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ARTICLE 67:62

MENTAL HEALTH

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**ARTICLE 67:62**

**MENTAL HEALTH**

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**CHAPTER 67:62:01**

**DEFINITIONS**

# Section

67:62:01:01 Definitions.

**67:62:01:01.  Definitions.** As used in this article:

(1)  "Admission" means the point in an individual's relationship with a mental health center when the intake process has been completed and the individual is eligible to receive and accept services;

(2)  "Advocate" means any individual designated by a client to support that client by speaking or acting on the client's behalf;

(3)  "Board of directors" means the entity legally responsible for the overall operation and management of the agency center;

(4)  "Case management" means a collaborative process that assesses, plans, implements, coordinates, monitors and evaluates the options and services to meet an individual's health needs, as identified in the treatment plan;

(5)  "Center" means an entity seeking or holding accreditation as a mental health center through the Department, as provided in SDCL 27A-5-1;

(6)  "Child or youth and family services" means comprehensive, child-centered, family-focused, and resiliency-oriented treatment services and support, provided to a child or youth with a "serious emotional disturbance", including a child or youth with a co-occurring disorder, and to the family of the child or youth;

(7)  "Client" means a child, youth, or adult receiving services from a mental health center;

(8)  "Clinical supervisor" means a mental health professional who has at least a master's degree in psychology, social work, counseling, or nursing; currently holds a license in that field; and has two years of supervised, postgraduate clinical experience in a mental health setting;

(9)  "Collateral contacts" means telephone or face-to-face contact with an individual other than the identified client, to plan appropriate treatment, to assist others so they can respond therapeutically regarding the client's difficulty or illness, or to link the client, family, or both, to other necessary and therapeutic community support;

(10)  "Comprehensive assistance with recovery and empowerment services" mean comprehensive, person-centered, and recovery-focused services providing medically necessary treatment, rehabilitative, and support services to a client with a "serious mental illness", including co-occurring disorders;

(11)  "Contract" means a written agreement, approved by a center's board of directors or an authorized designee, for specified services, personnel, or space, to be provided to the agency by another organization, agency, or individual, in exchange for money;

(12)  "Co-occurring disorder" means a mental health condition in combination with a substance use problem, trauma issues, problem gambling, medical issues, or developmental disabilities;

(13)  "Department" means the Department of Social Services;

(14)  "Discharge summary" means a narrative summary of a client's treatment record, including the reason for the client's admission, clinical problems, accomplishments during treatment, reason for discharge, and recommendations or referrals for further services, if indicated;

(15)  "Division" means the Division of Behavioral Health;

(16)  "Emergency services" means services available 24 hours a day, seven days a week, for a client experiencing a mental health emergency or crisis;

(17)  "Individualized and mobile program of assertive community treatment" means a comprehensive, person-centered, and recovery-focused program providing medically necessary treatment, rehabilitative, and support services to an eligible client who requires more intensive services than can be provided by comprehensive assistance with recovery and empowerment services;

(18)  "Individualized and mobile program of assertive community treatment team" means a mobile group of mental health professionals who merge clinical, medical, rehabilitation, and staff expertise, within one service delivery team, under a clinical supervisor;

(19)  "Intake services" mean those services that assist the client in initiating services with the center, and include providing information on the center and available services, discussing client rights and responsibilities and grievance procedures with the client, obtaining information from the client to determine financial eligibility, and obtaining other required information from the client;

(20)  "Integrated assessment" means the gathering of information and engaging in a process with the client, thereby enabling the provider to establish the presence or absence of a co-occurring disorder. An integrated assessment identifies a client's strengths and needs, determines the client's motivation and readiness for change, and engages the client in the development of an appropriate treatment relationship in which an individualized treatment plan can be developed;

(21)  "Intern" means a college student gaining supervised practical experience;

(22) "Liaison services" mean treatment planning and the coordination of services between a center and the out-of-home placement, which must be consistent with treatment goals and intended to shorten the length of hospitalization or out-of-home placement, and which may include community resources and contacts with the client's family to assure that changing needs are recognized and met;

(23)  "Management Information Systems" means a system designed to collect, store, and report treatment and treatment outcome data;

(24)  "Mental disorder" means a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory, as specified within the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, criteria or coding found in § 67:16:01:26. Intellectual disability, epilepsy, other developmental disability, alcohol abuse, substance abuse, brief periods of intoxication, or criminal behavior do not, alone, constitute mental illness;

(25)  "Mental health center" has the same meaning as the term defined in SDCL subdivision 27A-1-1(16);

(26)  "Outpatient services" mean nonresidential diagnostic and treatment services that are distinct from child or youth family services, comprehensive assistance with recovery and empowerment services, or the individualized and mobile program of assertive community treatment. Outpatient services must be individualized according to the needs of the client and the client's family if appropriate, and must be responsive to cultural differences and special needs;

(27)  "Physician" means an individual licensed in accordance with the provisions of SDCL chapter 36-4 and qualified to provide medical and other health services under this chapter;

(28)  "Qualified mental health professional" means an individual who meets the criteria set forth in SDCL 27A-1-3;

(29) "Recovery" means a process of change through which an individual achieves improved health, wellness, and quality of life;

(30)  "Room and board services" mean residential housing for a client who is age 18 or older, has a serious mental illness, and due to the client's illness is unable to function in an independent living arrangement;

(31)  "Screening" means a formal and typically brief process of determining the likelihood that a person has a substance use, mental health or co-occurring disorder, administered soon after the client presents for services. The purpose is to establish the need for an in-depth assessment, not to establish the presence or specific type of such a disorder;

(32)  "Services" means direct or indirect contact between a client or a group of clients and mental health staff, for the purpose of diagnosis, evaluation, treatment, consultation, or other necessary direct assistance in providing comprehensive mental health care and to ensure that the client obtains the basic necessities of daily life and performs basic daily living activities;

(33)  "Substance use disorder" means a diagnosable substance use condition;

(34)  "System of care" means a coordinated network of community-based services and support organized to meet the needs of individuals with mental health issues and their families;

(35)  "Telehealth" means a method of delivering services including interactive audio-visual or audio-only technology in accordance with SDCL 34-52-1;

(36)  "Transfer" means movement of the client from one level of service to another;

(37)  "Treatment plan" means a written, individualized, and comprehensive plan that is based on information obtained from the integrated assessment, and is designed to improve a client's mental health condition, and includes treatment goals or objectives for primary problems that indicate a need for mental health services;

(38)  "Volunteer" means an individual who provides unpaid assistance to an agency or program.

**Source:** 43 SDR 80, effective December 5, 2016; 48 SDR 14, effective August 22, 2021.

**General Authority:** SDCL 1-36-25(3)(4)(5), 27A-5-1(3)(5).

**Law Implemented:** SDCL 1-36-25, 27A-5-1.

**Cross-Reference:** Use of ICD-10-CM, § 67:16:01:26.

**Reference: DSM-5 -- Diagnostic and Statistical Manual of Mental Disorders**, Fifth Edition, published by the American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209-3901. Cost: $199.00.

**CHAPTER 67:62:02**

**ACCREDITATION**

# Section

67:62:02:01 Definitions.

67:62:02:02 Access by the department.

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67:62:02:21 Center application for state or federal assistance.

**67:62:02:01.  Definitions.** Terms used in this chapter mean:

(1)  "Comprehensive survey," a planned, on-site survey of the center, by a team of representatives from the department for the purposes of evaluating compliance with standards for accreditation renewal and assessing the quality of services provided;

(2)  "Plan of correction," a plan created by a center to organize the process of making improvements in clinical or administrative practice, in order to address issues that are identified by the department and require corrective action or improvement to meet the requirements of this article;

(3)  "Probation," a status of restricted accreditation of a center that fails to follow the requirements for accreditation;

(4)  "Revocation," the permanent withdrawing of a center's accreditation by the department;

(5)  "Root cause analysis," a process to identify the fundamental reason for a failure or inefficiency of process that allowed for a mistake, including the occurrence or possible occurrence of a sentinel event, to determine how to change procedures so mistakes are less likely, and then make the change;

(6)  "Suspension," the temporary withdrawing of a center's accreditation by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:02.  Access by the department.** The department shall monitor each center for continued compliance with this article, regardless of the term of a center's accreditation certificate. A center is subject to review, without notice, by the department. A center shall provide the department with access to all clients and staff, and to all financial and administrative program records needed to determine whether the center meets the requirements of SDCL title 27A and this article. The department may review and copy records in compliance with this article.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:03.  Application for accreditation.** A center seeking to operate as an accredited community mental health center must submit an application for accreditation to the department. The department shall make accreditation application forms available upon request. The department shall return and may not consider an incomplete application submitted by a center.

The department shall provide the necessary application forms to a center seeking renewal of accreditation at least sixty days before the expiration of the center's current accreditation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:04.  Policy and procedures subject to approval.** All center policy and procedures must comply with and carry out the requirements of article 67:62 and are subject to the approval of the department as part of the accreditation process.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:05.  Provisional accreditation and comprehensive survey.** The department may grant provisional accreditation to a center seeking accreditation for the first time or to a center previously accredited to regain accreditation. A provisional accreditation certificate may only be issued upon submission of a completed application and a preliminary comprehensive survey by the department finding compliance with this article and the requirements of SDCL title 27A.

A provisional accreditation expires after six months and may not be extended, except with the approval of the department to accommodate department scheduling delays, not to exceed an additional three months. A follow-up, comprehensive survey must be conducted prior to the expiration of the provisional accreditation, to determine if the requirements of SDCL title 27A and this article have been met. At that time, the department shall:

(1)  Grant a one year accreditation certificate for a new center;

(2)  Grant accreditation up to the end date of the original certification for a currently accredited center; or

(3)  Deny accreditation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:06.  Extension of accreditation period.** The department may extend the period of accreditation to accommodate department on-site scheduling delays. No extension may exceed a period of one year beyond the certificate expiration date.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:07.  Renewal of accreditation -- Comprehensive survey.** Each center currently accredited by the department shall participate in a comprehensive survey to determine compliance with the requirements of this article and SDCL title 27A prior to the renewal of accreditation. The department shall notify the center of the date of the comprehensive survey.

