

QUALIFIED MENTAL HEALTH PROFESSIONAL ONLINE TRAINING



South Dakota Department of
Social Services

Division of Behavioral Health

INTRODUCTION

Division of
Behavioral
Health

TRAINING PROCESS

- Review each module and respond to the questions at the end.
- Each participant must score at least a 75% overall to pass and receive the Qualified Mental Health Professional (QMHP) Training Certificate.
- If an overall score of less than 75% occurs, the participant may request to retake the course after 30 days.

TRAINING CONTENTS

- Module 1:** Voluntary Admission of Adults
- Module 2:** Voluntary Admission of Minors
- Module 3:** Involuntary Commitment of Adults
- Module 4:** Involuntary Commitment of Minors
- Module 5:** Petition for Commitment
- Module 6:** County Board of Mental Illness
- Module 7:** Qualified Mental Health Professional (QMHP) Examination
- Module 8:** Involuntary Commitment Hearing and the County Board of Mental Illness
- Module 9:** Involuntary and Voluntary Status Changes
- Module 10:** Co-Occurring Commitments
- Module 11:** Outpatient Commitment Orders and Treatment Orders
- Module 12:** Human Services Center (HSC) Medical Limitations and Problems that Masquerade as Psychiatric Illnesses

WHO QUALIFIES FOR QMHP

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 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).

WHO QUALIFIES FOR QMHP (CONTINUED)

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 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.

WHO QUALIFIES FOR QMHP (CONTINUED)

Except as provided in subdivision (9) and SDCL 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.

TRAINING REQUIREMENTS

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.

DIVISION CONTACT INFORMATION

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VOLUNTARY ADMISSION OF ADULTS

Module 1

REQUIREMENTS FOR VOLUNTARY ADMISSION

A voluntary patient must be:

- 18 years of age or older
- Able to understand the nature of voluntary inpatient treatment
- Capable of giving informed consent
- Voluntarily execute a written application of admission

INFORMED CONSENT

Informed consent is defined as:

- 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.

VOLUNTARY ADMISSION CRITERIA FOR ADULTS

The Human Services Center in Yankton, SD (HSC) will use the following criteria to determine whether an adult will be admitted on a voluntary basis:

- After examination by a staff psychiatrist, the facility director or administrator determines that the patient is clinically suitable for inpatient treatment;
- A less restrictive alternative is inappropriate or unavailable;
- The patient is in need of and will likely benefit from treatment which is available at the facility;
- The patient does not have medical needs which are beyond the capacity of the facility, and
- The Explanation Requirements contained in SDCL 27A-8-15 have been met.

EXPLANATION REQUIREMENTS

The individual will need the following information explained to them prior to being accepted into voluntary inpatient treatment.

- The nature of voluntary status
- The types of treatment available
- The restraints and restrictions that may be used during treatment
- The possibility that voluntary status may be changed to an involuntary status if certain conditions are met
- Statement of rights under SD law

HSC will provide the individual with the required explanation and any statement of rights required by SD law.

SUBSTITUTED INFORMED CONSENT

If an individual is incapable of giving informed consent, substituted informed consent may be obtained by:

- A Guardian
- An Attorney-in-Fact
- The Individual's Next of Kin

SUBSTITUTED INFORMED CONSENT BY: GUARDIAN

The guardian must have been previously appointed by the Circuit Court.

- This means that a guardianship cannot be sought for the sole purpose of giving substituted informed consent to admission; it has to be a previously existing guardianship.

If there is a limited guardianship, the order from the court must specifically authorize the limited guardian to make health care decisions.

SUBSTITUTED INFORMED CONSENT BY: ATTORNEY-IN-FACT

An “attorney-in-fact” is the person who is granted decision-making authority for the principle through a written power of attorney.

- It is important to note that a power of attorney terminates upon the principle’s incapacity.
 - However, a durable power of attorney survives the principle’s incapacity.
 - Accordingly, for involuntary commitment purposes, the individual must have a durable power of attorney as the principle is unable to provide informed consent and, therefore, incapacitated.

Much like a guardianship, the attorney-in-fact must be previously named in a written durable power of attorney.

An attorney-in-fact may not provide substituted informed consent if the power of attorney specifically denies or limits the attorney-in-fact’s power to consent to admission.

SUBSTITUTED INFORMED CONSENT BY NEXT OF KIN

Substituted informed consent can be given by an individual's next of kin in the following order (SDCL 34-12C-3):

- spouse, if not legally separated
- adult child
- parent
- adult sibling
- grandparent or adult grandchild
- adult aunt or uncle, adult niece or nephew
- close friend

If the admission is made upon the substituted informed consent of the individual's next of kin, the commitment is limited for a period not to exceed 14 days.

The individual's next of kin must file a petition with the Circuit Court to exceed the 14 day commitment.

CONTINUED ADMISSION

30 days after the voluntary admission of an individual, and every 90 days thereafter, HSC will assess the need for continued admission.

- If continued admission is warranted, HSC will request that the individual provide oral and written consent to continued admission
- If the individual was admitted upon substituted informed consent and continues to be incapable of exercising informed consent, HSC will obtain substituted informed consent to continuing admission

VOLUNTARY ADMISSION OF MINORS

Module 2

VOLUNTARY ADMISSION OF MINORS

A minor is an un-emancipated and unmarried person under the age of 18.

