67:16:01:08. Services not covered. In addition to items and services specified as not covered in other sections of this article, the following items and services are not covered under the medical assistance program:

(1) Items or services ~~which~~ that have been determined by the state dental or medical consultant, or through peer reviews, to be not medically necessary, safe, or effective;

(2) Items or services for which the recipient has no legal obligation to pay, or for which ~~are~~ charges are imposed by an immediate ~~relatives or members~~ relative of the recipient or a member of the recipient's household;

(3) Over-the-counter drugs, home remedies, food supplements, nutritional items, vitamins, or alcoholic beverages, except as covered under chapter 67:16:14 or 67:16:42;

(4) Diagnosis or treatment given in the absence of the patient;

(5) Cosmetic or reconstructive surgery ~~to improve the appearance of an individual, if not incidental to prompt repair following an accidental injury or any cosmetic surgery~~ that goes beyond ~~that which~~ what is necessary to improve the functioning of a malformed body member, excluding:

(a) Reconstructive surgery following a medically necessary mastectomy; or

(b) Surgery that is incidental to prompt repair following an accidental injury;

(6) Items or services provided by ~~practitioners or agencies~~ a practitioner or agency in the employ of or under contract with the federal, state, or local government, except ~~state~~:

(a) State institutions for the developmentally disabled that are certified as skilled nursing or intermediate care facilities~~, the state psychiatric hospital, the public health service, or the national health service~~;

(b) State or local government hospitals or clinics;

(c) The United States Public Health Service; or

(d) The National Health Service Corps;

(7) Organ transplants, except as authorized under chapter 67:16:31;

(8) Acupuncture;

(9) Biofeedback;

(10) Chronic pain rehabilitation program services or chronic pain management services, except prescription drugs as allowed under chapter 67:16:14;

(11) Alcohol and drug rehabilitation therapy, except for services provided under chapter 67:16:48;

(12) Procedures for implanting an embryo;

(13) Gastric bypass, gastric stapling, gastroplasty, or any similar surgical procedure, or the associated conservative weight loss management, unless prior authorized;

(14) Self-help devices, exercise equipment, protective outerwear, personal comfort services ~~or environmental control equipment, such as~~ air conditioners, humidifiers, dehumidifiers, heaters, or furnaces;

(15) Medical equipment for a resident in a health care facility, except as authorized under chapter 67:44:03;

(16) Autopsies;

(17) Custodial care, except as authorized under chapter 67:44:03;

(18) Nursing facility services for individuals age ~~21~~ twenty-one and over and under age ~~65~~ sixty-five in institutions for individuals with a mental disease;

(19) Broken appointments;

(20) Reports required solely for insurance or legal purposes, unless requested by the department, the Department of Health, or the Department of Human Services;

(21) ~~Concurrent~~ The second and any subsequent claim submitted for concurrent care by more than one provider of the same discipline for the same diagnosis without a medical referral detailing the medical necessity of the concurrent care~~. For concurrent care without medical referral, the department will pay only the first claim submitted~~;

(22) A health service that is not documented in the recipient's medical record as required by chapter 67:16:34;

(23) Vocational training, educational activities, teaching, or counseling, except outpatient diabetes self-management ~~education~~ training programs covered under chapter 67:16:46;

(24) Record keeping, charting, or documentation related to providing a covered service, unless specifically ~~allowed~~ covered in this article;

(25) Payment of mileage unless specifically covered under this article;

(26) Drugs and biologicals~~, which~~ that the federal government has determined to be less than effective~~, as listed in § 67:16:14:05~~ according to 42 U.S.C. § 1395y(c) (February 3, 2026);

(27) Services, procedures, or drugs~~, which~~ that are considered experimental by the United States Department of Health and Human Services or another federal agency, not including services, procedures, or drugs approved by the Food and Drug Administration under an emergency use authorization that are being utilized in accordance with the emergency use authorization;

(28) Procedures and services to reverse sterilization;

(29) Computers, computer hookups, or computer printers, unless prior ~~authorized~~ authorization has been received from the department pursuant to § 67:16:01:06.03;

(30) Gambling addiction services or therapy; and

(31) Penile implants.

