive devices. This provision may be waived for postpartum services or when leaving the home is medically contraindicated by a physician. An individual's age alone does not qualify the person for home health services; and

(5) They must be provided intermittently but not more than once a day and no more frequently than five days a week, except as specified by subdivision 67:16:05:05(4).

If Medicare denies payment for a service because there is no medical necessity, the individual is ineligible for services under this chapter.

Source: 16 SDR 111, effective January 7, 1990; 16 SDR 233, effective July 1, 1990; 18 SDR 203, effective July 1, 1992; 33 SDR 137, effective March 7, 2007.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:11

EARLY AND PERIODIC SCREENINGS

Section

67:16:11:03.06 Orthodontic treatment.

67:16:11:03.07 to 67:16:11:03.16 Repealed.

67:16:11:03.17 Transferred.

67:16:11:03.18 and 67:16:11:03.19Repealed.

67:16:11:03.20 Private duty nursing services.

67:16:11:03.21 Extended home health aide services.

67:16:11:03.22 Private duty nursing services -- Extended home health aide services -- Prior authorization -- Reauthorization.

67:16:11:03.23 Repealed.

67:16:11:04 Screening services under EPSDT.

67:16:11:04.01 Periodicity schedules for complete, comprehensive screenings.

67:16:11:05 Rate of payment -- Screening services.

67:16:11:05.01 Rate of payment -- Immunizations.

67:16:11:06 to 67:16:11:06.06 Repealed.

67:16:11:06.07 Transferred.

67:16:11:06.08 Rate of payment -- Nutritional therapy, nutritional supplements, and electrolyte replacements.

67:16:11:06.09 Rate of payment -- Orthodontic treatment.

67:16:11:06.10 to 67:16:11:06.14 Repealed.

67:16:11:06.15 Rate of payment -- Private duty nursing services.

67:16:11:06.16 Rate of payment -- Extended home health aide services.

67:16:11:07 and 67:16:11:08 Repealed.

67:16:11:08.01 Cost not to exceed long-term institutional care.

67:16:11:08.02 to 67:16:11:10 Repealed.

67:16:11:11 Utilization review.

67:16:11:12 Repealed.

67:16:11:13 Billing requirements.

67:16:11:13.01 and 67:16:11:13.02Repealed.

67:16:11:14 Claim requirements.

67:16:11:15 and 67:16:11:16 Transferred.

67:16:11:17 Claim requirements -- Orthodontia services.

67:16:11:18 to 67:16:11:19.01 Repealed.

67:16:11:19.02 Claim requirements -- Private duty nursing -- Extended home health aide services.

67:16:11:19.03 Claim requirements -- Screenings.

67:16:11:19.04 Claim requirements -- Immunizations.

67:16:11:20 Application of other chapters.

Appendix A List of Dental Procedure Codes and Limits, repealed, 35 SDR 88, effective October 23, 2008.

Appendix B List of Medical Procedures and Limits of Dental/Medical Services, repealed, 35 SDR 88, effective October 23, 2008.

Appendix C List of Procedure Codes and Prices for Orthodontic Services, repealed, 35 SDR 88, effective October 23, 2008.

Appendix D Transferred.

Appendix E Certificate of Medical Necessity for Durable Medical Equipment.

Appendix F Orthodontic Assessment Record, repealed, 35 SDR 88, effective October 23, 2008.

67:16:11:03.20. Private duty nursing services. Private duty nursing services for a technology-dependent individual are covered when the following requirements are met:

(1) The services are medically necessary;

(2) The services are provided by a home health agency or, if a home health agency is not available in the area to provide the services, by a nurse licensed under the provisions of SDCL chapter 36-9. The department must have a written denial of services from the home health agency before the nurse delivers the services and the nursing services must meet the provisions of 42 C.F.R. § 440.70;

(3) The services are provided in the individual's residence, school setting, hospital, or nursing facility. For the purpose of this rule, an individual's residence does not include an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities or an institution for individuals with a mental disease;

(4) The services are provided to an individual requiring more than three consecutive hours of patient care or more patient care than is routinely provided by the nursing staff of a hospital or nursing facility;

(5) The services are prescribed by the individual's attending physician and contained in the individual's plan of care; and

(6) The services are authorized by the department before they are provided.

The individual's record must contain written documentation verifying that these requirements have been met.

Source: 18 SDR 209, effective June 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Private duty nursing services -- Extended home health aide services -- Prior authorization -- Reauthorization, § 67:16:11:03.22; Covered services must be medically necessary, § 67:16:01:06.02.

CHAPTER 67:16:14

PRESCRIPTION DRUGS

Section

67:16:14:03 Repealed.

67:16:14:04 Items and services covered.

67:16:14:05 Items and services not covered.

67:16:14:06 Payment for items dispensed by pharmacy.

67:16:14:06.01 Repealed.

67:16:14:06.02 State MAC list.

67:16:14:06.03 Dispensing fee for maintenance drugs.

67:16:14:06.04 Payment of container costs for drugs dispensed under unit dose system.

67:16:14:06.05 Prescriptions for family planning items.

67:16:14:06.06 Payment for drugs dispensed by physician.

67:16:14:06.07 and 67:16:14:06.08 Repealed.

67:16:14:06.09 Payment for items dispensed by PHS provider.

67:16:14:06.10 Coverage limits -- Growth hormones.

67:16:14:06.11 Required use of tamper-resistant prescriptions.

67:16:14:07 Repealed.

67:16:14:08 Utilization review.

67:16:14:09 Repealed.

67:16:14:10 Cost sharing.

67:16:14:11 and 67:16:14:12 Repealed.

67:16:14:13 Billing requirements.

67:16:14:14 Claim requirements.

67:16:14:15 Application of other chapters.

67:16:14:16 Over-the-counter items covered.

67:16:14:17 Drug review by P and T committee.

67:16:14:18 Prior authorization for certain prescription drugs.

67:16:14:19 P and T committee to make recommendations to department.

67:16:14:20 Notice to interested parties before drug placed on list -- Opportunity for interested parties to present data, opinions, and arguments.

67:16:14:21 Notice to providers when drug is to be placed on list.

