ADMINISTRATIVE RULES

of

SOUTH DAKOTA

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HEALTH

ARTICLE 44:70

ASSISTED LIVING CENTERS

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**ARTICLE 44:70**

**ASSISTED LIVING CENTERS**

Chapter

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**CHAPTER 44:70:01**

**RULES OF GENERAL APPLICABILITY**

Section

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**44:70:01:01.  Definitions.** Terms used in this article mean:

(1)  "Abuse," shown by a criminal conviction for, or substantial evidence of:

(a)  Emotional or psychological abuse as defined in SDCL 22-46-1(4);

(b)  Exploitation as defined in SDCL 22-46-1(5); or

(c)  Physical abuse as defined in SDCL 22-46-1(7);

(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;

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

(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;

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

(6)  "Communicable disease," as defined in § 44:20:01:01(8);

(7)  "Cognitively impaired," having a deficiency that results in a diminished ability to solve problems, to exercise good judgment in the context of a value system, to remember, and to be aware of and respond to safety hazards;

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

(9)  "Developmental disability," a severe, chronic disability of a person as defined in SDCL 27B-1-18;

(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 one hundred twenty or more hours of classroom instruction in food service supervision, or a certified dietary manager recognized by the Certifying Board for Dietary Managers and who functions with consultation from a dietitian;

(11)  "Dietitian," a person who is registered with the Academy of Nutrition and Dietetics and holds a current license to practice in accordance with SDCL chapter 36-10B;

(12)  "Distinct part," an entire ward or contiguous wards, wing, floor, or building, that is licensed at a specific level, including all beds and related facilities in the unit;

(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;

(14)  "Exploitation," as defined in SDCL 22-46-1(5);

(15)  "Facility," the place of business licensed in accordance with SDCL chapter 34-12 to provide assisted living care for residents;

(16)  "Governing body," an organized body of persons that is ultimately responsible for the quality of care in a health care facility, maintaining the financial viability of the facility, and formulating institutional policy;

(17)  "Healthcare personnel," any employee, staff, or individual working in a healthcare setting;

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

(19)  "Licensed health professional," a physician, physician 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 this state or privilege to practice;

(20)  "Memory care unit," a distinct part of a facility in which the physical environment and design maximizes functioning abilities, promotes safety, and encourages independence for a defined specific population, that is staffed by persons with training to meet the needs of residents admitted to the unit;

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

(22)  "Neglect," as defined in SDCL 22-46-1;

(23)  "Nurse," a registered nurse or a licensed practical nurse who holds a current license to practice in this state in accordance with SDCL chapter 36-9;

(24)  "Nurse aide," a person as defined in § 44:74:01:01(16);

(25)  "Nurse practitioner," a person who practices as a nurse practitioner in accordance with SDCL chapter 36-9A;

(26)  "Pharmacist," a person registered to practice pharmacy in accordance with SDCL chapter 36-11;

(27)  "Physician," a person licensed to practice medicine in accordance with SDCL chapter 36-4;

(28)  "Physician assistant," a person licensed in accordance with SDCL chapter 36-4A;

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

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

(31)  "Rehabilitation services," physical therapy, occupational therapy, respiratory therapy, and speech therapy;

(32)  "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;

(33)  "Resident advocate," an agency responsible for the protection and advocacy of any residents;

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

(35)  "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;

(36)  "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;

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

(38)  "Therapeutic diet," any diet other than a regular diet, excluding low sodium diets, that is ordered by a physician, physician assistant, nurse practitioner, or dietitian as part of the treatment for a disease or clinical condition to increase, decrease, or eliminate certain substances in the diet, and to alter food consistency;

(39)  "Total assistance," full performance of an activity with no participation by the resident for any aspect of the activities of daily living;

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

(41)  "Unlicensed assistive personnel," a person who is not licensed as a nurse in accordance with SDCL chapter 36-9 but who is trained to assist a 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; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13.

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

**44:70:01:02.  Licensure of assisted living centers.** The assisted living center 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; 46 SDR 65, effective November 26, 2019.

**General Authority:** SDCL 34-12-7.

**Law Implemented:** SDCL 34-12-7.

**44:70:01:03.  Name of facility.** Each facility shall designate a pertinent and distinctive name that is used in applying for a license. The facility name may not imply services rendered in excess of the facility's licensure classification. The governing body of the facility or designee must provide prior written notice to the department of any name change for the facility.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-7.

**Law Implemented:** SDCL 34-12-7.

**44:70:01:04.  Bed capacity.** The department shall establish the bed capacity of each facility pursuant to the physical plant and space provisions of this article. The resident census may not exceed the bed capacity for which the facility is licensed. A request by the facility for an adjustment in bed capacity because of change of purpose or construction shall be approved by the department before any changes are made.

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

**General Authority:** SDCL 34-12-7.

**Law Implemented:** SDCL 34-12-7.

**44:70:01:05.  Acceptance and retention of residents.** A facility may only accept and retain residents based on the facility's capabilities to meet the needs of the residents. The facility may accept or retain residents in accordance with the services provided, determined by the governing body, and with written policies and procedures for the following:

(1)  A resident accepted for care by a facility must be housed within the facility;

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

(3)  Healthcare personnel and other personnel essential to maintaining adequate staff may not leave a facility during the personnel's 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 facility that accepts or retains a resident with developmental disabilities or mental illness shall provide facilities and programs consistent with the needs of the individual residents;

(5)  If any person other than a resident is accepted for care or to participate in any program, service, or activity, that person must be included in the evaluation of central use, activity, and dining spaces; staffing of nursing, dietary, and activity programs; and the provision of an infection control program. No service provided to the person may infringe upon the needs of the residents; and

(6)  A facility may admit and retain any resident who is able to:

(a)  Complete activities of daily living of mobility or ambulation, dressing, toileting, including the provision of incontinence, catheter, or ostomy care, personal hygiene; and bathing independently or with assistance of personnel. Assistance may be provided according to the provisions of § 44:70:05:06;

(b)  Feed oneself with set up or supervision. Assistance may be provided according to the provisions of § 44:70:06:16;

(c)  Complete the resident's medication administration, including injections, or have medications administered by qualified personnel;

(d)  Remain free from the need for restraints, except for admission to a memory care unit;

(e)  Receive skilled services that may be provided by the facility nurse, a licensed or otherwise appropriately credentialed therapist, Medicaid-certified home health agency personnel, or a Medicaid-certified hospice provider; and;

(f)  Maintain conditions that are stable and controlled that do not require frequent nursing care or frequent visits or notifications to a physician, physician assistant, or nurse practitioner.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

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

**44:70:01:06.  Joint occupancy.** The use of a portion of a building for purposes other than that covered by the license may be approved by the department only if it can be shown that joint occupancy is not detrimental to the welfare of the residents. The area shall be open to inspection by the department.

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

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

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

**44:70:01:07.  Reports to the department.** Each facility shall report the following events to the department through the department's online reporting system within twenty-four hours of the discovery of the event:

(1)  An attempted suicide;

(2)  Any cause to suspect abuse or neglect of a resident;

(3)  Any death resulting from other than natural causes that originated on facility property;

(4)  A missing resident;

(5)  A fire in the facility;

(6)  Any loss of utilities, emergency generator, fire alarm, sprinklers, and other critical equipment necessary for operation of the facility for more than twenty-four hours; or

(7)  Any unsafe drinking water samples, or samples from pools or spas.

The facility shall conduct an internal investigation for the event and report the results to the department no later than five working days after the event.

The department may request additional information from the facility and investigate any reported event.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:01:07.01.  Reports to the Department of Human Services, law enforcement or state's attorney.** A facility shall report an event involving an attempted suicide or any reasonable cause to suspect abuse or neglect of any resident by any person within twenty-four hours of the discovery of the event orally or in writing to the Department of Human Services, to a law enforcement officer, or to the state's attorney of the county in which the facility is located.

**Source:** 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:01:08.  Plans of correction.** Within ten days of the receipt of the statement of deficiencies, each licensed facility shall submit to the department a written plan of correction for any 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; 46 SDR 65, effective November 26, 2019.

**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.

A modification specified in this section may be requested in writing by the facility.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:01:10.  Scope of article.** Nothing in article 44:70 limits or expands the rights of any healthcare personnel to provide services within the scope of the personnel's license, certification, or registration, as provided by law.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**CHAPTER 44:70:02**

**PHYSICAL ENVIRONMENT**

Section

44:70:02:01 Sanitation.

44:70:02:02 Pets.

44:70:02:03 Cleaning methods and facilities.

44:70:02:04 Chemicals used to sanitize, disinfect, or sterilize.

44:70:02:05 Housekeeping cleaning methods and equipment.

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44:70:02:17 Occupant protection.

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.

**44:70:02:01.  Sanitation.** The facility shall be designed, constructed, maintained, and operated to minimize the sources and transmission of infectious diseases to residents, personnel, visitors, and the community at large. This requirement shall be accomplished by providing the physical resources, personnel, and technical expertise necessary to ensure good public health practices for institutional sanitation.

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

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

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

**44:70:02:02.  Pets.** No pet kept in or visiting a facility may negatively affect the well-being of any resident.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**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 all work areas, equipment, utensils, and medical devices used for residents' care. Common-use equipment shall be disinfected after each use.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:02:04.  Chemicals used to sanitize, disinfect, or sterilize.** The label of chemicals used to sanitize, disinfect, or sterilize shall indicate registration with the Environmental Protection Agency as effective, safe, and approved for the chemical's intended use.

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

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

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

**44:70:02:05.  Housekeeping cleaning methods and equipment.** The facility shall establish written housekeeping procedures for the cleaning of all areas in the facility and copies made available to all housekeeping personnel. All parts of the facility shall be kept clean, neat, and free of visible soil, litter, and rubbish. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition. Hazardous cleaning solutions, chemicals, poisons, and substances shall be labeled, stored in a safe place, and kept in an enclosed section separate from other cleaning materials. Cleaning of areas designed for resident use shall be performed by dustless methods that minimize the spread of pathogenic organisms in the facility's atmosphere. Cleaning shall include all environmental surfaces within the facility that are subject to contamination from dust, direct splash, or pathogenic organisms except medical equipment, supplies, or devices that are the responsibility of other services or departments of the facility.

