CHAPTER 67:16:01

GENERAL PROVISIONS

67:16:01:14	Transferred.
67:16:01:15	Repealed.
67:16:01:16	Uniformity of services.
67:16:01:17	Fair hearings.
67:16:01:18	Civil rights.
67:16:01:19	Utilization review.
67:16:01:20	Transferred
67:16:01:21	Transferred.
67:16:01:22	Cost-sharing participants, Repealed.
67:16:01:22.01	Services exempt from cost sharing, Repealed.
67:16:01:23	Cost sharing deducted from allowable reimbursement before payment, Repealed.
67:16:01:24	Application of chapter.
67:16:01:25	Use of Current Procedural Terminology.
67:16:01:26	Use of International Classification of Diseases.
67:16:01:27	Use of Health Care Common Procedure Coding System.
67:16:01:28	Rates and procedures subject to review and amendment -- Provider may request review.

67:16:01:22. Cost-sharing participants. ~~All individuals are required to participate in cost sharing. Individuals exempt from cost sharing include:~~

~~(1) Individuals under age 21;~~

~~(2) Individuals receiving hospice care;~~

~~(3) Individuals residing in a long-term care facility or receiving home and community-based services;~~

~~(4) American Indians who have ever received an item or service furnished by an Indian Health Services (IHS) provider or through referral under contract health services; and~~

~~(5) Individuals eligible through the Breast and Cervical Cancer program.~~

~~Cost sharing is required for the services designated in chapters 67:16:02, 67:16:03, 67:16:06, 67:16:07, 67:16:08, 67:16:09, 67:16:13, 67:16:14, 67:16:28, 67:16:29, 67:16:41, 67:16:42, 67:16:44, and 67:16:46. Cost sharing is limited to the amount specified on the department's cost sharing website~~ Repealed.

Source: 9 SDR 164, effective June 30, 1983; 11 SDR 86, effective December 30, 1984; 14 SDR 46, effective September 28, 1987; 16 SDR 114, effective January 15, 1990; 22 SDR 6, effective July 26, 1995; 22 SDR 32, effective September 11, 1995; 23 SDR 109, effective January 5, 1997; 28 SDR 84, effective December 20, 2001; 31 SDR 191, effective June 8, 2005; 35 SDR 88, effective October 23, 2008; 37 SDR 53, effective September 23, 2010; 40 SDR 122, effective January 7, 2014; 42 SDR 51, effective October 13, 2015.

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

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

~~**Cross-References:** Cost sharing: Basis and purpose, 42 C.F.R. § 447.50.~~

67:16:01:22.01. Services exempt from cost sharing. ~~Services exempt from cost sharing include:~~

~~(1) Emergency services;~~

~~(2) Family planning services;~~

~~(3) Services relating to a pregnancy, post-partum condition, a condition caused by the pregnancy, or a condition that may complicate the pregnancy;~~

~~(4) Provider-preventable services;~~

~~(5) Laboratory services;~~

~~(6) Psychiatric inpatient and rehabilitation services;~~

~~(7) Radiological services;~~

~~(8) Chemical dependency treatment~~ Repealed.

Source: 42 SDR 51, effective October 13, 2015.

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

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

67:16:01:23. Cost sharing deducted from allowable reimbursement before payment. ~~The department shall deduct the recipient's cost-sharing amount from the provider's allowable reimbursement before paying the provider~~ Repealed.

Source: 9 SDR 164, effective June 30, 1983.

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

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

67:16:01:25. Use of Current Procedural Terminology. The guidelines contained in ~~**CPT®2023: Current Procedural Terminology**~~ CPT®2024: Current Procedural Terminology apply to claims submitted under the provisions of chapters 67:16:02, 67:16:03, 67:16:05, 67:16:07, 67:16:08, 67:16:09, 67:16:11, 67:16:12, 67:16:13, 67:16:24, 67:16:25, 67:16:28, 67:16:29, 67:16:37, 67:16:41, 67:16:44, and 67:16:48, unless otherwise specified.

Source: 21 SDR 183, effective April 30, 1995; 22 SDR 188, effective July 8, 1996; 23 SDR 109, effective January 5, 1997; 23 SDR 192, effective May 22, 1997; 24 SDR 144, effective April 30, 1998; 25 SDR 104, effective February 17, 1999; 28 SDR 1, effective July 18, 2001; 30 SDR 26, effective September 3, 2003; 31 SDR 39, effective September 29, 2004; 32 SDR 33, effective August 31, 2005; 34 SDR 68, effective September 12, 2007; 34 SDR 322, effective July 1, 2008; 39 SDR 220, effective June 27, 2013; 42 SDR 51, effective October 13, 2015; 46 SDR 50, effective October 10, 2019; 47 SDR 38, effective October 6, 2020; 48 SDR 39, effective October 3, 2021; 49 SDR 21, effective September 12, 2022; 50 SDR 63, effective November 27, 2023.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Reference: ~~**CPT®2023**~~ **CPT®2024: Current Procedural Terminology,** American Medical Association, ~~October 28, 2022~~ October 25, 2023. Copies may be obtained from the American Medical Association, https://commerce.ama-assn.org/store/ui; ~~$121.45~~ $134.95.

