

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

(1) "Abuse," an intentional act toward a participant involving:

(a) A criminal conviction under SDCL chapter 22-46 or other crime involving mistreatment of a participant; or

(b) Substantial evidence that a participant experienced harm, pain, fear, or mental anguish due to physical harm, physical injury, behavior causing imminent fear of physical harm or injury, or words or actions that intimidated, menaced, bullied, or coerced a participant;

(2)"Advocate," any individual designated by a participant to support that participant by speaking or acting on the participant's behalf;

~~(2)~~ (3) "Certification," the department decision following procedures in chapter 46:11:02 that entitles an organization to receive government funds and provide services to participants;

~~(3)~~ (4) "Chemical intervention," any medication used for the purpose of managing a participant's maladaptive problem behavior;

~~(4)~~ (5) "Community services provider," (SP) as defined in SDCL 27B-1-17;

~~(5)~~ (6) "Community support provider," (CSP) as defined in SDCL 27B-1-17;

~~(6)~~ (7) "Conservator," as defined in SDCL 29A-5-102;

~~(7)~~ (8) "Department," the Department of Human Services;

~~(8)~~ (9) "Developmental disability," as defined in SDCL 27B-1-18;

~~(9)~~ (10) "Direct home and community-based services," (direct HCB services) any waiver service provided by a community support provider (CSP), a community services provider (SP), or a qualified provider in the community, except for case management;

~~{10}~~ (11) "Division," the Division of Developmental Disabilities in the Department of Human Services;

(12) "Exploitation," the wrongful taking or exercising of control over property of a participant with the intent to defraud the participant;

~~{11}~~ (13) "Family," a person or a group of people who are related to the participant by blood, marriage, or adoption, or as defined by the participant as a family based upon bonds of affection. For the purposes of this subdivision, the phrase, "bonds of affection," means ~~enduring~~ ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

~~{12}~~ (14) "Group home," a congregate residential setting or home, for individuals with developmental disabilities;

~~{13}~~ (15) "Guardian," as defined in SDCL 29A-5-102;

~~{14}~~ (16) "Individualized service plan," (ISP) a single plan for the provision of necessary assessments, training, services, and supports to the participant that is person centered, directed by the participant, and oriented around personal outcomes measures, ~~and is intended to specify all needed assessments, supports, and training;~~

~~{15}~~ (17) "Intellectual disability," as defined in SDCL 27B-1-18.1;

~~{16}~~ (18) "Individualized service plan ~~(ISP)~~ team," a team composed of the participant; the participant's parent if the participant is under ~~18~~ eighteen years of age; or the participant's guardian; if any, the conflict-free case manager; the direct home and community-based services (HCBS) provider; and anyone else the participant desires;

~~{17}~~ (19) "National quality assurance organization," a national accrediting organization approved by the division;

(20) "Neglect," harm to a participant's health or welfare, without reasonable justification, caused by the conduct of someone responsible for the participant's health or welfare, including offensive behavior made

to or directed at a participant, and the failure to provide timely, consistent, and safe services, treatment, or care necessary to avoid physical or mental harm to the participant;

~~(18)~~ "Organized health care delivery system," a certified provider designated by the department that provides at least one waiver service directly to participants using the provider's employees;

~~(19)~~ (21) "Participant," a person receiving services or supports under the provisions of this article;

~~(20)~~ "Physical restraints," any manual hold or mechanical device that a participant cannot remove easily, and that restricts the free movement of, normal functioning of, or normal access to a portion of a participant's body;

~~(21)~~ (22) "Plan of correction," a plan to correct a deficiency, identified as a result of an investigation of an incident or event by the division, that has placed or has the immediate potential to place a participant or the participant's health and safety in jeopardy;

~~(22)~~ (23) "Plan of enhancement," a plan to improve a deficiency identified by the division as a result of the division's review of a provider's compliance with this article;

~~(23)~~ (24) "Problem behavior," a behavior that requires the attention of others in the person's environment because the behavior must be stopped or minimized;

~~(24)~~ (25) "Provider," a community support provider (CSP) or a community services provider (SP); and

~~(25)~~ (26) "Termination," the imminent cessation of provider services to a participant because of the inability of the provider to address the participant's needs.

