

## SOUTH DAKOTA

*This summary of state regulations and policy represents only a snapshot at a point in time, is not comprehensive, and should not be taken to constitute legal advice or guidance. State Medicaid requirements are included at the end of this summary.*

### Types of Facilities

*Substance Use Disorder (SUD):* A South Dakota governing statute defines two categories of facilities (an accredited prevention or treatment facility and a designated prevention or treatment facility) although neither definition references treatment setting, residential or otherwise:

- *Accredited prevention or treatment facility:* a private or public agency meeting the standards prescribed in the governing statute related to substance use prevention or treatment programs 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 adopted by the Division in rules promulgated pursuant to the governing statute, if proof of the accreditation, with accompanying recommendations, progress reports and related correspondence are submitted to the Division in a timely manner.
- *Designated prevention or treatment facility:* a state-accredited agency operating under the direction and control of the state or providing services under the governing statute 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.

The regulations identify four categories of residential SUD treatment facility (some day treatment programs are included as residential):

- *Level 2.5 or Day treatment program:* an accredited program providing services to a client in a clearly defined, structured, intensive treatment program.
- *Level 3.1 or Clinically-managed low-intensity residential treatment program:* an accredited residential program providing services to a client in a structured environment designed to aid re-entry into the community.
- *Level 3.2D or Clinically-managed residential detoxification program:* an accredited short-term residential program providing services through the supervised withdrawal from

alcohol or other drugs for a person not having a known serious physical or immediate psychiatric complication.

- *Level 3.7 or Medically-monitored intensive inpatient treatment program:* an accredited residential treatment program providing services to a client in a structured environment.

Additionally, the South Dakota Department of Health licenses the following health care facility type:

- *Chemical dependency treatment facility:* any facility which provides a structured inpatient treatment program for alcoholism or drug abuse
  - Because some chemical dependency residential treatment is identified as simultaneously “inpatient” as well as “residential,” some residential SUD treatment is covered by these regulations.

*Unregulated Facilities:* No unregulated facility types under the purview of this summary were found.

## **Approach**

*Mental Health (MH):* The Division of Behavioral Health of the Department of Social Services (DSS) regulations regarding mental health provide for accreditation of community mental health centers and they indicate that residential treatment is not reimbursable. These regulations are designed for outpatient treatment and to prevent people from needing residential and higher-level mental health services. Other statutes or regulations that expressly govern residential MH treatment were not located. DSS Division of Behavioral Health staff verified that there are no residential mental health facilities in the state that are subject to DOH licensure requirements.

*Substance Use Disorder (SUD):* A South Dakota statute governs the treatment and prevention of alcohol and drug abuse which is regulated by the Division of Behavioral Health of the Department of Social Services.

The South Dakota Department of Health (DOH) licenses “health care facilities and related institutions.” Health care facilities are defined as “any institution, birth center, ambulatory surgery center, chemical dependency treatment facility, hospital, nursing facility, assisted living center, rural primary care hospital, adult foster care home, inpatient hospice, residential hospice, freestanding emergency care facility, community living home, place, building, or agency in which any accommodation is maintained, furnished, or offered for the hospitalization, nursing care, or supervised care of the sick or injured. DOH licensure is required for the receipt of any public funds.

## **Processes of Licensure or Certification and Accreditation**

### *Substance Use Disorder (SUD):*

- Accreditation by the DSS Division of Behavioral Health is available and, according to DSS staff, is required in order for a facility to enroll in Medicaid as a service provider or be eligible for contracts utilizing state general funds and/or block grant funds. Accreditation for the first time is provisional for six months and requires a comprehensive survey to determine regulatory compliance. Before renewal, a resurvey is conducted which, if successful, will result in a one-year accreditation.
- Neither accreditation by the Division or by an independent accrediting entity is required (other than for receipt of state funding or Medicaid participation) but accreditation 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 confers deemed status, allowing the agency to obtain Division accreditation. By statute, accreditation by one of these non-Division entities excuses the facilities from routine inspection for compliance (assuming certain requirements are met), but the Division retains the right of access to all facility premises and relevant records to monitor compliance or investigate complaints brought against the facility.
- DOH licensure does apply to some SUD residential treatment in South Dakota and is required for any public funding of those facilities. Licenses may be annual or biennial. A probationary license may be issued in certain circumstances. Any building, institution, or establishment for which a license is issued under this chapter must be inspected by DOH to determine compliance with regulations.
- The state does not require a certificate of need but the DSS Division of Behavioral Health does require that new agencies seeking accreditation complete a community needs assessment.

