**46:11:03:02. Critical incident reports -- Submission to division.** ~~The~~ A provider shall give verbal notice, of any of the following critical ~~incident~~ incidents involving a participant, to the division ~~no later than the end of the division's next business day or the provider's next administrative business day, whichever occurs first, from the time the provider becomes aware of the incident. The provider 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) Deaths;

(2) Life-threatening illnesses or injuries;

(3) Alleged instances of abuse, neglect, or exploitation ~~against or by any participant~~;

(4) Changes in health or behavior that may jeopardize continued services;

(5) Serious medication errors;

(6) Illnesses or injuries that resulted from unsafe or unsanitary conditions;

(7) Any illegal activity ~~involving a participant~~;

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

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

(10) Any diagnosed case of a reportable communicable disease ~~involving a participant~~; or

(11) Alleged instances of corporal punishment, seclusion, denial of food, or other practices prohibited in SDCL 27B-8-42~~; or~~

~~(12) Any other critical incident as required by the division~~.

The verbal notice must be provided no later than the end of the division's next business day or the provider's next administrative business day, whichever occurs first, from the time the provider becomes aware of the incident.

The provider shall also submit a written critical incident report utilizing the division's online reporting system within seven business days after the initial verbal notice is made. The report must contain a description of the incident, specifying what happened, when it happened, and where it happened. The report ~~shall also~~ must include a description of any action taken by the provider ~~necessary~~ to ensure the ~~participant's~~ participant's safety and the safety of others, and any preventative measures taken by the provider to reduce the likelihood of a similar ~~incidents~~ incident occurring in the future. The division may request further information or follow-up related to the critical incident.

The provider ~~shall~~ must notify the participant's parent if the participant is under ~~18~~ eighteen years of age, or the participant's guardian, if any, that a critical incident report has been submitted and the reason why the report was submitted, unless the parent or guardian is accused of the incident.

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

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

**Law Implemented:** SDCL 27B-1-14, 27B-1-15(2), 27B-2-26.

~~**Cross-Reference**~~**Cross-References:** ~~Communicable disease control, chapter 44:20.~~

Other rights not limited by receipt of services--Certain practices prohibited, SDCL 27B-8-42.

Communicable disease control, article 44:20.

**46:11:03:10. Restoration plans.** ~~The participant's~~ A participant's team ~~shall~~ must develop a restoration plan when ~~a participant's~~ the participant's rights have been restricted. The participant and the ~~participant's~~ participant's team shall develop a plan ~~which shall include~~ that provides how the participant's rights ~~will~~ are to be restored, in part or in whole, based on the participant's progress with the participant's individualized service plan. The restoration plan ~~shall~~ must be reviewed as specified in the restoration plan, or at least annually, by the participant, or the participant's parent if the participant is under ~~18~~ eighteen years of age, or the participant's guardian, if any, and by the human rights committee.

~~A~~ The restoration plan ~~shall~~ must describe the participant's rights that ~~will~~ are to be restored and ~~shall~~ must be individualized, outcome-based, attainable, and measurable~~, and time-limited~~.

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

**General Authority:** SDCL ~~27B-2-25,~~ 27B-2-26~~(4)~~.

**Law Implemented:** SDCL 27B-1-14, 27B-1-15(2), 27B-2-26, 27B-8-52.

**46:11:04:02. Accounting systems, cost reporting and annual audits.** ~~The~~ A provider shall maintain an accounting system ~~pursuant to~~ compliant with Generally Accepted Accounting Principles ~~(GAAP)~~. ~~If required by the department, the~~ A provider must submit to the department a copy of an annual, entity-wide, independent financial audit ~~that shall be~~ conducted by a certified public accountant who is not an employee of the provider or a member of its board of directors. The audit ~~shall~~ must be completed and filed with the department within ~~the fourth month following~~ five months of the end of the provider's reporting period.

An audit conducted in accordance with this section ~~shall~~ must contain, as part of the supplementary information, a cost report as outlined by the department. If applicable, the audit ~~shall~~ must be conducted in accordance with ~~the Federal Office of Management and Budget (OMB) Uniform Guidance 2 CFR Chapter I, Chapter II, Part 200, et.al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards~~ 2 C.F.R. Part 200 Subpart F (July 1, 2026), by an auditor approved by the ~~Auditor General~~ auditor general to perform the audit.

For ~~either~~ an entity-wide, independent financial audit or ~~an OMB Uniform Guidance 2 CFR 200 audit~~ an audit conducted in accordance with 2 C.F.R. Part 200 Subpart F (July 1, 2026), the provider shall assure resolution of all interim audit findings. The provider shall facilitate and aid ~~any such reviews, examinations, and agreed upon procedures~~ in any review, examination, or agreed-upon procedure that the department or any contractor may perform.

**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-1-14, 27B-1-15(2), 27B-2-26.

~~**Reference: Office of Management and Budget (OMB) Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.** Copies are available free of charge from the following website: https://federalregister.gov/a/2013-30465.~~

**46:11:04:07. Insurance.** A provider must carry insurance that includes general liability, ~~property coverage, workers'~~ worker's compensation, and automobile liability~~, and fidelity bonding insurance~~. A provider who provides nursing services or other professional services under this title must also carry professional liability insurance.

