

ARTICLE 67:44

~~PREADMISSION ASSESSMENTS~~ HOME AND COMMUNITY-BASED SERVICES WAIVER  
OPERATED BY THE DIVISION OF ADULT SERVICES AND AGING

Chapter

67:44:01 ~~Assessments~~ Repealed.

67:44:02 ~~Alternative care services~~ Repealed.

67:44:03 ~~Home and community-based waiver services~~ HCBS Waiver operated by the  
Division of Adult Services and Aging.

Editor's Note: The Legislative Research Council substituted "nursing facility" for "nursing home" in this article in conformance with SL 1995, ch 191, § 2, which instructed the Code Commission to implement the name change made by SL 1995, ch 191, § 1.

## CHAPTER 67:44:01

### ASSESSMENTS

(Repealed)

#### Section

~~—67:44:01:01 Definitions.~~

~~—67:44:01:02 Assessments.~~

~~—67:44:01:03 Request for assessment.~~

~~—67:44:01:04 Emergency admissions.~~

~~—67:44:01:05 Individuals exempt from assessment requirement.~~

~~—67:44:01:06 Form of request for assessment.~~

~~—67:44:01:07 Department to conduct follow-up reports — Rehabilitation cases only.~~

~~—67:44:01:08 Facility to maintain copy of assessment recommendation.~~

~~67:44:01:01. Definitions. Terms used in this article mean:~~

~~—(1) "Department," the Department of Social Services;~~

~~—(2) "Emergency care," professional health care services needed immediately to preserve life or stabilize health either because the individual has experienced a sudden, severe, and unforeseen illness or injury or because of the immediate absence of the individual's primary caregiver; and~~

~~—(3) "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.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 18 SDR 67, effective October 13, 1991.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

~~67:44:01:02. Assessments. An assessment team consisting of a department social worker and a Department of Health community health nurse shall assess individuals preparing to enter a nursing facility. The assessment is a face-to-face visit with the individual and includes a determination of functional need and capacity, sensory communication, home environment, living arrangements, special equipment needs, mental functioning and behavior, and needed medical treatment. Based on the responses and information gathered, the assessment team may recommend alternative services if the team determines such services to be appropriate.~~

~~—The department shall inform the individual and a member of the individual's family of the day and time the assessment is scheduled and that they have a right to have a physician present during the assessment.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 18 SDR 67, effective October 13, 1991.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

~~67:44:01:03. Request for assessment. The department may accept a request for an assessment when the individual's move to a nursing facility is pending. The department may assess a number of individuals from a facility's waiting list equal to ten percent of the facility's total licensed bed count.~~

~~—The department may assess a nursing facility resident if the resident, the resident's family, or the nursing facility requests the assessment.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 18 SDR 67, effective October 13, 1991.~~

~~—General Authority: SDCL 34-12-28, 28-1-45.~~

~~—Law Implemented: SDCL 34-12-26, 28-1-45.~~

~~67:44:01:04. Emergency admissions. A nursing facility may accept an admission for emergency care if the attending physician has determined that emergency placement into the nursing facility is necessary. The nursing facility must submit a completed request for the assessment and the medical report within three days after the individual's admission to the facility.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

~~67:44:01:05. Individuals exempt from assessment requirement. The following individuals are exempt from the assessment requirements:~~

~~—(1) An individual transferring between nursing facilities;~~

~~—(2) An individual who was admitted to a nursing facility prior to July 1, 1988;~~

~~—(3) An individual covered under article 67:16 who has a primary diagnosis of mentally retarded, developmentally disabled, or mentally ill; and~~

~~—(4) An individual entering a nursing facility who has been assessed by the team within the previous six months.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 18 SDR 67, effective October 13, 1991.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

~~67:44:01:06. Form of request for assessment. A request for an assessment must be made on the request form available from the department. The completed form must contain the signatures of the nursing facility representative or the hospital's representative and the applicant or the applicant's authorized representative or legal guardian. A medical report containing current medical information on the applicant which was prepared within the 30 days prior to the request must be attached to the request.~~

~~—When a facility notifies the department that an individual has been admitted directly from the hospital, the notification must contain a completed request form and the medical report.~~

~~—Except for an individual discharged from a hospital to a nursing facility, the 10-day limit established in SDCL 34-12-27 begins when the department receives the completed request form and the medical report.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26, 34-12-27.~~

~~67:44:01:07. Department to conduct follow-up reports -- Rehabilitation cases only. The department shall prepare a follow-up report on each individual admitted to a nursing facility for rehabilitation. A follow-up contact shall be completed no more than 30 days following admission. If rehabilitation is to continue, an additional follow-up will be completed no more than 90 days following admission. The follow-up report contains the individual's status at the time of the follow-up, such as, discharged to private pay services, discharged with no services, entered long-term care facility, and continued with core service plan.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

~~67:44:01:08. Facility to maintain copy of assessment recommendation. To substantiate compliance with SDCL 34-12-27, each facility must maintain a copy of the assessment recommendation in each affected resident's file.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 34-12-28.~~

~~—Law Implemented: SDCL 34-12-26.~~

## CHAPTER 67:44:02

### ALTERNATIVE CARE SERVICES

(Repealed)

#### Section

- ~~67:44:02:01~~ Definitions.
- ~~67:44:02:02~~ Eligibility requirements.
- ~~67:44:02:03~~ Care plan to be developed.
- ~~67:44:02:04~~ Alternative care services.
- ~~67:44:02:05~~ Department participation in cost of services limited.
- ~~67:44:02:05.01~~ Fee for alternative care services.
- ~~67:44:02:06~~ Income considered -- Maintenance deductions.
- ~~67:44:02:07~~ Determining net income from self-employment.
- ~~67:44:02:08~~ Resource limits.
- ~~67:44:02:09~~ Determining resource value.
- ~~67:44:02:10~~ Consideration of certain resources.
- ~~67:44:02:11~~ Resource exclusions.
- ~~67:44:02:12~~ Reductions to burial funds.
- ~~67:44:02:13~~ Conversion or sale of resources.
- ~~67:44:02:14~~ Reporting income or resource changes.
- ~~67:44:02:15~~ Case management for ineligible household.
- ~~67:44:02:16~~ Discontinuance of services.
- ~~67:44:02:17~~ Provider agreement required.

