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ARTICLE 44:70

ASSISTED LIVING CENTERS

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CHAPTER 44:70:01

RULES OF GENERAL APPLICABILITY

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44:70:01:01. Definitions. Terms defined in SDCL chapter 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~~ a gesture, or engaging in ~~other acts~~ any act 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 resident activities program in a health care setting, or who is a qualified occupational therapist or occupational therapy assistant pursuant to the provisions of SDCL chapter 36-31 or who has completed a training program, or has similar qualifications as determined by the department;~~

~~(3)~~ (2) "Activities of daily living," the tasks of transferring, moving about, dressing, grooming, toileting, bathing, and eating performed routinely by a person to maintain physical functioning and personal care;

~~(4)~~ (3) "Adequate staff," a sufficient number of qualified personnel to perform the duties required to meet the performance criteria established by this article;

~~(5)~~ (4) "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)~~ (5) "Adult day care," a nonresident program in a licensed facility that provides health, social, and related support services;

~~(7)~~ (6) "Client advocates," agencies responsible for the protection and advocacy of any residents, including the department, the state ombudsman, the protection and advocacy network, and the Medicaid fraud control unit;

~~(8)~~ (7) "Cognitively impaired," a resident with a mental deficiency ~~deficiencies~~ that 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;

~~(9)~~ (8) "Department," the South Dakota Department of Health;

~~(10)~~ (9) "Developmental disability," a severe, chronic disability of a person as defined in SDCL chapter 27B-1-18 or a disability that:

- (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~~ Reflects the person's need for an array of generic services, met through a system of individual planning and supports over an extended time, including those of a life-long duration;

(11) (10) "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;

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

~~(13) "Direct contact," any activity that requires physically touching a resident;~~

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

(13) (13) "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;

~~(16) "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;~~

~~(17) "Equivalency," training of another or different type that is determined by the department to be equal to department approved training;~~

(14) (14) "Exploitation," the wrongful taking or exercising of control over property of a person with intent to defraud that person;

(15) (15) "Facility," the place of business ~~used~~ licensed to provide assisted living care for residents;

(20) (16) "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;

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

(22) (18) "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 resident and the resident'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;

(23) (19) "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 resident;

(24) (20) "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;

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

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

(23) "Memory care 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, that is staffed by persons with training to meet the needs of residents admitted to the unit;

(26) (24) "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;

(25) "Misappropriation of resident or patient property," the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's or patient's belongings or money without the resident's or patient's consent;

(27) (26) "Neglect," harm to a person's health or welfare, without reasonable justification, caused by the conduct of someone responsible for the person's health or welfare, including offensive behavior made to or directed at a ~~patient or~~ resident, and the failure to provide timely, consistent, and safe services, treatment, or care necessary to avoid physical harm, mental anguish, or mental illness to the person;

~~(28)~~ (27) "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;

~~(29)~~ (28) "Nurse aide," a person providing nursing or nursing-related services who is not a licensed health professional, or someone who volunteers to provide such services without pay;

~~(30)~~ (29) "Nurse practitioner," a person who practices the specialty nurse practitioner as authorized pursuant to SDCL chapter 36-9A;

~~(31)~~ (30) "Nursing personnel," staff which includes registered nurses, licensed practical nurses, nurse aides, ~~restorative aides,~~ and ~~orderlies~~ unlicensed assistive personnel;

~~(32)~~ "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;

~~(33)~~ (31) "Pharmacist," a person registered to practice pharmacy pursuant to SDCL chapter 36-11;

~~(34)~~ (32) "Physician," a person who is licensed or approved to practice medicine pursuant to SDCL chapter 36-4;

~~(35)~~ (33) "Physician assistant," a health care professional who meets the qualifications as defined and is licensed as authorized pursuant to SDCL chapter 36-4A;

~~(36)~~ (34) "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 2000, Pub. L. No. 106-402 (October 30, 2000), codified at 42 U.S.C. § ~~15001~~15041 to 15045, and the Protection and Advocacy for Persons with Mentally Illness Individuals ~~Amendments Act of 1991, Pub. L. No. 102-173 (November 27, 1991)~~ Act of 2000, Pub. L. No. 106-310 (October 17, 2000), codified at 42 U.S.C. §§ 10801 to 10851, inclusive;

~~(37)~~ (35) "Qualified personnel," persons with the specific education or training to provide the health service for which they are employed;

~~(38)~~ (36) "Regular diet," a nutritionally adequate diet using food items and written recipes that can be prepared and correctly served by a staff person;

~~(39)~~ (37) "Rehabilitation services," services that include physical therapy, occupational therapy, respiratory therapy, and speech therapy;

~~(40)~~ (38) "Resident," a person not in need of acute care with a valid order by a physician, physician assistant, or nurse practitioner for services in an assisted living center;

~~(41)~~ "Residential living center," ~~the residence, facility, or place of business required to be registered pursuant to SDCL 34-12-32;~~

~~(42)~~ (39) "Respite care," care permitted within the scope of a facility license, with a limited stay no greater than 30 days for any one resident;

~~(43)~~ "Restorative nursing," a part of nursing directed toward assisting a resident to achieve and maintain an optimal level of self-care and independence and that offers assistance to resident in learning or relearning of skills needed in everyday activities;

~~(44)~~ (40) "Restraint," a physical, chemical, or mechanical device used to restrict the movement of a resident or the movement or normal function of a portion of the resident's body, excluding devices used for specific medical and surgical treatment;

~~(45)~~ "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, that is staffed by persons with training to meet the needs of residents admitted to the unit;

~~(46)~~ (41) "Self-administration of medications," the removal of the correct dosage from the pharmaceutical container and self-injecting, self-ingesting, or self-applying the medication with no assistance or with assistance from qualified personnel of the facility for the correct dosage or frequency;

~~(47)~~ "Self directed care," care provided at the instruction and direction of a person with the ability to provide the instruction and understand the consequences of the provision of that care;

~~(48)~~ (42) "Stand-alone assisted living center," an assisted living center not physically attached to a nursing facility or hospital;

~~(49)~~ "Supervised practical training," training in a laboratory or other setting in which the nurse aide performs health related tasks on a resident while under the direct supervision of a licensed nurse;

~~(50)~~ (43) "Terminal illness," a medical prognosis that the person's life expectancy is six months or less if the illness runs its normal course;

~~(51)~~ "Therapeutic activity," any purposeful activity outside of activities of daily living that fosters social, emotional, physical, cognitive, and mental well being;

~~(52)~~ (44) "Therapeutic diet," any diet other than a regular diet, excluding low sodium diets, that is ordered by a physician, physician assistant, nurse practitioner, or qualified dietitian 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;

~~(53)~~ (45) "Total assist," full performance of an activity with no participation by the resident for any aspect of the activities daily living activity;

~~(54)~~ (46) "Transfer or discharge," the movement of a resident to a bed outside the distinct part or outside the facility;

~~(55) "Treatment," a medical aid provided for the purposes of palliating symptoms, improving functional level, or maintaining or restoring health; and~~

~~(56)~~ (47) "Unlicensed assistive personnel," a person who is not licensed as a nurse pursuant to SDCL chapter 36-9 but who is trained to assist a licensed nurse in the provision of nursing care to a resident as delegated by the nurse and authorized by the provisions of chapter 20:48:04.01.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13.

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

~~— **Note:** National Certification Council of Activity Professionals, P.O. Box 62589, Virginia Beach, VA 23466. Phone (757) 552-0653.~~

~~**44:70:01:02. Licensure of assisted living centers.** 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 pursuant to this chapter are provided. The most current license issued by the department shall 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.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-7.

Law Implemented: SDCL 34-12-7.

~~**44:70:01:05. Restrictions on acceptance and retaining of residents.** A facility shall accept and retain residents in accordance with the following restrictions:~~

~~(1) A resident accepted for care by a licensed facility shall be housed within the facility covered by the license;~~

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

~~(3) Nursing and personal care, other 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 residents of the facility with the exception of providing emergency care on premises contiguous to the facility's property;~~

~~(4) Each licensed facility that accepts or retains a residents suffering from with developmental disabilities or mental diseases shall provide facilities and programs consistent with the needs of such the residents;~~

~~(5) If persons other than residents are accepted for care or to participate in any programs, services, or activities activity for the residents, their numbers that person shall 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 No service provided such to the persons may not infringe upon the needs of the inpatients or residents; and~~

(6) An assisted living center may admit and retain any resident who is able to:

- (a) Turn self in bed and raise from bed or chair independently or with assist of one staff;
- (b) Transfer independently or with assist of one staff and do not require a mechanical lift;
- (c) Complete activities of daily living of mobility or ambulation, dressing, toileting, personal hygiene, and bathing with assist of one staff but less than total assist;
- (d) Feed self with set up, cueing, and supervision;
- (e) Complete own skilled ostomy or catheter cares;
- (f) Display normal expected behaviors for conditions s that do not place self or others at risk;
- (g) Complete own injections if scheduled or required or provided by nursing staff if assisted living staffing allows;
- (h) Manage care for his or her own feeding tube, tracheotomy, or peritoneal dialysis;
- (i) Remains free from the need for restraints, except for admission to a ~~secured~~ memory care unit;
- (j) Demonstrate no need for skilled services unless provided by contract with a Medicare certified home health agency or assisted living nursing staff for a limited time with a planned end date;
- (k) Be free from communicable diseases that place other residents or staff at risk; and
- (l) Maintain conditions that are stable and controlled that do not require frequent nursing care or frequent physician notification.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-7, 34-12-13(5).

Law Implemented: SDCL 34-12-7, 34-12-13(5).

44:70:01:07. Reports. Each ~~licensed~~ facility shall submit in writing to the department the pertinent data necessary to comply with the requirements of ~~SDCL chapter 34-12 and this article~~ all applicable administrative rules and statutes.

Any incident or event involving an attempted suicide or where there is reasonable cause to suspect abuse or neglect of any resident by any person shall be reported within 24 hours of becoming informed of the alleged incident or event. The facility shall report each incident or event orally or in writing to the Department of Social Services, to a law enforcement officer or to the state's attorney of the county in which the facility is located. The facility shall report each incident or event to the department within 24 hours, and conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the event.

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 resident; and any allegations of abuse or neglect of any resident by any person.~~ The facility shall conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the event.

Each facility shall report a missing resident to the department within 48 hours of incident. The facility shall conduct a subsequent internal investigation and provide a written report of the results to the department within five working days after the event.

~~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.

Each facility shall report to the department any unsafe water samples for pools, spas, or drinking water.

The department may follow-up and request additional information on any reported incident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(14).

Law Implemented: SDCL 34-12-13(14).

44:70:01:08. Plans of correction. Within ~~45~~ 10 days of the receipt of the statement of deficiencies, each licensed facility shall submit to the department a written plan of correction for ~~violations~~ the citation of noncompliance with licensure requirements. The plan of correction shall be signed, dated, and on the original 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: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:70:01:09. 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 if the health and safety of the residents are not jeopardized.

Modifications to the staffing requirements provided in § 44:70:03:02 may be approved by the department for licensed facilities which are physically combined and jointly operated if:

- (1) A hospital or a critical access hospital and assisted living center are co-located;
- (2) A nursing facility and assisted living center are co-located; or
- (3) Multiple assisted living centers are co-located.

The health and safety of the residents in either facility may not be jeopardized.

~~Modifications~~ A modification specified by this section may be requested in writing by the health care facility. ~~If the department approves the modifications, the approval shall be in writing.~~

~~The approval letter shall specify the modifications permitted and any limitations pertaining to the modifications.~~

Source: 38 SDR 115, effective January 9, 2012.
General Authority: SDCL 34-12-13(5) and (14).
Law Implemented: SDCL 34-12-13(5) and (14).