## **Cause-Based Monitoring**

*Substance Use Disorder (SUD):* The DSS Division of Behavioral Health may deny an application, place a facility on probation, require a plan of correction, or suspend or revoke accreditation. Even if a public or private agency or facility is considered to be an accredited prevention or treatment, the Division retains the right of access to all facility premises and relevant records to monitor compliance or investigate complaints brought against the facility. The Department of Social Services may conduct financial audits of agencies.

If DOH licensure applies, the Department may inspect all licensed hospitals or licensed chemical dependency treatment. If, prior to an inspection, the operator refuses to allow the inspection, no inspection may be made. If, during the course of the inspection, the operator refuses to allow the inspection to continue, the inspection shall cease. In such cases, the Department may immediately initiate revocation proceedings against the operator's license, as well as in other specified instances. Unlicensed operation is a misdemeanor.

## **Access Requirements**

*Substance Use Disorder (SUD):* No agency may deny any person equal access to its facilities or services on the basis of race, color, religion, gender, ancestry, national origin, mental or physical illness, or disability unless such illness or disability makes treatment offered by the agency non-beneficial or hazardous. Each agency shall ensure that they comply with the Americans with Disabilities Act and the regulations governing nondiscrimination on the basis of disability by public accommodations and in commercial facilities. The agency shall provide referral services to individuals not admitted to treatment.

## **Staffing**

*Substance Use Disorder (SUD):* All agencies must have a director with defined qualifications and duties. The regulations also include required qualifications for addiction counselors and requirements regarding staff orientation, supervision, personnel policies and documentation, workforce development, and volunteers.

For day treatment with residential services and clinically-managed low-intensity residential treatment, programs shall operate 7 days a week, 24 hours a day. The agency shall have a staff member trained to respond to fires and other natural disasters as well as to administer emergency first aid and CPR on duty at all times. An addiction counselor or counselor trainee shall be available to the clients at least 8 hours a day, 5 days a week, and shall be available on-call, 24 hours a day.

For clinically-managed residential detoxification, programs shall operate 7 days a week, 24 hours a day whenever clients are present. When the agency is open, a staff member shall be on duty who is trained to respond to fires and other natural disasters as well as to administer emergency first aid and CPR. An addiction counselor or counselor trainee shall be available to the clients at least 8 hours a day, 5 days a week, and available on-call, 24 hours a day.

For medically-monitored intensive inpatient treatment, programs shall operate 7 days a week, 24 hours a day. The agency shall have a staff member trained to respond to fires and other natural disasters as well as to administer emergency first aid and CPR on duty at all times. Training and annual training updates in each area shall be documented in personnel files.

Nursing staff shall be on-call 24 hours a day, 7 days a week. Counseling staff shall be on duty during normal daytime hours and must be on-call, 24 hours a day, 7 days a week. The program must have a written agreement with a licensed physician, physician assistant, or certified nurse practitioner to serve as the medical director or employ a licensed physician who is primarily responsible for providing medical care to the clients.

## **Placement**

*Substance Use Disorder (SUD):* Programs must have policies regarding admission in accordance with eligibility criteria for the level of care. An integrated assessment must be conducted within 30 days of intake.

To be eligible for day treatment services the client shall meet the following criteria: (1) The client is experiencing mild withdrawal or is at risk for withdrawal; (2) The client has no or very stable biomedical conditions which are not a distraction from treatment; (3) The client has mild emotional, behavioral, or cognitive conditions which may distract from recovery and needs stabilization; and (4) The client shall meet one of the following: (a) The client requires a structured program to promote progress through the stages of change; (b) The client is at high risk of relapse or continued use and deterioration in level of functioning; or (c) The client's environment renders recovery unlikely without structured monitoring and support.

To be eligible for clinically-managed low intensity residential services the client shall meet the following criteria: (1) The client is at risk of or is experiencing minimal withdrawal; (2) The client has no or very stable biomedical conditions; (3) The client has no or very stable emotional, behavioral, or cognitive conditions; (4) The client requires a structured environment to promote progress through the stages of change; (5) The client needs structure to reinforce recovery and relapse prevention skills; and (6) The client's recovery environment poses a threat to safety or engagement in treatment or both. A person admitted to a clinically-managed low-intensity residential treatment program shall have received a medical examination conducted by or under the supervision of a licensed physician within the three months before admission.

To be eligible for clinically-managed residential detoxification services the client shall meet one of the following criteria: (1) The client is experiencing signs and symptoms of withdrawal that is manageable in this level of care; or (2) There is evidence that withdrawal is imminent based on history of substance intake, previous withdrawal history, present symptoms, physical conditions, or emotional, behavioral or cognitive condition. A detailed intake assessment is required.

