## **Table of Contents**

**State/Territory Name: South Dakota** 

State Plan Amendment (SPA) #: 19-0011

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Companion Letter
- 3) CMS 179 Form
- 4) Approved SPA Pages

## DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services 601 E. 12th St., Room 355 Kansas City, Missouri 64106



## Medicaid and CHIP Operations Group

March 18, 2021

William Snyder, Medicaid Director Department of Social Services Richard F. Kneip Building 700 Governors Drive Pierre, SD 57501-2291

RE: TN 19-0011

Dear Mr. Snyder:

The Centers for Medicare and Medicaid Services (CMS) has completed its review of South Dakota's State Plan Amendment (SPA) Transmittal #19-0011, submitted on December 20, 2019. This SPA clarifies that substance use disorder (SUD) early intervention services provided by a SUD agency are covered and SUD treatment services may be provided in an institution for mental disease (IMD) in accordance with Section 5052 of Public Law 115-271.

CMS approved SPA #19-0011 on March 17, 2021, with an effective date of November 1, 2019, as requested by the state. Enclosed is a copy of the CMS-179 summary form, as well as the approved pages for incorporation into the South Dakota State Plan.

During the course of review of the SPA, CMS also reviewed "collateral contacts" that are included under the rehabilitative services benefit. These items are described on the same pages of the amended changes. Based on our same page review, CMS has determined that more information about collateral contacts is needed in order to ensure compliance with Medicaid statute and regulations as outlined in a companion letter issued with this approval.

If you have any questions regarding this amendment, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

Digitally signed by Ruth A. Hughes Date: 2021.03.18 10:55:55 -05'00'

Ruth A. Hughes, Acting Director Division of Program Operations

#### **Enclosures**

cc: Brenda Tidball-Zeltinger, Deputy Secretary, South Dakota Medicaid Matthew Ballard, Deputy Director, South Dakota Medicaid Mandy Strom, CMS North Branch-Division of Program Operations

## DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services 601 E. 12th St., Room 355 Kansas City, Missouri 64106



## Medicaid and CHIP Operations Group

March 18, 2021

William Snyder, Medicaid Director Department of Social Services Richard F. Kneip Building 700 Governors Drive Pierre, SD 57501-2291

RE: TN 19-0011 Companion letter

Dear Mr. Snyder:

This letter is being sent as a companion to our approval of South Dakota state plan amendment (SPA) 19-0011. The SPA clarifies that early intervention services provided by a substance use disorder agency are covered and substance use disorder services may be provided in an institution for mental disease in accordance with Section 5052 of Public Law 115-271.

Our review of SPA 19-0011 included a review of "collateral contacts" that are included under the rehabilitative services benefit. These items are described on the same pages in which the state added modifications to the SPA. Regulations at 42 CFR 430.10 require that the state plan be a comprehensive written statement describing the nature and scope of the state's Medicaid program and that it contain all information necessary for CMS to determine whether the plan can be approved to serve as the basis for Federal financial participation (FFP) in the state program. Based on our review, CMS has determined that more information about collateral contacts (Supplement to Attachment 3.1-A, Item 13d, pages 31a – 31c) is needed in order to ensure that the state is in compliance with Medicaid statute and regulations.

To that end, CMS welcomes the opportunity to work with you and your staff to discuss options for resolving the concerns outlined below:

#### **Collateral Contacts**

The SPA describes "collateral contacts" as a component service of "outpatient treatment services" and "intensive outpatient treatment services" for Substance Use Disorder Agency Services. However, collateral contacts are not considered Medicaid coverable services pursuant to section 1905(a) of the Social Security Act because they are not "care and services" furnished to Medicaid eligible individuals. The "collateral" can participate in a service but only if the service is Medicaid coverable as medical assistance and the service is for the direct benefit of the beneficiary. For example, the activity of gathering information from a collateral is not covered medical assistance. However, development of a treatment plan for the beneficiary may involve gathering information from a collateral. In this latter instance, the service is for the direct benefit of the beneficiary, even

though a collateral was involved. Other examples of services that include the participation of a "collateral" in a service for the benefit of the recipient are family therapy or family psychoeducation. In such cases, the general expectation is that the beneficiary would be present for the service with the collateral; however, there may be some treatment sessions where the clinician's judgment is not to include the beneficiary. While the presence of a beneficiary is an important factor for coverage, the critical issue is that the service is a coverable 1905(a) service for the direct benefit of the beneficiary and not the collateral.