CHAPTER 44:70:02

PHYSICAL ENVIRONMENT

Section	
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44:70:02:05	Housekeeping cleaning methods and equipment.
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44:70:02:07	Handwashing facilities.
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44:70:02:10	Plumbing.
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44:70:02:13	Lighting.
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44:70:02:18	Area requirements for currently licensed resident rooms.
44:70:02:19	Physical plant changes.
44:70:02:20	Location.
44:70:02:21	Heating and cooling.

44:70:02:02. Pets. ~~Any~~ No pet kept in or visiting a facility may ~~not~~ negatively affect the well-being of residents a any resident. ~~The facility shall develop policies and procedures regarding the care and training of pets following the recommendations of a local veterinarian. The primary responsibility of care or the supervision of care for any pet shall be assigned to a staff member.~~

Source: 38 SDR 115, effective January 9, 2012.
General Authority: SDCL 34-12-13(1).
Law Implemented: SDCL 34-12-13(1).

Cross-Reference: Physically disabled, blind, or deaf person's right to be accompanied by guide dog without extra charge, SDCL 20-13-23.2.

44:70:02:03. Cleaning methods and facilities. The facility shall have supplies, equipment, work areas, and complete written procedures for cleaning, sanitizing, or disinfecting, ~~or sterilizing~~ all work areas, equipment, utensils, ~~dressings,~~ and medical devices, ~~and solutions~~ used for residents' care. Common use equipment shall be disinfecting ~~or sterilized~~ after each use.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(2).

Law Implemented: SDCL 34-12-13(2).

44:70:02:08. Linen. ~~The supply of bed linen and towels shall equal three times the licensed capacity.~~ The supply of bed linens shall equal two times the licensed capacity. The facility shall have written procedures for the storage and handling of soiled and clean linens. The facility shall contract with commercial laundry services or the laundry service of another licensed health care facility for all common use linens if laundry services are not provided on the premises. A facility providing laundry services shall have adequate space and equipment for the safe and effective operation of the laundry service. Commingled residents' personal clothing, common-use linen, such as towels, washcloths, gowns, clothing protector, protective briefs, and bedding, any isolation clothing, and housekeeping items shall be processed by methods that assure disinfection. The facility shall process laundry following the laundry equipment and cleaning agent recommendations. If hot water is used for disinfection, minimum water temperature supplied for laundry purposes shall be 160 degrees Fahrenheit (F.) (71 degrees centigrade). If chlorine bleach is added to the laundry process following the manufacturer's direction, the minimum hot water temperatures supplied for laundry purposes may be reduced to 120 degrees Fahrenheit (F.) (~~60~~ 49 degrees centigrade). The facility may choose to wash commingled residents' personal clothing, common-use linen, and any isolation clothing in water temperatures less than 120 F. if the following conditions are met:

~~(1) The process is effective at removing Staphylococcus aureus, Klebsiella pneumoniae. For hospitals the process is effective at also removing Pseudomonas aeruginosa;~~

~~(2) The water temperature is maintained at a temperature of at least 70 F. for the chemicals used in low temperature washing to be effective in hard water;~~

~~(3)~~(1) The supplier of the chemical specifies low-temperature wash formulas in writing for the machines used in the facility;

~~(4)~~(2) Charts providing specific information concerning the formulas to be used for each machine are posted in an area accessible to staff;

~~(5)~~(3) The facility ensures ~~that~~ laundry staff receives in-service training by the chemical supplier on a routine basis, regarding chemical usage and monitoring of wash operations; and

~~(6)~~(4) The facility ensures ~~that~~ staff monitors chemical usage and wash water temperatures at least monthly to ensure conformance with the chemical supplier's instructions.

Any resident's personal clothing that is not commingled may be processed according to manufacturer's recommendations using water temperatures and detergent in quantity as

recommended by the garment or detergent manufacturer. The facility shall have distinct areas for the storage and handling of clean and soiled linens. Those areas used for the storage and handling of soiled linens shall be negatively pressurized. The facility shall establish special procedures for the handling and processing of contaminated linens. Soiled linen shall be placed in closed containers prior to transportation. To safeguard clean linens from cross-contamination, the linens shall be transported in containers used exclusively for clean linens, shall be kept covered with dust covers at all times while in transit or in hallways, and shall be stored in areas designated exclusively for this purpose. Any written request for any modification of the requirements of this section shall be ~~received~~ reviewed and approved by the department before any changes are made.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(2).

Law Implemented: SDCL 34-12-13(2).

44:70:02:10. Plumbing. The facility's plumbing system shall be designed and installed in accordance with the provisions of SDCL chapters 36-25-15 and 36-25-15.1. Plumbing shall be sized, installed, and maintained to carry required quantities of water to required locations throughout the facility. ~~Plumbing may not constitute a source of contamination of food equipment or utensils or create an unsanitary condition or nuisance.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(4).

Law Implemented: SDCL 34-12-13(4).

44:70:02:11. Water supply. The facility's water supply shall be obtained from a public water system or, in its absence, from a supply approved by the Department of Environment and Natural Resources. Each private water supply shall have a water sample bacteriologically tested at least monthly. The volume of water shall be sufficient for the needs of the facility, including fire fighting requirements. The hot water system shall be capable of supplying the work and resident areas with water at the required temperatures. Maximum hot water temperatures at plumbing fixtures used by residents may not exceed 125 degrees Fahrenheit (52 degrees centigrade). The minimum temperature of hot water for resident use shall be at least 100 degrees Fahrenheit (38 degrees centigrade).

Each water supply system in a facility shall maintain one part per million free residual chlorine at remote point-of-use fixtures in the facility or may use another bacteriological control method (increasing water temperature range from 122 degrees to 125 degrees Fahrenheit [50-52 degrees centigrade] is acceptable) that has been demonstrated to be equivalent in control of *Legionella*. The facility shall document water temperatures to verify the hot water temperature is being maintained within the acceptable range. The chlorine testing shall be done daily using photocell and light source DPD (N, N, Diethyl-p-phenylenediamine) test kits and the test results logged. If testing demonstrates consistent chlorine levels are maintained, the frequency of testing may be reduced to a level necessary to demonstrate compliance.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

Cross-References:

Standards adopted for plumbing -- Conformity to Uniform Plumbing Code, SDCL 36-25-15. Scope and objectives of plumbing standards and rules, SDCL 36-25-15.1.

44:70:02:17. Occupant protection. Each facility shall be constructed, arranged, equipped, maintained, and operated to avoid injury or danger to any occupant. The extent and complexity of occupant protection precautions is determined by the services offered and the physical needs of any resident admitted to the facility. The facility shall take at least the following precautions:

- (1) Develop and implement a written and scheduled preventive maintenance program;
 - (2) Provide securely constructed and conveniently located grab bars in all toilet rooms and bathing areas used by residents;
 - (3) An emergency staff call system, if required by other sections of this article, shall be provided for resident use to summon assistance from staff. The system shall be capable of being easily activated by the resident and must register both visually and audibly at the staff station. The system shall be utilized and maintained in such a manner as to ensure that it is a consistent and effective means for a resident to alert staff of the need for assistance. The call system shall also meet at least one of the following requirements
 - (a) The call system utilizes fixed call stations that are convenient for resident use and activated by a pull cord or other approved device. The fixed call stations shall be located at each bed, ~~water closet~~ toilet, and bathing facility used by the resident;
 - (b) The call system is a wireless system with devices carried by the resident; or
 - (c) Another type of call system that has been submitted for review and approved by the department;
- A call station or device is not required in the resident room of a cognitively impaired resident if a nursing assessment determines the resident would not benefit from the availability;
- (4) Provide grounded or double-insulated electrical equipment or protect the equipment with ground fault circuit interrupters. Ground fault circuit interrupters shall be provided in wet areas and for outlets within six feet of sinks;
 - (5) Install an electrically activated audible alarm, if required by other sections of this article, on any unattended exit door. Any other exterior door shall be locked or alarmed. The alarm shall be audible at a designated staff station and may not automatically silence if the door is closed;
 - (6) ~~Portable~~ A portable space heaters heater, and portable halogen lamps lamp, household-type electric blanket, or household-type heating pad may not be used in a facility;
 - ~~(7) Household type electric blankets or heating pads may not be used in a facility;~~

~~(8)~~(7) Any light fixture located over a resident bed, ~~in any bathing~~ over a bathing fixture or treatment area, in a clean supply storage area, or in any medication set-up area shall be equipped with a lens cover or a shatterproof ~~lamp~~ bulb;

~~(9)~~(8) Any clothes dryer shall have a galvanized metal vent pipe for exhaust; and

~~(10)~~(9) The storage and transfilling of oxygen cylinders or containers shall meet the requirements of the NFPA 99 Standard for Health Care Occupancies, ~~2005~~ 2012 Edition. A resident may store in his or her room a maximum of three E-cylinders or 72 cubic feet (2.040 cubic meters) of oxygen on as needed basis in addition to oxygen in use by the resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1).

Law Implemented: SDCL 34-12-13(1).

Reference: **NFPA 99 Health Care Facilities**, ~~2005~~ 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: \$59 93.00.

CHAPTER 44:70:03

FIRE PROTECTION

Section

44:70:03:01 Fire safety code requirements.

44:70:03:02 General fire safety.

44:70:03:02.01 Staffing exception ~~during sleeping hours~~.

44:70:03:03 Fire extinguisher equipment.

44:70:03:04 Fire alarm systems.

44:70:03:01. Fire safety code requirements. Each facility shall meet applicable fire safety standards in **NFPA 101 Life Safety Code**, ~~2009~~ 2012 edition. An automatic sprinkler system is not required in an existing facility unless significant renovations or remodeling occurs; however, any existing automatic sprinkler system shall remain in service. An attic heat detection system is not required in an existing facility unless significant renovations or remodeling occurs.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

Reference: **NFPA 101 Life Safety Code**, ~~2009~~ 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: \$76.50.

44:70:03:02. General fire safety. Each facility shall be constructed, arranged, equipped, maintained, and operated to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the structure in case of fire or other emergency. The fire alarm system shall be sounded each month. At least two staff members shall be on duty at all times. In a multilevel facility, at least one staff member shall be on duty on each floor containing occupied beds. ~~Compliance with this section does not eliminate or reduce the necessity for other provisions for safety of persons using the structure under normal occupancy conditions.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

Cross-References:

Fire safety code requirements, § 44:70:03:01.

Staffing exception during sleeping hours, § 44:70:03:02.01.