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

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

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

**44:70:02:06.  Food service.** Food service must be provided by a facility licensed in accordance with SDCL chapter 34-12 or food service establishment licensed in accordance with SDCL chapter 34-18 that is inspected by a local, state, or federal agency. The facility shall meet the safety and sanitation procedures for food service in §§ 44:02:07:01, 44:02:07:02, and 44:02:07:04 to 44:02:07:95, inclusive. A facility of seventeen beds or more shall have a mechanical dishwasher. The facility shall have the space, equipment, supplies and mechanical systems for efficient, safe, and sanitary food preparation if any part of the food service is provided by the facility.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(4).

**Law Implemented:** SDCL 34-12-13.

**Cross Reference:** Food Service Code, chapter 44:02:07.

**44:70:02:07.  Handwashing facilities.** Handwashing facilities consisting of hot and cold running water dispensed through a mixing faucet controlled with blade handles or other hands-free controls, a towel dispenser with single-service towels or a hand-drying device, and hand cleanser must be located in dietary areas, utility rooms, staff stations, physical therapy rooms, laundry rooms, and all toilet rooms. A handwashing facility must be provided in each resident room or in a bath or toilet room connected directly to the room. If existing faucets and controls are replaced or changed, they must be replaced with mixing faucets controlled with blade handles or other hands-free controls.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(4).

**Law Implemented:** SDCL 34-12-13.

**44:70:02:08.  Linen.** The supply of bed linens must equal two times the licensed capacity of the facility. The facility shall develop and implement written procedures for the storage and handling of soiled and clean linens. The facility must 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 linens; any isolation clothing; and housekeeping items must 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 must be one hundred sixty degrees Fahrenheit or seventy-one 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 one hundred twenty degrees Fahrenheit or forty-nine degrees centigrade. The facility may wash commingled residents' personal clothing, common-use linens, and any isolation clothing in water temperatures less than one hundred twenty degrees Fahrenheit if:

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

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

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

(4)  The facility ensures personnel monitor 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 must be negatively pressurized. The facility shall establish procedures for the handling and processing of contaminated linens. Soiled linen must be placed in closed containers prior to transportation. Clean linens must be transported in containers used exclusively for clean linens, must be kept covered with dust covers at all times while in transit or in hallways, and must be stored in areas designated exclusively for this purpose. The department must review and approve any written request for any modification of the requirements of this section before any changes are made.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:02:09.  Infection prevention and control.** The infection prevention and control program must utilize the concept of standard precautions as the basis for infection prevention and control. Bloodborne pathogen control must be maintained according to the requirements contained in 29 C.F.R. § 1910.1030, in effect on April 3, 2012. The facility shall designate healthcare personnel to be responsible for the implementation of the infection prevention and control program including monitoring and reporting activities. The facility shall have written procedures that govern the use of aseptic techniques and procedures in all areas of the facility. Each facility shall develop written policies and procedures for the handling and storage of potentially hazardous substances. The facility shall provide orientation and continuing education to all personnel on the cause, effect, transmission, prevention, and elimination of infections. Each facility shall develop a written policy for evaluation and reporting of any personnel with a reportable infectious disease.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1), 34-22-9.

**Law Implemented:** SDCL 34-12-13.

**44:70:02:10.  Plumbing.** The facility's plumbing system shall be designed and installed in accordance with the provisions of SDCL 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.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**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 must be obtained from a public water system or, in its absence, from a supply approved by the Department of Agriculture and Natural Resources. Each private water supply must have a water sample bacteriologically tested at least monthly. The volume of water must be sufficient for the needs of the facility, including firefighting requirements. The hot water system must be capable of supplying the work and resident areas with water at the required temperatures. The maximum temperature of hot water for resident use must be one hundred twenty-five degrees Fahrenheit or fifty-two degrees centigrade. The minimum temperature of hot water for resident use must be at least one hundred degrees Fahrenheit or thirty-eight degrees centigrade. A facility shall monitor water temperatures monthly, and maintain documentation in accordance with facility policy.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**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.

**44:70:02:11.01.  Water supply -- Control of *Legionella*.** Each water supply system in a facility, must maintain one part per million free residual chlorine at remote point-of-use fixtures in the facility or the facility may use another bacteriological control method that has been demonstrated to be equivalent in control of *Legionella*. Increasing the water temperature range from one hundred twenty-two degrees to one hundred twenty-five degrees Fahrenheit or fifty degrees to fifty-two degrees centigrade is acceptable for the control of *Legionella*. The facility shall document water temperatures to verify the hot water temperature is being maintained within the acceptable range for the control of *Legionella*. If hot water temperatures are outside the acceptable range, the facility must conduct chlorine testing using photocell and light source N, N, Diethyl-p-phenylenediamine test kits, and the facility shall log the test results. If testing demonstrates that consistent chlorine levels are maintained, the facility may conduct monthly testing.

**Source:** 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:02:12.  Ventilation.** Electrically powered exhaust ventilation shall be provided in all soiled areas, wet areas, toilet rooms, and storage rooms. Clean storage rooms may also be ventilated by supplying and returning air from the building's air-handling system.

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

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

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

**44:70:02:13.  Lighting.** Any space occupied by people, machinery, and equipment within buildings and their approaches and parking lots shall have artificial lighting at a level for general safety. Each resident bedroom shall have general lighting and night lighting. A reading light shall be provided for each resident who can benefit from one. Each required exit shall be equipped with continuous emergency lighting. Emergency power shall be provided if the main source of power fails.

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

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

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

**44:70:02:14.  Refuse and waste disposal.** Garbage, refuse, and waste shall be handled and disposed of in a safe and sanitary manner. Final disposal of all refuse and waste shall comply with articles 74:27 and 74:28. Putrescible garbage shall be removed at a frequency to contain or prevent odors, insects, and vermin.

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

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

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

**44:70:02:15.  Insect and rodent control.** The facility shall take effective measures to protect against the entrance into the facility and the breeding or presence on the premises of rodents, flies, roaches, and other vermin. The facility may use chemical substances of a poisonous nature in accordance with the requirements of this section to control or eliminate various types of vermin. The substances shall be properly colored and labeled to identify them as poisons, shall be used and stored in a safe manner, and may not be stored with food or drugs used for human consumption. Extreme care shall be taken to prevent any poisons from contaminating food or food products.

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

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

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

**44:70:02:16.  Sewage disposal.** Sewage shall be disposed of in a public sewage works system or, in its absence, in a manner approved by the department in accordance with the provisions of SDCL chapter 34A-2.

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

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

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

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

(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)  Provide an emergency staff call system for resident use to summon assistance from staff. The system must be capable of being easily activated by a resident and must register both visually and audibly at the staff station. The system must be utilized and maintained in a manner to ensure it is a consistent and effective means for a resident to alert staff of the need for assistance. The call system must also:

(a)  Utilize fixed call stations convenient for resident use and activated by a pull cord or other department-approved device. The fixed call stations must be located at each bed, toilet, and bathing facility used by a resident;

(b)  Be a wireless system with a device carried by a resident; or

(c)  Have 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 must 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 must be locked or alarmed. The alarm must be audible at a designated staff station and may not automatically silence if the door is closed;

(6)  Prohibit the use of a portable space heater, portable halogen lamp, household-type electric blanket, or household-type heating pad in a facility;

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

(8)  Ensure that any clothes dryer must have a galvanized metal transition duct for exhaust or flexible transition duct listed and labeled in accordance with UL 2158A; and

(9)  Ensure that the storage and transfilling of oxygen cylinders or containers meet the requirements of the NFPA 99 Health Care Facilities, 2012 Edition, chapter 11. A resident may store in the resident's room a maximum of three E-cylinders or seventy-two cubic feet, or 2.040 cubic meters of oxygen on an as-needed basis, in addition to oxygen in use by the resident.

If a facility admits or retains a resident not capable of self-preservation, the facility must meet **NFPA 101 Life Safety Code**, 2012 edition, health care occupancy standards in chapter 18 or 19, or equip the facility with complete automatic sprinkler protection.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

NFPA 99 Health Care Facilities Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $111.00.

**44:70:02:18.  Area requirements for currently licensed resident rooms.** Each currently licensed resident room shall have at least 75 square feet (6.98 square meters) of floor space per bed, with at least three feet (0.91 meters) between beds in a multi-bed room exclusive of closets and wardrobes; and 95 square feet (8.83 square meters) in a single room, exclusive of closets and wardrobes. Each resident shall have for individual use in the assigned room a bed, a bedside stand, and a chair appropriate to the needs and comfort of the resident. Each facility shall have ten square feet (0.93 square meters) of general storage for each bed. A total of 37.5 square feet (3.48 square meters) of recreational, activity, dining, and occupational therapy area for each bed and each day care resident shall be provided in the facility. Each facility shall be constructed, equipped, and operated to maintain the privacy and dignity of all residents. In a multi-bed room, each bed shall be able to be separated from the other beds by privacy curtains. Existing assisted living centers shall maintain the square footage of resident rooms, dining rooms, and common space required at the time of plan approval.

**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).

**Cross-Reference:** Area requirements for new construction or renovations, subdivision 44:70:10:02(2).

**44:70:02:19.  Physical plant changes.** A facility shall submit any proposed change by new construction, remodeling, or change of use of an area to the department. Any change shall have the approval of the department before it is made.

**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).

**44:70:02:20.  Location.** The location of a facility must promote the health, treatment, comfort, safety, and well-being of persons accepted and retained for care. A facility must be served by passable roads and accessible by personnel, visitors, and firefighting services.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(3)(14).

