

CHAPTER 67:42:17

CHILD CARE LICENSING

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[67:42:17:01](#). Definitions. Terms used in this chapter mean:

- (1) "Center program," a day care center, as referenced in SDCL subdivision [26-6-14](#)(3), and a group family day care home, as referenced in SDCL subdivision [26-6-14](#)(5);
- (2) "Director," the representative of the agency or organization responsible for the center or school-age program;
- (3) "Family day care," an activity that is defined in SDCL [26-6-14.1](#) and meets the registration requirements of SDCL [26-6-14.2](#);
- (4) "Household member," a person residing in a home or a home operated as a facility, used for the purpose of providing care and supervision to children, who may have contact with any children in the facility;
- (5) "Medication," a prescription or over-the-counter substance that is intended to relieve pain or treat an illness or a disease;
- (6) "Parent," a child's natural parent, adoptive parent, stepparent, or legal guardian;
- (7) "Program employee," an individual who does not provide direct care to and supervision of a child;
- (8) "Provider," an individual providing direct care to and supervision of a child;
- (9) "Registration certificate," the document described in SDCL [26-6-15](#), which certifies that a provider has met the family day care registration standards; and
- (10) "School-age program," a program providing for the care and supervision of children as defined in SDCL subdivision [26-6-14](#)(6).

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#).

[67:42:17:02](#). Application for license or registration certificate. Before submitting to the department an application for licensure, a center or school-age program shall submit to the department a copy of a building, renovation, or alteration plan, and obtain the department's approval of the plan.

The department shall, within sixty days after receiving a completed application, provide to the applicant written notice of the department's approval or denial of licensure or registration. If the department denies the licensure or registration, the department shall provide the reason for the denial.

An applicant may reapply after taking corrective action related to each reason listed in the denial.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-11](#), [26-6-16\(2\)](#).

[67:42:17:03](#). Inspection. The department shall conduct at least one pre-licensure inspection, and one unannounced inspection annually, to determine compliance with the licensing requirements.

If the inspection results in a plan of correction, the department shall provide a copy of the plan to any individual upon request.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16\(2\)\(3\)\(6\)](#).

[67:42:17:04](#). Required posting. A provider shall prominently display the department's licensing telephone number and website in the home or licensed facility.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16\(2\)\(6\)](#).

[67:42:17:05](#). Revocation of a license or registration certificate. The department may revoke a license or registration certificate, due to noncompliance with a licensing or registration standard, by providing a thirty-day written notice to the provider. The thirty-day written notice is not required if the department determines that the revocation is necessary to protect the health, safety, or welfare of a child. The provider may not reapply for a license or registration certificate for one year after the date of revocation.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16\(6\)](#), [26-6-24](#).

[67:42:17:06](#). Required reporting of an incident or a change in circumstances. A provider shall, within twenty-four hours, report to the department.

- (1) A change of address;
- (2) Any major change in the operation or ownership of the program;
- (3) A change in the household size or composition;
- (4) Damage to or a change in the condition of the facility or home;
- (5) An investigation of the provider or a program employee, by the Division of Child Protection Services or law enforcement, concerning any allegation of:
 - (a) Child abuse or neglect; or

(b) Any action that may prohibit the provider or employee from meeting background check eligibility requirements;

(6) Any injury to a child that requires medical attention or dental care; and

(7) The death of a child, if related to a serious injury that occurred on the premises of the child care program.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:07](#). Owner and director responsibilities. The owner and director are responsible for the day-to-day operation of the program, including the supervision of staff and compliance with all licensing standards.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6).

[67:42:17:08](#). Owner qualifications. The owner of a licensed child care or school-age program may be an agency, institution, organization, or a natural person who is at least eighteen years of age.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1).