67:16:14:22 Cost of drug not covered if substitution not made or prior authorization obtained.

67:16:14:23 Emergency supplies.

67:16:14:24 Appeal process.

67:16:14:06.04. Payment of container costs for drugs dispensed under unit dose system. Payment for drugs dispensed under a unit dose system includes a container cost in addition to the amount determined under § 67:16:14:06. The container cost is available on the department's website at http://dss.sd.gov/medicalservices/providerinfo/feeschedule.asp and is limited to one fee for each prescription each month.

Manufacturers' prepackaged strip items, liquid preparations, or items dispensed in original containers do not qualify for additional container costs.

Payment for drugs dispensed under a unit dose system is limited to a recipient who is a participant under home- and community-based services or resides in a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, an assisted living center, or an adjustment training center.

Source: Transferred from § 67:16:14:06, 14 SDR 153, effective May 23, 1988; 16 SDR 234, effective July 1, 1990; 22 SDR 93, effective January 7, 1996; 37 SDR 53, effective September 23, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1, 28-6-1.1.

CHAPTER 67:16:16

FACILITIES FOR THE MENTALLY IMPAIRED

Section

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

(1) "Facility," a public or private institution licensed by an agency of the state of South Dakota or owned and operated by the state of South Dakota and certified by the department as a provider of care under the medical assistance program for eligible ~~mentally retarded persons~~ individuals with intellectual disabilities, persons with a related condition, or individuals who are mentally or emotionally impaired;

(2) "Monthly care cost," the total monthly dollar amount payable by or in behalf of an eligible individual;

(3) "Review team," a team consisting of a physician, a registered nurse, a social worker, and other professionals as required which conducts on-site reviews and inspections of facilities for ~~the mentally retarded or mentally~~ individuals with intellectual disabilities or ~~emotionally impaired~~ emotional impairments; and

(4) "Utilization review," the assessment of the necessity for initial medical care or services and the periodic reassessment of the continued need for medical care or services by the review team.

Source: 1 SDR 30, effective October 13, 1974; 4 SDR 88, effective June 26, 1978; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 11, effective August 1, 1982; 16 SDR 235, effective July 5, 1990; 26 SDR 168, effective July 1, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Title XIX of the Social Security Act, 42 U.S.C. § 1396d.

67:16:16:09. Payments for reserved bed days. Payment shall be made in behalf of an eligible individual when it is necessary to reserve a recipient's bed during temporary absence from a skilled nursing or intermediate care facility for persons with mental disease or an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities. Payment is limited to a maximum of five days when the absence is due to admission to an acute care general hospital for an acute condition and therapeutic home visits when the absence has been provided for in the patient's plan of care.

No payment may be made to a state-owned institution for reserving a bed during a resident's absence.

Source: 1 SDR 30, effective October 13, 1974; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 79, effective February 1, 1984; 11 SDR 26, effective August 21, 1984; 16 SDR 235, effective July 5, 1990.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:24

PERSONAL CARE SERVICES

Section

67:16:24:03. Services covered. Personal care services are limited to medically necessary services contained in the recipient's case service plan and provided in the recipient's residence. Personal care services covered are limited to the following:

(1) Basic personal care and grooming, including bathing, shaving, dressing, and assisting the recipient with hair and teeth care;

(2) Assistance with bladder or bowel requirements, which does not include administration of a bowel program;

(3) Assisting the patient with medications which are ordinarily self-administered;

(4) Assistance with food, nutrition, and diet activities if they are incidental to a medical need;

(5) Performing those household services, if related to a medical need, that are essential to the patient's health and comfort in the patient's residence; or

(6) Maintenance nursing.

The department shall use SDCL chapter 36-9 to determine when the needed covered services must be delivered by a licensed nurse.

For purposes of this rule, a recipient's residence does not include a hospital, penal institution, detention center, school, nursing facility, assisted living center, congregate facility where services are available, other types of group settings, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution which treats individuals for mental diseases.

Source: 5 SDR 109, effective July 1, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 16 SDR 235, effective July 5, 1990; 20 SDR 170, effective April 18, 1994; 23 SDR 92, effective December 10, 1996; 28 SDR 96, effective December 30, 2001.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Covered services must be medically necessary, § 67:16:01:06.02; Practices not prohibited by chapter, SDCL 36-9-28.

CHAPTER 67:16:25

TRANSPORTATION SERVICES

Section

67:16:25:12 Repealed.

67:16:25:12.01 Claim requirements -- Community transportation services.

67:16:25:12.02 Claim requirements -- Commercial carrier.

67:16:25:12.03 Claim requirements -- Recipient, escort, or volunteer driver.

67:16:25:12.04 Claim requirements -- Non-profit service organization.

67:16:25:12.05 Claim requirements -- Modifier codes -- Ambulance, wheelchair, and community transportation services.

67:16:25:13 Application of other chapters.

67:16:25:14 Recovery of amounts overpaid.

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

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

(4) 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

(5) 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.

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

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

CHAPTER 67:16:29

MEDICAL EQUIPMENT

Section

67:16:29:04. Limits on the provision of medical equipment. The provision of medical equipment is subject to the following requirements:

(1) The equipment must be medically necessary according to § 67:16:01:06.02;

(2) The equipment must be prescribed in writing by a physician for use in the recipient's residence. A recipient's residence does not include a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution for individuals with a mental disease;

(3) The prescription must be signed and dated by the physician before the covered medical equipment is provided. The effective date of the prescription is the physician's signature date;

(4) The prescribing physician must sign and date the certificate of medical necessity contained in Appendix C at the end of this chapter;

(5) When equipment is rented, the prescription and the certificate of medical necessity must be renewed every six months. Documentation justifying continued use of rental equipment must be contained on the certificate of medical necessity.