44:70:03:02.01. Staffing exception during sleeping hours. Certain staffing exceptions for assisted living centers ~~during sleeping hours~~ are allowed as follows:

(1) For each facility with ten beds or less, at least one staff person shall be on duty in the facility is required during sleeping hours. This staff person may sleep at night if:

- (a) The facility fire alarm promptly alerts staff;
- (b) Exterior door alarms are audible in the staff bedroom;
- (c) A staff call system is available;
- (d) The staff bedroom has an egress window; and
- (e) The residents have an evacuation score which shows them capable of prompt evacuation (three minutes or less) as defined in § 3.3.7076, evacuation capability, of **NFPA 101 Life Safety Code, 2009 2012** edition;

(2) For each facility with 11 to 16 beds, inclusive, at least one staff person who is awake shall be on duty is required during sleeping hours if:

- (a) The facility fire alarm promptly alerts staff;
- (b) A staff call system is available; and
- (c) The residents have an evacuation score which shows them capable of prompt evacuation (three minutes or less) as defined in § 3.3.7076, evacuation capability, of **NFPA 101 Life Safety Code, 2009 2012** edition;

(3) For each facility with 16 beds or less, that is a stand-alone facility, at least one staff person who is awake shall be on duty is required during the sleeping hours if:

- (a) The facility fire alarm promptly alerts staff;
- (b) The facility is equipped with an automatic sprinkler system as defined in § 9.7, automatic sprinklers, of **NFPA 101 Life Safety Code, 2009 2012** edition;

(c) An automatic fire alarm dialer as defined in § 9.6.4, Emergency Forces Notification, of **NFPA 101 Life Safety Code, 2009 2012** edition, to summon the local fire department is provided;

(d) A staff call system is available; and

(e) The residents have an evacuation time which shows them capable of evacuation in five minutes or less;

(4) For each facility with 16 beds or less, physically attached to a nursing facility or hospital, at least one staff person who is awake shall be on duty ~~is required during sleeping hours~~ if:

(a) The facility fire alarm promptly alerts staff;

(b) The facility is equipped with an automatic sprinkler system, as defined in § 9.7, automatic sprinklers, of **NFPA 101 Life Safety Code, 2009 2012** edition;

(c) An automatic fire alarm dialer as defined in § 9.6.4, Emergency Forces Notification, of **NFPA Life Safety Code, 2009 2012** edition, to summon the local fire department is provided;

(d) A fire ~~annunciator~~ annunciator panel is provided at the nursing facility or hospital nurses station;

(e) A call system is available; and

(f) The residents have an evacuation time which shows them capable of evacuation in eight minutes or less;

(5) For each facility with 17 to 25 beds, inclusive, physically attached directly to a nursing home or hospital, one staff person who is awake is required during sleeping hours from 10:00 p.m. to 6:00 a.m. if:

(a) The facility fire alarm promptly alerts staff;

(b) The facility is equipped with an automatic sprinkler system, as defined in § 9.7, automatic sprinklers, of **NFPA 101 Life Safety Code, 2009 2012** edition;

(c) An automatic fire alarm dialer as defined in § 9.6.4, Emergency Force Notification, of **NFPA 101 Life Safety Code, 2009 2012** edition, to summon the local fire department is provided;

(d) The fire alarm ~~annunciate~~ annunciator panel is provided at the nursing facility or hospital staff station;

(e) The residents have an evacuation time which shows them capable of evacuation in eight minutes or less;

(f) An approved call system is provided in accordance with the provisions of subdivision 44:70:02:17(3) and staff carries a device that registers an audible and visual signal if the call system is activated;

(g) The building is a single story;

(h) Each resident is capable of self-preservation and requires limited assistance of one staff;

(i) The facility has a plan in place to increase staffing during times of resident illnesses;

(j) The facility has exit alarms; and

(k) The staff person carries a device that can summon assistance from the attached nursing home or hospital.

Source: 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; 29 SDR 81,

effective December 11, 2002; 31 SDR 62, effective November 7, 2004; transferred from § 44:04:03:02.01, 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

Reference: **NFPA 101 Life Safety Code**, 2009 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: ~~\$76.50~~\$3.00.

44:70:03:03. Fire extinguisher equipment. Fire extinguisher equipment shall be installed and maintained by the following standards:

(1) Portable fire extinguishers shall have a minimum rating of 2-A:10-B:C;

(2) Fire extinguisher equipment shall be inspected monthly and maintained yearly; and

(3) Approved fire extinguisher cabinets shall be provided throughout the building with one cabinet for each 3,000 square feet (278.7 square meters) of floor space or fraction thereof. The fire resistance rating of corridor walls shall be maintained at recessed fire extinguisher cabinets. The glazing in doors of fire extinguisher cabinets shall be wire glass or other safety glazing material. Fire extinguisher cabinets shall be identified with a sign mounted perpendicular to the wall surface above the cabinet.

Source: 38 SDR 115, effective January 9, 2012; transferred from 44:70:10:15.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:70:03:04. Fire alarm systems. A manually operated, electrically supervised fire alarm system shall be installed in each facility.

Source: 38 SDR 115, effective January 9, 2012; transferred from 44:70:10:36.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

CHAPTER 44:70:04

MANAGEMENT AND ADMINISTRATION

Section

44:70:04:01	Governing body.
44:70:04:02	Administrator.
44:70:04:03	Personnel.
44:70:04:04	Personnel training.
44:70:04:05	Employee health program.
44:70:04:06	Admissions or retention of residents.

- 44:70:04:07 Prevention and control of influenza.
- 44:70:04:08 Prevention and control of pneumonia.
- 44:70:04:09 Disease prevention.
- 44:70:04:10 Tuberculin screening requirements.
- 44:70:04:11 Care policies.
- 44:70:04:12 ~~Secured~~ Memory care units.
- 44:70:04:13 Restricted admissions.
- 44:70:04:13.01 Facility form -- Contents.
- 44:70:04:14 Optional services.
- 44:70:04:15 Quality assessment.
- 44:70:04:16 Discharge planning.
- 44:70:04:17 Physician, physician assistant, or nurse practitioner services.

44:70:04:02. Administrator. The governing body shall designate a qualified administrator to represent the owner or governing body and to be responsible for the daily overall management of the facility. The administrator shall designate a qualified person to represent the administrator during the administrator's absence. The governing body shall notify the department in writing of any change of administrator. The administrator of an assisted living center shall be a licensed health professional as ~~defined in subdivision 44:04:01:01(31) or shall hold a high school diploma or equivalent and shall become a qualified administrator within a year of employment by successfully completing the training program and competency evaluation outlined in chapter 44:04:18 or a training program that is substantially equivalent, as determined by the department., a graduate from an accredited institution of a higher learning course for long-term healthcare or health service administration program, or complete a department approved assisted living administrator course and pass the competency examination offered by the course. During the completion of the assisted living administrator course, oversight by a qualified administrator with at least two years experience as an assisted living center administrator shall continue until the administrator training is complete. The certificate of completion and an attestation statement the administrator had read Article 44:70 must be provided to the department before the individual is considered qualified.~~

The administrator shall be available to meet the needs of the residents or to meet with the resident and family when needed.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

~~Note: Article 44:04 Medical Facilities, Administrative Rules of South Dakota, may be obtained from Legislative Mail, 1320 East Sioux Avenue, Pierre, South Dakota 57501, telephone (605) 773-4935, for \$3.66.~~

44:70:04:04. Personnel training. The facility shall have a formal orientation program and an ongoing education program for all personnel. Ongoing education programs shall cover the required subjects annually. These programs shall include the following subjects:

(1) Fire prevention and response. The facility shall conduct fire drills quarterly for each shift. If the facility is not operating with three shifts, monthly fire drills shall be conducted to provide training for all staff;

(2) Emergency procedures and preparedness;

(3) Infection control and prevention;

(4) Accident prevention and safety procedures;

(5) Resident rights;

(6) Confidentiality of resident information;

(7) Incidents and diseases subject to mandatory reporting and the facility's reporting mechanisms;

(8) Care of residents with unique needs; ~~and~~

(9) Nutritional risks and hydration needs of residents; ~~and~~

(10) Abuse, neglect, misappropriation of resident property and funds, and mistreatment.

Any personnel whom the facility determines will have no contact with residents are exempt from training required by subdivisions (8) and (9) of this section.

Additional personnel education shall be based on facility identified needs.

Current professional and technical reference ~~books~~ materials and periodicals shall be made available for personnel.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5).

Law Implemented: SDCL 34-12-13(5).

44:70:04:07. Prevention and control of influenza. Each facility shall arrange for an influenza vaccination to be completed annually for each resident. Each resident shall be offered influenza vaccine when he or she is admitted and annually during the influenza season. ~~An influenza vaccination may be waived for a resident because of religious beliefs, medical contraindication, or refusal by the resident.~~ Documentation of the vaccination or ~~its waiver~~ refusal shall be recorded in the resident's ~~medical or~~ care record.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (5), 34-22-9(8).

Law Implemented: SDCL 34-12-13(1) and (5).

44:70:04:08. Prevention and control of pneumonia. Each facility shall arrange for an immunization for pneumococcal disease. If immunization is lacking and the resident's physician, physician's assistant, or nurse practitioner recommends immunization, the facility shall encourage a resident to obtain an immunization for pneumococcal pneumonia within 14 days of admission. ~~A pneumococcal vaccination may be waived for the resident because of religious beliefs, medical contraindication, or refusal by the resident.~~ Documentation of the vaccination or ~~its waiver~~ refusal shall be recorded in the resident's ~~medical or~~ care record.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (5), 34-22-9(8).

Law Implemented: SDCL 34-12-13(1) and (5), 34-22-9(8).

44:70:04:10. Tuberculin screening requirements. Each facility shall develop criteria to screen health care workers or residents for *Mycobacterium tuberculosis* (TB) based on the guidelines issued by Centers for Disease Control and Prevention. Each facility shall establish policies and procedures for conducting *Mycobacterium tuberculosis* a TB risk assessment ~~that to~~ include the key components of responsibility, surveillance, containment, and education. The frequency of repeat screening shall be determined by the results of the annual TB risk assessment conducted by the facility.

Tuberculin screening requirements for healthcare workers or residents are as follows:

(1) Each new healthcare worker or resident shall receive the two-step method of tuberculin skin or a TB blood assay test to establish a baseline within 14 days of employment or admission to a facility. Any two documented tuberculin skin tests completed within a 12 month period prior to the date of admission or employment ~~shall~~ can be considered a two-step or one blood assay TB test completed within a 12 month period prior to the date of admission or employment can be considered an adequate baseline test. Skin testing ~~is-or~~ TB blood assay tests are not necessary if a new employee or resident transfers from one licensed healthcare facility to another licensed healthcare facility within the state if the facility received documentation of the last ~~skin~~ testing completed within the prior 12 months. Skin testing ~~is-or~~ TB blood assay test are not necessary if documentation is provided of a previous positive reaction. Any new healthcare worker or resident who has a newly recognized positive reaction to the skin or TB blood assay test shall have a medical evaluation and a chest X-ray to determine the presence or absence of the active disease;

(2) A new healthcare worker or resident who provides documentation of a positive reaction to the tuberculin skin or a TB blood assay test shall have a medical evaluation and chest X-ray to determine the presence or absence of the active disease; and

(3) Each healthcare worker or resident with a history of a positive reaction to the tuberculin skin or TB blood assay test shall be evaluated annually by a physician, physician's assistant, nurse practitioner, or a nurse and a record maintained of the presence or absence of symptoms of *Mycobacterium tuberculosis*. If this evaluation results in suspicion of active tuberculosis, the person shall be referred for further medical evaluation to confirm the presence or absence of tuberculosis.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (5), 34-22-9(8).

Law Implemented: SDCL 34-12-13(1) and (5).

Reference: **Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care Facilities**, 2005. "Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report," December 30, 2005 (RR17).

44:70:04:12. Secured Memory care units. Each facility with a ~~secured~~ memory care unit shall comply with the following provisions:

(1) Each physician's, physician assistant's, or nurse practitioner's order for confinement that includes medical symptoms that warrant seclusion or placement shall be documented in the

resident's chart and shall be reviewed periodically by the physician, physician assistant, or nurse practitioner;

(2) Therapeutic programming shall be provided and shall be documented in the overall plan of care;

(3) Confinement may not be used as punishment or for the convenience of the staff;

(4) Confinement and its necessity shall be based on a comprehensive assessment of the resident's physical and cognitive and psychosocial needs, and the risks and benefits of this confinement shall be communicated to the resident's family;

(5) Each locked door shall conform to § ~~18.2.2.2.4~~ and § ~~19.2.2.2.4~~ 33.3.2.11.2 of NFPA 101 Life Safety Code, ~~2009~~ 2012 edition; and

(6) Any staff assigned to the ~~secured~~ memory care unit shall have specific training regarding the unique needs of residents in that unit. At least one caregiver shall be on duty on the ~~secured~~ memory care unit at all times.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5) and (14).

Law Implemented: SDCL 34-12-13(5) and (14).

Reference: NFPA 101 Life Safety Code, ~~2009~~ 2012 edition, § 33.3.2.11.2 ~~18.2.2.2.4~~ and § ~~19.2.2.2.4~~ National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: ~~\$76.50~~ \$93.00.