**Law Implemented:** SDCL 34-12-13.

**44:70:02:21.  Heating and cooling.** The temperature in any occupied space in the facility shall be maintained between 68 and 80 degrees Fahrenheit during waking hours and not lower than 64 degrees Fahrenheit during sleeping hours. Each resident's space may be maintained outside the required range if desired 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).

**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 exceptions.

44:70:03:03 Fire extinguisher equipment.

44:70:03:04 Fire alarm systems.

**44:70:03:01.  Fire safety code requirements.** Each facility must meet applicable fire safety standards in NFPA 101 Life Safety Code, 2012 edition in chapter 32 or 33. An automatic sprinkler system is not required in an existing facility unless significant renovations or remodeling of greater than fifty percent of the facility occurs, provided that any existing automatic sprinkler system must remain in service. An attic heat detection system is not required in an existing facility unless significant renovations or remodeling of greater than fifty percent of the facility occurs.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** **NFPA 101 Life Safety Code**, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

**44:70:03:02.  General fire safety.** Each facility must be constructed, arranged, equipped, maintained, and operated to avoid undue danger to the lives and safety of 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 facility shall conduct fire drills quarterly for each shift. If the facility is not operating with three shifts, the facility must conduct monthly drills to provide training for all personnel. At least two personnel must be on duty at all times, unless the department has approved a staffing exception requested by the facility. In a multilevel facility, at least one personnel must be on duty on each floor containing occupied beds.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Cross-References:**

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

Staffing exceptions, § 44:70:03:02.01.

**44:70:03:02.01.  Staffing exceptions.** The following are staffing exceptions for facilities as referenced in § 44:70:03:02:

(1)  For each facility with ten beds or fewer, at least one healthcare personnel must be on duty. The 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 that shows them capable of prompt evacuation of three minutes or less as defined in § 3.3.76, evacuation capability, of NFPA 101 Life Safety Code, 2012 edition;

(2)  For each facility with eleven to sixteen beds, inclusive, at least one healthcare personnel, who is awake, must be on duty 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 of three minutes or less as defined in § 3.3.76, evacuation capability, ofNFPA 101 Life Safety Code, 2012 edition;

(3)  For each facility with sixteen beds or fewer, that is a stand-alone facility not physically attached to a nursing facility or hospital, at least one healthcare personnel, who is awake, must be on duty 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, 2012 edition;

(c)  An automatic fire alarm dialer as defined in § 9.6.4, Emergency Forces Notification, of NFPA 101 Life Safety Code, 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 that shows them capable of evacuation in five minutes or less;

(4)  For each facility with sixteen beds or fewer, physically attached to a nursing facility or hospital, at least one healthcare personnel, who is awake, must be on duty 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, 2012 edition;

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

(d)  A fire 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 that shows them capable of evacuation in eight minutes or less; and

(5)  For each facility with seventeen to twenty-five beds, physically attached to a nursing facility or hospital, one healthcare personnel, who is awake, is required during the 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, 2012 edition;

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

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

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

(f)  An approved call system is provided in accordance with 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 healthcare personnel carries a device that can summon assistance from the attached nursing facility 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; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** **NFPA 101 Life Safety Code**, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

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

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

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

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

**Source:** 38 SDR 115, effective January 9, 2012; transferred from § 44:70:10:16, 46 SDR 65, effective November 26, 2019.

**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 must be installed in each facility.

**Source:** 38 SDR 115, effective January 9, 2012; transferred from 44:70:10:36, 46 SDR 65, effective November 26, 2019.

**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 Personnel 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 and testing requirements.

44:70:04:10.01 TB education for healthcare personnel.

44:70:04:11 Care policies.

44:70:04:12 Memory care units.

44:70:04:13 Resident admissions.

44:70:04:13.01 Repealed.

44:70:04:14 Repealed.

44:70:04:15 Quality assessment.

44:70:04:16 Discharge planning.

44:70:04:17 Physician, physician assistant, or nurse practitioner services.

44:70:04:18 Admission and retention of residents with communicable diseases.

**44:70:04:01.  Governing body.** Each facility operated by a limited liability partnership, a corporation, or a political subdivision shall have an organized governing body legally responsible for the overall conduct of the facility. If the facility is operated by an individual or partnership, the individual or partnership shall carry out the functions in this chapter pertaining to the governing body. The governing body shall establish and maintain administration policies, procedures, or bylaws governing the operation of the facility.

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

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

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

**44:70:04:02.  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 a facility must be a licensed health professional, be a graduate from an accredited institution of a higher learning program for long-term healthcare or health service administration program, or complete a department-approved assisted living administrator course. If completing a department-approved assisted living administrator course, the facility administrator must be supervised by a qualified administrator with at least two years of experience as an administrator until the course is complete. The administrator must provide a certificate of completion and an attestation statement that the administrator has read article 44:70 to the department before the administrator is considered qualified.

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:03.  Personnel.** The facility shall have a sufficient number of qualified personnel to provide effective and safe care. Personnel on duty must be awake at all times, except as provided in § 44:70:03:02.01. Any supervisor must be eighteen years of age or older. The facility shall make available written job descriptions and personnel policies and procedures to personnel of all departments and services. The facility may not knowingly employ any person with a conviction for abusing another person. The facility shall establish and follow policies regarding special duty or personnel on contract.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:04.  Personnel training.** The facility shall have a formal orientation program and an ongoing education program for all healthcare personnel. Ongoing education programs must cover the required subjects annually. These programs must be completed within thirty days of hire for all healthcare personnel and must include the following subjects:

(1)  Fire prevention and response;

(2)  Emergency procedures and preparedness, including responding to resident emergencies and information regarding advanced directives;

(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)  Nutritional risks and hydration needs of residents;

(9)  Abuse and neglect;

(10)  Problem solving and communication techniques related to individuals with cognitive impairment or challenging behaviors if admitted and retained in the facility; and

(11)  Any additional healthcare personnel education necessary based on the individualized resident care needs provided by the healthcare personnel to the residents who are accepted and retained in the facility.

Any personnel whom the facility determines will have no contact with residents are exempt from the training required by subdivision (8).

Current professional and technical reference materials and periodicals must be made available for personnel.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:05.  Personnel health program.** The facility shall have a personnel health program for the protection of the residents. All personnel must be evaluated by a licensed health professional for a reportable communicable disease that poses a threat to others before assignment to duties or within fourteen days after employment including an assessment of previous vaccinations and tuberculin skin tests. The facility may not allow anyone with a communicable disease, during the period of communicability, to work in a capacity that would allow spread of the disease. Any personnel absent from duty because of a reportable communicable disease that may endanger the health of residents and fellow personnel may not return to duty until they are determined by a physician, physician assistant, or nurse practitioner, or designee, to no longer have the disease in a communicable state.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(5).

**Law Implemented:** SDCL 34-12-13.

**Cross-Reference:** Definitions and reportable diseases and conditions, ch 44:20:01.

**44:70:04:06.  Admissions or retention of residents.** The governing body of the facility shall establish and maintain admission, transfer, and discharge policies, with written evidence to assure the residents admitted to and retained in the facility are within the licensure classification of the facility or its distinct part. The facility may admit and retain, on the orders of a physician, physician assistant, or nurse practitioner, only those residents for whom it can provide care safely and effectively.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**Cross-Reference:** Acceptance and retention of residents, § 44:70:01:05.

**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 the resident is admitted and annually during the influenza season. Documentation of the vaccination or refusal must be recorded in the resident's care record.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

**Law Implemented:** SDCL 34-12-13(1)(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 assistant, or nurse practitioner recommends immunization, the facility shall encourage a resident to obtain an immunization for pneumococcal pneumonia within 14 days of admission. Documentation of the vaccination or refusal must be recorded in the resident's care record.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:04:09.  Disease prevention.** Each facility shall provide an organized infection control program for preventing, investigating, and controlling infection. The facility shall establish written policies regarding visitation in the various services and departments of the facility. Any visitor who has an infectious disease, who has recently recovered from such a disease, or who has recently had contact with such a disease shall be discouraged from entering the facility.

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

**General Authority:** SDCL 34-12-13(1) and (5).

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

**44:70:04:10.  Tuberculin screening and testing requirements.** Each facility shall develop criteria to screen healthcare personnel and residents for *Mycobacterium* tuberculosis (TB) based on the Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019. Each facility shall establish policies and procedures for conducting TB risk assessment that include the key components of responsibility, surveillance, and containment. The frequency of repeat screening depends upon annual facility risk assessment results. Any resident identified as asymptomatic upon admission as short stay or anticipated stay of thirty days or less is not required to have a tuberculin skin test or a TB blood assay test.

Tuberculin screening requirements for healthcare personnel and residents are as follows:

(1)  Each healthcare personnel or resident shall receive an initial individual TB risk assessment that is documented and the two-step method of tuberculin skin test or a TB blood assay test to establish a baseline within twenty-one days of employment or admission to a facility. Any two documented tuberculin skin tests completed within a twelve-month period prior to the date of admission or employment are considered two-step. A TB blood assay test completed within a twelve-month period prior to the date of admission or employment is an adequate baseline test. Skin testing or TB blood assay tests are not necessary if a new healthcare personnel or resident transfers from one licensed healthcare facility to another licensed healthcare facility within this state if the facility received documentation from the transferring healthcare facility, healthcare personnel, or resident, of the last skin or blood assay TB testing having been completed within the prior twelve months. Skin testing or TB blood assay tests are not necessary if documentation is provided by the transferring healthcare facility, healthcare personnel, or resident, of a previous positive reaction to either test. Any healthcare personnel or resident who has a newly recognized positive reaction to the skin or TB blood assay test must have a medical evaluation and a chest X-ray to determine the presence or absence of the active disease;

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

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

(4)  Each healthcare personnel or facility resident identified at increased risk for TB because of an occupational risk or current or planned immunosuppression shall receive an annual TB risk screening.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019. "Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report," May 17, 2019 / 68(19); pages 439–443. Copies are available at no cost at <https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm>.

