

# MINUTES

## Rules Review Committee



Representative Jon Hansen, Chair  
Senator Jean Hunhoff, Vice Chair

Four hundred first meeting  
Monday, September 13, 2021

Room 414 – State Capitol  
Pierre, South Dakota

The four hundred first meeting of the Rules Review Committee was called to order by Representative Jon Hansen, Chair, at 9:02 a.m. (CT) on September 13, 2021, via electronic conference and in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach, Jon Hansen, Chair, and Kevin Jensen; and Senators Jean Hunhoff, Vice Chair, Troy Heinert, and Timothy Johns. Staff members present were Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel, Kelly Thompson, Supervisor of Text Editing Services, and Hilary Carruthers, IT Support Specialist.

*All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order.*

### Approval of Minutes

***Senator Johns moved, seconded by Representative Jensen, that the August 2, 2021, meeting minutes be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

### Staff Report

**Mr. Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel,** announced that this would be his last meeting as the staff person for the Interim Rules Review Committee as the incoming Code Counsel, John McCullough, will be in place before the next meeting. Mr. Goetz thanked the members for the privilege of serving the committee for the past year.

### Rules Reviewed

**[South Dakota Animal Industry Board \(Department of Agriculture and Natural Resources\):](#)** Adopt and amend rules to:

- More accurately reflect current terminology;
- Modernize the language of reference material; and
- Reflect current cervid TB diagnostic testing methods.

**Dr. Dustin Oedekoven, Department of Agriculture and Natural Resources,** reviewed the proposed rules, which were heard by the South Dakota Animal Industry Board twice. At the first meeting on July 13, 2021, the motion to pass the rules was tabled. The board approved the rules following a second meeting on August 10, 2021.

Senator Hunhoff asked what consequences exist if cervid TB tests are not conducted. Dr. Oedekoven said the penalties for such violations are defined in Chapter [40-5](#).

Senator Hunhoff inquired whether the repealed nondomestic ruminant animal provisions were inserted elsewhere in the rules. Dr. Oedekoven stated that the state did not need to regulate non-captive ruminants, given federal requirements.

Responding to Senator Hunhoff as to the definition of "area vet in charge", Dr. Oedekoven explained that it is a designation by the U.S. Department of Agriculture and that North Dakota and South Dakota share one, who is located in Pierre.

***Senator Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the South Dakota Animal Industry Board (Department of Agriculture and Natural Resources) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Social Services:** Amend rules to:

- Update to current coding manuals;
- Clarify coverage of 90 day fills on eligible generic maintenance medication;
- Clarify fees for personal care services;
- Allow an enrolled secure medical transportation provider to also enroll as a community transportation provider;
- Add a definition for telehealth;
- Allow continuation of public health emergency coverage of telehealth services; and
- Add nurse midwife as a type of provider a visit can occur with within the Federally Qualified Health Centers and Rural Health Clinics coverage chapter.

**Mr. Jeremy Lippert, Department of Social Services,** reviewed the proposed rules, which were prompted by the passage of [Senate Bill 96](#) by the 2021 Legislature.

### **Public Testimony**

**Ms. Sara Aker, South Dakota Association of Health Organizations (SDAHO),** thanked the department for collaborating with the industry on telehealth programs during the COVID-19 pandemic and stated that audio only services provide a vital link to care for those individuals who do not have access to reliable Internet connections.

Representative Jensen asked if all phases of treatment can be effectively provided without face-to-face contact. Mr. Lippert clarified that audio only is one of the possible means to provide treatment services.

**Mr. Bill Snyder, Department of Social Services,** said the preferred method for treatment still includes a face-to-face component. He told Representative Jensen there would never be a case where an individual would go all the way through the treatment process without establishing a provider-patient relationship.

Representative Jensen inquired if it was possible through the proposed rules that a person would never have to meet face-to-face with their treatment provider. Mr. Snyder acknowledged that may be possible,

in some circumstances, noting that an evaluation and management visit could be entirely performed through audio if the provider knows the patient.

Senator Hunhoff requested a definition of "secure medical transportation provider." Mr. Lippert said the term is defined in ARSD [67:16:25:01](#), and Mr. Snyder indicated that it refers to a provider who uses specifically designed and equipped vehicles to provide nonemergency transportation to individuals who may be in a wheelchair or need to be otherwise secured during transport, such as on a stretcher.

Senator Hunhoff inquired as to whether assessment, case management, and treatment of a person could be accomplished through audio only services. Mr. Snyder replied that while assessment could be, in most cases, that may not be the case with treatment.

***Senator Johns moved, seconded by Senator Heinert, that the review of the rules proposed by the Department of Social Services is complete.***

Representative Jensen said he was inclined to vote against approving the rules because of concerns over confidentiality and the effectiveness of using audio only services. Senator Hunhoff agreed, saying that while she believed in the use of video telehealth services, she was less confident that effective treatment could be provided by audio only means.

