

Family Support 360 Program

Draft Proposed Administrative Rule Changes

Below are the draft proposed changes to ARSD Chapter 46:11:09 Family Support Waiver Services. Please note that proposed additions are underlined and proposed deletions are signified with ~~striketrough~~. A brief explanation of each proposed rule change has been incorporated into this document.

Questions or comments regarding the proposed rules can be submitted to:

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Please also note that it is the Department's intent to facilitate a virtual meeting in the coming weeks which will be an opportunity for stakeholders to ask questions and provide comment about the proposed administrative rule revisions. Additional details about that opportunity will be forthcoming.

All comments received through this preliminary process will be taken into account as the rules packet is finalized in mid-September. Once the formal rules promulgation process is initiated, stakeholders and interested parties will have additional opportunities to comment on the proposed rules.

CHAPTER 46:11:09

FAMILY SUPPORT WAIVER SERVICES

Section

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46:11:09:01. Definitions. Terms used in this chapter mean:

(1) "Agency with choice," a co-employment option between a provider and a participant for participant-directed services in which the provider is the employer of record and the participant is the managing employer. The participant and the participant's family or guardian may participate in the recruitment, interviewing, selection, training, and supervising of employees who will be providing the service. The provider is responsible for hiring.

(2) "Common-law employer model," an option for participant-directed services in which the participant, or their designated representative serves as the employer of record, and a financial management services provider assists with enrollment, accounting, reporting, payroll, and taxes;

~~(1)~~ (3) "Companion care services," non-medical services geared toward developing a participant's independent living skills;

~~(2)~~ (4) "Consent," voluntary approval given in writing, orally, or implied by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision;

~~(3)~~ (5) "Coordinator," an individual employed by a provider meeting the requirements of this chapter, to assist participants who receive family support services in gaining access to needed family support and other available services, as well as needed medical, social, educational, and other services, regardless of the funding source for the services to which access is gained;

~~(4)~~ (6) "Employer of record," any provider providing family support services pursuant to this chapter and who is responsible for officially hiring the employee, processing employment forms, providing training to program participants and employees if requested, and managing the payroll function;

~~(5)~~ (7) "Family," a person or a group of people who are related to the participant by blood, marriage, or adoption, or define themselves as a family based upon bonds of affection, and who currently share a household with the participant or has, in the past, shared a household with the participant. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

(8) "Financial management services," may include paying invoices for waiver goods and services and tracking expenditures against the individual's budget for participant-directed services. When used in conjunction with employer authority, financial management services includes, operating a payroll service individual-employed staff and making required payroll withholdings;

(9) "Financial management services provider," an entity who provides financial management services to a participant who directs some or all of the participant's waiver services;

~~(6)~~ (10) "Goals," outcomes generally expected to be achieved by a participant for each service received, stated in measurable terms so that their attainment can be determined, and should be attained within five years. Goals are developed from an evaluation of the participant's present performance, abilities, and desires;

~~(7)~~ (11) "Home and community based services" or "HCBS," the services contained in this chapter that are provided by a CSP, SP, or qualified provider meeting the requirements of this chapter, to a participant who, without these services, would require placement in an intermediate care facility for individuals with intellectual disabilities;

~~(8)~~ (12) "Individualized service plan" or "ISP," a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training pursuant to § 46:11:09:14;

~~(9)~~ (13) "Managing employer," any participant receiving services pursuant to this chapter or the participant's guardian or family who is responsible for recruitment, hiring recommendations, dismissal determinations, training of employees, determining what tasks are to be performed, and submitting and approving employees' timecards;

~~(10)~~ (14) "Participant-directed services," a service arrangement whereby the participant may choose any individual the participant desires to assist with the design of services, the selection of service providers, and decisions of how the authorized funding is to be spent based on the needs in the participant's ISP;

~~(11)~~ (15) "Personal care services," services that enable the participant to accomplish tasks that the participant would normally do if the participant did not have a disability;

~~(12)~~ (16) "Qualified provider," one that enters into an agreement with the division to provide personal care 1, personal care 2, respite care, companion care, or supported employment services to a participant;

~~(13)~~ (17) "Services," a system of formalized supports, generic or specialized;

~~(14)~~ (18) "Sub-contractor," an individual or organization that enters into an agreement with a participant and an OHCDs to provide services to the participant;

~~(15)~~ (19) "Supported employment," services directed towards assisting participants to obtain and retain paid employment in community settings.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26.

Explanation of Proposed Changes: The changes to this rule include adding definitions for “common law employer model” as approved by the most recent waiver renewal and moving the existing “agency with choice” definition to this section. This provides a central location to review all definitions for this chapter. This rule also includes a definition for “financial management services” and “financial management services provider” which is terminology used to describe the implementation of the common-law model.