- Minors can be voluntarily admitted by:
 - A Parent (SDCL 27A-15-5),
 - Guardian, or Legal Custodian; or
 - The Courts or Department of Corrections (DOC)

VOLUNTARY ADMISSION OF A MINOR BY: A PARENT, GUARDIAN, OR LEGAL CUSTODIAN

A minor may be immediately admitted to an inpatient psychiatric facility by the minor's parent, guardian, or legal custodian if the following criteria are met:

- The minor is an individual with a serious emotional disturbance
- The minor needs and is likely to benefit from inpatient treatment at the facility
- The parent, guardian, or legal custodian has exercised informed consent to inpatient treatment of the minor

VOLUNTARY ADMISSION OF A MINOR BY: A PARENT, GUARDIAN, OR LEGAL CUSTODIAN

The minor displays one or more of the following conditions:

- Exhibits:
 - Seriously impaired contact with reality
 - Severely impaired social, academic, and self-care functioning
 - Thinking is frequently confused
 - Behavior may be grossly inappropriate and bizarre
 - Emotional reactions are frequently inappropriate at the situation
- Manifests long-term behavior problems or suicidal behavior; or
- Suffers from severe anxiety, depression, irrational fears, and concerns
 - Symptoms may be exhibited as
 - Serious eating and sleeping disturbances
 - Extreme sadness of suicidal proportion
 - Maladaptive dependence on parents
 - Avoidance of non-familial social contact

VOLUNTARY ADMISSION OF A MINOR BY: A PARENT, GUARDIAN, OR LEGAL CUSTODIAN

The facility has determined that:

- Reasonable efforts have been made to provide for the mental health treatment needs of the minor through the provision of less restrictive treatment alternatives to inpatient treatment
- Such alternatives have failed to meet the treatment needs of the minor
- The condition of the minor is such that less restrictive treatment alternatives are unlikely to meet the mental health treatment or diagnostic needs of the minor.

SERIOUS EMOTIONAL DISTURBANCE

An individual with a serious emotional disturbance is an individual who:

- Is under eighteen years of age
- 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
- Has a mental disorder diagnosed under the Diagnostic and Statistical Manual of Mental Disorders, fourth edition revised (DSM IV-TR), 1994*;
- Has demonstrated a need for one or more special care services, in addition to mental health
- Has problems with a demonstrated or expected longevity of at least one year or has an impairment of short duration and high severity.

Intellectual disabilities, epilepsy, other developmental disabilities, alcohol or substance abuse, brief period of intoxication, or criminal or delinquent behavior do not, alone, constitute serious emotional disturbance.

SDCL 27A-15-1.1

*The statutory language has not been updated since the release of the DSM 5. A mental disorder diagnosed under the DSM 5 would be acceptable.

SPECIAL REQUIREMENTS FOR ADMISSIONS MADE BY A GUARDIAN OR LEGAL CUSTODIAN

An application for admission of a minor to an inpatient psychiatric facility by a minor's guardian or legal custodian must be accompanied with a recommendation by a Qualified Mental Health Professional (QMHP).

EXPLANATION REQUIREMENTS

Before admission, HSC will explain the following information to the parent, guardian, or legal custodian and the minor:

- The nature of inpatient status
- The types of treatment available
- The restraints and restrictions to which the minor may be subject
- A statement of the parent's, guardian's, or other legal custodian's rights and minor's rights, including the minor's right to object to admission, and the right to view and copy records

OBJECTION TO CONTINUED INPATIENT TREATMENT

- A minor who has been admitted to an inpatient psychiatric facility, or an adult on the minor's behalf, shall have the right to execute a written objection to continued inpatient treatment.
- The objection is forwarded to the chair of the County Board of Mental Illness for the county where the facility is located.
- The minor is immediately advised of certain rights, evaluated by a QMHP designated by the board within twenty-four hours, and, if the minor remains in the facility, is entitled to a hearing within five days after the objection is made.

VOLUNTARY ADMISSION OF A MINOR BY THE COURTS OR DOC

Upon the recommendation of a QMHP, the Courts or the Secretary of DOC may place a minor in an inpatient psychiatric facility if it is determined the minor meets the applicable criteria.

CONTINUED ADMISSION

Upon admission, and every 45 days thereafter, the minor shall have a psychiatric and clinical evaluation and upon written findings by the evaluating psychiatrist which reaffirm that commitment criteria are met, the administrator or facility director may authorize continued admission of the minor to the inpatient psychiatric facility for a period not to exceed 45 days.

INVOLUNTARY COMMITMENT OF ADULTS

Module 3

INVOLUNTARY COMMITMENT CRITERIA FOR ADULTS

A person 18 years or older is subject to involuntary commitment if:

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

SERIOUS MENTAL ILLNESS

“Serious Mental Illness” is 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 disabilities, epilepsy, other developmental disabilities, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute serious mental illness.

DANGER TO SELF

“Danger to self” is a reasonable expectation that a person will inflict serious physical injury upon him or herself in the near future, due to a serious mental illness, as evidenced by:

- The person’s treatment history and recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury; (i.e. physical harm to self)
 - 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.
- A reasonable expectation of danger of serious personal harm in the near future, due to a serious 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 serious mental illness; (i.e. inability to care for self).

DANGER TO OTHERS

“Danger to others” is a reasonable expectation that a person will inflict serious physical injury upon another person in the near future due to serious mental illness, as evidenced by:

- The person’s treatment history and 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 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.