Source: 14 SDR 46, effective September 28, 1987; 16 SDR 239, effective July 9, 1990; 17 SDR 194, effective July 1, 1991; 18 SDR 210, effective June 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:36

HOSPICE SERVICES

Section

67:16:36:01. Definitions. Terms used in this chapter mean:

(1) "Assisted living center," a facility as defined in SDCL subdivision 34-12-1.1(2);

(2) "Continuous home care day," a category of care as defined in 42 C.F.R. § 418.302 (as amended to January 1, 2010);

(3) "Community support provider," a nonprofit facility as defined in SDCL subdivision 27B-1-17(4);

(4) "General inpatient care day," a category of care as defined in 42 C.F.R. § 418.302 (as amended to January 1, 2010).

(5) "Hospice facility," an agency or organization engaged in providing care to terminally ill individuals;

(6) "Inpatient respite care day," a category of care as defined in 42 C.F.R. § 418.302 (as amended to January 1, 2010;

(7) "Inpatient hospice," a facility as defined in SDCL subdivision 34-12-1.1(10);

(8) "~~ICF-MR~~ ICF/IID," a facility as defined in § 67:54:03:01;

(9) "Nursing facility," a facility as defined in SDCL subdivision 34-12-1.1(7);

(10) "Residential hospice," a facility as defined in SDCL subdivision 34-12-1.1(11);

(11) "Routine home care day," a category of care as defined in 42 C.F.R. § 418.302 (as amended to January 1, 2010;

(12) "Swing bed," a licensed hospital bed approved by the Department of Health to provide short-term nursing facility care pending the availability of a nursing facility bed; and

(13) "Terminally ill," a medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course.

Source: 37 SDR 127, effective December 27, 2010.
General Authority: SDCL 28-6-1(1).
Law Implemented: SDCL 28-6-1(1).

67:16:36:04. Covered services -- Limits. Hospice services are limited to the following:

(1) Routine home care provided in a recipient's place of residence, skilled nursing facility, ~~ICF-MR~~ ICF/IID, swing bed, assisted living center, residential hospice, community support provider, or inpatient hospice;

(2) General inpatient care provided in a skilled nursing facility, ~~ICF-MR~~ ICF/IID, swing bed, inpatient hospice, or hospital. The facility must provide 24-hour nursing services with a registered nurse providing direct patient care included in each shift;

(3) Continuous home care provided in a recipient's place of residence, long-term care facility, residential hospice, community support provider, or inpatient hospice; and

(4) For recipients residing in their own homes, assisted living centers, community support providers, or residential hospices, inpatient respite care may be provided at a nursing facility, inpatient hospice, or hospital.

A recipient receiving hospice services in a skilled nursing facility, ~~ICF-MR~~ ICF/IID, swing bed, assisted living center, community support provider, or inpatient hospice must meet the level of care requirements of chapter 67:45:01.

Source: 37 SDR 127, effective December 27, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:16:36:05. Reimbursement for room and board. A recipient's room and board is covered through the hospice benefit under the following circumstances:

(1) If a recipient is receiving routine home care in an inpatient hospice; or
(2) If a recipient is receiving routine home care or continuous home care in a skilled nursing facility, ~~ICF-MR~~ ICF/IID, or swing bed.

For a recipient receiving routine home care or continuous home care in a skilled nursing facility, ~~ICF-MR~~ ICF/IID, or swing bed, the hospice provider is paid 95% of the per deim rate that would have been paid to the facility. The facility is paid by the hospice provider pursuant to their written agreement as required by 42 C.F.R. § 418.112, as amended to January 1, 2010.

Source: 37 SDR 127, effective December 27, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:37

SCHOOL DISTRICTS

Section

67:16:37:14. Billing requirements. A school district submitting a claim for covered services under this chapter must submit the claim at its usual and customary charge.

The school district must submit the claim when the service is listed in the child's individual education plan and is covered under this chapter. Services provided to an individual who has been admitted to a hospital as an inpatient, or who is residing in a residential treatment center, a nursing facility, or an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities are exempt from the provisions of this rule. Claims for these services must be submitted according to the applicable chapters of article 67:16.

A provider, other than those listed above, may not submit claims for services which the provider knows or should have known are services listed in the child's individual education plan.

Claims submitted for psychological services listed in § 67:16:37:06 must use procedure code 90899 and may not exceed 60 hours in any 12 month period;

Claims submitted for physical therapy services must use procedure code 97799.

Claims submitted for occupational therapy services must use procedure code W4510.

Claims submitted for speech therapy services must use procedure code 92507.

Claims submitted for audiology services must use procedure code 92599.

Claims submitted for nursing services listed in § 67:16:37:11 must use procedure code W4710.

Source: 18 SDR 78, effective November 4, 1991; 18 SDR 224, effective July 13, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:41

MENTAL HEALTH SERVICES BY INDEPENDENT PRACTIONERS

Section

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;

(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/MR~~ 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;

(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.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:16:42

NUTRITIONAL THERAPY AND NUTRITIONAL SUPPLEMENTS

Section

67:16:42:15 Application of other chapters.

Appendix A List of Procedure Codes and Prices for Enteral Therapy, Oral Nutrition, and Electrolyte Replacement for Individuals Under 21 Years of Age, repealed, 35 SDR 49, effective September 10, 2008.

Appendix B List of Procedure Codes and Prices for Enteral Therapy for Individuals Age 21 and Older, repealed, 35 SDR 49, effective September 10, 2008.

Appendix C List of Procedure Codes and Prices for Parenteral Therapy, repealed, 35 SDR 49, effective September 10, 2008.

67:16:42:02. Enteral nutritional therapy and nutritional supplements for individual under 21 years of age. Enteral nutritional therapy, oral nutritional supplements, and electrolyte replacement for an individual who is under 21 years of age are covered when the following conditions are met:

(1) The individual is not institutionalized and services are delivered in the individual's residence. For purposes of this rule, an individual's residence does not include an acute care hospital, a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution for individuals with a mental disease;

(2) If eligible for the Supplemental Nutrition Program for Women, Infants, and Children operated by the Department of Health, the items and services are not available under that program or the physician's order exceeds the amount allowed under that program; and

(3) The items are ordered by a physician.

Enteral nutritional therapy is covered when the individual has a functioning gastrointestinal tract but cannot maintain weight and strength commensurate with the individual's general condition because of a medical condition or illness or pathology to or the nonfunctioning of the structures that normally permit food to reach the digestive tract.

