South Dakota Health Professionals Assistance Program
Program Service Committee
PUBLIC MEETING
Thursday, January 19, 2017
12:00 PM (CST)/11:00 AM (MST)

To participate by:
DDN Sites: Pierre: DDN-Pierre/Cap A, 500 E. Capitol, Room B12

In person: Board Conference Room, 101 N. Main Avenue, Suite 215 (on 2nd Floor), Sioux Falls, SD 57104

Purpose: pursuant to SDCL 36-2A-3 Program service committee--Duties. The participating boards shall establish a program service committee consisting of one representative appointed by each participating board from its board membership or staff. The committee shall meet at least annually or as often as necessary to transact its business. The duties of the committee include: (7) Conducting an annual evaluation of the health professionals assistance program. We will need an executive session to discuss contract per SDCL 1-25-2 (1), (3) and (4).

Materials for this meeting can be accessed via the South Dakota Boards and Commissions Portal at: http://boardsandcommissions.sd.gov/ and a hard copy is available at 101 N. Main Ave. Ste. 301 Sioux Falls SD 57104

**Agenda**

1. Call to Order & Roll Call of the Health Professionals Assistance Program Service Committee: Boards of:
   a. Dentistry
   b. Medical and Osteopathic Examiners
   c. Nursing
   d. Pharmacy
2. Approval of Agenda
3. Review in general SDCL 36-2A and specifically SDCL 36-2A-3
4. Minutes
5. Executive session to discuss contract per SDCL 1-25-2 (1), (3) and (4)
7. Determine next meeting date
8. Adjournment
South Dakota Health Professionals Assistance Program
Program Service Committee
Unapproved Draft Minutes
Wednesday, December 14, 2016 1:00 PM (CST)/12:00 PM (MST)

1. Pierre - Public DDN site: CAP A, 500 E. Capitol Ave., Room B12, Pierre, SD 57105
2. Board Conference Room: 101 N. Main Ave., Suite 215, Sioux Falls, SD 57104

Unapproved Draft Minutes
Wednesday, December 14, 2016 – 1:00 pm (CST)

Program Service Committee Members:
   Present: Gloria Damgaard; Margaret Hansen; Kari Shanard-Koenders; Brittany Novotny

Medical and Osteopathic Examiners Staff:
   Present: Tyler Klatt

Counsel:
   Present: Assistant AG Steven Blair (Medical and Osteopathic Examiners), Assistant AG William Golden (Medical and Osteopathic Examiners), Shelley Munson (Board of Nursing), Doug Barnett (Board of Pharmacy)

Attendees:
   Amanda McKnelly (Midwest Health Management Services, LLC.), Maria Eining (Midwest Health Management Services, LLC.), Alex Hagen

Margaret Hansen called the meeting to order at 1:00 PM and a quorum was established.

A motion to approve the agenda was ratified by voice vote (Shanard-Koenders, Damgaard/unanimous).

Executive session pursuant to SDCL1-25-2(3) to consult with legal counsel (Shanard-Koenders, Damgaard/unanimous) was entered at 1:10 pm and the public meeting resumed at 2:15 pm.

A motion to schedule another program service committee meeting was ratified by voice vote (Shanard-Koenders, Hansen/unanimous).

There being no further business, the meeting was adjourned at 2:25 pm.
CHAPTER 36-2A  
HEALTH PROFESSIONALS ASSISTANCE PROGRAM  

36-2A-1 Definitions.  
36-2A-2 Joint health professionals assistance program.  
36-2A-3 Program service committee--Duties.  
36-2A-4 Evaluation committees.  
36-2A-5 Duties of evaluation committee.  
36-2A-6 Application to program--Admission evaluation.  
36-2A-7 Eligibility for program.  
36-2A-8 Denial of admission to program.  
36-2A-9 Program participation components.  
36-2A-10 Fees and costs.  
36-2A-12 Confidentiality of program participants' records.  
36-2A-13 Immunity from liability for reports and actions related to duties.  
36-2A-14 Promulgation of rules.  
36-2A-15 Determination of expenses to be borne by participating boards.  