CHRONIC DISABILITY

“Chronic disability” is 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 serious 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

TYPES OF INVOLUNTARY COMMITMENTS

There are three ways that an adult can be involuntarily committed:

- QMHP Hold
- By Petition
- Law Enforcement Hold

QMHP HOLD

If an individual presents to a facility licensed by the state as a hospital and, after an examination by a QMHP, it is determined that the individual is seriously mentally ill and in such condition that immediate intervention is necessary to protect the individual from physical harm to self or others, the QMHP may initiate a 24 hour hold on the individual and retain the individual at the hospital for purposes of observation and emergency treatment.

Notifying the Chair

- The hospital or the QMHP shall notify the Chair of the County Board of Mental Illness of the 24 hour hold

Completing the Petition

- The QMHP completing the petition must have personal knowledge of the individual's behaviors
- The QMHP must advise the individual of their rights in both written and verbal form

Filing the Petition

- The QMHP must file a petition with the County Board of Mental Illness within 24 hours after the individual is placed on the hold or the individual must be released

Based on both the petition and the QMHP examination, the Board will make a determination on whether to release the individual or hold them until a hearing can be held.

BY PETITION

Commitment by Petition follows the process below:

Individual completing petition:

- Any person, 18 years of age or older, may complete a petition stating the factual basis for concluding that the individual is seriously mentally ill and in such condition that immediate intervention is necessary to protect the individual from physical harm to self or others
- The person completing the petition must have personal knowledge of the individual's behaviors
- The petition is submitted to the County Board of Mental Illness

County Board of Mental Illness

- Based on the petition, the County Board of Mental Illness makes a determination on whether to issue an emergency warrant for the individual to be taken into custody

Law Enforcement

- If a warrant is issued, law enforcement will take the individual into custody and advise them of their rights in both written and verbal form
- The individual is taken to an appropriate regional facility

QMHP

- A QMHP examination is completed within 24 hours and the results of the examination are reported to the County Board of Mental Illness

Based on both the petition and the QMHP examination, the County Board of Mental Illness will make a determination on whether to release the individual or hold them until a hearing can be held

LAW ENFORCEMENT HOLD

Law enforcement may place an individual on a 24 hour hold if there is probable cause to believe that the individual is seriously mentally ill and in such condition that immediate intervention is necessary to protect the individual from physical harm to self or others.

Law Enforcement

- The law enforcement officer completing the petition must have personal knowledge of the individual's behaviors
- A petition must be filed with the County Board of Mental Illness within 24 hours after the individual is taken into custody or the individual must be released
- If placed on a hold, the individual is advised of their rights in both written and verbal form and transported to an appropriate regional facility

QMHP

- A QMHP examination must be completed within 24 hours after the individual is taken into custody

Based on both the petition and the QMHP examination, the County Board of Mental Illness will make a determination on whether to release the individual or hold them until a hearing can be held.

NOTICE OF RIGHTS

Immediately after an individual is taken into custody, she/he must be notified both orally and in writing of the following rights:

- The right to immediately contact a person of their choice
- The right to immediately contact and be represented by an attorney
- That the individual will be examined by a qualified mental health professional, designated by the Chair of the County Board of Mental Illness, within 24 hours of being taken into custody to determine whether custody should be continued
- The right, if custody is continued, to an independent examination
- That should custody be continued, the right to a hearing within 5 to 7 days, depending on if there are weekends and/or holidays

Post-Commitment Treatment

- The cost of any post-commitment treatment, medication and any hearing relating to medication, any post-commitment proceedings, including habeas corpus, any additional examinations requested by the individual, and costs of court-appointed counsel are the individual's responsibility and a lien may be filed upon the individual's real and personal property to ensure payment.

MOBILE CRISIS TEAM

A Mobile Crisis Team is 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/abuse intervention
- can be used as an alternative to apprehension of an individual and transfer to an appropriate regional facility

MOBILE CRISIS TEAM (CONTINUED)

Mobile crisis teams and crisis intervention team certified law enforcement officers are able to resolve crisis events at the clinic or hospital or other location instead of solely at the individual's home.

A “crisis intervention team certified law enforcement officer” is any law enforcement officer who has undergone a comprehensive training program in crisis intervention techniques involving any person who is mentally ill or has substance abuse issues and has received certification as a crisis intervention officer by the officer's department.

- If any member of the mobile crisis team or the crisis intervention team certified law enforcement officer accepts direct supervision of the individual, in writing, the member or officer may:
 - Resolve the intervention on a voluntary basis, at the clinic or hospital, at the individual's home or other location or with the assistance of any public or private community service that the patient is willing to accept. Any team member may request the assistance of law enforcement for the voluntary transfer of the individual.
 - Direct the law enforcement officer to proceed with the apprehension of the individual and transport the individual to either:
 - An appropriate regional facility for an emergency intervention and a mental illness examination (SDCL 27A-10-6)
 - An approved treatment facility offering detoxification services for chemical dependency emergencies (SDCL 34-20A-55 and 34-20A-56)

INVOLUNTARY COMMITMENT OF MINORS

Module 4

INVOLUNTARY COMMITMENT CRITERIA FOR MINORS

The involuntary commitment process used for minors is similar to the process for adults:

- Minors can be involuntarily committed by a QMHP hold, by petition, or by a law enforcement hold
- The County Board of Mental Illness handles juvenile involuntary commitments
- A minor is entitled to a QMHP examination within 24 hours of the minor being held/taken into custody
- A petition needs to be filed with the County Board of Mental Illness within 24 hours of the minor being held/taken into custody or the minor will be released
- Based on both the petition and the QMHP examination, the County Board of Mental Illness will make a determination on whether to release the minor or hold them until a hearing can be held

INVOLUNTARY COMMITMENT CRITERIA FOR MINORS (CONTINUED)

