

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

400X0194

## HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **SB 20** - 02/04/2016

Introduced by: The Committee on Health and Human Services at the request of the  
Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to behavioral health.

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

3 Section 1. That § 1-36-25 be amended to read:

4 1-36-25. The secretary of the Department of Social Services may promulgate rules, pursuant  
5 to chapter 1-26, for the ~~Mental Health~~ Division of Behavioral Health pertaining to any  
6 individual, organization, or corporation which receives directly or indirectly financial assistance  
7 from the state if such assistance is under the department's supervision. The ~~secretary's~~  
8 ~~promulgation of rules shall be in accordance with chapter 1-26 governing~~ may govern:

- 9 (1) Management and administration, including fiscal control, program planning,  
10 implementation, and evaluation;
- 11 (2) Physical facilities, except matters covered by local fire and building codes or  
12 regulations;
- 13 (3) Service administration, including client rights, confidentiality, treatment planning,  
14 and statistical reporting;



1 (4) Service components, including outpatient, emergency, liaison, psychiatric  
2 rehabilitation, residential, consultation and education, and case management; and

3 (5) Staff qualifications.

4 Section 2. That § 1-36-26 be repealed.

5 ~~1-36-26. The Division of Alcohol and Drug Abuse created by chapter 1-36A is hereby~~  
6 ~~transferred from the Department of Human Services to the Mental Health Division, Department~~  
7 ~~of Social Services. The secretary of the Department of Social Services shall perform the~~  
8 ~~functions of the former secretary of the Department Human Services, relating to the Division~~  
9 ~~of Alcohol and Drug Abuse.~~

10 Section 3. That § 1-36-31 be repealed.

11 ~~1-36-31. The Board of Counselor Examiners, created by chapter 36-32, and its functions in~~  
12 ~~the former Department of Human Services are transferred to the Department of Social Services.~~  
13 ~~The secretary of the Department of Social Services shall perform the functions of the secretary~~  
14 ~~of the Department of Human Services, relating to the Board of Counselor Examiners.~~

15 Section 4. That § 1-36-32 be repealed.

16 ~~1-36-32. The Certification Board for Alcohol and Drug Professionals created by chapter 36-~~  
17 ~~34, and its functions in the former Department of Human Services are transferred to the~~  
18 ~~Department of Social Services. The secretary of the Department of Social Services shall perform~~  
19 ~~the functions of the secretary of the Department of Human Services, relating to the Certification~~  
20 ~~Board for Alcohol and Drug Professionals.~~

21 Section 5. That § 1-36-33 be repealed.

22 ~~1-36-33. The Mental Health Planning and Coordination Advisory Board and its functions~~  
23 ~~in the former Department of Human Services are transferred to the Department of Social~~  
24 ~~Services. The secretary of the Department of Social Services shall perform the functions of the~~

1 ~~secretary of the Department of Human Services, relating to the Mental Health Planning and~~  
2 ~~Coordination Advisory Board.~~

3 Section 6. That § 1-36-34 be repealed.

4 ~~— 1-36-34. The Drug and Alcohol Abuse Advisory Council and its functions in the former~~  
5 ~~Department of Human Services are transferred to the Department of Social Services. The~~  
6 ~~secretary of the Department of Social Services shall perform the functions of the secretary of~~  
7 ~~the Department of Human Services, relating to the Drug and Alcohol Abuse Advisory Council.,~~

8 Section 7. That § 27A-1-13 be amended to read:

9 27A-1-13. A bordering state or governmental entity of a bordering state may contract with  
10 any appropriate treatment facility in South Dakota for the treatment of mental illness or  
11 chemical dependency substance use disorder for residents of the bordering state. However, ~~any~~  
12 ~~such~~ the contract shall conform to the requirements of §§ 27A-1-12 to 27A-1-17, inclusive.

13 Section 8. That § 27A-1-16 be amended to read:

14 27A-1-16. Any treatment facility in South Dakota may enter negotiations with appropriate  
15 personnel of a bordering state to develop a contract that conforms to the requirements of  
16 §§ 27A-1-12 to 27A-1-17, inclusive. A contract with a bordering state shall enable the  
17 temporary placement in South Dakota by a bordering state of a person who is on an emergency  
18 hold or who has been involuntarily committed ~~as mentally ill or chemically dependent~~ due to  
19 mental illness or a substance use disorder as determined by the bordering state. Any person  
20 committed by a bordering state or on emergency hold from a bordering state and who is placed  
21 in a South Dakota facility continues to be in the legal custody of the bordering state and shall  
22 be returned to the bordering state ~~prior to~~ before release from emergency hold or involuntary  
23 commitment. The bordering state's laws governing commitment criteria, length of commitment,  
24 hearings, reexaminations, and extension of commitment continue to apply to these bordering

