

Legal Brief

Commitment of the Mentally Ill

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of February 1, 2013 May 22, 2017; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

The procedures for the commitment of the mentally ill are complex and include provisions intended to protect the rights of the patient. This legal brief is intended only as a basic guide. Because of the potential for unintentional violations of personal rights in the involuntary commitment of adults and minors, whether for treatment of mental illnesses or chemical dependency, the physician is strongly encouraged to review the applicable statutes and consult with the physician's legal counsel.

Discussion

Voluntary Commitment - Adults

Any person eighteen years or older may voluntarily commit himself or herself to an inpatient psychiatric facility. The patient must understand the nature of voluntary inpatient treatment, be capable of giving informed consent, and voluntarily execute a written application for admission. Prior to admission, the patient must be given an explanation of the nature of the patient's status in inpatient treatment, including the types of treatment available and the restraints or restrictions to which the patient may be subject, including possible conversion to involuntary status. SDCL § 27A-8-15.

The necessary informed consent must be obtained orally and in writing. The written informed consent must describe the patient's discharge rights in bold print and simple language. In addition, the form shall include the following representations:

1. The applicant understands that his treatment will involve inpatient status;
2. He is willing to be admitted to the facility;
3. He consents to such admission voluntarily, without any element of force, duress, threat, or other form of coercion.

The consent must be made a part of the patient's record. In addition, a copy of the signed application and a written statement of the patient's rights under this title shall be given to the patient and to any other person designated by the patient.

A voluntary adult patient may also be admitted upon exercising substituted informed consent if the facility director or administrator "determines that the person is incapable of exercising an informed consent to the admission." SDCL § 27A-8-18.1. Substituted informed consent may be provided as follows:

1. By a guardian appointed by the circuit court;
2. By an attorney-in-fact named in a written durable power of attorney; or
3. By a next of kin.

Admission is provisional when substituted informed consent is given by next of kin. A patient may be admitted for fourteen (14) days after substitute informed consent is provided by next of kin, during which time the next of kin may file a petition for appointment as a guardian. If a petition is not filed, the patient shall be discharged upon the expiration of the fourteen-day admission period.

Additionally, the following conditions must be met prior to the voluntary admission of a patient:

1. After examination by a staff psychiatrist, the facility director or administrator must determine the applicant is clinically suitable for inpatient treatment. If a staff psychiatrist is unavailable, admission may be granted for one (1) working day pending an examination by a staff psychiatrist;
2. A less restrictive treatment alternative must be inappropriate or unavailable;
3. The potential patient must need and benefit from treatment which is available at the facility; and
4. The facility must be able to meet the person's medical needs.

Upon voluntary admission, at the end of the first six (6) months of hospitalization, and annually thereafter, the patient shall be given a written notice of release procedures. In addition, a copy of the written notice shall be given to one (1) other person designated by the patient. The patient shall acknowledge deliverance of the notice in writing, or an affidavit that he was so informed shall be attached to his record. In addition, detailed release procedures in simple and nontechnical language shall be permanently and prominently displayed in every psychiatric ward.

A patient who requests and qualifies for voluntary inpatient treatment shall be admitted only on a voluntary basis. Any person denied admission shall receive a referral to other facilities or programs that may be able to provide the treatment needed by the individual.

Statutes for voluntary committal are found at SDCL chapter 27A-8.

Termination of Treatment of Voluntarily Committed Adults

Thirty (30) days after the voluntary admission of a patient and every ninety (90) days thereafter, the facility director or center administrator shall review the patient's record and assess the need for continued admission. If continued admission is indicated, the facility director or center administrator shall consult with the patient and request from the patient an oral and written affirmation of his informed consent to continued admission. If a patient was admitted upon substituted informed consent and continues to be incapable of exercising an informed consent, a substitute informed consent to continuing admission (described above) must be obtained. The failure to affirm substitute informed consent to continued admission constitutes notice by the patient of the patient's intention to terminate inpatient treatment.