Source: SL 1975, ch 16, § 1; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 9 SDR 11, effective August 1, 1982; 9 SDR 164, effective June 30, 1983; 10 SDR 79, effective February 1, 1984; 11 SDR 26, effective August 21, 1984; 11 SDR 86, effective December 30, 1984; 15 SDR 204, effective July 6, 1989; 17 SDR 4, effective July 16, 1990; 17 SDR 184, effective June 6, 1991; 17 SDR 194, effective June 24, 1991; 18 SDR 98, effective December 9, 1991; 19 SDR 26, effective August 23, 1992; 19 SDR 165, effective May 3, 1993; 20 SDR 144, effective March 10, 1994; 22 SDR 32, effective September 11, 1995; 28 SDR 166, effective June 12, 2002; 35 SDR 88, effective October 23, 2008; 40 SDR 122, effective January 7, 2014; 43 SDR 80, effective December 5, 2016; 46 SDR 50, effective October 10, 2019; 47 SDR 129, effective June 3, 2021.

General Authority: SDCL 28-6-1~~(1)(2)~~.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Covered services must be medically necessary, § 67:16:01:06.02.

67:16:25:06.01. Transportation services provided by community transportation provider. Community transportation services, as described in § 67:16:25:06.02, are covered if the following requirements are met:

(1) The transportation provider is a governmental entity, a secure medical transportation provider, or registered as a nonprofit organization with the ~~South Dakota Secretary of State~~ secretary of state;

(2) The transportation provider is domiciled in ~~the State of South Dakota~~ this state or enrolled as a ~~Medicaid~~ medicaid transportation provider in the ~~entity or organization's~~ provider's state of domicile;

(3) The ~~entity or organization~~ transportation provider has a signed transportation provider agreement with the department to furnish nonemergency medical transportation to recipients; and

(4) Transportation is ~~from~~:

(a) From an eligible recipient's residence or bus stop nearest to the recipient's residence, place of work, or school, to a medical provider; ~~between~~

(b) Between medical providers; or ~~from~~

(c) From a medical provider to the recipient's residence or bus stop nearest to the recipient's residence, place of work, or school;

(d) To or from medically necessary examinations or treatment, if the services are covered under article 67:16 and are provided by a provider who is enrolled or eligible for enrollment in the medical assistance program; or

(e) To the closest facility or medical provider capable of providing the necessary services, unless the recipient has a written referral or a written authorization from a medical provider in the recipient's medical community.

A recipient's residence does not include a hospital, penal institution, detention center, campus setting, nursing facility, an intermediate care facility for individuals with intellectual disabilities, or an institute for the treatment of an individual with a mental disease~~;~~

~~(5) Transportation is to or from medically necessary examinations or treatment, if the services are covered under article 67:16 and are provided by a provider who is enrolled or eligible for enrollment in the medical assistance program; and~~

~~(6) Transportation is to the closest facility or medical provider capable of providing the necessary services, unless the recipient has a written referral or a written authorization from a medical provider in the recipient's medical community~~.

Source: 16 SDR 234, effective July 1, 1990; 17 SDR 201, effective July 1, 1991; 20 SDR 126, effective February 10, 1994; 25 SDR 69, effective November 12, 1998; 26 SDR 157, effective June 7, 2000; 35 SDR 253, effective May 12, 2009; 40 SDR 122, effective January 8, 2014; 44 SDR 94, effective December 4, 2017; 45 SDR 82, effective December 10, 2018; 48 SDR 39, effective October 3, 2021.

General Authority: SDCL 28-6-1~~(1)(2)~~.

Law Implemented: SDCL 28-6-1.

67:16:25:06.02. Reimbursable services -- Community transportation provider. If the requirements of § 67:16:25:06.01 are met, reimbursable community transportation services are limited to the following:

(1) Transport of a recipient, and an accompanying adult, if the transportation accompaniment is medically necessary due to the recipient's age or medical condition; and

(2) Mileage.

Transportation expenses payable by a third party are not eligible for reimbursement under this chapter.

Source: 20 SDR 126, effective February 10, 1994; 26 SDR 157, effective June 7, 2000; 35 SDR 253, effective May 12, 2009.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Covered services must be medically necessary, § 67:16:01:06.02.

67:16:26:05. Provider must collect from third-party source before submitting claim to department -- Medical assistance program payer of last resort -- Payment provision. Because the medical assistance program is the payer of last resort, a provider must pursue the availability of third-party payment sources whether or not the sources are identified by the department.

The provider must ~~be able to~~ document the provider's pursuit of the availability of a third-party payment source, except for claims listed in § 67:16:26:07.02. The documentation must be maintained in the recipient's records. Documentation may include a signed statement by the recipient informing the provider of all third-party payment sources.

