

# South Dakota

## PASRR Reference Manual

January 2015

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## **PASRR HISTORY AND PROCESS**

The Omnibus Budget Reconciliation Act of 1987 mandated that all individuals, regardless of funding source, who are seeking admission to a Medicaid certified Swing Bed or Nursing Facility must be screened to determine if they have mental illness or intellectual and developmental disabilities. In 1989 South Dakota Medicaid provided written notification to providers regarding what was then known as the preadmission screening annual resident review. Educational sessions were held throughout the state. In 1989 the state of South Dakota provided facilities with a pre-screening tool to utilize to determine if a referral to Adult Services & Aging was required. The general content in the pre-screening tool initiated in 1989 has not changed from the current tool in use today.

Providers complete a pre-screening evaluation using a state approved form to identify individuals who meet specified criteria. Providers refer everyone meeting the specified criteria to Adult Services & Aging (ASA) staff for a Level I screening. The ASA staff determines whether individuals meet the nursing facility level of care criteria and whether they are suspected of having a serious mental illness (SMI), intellectual disability (ID) or developmental disability (DD). The nursing facility level of care process assesses the client's medical and physical condition to determine whether he/she requires long term nursing facility care.

If the individual applying for admission to a nursing facility or swing bed has or is suspected of having a diagnosis of SMI and/or ID/DD and does not meet Level I exemption or categorical determination criteria, the ASA staff complete a referral to the Department of Social Services Division of Behavioral Health (DBH) and or the Department of Human Services Division of Developmental Disabilities (DDD) for Level II resident review. The Level II resident review is conducted to determine the need for specialized services or additional services that will benefit the individual. South Dakota defines "specialized services" for persons with SMI as psychiatric services resulting in the continuous and aggressive implementation of an individualized plan of care that is developed by an interdisciplinary team which includes a physician, QMHP, and other professionals which prescribes specific therapies and activities for the treatment of individuals experiencing an acute episode of SMI requiring supervision by a trained mental health professional to obtain improvement in function that would permit a reduction in the level of intensity to below the level of specialized services at the earliest possible time (ARSD 46:20:34:01(5)). However, for persons with ID/DD, specialized services are continuous aggressive generic treatments, therapies, or training that prevent or slow down the regression or loss of current optimal functioning.

Under the PASRR provisions, the Division of Developmental Disabilities is responsible to assure that anyone who has a developmental disability and/or intellectual disability that was attained prior to the age of 22 is appropriately placed in a long-term care facility. Often times community service providers are able to provide the same level of skilled nursing services in the community as those provided by the nursing facility. Each community service provider provides a variety of healthcare services. Not all services are available at all centers. Division staff will work with each nursing facility to determine the best possible placement on an individual basis.

The Division of Behavioral Health and/or Division of Developmental Disabilities makes the final determination regarding specialized services needs for the individual.

## **PASRR AND SWING BED**

Swing bed facilities must comply with the nursing facility requirements in regards to PASRR. Section 1883 of the Social Security Act defines swing beds and clearly requires that swing bed facilities comply with all requirements of Section 1919(b) through 1919(d) with respect to the NF service offered. In addition, a swing bed must meet all of the Conditions of Participation applicable to a Medicare-certified hospital set forth in 42 CFR 482, which emphasizes the necessity to comply with PASRR requirements.

## **PASRR AND CRITICAL ACCESS HOSPITAL**

The central issue for the critical access hospital is whether the swing bed is Medicaid-certified. If they are, the hospital *must* comply with PASRR. The State cannot pay providers for services provided to occupants in a Medicaid-certified swing bed of a critical access hospital if PASRR was not completed prior to admission to the swing bed. In addition, the state cannot receive federal financial participation monies for services provided to occupants of these beds. PASRR applies to all individuals in the Medicaid-certified swing bed facility regardless of the acuity of the individual in the swing bed (i.e. skilled, intermediate etc.).

### **PASRR DEFINITIONS FOR MENTAL ILLNESS OR INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

PASRR – Pre-Admission Screening and Resident Review

PRE-SCREENING EVALUATION – a review by the provider utilizing the State form “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” that determines if an individual meets criteria for Level I review.

HOSPITAL EXEMPTION – an exemption from the PASRR process for individuals who meet the federal hospital exemption criteria and the inpatient hospital provider has completed the State approved hospital exemption form.

LEVEL I REVIEW– the Department of Social Services shall conduct a Level I (PAS) review that identifies each individual who is seeking nursing facility level of care services who have presenting evidence of mental illness or intellectual and developmental disabilities.

LEVEL II RESIDENT REVIEW – the Division of Behavioral Health or the Division of Developmental Disabilities shall conduct a Level II resident review (RR) that determines the appropriateness of nursing facility services and specialized services for individuals identified in the Level I pre-admission screening. The Level I pre-admission review and the Level II resident review make up the preadmission screening resident review, or PASRR, which is the process that is completed when any individual with mental illness or intellectual and developmental disabilities applies to reside in a nursing facility or swing bed. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility or swing bed services. A determination whether or not an individual can benefit from specialized services is made.

CONTINUED STAY REVIEW – a review to determine if an individual in the nursing facility or swing bed remains appropriate and if specialized or other services are needed.

MENTAL ILLNESS – a diagnosis regarding schizophrenia; mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder as defined in the DSM-IV-TR. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute mental illness.

SEVERE MENTAL ILLNESS – a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness.

INTELLECTUAL DISABILITY– a significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a person’s performance.

**DEVELOPMENTAL DISABILITY** – any severe chronic disability of a person that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity- self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- (5) Reflects the person’s need for an array of generic services, met through a system of individualized planning and supports over an extended time, including those of life-long duration.

**MH SPECIALIZED SERVICES** – active treatment received in an inpatient setting. This service is currently provided at the Human Services Center – Geriatric Unit.

**ID/DD SPECIALIZED SERVICES** – continuous, aggressive generic treatments, therapies or training that prevents or slows down the regression or loss of current optimal functioning.

**SIGNIFICANT CHANGE IN STATUS AS IT RELATES TO PASRR** – as defined in the CMS Long Term Care Resident Assessment Instrument.

**COMMUNITY SERVICE PROVIDERS** – provide services which may include residential, vocational, service coordination, and nursing care. Community Support Providers provide residential options for people, such as group homes and supervised apartments. Community living training and residential expanded follow-along are also provided for those who are living on their own or are working toward that goal. Vocational opportunities may include working in the agency workshop, job coaching and pre-vocational training for individuals looking for community jobs and vocational expanded follow-along for those working in the community.

## MISSION AND VISION OF PASRR

Ensure Swing Bed and Nursing Facility (NF) applicants & residents with Serious Mental Illness (SMI) or Intellectual and Developmental Disability (ID/DD) are:

- Identified and evaluated;
- Placed in the most appropriate and least restrictive setting available;
- Transitioned to an appropriate community setting when the individual no longer meets criteria for NF placement;
- Provided with the MI and/or ID/DD services they need, including Specialized Services (SS).

The State PASRR program directs hospitals, swing beds and nursing facilities to complete a PASRR pre-screening evaluation to determine if a resident needs to be referred for a Level I screening.

## PASRR PRE-SCREENING EVALUATION

This pre-screening evaluation form is titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities.”

Providers must complete the pre-screening evaluation form for every individual who is planning to admit into a Medicaid certified nursing facility or swing bed regardless of pay source.

Provider responses on the pre-screening evaluation form will determine who must be referred for a Level I screening.

Providers must complete the pre-screening evaluation form when requesting a resident review for an individual admitted to the swing bed or nursing facility through the hospital exemption notification prior to the end of their 30 day time limited stay.

PASRR pre-screening evaluation question #1

1. Does this individual have a condition of, or is there any presenting evidence that may indicate the individual may have intellectual or developmental disabilities?

Response options are: Yes, No, Unknown

PASRR pre-screening evaluation question #2

2. Is the individual being referred by an agency that serves persons with intellectual disability or other developmental disabilities and has the individual been determined to be eligible for that agency’s services?

Response options are: Yes, No, Unknown

PASRR pre-screening evaluation question #3

3. Does this individual have a condition of, or is there any presenting evidence that may indicate the individual may have mental illness?

Response options are: Yes, No, Unknown

Examples of “presenting evidence” for pre-screening evaluation questions #1 include:

- Mental Illness diagnosis. (Diagnostic and Statistical Manual of Mental Disorders - DSM Manual).
- Diagnosis of depression.
- Resident prescribed drug classified as psychotropic medication, regardless of reason for medication.
- Resident prescribed drug classified as hypnotic medication, regardless of reason for medication.
- The individual has a severe, chronic disability attributable to intellectual disabilities, cerebral palsy, epilepsy, head injury, brain disease, or autism or any other condition, other than mental illness, closely related to intellectual or developmental disability and requires treatment or services similar to those required for the intellectually or developmentally disabled. To be closely related to intellectual or developmental disabled, a condition must cause impairment of general intellectual functioning or adaptive behavior similar to that of intellectual disability and the disability must have manifested itself before the individual reached age 22 and the disability is likely to continue indefinitely.

What to do when the resident has any type of documented dementia?

- Any time a physician documented dementia diagnosis is present; you must respond “YES” to question #3 and refer to ASA for PASRR screening.

If you respond “no” to all the questions on the “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities,” no further action is required and you may proceed with admission to the nursing facility or swing bed.

Healthcare providers are required to attempt to complete an accurate medication reconciliation and history on a resident; therefore, a response of “Unknown” would only occur when there are unusual circumstances.

If you answer yes or unknown to any one or more of the questions on the “Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” you must make a referral for Level I Screening to the ASA Nurse Consultant for your facility.

You must WAIT for approval to admit to the nursing facility or swing bed.

## **LEVEL I SCREENING**

The ASA Nurse Consultant will review the medical/clinical information the provider submits and determine if there are any exemptions, categorical determinations or positive indicators for Level II resident review.

The ASA Nurse Consultant will give the provider permission to proceed with admit to the nursing facility or swing bed when appropriate. All verbal permissions to admit will be followed with the written Level I determination.

To expedite the Level I Screening the provider can:

- Obtain hospital exemption information when appropriate. A hospital exemption includes certification from a physician that an individual:
  - Is being discharged to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital; and
  - Requires nursing facility services for the condition for which he/she received care in the hospital; and
  - The physician certifies no later than the date of discharge, that the individual requires less than 30 days of nursing facility or swing bed services.

## **HOSPITAL EXEMPTION**

The provider has the optional choice of completing the form titled “South Dakota Hospital Exemption from Preadmission Screening Notification” for individuals who meet all three of the hospital exemption criteria.

You do not have to contact the ASA Nurse Consultant for preapproval of individuals who meet the hospital exemption criteria. You must fax the completed “South Dakota Hospital Exemption from Preadmission Screening Notification” form to the ASA office PRIOR to the date/time of admission to the swing bed or nursing facility.

The instructions and form to complete the “South Dakota Hospital Exemption from Preadmission Screening Notification” are in this manual. This notification must be faxed to the nursing facility or swing bed and the Adult Services & Aging Nurse Consultant for the specified region PRIOR to discharge from the hospital.

The nursing facility or swing bed accepts responsibility for requesting a resident review prior to the end of the 30th day following admission from the hospital. To request the resident review, the swing bed or nursing facility must complete the PASRR pre-screening evaluation form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” and submit the required information to the Adult Services & Aging Nurse Consultant for their facility.

The hospital exemption notification form must be completed fully in order for the nursing facility or swing bed to accept payment for nursing facility or swing bed services. Incomplete forms will be returned.

Oversight and monitoring of this process by the state will include comparison of date/time a notification is faxed and received to the date/time of the nursing facility or swing bed admission and through on-site PASRR reviews.

To expedite the Level I Screening the provider can:

- Notify the ASA Nurse Consultant if the individual has elected and is receiving hospice services;
- Notify the ASA Nurse Consultant when the individual is ventilator dependent, comatose or has a severe physical illness that has progressed to end stage resulting in a level of impairment so severe that the individual cannot benefit from active treatment;
- Notify the ASA Nurse Consultant when an individual is age 75 or older;
- Notify the ASA Nurse Consultant when there is a physician documented primary diagnosis of dementia, including Alzheimer’s disease or related disorder; or a non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness;
- Notify the ASA Nurse Consultant that an individual has been prescribed a psychotropic medication for non-mental health reasons and there is no diagnosis of mental illness.

## **LEVEL II RESIDENT REVIEW**

The ASA Nurse Consultant will review the medical/clinical information submitted by the provider and determine if there are positive indicators for Level II resident review. Level II resident reviews are completed by the Division of Behavioral Health (DBH) and / or the Division of Developmental Disabilities (DDD). CMS requires Level II resident reviews to be completed within 7-9 annual average working days.

To expedite the Level II Resident Review the provider should ensure they provide the following information to Adult Services & Aging when requesting a Level I screening:

- Psychological evaluations from the community or facility;
- Demographic/face sheet;
- Medical history and physical report;
- Physician progress notes for past 3-5 days of hospitalization;
- Nursing notes for past 3-5 days that describe reason for admit to nursing facility or swing bed;
- Therapy notes for past 3-5 days including PT, OT, ST;
- Current medication list;
- Consultant reports that pertain to current patient status; and
- Most current MDS or swing bed assessment if already in the facility.

The Division of Behavioral Health and/or the Division of Developmental Disabilities will complete Level II resident reviews when positive indicators are identified in a Level I screening by Adult Services & Aging. The provider will be responsible for offering appropriate services to the resident to ensure proper placement with the most integrated services appropriate to meet the resident's specific needs. The provider, resident, legal representative, discharging hospital and/or attending physician will receive a written determination notice of the resident review from DBH/DDD. The determination letter will include recommendations and/or directives regarding mental health or the developmental disability and the approved length of stay before a follow up Level II review will be conducted to ensure appropriateness of placement. The goal of the Level II PASRR follow ups is to facilitate placement back into the community with appropriate supportive services, when indicated.