**44:70:04:10.01.  TB education for healthcare personnel.** All healthcare personnel shall receive TB education annually. TB education shall include information on TB risk factors, the signs and symptoms of TB disease, and TB infection control policies and procedures of the facility.

**Source:** 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:11.  Care policies.** Each facility shall establish and maintain policies, procedures, and practices that follow accepted standards of professional practice to govern care, and related medical or other services necessary to meet the residents' needs. Each facility shall establish and maintain policies and procedures for the management of adult day care clients and respite care residents if the facility offers those services.

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

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

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

**44:70:04:12.  Memory care units.** Each facility with a 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 must be documented in the resident's chart and must be reviewed periodically by the physician, physician assistant, or nurse practitioner;

(2)  Therapeutic programming must be provided to residents by the facility and must be documented by the facility in the overall plan of care;

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

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

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

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

**44:70:04:13.  Resident admissions.** Before admission to a facility, each resident shall have written orders from a physician, physician assistant, or nurse practitioner of symptoms and diagnoses and a physical examination certifying the resident is in reasonably good health.

The facility shall develop written communication describing the resident care and services provided in the facility. The facility shall provide the written communication to the resident's physician, physician assistant, or nurse practitioner prior to or upon admission, yearly, and after a significant change of condition of the resident.

The facility shall evaluate and document each resident's care needs at the time of admission, thirty days after admission, and annually thereafter, to determine if the facility can meet the needs for each resident. The resident evaluation tool must address:

(1)  Nursing care needs;

(2)  Medication administration needs;

(3)  Cognitive status, as shown by tasks performed routinely by a person; utilizing physical and social environmental features; to manage life situations, meal preparation, self-administration of medications, telephone use, housekeeping, laundry, handling finances, shopping, and use of transportation;

(4)  Mental health status;

(5)  Physical abilities including activities of daily living, ambulation, and the need for assistive devices; and

(6)  Dietary needs.

**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; transferred from § 44:04:04:12, 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:13.01.  Facility form -- Contents.** Repealed.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**44:70:04:14.  Optional services.** Repealed.

**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; 41 SDR 109, effective January 5, 2015; 46 SDR 65, effective November 26, 2019.

**44:70:04:15.  Quality assessment.** Each facility shall provide for on-going evaluation of the quality of services provided to residents. Components of the quality assessment evaluation shall include establishment of facility standards; review of resident services to identify deviations from the standards and actions taken to correct deviations; resident satisfaction surveys; utilization of services provided; and documentation of the evaluation and report to the governing body.

**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).

**44:70:04:16.  Discharge planning.** A facility shall have policies and procedures for discharge planning including the person responsible, members of the discharge planning team, a list of all area agencies and resources, and a description of the process. An outside caregiver may be included in any discharge planning conference.

The facility shall initiate planning with applicable agencies to meet identified needs, and a resident must be offered assistance to obtain needed services upon discharge. Information necessary for coordination and continuity of care must be made available to whomever the resident is discharged and to each referral agency as provided by the discharge plan.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:04:17.  Physician, physician assistant, or nurse practitioner services.** Each resident shall designate an attending physician, physician assistant, or nurse practitioner upon admission. Emergency and arranged medical care must be provided in accordance with written policies and procedures of the facility. A physician, physician assistant, or nurse practitioner shall see each resident at intervals in keeping with the resident's condition, but at least once a year.

**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; 26 SDR 96, effective January 23, 2000; 29 SDR 81, effective December 11, 2002; transferred from § 44:04:05:05, 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:04:18.  Admission and retention of residents with communicable diseases.** A facility may admit a resident who is infected with a communicable disease that is reportable to the department under SDCL 34-22-12 if the facility provides appropriate infection control measures to prevent the spread of the communicable disease. If the facility admits a resident with any of these diseases or antibiotic resistant organisms, or if after admission, a resident is suspected of having a communicable disease or antibiotic resistant organism, the following conditions must be met:

(1)  All healthcare personnel shall have received education related to infection control measures and information about the state's reportable diseases list;

(2)  The facility shall have written procedures and protocols for healthcare personnel to follow to avoid exposure to the resident's blood or body fluids; and

(3)  The facility shall have a written infection control policy and procedures in practice that prevent the spread of a communicable disease.

**Source:** 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(14).

**Law Implemented:** SDCL 34-12-13, 34-22-9.

**CHAPTER 44:70:05**

**NURSING AND RELATED CARE SERVICES**

Section

44:70:05:01 Nursing policies and procedures.

44:70:05:02 Resident care plans, service plans, and programs.

44:70:05:03 Resident care.

44:70:05:04 Intermittent nursing care.

44:70:05:05 Hospice services.

44:70:05:06 Total activities of daily living assistance.

44:70:05:07 Care of the resident with cognitive impairment.

**44:70:05:01.  Nursing policies and procedures.** The facility shall establish and maintain policies and procedures that provide nurses and other healthcare personnel with methods of meeting the facility's administrative and technical responsibilities in providing care to residents. The policies must include:

(1)  The noting of diagnostic and therapeutic orders;

(2)  The assignment of the nursing care of residents;

(3)  Administration and control of medications;

(4)  Assessment and documentation by nurses;

(5)  Documentation by healthcare personnel;

(6)  Infection control;

(7)  Resident safety;

(8)  Delineation of orders from nonphysician practitioners; and

(9)  Activities of daily living to maintain each resident's physical functioning and personal care.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:05:02.  Resident care plans, service plans, and programs.** The facility shall provide safe and effective care from the day of admission through the development and implementation of a written care plan or service plan for each resident. The care plan or service plan must address personal care, and the medical, physical, mental, and emotional needs of the resident. The facility shall establish and implement procedures for the assessment and management of symptoms including pain.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:05:03.  Resident care.** The facility shall employ or contract with a licensed nurse who assesses and documents that the resident's individual personal care, and medical, physical, mental and emotional needs, including pain management, have been identified and addressed. Any outside services utilized by a resident shall comply with and complement facility care policies. Each resident shall receive daily care by facility personnel as needed to keep skin, nails, hair, mouth, clothing, and body clean and healthy. The facility shall provide linens, equipment, and basic toiletries for personal care and for other activities of daily living commensurate with the needs of the resident served.

**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; 26 SDR 96, effective January 23, 2000; transferred from § 44:04:06:11, 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:05:04.  Intermittent nursing care.** A facility shall limit nursing services or rehabilitation services provided to a resident to less than eight hours per day and twenty-eight hours each week. The facility shall maintain documentation of the skilled nursing services or rehabilitation services to ensure the needs of the resident are addressed, including a planned completion date based on the assessments conducted. Unlicensed personnel of a facility may not accept any delegated skilled tasks from any nonemployed, noncontracted skilled nursing or therapy providers licensed pursuant to SDCL chapters 36-9, 36-10, and 36-31.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:05:05.  Hospice services.** Each facility offering hospice services, as defined in § 44:79:01:01(14), shall provide services to a terminally ill person and arrange for those services from a Medicaid-certified hospice agency under a written care plan established and periodically reviewed by the person's attending physician, physician assistant, or nurse practitioner. Unlicensed personnel of a facility may not accept any delegated skilled tasks from any hospice providers licensed under SDCL chapter 36-9.

A facility that admits or retains a resident who has requested hospice services shall have an order identifying the terminal illness. The facility shall have unlicensed assistive personnel on duty to administer medications to a resident receiving hospice services. At least two personnel must be on duty at all times if the care needs of the resident require additional staffing or if the resident is not capable of self-preservation. Family members may assist with the care of the resident. The facility and hospice agency shall develop a written care plan or service plan that delineates responsibilities. The facility must be equipped with an automatic sprinkler system if a resident becomes incapable of self-preservation. A facility without an automatic sprinkler system shall implement discharge planning to a safe environment prior to the resident becoming incapable of self-preservation.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:05:06.  Total activities of daily living assistance.** A facility may admit or retain a resident who requires one or two personnel for total assistance with completing activities of daily living. Each direct care personnel shall complete an approved certified nurse aide training program pursuant to article 44:74 or an equivalent program approved by the department before assisting a resident who requires total assistance. In the facility, the registered nurse may be the program coordinator and the primary instructor. The nurse shall conduct and document a nursing assessment for the resident's need of total assistance initially upon requiring the services, upon a significant change in the resident's condition, and at least semi-annually. The facility shall have a nurse to work the day shift at least thirty-two hours per week when any resident requires the assistance of two personnel. A nurse must be on call at all times. A facility that provides total assistance is not eligible for a staffing exception allowed under § 44:70:03:02.01. If a mechanical lift is used, the lift must be operated by at least two personnel with training on the use of the mechanical lift. The facility must document training provided to personnel on the use of the lift. A resident toileting room and bathing room must be large enough to accommodate two-person assistance.

**Source:** 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:05:07.  Care of a resident with cognitive impairment.** Each facility shall use a validated screening tool for evaluation of a resident's cognitive status upon admission, yearly, and after a significant change in condition.

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 equipped with exit alarms installed in compliance with subdivision 44:70:02:17(5).

The facility shall have policies and procedures based on the facility’s capabilities to meet the needs of the residents.

**Source:** 46 SDR 65, effective November 26, 2019.

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

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

**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 and dining arrangements.

44:70:06:08 Written dietetic policies.

44:70:06:09 Written menus.

44:70:06:10 Repealed.

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 Repealed.

44:70:06:15 Nutritional assessments.

44:70:06:16 Person in charge of dietary services.

44:70:06:17 Required dietary inservice training.

44:70:06:18 Dining assistance program.

**44:70:06:01.  Dietetic services.** The facility shall have an organized dietetic service that meets the daily nutritional needs of residents and ensures that food is stored, prepared, distributed, and served in a manner that is safe, wholesome, and sanitary in accordance with the provisions of § 44:70:02:06.