67:44:02:01. Definitions. Terms used in this chapter mean:

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

~~—(2) "Beginning of the month," the first moment of the month;~~

~~—(3) "Homestead," that property which meets the requirements of SDCL 43-31-2 to 43-31-4, inclusive.~~

~~—(4) "Household," an individual preparing to enter a nursing facility and the individual's spouse who is not a medicaid recipient, or a resident of a nursing facility and the resident's spouse who is not a medicaid recipient;~~

~~—(5) "Income," money received in a month, including money wages or salaries after deductions for taxes and pensions; social security payments; railroad retirement; dividends; interest income; trust income except the interest accrued on the burial funds covered in subdivision 67:44:02:11(6); veterans' benefits; pensions and annuities; unemployment compensation; net farm income; supplemental security income; net self-employment income; income tax refund; and net rental income; and~~

~~—(6) "Resources," those assets an individual or couple already has at the beginning of a month or at the time of a request for an assessment which are not counted as income for that month.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 23 SDR 92, effective December 10, 1996.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:02. Eligibility requirements. An individual may be eligible for alternative care services if, pursuant to the assessment required under chapter 67:44:01, the individual meets the following criteria:~~

- ~~—(1) Has a nursing facility level of care;~~
- ~~—(2) Is able to live outside a nursing facility with the help of alternative care services; and~~
- ~~—(3) Meets the income and resource requirements of this chapter.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 26 SDR 109, effective March 5, 2000.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~—Cross Reference: Department participation in cost of services limited, § 67:44:02:05.~~

~~67:44:02:03. Care plan to be developed. Based on the assessment conducted under chapter 67:44:01, the department shall develop a care plan for those individuals meeting the eligibility requirements of § 67:44:02:02. The care plan shall contain the list of alternative care services which will assist the individual to live outside a nursing facility. The care plan shall specify the extent of the department's participation.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~—Cross-Reference: Alternative care services, § 67:44:02:04.~~

~~67:44:02:04. Alternative care services. Alternative care services include the following:~~

~~—(1) Personal services -- services designed to meet an individual's health and social needs. Personal services may include assisting with grooming, in-home services, housekeeping, and nutrition and monitoring the individual's activities of daily living;~~

~~—(2) Adult day care -- regular care and protection for adults away from their home for part of a 24-hour period. These adult day care services are not those funded under chapter 67:40:15;~~

~~—(3) Maintenance nursing -- evaluation and counseling by a registered nurse to promote and maintain the individual's optimal health. Maintenance nursing may also include injections, monitoring and setting up medications, physical assessments, monitoring patient status, foot care, drawing blood, changing dressings, nutritional assessment, and health education;~~

~~—(4) Case management services -- a combination of services designed to assist persons gain access to and maintain appropriate services and supports. Case management services may include case planning, monitoring and review, advocacy, assessment, referral, and coordination of the total service plan;~~

~~—(5) Emergency response device -- a device that links an individual living independently at home to professionals who will respond to an emergency;~~

~~—(6) Medication management -- either a machine from a pharmaceutical or medical equipment supplier which dispenses medication to a recipient or the interaction from another individual who reminds the recipient to take needed medication;~~

~~—(7) Meals -- the provision of nutritious meals to an individual living independently at home where a home-delivered meal is not available or does not meet all of the client's nutritional needs; and~~

~~—(8) Respite care -- temporary relief to the primary caregiver from the continuous support and care of a dependent adult.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 20 SDR 170, effective April 18, 1994; 26 SDR 109, effective March 5, 2000.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:05. Department participation in cost of services limited. The department may participate in the cost of alternative care services if the cost of the services does not exceed \$850 a month and the department has funding for the required services.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 16 SDR 161, effective April 8, 1990; 18 SDR 177, effective April 26, 1992; 20 SDR 170, effective April 18, 1994; 22 SDR 16, effective August 17, 1995; 26 SDR 109, effective March 5, 2000; 28 SDR 96, effective December 30, 2001; 29 SDR 81, effective December 11, 2002.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:05.01 Fee for alternative care services.~~ The department shall charge a fee for alternative care services provided. The fee is based on the household's monthly net income, computed according to ~~§ 67:44:02:06~~, and the individual's monthly care costs. The fees are a percentage of the cost of care and are as contained in the following chart:

<del>NET INCOME FOR</del>	<del>NET INCOME FOR</del>	<del>NET INCOME FOR</del>	
<del>ONE PERSON</del>	<del>TWO PERSON</del>	<del>THREE PERSON</del>	
<del>HOUSEHOLD</del>	<del>HOUSEHOLD</del>	<del>HOUSEHOLD</del>	<del>FEE</del>
<del>\$0 - \$738</del>	<del>\$0 - \$995</del>	<del>\$0 - \$1,252</del>	<del>8%</del>
<del>739 - 804</del>	<del>996 - 1,122</del>	<del>1,253 - 1,445</del>	<del>12%</del>
<del>805 - 870</del>	<del>1,123 - 1,249</del>	<del>1,446 - 1,638</del>	<del>16%</del>
<del>871 - 936</del>	<del>1,250 - 1,376</del>	<del>1,639 - 1,831</del>	<del>20%</del>
<del>937 - 1,002</del>	<del>1,377 - 1,503</del>	<del>1,832 - 2,024</del>	<del>24%</del>
<del>1,003 - 1,068</del>	<del>1,504 - 1,630</del>	<del>2,025 - 2,217</del>	<del>28%</del>
<del>1,069 - 1,134</del>	<del>1,631 - 1,757</del>	<del>2,218 - 2,410</del>	<del>32%</del>
<del>1,135 - 1,200</del>	<del>1,758 - 1,884</del>	<del>2,411 - 2,603</del>	<del>36%</del>
<del>1,201 - 1,266</del>	<del>1,885 - 2,011</del>	<del>2,604 - 2,796</del>	<del>40%</del>
<del>1,267 - 1,332</del>	<del>2,012 - 2,138</del>	<del>2,797 - 2,989</del>	<del>44%</del>
<del>1,333 - 1,398</del>	<del>2,139 - 2,265</del>	<del>2,990 - 3,182</del>	<del>48%</del>
<del>1,399 - 1,464</del>	<del>2,266 - 2,392</del>	<del>3,183 - 3,375</del>	<del>52%</del>
<del>1,465 - 1,530</del>	<del>2,393 - 2,519</del>	<del>3,376 - 3,568</del>	<del>56%</del>
<del>1,531 - 1,596</del>	<del>2,520 - 2,646</del>	<del>3,569 - 3,761</del>	<del>60%</del>
<del>1,597 - 1,662</del>	<del>2,647 - 2,773</del>	<del>3,762 - 3,954</del>	<del>64%</del>
<del>1,663 - 1,728</del>	<del>2,774 - 2,900</del>	<del>3,955 - 4,147</del>	<del>68%</del>
<del>1,729 - 1,794</del>	<del>2,901 - 3,027</del>	<del>4,148 - 4,340</del>	<del>72%</del>
<del>1,795 - 1,860</del>	<del>3,028 - 3,154</del>	<del>4,341 - 4,533</del>	<del>76%</del>
<del>1,861 - 1,926</del>	<del>3,155 - 3,281</del>	<del>4,534 - 4,726</del>	<del>80%</del>
<del>1,927 - 1,992</del>	<del>3,282 - 3,408</del>	<del>4,727 - 4,919</del>	<del>84%</del>
<del>1,993 - 2,058</del>	<del>3,409 - 3,535</del>	<del>4,920 - 5,112</del>	<del>88%</del>
<del>2,059 - 2,124</del>	<del>3,536 - 3,662</del>	<del>5,113 - 5,305</del>	<del>92%</del>
<del>2,125 - 2,190</del>	<del>3,663 - 3,789</del>	<del>5,306 - 5,498</del>	<del>96%</del>
<del>2,191 - 2,256</del>	<del>3,790 - 3,916</del>	<del>5,499 - 5,691</del>	<del>100%</del>

~~Fees are rounded to the nearest whole dollar and must be paid the month after the services are provided.~~

~~Source: 26 SDR 109, effective March 5, 2000; 28 SDR 96, effective December 30, 2001; 29 SDR 81, effective December 11, 2002.~~

~~General Authority: 28-1-45.~~

~~Law Implemented: 28-1-44.~~

~~67:44:02:06. Income considered -- Maintenance deductions. In determining a household's monthly income and its level of participation, a household comprised of a single individual is allowed a maintenance deduction equal to the monthly federal poverty level for a household of one. A household comprised of a married couple is allowed a maintenance deduction equal to the monthly federal poverty level for a household of two regardless of whether one or both are in need of services. In addition, the household may deduct up to \$250 a month for wages paid by the household for the individual's care needs.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 16 SDR 161, effective April 8, 1990; 18 SDR 177, effective April 26, 1992; 22 SDR 16, effective August 17, 1995; 26 SDR 109, effective March 5, 2000.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~—Cross Reference: Federal poverty level, § 67:11:01:03.~~

~~67:44:02:07. Determining net income from self-employment. When an individual has been in the same business for at least one year and net earnings have been fairly constant with no anticipated change for the current year, the current year's net earnings shall be considered equal to the previous year's net profits as shown on the individual's federal tax return. Monthly income shall be determined by dividing the net profit by 12.~~

~~—When an individual is engaged in a first-year business, the department shall determine net profit from business records to date, project this amount for the year, and divide it by 12.~~

~~—If an individual states that this year's income is not representative of past years' tax returns, consideration may be given to situations including a catastrophic event such as fire, flood, drought, or the serious disability or illness of the owner.~~

~~—When there are no records, the department shall use the individual's best estimate to determine net income.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:08. Resource limits. The department may not participate in the cost of services if the household's resources exceed \$40,000 for a household composed of a single individual or \$45,000 for a household composed of a married couple. These limits apply regardless of whether one spouse or both are in need of alternative care services.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 20 SDR 170, effective April 18, 1994; 26 SDR 109, effective March 5, 2000.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~—Cross-Reference: Resources considered, § 67:44:02:10.~~

~~67:44:02:09. Determining resource value. Resources shall be valued at their current market value less encumbrances. Current market value is the amount for which the property can be expected to sell on the open market in the geographic area involved.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:10. Consideration of certain resources. If the household's resources include the items listed in this section, they shall be considered as follows:~~

~~—(1) Trusts when a household member has the legal power to dissolve the trust or invade the principal and use the proceeds. The principal of the trust shall be considered a resource;~~

~~—(2) Deposits in a bank, savings and loan, or similar institution whether in the form of a checking or savings account or a certificate of deposit. Deposits held in joint accounts shall be considered available to the household when a household member has control or can direct the disposition of funds from the accounts. Accounts held in joint ownership shall be divided equally among the owners;~~

~~—(3) Savings bonds to the extent of their current value. Bonds held in co-ownership with another person shall be considered available to the household when a member of the household is the actual purchaser or has the authority to cash the bond;~~

~~—(4) The total cash surrender value of the household's life insurance policies when the total face value of all the policies added together exceed \$5,500 for a household comprised of a single individual or \$11,000 for a household comprised of a married couple whether one or both are in need of services; and~~

~~—(5) Stocks, mutual fund shares, promissory notes, mortgages, or municipal, corporate, or government bonds owned by a household member which can be sold or discounted shall be included in the amount for which they can be sold or discounted. The amount must be the highest estimated money price which the stocks, notes, mortgages, or bonds will bring if offered for sale on the open market.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:11. Resource exclusions. When determining a household's resources, the following items shall be excluded:~~

~~—(1) Homestead property as long as it continues to be the household's principal place of residence or continues to be occupied by a dependent relative;~~