The department shall determine whether, based on the survey, the center complied with SDCL title 27A and this article, within ninety days of the comprehensive survey. The determination must be based on the evaluation of each component of the accreditation application and materials reviewed. As a result, the department shall:

(1)  Issue a three-year accreditation certificate, if a center is in compliance with ninety percent or more of the requirements and submits a plan of correction that is approved by the department and addresses all areas of noncompliance;

(2)  Issue a two-year accreditation certificate, if a center is in compliance with seventy to eighty-nine percent of the requirements and submits a plan of correction that is approved by the department and addresses all areas of noncompliance;

(3)  Place a center on probation for no more than six months, if the center is in compliance with less than seventy percent of the requirements. If the center successfully completes a plan of correction approved by the department, addresses all areas of noncompliance, and attains at least seventy percent compliance, the department must issue a one-year accreditation certificate; or

(4)  Deny accreditation, if the center fails to substantially comply with the requirements of SDCL title 27A and this article or fails to submit a plan of correction approved by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:08.  Comprehensive survey report -- Plan of correction.** The department shall, within thirty days following the comprehensive survey, report its findings to the center. If a center is not in compliance with this article and SDCL title 27A, the department must notify the center of the areas of noncompliance in the accreditation report. In response to any areas of noncompliance, the center shall submit a plan of correction to the department, within thirty days of receiving the accreditation report. The plan must include the action to be taken to correct the areas of noncompliance and the date the action is to be completed. The plan of correction is subject to acceptance or rejection in whole or in part by the department. The department shall, within thirty days of receiving the plan of correction, notify the center of the department's decision regarding approval or disapproval of the plan of correction and the accreditation status of the center. The department may conduct a follow-up review of the center to evaluate the corrections made. Failure to submit a plan of correction or failure to have the plan of correction approved by the department will result in probation, suspension, or revocation of accreditation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:09.  Reasons for placing a center on probation.** The department may place a center on probation if:

(1)  The center is in compliance with less than seventy percent of the requirements of this article and SDCL title 27A;

(2)  The center failed to complete the plan of correction to address the areas of noncompliance noted by the department in the accreditation report;

(3)  The center has serious infractions of this article that affect the overall continuity of care or safety of clients;

(4)  The center falsified information provided to the department for accreditation or funding purposes;

(5)  The center participated in, condoned, or permitted illegal acts;

(6)  The center participated in, condoned, or permitted fraud, deceit, or coercion;

(7)  The department determined the center fails to comply with licensing and other standards that are required by federal or state laws, rules, or regulations; state and federal confidentiality laws; or this article, and the noncompliance results in practices that are detrimental to the welfare of a client; or

(8)  The center refused to allow the department access for a comprehensive survey, a complaint review, or any necessary follow-up review.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:10.  Probation procedures.** If the department determines there is sufficient cause to place a center on probation:

(1)  The department must send the center written notice of probationary status and areas of noncompliance;

(2)  The center must develop and submit a plan of correction, pursuant to § 67:62:02:08, within thirty days of receiving the notice of probationary status;

(3)  Within five business days after receiving the plan of correction, the department must notify the center of the department's decision to approve or deny the plan of correction.

The department must conduct a site visit, at least once during the probationary period, to monitor the center's progress on the plan of correction. At the end of the probationary period, the department shall conduct a comprehensive survey of the center and grant a one year accreditation certificate, provided the agency has obtained at least seventy percent compliance during the final comprehensive survey; suspend the center's accreditation; or revoke the center’s accreditation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:11.  Suspension or revocation procedures.** The department shall provide written notice to the center of the department's intent to suspend or revoke the center's accreditation.

The suspension or revocation is effective fifteen days after receipt of the notice. The notice must contain the reason for the department's action, describe the process by which the center may request reconsideration by the department, and describe the appeal process.

A center's request for reconsideration must be in writing and be received by the department within fifteen days from the date the agency received the notice of suspension or revocation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**Cross Reference:** Acceptance of new clients prohibited, § 67:62:02:12.

**67:62:02:12.  Acceptance of new clients prohibited.** A center that has been placed on probation, or whose accreditation has been suspended, is prohibited from accepting new clients until the department approves the plan of correction.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:13.  Delay in meeting requirements.** The department may grant the center a delay in meeting the requirements of this article to avoid undue hardship on the center if the department determines that allowing a delay would be in the best interest of the center's clients.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:14.  Denial of accreditation.** If the departmant denies the accreditation to a center, the department must send notice of the denial to the center by certified mail, return receipt requested, within sixty days of the final review. The notice of denial must inform the center that the denial is effective fifteen days after receipt of the notice.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:15.  Reconsideration of application for accreditation.** A center may request that the department reconsider an application. The request must be in writing and sent within fifteen calendar days after receipt of the denial of accreditation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:16.  Appeal procedure.** A center may appeal to the secretary of the department any denial, revocation, or suspension of accreditation, or placement on probation by the department. An appeal under this section must be sent by certified mail within fifteen days after receipt of the notification of the department's action and must include a request for a fair hearing pursuant to SDCL chapter 1-26.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**Cross Reference:**  Fair hearings, chapter 67:17:02.

**67:62:02:17.  Time and place of hearing.** A fair hearing by an impartial hearing officer shall be held within 45 days after the department receives request for a fair hearing. The hearing officer shall set a time and place for the hearing at the earliest reasonable time. The hearing officer may continue the hearing at the request of any party involved and upon agreement by the parties to a specific extension of time.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:18.  Changes requiring notification.** An accredited center shall notify the department before a change in the center director, a reduction in services provided by the center, or the impending closure of the center. Upon receiving a notification under this section, the department must make a determination on the center's continued accreditation.

An accredited center shall give the department thirty days' written notice of closure. The center shall provide the department with written documentation outlining the manner in which safe storage of financial records will be provided, for at least six years from the date of closure, and safe storage of client case records will be provided, for at least six years from the date of closure, as required by 42 C.F.R. § 2.19, in effect on October 1, 1999.

The department may assist in making arrangements for the provision of services to clients by another accredited center, prior to the closing.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:19.  Sentinel event notification.** Each accredited center shall make a report to the department within twenty-four hours of any: death not primarily related to the natural course of the client's illness or underlying condition, permanent harm to a client, or severe temporary harm to a client, and any intervention required to sustain life to a client.

The center shall submit a follow-up report to the department within seventy-two hours and must include:

(1)  A written description of the event;

(2)  The client's name and date of birth; and

(3)  Immediate actions taken by the center.

Each center shall develop a root cause analysis policy and procedures to utilize in response to any event requiring notification.

Each center shall report to the department, as soon as possible, any fire with structural damage or in which injury or death occurs; any partial or complete evacuation of the agency resulting from natural disaster; any loss of utilities, including electricity, natural gas, and phone lines; and any loss of an emergency generator, fire alarms, sprinklers, and other critical equipment necessary for operation of the agency for more than twenty-four hours.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:02:20.  Approval needed for receipt of government funds.** Any funds generated through the provisions of SDCL chapter 27A-5 or any federal funds administered pursuant to SDCL chapter 28-1, may only be granted to an agency if the agency is accredited by the department pursuant to this article.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:02:21.  Center application for state or federal assistance.** A center applying for state or federal assistance, to supplement services required under the provisions of a service agreement with the department, shall submit a copy of the application to the department for review. A service agreement is a contract between the department and a center, in which the center agrees to provide diagnosis, evaluation, treatment, consultation, and other necessary direct assistance required for comprehensive mental health care.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**CHAPTER 67:62:03**

**GOVERNANCE**

# Section

67:62:03:01 Articles of incorporation.

67:62:03:02 Board of director policies.

67:62:03:03 Board responsibilities.

67:62:03:04 Discrimination in services prohibited.

**67:62:03:01.  Articles of incorporation.** Any center accredited by the department shall be established as a nonprofit organization incorporated in the state of South Dakota. A copy of the articles of incorporation or a nonprofit organization shall be filed with the department before a certificate of approval is issued. A nonprofit center shall submit a copy of the letter of exemption from the Internal Revenue Service to the department.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1(2).

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(2).

**67:62:03:02.  Board of director policies.** The center shall adopt bylaws which state its purpose and shall:

(1)  Provide for a rotating board composed of members who reside or work in the center's catchment area and who, as a group, represent the residents of that area, taking into consideration their employment, age, sex, ethnicity, place of residence, and other demographic characteristics of the area;

(2)  Describe the qualifications for membership on the board;

(3)  Describe procedures for selection and tenure of office for a member of the board;

(4)  Describe methods of amending bylaws;

(5)  Provide that the board must be responsible for approving overall policy;

(6)  Provide that the members of the governing board serve without pay;

(7)  Provide that no financial benefit accrue as a result of membership on the board;

(8)  Require that the board meets quarterly or more often as necessary for the proper administration of the center;

(9)  Provide that the minutes of all official meetings of the board be maintained;

(10)  Provide that the board arrange for an annual audit of the center's accounts;

(11)  Describe the process to be used to handle potential conflicts of interest;

(12)  Describe the body of parliamentary procedure to be followed in the conduct of business meetings; and

(13)  Include current or past clients of mental health services and family members on the board of directors and describe formal procedures for obtaining client and family member feedback and input, such as through the use of subcommittees or focus groups.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1(2)(5).

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(2)(5).

**67:62:03:03.  Board responsibilities.** The board shall take the following actions:

(1)  Employ an executive director whose qualifications, authority, and duties are defined in writing, and delegate to the executive director authority and responsibility for the daily management of the operations of the center according to established policies, including the hiring or designation of a clinical director;

(2)  Employ or designate a clinical director if the center does not have a current executive director and if the board determines the services of a clinical director are immediately needed, and delegate to the clinical director authority and responsibility for the management or the clinical operations of the center according to established policies;

(3)  Exercise general supervision and establish policy regarding personnel, property, funds, administrative job descriptions, operations, and program;

(4)  Approve a plan of financing which assures sufficient funds to provide care for clients and carry out the stated purpose of the center on a continuing basis;

(5)  Ensure that capital commitments are not made to the detriment of services to the client; and

(6)  Approve initiation, expansion, or modification of the center's program based on service needs of the community and the capability of the center to have an effect on those needs within its established goals and objectives.