46:11:09:07. Agency with choice model.~~The agency with choice model is a co-employment arrangement between a provider and a participant in which the provider is the employer of record and the participant is the managing employer. The participant and the participant's family or guardian may participate in the recruitment, interviewing, selection, training, and supervising of employees who will be providing the service. The provider does the actual hiring. The agency with choice model is limited to the following waiver services:~~

- ~~(1) Personal care 1;~~
- ~~(2) Companion care;~~
- ~~(3) Respite care; and~~
- ~~(4) Supported employment. Repealed.~~

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: ~~SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).~~

Explanation of Proposed Changes: The definition portion of this rule was moved to the definition section (46:11:09:01(1)). The services provided under Agency with Choice are now in the new proposed 46:11:09:07.01.

46:11:09:07.01. Waiver services for agency with choice and common-law employer. The agency with choice and common-law employer models are limited to the following waiver services:

- (1) Personal care 1;
- (2) Companion care;
- (3) Respite care; and
- (4) Supported employment.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2).

Explanation of Proposed Changes: This new rule reflects that both participant-driven waiver options (agency with choice and common law employer) only provide the four listed services. The common-law service delivery option was added to the Family Support 360 waiver, which was approved by the Centers for Medicaid and Medicaid Services (CMS). The addition of this model supports the option to self-direct services that is outlined in Appendix E of the Family Support 360 waiver. This change increases options available to participants and families and does not replace the current Agency with Choice model.

46:11:09:10. Description of services. Any family support service shall be participant-directed to the extent the participant and the participant's family or guardian chooses and can include budget and employer authority. Budget and employer authority means the participant and the participant's family can control their own budget for services and can recommend for hire individuals to the CSP, SP, or qualified provider.

Family support services shall be specifically tailored to the competencies, interests, preferences, and needs of the participant and the participant's family or guardian and respectful of the cultural and ethnic beliefs, traditions, personal values, and lifestyle of the family.

The participant must receive at least one of the following waiver services each month:

(1) Family support coordination services by a provider to include:

- (a) Coordination of services that will assist a participant to gain access to needed medical, social, and other needed services;
- (b) On-going monitoring of the services; and
- (c) Initiating and overseeing the assessment and reassessment of the participant's level of care;

(2) Personal care 1 services to include:

- (a) Assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;
- (b) Assistance with the preparation of meals, not to include the cost of the food itself; and
- (c) Assistance with housekeeping chores such as making the bed, dusting, and vacuuming;

(3) Personal care 2 services to include assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(4) Respite care services to include short term assistance, in or out of a participant's home for the temporary relief and support of the family;

(5) Supported employment services to include:

- (a) Improving or maintaining skills in employment activities;
- (b) Enhancing social and personal development or well-being within the context of vocational goals; and
- (c) Providing consultation services, as needed by each participant;

(6) Companion care services to include:

- (a) Assistance with or supervision of laundry, shopping, or meal preparation, not to include the cost of the food;
- (b) Assistance or supervision with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and
- (c) Assistance with participation in community events to develop appropriate socialization skills to become integrated into the community;

(7) Environmental accessibility adaptation services to include adaptations to the home owned by the participant or the participant's family that are a direct benefit to the participant to ensure access, health, and safety. Adaptations that add to the total square footage of the home are excluded from this benefit. For all purchases over \$1,000, the participant must intend to reside in the home for more than two years. Adaptations to a property in which the participant will reside for less than two years are subject to a prior authorization process administered by the division;

(8) Nutritional supplements;

(9) Specialized medical adaptive equipment and supplies to include devices, controls, or appliances that enable participants to increase their abilities to perform activities of daily living or perceive, control, or communicate with the environment in which they live; ~~or~~

(10) Vehicle modification to include adaptations to vehicles to ensure the participant's safety and access to the community; or

(11) Specialized therapies used to improve the participant's cognitive functioning, motor skills, emotional and affective development, behavior and social skills and quality of life, which are:

(a) art therapy;

(b) horse therapy; or

(c) music therapy.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017.

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3).

Explanation of Proposed Changes: The proposed change to this rule adds subdivision (11) which includes specialized therapies as a new waiver service that was added to the Family Support 360 waiver during the waiver renewal. All Family Support 360 waiver participants are eligible to receive specialized therapies.

46:11:09:20. Review of a qualified provider. ~~The division shall conduct an annual review through a random sample of at least ten percent of participants served by each qualified provider including all or part of any services, finances, or operations of the qualified provider. The division may also conduct a review upon receipt of any complaint filed with the division regarding the provision of services by a qualified provider.~~ **Repealed.**

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

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

Explanation of Proposed Changes: This rule is being repealed due to outdated language regarding the review of Family Support participants. The certification requirements for Community Support Providers are outlined in Chapter 46:11:02. ARSD 46:11:02:09 outlines the requirement for the biennial review for compliance with rules for all providers that includes a compliance and fiscal review. The sample size of the review is outlined in the Family Support 360 waiver, which requires approval from CMS. Repealing this rule will not result in any programmatic changes for providers or DDD.