1 state residents. The State of South Dakota is not responsible for treatment costs, legal  
2 proceeding costs, or transportation costs. In all other aspects, a resident of a bordering state  
3 placed in a South Dakota facility is subject to the laws of South Dakota. A contract under  
4 §§ 27A-1-12 to 27A-1-17, inclusive, with a bordering state or bordering state governmental  
5 entity shall specify that responsibility for payment for the cost of care and transportation for  
6 persons under §§ 27A-1-12 to 27A-1-17, inclusive, remains with the contracting entity of the  
7 bordering state of which that person is a resident.

8 Section 9. That § 27A-15-1.1 be amended to read:

9 27A-15-1.1. For the purposes of this chapter, an individual with a serious emotional  
10 disturbance is an individual who:

- 11 (1) Is under eighteen years of age;
- 12 (2) Exhibits behavior resulting in functional impairment which substantially interferes  
13 with, or limits the individual's role or functioning in the community, school, family,  
14 or peer group;
- 15 (3) Has a mental disorder diagnosed under the Diagnostic and Statistical Manual of  
16 Mental Disorders, ~~fourth~~ fifth edition ~~revised, 1994,~~ 2013;
- 17 (4) Has demonstrated a need for one or more special care services, in addition to mental  
18 health services; and
- 19 (5) Has problems with a demonstrated or expected longevity of at least one year or has  
20 an impairment of short duration and high severity.

21 For purposes of this section, intellectual disability, epilepsy, other developmental disability,  
22 alcohol or substance abuse, brief period of intoxication, or criminal or delinquent behavior do  
23 not, alone, constitute a serious emotional disturbance.

24 Section 10. That § 34-20A-2 be amended to read:

1 34-20A-2. Terms as used in this chapter mean:

2 (1) "Accredited prevention or treatment facility," a private or public agency meeting the  
3 standards prescribed in § 34-20A-27 and listed under § 34-20A-47, or a private or  
4 public agency or facility surveyed and accredited by the Joint Commission; an Indian  
5 Health Service's quality assurance review under the Indian Health Service Manual,  
6 Professional Standards-Alcohol/Substance Abuse; or the Commission on  
7 Accreditation of Rehabilitation Facilities; or the Council on Accreditation; under the  
8 drug and alcohol treatment standards incorporated and adopted by the division in  
9 rules promulgated pursuant to chapter 1-26, if proof of ~~such~~ the accreditation, with  
10 accompanying recommendations, progress reports and related correspondence are  
11 submitted to the Division of ~~Alcohol and Drug Abuse~~ Behavioral Health in a timely  
12 manner;

13 (2) ~~"Advisory council" and "council," the Drug and Alcohol Abuse Advisory Council~~  
14 ~~created by § 34-20A-3.2~~ "Addiction counselor," a person licensed or certified as an  
15 addiction counselor by the South Dakota Board of Addiction and Prevention  
16 Professionals;

17 (3) "Alcoholic," a person who habitually lacks self-control as to the use of alcoholic  
18 beverages, or uses alcoholic beverages to the extent that ~~his~~ the person's health is  
19 substantially impaired or endangered or ~~his~~ the person's social or economic function  
20 is substantially disrupted;

21 (4) ~~"Chemical dependency counselor," a level II or III counselor certified by the South~~  
22 ~~Dakota Certification Board for Alcohol and Drug Professionals;~~

23 ~~(5)~~ "Department," the State Department of Social Services;

24 ~~(6)~~(5) "Designated prevention or treatment facility," an accredited agency operating under

1 the direction and control of the state or providing services under this chapter through  
2 a contract with the division or treatment facilities operated by the federal government  
3 which may be designated by the division without accreditation by the state;

4 ~~(7)~~(6) "Division," the Division of ~~Alcohol and Drug Abuse~~ Behavioral Health within the  
5 department;

6 ~~(8)~~(7) "Drug abuser," a person who habitually lacks self-control as to the use of controlled  
7 drugs or substances as defined in § 34-20B-3 to the extent that the person's health is  
8 substantially impaired or endangered or that the person's social or economic function  
9 is substantially disrupted;

