

2024 South Dakota Legislature

House Bill 1202**AMENDMENT 1202D
FOR THE HOUSE HEALTH AND HUMAN SERVICES
ENGROSSED BILL**

1 **An Act to establish procedures for the termination of services by a provider through**
2 **the CHOICES waiver program.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to chapter 27B-2:**

5 Terms used in sections 2 to 5, inclusive, of this Act, mean:

- 6 (1) "CHOICES waiver program," the medicaid 1915(c) waiver program administered
7 by the Department of Human Services to provide home and community-based
8 services to children and adults with intellectual and developmental disabilities
9 through a provider;
10 (2) "Participant," an individual with an intellectual or developmental disability who
11 receives services through the CHOICES waiver program; and
12 (3) "Provider," a community services provider or a community support provider.

13 **Section 2. That a NEW SECTION be added to chapter 27B-2:**

14 A provider must, at least thirty days before terminating services provided to a
15 participant under the CHOICES waiver program, provide a notice of termination to the:

- 16 (1) Participant, with accommodations for participants who have difficulty
17 communicating, or the participant's parent, if the participant is under age eighteen;
18 (2) Participant's guardian, if applicable;
19 (3) Participant's individualized service plan team; and
20 (4) Department of Human Services.

21 Affirmative understanding of the notice by the participant is not required.

22 **Section 3. That a NEW SECTION be added to chapter 27B-2:**

23 The notice of termination required in section 2 of this Act must contain:

- 1 (1) The reason for terminating the services provided under the CHOICES waiver
2 program;
- 3 (2) The date that the termination of services is effective;
- 4 (3) Information on the availability of similar services in the community;
- 5 (4) A statement of the participant's right to appeal the termination; and
- 6 (5) A statement indicating that an appeal may only be based upon the question of
7 whether the provider followed termination procedures as set forth in this chapter,
8 in administrative rule, and in the provider's termination policy.

9 **Section 4. That a NEW SECTION be added to chapter 27B-2:**

10 A participant, the participant's parent if the participant is under age eighteen, or
11 the participant's guardian, may appeal the provider's termination of services under the
12 CHOICES waiver program to the Department of Human Services within thirty days from
13 the date of the notice of termination. An appeal may only be based upon the question of
14 whether the provider followed the termination procedures as set forth in this chapter, in
15 administrative rule, and in the provider's termination policy.

16 Except as provided in section 5 of this Act, if a termination is being appealed, the
17 provider must continue to provide services to the participant for a period of ninety days
18 from the date of the provider's notice of termination, or until a decision is reached after a
19 hearing pursuant to chapter 1-26, whichever occurs first.

20 If an appeal to terminate services is adjudicated in favor of the participant or the
21 participant's parent or guardian, the provider must reinstate services to the participant.
22 After the provider has reinstated services, the provider may reissue a notice of
23 termination.

24 **Section 5. That a NEW SECTION be added to chapter 27B-2:**

25 If the provider determines that a participant is a danger to self or others, or the
26 participant has engaged in behavior that repeatedly interferes with the rights, health, or
27 safety of others, the provider may terminate services provided to the participant under
28 the CHOICES waiver program ~~on the noticed date of termination thirty days after providing~~
29 the notice required in section 2 of this Act, regardless of whether an appeal is filed under
30 section 4 of this Act. If a participant has a residential lease agreement with a provider,
31 the noticed date of termination may not be sooner than the termination or expiration of
32 the agreement.

1 In order to terminate services in accordance with this section, the provider must
2 forward the notice required by section 2 of this Act and include:

3 (1) A statement indicating that the provider is terminating services to the participant
4 because:

5 (a) The participant is a danger to self or others; or

6 (b) The participant has engaged in behavior that repeatedly interferes with the
7 rights, health, or safety of others;

8 (2) A statement indicating that, if an appeal is filed, the provider may terminate
9 services ~~on the noticed termination date thirty days after providing the notice~~; and

10 (3) Documentation of the participant's behavior and action taken by the provider to
11 address the behaviors that led to the issuance of the termination notice.

12 The provider shall refer a participant whose services are terminated under this
13 section to the participant's case manager and the Department of Human Services to secure
14 alternative placement until a decision is reached after a hearing pursuant to chapter 1-
15 26.