### **PROVIDER RESPONSIBILITIES REGARDING LEVEL II DETERMINATION**

The provider is responsible for ensuring that the recommendations or directives for mental illness or intellectual and developmental disabilities are implemented and follow up of a short term Level II PASRR is conducted prior to the PASRR expiring. If a resident is noncompliant with DBH/DDD recommendations or directives the provider needs to document this and notify the appropriate division in writing when there are issues or problems implementing recommendations or directives.

Provider documentation needs to include:

- Documentation in interdisciplinary care plan that indicates the determination by DBH/DDD has been care planned with the resident and interdisciplinary team;
- Documentation of the resident's involvement in care planning activities; and
- Documentation which indicates the provider and resident worked together to implement the determination from DBH/DDD.

If a resident is noncompliant with the determination by DBH/DDD the provider needs to document this. Documentation needs to include:

- The reason the resident is noncompliant;
- Ongoing attempts by the provider to engage the resident in cooperatively obtaining mental health or intellectual and developmental disability services as recommended by DBH/DDD; and
- Contacts with DBH/DDD for recommendations.

The provider and resident both benefit when a resident cooperates with recommendations for mental health or intellectual and developmental disability services through:

- A decrease in resident behaviors;
- Improved resident cooperation;
- Improved understanding of the resident and their needs; and
- Improved quality of life for the resident.

### **RECORD RETENTION OF PASRR DOCUMENTS**

PASRR pre-admission screening evaluations, Level I documents and Level II documents should be on the resident chart (current chart, not archived). In South Dakota the following documents must be in the active resident chart:

- Pre-screening evaluation form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Intellectual Disability, Developmental Disabilities”;
- PASRR Level I screening determination;
- PASRR Level II screening determination; and
- SD Hospital Exemption from Preadmission Screening Notification Form.

### **PASRR AND MDS 3.0**

CMS and states will be monitoring PASRR activities partly through data entered into MDS 3.0 and on-site visits. The MDS 3.0 assessments will require providers to record PASRR data regarding an individual’s pre-screening, Level I screening and/or Level II resident review. PASRR requirements for MDS 3.0 can be found in Chapter 2 of the RAI Manual and Section S.

### **PASRR, MDS AND SIGNIFICANT CHANGE**

If a significant change in status assessment (SCSA) occurs for an individual known or suspected to have mental illness, intellectual disability, or condition related to developmental disability (as defined by 42CFR 483.102), a referral to ASA for possible Level II PASRR evaluation must occur within 14 days as required by Section 1919(e)(7)(B)(iii) of the Social Security Act. Resources for determining a SCSA as it relates to PASRR can be found in the MDS 3.0 RAI Manual Chapter 2.

### **PASRR AND THE NURSING FACILITY SURVEY**

MDS PASRR questions are a reminder to staff and a trigger to surveyors for PASRR tag.

Failure to document pre-screening evaluations, PASRR Level I, and if indicated all Level II requirements, (prior to admission or upon change in condition), subjects nursing facilities or swing beds to liability for:

- Survey deficiency (F285);
- Recouping federal financial participation monies (FFP) for all days prior to completion.

Specific regulatory requirements and guidance to determine a facility’s compliance with PASRR are found in Appendix PP, Interpretive Guidance for Long Term Care Facilities.

Deficiencies in the areas of care planning and/or Quality of Life may occur if a provider does not follow DHS/DSS recommendations or directives provided in a Level II determination letter.

Department of Health reviews PASRR compliancy during their survey/certification of nursing homes and swing bed facilities.

Department of Social Services completes on-site PASRR compliancy reviews along with case mix reviews and as needed to determine South Dakota Medicaid Reimbursement and PASSR compliancy.

Department of Social Services will cross reference available documents, MDS assessments and eligibility information to determine if the PASRR requirements were met prior to the date/time of admission to the nursing facility or swing bed.

## **NURSING FACILITY AND SWING BED RESPONSIBILITIES**

According to Section 1919(e)(7)(D) of the Social Security Act, no payment may be made under Section 1903(a) with respect to nursing facility services furnished to an individual for whom a PASRR determination is required, under subsection (b)(3)(F) or subparagraph (B), but for whom the determination is not made. To avoid non-payment, nursing facilities **must**:

- Ensure the pre-admission screening evaluation form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” is completed **accurately** prior to every admission. If completed inaccurately, the nursing facility or swing bed must complete a new screening evaluation form;
- Ensure that any “yes” or “unknown” response to the “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” is referred to the ASA Nurse Consultant for Level I PASRR screening;
- Ensure any individual referred to the ASA Nurse Consultant for Level I PASRR screening is not admitted before receiving approval from Adult Services & Aging;
- Ensure that if the swing bed or nursing facility admits an individual with the “SD Hospital Exemption from Preadmission Screening Notification Form”, it is reviewed for 100% accuracy; and
- Ensure that if a significant change in status occurs, a new “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” form is completed and ASA is notified within 14 days, if indicated.

Ensure that the following forms and related information are in the resident’s active file:

- Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities;
- PASRR Level I screening determination;
- PASRR Level II screening determination; and
- SD Hospital Exemption from Preadmission Screening Notification Form.

## **DATA SUBMISSION REQUIREMENTS**

Information that a provider is required to submit to ASA when requesting a Level I determination includes:

- Psychological Evaluation from the community/facility (if available);
- Face sheet;
- Medical History and Physical Report;
- Consultant reports that pertain to the current status of the patient;
- Physician progress notes, past 3-5 days of hospitalization;
- Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility;
- Therapy notes, past 3-5 days, if applicable (PT, OT, ST);
- Current Medication list; and
- If already in nursing home or swing bed most current MDS or swing bed assessment.

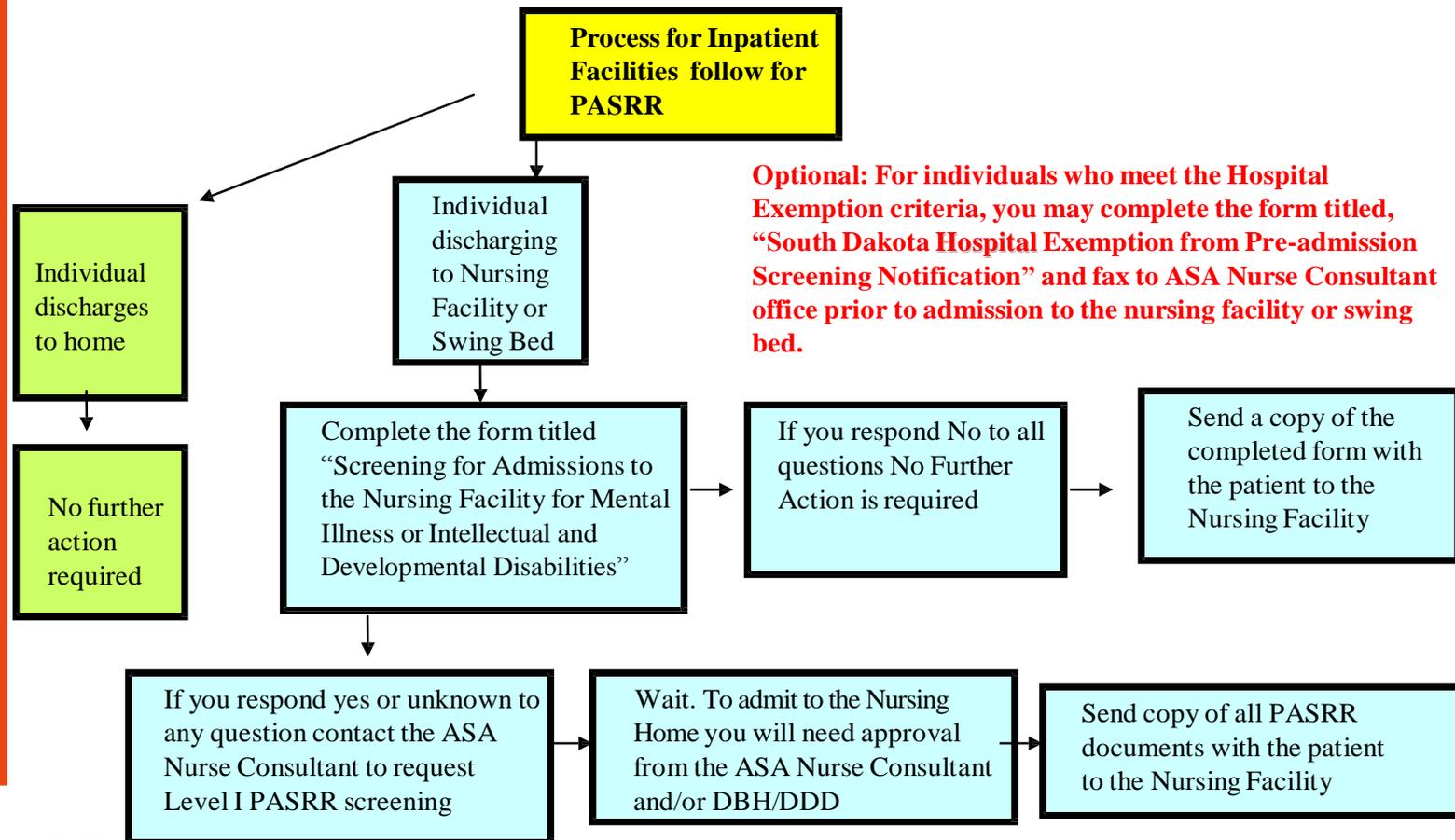
The ASA Nurse Consultant reviews the information and determines if:

- There are exemptions from PASRR Level II resident review; and
- Whether there is a substantiated diagnosis of mental illness, intellectual disability or a developmental disability

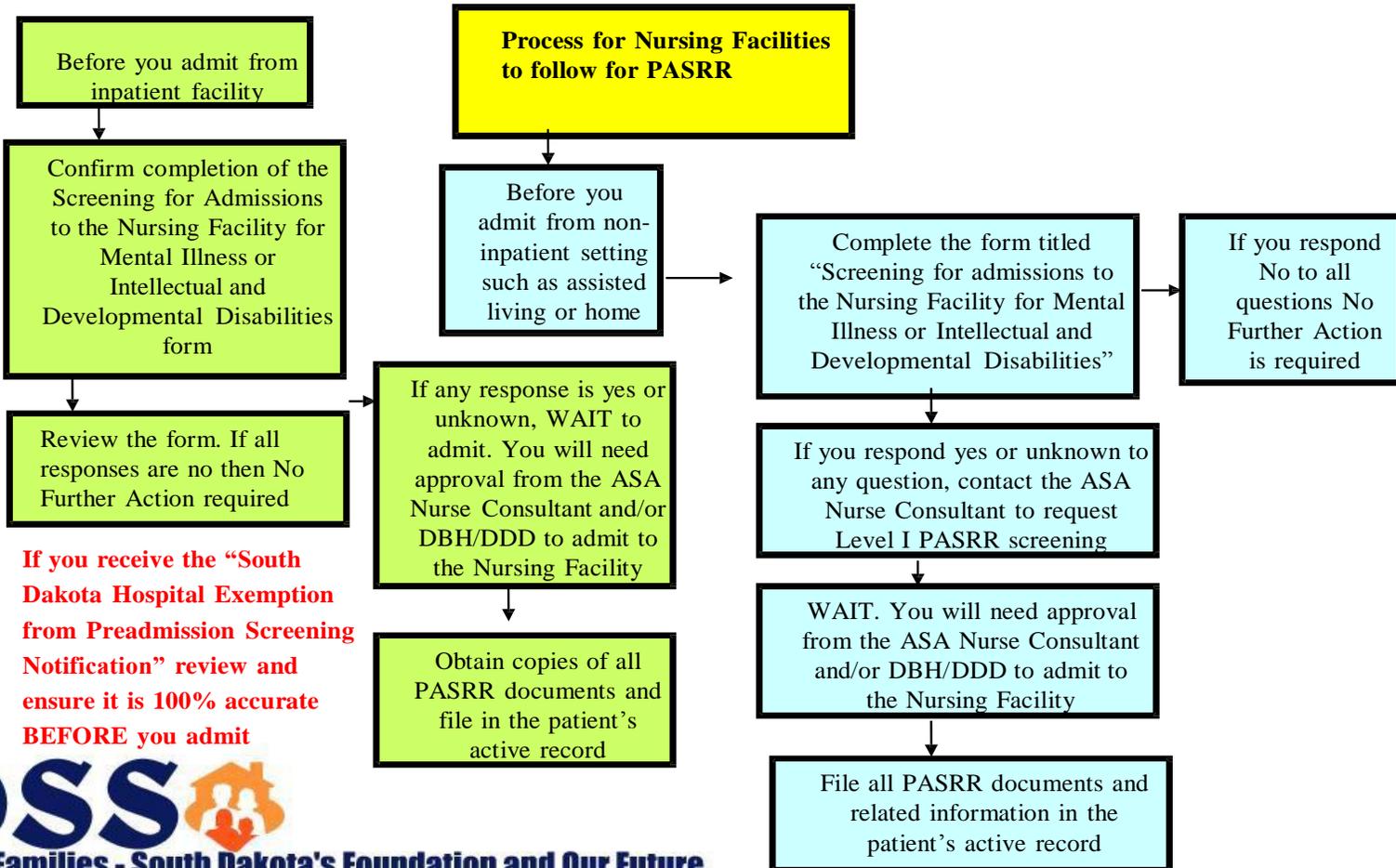
The ASA Nurse Consultant will then forward the PASRR information for a Level II resident review and determination to the appropriate Division(s).