67:16:01:26. Use of International Classification of Diseases. Claims submitted under the provisions of chapters 67:16:02, 67:16:03, 67:16:05, 67:16:07, 67:16:09, 67:16:11, 67:16:13, 67:16:25, 67:16:41, 67:16:43, 67:16:44, 67:16:46, 67:16:47, and 67:16:48 must contain the applicable diagnosis codes contained in the ~~**International Classification of Diseases, 10th Revision, Clinical Modification, 2023**~~ International Classification of Diseases, 10th Revision, Clinical Modification, 2024.

Claims submitted under chapter 67:16:03 must also contain the applicable procedure codes contained in the International Classification of Diseases, 10th Revision, Procedure Coding System, ~~2023~~ 2024.

Source: 21 SDR 183, effective April 30, 1995; 22 SDR 6, effective July 26, 1995; 22 SDR 188, effective July 8, 1996; 23 SDR 109, effective January 5, 1997; 23 SDR 192, effective May 22, 1997; 24 SDR 144, effective April 30, 1998; 25 SDR 104, effective February 17, 1999; 28 SDR 1, effective July 18, 2001; 30 SDR 26, effective September 3, 2003; 31 SDR 39, effective September 29, 2004; 32 SDR 33, effective August 31, 2005; 34 SDR 68, effective September 12, 2007; 34 SDR 322, effective July 1, 2008; 42 SDR 51, effective October 13, 2015; 46 SDR 50, effective October 10, 2019; 47 SDR 38, effective October 6, 2020; 48 SDR 39, effective October 3, 2021; 49 SDR 21, effective September 12, 2022; 50 SDR 63, effective November 27, 2023.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

References:

International Classification of Diseases, 10th Revision, Clinical Modification, American Medical Association, ~~October 1, 2022~~ August 30, 2023. Copies may be obtained from the American Medical Association, https://commerce.ama-assn.org/store/ui; ~~$88.83~~ $118.60;

International Classification of Diseases, 10th Revision, Procedure Coding System, American Medical Association, ~~August 8, 2022~~ September 8, 2023. Copies may be obtained from the American Medical Association, https://commerce.ama-assn.org/store/ui; ~~$89.12~~ $118.60.

67:16:01:27. Use of Health Care Common Procedure Coding System. The guidelines contained in the ~~**Health Care Common Procedure Coding System 2023 Level II**~~ Health Care Common Procedure Coding System 2024 Level II apply to claims submitted under the provisions of chapters 67:16:02, 67:16:13, 67:16:28, 67:16:29, 67:16:44, 67:16:46, 67:16:47, 67:16:48, and 67:54:09.

Source: 34 SDR 68, effective September 12, 2007; 34 SDR 322, effective July 1, 2008; 42 SDR 51, effective October 13, 2015; 46 SDR 50, effective October 10, 2019; 47 SDR 38, effective October 6, 2020; 48 SDR 39, effective October 3, 2021; 49 SDR 21, effective September 12, 2022; 50 SDR 63, effective November 27, 2023.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Reference: Health Care Common Procedure Coding System ~~2023~~ 2024 Level II, American Medical Association, ~~January 15, 2023~~ January 10, 2024. Copies may be obtained from the American Medical Association, https://commerce.ama-assn.org/store/ui; ~~$89.23~~ $96.52.

CHAPTER 67:16:39

CARE MANAGEMENT -- PRIMARY CARE PROVIDER

Section

67:16:39:17. Cost share exemption. ~~Services provided by the recipient's PCP or a designated covering provider at the PCP's clinic if the PCP is unavailable are exempt from cost sharing~~ Repealed.

Source: 37 SDR 53, effective September 23, 2010.

