

## **CHAPTER 67:42:16**

### **SCOPE OF SERVICES FOR CHILD CARE PROGRAMS**

#### Section

- 67:42:16:01 Definitions.
- 67:42:16:02 Application.
- 67:42:16:03 Initial evaluation and approval -- Renewal of license or registration certificate.
- 67:42:16:04 Criminal record check.
- 67:42:16:05 Screening for substantial reports of abuse and neglect.
- 67:42:16:06 Notice to facility.
- 67:42:16:07 Physical health standards required of applicant and applicant's family.
- 67:42:16:08 Qualifications of substitute providers.
- 67:42:16:09 Reporting incidents or changes in circumstances.
- 67:42:16:10 Denial of license or registration certificate.
- 67:42:16:11 Revocation of license or registration certificate.
- 67:42:16:12 Fair hearing.
- 67:42:16:13 Maintenance of records.
- 67:42:16:14 Confidentiality.
- 67:42:16:15 Transportation.
- 67:42:16:16 Insurance.
- 67:42:16:17 Final inspection reports -- Required posting.
- 67:42:16:18 Telephones.
- 67:42:16:19 Supervision.

**67:42:16:01. Definitions.** Terms used in this chapter mean:

- (1) "Alternative care," care provided in family day care homes, day care centers, group family day care homes, and before and after school programs;
- (2) "Applicant," an individual, agency, institution, or organization which submits an application for a license or registration certificate to the department as provided in this chapter;
- (3) "Day care center," a facility for the care and supervision of 21 or more children on a regular basis for part of a day as a supplement to regular parental care;
- (4) "Day care program" or "program," refers to both day care centers and group family day care homes;
- (5) "Employee applicant," an individual applying to a provider for employment;
- (6) "Family day care," the provision of regular care and supervision of no more than 12 children including the provider's own children who are under the age of six years for part of a 24-hour period as a supplement to regular parental care;
- (7) "Facility," a family day care home, day care center, group family day care home, before and after school program licensed or registered under the provisions of this chapter;
- (8) "Group family day care home," a facility where regular supervision of 13 to 20 children is provided for part of a 24-hour period as a supplement to regular parental care;
- (9) "Household member," a person who uses a facility as a permanent or part-time residence and who may have contact with children in the facility;
- (10) "License," the document described in SDCL 26-6-15 which certifies that a provider meets applicable licensing standards contained in this chapter;
- (11) "Medication," a substance that is intended to relieve pain or treat disease;
- (12) "Provider," an individual, agency, institution, or organization providing services covered in this chapter;
- (13) "Provider applicant," an individual, agency, institution, or organization applying to be a provider under this chapter;
- (14) "Helper," an employee or volunteer present in the family day care home to assist with the care of children;
- (15) "Registration certificate," the document described in SDCL 26-6-15 which certifies that a provider meets the family day care registration standards contained in chapter 67:42:03;
- (16) "Staff member" or "staff person," an employee or volunteer of a facility; and
- (17) "Volunteer applicant," an individual applying to provide voluntary services for a provider.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:03. Initial evaluation and approval -- Continuation of licensed operation -- Renewal of registration certificate.** The department's initial evaluation of the applicant includes reference checks, personal interviews, a screening for records of abuse or neglect, a background check, and on-site visits. The applicant shall provide three references.

Based on the inspection, the department shall determine whether to issue a license or registration certificate.

Continuation of a license is based on the department's annual inspection of the licensed facility and care provided. Renewal of a registration certificate is based on the department's annual inspection of the facility and care provided.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16(10)(12).

**67:42:16:04. Background check.** The department shall secure a background check to obtain information concerning convictions for criminal offenses or substantiated reports of child abuse or neglect by an individual that provides care for or has unsupervised access to a child in care. This includes a prospective provider of family day care, a helper, a person living in a prospective family day care and a staff member in a day care program and before and after school program. An individual is prohibited from working in a licensed child care program or family day care if the background check detects any of the following:

- (1) A crime that would indicate harmful behavior towards children;
- (2) A crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
- (3) A sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state;
- (4) A felony conviction for domestic abuse, physical assault or battery;
- (5) Within the preceding five years, a conviction for any other felony; or
- (6) A substantiated report of child abuse or neglect.

A background check is required at least once during every five year period following the initial submission.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16(11).