The SPA description of "collateral contacts" appears to set forth three purposes for these contacts — to seek information from collaterals for treatment planning; to educate or train collaterals in order that they can assist a beneficiary; and to refer collaterals to other needed services. Specifically, the SPA indicates:

<u>Collateral Contacts</u>: Telephone or face-to-face contact with an individual other than the identified recipient to plan appropriate treatment, assist an individual so they can respond therapeutically to the recipient's substance abuse problem, or to refer the recipient, family, or both, to other necessary community supports.

The first purpose, seeking information from a collateral, could be accounted for in the rate paid for a covered Medicaid service for the beneficiary. To accomplish this, the state needs to include a service description in the state plan for a service such as "development of a treatment plan" and include in the service description language such as, "Collateral contacts are for the purpose of seeking information to assist in the development of the beneficiary's treatment plan." The reimbursement page in the state plan would need to account for this activity in the rate paid for the covered service.

The state's other two purposes for the collateral contacts actually propose that the collaterals receive a service or participate in a service, albeit for the direct benefit of the beneficiary. As noted above, participation by a collateral in a covered service can be accounted for in the rate paid for a covered service for the beneficiary.

When a state proposes that a collateral receive a service or participate in a service, it is important that the state clarify that the service is delivered to the beneficiary and the collateral together and that the collateral's participation in the service is for the direct benefit of the beneficiary. The SPA, as written, does not include such a clarification.

Accordingly, the SPA would need to be revised to identify the covered service or services for the beneficiary in which a collateral would participate, and include an assurance that the service is for the direct benefit of the beneficiary. Again, a service description would need to be included in the SPA. The service description would also need to include language such as, "The participation of the collaterals in the service is for the purpose of treating the beneficiary's condition and is for the direct benefit of the beneficiary."

The State has 90 days from the date of this letter, to address the issues described above. Within that period the State may submit a SPA to address the inconsistencies or submit a Corrective Action Plan describing how the State will resolve the issued identified above in a timely manner. Failure to respond will result in the initiation of a formal compliance process. During the 90 days, CMS will provide any required technical assistance.

If you have any questions regarding this this letter, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

Digitally signed by Ruth A. Hughes Date: 2021.03.18 10:56:39 -05'00'

Ruth A. Hughes, Acting Director Division of Program Operations

## Enclosures

cc: Brenda Tidball-Zeltinger, Deputy Secretary, South Dakota Medicaid Matthew Ballard, Deputy Director, South Dakota Medicaid Mandy Strom, North Branch-Division of Program Operations Revision: HCFA-PM-91-8 (MB) ATTACHMENT 2.6-A OCTOBER 1991 Page 3a

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: SOUTH DAKOTA

**ELIGIBILITY CONDITIONS AND REQUIREMENTS** 

<u>Citation(s)</u> <u>Condition or Requirement</u>

(A) General Conditions of Eligibility (continued)

42 CFR 433.145 Section 1912 of the Act 5. Is required, as a condition of eligibility, to assign his or her own rights, or the rights of any other person who is eligible for Medicaid and on whose behalf the individual has legal authority to execute an assignment, to medical support and payments for medical care from any third part. (Medical support is defined as support specified as being for medical care by a court or administrative order.)

#### SUPPLEMENT TO ATTACHMENT 3.1-A

2. Substance use disorder agencies accredited by the single state agency for substance abuse. Services are covered for an individual for whom an integrated assessment has been prepared that includes a primary diagnosis of substance use disorder. The agency must prepare an individual treatment plan as a result of the integrated assessment. Crisis intervention services do not require an integrated assessment or individual treatment plan.