A minor is subject to involuntary commitment if:

- The minor displays one or more of the following conditions:
 - Exhibits:
 - Seriously impaired contact with reality
 - Severely impaired social, academic, and self-care functioning
 - Thinking is frequently confused
 - Behavior may be grossly inappropriate and bizarre
 - Emotional reactions are frequently inappropriate at the situation
 - Manifests long-term behavior problems or suicidal behavior; or
 - Suffers from severe anxiety, depression, irrational fears, and concerns
 - Symptoms may be exhibited as
 - Serious eating and sleeping disturbances
 - Extreme sadness of suicidal proportion
 - Maladaptive dependence on parents
 - Avoidance of non-familial social contact

INVOLUNTARY COMMITMENT CRITERIA FOR MINORS (CONTINUED)

As a result of being an individual with a serious emotional disturbance, the minor is a danger to self or others.

- This includes the minor's ability to attend to their basic human needs based upon what is appropriate for the age of the minor
- The minor needs and is likely to benefit from treatment
- Delinquent behavior alone does not constitute a serious emotional disturbance.

SERIOUS EMOTIONAL DISTURBANCE

An individual with a serious emotional disturbance is an individual who:

- Is under eighteen years of age
- 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
- Has a mental disorder diagnosed under the Diagnostic and Statistical Manual of Mental Disorders, fourth edition revised (DSM IV-TR), 1994*;
- Has demonstrated a need for one or more special care services, in addition to mental health
- Has problems with a demonstrated or expected longevity of at least one year or has an impairment of short duration and high severity.

Intellectual disabilities, epilepsy, other developmental disabilities, alcohol or substance abuse, brief period of intoxication, or criminal or delinquent behavior do not, alone, constitute serious emotional disturbance.

SDCL 27A-15-1.1

*The statutory language has not been updated since the release of the DSM 5. A mental disorder diagnosed under the DSM 5 would be acceptable.

NOTICE OF RIGHTS

Immediately after the minor is taken into custody, the minor must be notified both orally and in writing of the following rights:

- The right to immediately contact a parent, guardian, legal custodian, or other persons of the minor's choosing
- The right to immediately contact and be represented by counsel
- That the minor will be examined by a QMHP, designated by the chair of the County Board of Mental Illness, within 24 hours after being taken into custody to determine whether custody should continue
- The right, if custody is continued, to an independent examination
- That should custody be continued, the right to a hearing within 5 to 7 days, depending on if there are weekends and/or holidays
- That the referring county shall pay any expenses incurred by the board holding the hearing, including the transportation of the minor to the hearing, subject to reimbursement by the county ultimately proven to be the county of residence
- No lien may be placed against the minor for the expenses incurred by the board holding the hearing, including the transportation of the person to the hearing

Post-Commitment Treatment

- The cost of any post-commitment treatment, medication and any hearing relating to medication, any post-commitment proceedings, including habeas corpus, any additional examinations requested by the individual, and costs of court-appointed counsel are the individual's responsibility and a lien may be filed upon the individual's real and personal property to ensure payment.

APPROPRIATE REGIONAL FACILITY

A juvenile detention facility may be used for pre-hearing custody of a minor if the availability of other appropriate regional facilities have been explored and exhausted.

- A minor cannot, under any circumstances, be held in a jail.
- If an appropriate regional facility maintains a separate unit for minors, a minor cannot be confined with adult detainees or patients.
- A minor can only be detained at a regional facility without a separate unit for minors if all other options were explored and exhausted.
 - If placed in a facility with adults, the minor should be given separate sleeping quarters and day areas to the maximum extent possible.

SDCL 27A-15-31

PETITION FOR COMMITMENT

Module 5

PETITION FOR COMMITMENT

Who Can Petition?

- Any person eighteen years of age or older who has personal knowledge of the individual's behavior may file a petition with the County Board of Mental Illness alleging that the subject is seriously mentally ill (or has a serious emotional disturbance for minors) and in such condition that immediate intervention is necessary for the protection from physical harm of him/herself or others.
- The same QMHP cannot initiate the petition and perform the QMHP examination.

INFORMATION NEEDED ON AN ADULT PETITION

The petition must be on a form, verified by affidavit, and must include:

- A statement by the petitioner that the petitioner believes, on the basis of personal knowledge, that the individual is, as a result of serious mental illness, a danger to self or others;
- The specific nature of the danger;
- A summary of information upon which the statement of danger is based;
- A statement of facts which caused the subject to come to the petitioner's attention;
- The address and signature of the petitioner;
- A statement of the petitioner's interest in the case; and
- The name, address, age, marital status, and occupation of the individual to be evaluated.

INFORMATION NEEDED ON A MINOR PETITION

The petition must be on a form, verified by affidavit, and must include:

- A statement by the petitioner, on the basis of personal knowledge, that such minor is, as a result of a serious emotional disturbance, a danger to self or others;
- The specific nature of the danger;
- A summary of the information upon which the statement of danger is based;
- A statement of facts which caused the minor to come to the petitioner's attention;
- The name, address, and signature of the petitioner;
- A statement of the petitioner's interest in the case; and
- The name of the minor to be evaluated and the address and age of the minor and the name and address of the minor's parents, guardian, or nearest relative.

PETITION FOR COMMITMENT

The State's Attorney or other person designated by the Board of County Commissioners shall assist the petitioner in completing the petition.