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

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

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

**44:70:06:02.  Food safety.** Hot foods must be held at or above 135 degrees Fahrenheit or 57.2 degrees centigrade and served promptly after being removed from the temperature holding device. Cold foods must be held at or below 41 degrees Fahrenheit or 5 degrees centigrade and served promptly after being removed from the holding device. Milk and milk products must be from a source approved by the state Department of Agriculture and Natural Resources. Fluid milk must 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; 46 SDR 65, effective November 26, 2019; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

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

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

**44:70:06:03.**  **Nutritional adequacy.** The dietetic service shall prepare food that is nutritionally adequate in accordance with the Recommended Dietary Allowances and is chosen from each of the five basic food groups listed in Dietary Guidelines for Americans 2020-2025, United States Department of Agriculture, in accordance with consideration for individual needs and reasonable preferences.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** Dietary Guidelines for Americans 2020-2025, United States Department of Agriculture. Copies may be viewed and printed at no cost at <https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf>.

**44:70:06:04.  Food substitutions.** The facility shall offer reasonable substitutions of equal nutritional value to residents who refuse or are unable to eat the food served.

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

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

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

**44:70:06:05.  Food supply.** The facility shall maintain an on-site supply of perishable and nonperishable foods to meet the requirements of planned menus for three days. A facility shall maintain an additional supply of nonperishable foods as part of the facility's emergency preparedness plan. A facility may use military meals ready to eat in an emergency event according to the facility's emergency response plan.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:06.  Therapeutic diets.** A facility that admits or retains any resident requiring a therapeutic diet, excluding low sodium diets, shall employ or contract with 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 personnel in areas of preparation, service, and monitoring the resident's acceptance of the diet. The frequency of dietitian consultations must be at least quarterly or sooner as determined by the resident's dietary need.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**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 resident and encourage eating in the common dining area. Social needs include mutually compatible seating arrangements, a 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; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:08.  Written dietetic policies.** The facility shall have written policies and procedures that govern all dietetic activities. The policies and procedures must include food handling procedures, length of duration for leftovers, and opened packages of commercially prepared food in accordance with chapter 44:02:07. The facility shall review the policies and procedures yearly and revise as necessary.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(5)(8).

**Law Implemented:** SDCL 34-12-13.

**Cross Reference:** Food Service Code, chapter 44:02:07.

**44:70:06:09.  Written menus.** Any regular or therapeutic menu, including therapeutic diet menu extensions for all diets served in the facility, must be written, prepared, and served as prescribed by each resident's physician, physician assistant, nurse practitioner, or dietician. Each menu must be written at least one week in advance. A dietician shall annually approve, sign, and date each planned menu for all facilities except a facility without therapeutic diet services. The dietician shall review any menu changes from month to month. Each menu as served must meet the nutritional needs of the resident in accordance with the orders of a physician, physician assistant, nurse practitioner, or dietician, and Dietary Guidelines for Americans, 2020-2025, United States Department of Agriculture. The facility shall file and retain a record of each menu as served for thirty days.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** Dietary Guidelines for Americans, 2020-2025, United States Department of Agriculture. Copies may be viewed and printed at no cost at <https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf>.

**44:70:06:10.  Preparation of food.** Repealed.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**44:70:06:11.  ServSafe and nutritional needs.** The dietary manager, if employed, and at least one cook shall:

(1)  Successfully complete a ServSafe Food Protection Program and possess a current certificate;

(2)  Successfully complete the Certified Food Protection Professional's Sanitation Course offered by the Dietary Managers Association; or

(3)  Successfully complete equivalent training as determined by the department.

The dietary manager or designated personnel shall monitor the dietetic service to ensure that the nutritional and therapeutic dietary needs for each resident are met. 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; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:12.  Diet manual.** A therapeutic diet manual with a description of all diets served in the facility must be readily available in the facility to healthcare personnel. The manual must have been updated within the last five years.

**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 18, 1995; transferred from § 44:04:07:13, 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:13.  Frequency of meals.** Each facility shall serve at least three meals daily at regular times with not more than a 14-hour span between a substantial evening meal and breakfast.

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

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

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

**44:70:06:14.  Dining arrangements.** Repealed.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**44:70:06:15.  Nutritional assessments.** A registered dietitian shall ensure a nutritional assessment is completed and documented on each new resident on therapeutic diets upon admission; on any resident having a significant change in diet, eating ability, nutritional status, or weight loss or gain; 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, including an assessment of the nutritional adequacy of calories, protein, and fluids shall be performed on any resident with a tube feeding. This nutritional assessment shall be performed by a registered dietitian or a health care provider under SDCL title 36 with the education preparation required to perform an advanced nutritional assessment.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:06:16.  Person in charge of dietary services.** The person in charge of dietary services shall possess a current certificate from:

(1)  A ServSafe Food Protection Course;

(2)  The Certified Food Protection Professional's Sanitation Course from the Dietary Managers Association; or

(3)  Equivalent training as determined by the department.

If the person in charge is not a dietitian, the facility shall schedule dietitian consultations for each resident quarterly or sooner as determined by the dietary needs of the resident. The dietitian shall approve all menus, assess the nutritional status of each resident, with problems identified in the assessment, and review and revise dietetic policies and procedures during scheduled consultations.

**Source:** 29 SDR 81, effective December 11, 2001; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:07:15, 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:17.  Required dietary inservice training.** The person in charge of dietary services or the dietitian shall provide ongoing inservice training for all healthcare personnel providing dietary and food-handling services. Training must be completed within thirty days of hire and annually for any dietary or food-handling personnel and must include the following subjects:

(1)  Food safety;

(2)  Handwashing;

(3)  Food handling and preparation techniques;

(4)  Food-borne illnesses;

(5)  Serving and distribution procedures;

(6)  Leftover food handling policies;

(7)  Time and temperature controls for food preparation and service;

(8)  Nutrition and hydration; and

(9)  Sanitation requirements.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:06:18.  Dining assistance program.** A facility that admits or retains any resident who requires dining assistance shall develop a department-approved dining assistance program. Any personnel providing dining assistance to a resident must be a certified nurse aide or must have completed a department-approved dining assistance program. The program's curriculum must include instruction from a speech-language pathologist licensed in accordance with SDCL ch. 36-37 and a dietitian. The program must consist of a minimum of ten hours of training and clinical experience.

Any personnel providing dining assistance to a resident shall work under the supervision of a nurse. A registered nurse shall assess a resident before the resident participates in a dining assistance program. A resident who has difficulty swallowing, recurrent lung aspirations, or tube feeding may not participate. A dietitian shall document any special nutritional needs and instructions on the resident's care plan or service plan. The facility shall have a nurse to work the day shift at least thirty-two hours a week. A nurse shall be on call at all times.

**Source:** 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(5)(8)(14).

**Law Implemented:** SDCL 34-12-13.

**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.

44:70:07:05 Control and accountability of medications.

44:70:07:06 Drug disposal.

44:70:07:07 Medication administration.

44:70:07:08 Medication records and administration.

44:70:07:09 Self-administration of medications.

44:70:07:10 Emergency opioid antagonist storage and administration.

**44:70:07:01.  Policies and procedures.** Each facility shall establish and implement written policies and procedures for medication control that include:

(1)  A requirement that each resident's prescribing physician, physician assistant, or nurse practitioner provide to the facility electronic or written signed orders for:

(a)  Any medications taken by the resident;

(b)  Authorization for medications kept on the person or in the room of the resident; and

(c)  Release of medications;

(2)  Provisions for proper storage of prescribed medications so that the medications are inaccessible to residents and 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)  A requirement that a designated personnel of the facility supervise any self-administration of medications by a resident, to include:

(a)  A description of the responsibilities of the resident, the resident's family members, and the facility personnel; 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 medicines due to:

(a)  Resident discharge;

(b)  Resident death;

(c)  Outdated medication; or

(d)  The prescription being discontinued by the physician, physician assistant, or nurse practitioner.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:07:02.  Written orders for medication required.** All medications or drugs taken by or administered to residents shall be ordered electronically or in writing and signed by the prescribing physician, physician assistant, or nurse practitioner.

**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.** The pharmacist shall review the drug regimen monthly of each resident who requires 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 resident to the resident's physician, physician assistant, or nurse practitioner, the facility's 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.

**Source:** 38 SDR 115, effective January 9, 201246 SDR 65, effective November 26, 2019.

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

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

**44:70:07:04.  Storage and labeling of medications.** All medications must be stored in a well illuminated, locked storage area that is well ventilated, maintained at a temperature appropriate for medication storage, and inaccessible to residents and visitors at all times. Medications suitable for storage at room temperature must be maintained between fifty-nine and eighty-six degrees Fahrenheit, or between fifteen and thirty degrees centigrade. Medications that require refrigeration must be maintained between thirty-six and forty-six degrees Fahrenheit, or between two and eight degrees centigrade. Poisons and medications prescribed for external use must be stored separately from medications prescribed for internal use, locked, and made inaccessible to residents and visitors.

The medications or drugs of each resident for whom a medication is facility-administered must be stored in the container in which it was originally received and may not be transferred to another container. Single dose medication received by a resident from a physician, physician assistant, or nurse practitioner must be identified as single dose. Each prescription medication container, including manufacturer's complimentary samples, must be labeled with the resident's name; the name of the resident's physician, physician assistant, or nurse practitioner; medication name and strength; directions for use; and prescription date.

A container with a medication that will not be used within thirty days of issue or with contents that expire in less than thirty days of issue must bear an expiration date. If a single-dose system is used, the medication name and strength, expiration date, and a control number must be on the unit dose packet.

If a facility is co-located with a nursing facility or hospital, or has a nurse present at the facility twenty-four hours per day, the facility may procure and stock, including in bulk form, nonlegend medications and administer them in accordance with written policies and procedures that provide for oversight by qualified personnel.

