

CHAPTER 44:04:01

RULES OF GENERAL APPLICABILITY

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44:04:01:01. Definitions. Terms defined in SDCL 34-12-1.1 have the same meaning in this article. In addition, terms used in this article mean:

(1) "Abuse," an intentional act toward an individual indicating that one or more of the following has occurred:

(a) A criminal conviction against a person for mistreatment toward an individual; or
(b) In the absence of a criminal conviction, substantial evidence that one or more of the following has occurred resulting in harm, pain, fear, or mental anguish:

(i) Misappropriation of a patient's or resident's property or funds;
(ii) An attempt to commit a crime against a patient or resident;
(iii) Physical harm or injury against a patient or resident; or
(iv) Using profanity, making gestures, or engaging in other acts made to or directed at a patient or resident;

(2) "Activities coordinator," a person who is a therapeutic recreation specialist or activity professional eligible for certification from the National Certification Council of Activity Professionals, who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a patient activities program in a health care setting, or who is a qualified occupational therapist or occupational therapy assistant under SDCL chapter 36-31 or who has completed a training program;

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

(4) "Adequate staff," a sufficient number of qualified personnel to perform the duties required to meet the performance criteria established by this article;

(5) "Administrator," a person appointed by the owner or governing body of a facility who is responsible for managing the facility and who maintains an office on the premises of the facility;

(6) "Adult day care," a nonresident program in a licensed facility that provides health, social, and related support services;

(7) "Anesthesiologist," a physician whose specialized training and certification qualify the person to administer anesthetic agents and to monitor the patient under the influence of these agents;

(8) "Anesthetist," a physician eligible for certification as an anesthesiologist or a certified registered nurse anesthetist who meets the requirements of SDCL chapter 36-9;

(9) "Client advocates," agencies responsible for the protection and advocacy of patients and residents, including the department, the state ombudsman, the protection and advocacy network, and the Medicaid fraud control unit;

(10) "Cognitively impaired," a patient or resident with mental deficiencies which result 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;

(11) "Department," the South Dakota Department of Health;

(12) "Developmental disability," a severe, chronic disability of a person as defined in SDCL 27B-1-3 or a disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age 22;

(c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(e) Requires a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are individually planned and coordinated;

(13) "Dietary manager," a person who is a dietitian, a graduate of an accredited dietetic technician or dietetic manager training program, a graduate of a course that provides 120 or more hours of classroom instruction in food service supervision, or a certified dietary manager recognized by the National Certifying Board of Dietary Managers and who functions with consultation from a dietitian;

(14) "Dietitian," a person who is registered with the Commission on Dietetic Registration of the American Dietetic Association and holds a current license to practice in South Dakota pursuant to SDCL chapter 36-10B;

(15) "Dining assistant," a person who has successfully completed a dining assistant program approved pursuant to § 44:04:07:17;

(16) "Direct contact," any activity that requires physically touching a patient or resident;

(17) "Distinct part," an identifiable unit, such as an entire ward or contiguous wards, wing, floor, or building, which is licensed at a specific level. It consists of all beds and related facilities in the unit;

(18) "Emergency care," professional health services immediately necessary to preserve life or stabilize health due to the sudden, severe, and unforeseen onset of illness or accidental bodily injury;

(19) "Endorsement," the process of formally recognizing for the purpose of employment in a licensed health care facility in South Dakota the qualifications of a person trained and evaluated in another state as a nurse aide;

(20) "Equivalency," training of another or different type that is determined by the department to be equal to department approved training;

(21) "Facility," the place of business used to provide health care for patients or residents;

(22) "General hospital," a hospital that provides at least medical, surgical, obstetrical, and emergency services;

(23) "Governing body," an organized body of persons that is ultimately responsible for the quality of care in a health care facility, credentialing of and granting privileges to the medical staff, maintaining the financial viability of the facility, and formulating institutional policy;

(24) "Health supervision," activity by an adult foster care provider that ensures a resident carries out the health plan of the resident's physician and observes good health practices;

(25) "Healthcare worker," any paid person working in a health-care setting;

(26) "Hospice services," a coordinated interdisciplinary program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a

terminally ill patient and the patient's family. The needs arise out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component;