- Each county will likely have a different format for their petition.
 - Please consult with your local Chair of the County Board of Mental Illness or your local State's Attorney for the petition used in your area.
- Upon completion of the petition, the petition shall be forthwith submitted to the Chair of the County Board of Mental Illness where such seriously mentally ill person is found.
 - The term, forthwith, means that the petition shall be completed and submitted to the chair at the earliest possible time during normal waking hours.

If a petition is not filed with the chair within 24 hours of the apprehension of the person, the person shall be released.

PETITION EXAMPLES

Example petitions may be found at:

<http://dss.sd.gov/behavioralhealth/community/countyboard.aspx>

Please check with your Chair of the County Board of Mental Illness or your local State's Attorney for the petition used in your area.

COUNTY BOARD OF MENTAL ILLNESS

Module 6

DIFFERENCES BETWEEN MINORS AND ADULTS

- In each county, a magistrate judge or lawyer shall be appointed by the presiding circuit judge of the circuit in which the county is situated to serve as the Chair of the County Board of Mental Illness.
- The County Board of Mental Illness may be comprised of only the chair if it does not conduct hearings.
- The chair appointed by the presiding circuit judge need not be a resident of the county.
- There is not a term limit for the Chair of the County Board of Mental Illness.

Any board conducting commitment hearings shall consist of the chair and two other persons appointed by the Board of County Commissioners.

- The two members appointed by the Board of County Commissioners shall be residents of the county.
- The members of the County Board of Mental Illness who are appointed by the Board of County Commissioners may be appointed to more than 1 term but may not serve more than 2 consecutive 3 year terms.

The state's attorney for the county may not serve on the County Board of Mental Illness.

MULTIPLE OR SHARED BOARDS

- 2 or more counties may jointly contract to establish a county review board to serve all contracting counties.
- Many counties contract with the Yankton County Board of Mental Illness to conduct hearings.

POWERS OF THE BOARD

- The County Board of Mental Illness has jurisdiction over all applications or petitions for
 - involuntary commitment
 - the treatment of any involuntarily committed person
 - the safekeeping of any person subject to involuntary commitment within its county.
- The County Board of Mental Illness may issue subpoenas and compel obedience to any subpoena, and do any act of a court necessary and proper for the purpose of discharging the duties required of it.

RELEASE

If the County Board of Mental Illness determines that the QMHP findings do not support involuntary commitment criteria, the individual must be released.

QUALIFIED MENTAL HEALTH PROFESSIONAL (QMHP) EXAMINATION

Module 7

QMHP EXAMINATION

Within 24 hours after an individual is placed on a hold, the individual must be examined by a QMHP designated by the Chair of the County Board Mental Illness serving the area where the individual is being held.

- The same QMHP cannot initiate the petition and perform the QMHP examination.
- The QMHP examination shall include a mental status exam.

EXAMINATION NOTICE

Before the examination, the examiner must:

- Identify himself/herself to the individual and explain the nature and purpose of the examination
- Advise the individual that the examination is being performed to assist in the determination of whether custody should continue
- Further advise the individual that the results of the examination may be used as evidence in an involuntary commitment hearing.

CONTENT OF QMHP EXAMINATION

Reason for the evaluation/basis for petition

- Notice
- Specific history relevant to allegations (be specific, use quotes, timelines)

Brief social history

- Education
- Current living situation
- Vocational/activities of daily living
- Stress
- Social support

CONTENT OF QMHP EXAMINATION

(CONTINUED)

Psychiatric history

- Current/past history
- Previous commitment/behavior related to the petition
- Previous suicide threats/attempts
- History of assaults/harm to others
- Psychiatric med/treatment response/follow-up with aftercare
- Substance use history
- History of legal problems

CONTENT OF QMHP EXAMINATION

(CONTINUED)

Mental Status Examination

- Level of cooperation
- Speech
- Orientation/memory
- Mood
- Affect
- Thought content
- Delusions
- Thought processes
- Insight and judgment

Medical Issues that may affect the examination

- Delirium
- Acute Intoxication
- Infection; such as Urinary Tract Infection (UTI)
- Recent Substance Use – When? How much?

COMMUNICATION OF FINDINGS

- The examiner must immediately report the findings to the Chair of the County Board of Mental Illness (SDCL 27A-10-6)
- Results are typically reported to the Chair of the County Board of Mental Illness by phone
- QMHP or Physician Certificate completed and signed
- Dictated report

PETITION EXAMPLES

Example petitions may be found at:

<http://dss.sd.gov/behavioralhealth/community/countyboard.aspx>

Please check with your Chair of the County Board of Mental Illness or your local State's Attorney for the petition used in your area.

LIABILITY FOR QMHP

Any person serving as the QMHP as designated by the Chair of the County Board of Mental Illness, whose examinations and testimony are conducted in good faith, is immune from any civil liability for such examinations and testimony.

The immunity from civil liability under this section does not apply if injury results from gross negligence or willful or wanton misconduct.

INVOLUNTARY COMMITMENT HEARING AND THE BOARD OF MENTAL ILLNESS

Module 8

THE INVOLUNTARY COMMITMENT HEARING

The involuntary commitment hearing must take place within 5 days of the individual being taken into custody, 6 days if there is a weekend, or 7 days if there is a weekend and a holiday.

- If a hearing does not occur during this time frame, the individual must be released.

The county of residence shall pay any expenses incurred by the board for the hearing or transportation of the individual

LOCATION OF THE HEARING

Hearings and review hearings for involuntary commitments shall be conducted in a courtroom of the county courthouse or such other place within the designated county as the Chair of the County Board of Mental Illness may designate with due regard to the rights, safety, and comfort of the person.