**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-1-14, 27B-1-15(2), 27B-2-26.

**46:11:06:15. Monitor participant safety.** ~~The~~ A provider of direct HCB services ~~shall~~ must document all incidents, injuries, and medication errors that impact the health, safety, and welfare of each participant. The documentation ~~shall~~ must include the location of the incident, injury, or medication error~~,~~ and the ~~level~~number of staff ~~and~~ or medical personnel involvement. ~~The~~ Each provider ~~of direct HCB services~~ shall maintain a log of all participant incidents, injuries, and medication errors.

~~The~~Each provider of direct HCB services ~~shall collect, document and submit to the division, at least annually the findings of the data analysis~~ must analyze the documentation kept in accordance with this rule for the preceding calendar year and submit the analysis, in the format prescribed by the department, to the department by February 15 of the year following the analysis period.

**Source:** 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~~(5)~~.

**Law Implemented:** SDCL 27B-1-14, 27B-1-15(2), 27B-2-26~~(5)~~.

**46:11:08:01. Description of services.** A participant's designated conflict-free case manager, ISP team, and providers must tailor CHOICES waiver services ~~must be tailored~~ to the preferences and priorities of each participant. Each participant ~~must~~ shall receive at least one of the following waiver services each month:

(1) Assistive technology services as follows:

(a) Evaluating the assistive technology needs of the participant, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the participant in the customary environment of the participant;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for the participant;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) The coordination and use of necessary therapies, interventions, or services with assistive technology devices;

(e) Training or technical assistance in the operation or maintenance of an assistive technology device for the participant, or, where appropriate, the participant's family member, guardian, advocate, or authorized representative; or

(f) Training or technical assistance in the operation or maintenance of an assistive technology device for professionals or other persons who provide services to, employ, or are otherwise substantially involved in the major life functions of the participant;

~~(1)~~(2) Case management ~~to include~~ as follows:

(a) Developing ~~the~~ an individualized service plan (ISP) utilizing the state's standardized ISP;

(b) Promoting and documenting ~~participant~~ the participant's involvement in the ISP monitoring process;

(c) Documenting ~~the~~ ISP team ~~meeting and making sure~~ meetings and ensuring scheduling facilitates the participation of all members;

(d) Observing, monitoring, and documenting the implementation of the ISP at least quarterly;

(e) Meeting ~~minimally,~~ for one face-to-face visit ~~per~~ each quarter with ~~each~~ the participant;

(f) Ensuring implementation and revisions of the ISP;

(g) Reviewing critical incident reports;

(h) Reviewing instances of abuse, neglect, or exploitation, participant health and safety, or other pertinent information;

(i) Submitting monthly ~~quality~~ reports summarizing case management activities;

(j) Assisting ~~participants~~ the participant in finding paid and unpaid natural supports;

(k) Arranging, reviewing, and approving assessments;

(l) Administering the inventory for client and agency planning ~~(ICAP).~~;

(m) Conducting ~~person centered~~ person-centered planning;

(n) Assisting ~~participants~~ the participant in selecting services and supports;

(o) Assisting ~~participants to identify~~ the participant in identifying individual budgets;

(p) Assessing ~~individual~~ the participant's eligibility status and referring ~~individuals~~ the participant to necessary eligibility resources;

(q) Assisting ~~individuals to access~~ the participant in accessing integrated community employment;

(r) Ensuring the human rights committee or the behavior support committee~~, or both, has~~ have afforded due process to a participant when necessary; and

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

~~(2)~~(3) Day services ~~to include~~ as follows:

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

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

~~(c) Services that pay no wages for participation in activities;~~ Day services cannot be limited to fixed site facilities; and wages cannot be paid for a participant's participation in day service activities.

~~(3)~~(4) Career exploration ~~to include~~ as follows:

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

~~(b) Services that are time limited; and~~

~~(c) Services~~ may not exceed twenty-four months and must be intended to result in paid employment and work experience to further career development and individual integrated community-based employment for the participant;

~~(4)~~(5) Residential habilitation ~~to include~~ as follows:

(a) ~~Services provided to~~ Serving a participant living in the participant's own home, including a participant living with other family members; ~~and~~ by

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

~~(i) Activities~~ activities of daily living~~;~~,

~~(ii) Food~~ food preparation~~;~~,

~~(iii) Money~~ money management~~;~~,

~~(iv) Safety~~ safety skills~~;~~, and

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

~~(5)~~(6) Supported employment ~~to include~~ comprised of intensive services ~~that are intensive with~~ and ongoing supports that enable the participant, for whom competitive employment~~,~~ at or above the minimum wage~~,~~ is unlikely ~~absent~~ without the provision of supports ~~and who, because of the participant's disabilities, needs supports~~, to perform in a regular work setting; or

~~(6)~~(7) Medical equipment and drugs ~~to include~~ comprised of devices, controls, or appliances~~,~~ specified in the participant's ISP that ~~enable a participant to~~ increase the participant's ability to perform activities of daily living, or to perceive, control, or communicate with the environment in which ~~they live;~~ the participant lives