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

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

ARTICLE 67:45

NURSING FACILITY LEVEL OF CARE AND CLAIMS

Chapter

CHAPTER 67:45:01

~~MEDICAL REVIEW TEAM – –~~ LEVEL OF CARE

Section

67:45:01:01. Definitions. Terms used in this chapter mean:

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

(2) "Adult foster care,"~~ personal care, health supervision, and household services provided in a family residence, in a family atmosphere, and on behalf of adults who are aged, blind, or disabled according to~~ as defined in chapter 67:46:03;

(3)~~ "Adult services and aging specialist," an employee of the department as defined in § 67:44:03:01;~~

~~(4)~~ "Alternative services,"~~ those~~ services provided in~~ the~~ an individual's home by family, friends, or in-home service providers~~ which~~ that allow the individual to remain in the home;

(4) "Assessment," a comprehensive evaluation described in § 44:73:06:10 that includes admission, readmission, and discharge information, as applicable;

(5) "Assisted living center," a facility~~ which~~ that meets the definition of an assisted living center~~ according to~~ provided in SDCL 34-12-1.1;

(6) "Department," the Department of Social Services;

(7) "Instrumental activities of daily living," tasks performed routinely by an individual utilizing physical and social environmental features to manage life situations~~, including preparing meals, self-administering medications, using a telephone, housekeeping, doing laundry, handling finances, shopping, and using a transportation system or obtaining transportation~~;

~~(7)~~ (8) "Level of care," a classification ~~which~~ that denotes the type of care an individual requires;

~~(8) "Medical review team" or "MRT," a two-member team from the department consisting of a registered nurse and an adult services and aging specialist;~~

(9) "Non-waiver assisted living," a service provided to an individual in an assisted living center who does not meet the eligibility criteria to receive waiver services;

(10) "Nursing facility," a facility licensed as a nursing facility by the Department of Health ~~and maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician 24 hours a day~~ as defined in SDCL 34-12-1.1;

~~(10) "Resident assessment" or "assessment," a comprehensive assessment of the functional, medical, mental, nursing, and psychosocial needs of a resident of a nursing facility and includes admission, readmission, and discharge information as applicable;~~

(11) "Self-care level of care," the ability of an individual to live ~~in the individual's own home~~ independently with or without alternative services; ~~and~~

(12) "Swing ~~bed" or "hospital 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) "Waiver services," Title XIX Long Term Services and Support services provided under chapter 67:44:03.

Source: 18 SDR 67, effective October 13, 1991; 23 SDR 92, effective December 10, 1996; 27 SDR 32, effective October 11, 2000; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:45:01:02. ~~Medical review team~~ Department to determine level of care classification. ~~The medical review team~~ If an assessment of the individual indicates waiver services are applicable, the department must determine if the individual requesting long-term care assistance under article 67:46 is in need of care. The need for care is established by reviewing the individual's medical, nursing, and social needs. ~~Consideration shall also be given to those~~ The department shall also consider alternative services available for the individual in the community. Based on ~~the need~~ an individual's needs, the ~~medical review team~~ department shall assign ~~the individual to~~ one of the following ~~level of care classifications~~:

(1) Nursing facility level of care classification;

(2) ~~Adult foster care;~~

~~(3) Assisted living~~ Intermediate level of care classification; or

~~(4)~~(3) Self-care level of care classification.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974; 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 79, effective February 1, 1984; transferred from § 67:16:04:03, 18 SDR 67, effective October 13, 1991; 27 SDR 32, effective October 11, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Redetermination of level of care classification, § 67:45:01:08.

Payment limits -- Level of care classification, § 67:45:02:02;

~~Redetermination of level of care classification, § 67:45:01:08~~.

67:45:01:03. Nursing facility level of care classification. The ~~medical review team~~ department may assign an individual to a nursing facility level of care classification if the individual requires any of the following services:

(1) Continuing direct care services ~~which~~ that have been ordered by a physician and can only be provided by or under the supervision of a ~~professional~~ licensed nurse. These services include daily management, direct observation, monitoring, or performance of complex nursing procedures. For purposes of this ~~rule~~ section, continuing direct care is repeated application of the procedures or services at least once every ~~24~~ twenty-four hours, frequent monitoring, and documentation of the individual's condition and response to the procedures or services;

(2) The assistance of another person for the performance of any activity of daily living according to an assessment of the individual's needs; or

(3) ~~In need of skilled mental health services or skilled~~ Skilled therapeutic services~~, including physical~~:

(a) Physical therapy, occupational therapy, or ~~speech/language~~ speech-language therapy in any combination that is provided at least once a week~~,~~;

(b) Continuing mental health services provided under chapter 67:62:12 with a documented need for waiver services to prevent nursing facility placement by a staff member who meets the requirements of subdivision 67:62:06:03(2); or

(c) Continuing mental health services provided under chapter 67:62:13 with a documented need for waiver services to prevent nursing facility placement by a staff member who meets the requirements of subdivision 67:62:06:03(2).