36-2A-1. Definitions. Terms used in this chapter mean:  

1) "Health professionals assistance program," a confidential program designed to monitor the treatment and continuing care of any regulated health professional who may be unable to practice with reasonable skill and safety, if the professional's mental health issues or substance use disorder is not appropriately managed;  

2) "Impaired," the inability of a licensee to practice his or her health-related profession with reasonable skill and safety as a result of mental health issues or substance use related disorders;  

3) "Participating board," a health-related licensing board listed in Title 36 which agrees with other health-related licensing boards to jointly conduct a health professionals assistance program. The program is available to participating health-related licensing boards in conjunction with, or as an alternative to, other sanctions which a health-related board may impose upon its licensees pursuant to disciplinary actions within its jurisdiction;  

4) "Program personnel," persons or contracted entities employed by, or contracted with, the health professionals assistance program service committee to provide services for the health professionals assistance program.  


36-2A-2. Joint health professionals assistance program. Health-related licensing boards listed under Title 36 may jointly conduct a health professionals assistance program to protect the
public from impaired persons regulated by the boards. The health professionals assistance program does not affect a board's authority to discipline violators of a board's practice act. 

**Source:** SL 1996, ch 227, § 2; SL 2013, ch 171, § 2.

36-2A-3. Program service committee--Duties. The participating boards shall establish a program service committee consisting of one representative appointed by each participating board from its board membership or staff. The committee shall meet at least annually or as often as necessary to transact its business. The duties of the committee include:

(1) Establishing the annual health professionals assistance program budget and the pro rata share of program expenses to be borne by each participating board;

(2) Determining the qualifications, duties, and compensation for program personnel;

(3) Hiring program personnel or contracting with entities;

(4) Approving policies and procedures for the health professionals assistance program and providing guidance to the program personnel;

(5) Annually approving members of the health professionals assistance program evaluation committees as outlined in this chapter;

(6) Approving treatment facilities and services to which health professionals assistance program participants may be referred; and

(7) Conducting an annual evaluation of the health professionals assistance program.

**Source:** SL 1996, ch 227, § 3; SL 2013, ch 171, § 3.

36-2A-4. Evaluation committees. The health professionals assistance program service committee shall establish one or more evaluation committees. Each evaluation committee shall include one actively practicing licensed health care professional with demonstrated expertise in the field of mental health or substance use disorder from each health-related profession participating in the health professionals assistance program.

**Source:** SL 1996, ch 227, § 4; SL 2013, ch 171, § 4.

36-2A-5. Duties of evaluation committee. Duties of an evaluation committee include:

(1) Evaluate each applicant for admission to the health professionals assistance program according to criteria established pursuant to § 36-2A-14;

(2) Develop individual participation agreements for health professionals assistance program participants;
(3) Evaluation of any program participant for discharge according to criteria established pursuant to § 36-2A-14;

(4) Review participant progress and recommend amendments for participation agreements as indicated;

(5) Maintain the confidentiality of the names, identities, and treatments of applicants and participants considered by the committees; and

(6) Report any applicant who has been denied admission to the health professionals assistance program to the applicable participating licensing board.


36-2A-6. Application to program--Admission evaluation. Any applicant may access the health professionals assistance program by self-referral, board referral, or referral from another person or agency, such as an employer, coworker, or family member. An evaluation of the admission application shall be conducted by program personnel. The health professionals assistance program personnel shall advise the applicant of the program requirements and the implications of noncompliance and shall secure the cooperation of the applicant with the health professionals assistance program. Any applicant who refuses to cooperate with the program admission evaluation shall be reported to the applicable participating board or entity.


36-2A-7. Eligibility for program. Admission to the health professionals assistance program is available to any person who is impaired and:

(1) Holds licensure as a health care professional in this state;

(2) Is eligible for and in the process of applying for licensure as a health care professional in this state; or

(3) Is enrolled as a student in a program leading to licensure as a health care professional.