~~—(2) One automobile regardless of value;~~

~~—(3) Household goods including clothing, items essential to everyday living, and personal effects;~~

~~—(4) Life insurance policies when the total face value of all the policies added together is \$5,500 or less for a household comprised of a single individual and \$11,000 or less for a household comprised of a married couple whether one or both are in need of services;~~

~~—(5) Life insurance policies with no cash surrender value, such as term insurance;~~

~~—(6) Funds set aside for burial up to \$7,000 for each household member. This includes revocable burial contracts, burial trusts, or any other separately identifiable assets intended for burial expenses. Interest which is left to accumulate and become a part of these excluded burial funds is also excluded. These funds may be reduced under the provisions of § 67:44:02:12;~~

~~—(7) Burial spaces owned by a household member;~~

~~—(8) Irrevocable prepaid burial contracts between a household member and another person for the purpose of defraying burial expenses;~~

~~—(9) Property held in trust by the federal government for the benefit of a household member when the member has restricted access to the principal. A requirement for obtaining approval of the secretary of the interior or an authorized representative of the secretary of the interior is considered restricted access to the principal.~~

~~—Source: 15 SDR 68, effective November 7, 1988; 28 SDR 96, effective December 30, 2001.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:12. Reductions to burial funds. The burial exclusion provided in subdivision 67:44:02:11(6) must be reduced by the current market value less encumbrances of an irrevocable burial trust, contract, or other irrevocable arrangement which is available to meet burial expenses and by the face value of life insurance policies of \$5,500 or less if the policy is owned by a household member and if the cash surrender value of the policy has been excluded under subdivision 67:44:02:11(4).~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:13. Conversion or sale of resources. When a household member converts or sells a resource, the result is not considered income. The changed resource remains a resource subject to all the resource criteria. It is considered a countable resource at the beginning of the month following the month in which the conversion occurred.~~

~~—An excludable resource which is converted to a nonexcludable resource during the month shall be considered in the resource limit the beginning of the month following the conversion.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:14. Reporting income or resource changes. A household must report changes in its income or resources to the department within 10 days after the change occurred.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:15. Case management for ineligible household. An ineligible household may receive initial and on-going case management services while living outside a nursing facility. An ineligible household desiring case management services must notify the department.~~

~~—Source: 15 SDR 68, effective November 7, 1988.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~—Cross-Reference: Alternative care services, § 67:44:02:04.~~

~~67:44:02:16. Discontinuance of services. The department may discontinue services provided under this chapter when the department exhausts its resources for providing the services, the client can no longer benefit from the services provided, or the client's or the provider's health or safety would be jeopardized if the services were continued. Specific reasons for discontinuing services include the following:~~

~~—(1) The client's medical needs may require daily nursing. Indications are the client is experiencing falls, is failing to take needed medication, is suffering from uncontrolled tuberculosis or antibiotic-resistant organisms, or two people are needed to move the client;~~

~~—(2) The client is sexually harassing, verbally abusive, threatening, or combative towards the person delivering services;~~

~~—(3) The client's care plan exceeds the limits of the in-home care limits;~~

~~—(4) The client's living environment presents health and fire hazards or unsafe conditions for the person delivering services;~~

~~—(5) The client's family and individuals from other support systems have discontinued providing care or are unable to provide the care needed;~~

~~—(6) The client is not in compliance with the case service plan;~~

~~—(7) The client's cognitive ability is limited to the extent that the client is not oriented to person, place, or time;~~

~~—(8) The client is not capable of self-preservation in an emergency;~~

~~—(9) The client's condition has improved and no longer meets program eligibility;~~

~~—(10) The client failed to contribute to the program as required;~~

~~—(11) The client refuses to allow the service provider on the premises;~~

~~—(12) The client or others in the household are under the influence of drugs or alcohol; or~~

~~—(13) The client has pornographic materials exhibited in the home.~~

~~—Source: 20 SDR 170, effective April 18, 1994; 26 SDR 109, effective March 5, 2000; 28 SDR 96, effective December 30, 2001.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

~~67:44:02:17. Provider agreement required. An agency providing homemaker or nursing services under this chapter must have a signed agreement with the department before providing services to an eligible client.~~

~~—Source: 26 SDR 109, effective March 5, 2000.~~

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-44.~~

CHAPTER 67:44:03

~~HOME AND COMMUNITY-BASED WAIVER SERVICES~~HCBWS WAIVER OPERATED BY THE  
DIVISION OF ADULT SERVICES AND AGING

Section

- 67:44:03:01 Definitions.
- 67:44:03:02 Eligibility requirements.
- 67:44:03:03 Applicable provisions of article 67:46.
- 67:44:03:04 Individual care plan -- Review.
- 67:44:03:05 Redetermination of level of care.
- 67:44:03:06 ~~Services covered under HCBWS.~~
- 67:44:03:07 ~~Adult day care services~~Repealed.
- 67:44:03:08 ~~Homemaker services~~Repealed.
- 67:44:03:09 ~~Private duty nursing~~Repealed.
- 67:44:03:09.01 ~~Administration of medications~~Repealed.
- 67:44:03:09.02 ~~Meals and nutritional supplements~~Repealed.
- 67:44:03:10 Eligible individuals to participate in cost of ~~HCBWS~~SASA waiver services.
- 67:44:03:11 Payment limits.
- 67:44:03:12 Provider requirementsagreement required.
- 67:44:03:13 ~~Conditions for terminating provider agreement~~Repealed.
- 67:44:03:14 ~~Submission of claims~~Repealed.
- 67:44:03:15 Discontinuance of services.