Generally, a voluntary patient has the right to terminate treatment at any time. Unless termination is a result of the evaluations described above, the patient must give written notice of his intention to terminate inpatient treatment. Upon informing a staff member of the inpatient psychiatric facility of the intention to terminate inpatient treatment, the facility shall promptly supply the patient with the required written form. However, if the facility director or center administrator or attending psychiatrist has probable cause to believe that the patient requires emergency intervention, the patient may be held for a period not to exceed twenty-four (24) hours, not including weekends or holidays. Emergency intervention is considered necessary (i) if the person has a severe mental illness, (ii) due to the severe mental illness the person is a danger to self or others or has a chronic disability, and (iii) the person needs and is likely to benefit from treatment.

If the patient qualifies for emergency intervention, the facility director or center administrator shall immediately advise the patient that the patient is being detained on a twenty-four (24) hour mental illness hold and explain the nature of such hold. The facility director or center administrator shall forthwith notify the chairman of the County Board of Mental Illness for the county where the facility is located or a local peace officer of the time of receipt of the notice to terminate, the time the hold was initiated, the circumstances necessitating the hold, and the time and place the director or administrator or attending psychiatrist will be available to file a petition asserting the need for immediate intervention and involuntary commitment. (See the discussion of involuntary commitment below for further details regarding the petition.)

A petition asserting the need for immediate intervention and involuntary commitment may also be filed when (i) the facility director, the center administrator, or attending psychiatrist has probable cause to believe that emergency intervention is necessary; and (ii) the patient is unwilling or unable to consent to treatment deemed necessary by the treating physician and there are no other appropriate treatments to which the patient is willing or able to consent; or (iii) the patient is unable or unwilling to affirm consent to continued admission.

Adults – Involuntary Commitment

Petition for Commitment

Any person eighteen years of age or older may petition the chairperson of the County Board of Mental Illness for the involuntary commitment of another. The petition must be directed to the board of the county in which the patient is found and include the following information:

1. A statement by the petitioner that the petitioner believes, on the basis of personal knowledge, that the patient is, as a result of severe mental illness, a danger to self or others;
2. The specific nature of the danger;
3. A summary of the information upon which the statement of danger is based;
4. The facts which caused the patient to come to the petitioner's attention;
5. The name, address, and signature of the petitioner and a statement of the petitioner's interest in the case (such as "attending or treating physician"); and
6. The name, address, age, marital status, and occupation of the patient, and the name and address of the patient's nearest relative (or parent or guardian if the patient is a minor).

After a petition is filed and examined by the chair of the County Board of Mental Illness, the patient may be apprehended and temporarily detained at a treatment facility. SDCL § 27A-10-1.

Additionally, after July 1, 2020, if a person fails to comply with the requirement of an outpatient or treatment order, and the person's treating physician or the of the outpatient treatment program, believe there is significant risk of deterioration in the person's condition, the program director or the treating physician may notify the chair of the county board of mental illness that issued the outpatient or treatment order, the chair of the board where the person is located, the office of the state's attorney of the county where the person is located, and the office of the state's attorney of the country where the person is subject to the outpatient commitment or treatment order, and recommend an appropriate alternate disposition.

Apprehension by Peace Officer

A law enforcement officer may apprehend any person the officer has probable cause to believe requires emergency intervention due to the patient's severe mental illness and as a result is a danger to self or others. Within twenty-four (24) hours of apprehension, the petition described above shall be completed for review. If, after exam by a mental health professional, it is determined that immediate intervention is necessary to protect the patient and others, a twenty-four (24) hour hold may be initiated for purposes of observation and emergency treatment.

Additionally, after July 1, 2017, if the circumstances giving rise to probable cause to believe the person is an imminent danger to himself or others occur in a domestic abuse situation, law enforcement will be authorized to initiate a mental illness hold. After the mental illness hold is released, the facility may only release the person to the custody of law enforcement.