The department must complete a classification assignment for an eligible individual before payment is made for services provided.

Source: 18 SDR 67, effective October 13, 1991; 27 SDR 32, effective October 11, 2000; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

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

Redetermination of level of care classification, § 67:45:01:08.

Requirements for staff providing direct services and supports to clients, § 67:62:06:03.

67:45:01:04. ~~Assisted living~~ Intermediate level of care classification. The ~~MRT~~ department may assign an individual to an ~~assisted living~~ intermediate level of care classification if the individual ~~requires supervision 24 hours a day or needs to have~~:

(1) Resides, or is anticipated to reside, in an assisted living center and requires assistance available ~~24~~ twenty-four hours a day to enable the individual to carry out those tasks associated with the activities of daily living ~~and~~ or the instrumental activities of daily living ~~as defined in § 67:45:01:01~~; or

(2) Resides, or is anticipated to reside, in adult foster care and needs supervision, minimal assistance, or monitoring in:

(a) The activities of daily living or instrumental activities of daily living;

(b) The self-administration of medications;

(c) The self-treatment of a physical disorder; or

(d) Self-preservation in emergencies when capable of taking action with direction.

The department must complete a classification assignment for an eligible individual before payment is made for services provided.

Source: SL 1975, ch 16, § 1; 2 SDR 71, effective April 29, 1976; 4 SDR 10, effective August 28, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 68, effective November 7, 1988; transferred from § 67:16:04:19, 18 SDR 67, effective October 13, 1991; 23 SDR 92, effective December 10, 1996; 27 SDR 32, effective October 11, 2000; 28 SDR 96, effective December 30, 2001; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

~~Restricted~~ Resident admissions ~~to assisted living centers~~, § ~~44:04:04:12~~ 44:70:04:13.

~~Requirements for assisted living centers, § 44:04:04:12.01.~~

Dietetic services, ~~ch 44:04:07~~ chapter 44:70:06.

Medication control, ~~ch 44:04:08~~ chapter 44:70:07.

Redetermination of level of care classification, § 67:45:01:08.

67:45:01:04.01. Adult foster care classification. ~~The MRT may assign an individual to an adult foster care classification if the individual meets the following criteria:~~

~~(1) Is not able to live independently;~~

~~(2) Does not pose a danger to self or others;~~

~~(3) With direction, is capable of taking action for self-preservation in emergencies; and~~

~~(4) Requires supervision, minimal assistance, or monitoring in the activities of daily living; the self-administration of medications; the self-treatment of a physical disorder; or the instrumental activities of daily living~~ Repealed.

Source: 23 SDR 92, effective December 10, 1996; 27 SDR 32, effective October 11, 2000.

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

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

~~**Cross-Reference:** Redetermination of level of care classification, § 67:45:01:08.~~

67:45:01:05. Self-care level of care classification. ~~When assigning a self-care classification, the MRT must evaluate the resources available in the home, family, and community. If those resources can be used to meet the individual's needs, a self-care classification may be made~~ For individuals who do not meet the criteria for a nursing facility level of care classification or an intermediate level of care classification, the department must assign a self-care level of care classification. Individuals with a self-care level of care classification are not eligible for waiver services but may be eligible for services under other programs.

Source: 18 SDR 67, effective October 13, 1991; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:45:01:05.01. Settings and services for level of care classifications. Individuals are eligible for certain settings and services, depending on their level of care classification:

(1) For a nursing facility level of care classification:

(a) Swing bed;

(b) Nursing facility; and

(c) Home and community-based waiver services provided in § 67:44:03:06;

(2) For an intermediate level of care classification:

(a) Adult foster care; and

(b) Non-waiver assisted living; or

(3) For a self-care level of care classification, any services not covered under chapter 67:44:03.

Source:

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:45:01:06. Swing-bed hospital services. ~~Swing-bed hospital services consist of services provided to an eligible individual at any of the following levels of care:~~

~~(1) Nursing facility care;~~

~~(2) Adult foster care; or~~

~~(3) Assisted living.~~

~~The medical review team must have completed a level of care determination for an eligible individual before payment is made~~ Repealed.

Source: 11 SDR 26, effective August 21, 1984; transferred from § 67:16:04:20.02, 18 SDR 67, effective October 13, 1991.

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

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

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

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

If it is determined that the individual does not need a nursing facility level of care~~, adult foster care, or assisted living~~ or an intermediate level of care, the department ~~shall~~ must notify the individual and the facility, if applicable. The facility ~~must~~ shall 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; 40 SDR 122, effective January 8, 2014.

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 individuals with intellectual disabilities or intermediate care for the mentally disabled -- Payment limits, § 67:45:02:09.