[67:42:17:09](#). Program administrator qualifications. The program administrator is the director or individual responsible for planning and implementing the program in a licensed child care or school-age program and must be at least eighteen years of age and:

(1) Have a bachelor's degree in a field of education or human development;

(2) Have a two-year degree in early childhood education;

(3) Have a Child Development Associate credential or comparable credential, as determined by the department;

(4) Hold certification in a child learning philosophy and have at least one year of experience in a child care setting;

(5) Have a child development technician diploma; or

(6) Have four years of experience in a center or school-age program.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

67:42:17:10. Provider qualifications. All providers shall be at least eighteen years of age and demonstrate and maintain the ability to provide care that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child, as determined by the department.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

67:42:17:11. Assistant qualifications -- Licensed child care and school-age program. In a licensed child care or school-age program, a provider's assistant must be at least fourteen years old, may not be left alone with children in care, and may be counted in the staff-child ratio only when the assistant is under the direct supervision of a provider, a program director, or the individual responsible for planning and implementing the program.

A provider's assistant shall demonstrate the ability to provide care that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

67:42:17:12. Assistant qualifications -- Family day care program. A family day care assistant must be at least fourteen years old.

A family day care assistant who is under the age of eighteen may be included in the adult-child ratio only if another adult is present in the home.

A family day care assistant who is under the age of eighteen may not be left alone on the premises with children in care.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

67:42:17:13. Background check. All child care providers, program employees age fourteen and older, and family day care household members age eighteen and older, shall meet federal background check requirements. An individual may not provide care, or work in a child care setting, if the individual's background check reveals:

- (1) A crime that indicates harmful behavior towards children;
- (2) A crime of violence, as defined in SDCL [22-1-2](#), or in a similar statute from another state;
- (3) A sex crime pursuant to SDCL chapters [22-22](#) or [22-24A](#), SDCL [22-22A-3](#), or similar statutes from another state;
- (4) A felony conviction for domestic abuse, physical assault, battery, kidnapping, or arson;
- (5) Any other felony conviction, within the preceding five years; or

(6) A substantiated report of child abuse or neglect.

A family day care provider may not provide care in the provider's home, if any household member's background check reveals any item listed in this section.

A background check is required at least once every five years.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6)(10), [26-6-23.2](#).

Cross-References:

Substantiated reports, § [67:14:39:04](#).

Criminal background checks, 45 C.F.R. § 98.43(a)(1)(i).

[67:42:17:14](#). Notice to provider. Upon completion of a background check, the department must notify the program or family day care provider of an individual's eligibility or ineligibility for employment.

If the individual is ineligible for employment, the department must include guidance regarding the appeal process.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1).

[67:42:17:15](#). Provider employee records. A child care provider shall maintain a record for each employee that includes:

- (1) The employee's name and date of birth;
- (2) The dates on which the employee began and ended employment;
- (3) Documentation of orientation and ongoing annual training, if the employee provides direct care and supervision of children;
- (4) A statement that:
 - (a) Defines child abuse and neglect;
 - (b) Sets forth the employee's responsibility to report all incidents of child abuse or neglect in accordance with SDCL [26-8A-3](#) and [26-8A-8](#); and
 - (c) Is signed by the employee; and
- (5) The results of the background check.

All records required by this section must be reviewed and updated at least annually by the provider, made available to the department for verification of the contents, and retained by the provider for six months after the employee leaves the program.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(3).

Cross-Reference:

Background check, § [67:42:17:13](#).

67:42:17:16. Confidentiality. The files and records of a provider are confidential. A child's records, photographs, and information about a child or the child's family may not be shared or publicly posted, unless the parent signs a consent form. Nothing in this section prevents licensing specialists, child protective services, or law enforcement from accessing the files and records of a provider or family information.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(3)(6).

67:42:17:17. Orientation training. All providers shall, within ninety days after the date of employment, complete and obtain documentation of orientation training in the following areas:

- (1) Prevention and control of infectious diseases;
- (2) Prevention of sudden infant death syndrome and the use of safe sleep practices, if infant care is provided;
- (3) Administration of medication;
- (4) Prevention of and response to an emergency due to food allergies and other allergic reactions;
- (5) Building and physical premises safety;
- (6) Prevention of shaken baby syndrome and abusive head trauma, if infant care is provided;
- (7) Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;
- (8) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;
- (9) Precautions in transporting a child, if the program provides transportation;
- (10) Recognition and reporting of child abuse and neglect;
- (11) Pediatric first aid;
- (12) Pediatric cardiopulmonary resuscitation; and
- (13) Child development.