The board may employ one person to serve as both executive director and the clinical director if the person is qualified pursuant to §§ 67:62:06:02 and 67:62:06:03 and the board determines that a full-time clinical director is not needed.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(2)(5).

**67:62:03:04.  Discrimination in services prohibited.** No center may deny any person equal access to its facilities or services on the basis of race, color, religion, gender, ancestry, national origin, mental or physical illness, or disability unless such illness or disability makes treatment offered by the agency non-beneficial or hazardous. All agencies shall ensure that they comply with the federal Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. (September 25, 2008) and the nondiscrimination on the basis of disability by public accommodations and in commercial facilities, 28 C.F.R. Part 36 (March 11, 2011). Referral services shall be provided to individuals not admitted to treatment.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 34-20A-27.

**Law Implemented:** SDCL 20-13-1(12), 20-13-23, 20-13-23.1, 34-20A-27, 29 U.S.C. § 794.

**CHAPTER 67:62:04**

**CORE SERVICE RESPONSIBILITIES**

# Section

67:62:04:01 Required range of services.

67:62:04:02 Center responsibilities.

67:62:04:03 Refusal to serve a child with a serious emotional disturbance or an adult with a serious mental illness -- Alternate provider.

67:62:04:04 Center's right to appeal.

**67:62:04:01.  Required range of services.** Community mental health centers shall serve the counties assigned to them by the department, and provide services to clients with acute mental health issues or serious mental health difficulties, including those with co-occurring disorders. A center shall provide services to children, youth, adults, and elderly residents of the area assigned to the center, either directly or by affiliation with another agency. Each community mental health center must provide:

(1)  Emergency services, available twenty-four hours per day, seven days a week;

(2)  Assessment services, to determine the best service match, for a client;

(3)  Outpatient services, pursuant to chapter 67:62:10;

(4)  Specialized outpatient services for children or youth, pursuant to chapter 67:62:11; and

(5)  Specialized outpatient services for adults, pursuant to chapter 67:62:12.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1, 27A-5-7.

**Note:** Optional services may include room and board, as defined in subdivision 67:62:01:01(30) and individualized and mobile programs of assertive community treatment team pursuant to chapter 67:62:13.

**67:62:04:02.  Center responsibilities.** A center's services shall be available and accessible, particularly for clients with complex mental health issues and co-occurring disorders as defined in subdivision 67:62:01:01(12), or who experience cultural or linguistic barriers or both. The center shall ensure:

(1)  Services are available and accessible to the general public;

(2)  The location of center offices and hours of service are posted and publicized at all of the center's locations;

(3)  That staff is available to provide clinical attention to a person with immediate needs during regular center hours and in case of emergency when the center is closed;

(4)  That a seamless continuum of services is provided for a client and a family so that:

(a)  The client and family move smoothly into more or less intensive services when needed to support progress toward recovery; and

(b)  Youth nearing adulthood receive smooth transitions into appropriate adult services when indicated; and

(5)  That a plan is developed by the center which describes an organized community-based system of care for individuals with a mental disorder, including co-occurring disorders.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1, 27A-5-7.

**67:62:04:03.  Refusal to serve a child with a serious emotional disturbance or an adult with a serious mental illness -- Alternate provider.** A center shall serve any client who meets the serious emotional disturbance or serious mental illness criteria, pursuant to § 67:62:11:01 or 67:62:12:01, and the financial eligibility criteria. If a center refuses services to a client who meets these criteria, the department may reduce the contract for the center, in order to purchase necessary services from an alternate provider.

In order for a center to refuse services to any client who meets the above criteria without an impact to the center's contract, a center must:

(1)  Provide written notice of the refusal to the department within seventy-two hours of the action;

(2)  Offer emergency services to the client, until the client can be relocated to another service area or alternate services are arranged; and

(3)  Arrange for appropriate mental health services for the client with another provider.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:04:04.  Center's right to appeal.** Within thirty days of the refusal to serve, the center's director may submit a letter of appeal to the department, stating the center's cause for maintaining its contract funds. The department shall make a determination and respond to the center within fourteen days of receiving the letter of appeal.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:05**

**GENERAL MANAGEMENT REQUIREMENTS**

# Section

67:62:05:01 Policy and procedures manual.

67:62:05:02 Statistical data.

67:62:05:03 Compliance -- Case record review.

67:62:05:04 Retention of records.

67:62:05:05 Accounting system, cost reporting, and annual audit.

67:62:05:06 Fees for services.

67:62:05:07 Client orientation.

67:62:05:08 Participation in state plan.

**67:62:05:01.  Policy and procedures manual.** Each center must have a policy and procedures manual to ensure compliance with this article and have procedures for reviewing and updating the manual.

**Source:** 43 SDR 80, effective December 5, 2016;.50 SDR 63, effective November 27, 2023

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:05:02.  Statistical data.** Each center shall submit to the department statistical data on each client receiving services, at the time and in the manner agreed upon by the department and the center.

Each center shall provide statistical data on all services, in accordance with the state management information system, and any other data required by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 1-36-25, 27A-3-1, 27A-5-1.

**67:62:05:03.  Compliance -- Case record review.** Each center shall establish an ongoing compliance review process for the review of case records to assure the quality and appropriateness of services. Center staff shall be informed of the review process, and the review process shall be made a part of the center's policies and procedures manual. The center shall have a procedure to address any issues discovered during the compliance review process.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:05:04.  Retention of records.** Each center shall retain all financial records, client case records, and documentation of services provided for at least six calendar years post-treatment for adults or at least six calendar years after the client reaches age 18 for children or youth. Records may not be destroyed when an audit or investigation is pending.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1(2).

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(2).

**67:62:05:05.  Accounting system, cost reporting, and annual audit.** Each center shall maintain an accounting system pursuant to generally accepted accounting principles. If requested by the department, a center must submit to the department a copy of an annual entity-wide, independent financial audit. The audit must be completed and filed with the department by the end of the fourth month following the end of the fiscal year being audited.

Each audit must contain, as part of the supplementary information, a cost report, as outlined by the department. If applicable, the audit must be conducted in accordance with 2 C.F.R. Part 200 Subpart F, in effect on August 13, 2020.

In the case of an entity-wide, independent financial audit or a single audit, the center shall ensure the resolution of all interim audit findings. The center shall facilitate and aid any reviews, examinations, and agreed-upon procedures the department or any contractor may perform.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**Cross Reference:** Single audit, 2 C.F.R. § 200.501(b).

**67:62:05:06.  Fees for services.** The board of a center shall adopt a schedule of fees for services. The fees must be based on a client's ability to pay. A center shall provide its clients, referral resources, the public, and the department with up-to-date fees for services, including the fee per unit of service and any standard fee not included in the unit rate charged by the center.

A center shall attempt to collect from clients payments for services, in accordance with the adopted fee schedule. A center shall attempt to collect, from third-party sources reimbursement for the cost of services provided to a client.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:05:07.  Client orientation.** Each center shall establish a policy and procedures to ensure that a new client is provided with orientation to the program, at or before the time of admission, or as soon thereafter as possible. The orientation must provide:

(1)  A description of the center's purpose and the treatment process;

(2)  A review of relevant center policies;

(3)  The hours during which services are available;

(4)  The fees for services and the responsibility for payment for those fees;

(5)  Information regarding the right to confidentiality, in accordance with 42 U.S.C. § 290 dd-2, in effect on March 27, 2020; 42 C.F.R. Part 2, in effect on January 18, 2017; and 45 C.F.R. Parts 160 and 164, in effect on September 26, 2016; and

(6)  The rights of the client while receiving services, in accordance with §§ 67:62:07:01 and 67:62:07:02.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:05:08.  Participation in state plan.** Each center shall participate in the state's comprehensive mental health service plan and submit information to the department, as required.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:06**

**PERSONNEL**

# Section

67:62:06:01 Requirements for executive director.

67:62:06:02 Requirements for clinical director.

67:62:06:03 Requirements for staff providing direct services and supports to clients.

67:62:06:04 Orientation of personnel.

67:62:06:05 Supervision.

67:62:06:06 Personnel policies and records.

67:62:06:07 Organizational chart.

67:62:06:08 Workforce development and training.

67:62:06:09 Volunteers.

67:62:06:10 Office of Inspector General Medicaid exclusion list.

**67:62:06:01.  Requirements for executive director.** The board of directors shall appoint an executive director with the following qualifications:

(1)  Knowledge of mental health services;

(2)  Administrative skills; and

(3)  At the time of employment, knowledge of the administrative rules pertaining to community mental health services and programs.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 1-36-25(5), 27A-3-1, 27A-5-1(1)(2).

**67:62:06:02.  Requirements for clinical director.** The clinical director employed or designated by a center's executive director or the board shall meet the qualifications of a clinical supervisor as defined in subdivision 67:62:01:01(8), and have an additional two years' experience in a mental health setting.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 1-36-25(5), 27A-3-1, 27A-5-1(1)(2).

**67:62:06:03.  Requirements for staff providing direct services and supports to clients.** Qualifications to provide direct mental health services and supports to clients are as follows:

(1)  A staff member who has at least a high school diploma or a high school equivalency may, if supervised by a clinical supervisor, provide:

(a)  Intake services;

(b)  Case management;

(c)  Family education and support;

(d)  Liaison services;

(e)  Direct assistance;

(f)  Psychosocial rehabilitative services; and

(g)  Recovery support services;

(2)  A staff member who has at least a master's degree in psychology, social work, counseling, or nursing; a staff member who has a social work license, as defined in SDCL 36-26-15; or staff member who holds a bachelor's degree in a human services field and has two years of related experience may provide:

(a)  Any service listed in subdivision (1); and

(b)  Any other mental health service;

(3)  A physician, a resident operating within guidelines esablished by the Board of Medical and Osteopathic Examiners, a licensed physician assistant, or a licensed certified nurse practitioner practicing within the individual's scope of practice, may provide psychiatric services; and

(4)  A registered nurse or a licensed practical nurse may provide psychiatric nursing services.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 1-36-25, 27A-3-1, 27A-5-1.