- The Division of Behavioral Health (DBH) for people with mental illness
- The Division of Developmental Disabilities (DDD) for people with intellectual and developmental disability
- Both Divisions will receive information from Adult Services & Aging when an individual has been identified as having a dual diagnosis (mental illness and intellectual disability/developmental disability)

# Flowchart for Inpatient Facilities to Follow



# Flowchart for Swing Bed and Nursing Facilities to Follow



**SCREENING FOR ADMISSIONS TO THE NURSING FACILITY or SWING BED FOR  
MENTAL ILLNESS or INTELLECTUAL and DEVELOPMENTAL DISABILITIES**

Identification Information:

Last Name:	First Name:	MI	Date Of Birth:
Address:			Social Security Number:
City:		State:	Zip:

Primary Admitting Diagnosis: \_\_\_\_\_

Secondary Diagnoses: \_\_\_\_\_

	<b>YES</b>	<b>NO</b>	<b>Unknown</b>
1. Does the individual have a condition of, or is there any presenting evidence* that may indicate the individual may have an intellectual or developmental disability?			
2. Is the individual being referred by an agency that provides support for individuals with intellectual or developmental disabilities and has the individual been determined to be eligible for that agency's services?			
3. Does this individual have a condition of, or is there any presenting evidence* that may indicate the individual may have mental illness? {Indicate a "YES" response if the individual being referred has any type of physician documented dementia diagnosis }			

\*"Presenting Evidence" includes: Mental Illness diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders (DSM) Manual. "Mental illness," a diagnosis regarding schizophrenia; mood, paranoid, panic, or other anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder per the diagnostic criteria specified within DSM-IV. Resident prescribed drug(s) classified as: psychotropic, antipsychotic, antianxiety, antidepressant, or hypnotic medication, regardless of reason for medication. The individual has a severe, chronic disability attributable to intellectual disability, cerebral palsy, epilepsy, head injury, brain disease, autism or any other disorder, other than mental illness, that is closely related to intellectual disability and requires treatment or services similar to those required for individuals with intellectual disabilities. Such a condition must cause impairment of general intellectual functioning or adaptive behavior. In addition, the disability must have manifested itself before the individual reached age 22 and the disability is likely to continue indefinitely.

**If any of the answers are "YES", or if any answer is "Unknown", contact the ASA Nurse Consultant assigned to your facility.**

**If all the answers are "NO", the individual may be placed without further evaluation.**

\_\_\_\_\_ This individual does not need to be referred for further evaluation.

\_\_\_\_\_ This individual was referred to the ASA Nurse Consultant on: \_\_\_\_\_/\_\_\_\_\_.  
(Complete date/time)

\_\_\_\_\_  
Signature of Designated Facility Representative

\_\_\_\_\_  
Date Signed



**SECTION C: CERTIFICATION FOR HOSPITAL EXEMPTION**

As the individual's physician, I certify that the individual:

\*is discharging to a nursing facility or swing bed directly from a hospital after receiving acute inpatient hospital care; and

\*requires nursing facility services for the condition for which he/she received care in the hospital; and

\*as the physician, I certify, no later than the date of discharge, that the individual requires less than 30 days of nursing facility or swing bed services.

Physician's Printed Name

Physician's Signature

Date (mm/dd/yyyy)

*Please note:* The individual cannot be admitted to the nursing facility through the hospital exemption if all three criteria are not met. If the individual does not meet the three criteria for exemption, the individual may still seek nursing facility or swing bed admission through a pre-admission screen via completion of the "SCREENING FOR ADMISSIONS TO THE NURSING FACILITY OR SWING BED FOR MENTAL ILLNESS or INTELLECTUAL and DEVELOPMENTAL DISABILITIES" and referral to Adult Services & Aging, if applicable.

**SECTION D: IDENTIFYING INFORMATION FOR THE NURSING FACILITY OR SWING BED TO WHICH AN INDIVIDUAL WILL BE ADMITTED**

Facility Name

Facility Contact

Street Address

City

State

Zip

Date of Expected Admission (mm/dd/yyyy)

Phone #

Fax #

Printed Name of Hospital Staff completing this form

Time faxed to ASA

Signature of Hospital staff completing this form

Date (mm/dd/yyyy) faxed to ASA

Circle the name of the Adult Services & Aging (ASA) Nurse Consultant to whom you faxed this notification form.

Region I – Crystal Hamann  
Phone: 605-394-2525 x309  
FAX: 605-394-2363

Region II – Lana Glanzer  
Phone: 605-353-7100 x208  
FAX: 605-353-7103

Region III – Cassandra Varilek  
Phone: 605-882-5000 x213  
FAX: 605-882-5024

Region IV – Lori Baltzer  
Phone: 605-387-4219 x203  
FAX: 605-387-2438

Region V – Tricia Fjerestad  
Phone: 605-367-5444 x421  
FAX: 605-367-4272

**THIS NOTIFICATION FORM MUST BE KEPT IN THE NURSING FACILITY OR SWING BED RESIDENT'S ACTIVE FILE. BY ACCEPTING ADMISSION, THE NURSING FACILITY OR SWING BED CONFIRMS THAT THE HOSPITAL EXEMPTION CRITERIA AND ALL APPLICABLE REQUIREMENTS OF SOUTH DAKOTA'S PASRR PROGRAM ARE MET. THE NURSING FACILITY OR SWING BED ACCEPTS THE ADMISSION ONLY AFTER RECEIPT AND REVIEW OF THIS NOTIFICATION FORM FOR 100% ACCURACY AND COMPLETION. THE NURSING FACILITY OR SWING BED ACCEPTS RESPONSIBILITY FOR REQUESTING A RESIDENT REVIEW (IF REQUIRED) FROM ADULT SERVICES & AGING PRIOR TO THE 30<sup>th</sup> DAY FOLLOWING ADMISSION FROM THE HOSPITAL.**

**ADULT SERVICES & AGING  
LEVEL I PASRR REVIEW**

\_\_\_\_\_  
Last Name, First Name, MI

\_\_\_\_\_  
Nursing Facility or Swing Bed

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date of Birth

A check in any of the below boxes means Nursing Facility or Swing Bed placement appropriate and the provider may proceed with admission to the Nursing Facility or Swing Bed.

**Level II review exemptions – ARSD 46:20:34:03 and 46:11:13:03**

<input type="checkbox"/>	The diagnosis of ID/DD or MI is unsubstantiated;
<input type="checkbox"/>	The individual is being readmitted to a nursing home from a hospital to which they were transferred for the purpose of receiving care; (nursing facility must evaluate upon return for significant change in status and submit PASRR request if indicated)
<input type="checkbox"/>	The individual is transferring from one nursing home to another and PASRR has previously been completed;
<input type="checkbox"/>	The physician has identified the need for a nursing facility or swing bed stay following hospitalization which will be for less than 100 days;
<input type="checkbox"/>	There is a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear that it will lead to a chronic disability;
<input type="checkbox"/>	There is use of psychotropic medication in the absence of a major mental illness diagnosis;
<input type="checkbox"/>	There is a diagnosis of anxiety disorder that is not identified as severe and does not appear to be leading to chronic disability;
<input type="checkbox"/>	Physician order for respite stay of 30 days or less.

**Categorical Determination - ARSD 46:20:34:05 and 46:11:13:05**

<input type="checkbox"/>	Terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of 6 months or less;
<input type="checkbox"/>	Severe physical illness which has resulted in coma or ventilator dependence; (examples include: functioning at a brain stem level, or a diagnosis such as end stage COPD, Parkinson's disease, Huntington's, CHF, amyotrophic lateral sclerosis, which results in a level of impairment so severe that a person cannot be expected to benefit from active treatment.)
<input type="checkbox"/>	The age of individual is 75 years or older;
<input type="checkbox"/>	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.

\_\_\_\_\_  
Adult Services & Aging Nurse Consultant

\_\_\_\_\_  
Date

## SOUTH DAKOTA LEVEL I PASRR ASSESSMENT PROCESS

**Responsibility of the Adult Services and Aging (ASA) Nurse Consultant to review received information and complete the Level I PASRR assessment. A Level II PASRR referral will be made after thorough assessment, if indicated. (Check off as each step is completed):**

\_\_\_\_ 1. Information received from ASA Nurse Consultant--Information may include the following:

### **From a hospital or nursing home:**

\_\_\_\_ Name of prospective nursing home

\_\_\_\_ Demographic/face sheet

\_\_\_\_ Admission History & Physical Examination that may include:

\_\_\_\_ A diagnostic list of physical, mental, substance use or substance related disorders

\_\_\_\_ ID/DD, including historical evidence of ID/DD age of onset prior to age 18

\_\_\_\_ Related Conditions (RC), including historical evidence of RC with an age of onset prior to age 22

\_\_\_\_ Consultant reports that pertain to current patient status including neurological assessment, with information including cognitive deficits and orientation

\_\_\_\_ Current (most recent 3-5 days) physician's progress notes

\_\_\_\_ Current (most recent 3-5 days) nursing and/or interdisciplinary progress notes

\_\_\_\_ Progress notes for any current therapy (PT, OT, and ST)

\_\_\_\_ Current medication list that includes medications to treat mental illness

\_\_\_\_ Most current psychiatric and/or psychological evaluation to include intellectual functioning, full scale IQ, self-injurious, self-mutilation, suicidal, physical violence or threats, appetite disturbances, hallucinations, delusions, serious loss of interest, tearfulness, irritability, and withdrawal. Documentation may indicate a mental illness

\_\_\_\_ Most current adaptive behavior testing, including review of ADLs and IADLs to assess the ability to complete tasks and adapt to change, including mobility, self-care, self-direction, learning, understanding/use of language, and capacity for living independently

\_\_\_\_ Documentation may provide indications of presenting evidence of a suspected or undiagnosed mental health condition or mental illness

\_\_\_\_ Documentation may provide indications of presenting evidence of a suspected or undiagnosed ID/DD condition

\_\_\_\_ Comprehensive mental health status exam(s), including BIMS, Mini Mental Status Exam, and/or a Dementia Work Up to assess for mental illness along with serious difficulty completing tasks, requiring assistance with tasks, errors with tasks, concentration, persistence, and pace, which provides supportive evidence of:

\_\_\_\_ A mental illness

\_\_\_\_ A primary dementia diagnosis outside of the physician's diagnosis

\_\_\_\_ ID/DD diagnosis

- \_\_\_ Psychosocial history, including evidence of interpersonal conflicts, difficulty interacting with others including altercations or isolation (avoiding others), evictions, unstable employment, and social support systems indicating:
  - \_\_\_ Medical conditions, mental health conditions, or mental illness
  - \_\_\_ ID/DD history
- \_\_\_ Most recent MDS if PASRR initiated by a nursing facility
- \_\_\_ Documentation/evidence to support a mental health condition
- \_\_\_ Documentation/evidence to support an ID/DD condition
  - \_\_\_ For individuals with ID/DD, information should include past and present agencies serving the individual, services provided, and referrals made
- \_\_\_ Documentation/evidence to support a Related Condition diagnosis, which may include symptoms that affect intellectual functioning and adaptive functioning, autism, epilepsy, blindness, cerebral palsy, closed head injury, and/or deafness
- \_\_\_ Documentation/evidence to support a primary dementia diagnosis. According to Administrative Rule of South Dakota (ARSD) 46:20:34:05, a Level I PASRR may be completed if the individual has 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.
- \_\_\_ 2. Information received is:
  - \_\_\_ Complete: proceed to #4
  - \_\_\_ Incomplete: proceed to #3
- \_\_\_ 3. Contact the hospital, nursing facility, or referring agency to request further information
- \_\_\_ 4. Using nursing judgment and information received determine if case will be a Level I or referred for Level II Determination
- \_\_\_ 5. If a Level II Determination is required, skip to #6. If a Level I Determination is made, complete the following:
  - \_\_\_ Complete Level I PASRR Review Form and send communication to facility
  - \_\_\_ If criteria is met for physician ordered rehab stay, create a reminder for when the follow up review is due
  - \_\_\_ Enter information into ASA Database and File Director. The Level I process is complete
- \_\_\_ 6. If a Level II Determination is required, complete the following:
  - \_\_\_ Complete the Level II Checklist
  - \_\_\_ If a dual PASRR is indicated, submit a request for Level II to Division of Developmental Disabilities and Division of Behavioral Health for review
  - \_\_\_ For mental health Level II PASRR requests, submit documentation and Level II checklist to ASA Nurse Consultant Program Manager and Division of Behavioral Health for review
  - \_\_\_ For ID/DD Level II PASRR requests, submit documentation and Level II checklist to Division of Developmental Disabilities for review
  - \_\_\_ Send Level II letter to individual and facility

REQUEST FOR LEVEL II CHECKLIST

DD \_\_\_\_\_ MI \_\_\_\_\_ DD/MI \_\_\_\_\_

Diagnosis Documentation Location: \_\_\_\_\_

FROM: ASA Nurse Consultant: \_\_\_\_\_

Patient Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Next of Kin, address, and phone number (if known):

\_\_\_\_\_

\_\_\_\_\_

Nursing Facility or Swing Bed admitting to: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person from referring facility: \_\_\_\_\_

**Attached:**

\_\_\_\_\_ Psychological Evaluation from the community/ facility (if available)

\_\_\_\_\_ Face sheet

\_\_\_\_\_ Medical History and Physical Report

\_\_\_\_\_ Consultant reports that pertain to the current status of the patient (including neurological assessment)

\_\_\_\_\_ Physician progress notes, past 3-5 days of hospitalization

\_\_\_\_\_ Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility or swing bed (DD/MI)

\_\_\_\_\_ Therapy notes, past 3-5 days, if applicable (PT, OT, ST)

\_\_\_\_\_ Current Medication list

\_\_\_\_\_ Most current MDS or swing bed assessment if already in the facility.

