



ASSISTED LIVING PROVIDER PROVISIONS

A 1.1 PURPOSE: The South Dakota Department of Human Services, (“State” or “DHS”) Division of Long Term Services and Supports provides home and community-based service options to individuals 65 years of age and older and 18 years of age and older with disabilities. State services enable these South Dakotans to live independent, meaningful lives while maintaining close family and community ties. State provides home and community-based services sufficient in type, scope, amount, duration, and frequency, as specified in the Long Term Services and Supports Individual Support Plan (ISP)/Service Plan (LTSS Individual Support Plan (ISP); see Provision B 2.2), to prevent or delay premature or inappropriate institutionalization.

State consumers are given information on available home and community-based services and have the right to choose between receiving services in his/her home and community or receiving services in a nursing facility. When a consumer chooses an Assisted Living setting to receive services, a partnership between the State and the Assisted Living Provider is developed to ensure the health, safety, and welfare of the consumer.

A 1.2 PROVISION: In addition to the requirements outlined in the SD Medicaid Provider Agreement, the Provider agrees to the following:

A 1.3 RULES AND REGULATIONS: The Provider shall comply with all South Dakota Codified Laws and Administrative Rules of South Dakota applicable to the services provided. The Provider agrees to comply in full with all licensing requirements and other standards required by federal, state, county, city or tribal statute, regulation or ordinance in which the service and/or care is provided. Liability resulting from noncompliance with licensing and other standards required by federal, state, county, city or tribal statute, regulation, or ordinance or through the Provider’s failure to ensure the safety of all consumers served is assumed entirely by the Provider. Medicaid rules and regulations supersede all Assisted Living policies and procedures.

A 1.4 INTERPRETERS: If Interpreter services are necessary, the Providers must utilize DHS approved interpreters whenever authorized by the State. Interpreter services must be authorized by the LTSS Service Coordinator prior to Interpreter services being

utilized. LTSS Service Coordinator and Provider will cooperatively arrange for interpreter services as necessary for service provision.

A 1.5 VERIFICATION AND DOCUMENTATION: The Provider is required to maintain documentation and verification demonstrating compliance with these Provisions. This documentation must be readily available upon request.

A 1.6 REIMBURSEMENT: The rate(s) for services are specified in the HOPE Waiver Fee Schedule located at <http://dhs.sd.gov/ltss/ltssproviders.aspx>. Assisted Living Services are billed at a tiered daily rate. Rate tiers are determined by a standardized needs assessment tool that is completed by the LTSS Service Coordinator at least annually with all consumers of the HOPE waiver. The information collected during the assessment generates a RUG score based on an algorithm developed by InterRAI.

It is the responsibility of the Provider to review the Therap Service Auth to ensure the rate is correct prior to acknowledging the Therap Service Auth. If the rate is incorrect, the Provider must contact the Long Term Services and Supports (LTSS) Service Coordinator to mitigate claims error(s).

Assisted Living staff are expected to participate in the assessment process and doing so will ensure the most accurate tier is assigned. If a Provider is concerned that a consumer is not accurately classified into the appropriate tier based on his/her last assessment and/or there is an error on the Therap Service Auth, the Provider should not acknowledge the Therap Service Auth. The Provider should contact the LTSS Service Coordinator assigned as the consumer's case manager to resolve any potential discrepancies.

All services authorized and delivered by the Provider to eligible consumers will be reimbursed at stated rates. The HOPE Waiver reimbursement rates are updated in July of each year. The Room and Board portion of the rate is adjusted in January of each year, based on the Cost of Living Adjustment (COLA). Notification of reimbursement rate adjustments is provided when these updates occur.

The Provider must collect the Room and Board portion of the payment from the consumer. In situations where the consumer is unable to pay the Room and Board, he/she may be eligible to have the Room and Board subsidized by DHS. Eligibility is determined by the Division of Economic Assistance. The Provider will be notified of the portion of the Room and Board that may be subsidized and what must be collected from the consumer by the Provider. Consumers residing in a Assisted Living are not eligible for the Supplemental Nutrition Assistance Program (SNAP) since their Room and Board is supplied.

Approved claim forms, including all required information (e.g. Provider's National Provider Identifier, consumer's primary diagnosis code, etc.) will be submitted by the Provider to the State for payment of services authorized and provided.

The Provider must only bill for services acknowledged in Therap and delivered by the Provider.

The State will not reimburse or otherwise be made liable for purchases or transactions made by the Provider on behalf of the consumer, which are not previously authorized in Therap.