Source: 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000; 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017; 49 SDR 48, effective November 22, 2022.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-1-15, 27B-2-26.

46:11:02:12. Probation. The division may impose probation, not to exceed one year, if ~~the~~ a provider fails to demonstrate substantial compliance with the requirements in this article or engages in any action listed in subdivisions 46:11:02:14(1), (2), (3), (4), and (5).

A provider may not accept new participants while on probation, unless approved by the division.

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

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

Law Implemented: SDCL 27B-1-15, 27B-2-26.

46:11:02:14. Revocation of certification. The department may revoke a provider's certification if the provider fails to meet the requirements of this article, or if the division finds that the provider has engaged in ~~any of the following~~:

- (1) Permitting, aiding, or abetting the commission of any unlawful act or omission;
- (2) ~~Engaging in any practices~~ Any act or practice which ~~that negatively affects~~ affect the health, safety, welfare, rights, or habilitation of ~~the~~ participants;
- (3) Failure to comply with all licensing and other standards required by federal or state laws, rules, or regulations, ~~which affects~~ affect the health, safety, welfare, rights, or habilitation of the participants;
- (4) Falsifying information provided to the division for certification or funding purposes ~~or failing to comply with billing procedures as outlined by the department contract~~;
- (5) Failing to comply with billing procedures as outlined by the department contract;
- ~~(5)~~ (6) Participating in, condoning, permitting, aiding, or abetting, ~~or being associated with~~ fraud, deceit, coercion, misrepresentation, or any unethical acts, ~~by the provider, its personnel, or governing body~~; or
- ~~(6)~~ (7) Failure to fulfill ~~any conditions~~ condition of probation.

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

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

Law Implemented: SDCL 27B-1-15, 27B-2-26.

46:11:03:00. Participant's rights. ~~A participant has rights guaranteed under the constitution and laws of the United States and the state including~~ A provider must afford each participant served the following rights:

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

Written notice of the participant's rights must be provided to the participant in an accessible format. If the participant is under eighteen years of age or a protected person, as defined in SDCL 29A-5-102, the notice must also be provided to the participant's parent or guardian, respectively. The notice may be

provided to the participant's advocate upon the request of the participant and parent or guardian, if applicable.

Providers are required to provide training to participants served on the rights afforded under this section. The notice and training on the participant's rights must be provided to the participant upon admittance to the provider and annually thereafter.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 49 SDR 48, effective November 22, 2022.

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

Law Implemented: SDCL 27B-1-15, 27B-2-26~~(4)(9)~~.

46:11:03:01. Provider policy on abuse, neglect, and exploitation. A provider shall have a policy approved by the division which prohibits may not allow or condone abuse, neglect, and or exploitation of a participant. ~~The policy shall contain~~ A provider shall have a policy on how to address allegations of abuse, neglect, or exploitation. The policy must comply with all applicable law and contain the following:

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

~~(2) A procedure to report to the division pursuant to § 46:11:03:02;~~

~~(3) A procedure to report to the Department of Social Services pursuant to SDCL 26-8A-3 to 26-8A-8, inclusive, or SDCL 22-46-7 to 22-46-11, inclusive;~~

~~(4)~~ A procedure for an internal investigation that ~~includes~~ requires:

(a) Initiation of the investigation within ~~48~~ forty-eight hours or the next business day, whichever is later;

(b) Issuance of preliminary investigation findings to the division within seven calendar days of initiation of the investigation;

(c) Issuance of the final investigation findings to the division within ~~30~~ thirty calendar days of initiation of the investigation;

~~(5)~~ (2) A procedure for remediation to ensure the health and safety of participants;

~~(6)~~ (3) A procedure for disciplinary action to be taken if staff have engaged in abusive, neglectful, or exploitative activities;

~~(7)~~ (4) A procedure to inform the participant's guardian, the ~~parent~~ parents, if the participant is under ~~18~~ eighteen years of age, and the participant's advocate, if any, of the alleged incident or allegation and any information not otherwise prohibited by court order about any action taken within ~~24~~ twenty-

four hours after the incident or allegation, unless the person to be notified is accused of the alleged incident;