Before a provider may care for children without supervision, the provider must complete orientation training in each of the areas listed in this section.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(3)(6).

Cross-Reference:

Health and safety requirements, 45 C.F.R. § 98.41.

67:42:17:18. Ongoing training requirements. All providers must obtain annual training in the topic areas identified in 45 C.F.R. § 98.41, in effect on September 30, 2016, or as identified by the department. Training must be documented and relevant to the provider's position as determined by the department. Training may include on-site or online classes. Pediatric cardiopulmonary resuscitation renewal may not be included in annual training.

Each director and provider of center and school-age programs counted in staff-child ratios shall complete ten hours of annual training.

Each provider of family day care counted in staff-child ratios shall complete six hours of annual training.

Orientation training hours qualify as annual training hours for each provider in the year the training was completed.

Every five years, all providers shall complete additional, advanced training in each of the training areas listed in § [67:42:17:17](#).

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

Cross-Reference:

Health and safety requirements, 45 C.F.R. § 98.41.

[67:42:17:19](#). Group size -- Center and school-age programs. Maximum group sizes are determined by individual room capacity and all space used must be approved for care by the department.

The provider shall ensure the number of children in care at any given time does not exceed the capacity identified on the license. Children of program employees must be included in the group size.

The provider shall ensure children to staff ratios are maintained in all settings, including large indoor and outdoor space; in spaces where more than twenty children are allowed, providers shall identify which children each provider is responsible to supervise; and when room capacity does not align with the ratio requirements, a maximum of three additional children may be included in the room capacity as long as ratios are maintained.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(5)(6).

[67:42:17:20](#). Supervision -- Center and school-age programs. A center provider supervising children must be in the same room with the children or on the playground with the children, and must be able to see or hear the children, at all times.

If children are in a school-age program, the provider must be able to hear or see the children, at all times, and must be close enough to intervene at all times.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6).

[67:42:17:21](#). Center and school-age program ratio. A center or school-age program must maintain the following ratios:

- (1) Five children to one staff for children up to three years of age;
 - (2) Ten children to one staff for children three through four years; and
 - (3) Fifteen children to one staff for children five years and over.
- Children of program employees must be included in determining the children to staff ratio.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(5)(6).

[67:42:17:22](#). Center and school-age program ratio -- Mixed age group. A program that serves twenty or fewer children, and routinely operates a mixed age group, shall meet a ratio of ten children to one staff. Each provider may care for a maximum of four children under the age of two, with no more than two children under the age of one.

A center program that serves more than twenty children in a mixed age group, must:

- (1) Maintain a ratio of five children to one staff, if the group includes three or more children under the age of three; and
- (2) In all other circumstances, maintain the children to staff ratio that is based on the age range of the majority of children in the group.

Children of program employees must be included in determining the children to staff ratio.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(5)(6).

[67:42:17:23](#). Supervision, ratios and group size -- Family day care. A family day care provider may care for up to twelve children in the provider's home. A family day care provider shall, at all times, supervise children by hearing or seeing children and be close enough to intervene.

If only one provider is present, no more than four of the children may be under the age of two years, and no more than three of those children may be under the age of one.

If a family day care assistant is present, no more than eight children may be under the age of two.

A family day care provider's own children, if under the age of six, must be included in the total capacity and ratio.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(5)(6).

[67:42:17:24](#). Health standards and immunizations for day care children. Before a child may be admitted to a registered or licensed day care provider, the provider must require the child's parent or guardian to submit a statement, signed by a licensed physician, physician's assistant, certified nurse practitioner, or community health nurse, or an immunization record from the South

Dakota Immunization Information System, showing that the child meets the minimum immunization requirements according to 45 C.F.R. § 98.41(a)(1)(i)(A), in effect on September 30, 2016.

The provider shall ensure that immunizations of all children are current.