36-2A-8. Denial of admission to program. The evaluation committee may deny admission to the health professionals assistance program if the applicant:

(1) Is not eligible for licensure in this state;

(2) Diverted controlled substances for other than personal use;
(3) Creates too great a risk to the public by participating in the health professionals assistance program as determined by the evaluation committee and program personnel;

(4) Has engaged in sexual misconduct that meets the criteria for denial of admission established by the participating boards; or

(5) Has been terminated from any health professional assistance program.


36-2A-9. Program participation components. The health professionals assistance program participation components may include requirements for treatment and continuing care, worksite monitoring, practice restrictions, random drug screening, support group participation, filing of reports, and other requirements as necessary for successful completion of the health professionals assistance program.


36-2A-10. Fees and costs. Each health professionals assistance program participant shall pay an initial participation fee set pursuant to § 36-2A-14 as well as all costs associated with physical, psychosocial, or other related evaluations, treatment, and random drug screens.


36-2A-11. Termination of participation in program--Report to board. The health professionals assistance evaluation committee may terminate a person's participation in the program based upon:

(1) Failure to cooperate or comply with the individualized participation agreement; or

(2) Violation of the practice act of the applicable health care profession during participation in the program.

The evaluation committee shall report terminations to the applicable participating board.


36-2A-12. Confidentiality of program participants' records. All records of health professionals assistance program participants are confidential and are not subject to discovery or subpoena. Only authorized program personnel and health professionals assistance evaluation committee members may have access to participant records unless the participant voluntarily provides for written release of the information. A participating board may only have access to records of participants who were referred by the board, who refused to cooperate with the health professionals assistance program, or who have been terminated by the health professionals assistance program in accordance with § 36-2A-11. Records shall be maintained in accordance with § 36-2A-14.

36-2A-13. Immunity from liability for reports and actions related to duties. Any person, agency, institution, facility, or organization making reports to the participating board or health professionals assistance program regarding an individual suspected of practicing while impaired or reports of a participant's progress or lack of progress in the health professionals assistance program is immune from civil liability for submitting a report in good faith to the health professionals assistance program. Members and staff of the participating boards, health professionals assistance program evaluation committees, and health professionals assistance program personnel acting in good faith are immune from civil liability for any actions related to their duties under this chapter.  


36-2A-14. Promulgation of rules. The Board of Nursing and the Board of Medical and Osteopathic Examiners, with the approval of the other participating boards, may jointly promulgate rules pursuant to chapter 1-26 for implementation of the health professionals assistance program, including:

(1) Committee structure and program personnel;

(2) Admission criteria;

(3) Criteria for denial of admission;

(4) Required participation components;

(5) Termination of participation and discharge criteria;

(6) Confidentiality and retention of program records;

(7) Annual evaluation of effectiveness of the program;

(8) Participation fees; and

(9) Procedures for establishing the annual budget and prorating program expenses.


36-2A-15. Determination of expenses to be borne by participating boards. The health professionals assistance program expenses to be borne by each participating board shall be determined by the health professionals assistance program service committee in accordance with § 36-2A-14.  

ARTICLE 20:85

HEALTH PROFESSIONALS ASSISTANCE PROGRAM

Chapter

20:85:01 Operation of program service committee.

20:85:02 Confidentiality.

20:85:03 Annual evaluation.

20:85:04 Fees.

20:85:05 Budget.

20:85:06 Program participation components
CHAPTER 20:85:01

OPERATION OF PROGRAM SERVICE COMMITTEE

Section

20:85:01:01 Election of officers.

20:85:01:02 Chair.

20:85:01:03 Vice chair.

20:85:01:04 Secretary.

20:85:01:05 Quorum for conduct of business.

20:85:01:06 Meetings.

20:85:01:07 Special meetings.

20:85:01:08 Notice of special meetings.

20:85:01:01 Election of officers. The program service committee shall elect officers annually.

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-3

20:85:01:02 Chair. The chair of the committee shall supervise the business of the committee. The chair shall preside at committee meetings. The chair may sign, with the secretary or another officer authorized by the committee, any instruments which the committee has authorized to be executed. The chair shall perform all duties incident to the position of chair and any other duties assigned by the committee.
**General Authority**: SDCL 36-2A-14

**Law Implemented**: SDCL 36-2A-3

**20:85:01:03. Vice chair.** The vice chair shall perform the duties of the chair when the chair is absent, is unable to act, or refuses to act. The vice chair shall perform any other duties assigned by the board.