## ADMINISTRATIVE RULES for PASRR

### Chapter 46:20:34 Mental Health

#### Preadmission Screening and Resident Review

##### Section

[46:20:34:01](#) Definitions.

[46:20:34:02](#) Level I screening.

[46:20:34:03](#) Level II review exemptions.

[46:20:34:04](#) Exempt hospital discharge.

[46:20:34:05](#) Categorical determinations for Level I.

[46:20:34:06](#) Level II review.

[46:20:34:07](#) Level II determination -- Data requirements.

[46:20:34:08](#) Determination of services.

[46:20:34:09](#) Determination of specialized mental health services.

[46:20:34:10](#) Timeliness of determinations of Level II review.

[46:20:34:11](#) Notification of Level II determination.

[46:20:34:12](#) Determination may not be countermanded.

[46:20:34:13](#) Appeal of ineligibility of Level II determination.

[46:20:34:14](#) Length of stay.

[46:20:34:15](#) Individuals not requiring swing bed or nursing facility services but requiring mental health services--30 month determination.

[46:20:34:16](#) Significant change.

[46:20:34:17](#) New admission and readmission.

[46:20:34:18](#) Inter-facility transfers.

[46:20:34:19](#) Out of state placement.

**46:20:34:01. 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 that 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, that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance, or to multiple etiologies such as the combined effects of cerebrovascular disease and Alzheimer's disease;
- (3) "Nursing facility," as defined in subdivision 67:45:01:01(10);
- (4) "Preadmission screening and resident review" or "PASRR," a process made up of a Level I screening completed by the Department of Social Services and Level II review completed by the division to determine eligibility when an individual with a mental illness as defined in subdivision 46:20:18:01(19), applies to reside in a Medicaid certified swing bed or nursing facility;
- (5) "Specialized mental health services," psychiatric services resulting in the continuous and aggressive implementation of an individualized plan of care that is developed by an interdisciplinary team which includes a physician, QMHP, and other professionals which prescribes specific therapies and activities for the treatment of individual's experiencing an acute episode of SMI requiring supervision by trained mental health professionals to obtain improvement in function that would permit a reduction in the level of intensity to below the level of specialized services at the earliest possible time;
- (6) "Swing bed," as defined in subdivision 67:45:01:01(13).

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:02. Level I screening.** The Department of Social Services 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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:03. Level II review exemptions.** An individual is exempt from a Level II review if at least one of the following occurs:

- (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 PASRR has previously been completed;
- (4) The physician identifies the need for convalescent care following hospitalization for a duration of less than 100 days;
- (5) The physician orders a respite stay of 30 days or less;
- (6) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and 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 of Social Services shall complete a Level I screening form to notify appropriate parties of the determination of the exemption.

**Source:** 37 SDR 131, effective January 10, 2011; 40 SDR 230, effective June 30, 2014.

**General Authority:** SDCL [1-36-25\(4\)](#).

**Law Implemented:** SDCL [1-36-25\(4\)](#).

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**46:20:34:04. Exempt hospital discharge.** An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

- (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 care was received 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 30 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 30 days of nursing care, the facility shall request a PASRR prior to the expiration of that 30 days.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:05. Categorical determinations for Level I.** The Department of Social Services 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 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 of Social Services shall complete a Level I screening form. A copy of the form shall be sent to the division and any 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:** 37 SDR 131, effective January 10, 2011; 40 SDR 130, effective June 30, 2014.

**General Authority:** SDCL [1-36-25\(4\)](#).

**Law Implemented:** SDCL [1-36-25\(4\)](#).

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**46:20:34:06. Level II review.** The division 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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:07. 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) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;

(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 must 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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:08. Determination of services.** The division 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 division determines that an individual requires a Medicaid certified swing bed or nursing facility services, the facility may admit or retain the individual. If the division determines that an individual does not require Medicaid certified swing bed or nursing facility services, the individual may not be admitted.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:09. Determination of specialized mental health services.** If the division determines that the individual requires Medicaid certified swing bed or nursing facility services, the division shall also determine whether the individual may benefit from mental health services.

If the division determines that an individual requires both Medicaid certified swing bed or nursing facility services and specialized mental health services as defined in subdivision 46:20:34:01(5), the facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized mental health services.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:10. Timeliness of determinations of Level II review.** The division 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 § 46:20:34:07.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:11. Notification of Level II determination.** The division shall issue a written notification of the Level II review determination. The notification shall include:

- (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.

A copy of this notification shall be sent 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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:12. Determination may not be countermanded.** A Level II determination made by the division may not be countermanded by the Department of Social Services.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:13. Appeal of ineligibility of Level II determination.** The individual, or the individual's legal representative, may appeal within 30 calendar days of receipt of the notice of ineligibility pursuant to SDCL chapter [1-26](#) by notifying the Department of Human Services 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 of Human Services.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:14. 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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:15. 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 of Social Services and Department of Human Services, 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 being made;

- (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 being made;

- (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:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:16. 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, is not "self-limiting" (for decline only);
- (2) Impacts more than one area of the individual's health status; and
- (3) Requires interdisciplinary review or revision of the care plan.

If a significant change occurs for an individual known or suspected to have a mental illness, the Medicaid certified swing bed or nursing facility shall make a referral to the division for a possible Level II review. This referral shall occur within 14 days of the identification of the significant change.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:17. New admission and readmission.** A new admission occurs when 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. With the exception of certain exempt hospital discharges listed in § 46:20:34:04, new admissions are subject to a 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 was transferred from a facility for the purpose of receiving medical care. This type of readmission does not require a PASRR.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:18. Inter-facility transfers.** An inter-facility transfer occurs when the individual is transferred from one Medicaid certified swing bed or nursing facility to another, with or without an intervening hospital stay. Inter-facility transfers are not subject to a PASRR. 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 is responsible for ensuring that copies of the individual's PASRR findings accompany the individual.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

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**46:20:34:19. Out of state placement.** The state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

**Source:** 37 SDR 131, effective January 10, 2011.

**General Authority:** SDCL [1-36A-1.26\(4\)](#).

**Law Implemented:** SDCL [1-36A-1.26\(4\)](#).

## **Chapter 46:11:13 Developmental Disabilities**

### Preadmission Screening and Resident Review

#### Section

[46:11:13:01](#) Definitions.

[46:11:13:02](#) Level I screening.

[46:11:13:03](#) Level II review exemptions.

[46:11:13:04](#) Exempt hospital discharge.

[46:11:13:05](#) Categorical determinations for Level I.

[46:11:13:06](#) Level II review.

[46:11:13:07](#) Level II determination -- Data requirements.

[46:11:13:08](#) Determination of services.

[46:11:13:09](#) Determination of specialized services.

[46:11:13:10](#) Timeliness of determination of Level II review.

[46:11:13:11](#) Notification of Level II determination.

[46:11:13:12](#) Determination may not be countermanded.

[46:11:13:13](#) Appeal of ineligibility of Level II determination.

[46:11:13:14](#) Length of stay.

[46:11:13:15](#) Individuals not requiring swing bed or nursing facility services but requiring specialized services – 30 month determination.

[46:11:13:16](#) Significant change.

[46:11:13:17](#) New admission and readmission.

[46:11:13:18](#) Inter-facility transfer.

[46:11:13:19](#) Out-of-state placement.

**46:11:13:01. Definitions.** Terms in this chapter mean:

- (1) "Active treatment," the implementation of a program of specialized and generic training, treatment, health services, and related services that 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, that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance, or to multiple etiologies such as the combined effects of cerebrovascular disease and Alzheimer's disease;
- (3) "Nursing facility," as defined in subdivision 67:45:01:01(9);
- (4) "Preadmission screening and resident review" or "PASRR," a process made up of a Level I screening completed by the Department of Social Services and a Level II review completed by the division to determine eligibility when an individual with a diagnosis of developmental disability as defined in SDCL [27B-1-18](#) applies to reside in a Medicaid certified swing bed or nursing facility;
- (5) "Resident review," a review to determine if residence in a nursing facility remains appropriate and if specialized services are needed;
- (6) "Specialized services," the services specified by the state for the individual which, combined with the services provided by the nursing facility or other service providers, results in active treatment;
- (7) "Swing bed," as defined in subdivision 67:45:01:01(2).

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:02. Level I screening.** The Department of Social Services shall conduct a Level I screening that identifies each individual who is seeking a Medicaid certified swing bed or nursing facility services who may have an intellectual disability or developmental disability.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:03. Level II review exemptions.** An individual is exempt from a Level II review if at least one of the following occurs:

- (1) The diagnosis of an intellectual disability or developmental disability is unsubstantiated;
- (2) An 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) An individual is transferred from a Medicaid certified swing bed or nursing facility to another and a PASRR has previously been completed;
- (4) The physician identifies the need for convalescent care following hospitalization for a duration of less than 100 days; or
- (5) A physician ordered respite stay of 30 days or less.

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

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:04. Exempt hospital discharge.** An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

- (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 same condition for which care was received 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 30 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 30 days of nursing care, the facility shall request a PASRR prior to the expiration of that 30 days.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:05. Categorical determinations for Level I.** A categorical determination is made by the Department of Social Services. A categorical determination may warrant Medicaid certified swing bed or nursing facility services but does not warrant specialized services. A situation known as a categorical situation is one of the following:

- (1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of six months or less;
- (2) A severe physical illness which has resulted in a coma or ventilator dependence;
- (3) The age of the 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 of Social Services shall complete a Level I screening form. A copy of the form shall be sent to the division and any appropriate facility.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:06. Level II review.** The division shall conduct a Level II review that consists of determining appropriateness of Medicaid certified swing bed or nursing facility services and specialized 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 specialized services is made.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:07. 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 developmental 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;

(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 must 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:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:08. Determination of services.** The division 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 division determines that an individual requires a Medicaid certified swing bed or nursing facility services, the facility may admit or retain the individual. If the division determines that an individual does not require Medicaid certified swing bed or nursing facility services, the individual may not be admitted.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:09. Determination of specialized services.** If the division determines that the individual requires Medicaid swing bed or nursing facility services, the division shall also determine whether the individual may benefit from specialized services as defined in subdivision 46:11:13:01(6).

If the division determines that an individual requires both Medicaid certified swing bed or nursing facility services and specialized services, the nursing facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized services needed by the individual in the Medicaid certified swing bed or nursing facility.

If the division determines that the individual does not require Medicaid certified swing bed or nursing facility services, but may benefit from specialized services, the division shall provide the individual with information regarding service options.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:10. Timeliness of determination of Level II review.** The division 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 the information required in § 46:11:13:07.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:11. Notification of Level II determination.** The division shall issue a written notification of the Level II review determination. The notification shall include:

- (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.

A copy of this notification shall be sent to the individual the Level II review was completed on, 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:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:12. Determination may not be countermanded.** A Level II determination made by the division may not be countermanded by the Department of Social Services.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:13. 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 orally or in writing. Any costs associated with legal counsel obtained to represent the individual are not the responsibility of the department.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:14. Length of stay.** For the purpose of establishing length of stay in a Medicaid certified swing bed or nursing facility, the 30 months of continuous residence in a Medicaid certified swing bed or nursing facility may include temporary absences for hospitalization or therapeutic leave and may consist of consecutive residences in more than one Medicaid certified swing bed or nursing facility.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:15. Individuals not requiring swing bed or nursing facility services but requiring specialized services -- 30 month determination.**

(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 specialized services, the Department of Social Services and the Department of Human Services, in consultation with the individual's family or legal representatives and caregivers, shall:

- (a) Offer the choice of remaining in the nursing facility or of 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 nursing facility, including the effect on readmission to the nursing facility; and
- (d) Provide for, or arrange for the provision of, specialized services for the intellectual disability or developmental disability; or

(2) If the individual has been residing in a 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 specialized services, the Department of Social Services and Department of Human Services, 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 for, or arrange for the provision of, specialized services for the intellectual disability or developmental disability.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229 effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:16. 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, is not "self-limiting" (for decline only);
- (2) Impacts more than one area of the individual's health status; and
- (3) Requires interdisciplinary review or revision of the care plan.

If a significant change occurs for an individual known or suspected to have an intellectual disability or a condition related to an intellectual disability, the Medicaid certified swing bed or nursing facility shall make a referral to the division for a possible Level II review. The referral shall occur as soon as evidence of a significant change is identified.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:17. New admission and readmission.** A new admission occurs when an individual is admitted to any Medicaid certified swing bed or nursing facility for the first time or when an admission does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:11:13:04, new admissions are subject to 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 was transferred from the nursing facility for the purpose of receiving medical care. This type of readmission does not require a PASRR.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:18. Inter-facility transfers.** An inter-facility transfer occurs when the individual is transferred from one Medicaid certified swing bed or nursing facility to another, with or without an intervening hospital stay. Inter-facility transfers are not subject to PASRR. 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 nursing facility is responsible for ensuring that copies of the individual's PASRR findings accompany the individual.