Senator Heinert commented that as someone who lives in an area that lacks reliable Internet service, he sees the value of having the audio only option. He said he trusted that SDAHO and other similar groups evaluated the proposed options and understood the cautions expressed by the committee.

***Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Cwach, Hansen, Heinert, and Johns. Voting nay: Hunhoff and Jensen.***

**Bureau of Administration:** Amend rules to increase the rate for legal publications.

**Ms. Kirsten Jasper, Bureau of Administration,** reviewed the proposed rules.

### **Public Testimony**

**Mr. Dave Bordewyk, South Dakota Newspaper Association (SDNA),** said his organization supports the proposed rules and the rates in question are the maximum rates that can be charged by a newspaper. He clarified the rates also apply to other types of published content in addition to the public notices printed for state agencies, and the industry agrees the rates needed to be adjusted. He noted the last time rates were increased was 2016, and that these increases average out to a 1% increase per year.

Representative Hansen asked how much Minnehaha County and the city of Sioux Falls pay annually in these types of fees. Ms. Jasper responded that Minnehaha County did not submit numbers when queried about the proposed rates. Mr. Bordewyk referenced information gathered from SDNA member newspapers that showed in 2019, Minnehaha County paid almost \$17,000 to the Brandon Valley Journal. As Minnehaha County utilizes four area newspapers for legal publications, the cost would be similar for the other three publications.

Representative Hansen said he has been told by Sioux Falls entities that their printing costs average about \$200,000 annually. Mr. Bordewyk acknowledged the amount was feasible. Ms. Jasper said that for the past year, Lincoln County reported over \$60,000 and Pennington County over \$85,000 in printing costs.

Representative Jensen requested that in the future, a comparison between legal publication advertising rates and regular advertising rates be provided.

Representative Hansen expressed his concern over the additional cost to taxpayers whenever these fees are raised, and said consideration should be given to other methods of delivery (such as websites) that would be less costly to taxpayers.

***Senator Hunhoff moved, seconded by Senator Johns, that the review of the rules proposed by the Bureau of Administration is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Board of Elections (Office of the Secretary of State)**: Adopt rules regarding the forms and processes relating to the implementation of the secured active voter registration designation, following the passage of [Senate Bill 102](#), and to update the Certificate of Nomination to Fill Vacancy per the passage of [Senate Bill 145](#), during the 2021 Legislative Session.

**Mr. Jason Lutz, Office of the Secretary of State**, reviewed the proposed rules.

Senator Heinert asked in regard to the submission of a Certificate of Nomination to Fill Vacancy form, who accepts the form in a single county legislative district that does not have a county central chairperson. Mr. Lutz responded that the proposed rule was aimed at multi-county districts but said he will further research the question and respond to Senator Heinert directly with the answer.

***Senator Heinert moved, seconded by Representative Jensen, that the review of the rules proposed by the Board of Elections (Office of the Secretary of State) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Transportation**: Amend rules to:

- Establish a 55 miles per hour speed zone on Highway 18 in and around Edgemont;
- Establish a 25 miles per hour speed zone on U.S. Highway 18P in Edgemont;
- Clarify the starting and ending points of speed zones in Fall River County;
- Eliminate references to highway segments that have been removed from the state trunk highway system; and
- Repeal lower speed limits for certain truck traffic on U.S. Highway 18 in and around Hot Springs.

**Ms. Karla Engle, Department of Transportation**, reviewed the proposed rules.

Representative Hansen commended the department and Ms. Engle for being one of the role models for how administrative rules should be prepared and presented.

***Representative Hansen moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**South Dakota Division of Insurance (Department of Labor and Regulation):** Amend rules to update the certified reinsurer rating factor and filing requirement for audited financial statements.

**Ms. Lisa Harmon, South Dakota Division of Insurance (Department of Labor and Regulation),** reviewed the proposed rules.

Senator Hunhoff noted that as South Dakota is a member of the National Association of Insurance Commissioners, it is important to continue to maintain accreditation.

***Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Division of Insurance (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Revenue:** Repeal and amend rules to eliminate the registration decal requirement for businesses with amusement devices.

**Mr. Jason Evans, Department of Revenue,** reviewed the proposed rules, which were prompted by the passage of [Senate Bill 39](#) by the 2021 Legislature.

***Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Revenue is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**South Dakota Board of Nursing (Department of Health):** Amend rules to:

- Update the clinical nurse specialist and certified registered nurse anesthetist applications for licensure;
- Update and remove outdated language on examinations;
- Provide consistency with the current licensing process;
- Allow for the evaluation of educational qualifications for endorsing applicants who completed substantially equivalent education programs in other jurisdictions;
- Clarify the requirements and process for the approval, renewal, and denial of a nurse's health care corporation certificate;
- Outline standards for operating a health professional assistance program; and
- Repeal rules clarifying disciplinary procedures and the declaratory rulings process which are now covered in statute.