**67:62:06:04.  Orientation of personnel.** The center shall provide orientation for all employees, including contracted staff providing direct clinical services, interns, and volunteers within ten working days after employment. The orientation shall be documented and shall include at least the following items:

(1)  Fire prevention and safety, including the location of all fire extinguishers in the center, instruction in the operation and use of each type of extinguisher, and an explanation of the fire evacuation plan and center's smoking policy;

(2)  The confidentiality of all information about clients, including a review of requirements in this article and 45 C.F.R. Parts 160 and 164 (October 7, 2009);

(3)  The proper maintenance and handling of client case records;

(4)  The center's philosophical approach to treatment and the center's goals;

(5)  The procedures to follow in the event of a medical emergency or a natural disaster;

(6)  The specific job descriptions and responsibilities of employees;

(7)  The center's policies and procedures are maintained in accordance with § 67:62:05:01; and

(8)  The center's procedures regarding the reporting of cases of suspected child abuse or neglect in accordance with SDCL 26-8A-3 and 26-8A-8.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**Cross-References:**

Persons required to report child abuse or neglected child -- Intentional failure as misdemeanor, SDCL 26-8A-3.

Oral report of abuse or neglect -- To whom made -- Response report, SDCL 26-8A-8.

**67:62:06:05.  Supervision.** Any center staff providing direct services to clients, other than those staff who meet the criteria of a clinical supervisor as defined in subdivision 67:62:01:01(8), shall be supervised by a clinical supervisor.

The amount and type of supervision shall be based on the center's staff needs for such supervision and their level of education, training, and experience. Clinical supervisors are also responsible for ensuring center staff who do not meet clinical supervisor criteria are operating within the scope of their education, training, and competencies.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(1).

**67:62:06:06.  Personnel policies and records.** The center shall maintain written personnel policies and records for all staff including provisions for equal employment opportunities. Each center shall maintain a personnel file or record for each staff member including contracted staff, intern, or volunteer. The file includes the following:

(1)  The application filed for employment or resume and transcripts or diploma and continuing education;

(2)  The position description signed by the staff with a statement of duties and responsibilities and the minimum qualifications and competencies necessary to fulfill these duties;

(3)  The completion of appropriate pre-hire screening will be evident for staff that provide direct services to vulnerable populations;

(4)  The staff's orientation document in accordance with § 67:62:06:05; and

(5)  Copies of the staff's current credentials related to job duties.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(2).

**67:62:06:07.  Organizational chart.** Each center shall have a current organizational chart that indicates lines of authority from the board of directors and lines of authority for all job classifications. The organizational chart must be made available to all staff members, the board of directors, and the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:06:08.  Workforce development and training.** Each center shall provide for ongoing training and consultation to enable staff and supervisors to carry out their responsibilities effectively.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:06:09.  Volunteers.** If a center uses volunteers as support for programs, the center shall establish and maintain a plan for recruiting, screening, training, and supervising the volunteers.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(5).

**67:62:06:10.  Office of Inspector General Medicaid exclusion list.** Each facility shall routinely check the Office of Inspector General's List of Excluded Individuals and Entities to ensure that each new hire as well as any current employee is not on the excluded list. No payment may be provided for services furnished by an excluded individual. Documentation that this has been completed shall be placed in the employee's personnel file.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1(5).

**CHAPTER 67:62:07**

**CLIENTS' RIGHTS**

# Section

67:62:07:01 Clients' rights.

67:62:07:02 Guaranteed rights.

67:62:07:03 Policy on abuse, neglect, and exploitation.

67:62:07:04 Grievance procedures.

67:62:07:05 Appeal of ineligibility or termination of services.

67:62:07:06 Time and place of hearing.

**67:62:07:01.  Clients' rights.** A center shall ensure that the rights of a client are fully protected. A center shall give each client, the client's parent if the client is under the age of eighteen, or the client's guardian or advocate, if any, a copy of the client's rights and responsibilities in writing, or in an accessible format, during the intake process and shall discuss the rights and responsibilities with the client or the client's parent, guardian, or advocate.

Each center shall post the rights and responsibilities of a client in a place accessible to clients. Copies must be available in locations where clients can access them, without making a request to center staff.

Each center shall make a copy of the rights and responsibilities available to the department.

Each center shall provide services in a manner that is responsive to a client's needs, considering the client's age, gender, social support, cultural orientation, psychological characteristics, sexual orientation, physical situation, and spiritual beliefs.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:07:02.  Guaranteed rights.** A client has rights guaranteed under the constitution and laws of the United States and this state, including:

(1)  The right to refuse prohibited treatment, as provided in SDCL 27A-12-3.22;

(2)  The right to be free of any exploitation or abuse;

(3)  The right to seek and have access to legal counsel;

(4)  The right to have access to an advocate or an employee of the state's designated protection and advocacy system;

(5)  Information regarding the right to confidentiality of all records, correspondence, and information relating to assessment, diagnosis, and treatment, pursuant to SDCL 27A-12-26 and 45 C.F.R. Parts 160 and 164, in effect on September 26, 2016; and

(6)  The right to participate in decision-making, related to treatment, to the greatest extent possible.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1, 27A-12-3.22, 27A-12-26.

**67:62:07:03.  Policy on abuse, neglect, and exploitation.** Each center shall establish a policy to prohibit abuse, neglect, and exploitation of a client. The policy must contain:

(1)  Definitions of abuse, neglect, and exploitation, pursuant to SDCL 22-46-1;

(2)  A requirement to report to the department any incidents of abuse, neglect, or exploitation;

(3)  A requirement to report to the department, pursuant to SDCL 26-8A-3 and 26-8A-8;

(4)  A procedure for disciplinary action to be taken, if staff engages in abusive, neglectful, or exploitative behavior;

(5)  A requirement to make immediate efforts to inform the guardian, or the parent if the client is under the age of eighteen, of an alleged incident or an allegation of abuse, neglect, or exploitation; and

(6)  A requirement to document the actions to be implemented, upon substantiation of an alleged incident or an allegation of abuse, neglect, or exploitation, to reduce the likelihood of, or to prevent future incidents of, abuse, neglect, or exploitation.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**Cross References:**

Persons required to report child abuse or neglected child -- Intentional failure as misdemeanor, SDCL 26-8A-3.

Oral report of abuse or neglect -- To whom made -- Response report, SDCL 26-8A-8.

**67:62:07:04.  Grievance procedures.** Each center shall establish a policy and procedures for receiving, considering, and responding to client grievances.

The center shall provide, to the client and the client's parent or guardian if the client is under the age of eighteen, a copy of the policy and procedures, in writing or in an accessible format, during intake services. Verification by the client of receipt of the policy and procedures must be placed in the client's clinical record. The grievance policy and procedures must be available in locations where it can be accessed by a client, without making a request to center staff. The policy and procedures must be available to former clients, upon request.

The policy and procedures must include the ability to appeal the center's decision regarding ineligibility or the termination of services to the department, as provided in § 67:62:07:05, and must include the telephone number and address of the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:07:05.  Appeal of ineligibility or termination of services.** A client, a client's parent in the case of a client under the age of eighteen, or a client's guardian, may appeal to the department the center's decision regarding the ineligibility or termination of services. An appeal must be made in writing, to the department, within thirty days of receiving the notice regarding ineligibility or termination of services. The department shall provide a determination within thirty days of receipt of a request for appeal. If the client or the client's parent or guardian is dissatisfied with the department's decision regarding ineligibility or termination of services, the client, the client's parent, or the client's guardian may request a fair hearing by notifying the department, in writing, within thirty days of receiving the department's decision.

While a termination is being appealed, the center shall continue to provide services to the client until a decision is reached, after a hearing pursuant to SDCL chapter 1-26.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:07:06.  Time and place of hearing.** A fair hearing, by an impartial hearing officer, must be held within ninety days after receiving a request by the client, the client's parent in the case of a client under the age of eighteen, or the client's guardian, if applicable. The impartial hearing officer shall set a time and place for the hearing at the earliest reasonable time. Time extensions may be provided by the impartial hearing officer upon order of the hearing officer or at the request of any of the parties involved if there is no objection to a time extension from any other party involved.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**CHAPTER 67:62:08**

**CLINICAL PROCESSES**

# Section

67:62:08:01 Client identification data.

67:62:08:02 Client review of case records.

67:62:08:03 Closure and storage of case records.

67:62:08:04 Admission of returning clients

67:62:08:05 Integrated assessment.

67:62:08:06 On-going assessment.

67:62:08:07 Treatment plan.

67:62:08:08 Treatment plan review -- Six month review.

67:62:08:09 Supervisory reviews.

67:62:08:10 Crisis intervention plans.

67:62:08:11 Transition planning.

67:62:08:12 Progress notes.

67:62:08:13 Group therapy progress notes.

67:62:08:14 Transfer or discharge summary.

