

AN ACT

ENTITLED, An Act to revise certain provisions related to behavioral health.

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

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

1-36-25. The secretary of the Department of Social Services may promulgate rules, pursuant to chapter 1-26, for the Division of Behavioral Health pertaining to any individual, organization, or corporation which receives directly or indirectly financial assistance from the state if such assistance is under the department's supervision. The rules may govern:

- (1) Management and administration, including fiscal control, program planning, implementation, and evaluation;
- (2) Physical facilities, except matters covered by local fire and building codes or regulations;
- (3) Service administration, including client rights, confidentiality, treatment planning, and statistical reporting;
- (4) Service components, including outpatient, emergency, liaison, psychiatric rehabilitation, residential, consultation and education, and case management; and
- (5) Staff qualifications.

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 That § 1-36-26 be repealed.

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 That § 1-36-31 be repealed.

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 That § 1-36-32 be repealed.

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 That § 1-36-33 be repealed.

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 That § 1-36-34 be repealed.

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

27A-1-13. A bordering state or governmental entity of a bordering state may contract with any appropriate treatment facility in South Dakota for the treatment of mental illness or substance use

disorder for residents of the bordering state. However, the contract shall conform to the requirements of §§ 27A-1-12 to 27A-1-17, inclusive.

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

27A-1-16. Any treatment facility in South Dakota may enter negotiations with appropriate personnel of a bordering state to develop a contract that conforms to the requirements of §§ 27A-1-12 to 27A-1-17, inclusive. A contract with a bordering state shall enable the temporary placement in South Dakota by a bordering state of a person who is on an emergency hold or who has been involuntarily committed due to mental illness or a substance use disorder as determined by the bordering state. Any person committed by a bordering state or on emergency hold from a bordering state and who is placed in a South Dakota facility continues to be in the legal custody of the bordering state and shall be returned to the bordering state before release from emergency hold or involuntary commitment. The bordering state's laws governing commitment criteria, length of commitment, hearings, reexaminations, and extension of commitment continue to apply to these bordering state residents. The State of South Dakota is not responsible for treatment costs, legal proceeding costs, or transportation costs. In all other aspects, a resident of a bordering state placed in a South Dakota facility is subject to the laws of South Dakota. A contract under §§ 27A-1-12 to 27A-1-17, inclusive, with a bordering state or bordering state governmental entity shall specify that responsibility for payment for the cost of care and transportation for persons under §§ 27A-1-12 to 27A-1-17, inclusive, remains with the contracting entity of the bordering state of which that person is a resident.

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

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

- (1) Is under eighteen years of age;

- (2) Exhibits behavior resulting in functional impairment which substantially interferes with, or limits the individual's role or functioning in the community, school, family, or peer group;
- (3) Has a mental disorder diagnosed under the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, 2013;
- (4) Has demonstrated a need for one or more special care services, in addition to mental health services; and
- (5) Has problems with a demonstrated or expected longevity of at least one year or has an impairment of short duration and high severity.

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

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

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

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

- (2) "Addiction counselor," a person licensed or certified as an addiction counselor by the South Dakota Board of Addiction and Prevention Professionals;
- (3) "Alcoholic," a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered or the person's social or economic function is substantially disrupted;
- (4) "Department," the Department of Social Services;
- (5) "Designated prevention or treatment facility," an accredited agency operating under the direction and control of the state or providing services under this chapter through a contract with the division or treatment facilities operated by the federal government which may be designated by the division without accreditation by the state;
- (6) "Division," the Division of Behavioral Health within the department;
- (7) "Drug abuser," a person who habitually lacks self-control as to the use of controlled drugs or substances as defined in § 34-20B-3 to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted;
- (8) "Incapacitated by alcohol or other drugs," that a person, as a result of the use of alcohol or other drugs, is unconscious or the person's judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment;
- (9) "Incompetent person," a person who has been adjudged incompetent by the circuit court;
- (10) "Intoxicated person," a person who demonstrates diminished mental or physical capacity as a result of the use of alcohol or other drugs;
- (11) "Prevention," purposeful activities designed to promote personal growth of a person and

strengthen the aspects of the community environment which are supportive to the person in order to preclude, prevent, or impede the development of alcohol or other drug misuse and abuse;

- (12) "Secretary," the secretary of the Department of Social Services;
- (13) "Treatment," the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, which may be extended to a person experiencing problems as a result of the use of alcohol or other drugs.

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

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

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

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

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

34-20A-34. The division may acquire, hold, or dispose of real property or any interest in real property, and construct, lease, or otherwise provide facilities for the prevention of alcohol and drug abuse and facilities for the treatment of those persons suffering from alcohol and drug abuse and for intoxicated persons.

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

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

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

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

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

34-20A-51. Subject to rules adopted by the division, the administrator in charge of an accredited treatment facility may determine who shall be admitted for treatment. If a person is refused admission to the facility, the administrator, subject to rules adopted by the division, shall refer the

person to another treatment facility for treatment if possible and appropriate.

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

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

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

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

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

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

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

34-20A-76. If the person has refused to be examined by a licensed physician or an addiction counselor, the person shall be given an opportunity to be examined by a court-appointed licensed physician or addiction counselor. If the person refuses and there is sufficient evidence to believe that

the allegations of the petition are true, or if the court believes that more evidence is necessary, the court may order a temporary commitment and transportation by a law enforcement officer to an approved treatment facility for a period of not more than five days for purposes of a diagnostic examination.

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

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

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

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

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

32-23-2.1. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent or more by weight of alcohol in the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation by an addiction counselor licensed or certified by the Board of Addiction and Prevention Professionals pursuant to § 36-34-13.1 or a

licensed or certified health care professional with specialized training in chemical dependency evaluation to determine if the defendant is chemically dependent. The cost of such evaluation shall be paid by the defendant. The recommendations of the evaluation shall be provided to the referring judge.

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I certify that the attached Act
originated in the

SENATE as Bill No. 20

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 20

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State