~~(7) Nursing services that are not available under the Medicaid state plan and are limited to:~~

~~(a) Screenings and assessments;~~

~~(b) Nursing diagnosis treatment;~~

~~(c) Staff training;~~

~~(d) Monitoring of medical care and related services;~~

~~(e) Policy and procedure development; and~~

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

~~(8) Other medically related services to include:~~

~~(a) Speech, hearing, and language services;~~

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

~~(i) Physicians;~~

~~(ii) Psychiatrists;~~

~~(iii) Physician assistants;~~

~~(iv) Speech, physical, or occupational therapists;~~

~~(v) Pharmacists;~~

~~(vi) Optometrists;~~

~~(vii) Dentists or dental hygienists;~~

~~(viii) Audiologists;~~

~~(ix) Podiatrists;~~

~~(x) Chiropractors; or~~

~~(xi) Dietitians;~~

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

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

**Source:** 40 SDR 102, effective December 3, 2013; 43 SDR 9, effective August 2, 2016; 45 SDR 83, effective December 17, 2018; 49 SDR 48, effective November 22, 2022.

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

**Law Implemented:** SDCL 27B-1-14, 27B-1-15(2), 27B-2-26~~(3)(9)~~.

**46:11:09:05. Critical incident report -- Submission to the division.** A CSP, SP, or qualified provider~~,~~ providing service under this chapter~~,~~ shall give verbal notice, of any of the following critical ~~incident~~ incidents involving a participant, to the division ~~no later than the end of the division's next business day or the CSP, SP, or qualified provider's administrative business day whichever occurs first from the time the CSP, SP, or qualified provider becomes aware of the incident. The CSP, SP, or qualified provider shall submit a written critical incident report on a form provided by the division. The report shall be submitted to the division within seven calendar days after the verbal notice. A report shall be submitted in the following critical instances~~:

(1) Death;

(2) Life-threatening illness or injury;

(3) Alleged instances of abuse, neglect, or exploitation ~~against or by any participant~~;

(4) Changes in health or behavior that may jeopardize continued services;

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

(6) Any illegal activity ~~that involves a participant~~.

The verbal notice must be provided no later than the end of the division's next business day or the provider's next administrative business day, whichever occurs first, from the time the provider becomes aware of the incident.

The provider shall also submit a written critical incident report utilizing the division's online reporting system within seven business days after the initial verbal notice is made. The report must contain a description of the incident, specifying what happened, when it happened,

and where it happened. The report must be dated and include the name of the individual submitting the report.

The coordinator shall notify the ~~participant's~~ participant's parent if the participant is under ~~18~~ eighteen years of age, or the participant's guardian, if any, that a critical incident report has been submitted and the reason why the report was submitted, unless the parent or guardian is accused of the incident.

**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-1-14, 27B-1-15(2), 27B-2-26~~(1)(2)(4)~~.

## CHAPTER 46:17:04

## SERVICE STANDARDS

46:17:04:01 Interdisciplinary team -- Composition and meetings.

46:17:04:02 Comprehensive functional assessment

46:17:04:03 Individual support plan.

46:17:04:04 Individual support plan development -- Participants.

46:17:04:05 QDDP monitoring and coordination of ISP.

46:17:04:06 Professional program staff.

46:17:04:07 Direct support professionals.

46:17:04:08 Highly restrictive procedures.

46:17:04:09 Time-out rooms.

46:17:04:10 ~~Psychotropic medications~~Medications.

46:17:04:11 Medical restraint -- Order by physician, physician assistant, certified nurse practitioner, or dentist.

46:17:04:12 Physical restraints.

46:17:04:13 Management of maladaptive behaviors.

46:17:04:14 Behavior support committee.

46:17:04:15 Human rights committee -- Composition.

46:17:04:16 Human rights committee -- Functions.

46:17:04:17 Staff orientation training.

46:17:04:18 Communication with parents or legal guardians.

**46:17:04:10. ~~Psychotropic medications~~ Medications.** ~~Each plan for use of psychotropic medications must identify the potential harmful effect of the medications in nontechnical terms that all interdisciplinary team members can understand. Dosages, prescribed by the attending physician, physician's assistant, or certified nurse practitioner, may not interfere with the person's daily living activities. Usage must be approved by the interdisciplinary team as an integral part of the ISP. The pharmacist, with input from the interdisciplinary team, shall monitor and document the use of psychotropic medication at least quarterly for desired responses and adverse effects~~ Any use of medication by an ICF/IID for behavior on an as-needed basis is a highly restrictive procedure and must meet the requirements of § 46:17:04:08. For medications that are not for behavior on an as-needed basis, the person supported may request an annual human rights review. The person's case manager shall, during each annual ISP team meeting, facilitate a discussion about the person's medications and whether a human rights committee review is requested. The QDDP shall document all discussions regarding medication during the ISP team meeting.

**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. § 483.450 (October 1, 2002)~~ SDCL 27B-1-14, 27B-1-15 (2), 27B-2-26.