For children who begin the series late or are more than one month behind in immunizations, the documentation must show progress toward achieving immunization requirements, as determined by a licensed physician, or other licensed practitioner. A grace period may be approved by the department for a child experiencing homelessness or a child in foster care.

A child is exempt from meeting the minimum age-specific immunization levels if:

(1) The child's parent or guardian has certification from a licensed physician, or other licensed practitioner, stating that the physical condition of the child is such that an immunization would endanger the child's life or health; or

(2) The child's parent or guardian has signed a written statement that the child is an adherent to a religious doctrine whose teachings are opposed to such immunizations.

If a child becomes ill while at a day care, the provider must separate the child from other children and notify the child's parents. If any child in the program contracts a communicable disease, the provider must notify the Department of Health. The program provider shall follow the Department of Health's recommendations for addressing a situation involving a communicable disease.

To prevent the spread of an infestation or infectious disease, a program shall provide an individual storage unit or container for each child's personal articles.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(4)(6).

Cross-References:

Communicable disease control, article [44:20](#).

Health and safety requirements, 45 C.F.R. § 98.41.

[67:42:17:25](#). Sanitation requirements. All equipment, utensils, kitchenware, dining tables, and food contact surfaces of equipment must be washed, rinsed, and sanitized after each meal. Toys capable of being placed in a child's mouth must be cleaned and sanitized daily, using a solution approved by the department.

All providers, program employees, and children shall wash their hands with soap, before preparing food or beverages, eating, handling food, or feeding a child, and after changing a diaper, using the toilet, helping a child use a toilet, or coming into contact with bodily fluid.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:26](#). Safe sleep practices. A nap mat, blanket, or other sleep surface, other than the floor, for children over one year of age must be available for each child during nap time.

A sleep surface must be maintained in good repair.

A provider shall follow the safe sleep practices contained in **Caring for Our Children: National Health and Safety Performance Standards, 4th Edition**, for infants under the age of one.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

Reference:

Caring for Our Children: National Health and Safety Performance Standards, 4th Edition, American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. Copies may be obtained from the American Academy of Pediatrics, <https://shop.aap.org/>. Cost \$66.95.

[67:42:17:27](#). Medication administration. Before any medication is administered to a child, permission of the parent or guardian must be documented and must include the name of the child, the name of the medication, and the dates, times, and dosage of the medication.

The medication must be provided by the parent and kept in the original container, with the original label. The label for a prescription medication must contain the child's name, the amount and frequency of dosage, the expiration date, the physician or other licensed practitioner's name, and instructions for storage. The medication must be returned to the parent when no longer needed or expired.

The provider shall document, in the child's record, any medication administered to a child and shall include the dose, the name of the child, the time and date administered, and the name of the person administering the medication. The documentation must be retained for at least six months and be made available to the child's parent upon request.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(4)(6)(8).

[67:42:17:28](#). Medication storage. Medication must be stored in a place that is inaccessible to children. The provider shall refrigerate medication requiring refrigeration. Refrigerated medication must be placed in a nonabsorbent container that is labeled medications.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6)(8).

[67:42:17:29](#). Allergic reactions. A provider shall have a written care plan for each child who has a known food allergy. The plan must contain instructions regarding any food allergens, steps to be taken to avoid that food, and a detailed treatment plan to be implemented if the child has an allergic reaction.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).
Law Implemented: SDCL [26-6-16](#)(4)(6)(8).
Cross - Reference:
Medication administration, § [67:42:17:27](#).

[67:42:17:30](#). Menu requirements. Providers shall post a weekly menu that indicates meals and snacks to be served that week.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6)(8).

[67:42:17:31](#). Infant food safety. An infant shall be fed according to the infant's schedule. The provider shall hold the infant's bottle when feeding the infant. The provider may not feed an infant by propping up the infant's bottle.

Food, including breast milk and formula, must be properly stored, kept at the proper temperature, and protected from potential contamination according to the preparing, feeding, and storing standards contained in **Caring for Our Children: National Health and Safety Performance Standards, 4th Edition**.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6)(8).