44:70:04:14. Optional services. A facility shall meet the following requirements:

(1) A facility may not admit or retain residents who require more than intermittent nursing care or rehabilitation services;

(2) If a facility does not have a licensed nurse to administer medications, to supervise resident care at all times, and to admit or retain residents who require administration of medications, the facility shall employ or contract with a licensed nurse who reviews and documents resident care and condition at least weekly. A facility that employs a licensed nurse who is on the premises at least 40 hours per week is not required to review and document resident care and condition weekly, but shall document resident's individual needs that have been identified. A registered nurse ~~or registered pharmacist~~ shall provide medication administration training pursuant to § ~~20:48:04:01~~ 20:48:04.01 to any unlicensed assistive personnel employed by the facility who will be administering medications. Each licensed practical nurse who reviews resident care and condition shall be in compliance with requirements for supervision pursuant to SDCL chapter 36-9-4. ~~Any u~~Unlicensed assistive personnel shall receive ongoing resident specific training for medication administration and annual training in all aspects of medication administration occurring at the facility;

(3) A facility that admits or retains a resident with cognitive impairment shall have the resident's physician, physician assistant, or nurse practitioner determine and document if services offered by the facility continue to enhance the resident's functioning in activities of daily living. The physician, physician assistant, or nurse practitioner shall identify if other disabilities and illnesses are impacting the resident's cognitive and mental functioning. The facility shall be approved for medication administration. Each staff member shall attend in-service training specified in § 44:70:04:04 with completion of subdivision (8) within one month after employment. The facility shall be equipped with exit alarms installed in compliance with subdivision 44:70:02:17(5);

(4) A facility that admits or retains residents with physical impairments that prevent them from walking independently shall provide a call system in accordance with subdivision 44:70:02:17(3);

(5) A facility that admits or retains a resident not capable of self-preservation shall meet **NFPA 101 Life Safety Code**, 2009 2012 edition, health care occupancy standards in chapter 18 or 19 or equip the facility with complete automatic sprinkler protection;

(6) A facility that admits or retains residents dependent on supplemental oxygen shall train staff regarding oxygen safety, proper administration of oxygen, and shall practice safe oxygen handling procedures;

(7) A facility that admits or retains residents requiring a therapeutic diet, excluding low sodium diets, shall employ or contract a dietitian. The dietitian shall approve written menus and diet extensions, assess the resident's nutritional status and dietary needs, plan individual diets, and provide guidance to dietary staff in areas of preparation, service, and monitoring the resident's acceptance of the diet. The frequency of dietitian visits shall be ~~at least~~ quarterly or sooner as determined by the resident's dietary need and the facility's ability to implement the diet correctly;

(8) A facility that admits or retains a resident ~~that~~ who has elected hospice shall have the resident's physician order identifying the terminal illness. The facility shall provide the department within 48 hours of election the name of the resident ~~that~~ who has elected hospice, the date hospice was elected, and the name of the hospice agency serving the patient. The facility shall also notify the department within 48 hours of a hospice patient discharge, transfer, death, or when the resident is no longer capable of self-preservation. The facility shall be approved for medication administration and have an unlicensed assistive personnel on duty if a hospice patient resides in the facility. The facility shall be equipped with an automatic sprinkler system if a hospice patient becomes incapable of self-preservation. At least two staff shall be on duty at all times if the hospice resident care needs require additional staffing or the resident is not capable of self-preservation, except when the hospice plan of care provides for adequate 24 hour ~~beside~~ bedside care, which can be provided by either family members ~~on~~ or hospice staff during their intermittent visits. The facility shall include family members or hospice staff on a staffing schedule. Each staff member shall attend training within 30 days of employment and annually specific to the care for terminally ill residents. Only a Medicare certified hospice provider may be permitted to serve a resident who has elected hospice. The facility and hospice agency shall ~~enter into~~ develop a written ~~agreement~~ care plan that delineates responsibilities. Each staff member shall complete the following training that shall include a competency evaluation by the facility nurse, nursing consultant, or hospice agency nurse:

- (a) Ambulation;
- (b) Changing an occupied bed;
- (c) Position resident on side in bed;
- (d) Toileting using a bedpan;
- (e) Partial bed bath;
- (f) Transfer using a gait belt;
- (g) Urinary emptying drainage bag;
- (h) Hospice history and philosophy;
- (i) Ethical and privacy considerations;
- (j) Definitions of team roles and eligibility;
- (k) Communication techniques;
- (l) Spiritual care services;
- (m) Bereavement and grief explorations; and
- (n) Alternative therapies.

(9) A facility that admits or retains any resident who requires dining assistance shall develop a nutrition and hydration assistance program. Any staff member providing dining assistance shall be a certified nurse aide or shall have completed an approved nutrition and hydration dining assistance program. A nutrition and hydration assistance program curriculum shall be approved by the department. The curriculum shall include instruction from both a licensed speech-language pathologist and a registered ~~dietician~~ dietitian. The program shall consist of a minimum of 10 hours of training and clinical experience. Any dining assistant shall work under the supervision of a licensed nurse. A resident shall be assessed by ~~nursing staff or a registered nurse consultant~~ before participating in a nutrition and hydration assistance program. Only those residents who have no complicated feeding problems may be allowed to participate. A resident ~~that~~ who has difficulty swallowing, recurrent lung aspirations, or tube feeding may not participate. A ~~dietician~~ dietitian shall document any special nutritional needs and instructions on the resident's care plan. If a facility has an approved nutrition and hydration assistance program, the facility shall have a licensed nurse to work the day shift at least 32 hours a week. A licensed nurse shall be on call at all times. The facility shall be approved for therapeutic diet. If a facility has an approved nutrition and hydration assistance program, the facility is exempt from the requirement of subsection 44:70:01:05(6)(d);

(10) A facility that admits or retains any resident who requires one or two staff for up to total assistance with completing activities of daily living (ADL) or assistance to turn or raise in bed and to transfer resident shall meet all the provisions of this subsection. Each direct care staff shall complete an approved certified nurse aide training program pursuant to ~~chapter 44:04:18:~~ Article 44:74 or equivalent program approved by the department before assisting a resident. In the assisted living center, the registered nurse may be the program coordinator and the primary instructor. If a resident requires one or two staff for up to total assistance with completing ADLs listed in subsection 44:70:01:05(6)(c), or assistance to turn or raise in bed and to transfer the resident, the facility shall conduct and document a nursing assessment as to the resident's need of total assistance. A facility shall complete and document an assessment on each new resident upon admission, upon a significant change in the resident's condition, and at least semi-annually. If a resident requires one to two staff for up to total assistance with ADLs or assistance to turn or raise in bed and to be transferred, the facility shall have a licensed nurse to work the day shift at least 32 hours a week. A licensed nurse shall be on call at all times. The facility shall be approved for

medication administration, cognitive impairment, acceptance of physically impaired, and incapable of self-preservation, and to administer medications. A facility licensed for this option is not eligible for a staffing exception as allowed under § 44:70:03:02.01. At least one certified nurse aide shall be on duty in each ~~secure~~ memory care unit at any time a resident is present. If a mechanical lift is used, it shall be operated by at least two staff members. Resident toileting room and bathing room shall be large enough to accommodate two person assistance. If a facility has been approved to provide a resident total assistance with ADLs or to turn or raise a resident in bed and to transfer a resident, the facility is exempt from the requirements of subsections 44:70:01:05(6)(a),(b), and (c).

A facility that intends to offer services identified in subdivisions (2) to (10), inclusive, of this section shall comply with the additional requirements and request and receive approval printed on a new license from the department, prior to providing the additional services.

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; 27 SDR 59, effective December 17, 2000; 28 SDR 83, effective December 16, 2001; 29 SDR 81, effective December 11, 2002; transferred from § 44:04:04:12.01, 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(5) and (14).

Law Implemented: SDCL 34-12-13(5) and (14).

Reference: **NFPA 101 Life Safety Code, 2009 2012** edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: ~~\$76.50~~ \$93.00.

CHAPTER 44:70:06

DIETETIC SERVICES

Section	
44:70:06:01	Dietetic services.
44:70:06:02	Food safety.
44:70:06:03	Nutritional adequacy.
44:70:06:04	Food substitutions.
44:70:06:05	Food supply.
44:70:06:06	Therapeutic diets.
44:70:06:07	Social needs <u>and dining arrangements.</u>
44:70:06:08	Written dietetic policies.
44:70:06:09	Written menus.
44:70:06:10	Preparation of food. <u>Repealed.</u>
44:70:06:11	ServSafe and nutritional needs.
44:70:06:12	Diet manual.
44:70:06:13	Frequency of meals.
44:70:06:14	Dining arrangements.
44:70:06:15	Nutritional assessments.

- 44:70:06:16 Person-in-charge of dietary services.
44:70:06:17 Required dietary inservice training.

44:70:06:02. Food safety. ~~The dietetic service shall ensure that food is prepared and served in a manner that is safe and palatable.~~ Hot food shall be held at or above 140 135 degrees Fahrenheit (~~60~~ 57.2 degrees centigrade) and served promptly after being removed from the temperature holding device. Cold foods shall be held at or below 41 degrees Fahrenheit (5 degrees centigrade) and served promptly after being removed from the holding device. Milk and milk products shall be from a source approved by the Department of Agriculture. Fluid milk shall be Grade A, and only fluid milk may be used for drinking purposes. Grade A pasteurized dried milk may be used to fortify nutritional supplements only if consumed within four hours of preparation.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

~~**Cross-Reference:** Permit required to produce or process milk and milk products, § 12:05:03:01.~~

~~— **Note:** Article 44:02, Lodging and Food Service, Administrative Rules of South Dakota, contains the Food Service Code and may be obtained from Legislative Mail, 1320 E. Sioux Avenue, Pierre, South Dakota 57501, telephone (605) 773-4935, for \$4.08.~~

44:70:06:03. Nutritional adequacy. The dietetic service shall ensure that food prepared is nutritionally adequate in accordance with the Recommended Dietary Allowances and is chosen from each of the five basic food groups listed in the **Food Guide Pyramid**, 1996 or 2005, ~~Center for Nutrition Policy and Promotion,~~ **MyPlate**, Dietary Guidelines for Americans 2010, U.S. Department of Agriculture, in accordance with consideration for individual needs and reasonable preferences.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

~~**Reference:** **Food Guide Pyramid**, 1996 or 2005, Food and Nutrition Information Center National Agricultural Library, 10301 Baltimore Ave., Room 105, Beltsville, MD 20705. Phone: 301-504-5414. **Recommended Dietary Allowances**, Tenth Revised Edition, 1989, National Research Council, The National Academy of Sciences. Copies may be obtained from National Academy Press, 500 Fifth St. NW, Washington DC 20001. Cost: \$19.95. Phone: 1-888-624-8373. Dietary Guidelines for Americans 2010, United States Department of Agriculture. Copies may be viewed and printed free of charge at <http://www.dietaryguideline.gov>.~~

44:70:06:05. Food supply. The facility shall maintain an on-site supply of perishable and nonperishable foods adequate to meet the requirements of planned menus for three days. A facility shall maintain an additional supply of nonperishable foods as part of their emergency preparedness

plan. Military meals ready to eat (MRE) are not a substitute for the nonperishable food supply for residents, but may be used to address other emergency food supply needs.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

44:70:06:07. Social needs and dining arrangements. In each facility the dietetic service, in cooperation with other departments or services, shall meet the social and environmental needs of ~~the each~~ residents ~~in the dining setting to encourage eating in the common dining area~~. Social needs include mutually compatible seating arrangements, pleasant dining atmosphere, encouragement of interactions between residents, and food service to all residents at a table at approximately the same time.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

~~**Reference: Article 44:02, Lodging and Food Service,** Administrative Rules of South Dakota, contains the Food Service Code and may be obtained from Legislative Mail, 1320 East Sioux Avenue, Pierre, South Dakota 57501, telephone (605) 773-4935, for \$4.08 and **Food Code,** U.S. Public Health Service, FDA, 1999, and may be obtained from U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312, 1-800-553-6847 for \$69.~~

44:70:06:09. Written menus. Any regular and therapeutic menu, including therapeutic diet menu extensions for all diets served in the facility, shall be written, prepared, and served as prescribed by each resident's physician, physician assistant, ~~or~~ nurse practitioner, or dietitian. Each menu shall be written at least one week in advance. Each planned menu shall be approved, signed, and dated annually by the dietitian for all facilities except a facility without therapeutic diet services. Any menu changes from month to month shall be reviewed by the dietitian, ~~and each menu shall be reviewed and approved by the dietitian at least annually if applicable~~. Each menu as served shall meet the nutritional needs of the residents in accordance with the physician's orders and the ~~Recommended Dietary Allowances of the National Research Council, Tenth Edition, 1989~~ MyPlate Dietary Guidelines for Americans, 2010, U.S. Department of Agriculture. A record of each menu as served shall be filed and retained for 30 days.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

~~**Reference: Recommended Dietary Allowances,** Tenth Revised Edition, 1989, National Research Council, The National Academy of Sciences. Copies may be obtained from National Academy Press, 500 Fifth St NW, Washington DC 20001. Cost: \$19.95. Phone 1-888-624-8373.~~ **Dietary Guidelines for Americans, 2010,** United States Department of Agriculture. Copies may be obtained free of charge at www.dietaryguidelines.gov.