(27) "Interdisciplinary team," a group of persons selected from multiple health disciplines who have a diversity of knowledge and skills and who function as a unit to collectively address the medical, physical, mental or cognitive, and psychosocial needs of a patient or resident;

(28) "Instrumental activities of daily living," tasks performed routinely by a person, utilizing physical and social environmental features, to manage life situations, including meal preparation, self-administration of medications, telephone use, housekeeping, laundry, handling finances, shopping, and use of transportation;

(29) "Legend drug," any drug that requires the label bearing the statement "Caution: Federal law prohibits dispensing without prescription";

(30) "Licensed health professional," a physician; physician's assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; nurse; nursing facility administrator; dietitian; pharmacist; respiratory therapist; or social worker who holds a current license to practice in South Dakota;

(31) "Medical staff," an organized staff composed of practitioners that operates under bylaws approved by the governing body and which is responsible for reviewing the qualifications of practitioners applying for clinical privileges and for the provision of medical care to patients and residents in a health care facility;

(32) "Mental disease," a mental condition that causes a person to lack sufficient understanding or capacity to make the responsible decisions to meet the ordinary demands of life, as evidenced by the person's behavior, or that causes a person to be a danger to self or others;

(33) "Neglect," a failure, without a reasonable justification, to provide timely, consistent, and safe services, treatment, and care necessary to avoid physical harm, mental anguish, or mental illness to a patient or resident;

(34) "Nurse," a registered nurse or a licensed practical nurse who holds a current license to practice in South Dakota pursuant to SDCL chapter 36-9;

(35) "Nurse aide," an individual providing nursing or nursing-related services who is not a licensed health professional, or someone who volunteers to provide such services without pay;

(36) "Nursing personnel," staff which includes registered nurses, licensed practical nurses, nurse aides, restorative aides, and orderlies;

(37) "Nursing unit," a patient unit that is limited to one floor of a health care facility and has all patient room entrances and exits within sight or control of nursing personnel;

(38) "Patient," a person with a valid order by a practitioner for diagnostic or treatment services in a hospital, specialized hospital, critical access hospital, swingbed, ambulatory surgery center, or chemical dependency treatment facility;

(39) "Personal care," assistance given by an adult foster care home owner in those areas of daily living when a resident has difficulty functioning because of a physical, mental, or emotional condition;

(40) "Pharmacist," a person registered to practice pharmacy pursuant to SDCL chapter 36-11;

(41) "Physician," a person who is licensed or approved to practice medicine pursuant to SDCL chapter 36-4;

(42) "Physician's extender," a person who is an assistant to a physician as authorized under SDCL chapter 36-4A; a nurse practitioner as authorized under SDCL chapter 36-9A; or a nurse midwife as authorized under SDCL chapter 36-9A;

(43) "Practitioner," one of the following:

(a) A person who is licensed or approved to practice medicine pursuant to SDCL chapter 36-4;

(b) A person who is licensed to practice dentistry pursuant to SDCL chapter 36-6;

(c) A person who is licensed to practice podiatry pursuant to SDCL chapter 36-8;

(d) A person who is licensed to practice optometry pursuant to SDCL chapter 36-7;

(e) A person who is licensed to practice chiropractic pursuant to SDCL chapter 36-5;

(f) A person who is licensed to practice pharmacy pursuant to SDCL chapter 36-11;

(g) A person who is licensed to practice physical therapy pursuant to SDCL chapter 36-10; or

(h) A person who is licensed to practice occupational therapy pursuant to SDCL chapter 36-31;

(44) "Protection and advocacy network," agencies responsible for the protection and advocacy of individuals with developmental disabilities or mental illness, established under the Developmental Disabilities Assistance and Bill of Rights Act of 1990, Pub. L. No. 101-496 (October 30, 1990), codified at 42 U.S.C. § 6042, and the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991, Pub. L. No. 102-173 (November 27, 1991), codified at 42 U.S.C. §§ 10801 to 10851, inclusive;

(45) "Qualified personnel," persons with the specific education or training to provide the health service for which they are employed;

(46) "Referral hospital," a general hospital with medical personnel qualified to receive emergency and nonemergency patient transfers from a critical access hospital, which has sufficient resources to provide consultation to a critical access hospital in the areas of clinical protocols, quality assurance, utilization review, staff inservice, and business consultation;