10 ~~(9)~~(8) "Incapacitated by alcohol or other drugs," that a person, as a result of the use of  
11 alcohol or other drugs, is unconscious or ~~his~~ the person's judgment is otherwise so  
12 impaired that ~~he~~ the person is incapable of realizing and making a rational decision  
13 with respect to ~~his~~ the person's need for treatment;

14 ~~(10)~~(9) "Incompetent person," a person who has been adjudged incompetent by the  
15 circuit court;

16 ~~(11)~~(10) "Intoxicated person," a person who demonstrates diminished mental or  
17 physical capacity as a result of the use of alcohol or other drugs;

18 ~~(12)~~(11) "Prevention," purposeful activities designed to promote personal growth of ~~an~~  
19 ~~individual~~ a person and strengthen the aspects of the community environment  
20 which are supportive to ~~him~~ the person in order to preclude, ~~forestall~~ prevent,  
21 or impede the development of alcohol or other drug misuse and abuse;

22 ~~(13)~~(12) "Secretary," the secretary of the Department of Social Services;

23 ~~(14)~~(13) "Treatment," the broad range of emergency, outpatient, intermediate, and  
24 inpatient services and care, including diagnostic evaluation, which may be

1 extended to ~~those persons~~ a person experiencing problems as a result of the  
2 use of alcohol or other drugs.

3 Section 11. That § 34-20A-3.1 be repealed.

4 ~~34-20A-3.1. There is created the Division of Alcohol and Drug Abuse which shall perform~~  
5 ~~all of the functions of the former Division of Alcoholism and the Division of Drugs and~~  
6 ~~Substances Control. All quasi-legislative, quasi-judicial, administrative, and special budgetary~~  
7 ~~functions of the division shall vest in the secretary of the Department of Social Services or his~~  
8 ~~designee.~~

9 Section 12. That § 34-20A-27 be amended to read:

10 34-20A-27. The ~~Division of Alcohol and Drug Abuse~~ division shall establish reasonable  
11 standards and requirements for accredited prevention or treatment facilities. The division may  
12 fix the fees to be charged by the division for the required inspections. The division may adopt  
13 rules, pursuant to chapter 1-26, in regard to the following standards and requirements:

- 14 (1) Management and administration, including fiscal control, program planning, and  
15 evaluation;
- 16 (2) Physical facilities and quality control;
- 17 (3) Services administration, including client rights, confidentiality, treatment planning,  
18 and statistical reporting;
- 19 (4) Service components including: inpatient/residential, outpatient treatment, social  
20 detoxification, transitional care, custodial care, counseling and support services,  
21 prevention services;
- 22 (5) Staff qualifications; and
- 23 (6) Such other standards as are necessary for the safety and health of clients and patients.

24 Section 13. That § 34-20A-34 be amended to read:

1       34-20A-34. The ~~Division of Alcohol and Drug Abuse~~ division may acquire, hold, or dispose  
2 of real property or any interest ~~therein in real property~~, and construct, lease, or otherwise provide  
3 facilities for the prevention of alcohol and drug abuse and facilities for the treatment of those  
4 persons suffering from alcohol and drug abuse and for intoxicated persons.

5       Section 14. That § 34-20A-44 be amended to read:

6       34-20A-44. The ~~Division of Alcohol and Drug Abuse~~ division shall inspect accredited  
7 prevention or treatment facilities to insure compliance with this chapter. For purposes of  
8 inspection, the division shall have access to the facility and its records at reasonable times and  
9 in a reasonable manner. This section does not apply to facilities accredited pursuant to  
10 accreditation by the Joint Commission, the Commission on Accreditation of Rehabilitation  
11 Facilities, an Indian Health Service's quality assurance review under the Indian Health Service  
12 Manual, Professional Standards-Alcohol/Substance Abuse, or the Council on Accreditation.

13       Section 15. That § 34-20A-44.1 be amended to read:

14       34-20A-44.1. If a public or private agency or facility is considered to be an accredited  
15 prevention or treatment facility by reason of compliance with accreditation by the Joint  
16 Commission, the Commission on Accreditation of Rehabilitation Facilities, an Indian Health  
17 Service's quality assurance review under the Indian Health Service Manual, Professional  
18 Standards-Alcohol/Substance Abuse, or the Council on Accreditation, as described in § 34-20A-  
19 2, the ~~Division of Alcohol and Drug Abuse~~ division retains the right of access to all facility  
20 premises and relevant records to monitor compliance or investigate complaints brought against  
21 the facility.