44:70:06:10. Preparation of food. ~~Food shall be wholesome and prepared by methods that conserve nutritive value, flavor, and appearance and shall be attractively served at the temperature applicable to the particular food in a form to meet each resident's needs.~~ **Repealed.**

Source: 38 SDR 115, effective January 9, 2012.

~~General Authority:~~ SDCL 34-12-13(8).

~~Law Implemented:~~ SDCL 34-12-13(8).

44:70:06:11. ServSafe and nutritional needs. The dietary manager if employed and at least one cook shall successfully complete and possess a current certificate from a ServSafe Food Protection Program offered by various retailers or the Certified Food Protection Professional's Sanitation Course offered by the Dietary Managers Association, or successfully completed equivalent training as determined by the department. The dietary manager or designated staff person shall monitor the dietetic service to ensure that the nutritional and therapeutic dietary needs for each resident are met. If the dietary manager is not a dietitian, the facility shall schedule dietitian consultations ~~onsite at least monthly~~ quarterly or sooner as determined by the resident's dietary need. The dietitian shall approve all menus, assess the nutritional status of residents with problems identified in the assessment, and review and revise dietetic policies and procedures during scheduled visits. The facility shall have adequate staff whose working hours are scheduled to meet the dietetic needs of the residents.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL [34-12-13\(8\)](#).

Law Implemented: SDCL [34-12-13\(8\)](#).

44:70:06:15. Nutritional assessments. ~~A registered dietitian shall ensure a nutritional assessment is~~ shall be completed and documented on each new resident on therapeutic diets upon admission; on any resident having a significant change in diet, eating ability, weight loss, or nutritional status, or weight loss or gain; on a monthly basis for any resident managing own tube feedings; and on any resident with a disease or condition that puts the resident at significant nutritional risk. An annual assessment shall be completed for each resident.

A monthly tube feeding assessment shall include nutritional adequacy of calories, protein, and fluids on any resident managing own tube feedings. This nutritional assessment shall be performed by a registered dietitian or by a health care provider licensed pursuant to SDCL 36 with the education preparation to perform an advanced nutritional assessment.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(8).

Law Implemented: SDCL 34-12-13(8).

CHAPTER 44:70:07

MEDICATION CONTROL

Section

44:70:07:01	Policies and procedures.
44:70:07:02	Written orders for medication required.
44:70:07:03	Medication therapy reviewed monthly.
44:70:07:04	Storage and labeling of medications and drugs.
44:70:07:05	Control and accountability of medications and drugs.
44:70:07:06	Drug disposal.
44:70:07:07	Medication administration.
44:70:07:08	Medication records and administration.
44:70:07:09	<u>Self-administration of drugs.</u>

44:70:07:01. Policies and procedures. Each facility shall establish and practice methods and procedures for medication control that include the following:

(1) A requirement that each resident's prescribing physician, physician assistant, or nurse practitioner provide to the ~~center~~ facility electronic or written signed orders for any medications taken by the resident; authorization for medications or drugs kept on the person or in the room of the resident; and release of medications;

(2) Provisions for proper storage of prescribed medications so that the medications are inaccessible to residents or visitors with requirements for:

- (a) Separate storage of poisons, topical medications, and oral medications;
- (b) Each resident's medication to be stored in the container in which it was originally received and not transferred to another container; and
- (c) A medication prescribed for one resident not to be administered to any other resident;

(3) Self-administration of medications to be accomplished with the supervision of a designated employee of the ~~center~~ facility to include:

- (a) A description of the responsibilities of the resident, the resident's family members, and the facility staff; and
- (b) The provision of written educational material explaining to the resident and the resident's family the resident's rights and responsibilities associated with self-administration; and

(4) The proper disposition of discontinued medicines ~~that are discontinued because of the due to discharge or death of the resident, because the drug is outdated, or because the prescription is no longer appropriate to the care of the resident.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:03. Medication therapy reviewed monthly. ~~In an assisted living center with approval for medication administration,~~ The pharmacist shall review the drug regimen at least monthly of only those residents who require administration of medications. The pharmacist shall review the resident's diagnosis, the drug regimen, and any pertinent laboratory findings and dietary considerations. The pharmacist shall report potential drug therapy irregularities and make recommendations for improving the drug therapy of the residents to the resident's physician, physician assistant, or nurse practitioner, the facilities licensed nurse, and the administrator. The pharmacist shall document the review by preparing a monthly report of the potential irregularities and recommendations. The administrator shall retain the report in the assisted living center, ~~with approval for medication administration.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:05. Control and accountability of medications and drugs. Medications brought from home may be used if ordered by the attending physician, physician assistant, or nurse practitioner and, if prior to administration, is identified as the prescribed drug. Medications prescribed for one resident may not be administered to another. Residents may not keep medications on their person or in their room without a physician, physician assistant, or nurse practitioner's order allowing self-administration. Written authorization by the resident's physician, physician assistant, or nurse practitioner shall be secured for the release of any medication to a resident upon discharge, transfer, or temporary leave from the facility. The release of medication shall be documented in the resident's record, indicating quantity, drug name, and strength. The facility shall maintain records that account for all medications and drugs from their receipt through administration, destruction, or return.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:06. Drug disposal. Legend drugs not controlled under SDCL chapter 34-20B shall be destroyed or disposed of by a nurse and another witness. Destruction or disposal of medications controlled under SDCL chapter 34-20B shall be witnessed by two persons, both of whom are a nurse or pharmacist, as designated by facility policy. Methods of destruction or disposal may include:

(1) Disposal by using a professional waste hauler to take the medications to a permitted medical waste facility or by facility disposal at a permitted municipal solid waste landfill. Prior to disposal all medications shall be removed from original containers and made unpalatable by the addition of adulterants and alteration of solid dosage forms by dissolving or combination into a solid mass;

(2) Return to the dispensing pharmacy for destruction or dispose according to federal and state regulations;

(3) Return to an authorized reverse distributor company licensed by the South Dakota Board of Pharmacy; or

~~—— (4) Release to resident upon discharge after authorization by the resident's prescribing practitioner.~~

(4) Medications controlled under SDCL chapter 34-20B shall not be returned to the dispensing pharmacy or to an authorized reverse distributor company.

(5) Documentation of destruction or disposal of medications shall be included in the resident's record. The documentation shall include the method of disposition (destruction, disposal, ~~return to pharmacy~~, or release to resident); the medication name, strength, prescription number (as applicable), quantity, and date of disposition; and the name of any person who witnessed the destruction or disposal.

Medications, excluding those controlled under SDCL chapter 34-20, contained in unit dose packaging meeting the requirements of § 20:51:13:02.01 may be returned to the dispensing pharmacy for credit and redispensing.

Any medication held for disposal shall be physically separated from the medications being used in the facility, locked with access limited, in an area with a system to reconcile, audit, or monitor them to prevent diversion.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:07. Medication administration. If any resident of the facility cannot assume responsibility for medication self-administration or self-directed assistance with medication administration or if the facility is approved to provide services to cognitively impaired residents as noted in subdivision 44:70:04:14(3), the facility shall also be approved by the department to provide medication administration.

If medication administration is provided, it shall comply with §§ 44:70:07:02 to 44:70:07:05, inclusive, and with the requirements for training in §§ 20:48:04.01:14 and 20:48:04.01:15 and for supervision in § 20:48:04.01:02. The supervising licensed nurse shall provide an orientation to the unlicensed assistive personnel who will administer medications. The orientation shall be specific to the facility and relevant to the residents receiving administered medications

~~—— If any resident is permitted to self-administer medications, the facility's policies and procedures related to self-administered drugs shall include a description of the responsibilities of the resident, the resident's family members, and the facility staff. The facility shall provide written educational material explaining to the resident and the resident's family the resident's rights and responsibilities associated with self-administration. **Transferred to 44:70:07:09**~~

~~In an assisted living center approved for medication administration, a resident with the cognitive ability to understand may self-administer medications. At least every three months, the supervising nurse or the physician, physician assistant, nurse practitioner shall evaluate and record the continued appropriateness of the resident's ability to self-administer medications. **Transferred to 44:70:07:09**~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:08. Medication records and administration. Medication administration records shall be used and regularly checked against the physician, physician assistant, or nurse practitioner's orders. Each medication administered shall be recorded in the resident's medical care record and signed by the individual responsible.

Medication errors and drug reactions shall be reported to the resident's physician, physician assistant, or nurse practitioner and an entry made in the resident's medical care record.

Orders involving abbreviations and chemical symbols may be carried out only if the facility has a standard list of abbreviations and symbols and the list is available to the nursing staff.

A person may not administer medications ~~that have been~~ prepared by another person, other than a pharmacist.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(9).

Law Implemented: SDCL 34-12-13(9).

44:70:07:09. Self-administration of drugs. In an assisted living center approved for medication administration, a resident with the cognitive ability to understand may self-administer medications. At least every three months, the licensed nurse, the physician, physician assistant, or nurse practitioner shall evaluate and record the continued appropriateness of the resident's ability to self-administer medications. Transferred from 44:70:07:07

The determination shall state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with the provisions of chapter 44:70:07. In an assisted living center, a resident may self-administer drugs if the registered nurse (if applicable) and physician, physician assistant, or nurse practitioner have determined the practice to be safe. Residents may not keep medications on their person or in their room without a medication order allowing self-administration. Transferred from 44:70:09:13

If any resident is permitted to self-administer medications, the facility's policies and procedures related to self-administered drugs shall include a description of the responsibilities of the resident, the resident's family members, and the facility staff. The facility shall provide written educational material explaining to the resident and the resident's family the resident's rights and responsibilities associated with self-administration. Transferred from 44:70:07:07

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference:

CHAPTER 44:70:08

RESIDENT RECORD SERVICES

Section

44:70:08:01	Record service.
44:70:08:02	Authentication.
44:70:08:03	Retention of medical or care records.
44:70:08:04	Storage of medical or care records.
44:70:08:05	Destruction of medical or care records.
44:70:08:06	Disposition of medical or care records on closure of facility or transfer of ownership.

44:70:08:03. Retention of medical or care records. A facility shall retain medical or care records for a minimum of ten years from the actual visit date of service or resident care. The retention of the record for ten years is not affected by additional and future visit dates. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years, but no less than ten years from the actual visit date of service or resident care. ~~Initial, annual, and significant change resident assessment records, as required in §§ 44:70:06:15 and 44:70:08:01, shall be retained for ten years from the actual visit date of resident care. The retention of the record for ten years is not affected by additional and future visit dates.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(10).

Law Implemented: SDCL 34-12-13(10).