Once the provider has identified a third-party payment source, the provider must submit a completed claim for payment of services to the third-party source before requesting payment from the department. Except for an electronic claim, if a claim is subsequently submitted to the department for payment, evidence of third-party payment or rejection must accompany the claim. For an electronic claim, the provider must maintain and submit to the department, on request, evidence of the third-party payment or rejection. The provider is eligible to receive ~~the recipient's third party liability responsibility~~ payment from the medical assistance program, up to the amount ~~or the amount~~ allowed under the department's payment schedule ~~less~~, minus the third-party liability amount~~, whichever is less~~.

The department may not pay for any service that has been denied by the third-party liability source as not meeting the requirements for submitting a claim.

Source: 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 16 SDR 226, effective June 24, 1990; 17 SDR 194, effective June 24, 1991; 26

SDR 168, effective July 1, 2000; 31 SDR 214, effective July 6, 2005; 40 SDR 122, effective January 7, 2014.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References:

~~Department determination of possible existence of third-party source -- Claim denial, § 67:16:26:07.~~

Certain claims eligible for payment before third-party benefits recovered -- Department to pursue reimbursement, § 67:16:26:07.02.

Department determination of possible existence of third-party source -- Claim denial, § 67:16:26:07.

Records, ~~ch~~ chapter 67:16:34.

67:16:41:01. Definitions. ~~As~~ Terms used in this chapter mean:

(1) ~~"Certified social worker - private, independent practice" means an individual certified under SDCL 36-26-17;~~

~~(2) "Certified social worker - private, independent practice candidate" means an individual who is licensed as a certified social worker under SDCL 36-26-14 and is working toward becoming a certified social worker - private, independent practice under an approved supervision agreement, as required by § 20:59:05:05;~~

~~(3) "Clinical nurse specialist" means an individual who is licensed under SDCL 36-9-85 to perform the functions contained in SDCL 36-9-87;~~

~~(4)~~ "Collateral contact~~" means,~~" telephone or face-to-face contact with an individual, other than the recipient receiving treatment, to~~ plan~~:

(a) Plan appropriate treatment~~, to assist~~;

(b) Assist others in responding therapeutically regarding the recipient's difficulty or illness~~, or to link~~; or

(c) Link the recipient, family, or both, to other necessary and therapeutic community support;

~~(5)~~ (2) "Diagnostic assessment~~" means,~~" a written comprehensive evaluation of symptoms that indicate a diagnosis of a mental disorder ~~and which meet the requirements of § 67:16:41:04~~;

~~(6)~~ (3) "Family~~" means,~~" a unit of two or more ~~persons~~ individuals, related by blood or by past or present marriage. A family may also include ~~other individuals living~~ another individual who lives in the same household with the recipient, ~~individuals~~ who will reside in the home in the future, or ~~individuals~~ who ~~reside~~ resides elsewhere, if the individual's

participation is necessary to accomplish the recipient's treatment plan goals~~,~~ and the individual is considered an essential and integral part of the family unit identified in the treatment plan;

~~(7)~~ (4) "Group~~" means,~~" a unit of at least two, but no more than ten, individuals who, because of the commonality and the nature of their diagnoses, can derive mutual benefit from psychotherapy and the therapy can be demonstrated to be medically necessary for the individuals to jointly participate, in order to accomplish treatment plan goals through a group psychotherapy session;

~~(8) "Licensed professional counselor - mental health" means an individual certified under SDCL 36-32-65 to 36-32-67, inclusive;~~

~~(9) "Licensed professional counselor working toward a mental health designation" means an individual who is licensed as a licensed professional counselor under SDCL 36-32-64 and is working toward a mental health designation under the supervision required by SDCL subdivision 36-32-65(4);~~

~~(10) "Licensed marriage and family therapist" means an individual licensed under SDCL 36-33-43 to 36-33-45, inclusive;~~

~~(11)~~ (5) "Mental disorder~~" means,~~" an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, or behavior;

(~~12)~~ (6) "Mental health services~~" means,~~" nonresidential psychiatric or psychological diagnostic assessment and treatment that is goal-oriented and designed for the care and treatment of an individual ~~having~~ who has a primary diagnosis of a mental disorder;