Reference:

Caring for Our Children: National Health and Safety Performance Standards, 4th Edition, American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. Copies may be obtained from the American Academy of Pediatrics, <https://shop.aap.org/>. Cost \$66.95.

[67:42:17:32](#). Building requirements. All walls, ceilings, floors, and equipment must be easily cleanable, kept clean, and in good repair. Heating and cooling systems must maintain a temperature between sixty-five degrees Fahrenheit and seventy-five degrees Fahrenheit. For a child care center and school-age program, all heating and cooling systems must be inspected annually, by a certified technician.

Food preparation areas, including tables and countertops, must be made of a smooth, nonporous material, kept clean and sanitized, be free of cracks, and be in good repair. Center and school-age programs, in which more than twenty children are cared for, must provide a ventilation hood over all cooking areas. The hood must be appropriate for the type of appliance and intended use, as required in § [61:15:01:01](#).

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

67:42:17:33. Bathroom and sink requirements. A provider shall meet the following requirements regarding bathrooms:

- (1) Bathroom facilities must be easily accessible by children and providers;
- (2) Hot water for faucets normally used by children in care may not exceed one hundred twenty degrees Fahrenheit;
- (3) Toilets and hand sinks must be kept clean and in good repair; and
- (4) For child care centers and school-age programs:
 - (a) All bathrooms must have natural or mechanical ventilation;
 - (b) Separate bathrooms must be available for males and females;
 - (c) Ratios for toilet and hand sinks must align with the minimum standards for plumbing and plumbing systems published by the plumbing commission.

Except in a family day care, hand sinks must be in the same room, or an unobstructed room adjacent to the diaper changing area. A handwashing sink used after diapering and toileting may not be used for food preparation.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

Cross-Reference:

Standards adopted for plumbing -- Conformity to Uniform Plumbing Code, SDCL [36-25-15](#).

67:42:17:34. Physical capacity requirements. A center program must have available a minimum of thirty-five square feet of play space indoors and fifty square feet of play space outdoors for each child. A school-age program must have a minimum of twenty-five square feet of play space indoors and fifty square feet of play space outdoors for each child.

Playgrounds and parks may be used for outdoor play space.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

67:42:17:35. Playground requirements. Playgrounds for all child care settings must be safe, in good repair, and free of debris, trash, and weeds. Playground equipment must be installed according to the manufacturer's instructions and maintained in good repair.

For a center program, a fence that measures at least four feet high is required around the center's outdoor play space.

For a family day care or school-age program, a fence that measures at least forty-two inches high may be required to separate the outdoor play space, if the department determines a body of water, vehicular traffic, or other hazard poses a risk of injury or death to a child.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:36](#). Water safety. A provider shall meet the following water safety requirements:

- (1) If an outdoor swimming pool is on the premises, it must be emptied after each use or enclosed with a five-foot fence and a self-closing, latching gate that can be locked while not in use;
- (2) If an indoor swimming pool is on the premises, it must have an access door that restricts entry;
- (3) A child may not play in an area where there is a body of water, unless the provider can see and hear the child, and is close enough to intervene, at all times; and
- (4) A hot tub must be securely covered.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:37](#). Construction and fire safety requirements. Center and school-age programs operating outside of a school building shall follow applicable construction and fire safety requirements, as outlined in chapters [61:15:05](#) and [61:15:06](#). School-age programs operating in a school building shall follow applicable construction and fire safety requirements, as outlined in chapters [61:15:01](#), [61:15:02](#), and [61:15:07](#).