Cross-Reference: Storage of medical or care records, § 44:70:08:04.

44:70:08:05. Destruction of medical or care records. After the minimum retention period of ten years from the actual visit date of care required by the provisions of § 44:70:08:03, the medical or care record may be destroyed at the discretion of the facility. Before the destruction of the medical or care record, the facility shall prepare and retain a resident index or abstract. The resident index or abstract shall include:

- (1) Name;
 - (2) ~~Medical record number;~~
 - (3) ~~(2)~~ Date of birth;
 - (4) ~~(3)~~ Summary of visit dates;
 - (5) ~~(4)~~ Name of attending or admitting physician, physician assistant, or nurse practitioner;
- and
- (6) ~~(5)~~ Diagnosis or diagnosis code.

The facility shall destroy the medical or care record in a way that maintains confidentiality.

Source: 38 SDR 115, effective January 9, 2012.
General Authority: SDCL 34-12-13(10).
Law Implemented: SDCL 34-12-13(10).

CHAPTER 44:70:09

RESIDENTS' RIGHTS AND SUPPORTIVE SERVICES

Section

44:70:09:01	Application of chapter -- Residents' rights policies.
44:70:09:02	Facility to inform resident of rights.
44:70:09:03	Facility to provide information on available services.
44:70:09:04	Notification when resident's condition changes.
44:70:09:05	Notification of resident's room assignment or rights change.
44:70:09:06	Right to manage financial affairs.
44:70:09:07	Choice in planning care.
44:70:09:08	Privacy and confidentiality.
44:70:09:09	Quality of life.
44:70:09:10	Grievances.
44:70:09:11	Availability of survey results.
44:70:09:12	Right to refuse to perform services.
44:70:09:13	Self administration of drugs. Transferred to 44:70:07:09
44:70:09:14	<u>13</u> Admission, transfer, and discharge policies.
44:70:09:15	<u>14</u> Spiritual needs.
44:70:09:16	<u>15</u> Activities program.

44:70:09:02. Facility to inform resident of rights. Prior to or at the time of admission, a facility shall inform the resident, both orally and in writing, of the resident's rights and of the rules governing the resident's conduct and responsibilities while living in the facility. The resident shall acknowledge in writing that the resident received the information. During the resident's stay the facility shall notify the resident, both orally and in writing, of any changes to the original information. The information shall contain the following:

- (1) The resident's right to exercise the resident's rights as a resident of the facility and as a citizen of the United States;
- (2) The resident's right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising the resident's rights;
- (3) The resident's right to have a person appointed to act on the resident's behalf. If a resident has been adjudged incompetent or incapacitated, the resident's rights shall be exercised by the person appointed under state law to act on the resident's behalf. If a resident has not been adjudged to be incompetent or incapacitated, the resident's rights may be exercised by the legal surrogate recognized under state law, whether statutory or as recognized by the courts of the state

to act on the resident's behalf. The facility shall record and keep up to date the ~~appointed person's~~ address and phone number of the residents preferred contact;

(4) The resident's right to access records pertaining to the resident. The resident may purchase photocopies of the resident's records or any portions of them. The cost to the resident may not exceed community standards for photocopying. The facility shall provide the photocopies within two working days of the request;

(5) The resident's right to be fully informed of the resident's total health status, including functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health, psychosocial status, and sensory and physical impairments;

(6) The resident's right to refuse treatment and to refuse to participate in experimental research. A resident's right to refuse treatment does not absolve a facility from responsibility to provide for necessary medical services and treatment. Any resident who refuses treatment shall be informed of the results of that refusal, plus any alternatives that may be available; and

(7) The resident's right to formulate a durable power of attorney for health care as provided in SDCL chapter 59-7 and a living will declaration as provided in SDCL chapter 34-12D; and

(8) The resident's right to receive visitors. Visiting hours and policies of the facility shall permit and encourage the visiting of residents by friends and relatives. Visitors shall not cause a disruption to the care and services residents receive or infringement on other residents' rights or place an undue burden on the facility.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:03. Facility to provide information on available services. A facility shall provide the following information in writing to each resident:

(1) A list of services available in the facility and the charges for such services. The facility shall specify which items and services are included in the services for which the resident may not be charged, those other items and services that the facility offers and for which the resident may be charged, and the amount of any such charges;

(2) A description of how a resident may protect personal funds;

(3) A list of names, addresses, and telephone numbers of client advocates;

(4) A description of how to file a complaint with the department concerning abuse, neglect, and misappropriation of resident property;

(5) A description of how the resident can contact the resident's physician, physician assistant, or nurse practitioner, including the name and specialty of the physician;

(6) A description of how to apply for and use Medicare and Medicaid benefits, and the right to establish eligibility for Medicaid, including the addresses and telephone numbers of the nearest office of the South Dakota Department of Social Services and of the United State Social Security Administration;

(7) A description of the bed-hold policy that indicates the length of time the bed will be held for the resident, any policies regarding the held bed, and readmission rights of the resident; and

(8) A description explaining the responsibilities of the resident and family members regarding self-administered medication.

A signed and dated admission agreement between the resident or the resident's legal representative and the facility shall include subdivisions (1) to (8), inclusive, of this section. The resident or resident's legal representative and the facility shall complete the admission agreement before or at the time of admission and before the resident has made a commitment for payment for proposed or actual care. ~~The agreement may not include ambiguous or misleading information and may not be in conflict with this chapter.~~ The agreement shall be printed for ease of reading by the resident. ~~If the agreement exceeds three pages, the agreement shall contain a table of contents or an index of principal sections.~~ Any change in the information shall be given to the resident or the resident's legal representative as a signed and dated addendum to the original agreement.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:04. Notification when resident's condition changes. A facility shall immediately inform the resident, consult with the resident's physician, physician assistant, or nurse practitioner, and, if known, notify the resident's legal representative or interested family member when any of the following occurs:

- (1) An accident involving the resident that results in injury or has the potential for requiring intervention by a physician, physician's assistant, or nurse practitioner;
- (2) A significant change in the resident's physical, mental, or psychosocial status;
- (3) A need to alter treatment significantly; or
- (4) A decision to transfer or discharge the resident from the facility.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:08. Privacy and confidentiality. A facility shall provide for privacy and confidentiality for the resident, ~~including the resident's accommodations, medical treatment, written and telephone communications, personal care, visits, and meeting of family and resident groups.~~ A facility is not required to provide a private room for each resident. A facility shall permit residents to perform the following:

- (1) To send and receive unopened mail and to have access to stationery, postage, and writing implements at the resident's own expense;

(2) To access and use a telephone without being overheard;

(3) To visit a spouse or significant other or, if both are residents of the same facility, to share a room ~~with the spouse~~, within the capacity of the facility, upon the consent of both ~~spouses~~ individuals;

(4) Except in an emergency, to have room doors closed and to require knocking before entering the resident's room;

(5) To have only authorized staff present during treatment or activities of personal hygiene;

(6) To retire and rise according to the resident's wishes, as long as the resident does not disturb other residents;

(7) To meet, associate, and communicate with any person of the resident's choice in a private place within the facility;

(8) To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

(9) To approve or refuse the release of personal and care records to any individual outside the facility, except if the resident is transferred to another health care facility or if the release of the record is required by law. With the resident's permission, a facility shall allow the state ombudsman or a representative of the ombudsman access to the resident's medical records.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

Cross-Reference: Record service, § 44:70:08:01.

44:70:09:10. Grievances. A resident or their designated representative may voice grievances without discrimination or reprisal. A resident's grievance may be given in writing or ~~oral~~ verbally and may relate to treatment furnished, treatment that has not been furnished, the behavior of other residents, and infringement of the resident's rights. A facility shall adopt a grievance process and make the process known to each resident and to the resident's ~~immediate family~~ representative. The grievance process shall include the facility's efforts to resolve the grievance and documentation of:

- (1) The grievance;
- (2) The names of the persons involved;
- (3) The disposition of the matter; and
- (4) The date of disposition.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:11. Availability of survey results. ~~A resident may examine the results of the department's most recent survey of the facility and any plan of correction in effect. A facility shall make available, in a place readily accessible to residents, results of the department's most recent survey. Survey results, along with the corresponding Plan of Correction shall be readily available and provided to residents and individuals upon request.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

~~—— **44:70:09:13. Self-administration of drugs.** The determination shall state whether the resident or the nursing staff is responsible for storage of the drug and documentation of its administration in accordance with the provisions of chapter 44:70:07. In an assisted living center, a resident may self-administer drugs if the registered nurse (if applicable) and physician, physician assistant, or nurse practitioner have determined the practice to be safe. **Transferred to 44:70:07:09**~~

~~—— **Source:** 38 SDR 115, effective January 9, 2012.~~

~~—— **General Authority:** SDCL 34-12-13(15).~~

~~—— **Law Implemented:** SDCL 34-12-13(15).~~

~~—— **Cross Reference:**~~

~~—— Medication control, ch 44:70:07.~~

~~—— Optional services, subdivision 44:70:04:14(2).~~

44:70:09:14. ~~44:70:09:13.~~ Admission, transfer, and discharge policies. A facility shall establish and maintain policies and practices for admission, discharge, and transfer of residents that prohibit discrimination based upon payment source. The facility shall notify each resident at or before the time of admission of these policies and practices. The policies and practices shall include the following provisions:

(1) The resident may remain in the facility and may not be transferred or discharged unless the resident's needs and welfare cannot be met by the facility, the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, the safety or health of persons in the facility is endangered by the resident, the resident has failed to pay for allowable billed services as agreed to, or the facility ceased to operate;

(2) The facility shall notify the resident and a family member or client advocate in writing at least 30 days before the transfer or discharge unless a change in the resident's health requires immediate transfer or discharge or the resident has not resided in the facility for 30 days. The written notice shall specify the reason for and effective date of the transfer or discharge and the location to which the resident will be transferred or discharged;

(3) The conditions under which the resident may request or refuse transfer within the facility; and

(4) A description of how the resident may appeal a decision by the facility to transfer or discharge the resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:15. 44:70:09:14. Spiritual needs. The facility shall provide for the spiritual needs of the residents. Any resident's request to see a clergyman shall be honored. No specific religious beliefs or practices may be imposed on any resident contrary to the resident's choice.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

44:70:09:16. 44:70:09:15. Activities program. A planned activities program shall be provided with therapeutic activities designed to meet the needs and interests of each individual resident. Supplies and equipment shall be provided for activities to satisfy the individual interests of each resident.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(15).

Law Implemented: SDCL 34-12-13(15).

CHAPTER 44:70:10

CONSTRUCTION STANDARDS

Section

44:70:10:01	Application of chapter.
44:70:10:02	Resident rooms.
44:70:10:02.01	Modifications.
44:70:10:03	Service area in care units.
44:70:10:04	Dietary department.
44:70:10:05	Food preparation services and equipment.
44:70:10:06	Laundry.
44:70:10:07	Storage rooms.
44:70:10:08	Resident dining and recreation area.
44:70:10:09	Outside area.
44:70:10:10	Secured <u>Memory care</u> unit locations.
44:70:10:11	Employee facilities.
44:70:10:12	Engineering service and equipment areas.
44:70:10:13	Corridor restrictions.
44:70:10:14	Doors.

44:70:10:15	Ceiling heights.
44:70:10:16	Fire extinguisher equipment <u>Transferred.</u>
44:70:10:17	Floor surface finish.
44:70:10:18	Wall and ceiling finish.
44:70:10:19	Elevators.
44:70:10:20	Steam and hot water systems.
44:70:10:21	Ventilating systems.
44:70:10:22	Filters.
44:70:10:23	Ducts.
44:70:10:24	Food service ventilation.
44:70:10:25	Recirculated air systems. <u>Repealed.</u>
44:70:10:26	Plumbing fixtures.
44:70:10:27	Water supply systems.
44:70:10:28	Vacuum breakers.
44:70:10:29	Hot water systems.
44:70:10:30	Drainage systems.
44:70:10:31	Electrical distribution system.
44:70:10:32	Emergency electrical services.
44:70:10:33	Lighting.
44:70:10:34	Receptacles or convenience outlets.
44:70:10:35	Staff call system.
44:70:10:36	Fire alarm systems <u>Transferred.</u>
44:70:10:37	Submittal of plans and specifications.
44:70:10:38	Pipe requirements.
44:70:10:39	Water recreation facilities.

