

SUMMARY OF PROPOSED CHANGES TO FAMILY SUPPORT 360 RULES
August 28, 2019

46:11:09:02 – Adding new training requirements to expand upon existing training requirements which were heavily focused on the safety and welfare of the individual and was lacking a focus on the participant’s needs to achieve their good life. The DDD will provide guidance to providers about each new training requirement.

46:11:09:11 – Adding new requirements to ISP development to include Charting the LifeCourse principles as recommended by the National Supporting Families Community of Practice (CoP) and the State CoP Team. These new requirements will promote a stronger focus on the participant’s needs to achieve their good life. Also adding a timeline in which the ISP must be developed. This ISP timeline is a new process needed because of the elimination of the family support waiting list.

46:11:10:03 – repealing due to redundancy with 46:11:09:11.

46:11:10:05 – This is general cleanup to the rule as there an eligibility rule already exists under Medicaid’s rules.

46:11:10:06, 46:11:10:07, 46:11:10:08, 46:11:10:09, 46:11:10:11, 46:11:10:13, 46:11:10:15 – Changing the name of Statewide Family Support to Strengthening Families Program.

46:11:10:12 – This rule is redundant to the Funding clause within provider contracts.

46:11:10:13 – Updating age requirement to reflect DSS Medicaid’s policy.

46:11:09:02. Responsibilities of a provider. A provider providing services under this chapter has the following responsibilities:

- (1) Ensure any employee providing coordination meet the following qualifications:
 - (a) Be at least 21 years of age;
 - (b) Pass a criminal background check;
 - (c) Be able to communicate effectively verbally and in writing;
 - (d) Be able to follow written or verbal instructions provided by the participant, guardian, advocate, or family member of the participant;
 - (e) Have the abilities or skills necessary to meet the participant's needs as outlined in the ISP;
 - (f) Have a degree in the field of human services, social work, sociology, psychology, or related field experience or be a parent of a child with a developmental disability;
 - (g) Be able to effectively utilize database and word processing computer software and the Internet;
 - (h) Successfully complete ~~a minimum of 40 hours of~~ training provided by the division in the following areas:
 - (i) Administration of the HCBS family support waiver;
 - (ii) Individual service plan development;
 - (iii) Available services;
 - (iv) Defining, identifying, and reporting abuse, neglect, and exploitation;
 - (v) Individual education program pursuant to chapter 24:05:27;
 - (vi) Developmental disability eligibility criteria;
 - (vii) ICAP training provided by the division;
 - (viii) Have the ability to work independently upon completion of training; and

(2) Ensure that all employees responsible for providing service coordination to individuals are trained on the minimum requirements necessary to address the individual's needs. The training and documentation requirements are as follows:

- (A) Before a service coordinator performs any service coordination duties to the participant, initial orientation requirements are as follows:
- (i) Orientation to the community services provider and its policies;
 - (ii) The provider's philosophy and mission;
 - (iii) Disability awareness;

(iv) Emergency procedures concerning fire prevention, accident prevention, and response to emergencies; and

(v) Employee's specific duties and position;

(B) The following training areas shall be addressed within 30 days of the employee's start date:

(a) Development, facilitation and monitoring of a person-centered ISP;

(b) Instruction in the ethical principles related to positive behavior support techniques;

(c) Types adaptive technology available that may enhance the participant's quality of life;

(d) Community-based services and supports the person may access and supports;

(e) Eligibility-based services and supports for which the participant may qualify and providers of those services;

(f) Cultural competency training;

(g) Participant rights in accordance with state and federal law; and

(h) Trauma-informed care and support.

(3) The provider shall document in the staff personnel record that training and demonstration of competency were successfully completed. Documentation shall include:

(a) Topic;

(b) Date staff attended training;

(c) Date competencies were verified; and

(d) Name of person conducting training.