Notification of Patient Rights

Immediately after the patient is taken into custody, he must be notified both orally and in writing of his right (i) to immediately contact the person of his choosing, (ii) to immediately contact and be represented by counsel, (iii) within twenty-four (24) hours to be examined by a qualified mental health professional designated by the chairperson of the county board, and (iv) to a hearing within five (5) days of the date of his apprehension. The person may, at any time, voluntarily admit himself to an inpatient psychiatric facility or other treatment program. Should the person express a desire to do so, the chairperson of the County Board of Mental Illness shall make the final determination whether such an admission is appropriate. SDCL § 27A-10-5.

Twenty-Four (24) Hour Exam

Within twenty-four (24) hours after apprehension of a person who allegedly requires emergency intervention, the chairperson of the County Mental Health Board must designate a qualified mental health professional to conduct an examination, including a mental status examination, of the patient. Prior to the examination, the mental health professional must identify himself or herself to the patient and explain the nature and purpose of the examination, including the fact that it is being performed to assist in the determination of whether custody should continue. The mental health professional must also advise the patient that the examination may be used as evidence in an involuntary commitment hearing.

Upon completion of the examination, the mental health professional must immediately report his or her findings to the chairperson of the County Board of Mental Illness. If the examination does not support a finding that the patient is a danger to self or others, the patient must be released. If the examination supports a finding that the person should be detained, however, then the chair of the county board may order that the person continue to be detained for a period of not longer than five (5) days pending a hearing. SDCL § 27A-10-7.1.

Involuntary Commitment Hearing – Psychotropic Medication

If it is determined the person should continue to be detained, a hearing shall take place within five (5) days after the person is taken into custody. The person has a right to be represented by counsel. A report of the mental health professional initial examination, along with answers to particular interrogatories required by law, shall be submitted to the board. Additionally, testimony by a qualified mental health professional independent of the petitioner must be taken at the hearing and must include evidence concerning (i) 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; and (ii) available alternatives that were investigated, and why alternatives are not deemed appropriate. Upon completion of the hearing, the County Board of Mental Illness may order the involuntary commitment of the person for an initial period not to exceed ninety (90) days if it is determined (i) that the person has a severe mental illness and as a result poses a danger to self or others, (ii) that the person is likely to benefit from treatment, and (iii) that treatment is the least restrictive alternative. SDCL §27A-10-9.1.

Prior to the administration of psychotropic medication, electroconvulsive, or other such treatment, the County Mental Health Board must conduct a hearing. Additionally, a hearing is necessary to treat a co-occurring substance use disorder. SDCL § 27A-10-9.2.

Review After Involuntary Commitment Order

A person subject to an involuntary commitment order after the hearing process described above is entitled to periodic reviews. Within ninety (90) days after the involuntary commitment, the County Board of Mental Illness must conduct a review hearing. The purpose of the review hearing is to determine whether the person has a continuing severe mental illness and as a result poses a danger to himself or others, whether the person is likely to continue to benefit from treatment, and whether treatment is the least restrictive alternative.

If the conditions are met, the board may order the continued involuntary commitment of the person for up to six (6) months. After six (6) months, another review hearing must be held. If the board issues another order of continued involuntary commitment, the next review shall be held within six (6) months. If the second six-month review justifies continued commitment, the board may order continued involuntary commitment for up to twelve (12) months.

Subsequent reviews shall be conducted within each twelve (12) months thereafter that the person remains under commitment.

The statutes governing involuntary commitment of adults can be found in SDCL chapter 27A-10.

Voluntary Commitment by Parent or Guardian - Minors

An un-emancipated or unmarried minor may be admitted to an inpatient psychiatric facility upon application of a guardian or legal custodian (including a parent) or upon the recommendation of a qualified mental health professional. Prior to an application for the involuntary commitment of a minor, the parent, guardian, or other legal custodian and minor must be given an explanation of the nature of inpatient treatment, including 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 under applicable law, including the minor's right to object to admission, and the right to view and copy records related to the proposed commitment. If committed, minors may not be placed with adult patients, except that a minor may be placed with adult patients for acute treatment and evaluation, and then only for a period not to exceed seven (7) working days.