HEARINGS

The County Board of Mental Illness may exclude any person not necessary for the conduct of the proceedings from the hearings, except any person requested to be present by the proposed patient.

All records of the proceedings are confidential and shall be sealed upon such release and shall be opened only by court order of the circuit court.

ATTORNEYS

Petitioner

In any proceeding for involuntary commitment, review, or detention, or in any proceeding challenging commitment or detention, the state's attorney for the county in which the proceeding is held shall represent the petitioner and shall defend all challenges to commitment or detention. (SDCL 27A-11A-4)

Individual Facing Involuntary Commitment

If the alleged mentally ill person has not or cannot employ his own counsel, the Chair of the County Board of Mental Illness where the hearing is to be held shall immediately assign counsel to represent the interests of the person. In no instance may a person not be represented by counsel. (SDCL 27A-11A-7)

NOTICE OF THE HEARING

Copies of the petition and notice of hearing shall be personally served forthwith on the individual subject to involuntary commitment prior to the hearing 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.

SDCL 27A-11A-5

QMHP TESTIMONY

The County Board of Mental Illness conducting the involuntary commitment hearing shall order testimony by a QMHP independent of the petitioner who shall assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment and specifically including whether such programs are available at the mental health center serving the area in which the person was apprehended or resides.

Such testimony shall include

- what alternatives are or should be made available
- what alternatives were investigated
- why any investigated alternatives are not deemed appropriate.

INDIVIDUAL'S RIGHT TO GIVE TESTIMONY

The individual subject to involuntary commitment may appear personally at any hearing and testify on his/her own behalf, but may not be compelled to do so. He/she has the right to subpoena and cross-examine witnesses and to present evidence.

If the person chooses not to appear, his/her attorney shall state on the record that the person has been informed of the hearing and of his right to appear and chooses not to exercise this right.

- Documentation of the reasons for the person's decision may not be required.

THE BOARD'S DECISION

In order to involuntarily commit an adult, a majority of the board must find, by clear and convincing evidence, that:

- The person has a serious mental illness;
- Due to the serious mental illness, the person is a danger to self or others or has a chronic disability;
- The person needs and is likely to benefit from the proposed treatment; and
- The commitment is to the least restrictive treatment alternative.

An adult may only be committed for a period not to exceed 90 days.

If the above findings are not made, the board shall order that the person be released.

THE BOARD'S DECISION

In order to involuntarily commit a minor, a majority of the board must find, by clear and convincing evidence, that:

- The minor is an individual with a serious emotional disturbance
- The minor exhibits one or more of the following conditions:
 - Seriously impaired contact with reality
 - Severely impaired social, academic, and self-care functioning
 - Thinking is frequently confused
 - Behavior may be grossly inappropriate and bizarre
 - Emotional reactions are frequently inappropriate at the situation
- Manifests long-term behavior problems or suicidal behavior; or
- Suffers from severe anxiety, depression, irrational fears, and concerns
 - Symptoms may be exhibited as
 - Serious eating and sleeping disturbances
 - Extreme sadness of suicidal proportion
 - Maladaptive dependence on parents
 - Avoidance of non-familial social contact

THE BOARD'S DECISION

As a result of being an individual with a serious emotional disturbance, the minor is a danger to self or others.

- This includes the minor's ability to attend to their basic human needs based upon what is appropriate for the age of the minor
- The minor needs and is likely to benefit from treatment
- Delinquent behavior alone does not constitute a serious emotional disturbance.
- The commitment is to the least restrictive treatment alternative.

A minor may only be committed for a period not to exceed 45 days.

RIGHT TO APPEAL

An individual who has been involuntarily committed may appeal the final order of a County Board of Mental Illness.

In the case of a minor, or a person for whom the guardian has been appointed, such right to appeal may be exercised on behalf of the person by an attorney.

The individual subject to involuntary commitment shall be advised of their right to appeal at the end of the hearing, both verbally and in writing.

SDCL 27A-11A-25

INPATIENT COMMITMENT

If the individual is committed to inpatient treatment, the County Board of Mental Illness may order that the individual undergo such treatment.

REVIEW HEARING FOR CONTINUED COMMITMENT OF ADULTS

90 Day Review:

Within 90 days after the involuntary commitment of a person who is still under the commitment order, the County Board of Mental Illness which serves the county in which the person is receiving treatment shall conduct a review hearing in the county to determine if the person continues to meet the criteria for an involuntary commitment order.

Continued Stay Review:

The County Board of Mental Illness may order the continued involuntary commitment of the person to the same or an alternative placement or program for up to 6 months if a majority of the board finds by clear and convincing evidence that the person continues to meet the criteria for an involuntary commitment order.

Long Term Continued Stay Review:

If continued involuntary commitment is ordered, a review shall be conducted within 6 months after the order. If the county board issues another order of continued involuntary commitment, the next review shall be held within 6 months after the order. If the second 6-month review justifies continued commitment, the county board may order continued involuntary commitment for up to 12 months. Subsequent reviews shall be conducted within each 12 months thereafter that the person remains under commitment.

REVIEW HEARING FOR CONTINUED COMMITMENT OF MINORS

Within 45 days after the involuntary commitment of a minor who is still under the commitment order, the County Board of Mental Illness which serves the county in which the minor is receiving treatment shall conduct a review hearing in such county to determine if the minor continues to meet the criteria for an involuntary commitment order.

The County Board of Mental Illness may order the continued involuntary commitment of the minor to the same or alternative placement or program for a period not to exceed 45 days if a majority of the board finds by clear and convincing evidence, that the minor continues to meet the criteria for an involuntary commitment order.