**67:62:08:01.  Client identification data.** Each center shall establish a policy and procedures to collect and record client identification data, at the time of admission or as soon after admission as possible, and on an annual basis thereafter. Client identification data must be kept in the clinical record. Client identification data is:

(1)  Name, street address, and telephone number of the client;

(2)  Date of birth, gender, and race or ethnic origin of the client;

(3)  Unique identification number of the client;

(4)  Referral source;

(5)  Service start date;

(6)  Outcome measures;

(7)  Data for the state management information system; and

(8)  Any other client information required by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:02.  Client review of case records.** Each center shall establish a written policy and procedures to govern a client's access to the client's case records. The policy and procedures must specify any conditions or restrictions on client access and must be available to the client, upon request.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:03.  Closure and storage of case records.** The center shall establish a policy and procedures to ensure the closure and storage of case records upon the completion or termination of a treatment program. The policy and procedures must:

(1)  Identify, by position or title, the staff members who are responsible for the closure of case records within the agency and the management information system;

(2)  Provide for the closure of case records belonging to clients who have had no contact, by phone or by person, with the agency for a time period no longer than six months; and

(3)  Provide for the safe storage of case records for at least six years from the closure.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:04.  Admission of returning clients.** The center shall establish a policy and procedures to promote the continuity of care for a client who is readmitted. The procedures must show staff how to complete a new agency case record and new admission record in the management information system.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:05.  Integrated assessment.** A mental health staff member shall meet with the client and, if appropriate, the client's family if appropriate, to complete an integrated assessment, within thirty days of the first day the intake process begins. The integrated assessment must include both functional and diagnostic components. For a client under the age of eighteen, the mental health staff must obtain permission from the parent or guardian to meet with the child, and at least one parent or guardian must participate in the assessment. The assessment must contain:

(1)  Strengths of the client and the client's family, if appropriate, as well as previous periods of success, the strengths that contributed to that success, and the identification of potential resources within the family, if applicable;

(2)  Presenting problems or issues that indicate a need for mental health services;

(3)  Identification of readiness for change regarding problem areas, including motivation and supports for making such changes;

(4)  Current substance use and relevant treatment history of any previous mental health and substance use disorder or gambling treatment, and periods of success, psychiatric hospital admissions, psychotropic and other medications, relapse history or potential for relapse, physical illness, and hospitalization;

(5)  Relevant family history, including family relationship dynamics and family psychiatric and substance abuse history;

(6)  Family and relationship issues, along with social needs;

(7)  Educational history and needs;

(8)  Legal issues;

(9)  Living environment or housing;

(10)  Safety needs and risks with regard to physical acting out, health conditions, acute intoxication, or withdrawal;

(11)  Past or current indications of trauma or domestic violence;

(12)  Vocational and financial history and needs;

(13)  Behavioral observations or mental status;

(14)  Formulation of a diagnosis, including documentation of co-occurring medical, developmental disability, mental health, substance use disorder, or gambling issues, or a combination of these based on integrated screening;

(15)  Eligibility determination for mental health services based on a serious mental illness or serious emotional disturbance, and a level of care determination for substance use services, or both;

(16)  Clinician's signature and credentials, and the date; and

(17)  Clinical supervisor's signature and credentials, and the date, to verify review of the assessment and if there is agreement with:

(a)  The initial diagnosis; or

(b)  The formulation of the initial diagnosis, if the staff member conducting the integrated assessment does not have the education or training to make a diagnosis.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:06.  On-going assessment.** The center shall maintain and document an on-going assessment and identify any changes in the client's needs and strengths throughout treatment. The on-going assessment must be documented in the client's progress notes or case record.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:07.  Treatment plan.** The initial treatment plan must be completed within thirty days of the first day the intake process begins and must include the mental health staff's signature and credentials, the date of the signature, and the clinical supervisor's signature and credentials, if the mental health staff member does not meet the criteria of a clinical supervisor, as defined in § 67:62:01:01. Evidence of the client's or the client's parent or guardian's participation and meaningful involvement in formulating the plan must be documented in the client's clinical record.

The treatment plan must:

(1)  Contain goals or objectives which are individualized, clear, specific, and measurable, so that both the client and the mental health staff can determine when progress has been made;

(2)  Address multiple client needs, if applicable, that are relevant to the client's mental health treatment;

(3)  Include interventions that match the client's readiness for change with respect to identified issues; and

(4)  Be understandable by the client and the client's parent or guardian, if applicable.

A copy of the treatment plan must be provided to the client, and to the client's parent or guardian if applicable.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:08.  Treatment plan review -- Six month review.** A mental health staff member shall review the treatment plan at least once every six months and update, if needed. The treatment plan review must include documentation of any progress made toward treatment goals or objectives, significant changes to the treatment goals or objectives, and a justification for a continuation of mental health services. Treatment plan reviews may be documented in the progress notes or case record. Changes in the client's treatment plan goals or objectives must be documented in the treatment plan. Treatment plan reviews must include the mental health staff's signature and credentials, and the date.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:09.  Supervisory reviews.** Staff meeting clinical supervisory criteria as defined in § 67:62:01:01, shall annually conduct at least one of the client's treatment plan reviews. This review must include documentation of:

(1)  Progress made toward treatment goals or objectives;

(2)  Significant changes to the treatment goals or objectives;

(3)  Justification for the continuation of mental health services; and

(4)  Assessment of the need for additional services or changes in services, if applicable.

This review qualifies as a six month review, pursuant to § 67:62:08:08. The annual supervisory review must include the clinical supervisor's signature and credentials, and the date.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:10.  Crisis intervention plans.** Crisis intervention planning must be provided to any client who has safety issues or risks, or has frequent crisis situations or recurrent hospitalizations. Crisis intervention planning must be offered to any client who may need assistance to prevent:

(1)  Hospitalization;

(2)  Out of home placement;

(3)  Homelessness;

(4)  Becoming a danger to oneself or others; or

(5)  Involvement with the criminal justice system.

Crisis intervention plans must be developed in partnership with the client, if possible, in partnership with the client's parent, if the client is under the age of eighteen, or in partnership with the client's guardian, if any. Crisis intervention plans must include interventions specific to the client, and address issues relative to co-occurring disorders.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:11.  Transition planning.** Transition planning must be provided to clients moving to a different service, leaving services, or for youth nearing adulthood. Goals related to transition planning must be included in the clinical documentation, either as part of the treatment plan or as a separate transition plan.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:12.  Progress notes.** A mental health staff member must record progress notes in the client's case record that substantiate all services provided. A mental health staff member must document the counseling sessions with the client, summarize significant events occurring, and reflect goals and problems relevant during the session, and any progress in achieving those goals and addressing the problems in the progress notes. A mental health staff member must also include attention to any co-occurring disorder as it relates to the client's mental disorder in the progress notes.

A progress note must be included in the client's clinical record for each billable service provided. Progress notes must include the following for the services to be billed:

(1)  Information identifying the client receiving services, including the client's name and unique identification number;

(2)  The date, location, time met, the units of service of the session, and the duration of the session;

(3)  The service activity code or the title describing the service code;

(4)  A brief assessment of the client's functioning;

(5)  A description of what occurred during the session, including the specific action taken or plan developed to address unresolved issues for the purpose of achieving treatment goals or objectives;

(6)  A brief description of what the client and the provider plan to work on during the next session and work that may occur between sessions, if applicable; and

(7)  The signature and credentials of the staff providing the service.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:13.  Group therapy progress notes.** One progress note may be recorded for each group therapy session, if the note includes specific information for each client participating in the group. Group progress notes must contain:

(1)  Information identifying each client receiving services, including the client's name and unique identification number;

(2)  The date, location, time met, the units of service of the counseling session, and the duration of the session;

(3)  The service activity code or the title describing the service code;

(4)  A brief assessment of each client's functioning;

(5)  A description of what occurred during the session, including the specific action taken or plan developed to address unresolved issues for the purpose of achieving treatment goals or objectives for each client;

(6)  A brief description of what each client and the provider plan to work on during the next session and any work that may occur between sessions, if applicable; and

(7)  The signature and credentials of the staff providing the service.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:08:14.  Transfer or discharge summary.** A transfer or discharge summary must be completed within five working days after termination or discontinuation of services. A transfer or discharge summary of the client's problems, course of treatment, and progress toward planned goals and objectives identified in the treatment plan must be maintained in the client case record. A policy and procedures must be in place to ensure that the transfer or discharge is completed in the management information system.

If a client prematurely discontinues services, reasonable attempts must be made by the center to re-engage the client into services, if appropriate. The attempts made must be documented in the client's clinical record.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:09**

**ENVIRONMENTAL SANITATION SAFETY AND FIRE PREVENTION**

# Section

67:62:09:01 Safety and sanitation plan.

67:62:09:02 Life safety codes.

**67:62:09:01.  Safety and sanitation plan.** For each setting in which the center provides services, there must be a health, safety, sanitation, and disaster plan that ensures the health and safety of the individuals served. The plan must provide procedures for:

(1)  Responding to a medical emergency;

(2)  Responding to fire and natural disasters, including evacuation plans;

(3)  Training and regularly scheduled drills for fire and natural disasters;

(4)  Responding to communicable diseases; and

(5)  Ensuring sanitation of all settings in which services are provided.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:09:02.  Life safety codes.** Each building the center owns, rents, or leases must comply with applicable fire safety standards, as set forth in the 2012 edition of the NFPA 101 Life Safety Code. An automatic sprinkler system is not required in an existing facility, unless significant renovation or remodeling occurs. An existing automatic sprinkler system must remain in service.

New construction, renovations, additions, and changes of space must comply with NFPA 101 Life Safety Code, 2012 edition. Each facility must also comply with the building construction standards of the International Building Code, 2012 edition.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**Reference: NFPA 101 Life Safety Code, 2012, National Fire Protection Association**. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; https://catalog.nfpa.org/NFPA-101-Life-Safety-Code-P1220.aspx; Phone: 1-800-344-3555. Cost $171.00;

**International Building Code**, 2012 edition. Copies may be obtained from International Conference of Building Officials, Phone 1-800-786-4452. Order@iccsafe.org Cost: $89.00.

**CHAPTER 67:62:10**

**OUTPATIENT SERVICES**

# Section

67:62:10:01 Eligibility criteria.

67:62:10:02 Services provided.

67:62:10:03 Reimbursable services.

67:62:10:04 Nonreimbursable services.

