

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

733B0158

HOUSE BILL NO. 1099

Introduced by: Representatives Reed, Bartels, Duba, Howard, Jensen (Kevin), McCleerey, Post, and Sullivan and Senators Smith (VJ), Langer, and Steinhauer

1 FOR AN ACT ENTITLED, An Act to provide for the designation of a caregiver to receive
2 information regarding residents of treatment facilities.

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

4 Section 1. That chapter 27A-1 be amended by adding a NEW SECTION to read:

5 A resident of a treatment facility may designate a caregiver to receive notice of the resident's
6 treatment and aftercare plan developed under § 27A-12-3.7 upon the resident's admission into
7 the treatment facility or, for any resident who is unconscious or otherwise incapacitated upon
8 admission into the treatment facility, upon the resident's recovery of consciousness or capacity.
9 For any resident who is unable to make decisions upon the resident's admission into a treatment
10 facility, the resident's guardian, durable power of attorney for healthcare as defined in § 34-12C-
11 1, or any person authorized to make decisions for the resident under § 34-12C-2 may designate
12 a caregiver to receive notice of the resident's treatment and aftercare plan.

13 Upon a resident's admission into a treatment facility, or upon the resident's recovery of
14 consciousness or capacity, the treatment facility shall inform the resident of the right to
15 designate a caregiver to receive notice of the resident's treatment and aftercare plan.



1 A treatment facility shall request and document in a resident's record the name, address,
2 telephone number, and relationship to the resident of any caregiver designated under this
3 section; a choice under this section not to make a designation under this section; and any change
4 in designation of a caregiver under this section. The record under this section shall be provided
5 to any treatment facility to which the resident may be transferred.

6 For purposes of this section, a caregiver is a person who provides informal support and
7 advocacy, without pay, for any family member or friend who is a resident in need of support due
8 to any physical, cognitive, or mental health condition. A caregiver under this section is not a
9 health care professional.

10 Nothing in this section alters or interferes with any right or obligation of an agent designated
11 as a power of attorney for health care under § 59-7-2.1. Nothing in this section imposes any
12 obligation or any civil liability on a caregiver designated under this section.

13 Section 2. That chapter 27A-1 be amended by adding a NEW SECTION to read:

14 A treatment facility shall provide reasonable notice to a caregiver designated under section
15 1 of this Act of the resident's discharge or transfer to a different treatment facility prior to the
16 resident's discharge or transfer. Prior to a resident's discharge from a treatment facility, the
17 treatment facility shall consult with the resident and the caregiver designated under section 1
18 of this Act regarding any after-discharge plan, including a description of the resident's aftercare
19 plan developed under § 27A-12-3.7. A treatment facility may not be held liable in any civil
20 action for failure to provide notice under this section.

21 Nothing in this section prohibits a treatment facility, in the exercise of professional judgment
22 and its experience with common practice to make reasonable inferences of the resident's best
23 interests, from:

24 (1) Determining not to disclose any information related to the resident to a caregiver

1 designated under section 1 of this Act; and

2 (2) Disclosing information related to the resident to a caregiver of the treatment facility's

3 choice.