~~(2)~~ (4) Have primary responsibility for preparing the participant's annual ISP and modifications as needed;

~~(3)~~ (5) Ensure the health and safety of each participant receiving services according to this chapter;

~~(4)~~ (6) Ensure that services provided are consistent with the participant's ISP and the provider agreement with the division;

~~(5)~~ (7) Serve as an employer of record and a co-employer when the agency with choice model pursuant to § 46:11:09:08 is used;

~~(6)~~ (8) Monitor and document the effectiveness of the implementation of the ISP on a quarterly basis;

~~(7)~~ (9) Provide participants and their families with a written list of their rights in an accessible format or language that is easy to understand upon initiation of services and annually thereafter;

~~(8)~~ (10) Submit reports and comply with all record-keeping required by the division;

(9) (11) Submit claims to the Department of Social Services for reimbursement;

(10) (12) Submit critical incident reports pursuant to § 46:11:09:05;

(11) (13) Ensure that any employee or subcontractor adhere to the division's qualifications for providing services pursuant to this chapter;

(12) (14) Maintain, transfer, and retain records pursuant to this chapter including all information related to invoicing; and

(13) (15) Have policies approved by the division in the following areas and ensure that any employee or subcontractor is provided adequate training on each of the following policies:

- (a) Confidentiality;
- (b) Drug-free workplace and drug screening;
- (c) Grievance;
- (d) Sexual harassment;
- (e) Abuse, neglect, or exploitation reporting;
- (f) Safety;
- (g) Universal precautions;
- (h) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury.

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).

Cross-Reference: Individual educational program, chapter 24:05:07.

46:11:09:11. ISP. ~~For services under this chapter the coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP must be completed within 30 calendar days of initial contact between the participant and the coordinator. From the date of initiation of services the coordinator shall:~~

- (1) Identify the ISP team within 15 calendar days;

(2) Complete the ISP within 30 calendar days; and

(3) Implement the ISP within 45 calendar days.

The ISP must be developed with the participant, the participant's parent or parents, if the participant is under 18 years of age, or the participant's guardian, if any. The coordinator shall review the ISP quarterly with the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and document the outcome of the review and any recommendations regarding the status of the ISP.

The ISP shall include:

~~(1) Measurable goals for the completion of outcomes documenting the use of a minimum of one person centered thinking tool;~~

(1) The participant's vision of a good life, including;

(a) People, places, experiences, and possessions which bring satisfaction, joy, and contentment to the participant; and

(b) Supports which promote the participant's health, safety, and role as a valued member of the community.

(2) Participant goals which include;

(a) Identification of quality of life outcomes for the participant;

(b) Consideration of desired employment outcomes;

(c) Evaluation of past and future life experiences which will promote the participant's vision for a good life; and

(d) Specific action steps which will assist the participant to attain the goal.

~~(2) (3) Any services or supports to be provided to the participant;~~

~~(3) Start dates to address goals;~~

~~(4) Implementation strategies to address goals;~~

~~(5) (4) The amount, frequency, and duration of each service;~~

~~(6) (5) Consideration of information gathered through person centered discovery;~~

~~(7) (6) Consideration of integrated supports and resources available to the participant.~~

~~(8) (7) Individuals responsible for providing the supports, implementation, and monitoring of the ISP;~~

~~(9) (8) An emergency back-up plan developed to address concerns identified through completed assessments;~~

~~(10) (9) Documentation indicating that the participant or the participant's parent or guardian has been involved in, informed of, and agrees with the plan; and~~

(9) (10) A description of the process for appeal pursuant to § 46:11:09:24.

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

General Authority: SDCL 27B-2-26.

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

CHAPTER 46:11:10

FAMILY SUPPORT SERVICES

Section

46:11:10:01	Definitions.
46:11:10:02	Local family support program.
46:11:10:03	ISP. Repealed
46:11:10:04	Local family support provider.
46:11:10:05	Local family support eligibility.
46:11:10:06	Statewide family support <u>Strengthening Families</u> program.
46:11:10:07	Statewide family support <u>Strengthening Families</u> eligibility.
46:11:10:08	Statewide family support <u>Strengthening Families</u> notice of ineligibility.
46:11:10:09	Appeal of ineligibility of statewide family <u>strengthening families</u> support services.
46:11:10:10	Services and supports.
46:11:10:11	Prior authorization required.
46:11:10:12	Funding availability. Repealed
46:11:10:13	Non-covered expenses.
46:11:10:14	Safety assurance.
46:11:10:15	Termination of services or benefits.
46:11:10:16	Appeal of ineligibility or termination of local family support services.