**Source:** 40 SDR 102, effective December 3, 2013; 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

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**46:11:13:19. Out-of-state placement.** The state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

**Source:** 40 SDR 229, effective June 30, 2014.

**General Authority:** SDCL [27B-2-26\(8\)](#).

**Law Implemented:** SDCL [27B-2-26](#).

GUIDANCE TO SURVEYORS—LONG TERM CARE FACILITIES

TAG #	REGULATION	GUIDANCE TO SURVEYORS
F285	<p>(m) readmission screening for mentally ill individuals and individuals with intellectual disability</p> <p>(1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—</p> <p>(i) Mental Illness as defined in paragraph (m)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission;</p> <p>(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and</p> <p>(B) If the individual requires such level of services, whether the individual requires specialized services for intellectual disability.</p> <p>(ii) intellectual disability, as defined in paragraph (m)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission—</p> <p>(A) That, because of the physical and mental conditions of the individual, the individual requires the level of service provided by a nursing facility; and</p> <p>(B) If the individual requires such level of services, whether the individual requires specialized services for intellectual disability.</p> <p>(2) Definitions. For purpose of this section—</p> <p>(i) An individual is considered to have “mental illness” if the individual has a serious mental illness defined at 483.102(b)(1).</p> <p>(ii) An individual is considered to be “intellectually disabled” if the individual is intellectually disabled as defined in 483.102(b)(3) or is a person with a related condition as described in 42 CFR 1009.</p>	<p><u>483.20(n) Intent:</u> To ensure that persons with mental illness and intellectual disability receive the care and services they need in the most appropriate setting.</p> <p>“Specialized services” are those services that the State is required to provide or arrange for that raise the intensity of services to the level needed by the resident. That is, specialized services are an “add-on” to NF services—they are of a higher intensity and frequency than specialized rehabilitation services, which are provided by the NF.</p> <p>The statute mandates preadmission screening for all individuals with mental illness (MI) or intellectual and developmental disability (ID/DD) who apply to NFs, regardless of the applicant’s source of payment, except as provided below. (See 1919(b)(3)(f).) Residents readmitted and individuals who initially apply to a nursing facility directly following a discharge from an acute care stay exempt if:</p> <ul style="list-style-type: none"> <li>• They are certified by a physician prior to admission to require a nursing facility stay of less than 30 days; and</li> <li>• They require care at the nursing facility for the same condition for which they were hospitalized.</li> </ul> <p>The State is responsible for providing specialized services to resident with MI/ID/DD residing in Medicaid-certified facilities. The facility is required to provide all other care and services appropriate to the resident’s condition. Therefore, if a facility has residents with MI/ID/DD, do not survey for specialized services, but survey for all other requirements, including resident rights, quality of life, and quality of care.</p> <p>If the resident’s PAS report indicates that he or she needs specialized services but the resident is not receiving them, notify the Medicaid agency. NF services ordinarily are not the intensity to meet the needs of the residents with MI and ID/DD.</p> <p><u>483.20(m) Probes:</u></p> <p>If sampled residents have MI or ID/DD, did the State Mental Health or Intellectual or Developmental Disability Authority determine:</p> <ul style="list-style-type: none"> <li>• Whether the residents needed the services of the NF?</li> </ul> <p>Whether the residents need specialized services for their MI or ID/DD?<sup>1</sup></p>

## FREQUENTLY ASKED PASRR QUESTIONS AND ANSWERS

### Question 1. What is the goal of the federally mandated PASRR?

The goal of PASRR is to:

- Assist nursing and swing bed facilities in providing the necessary care and services to each resident so that they may attain or maintain the highest practicable physical, mental, and psychosocial well-being (42 CFR 483.25, F285); and
- Prevent inappropriate institutionalization of individuals with Mental Illness (MI) or Intellectual and Developmental Disabilities (ID/DD).

### Question 2. Can you briefly describe the PASRR Process?

The form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” identifies individuals who have indicators of Mental Illness or Intellectual and Developmental Disabilities. Only a designated facility representative should complete these forms.

If there are any yes responses, or if the response is unknown, you will need to contact the Adult Service & Aging (ASA) Nurse Consultant assigned to your region and request a Level I PASRR.

- Level I PASRR– The ASA Nurse Consultant will complete a Level I PASRR screening and determine if there are positive indicators that would require a referral for a Level II PASRR screening.
- Level II PASRR– Evaluates the individual for the most appropriate and least restrictive care setting (Examples include home and community based services, Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), Nursing Facilities, and In-patient psychiatric hospitals).
  - Level II PASRR review identifies if the individual is likely to benefit from MI or ID/DD services and if so, whether or not specialized services are required.

### Question 3. Who does PASRR apply to?

All individuals, regardless of payment source, being admitted into a Medicaid Certified Nursing Facility or Swing Bed must undergo a screening for Mental Illness or Intellectual and Developmental Disabilities prior to admission to a nursing facility.

Federal regulation prohibits Medicaid reimbursement to nursing facilities or swing bed facilities under certain circumstances, such as, but not limited to, when the nursing facility or swing bed fails to obtain a Level I or Level II PASRR determination when there are indicators of MI or ID/DD.

### Question 4. If I am an inpatient provider, how do I know whether I should complete PASRR?

PASRR screenings should be completed for all individuals actively arranging to discharge to a nursing facility or swing bed. Results of the PASRR screening should be forwarded to the receiving nursing facility or swing bed prior to admission, with the patient’s medical records.

### Question 5. At what time is PASRR done?

A PASRR must be done in the following situations:

- Prior to a person being admitted to a nursing facility or swing bed;
- Prior to expiration of a time-limited screening. (Example of a time-limited screening would be when the Division of Developmental Disabilities (DDD) or the Division of Behavioral Health (DBH) has given authorization for a 30, 60 or 90 day stay);
- For admissions from out-of-state, the PASRR from the previous state will be accepted upon admission. A South Dakota Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities must be completed upon admission. A Level I PASRR

screening must be requested within one business day of admission; or

- When a resident of a nursing facility has a Significant Change in Status as defined in the Federal Resident Assessment Instrument (RAI) Manual, the facility has 14 days to submit to the ASA Nurse Consultant. (42 CFR 483.20).

#### **Question 6. What is a Significant Change in Status Assessment (SCSA)?**

Providers are responsible for following the guidelines listed in the Long Term Care Facility RAI for determining when a significant change in status should be completed. In addition, if there is new presenting evidence, such as a medication or diagnosis, that would change the outcome of the “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities,” a new form must be completed and submitted to the ASA Nurse Consultant within 14 days.

#### **Question 7. What is the relationship between PASRR and SCSA MDS?**

Providers are responsible for following the guidelines listed in the Long Term Care Facility Resident Assessment Instrument (RAI) for determining when a significant change should result in referral for a preadmission screening (PAS) and resident review (RR) Level II Evaluation as defined in the RAI Manual.

#### **Question 8. What are some examples of Significant Change in Status that Relate to PASRR?**

Please refer to the examples provided in the RAI manual.

#### **Question 9. How do I request a PASRR Level I screening?**

For individuals who are planning to admit to a Nursing Facility or Swing Bed and “yes” or “unknown” is the response to any of the questions on the form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” you will need to contact the ASA Nurse Consultant in your region to request a PASRR Level I screening.

#### **Question 10. What do I do after I request a Level I PASRR screening?**

**Wait** for approval from the ASA Nurse Consultant before admission.

**Remember** that if you admit an individual who has positive indicators for PASRR without completing the PASRR process, your reimbursement from SD Medicaid will be affected.

#### **Question 11. What are the responsibilities of a nursing facility or swing bed in regards to PASRR compliance?**

A nursing facility or swing bed is responsible to:

- Ensure the form titled “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” is completed accurately prior to admission;
- Ensure that any “yes” or “unknown” response to the “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” is referred to the ASA Nurse Consultant for Level I PASRR screening;
- Ensure you do not admit any individual referred to the ASA Nurse Consultant for Level I PASRR screening before you receive approval from ASA and/or DBH/DDD;
- Ensure that the following applicable forms and related PASRR information are in the resident’s active file:
  - Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities;
  - PASRR Level I screening determination; and
  - PASRR Level II screening determination.

- ASA Nurse Consultants will check nursing facility records for the above forms during case mix reviews and as needed to determine South Dakota Medicaid Reimbursement.
- Ensure you carry out any directives designated by DBH/DDD in the Level II resident review determination letter.

**Question 12. Does PASRR apply to critical access hospital(s)?**

Section 1913 of the Social Security Act defines swing beds and clearly requires that swing-bed facilities comply with all requirements of section 1919(b) through 1919(d) with respect to the NF services offered. That includes 1919(b)(3)(F), which restates the essential PASRR requirements from 1919(e) in relation to the Resident Assessment Instrument (RAI). Section 1919(e)(7) of the Social Security Act and Chapter 42 of the Code of Federal Regulations, Sections 483.100 through 483.138 specify the requirements for pre-admission screening resident reviews for individuals with mental illness or intellectual and developmental disabilities. Federal regulations require that PASRR screenings take place prior to admission to the swing bed.

**Question 13: Does PASRR need to be re-done when an individual is transferred from a swing bed to a nursing facility?**

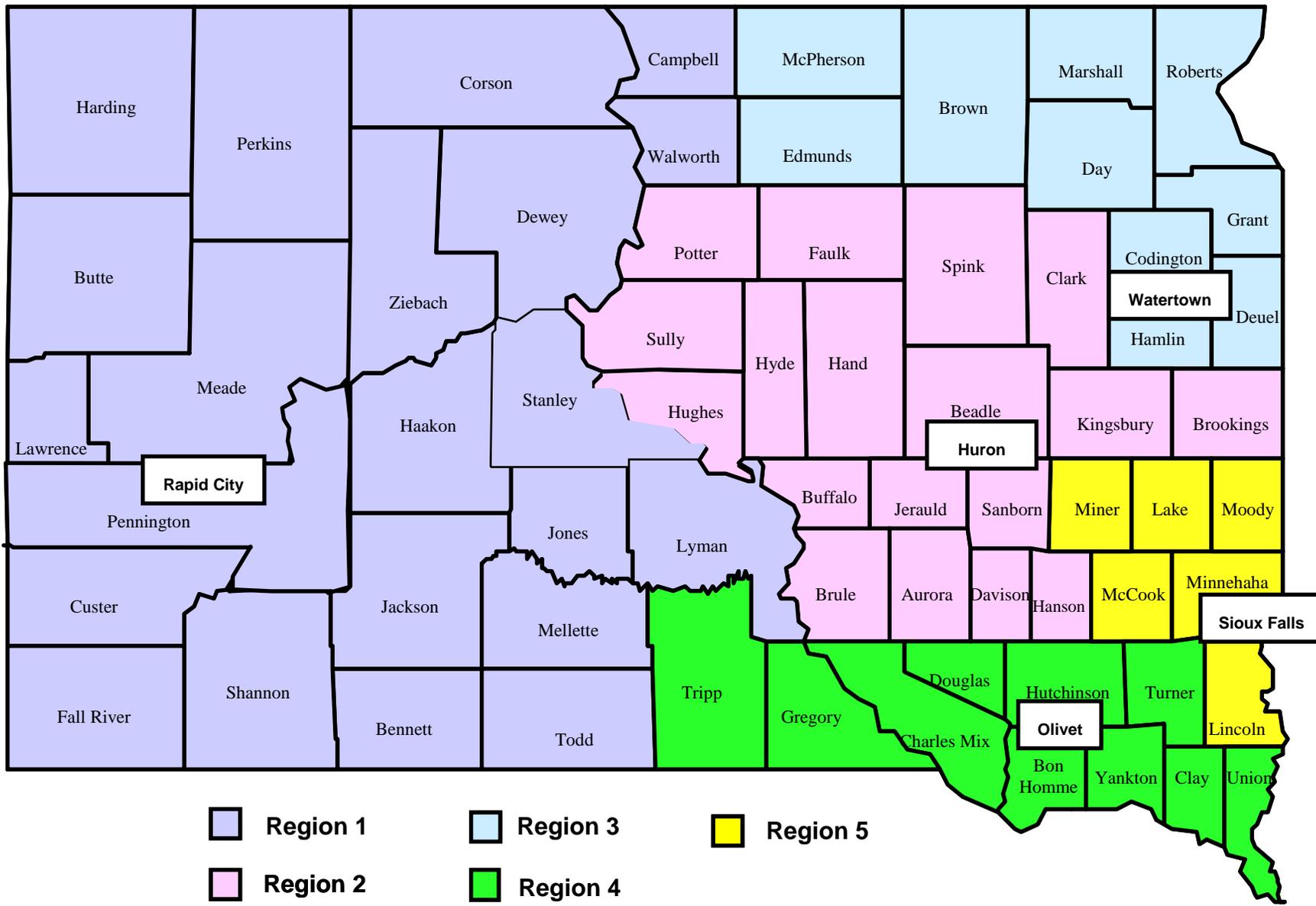
A second Level II is *not* required when an individual is transferred from one NF to another (with or without an intervening hospital stay). However, the swing bed facility must deliver the individual's records to the accepting NF. According to CFR Chapter 42, Section 483(b)(4)- Inter facility transfers —(i) An inter facility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. (ii) In cases of transfer of a resident with MI or ID/DD from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports accompany the transferring resident.

If you need assistance or have questions regarding the Hospital Exemption or PASRR process, please contact the ASA Nurse Consultant assigned to your region or the Adult Services & Aging Nurse Consultant Program Manager.

**Question 14: What happens if the PASRR is not done prior to admission and the client applies for Medicaid funding?**

Admitting facilities must ensure that the “Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness or Intellectual and Developmental Disabilities” is completed accurately prior to admission to their facility. If the discharging hospital completes the screening form, it is necessary for the admitting facility to review for accuracy. Missing or inaccurate screenings when PASRR indicators are present will result in denial of Medicaid reimbursement for the entire period of PASRR non-compliance.