Any container with a worn, illegible, or missing label must be destroyed pursuant to § 44:70:07:06. Licensed pharmacists are responsible for the labeling, relabeling, or altering of labels on medication containers.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:07:05.  Control and accountability of medications.** Medication brought from a resident's home may be used if ordered by the resident's physician, physician assistant, or nurse practitioner and, if prior to administration, the medication is identified as the prescribed medication. No resident may keep medications on the resident's person or in the resident's room without a physician, physician assistant, or nurse practitioner's order allowing self-administration. The facility must receive written authorization from the resident's physician, physician assistant, or nurse practitioner before releasing any medication to a resident upon discharge, transfer, or temporary leave from the facility. The release of medication must 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 receipt through administration, destruction, or return.

**Source:** 38 SDR 115, effective January 9, 201246 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**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 must 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 disposal according to federal and state regulations; or

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

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

Documentation of destruction or disposal of medications must be included in the resident's record. The documentation must include the method of disposition (destruction, disposal, or return to pharmacy); 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 must be physically separated from the medications being used in the facility, and 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; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:07:07.  Medication administration.** A registered nurse shall provide medication administration training pursuant to § 20:48:04.01 to any unlicensed assistive personnel employed by the facility who will be administering medications.

Unlicensed assistive personnel shall receive initial and ongoing resident specific training for medication administration and annual training in all aspects of medication administration occurring at the facility.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:07:08.  Medication records and administration.** A facility shall establish and implement written policies and procedures to check the resident's medication administration records against the physician, physician assistant, or nurse practitioner's orders to verify accuracy. Each medication administered must be recorded in the resident's care record and signed by the individual administering the medication.

Medication errors and drug reactions must be reported to the resident's physician, physician assistant, or nurse practitioner and an entry made in the resident's 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 nurse personnel.

A person may not administer medications prepared by another person, other than a pharmacist.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:07:09.  Self-administration of medications.** A resident with the cognitive ability to safely perform self-administration, may self-administer medications. At least every three months, a registered nurse, or the resident's physician, physician assistant, or nurse practitioner shall determine and record the continued appropriateness of the resident's ability to self-administer medications.

The determination must state whether the resident or healthcare personnel is responsible for storage of the medication and include documentation of its administration in accordance with this chapter.

Any resident who stores a medication in the resident's room or self-administers a medication, must have an order from a physician, physician assistant, or nurse practitioner allowing self-administration.

If any resident is permitted to self-administer medications, the facility's policies and procedures must be in accordance with this chapter. The facility shall provide written educational material explaining to the resident and the resident's representative, the resident's rights and responsibilities associated with self-administration.

**Source:** 38 SDR 115, effective January 9, 2012; transferred from § 44:70:09:13, 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(9)(15).

**Law Implemented:** SDCL 34-12-13.

**44:70:07:10.  Emergency opioid antagonist storage and administration.** A facility may stock opioid antagonists for emergency use if the facility develops and implements written policies and procedures consistent with manufacturer guidelines for the safe storage and use. Opioid antagonists must be stored in a manner that allows access only to individuals qualified to administer the opioid antagonist. Qualified personnel may administer an opioid antagonist in accordance with the facility’s policies and procedures. The facility must provide initial, and annual training to all personnel qualified to administer an opioid antagonist.

**Source:** 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(9)(14).

**Law Implemented:** SDCL 34-12-13.

**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 care records.

44:70:08:04 Storage of care records.

44:70:08:05 Destruction of care records.

44:70:08:06 Disposition of care records on closure of facility or transfer of ownership.

**44:70:08:01  Record service.** Each facility shall maintain a care record on each resident; shall have written procedures for documentation, filing, and retrieval of records; and shall have written policies to safeguard the resident's records against destruction, loss, and unauthorized use. The resident care records shall include the following:

(1)  Admission and discharge data including disposition of unused medications;

(2)  Report of the physician's, physician assistant's, or nurse practitioner's admission physical evaluation for resident;

(3)  Physician, physician assistant, or nurse practitioner orders;

(4)  Medication entries;

(5)  Observations by personnel, resident physician, physician assistant, nurse practitioner, or other persons authorized to care for the resident; and

(6)  Documentation that assures the individual needs of residents are identified and addressed.

**Source:** SL 1975, ch 16, § 1; 4 SDR 14, effective September 14, 1997; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995; 27 SDR 59, effective December 17, 2000; 30 SDR 84, effective December 4, 2003; transferred from § 44:04:09:06, 38 SDR 115, effective January 9, 2012.

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

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

**44:70:08:02.  Authentication.** A facility shall ensure entries to the care record are signed or electronically authenticated. If the facility permits any portion of the care records to be generated by electronic or optical means, policies and procedures shall exist to prohibit the use of authentication by unauthorized users.

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

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

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

**44:70:08:03.  Retention of care records.** A facility shall retain care records for a minimum of five years from the actual visit date of service or resident care. The retention of the record for five years is not affected by additional and future visit dates. Records of minors must 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.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

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

**44:70:08:04.  Storage of care records.** A facility shall provide for filing, safe storage, and easy accessibility of care records. The care records must be preserved as original records or in another readily retrievable and reproducible form. Care records must be protected against access by unauthorized individuals. All care records must be retained by the health care facility upon change of ownership.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**Cross-Reference:** Disposition of care records on closure of facility or transfer of ownership, § 44:70:08:06.

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

(1)  Name;

(2)  Date of birth;

(3)  Summary of visit dates;

(4)  Name of attending or admitting physician, physician assistant, or nurse practitioner; and

(5)  Diagnosis.

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:08:06.  Disposition of care records on closure of facility or transfer of ownership.** If a facility ceases operation, the facility must provide for the safe storage and prompt retrieval of care records and the resident indexes and abstract specified in § 44:70:08:05. The facility may arrange storage of care records with another health care facility of the same licensure classification, transfer care records to another health care provider at the request of the resident, relinquish care records to the resident or the resident's legal representative, or arrange storage of remaining care records with a third-party vendor who provides secure storage of healthcare records. At least thirty days before closure, the facility shall notify the department in writing indicating the provisions for the safe preservation of care records and the location of the care records, and shall publish or share in the nearest newspaper or the facility's website the location and disposition arrangements of the care records.

If ownership of the facility is transferred, the new owner must maintain the care records in accordance with this chapter.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

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

**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, procedures, and policies.

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 Repealed.

44:70:09:13 Transferred.

44:70:09:14 Admission, readmission, transfer, and discharge policies.

44:70:09:15 Spiritual needs.

44:70:09:16 Activities program.

**44:70:09:01.  Application of chapter -- Residents' rights policies.** An assisted living center shall establish policies consistent with this chapter to protect and promote the rights 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).

**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 must contain:

(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 must 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 address and phone number of the resident's appointee;

(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 must be informed of the results of that refusal, plus any alternatives that may be available;

(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 in accordance with SDCL 34-12-67. Visiting hours and policies of the facility must permit and encourage the visiting of residents by friends and relatives. Visitors may not cause a disruption to the care and services residents receive or infringe on other residents' rights or place an undue burden on the facility.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13, 34-12-67.

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

(1)  A list of items and services available in the facility and the charges for the items and services, and items and 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;

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

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

(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 States 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 must include information described in subdivisions (1) through (8), inclusive. 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 must be printed in a manner to ensure ease of reading by the resident prior to signing. Any change in the admission agreement must be signed and dated by the resident or the resident's legal representative as an addendum to the original agreement.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**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 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; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:09:05.  Notification of resident's room assignment or rights change.** A facility shall promptly notify the resident and, if known, the resident's legal representative, as specified in SDCL 34-12C-3, or interested family member if there has been a change in the resident's room or roommate assignment or if there has been a change in the resident's rights.

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

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

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

**44:70:09:06.  Right to manage financial affairs.** A resident may manage personal financial affairs. A facility may not require any resident to deposit any personal funds with the facility. If the resident chooses to deposit funds with the facility and gives written authorization, the facility shall hold the funds in accordance with the provisions of SDCL 34-12-15.1 to 34-12-15.10, inclusive. This section does not apply to any facility that does not manage a resident's personal funds.

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

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

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

**44:70:09:07.  Choice in planning care.** A resident may choose a personal attending physician, physician assistant, or nurse practitioner, be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being, and participate in planning care and treatment or changes in care or treatment.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**Cross-References:**

Right to choose own physician, physician assistant, or nurse practitioner unimpaired by public health programs -- Misdemeanor, SDCL 34-1-20.

Rights of authorized person as incapacitated person, SDCL 34-12C-6.

Liability of health care provider -- Liability of authorized decision maker, SDCL 34-12C-7.

**44:70:09:08.  Privacy and confidentiality.** A facility shall provide for privacy and confidentiality for the resident. A facility shall permit residents:

(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, within the capacity of the facility, upon the consent of both residents;

(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 personnel 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 care records.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

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

**44:70:09:09.  Quality of life.** A facility shall provide care and an environment that contributes to the resident's quality of life, including:

(1)  A safe, clean, comfortable, and homelike environment;

(2)  Maintenance or enhancement of the resident's ability to preserve individuality, exercise self-determination, and control everyday physical needs;

(3)  Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;

(4)  Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property;

(5)  Retention and use of personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents; and

(6)  Support and coordination to assure pain is recognized and addressed appropriately.

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

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

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

**44:70:09:10.  Grievances.** A resident or the resident's designated representative may voice grievances without discrimination or reprisal. A resident's grievance may be given in writing or 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 representative. The grievance process must 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; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:09:11.  Availability of survey results.** Survey results, along with the corresponding plan of correction, shall be readily available and provided to residents and other individuals upon request.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:09:12.  Right to refuse to perform services.** Repealed.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**44:70:09:13.  Transferred to § 44:70:07:09.**

**44:70:09:14.  Admission, readmission, transfer, and discharge policies.** A facility shall establish and maintain policies and procedures for admission, readmission, 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 procedures. The policies and procedures must include the following provisions:

(1)  The resident may not be transferred or discharged unless the resident's needs and safety 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 ceases to operate.

