ARTICLE 67:44

~~HOME AND COMMUNITY-BASED SERVICES~~ HOME-AND-COMMUNITY-BASED OPTIONS AND PERSON-CENTERED EXCELLENCE (HOPE) WAIVER OPERATED BY THE ~~DIVISION OF ADULT SERVICES AND AGING~~ DEPARTMENT OF HUMAN SERVICES

Chapter

CHAPTER 67:44:03

~~HCBS~~ HOME-AND-COMMUNITY-BASED OPTIONS AND PERSON-CENTERED EXCELLENCE (HOPE) WAIVER OPERATED BY THE ~~DIVISION OF ADULT SERVICES AND AGING~~ DEPARTMENT OF HUMAN SERVICES

Section

67:44:03:01. 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;

~~(1)~~(2) "Adult companion services," nonmedical care, assistance, supervision, and socialization~~;~~ provided to a participant by a companion that is incidental to the care and supervision of the participant and is not for the sole purpose of completing the task for the participant;

~~(2)~~(3) "Adult day services," ~~formal supportive service that provides care and supervision outside of the home for part of the day;~~ providing regular care, supervision, and structured activities in a non-institutional, community-based setting, including health and social services that are necessary to ensure the optimal functioning of a participant, for a period of less than twenty-four hours per day;

~~(3) "Adult services and aging specialist," an employee of the department responsible for an assigned case load in the Division of Adult Services and Aging;~~

~~(4) "Adult Services and Aging waiver services" or "ASA waiver services," services reimbursed under Title XIX that are designed to prevent or delay placement of an individual in a nursing facility;~~

~~(5)~~(4) "Assisted living services," services furnished to ~~individuals~~ a participant receiving waiver services who ~~reside~~ resides in a homelike, noninstitutionalized setting that includes ~~24-hour~~ twenty-four-hour, on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety, and security;

(5) "Chore services," services needed to maintain the exterior of a participant's place of residence in a healthy and safe manner or as required by city or county ordinance;

(6) "Community living home," has the same meaning provided in SDCL 34-12-1.1;

(7) "Community transition coordination," a service that assists a participant in obtaining paid and unpaid services to support a successful transition from a nursing home, assisted living facility, or hospital to an approved HOPE waiver setting; or from a provider-owned and -operated setting to a participant's private residence;

(8) "Community transition supports," a service that assists a participant with non-recurring, one-time expenses necessary to provide essential household items or services when a participant transitions from a nursing home, assisted living facility, or hospital to an approved HOPE waiver setting; or from a provider-owned and -operated setting to a participant's private residence;

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

~~(6)~~(10) "Environmental accessibility adaptations," physical adaptations made to the private residence of ~~the consumer~~ a participant required by the ~~consumer's care~~ participant's individual support plan that are necessary to ensure the health, welfare, and safety of the ~~consumer~~ participant, or that enable the ~~consumer~~ participant to function with greater independence within the home;

~~(7)~~(11) "Homemaker services," the performance of nonmedical household tasks designed to ~~maintain an individual~~ support a participant who needs assistance to perform the tasks in the ~~individual's~~ participant's home;

(12) "Home and community-based services," services that provide opportunities for a participant to receive long-term services and supports in the participant's home or community rather than in an institution;

(13) "Home-and-community-based Options and Person-centered Excellence (HOPE) waiver services," services reimbursed under 42 U.S.C. §§ 1396 et seq. that are provided in a

participant's home or another community-based setting and are designed to prevent or delay placement in a nursing facility;

(14) "Individual support plan (ISP)," a document that lists the services and supports assessed by the department as necessary for a participant and the participant's preference for delivery of those services and supports;

~~(8) "Medical review team," a team consisting of a registered nurse and an adult services and aging specialist;~~

~~(9)~~(15) "In-home nursing services," individual and continuous care provided to ~~an individual~~ a participant at home by a licensed nurse;

(16) "In-home respite," supervision of a participant provided in the absence of, or for the relief of, an unpaid caregiver, for no more than thirty consecutive days;

~~(10)~~(17) "Meals and nutritional supplements," nutritious meals or nutritional supplements that enhance ~~an individual's~~ a participant's diet;

~~(11)~~(18) "Personal care services," the performance of hands-on personal care tasks and activities of daily living designed to ~~maintain an individual~~ support a participant who needs assistance to perform the tasks in the ~~individual's~~ participant's home. ~~Personal care tasks include the activities of daily living~~;

~~(12)~~(19) "Personal emergency response system," an electronic device that enables ~~individuals~~ a participant to secure help in an emergency;