22       Section 16. That § 34-20A-51 be amended to read:

23       34-20A-51. Subject to rules adopted by the ~~Division of Alcohol and Drug Abuse~~ division,  
24 the administrator in charge of an accredited treatment facility may determine who shall be



1 admitted for treatment. If a person is refused admission to the facility, the administrator, subject  
2 to rules adopted by the division, shall refer the person to another treatment facility for treatment  
3 if possible and appropriate.

4 Section 17. That § 34-20A-66.1 be amended to read:

5 34-20A-66.1. Payment for treatment under emergency commitment, or under protective  
6 custody pursuant to § 34-20A-55 if emergency commitment is not required, may be assessed  
7 to the individual, to a legally responsible relative or guardian, to the county of residence if  
8 indigent, or billed to the ~~Division of Alcohol and Drug Abuse~~ division through contract with  
9 an approved treatment facility. Any payment for emergency commitment to the Human Services  
10 Center is subject to the requirements of chapter 27A-13.

11 Section 18. That § 34-20A-72 be amended to read:

12 34-20A-72. A petition filed under § 34-20A-70 shall be accompanied by a certificate of a  
13 licensed physician or a ~~certified chemical dependency~~ addiction counselor either of whom  
14 has examined the person within two days before submission of the petition, unless the person  
15 whose commitment is sought has refused to submit to a medical examination or counselor  
16 assessment in which case the fact of refusal shall be alleged in the petition. The certificate shall  
17 set forth the physician's or the counselor's findings in support of the allegations of the petition.  
18 A physician or ~~chemical dependency~~ addiction counselor employed by the admitting facility is  
19 not eligible to provide certification.

20 Section 19. That § 34-20A-75 be amended to read:

21 34-20A-75. At the hearing the court shall hear all relevant testimony, including, if possible,  
22 the testimony of at least one licensed physician and one ~~certified chemical dependency~~ addiction  
23 counselor who have examined the person whose commitment is sought.

24 Section 20. That § 34-20A-76 be amended to read:

1       34-20A-76. If the person has refused to be examined by a licensed physician or a ~~certified~~  
2 ~~chemical dependency~~ an addiction counselor, the person shall be given an opportunity to be  
3 examined by a court-appointed licensed physician or ~~certified chemical dependency~~ addiction  
4 counselor. If the person refuses and there is sufficient evidence to believe that the allegations  
5 of the petition are true, or if the court believes that more evidence is necessary, the court may  
6 order a temporary commitment and transportation by a law enforcement officer to an approved  
7 treatment facility for a period of not more than five days for purposes of a diagnostic  
8 examination.

9       Section 21. That § 34-20A-76.1 be amended to read:

10       34-20A-76.1. A licensed physician or ~~certified chemical dependency~~ addiction counselor  
11 appointed by the court to examine and assess a person for the purposes of involuntary  
12 commitment shall be paid by the county where the hearing and commitment proceedings take  
13 place. The physician or addiction counselor shall be compensated for such services in an amount  
14 fixed by the circuit judge. The county shall be reimbursed for such expense by the person if the  
15 person is financially able to do so. If the person is not financially able to pay such expense, the  
16 cost of physician or addiction counselor examination shall be paid to the county by the person  
17 legally bound for the support of such person if financially able to do so.

18       Section 22. That § 34-20A-86 be amended to read:

19       34-20A-86. The person whose commitment or recommitment is sought shall be informed  
20 of ~~his~~ the person's right to be examined by a licensed physician and a ~~certified chemical~~  
21 ~~dependency~~ an addiction counselor of ~~his~~ the person's choice. If the person is unable to obtain  
22 a licensed physician or a ~~certified chemical dependency~~ an addiction counselor and requests  
23 examination by a physician or an addiction counselor, the court shall employ a licensed  
24 physician or a ~~certified chemical dependency~~ an addiction counselor.

1 Section 23. That § 32-23-2.1 be amended to read:

2 32-23-2.1. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent  
3 or more by weight of alcohol in the person's blood shall, in addition to the penalties provided  
4 in § 32-23-2, be required to undergo a court-ordered evaluation by a ~~chemical dependency~~  
5 ~~counselor as defined in § 34-20A-2~~ an addiction counselor licensed or certified by the Board of  
6 Addiction and Prevention Professionals pursuant to § 36-34-13.1 or a licensed or certified health  
7 care professional with specialized training in chemical dependency evaluation to determine if  
8 the defendant is chemically dependent. The cost of such evaluation shall be paid by the  
9 defendant. The recommendations of the evaluation shall be provided to the referring judge.