~~{8}~~ (5) ~~Upon substantiating the~~ If the required investigation confirms an allegation, a procedure to communicate investigation results to the participant, to the participant's parent if the participant is under ~~18~~ eighteen years of age, or to the participant's guardian or advocate, if any. The provider shall document the actions to be implemented to reduce the likelihood of, and prevent repeated incidents of, abuse, neglect, or exploitation;

~~{9}~~ (6) A procedure for training the participant, the participant's guardian or the participant's advocate, if any, and any family members as identified by the participant, upon admission and annually thereafter, on how to report to the provider and division any allegation of abuse, neglect, or exploitation. The provider shall document the date, time, and content of this training;

~~{10}~~ (7) A requirement that the training include what actions ~~by~~ the participant, the participant's guardian or the participant's advocate, if any, may take when not satisfied with the action taken or the outcome; and

~~{11}~~ (8) A requirement that the training ~~shall be~~ is provided in an accessible format; ~~and~~

~~— {12} A requirement that retaliation against a participant, the participant's parent if the participant is under 18 years of age, the participant's guardian or advocate, if any, is forbidden. Retaliation is also forbidden against a whistle blower pursuant to SDCL 27B-8-43.~~

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

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

Law Implemented: SDCL 27B-1-15, 27B-2-26.

Cross References:

Reports of child abuse, SDCL 26-8A-3 to 26-8A-10, inclusive.

Reports of abuse, neglect, or exploitation of elderly or adults with disabilities, SDCL 22-46-7 to 22-46-11, inclusive.

46:11:08:05. Termination of waiver services -- Provider initiated. A provider shall have a policy that addresses notice of termination services. ~~At least 30~~ thirty calendar days before a provider terminates services to a participant, the provider ~~shall~~ must provide notice of its intention ~~to the division.~~ The notice shall specify the provider's reasons for the action. to terminate services and specify the provider's reasons for the termination to:

- (1) The division;
- (2) The ~~provider shall provide information to the~~ participant, with accommodations for participants who have difficulty communicating; and
- (3) ~~the~~ The participant's ~~parent~~ parents if the participant is under ~~18~~ eighteen years of age, or the participant's guardian, if applicable; and
- (4) The participant's individualized service plan team.

The notice must include information regarding the availability of other services in the community and the participant's right to appeal the decision~~to the division.~~ An appeal of a termination of services will review whether or not the required procedures and processes for termination of services were followed. ~~The provider shall have a policy that addresses notice of termination of services. Notice must be provided at least 30 calendar days prior to termination to the following:~~

- ~~—— (1) The participant, with accommodations made for people who have difficulties communicating;~~
- ~~—— (2) The participant's parent if the participant is under 18 years of age;~~
- ~~—— (3) The participant's guardian;~~
- ~~—— (4) All of the participant's ISP team; and~~
- ~~—— (5) The division.~~

A participant, the participant's parent, or the participant's guardian appealing a notice of termination under this section, must send an appeal to the division within thirty calendar days of the notice of

termination. ~~When~~ If a termination is being appealed, the participant ~~shall~~ must continue receiving services from the provider until a decision is reached after a hearing pursuant to SDCL chapter 1-26 or for a maximum of one hundred twenty days from the date of the termination notice, whichever occurs first. This rule does not prohibit a provider from continuing to provide services to a participant who has received a termination notice for longer than the required one hundred twenty days, or after a hearing, on a voluntary basis.

Source: 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 44 SDR 65, effective October 16, 2017.

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

Law Implemented: SDCL 27B-1-15, 27B-2-26.

Cross-Reference: ISP team -- Composition, § 46:11:05:01.