If continued involuntary commitment is ordered, a review hearing as provided in this section shall be conducted at least every 45 days that the minor remains under commitment.

INVOLUNTARY AND VOLUNTARY STATUS

Module 9

STATUS AGREEMENT BEFORE HEARING

If an individual who is subject to an involuntary commitment is willing to admit themselves to an inpatient psychiatric facility or other treatment program on a voluntary basis and the admission is deemed suitable by the facility or program, the Chair of the County Board of Mental Illness to whom the petition was filed shall be notified and shall make the final determination.

This process is used when an individual is placed on a mental illness hold but a hearing has not yet been held.

CHANGE FROM VOLUNTARY TO INVOLUNTARY STATUS

- A voluntary patient 18 years of age or over has the right to immediate discharge upon written notice of their intention to terminate inpatient treatment.
- However, if the facility director, administrator, or attending psychiatrist has probable cause to believe that the patient requires emergency intervention, meets the involuntary commitment criteria, and should remain in the facility; the director, administrator, or attending psychiatrist may initiate a mental illness hold detaining the patient for a period not to exceed 24 hours.
- A petition for involuntary commitment must be filed with the County Board of Mental Illness within 24 hours and the board will make a determination whether to release the individual or hold them until a hearing can be held.

CHANGE FROM VOLUNTARY TO INVOLUNTARY STATUS

The facility may file a petition for the involuntary commitment of a voluntary patient even though a written notice of intention to terminate inpatient treatment has not been received.

- Reasons for the filing a petition for involuntary commitment are limited to the following:
 - The facility has probable cause to believe the patient meets the involuntary commitment criteria
 - 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
 - The patient is unwilling or unable to affirm consent to continued admission

CHANGE FROM INVOLUNTARY TO VOLUNTARY STATUS

An involuntarily committed person 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.

If transfer to voluntary status occurs, notice shall be given to the County Board of Mental Illness which initiated the commitment.

This process is used when an individual has been involuntarily committed after a hearing, but later applies for voluntary status.

CO-OCCURRING COMMITMENTS

Module 10

CO-OCCURRING DISORDERS

Defined as a person who has at least one mental disorder as well as an alcohol or drug use disorder

TREATMENT ORDERS AND HEARINGS

After determination that the criteria for involuntary commitment were met and ordered the County Board of Mental Illness, they may also, at the same hearing or subsequent hearing, consider petitions for:

- 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:
 - 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
 - Is incapacitated by the effects of alcohol or drugs
 - Is pregnant and abusing alcohol or drugs.
- If after hearing all relevant evidence, the County Board of Mental Illness finds, by clear and convincing evidence, that the above grounds for involuntary treatment of a co-occurring substance use disorder exists, the County Board of Mental Illness may also order a commitment for such co-occurring disorder to any appropriate treatment facility, for a period not to exceed 90 days.

SDCL 27A-10-9.2

OUTPATIENT COMMITMENT ORDERS AND TREATMENT ORDERS

Module 11

OUTPATIENT COMMITMENT ORDER

The County Board of Mental Illness may involuntarily commit an individual for outpatient treatment to a private facility or an outpatient treatment program if that facility or program agrees to accept the commitment and if the commitment will not result in liability to any county for the cost of treating such person.

"Outpatient treatment" means mental health diagnosis, observation, evaluation, care, treatment or rehabilitation rendered inside or outside the premises of an outpatient program for the treatment of persons with mental, emotional, or substance use disorders.

OUTPATIENT COMMITMENT ORDER

The goal of entering an outpatient commitment order is to provide services to the individual using the least restrictive treatment alternative.

- "Least restrictive treatment alternative," means 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.

In determining the least restrictive alternative, considerations shall include:

- the values and preferences of the patient
- the environmental restrictiveness of treatment settings
- the duration of treatment
- the physical safety of the patient and others
- the psychological and physical restrictiveness of treatments
- the relative risks and benefits of treatments to the patient
- the proximity of the treatment program to the patient's residence
- the availability of family and community resources and support

TREATMENT ORDERS

If an individual is involuntarily committed either to inpatient or outpatient treatment by the County Board of Mental Illness, the board may, at the same hearing or a subsequent hearing, consider a petition for authority to administer psychotropic medication, electroconvulsive treatment (ECT), and such other medical treatment as may be necessary for the treatment of the person's mental illness. (SDCL 27A-10-9.2)

- This order is known as a “treatment order.”

A “treatment order,” is an order by the County Board of Mental Illness, as part of an inpatient or outpatient commitment order, or as a separate order by the Circuit Court or County Board of Mental Illness after an inpatient or outpatient commitment ordered by the County Board of Mental Illness, that requires a program of treatment.

TREATMENT ORDERS

To enter a treatment order, the court or the County Board of Mental Illness must find, by clear and convincing evidence, that the person is incapable of consenting to treatment with psychotropic medication and such other medical treatment as may be necessary for the treatment of the person's mental illness, including electroconvulsive therapy (ECT), 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 the medication and medical treatment and the administration of the recommended psychotropic medication and medical treatment is essential because:

- The person presents a danger to self or others
- The person cannot improve or the person's condition may deteriorate without the medication and such treatment
- The person may improve without the medication or such treatment but only at a significantly slower rate

SDCL 27A-12-3.15 and SDCL 27A-12-3.13

TREATMENT ORDERS

- Treatment orders are valid for a period of not more than 1 year from when the order was entered.
- The court's or County Board of Mental Illness' order shall terminate sooner than 1 year if the person is judicially restored or restored by the board as competent to consent to or refuse the administration of psychotropic medication and such other medical treatment as may be necessary for the treatment of the person's mental illness or if the person's treating physician or the medical director of the facility or, if the facility does not have a medical director, a consulting psychiatrist determines that the administration of psychotropic medication and such medical treatment is no longer necessary.
- Transfer from inpatient to outpatient treatment while the person is under an order of involuntary commitment does not, in itself, terminate the court's or board's treatment order.