Admission of a minor is proper if all of the following criteria are met:

1. The minor has a serious emotional disturbance, defined as the exhibition of 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 Manual of Mental Disorders or coding in ICD (2015), has demonstrated a need for one or more special care services, in addition to mental health, and has problems with a demonstrated or expected longevity of at least one (1) year or has an impairment of short duration and high severity.
2. The minor displays one (1) or more of the following:
 - a. Exhibits seriously impaired contact with reality and severely impaired social, academic, and self-care functioning, whose thinking is frequently confused, whose behavior may be grossly inappropriate and bizarre, and whose emotional reactions are frequently inappropriate at the situation;
 - b. Manifests long-term behavior problems or suicidal behavior; or
 - c. Suffers from severe anxiety, depression, irrational fears, and concerns whose symptoms may be exhibited as serious eating and sleeping disturbances, extreme sadness of suicidal proportion, maladaptive dependence on parents, or avoidance of non-familial social contact;
3. The minor needs and is likely to benefit from inpatient treatment at the facility;
4. The facility has determined that:
 - a. 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;
 - b. Such alternatives have failed to meet the treatment needs of the minor; or
 - c. 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; and
5. The parent has exercised an informed consent to inpatient treatment of the minor. SDCL § 27A-15-5.

If the application criteria are met, the facility director or center administrator may immediately admit the minor. Upon admission, each minor shall have a psychiatric evaluation within forty-eight (48) hours and a clinical evaluation within twenty-four (24) hours. Upon completion of the psychiatric and clinical evaluation, the facility director or center administrator may authorize continued admission of the minor to the inpatient psychiatric facility for a period not to exceed forty-five (45) days, but only upon written findings by the evaluating psychiatrist which reaffirm the need for the initial admission. A copy of the written psychiatric and clinical evaluation shall be immediately delivered to the parent, guardian, or other legal custodian upon request. The written psychiatric and clinical evaluation and all records and relevant information shall become part of the minor's medical records.

Within ten (10) days after admission, a written, comprehensive individualized treatment plan must be developed and implemented. The plan must be developed by appropriate, qualified mental health professionals, including a psychiatrist, and must be explained to the minor and the parent. The minor must also receive educational programming consistent with applicable federal and state law. The treatment plan must be reviewed at least every thirty (30) days. SDCL §27A-15-21, SDCL § 27A-15-22, and SDCL § 27A-15-23. A parent who requested admission of a minor may also demand immediate discharge of the minor. Upon notification of the intent to discharge the minor, the facility shall promptly supply the parent with the required written form.

Review - Continued Treatment

Within forty-five (45) days after the admission of a minor by parent, guardian, or other legal custodian, and at least every forty-five (45) days thereafter, a psychiatric evaluation of the minor shall be completed by a psychiatrist to assess the need for continued inpatient treatment. If the psychiatrist determines that the admission criteria are no longer met, the minor shall be immediately discharged to the custody of the minor's parent, guardian, or other legal custodian. If the psychiatrist concludes that the admission criteria continue to be met, the psychiatrist shall so state the reasons in written findings which, along with the clinical evaluation, shall become part of the minor's medical records. The facility director or center administrator shall immediately inform the parent, guardian, or other legal custodian who consented to admission of the right to request an independent clinical evaluation.

The facility director or center administrator must also ask the parent, guardian, or other legal custodian for an oral and written affirmation of informed consent to inpatient treatment of the minor. Affirmation of the request to the parent, guardian, or other legal custodian, and the parent's, guardian's, or other legal custodian's informed consent shall be in writing and be made part of the minor's medical records. SDCL § 27A-15-21.

Objection to Continued Treatment

The minor admitted to treatment, or an adult acting on the minor's behalf, may make a written objection to continued treatment. The written objection must be provided by the facility to the County Board of Mental Illness. The facility shall immediately notify the minor (i) of the right to immediately contact a person of the minor's choosing, (ii) of the right to immediately contact and be represented by counsel; (iii) that the minor will be examined by a mental health professional within twenty-four (24) hours to determine whether inpatient treatment should continue, and (iv) of the right to an independent examination and to a hearing. The facility may discharge the minor prior to the hearing if the minor no longer meets the requirements for admission. Within twenty-four (24) hours of receipt of the objection, an independent clinical evaluation of the minor must be performed, the findings of which must be reported to the chairman of the County Board of Mental Illness.