**Ms. Linda Young, South Dakota Board of Nursing (Department of Health),** reviewed the proposed rules, which resulted from the passage of [Senate Bill 4](#) and [House Bill 1014](#) by the 2021 Legislature.

***Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Board of Nursing (Department of Health) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Health:** Adopt rules to establish the South Dakota medical cannabis program as required by [SDCL chapter 34-20G](#).

Senator Hunhoff, acting as Chair for the hearing, provided instructions for testifiers.

**Ms. Kim Malsam-Rysdon, Secretary, and Mr. Justin Williams, Department of Health,** reviewed the proposed rules, which were drafted with assistance from Cannabis Public Policy Consulting (CPPC). A [presentation](#) was given detailing the timeline for development of the rules, strategies for informing the public, the hearing process, and an overview of the state's Medical Cannabis Program. A [section by section analysis](#) of the proposed rules was then provided.

Ms. Malsam-Rysdon said the department had worked hard in a short period of time to prepare the rules for consideration by the committee and she expects to see changes in the rules as the program evolves, which has been the experience in other states. She acknowledged that the LRC had raised questions about whether the fees being proposed constituted a tax, saying the fee charged cannot be more than the cost of actually producing the cards that will be distributed to eligible individuals. According to Ms. Malsam-Rysdon, the figures contained in the fiscal note submitted with the proposed rules are based on projections for a brand-new industry, they are reasonable, and they can be adjusted in the future, if necessary, particularly if revenue greatly outpaces the cost.

The Department of Health challenged several recommendations to the final rules made by LRC staff on September 7, 2021; committee members received a [formal response](#) from the department detailing their opposition to the suggested changes.

### **Public Testimony**

**Ms. Yvonne Taylor, South Dakota Municipal League,** testified in support of the rules and said the department had done its best in promulgating them. Her organization will be looking for some legislative changes, if they are warranted.

**Mr. Jeremiah M. Murphy, Cannabis Industry Association of South Dakota,** said he appreciated the department taking his group's concerns into consideration and making changes based on their comments. While the rules package overall was solid, his client is opposed to four of the proposed rules: ARSD 44:90:02:18 regarding the potency of concentrated cannabis; 44:90:10:14 relating to product labeling; 44:90:10:01 concerning packaging for transfer or sale; and 44:90:09:01 pertaining to mandatory testing prior to transfer.

**Ms. Sara Aker, SDAHO,** commended the department on its transparency throughout the promulgation process and their willingness to listen to the concerns of opponents. Her organization is opposed to ARSD 44:90:02:03 which requires a physician to certify an individual for home cultivation. Ms. Aker said no other state requires that action and she suggested South Dakota adopt a policy based on objective criteria.

**Mr. Jason Tarasek, Dakota Natural Growers LLC of Vermillion**, addressed the operation of vertically integrated businesses, which grow, process, and sell cannabis within the same building. Mr. Tarasek reiterated that safety is a top concern for his organization, which is opposed to ARSD 44:90:04:04 regarding co-location guidelines for cannabis operations. He said Dakota Natural Growers will be submitting its operating plan to the Department of Health and the agency can reject it if they choose to do so, but the rule as currently written constitutes a blanket ban on vertically integrated businesses.

**Mr. Tim Engel, South Dakota State Medical Association (SDSMA)**, said while the overall rules package was acceptable, his association is opposed to ARSD 44:90:02:03, for the same reasons as expressed by SDAHO, as well as ARSD 40:90:02:08. SDSMA is also requesting access to a list of people in South Dakota using medical cannabis so drugs are not prescribed to those individuals that may be contrary to their use of cannabis. No such rule was included in the proposed package.

**Mr. Steve Willard, South Dakota Broadcasters Association**, detailed the group's opposition to ARSD 44:90:10:17 which regulates the advertising of medical cannabis establishments. Mr. Willard said the proposed rule as written would be difficult to enforce, make online advertisers the winners at the expense of TV and radio advertising, and a definition of "media" should be included to provide more clarity. He also noted that unless federal policy is changed, no one will advertise.

**Ms. Deb Mortenson, South Dakota Optometric Society**, told the committee the society is opposed to the addition of glaucoma in ARSD 44:90:13:01. She said the effects of glaucoma cannot be reversed by the use of medical cannabis, only eased, and its inclusion on the list gives patients false hope.