46:11:10:03. ISP. ~~The coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP must be completed within 30 calendar days of initial contact between the participant and the coordinator. The ISP must identify and prioritize the participant's needs and must be developed with the participant, if able, the participant's parent or parents, if the participant is under 18 years of age, or the participant's guardian, if any. The coordinator shall review the ISP quarterly with the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and document the outcome of the review and any recommendations regarding the status of the ISP. The ISP shall include:~~

- ~~—— (1) The type of service to be furnished;~~
- ~~—— (2) The amount, the frequency, and duration of each service;~~

- ~~— (3) Who is responsible to provide the service; and~~
- ~~— (4) At least one goal and any services related to attainment of that goal.~~

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

~~— General Authority: SDCL 27B-2-26(7).~~

~~— Law Implemented: SDCL 27B-2-26(3)(7). **Repealed**~~

46:11:10:05. Local family support eligibility. An individual must meet the following criteria to be eligible to receive services under the local family support program:

- ~~— (1) The individual must be a resident of South Dakota;~~
- ~~— (2) The individual must be under the age of 22 and have a developmental disability as defined in SDCL 27B-1-18 or be a child birth through two years of age who has been identified by the Department of Education as needing prolonged assistance as defined in § 24:05:24.01:15;~~
- ~~— (3) If the individual is under 18 years of age, the individual must be living in a home with a parent as defined in subdivision 46:11:10:01(5) or a guardian; and~~
- ~~— (4) The home may not have more than four non-related individuals living in that home who are receiving family support services.~~

~~— Participant eligibility for the local family support program shall be reviewed by the coordinator at least annually or upon receipt of any documentation which could potentially affect eligibility. Eligibility for family support services is described in 67:54:09:12.~~

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

General Authority: SDCL 27B-2-26(7).

Law Implemented: SDCL 27B-2-26(7).

Cross-Reference: Prolonged assistance defined, § 24:05:24.01:15.

46:11:10:06. Statewide family support Strengthening families program. The statewide family support strengthening families program is available to a family who has a child or adult who meets eligibility criteria as defined in § 46:11:10:07 and who is not receiving services from a provider. The statewide strengthening families program does not provide service coordination to families. The division determines eligibility and authorizes payment for items and supplies that are requested by eligible families.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 65, effective October 16, 2017; 44 SDR 93, effective December 4, 2017.

General Authority: SDCL [27B-2-26\(7\)](#).
Law Implemented: SDCL [27B-2-26\(3\)\(7\)](#).

46:11:10:07. ~~Statewide family support~~ Strengthening families program eligibility. An individual must meet the following criteria to be eligible to receive items and services under the ~~statewide family support~~ strengthening families program:

- (1) The individual must be a resident of South Dakota;
- (2) The individual must have a developmental disability as defined in SDCL [27B-1-18](#) or be a child, birth through two years of age, who has been identified by the Department of Education as a child needing prolonged assistance as defined in § 24:05:24.01:15; and
- (3) If the individual is under 18 years of age, the individual must be living in a home with a parent or guardian.

Source: 40 SDR 102, effective December 3, 2013; 44 SDR 93, effective December 4, 2017.

General Authority: SDCL [27B-2-26\(7\)](#).
Law Implemented: SDCL [27B-2-26\(7\)](#).

Cross-Reference: Prolonged assistance defined, § 24:05:24.01:15.

46:11:10:08. ~~Statewide family support~~ Strengthening families program notice of ineligibility. The division shall determine eligibility for any individual applying for the ~~statewide family support~~ strengthening families program within 14 calendar days of receipt of the application.

The division shall send a written notice to the applicant or the applicant's parent, if the applicant is under 18 years of age, or guardian informing the applicant of the results of the eligibility determination. If the applicant is determined to be ineligible, the notice shall state the reason the applicant is not eligible and the process for appealing the decision pursuant to § 46:11:10:09.