**67:62:10:01.  Eligibility criteria.** Individuals are eligible for outpatient clinic services if they have a mental disorder, with the exception of:

(1)  Substance-related and addictive disorders; and

(2)  Developmental disabilities unless they co-occur with another diagnosable mental disorder.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:10:02.  Services provided.** Each center shall make the following outpatient services available to clients:

(1)  Integrated assessment, evaluation, and screening;

(2)  Individual therapy;

(3)  Group therapy;

(4)  Family therapy;

(5)  Psychiatric services, with the primary purpose of prescribing, or reviewing a client's use of, pharmaceuticals, including psychiatric assessments, treatment, and prescription of pharmacotherapy; and

(6)  Collateral contacts.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:10:03.  Reimbursable services.** Reimbursable services are limited to face-to-face and telehealth contacts for the purpose of providing comprehensive mental health treatment pursuant to § 67:62:10:02.

**Source:** 43 SDR 80, effective December 5, 2016; 48 SDR 14, effective August 22, 2021.

**General Authority:** SDCL 1-36-25(1), 27A-5-1(2)(3).

**Law Implemented:** SDCL 1-36-25, 27A-3-1, 27A-5-1.

**67:62:10:04.  Nonreimbursable services.** The following are nonreimbursable under this chapter:

(1)  Vocational counseling and vocational training in a classroom or at a job site;

(2)  Academic educational services;

(3)  Services that are solely recreational in nature;

(4)  Services provided to clients who are in psychiatric residential treatment facilities or institutions for mental disease;

(5)  Services provided to clients who are in detoxification centers;

(6)  Services provided to clients who are incarcerated in a correctional facility;

(7)  Services provided to clients who are in juvenile detention facilities; and

(8)  Transportation services.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:11**

**CHILD OR YOUTH AND FAMILY SERVICES**

# Section

67:62:11:01 Eligibility criteria.

67:62:11:02 Services provided.

67:62:11:03 Reimbursable services.

67:62:11:04 Nonreimbursable services.

**67:62:11:01.  Eligibility criteria.** To be eligible for services under § 67:62:11:02, the clinical record must contain documentation that indicates:

(1)  At least one child in the family under the age of eighteen meets the criteria of serious emotional disturbance, as provided in SDCL 27A-15-1.1; or

(2)  At least one youth who is eighteen years of age or older, but less than twenty-one years of age, needs a continuation of services started before the age of eighteen, in order to realize specific goals, or assist in the transition to adult services, and meets the criteria of serious emotional disturbance, provided in SDCL subdivisions 27A-15-1.1(2)(3)(4) and (5).

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:11:02.  Services provided.** Services may be provided in a location preferred by the child or youth and the child or youth's parent or guardian, including settings outside of the center.

Services may be provided within an integrated system of care. The parents or guardian and family, of the child or youth with serious emotional disturbance, may be full participants in the planning, delivery, and evaluation of services.

Services must be provided according to the individualized needs and strengths of the child or youth and the child or youth's family or guardian, and must be responsive to cultural differences and special needs of the child, youth, or family. The following child or youth and family services must be provided by the center according to the individualized needs of each child or youth:

(1)  Integrated assessment, evaluation, and screening;

(2)  Case management;

(3)  Individual therapy;

(4)  Group therapy;

(5)  Parent or guardian group therapy;

(6)  Family education, support, and therapy;

(7)  Crisis assessment and intervention services, with twenty-four hour per day and seven day per week availability;

(8)  Psychiatric services with the primary purpose of prescribing, or reviewing a client's use of, pharmaceuticals, including psychiatric assessments, treatment, and prescription of pharmacotherapy;

(9)  Psychiatric nursing services, including components of physical assessment, medication assessment and monitoring, and medication administration for clients unable to self-administer their medications;

(10)  Collateral contacts; and

(11)  Liaison services, to facilitate treatment planning and coordination of services between mental health and other entities.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:11:03.  Reimbursable services.** Reimbursable services are limited to face-to-face and telehealth contacts for the purpose of providing comprehensive mental health treatment pursuant to the services listed in subdivisions 67:62:11:02 (1) through (10).

**Source:** 43 SDR 80, effective December 5, 2016; 48 SDR 14, effective August 22, 2021.

**General Authority:** SDCL 1-36-25(1), 27A-5-1(3).

**Law Implemented:** SDCL 1-36-25, 27A-3-1, 27A-5-1.

**67:62:11:04.  Nonreimbursable services.** The following are nonreimbursable under this chapter:

(1)  Vocational counseling and vocational training in a classroom or at a job site;

(2)  Academic educational services;

(3)  Services that are solely recreational in nature;

(4)  Services for a client, other than an eligible child or youth with serious emotional disturbance and the child or youth's family;

(5)  Services provided to clients who are in psychiatric residential treatment facilities;

(6)  Services provided to clients who are in inpatient psychiatric hospitals;

(7)  Services provided to clients who are in detoxification centers;

(8)  Services provided to clients who are incarcerated in a correctional facility;

(9)  Services provided to clients who are in juvenile detention facilities; and

(10)  Transportation services.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:12**

**COMPREHENSIVE ASSISTANCE WITH RECOVERY**

**AND EMPOWERMENT**

# Section

67:62:12:01 Eligibility criteria

67:62:12:02 Services provided.

67:62:12:03 Reimbursable services.

67:62:12:04 Nonreimbursable services.

**67:62:12:01.  Eligibility criteria.** To be eligible for comprehensive assistance with recovery and empowerment services, a client must be at least eighteen years of age and:

(1)  The client must have one of the following:

(a)  Undergone psychiatric treatment more intensive than outpatient care and more than once in the client's lifetime;

(b)  Experienced a single episode of psychiatric hospitalization with a diagnosis of a major mental disorder;

(c)  Been treated with psychotropic medication for at least one year; or

(d)  Had frequent crisis contact with a community mental health center, or another mental health provider, for more than six months as a result of a mental illness; and

(2)  Meet three of the following:

(a)  The client must be unemployed or have markedly limited job skills or poor work history;

(b)  The client must exhibit inappropriate social behavior that results in concern by the community or requests for mental health or legal intervention;

(c)  The client must be unable to obtain public services without assistance;

(d)  The client must require public financial assistance for out-of-hospital maintenance, must have difficulty budgeting public financial assistance, or must require ongoing training in budgeting skills or require a payee;

(e)  The client must lack social support systems in a natural environment, live alone, or be isolated; or

(f)  The client must be unable to perform basic daily living skills without assistance.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:12:02.  Services provided.** Services may be provided in a location preferred by the client, including settings outside of the center.

Services may be provided within an integrated system of care. Services must be provided according to the individualized needs and strengths of the client and must be responsive to cultural differences and special needs of the client. The following comprehensive assistance with recovery and empowerment services must be provided by the center according to the individualized needs of the client:

(1)  Integrated assessment, evaluation, and screening;

(2)  Crisis assessment and intervention services, with twenty-four hour per day and seven day per week availability;

(3)  Case management services;

(4)  Psychiatric services, with the primary purpose of prescribing or reviewing a client's use of pharmaceuticals, including psychiatric assessments, treatment, and prescription of pharmacotherapy;

(5)  Psychiatric nursing services, including components of physical assessment, medication assessment and monitoring, and medication administration;

(6)  Symptom assessment and management, including medication monitoring and education;

(7)  Individual therapy or counseling;

(8)  Group therapy;

(9)  Recovery support services;

(10)  Direct assistance to ensure ongoing opportunities for the client to obtain the basic necessities of daily life and perform basic daily living activities;

(11)  Psychosocial rehabilitation services provided on an individual or group basis, to assist the client with gaining or relearning self-care, interpersonal, and community living skills needed to live independently, sustain psychiatric stability, and progress towards recovery;

(12)  Liaison services, to facilitate treatment planning and coordination of services between mental health and other entities;

(13)  Encouragement for the active participation of family and a supportive social network; and

(14)  Collateral contacts.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-5-1.

**67:62:12:03.  Reimbursable services.** Reimbursable services are limited to face-to-face and telehealth contacts for the purpose of providing comprehensive treatment, rehabilitation, and support services listed in subdivisions 67:62:12:02(1) through (11).

With the exception of psychiatric services, billable contacts under the comprehensive assistance with recovery and empowerment services daily rate are limited to one contact per client per day even though multiple contacts may take place.

**Source:** 43 SDR 80, effective December 5, 2016; 48 SDR 14, effective August 22, 2021.

**General Authority:** SDCL 1-36-25(1), 27A-5-1(3).

**Law Implemented:** SDCL 1-36-25, 27A-5-1.

**67:62:12:04.  Nonreimbursable services.** The following are nonreimbursable under this chapter:

(1)  Vocational counseling and vocational training in a classroom or at a job site;

(2)  Academic educational services;

(3)  Services that are solely recreational in nature;

(4)  Services for individuals other than eligible clients;

(5)  Services delivered by telephone or through other non-face-to-face contact;

(6)  Services provided in an institution for mental disease;

(7)  Services provided to clients who are in detoxification centers;

(8)  Services provided to clients who are incarcerated in correctional facilities; and

(9)  Transportation services.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:13**

**INDIVIDUALIZED MOBILE PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT**

# Section

67:62:13:01 Eligibility criteria.

67:62:13:02 Services provided by a center.

67:62:13:03 Requirement for designation and duties of primary provider.

67:62:13:04 Individualized and mobile program of assertive community treatment team duties.

67:62:13:05 Individualized and mobile program of assertive community treatment team meetings.

67:62:13:06 Monthly treatment planning and review meetings.

67:62:13:07 Reimbursable services.

67:62:13:08 Nonreimbursable services.

**67:62:13:01.  Eligibility criteria.** To be eligible forindividualized and mobile program of assertive community treatment (IMPACT) services, a client must be eighteen years of age or older, meet theserious mental illness criteria pursuant to § 67:62:12:01, and the following:

(1)  The client must have a medical necessity to receive IMPACT services, as determined by a clinical supervisor;

(2)  The client must be approved by the department to receive IMPACT services;

(3)  The client must understand the IMPACT model and voluntarily consent to receive IMPACT services or, must be under a transfer of commitment from the Human Services Center;

(4)  No other appropriate community-based mental health service is available for the client; and

(5)  The client must meet four of the following:

(a)  Have persistent or recurrent difficulty performing daily living tasks, except with significant support or assistance from friends, family, relatives, community mental health providers, or others;

(b)  Have frequent psychiatric inpatient hospitalizations within the past year;

(c)  Have constant or cyclical turmoil with family, social, or legal systems or inability to integrate successfully into the community;

(d)  Reside in an inpatient facility, jail, prison, or residential facility and be clinically assessed as able to live in a more independent living situation, if intensive services are provided;

(e)  Have an imminent threat of losing housing or becoming homeless; or

(f)  Be likely to need residential or institutional placement if more intensive community-based services are not provided.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:02.  Services provided by a center.** A center may provide services in a location preferred by a client, including settings outside the center.