CHAPTER 46:11:09

FAMILY SUPPORT WAIVER SERVICES

Section

46:11:09:01	Definitions.
46:11:09:02	Responsibilities of a provider.
46:11:09:03	Criteria for designation as a qualified provider.
46:11:09:04	Responsibilities of a qualified provider.
46:11:09:05	Critical incident report -- Submission to the division.
46:11:09:06	Participant selection of a CSP, SP, or qualified provider.
46:11:09:07	Agency with choice model.
<u>46:11:09:07.01</u>	<u>Waiver services for agency with choice and common-law employer.</u>
46:11:09:08	Notification to participant of providers, services, and rights.
46:11:09:09	Waiting list.
46:11:09:10	Description of services.
46:11:09:11	ISP.
46:11:09:12	Support plan for services.
46:11:09:13	Budget utilization information to support participant directed services.
46:11:09:14	Annual ISP meeting.
46:11:09:15	ISP review and modification.
46:11:09:16	Participant's records.
46:11:09:17	Transferred.
46:11:09:18	Transfer of participant records.
46:11:09:19	Review of a provider.
46:11:09:20	Review of a qualified provider, <u>Repealed</u> .
46:11:09:21	Statement of deficiencies and plan of correction.

- 46:11:09:22 Revocation of the provider agreement.
- 46:11:09:23 Rights of participants and parents or guardians.
- 46:11:09:24 Right of appeal.

46:11:09:01. Definitions. Terms used in this chapter mean:

(1) "Agency with choice," a co-employment option between a provider and a participant for participant-directed services in which the provider is the employer of record and the participant is the managing employer;

(2) "Common-law employer model," an option for participant-directed services in which the participant, or the participant's designated representative, serves as the employer of record, and a financial management services provider assists with enrollment, accounting, reporting, payroll, and taxes;

(3) "Companion care services," non-medical services geared toward ~~for~~ developing a participant's independent living skills;

~~(2)~~ (4) "Consent," voluntary approval given in writing, orally, or implied ~~impliedly~~ by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision;

~~(3)~~ (5) "Coordinator," an individual employed by a provider meeting the requirements of this chapter, to assist participants who receive family support services in gaining access to needed family support and other available services, as well as needed necessary medical, social, educational, and other services, regardless of the funding source for the services to which access is gained;

~~(4)~~ (6) "Employer of record," any provider providing family support services pursuant to this chapter and who is responsible for officially hiring hires the employee, processing processes employment forms, providing provides training to program participants and employees if requested, and managing manages the payroll function;

~~(5)~~ (7) "Family," a person or a group of people who are related to the participant by blood, marriage, or adoption, or define themselves as a family based upon bonds of affection, and who currently share a household with the participant or has have, in the past, shared a household with the participant. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

(8) "Financial management services," tracking expenditures against the participant's budget for participant-directed services. When used in conjunction with employer authority, financial management services include operating a payroll service participant-employed staff and making required payroll withholdings. Financial management services may also include paying invoices for waiver goods and services;

(9) "Financial management services provider," an entity providing financial management services to a participant;

~~(6)~~ (10) "Goals," outcomes ~~generally~~ expected to be achieved by a participant within five years for each service received, stated in measurable terms so that ~~their~~ attainment can be determined, ~~and should be attained within five years.;~~

~~(7)~~ (11) "Home and community based services," ~~or "[HCBS],"~~ the services contained in this chapter that are provided by a ~~CSP, SP,~~ community support provider, support provider, or qualified provider meeting the requirements of this chapter, to a participant who, without these services, would require placement in an intermediate care facility for individuals with intellectual disabilities, as defined in 42 C.F.R. § 435.1009, in effect on January 1, 2007;

~~(8) "Individualized service plan" or "ISP," a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training pursuant to § 46:11-09:14;~~

~~(9)~~ (12) "Managing employer," any participant receiving services pursuant to this chapter or the participant's guardian or family who is responsible for recruitment, hiring recommendations, dismissal determinations, training of employees, determining what tasks are to be performed, and submitting and approving employees' timecards;

~~(10)~~ (13) "Participant-directed services," a service arrangement whereby the participant may choose any individual the participant desires to assist with the design of services, the selection of service providers, and decisions of how the authorized funding is to be spent based on the ~~needs in the~~ participant's ISP;

~~(11)~~ (14) "Personal care services," services that enable the participant to accomplish tasks that the participant would normally do if the participant did not have a disability;

~~(12)~~ (15) "Qualified provider," one that enters into an agreement with the division to provide personal care 1, personal care 2, respite care, companion care, or supported employment services to a participant;

~~(13)~~ (16) "Services," a system of formalized supports, generic or specialized;

~~(14)~~ (17) "~~Sub-contractor~~ Subcontractor," an individual or organization that enters into an agreement with a participant and an ~~OHCD~~ organized health care delivery system to provide services to the participant;

~~(15)~~ (18) "Supported employment," services directed towards assisting participants to obtain and retain paid employment in community settings; and

(19) "Waiver," a program of services for which the state requests to waive federal comparability requirements, in order to offer HCBS to specific groups of individuals as an alternative to institutional care.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-1-15, 27B-2-26.