Within five (5) days after a written objection to the minor's continued treatment, the county board must hold a hearing regarding the appropriateness of the continued treatment of the minor. The testimony of a mental health professional regarding the availability and appropriateness of treatment alternatives, including programs other than inpatient treatment, must be provided at the hearing. The testimony shall also include what alternatives are available and have been investigated and why they are not appropriate. If alternatives are appropriate, continued inpatient treatment may not be authorized. If at any time prior to the hearing the chairman of the County Board of Mental Illness finds the admission criteria are not met, he or she must order the immediate discharge of the minor to the custody of the minor's parents or legal guardian. Statutes governing voluntary commitment of a minor by parent or guardian are found at SDCL chapter 27A-15.

Involuntary Commitment - Minors

A minor may be involuntarily committed utilizing the same basic procedures, criteria, and rights provided for adults. To be eligible a minor must meet all of the following criteria:

1. The minor has a serious emotional disturbance, defined as the exhibition of 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, and has a diagnosed mental disorder, and has demonstrated a need for one (1) or more special care services, in addition to mental health and has problems with a demonstrated or expected longevity of at least one (1) year or has an impairment of short duration and high severity.
2. The minor displays one or more of the following conditions:
 - a. Exhibits seriously impaired contact with reality and severely impaired social, academic, and self-care functioning, whose thinking is frequently confused, whose behavior may be grossly inappropriate and bizarre, and whose emotional reactions are frequently inappropriate at the situation;
 - b. Manifests long-term behavior problems or suicidal behavior; or
 - c. Suffers from severe anxiety, depression, irrational fears, and concerns whose symptoms may be exhibited as serious eating and sleeping disturbances, extreme sadness of suicidal proportion, maladaptive dependence on parents, or avoidance of non-familial social contact;
3. As a result of being an individual with a serious emotional disturbance, the minor is a danger to self or others. This includes a determination regarding the ability of the minor attend to basic human needs that is based upon the age of the minor and reasonable and appropriate expectation of the abilities of the minor or such age to attend to the needs; and
4. The minor needs and is likely to benefit from inpatient treatment at the facility.

Delinquent behavior alone does not constitute “severe mental illness.” Just as with the voluntary commitment, a detained minor must be kept separate from adults.

The petition necessary for the involuntary commitment of a minor is the same as for adults. Apprehension evaluation, hearing, and the review process must also be performed in the same manner as for the involuntary commitment of adults.

Statutes governing involuntary commitment of a minor are found at SDCL § 27A-15-28, *et seq.*

Treatment Methods - Minors

During treatment, no intrusive or experimental procedures, including convulsive or shock therapy or electric shock, may be utilized absent court order. The oral and written informed consent of the parent and minor, if over age sixteen, along with a treating psychiatrist's opinion, must be obtained to petition the court for such an order. Psychotropic medications may only be administered if they are the least restrictive alternative and the parent has given oral and written informed consent. If the minor is over age sixteen, the minor's consent must also be obtained. Absent consent, treatment with psychotropic medications may only take place pursuant to court order.

HIPAA Privacy Rule Considerations

The HIPAA mandated privacy rules specifically authorize testimony or other disclosures in response to an order of a court or administrative agency, provided that the information provided is limited to that expressly authorized or requested by the order of the court or as part of an administrative proceeding. 45 C.F.R. §164.512. As a result, situations where the patient (adult or minor) is a serious and imminent threat to the patient or others and involuntary commitment to a mental health treatment facility is necessary, the HIPAA mandated privacy rules allow the practitioner to provide relevant information or sign a petition for involuntary commitment.

Conclusion

Committing a person for mental illness deprives them of their freedom. While these statutes set up complex procedures, it is required to ensure every person is secure in their right to due process before being detained. Therefore, these laws attempt to balance the patient's rights with the need for commitment and treatment, even when the person cannot recognize their need or consent to treatment.



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