A center may provide services within an integrated system of care. A center must provide services according to the individualized needs and strengths of the client and must be responsive to cultural differences and special needs of the client. The following individualized and mobile program of assertive community treatment (IMPACT) services must be provided according to the individualized needs of the client:

(1)  Integrated assessment, evaluation, and screening;

(2)  Crisis assessment and intervention services, with twenty-four hour per day and sevenday per week availability;

(3)  Case management;

(4)  Psychiatric services, with the primary purpose of prescribing or reviewing a client's use of pharmaceuticals, including psychiatric assessments, treatment, and prescription of pharmacotherapy;

(5)  Psychiatric nursing services, including components of physical assessment, medication assessment and monitoring, and medication administration;

(6)  Symptom assessment and management, including medication monitoring and education;

(7)  Individual therapy or counseling;

(8)  Group therapy;

(9)  Recovery support services;

(10)  Direct assistance to ensure ongoing opportunities for the client to obtain the basic necessities of daily life and perform basic daily living activities;

(11)  Psychosocial rehabilitative services provided on an individual or group basis, to assist the client with gaining or relearning self-care, interpersonal, and community living skills needed to live independently, sustain psychiatric stability, and progress towards recovery;

(12)  Liaison services, to facilitate treatment planning and coordination of services between mental health and other entities;

(13)  Encouragement for the active participation of family and a supportive social network; and

(14)  Collateral contacts.

For IMPACT services, there must be at least one primary therapist for every twelve clients served. A center must provide clients with an annual average of sixteen contacts per month with IMPACT staff and more, if clinically appropriate.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:03.  Requirement for designation and duties of primary provider.** A primary provider must be designated for each client in the individualized and mobile program of assertive community treatment (IMPACT) program. The designation must be made by the clinical supervisor, be in writing, and be included in the client's clinical record. The designation must be updated as client or personnel needs require. Each IMPACT program must have a backup policy to be implemented when a primary provider is not available to serve a client's needs. The primary provider duties include:

(1)  Maintaining an orderly and complete clinical record for the client that contains:

(a)  Documentation showing that written assessments for the client are completed;

(b)  A current case service plan; and

(c)  Documentation of services and client responses to treatments; and

(2)  Conducting and participating in treatment planning and case conferences with other staff of the IMPACT program and with others authorized by the client.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:04.  Individualized and mobile program of assertive community treatment** **team duties.** The duties of the individualized and mobile program of assertive community treatment (IMPACT) team include:

(1)  Maintaining a therapeutic alliance with the client;

(2)  Referring and linking the client to all needed services provided outside of the IMPACT program;

(3)  Ensuring that all needed services provided outside of the IMPACT program are received and monitoring the benefit of those services to the client;

(4)  Coordinating face-to-face meetings with the client, at least one time per week, and an annual minimum average of sixteen contacts per month with IMPACT team members;

(5)  Coordinating the provision of IMPACT emergency services and hospital liaison services, if the client is in a crisis;

(6)  Coordinating overall independent living assistance services, and working with community agencies to develop needed resources including housing, employment options, and income assistance;

(7)  Supporting and consulting with the client's family or other support network; and

(8)  Acting as a client advocate.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:05.  Individualized and mobile program of assertive community treatment** **team meetings.** The individualized and mobile program of assertive community treatment team shall meet, at a minimum, two times per week, to review client contacts and client status, and to plan forresponses to additional client needs as they arise. The clinical supervisor, or other staff designated by the clinical supervisor, shall lead the meetings, and keep a written log of meeting discussions, dates, and participants.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:06.  Monthly treatment planning and review meetings.** An individualized and mobile program of assertive community treatment team shall meet monthly to conduct treatment planning and review meetings. The clinical supervisor, or other staff designated by the clinical supervisor, shall lead the monthly meetings, keep a written log of meeting dates and participants, and maintain a schedule of upcoming meetings.

**Source:**43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:**SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**67:62:13:07.  Reimbursable services.** Reimbursable services are limited to face-to-face and telehealth contacts for the purpose of providing comprehensive treatment, rehabilitation, and support services listed in subdivisions 67:62:13:02(1) through (11).

With the exception of psychiatric services, billable contacts under the individualized and mobile program of assertive community treatment daily rate are limited to one contact per client per day even through multiple contacts may take place.

**Source:** 43 SDR 80, effective December 5, 2016; 48 SDR 14, effective August 22, 2021.

**General Authority:** SDCL 1-36-25(1), 27A-5-1(3).

**Law Implemented:** SDCL 1-36-25, 27A-3-1, 27A-5-1.

**67:62:13:08.  Nonreimbursable services.** The following are nonreimbursable under this chapter:

(1)  Vocational counseling and vocational training in a classroom or at a job site;

(2)  Academic educational services;

(3)  Services solely recreational in nature;

(4)  Services for individuals other than eligible clients;

(5)  Services delivered by telephone or through other non-face-to-face contact;

(6)  Services provided in an institution for mental disease;

(7)  Services provided to clients who are in detoxification centers;

(8)  Services provided to clients who are incarcerated in correctional facilities; and

(9)  Transportation services.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25, 27A-5-1.

**Law Implemented:** SDCL 27A-3-1, 27A-5-1.

**CHAPTER 67:62:14**

**QUALIFIED MENTAL HEALTH PROFESSIONAL**

# Section

67:62:14:01 Training required for commitment process.

67:62:14:02 Registration for training -- Fee.

67:62:14:03 Content of training exam.

67:62:14:04 Training requirements.

67:62:14:05 Continued eligibility contingent upon qualified mental health professional status.

67:62:14:06 Renewal of eligibility -- Fee.

67:62:14:07 Reinstatement of lapsed eligibility.

67:62:14:08 Notice of department action.

67:62:14:09 Appeal of department decision.

**67:62:14:01.  Training required for commitment process.** A qualified mental health professional, except a physician licensed pursuant to SDCL chapter 36-4, shall participate in training and pass an examination, in order to complete examinations that are part of the commitment process under SDCL 27A-10-6, in accordance with SDCL 27A-1-7.

Training and examinations may be held in person or via an online course available through the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-3, 27A-1-7, 27A-1-9.

**67:62:14:02.  Registration for training -- Fee.** A qualified mental health professional (QMHP) shall register with the department for training, prior to performing the examination of a detained person, in accordance with SDCL 27A-10-6, and submit a fee to be determined by the department. The registration must contain:

(1)  The QMHP's name and address;

(2)  The QMHP's current employer, or place of practice, with address and telephone number;

(3)  Verification of the hours, duration, setting, and content of the supervision for their professional licensure level to demonstrate their qualifications as a QMHP, as listed in SDCL 27A-1-3; and

(4)  A copy of the QMHP's South Dakota professional license or certificate.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**67:62:14:03.  Content of training exam.** The training exam shall consist of questions regarding South Dakota mental health commitment procedures for both children and adults. The passing score is 75 percent.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**67:62:14:04.  Training requirements.** Refresher training shall be completed every four years.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**67:62:14:05.  Continued eligibility contingent upon qualified mental health professional** **status.** An individual who has completed the required commitment process training must continue to meet the requirements of a qualified mental health professional, in accordance with SDCL 27A-1-3, in order to remain eligible to perform the examination of a detained person, in accordance with SDCL 27A-10-6.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-3, 27A-1-9, 27A-10-6.

**67:62:14:06.  Renewal of eligibility -- Fee.** A qualified mental health professional (QMHP) shall register with the department for renewal of eligibility. A QMHP may register for renewal anytime during the year before the QMHP's current eligibility ends. A renewal registration must contain:

(1)  The QMHP's name and address;

(2)  The QMHP's current employer, or place of practice, with address and telephone number;

(3)  A copy of the QMHP's outh Dakota professional license or certificate; and

(4)  The renewal fee, as determined by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**67:62:14:07.  Reinstatement of lapsed eligibility.** A qualified mental health professional who fails to register for a renewal of eligibility before the end of the current eligibility period, may register for a reinstatement of eligibility by:

(1)  Submitting a copy of the individual's South Dakota professional license or certificate;

(2)  Paying the renewal fee, as determined by the department; and

(3)  Completing the training and passing the examination, pursuant to § 67:62:14:01.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-3, 27A-1-9.

**67:62:14:08.  Notice of department action.** The department shall either approve or deny the registration for eligibility or the registration for renewal of eligibility. The department shall notify the qualified mental health professional applying for registration of the department's action, within an annual average of ten working days, following the registration, eligibility examination, or receipt of the registration for renewal. If the department denies eligibility of renewal, the specific reasons for denial must be stated in the notice.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**67:62:14:09.  Appeal of department decision.** A qualified mental health professional whose eligibility renewal is denied may request a fair hearing by notifying the department, by certified mail, within ten calendar days of receipt of the department's decision. The hearing must be conducted pursuant to SDCL chapter 1-26.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 27A-1-9.

**Law Implemented:** SDCL 27A-1-9.

**CHAPTER 67:62:15**

**PREADMISSION SCREENING AND RESIDENT REVIEW**

# Section

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67:62:15:16 Significant change.

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67:62:15:18 Interfacility transfers.

67:62:15:19 Out of state placement.