Oral nutritional supplements are covered when a child cannot maintain normal protein or caloric intake from a daily nutritional plan or when a normal infant formula cannot be tolerated because of a condition or illness.

Source: 17 SDR 37, effective September 11, 1990; 17 SDR 184, effective June 6, 1991; 17 SDR 200, effective July 1, 1991; 18 SDR 209, effective June 23, 1992; transferred from § 67:16:11:03.05, 22 SDR 32, effective September 11, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:16:42:03. Enteral nutritional therapy for individual 21 years of age and older. Enteral nutritional therapy for an individual who is 21 years of age or older is covered if all of the following conditions are met:

(1) The individual is not institutionalized and services are delivered in the individual's residence. For purposes of this rule, an individual's residence does not include an acute care hospital, a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution for individuals with a mental disease;

(2) The individual has a permanently inoperative internal body organ or an inoperative body function;

(3) There is a physician's order or prescription for the therapy and sufficient medical documentation describing the medical necessity for the therapy;

(4) The provider has received prior approval from the department; and

(5) Enteral nutritional therapy is the only means the individual has to receive nutrition.

Enteral nutritional therapy is covered if the individual has a functioning gastrointestinal tract but cannot maintain weight and strength commensurate with the individual's general condition because of pathology to or the nonfunction of the structures that normally permit food to reach the digestive tract.

Source: 22 SDR 32, effective September 11, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:16:42:05. Parenteral nutritional therapy. Parenteral nutritional therapy is covered if all of the following conditions are met:

(1) The individual is not institutionalized and services are delivered in the individual's residence. For purposes of this rule, an individual's residence does not include an acute care hospital, a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution for individuals with a mental disease;

(2) The individual has a permanently inoperative internal body organ or an inoperative body function such as severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the individual's general condition;

(3) There is a physician's order or prescription for the therapy and medical documentation describing the diagnosis and the medical necessity for the therapy;

(4) The provider has received prior approval from the department; and

(5) Parenteral nutritional therapy is the only means the individual has to receive nutrition.

Source: 22 SDR 32, effective September 11, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

ARTICLE 67:40

OFFICE OF ADULT SERVICES AND AGING

Chapter

CHAPTER 67:40:07

HOMEMAKER SERVICES

Section

67:40:07:01. Definitions. Terms used in chapter 67:40:11 have the same meanings when used in this chapter. Terms used in this chapter mean:

(1) "Activities of daily living," tasks performed routinely by an individual to maintain physical functioning and personal care, including transferring, moving about, dressing, grooming, toileting, and eating;

(2) "Economic resources," the client's own resources together with other types of assistance, financial or otherwise, which are available to a client and would help maintain the client in the client's own home;

(3) "Health status," the client's medical condition based on a diagnosis of the client's existing illnesses or disabilities, the medical care and medication needed in response to the diagnosis, and an assessment of the client's ability to perform daily tasks;

(4) "Home," the client's residence which may not include a hospital, penal institution, detention center, school, nursing facility, assisted living facility, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution that treats individuals who have mental diseases;

(5) "Home environment," the client's dwelling unit, building, or house and its furnishings and the neighborhood in which the client resides;

(6) "Homemaker," the individual who performs homemaker services for an eligible client;

(7) "Homemaker service," the performance of nonmedical household tasks designed to maintain a client in the client's home and provided by a homemaker for a client who has lost the ability to perform the tasks;

(8) "Personal adjustment," the indicators of an individual's mood, judgment, and memory which are essential to remaining independent; and

(9) "Social resources," support or assistance available to a client from the client's family, friends, neighbors, or community organizations such as churches, civic groups, or senior centers, or other agencies providing services to residents of the community.

Source: SL 1975, ch 16, § 1; 2 SDR 49, effective January 7, 1976; transferred from § 67:14:07:01, 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 30, effective September 16, 1982; 13 SDR 193, effective June 22, 1987; 23 SDR 92, effective December 10, 1996; 26 SDR 109, effective March 5, 2000.

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-44.

CHAPTER 67:40:18:01

RESPITE CARE SERVICES

Section

67:40:18:01. Definitions. Terms used in this chapter mean:

(1) "Activities of daily living," tasks performed routinely by a person to maintain physical functioning and personal care, including transferring, moving about, dressing, grooming, toileting, and eating;

(2) "Client," a dependent person at risk of being institutionalized and presently unable to live independently;

(3) "Economic resources," the client's own resources together with other types of assistance, financial or otherwise, which are available to a client and would help maintain the client in the client's own home;

(4) "Health status," the client's medical condition based on a diagnosis of the client's existing illnesses or disabilities, the medical care and medications needed in response to the diagnosis, and an assessment of the client's ability to perform daily tasks;

(5) "Home," the client's residence which may not include a nursing facility, hospital, assisted living facility, penal institution, detention center, school, intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or an institution that treats individuals who have mental diseases;

(6) "Home environment," the client's dwelling unit, building, or house and it furnishings and the neighborhood in which the client resides;

(7) "Needs assessment and evaluation," a procedure for evaluating a client for respite care;

(8) "Personal adjustment," the indicators of an individual's mood, judgment, and memory which are essential to remaining independent;

(9) "Primary caregiver," an individual who provides a client with continuous at-home care at no cost;

(10) "Provider," the person who provides respite care services;

(11) "Respite care," temporary relief for primary caregivers to prevent individual and family breakdown, institutionalization of the person being cared for, or abuse by the primary caregiver as a result of stress from giving continuous support and care to a dependent person; and

(12) "Social resources," support or assistance available to a client from family, friends, neighbors, community organizations such as churches, civic groups, or senior centers, or other agencies providing services to residents of the community.

Source: 13 SDR 3, effective July 20, 1986; 13 SDR 193, effective June 22, 1987; 23 SDR 92, effective December 10, 1996; 26 SDR 109, effective March 5, 2000.

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-44.

ARTICLE 67:45

NURSING FACILITY LEVEL OF CARE AND CLAIMS

Chapter

CHAPTER 67:45:01

MEDICAL REVIEW TEAM – LEVEL OF CARE

Section

67:45:01:08. Redetermination of level of care classification. The registered nurse from the medical review team must annually redetermine an individual's level of care classification.