**General Authority**: SDCL 36-2A-14

**Law Implemented**: SDCL 36-2A-3

**20:85:01:04. Secretary.** The duties of the secretary are as follows:

1. Keep the minutes of the committee meetings in a book provided for that purpose;
2. Give all notices as required by law;
3. Be custodian of the board records;
4. Be responsible for all funds and securities of the committee, receive and give receipts for money paid to the committee, and deposit all such moneys in the name of the committee in the depositories selected by the committee;
5. Sign, with the chair or another officer authorized by the committee, any instruments which the committee has authorized to be executed;
6. Perform all duties incident to the office of secretary and any other duties assigned by the chair or the committee.

**General Authority**: SDCL 36-2A-14

**Law Implemented**: SDCL 36-2A-3
20:85:01:05. **Quorum for conduct of business.** A majority of the committee constitutes a quorum for the transaction of all business at any regular or special meeting.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3

20:85:01:06. **Meetings.** Committee meetings shall be held at a place designated by the presiding officer of the committee.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3

20:85:01:07. **Special meetings.** Special meetings of the committee may be called by the chair or a majority of the committee members. Special meetings may also be set by action of the committee at any regular or special meeting of the committee. The notice of the meeting or action of the committee shall establish the time and place for the meeting.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3

20:85:01:08. **Notice of special meetings.** At least 10 days notice of a special meeting shall be given to any member of the committee not calling the meeting or not in attendance at the meeting at which a special meeting was called. The notice shall state the time and place for the
special meeting and whether the meeting is called for the consideration of one or more specific

issues or for consideration of all matters that come before the committee.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3
CHAPTER 20:85:02

CONFIDENTIALITY

Section

20:85:02:01  Confidential records.

20:85:02:02  Retention of program records.

20:85:02:01.  **Confidential records.** The evaluation committee shall be responsible for maintaining the confidentiality of the names, identities, and treatments of applicants and participants considered by the committees.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-5, 36-2A-12

20:85:02:02.  **Retention of program records.** All records shall be retained according to policies and procedures established by the program service committee.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3
CHAPTER 20:85:03

PROGRAM EVALUATION

Section

20:85:03:01  Annual evaluation.

20:85:03:01.  **Annual evaluation.** The program service committee shall conduct, on an annual basis, an evaluation of the health professionals assistance program. The evaluation will assess the program’s policies and procedures, evaluation committees, and overall program effectiveness.

**General Authority:** SDCL 36-2A-14

**Law Implemented:** SDCL 36-2A-3
CHAPTER 20:85:04

FEES

Section

20:85:04:01 Fees.

20:85:04:02 Participant costs.

20:85:04:01. Fees. Participation fees will be ___ to enter the program unless undue hardship is shown by the applicant, then the fee is waived.

General Authority: SDCL 36-2A-14

Law Implemented: 36-2A-10

20:85:04:02. Participant costs. The costs for all testing, monitoring, and other participation components, that are required for successful completion of the program, shall be paid for by the participant.
CHAPTER 20:85:05

BUDGET

Section

20:85:05:01 Annual budget.

20:85:05:02 Participating board expenses.

20:85:05:01. Annual budget. The program service committee shall establish the annual health professionals assistance program budget.

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-3

20:85:05:02. Participating board expenses. The program committee shall establish the expenses of the participating boards pro rata by licensees participating, unless the participating boards agree to a different cost sharing method.

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-3, 36-2A-15
CHAPTER 20:85:06

PROGRAM PARTICIPATION COMPONENTS

Section

20:85:06:01 Program participation components.

20:85:06:01. Program participation components. All program participation components, including, but not limited to, treatment, continuing care, work-site monitoring, practice restrictions, random drug screening, support group participation, filing of reports, and other requirements shall be approved by the program service committee.

General Authority: SDCL 36-2A-14

Law Implemented: SDCL 36-2A-3, 36-2A-9