67:44:03:01. Definitions. Terms used in this chapter mean:

(1) "Adult companion services," non-medical care, assistance, and socialization;

~~(2) "Adult day careservices," regularly scheduled, structured health and social services provided outside an individual's home during the day~~formal supportive service that provides care and supervision outside of the home for part of the day;

~~(3) "Assisted living services," services furnished to individuals receiving waiver services who reside in a homelike, non-institutionalized setting that includes 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety, and security;~~

~~(4) "Environmental accessibility adaptations," physical adaptations to the private residence of the consumer required by the consumer's care plan, that are necessary to ensure the health, welfare, and safety of the consumer or that enable the consumer to function with greater independence within the home;~~

~~(2) "Cognitive condition," a mental deficiency which results in a diminished ability to solve problems, to exercise good judgment in the context of a value system, to remember, and to be aware of and respond to safety hazards;~~

~~(3) "Emergency response device," a device which alerts designated individuals to respond to an emergency situation, including devices such as a portable "help" button; a small, electrical table-top unit; or a voice activated unit. Examples of these devices include Lifeline, Voice of Help, and Mainstreet Messengers;~~

~~(4)~~(5) "Home and community-based waiver services waiver" or "HCBWSHCBSW," services reimbursed under Title XIX that are designed to prevent or delay placement of an individual in a nursing facility;

~~(5) "Homemaker," the individual who performs homemaker services for an eligible client;~~

~~(6) "Homemaker services," if all other resources have been exhausted, the performance of nonmedical household tasks designed to maintain a client~~an individual who needs assistance

to perform the tasks in the individual's home~~in the client's home and provided by a homemaker for a client who has lost the ability to perform the tasks;~~

~~(7) "Medical review team," a team consisting of a registered nurse and a social worker;~~

~~(8) "Medication management," either an electrical device from a pharmaceutical or medical equipment supplier that is programmed to automatically dispense medications which are in pill form or interaction from another individual who reminds the recipient to take needed medications; and~~

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

(8) "Meals and nutritional supplements," nutritious meals or nutritional supplements that enhance an individual's diet;

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

(10) "Personal emergency response system," an electronic device that enables individuals to secure help in an emergency;

(11) "Provider," the person, facility, or agency that provides authorized services;

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

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

(14) "Specialized medical equipment," equipment needed to assist a consumer in living safely at home; and

(15) "Specialized medical supplies," expendable or reusable supplies related to the needs of incontinency, diabetes, or wound care

~~(9) "Private duty nursing," nursing services for individuals with chronic and stable conditions who require more individual care than is available from a part-time or intermittent nursing service.~~

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.

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-45.

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

~~(1) The individual is age 65 or older or is over the age of 18 with a qualifying disability and, if the individual is going into an assisted living center, the individual must have at least \$520 to cover the individual's board and room charges after the deductions allowed under § 67:44:03:10;~~

~~(2) The individual is receiving SSI or has an income level within 300% of the 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;~~

~~(3) The department has conducted a preadmission assessment according to § 67:44:01:02;~~

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

~~(5)~~(4) The individual will reside at home or in an assisted living facility while receiving ASA waiver servicesis not a resident of a hospital, a nursing facility, or an intermediate care facility for the mentally retarded;

~~(6) The individual care plan prepared under § 67:44:03:04 requires one or more of the services provided in this chapter if the individual is to remain outside a nursing facility; and~~

~~(7) The anticipated monthly HCBWS cost for the individual does not exceed 85 percent of the statewide average nursing facility rate established under chapter 67:16:04.~~

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.

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

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

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

- (1) Chapter 67:46:01, all provisions;
- (2) Chapter 67:46:02, all provisions;
- (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 67:46:03:21;
- (4) Chapter 67:46:04, all provisions;
- (5) Chapter 67:46:05, all provisions;
- (6) Chapter 67:46:07, all provisions;
- (7) Chapter 67:46:08, all provisions; and
- (8) Chapter 67:45:01, all provisions.

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

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-45.

67:44:03:04. Individual care plan -- Review. Each individual eligible for ASA waiver services~~HCBS~~ must have an individual care plan ~~before services may begin.~~ The care plan must be signed by the individual or the individual's legal representative~~A department social worker together with the client must develop, approve, and sign the individual's care plan.~~ They must base the care plan on the assessment prepared under chapter 67:44:01.

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

~~The department shall review the~~ care plan shall be revised annually or as the individual's needs change~~as often as necessary but not less than once a year.~~

Source: 15 SDR 191, effective June 11, 1989; 18 SDR 177, effective April 26, 1992; 28 SDR 96, effective December 30, 2001.

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-45.

67:44:03:06. Services covered under HCBWS. Services covered under the ASA

waiver HCBWS include the following:

- (1) Adult day servicescare;
- (2) Homemaker services;
- (3) Personal care services;
- (3)(4) Private-duty 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
- ~~—(4) Emergency response devices;~~
- ~~—(5) Administration of medication;~~
- ~~—(6) Meals and nutritional supplements; and~~
- ~~—(7) Medication management.~~

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

General Authority: SDCL 28-1-45.

Law Implemented: SDCL 28-1-45.

[67:44:03:07. Adult day care services.](#) ~~Adult day care services may include the following:~~

- ~~—(1) Supervision;~~
- ~~—(2) Group and individual activities such as crafts, shopping, reminiscence groups, art therapy, and pet therapy;~~
- ~~—(3) Meals and snacks;~~
- ~~—(4) Socialization;~~
- ~~—(5) Recreation;~~
- ~~—(6) Exercise;~~
- ~~—(7) Health screening;~~
- ~~—(8) Transportation;~~
- ~~—(9) Information and referral;~~
- ~~—(10) Health education; and~~
- ~~—(11) Self-help training~~Repealed.

[Source:](#) 15 SDR 191, effective June 11, 1989.

~~General Authority: SDCL 28-1-45.~~

~~Law Implemented: SDCL 28-1-45.~~

[67:44:03:08. Homemaker services.](#) After the department determines that all other resources

have been exhausted, homemaker services may include the following:

- ~~—(1) Cleaning identified household areas;~~
- ~~—(2) Washing dishes;~~
- ~~—(3) Dusting;~~
- ~~—(4) Caring for floors;~~
- ~~—(5) Performing personal hygiene tasks;~~
- ~~—(6) Doing laundry;~~
- ~~—(7) Preparing light meals;~~
- ~~—(8) Shopping for necessities that are incidental to the needed homemaker services;~~
- ~~—(9) Assisting a client complete personal tasks such as paying bills;~~
- ~~—(10) Providing brief periods of care for the client if incidental to the homemaker tasks; or~~
- ~~—(11) Assisting a client with routine health care, including items such as reminding the client to take medications; opening and closing a medication container; returning a medication container to its proper storage area; if medical conditions such as diabetes and peripheral neuropathy are ruled out, assisting the client with foot soaks; cleaning a dehumidifier; or assisting the client with footwear or hose~~Repealed.