(47) "Registry," a computerized record of all nurse aides who have completed the minimum nurse aide training and competency evaluation requirements in chapter 44:04:18 to obtain registry status as a nurse aide;

(48) "Regular diet," a nutritionally adequate diet using food items and written recipes that can be prepared and correctly served by a staff person;

(49) "Rehabilitation services," services which include physical therapy, occupational therapy, respiratory therapy, and speech therapy;

(50) "Resident," a person not in need of acute care with a valid order by a practitioner for services in a nursing facility or assisted living center;

(51) "Residential living center," the residence, facility, or place of business required to be registered pursuant to SDCL 34-12-32;

(52) "Respite care," care permitted within the scope of a facility license, with a limited stay no greater than 30 days for any one patient or resident;

(53) "Restorative nursing," a part of nursing directed toward assisting a patient to achieve and maintain an optimal level of self-care and independence and which offers assistance to patients in learning or relearning of skills needed in everyday activities;

(54) "Restraint," a physical, chemical, or mechanical device used to restrict the movement of a patient or resident or the movement or normal function of a portion of the patient's or resident's body, excluding devices used for specific medical and surgical treatment;

(55) "Secured unit," a distinct area of a facility in which the physical environment and design maximizes functioning abilities, promotes safety, and encourages independence for a defined unique population, which is staffed by persons with training to meet the needs of patients or residents admitted to the unit;

(56) "Self-administration of medications," the removal of the correct dosage from the pharmaceutical container and self-injecting, -ingesting, or -applying the medication with no assistance or with assistance from qualified personnel of the facility for the correct dosage or frequency;

(57) "Self-directed care," care provided at the instruction and direction of an individual with the ability to provide the instruction and understand the consequences of the provision of that care;

(58) "Social worker," a person who is licensed pursuant to SDCL chapter 36-26;

(59) "Social service designee," a person who has a degree in a behavioral science field, two years of supervised experience in a behavioral science field, is a licensed nurse, or has similar qualifications;

(60) "Specialized hospital," a hospital that provides only one service or a combination of services but does not provide all of the services required to qualify as a general hospital;

(61) "Stand-alone assisted living center," an assisted living center not physically attached to a nursing facility or hospital;

(62) "Swing-bed," a licensed hospital bed which has been approved by the department pursuant to § 44:04:11:10 to also provide short-term nursing care;

(63) "Supervised practical training," training in a laboratory or other setting in which the nurse aide performs health-related tasks on a patient or resident while under the direct supervision of a licensed nurse;

(64) "Supplemental personnel," individuals who assist the primary instructor in the training of nurse aides;

(65) "Terminal illness," a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course;

(66) "Therapeutic activity," any purposeful activity outside of activities of daily living that fosters social, emotional, physical, cognitive, and mental well-being;

(67) "Therapeutic diet," any diet other than a regular diet that is ordered by a physician as part of the treatment for a disease or clinical condition to increase, decrease, or to eliminate certain substances in the diet, and to alter food consistency;

(68) "Transfer or discharge," the movement of a patient or resident to a bed outside the distinct part or outside the facility;

(69) "Treatment," a medical aid provided for the purposes of palliating symptoms, improving functional level, or maintaining or restoring health; and

(70) "Unlicensed assistive personnel," a person who is not licensed as a nurse under SDCL chapter 36-9 but who is trained to assist a licensed nurse in the provision of nursing care to a patient or resident as delegated by the nurse and authorized by chapter 20:48:04.01.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 15 SDR 155, effective April 20, 1989; 17 SDR 122, effective February 24, 1991; 19 SDR 95, effective January 7, 1993; 21 SDR 118, effective January 2, 1995; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002; 30 SDR 84, effective December 4, 2003; 31 SDR 62, effective November 7, 2004.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13, 34-12-32.

Note: National Certification Council of Activity Professionals, 520 Stewart, Park Ridge, IL 60068. Phone (708) 698-4263.