#### Substance Use Disorder Agency Services

- a. <u>Integrated assessment</u>. The integrated assessment includes both functional and diagnostic components. The assessment shall establish the historical development and dysfunctional nature of the recipient's alcohol and drug abuse or dependence and shall assess the recipient's treatment needs.
- b. <u>Crisis intervention services</u>. Crisis intervention services are provided to a recipient in a crisis situation related to the recipient's use of substances, including crisis situations where co-occurring mental health symptoms may be present. The focus of the intervention is to restore the recipient to the level of functioning before the crisis or provide means to place the recipient into a secure environment.
- c. <u>Early intervention services</u>. Nonresidential services provided to individuals that may have substance use related problems, but do not meet the diagnostic criteria for a substance use disorder. The following services at a minimum must be included:
  - i. Initial screening and planning within 48 hours of initial contact.
  - ii. Crisis intervention services as described above in item b.
  - iii. <u>Individual or family counseling</u> regarding substance abuse and dependence. Family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - iv. <u>Discharge planning services</u> to include continued care planning and counseling, referral to and coordination of care with other resources that will assist a client's recovery, including educational, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services which includes the availability of tuberculosisand human immunodeficiency virus services.
- d. <u>Outpatient treatment services</u> provided by an accredited nonresidential program to a recipient or a person harmfully affected by alcohol or other drugs through regularly scheduled counseling services. The following services are covered:
  - i. <u>Individual, group and family counseling</u> regarding substance abuse and dependence. Group and family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - ii. <u>Discharge planning services</u> to include continued care planning and counseling, referral to and coordination of care with other resources that will assist a client's recovery, including educational, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services which includes the availability of tuberculosis and human immunodeficiency virus services.
  - iii. <u>Collateral Contacts</u> which is a telephone or face-to-face contact with an individual other than the identified recipient in order to plan appropriate treatment, to assist an individual so the individual can respond therapeutically to the recipient's substance abuse problem, or to refer the recipient, family, or both, to other necessary community supports.
- e. <u>Intensive outpatient treatment services</u> are provided by an accredited nonresidential program providing services to a recipient in a clearly defined, structured, intensive outpatient treatment program on a regularly scheduled basis. The following services are covered:
  - i. <u>Individual, group, and family counseling</u> regarding alcohol and drug abuse and dependence. Group and family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - ii. <u>Discharge planning</u> which must include continued care planning and counseling, referral to and coordination of care with other resources that will assist a recipient's recovery, including education, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services to include the availability of tuberculosis and human immunodeficiency virus services.

#### SUPPLEMENT TO ATTACHMENT 3.1-A

- iii. <u>Collateral Contacts</u> which is a telephone or face-to-face contact with an individual other than the identified recipient in order to plan appropriate treatment, to assist an individual so the individual can respond therapeutically to the recipient's substance abuse problem, or to refer the recipient, family, or both, to other necessary community supports.
- f. <u>Day treatment services</u> are provided by an accredited program providing services to a recipient in a clearly defined, structured, intensive treatment program. The following services are covered:
  - i. <u>Individual, group, and family counseling</u> regarding alcohol and drug abuse and dependence. Group and family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - ii. <u>Discharge planning</u> which must include continued care planning and counseling, referral to and coordination of care with other resources that will assist a recipient's recovery, including education, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services to include the availability of tuberculosis and human immunodeficiency virus services.
- g. <u>Clinically-managed low-intensity residential treatment services</u> provided by an accredited residential program providing services to a recipient in a structured environment designed to aid re-entry into the community. Clinically-managed, low-intensity residential treatment programs are not institutions for mental diseases as described in 42 CFR 435.1010. The following services are covered:
  - i. <u>Individual, group, and family counseling</u> regarding alcohol and drug abuse and dependence. Group and family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - ii. <u>Discharge planning</u> to continued care planning and counseling, referral to and coordination of care with other resources that will assist a recipient's recovery, including education, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services to include the availability of tuberculosis and human immunodeficiency virus services.
- h. <u>Medically-monitored intensive inpatient treatment programs</u> are an accredited residential program providing services to a recipient in a structured environment. These medically-monitored intensive inpatient treatment program may be provided to eligible individuals in an eligible IMD as allowed in Attachment 3.1-M. The following services are covered:
  - i. <u>Individual, group, and family counseling</u> regarding alcohol and drug abuse and dependence. Group and family counseling services to the recipient's family and significant others is for the direct benefit of the recipient, in accordance with the recipient's needs and treatment goals identified in the recipient's treatment plan, and for the purpose of assisting in the recipient's recovery.
  - ii. <u>Discharge planning</u> to include continued care planning and counseling, referral to and coordination of care with other resources that will assist a recipient's recovery, including education, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services to include the availability of tuberculosis and human immunodeficiency virus services.