[Source:](#) 15 SDR 191, effective June 11, 1989; 28 SDR 96, effective December 30, 2001.

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-45.~~

[67:44:03:09. Private duty nursing.](#) ~~Private duty nursing must be provided by currently licensed registered nurses and licensed practical nurses. Private duty nursing services may include the following:~~

- ~~—(1) Providing periodic evaluation, counseling, and screening procedures to maintain and promote optimal health;~~
- ~~—(2) Monitoring and setting up medications;~~
- ~~—(3) Giving injections;~~
- ~~—(4) Conducting physical assessments and monitoring patient status;~~
- ~~—(5) Providing foot care;~~
- ~~—(6) Drawing blood;~~
- ~~—(7) Changing dressings; and~~
- ~~—(8) Providing health education~~Repealed.

[Source: 15 SDR 191, effective June 11, 1989.](#)

~~General Authority: SDCL 28-1-45.~~

~~Law Implemented: SDCL 28-1-45.~~

67:44:03:09.01. Administration of medications. ~~Medications may be administered only to an~~

~~individual living in an assisted living facility who meets the following criteria:~~

~~—(1) Is 65 years of age or older;~~

~~—(2) Is unable to self-administer medications due to a debilitating physical, mental, or cognitive condition, including illiteracy;~~

~~—(3) Is a resident of a facility that is licensed under the provisions of § 44:04:04:12.01; and~~

~~—(4) Is a resident of a facility which has a signed provider agreement with the department for the administration of medication.~~

~~—The administration of medications consists of removing an individual dose from a previously dispensed, labeled container, including a unit dose container; verifying it with the physician's order; giving the individual dose to the individual for whom it is prescribed; and promptly recording the time and dose given.~~

~~—The administration of medications by unlicensed assistive personnel must follow the provisions of chapter 20:48:04~~Repealed~~.~~

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

~~—General Authority: SDCL 28-1-45.~~

~~—Law Implemented: SDCL 28-1-45.~~

67:44:03:09.02. Meals and nutritional supplements. ~~The provision of meals and liquid nutritional supplements is limited to those not covered or available through another source~~Repealed.

Source: 23 SDR 92, effective December 10, 1996.

~~General Authority: SDCL 28-1-45.~~

~~Law Implemented: SDCL 28-1-45.~~

67:44:03:10. Eligible individuals to participate in cost of ASA waiver services HCBWS. An individual eligible for and requiring receiving ASA waiver services HCBWS shall participate in the cost of the service as calculated pursuant to § ??. Individuals will receive written notification of the cost share amount. ~~Payment for HCBWS is based on the difference between the client's income, minus allowable deductions, and the client's monthly care costs. If the client meets the requirements of subdivision 67:54:04:03(1), none of the client's income is credited to the monthly care costs. If the client meets the requirements of subdivision 67:54:04:03(2), the department applies the following criteria to determine the amount of assistance a client is eligible to receive from the department to meet the client's monthly care costs:~~

- ~~—(1) Apply the provisions of chapter 67:46:06, with the exception of § 67:46:06:05;~~
- ~~—(2) If the client is married, apply the provisions of chapter 67:46:07, with the exception of subdivision 67:46:07:10(1);~~
- ~~—(3) Allow a deduction equal to the SSI standard benefit amount plus \$20 for the client's personal needs;~~
- ~~—(4) Deduct the amount incurred by the HCBWS individual for medicare and other health insurance premiums, deductibles, and coinsurance charges not paid prior to eligibility; and~~
- ~~—(5) Deduct amount incurred by the HCBWS individual for medical or remedial care that will not be paid by a third party and were not paid prior to eligibility.~~

The Department of Social Services department shall pay its share of the costs directly to the provider agency. The client individual is responsible for paying the client's individual'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, 1994; 22 SDR 16, effective August 17, 1995; 28 SDR 96, effective December 30, 2001.

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

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

Cross-References:

Patient income applied to cost of care, 42 C.F.R. § 435.726(4);

Definition of community spouse, SDCL 28-6-16;

~~SSI standard benefit amount, § 67:46:04:13.~~

67:44:03:11. Payment limits. ~~Payment for HCBWS is limited to the provider's usual and customary charge to the general public, the rate contained in the provider's contract, or the fee established in this section, whichever is lowest:~~

- ~~—(1) Homemaker services – \$13.88 an hour;~~
- ~~—(2) Private duty nursing – \$28.56 an hour;~~
- ~~—(3) Adult day care – \$4.07 an hour;~~
- ~~—(4) Emergency response devices – \$35 a month;~~
- ~~—(5) Administration of medication – \$5 a day;~~
- ~~—(6) Nutritional supplements – \$4.58 a meal; and~~
- ~~—(7) Medication management – an amount not covered by an eligible individual's own income and other state and federal programs, up to \$35 a month.~~

~~—Payment may consist of a combination of department and client funds if the department determines under § 67:44:03:10 that a client must participate in the cost of the services provided~~The rate of payment for ASA 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/sdmedx/includes/providers/feeschedules/dss/index.aspx>.

Source: 15 SDR 191, effective June 11, 1989; 16 SDR 161, effective April 8, 1990; 18 SDR 177, 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.

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

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

67:44:03:12. Provider agreement required requirements. Individuals and agencies Agencies providing services under this chapter must complete all required initial and continuing enrollment activities have an HCBWS agreement with the department that has been approved and signed. The department may terminate an agreement with a provider for ASA waiver services if the provider fails to meet continuing enrollment requirements.

Source: 15 SDR 191, effective June 11, 1989.