A redetermination may be made at more frequent intervals if a redetermination is warranted due to a change in the resident's mental or physical condition.

If it is determined that the individual does not need nursing facility care, adult foster care, or assisted living, the department shall notify the individual and the facility. The facility must document this notice in the individual's record.

Source: 2 SDR 74, effective May 13, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 11, effective August 1, 1982; transferred from § 67:16:18:14, 18 SDR 67, effective October 13, 1991; 22 SDR 16, effective August 17, 1995; 23 SDR 92, effective December 10, 1996; 26 SDR 21, effective August 24, 1999; 38 SDR 123, effective January 23, 2012.

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

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

Cross-References:
Assistance when nursing facility unable to meet individual's need -- Individual assigned to self-care -- Payment limits, § 67:45:02:08.
Assistance when need is intermediate care for ~~the mentally retarded~~ individuals with intellectual disabilities or intermediate care for the mentally disabled -- Payment limits, § 67:45:02:09.

CHAPTER 67:45:02

NURSING FACILITY CLAIMS AND PAYMENT LIMITS

Section

67:45:02:02 Payment limits -- Level of care classification.

67:45:02:03 Repealed.

67:45:02:04 Payment for reserved bed days.

67:45:02:05 and 67:45:02:06 Repealed.

67:45:02:07 Documentation required for ventilator add-on payment.

67:45:02:08 Assistance when nursing facility unable to meet individual's need -- Individual assigned to self-care -- Payment limits.

67:45:02:09 Assistance when need is intermediate care for ~~the mentally retarded~~ individuals with intellectual disabilities or intermediate care for the mentally disabled -- Payment limits.

67:45:02:10 Payment limited to resident days.

67:45:02:11 Utilization review.

67:45:02:12 Claim requirements.

67:45:02:13 Claim requirements -- New residents.

67:45:02:09. Assistance when need is intermediate care for ~~the mentally retarded~~ individuals with intellectual disabilities or intermediate care for the mentally disabled -- Payment limits. When a nursing facility is unable to meet the needs of the individual because the need is for intermediate care for ~~the mentally retarded~~ an individual with an intellectual disability or intermediate care for the mentally disabled, the department shall refer the individual to the Department of Human Services for assistance in finding an appropriate facility. Payment to the facility will continue for a maximum of 60 days or until the date of transfer to an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities or to an intermediate care facility for the mentally disabled, whichever occurs first.

Source: 5 SDR 109, effective July 1, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981; transferred from § 67:16:04:09.01, 18 SDR 67, effective October 13, 1991.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

ARTICLE 67:46

ELIGIBILITY FOR MEDICAL SERVICES

Chapter

CHAPTER 67:46:03

LONG-TERM CARE ELIGIBILITY

Section

67:46:03:03 Long-term care residency requirement and beginning of eligibility.

67:46:03:04 State residency determinations -- General provisions.

67:46:03:05 Residency -- Placement by states in an out-of-state long-term care facility.

67:46:03:06 No specified period of residence required.

67:46:03:07 Incapability of indicating intent.

67:46:03:08 Residency determinations -- Individuals under age 21 residing in long-term care facilities.

67:46:03:09 Residency determinations -- Individuals under age 21 not residing in a long-term care facility.

67:46:03:10 Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Capable of indicating intent.

67:46:03:11 Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent before age 21.

67:46:03:12 Residency determinations -- Individuals aged 21 and over residing in long-term care facilities -- Incapable of indicating intent after age 21.

67:46:03:13 Residency determinations -- Individuals aged 21 and over not residing in a long-term care facility.

67:46:03:14 Disputed residency cases.

67:46:03:15 Residence determination when individual leaves the state.

67:46:03:16 and 67:46:03:17 Repealed.

67:46:03:18 Determination of disability.

67:46:03:19 Determination of blindness.

67:46:03:20 Cessation of determination of blindness.

67:46:03:21 Cessation of disability.

67:46:03:22 Release of medical information.

67:46:03:23 Payment for examinations.

67:46:03:07. Incapability of indicating intent. The department shall consider an individual incapable of indicating intent if the individual meets one of the following:

(1) The individual has been judged legally incompetent by a court;

(2) A physician, psychologist, or a qualified ~~mental retardation~~ developmental disability professional has found the individual to be incapable of indicating intent and has based this finding on medical evidence; or

(3) A psychologist has determined that the individual has an IQ of 49 or less or a mental age of 7 or less and has based this determination on tests appropriate for the individual being tested.

Source: 10 SDR 39, effective November 1, 1983; transferred from § 67:16:18:04.03, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: State residence -- Individual considered incapable of indicating intent, 42 C.F.R. § 435.403; Definition of qualified ~~mental retardation~~ developmental disability professional, 42 C.F.R. § 442.401.

CHAPTER 67:46:09

DISABLED CHILDREN

Section

67:46:09:01. Definitions. Terms used in this chapter mean:

(1) "Active treatment," a continuous program of specialized training, treatment, health services, and related services provided to help an individual achieve the highest functioning level possible, but not services required to maintain generally independent individuals who are able to function with little supervision or in the absence of the continuous active treatment program;

(2) "Activities of daily living" or "ADL," physical functions which allow a person to live independently, including bathing, dressing, eating, toileting, and mobility according to an age appropriate assessment;

(3) "Developmental milestones," significant behavior that marks and delineates normal sequences of human development;

(4) "Disabled child program," a program for certain medically fragile and severely disabled children whose medical care needs would otherwise require the level of care provided in a medical institution;

(5) "~~ICF-MR~~ ICF-IDD," an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities as defined in § 67:54:03:01;

(6) "Medical institution," a hospital as defined under § 67:16:03:01; a facility licensed by the department of health under SDCL 34-12 as a specialized hospital with services limited to rehabilitation; a nursing facility as defined in § 67:45:01:01; or an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities;

(7) "Professional nursing services," nursing services which are provided by a professional nurse under the provisions of SDCL chapter 36-9; and

(8) "Team," a group which determines eligibility for the disabled child program under the provisions of this chapter and consists of at least a nurse and a social worker and may include a physician.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:06. Team to determine level of care. The team shall determine whether the child requesting assistance under this chapter needs one of the following levels of care:

(1) Acute care hospital;

(2) Specialized hospital;

(3) Nursing facility; or

(4) ~~ICF-MR~~ ICF-IID.