To be reimbursed at the established rate, the consumer must be physically present in the Assisted Living Center and must be receiving the assisted living service, except in the following situations:

Hospital reserve bed days: An Assisted Living Center may bill SD Medicaid for a maximum of five consecutive days when a recipient is admitted to an inpatient hospital stay. Up to five consecutive days may be billed to SD Medicaid per hospitalization; however, the recipient must return to the Assisted Living Center for a minimum of 24 hours before additional hospital reserve bed days will be paid. When a consumer is transferred from an Assisted Living Center to a hospital, it is expected that the Provider will accept the consumer back at the Assisted Living Center at the time of hospital discharge.

Therapeutic leave days: An Assisted Living Center may bill SD Medicaid for a maximum of five therapeutic leave days per month. Therapeutic leave days may be consecutive or non-consecutive. Therapeutic leave days are leave days from the Assisted Living Center for non-medical reasons (e.g., visits to the homes of family or friends).

The State's reimbursement for services rendered shall be considered payment in full. Except for the cost-share for waiver services, the Provider may not bill the consumer for any additional fees. The Provider will be advised of the consumer's cost-share, if any, and will be responsible for collecting the cost-share from the consumer.

For assistance with claims denials, Providers must notify the State within the 6-month time limits outlined in ARSD **67:16:35:04**. For all claims inquiries, Providers must submit a claims resolution template to ltss therap@state.sd.us for further review. Providers are encouraged to resubmit all previously denied claims every 90 days for SD Medicaid and SD DHS/LTSS claims compliance. Claims inquiries will be reviewed by appropriate LTSS staff in the order in which they are received. The claims resolution template is located on the DHS LTSS Provider Resources Page at:

<https://dhs.sd.gov/ltss/ltssproviders.aspx>.

STANDARD PROGRAM DEFINITIONS

B 2.1 "Assisted Living Services" include personal care and supportive services that are furnished to eligible consumer(s) who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable

consumer(s) needs and to provide supervision, safety and security. Services shall support full access to the greater community of consumers receiving Medicaid home and community-based services to the same degree of access as individuals not receiving Medicaid home and community-based services. The assisted living location promotes the health, treatment, comfort, safety, and well-being of consumer(s), with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under state law). Services that are provided by third parties must be coordinated with the Assisted Living Provider and LTSS Service Coordinator.

Nursing and skilled therapy services are incidental rather than integral to the provision of assisted living services. Payment is not made for 24-hour skilled care. State reimbursement is not available for room and board (with the exception of subsidies approved by the Department of Social Services (DSS), Division of Economic Assistance (EA)), items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement.

The following waiver services cannot be billed separately: homemaker, personal care, respite care, emergency response service, meals, environmental accessibility adaptations, and chore services.

Adult companion services, adult day services, nursing, nutritional supplements, specialized medical equipment, and specialized medical supplies may be authorized by the LTSS Service Coordinator, based on assessed need as identified in the LTSS Individual Support Plan (ISP) with a threshold equal to the average cost of nursing home care. When these additional services are authorized by the LTSS Service Coordinator, the services/supplies must be provided by a third party that is enrolled as a HOPE Waiver Medicaid Provider.

B 2.2 “Critical Service Need Consumer” is a consumer who needs service(s) (i.e., oxygen, injection, medication, wound care, therapy) provided on each assigned day without disruption without which the consumer’s health condition would decline. The LTSS Service Coordinator will communicate with the Provider (through the LTSS Individual Support Plan (ISP)) when a consumer has been identified as a Critical Service Need Consumer. When a Critical Service Need Consumer is identified, the LTSS Service Coordinator is responsible to work with the consumer and the Provider to develop a back-up plan for service provision during an emergency. The LTSS Service Coordinator assists the consumer to identify any services that will be needed during an emergency.

B 2.3 “Eligible Consumer” is any person in need of services who has been determined eligible by DHS. State will provide on-going case management for each consumer. Case management will include reassessing the consumer’s needs and eligibility at least annually, facilitating the development of the LTSS Individual Support Plan (ISP), convening annual and as-needed person-centered planning meetings to develop and

approve changes to the LTSS Individual Support Plan (ISP), authorizing additional services by the Provider and/or third parties, and resolving any consumer concerns and other consumer-related issues.

B 2.4 “LTSS Individual Support Plan (ISP)” is an electronic document within each consumer’s record in the Therap case management system. The Individual Support Plan (ISP) is developed by the LTSS Service Coordinator with the consumer, as well as any individuals the consumer chooses. The ISP must be finalized with the agreement and informed consent of the consumer in writing and signed by all individuals and providers responsible for its implementation.

The Individual Support Plan (ISP) reflects the services and supports that are important for the individual to meet the needs identified through an assessment of need, as well as what is important to the consumer with regard to preferences for the delivery of such services and supports.