44:70:10:01. Application of chapter. This chapter applies to any new facility and to any renovation, addition, and change in space use of any currently approved existing facility. Accessible and usable accommodations shall be available to the public, staff, and residents with disabilities. ~~Minimum requirements, except as noted in this chapter, are those in "ADA Standards for Accessible Design", September 15, 2010.~~

Each facility shall comply with **NFPA 101 Life Safety Code, 2009 2012 edition.** ~~Each facility shall also comply with the building construction standards of the **International Building Code, 2009 2012 edition.**~~

Each facility providing off-site services shall comply with business occupancy standards or other occupancies standards as applicable for the use of the facility from **NFPA 101 Life Safety Code, 2009 2012 edition,** and construction standards of the **International Building Code, 2009 2012 edition,** for the buildings where these services are offered.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

~~References: "2010 ADA Standards for Accessible Design, Department of Justice", September 15, 2010. Copies may be obtained from the Rocky Mountain Disability and Business Technical Assistance Center, Colorado Springs, CO 80907. Phone: 1-800-949-4232. Cost \$15.00.~~

NFPA 101 Life Safety Code, 2009 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: ~~\$76.50~~ 93.00.

~~International Building Code, 2009 2012 edition. Copies may be obtained from International Code Council, phone 1-800-786-4452. Order@iccsafe.org. Cost: \$85.50 89.00.~~

44:70:10:02. Resident rooms. A resident room shall meet the following requirements:

- (1) A maximum room capacity not exceeding two residents;
- (2) A minimum area, exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules, of 120 square feet (10.8 square meters) in each one-bed room and 200 square feet (18.58 square meters) in each two-bed room. Any sleeping room designed as part of a suite of rooms shall have a minimum area of 100 square feet in each one-bed room and 140 square feet (13 square meters) in each two-bed room. The minimum dimension in a sleeping room may be not less than nine feet six inches (2.74 meters);
- (3) Privacy curtains shall be provided if requested by the resident. Privacy curtains or equivalent built-in devices if installed shall provide full visual privacy that allow access to the toilet room and corridor without entering the roommate's space;
- (4) ~~Have a~~ A window whose sill is not higher than three feet (0.91 meters) above the floor. The floor shall be above grade;
- (5) Have a call cord at each bed for staff calling stations;
- (6) Have a toilet room and lavatory. Each resident toilet room shall be directly accessible for each resident without going through the general corridor. In remodeling projects, one toilet room with handsinks in a resident room may serve two resident rooms, but not more than four beds. For new construction, a toilet room may not be shared between resident rooms. ~~The minimum dimensions of any room containing only a water closet are three feet by six feet (0.91 meters by 1.83 meters). All new construction of toilet rooms shall meet accessibility standards required in § 44:70:10:01~~ All new resident toilet rooms shall be wheelchair accessible;
- (7) Have a ~~locker wardrobe~~ or closet for each resident with an area of at least five square feet (0.465 square meters); and
- (8) Have each resident room door located not more than 200 feet (45.72 meters) from the staff station.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:70:10:02.01. Modifications. Any modification of the requirement listed in subdivision 44:70:10:02(8) may be approved if the following criteria are met:

- (1) The facility fire alarm promptly alerts staff;
- (2) The facility is equipped with an automatic sprinkler system, as defined in § 9.7, automatic sprinklers, of **NFPA 101 Life Safety Code, 2009 2012** edition;
- (3) An automatic fire alarm dialer as defined in § 9.6.4, Emergency Force Notification, of **NFPA 101 Life Safety Code, 2009 2012** edition, to summon the local fire department;
- (4) The residents have an evacuation time that shows them capable of evacuation in eight minutes or less;
- (5) An approved call system is provided in accordance with subdivision 44:70:02:17(3). Staff must also carry a device that registers an audible and visual signal when the call system is activated;
- (6) Residents are capable of self-preservation and require limited assistance of one staff;
- (7) The facility has a plan in place to increase staffing during times of resident illnesses; and
- (8) The staff person carries a device that can summon assistance from other staff.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

Reference: **NFPA 101 Life Safety Code, 2009 2012** edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone 1-800-344-3555. Cost: \$76.50 93.00.

44:70:10:03. Service area in care units. Each care unit shall contain a service area that includes the following, ~~except if the service is not required for licensure category:~~

- (1) Staff station, staff office, or work area with convenient access to handwashing facilities;
- (2) Communications;
- (3) Storage for supplies and staff personal effects;
- (4) Staff or public toilet room;
- (5) Medicine room adjacent to the staff station with a sink, refrigerator, locked storage, and facilities for preparation and administration of medication;
- (6) Clean linen storage area in an enclosed storage space;
- (7) Equipment storage room on each resident wing or floor for storage of resident care equipment;
- (8) Resident bathing facilities containing one shower, bathtub, or whirlpool for each 16 beds not individually served; and

(9) Janitor's closet for storage of housekeeping supplies and equipment that contains a floor receptor or service sink. The janitor's closet space and equipment may be incorporated into the laundry room.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

44:70:10:04. Dietary department. Construction, equipment, and installation of the dietary department shall comply with or exceed the minimum standards in §§ 44:02:07:01, 44:02:07:02, and 44:02:07:04 to 44:02:07:95, inclusive, in the Food Service Code. The installation shall comply with § 44:70:10:05 unless a commercially prepared dietary service, meals, or disposables are used. If a commercial service is used, dietary areas and equipment shall meet the requirements for sanitary storage, processing, and handling.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-1-17, 34-12-13(3).

Law Implemented: SDCL 34-12-13(3).

~~**Note:** Article 44:02, Lodging and Food Service, Administrative Rules of South Dakota, contains the Food Service Code and may be obtained from Legislative Mail, 1320 East Sioux Avenue, Pierre, South Dakota 57501, telephone (605) 773 4935, for \$4.08.~~

44:70:10:05. Food preparation services and equipment. The dietary area shall be completely cleanable by conventional methods. The location and design of the dietary area shall enable convenient handling of incoming supplies, preparation of meals, including tray service, and disposal of rubbish and garbage. Equipment and space provided shall include the following:

(1) In dietary areas serving 17 beds or more, a dishwashing area including a commercial dishwasher supplied with 180 degree Fahrenheit (82 degrees centigrade) rinse water or a chemical sanitizing cycle, a soiled dish table with sufficient work space, a garbage disposal, a garbage can, a clean dish table with room for at least three dish racks, and handwashing facilities. ~~If a commercial undercounter dishwasher is used, the unit shall be raised above the floor so that the rack height is level with the adjacent dish tables.~~ Dietary areas located in resident areas serving 16 residents or less may use an undercounter dishwasher;

(2) A dry food storage area with at least 1.5 linear feet (0.46 meters) of shelving 20 inches (0.51 meters) wide for each resident bed and a functional aisle;

(3) Refrigerated storage space providing at least 1.5 cubic feet (0.042 cubic meters) of refrigerated space and 0.5 cubic feet (0.014 cubic meters) of freezer space per resident bed with sufficient refrigerated storage space located within the food production area for convenient food preparation;

(4) Aisles within the dietary area not less than three feet (0.91 meters) wide. Aisles adjoining equipment locations with doors or aisles utilized for cart traffic shall be at least four feet (1.22 meters) wide;

(5) Pot and pan washing facilities, including a three-compartment sink, with 18 inch drainboards on both sides and drying and storage facilities for pots and pans;

(6) A vegetable preparation area with a two-compartment sink with drainboards on both side;

(7) Cart storage areas;

(8) Waste disposal facilities;

(9) Janitor's closet with storage for housekeeping supplies and equipment and floor receptor or service sink;

(10) Food production equipment sized and designed to prepare a complete meal for the total bed complement and for personnel, guests, day-care residents, or other catering services;

(11) Food holding and transportation equipment capable of protecting food from contamination and of maintaining cold food at 41 degrees Fahrenheit (5 degrees centigrade) or below and hot food at ~~140~~ 135 degrees Fahrenheit (~~60~~ 57.2 degrees centigrade) or above during the total serving period;

(12) Ventilation equipment sized and designed to effectively remove steam, heat, cooking vapors, and grease from food production areas, dishwashing areas, and serving areas;

(13) Handwashing facilities that are convenient to each work area, consisting of hot and cold running water, towel dispenser with single-service towels or hand drying device and hand cleanser;

(14) In dietary areas serving 17 beds or more, a staff toilet facility within or conveniently located adjacent to the dietary area; and

(15) In dietary areas serving 17 beds or more, an ice maker with bin or self-dispensing ice maker. A built-in dispensing ice maker in a refrigerator may be used in any facility with a capacity of less than 17 beds. Any ice maker accessible to residents shall be self-dispensing.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (2), and (4).

Law Implemented: SDCL 34-12-13(1), (2), and (4).

44:70:10:09. Outside area. Each ~~secure~~ memory care unit shall have for the resident's use ~~access to~~ an outdoor area ~~that is~~ enclosed by a fence. The fence shall extend to a minimum of six feet above grade level and be designed to be safe for resident contact. Hard surface walking paths shall be provided in the outside area. If the access to the outside area is through a required building exit, the area shall be large enough to allow movement of all affected residents 50 feet away from the building structure, ~~a distance of 50 feet and have a~~ A gate to exit the outside area, to allow emergency egress, and allow access for maintenance shall be provided.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(3) and (14).

Law Implemented: SDCL 34-12-13(3) and (14).

44:70:10:10. Secured Memory care unit locations. Any ~~secured~~ memory care unit shall be located at grade level and have direct access to an outside area.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:70:10:12. Engineering service and equipment area. The requirements for engineering service and equipment areas for each facility are as follows:

- ~~— (1) A boiler room with two remote doors to the exit or exit access;~~
- ~~— (2) An engineer's office which may be combined with a maintenance shop;~~
- ~~— (3) Mechanical and electrical equipment rooms;~~
 - (1) (4) A maintenance shop with at least one room;
 - (2) (5) A storage room for building maintenance supplies;
 - (3) (6) A refuse room for trash storage that is conveniently located to the service entrance or exterior trash receptacles; and
 - (4) (7) A yard equipment storage room or exterior building.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:70:10:15. Ceiling heights. ~~Boiler room ceilings may not be less than two feet six inches (0.76 meters) above the main boiler header and connecting piping, with a minimum height of nine feet (2.74 meters).~~ The ceilings of corridors, storage rooms, resident toilet rooms, and other minor rooms may not be less than seven feet, eight inches (2.34 meters). The ceilings of all other rooms may not be less than seven feet, ten inches (2.39 meters).