**67:62:15:01.  Definitions.** Terms used in this chapter mean:

(1)  "Active treatment," the implementation of a program of specialized and generic training, treatment, health services, and related services, which lead to the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible, and to prevent regression or loss of current optimal functional status;

(2)  "Dementia," disorders characterized by the development of multiple cognitive deficits, including memory impairment, which are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance, or to multiple etiologies ;

(3)  "Nursing facility," a facility licensed as a nursing facility by the Department of Health and maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician twenty-four hours a day;

(4)  "Preadmission screening and resident review," a process made up of a Level I screening completed by the department, and a Level II review completed by the department, to determine eligibility when an individual with a mental disorder, as defined in § 67:62:01:01, applies to reside in a Medicaid certified swing bed or nursing facility;

(5)  "Specialized mental health services," psychiatric services that result in the continuous and aggressive implementation of an individualized plan of care developed by an interdisciplinary team consisting of a physician, a qualified mental health professional, and other professionals, which prescribes specific therapies and activities for the treatment of individuals experiencing an acute episode of serious mental illness. requiring supervision by trained mental health professionals, to obtain improvement in function thereby permitting a reduction in the level of intensity to less than the level of specialized services at the earliest possible time; and

(6)  "Swing bed," a licensed hospital bed approved by the Department of Health to provide short-term nursing facility care pending the availability of a nursing facility bed.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:02.  Level I screening.** The department shall conduct a Level I screening that identifies each individual who is seeking Medicaid certified swing bed or nursing facility services who may have a mental illness.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:03.  Level II review exemptions.** An individual is exempt from a Level II review if:

(1)  The diagnosis of mental illness is unsubstantiated;

(2)  The individual is readmitted to a Medicaid certified swing bed or nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;

(3)  The individual is transferred from one Medicaid certified swing bed or nursing facility to another, and a preadmission screening and resident review has previously been completed;

(4)  The physician identifies the need for convalescent care following hospitalization for a duration of less than one hundred days;

(5)  The physician orders a respite stay of thirty days or less;

(6)  The individual has a diagnosis of situational depression that:

(a)  Is of short duration;

(b)  Is in direct relation to an occurrence in an individual's life; and

(c)  Does not appear to be a chronic disability;

(7)  The individual is using psychotropic medication in the absence of a major mental illness diagnosis; or

(8)  The individual has a diagnosis of an anxiety disorder that is not identified as severe and does not appear to be leading to a chronic disability.

The department shall complete a Level I screening form to notify appropriate parties of the determination of the exemption.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:04.  Exempt hospital discharge.** An individual is exempt from a preadmission screening and resident review (PASRR) following a hospital discharge if:

(1)  The individual is admitted to a Medicaid certified swing bed or nursing facility, directly from a hospital, after receiving acute inpatient care at the hospital;

(2)  The individual requires Medicaid certified swing bed or nursing facility services for the condition that required care in the hospital; and

(3)  The individual's attending physician has certified, before admission to the Medicaid certified swing bed or nursing facility, that the individual is likely to require less than thirty calendar days of Medicaid certified swing bed or nursing facility services.

If an individual enters a Medicaid certified swing bed or nursing facility as an exempt hospital discharge and is later found to require more than thirty days of nursing care, the facility must request a PASRR prior to the expiration of that thirty days.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:05  Categorical determinations for Level I.** The department shall make a categorical determination in one of the following situations:

(1)  A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of 6 months or less;

(2)  A severe physical illness that has resulted in coma or ventilator dependence;

(3)  The age of an individual is 75 years or older; or

(4)  A primary diagnosis of dementia, including Alzheimer's disease or a related disorder or a non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness.

For any of these situations, the department shall complete a Level I screening form. A copy of the form shall be sent to the appropriate facility. A categorical determination may warrant Medicaid certified swing bed or nursing facility services but does not warrant mental health services or specialized services.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:06.  Level II review.** The department shall conduct a Level II review that consists of determining the appropriateness of a Medicaid certified swing bed or nursing facility, and possible mental health services, including specialized mental health services for individuals identified in the Level I screening.

Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the swing bed or nursing facility services. A determination whether or not an individual requires the level of services provided by the facility and whether or not an individual can benefit from mental health services is made.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:07.  Level II determination -- Data requirements.** The data used for a Level II determination includes:

(1)  A comprehensive social and developmental history and physical, including:

(a)  Medical history;

(b)  Review of body systems;

(c)  Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(d)  Additional evaluations conducted by appropriate specialists in case of abnormal findings;

(2)  A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;

(3)  A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;

(4)  A comprehensive psychiatric or psychological evaluation including a complete psychiatric and development history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal, or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations; and

(5)  A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This assessment shall conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:08.  Determination of services.** The department shall determine if the individual requires the level of services provided by a Medicaid certified swing bed or nursing facility due to the individual's physical or mental condition. If the department determines that an individual requires a Medicaid certified swing bed or nursing facility services, the facility may admit or retain the individual. If the department determines that an individual does not require Medicaid certified swing bed or nursing facility services, the individual may not be admitted.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:09.  Determination of specialized mental health services.** If the department determines that the individual requires Medicaid certified swing bed or nursing facility services, the department must also determine whether the individual may benefit from mental health services.

If the department determines that an individual requires both Medicaid certified swing bed or nursing facility services and specialized mental health services as defined in § 67:62:15:01, the facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized mental health services needed by the individual in the Medicaid certified swing bed or nursing facility.

If the department determines that the individual does not require Medicaid certified swing bed or nursing facility services, but may benefit from mental health services, the department shall provide the individual with information regarding service options.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:10.  Timeliness of determinations of Level II review.** The department shall make each Level II determination within an annual average of seven-to-nine business days of receipt of the Level I screening and all of the data required in § 67:62:15:07.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:11.  Notification of Level II determination.** The department shall issue a written notification of the Level II review determination. The notification must contain:

(1)  The name of each professional who performed an evaluation used to make the Level II determination;

(2)  The date each portion of the evaluation was administered; and

(3)  Any other information used to make the Level II determination.

The department shall provide a copy of the notification to the individual on whom the Level II review was completed; the individual's legal representative, if applicable; the Medicaid certified swing bed or nursing facility; and any other party affected by the Level II determination.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:12.  Determination may not be countermanded.** A Level II determination made by the division may not be countermanded by the department.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:13.  Appeal of ineligibility of Level II determination.** The individual, or the individual's legal representative, may request a fair hearing within 30 calendar days of receipt of the notice of ineligibility pursuant to SDCL chapter 1-26 by notifying the department in writing. Upon request, the individual, or the individual's legal representative, will be provided with information in an accessible format. Any costs associated with legal counsel obtained to represent the individual are not the responsibility of the department.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:14.  Length of stay.** For the purposes of establishing length of stay in a Medicaid certified swing bed or nursing facility, the 30 months of continuous residence in a Medicaid certified facility may include temporary absences for hospitalization or therapeutic leave and may include consecutive residences in more than one Medicaid certified swing bed or nursing facility.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:15.  Individuals not requiring swing bed or nursing facility services but requiring mental health services -- 30 month determination.** If the individual is determined not eligible for swing bed or nursing home services, but requires mental health services, the department, in consultation with the individual's family or legal representative and caregivers, shall:

(1)  If the individual has continuously resided in a Medicaid certified swing bed or nursing facility at least 30 months prior to a determination of eligibility and determined not eligible for swing bed or nursing home services, but who require mental health services, the department, in consultation with the individual's family or legal representative and caregivers, shall:

(a)  Offer the choice of remaining in the facility or receiving services in an alternative setting;

(b)  Inform the individual of the institutional and non-institutional alternatives covered under the state Medicaid plan;

(c)  Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the Medicaid certified swing bed or nursing facility, including the effect on readmission to the Medicaid certified swing bed or nursing facility; and

(d)  Provide, or arrange the provision of, mental health services for the mental illness; or

(2)  If the individual has been residing in the Medicaid certified swing bed or nursing facility less than 30 months prior to a determination of eligibility and determined not eligible for swing bed or nursing home services, but who requires mental health services, the department, in consultation with the individual's family or legal representative and caregivers, shall:

(a)  Arrange for the safe and orderly discharge of the individual from the facility;

(b)  Prepare and orient the individual for discharge; and

(c)  Provide, or arrange for the provision of, mental health services for the mental illness.

**Source:** 43 SDR 80, effective December 5, 2016.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25(4).

**67:62:15:16.  Significant change.** A significant change is a decline or improvement in an individual's status that:

(1)  Will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions;

(2)  Impacts more than one area of the individual's health status; and

(3)  Requires interdisciplinary review or revision of the care plan.

A self-limiting decline is not considered a significant change. If a significant change occurs for an individual known or suspected to have a mental illness, the Medicaid certified swing bed or nursing facility must make a referral to the department for a possible Level II review. This referral must occur as soon as evidence of the significant change is identified.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:17.  New admission and readmission.** A new admission occurs if an individual is admitted to a Medicaid certified swing bed or nursing facility for the first time, or when an admission does not qualify as a readmission. Unless excepted under § 67:62:15:04, a newadmission is subject to a preadmission screening and resident review (PASRR).

A readmission occurs when an individual is readmitted to a Medicaid certified swing bed or nursing facility, from a hospital to which the individual, who was in a facility, had been transferred, for the purpose of receiving medical care. A readmission that meets the criteria set forth in this section does not require a PASRR.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:18.  Interfacility transfers.** An interfacility transfer occurs if the individual is transferred from one Medicaid certified swing bed or nursing facility to another, with or without an intervening hospital stay. An interfacility transfer is not subject to a preadmission screening and resident review. If an individual transfers from a Medicaid certified swing bed or nursing facility to a hospital, or to another Medicaid certified swing bed or nursing facility, the transferring facility must ensure that copies of the individual's preadmission screening and resident review findings accompany the individual.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**67:62:15:19.  Out of state placement.** The required preadmission screening and resident review determination must be conducted by the state in which the individual:

(1)  Resides; or

(2)  Will reside at the time Medicaid eligibility is obtained.

**Source:** 43 SDR 80, effective December 5, 2016; 50 SDR 63, effective November 27, 2023.

**General Authority:** SDCL 1-36-25.

**Law Implemented:** SDCL 1-36-25.

**Cross Reference:** Out-of-State arrangements, 42 C.F.R. § 483.110.