~~(13)~~(20) "Provider," the person, facility, or agency that provides authorized services;

~~(14) "Respite care," temporary substitute supports or living arrangements for individuals participants that provide a period of relief to the primary caregiver on an intermittent, occasional, or emergency basis;~~

(21) "Residential respite," short-term care and supervision, available to eligible individuals who reside with unpaid caregivers, provided in an assisted living or nursing facility, for a participant who is unable to care for themselves in the absence of, or for the relief of, an unpaid caregiver;

~~(15)~~(22) "Qualifying disability," a disability that results in needs requiring long-term ~~supports and services~~ services and supports that cannot be provided in a less restrictive environment;

~~(16)~~(23) "Specialized medical equipment," ~~equipment needed to assist a consumer in living safely at home; and~~ devices, controls, or appliances, specified in a participant's individual support plan, that enhance the participant's ability to perform activities of daily living and assist the participant in remaining and living safely in the participant's home;

~~(17)~~(24) "Specialized medical supplies," ~~expendable or reusable supplies related to the needs of incontinence, diabetes, or wound care.~~ disposable supplies necessary to maintain a participant's health, manage a medical or physical condition, improve functioning, or enhance independence, as specified in the participant's individual support plan; and

(25) “Structured family caregiving,” a service that offers a participant the opportunity to reside with a principal caregiver in the participant's home or in the private home of the principal caregiver in order to receive necessary care and supervision.

Source: 15 SDR 191, effective June 11, 1989; 18 SDR 67, effective October 13, 1991; 23 SDR 92, effective December 10, 1996; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45~~ 1-36A-25, 1-36A-26.

67:44:03:02. Eligibility requirements. An individual is eligible for ~~ASA~~ HOPE waiver services if the individual is not receiving services under ~~chapter~~ chapters 67:54:04, 67:54:06, or 67:54:09, and meets the following requirements:

(1) The individual is ~~age 65~~ sixty-five or older, or ~~is over the age of 18~~ eighteen or older with a qualifying disability;

(2) The individual is receiving ~~Supplemental Security Income~~ supplemental security income (SSI) or has an income level within ~~300%~~ three hundred percent of the ~~Supplemental Security Income~~ SSI standard benefit amount as provided in § 67:46:04:13, and meets the eligibility criteria established in chapter 67:46:03 or would be eligible for Medicaid under article 67:46 if ~~institutionalized~~ residing in a nursing facility;

(3) The~~ medical review team has determined according to chapter 67:45:01 that the~~ individual meets the nursing facility level of care as determined by the department according to chapter 67:45:01; ~~and~~

(4) The individual resides or will reside at home or in ~~an assisted living facility~~ a HOPE waiver-approved home and community-based setting while receiving ~~ASA~~ HOPE waiver services~~.~~; and

(5) The individual has an individual support plan prepared under the provisions of § 67:44:03:04 and requires one or more of the services provided under this chapter.

Source: 15 SDR 191, effective June 11, 1989; 16 SDR 161, effective April 8, 1990; 18 SDR 67, effective October 13, 1991; 20 SDR 170, effective April 18, 1994; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45, 28-6-1~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45, 28-6-1~~ 1-36A-25, 1-36A-26.

67:44:03:03. Applicable provisions of article 67:46. The following rules apply to applicants and ~~recipients~~ participants of ~~ASA~~ HOPE waiver services:

(1) ~~Chapter 67:46:01, all provisions~~ Chapter 67:45:01;

(2) ~~Chapter 67:46:02, all provisions~~ Chapter 67:46:01;

(3) ~~Chapter 67:46:03, all provisions except §§ 67:46:03:08 to 67:46:03:12, inclusive, 67:46:03:18, 67:46:03:19, 67:46:03:20, and~~ to ~~67:46:03:21, inclusive~~ Chapter 67:46:02;

(4) ~~Chapter 67:46:04, all provisions~~ Chapter 67:46:03;

(5) ~~Chapter 67:46:05, all provisions~~ Chapter 67:46:04;

(6) ~~Chapter 67:46:07, all provisions; and~~ Chapter 67:46:05;

(7) ~~Chapter 67:46:08, all provisions~~ Chapter 67:46:07; and

(8) ~~Chapter 67:45:01, all provisions~~ Chapter 67:46:08.

Source: 15 SDR 191, effective June 11, 1989; 18 SDR 67, effective October 13, 1991; 20 SDR 170, effective April 18, 1994; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45~~ 1-36A-25, 1-36A-26.

67:44:03:03.1 Assessment. To apply for HOPE waiver services, an individual must participate in an initial assessment. Thereafter the participant must participate in an ongoing assessment annually, or as required by the department.