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:70:10:16. Fire extinguisher equipment. ~~Fire extinguisher equipment shall be installed and maintained by the following standards:~~

- ~~— (1) Portable fire extinguishers shall have a minimum rating of 2-A:10-B:C;~~
- ~~— (2) Fire extinguisher equipment shall be inspected monthly and maintained yearly; and~~
- ~~— (3) Approved fire extinguisher cabinets shall be provided throughout the building with one cabinet for each 3,000 square feet (278.7 square meters) of floor space or fraction thereof. The fire resistance rating of corridor walls shall be maintained at recessed fire extinguisher cabinets. The glazing in doors of fire extinguisher cabinets shall be wire glass or other safety glazing material.~~

~~Fire extinguisher cabinets shall be identified with a sign mounted perpendicular to the wall surface above the cabinet. Transferred to § 44:70:03:03.~~

~~Source: 38 SDR 115, effective January 9, 2012.~~

~~General Authority: SDCL 34-12-13(3).~~

~~Law Implemented: SDCL 34-12-13(3).~~

44:70:10:21. Ventilating systems. The ventilating systems shall maintain temperatures, minimum air changes of outdoor air an hour, minimum total air changes, and relative humidities as follows:

(1) For all other occupied areas, the facility shall be able to maintain a minimum temperature of 75 degrees Fahrenheit (23.9 degrees centigrade) at winter design conditions with a minimum of at least two total air changes an hour. Each air supply and air exhaust system shall be mechanically operated. ~~Any fan serving an exhaust system shall be located at the discharge end of the system.~~ Any outdoor ventilation air intake, other than for an individual room unit, shall be located as far away as practicable but not less than 25 feet (7.62 meters) from any plumbing vent stack and the exhaust from any ventilating system or combustion equipment. The bottom of any outdoor intake serving a central air system shall be located as high as possible but not less than ~~six~~ three feet (1.83 0.91 meters) above the ground level ~~or, if installed through the roof, three feet (0.91 meters) above the roof level.~~ Each mechanical ventilation system shall be designed and balanced to provide make-up air and safe pressure relationships between adjacent areas to preclude the spread of infections and assure the health of the occupants. Each room supply air inlet, recirculation inlet, and exhaust air outlet shall be located with the grill or diffuser opening not less than three inches (0.08 meters) above the floor. A corridor may not be used to supply air to or exhaust air from any room, ~~except that exhaust air from a corridor may be used to ventilate a bathroom, a toilet room, or a janitor's closet opening directly on the corridor.~~ Continuous mechanical exhaust ventilation shall be provided in all soiled areas, wet areas, and storage rooms. In any unoccupied service area, ventilation may be reduced or discontinued if the health and comfort of the occupants are not compromised;

(2) Each cooking appliance, other than a microwave oven, shall be provided with exhaust ventilation to the exterior of the building to remove cooking odors, heat, and moisture. Each cooking appliance installed in a resident room shall be equipped with a recirculating fan ~~and equipped with a charcoal filter~~ or may be exhausted to the exterior to remove cooking odors, heat, and moisture;

(3) Each vehicle parking garage shall be provided with carbon monoxide detection to activate exhaust ventilation of six air changes each hour or to open the garage door if the area of the garage is under 1000 square feet. ~~A sign shall be posted at the front of each parking space advising the driver to shut off the engine;~~ and

(4) Each crawl space shall be provided with mechanical ventilation of at least 0.5 air changes each day or be provided with open perimeter venting as required by the **International Building Code**.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (3), and (4).

Law Implemented: SDCL 34-12-13(1), (3), and (4).

Reference: **International Building Code**, 2009 2012 edition. Copies may be obtained from International Code Council, phone: 1-800-786-4452. Cost: ~~\$85.50~~ 89.00.

44:70:10:22. ~~Filters~~ Filtration. A ventilation system using a recirculated central air system shall be equipped with a ~~minimum of two~~ filter beds. Filter bed ~~number one~~ shall be located upstream of the conditioning equipment and shall have a minimum efficiency of ~~30 percent~~ MERV 7. ~~Each supply air unit shall have a minimum of 30 percent effective filters. Each central ventilation system shall have a minimum of 30 percent effective filters. Each central ventilation system shall have a minimum of 30 percent effective filters. Each common use area, i.e., dining, lounge, and corridor, shall have 30 percent effective filters on air supply systems. All air supply systems serving solely administrative areas must have a minimum or 30 percent effective filters. One inch furnace filter media is required for a forced air furnace and ventilation system. These filter efficiencies shall be warranted by the manufacturer and shall be based on the ASHRAE 52.2, 2007 2012 edition, American Society of Heating, Refrigeration, and Air Conditioning Engineers dust spot test method with atmospheric dust. Each filter frame shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing duct work. Each joint between filter segments and the enclosing duct work shall be gasketed or sealed to provide a positive seal against air leakage. A manometer shall be installed across each filter bed serving a central air system.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (3), and (4).

Law Implemented: SDCL 34-12-13(1), (3), and (4).

Reference: "ASHRAE 52.2," 2007 2012 edition, American Society of Heating, Refrigeration, and Air Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329. Phone: 1-800-527-4723. Cost: \$39.

44:70:10:23. Ducts. Each duct shall be constructed of iron, steel, aluminum, or other approved metal or materials as defined in **NFPA 101 Life Safety Code**, 2009 2012 edition. Duct linings, coverings, vapor barriers, and the adhesives used for applying them shall have a flame spread classification of not more than 25 and a smoke developed rating of not more than 50 using **NFPA 255**, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." ~~A fire and smoke damper shall be provided on each opening through each required two-hour or greater fire resistive wall or floor and on each opening through the walls of a vertical shaft, unless the shaft has a fire and smoke damper at the floor level. Access for maintenance shall be provided at each damper. Each duct system serving hoods shall be constructed of corrosion resistant material. Each cold air duct shall be insulated wherever necessary to maintain the efficiency of the system or to minimize condensation problems.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (3), and (4).

Law Implemented: SDCL 34-12-13(1), (3), and (4).

References: NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." Copies may be obtained from National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Cost \$32 38.50.

NFPA 101 Life Safety Code, 2009 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone 1-800-344-3555. Cost: \$76.50 93.00.

44:70:10:25. Recirculated air systems. ~~Any recirculated air system serving more than one room shall be equipped with an automatic shutdown and a smoke damper activated by a smoke detector and the building fire alarm.~~ Repealed.

Source: 38 SDR 115, effective January 9, 2012.

~~**General Authority:** SDCL 34-12-13(1), (3), and (4).~~

~~**Law Implemented:** SDCL 34-12-13(1), (3), and (4).~~

44:70:10:26. Plumbing fixtures. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material. Each lavatory and sink required in resident room toilets ~~are~~ areas shall have the water supply spout mounted so that the discharge is a minimum of 5 2.5 inches (~~0.13~~ .064 meters) above the rim of the fixture. Handwashing facilities used by medical and care staff, ~~residents~~, and food handlers shall have the water supply spout mounted so that the discharge is a minimum of five inches (0.13 meters) above the rim of the fixture and be equipped with hands-free controls. A single lever device may be used. ~~If a blade handle is used, the handle may not exceed 4.5 inches (0.11 meters) in length, except that a handle on a scrub sink and a clinical sink may not be less than six inches (0.15 meters) long. Each clinical sink shall have an integral trap in which the upper portion of a visible trap seal provides a water surface. If a blade handle is used, proper clearance shall be maintained for operation.~~ An aerator is not approved for use on a faucet spout. A paper towel dispenser or hand-drying device shall be provided at each lavatory and sink used for handwashing. ~~Mirrors or paper towel dispensers with reflective surfaces may not be provided at handwashing facilities in clean utility, central sterilizing, dietary, or other critical areas where grooming could potentially cause contamination.~~

~~Each water closet shall be an elongated bowl type and be equipped with an open front seat.~~

Any shower stall that is not required to be accessible wheelchair transfer or standard roll-in type shall have curb heights not more than five six inches above the finished floor. The shower floor elevation and bathroom finished floor elevation shall be level if possible but the difference in elevation may not exceed three inches.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:70:10:27. Water supply systems. Each water supply system shall supply water to the fixtures and equipment on the upper floors at a minimum pressure of 15 pounds a square inch (1055.9) kilograms a square meter) during maximum demand periods. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture. Hot, cold, and chilled water piping and waste piping on which condensation may

occur shall be insulated. Insulation of each cold and chilled water line shall include an exterior vapor barrier.

~~Each water supply system in a facility shall maintain one part per million free residual chlorine at remote point-of-use fixtures in the facility or may use another bacteriological control method (increasing water temperature range from 122 degrees to 125 degrees Fahrenheit [50-52 degrees centigrade] is acceptable) that has been demonstrated to be equivalent in control of *Legionella*. The facility shall document water temperatures to verify the hot water temperature is being maintained within the acceptable range. The chlorine testing shall be done daily using photocell and light source DPD (N, N, Diethyl p-phenylenediamine) test kits and the test results logged. If testing demonstrates that consistent chlorine levels are maintained, the frequency of testing may be reduced to a level necessary to demonstrate compliance.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (4), and (14).

Law Implemented: SDCL 34-12-13(1), (4), and (14).

44:70:10:29. Hot water systems. Each hot water distribution system over 50 feet (15.24 meters) long shall recirculate to provide hot water at each fixture at all times. The hot water heating equipment shall have sufficient capacity to supply water at the temperatures and amounts indicated in the following:

(1) Three gallons an hour (0.0033 liters a second) for each ~~bed at a temperature range of 122-125 degrees Fahrenheit (50-52 degrees centigrade);~~

(2) Two gallons an hour (0.0020 liters a second) for each bed for dietary ~~use at a temperature of 140 degrees Fahrenheit (60 degrees centigrade); and~~

(3) Two gallons an hour (0.0020 liters a second) per bed for ~~laundry at a temperature of 160 degrees Fahrenheit (71 degrees centigrade).~~

Each storage tank provided shall be fabricated of noncorrosive metal or lined with noncorrosive material.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (4), and (14).

Law Implemented: SDCL 34-12-13(1), (4), and (14).

44:70:10:30. Drainage systems. Each drain line from a sink in which acid wastes may be poured shall be fabricated from an acid resistant material. Any piping over food preparation centers, food service facilities, food storage areas, and other critical areas shall be kept to a minimum and may not be exposed. Special precautions shall be taken to protect these areas from possible leakage of necessary overhead piping systems. The building sewer system shall discharge into a community sewerage system. If such a system is not available, a facility providing sewage treatment that conforms to applicable local and state regulations is required.

Water from a roof system shall be collected and discharged away from the building foundation. Rain gutters with downspouts and splash blocks shall be provided for a pitched roof

system. Provisions shall be made to avoid having water accumulated on sidewalks and parking areas around the building.

~~The building sewer system shall have a cleanout located outside the perimeter of the building foundation.~~

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1), (4), and (14).

Law Implemented: SDCL 34-12-13(1), (4), and (14).

Cross-Reference: Individual and small on-site wastewater systems, ch 74:53:01.

~~**44:70:10:36. Fire alarm systems.** A manually operated, electrically supervised fire alarm system shall be installed in each facility. Transferred to § 44:70:03:04.~~

~~— **Source:** 38 SDR 115, effective January 9, 2012.~~

~~— **General Authority:** SDCL 34-12-13(3).~~

~~— **Law Implemented:** SDCL 34-12-13(3).~~

44:70:10:37. Submittal of plans and specifications. Plans and specifications for new construction shall be submitted to the department for evaluation of function and fire protection including concealed spaces. The department's approval shall be obtained before beginning construction. Any modification during construction shall be submitted to the department for review and shall be approved prior to the modification. A written narrative describing the intended use of the proposed construction shall accompany the plans and specifications.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

44:70:10:38. Pipe requirements. Each piping system for potable water shall be installed to eliminate any dead-end runs of piping. Before placing any potable water system in service, the piping system shall be disinfected in accordance with the South Dakota Plumbing Commission standards in article 20:54 and certification shall be available from the installer showing the method used, date, test procedure used to verify chlorine concentrations, and date the system was flushed and placed in service.

Any pipe covering, vapor barrier, and adhesive used for applying them shall have a flame spread of not more than 25 and a smoke emission factor of not more than 50 when tested in accordance with the **NFPA 101 Life Safety Code**, 2009 2012 edition.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 34-12-13(1) and (3).

Law Implemented: SDCL 34-12-13(1) and (3).

Reference: NFPA 101 Life Safety Code, ~~2009~~ 2012 edition, National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, P.O. Box 9101, Quincy, MA 02269-9101. Phone: 1-800-344-3555. Cost: ~~\$76.50~~ 93.00.

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