(~~13)~~ (7) "Mental health treatment~~" means,~~" goal-oriented therapy designed for the care and treatment of an individual ~~having~~ who has a primary diagnosis of a mental disorder;

~~(14)~~ (8) "Psychologist~~" means,~~" for services provided in South Dakota, a person licensed under SDCL 36-27A-12 or 36-27A-13~~; for~~. For services provided in another state, a person licensed as a psychologist in the state where the services are provided. For purposes of the medical assistance program, a person practicing under SDCL 36-27A-11 is specifically excluded from this definition;

~~(15)~~ (9) "Psychotherapy~~" means,~~" the face-to-face or telehealth treatment of a recipient~~, through~~ by a mental health provider using a psychological or psychiatric method~~. The treatment is a planned, structured program based on a primary diagnosis of mental disorder and is directed to influence and produce a response for a mental disorder and to accomplish measurable goals and objectives specified in the recipient's individual treatment plan~~ to treat an individual with a primary or provisional mental health disorder;

~~(16) "Psychotherapy session" means a planned and structured face-to-face or telehealth treatment episode between a mental health provider and one or more recipients;~~

~~(17)~~ (10) "Telehealth~~" means,~~" a method of delivering services~~, including~~ through the use of interactive audio-visual or audio-only technology, in accordance with SDCL chapter 34-52; and

~~(18)~~ (11) "Treatment plan~~" means,~~" a written,~~ individual~~ individualized, and comprehensive plan that is based on the information and outcome of~~ the~~ a recipient's diagnostic assessment and~~ which~~ that is designed to improve the recipient's mental disorder.

Source: 22 SDR 6, effective July 26, 1995; 26 SDR 168, effective July 1, 2000; 37 SDR 53, effective September 23, 2010; 45 SDR 82, effective December 10, 2018; 48 SDR 39, effective October 3, 2021.

General Authority: SDCL 28-6-1~~(1)(2)(4)~~.

Law Implemented: SDCL 28-6-1.

67:16:41:03. Mental health provider. A mental health service covered under this chapter must be performed by a mental health provider who has a signed provider agreement with the department to provide mental health services. A mental health provider must be ~~a~~:

(1) A psychologist~~, a~~ licensed under SDCL 36-27A-12 or 36-27A-13, or for services provided in another state, a person licensed as a psychologist in the state where the services are provided. For purposes of the medical assistance program, a person practicing under SDCL 36-27A-11 is specifically excluded from this definition;

(2) A licensed professional counselor - mental health~~, a~~ certified under SDCL 36-32-65 to 36-32-67, inclusive;

(3) A licensed professional counselor working toward a mental health designation~~, a~~ who is licensed as a licensed professional counselor under SDCL 36-32-64 and is working toward a mental health designation under the supervision required by SDCL subdivision 36-32-65(5);

(4) A clinical nurse specialist~~, a~~ licensed under SDCL chapter 36-9;

(5) A certified social worker ~~PIP~~ – private independent practice, ~~a~~ certified under SDCL 36-26-17;

(6) A certified social worker ~~– PIP~~ – private independent practice candidate, ~~or a~~ who is licensed as a certified social worker under SDCL 36-26-14 and is working toward becoming a certified social worker - private independent practice under an approved supervision agreement pursuant to § 20:59:05:05;

(7) A licensed marriage and family therapist ~~who has a signed provider agreement with the department to provide mental health services~~, licensed under SDCL chapter 36-33; or

(8) A licensed marriage and family therapist who is licensed as a marriage and family therapist under SDCL 36-33-43 and is working toward a mental health designation under the supervision required by SDCL subdivision 36-32-65(5).

A mental health provider must have a National Provider Identification (NPI) number and may not provide services under another provider's ~~medical assistance provider~~ NPI number.

An individual who does not ~~meet the certification or licensure requirements of the applicable profession may not enroll~~ qualify as a mental health provider ~~or~~ may not participate in the delivery of mental health services, except for the administration or scoring of psychological or neuropsychological tests.

Source: 22 SDR 6, effective July 26, 1995; 26 SDR 168, effective July 1, 2000; 37 SDR 53, effective September 23, 2010; 40 SDR 122, effective January 7, 2014; 45 SDR 82, effective December 10, 2018.

General Authority: SDCL 28-6-1~~(1)(2)(4)~~.

Law Implemented: SDCL 28-6-1~~(1)(2)(4)~~.

Cross-Reference: Provider requirements, ~~ch~~ chapter 67:16:33.