Any modification of the federal regulations for the HCBS Settings Final Rule, as described at CFR 42 § 441.710(a)(1)(vi), must be individualized and addressed in the LTSS Individual Support Plan (ISP). If a provider is implementing any modification(s) to any of these federal home and community-based settings requirements, the modification(s) must be discussed with the LTSS Service Coordinator and documented in the LTSS Individual Support Plan (ISP).

The Provider must notify the LTSS Service Coordinator whenever a change in the consumer’s condition occurs and/or a modification may be necessary. The Provider is expected to provide input and otherwise participate in the development of the initial and ongoing LTSS Individual Support Plan (ISP).

B 2.5 “Therap” is the online case management documenting and billing software.

B 2.6 “Therap Service Auth” is the electronic document in Therap which details the services authorized for the consumer. The Therap Service Auth must be acknowledged by the Provider within seven (7) business days of receipt. Failure to acknowledge the Therap Service Auth within the designated time frame may negatively affect reimbursement for services provided.

If a Provider is concerned that there is an error on the Therap Services Auth, the Provider should not acknowledge the Therap Service Auth. The Provider should contact the LTSS Service Coordinator assigned as the consumer’s case manager to resolve any potential discrepancies.

STANDARD PROGRAM REQUIREMENTS

C 3.1 The Provider must conduct a State fingerprint background checks of all employees that provide direct services or supports to screen for disqualifying criminal convictions. The Provider may request the State's approval for an alternative background check by completing and submitting the Provider Request for Approval of Alternative Background Check form, along with a description of the alternative background check (produced by the company that processes the background checks).

To receive approval, the alternative background check results for employees hired by the Provider must be readily accessible to the State upon request and the description of the alternative background check must include verification that the following threshold criteria are met:

- The alternative background check verifies the identity of the individual hired utilizing at least two unique types of identification (must include a government issued photo ID and an additional document that meets I-9 standards)
- The alternative background check identifies the criminal history of the individual hired
- The alternative background check creates a report of the criminal history of the individual hired which is readily accessible to the Provider

An employee hired to provide direct services or supports to consumers residing in an Assisted Living Center must meet the following minimum standards:

1. Be 16 years of age or older.
2. Be employed by an enrolled Medicaid Provider.
3. Pass a State fingerprint (or State approved) background check.
 - a. The following are a list of fitness criteria that would automatically preclude an individual from being hired/contracted:
 - i. A conviction of a crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
 - ii. A conviction of a sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state;
 - iii. Class A and/or B felony convictions.
 - b. The following are a list of fitness criteria that may preclude an individual from being hired/contracted at the discretion of the provider:
 - i. Convictions of other felonies not described in 3.a.iii.
 - ii. Misdemeanor convictions related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
 - iii. Any convictions, including any form of suspended sentence, which are determined to be detrimental to the best interests of SD Medicaid. This includes convictions related to a person's character such as perjury and fraud related charges as individuals determined to be dishonest with any party should not be assumed to be honest with SD Medicaid;
 - iv. Convictions related to obstruction of a criminal investigation.

C 3.2 The Office of the Inspector General (OIG) has the authority to exclude individuals and entities from federally funded health care programs and maintains a list of all currently excluded individuals. The Provider must check the OIG List of Excluded Individuals and Entities (LEIE) at least once every six months to ensure that new hires and current employees are not on the excluded list. The OIG exclusions database can be searched online at: <https://exclusions.oig.hhs.gov/>.

The System for Award Management (SAM) lists individuals and entities who are suspended or debarred from receive federal funding, contracts, subcontracts, financial and non-financial assistance and benefits. The Provider must screen staff through the SAM system, at least once every six months, to ensure that new hires and current employees are not on the excluded list. The SAM exclusion database can be searched online at: <https://sam.gov/content/exclusions>.

The Provider must have a policy that specifies both process(es) (OIG & SAM) for conducting staff exclusion search and the policy must have a mechanism for ensuring that the staff who perform the verifications are not listed on either exclusion list(s).

C 3.3 The Provider must report bed occupancy in the format and frequency required by Long Term Services and Supports.

C 3.4 In accordance with South Dakota law, the Provider is mandated to immediately report any suspected abuse, neglect or exploitation of a consumer. The Provider must have a policy for abuse, neglect or exploitation reporting which conforms to the mandatory reporting laws and must provide training on mandatory reporting laws to staff on an annual basis. See South Dakota Codified Law 22-46 for South Dakota's laws regarding abuse, neglect or exploitation of elders or adults with disabilities.