# ASA Nurse Consultant Regions



- Region 1
- Region 3
- Region 5
- Region 2
- Region 4

# PASRR CONTACT LIST

## Level I PASRR Contacts Adult Services & Aging Nurse Consultants

### Region I

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# **A Roadmap of South Dakota's Mental Health Involuntary Commitment and Voluntary Hospitalization of Adults**

Revised July 29, 2013

## Introduction

### I. QUALIFIED MENTAL HEALTH PROFESSIONAL

The term “qualified mental health professional”, means a physician licensed pursuant to chapter 36-4 or a member of one of the professions listed as follows who is in good standing with any relevant licensing or certification boards:

1. A psychologist who is licensed to practice psychology in South Dakota.
2. An advanced practice nurse with at least a master’s degree from an accredited education program and either two years or one thousand hours of clinical experience that includes mental health evaluation and treatment.
3. A certified social worker with a master’s degree from an accredited training program and two years of experience in a mental health setting.
4. A person who has a master’s degree in psychology from an accredited program and two years of supervised clinical mental health experience and who meets the provision of subdivision 36-27A-2(2).
5. A counselor who is certified under chapter 36-32 as a licensed professional counselor-mental health.
6. A counselor who is certified under chapter 36-32 as a licensed professional counselor and has two years of supervised clinical experience in a mental health setting and who is employed by the State of South Dakota or a mental health center.
7. A therapist who is licensed under chapter 36-33 as a marriage and family therapist with two years of supervised clinical experience in a mental health setting.
8. A physician assistant who is licensed under chapter 36-4A and either two years or one thousand hours of clinical experience that includes mental health evaluation and treatment.
9. A professional as listed in subdivisions (1) to (8), inclusive, who is employed by the federal government and currently licensed in that profession in another state, in good standing with the licensing board, and acting within the scope of the professional’s license.

Except as provided in subdivision (9) and § 36-4-20, each qualified mental health professional shall meet all licensing and certification requirements required by the State of South Dakota for persons engaged in private practice of the same profession. However, the private practice licensure requirements for persons referred to in subdivisions (3) and (6) do not apply to those employed by the State of South Dakota, mental health centers, or organizations that have a formal clinical supervision arrangement by an employed person who is licensed at the private practice level. **(27A-1-3)**

To complete examinations as part of the emergency commitment process, qualified mental health

professionals shall participate in training as required by the Department of Social Services prior to serving in this capacity. (27A-1-7)

Each member of a board of mental illness shall participate in training as required by the Department of Social Services prior to undertaking their duties. (27A-7-9)

## II. INVOLUNTARY COMMITMENT OF ADULTS

All commitments must be made under the emergency commitment procedures governed by SDCL 27A-10.

### 1. Who is subject to commitment? The Substantive Criteria

A person is subject to involuntary commitment if:

- a. The person has a severe mental illness;
- b. Due to the severe mental illness, the person is a danger to self or others; or has a chronic disability; and
- c. The person needs and is likely to benefit from treatment.

“*Severe Mental Illness*” is defined as a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness; (27A-1-1 (24))

“*Danger to Self*” is defined as:

a) A reasonable expectation that the person will inflict serious physical injury upon himself or herself in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or

(b) A reasonable expectation of danger of serious personal harm in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's severe mental illness. (27A-1-1(7))

“*Danger to Others*” is defined as a reasonable expectation that the person will inflict serious physical injury upon another person in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of serious physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out (27A-1-1(6))

“*Chronic Disability*” is defined as a condition evidenced by a reasonable expectation, based on the person's psychiatric history, that the person is incapable of making an informed medical decision

because of a severe mental illness, is unlikely to comply with treatment as shown by a failure to comply with a prescribed course of treatment outside of an inpatient setting on two or more occasions within any continuous twelve month period, and, as a consequence, the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others. (27A-1-1(4))

*"Co-occurring substance use disorder"* refers to persons who have at least one mental disorder as well as an alcohol or drug use disorder. (27A-1-1(5))

## **2. Mobile Crisis Team**

Referral to mobile crisis team or crisis intervention team certified law enforcement office—voluntary resolution or placement. If any law enforcement officer or qualified mental health professional in a clinic or hospital has probable cause to believe that a person required emergency non-medical intervention, as an alternative to a petition for commitment pursuant to chapter 27A-10, or apprehension and transfer to an appropriate regional facility, the officer or qualified mental health professional may refer the person to the direct supervision of any member of a mobile crisis team or crisis intervention team certified law enforcement officer.

If any member of the mobile crisis team or the crisis intervention team certified law enforcement officer accepts direct supervision of the person, in writing, the member or officer may:

- a. Resolve the intervention on a voluntary basis, at the clinic or hospital, at the person's home, or other location, or with the assistance of any public or private community services that the patient is willing to accept. Any team member may request the assistance of law enforcement for the voluntary transfer of the person.
- b. Direct that the law enforcement officer proceed with the apprehension of the person and transport the person to either an appropriate regional facility for an emergency intervention and mental illness examination or an approved treatment facility offering detoxification services for chemical dependency emergencies.

*"Mobile Crisis Team"* is defined as: an interdisciplinary team of one or more mental health professionals able to respond to any person in the community, usually visiting the person at home, for mental health and chemical dependency or abuse intervention. (27A-10-20(3))

*"Appropriate Regional Facility"* is defined as a facility designated by the department for the prehearing custody of an individual apprehended under authority of this title which is as close as possible in the immediate area to where the apprehension occurred; and is no more restrictive of mental, social, or physical freedom than necessary to protect the individual or others from physical injury. In determining the least restrictive facility, considerations shall include the preferences of the individual, the environmental restrictiveness of the setting, the proximity of the facility to the patient's residence, and the availability of family, legal and other community resources and support. (27A-1-1 (2))

## **3. Procedures for Apprehension**

### **A. Petition Filing**

Any person eighteen years of age or older may file a petition with the county board of mental illness alleging that the subject is severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm of him/herself or others. The petition must be on a form, verified by affidavit, and must include the reasons for its filing and other information mandated

by statute. (27A-10-1)

After examining the petition, the chair of the board of mental illness may order law enforcement or a designee to apprehend the person if the chair has probable cause to believe that the person meets the commitment criteria. The person must be transported to an “appropriate regional facility.” At this point, the person may not be taken to the South Dakota Human Services Center. Moreover, the person may not be detained in a jail unless there is no other appropriate regional facility available. In any event, the person may not be held in a jail for longer than twenty-four hours on a mental illness hold alone. (27A-10-2)

## **B. Apprehension by Peace Officer**

A peace officer may apprehend a person even if a petition has not been filed. The officer, however, must have probable cause to believe that the person is severely mentally ill and in such condition that immediate intervention is necessary to prevent harm. The officer must transport the person to an appropriate regional facility. The restrictions on use of a jail, explained above, continue to apply. A petition must be filed in a forthwith manner with the chair of the county board of mental illness. If a petition is not filed with the chair of the county board within twenty-four hours, the person must be released. (27A-10-3; 27A-10-4)

## **C. Right to Notice**

Immediately after a person is apprehended, she/he must be notified both orally and in writing of the following:

- a. The right to immediately contact a person of choice;
- b. The right to immediately contact and be represented by an attorney;
- c. That she/he will be examined by a qualified mental health professional, designated by the chair of the county board, within twenty-four hours of being taken into custody to determine whether custody should be continued;
- d. The right to an independent examination if custody is continued; and the right to a hearing within five days, six, if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period.
- e. The person shall be further notified that the costs of any post-commitment treatment, medication, compensation for the attorney appointed to represent the person in any appeals proceedings, an additional examination requested by the person, and a certified transcript or tape of proceedings requested by the person are that person's responsibility and that a lien for the amount of these costs may be filed upon the person's real and personal property to ensure payment (27A-10-5)

## **D. Examination Within Twenty-Four Hours**

Within twenty-four hours after apprehension, the person will be examined by a qualified mental health professional designated by the chair of the county board.

Preceding the examination, the examiner must identify himself/herself and explain the nature and purpose of the examination. The person must be informed that the examination is being performed to assist in the determination of whether custody should continue. The person must also be informed that the results of the examination may be used as evidence in a commitment hearing. The examiner

must immediately report the findings to the chair of the county board.

If the chair of the county board determines that the examination does not support finding that the person meets the involuntary commitment criteria, the person must be released. The county in which the person was apprehended must provide transportation back to that county, if the person so desires.

If the examination and an investigation of the petition indicate that the person meets the commitment criteria, the board chair may order continued detainment in an appropriate regional facility. At this point, the person may be transported to the Human Services Center, but only if necessary. **(27A-10-6; 27A-10-7)**

#### **E. Notice to Community Mental Health Center**

Upon being informed of the apprehension of a person, the chair of the county board shall notify the area's community mental health center. **(27A-10-16)**

#### **F. Request for Voluntary Admission**

The chair of the county board shall determine whether a detained person may voluntarily admit him/herself into a facility or program. **(27A-10-7.1)**

### **4. The Hearing Process**

#### **A. Service of Notice**

Copies of the petition and notice of hearing shall be personally served forthwith by the sheriff or a constable, or an elector of any state not a party to the action that is specifically designated by the board on the person prior to the hearing. The notice must include the following:

- a. The time, date, and place of hearing;
- b. The right to be represented by an attorney retained by the person or appointed by the board chair;
- c. Notice of the twenty-four hour examination by a qualified mental health professional;
- d. The qualified mental health professional and the defense lawyer have access to the person's medical records; and
- e. The right of the person to obtain an independent examination at his/her own expense; if indigent, the county will bear the expense. **(27A-11A-5)**

#### **B. Assignment of Counsel**

If upon completion of the twenty-four hour examination, it is determined that a hearing shall be held, the board chair must immediately assign counsel to the person if she/he has not retained an attorney. In no instance may a person not be represented by counsel. **(27A-11A-7)**

#### **C. Duties of Counsel**

An appointed attorney shall represent the interests of the person, advocate the person's legal rights, and otherwise fully represent the person. The attorney shall serve as an advocate for the person rather than a guardian ad litem. **(27A-11A-26)**

#### **D. Timing of Hearing**

A person is entitled to an involuntary commitment hearing within five days after being taken into custody, within six, if there is a Saturday, Sunday, or holiday within that time period or within seven days if there is a Saturday, Sunday, **and** holiday within that time period. (27A-10-8)

#### **E. Location of Hearing**

The hearing shall be held in the county courthouse or such other place as the board chair may designate with due regard to the rights, safety, and comfort of the person. (27A-11A-28)

#### **F. Personal Appearance and Right to Present Evidence**

A person has the right to appear personally at the hearing and testify on his/her own behalf, but may not be compelled to do so. If a person decides not to appear, the board may not inquire into the reasons for that decision. The person has the right to require the attendance of witnesses, to cross-examine witnesses, and to present evidence. (27A-11A-11)

#### **G. Closed Hearing**

The board may exclude the public from attending a hearing. The board, however, must permit the attendance of any person requested to be present by the proposed patient. (27A-11A-11)

#### **H. Pre-Hearing Treatment**

If the person is receiving treatment prior to the hearing, the qualified mental health professional shall take all reasonable precautions to ensure that the person is not so affected by drugs or other treatment as to be hampered in preparing for or participating in the hearing. The board must be provided with a record of all treatment the person has received since being taken into custody. (27A-11A-10)

#### **I. Testimony on Alternative Placements**

An independent qualified mental health professional must assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment. This mental health professional must testify at the hearing and explain what alternatives are or should be made available, what alternatives were investigated, and why any investigated alternatives are not deemed appropriate. (27A-10-9)

##### **1. Outpatient Commitment Order**

- c.** If a person fails to comply with the requirements specified in an outpatient commitment order or a treatment order, and the person's treating physician or staff of the specified outpatient treatment program believes that the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others, the program director or the person's treating physician may notify law enforcement.
- d.** The outpatient commitment order or treatment order constitutes authorization for a law enforcement officer to transport the person to the designated outpatient treatment program or to the treating physician's office for the purpose of making reasonable effort to obtain compliance.
- e.** No person may be detained for more than one hour unless the person consents.

## **J. Rules of Evidence**

The rules of evidence shall be followed at all hearings and reviews. **(27A-11A-24)**

### **5. The Hearing Determination**

Upon completion of the hearing, the board may order the involuntary commitment of the person if it makes the following findings by clear and convincing evidence:

- A.** The person meets the involuntary commitment criteria in **SDCL 27A-1-2**, as explained above;
- B.** The person needs and is likely to benefit from the treatment which is proposed; and
- C.** The commitment is to the least restrictive treatment alternative. **(27A-10-9.1)**

*“Least restrictive treatment alternative”* is defined as the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of mental, social, or physical freedom than necessary to achieve a reasonably adequate therapeutic benefit. The following considerations shall be taken into account in determining the least restrictive alternative:

- 1. The values and preferences of the patient;
- 2. The environmental restrictiveness of treatment settings;
- 3. The duration of treatment;
- 4. The physical safety of the patient and others;
- 5. The psychological and physical restrictiveness of treatments;
- 6. The relative risks and benefits of treatments to the patient;
- 7. The proximity of the treatment program to the patient’s residence; and
- 8. The availability of family and community resources and support. **(27A-1-1 (15))**

If the above findings are not made, the board shall order that the person be released. The referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. **(27A-10-9.1)**

### **6. Duration of Commitment**

Upon completion of the hearing, the Board of Mental Illness may order the involuntary commitment of the person for an initial period not to exceed **ninety days**. **(27A-10-9.1)**

### **7. Record of Proceedings**

A court reporter shall attend all hearings of the county board and keep a stenographic or tape record of the proceedings. A person who has been committed may request a certified transcript or tape recording of the hearing. The person must pay for such transcript or recording unless indigent. **(27A-11A-2)**

### **8. Appeal**

An order of involuntary commitment may be appealed to the circuit court. The person shall be advised of the right to appeal both verbally and in writing upon the termination of the hearing. **(27A-11A-25)**

## **9. Review Hearings**

Within ninety days after the involuntary commitment of a person who is still under the commitment order, the county board shall conduct a review hearing to determine if the person continues to meet the commitment criteria. Notice of this hearing shall be given to the person and his/her attorney at least ten days in advance. If the person has not retained counsel, the board chair must appoint an attorney at least ten days in advance of the review hearing.

At the time of notice, the person and attorney shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered shall be immediately transmitted to the person and attorney. The person is entitled to all rights and procedures applicable to an initial commitment hearing except that a new petition need not be filed.