A family day care home must have the following fire safety measures in place:

- (1) A working smoke detector must be located on each level of the home;
- (2) A fully charged, portable fire extinguisher, with a minimum 2A rating, as identified on the extinguisher label, must be kept in or within fifteen feet of the kitchen or food preparation area;
- (3) A carbon monoxide detector must be installed, according to the manufacturer's instructions, if a fuel burning appliance is present in the home;
- (4) Each level of the home must have at least two remote exits that shall remain clear of obstructions. One of these exits must be a standard-sized door, and the other may be either a standard-sized door or an unobstructed, operable window, having at least five square feet of openable space, with a minimum width of twenty inches and a minimum height of twenty-four inches; and
- (5) Whenever a portable space heater, a wood burning stove, or a fireplace is in use, the heater, stove, or fireplace must be inaccessible to children.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:38](#). Hazardous conditions. The following must be inaccessible to a child:

- (1) Firearms;
- (2) Pellet guns, BB guns, and cap guns;

- (3) Matches and lighters;
- (4) Tobacco products;
- (5) Choking and strangulation hazards;
- (6) Items capable of being pulled or tipped onto a child;
- (7) A platform measuring more than thirty inches above ground level, unless surrounded by a railing that is at least thirty-six inches tall with no more than five inches between openings; and
- (8) Other hazardous condition as identified by the department.

The department may direct a provider to remove or correct a hazardous condition or circumstance not covered in this chapter, if the department considers the conditions or circumstances to have the potential to cause injury or illness to the children in care.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:39](#). Electrical outlet covers. For family day care providers, unused electrical outlets must have an outlet plug cover, have a tamper-resistant cover, or be made inaccessible to a child.

For center and school-age programs, unused electrical outlets must have a self-closing outlet cover or tamper-resistant cover.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:40](#). Pets. A pet, while permitted in the presence of children receiving care, must be current with its vaccinations, and have clean and sanitary living areas, at all times.

A pet with a history of aggressive behavior, which poses a risk to the safety of children, must be confined and kept away from children.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

[67:42:17:41](#). Prevention of child maltreatment. A provider shall meet the physical, social, emotional, and cognitive needs of a child, and identify procedures to implement behavior management strategies for use with children in care. Behavior management strategies must offer limits, with positive guidance and direction, to help a child develop self-control and respect for the rights of others, be appropriate to a child's age and developmental level, and include strategies to prevent shaken baby syndrome and abusive head trauma.

A behavior management strategy may not be delegated to an older child or peer. Separation, when used as a strategy, must be within sight or hearing of a provider.

The parent of a child may not, while working at the program, use a prohibited discipline technique to discipline the parent's child.

The following methods of discipline are prohibited:

- (1) Spanking, hitting, pinching, biting, shaking, or inflicting any other physical punishment;
- (2) Verbal abuse, shouting, threats, humiliation, or derogatory or sarcastic remarks about the child or the child's family;
- (3) Restriction of movement or confinement;
- (4) Isolating a child in an adjacent room, hallway, closet, darkened area, or any other area where a child cannot be seen or supervised;
- (5) Punishment for lapses in toilet training;
- (6) Withholding or forcing of meals, snacks, naps, or outdoor time to correct behavior;
- (7) Demanding excessive physical exercise or excessive rest; and
- (8) Placing substances in a child's mouth to cause discomfort such as soap, food, or spices.

A provider who is under investigation for abuse and neglect may not be in a caregiving role, if the department determines there is an imminent safety concern to a child in the provider's care.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6).

Cross-Reference:

Health and safety requirements, 45 C.F.R. § 98.41.

[67:42:17:42](#). Required child records. A provider shall maintain a record for each child that includes:

- (1) The child's name and date of birth;
- (2) The parent or guardian's name and telephone number;
- (3) An emergency contact name and telephone number;
- (4) Parental permission for emergency medical treatment;
- (5) The names of individuals authorized to pick up the child;
- (6) Health information, including any allergies or special needs;
- (7) A current immunization record or, for a school-age program, the name of the child's school;
- (8) Parental permission for medication;
- (9) The child's attendance records;
- (10) The date of the child's enrollment; and
- (11) The date on which the child's enrollment ends.

The provider shall annually review and update each record required under this section, and make the child's record available to the department, upon request.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(3)(4)(6).

[67:42:17:43](#). Emergency preparedness and response planning. A provider shall have:

- (1) A written emergency preparedness and response plan for emergencies resulting from a natural disaster or a man-caused event;

- (2) A written plan for evacuation, relocation, shelter-in-place, or a lock-down, that includes accommodations for infants, toddlers, and children with disabilities or medical conditions;
- (3) A written procedure for communication and reunification with parents; and
- (4) A written procedure for the continuity of operations.