The facility shall conduct an evaluation or assessment of each resident to determine if the facility is able to meet the needs of the resident. The determination must be discussed with the resident or the resident's designated representative and documented in accordance with §§ 44:70:01:05 and 44:70:05:03. If the facility is not able to meet the needs of the resident, discharge planning in accordance with § 44:70:04:16 must be coordinated with the facility to which the resident is to be transferred or discharged, the resident, and family member or designated representative to an appropriate level of care to meet the resident's individualized needs;

(2)  The facility shall notify the resident or designated representative and state ombudsman in writing at least thirty days before the transfer or discharge of the resident. If the resident's health requires immediate transfer or discharge, the thirty days notice is not required. The written notice must specify the reason, effective date, and the location to which the resident will be transferred or discharged; and

(3)  The facility shall provide to the resident or designated representative a description of how the resident may appeal a decision by the facility to transfer or discharge the resident including the right to a fair hearing.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**44:70:09:15.  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.  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 Memory care unit locations.

44:70:10:11 Personnel 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 Transferred.

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 Filtration.

44:70:10:23 Ducts.

44:70:10:24 Food service ventilation.

44:70:10:25 Repealed.

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 Transferred.

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, or change in space use of any currently licensed existing facility. Accessible and usable accommodations must be available to the public, staff, and residents with disabilities.

Each facility shall comply with NFPA 101 Life Safety Code, 2012 edition.

Each facility providing off-site services shall comply with business occupancy standards and other occupancies standards as applicable for the use of the facility from NFPA 101 Life Safety Code, 2012 edition, chapter 38.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**References:** NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

**44:70:10:02.  Resident rooms.** A resident room must 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 or 10.8 square meters in each one-bed room and 200 square feet or 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 or 13 square meters in each two-bed room. The minimum dimension in a sleeping room may be not less than nine feet six inches or 2.74 meters;

(3)  Privacy curtains shall be provided if requested by the resident. Privacy curtains or equivalent built-in devices, if installed, must provide full visual privacy that allows access to the toilet room and corridor without entering the roommate's space;

(4)  A window sill not higher than three feet (0.91 meters) above the floor. The floor shall be above grade;

(5)  A call cord at each bed for staff calling stations;

(6)  A toilet room and lavatory. Each resident toilet room must 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. All new resident toilet rooms must be wheelchair accessible;

(7)  A wardrobe or closet for each resident with an area of at least five square feet or 0.465 square meters; and

(8)  Each resident room door located not more than 200 feet or 45.72 meters from the staff station.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:02.01.**  **Modifications.** The department may approve a modification of the requirement in subdivision 44:70:10:02(8) 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, 2012 edition;

(3)  The facility is equipped with an automatic fire alarm dialer, as defined in § 9.6.4, Emergency Force Notification, of NFPA 101 Life Safety Code, 2012 edition, to summon the local fire department;

(4)  The residents have an evacuation time that shows the residents are capable of evacuation in eight minutes or less;

(5)  The facility is equipped with an approved call system in accordance with subdivision 44:70:02:17(3). Staff shall 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)  Healthcare personnel carry a device that can summon assistance from other staff.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

**44:70:10:03.  Service area in care units.** Each care unit must contain a service area that includes the following:

(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; 46 SDR 65, effective November 26, 2019.

**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 must comply with §§ 44:02:07:01, 44:02:07:02, and 44:02:07:04 through 44:02:07:95, inclusive. The installation of food service equipment must comply with § 44:70:10:05 unless the facility uses a commercial service. If a commercial service is used, dietary areas and equipment must meet the requirements for sanitary storage, processing, and handling.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Cross Reference:** Food Service Code, chapter 44:02:07.

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

(1)  In dietary areas serving 17 beds or more, a dishwashing area including a commercial dishwasher supplied with 180 degree Fahrenheit or 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. 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 or 0.46 meters of shelving 20 inches or 0.51 meters wide for each resident bed and a functional aisle;

(3)  Refrigerated storage space providing at least 1.5 cubic feet or 0.042 cubic meters of refrigerated space and 0.5 cubic feet or 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 or 0.91 meters wide. Aisles adjoining equipment locations with doors or aisles utilized for cart traffic shall be at least four feet or 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 sides;

(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 or 5 degrees centigrade or below and hot food at 135 degrees Fahrenheit or 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 must be self-dispensing.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:06. Laundry.** The laundry shall include the following:

(1)  Soiled linen holding room with a storage capacity of 1.75 square feet (0.1626 square meters) of floor area for each bed, to be used for storage, sorting, and weighing of soiled linen;

(2)  Linen cart storage;

(3)  Janitor's closet with storage for housekeeping supplies and equipment and a floor receptor or service sink convenient to the laundry;

(4)  Storage for laundry supplies;

(5)  Lavatories conveniently accessible to soiled, clean, and processing rooms; and

(6)  Laundry processing room with separate soiled and clean work areas with commercial equipment. Any clothes dryer shall have a galvanized metal vent pipe for exhaust.

The space and equipment layout shall be sized and designed to produce quality linen with a work flow that minimizes potential for cross-contamination of clean linen by soiled linen, contaminated equipment, contaminated air, or splash. The laundry department shall be capable of processing 10 pounds (4.54 kilograms) of soiled linen for each bed during a normal work day. Any modification to the standard may be made if the laundry serves only an assisted living center or if the services are contracted to an outside organization. Any modification shall be requested in writing by the facility and approved by the department.

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

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

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

**44:70:10:07.  Storage rooms.** There shall be at least 10 square feet (0.929 square meters) of central storage provided for each bed. General storage shall be concentrated in one area in the facility, but up to 50 percent of the general storage space may be provided on the premises. Each resident shall be provided with an individual closet with an area of at least five square feet (0.465 square meters) that is directly connected to the resident room.

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

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

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

**44:70:10:08.  Resident dining and recreation area.** The total areas set aside for resident dining, recreation, and other central use areas may not be less than 40 square feet (3.71 square meters) for each bed and each adult day-care resident. The resident dining space shall be at least 20 square feet (1.86 square meters) for each bed or adult day resident. Additional space shall be provided for day-care residents or residents if they participate in a day-care program. Storage shall be provided for recreational equipment and supplies.

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

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

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

**44:70:10:09.  Outside area.** Each memory care unit must have for the resident's use an outdoor area enclosed by a fence. The fence must 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 gate to exit the outside area must be provided.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:11.  Personnel facilities.** The locker room for personnel must have lockers and a separate toilet room.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

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

(1)  A maintenance shop with at least one room;

(2)  A storage room for building maintenance supplies;

(3)  A refuse room for trash storage that is conveniently located to the service entrance or exterior trash receptacles; and

(4)  A yard equipment storage room or exterior building.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:13.  Corridor restrictions.** Drinking fountains, telephone booths, fire extinguisher cabinets, and vending machines shall be located so that they do not project into the required width of exit corridors. Handrails installed in corridors shall return to the wall at the ends. Handrails shall be installed with the top 34 to 38 inches, inclusive, from the floor. Handrails shall be installed with 1½ inch spacing between the wall and the handrail.

**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:l4.  Doors.** Any door to a resident room toilet or bathroom shall be equipped with hardware that permits access in any emergency. A pocket or sliding door may not be installed except on a clothes closet or restroom in a resident room. Any hardware on a restroom pocket or sliding door shall provide for ease of operation for a resident with limited mobility. Any door opening onto a corridor, except an elevator door, shall be hinged on the side. Alcoves and similar spaces which generally do not require doors are excluded from this requirement. No door may swing into the corridor except a closet door. Any cross-corridor door shall be provided with vision panels.

**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.** The ceilings of corridors, storage rooms, resident toilet rooms, and other minor rooms may not be less than seven feet, eight inches or 2.34 meters. The ceilings of all other rooms may not be less than seven feet, ten inches or 2.39 meters.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:16.  Transferred to § 44:70:03:03.**

**44:70:10:17.  Floor surface finish.** Floors shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchens and related spaces shall be water-resistant. In all areas where floors are subject to wetting, each floor shall have a nonslip finish. A walking surface that is not flush with an adjacent surface shall be provided with a transition. A change in level up to 1/8 inch may be vertical and without edge treatment. Changes in level between 1/8 inch and 1/2 inch are to have bevel with a slope no greater than 1:2. A change in level may not exceed 1/2 inch. Gaps in the walking surface may not exceed 1/2 inch wide in the direction of travel.

**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).

**44:70:10:18.  Wall and ceiling finish.** Walls shall be washable, and in the immediate area of plumbing fixtures the finish shall be protected from water damage. Wall bases in dietary areas shall be free of spaces that can harbor insects. Each dietary ceiling shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops, and similar spaces.

**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).

**44:70:10:19.  Elevators.** If a resident's bed or a service such as recreation, resident dining, dietary, laundry, central storage, or therapy rooms, is located on other than the first floor, the facility shall have an electrical or electrohydraulic elevator. Each elevator car and platform shall be constructed of noncombustible material, except that material treated with fire retardant may be used if all exterior surfaces of the car are covered with metal. The car door shall have a clear opening of not less than three feet eight inches (1.12 meters). Each elevator shall have automatic two-way leveling with accuracy within plus or minus 0.5 inch (0.01 meters). Each elevator, except a freight elevator, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and to be dispatched directly to any floor.

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

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

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

**44:70:10:20.  Steam and hot water systems.** Boilers must have the capacity to supply the normal requirements of all of the facility's systems and equipment. Supply and return mains and risers of space heating and process steam systems must be valved to isolate the various sections of each system. Each piece of equipment must be valved at the supply and return end. Boilers, smoke breeching, steam supply piping, high pressure steam return piping, and hot water space heating supply and return piping must be insulated with insulation having a flame spread of twenty-five or less and a smoke emission rating of fifty or less using NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials" or equivalent test procedures.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $60.50.