A child who is medically stable, even though disabled, is not considered in need of a level of care. A child is medically stable if the child's health care and medical needs do not require care in a medical institution.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:10. Level of care -- ~~ICF-MR~~ ICF-IID. The team may assign an individual to an ~~ICF-MR~~ ICF-IID level of care when all of the following conditions are met:

(1) The child requires a continuous active treatment program;

(2) The child requires direct assistance from professionals for special rehabilitative or developmental intervention for conditions which significantly interfere with mental age-appropriate activities;

(3) The child requires the assistance of another person for the performance of at least three of the five activities of daily living according to an age appropriate assessment. The ADL dependency requires the assistance and presence of another person during the entire activity;

(4) The child requires continuing direct care services which have been ordered by a physician and can only be provided by or under the supervision of a professional nurse. The services include daily management, direct observation, monitoring, or performance of complex nursing procedures. Continuing care is repeated application of the procedures or services at least once each 24 hours, frequent monitoring, and documentation of the child's condition and response to the procedures or services; and

(5) A clinical psychologist has determined that the child ~~is mentally retarded~~ has an intellectual disability according to the provisions of § 67:46:09:11, or a physician or a psychologist has determined that the child is developmentally disabled according to § 67:16:27:05.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:11. Determination of ~~mental retardation~~ intellectual disability. A clinical psychologist may determine that a child ~~is mentally retarded~~ has an intellectual disability for the purposes of subdivision 67:46:09:10(5) if the child meets one of the following conditions:

(1) The child has achieved only those developmental milestones generally acquired by children no more than half the child's chronological age; or

(2) The child has an intelligence rating of 69 or below as determined by a standardized intelligence test such as the Wechsler Intelligence Scale for Children (WISC-R) or the Stanford-Binet.

Source: 19 SDR 26, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:09:12. Cost not to exceed cost of medical institutional care. Based on the level of care determination, the actual itemized cost of all Medicaid covered services provided in the home may not exceed 100 percent of the Medicaid-allowable cost of care in a medical institution. Medicaid allowable cost is the amount payable when cost share, insurance, or Medicare deductible or coinsurance has been applied.

The costs of all services that would be included in a medical institution's reimbursement shall be used to determine the monthly home care cost. When determining the monthly home care cost, the cost of purchased medical equipment shall be prorated on an annual basis.

When the cost of care in the home exceeds the cost of institutional care, the department shall issue a notice of intent to discontinue or deny further service. The department may reconsider its decision to discontinue or deny further service if, within 30 days from the date of the notice, the parent provides documentation to the department that future costs will decline and be within 100 percent of the cost.

The Medicaid allowable cost of care for the various medical institutions are as follows:

(1) Acute hospital care for a child who meets the requirements of § 67:46:09:07, $22,600 a month;

(2) Specialized hospital care for a technology-dependent child who meets the requirements of subdivision 67:46:09:08(1), $13,800 a month;

(3) Specialized hospital care for a child who is not technology-dependent who meets the requirements of subdivision 67:46:09:08(2), $6,350 a month;

(4) Nursing facility care cost for a child who meets the requirements of § 67:46:09:09, $2,054 a month plus any add-on allowances for ventilator assistance; and

(5) Intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities for a child who meets the requirements of § 67:46:09:10, $5,200 a month.

Source: 19 SDR 26, effective August 23, 1992; 20 SDR 144, effective March 10, 1994; 21 SDR 162, effective March 23, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Add-on payment -- Ventilator, § 67:16:04:08.04; Documentation required for ventilator add-on payment, § 67:45:02:07.

ARTICLE 67:48

RECOVERIES AND INVESTIGATIONS

Chapter

CHAPTER 67:48:01

COLLECTION OF MEDICAL BENEFITS PAID IN ERROR

Section

67:48:01:01. Definitions. Terms used in this chapter mean:

(1) "Assets," when determining eligibility for medical services, the income and resources of those individuals required to be considered under article 67:46, including any income or resources which the individual or the individual's spouse, if applicable, is entitled to receive but does not because of some action or inaction on the part of any of the individuals listed in § 67:46:05:32.01;

(2) "IPV," intentional program violation;

(3) "Long-term care," continuing 24-hour service in a medical facility, a nursing facility, an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, an assisted living facility, or an adult foster home; participation in a home and community-based service program under chapter 67:54:04 or 67:44:03; and

(4) "SSI," supplemental security income.

Source: 25 SDR 141, effective May 20, 1999.

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

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

CHAPTER 67:48:02

LIENS AND ESTATE RECOVERIES

Section

67:48:02:06 Recovery when individual would have been ineligible for assistance.

67:48:02:07 Fair hearing.

67:48:02:08 Recovery against estate of surviving spouse -- Petition to limit financial responsibility -- Determination of value of estate.

67:48:02:02. Individuals subject to liens and estate recoveries. Any payment of medical assistance by or through the department is a debt due to the department if the individual is residing in any of the following:

(1) A nursing home;

(2) An intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities;

(3) An adult foster care home;

(4) An assisted living center;

(5) A hospital swingbed; or

(6) An institution for individuals with a mental disease.

Source: 21 SDR 119, effective January 4, 1995.

General Authority: SDCL 28-6-23, 28-6-24.

Law Implemented: SDCL 28-6-23, 28-6-24.

ARTICLE 67:54

MEDICAL PROGRAMS ADMINISTERED BY DEPARTMENT OF HUMAN SERVICES

CHAPTER 67:54:03

INTERMEDIATE CARE FOR ~~THE MENTALLY RETARDED OR DEVELOPMENTALLY DISABLED~~ INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

Section

67:54:03:01 Definitions.

67:54:03:02 Eligibility for ~~ICF-MR/DD~~ ICF/IID services.

67:54:03:03 Criteria for determining developmental disability -- Facility to maintain documentation.