Source:

General Authority: SDCL 1-36A-26.

Law Implemented: SDCL 1-36A-25, 1-36A-26.

67:44:03:04. Individual ~~care~~ support plan -- Review. Each eligible individual applying ~~eligible~~ for ~~ASA~~ HOPE waiver services must have an individual ~~care~~ support plan ~~must be signed by the individual or the individual's legal representative~~ that is signed by the individual or the individual's legal representative.

~~The care plan shall describe each ASA waiver service to be provided, the extent and frequency of the service, and the anticipated cost.~~

The individual support plan must include:

(1) The individual's assessed needs, including health and safety risk factors;

(2) The individual's personal goals, to be achieved either by the provision of waiver services or through other means; and

(3) The type, scope, cost, duration, and frequency of each HOPE waiver service.

The ~~care~~ department shall revise the individual support plan ~~shall be revised~~ annually or as the individual's needs change.

Source: 15 SDR 191, effective June 11, 1989; 18 SDR 176, effective April 26, 1992; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45~~ 1-36A-25, 1-36A-26.

67:44:03:05. Redetermination of level of care. ~~The medical review team must annually redetermine the individual's level of care.~~ The redetermination of level of care must be done in accordance with § 67:45:01:08.

Source: 15 SDR 191, effective June 11, 1989; 18 SDR 67, effective October 13, 1991.

General Authority: SDCL ~~28-1-45~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45~~ 1-36A-25, 1-36A-26.

67:44:03:06. Services covered. Services ~~covered under ASA~~ available through the HOPE waiver as identified in the participant's individual support plan and based on assessed need may include ~~the following~~:

~~(1) Adult day services;~~

~~(2) Homemaker services;~~

~~(3) Personal care services;~~

~~(4) In-home nursing services;~~

~~(5) Respite care;~~

~~(6) Specialized medical equipment;~~

~~(7) Specialized medical supplies;~~

~~(8) Adult companion services;~~

~~(9) Assisted living services;~~

~~(10) Environmental accessibility adaptations;~~

~~(11) Personal emergency response systems; and~~

~~(12) Meals and nutritional supplements.~~

~~(13) Chore services;~~

~~(14) Community living home services;~~

~~(15) Community transition coordination services;~~

~~(16) Community transition supports;~~

~~(17) In-home respite care;~~

~~(18) Residential respite care; and~~

~~(19) Structured family caregiving services~~

(1) Adult companion services;

(2) Adult day services;

(3) Assisted living;

(4) Chore services;

(5) Community living home;

(6) Community transition coordination;

(7) Community transition supports;

(8) Environmental accessibility adaptations;

(9) Homemaker services;

(10) In-home nursing;

(11) In-home respite care;

(12) Meals;

(13) Nutritional supplements;

(14) Personal care services;

(15) Personal emergency response systems;

(16) Residential respite care;

(17) Specialized medical equipment;

(18) Specialized medical supplies; and

(19) Structured family caregiving.

Source: 15 SDR 191, effective June 11, 1989; 23 SDR 92, effective December 10, 1996; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45~~ 1-36A-25, 1-36A-26.

67:44:03:10. Eligible ~~individuals~~ participants to participate in cost of ~~ASA~~ HOPE waiver services. ~~An individual~~ A participant eligible for and receiving ~~ASA~~ HOPE waiver services ~~shall participate in the cost of the service~~ is required to pay any remaining income of the participant after allowable deductions toward the cost of services. ~~Individuals will receive~~ The department will send written notification of the cost share amount.

The department shall pay its share of the costs directly to the provider agency. The ~~individual~~ participant is responsible for paying the ~~individual's~~ participant's share directly to the provider agency.

Source: 15 SDR 191, effective June 11, 1989; 16 SDR 161, effective April 8, 1990; 18 SDR 177, effective April 26, 1992; 19 SDR 68, effective November 9, 1992; 20 SDR 170, effective April 18, 1992; 22 SDR 16, effective August 17, 1995; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45, 28-6-1~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45, 28-6-1~~ 1-36A-25, 1-36A-26.

Cross-References:

~~Patient income applied to cost of care~~ Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care, 42 C.F.R. § 435.726~~(4)~~ (July 25, 1994).

~~Definition of community spouse, SDCL 28-6-16.~~

67:44:03:11. Payment limits. The rate of payment for ~~ASA~~ HOPE waiver services is limited to the lesser of the provider's usual and customary fee or the fee contained on the department's website, located at ~~http://dss.sd.gov/medicaid/providers/feeschedules/dss/~~ https://dhs.sd.gov.