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

(1)  For all occupied areas, the facility shall be able to maintain a minimum temperature of seventy-five degrees Fahrenheit or 23.9 degrees centigrade at winter design conditions with a minimum of at least two total air changes per hour. Each air supply and air exhaust system must be mechanically operated. Any outdoor ventilation air intake, other than for an individual room unit, must be located as far away as practicable but not less than twenty-five feet or 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 must be located as high as possible but not less than three feet or 0.91 meters above the ground level. Each mechanical ventilation system must 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 must be located with the grill or diffuser opening not less than three inches or 0.08 meters above the floor. A corridor may not be used to supply air to or exhaust air from any room, except that air from a corridor may be used to ventilate a bathroom, a toilet room, or a janitor's closet opening directly on the corridor. Mechanical exhaust ventilation must be provided in all soiled areas, wet areas, toilet rooms, and clean 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, must 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 must have a recirculating fan equipped with a charcoal filter, or exhausted to the exterior;

(3)  Each vehicle parking garage must 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 one thousand square feet; and

(4)  Each crawl space must 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, § 1203.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** International Building Code, 2012 edition. Copies may be obtained from International Code Council at <https://shop.iccsafe.org/>. Cost: $81.75.

**44:70:10:22.  Filtration.** A ventilation system using a recirculated central air system must be equipped with a filter bed. The filter bed must be located upstream of the conditioning equipment and must have a minimum efficiency of MERV 7. These filter efficiencies must be warranted by the manufacturer and must be based on the ASHRAE 52.2, 2012 edition, American Society of Heating, Refrigeration, and Air Conditioning Engineers.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** "ASHRAE 52.2," 2012 edition, American Society of Heating, Refrigeration, and Air Conditioning Engineers. Copies are available at no cost at <https://ierga.com/hr/wp-content/uploads/sites/2/2017/10/ASHRAE-52.2-2012.pdf>.

**44:70:10:23.  Ducts.** Each duct must be constructed of iron, steel, aluminum, or other approved metal or materials as defined in NFPA 101 Life Safety Code, 2012 edition, § 32.3.6.2.1. Duct linings, coverings, vapor barriers, and the adhesives used for applying them must have a flame spread classification of not more than twenty-five and a smoke developed rating of not more than fifty using NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." Each cold air duct must be insulated wherever necessary to maintain the efficiency of the system or to minimize condensation problems.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**References:** NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $60.50.

NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $151.50.

**44:70:10:24.  Food service ventilation.** The air from any dining area may be used to ventilate the food preparation area only after it has been passed through a filter with 30 percent efficiency. Each exhaust hood in a food preparation center shall have a minimum exhaust rate of 50 cubic feet a minute for each square foot (0.25 cubic meters a second for each square meter) of hood face area. Each hood over a cooking range shall be equipped with a fire extinguishing system interconnected to shut off the fuel source. A cleanout opening shall be provided every 20 feet (6.10 meters) in a horizontal exhaust duct system serving a hood.

**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).

**44:70:10:25.  Recirculated air systems.** Repealed.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

**44:70:10:26.  Plumbing fixtures.** The material used for plumbing fixtures must be of nonabsorptive acid-resistant material. Each lavatory and sink required in resident toilet rooms must have the water supply spout mounted so the discharge is a minimum of 2.5 inches or 0.064 meters above the rim of the fixture. Handwashing facilities used by medical and care staff and food handlers must have the water supply spout mounted so the discharge is a minimum of five inches or 0.13 meters above the rim of the fixture and be equipped with hands-free controls. A single lever device may be used. An aerator may not be used on a faucet spout. A paper towel dispenser or hand-drying device must be provided at each lavatory and sink used for handwashing.

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:27.  Water supply systems.** Each water supply system must supply water to the fixtures and equipment on the upper floors at a minimum pressure of 15 pounds per square inch or 1055.9 kilograms per square meter during maximum demand periods. Each water service main, branch main, riser, and branch to a group of fixtures must be valved. Stop valves must be provided at each fixture. Hot, cold, and chilled water piping and waste piping on which condensation may occur must be insulated. Insulation of each cold and chilled water line must include an exterior vapor barrier.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:28.  Vacuum breakers.** An antisiphon device or backflow preventer shall be installed on any hose bib and on any fixture to which a hose or tubing can be attached such as a laboratory or a janitor's sink, bedpan flushing attachment, and a handheld shower. Each antisiphon device or backflow preventer shall be installed on any plumbing and equipment where any possibility exists for contamination of the potable water supply.

**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 or 15.24 meters long must recirculate to provide hot water at each fixture at all times. The hot water heating equipment must have sufficient capacity to supply water at the temperatures and amounts indicated in the following:

(1)  Three gallons an hour or 0.0033 liters a second for each bed;

(2)  Two gallons an hour or 0.0020 liters a second for each bed for dietary use; and

(3)  Two gallons an hour or 0.0020 liters a second per bed for laundry.

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

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

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

Water from a roof system must be collected and discharged away from the building foundation. Rain gutters with downspouts and splash blocks must be provided for a pitched roof system. Provisions must be made to avoid having water accumulated on sidewalks and parking areas around the building.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

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

**44:70:10:31.  Electrical distribution system.** All material including equipment, conductors, controls and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards. Each circuit breaker or fusible switch that provides disconnecting means and overcurrent protection for a conductor connected to a switchboard and distribution panel board shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Each overload protective device shall be designed for operating in the ambient temperature conditions. Each lighting and appliance panel board shall be provided for each circuit on each floor. This section does not apply to any emergency system circuit.

**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).

**44:70:10:32.  Emergency electrical service.** A facility with 16 beds or less shall be equipped with automatic emergency lighting for each exit way, staff work area, dining room, medication room, dietary department, room where main electrical panels are located, and power for the alarm system. A facility with 17 beds or larger shall be equipped with an emergency electrical service that includes an automatic generator set and automatic transfer switches serving emergency panels. A facility with 17 beds or larger shall have automatic emergency lighting for each exit way, staff work areas, dining room, medication room, dietary department, medication room, room where main entrance electrical panels are located, boiler room, and exterior lighting serving required exits. A facility with 17 beds or larger shall have automatic emergency power for the fire alarm system, electrical receptacle servicing computers containing resident care records, telephone system, door alarms, and staff call 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).

**44:70:10:33.  Lighting.** Any space occupied by people, machinery, and equipment within a building, any approach to the building and parking lot shall have artificial lighting approved by the department. Each resident's bedroom shall have general lighting of at least 10 footcandles (0.929 lumens per square meter) and night lighting. Plug-in night lights may be provided for each resident in a facility. If task illumination is required, a light with an intensity of at least 30 footcandles (2.79 lumens per square meter) at the work surface shall be provided for each resident. Any resident's reading light and any other fixed light not switched at the door shall have a switch control convenient for use at the luminarie. Illumination of at least 100 footcandles (9.29 lumens per square meter) shall be provided at the medication set-up area. Illumination of at least 50 footcandles (4.65 lumens per square meter) shall be provided at any activity room work table. Illumination of at least 30 footcandles (2.79 lumens per square meter) shall be provided in any dining area, in any physical and restorative therapy area, and at any bathing facility.

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

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

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

**44:70:10:34.  Receptacles or convenience outlets.** Each resident bedroom shall have duplex receptacles as follows: one on each side of the head of each bed; receptacles for luminaries and motorized beds, if used; and one receptacle on another wall. Duplex receptacles for general use shall be installed approximately 50 feet apart in each corridor and within 25 feet of the end of the corridor.

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

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

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

**44:70:10:35.  Staff call system.** A staff call system shall be provided for resident use in accordance with subdivision 44:70:02:17(3). Each staff call system that provides two-way voice communication shall be equipped with an indicating light at each calling station that lights and remains lighted as long as the voice circuit is operating.

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

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

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

**44:70:10:36.  Transferred to § 44:70:03:04.**

**44:70:10:37.  Submittal of plans and specifications.** Plans and specifications for new construction must be submitted to the department for evaluation of function and fire protection. The department's approval must be obtained before beginning construction. Any modification during construction must 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 must accompany the plans and specifications.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019.

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

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

**44:70:10:38.  Pipe requirements.** Each piping system for potable water must be installed to eliminate any dead-end runs of piping. Before placing any potable water system in service, the piping system must be disinfected in accordance with article 20:54, and certification must be available from the installer showing the method used, date of installation, 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 must have a flame spread of not more than twenty-five and a smoke emission factor of not more than fifty when tested in accordance with the NFPA 255, 2006 edition, Standard Method of Test for Surface Burning Characteristics of Building Material.

**Source:** 38 SDR 115, effective January 9, 2012; 46 SDR 65, effective November 26, 2019; 50 SDR 19, effective August 30, 2023.

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

**Law Implemented:** SDCL 34-12-13.

**Reference:** NFPA 255, 2006 edition, "Standard Method of Test for Surface Burning Characteristics of Building Materials." Copies may be ontained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: $60.50.

**44:70:10:39.  Water recreation facilities.** Each water recreation facility operated by a facility and used by any resident or the public, must be designed, constructed, and maintained using the "Recommended Standards for Swimming Pool Design and Operation," 1996 edition.

A facility shall collect and submit at least one water sample weekly for each swimming pool, spa, or other water recreational facility under the owner's or operator's control to an EPA-certified laboratory for bacteriological analysis. The owner or operator shall report any unsafe water sample test results to the department within three days after receipt of such test results. Upon the receipt of an unsafe water sample, the facility must submit two consecutive negative samples to the department to confirm treatment procedures have eliminated the contamination. If a resample test is positive, the facility must close the affected water recreational facility and submit two consecutive negative samples prior to allowing use of the affected water recreational facility. The facility shall use a colorimetric test kit for the monitoring and adjusting of disinfectant levels and pH in a swimming pool, spa, or other water recreational facility. The facility shall maintain a daily log of disinfectant levels and pH.

**Source:** 38 SDR 115, effective January 9, 2012; 50 SDR 19, effective August 30, 2023.

**General Authority:** SDCL 34-12-13(1)(14).

**Law Implemented:** SDCL 34-12-13.

**Collateral Reference:** "Recommended Standards for Swimming Pool Design and Operation." Copies are available at no cost at <https://doh.sd.gov/documents/Food/standardsforswimmingpooldesign.pdf>.