TREATMENT ORDERS

If a person has been involuntarily medicated on an outpatient basis, the necessity of treatment with psychotropic medication shall be reviewed, approved, and noted in the patient's medical record or chart at least every 30 days.

NONCOMPLIANCE WITH OUTPATIENT COMMITMENT AND TREATMENT ORDERS

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 and provide law enforcement with a certified copy of the outpatient commitment order or treatment order.

NONCOMPLIANCE WITH OUTPATIENT COMMITMENT AND TREATMENT ORDERS

The outpatient commitment order or treatment order constitutes a continuing authorization for law enforcement, upon request of the program director or the person's treating physician, to transport the person to the designated outpatient treatment program or to the treating physician's office for the purpose of making reasonable efforts to obtain the person's compliance with the requirements of the outpatient commitment or treatment order.

No person may be detained at the program's or the physician's office for more than 1 hour unless the person consents, or may be physically coerced or required to take prescribed medications unless the outpatient commitment or treatment order contains a specific authorization for the nonconsensual delivery of prescribed medication.

HEARING AFTER NONCOMPLIANCE

If a person fails to comply with the requirement of the outpatient commitment or treatment order, and the person's treating physician or the staff of the outpatient treatment program believes that there is a significant risk of deterioration in the person's condition, the program director or the treating physician may notify the original petitioner for inpatient or outpatient commitment or treatment order and the state's attorney's office of the county where the patient is found and recommend that a supplemental hearing be held. (SDCL 27A-10-9.4)

Within 72 hours of receiving notice that a person has failed to comply with the requirements of the outpatient commitment or treatment order, the original petitioner for inpatient or outpatient commitment or the state's attorney of the county where the patient is found or resides may petition the board for a supplemental hearing. (SDCL 27A-10-9.6)

**HUMAN SERVICES CENTER
(HSC) MEDICAL LIMITATIONS
AND PROBLEMS THAT
MASQUERADE AS
PSYCHIATRIC ILLNESSES**

Module 12

MEDICAL LIMITATIONS OF HSC

The individual must be medically stable to admit to HSC.

For the safety of the individual, if the medical needs exceed HSC's ability, the individual may not be admitted.

COMMON MEDICAL NEEDS THAT ARE NOT AVAILABLE OR LIMITED AT HSC

HSC has limited access to X-Rays.

HSC can only utilize portable oxygen.

The following are not available at HSC:

- Cardiac monitoring
- IV Potassium Replacement Therapy
- IV Antiarrhythmic Medication Therapy
- Drug and/or Alcohol Detox
- Burn Treatment
- Post-Operative Chest Tubes
- CT Scans

EXAMPLES OF MEDICAL PROBLEMS THAT MASQUERADE AS PSYCHIATRIC ILLNESSES

- Delirium
- Intoxication of any kind
- Drug overdose, can be as simple as an antihistamine
- Any infection, even a simple Urinary Tract Infection (UTI)
- Electrolyte imbalance
- Thyroid problems
- Seizure aftermath
- Liver or kidney failure
- Head trauma or stroke
- Dehydration
- Side effects of medication

DELIRIUM

- Medical diagnosis that will present with psychiatric symptoms.
- This is NOT a mental illness and is not treated in a psychiatric hospital or with psychiatric medications.
- Delirium is common and frequently misdiagnosed
- If untreated, can result in permanent brain damage or even death

HOW TO TELL IF IT'S DELIRIUM VS PSYCHIATRIC

Delirium (Medical Cause of Abnormal Behavior)

- Sudden global intellectual impairment
 - Dramatic changes from baseline or normal behavior
- Onsets within days or even hours
- Behavior fluctuates throughout the day
 - Often getting worse at night

Psychiatric Cause of Abnormal Behavior

- Gradual onset
- Onsets within weeks or months
- Often has had similar episodes in the past

GLOBAL INTELLECTUAL IMPAIRMENT

Usually several of the following:

- Can be impaired perceptions
 - Including delusions and/or hallucinations
- Altered mood
 - Can be euphoria or fear, despair or suicidal ideations
- Impaired ability to attend to the present or focus
- Changes in judgment
- Changes in activity - too much or too little
 - Agitation to Lethargy

SOME CAUSES OF DELIRIUM

Medications

- New medicine
- Too much (overdose)
- Medication combinations

Intoxication

- Recreational Drugs
- Alcohol

Dehydration

Electrolyte Imbalance - high or low

- Blood Sugar
- Calcium
- Potassium
- Sodium

Kidney Failure

Liver Failure

Sleep Deprivation

Stroke

Brain Mass

- Subdural Hematoma, usually from injury
- Malignancy

Seizures

ACUTE DRUG OR ALCOHOL INTOXICATION

If an individual is acutely intoxicated at the time of the QMHP examination, the individual shall be transported to an appropriate facility to detox.

Once the QMHP believes the individual is reasonably sober for evaluation, they may continue the QMHP Examination.

- Individual does not have to be free of substances prior to evaluation
- If the patient's blood alcohol content is too high for safe driving, it is too high for a reliable QMHP Evaluation.