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

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

67:44:03:13. Conditions for terminating provider agreement. ~~The department may terminate an agreement with a provider under the following conditions:~~

- ~~—(1) The provider voluntarily withdraws from participation;~~
- ~~—(2) The provider has failed to comply with this chapter and article 67:16;~~
- ~~—(3) The provider has failed to comply with the terms of the HCBWS provider agreement;~~
- ~~—(4) The provider routinely submits inaccurate billings or cost reports;~~
- ~~—(5) The provider's license or certificate to conduct business or practice a profession has been revoked~~Repealed.

Source: 15 SDR 191, effective June 11, 1989.

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

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

[67:44:03:14. Submission of claims.](#) ~~The provider shall submit claims to the department for services provided under this chapter. The claims must contain the provider's usual and customary charge to the general public for the service performed~~Repealed.

[Source:](#) 15 SDR 191, effective June 11, 1989.

~~[General Authority:](#) SDCL 28-1-45, 28-6-1.~~

~~[Law Implemented:](#) SDCL 28-1-45, 28-6-1.~~

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

(1) The individual's ~~client's~~ medical needs have surpassed the scope of the ASA waiver ~~may require daily nursing.~~ Indications are the client is experiencing falls, is failing to take needed medication, is suffering from uncontrolled tuberculosis or antibiotic-resistant organisms, or two people are needed to move the client;

(2) The individual ~~client~~ is sexually harassing, verbally abusive, threatening, or combative towards the person delivering services poses a safety risk;

(3) The client's care plan exceeds the limits of the in-home care limits;

~~(4) The client's living environment presents health and fire hazards or unsafe conditions for the person delivering services;~~

~~(5) The client's family and individuals from other support systems have discontinued providing care or are unable to provide the care needed;~~

~~(6) The individual ~~client~~ is not in compliance with the case service ~~care~~ plan;~~

~~(7) The client's cognitive ability is limited to the extent that the client is not oriented to person, place, or time;~~

~~(8)~~(4) The individual ~~client~~ is not capable of self-preservation in an emergency;

~~(9)~~(5) The client's ~~individual's~~ condition has improved and no longer meets program eligibility ~~level of care requirements~~; and

~~(10)~~(6) The individual ~~client~~ failed to contribute to the program ~~participate in the cost of service~~ as required;

~~(11) The client refuses to allow the service provider on the premises;~~

~~(12) The client or others in the household are under the influence of drugs or alcohol; or~~

~~—(13) The client has pornographic materials exhibited in the home.~~

Source: 20 SDR 170, effective April 18, 1994; 28 SDR 96, effective December 30, 2001.

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

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

## CHAPTER 67:45:01

### MEDICAL REVIEW TEAM -- LEVEL OF CARE

#### Section

- 67:45:01:01 Definitions.
- 67:45:01:02 Medical review team to determine level of care.
- 67:45:01:03 Nursing facility care classification.
- 67:45:01:04 Assisted living care classification.
- 67:45:01:04.01 Adult foster care classification.
- 67:45:01:04.02 ~~Assisted living/cognitively impaired~~Repealed.
- 67:45:01:04.03 ~~Assisted living/physically impaired~~Repealed.
- 67:45:01:04.04 ~~Assisted living/supplemental oxygen~~Repealed.
- 67:45:01:04.05 ~~Assisted living/special diet~~Repealed.
- 67:45:01:04.06 ~~Assisted living facility ineligible to receive reimbursement for certain individuals if not properly licensed~~Repealed.
- 67:45:01:05 Self-care classification.
- 67:45:01:06 Swing-bed hospital services.
- 67:45:01:07 Repealed.
- 67:45:01:08 Redetermination of level of care classification.
- 67:45:01:09 ~~Utilization review~~Repealed.

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 chapter 67:46:03;

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

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

~~(5) "Cognitively impaired," an individual with a mental limitation which results in a diminished ability to solve problems, to exercise good judgment in the context of a value system, to remember, and to be aware of and respond to safety hazards;~~

~~(6) "Extensive assistance," weight-bearing assistance while the individual performs an ADL;~~

~~(7)~~(5) "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;

~~(8)~~(6) "Level of care," a classification which denotes the type of care an individual requires;

~~(9)~~(7) "Medical review team" or "MRT," a two-member team from the department consisting of a registered nurse and an Adult Services and Aging specialist~~a social worker~~;

~~(10)~~(8) "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;

~~(14)~~(9) "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;

~~(12)~~(10) "Self-care," the ability of an individual to live in the individual's own home with or without alternative services; and

~~(13)~~(11) "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.

Source: 18 SDR 67, effective October 13, 1991; 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.

67:45:01:03. Nursing facility care classification. The medical review team 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 have been ordered by a physician and can only be provided by or under the supervision of a professional nurse. These services include daily management, direct observation, monitoring, or performance of complex nursing procedures. For purposes of this rule, continuing care is repeated application of the procedures or services at least once every 24 hours, frequent monitoring, and documentation of the individual's condition and response to the procedures or services;

(2) The assistance ~~or presence~~ of another person for the performance of any activity of daily living according to an assessment of the individual's needs ~~completed according to~~ § ~~44:04:06:15~~; or

(3) In need of skilled mental health services or skilled therapeutic services, including physical therapy, occupational therapy, or speech/language therapy in any combination that is provided at least once a week.

Source: 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-Reference: Redeterminaton of level of care classification, § 67:45:01:08.

67:45:01:04. Assisted living care classification. The MRT may assign an individual to an assisted living care classification if the individual requires supervision 24 hours a day or needs to have assistance available 24 hours a day to enable the individual to carry out those tasks associated with the activities of daily living and the instrumental activities of daily living as defined in § 67:45:01:01. ~~Assistance may not exceed cuing or limited hands-on physical assistance. An individual who meets these criteria, requires medication, and is not capable of assuming responsibility for the self-administration or self-directed assistance of the needed medications must reside in an assisted living facility that has been approved by the Department of Health to provide medication administration.~~

~~An individual who is cognitively or physically impaired or in need of a special diet or supplemental oxygen must meet the additional applicable requirements contained in §§ 67:45:01:04.02 to 67:45:01:04.05, inclusive.~~

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.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

Restricted admissions to assisted living centers, § 44:04:04:12.