C 3.5 The Provider agrees to fully comply with the HCBS Settings Final Rule, 42 CFR §441.301(c)(4) and (5) specified here and in the HCBS Settings Guide to Expectations and Compliance. The Provider also agrees to cooperate with all action steps included in South Dakota's HCBS Settings Final Rule Transition Plan. Both documents are available online at: <https://dss.sd.gov/medicaid/hcbs.aspx>.

C 3.6 The Provider's facility standards and policies must address the federal Medicaid requirements for Home and Community-Based Settings (HCBS Settings Final Rule) as specified in 42 CFR §441.301(c)(4) and (5). Specific policies that must be addressed as part of facility standards include the following:

1. Access to the broader community;
2. Privacy, dignity, respect, autonomy, choice, control, freedom from coercion and restraints, and all consumer's rights as noted in ARSD 44:70 and the HCBS Settings Guide to Expectations and Compliance;
3. Consumer lease/tenant agreement requirements;
4. Roommate choice policy;
5. Visitor/Guest policy;

6. Policy to address ability to lock door to sleeping or living unit; and
7. Policy to address access to food.

C 3.7 The Provider must have a written Quality Assurance Plan detailing all activities conducted by the Provider to ensure quality service provision. The Provider must also have a Quality Assurance policy specifying how the Provider will discover, fix, and report problems. The Provider will cooperate with quality performance site visit activities conducted by State.

The Provider agrees to participate in any evaluation and/or consumer satisfaction program developed and/or conducted by the State which will be used to determine the effectiveness of service provision statewide.

C 3.8 The Provider must have an Admission, Transfer and Discharge policy. When the Provider determines services to a consumer must be discontinued, the Provider must notify the consumer in writing at least 30 days before the transfer or discharge, unless a change in the consumer's health requires immediate transfer or discharge, or if the consumer has not resided in the Assisted Living Center for 30 days. The written notice must specify the reason for and the effective date of the transfer or discharge and the new location to which the consumer will be transferred or discharged to; the conditions under which the consumer may refuse transfer within Assisted Living; and a description of how the consumer may appeal a decision by Assisted Living to transfer or discharge the consumer as per ARSD 44:70:09:14. Additionally, per ARSD 44:70:04:16, the Provider shall initiate planning with applicable agencies to meet identified needs of the consumer and the consumer shall be offered assistance to obtain needed services upon discharge. Information necessary for coordination and continuity of care shall be made available to the assisted living setting and/or the individual to whom the consumer is discharged.

C 3.9 The Provider must have a Grievance policy pursuant to ARSD 44:70:09:10. A consumer may voice grievances without discrimination or reprisal. A grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other consumers, and/or infringement of the consumer's rights. The Provider shall adopt a grievance process and make the process known to each consumer and to the consumer's immediate family. The grievance process shall include documentation of the facility's efforts to resolve the grievance and documentation of the grievance; the names of the persons involved; the disposition of the matter; and the date of disposition.

C 3.10 The Provider must have an incident reporting policy. The Provider must immediately notify State of any consumer-related concerns, incidents and occurrences, including possible exploitation, that are not consistent with routine care. The Provider must follow the Department of Health's (DOH) policy for documenting the circumstances of any incident that involve falls with injury of a serious nature, restraint, seclusion, serious injury, missing person, or death from other than natural causes. For further

information regarding the Department of Health reporting criteria, please visit DOH Health Facility Licensure webpage at: <https://doh.sd.gov/providers/licensure/>.

Upon being informed that a consumer has been hospitalized, or discharged from the hospital, the Provider will immediately communicate this information to the LTSS Service Coordinator to assure the consumer's need for service provision continues to be met appropriately.

C 3.11 The Provider must have an emergency response policy. An "emergency" is defined as a situation that is sudden, generally unexpected, and demands immediate attention. The Provider must notify the State of the emergency upon resolution of the emergency or transfer of the consumer to emergency responders.

C 3.12 The Provider must have a health and safety policy. The health and safety policy must detail the use of universal precautions. The provider must provide all supplies and equipment needed for staff members to practice infection control.

C 3.13 The Provider must have a documentation policy. The documentation policy must include how assisted living staff document service provision, consumer progress and health/safety concerns with a consumer. Documentation must be kept for each consumer. Records must be retained for six (6) years after a claim has been paid or denied. Documentation must be easily accessible upon request.

C 3.14 The Provider must submit a cost report in the format required by the State within four months following the end of the Provider's fiscal year. Failure to submit the report will result in the termination of the Provider's contract with the State. For further information regarding the DHS annual cost report, please visit DHS Budget and Finance webpage at: <https://dhs.sd.gov/budgetandfinance.aspx>.

C 3.15 The Provider is responsible for maintaining proof of a valid driver's license for any employees transporting consumers.

C 3.16 A copy of all policies must be readily accessible upon request.