67:54:03:04 Determination of need for ~~ICF-MR/DD~~ ICF/IID services -- Initial level of care and annual redetermination.

67:54:03:05 and 67:54:03:06 Repealed.

67:54:03:07 Utilization review.

67:54:03:08 Payment limits.

67:54:03:09 Payments for reserved bed days.

67:54:03:10 Application of other rules.

67:54:03:11 and 67:54:03:12 Repealed.

Appendix A Criteria for Inventory for Client and Agency Planning (ICAP).

67:54:03:01. Definitions. Terms used in this chapter mean:

(1) "Intermediate care facility for individuals with ~~mental retardation or developmental disabilities~~ intellectual disabilities" or "~~ICF-MR" or "ICF-MR/DD~~ ICF/IID," an institution which has as its primary function the provision of health and rehabilitative services for individuals ~~who are mentally retarded~~ with intellectual disabilities or who have other developmental disabilities;

(2) "Utilization review team," a team consisting of a physician, a registered nurse, and a qualified ~~mental retardation~~ developmental disability professional as defined in SDCL 27B-1-17; and

(3) "Utilization review," the utilization review team's assessment of the necessity for initial medical care and rehabilitation services and the periodic reassessment of the continued need for such care and services.

Source: 18 SDR 224, effective July 13, 1992; 37 SDR 133, effective January 18, 2011.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:54:03:02. Eligibility for ~~ICF-MR/DD~~ ICF/IID services. To be eligible for ~~ICF-MR/DD~~ ICF/IID services under Medicaid, the following criteria must be met:

(1) The individual must be eligible for Medicaid under article 67:16;

(2) The individual must be developmentally disabled according to § 67:54:03:03; and

(3) The utilization review team must have determined that the individual is in need of ~~ICF-MR/DD~~ ICF/IID services pursuant to § 67:54:03:04.

Source: 18 SDR 224, effective July 13, 1992; 37 SDR 133, effective January 18, 2011.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:54:03:03. Criteria for determining developmental disability -- Facility to maintain documentation. The facility must maintain in the individual's medical record a copy of documentation signed by a physician or psychologist which indicates that the individual is developmentally disabled. An individual is considered developmentally disabled if the individual meets all of the following criteria:

(1) The individual has a severe, chronic disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, head injury, brain disease, autism, or another condition which is closely related to ~~mental retardation~~ intellectual disability and requires treatment or services similar to those required for ~~the mentally retarded~~ individuals with intellectual disabilities. To be closely related to ~~mental retardation~~ intellectual disability, a condition must cause impairment of general intellectual functioning or adaptive behavior similar to that of ~~mental retardation~~ intellectual disability;

(2) The disability manifested itself before the individual reached the age of 22; and

(3) The disability is likely to continue indefinitely.

Source: 18 SDR 224, effective July 13, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:54:03:04. Determination of need for ~~ICF-MR/DD~~ ICF/IID services -- Initial level of care and annual redetermination. An individual is in need of ~~ICF-MR~~ ICF/IID services if

the Inventory for Client and Agency Planning (ICAP) completed under § 67:54:03:05 shows that the individual has a substantial functional limitation in three or more of the following functional areas:

(1) Self-care -- the daily activities enabling a person to meet basic life needs for food, hygiene, and appearance;

(2) Receptive and expressive language -- communication involving verbal and nonverbal behavior that enables a person to understand others and to express ideas and information to others;

(3) Learning/general cognitive competence -- the ability to acquire new behaviors, perceptions, and information and to apply the experiences to new situations;

(4) Mobility -- the ability to use fine or gross motor skills to move from one place to another with or without mechanical aids;

(5) Self-direction -- the management of one's social and personal life; the ability to make decisions affecting and protecting one's self-interests;

(6) Capacity for independent living -- based on age, the ability to live without extraordinary assistance; and

(7) Economic self-sufficiency -- the maintenance of financial support.

The utilization review team must annually redetermine that the individual continues to need ~~ICF-MR/DD~~ ICF/IID services.

Source: 18 SDR 224, effective July 13, 1992; 21 SDR 34, effective August 29, 1994; 26 SDR 150, effective May 21, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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.

67:54:03:07. Utilization review. Services provided by an ~~ICF-MR/DD~~ ICF/IID are subject to utilization review on the following four levels:

(1) At the time of eligibility determination;

(2) After discharge from a hospital;

(3) During claims processing; or

(4) At the annual classification and review.

Source: 18 SDR 224, effective July 13, 1992; 37 SDR 133, effective January 18, 2011.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:54:03:08. Payment limits. Payment to an ~~ICF-MR~~ ICF/IID for services provided to an eligible individual may not be made until the requirements of this chapter are met and the facility is actually providing services to the individual.

Payment to facilities shall be made in behalf of a recipient for resident days only. Resident days include the day of admission but exclude the day of discharge.

Source: 18 SDR 224, effective July 13, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:54:03:09. Payments for reserved bed days. No payment may be made to an ~~ICF-MR~~ ICF/IID for reserving a bed during the individual's absence.

Source: 18 SDR 224, effective July 13, 1992; 26 SDR 150, effective May 21, 2000; 37 SDR 133, effective January 18, 2011.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:54:04

HOME AND COMMUNITY-BASED SERVICES

Section

67:54:04:02 Long-term care requirements apply to HCBS.

67:54:04:03 Financial eligibility requirements.

67:54:04:03.01 Notification of eligibility.

67:54:04:04 General eligibility -- Ineligible if SSI disability benefits denied.

67:54:04:05 Criteria for determining developmental disabilities -- Documentation required.

67:54:04:06 Preplacement assessment.

67:54:04:07 and 67:54:04:08 Repealed.

67:54:04:09 Residential limitations on eligibility.

67:54:04:10 Individual service plan.

67:54:04:11 Parent's income and resources.

67:54:04:12 Determining amount of HCBS assistance

67:54:04:13 Repealed.

67:54:04:14 Covered services.

67:54:04:15 to 67:54:04:17 Repealed.

67:54:04:18 Initial level of care.

67:54:04:18.01 Redetermination of level of care.