If, upon completion of the review hearing, the board finds by clear and convincing evidence that the person continues to meet the commitment criteria, the board may order continued commitment to the same or alternative placement for a period not to exceed six months. The person is entitled to another review hearing within the six-month period. If the board issues another order of continued commitment, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the board may order continued commitment for up to twelve months. Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment. **(27A-10-14)**

## **10. Additional Review Hearings**

The board may schedule review hearings in addition to those required by the above stated provision. **(27A-10-15)**

## **11. Noncompliance with Treatment Order**

If a person ordered to undergo a program of treatment does not comply with the order, the county board must conduct a hearing to determine compliance or noncompliance. If noncompliance is determined, the board may order an alternative program of treatment which is consistent with the commitment criteria. The person is entitled to representation by counsel and to notice delivered at least five days in advance of the hearing. **(27A-11A-21)**

**A.** If a person fails to comply with the requirements specified in an outpatient commitment order or a treatment order, and the person's treating physician or staff of the specified outpatient treatment program believes that the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others, the program director or the person's treating physician may notify law enforcement. No person may be detained for longer than one hour unless the person consents. **(27A-10-20)(27A-10-21)**

## **12. Unsuccessful Treatment**

If at any time while a person is under an order of commitment, it comes to the attention of the county board that the program of treatment has not been successful, the board shall conduct a hearing. This hearing must be held within five days, or six if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period. The person shall be represented by counsel and be given at least a five day notice of the hearing.

If the board finds that the program of treatment has not been successful, it shall order an alternative program of treatment consistent with the commitment criteria. The administrator, facility director, or program director of the facility to which a person is committed is responsible for notifying the county board whenever a treatment program has proven unsuccessful. (27A-11A-22)

### 13. Transfer of Patient

A person under an order of commitment may not be transferred to a more restrictive facility without a hearing before the county board prior to the transfer. The person has the right to be represented by an attorney and must be provided notice at least five days in advance of the hearing. The only exception is when the transfer is necessary to prevent the immediate danger of physical harm to the person or others. In such a case, the board chair may authorize the transfer pending the hearing. The hearing must be held within five days of the transfer or seven, if there is a Saturday, Sunday, and holiday within that time period.

If upon completion of the hearing, the board finds by clear and convincing evidence that the transfer is in accord with the commitment criteria, the board may so order the transfer. The transfer hearing shall not substitute for any of the review hearings the person is otherwise entitled to. (27A-11A-19)

## III. VOLUNTARY INPATIENT TREATMENT FOR ADULTS

### 1. Admission Criteria (27A-8-1)

A person, eighteen years of age or older, may apply to the South Dakota Human Services Center or other inpatient psychiatric facility for voluntary hospitalization. The person must execute a written application for admission and be capable of providing an informed consent to the admission.

*“Informed consent”* is defined as a consent voluntarily, knowingly and competently given without any element of force, fraud, deceit, duress, threat or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding. (27A-1-1(12))

The person may be admitted if the following requirements are met:

- a. If, after the examination by a staff psychiatrist, the facility director determines that the applicant is clinically suitable for inpatient treatment. If a staff psychiatrist is unavailable at the time of application, admission may be granted pending an examination by a staff psychiatrist within one working day;
- b. A less restrictive treatment alternative is inappropriate or unavailable;
- c. The applicant is in need of and will likely benefit from treatment which is available at the facility;
- d. The requirements in **SDCL 27A-8-15** have been met. This section requires that before admission, an explanation be made to the applicant of the nature of inpatient status, including the types of treatment available, and restraints or restrictions to which she/he may be subject. This explanation must include the fact that the person’s status may be converted to involuntary status under certain circumstances. The person must also be informed of all rights to which she/he is entitled; and
- e. The applicant does not have medical needs that are beyond the capacity of the facility.

Section **27A-8-15** also requires that the applicant give an informed consent to admission both orally and

in writing upon an application form. The application form must contain specified information. A copy of the signed application form and a written statement of the patient's rights shall be given to the patient and any one other person designated by the patient.

## **2. Voluntary Status Required**

An applicant for voluntary admission, who is clinically suitable for voluntary inpatient treatment, shall be admitted only on such voluntary status. If admission is denied, the facility must provide the person with a referral to other facilities or programs that may be appropriate. **(27A-8-16)**

## **3. Voluntary Admission by Guardian or Attorney-in-fact**

If a person is incapable of providing an informed consent to treatment, the legal guardian or attorney-in-fact may exercise a substituted informed consent to admission. The admission criteria continue to apply to the admission. The patient is entitled to all the rights accorded other voluntary patients, including the right to immediate discharge upon written request. **(New Section 13)**

## **4. Voluntary Admission by Next of Kin**

If a person is incapable of providing an informed consent to treatment, the person's next of kin may exercise a substituted informed consent to admission. The admission criteria continue to apply to these admissions. The person may be admitted for a period not to exceed fourteen days. The patient is entitled to all the rights accorded other voluntary patients, including the right to immediate discharge upon written request.

During the fourteen-day admission period, the consenting next of kin may file a petition in circuit court for an order authorizing appointment of the petitioner as guardian of the person for continuing the admission. If a petition is filed within the fourteen day period, the admission of a non-objecting person may continue until the court can hold the hearing. If a petition is not filed within the fourteen day period, the person must be discharged upon the expiration of the fourteen-day admission period. **(27A-8-19)**

## **5. Periodic Assessments**

Thirty days after the voluntary admission of a patient and every ninety days thereafter, the facility director must review the patient's records and assess the need for continued inpatient treatment. If continued treatment is indicated, the director must request from the patient an oral and written affirmation of informed consent to continued admission. If the patient was admitted upon substituted informed consent and continues to be incapable of exercising an informed consent, substituted informed consent to continuing admission must be obtained. A failure to affirm substituted informed consent constitutes notice of intention to terminate inpatient treatment. **(27A-8-17)**

## **6. Release Procedures**

### **A. Request for Release**

An adult voluntary patient has the right to immediate discharge upon written notice of his intention to be released. The facility must promptly supply the patient with the written discharge form upon request. **(27A-8-10)**

### **B. Detainment After Request for Release**

A voluntary patient who has submitted a written request for release may be detained for a period not to exceed twenty-four hours (excluding weekends or holidays) from receipt of the written notice if the facility has probable cause to believe that she/he meets the involuntary commitment criteria. The facility director must immediately notify the patient of this hold and explain its nature. The director must also notify the chair of the county board or a peace officer of the time of receipt of the patient's notice, the time the hold was initiated, the circumstances necessitating the hold, and the time a petition for involuntary commitment will be filed. This information must also be delivered to the patient.

If a petition is not filed with the chair of the county board within twenty-four hours of the facility's receipt of the patient's request for release (excluding weekends and holidays), the patient must be immediately discharged. If a petition is timely filed, the patient may be held pursuant to the involuntary commitment procedures explained above. **(27A-8-10.1)**

## **7. Notice of Release Procedures**

Upon voluntary admission, at the end of the first six months of hospitalization, and annually thereafter, the patient shall be given a separate written notice of release procedures. A copy of these procedures shall also be given to any one other person the patient so designates. Release procedures must be prominently and permanently displayed in every psychiatric unit. **(27A-8-14)**

## **8. Conversion to Involuntary Status Without Request for Release**

The facility may file a petition for the involuntary commitment of a voluntary patient even in the absence of a request for release. A petition may be filed only for the following reasons:

- a. The facility has probable cause to believe the patient meets the involuntary commitment criteria; and
- b. The patient, including one admitted upon a substituted informed consent of a guardian, attorney-in-fact, or next of kin, is unwilling or unable to consent to the treatment deemed necessary by the treating physician and there are no other appropriate treatments to which the patient is willing or able to consent; or
- c. The patient is unwilling or unable to affirm consent to continued admission when statutorily required. **(27A-8-11.2)**

# **IV. INDIVIDUAL RIGHTS**

## **1. Application of Rights**

Chapter 27A-12 governs the rights of any individual subject to the authority of the mental health code, either on a voluntary or involuntary basis.

## **2. Competence**

No person may be deemed incompetent to exercise any right or privilege accorded citizens of South Dakota solely by reason of detention, admission, or commitment under the mental health code. **(27A-12-1.2)**

### **3. Privacy and Dignity**

Each person has the right to a humane environment that affords appropriate individual privacy, individual dignity, and reasonable protection from harm. These rights shall be respected at all times and upon all occasions, including when a person is taken into custody, detained or transported. (27A-12-1)

### **4. Notice of Rights**

A person is entitled to prompt oral and written notice of his/her rights upon entering a facility or program. A written list of rights shall be prominently displayed in an accessible location. (27A-12-3)

### **5. Rights Enumerated**

Any person, if otherwise qualified, has the right to:

- a. Refuse to be photographed or fingerprinted;
- b. Remain silent and fully clothed;
- c. Have access to;
  - Toilet facilities upon request;
  - His/her own money unless a conservator has been appointed;
  - To keep as much money in his/her personal possession as he/she deems is necessary;
  - To purchase personal articles;
  - A minimum of two hours exercise daily;
- d. Receive any visitors during regular visiting hours; communicate with individuals outside the facility; send and receive unopened mail; adequate writing material, envelopes and stamps; access to a telephone; local calls without charge; long distance calls if paid for or charged to another number.
- e. Wear his/her own clothes; keep his/her own toilet articles; adequate storage space;
- f. Converse with others in private;
- g. Receive prompt, adequate medical treatment;
- h. Voluntary participation in religious services in accordance with personal needs, desires, and capabilities and also in accordance with the basic right to freedom of religion. (27A-12-3.1)

#### **A. Reasonable Limitations**

Reasonable limitations may be placed on the above-listed rights on an individual basis if essential to prevent the person from violating a law or to prevent substantial and serious physical or mental harm to self or others. Each limitation must be approved by the facility director and shall be documented in the person's record, stating the reasons for such limitations, and the length of time such limitation is imposed. (27A-12-3.1)

### **6. Spiritual Treatment**

Each person has the right to treatment by spiritual means through prayer. (27A-12-3.2)

### **7. Access to Rights Protection Services**

A person has the right to engage in private communications in appropriate facilities with any available rights protection service or system such as South Dakota Advocacy Services. (27A-12-3.3)

## **8. Access to Attorney and Physicians**

A person may communicate with a legal representative or a private physician subject to the facility's normal access restrictions. The person's legal representative shall have access to all records and information pertaining to the person. **(27A-12-3.18)**

## **9. Labor**

A person may perform labor for a facility only upon a voluntary and compensated basis. One half of such compensation is exempt from collection for services provided by the facility. Discharge may not be conditioned on performance of labor. **(27A-12-3.4; 27A-12-3.5)**

## **10. Treatment Programming**

- A.** Each person shall have a physical and mental examination within forty-eight hours (excluding Saturdays, Sundays, and holidays) of admission. **(27A-12-3.8)**
- B.** Each person has the right to a comprehensive individualized treatment program developed by appropriate qualified mental health professionals, including a psychiatrist. The treatment plan may not consist solely of chemical or drug therapy unless supported by sufficient psychiatric and medical opinion.

A person has the right, according to his/her capabilities, to participate in the planning of services to be provided. This right includes participation in the development, review, and revision of the treatment program. The person is entitled to a reasonable explanation of:

- a. Such persons' mental and physical condition;
  - b. The objective of treatment;
  - c. The nature and significant possible adverse effects of recommended treatments;
  - d. The reasons why a particular treatment is considered appropriate;
  - e. The reason for any limitation on rights; and
  - f. Any appropriate and available alternative treatments, services, and types of providers.**(27A-12-3.6)**
- C.** Treatment programs shall be designed to achieve discharge at the earliest possible time and to maximize each person's development and skill acquisition. A treatment team qualified mental health professional must periodically review, follow-up, and update all individualized programs. **(27A-12-3.6)**
- D.** Each person has the right to an aftercare program which outlines available services and recommendations for continued post-discharge placement or treatment. Participation in the plan is discretionary and refusal to participate shall not be a reason for continued detention. **(27A-12-3.7)**
- E.** Within ten days after commitment, the facility or program director shall review the need for continued commitment and assess whether an individualized treatment program has been implemented. If a treatment program has not been implemented within ten days, the person shall be released immediately unless he/she agrees to continue treatment on a voluntary basis. **(27A-12-3.9)**
- F.** Within thirty days after the above review and within every ninety days thereafter, the director shall assess whether commitment should be continued. **(27A-12-3.9)**

## **11. Transfer From Involuntary to Voluntary Status**

A person who is involuntarily committed has the right to apply for a transfer to voluntary status. The transfer shall be forthwith granted unless the person is unable to understand the nature of voluntary status or the transfer would not be in the best interests of the person. (27A-12-3.10)

## **12. Emergency Medical Procedures**

Emergency surgery and other emergency medical procedures may be performed without the patient's consent or court or board order only in a life-threatening emergency where there is not time to obtain consent or court or board authorization; or, if the patient is incapacitated as defined in **SDCL 34-12C-1** and substitute informed consent is obtained from an appointed guardian, an attorney-in-fact, or a person with authority pursuant to **SDCL 34-12C**.