A provider shall practice the evacuation, shelter-in-place, and lock down procedures, outlined in the emergency preparedness and response plan, at least twice each calendar year. The provider shall document the dates on which the procedures are practiced. A provider shall communicate the emergency preparedness and response plan to each individual at the time the individual begins employment.

Except for family day care, all child care providers shall have liability insurance. Proof of current liability insurance shall be made available to the department, upon request.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

[67:42:17:44](#). Handling, storage, and disposal of hazardous materials. All toxic or hazardous substances must be:

- (1) Inaccessible to children;
- (2) Used according to manufacturer's instructions;
- (3) Stored in the original or other labeled container; and
- (4) Disposed of according to manufacturer recommendations.

Bio-contaminants must be handled and disposed of properly.

Soiled diapers must be changed promptly, in a designated area, on a non-porous surface. The diaper changing area must be clean and disinfected with a sanitizing solution approved by the department. Soiled diapers must be kept in a leakproof, nonabsorbent container that is covered with a tight-fitting lid.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

Cross-Reference:

Health and safety requirements, 45 C.F.R. 98.41(a)(1)(viii).

[67:42:17:45](#). Transportation. The following requirements apply to the transportation of a child:

- (1) A parent or guardian shall provide written permission for the transportation of their child;
- (2) The vehicle may not carry more people than its passenger capacity, as stated on the label affixed to the vehicle under 49 C.F.R. Parts 567 and 568, in effect on March 9, 2022;
- (3) The required staff-child ratio must be maintained when children are being transported;
- (4) The driver must be at least eighteen years of age and have a driver license to operate the vehicle being driven;
- (5) When a child is being transported in a vehicle other than a bus, the child must be restrained in a car seat, booster seat, or seat belt appropriate for the child's weight and age; and

(6) Proof of liability insurance must be provided to the department, upon request, for any vehicle used for transporting children.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(2)(5)(6).

[67:42:17:46](#). Pediatric first aid and cardiopulmonary resuscitation. A provider shall complete pediatric first aid training every five years and maintain documentation of the training. A provider must be certified in pediatric cardiopulmonary resuscitation. The certification must include a hands-on skills test.

A provider shall work under supervision until the provider has completed the training required by this section. The supervisor shall have completed their pediatric first aid training and be certified in pediatric cardiopulmonary resuscitation.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(1)(6).

Cross-Reference:

Orientation training, § [67:42:17:17](#).

[67:42:17:47](#). Reporting of child abuse and neglect. A child care provider shall immediately report any suspected abuse or neglect of a child to child protective services, law enforcement, or the States Attorney's office, and cooperate fully in the investigation of any incident.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6), [26-8A-3](#).

[67:42:17:48](#). Night-time care. If care is provided between 7:00 p.m. and 6:00 a.m., the following requirements apply:

- (1) Center providers on duty must be awake and alert to the needs of children;
- (2) Family day care providers must be accessible and responsive to children who awaken during the night and require attention; and
- (3) Providers shall supply a cot or bed for each child in overnight care.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(2)(6).

67:42:17:49. Parental access. A parent must be allowed to observe their child or children at any time. A parent must be notified by the provider immediately regarding any serious injuries received while the child is under care of the provider.

A parent must be notified by the provider within twenty-four hours of any changes in circumstances. For purposes of this section, the term, changes in circumstances, means a change in the provider's registration or license, the suspension or revocation of the provider's license, a change in the program location, closure of the program, and a change in ownership of the program.

If a court order restricts a parent from having contact with a child, and if the provider has been given a copy of the court order, the provider shall deny access to the parent.

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#)(6).

67:42:17:50. Fair hearing. A provider may request a fair hearing if the provider is dissatisfied with any action taken on an application or license or registration certificate. A fair hearing must be conducted under chapter [67:17:02](#).

Source: 49 SDR 124, effective July 3, 2023.

General Authority: SDCL [26-6-16](#).

Law Implemented: SDCL [26-6-16](#).