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

Dietetic services, ch 44:04:07.

Medication control, ch 44:04:08.

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

67:45:01:04.02. Assisted living/cognitively impaired.—An individual who meets the requirements of § 67:45:01:04 and is cognitively impaired must meet the following additional requirements before the MRT can assign the individual to an assisted living level of care:

—(1) The individual scores a three or less on the cognitive performance scale contained in the resident assessment document;

—(2) The individual scores 20 or more on the minimum mental status scale contained in the resident assessment document;

—(3) The individual exhibits no more than two behavior symptoms as indicated on the resident assessment and the individual does not display these symptoms on a daily basis; and

—(4) The individual requires no more than extensive assistance with no more than three ADLs.

—An individual who is cognitively impaired and does not meet these additional requirements is not eligible for an assisted living level of care~~Repealed.~~

Source: 27 SDR 32, effective October 11, 2000.

—General Authority: SDCL 28-6-1.

—Law Implemented: SDCL 28-6-1.

—Cross Reference: Resident assessments § 44:04:06:15.

67:45:01:04.03. Assisted living/physically impaired. An individual who meets the requirements of § 67:45:01:04 and is physically impaired must meet the following additional requirements before the MRT can assign the individual to an assisted living level of care:

~~—(1) The individual scores a one or less on the cognitive performance scale contained in the resident assessment document;~~

~~—(2) The individual requires extensive assistance with no more than three ADLs; and~~

~~—(3) The individual does not require the use of a mechanical or pneumatic lift.~~

~~An individual who is physically impaired and does not meet these additional requirements is not eligible for an assisted living level of care.~~Repealed.

Source: 27 SDR 32, effective October 11, 2000.

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

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

~~Cross Reference: Resident assessments, § 44:04:06:15.~~

67:45:01:04.04. Assisted living/supplemental oxygen. An individual who meets the requirements of § 67:45:01:04 and is in need of supplemental oxygen must meet the following additional requirements before the MRT can assign the individual to an assisted living level of care:

—(1) The individual is able to maintain the physician-ordered oxygen flow settings and the oxygen equipment; and

—(2) The individual has a score of one or less on the cognitive performance scale contained in the resident assessment document.

—An individual who needs supplemental oxygen and does not meet these additional requirements does not qualify for an assisted living level of care.Repealed.

Source: 27 SDR 32, effective October 11, 2000.

—General Authority: SDCL 28-6-1.

—Law Implemented: SDCL 28-6-1.

—Cross-Reference: Resident assessments, § 44:04:06:15.

67:45:01:04.05. Assisted living/special diet. ~~An individual who meets the requirements of § 67:45:01:04 and is in need of a special diet that cannot be developed using a basic diet manual that includes basic nutrition information must be able to independently follow the diet or follow the diet with supervision. If an individual requires a therapeutic diet, the requirements of §§ 44:04:04:12, 44:04:04:12.01, 44:04:07:02.05, 44:04:07:04, and 44:04:07:08 must be met.~~

~~—An individual who needs a special diet and does not meet these additional requirements is not eligible for an assisted living level of care Repealed.~~

Source: 27 SDR 32, effective October 11, 2000.

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

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

~~Cross-Reference: Definition of therapeutic diet, § 44:04:01:01.~~

67:45:01:04.06. Assisted living facility ineligible to receive reimbursement for certain individuals if not properly licensed.

~~An assisted living facility is not eligible to receive reimbursement on behalf of an individual who is cognitively or physically impaired or in need of a special diet or supplemental oxygen unless the following conditions are met:~~

- ~~(1) The individual meets the requirements of § 67:45:01:04;~~
- ~~(2) The individual meets the additional applicable requirements contained in §§ 67:45:01:04.02 to 67:45:01:04.05, inclusive; and~~
- ~~(3) The facility's license issued by the Department of Health specifically indicates that the facility is approved to provide the needed additional service~~Repealed.

Source: 27 SDR 32, effective October 11, 2000.

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

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

~~Cross-References: Restrictions on acceptance of patients or residents, § 44:04:01:05; Requirements for assisted living centers, § 44:04:04:12.01.~~

67:45:01:05. Self-care classification. When assigning a self-care classification, the MRT must evaluate the resources available in the home, family, and community ~~together with the recommendations made under chapter 67:44:01.~~ If those resources can be used to meet the individual's needs, a self-care classification may be made.

Source: 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 annually redetermine an individual's level of care classification.

A redetermination may be made at more frequent intervals if a redetermination is warranted ~~or if a due to a change in the resident's mental or physical condition as reported in the resident assessment under the provisions of § 44:04:06:16 indicates that a redetermination is necessary.~~

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

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

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

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

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

67:45:01:09. Utilization review. A nursing facility is subject to utilization review on the following levels:

- ~~—(1) At the time of admission;~~
- ~~—(2) Level of care review; and~~
- ~~—(3) Computerized claims review and audit~~Repealed.

Source: 18 SDR 67, effective October 13, 1991; 22 SDR 16, effective August 17, 1995.

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

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

67:46:04:13. Department to refer certain individuals to Social Security Administration to apply for SSI. The department shall refer an individual to the Social Security Administration to apply for SSI if the individual's income minus \$20 is less than one of the following:

(1) The standard \$30 SSI payment if the individual is living in a medical or nursing facility;

or

(2) The SSI standard benefit amount of ~~\$674~~698 if the individual is not institutionalized but living in an adult foster care home or an assisted living facility.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 35, effective December 22, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 15 SDR 2, effective July 17, 1988; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:19:08, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 67, effective November 26, 1997; 26 SDR 99, effective January 30, 2000; 28 SDR 178, effective July 3, 2002; 30 SDR 193, effective June 13, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: 42 U.S.C. § 1382(b)(1), 1974; Long-term care residency requirements and beginning of eligibility, § 67:46:03:03.