46:11:09:07. Agency with choice model.~~The agency with choice model is a co-employment arrangement between a provider and a participant in which the provider is the employer of record and the participant is the managing employer. The~~ Under the agency with choice model, the participant and the participant's family or guardian ~~may~~ participate in the recruitment, interviewing, selection, training, and supervising of employees who will be providing the service. The provider ~~does the actual~~ is responsible for hiring. ~~The agency with choice model is limited to the following waiver services:~~

- ~~(1) Personal care 1;~~
- ~~(2) Companion care;~~
- ~~(3) Respite care; and~~
- ~~(4) Supported employment.~~

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-1-15, 27B-2-26~~(1)(2)(3)(4)(7)(9)(10)~~.

46:11:09:07.01. Waiver services for agency with choice and common-law employer. The agency

with choice and common-law employer models are limited to the following services:

- (1) Personal care 1;
- (2) Companion care;
- (3) Respite care; and
- (4) Supported employment.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-1-15, 27B-2-26.

46:11:09:10. Description of services. Any family support service ~~shall~~ must be participant-directed to the extent the participant and the participant's family or guardian ~~chooses and can include budget and employer authority. Budget and employer authority means the participant and the participant's family can~~ control their own budget for services and can recommend for hire individuals to the CSP, SP, community support provider, support provider, or qualified provider.

Family support services ~~shall~~ must be specifically tailored to the competencies, interests, preferences, and needs of the participant and the participant's family or guardian, and respectful of the cultural and ethnic beliefs, traditions, personal values, and lifestyle of the family.

The participant must receive at least one of the following waiver services each month:

(1) ~~Family support coordination services~~ Support coordination services by a provider to include are:

- (a) Coordination of services that will assist a participant to gain access to needed medical, social, and other needed services;
- (b) On-going monitoring of the services; and
- (c) Initiating and overseeing the assessment and reassessment of the participant's level of care;

(2) Personal care 1 services ~~to include are:~~

- (a) Assistance with basic living skills, such as eating, drinking, toileting, dressing, and personal hygiene;
- (b) Assistance with the preparation of meals, not to include the cost of the food itself; and
- (c) Assistance with housekeeping chores such as making the bed, dusting, and vacuuming;

(3) Personal care 2 services ~~to include are~~ assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(4) Respite care services ~~to include are~~ short term assistance, in or out of a participant's home for the temporary relief and support of the family;

(5) Supported employment services ~~to include are:~~

- (a) Improving or maintaining skills in employment activities;

(b) Enhancing social and personal development or well-being within the context of vocational goals; and

(c) Providing consultation services, as needed by each participant;

(6) Companion care services ~~to include~~ are:

(a) Assistance with or supervision of laundry, shopping, or meal preparation, not to include the cost of the food;

(b) Assistance or supervision with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and

(c) Assistance with participation in community events to develop appropriate socialization skills to become integrated into the community;

(7) Environmental accessibility adaptation services ~~to include~~ are adaptations to the home owned by the participant or the participant's family that are a direct benefit to the participant to ensure access, health, and safety. Adaptations that add to the total square footage of the home are excluded from this benefit. For all purchases over ~~\$1,000~~ one thousand dollars, the participant must intend to reside in the home for more than two years. Adaptations to a property in which the participant will reside for less than two years are subject to a prior authorization process administered by the division;

(8) Nutritional supplements;

(9) Specialized medical adaptive equipment and supplies ~~to include~~ which are devices, controls, or appliances that enable participants to increase their abilities to perform activities of daily living or perceive, control, or communicate with the environment in which they live; ~~or~~

(10) Vehicle modification ~~to include~~ which is adaptations to vehicles to ensure the participant's safety and access to the community; or

(11) Specialized art, horse, or music therapies used to improve the participant's cognitive functioning, motor skills, emotional and affective development, behavior and social skills, and quality of life.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-1-15, 27B-2-26(3).