#### Substance Use Disorder Agencies Non-Covered Services

The following services are non-covered for substance use disorder agencies:

- a. Treatment for a diagnosis of substance use disorder that exceeds the limits established by the division, unless prior authorization is approved by the division;
- b. Out-of-state substance use disorder treatment unless the division determines that appropriate in- state treatment is not available;
- c. Treatment for a gambling disorder;
- d. Room and board for residential services;
- e. Substance use disorder treatment before the integrated assessment is completed;
- f. Substance use disorder treatment after 30 days if the treatment plan has not been completed;
- g. Substance use disorder treatment if a required review has not been completed;
- h. Court appearances, staffing sessions, or treatment team appearances; and
- i. Substance use disorder services provided to a recipient incarcerated in a correctional facility.

#### Substance Use Disorder Agencies Practitioners and Qualifications

All agency staff providing addiction counseling must meet the standards for addiction counselors or addiction counselor trainees in accordance with South Dakota Board of Addiction and Prevention Professionals requirements. Each agency must have a clinical supervisor that supervises clinical services. Clinical supervisors must be licensed as either a certified addiction counselor or licensed addiction counselor. The table below lists the services each provider can provide, provider qualifications, and supervisory requirements:

Practitioner Type	Services Furnished	Qualifications	Supervisory Requirements
Licensed Addiction Counselor	<ul> <li>Integrated assessment;</li> <li>Crisis intervention;</li> <li>Early intervention services;</li> <li>Individual, group, and family counseling;</li> <li>Discharge planning; and</li> <li>Collateral contacts.</li> </ul>	Must meet be licensed as a Licensed Addiction Counselor by the South Dakota Board of Addiction and Prevention Professionals.	None
Certified Addiction Counselor	<ul> <li>Integrated assessment;</li> <li>Crisis intervention;</li> <li>Early intervention services;</li> <li>Individual, group, and family counseling;</li> <li>Discharge planning; and</li> <li>Collateral contacts.</li> </ul>	Must meet be certified as a Certified Addiction Counselor by the South Dakota Board of Addiction and Prevention Professionals.	None
Addiction Counselor Trainee	<ul> <li>Integrated assessment;</li> <li>Crisis intervention;</li> <li>Early intervention services;</li> <li>Individual, group, and family counseling;</li> <li>Discharge planning; and</li> <li>Collateral contacts.</li> </ul>	Must meet be recognized as an Addiction Counselor Trainee by the South Dakota Board of Addiction and Prevention Professionals.	Must be supervised by a certified addiction counselor or licensed addiction counselor.

## State/Territory: South Dakota

State Option to Provide Medicaid Coverage for Certain Individuals with Substance Use Disorders who are Patients in Certain Institutions for Mental Diseases

South Dakota Medicaid covers substance use disorder treatment services provided to eligible individuals in an eligible institution for mental disease (IMD) in accordance with Section 1915(I) of the Social Security Act.

#### Eligible Individuals

Eligibility is limited to Medicaid recipients age 21 through 64 who have at least one substance use disorder and reside in an eligible IMD primarily to receive withdrawal management or substance use disorder treatment services.

## General Assurances

The State provides the following assurances regarding the scope of IMD services:

- 1. Coverage is limited to services provided during the period beginning October 1, 2019 and ending September 30, 2023.
- 2. Coverage is limited to a maximum of 30 days per 12-month period per eligible individual from the date an eligible individual is first admitted to an eligible IMD.

#### IMD Assurances

The State provides the following assurances regarding eligible IMDs:

- Eligible IMDs follow reliable evidence-based practices and offer at least two forms of medication-assisted treatment (MAT) onsite, including one antagonist and one partial agonist for opioid use disorder. The State ensures IMDs meet these requirements through standards established by the State's Single State Agency for Substance Abuse Services for providers.
- 2. Eligible IMDs provide services at lower levels of clinical intensity or establish relationships with Medicaid-enrolled providers offering services at lower levels of care. The State ensures IMDs meet these requirements through standards established by the State's Single State Agency for Substance Abuse Services for providers.