44:04:01:02. Licensure of facilities by classification. Applications for licensure of a health care facility must set out the classification being applied for. Any license issued shall denote the classification and the facility address on the face of the license. The license shall include each facility address at which services licensed under this chapter are provided. A critical access hospital must first receive notice of eligibility for licensure from the secretary of health. A facility must comply only with those chapters in this article that apply to the classification of license

issued. The most current license issued by the department must be posted on the premises of the facility in a place conspicuous to the public. Each facility address shall show a current license. The license certificate remains the property of the department. Facility classifications in addition to those defined in SDCL 34-12-1.1 are as follows:

- (1) General hospital;
- (2) Specialized hospital; and
- (3) Hospice facility.

Source: SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-7, 34-12-13.

44:04:01:02.01. Annual license fees for health care facilities. The annual license fees for health care facilities, which includes up to two amendment applications of the license during the licensure year, are as follows:

- (1) For an ambulatory surgery center, \$100;
- (2) For a chemical dependency treatment facility, \$100 plus \$3 for each bed licensed;
- (3) For a hospital, \$100 plus \$3 for each bed licensed, except that the fee for each bed for a hospital qualifying for exemption pursuant to SDCL 34-12-16 is \$2;
- (4) For a maternity home, \$100 plus \$3 for each bed licensed;
- (5) For a nursing facility, \$100 plus \$3 for each bed licensed;
- (6) For an assisted living center, \$100 plus \$3 for each bed licensed;
- (7) For a critical access hospital, \$100 plus \$3 for each bed licensed;
- (8) For a hospice facility, \$100 plus \$3 for each bed licensed; and
- (9) For an adult foster care home, no fee.

Source: 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 30 SDR 84, effective December 4, 2003.

General Authority: SDCL 34-12-6.

Law Implemented: SDCL 34-12-6.

44:04:01:02.02. License amendment application fee. The amendment application fees for each license change in excess of two during the licensure year are as follows:

- (1) For an ambulatory surgery center, \$20;
- (2) For a chemical dependency treatment facility, \$20;
- (3) For a hospital, \$20;
- (4) For a maternity home, \$20;
- (5) For a nursing facility, \$20;
- (6) For an assisted living center, \$20;
- (7) For a critical access hospital, \$20;
- (8) For a hospice facility, \$20; and
- (9) For an adult foster care home, no fee.

Source: 26 SDR 96, effective January 23, 2000.

General Authority: SDCL 34-12-6.

Law Implemented: SDCL 34-12-6.

44:04:01:03. Name of facility. Each facility must be designated by a pertinent and distinctive name that must be used in applying for a license. The name may not be changed without first notifying the department in writing. No facility may be given a name or advertise in a way that implies services rendered are in excess of the classification for which it is licensed or which would indicate an ownership other than actual.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-7, 34-12-13.

44:04:01:04. Bed capacity. The department shall establish the bed capacity of each facility pursuant to the physical plant and space provisions of this article. The patient or resident census must not exceed the bed capacity for which the facility is licensed. A request by the facility for an adjustment in bed capacity because of change of purpose or construction must be approved by the department before any changes are made. A critical access hospital (CAH) may license no more than 25 beds. A CAH may establish a distinct part unit (e.g., psychiatric or rehabilitation) that meets requirements for such beds as established for a short-term, general hospital. Those beds may not count toward the CAH bed limit, and the total number in each distinct part unit may not exceed ten.

Source: SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 30 SDR 84, effective December 4, 2003; 31 SDR 62, effective November 7, 2004.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-7, 34-12-13.

44:04:01:05. Restrictions on acceptance of patients or residents. A facility shall accept patients or residents in accordance with the following restrictions:

(1) A patient or resident accepted for care by a licensed facility must be housed within the facility covered by the license;

(2) A licensed facility may not accept or retain patients or residents who require care in excess of the classification for which it is licensed;

(3) Nursing and personal care, personnel essential to maintaining adequate staff may not leave a licensed facility during their tour of duty in the facility to provide services to persons who are not patients or residents of the facility with the exception of providing emergency care on premises contiguous to the facility's property;

(4) Hospitals which accept or retain patients for other than short-term acute care shall provide the facilities, equipment, programs, and care needed by such patients;

(5) All licensed facilities that accept or retain patients or residents suffering from developmental disabilities or mental diseases shall provide facilities and programs consistent with the needs of such patients or residents;

(6) If persons other than inpatients or residents are accepted for care or to participate in any programs, services, or activities for the inpatients or residents, their numbers must be included in the evaluation of central use, activity, and dining spaces; staffing of nursing, dietary, and activity programs; and the provision of an infection control program. Services provided such individuals may not infringe upon the needs of the inpatients or residents;

(7) A critical access hospital may provide inpatient acute care up to an annual average length of stay of 96 hours; and

(8) A licensed hospice facility may admit and retain only patients certified by a physician as terminally ill.