Source: 40 SDR 102, effective December 3, 2013.
General Authority: SDCL [27B-2-25](#), [27B-2-26\(7\)](#).
Law Implemented: SDCL [27B-2-25](#), [27B-2-26\(4\)\(7\)](#).

46:11:10:09. Appeal of ineligibility of ~~statewide family support~~ strengthening families program services. An individual, and individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, may appeal the ~~statewide family support~~ strengthening families program manager's decision regarding ineligibility of services to the division.

An appeal shall be made in writing to the division within 30 calendar days of receipt of the notice regarding ineligibility. The division shall provide a determination within 30 calendar days of receipt of request for appeal.

An individual, an individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, dissatisfied with the division's determination regarding ineligibility of services may appeal the division's decision.

An appeal shall be made in writing to the department secretary within 30 calendar days of receipt of the notice regarding ineligibility. The department secretary shall provide a determination within 30 calendar days of receipt of request for appeal.

An individual, an individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, dissatisfied with the department secretary's determination regarding ineligibility of services may request a fair hearing by notifying the department in writing within 30 calendar days of receipt of the department's decision. A fair hearing shall be conducted pursuant to the provisions of SDCL chapter [1-26](#).

The department may not pay for legal fees for representing the individual, the individual's parent, or guardian at a fair hearing pursuant to this section.

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

General Authority: SDCL [27B-2-25](#), [27B-2-26\(7\)](#).

Law Implemented: SDCL [27B-2-25](#), [27B-2-26\(4\)\(7\)](#).

46:11:10:11. Prior authorization required. The coordinator must approve the purchase of any services or supports covered under this chapter for the local family support program before the services or supports are purchased.

The division must approve the purchase of any items or supplies covered under this chapter for the ~~statewide family support~~ strengthening families program before the items or supplies are purchased.

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

General Authority: SDCL [27B-2-26\(7\)](#).

Law Implemented: SDCL [27B-2-26\(3\)\(7\)](#).

~~**46:11:10:12. Funding availability.** Any services provided under this chapter are contingent upon availability of funds. Any individual under 22 years of age determined eligible for local family support program services, but due to a lack of available funds cannot be served, shall be referred to the statewide family support program. **Repealed**~~

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

~~— **General Authority:** SDCL [27B-2-26\(7\)](#).~~

~~— **Law Implemented:** SDCL [27B-2-26\(7\)](#).~~

46:11:10:13. Non-covered expenses. The following items are not covered:

- (1) Incontinence supplies for a child under ~~2½~~ 3 years of age;
- (2) Vehicles;
- (3) Purchases made without the prior approval of the coordinator for the local family support program or the division for the ~~statewide family support~~ strengthening families program; and
- (4) Any services, items, or supplies eligible for payment under another payment source.

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

General Authority: SDCL [27B-2-26\(7\)](#).

Law Implemented: SDCL [27B-2-26\(7\)](#).

46:11:10:15. Termination of services or benefits. Services or payment of items or supplies may be terminated if one of the following occurs:

- (1) The participant no longer meets eligibility criteria pursuant to § 46:11:10:05 or 46:11:10:07;
- (2) A misuse of funds by the participant or the participant's parent or guardian is substantiated;
- (3) There is a request to terminate services by the participant or the participant's parent or guardian; or
- (4) Funding for the local family support or ~~statewide family support~~ strengthening families program become unavailable.

If services or benefits are going to be terminated, the coordinator for the local family support program or the division for the ~~statewide family support~~ strengthening families program shall provide a written notice to the participant or the participant's parent or guardian, ten calendar days before the service or benefits are to be discontinued. The notice shall contain the reason for the discontinuance and the process for appeal pursuant to § 46:11:10:09 for ~~statewide family support~~ strengthening families services or § 46:11:10:16 for local family support.

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

General Authority: SDCL [27B-2-25](#), [27B-2-26\(7\)](#).

Law Implemented: SDCL [27B-2-25](#), [27B-2-26\(4\)\(7\)](#).