To be eligible for medically-monitored inpatient treatment the client shall meet the following criteria: (1) The client shall meet one of the following: (a) The client is experiencing moderate to severe withdrawal or is at risk of severe withdrawal based on previous withdrawal history; (b) The client's continued substance use causes imminent risk to biomedical conditions; or (c) The client's continued substance use causes imminent risk to emotional, behavioral, and

cognitive conditions; and (2) The client shall meet one of the following: (a) The client requires intensive monitoring and support to promote progress through the stages of change; (b) The client is in immediate danger of continued severe substance use or relapse and such behaviors present significant risk of serious adverse consequences to the client, or others, or both; or (c) The client's recovery environment poses a threat to safety or engagement in treatment or both. Specific medical evaluations must be conducted at intake and within 8 and 72 hours of admission.

## **Treatment and Discharge Planning and Aftercare Services**

*Substance Use Disorder (SUD):* Statute provides that the administrator of an approved treatment facility or an authorized designee who refuses an application for failing to sustain the statutory grounds for emergency commitment, must, unless the person is intoxicated and under protective custody, release the person and encourage him or her to seek voluntary treatment if appropriate.

The administrator of the facility to which a person was committed, or an authorized designee, may transfer any person committed to its custody from one accredited treatment facility to another if transfer is advisable based on the committed person's treatment needs.

All residential programs must develop individualized treatment plans within 10 days of placement. All also must provide their clients with discharge planning.

## **Treatment Services**

*Substance Use Disorder (SUD):* All programs are required to provide education regarding tuberculosis and the human immunodeficiency virus, how each is transmitted, and how to safeguard against transmission.

A day treatment program must provide its clients with a variety of treatment services, but the program shall provide the following services: (1) An integrated assessment; (2) Individual, group, and family counseling; and (3) Discharge planning. The day treatment program for adults and adolescents shall provide a minimum of 15 hours of any combination of individual, group, or family counseling services per week to each client. A day treatment program for adults shall provide a minimum of five hours of additional services per week on specialized topics which address the specific needs of the client.

A clinically-managed low intensity residential program may provide its clients with a variety of treatment services, but it shall provide the following services: (1) An integrated assessment; (2) Individual, group, and family; (3) Arts and crafts or work therapy. However, clients may not be required to participate in more than 40 hours of work therapy per week; (4) Housing and

dietary services; (5) Medical care; and (6) Discharge planning. A clinically-managed low-intensity residential treatment program shall provide each client a minimum of five hours of any combination of individual, group, or family counseling each week.

A clinically-managed residential detoxification program must have a written affiliation agreement with a hospital to provide emergency, inpatient, and ambulatory medical services. The agency must have a written agreement with a licensed physician, physician assistant, or certified nurse practitioner to serve as the medical director or employ a licensed physician who is primarily responsible for providing medical care to clients. The regulations include detailed requirements for patient monitoring. The program may provide its clients with a variety of treatment services, but it must provide the following services: (1) Initial assessment and planning within 48 hours of admission; (2) Individual, group, and family counseling; (3) Housing and dietary services; (4) Medical care; and (5) Discharge planning. The program shall provide daily to each client a minimum of 90 minutes of any combination of the services required above.

A medically-monitored inpatient treatment program may provide its clients with a variety of treatment services, but it shall provide the following services: (1) An integrated assessment; (2) Individual, group, and family counseling; (3) Housing and dietary services; (4) Education programming for adolescents; (5) Recreation and leisure time activities for adolescents; (6) Medical care; and (7) Discharge planning. A medically-monitored intensive inpatient treatment program for adults shall provide daily to each client a combination of individual, group, or family counseling which shall total a minimum of 21 hours per week. The program shall also provide a minimum of nine hours of additional services on specialized topics that address the specific needs of the client.

## **Patient Rights and Safety Standards**

*Substance Use Disorder (SUD):* Clients must receive information about their rights, including but not limited to freedom from abuse, rights of confidentiality, communication, religious practice, and to make a grievance, including the right to appeal to the Division of Behavioral Health. Abuse, neglect, and exploitation must be reported to the Department of Social Services. There is a prohibition on automatic discharge for any instance of non-prescribed substance use or for any instance of displaying symptoms of mental or physical illness. Accredited agencies must report any critical (sentinel) event, provide a follow-up report, and conduct a root cause analysis.

## Quality Assurance or Improvement

*Substance Use Disorder (SUD)*: Programs are required to submit data on clients and services, to establish a compliance review process to assure the quality and appropriateness of services, and to address any issues discovered during the compliance review process.

## Governance

*Substance Use Disorder (SUD)*: All nongovernmental or nontribal agencies providing residential services must be incorporated, have a board of directors, and establish policies.