If it is ordered by a physician, psychotropic medication may be administered to a person in an emergency to prevent serious physical harm to the person or to others. Psychotropic medication, electroconvulsive therapy (ECT), and other such medical treatment may also be administered if the attending physician and one other physician determine that administration of such medication, therapy, or treatment is necessary. The medication, ECT, or such other necessary medical treatment may only be continued for up to 10 days. (27A-12-3.11)

## **13. Experimental or Intrusive Procedures**

A person has the right to refuse to be subjected to research and experimental or intrusive procedures, including electroconvulsive therapy and psychotropic medication. If a person who is involuntarily committed refuses treatment, then psychotropic medication, ECT, and such other medical treatment may be administered if it is ordered by the court or board. (27A-12-3.12)

## **14. Refusal of Treatment—Psychotropic Medication**

### **A. Treatment Refusal**

1. A person who is voluntarily committed has the right to refuse any treatment. (27A-12-3.12)
2. For a person who is refusing treatment and is involuntarily committed and deemed incapacitated, a substitute informed consent can be provided by their appointed guardian, attorney-in-fact, or person with authority. Substitute informed consent may be withdrawn at any time, and is effective immediately upon request. (27A-12-3.11)

### **B. Psychotropic Drug, ECT, and Other Medical Treatment Refusal**

#### **1. Right to Refuse**

If a person who is involuntarily committed refuses the administration of psychotropic drugs, ECT, and such other medical treatment as may be necessary for the treatment of the person's mental illness, it may be administered if it is ordered by a court or board under the criteria in **SDCL 27A-12-3.15**. (27A-12-3.12)

#### **2. Petition**

A facility may petition the circuit court or board of mental illness for authority to administer

psychotropic medication and such other medical treatment, including electroconvulsive therapy, to a person who is involuntarily committed if, in the opinion of the administrator or attending psychiatrist and the person's treating physician, the treatment will be medically beneficial and are necessary because:

- a. The person presents as a danger to self or others;
- b. The person cannot improve or the person's condition may deteriorate without the medication or such treatment; or
- c. The person may improve without the medication or such treatment but only at a significantly slower rate and the person's treating physician determines that the person is incapable of consenting to such treatment because the person's judgment is so affected by mental illness that the person lacks the capacity to make a competent, voluntary, and knowing decision concerning such treatment. **(27A-12-3.13)**

### **3. Notice—Time of Hearing**

The petition and notice of hearing shall be personally served upon the person immediately upon filing of the petition. The notice of hearing shall include:

- a. Notice of time, date, and place of hearing;
- b. Notice of right to counsel and the appointment of counsel if indigent; and
- c. Notice of the right to an independent evaluation at the person's expense or if indigent, the county's expense; and
- d. The cost of any commitment proceedings, treatment, medication and any hearing relating to medication, any post-commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to ensure payment.

If counsel has not been retained, the court or board shall appoint counsel immediately upon filing of the petition. A date shall be set for the hearing within fifteen days of the filing of the petition. The hearing shall be a priority on the court's or board's calendar. One seven-day continuance may be allowed upon a showing of good cause. **(27A-12-3.14)**

### **4. Hearing Determination on Competency**

The court or board may exercise a substituted judgment on the administration of psychotropic medication and such other medical treatment as may be necessary for the treatment of the person's mental illness only upon a showing by clear and convincing evidence that the person is incapable of making an informed treatment decision and the drugs are essential under the criteria listed in #2 above. **(27A-12-3.15)**

### **5. Time Limit for Court Order**

A court or board authorizing the administration of psychotropic medication and such other medical treatment may not exceed one year. In any event, the court's or board's order shall terminate:

- a. If the person is judicially restored or restored by the board as competent to make the treatment decision; or

- b. The treating physician or medical director/consulting psychiatrist determine that the medication and such treatment are no longer necessary. **(27A-12-3.16)**

## **6. Review of Drug Treatment**

The treating physician and medical director/consulting psychiatrist must review the need for continued treatment by personal examination of the person at least every thirty days. **(27A-12-3.16)**

## **7. Prohibition of Psychosurgery, Aversive Stimuli, and Substantial Deprivations**

No person shall be administered or subjected to psychosurgery, aversive stimuli, or substantial deprivation.

*“Aversive Stimuli”* is defined as anything which, because it is believed to be unreasonable unpleasant, uncomfortable, or distasteful to the person, is administered or done to the person for the purpose of reducing the frequency of a behavior but does not include authorized restrictive treatment procedures.

*“Substantial Deprivations”* is defined as the withdrawal or withholding of basic necessities or comforts which are intended to subject the person to significant discomfort, inconvenience, or unpleasantness. **(27A-12-3.22)**

## **8. Restrictive Treatment Procedures**

Restrictive Treatment procedures which impose physical restrictions on the person:

- a. Must be part of an individualized treatment program that sets out conditions justifying its use and approved by a peer committee review;
- b. May not be used as punishment or for convenience of staff;
- c. May be implemented only as necessary to prevent assaultive or otherwise harmful behaviors with specific documentation justifying its use;
- d. If physical restraints or seclusion in a separate room is employed, appropriate attention shall be paid every fifteen minutes to the person;
- e. Shall require a written order at least every fifteen days during the first sixty days of the implementation and every thirty days thereafter;
- f. May not be considered seclusion or restraint if carried out as part of an approved behavioral treatment program. **(27A-12-6.1)**

## **9. Seclusion or Restraint**

The use of seclusion or restraint:

- a. Requires clinical justification and shall be employed only to prevent immediate harm to the person or others;
- b. May not be employed if less restrictive means of restraint are feasible; the rationale for use must address the inadequacy of less restrictive intervention techniques;
- c. May not be employed as punishment or for the convenience of staff;
- d. Must be authorized by a qualified mental health professional, physician’s assistant, or nurse practitioner;

- e. Justification of use shall be supported by a personal clinical assessment of the person and documented in the person's records;
- f. May not exceed one hour, at which time an order from a qualified mental health professional, physician's assistant, or nurse practitioner is required if seclusion or restraint is to be continued; such order must be time-limited and shall not exceed twenty-four hours;
- g. May not be used in a manner that causes undue physical discomfort, harm, or pain to the person; appropriate attention shall be paid every fifteen minutes to the person unless more frequent attention is warranted. **(27A-12-6.2)**

## **10. Grievances**

A person may assert grievances with respect to infringement of rights. The person is entitled to have a grievance considered in a fair, timely, and impartial procedure which provides meaningful review. **(27A-12-32.1)**

## **11. Habeas Corpus**

Any person involuntarily committed, confined, detained, or restrained may apply for a writ of habeas corpus. If the court finds that a person who is involuntarily committed continues to meet the commitment criteria, continued commitment may be authorized. The person may apply for another writ upon alleging that the commitment criteria are no longer met. **(27A-12-32.2)**

## **12. Exercise of Rights**

The provisions of the mental health code may not be construed as replacing or limiting any other rights, benefits, or privileges. The exercise of rights afforded by the code are not subject to any reprisal, including reprisal through the actual or threatened denial of any treatment, benefits, privileges, or other rights. **(27A-12-33.1)**

# **V. ACCESS TO AND CONFIDENTIALITY OF INFORMATION**

1. All records of proceedings are subject to the confidentiality and access provisions of Chapter 27A-12. Any records of an involuntarily detained person who is released prior to or upon completion of a commitment hearing shall be sealed. **(27A-11A-3)**
2. If a person is admitted, involuntarily committed, or discharged from the Human Services Center, his next of kin or guardian shall be notified unless notification is determined by the attending physician to be detrimental to the person. **(27A-12-34)**
3. A complete statistical and medical record shall be kept for each person receiving mental health services or being detained under the code. A person has the right to access, upon request, to his mental health records. The person, however, may be refused access to:
  - a. Information in the records provided by a third party under assurance that the information remain confidential; and
  - b. Specific material in the records if the qualified mental health professional responsible for the mental health services concerned has made a determination in writing that access would be

detrimental to the person's health. However, the material may be made available to a similarly licensed qualified mental health professional selected by the person; this professional may, in the exercise of professional judgment, provide the person with access to any or all parts of the material or otherwise disclose the information contained in the material to the person. (27A-12-25; 27A-12-26.1)

4. The following information is to be kept confidential and not open to public inspection unless specifically excepted as noted:
  - a. Information acquired by a peace officer pursuant to authority under the Code; (27A-12-25.1)
  - b. Records of concluded proceedings for which the information was acquired subject to order of the circuit court;
  - c. Information in the record of the person and other information acquired in the course of providing mental health services unless:
    1. Both the holder of the records and the person, the parent of a minor, or a guardian, consent to disclosure;
    2. Absent consent, only if requested under the following circumstances: (27A-12-27)
      - a. Pursuant to orders of subpoena of a court of record or subpoenas of the Legislature;
      - b. To a prosecuting or defense attorney or to a qualified mental health professional as necessary to participate in a proceeding governed by this title;
      - c. To an attorney representing a person who is presently subject to the authority of this title;
      - d. If necessary in order to comply with another provision of law;
      - e. To the Department of Social Services if the information is necessary for the discharge of a responsibility placed by law;
      - f. To a state's attorney or the attorney general for purpose of investigation of an alleged criminal act either committed by or upon a patient of the Human Services Center while a patient at the center.
5. **Any release of information by a holder of records shall be:**
  - a. Approved by the facility director; recorded to include information released, to whom, the date, and purpose of the release. The identity of the person to whom the information pertains may not be disclosed unless germane;
  - b. Any person receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. (27A-12-31; 27A-12-32)

## **VI. DISCHARGE**

### **1. Discharge of Voluntary Patient**

The facility director may at any time discharge a voluntary patient whom the director deems suitable for discharge. (27A-14-1)

### **2. Discharge of Patient**

If the facility director or attending psychiatrist determines that a patient under a guardianship no longer requires inpatient treatment and has been accepted for placement in a community setting, the guardian shall remove the patient within three days of notification. Failure to so remove shall result in notice to the guardianship court for further disposition. (27A-14-1.1)

### **3. Discharge Prior to Commitment Hearing**

- A.** If a person is detained at the Human Services Center pending the commitment hearing, he/she shall be released upon a determination by the administrator that the commitment criteria are not met. Following the release, the referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. (27A-14-1.2)
- B.** If the director of a facility in which a person is detained prior to a commitment hearing determines that the person does not meet the commitment criteria, the director shall notify the chair of the county board. If the chair agrees, the person shall be released. Transportation to the county where the person was taken into custody shall be provided by the referring county, if the person so desires. (27A-14-1.3)

### **4. Discharge of Involuntarily Committed Patient**

A person who is involuntarily committed shall be discharged when the director of the facility or program of commitment determines that the patient no longer meets the commitment criteria.

The county board must be notified of the discharge and provide the patient with transportation to his/her residence within forty-eight hours, if the patient so desires. (27A-14-2; 27A-14-3)

### **5. Provisional Discharge**

A patient may be provisionally discharged. The administrator must notify the county board of the provisions of the discharge which may not extend beyond the duration of the original commitment. (27A-14-4)

### **6. Leave Status**

A patient, upon approval of the director, may be placed on a leave status from the facility. A leave may not exceed thirty days and the status may not extend beyond the duration of any involuntary commitment order. While on leave, a patient who is involuntarily committed shall receive all reviews and hearings mandated by law or be discharged from the commitment order. (27A-14-1.4)

### **7. Public Assistance**

The secretary of social services shall provide by rules methods whereby a patient shall be assisted in qualifying for all available public assistance benefits provided by the state or federal law. (27A-14-14)

## **VII. COUNTY BOARD OF MENTAL ILLNESS**

- 1. Each county shall have a county board of mental illness, although two or more counties may jointly contract to establish one board serving all contracting counties. (27A-7-1)

2. A county board of mental illness shall consist of two people who shall be residents of the county and appointed by the board of county commissioners for a three-year non-consecutive term. A law trained magistrate or lawyer, who need not be a resident of the county, shall serve as the board's chair. The chair shall be appointed by the presiding judge of the county's circuit court.

The state's attorney for the county may not serve on the board of mental illness. The appointing authority may appoint alternative board members. **(27A-7-1)**

3. In the case of the temporary absence or inability of any member or alternate to serve, the remaining board members shall temporarily appoint replacements so that the original composition of the board is retained. **(27A-7-3)**
4. Each member of a board of mental illness is required to participate in training as required by the Department of Social Services prior to undertaking their duties. The training shall include the duties, procedures, and rights of any person coming before the board of mental illness. **(27A-7-9)**
5. The board of mental illness has jurisdiction over all petitions for involuntary commitment and is responsible for the treatment of a person who is involuntarily committed and for the safekeeping of persons subject to involuntary commitment within its county. The board may do any act of a court which is necessary and proper for the discharge of its duties. **(27A-7-4)**
6. If it appears that any board member has a conflict of interest, he/she may be removed by a filing of an affidavit with the board chair. Unless the affidavit appears clearly frivolous, it shall be granted. In the event of disqualification, a duly designated alternate or temporary replacement shall serve. **(27A-7-3.1)**
7. Board members shall be compensated at an hourly rate as determined by the county commissioners. Members shall also be reimbursed for mileage and other actual expenses incurred in the performance of their duties. **(27A-7-8)**

## **VIII. CO-OCCURRING**

If the county board finds that an individual meets criteria for an involuntary commitment and it is ordered, then the board may, at the same hearing or a subsequent hearing, consider a petition for the treatment of any co-occurring substance use disorder, on the grounds that the person is an alcohol or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or other drugs and the person;

1. Has threatened, attempted or inflicted physical harm on self or on another and that unless treated is likely to inflict harm on self or on another person; or
2. Is incapacitated by the effects of alcohol or drugs; or
3. Is pregnant and abusing alcohol or drugs.

After hearing all evidence the board may also order a commitment for such co-occurring disorder to any appropriate treatment facility, for a period not to exceed ninety days. **(SB 6 Section 18)**

## **IX. OTHER PROVISIONS**

- 1. State Mental Health Programs: See SDCL Chapter 27A-3.**
- 2. South Dakota Human Services Center: See SDCL Chapter 27A-4.**
- 3. Local Mental Health Centers: See SDCL Chapter 27A-5.**
- 4. Interstate Cooperation in Mental Health Services: See SDCL Chapter 27A-6.**
- 5. Costs of Care and Treatment in State Facilities: See SDCL Chapter 27A-13.**
- 6. Treatment of Minors: See SDCL Chapter 27A-15.**