**67:42:16:05. Screening for substantiated reports of abuse and neglect.** Repealed.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**67:42:16:06. Notice to facility.** The department shall notify the facility that the name of the facility's employee, employee applicant, volunteer, or volunteer applicant was located through the screening process when one of the following occurs:

- (1) Thirty days have lapsed since the department notified the individual that the name was located and the individual has not requested a review;
- (2) Thirty days have lapsed since a review was held which upheld the department's action and the individual has not requested a fair hearing;
- (3) A fair hearing was held and the decision upheld the department's action; or
- (4) A screening in a state other than South Dakota resulted in a finding as outlined in SDCL 26-6-23.1.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:08. Qualifications of substitute providers.** Repealed.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**67:42:16:09. Reporting incidents or changes in circumstances.** The provider shall report a change in circumstances that may affect the provider's ability to comply with the requirements of the provider's license or registration certificate or ability to provide adequate care. A change in circumstances includes items such as a change of address, a change in the household size, a change in the household composition, a change in the condition of the facility or home, or involvement with the Division of Child Protection Services or law enforcement concerning allegations of child abuse or neglect. The report must be made to the provider's licensing worker or agency within 24 hours after the change in circumstance occurs.

The provider shall immediately report all incidents of suspected child abuse or neglect either to the department or to law enforcement officials.

A facility shall notify the department within 24 hours after the occurrence of an unusual incident such as fire or serious injury to a child or serious illness that results in the hospitalization of the child or the death of a child while the child is in care.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:10. Denial of license or registration certificate.** The department may deny a license or registration certificate to an applicant based on an evaluation, substantiated by facts, showing that the applicant does not meet standards for care.

Within 60 days after completion of the application, the applicant must receive a written notice of approval or denial of a license or registration certificate. If the application is denied, the notice must include the reasons for the denial. An applicant may reapply when the applicant has taken corrective action related to the reasons for the original denial of the license or registration certificate.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 25-7A-56, 26-6-16.

**67:42:16:11. Revocation of license or registration certificate.** Violation of the provisions of this chapter are grounds for revocation of a license or registration certificate. Before a license or registration certificate is revoked, the department shall give a 30-day's written notice of revocation to the provider and shall make full disclosure of the reasons for revocation. The 30-day written notice is not required if the revocation is necessary to prevent danger to the life, health, or safety of a child.

The provider may not reapply for a licensure or registration certificate for at least one year after the date of revocation.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16, 26-6-23, 26-6-24.

**67:42:16:12. Fair hearing.** A provider applicant, an employee applicant, a volunteer, a volunteer applicant, or a provider is entitled to a fair hearing if aggrieved or dissatisfied with any action or inaction on the part of the department. Fair hearings are conducted under the provisions of chapter 67:17:02.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:13. Maintenance of records.** A record must be maintained by the provider on each child. The record must include the child's name, date of enrollment, date enrollment is terminated, the names and contact information of the child's parent or person to contact in the event of an emergency, and any other information required by the department or desired by the provider. A provider shall maintain these records for a period of six months after the child ceases receiving care.

**Source:** 39 SDR 220, effective June 27, 2013; 43 SDR 31, effective September 12, 2016.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16(3).

**67:42:16:14. Confidentiality.** The files and records of the provider shall be kept confidential. A provider shall maintain in confidence all information concerning a child. Details of a child's life or that of the child's family may not be shared with unauthorized individuals unless a signed authorization is obtained. The provider shall make its files and records available for inspection by the department for registration or licensure purposes.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:15. Transportation.** A vehicle used for transportation may not carry more people than its stated passenger capacity. Except when transporting children to and from school, the required staff-child ratio must be maintained when children are in transport.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:16. Insurance.** Each day care center, group family day care home, and before and after school program shall carry liability insurance. Each vehicle used for transporting children must have liability insurance that covers the children being transported.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:17. Final inspection reports -- Required posting.** Each facility shall post, in a visible location within the facility, a copy of the results of the facility's latest inspection. If the inspection resulted in a plan of correction, the facility shall maintain a copy of the plan and make it available to individuals on request. The facility shall also post the department's telephone number and address for individuals desiring more information concerning the facility's inspection.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-11.

**67:42:16:18. Telephones.** Each facility shall provide one nonpay telephone which can be used for general and emergency uses.

**Source:** 39 SDR 220, effective June 27, 2013.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16.

**67:42:16:19. Supervision.** The provider and staff members in a registered family day care home, licensed child care program, or a before and after school program are responsible for the direct care, protection, supervision and guidance of every child through active involvement or

direct observation.

**Source:** 43 SDR 31, effective September 12, 2016.

**General Authority:** SDCL 26-6-16.

**Law Implemented:** SDCL 26-6-16(6).