46:11:09:20. Review of a qualified provider.~~The division shall conduct an annual review through a random sample of at least ten percent of participants served by each qualified provider including all or part of any services, finances, or operations of the qualified provider. The division may also conduct a review upon receipt of any complaint filed with the division regarding the provision of services by a qualified provider~~ Repealed.

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

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:17:02:03. Termination of services -- Notification. ~~At least ten calendar days before~~ Before an ICF/IID terminates services to a person supported, the ICF/IID must provide notice of its intention in accordance with SDCL 27B-3-46. Notice must be given both orally and in writing to the person. Accommodations ~~shall~~ must be made for any person with communication difficulties. The ICF/IID shall provide written notice to the parent, if the person is under ~~18~~ eighteen years of age, or the guardian, if any, and the department. The written notice ~~shall include~~ must contain:

- (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; 40 SDR 122, effective January 8, 2014.

General Authority: SDCL 27B-2-25.

Law Implemented: SDCL 27B-2-25, 27B-2-26.

CHAPTER 46:31:02

INTERPRETER REGISTRATION AND CERTIFICATION

Section

- 46:31:02:01 Definitions.
- 46:31:02:02 Repealed.
- 46:31:02:03 Initial registration, Repealed.
- 46:31:02:04 Annual registration.
- 46:31:02:04.01 Continuing education maintenance cycle.
- 46:31:02:04.02 Continuing education maintenance cycle extension.
- 46:31:02:05 Repealed.

46:31:02:01. Definitions. Terms used in this chapter mean:

- (1) "Certificate," a document issued by the department or a national organization recognized by the department, which signifies that the interpreter for the deaf has met certain minimum requirements;
- (2) "Certified interpreter," a person registered and certified with the department who performs interpreting as defined in SDCL [1-36A-10.2](#);
- (3) "Contact hour," one contact hour equals one continuing education unit;
- (4) "Department," the Department of Human Services;
- (5) "Educational interpreter performance assessment" or "EIPA," a diagnostic tool which is language-free, designed specifically for an interpreter working with children and young adults in an educational setting;
- (6) "National Association of the Deaf" or "NAD," a national organization for the deaf;
- (7) "Nationally certified interpreter," an interpreter for the deaf holding a valid NAD certificate or RID certificate;
- (8) "South Dakota interpreter certification," a certificate issued by the department to an interpreter registering initially or annually by meeting the requirements in ~~§ 46:31:02:03 or 46:31:02:04~~ [SDCL 1-36A-10.1](#);
- (9) "Registration," the process by which an interpreter's credentials and continuing education requirements, if required, are verified by the department and a South Dakota certificate is then issued;
- (10) "Registry of Interpreters for the Deaf, Inc." or "RID," a national organization that certifies interpreters for the deaf.

Source: 33 SDR 107, effective December 26, 2006; 35 SDR 165, effective December 22, 2008; 37 SDR 111, effective December 7, 2010.

General Authority: SDCL 1-36A-12.

Law Implemented: SDCL 1-36A-10.1, 1-36A-10.2, 1-36A-11, 1-36A-12.

46:31:02:03. Initial registration. ~~The department shall register any individual who submits a completed registration form provided by the department, the applicable fee, and one of the following documentations:~~

~~(1) A current NAD or RID certificate; or~~

~~(2) An assessment score of 3.5 or higher on the EIPA performance test obtained not more than five years prior to the date of initial registration.~~

~~The department shall deny registration of any individual who fails to comply with the requirements of this section Repealed.~~

Source: 33 SDR 107, effective December 26, 2006; 35 SDR 165, effective December 22, 2008; 37 SDR 111, effective December 7, 2010; 43 SDR 176, effective July 3, 2017.

General Authority: ~~SDCL 1-36A-10.5.~~

Law Implemented: ~~SDCL 1-36A-10.1, 1-36A-10.5.~~