Source: 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 15 SDR 155, effective April 20, 1989; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:01:06. Joint occupancy. The use of a portion of a building for purposes other than that covered by the license may be approved by the department only if it can be shown that joint occupancy is not detrimental to the welfare of the patients or residents. The area must be open to inspection by the department.

Source: SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:01:07. Reports. Each licensed facility, when requested by the department, shall submit to the department the pertinent data necessary to comply with the requirements of SDCL chapter 34-12 and this article.

Each facility shall report to the department within 48 hours of the event any death resulting from other than natural causes originating on facility property such as accidents, abuse, negligence, or suicide; any missing patient or resident; and any allegation of abuse or neglect of any patient or resident by any person.

Each facility shall report the results of the investigation within five working days after the event.

Each facility shall also report to the department as soon as possible any fire with structural damage or where injury or death occurs; any partial or complete evacuation of the facility resulting from natural disaster; or any loss of utilities, such as electricity, natural gas, telephone, emergency

generator, fire alarm, sprinklers, and other critical equipment necessary for operation of the facility for more than 24 hours.

Each facility shall notify the department of any anticipated closure or discontinuation of service at least 30 days in advance of the effective date.

Source: SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 24 SDR 90, effective January 4, 1998; 26 SDR 96, effective January 23, 2000; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002; 30 SDR 84, effective December 4, 2003.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-5, 34-12-13, 34-12-17.

44:04:01:07.01. Plans of correction. Within 15 days of the receipt of the statement of deficiencies, each licensed facility shall submit to the department a written plan of correction for citations of noncompliance with licensure requirements. The plan of correction shall be signed, dated, and on forms provided by the department. The department may reject the plan of correction if there is no evidence the plan will cause the facility to attain or maintain compliance with SDCL chapter 34-12 and this article.

Source: 26 SDR 96, effective January 23, 2000; 27 SDR 59, effective December 17, 2000; 28 SDR 83, effective December 16, 2001.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:01:08. Modifications. Modifications to standards provided in this article may be approved by the department for an assisted living center with a licensed bed capacity of 16 or less or an adult foster care home if the health and safety of the residents are not jeopardized.

Modifications to the staffing requirements provided in § 44:04:03:02 or 44:04:06:08 may be approved by the department for licensed facilities which are physically combined and jointly operated if:

- (1) A hospital or critical access hospital and nursing facility are co-located and the nursing facility has a licensed bed capacity of 16 or less or the hospital has an acute care patient daily census of less than five;
- (2) A hospital or a critical access hospital and assisted living center are co-located; or
- (3) A nursing facility and assisted living center are co-located.

The health and safety of the patients or residents in either facility must not be jeopardized.

Modifications to the staffing requirements in this article may be approved by the department for a critical access hospital if there are no acute care or swing bed patients present.

Modifications specified by this section may be requested by the health care facility. Any modifications must be approved in writing by the department. The approval letter must specify the modifications permitted and any limitations pertaining to the modifications.

Source: 4 SDR 14, effective September 14, 1977; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 15 SDR 155, effective April 20, 1989; 22 SDR 70, effective November 19, 1995; 26 SDR 96, effective January 23, 2000; 29 SDR 81, effective December 11, 2002.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-13.

44:04:01:09. Transferred to § 44:04:09:12.

44:04:01:10. Rural primary care hospital required to describe services. Repealed.

Source: 22 SDR 70, effective November 19, 1995; repealed, 26 SDR 96, effective January 23, 2000.

44:04:01:11. Scope of article. Nothing in article 44:04 limits or expands the rights of any healthcare worker to provide services within the scope of the professional's license, certification, or registration, as provided by South Dakota law.

Source: 31 SDR 62, effective November 7, 2004.

General Authority: SDCL 34-12-13.

Law Implemented: SDCL 34-12-7, 34-12-13.