Source: 15 SDR 191, effective June 11, 1989; 16 SDR 161, effective April 8, 1990; 18 SDR 176, effective April 26, 1992; 20 SDR 170, effective April 18, 1994; 22 SDR 16, effective August 17, 1995; 23 SDR 92, effective December 10, 1996; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012; 42 SDR 51, effective October 13, 2015.

General Authority: SDCL ~~28-1-45, 28-6-1~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45, 28-6-1~~ 1-36A-25, 1-36A-26.

67:44:03:12. Provider requirements. ~~Agencies providing services under this chapter must be an shall complete all required initial and continuing enrollment activities. The department may terminate an agreement with a provider for ASA waiver services if the provider fails to meet continuing enrollment requirements.~~ Repealed.

Source: 15 SDR 191, effective June 11, 1989; 38 SDR 123, effective January 23, 2012.

~~**General Authority:** SDCL 28-1-45, 28-6-1.~~

~~**Law Implemented:** SDCL 28-1-45, 28-6-1.~~

67:44:03:15. Discontinuance or denial of services. The department may discontinue or deny services provided under this chapter if ~~the department exhausts its resources for providing the services, the individual participant can no longer benefit from the services provided, or the individual's or the provider's health or safety would be jeopardized if the services were continued. Specific reasons for discontinuing or denying services include the following:~~

~~(1) The individual's needs have surpassed the scope of the ASA waiver;~~

~~(2) The individual poses a safety risk;~~

~~(3) The individual is not in compliance with the care plan;~~

~~(4) The individual is not capable of self-preservation in an emergency;~~

~~(5) The individual's condition has improved and no longer meets level of care requirements; and~~

~~(6) The individual failed to participate in the cost of service as required.~~:

(1) The participant does not meet eligibility requirements;

(2) The participant failed to participate in completing any review required by § 67:44:03:03.1, 67:44:03:04, or 67:44:03:05;

(3) The participant is sexually harassing, verbally abusive, threatening, or combative;

(4) The participant's living environment presents health hazards, fire hazards, or unsafe conditions;

(5) The participant is not in compliance with the individual support plan;

(6) The participant's health and safety risk factors cannot be mitigated due to participant's noncompliance or inability to implement contingencies for emergencies;

(7) The participant failed to contribute to the cost of services as required;

(8) The participant refuses to cooperate with department staff or the service provider;

(9) The participant does not receive a HOPE waiver service at least monthly.

(10) The department exhausts its resources for providing services;

(11) The participant can no longer benefit from services provided;

(12) The participant's or provider's health or safety would be jeopardized if services were continued; or

(13) The participant requests to discontinue services.

Source: 20 SDR 170, effective April 18, 1994; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL ~~28-1-45, 28-6-1~~ 1-36A-26.

Law Implemented: SDCL ~~28-1-45, 28-6-1~~ 1-36A-25, 1-36A-26.

67:44:03:16. Exceptions process. The total amount the department will authorize for all HOPE waiver services for a participant is based on assessed need as identified in the individual support plan, with a maximum threshold equal to the average cost of nursing facility care. Services over this threshold are subject to an exceptions review process initiated and conducted by the department.

To qualify for an exception, a participant must meet all of the following criteria:

(1) The participant is not severely impaired based on the most recent assessment conducted by the department;

(2) The participant has an assessed need for extensive or total assistance, in at least two of the following activities of daily living:

(a) Locomotion;

(b) Toilet transfer;

(c) Toilet use;

(d) Bed mobility; or

(e) Eating;

(3) Without additional waiver services, nursing facility care is required to assure the participant's health, safety, and welfare;

(4) The participant's needs cannot be met without exceeding one hundred percent of the cost of nursing facility care;

(5) The participant has demonstrated compliance with the individual support plan;

(6) The participant has demonstrated compliance with medical advice from the participant's physician, if applicable;

(7) The participant has demonstrated that support offered through the HOPE waiver program provides opportunities for increased community integration that would not otherwise be available if residing in a nursing facility; and

(8) The participant does not experience seclusion from the greater community and the living arrangement does not promote isolation;

A participant who does not meet all exceptions criteria is limited to services that do not exceed the average cost of nursing facility care.

The exceptions request may not exceed one hundred and fifty percent of the average cost of nursing facility care. A participant approved for services above the one hundred and fifty percent limit prior to the effective date of this rule is not subject to this limit unless there is a significant change in health status or case closure.

Source:

General Authority: SDCL 1-36A-26.

Law Implemented: SDCL 1-36A-25, 1-36A-26.