#### Evidence-Based Clinical Screening Assurance

The State provides the following assurance regarding evidence-based clinical screenings:

 Eligible individuals receive an appropriate evidence-based clinical screening prior to receiving services in an eligible IMD, including initial and periodic reassessments to determine the appropriate level of care, length of stay, and setting for each individual. Eligible IMDs are required to perform an integrated assessment. The integrated assessment includes both functional and diagnostic components. The assessment shall establish the historical development and dysfunctional nature of the recipient's alcohol and drug abuse or dependence and shall assess the recipient's treatment needs.

## Continuum of Services Assurance

The State provides the following assurances regarding the continuum of services:

- 1. South Dakota Medicaid covers the following outpatient levels of care under the state plan:
  - a. Early intervention services;
  - b. Outpatient treatment services;
  - c. Intensive outpatient treatment services; and
  - d. Day treatment services (also referred to as partial hospitalization).
- 2. South Dakota Medicaid covers the following residential and inpatient levels of care under the state plan:
  - a. Clinically-managed low-intensity residential treatment services; and
  - b. Medically-monitored intensive inpatient treatment services.

### Transition of Care Assurances

The State provides the following assurance regarding transition of care:

1. Recipients residing in an IMD are required to be transitioned to the community upon discharge. Eligible IMDs are required to provide discharge planning services. Discharge planning services must include continued care planning and counseling, referral to and coordination of care with other resources that will assist a recipient's recovery, including education, vocational, medical, legal, social, mental health, employment, and other related alcohol and drug services, and referral to and coordination of medical services to include the availability of tuberculosis and human immunodeficiency virus services.

# ATTACHMENT 4.19-B INTRODUCTION

Payment rates for the services listed below are effective for services provided on or after the corresponding date. Fee schedules are published on the Department's website at <a href="http://dss.sd.gov/medicaid/providers/feeschedules/">http://dss.sd.gov/medicaid/providers/feeschedules/</a>. Effective dates listed on the introductory page supersede the effective dates listed elsewhere in Attachment 4.19-B. Unless otherwise noted in the referenced state plan pages, reimbursement rates are the same for both governmental and private providers.

Service	Attachment	Effective Date
Early and Periodic Screening,	Attachment 4.19-B, Page 4	April 1, 2019
Diagnosis, and Treatment		
(EPSDT) Physician Services	Attachment 4 10 P. Dogo 6	April 1 2010
	Attachment 4.19-B, Page 6	April 1, 2019
Optometrist Services	Attachment 4.19-B, Page 9	April 1, 2019
Chiropractic Services	Attachment 4.19-B, Page 10	April 1, 2019
Independent Mental Health Practitioners	Attachment 4.19-B, Page 11	April 1, 2019
Nutritionist and Dietician Services	Attachment 4.19-B, Page 11	April 1, 2019
Home Health Services	Attachment 4.19-B, Page 12	April 1, 2019
Durable Medical Equipment	Attachment 4.19-B, Page 13	April 1, 2019
Clinic Services	Attachment 4.19-B, Page 15	April 1, 2019
Dental Services	Attachment 4.19-B, Page 16	April 1, 2019
Physical Therapy	Attachment 4.19-B, Page 17	April 1, 2019
Occupational Therapy	Attachment 4.19-B, Page 18	April 1, 2019
Speech, Hearing, or Language Disorder Services	Attachment 4.19-B, Page 19	April 1, 2019
Dentures	Attachment 4.19-B, Page 21	April 1, 2019
Prosthetic Devices	Attachment 4.19-B, Page 22	April 1, 2019
Eyeglasses	Attachment 4.19-B, Page 23	April 1, 2019
Diabetes Self-Management Training	Attachment 4.19-B, Page 26	April 1, 2019
Community Health Workers	Attachment 4.19-B, Page 26	April 1, 2019
Community Mental Health Centers	Attachment 4.19-B, Page 26	April 1, 2019
Substance Use Disorder Agencies	Attachment 4.19-B, Page 26	November 1, 2019*
Nurse Midwife Services	Attachment 4.19-B, Page 31	April 1, 2019
Transportation	Attachment 4.19-B, Page 38	April 1, 2019
Personal Care Services	Attachment 4.19-B, Page 38	April 1, 2019
Freestanding Birth Centers	Attachment 4.19-B, Page 39	April 1, 2019
Professional Services Provided in a Freestanding Birth Center	Attachment 4.19-B, Page 39	April 1, 2019

<sup>\*</sup>Room and board is not included in these rates.