## Special Populations

*Substance Use Disorder (SUD)*: Researchers did not locate South Dakota rules regarding special populations in adult substance use treatment facilities other than requirements related to tuberculosis and HIV.

## Location of Regulatory and Licensing Requirements

Division of Behavioral Health MH Regulations<sup>1</sup>; SD Laws CHAPTER 34-20A<sup>2</sup>, Division of Behavioral Health SU Regulations<sup>3</sup>; SD DOH Licensing Statute<sup>4</sup>. Regulatory data collected June 1, 2019.

## Other Information Sources

M. LeVee and T. Wolfgang (DSS); National Conference of State Legislatures CON Program Overview, <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

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<sup>1</sup> See <http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=67:62>.

<sup>2</sup> See [https://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=34-20A](https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34-20A).

<sup>3</sup> See <http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=67:61>.

<sup>4</sup> See [http://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=34-12](http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34-12).

# SOUTH DAKOTA MEDICAID

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## Approach

*Mental Health (MH) and Substance Use Disorder (SUD):* The South Dakota Department of Social Services (DSS) oversees the state Medicaid program. South Dakota does not rely on the in lieu of provision but historically has relied on Disproportionate Share Hospital (DSH) to reimburse some services in institutions for mental diseases (IMDs). The state does not have a Section 1115 waiver permitting Medicaid coverage of treatment for MH or SUD treatment in an IMD.

## Types of Facilities

*Mental Health (MH):* No evidence was located of Medicaid coverage of residential mental health treatment facilities for adults in South Dakota.

*Substance Use Disorder (SUD):* The following residential services are the only ones that are covered for adults (room and board are excluded):

- *Clinically-managed low intensity residential treatment programs:* Level 3.1 services that are an accredited residential program providing services to a client in a structured environment designed to aid re-entry into the community.
- *Clinically-managed low intensity residential treatment:* programs for pregnant women or women with dependent children.
- *Medically-monitored intensive inpatient treatment programs:* Level 3.7 services that are an accredited residential treatment program providing services to a client in a structured environment.
- *Intensive methamphetamine services:* a program that supports treatment services for a recipient 18 years or older who is assessed with a severe methamphetamine use disorder and who requires 24-hour structure and support due to the imminent risk for relapse.

## **Staffing**

*Mental Health (MH) and Substance Use Disorder (SUD):*

- To receive reimbursement for covered medical services which are medically necessary and which are provided to eligible recipients, a provider must have a provider agreement with the department. Only those individuals or facilities which meet licensure and certification requirements may be participating providers. Providers may be suspended or terminated from participating in Medicaid.

## **Placement**

*Substance Use Disorder (SUD):* Requirements regarding residential services were not explicitly described in the state Medicaid regulations; see above for detailed licensure-related standards.

## **Treatment and Discharge Planning and Aftercare Services**

*Substance Use Disorder (SUD):* Clinically-managed low intensity residential treatment programs for pregnant women or women with dependent children, medically-monitored intensive inpatient treatment programs, and intensive methamphetamine services require prior authorization.

## **Treatment Services**

*Mental Health (MH) and Substance Use Disorder (SUD):* Covered services must be medically necessary. Other requirements regarding residential services were not explicitly described in the state Medicaid regulations; see above for detailed licensure-related standards.

## **Care Coordination**

*Substance Use Disorder (SUD):* Requirements regarding residential services were not explicitly described in the state Medicaid regulations; see above for detailed licensure-related standards.

## **Quality Assurance or Improvement**

*Substance Use Disorder (SUD):* Requirements regarding residential services were not explicitly described in the state Medicaid regulations; see above for detailed licensure-related standards.

## Special Populations

*Substance Use Disorder (SUD)*: Clinically-managed low intensity residential treatment programs for pregnant women or women with dependent children are available under the Medicaid program. Other requirements regarding residential services were not explicitly described in the state Medicaid regulations; see above for detailed licensure-related standards.

## Location of Medicaid Requirements

South Dakota Administrative Rules: DEPARTMENT OF SOCIAL SERVICES ARTICLE 67:16 COVERED MEDICAL SERVICES<sup>5</sup>. Regulatory data collected January 13, 2020.

## Other Information Sources

Kaiser Family Foundation. State Options for Medicaid Coverage of Inpatient Behavioral Health Services. KFF: San Francisco. November 2019. <http://files.kff.org/attachment/Report-Brief-State-Options-for-Medicaid-Coverage-of-Inpatient-Behavioral-Health-Services>

This state summary is part of the report “**State Residential Treatment for Behavioral Health Conditions: Regulation and Policy**”. The full report and other state summaries are available at <https://aspe.hhs.gov/state-bh-residential-treatment>.

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<sup>5</sup> See <https://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=67:16>.