67:54:04:19 Conditions of provider participation -- Certification -- Agreement.

67:54:04:20 and 67:54:04:21 Repealed.

67:54:04:22 Extent of payment.

67:54:04:23 Payments during temporary absences.

67:54:04:24 Basis of payment.

67:54:04:25 Utilization review.

67:54:04:26 Application of other chapters.

67:54:04:27 Right to request a fair hearing.

67:54:04:01. Definitions. Terms used in this chapter mean:

(1) "CSP," community support provider;

(2) "Functional limitation," a deficit that is indicated by a score that is at least two standard deviations below the mean on a standardized adaptive behavior instrument score;

(3) "Home and community-based services," or "HCBS," the services listed in § 67:54:04:14 that are provided by a certified provider to participants who, without these services, would require placement in an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities;

(4) "ICAP," inventory for client and agency planning;

(5) "Individual service plan" or "ISP," a single plan for the provision of services and supports to the participants that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training;

(6) "ISP team," a team composed of the coordinator, the participant, the participant's parent or guardian if the participant is under 18 and anyone else the participant desires;

(7) "Participant," a person receiving services or support under the provisions of these articles;

(8) "Provider," a private organization or a cooperative educational service unit which provides HCBS under this chapter and is certified by the Department of Human Services under article 46:11 and article 46:13 as a community support provider as defined in subdivision 27B-1-17(4);

(9) "~~QMRP~~ QDDP," qualified ~~mental retardation~~ developmental disability professional; and

(10) "TANF," temporary assistance for needy families.

Source: 10 SDR 79, effective February 1, 1984; 11 SDR 26, effective August 21, 1984; 17 SDR 127, effective March 3, 1991; 18 SDR 67, effective October 13, 1991; transferred from § 67:16:27:01, effective August 23, 1992; 26 SDR 150, effective May 21, 2000; SL 2013, ch 128, § 1, effective July 1, 2013.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Definition of qualified developmental disabilities professional, SDCL 27B-1-4; Definition of cooperative educational service units, SDCL 13-5-31.

67:54:04:04. General eligibility -- Ineligible if SSI disability benefits denied. In addition to qualifying under § 67:54:04:03, an individual must meet the following requirements:

(1) Be developmentally disabled according to § 67:54:04:05;

(2) Be appropriate for HCBS placement according to § 67:54:04:06; and

(3) Be in need of and eligible for placement in an intermediate care facility for ~~the mentally retarded or the developmentally disabled~~ individuals with intellectual disabilities according to § 67:54:03:04.

An individual who has been denied social security or SSI disability benefits based on a disability is ineligible for HCBS.

Source: 10 SDR 79, effective February 1, 1984; 11 SDR 26, effective August 21, 1984; 15 SDR 154, effective April 9, 1989; transferred from § 67:16:27:04, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Living arrangements -- Payment limitation -- Documentation required, § 67:54:04:13.

67:54:04:05. Criteria for determining developmental disabilities -- Documentation required. The provider shall maintain documentation signed by a physician or psychologist which indicates that the individual is developmentally disabled. An individual is considered developmentally disabled if the individual meets all of the following criteria:

(1) The individual has a severe, chronic disability attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, head injury, brain disease, or autism or any other condition, other than mental illness, closely related to ~~mental retardation~~ intellectual disability and requires treatment or services similar to those required for ~~the mentally retarded~~ individuals with intellectual disabilities. To be closely related to ~~mental retardation~~ intellectual disability, a condition must cause impairment of general intellectual functioning or adaptive behavior similar to that of ~~mental retardation~~ intellectual disability;

(2) The disability manifested itself before the individual reached age 22; and

(3) The disability is likely to continue indefinitely.

Source: 10 SDR 79, effective February 1, 1984; transferred from § 67:16:27:05, effective August 23, 1992; 26 SDR 150, effective May 21, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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 January 15th. For an individual's record to be valid, the evaluation date may not be more than 13 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 ~~is not mentally retarded~~ 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.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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.

67:54:04:09. Residential limitations on eligibility. Residents of hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities may apply for HCBS; however, these individuals may not be residents of one of these facilities when the HCBS services are provided.

Source: 10 SDR 79, effective February 1, 1984; transferred from § 67:16:27:09, effective August 23, 1992; 22 SDR 40, effective September 28, 1995.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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 shall update the ICAP data annually and submit it to the division. The ~~QMRP~~ QDDP, as defined in SDCL subdivision 27B-1-17(14), shall review the ICAP data to ensure continued eligibility that indicates at least three substantial functional limitations. The ~~QMRP~~ 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.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:54:07

TRAUMATIC BRAIN INJURY SERVICES

67:54:07:09. Participating provider. To participate in the delivery of TBI services, a provider must meet the following requirements:

(1) Must be certified by the Department of Human Services as an ~~adjustment training center~~ community support provider. If the provider is located in another state, the provider must be licensed or certified by the applicable licensing agency from the other state either as an intermediate care facility for ~~the mentally retarded or developmentally disabled~~ individuals with intellectual disabilities or as a home- or community-based service provider;

(2) Must provide TBI services;

(3) Must have a signed provider agreement with the Department of Human Services; and

(4) Must have a signed Medicaid provider agreement with the Department of Social Services.

Source: 23 SDR 8, effective July 21, 1996.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Community facility standards, art 46:11; Provider requirements, ch 67:16:33.

CHAPTER 67:54:09

FAMILY SUPPORT WAIVER SERVICES

Section

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;

(3) The division has determined that the individual is in need of and eligible for placement in an intermediate care facility for ~~the mentally retarded or the developmentally disabled~~ 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; 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.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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

67:54:09:13. Service restrictions. An individual may not receive family support services if already receiving services under chapter 67:54:04, 67:54:06, or 67:44:03. An individual may not be a resident of any of the following facilities when the family support services available under the provisions of this chapter are provided:

(1) A hospital;

(2) A nursing facility; or

(3) An intermediate care facility for individuals ~~who are mentally retarded or developmentally disabled~~ with intellectual disabilities.

Source: 34 SDR 271, effective May 7, 2008: SL 2013, ch 128, § 33, effective July 1, 2013.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.