**Mr. Matt Jorgenson, Cannabis Chem Lab**, commended the department on its transparency and willingness to listen to industry concerns. His opposition centered on ARSD 44:90:06:01 regarding the accreditation of cannabis testing facilities. Mr. Jorgenson proposed that the rule include an appeal or addendum to the process if the accreditation is not completed within the required 18 months of licensure. He also raised concerns on ARSD 44:90:09:01 and 44:90:09:02 relating to mandatory testing.

**Mr. Kittrick Jeffries, Dakota Cannabis Consulting**, expressed opposition to ARSD 44:90:09:01 and 44:90:09:02 on mandatory testing and the dates on which testing would commence. He was also opposed to sections in ARSD 44:90:10:01 concerning bulk transfer and prepackaging of medical cannabis and testified that prepackaging requirements impact low-income patients who can only afford small amounts of medical cannabis. Mr. Jeffries supported ARSD 44:90:04:21 which stipulated that cannabis or cannabis products being transported must be contained in a secured area of the transport vehicle, out of public view.

**Ms. Melissa Mentele, New Approach South Dakota**, spoke against ARSD 44:90:02:15 concerning nonresident registration. As the author of [Initiated Measure 26](#), Ms. Mentele said reciprocity was included to serve patients who were traveling through South Dakota to ensure they could get the medical cannabis they needed while in the state. Without reciprocity, such individuals would need to transport their cannabis across state lines to have access to it while in South Dakota, creating diversion issues. She also indicated support for Mr. Murphy's testimony.

**Mr. Seth Pearman, Attorney General, Flandreau Santee Sioux Tribe**, echoed the comments made by Mr. Murphy. According to Mr. Pearman, the Tribe has 7,000 patients from across the country who participate in its medical cannabis industry. He said the proposed rules lack an interface between state licensed and Tribal licensed facilities, and the Tribes would like to participate in the state program with medical cannabis grown on reservations, if the Tribe's testing results and products conform to state standards, and if shipping manifests can allow for transfer into the state system. Mr. Pearman offered that Tribal integration could occur through the nonresident cardholder aspect of the rules.

**Mr. Ned Horsted, Cannabis Industry Association of South Dakota**, thanked the department for their work on the medical cannabis program, saying it is close to being the best program in the country. Mr. Horsted stressed that the program should best serve patients and business owners and said some changes in its operation will naturally occur over time. He supported previous arguments made by other testifiers and urged that the following rules be reverted: ARSD 44:90:02:18, 44:90:10:14, 44:90:10:01, 44:90:09:01, 44:90:02:03, 44:90:06:01, and 44:90:02:15.

### Rebuttal

Ms. Malsam-Rysdon responded to the testifiers' comments as follows:

- The Department of Health has the authority to regulate the concentration of medical cannabis;
- The packaging rules proposed by the Department are common practice in other states and in North Dakota, and are similar to tobacco requirements for packaging and subsequent labeling;
- The plain language of statute--34-20G-1(1)(c)--authorizes physician certification of cannabis cultivation;
- While she appreciates that testing facilities in South Dakota feel they can begin testing soon, other states have not reported having testing facilities ready to come online at the onset of their programs, and the State of Maine used these particular timelines;
- She indicates that access to the medical registry is confidential and law does not allow physicians to access it;
- She believes there are certain types of extraction methods that are inherently dangerous, as is the practice of applying pesticides to cannabis plants in the same physical structure at which a dispensary is housed;
- Regarding advertising of medical cannabis establishments, outside legal counsel advised the department that commercial speech has less protection than free speech;
- As to whether glaucoma should be on the list of conditions for which medical cannabis can be used, the decision over whether a patient should use it is best left to the patient and their doctor, and glaucoma is listed in 29 states and the District of Columbia as a debilitating condition;
- Nonresident reciprocity represents a fairness issue. Any nonresident should need to follow the same guidelines as a South Dakota resident, which is similar to how the department would operate any other program that also exists in another state; and
- Any Tribe that wishes to participate in South Dakota's medical cannabis program may apply to do so, provided they meet the criteria.



### Committee Questions

Senator Johns asked if packaging needed to be limited to a certain size and whether the issue could be resolved by eliminating "retail sales" from the rule. Mr. Williams responded the language was aimed at preventing diversion, which other states say occurs at the retail level. Senator Johns noted that he respectfully disagreed.

Senator Johns inquired whether all advertising could be banned as cannabis is still illegal on the federal level. Mr. Williams replied that if the status of cannabis sales changes at the federal level, the rules could be updated.

Senator Johns asked if the practitioner certification process fell within the intent of the legislation that was approved. Ms. Malsam-Rysdon said the statute does not contemplate a different process.

Representative Jensen inquired how a sliding fee was determined for low-income patients. Ms. Malsam-Rysdon responded the department looked at the definition of a low-income person, estimated how many people overall would need medical cannabis cards, and estimated how many of those individuals would be classified as low-income patients.

Responding to Representative Jensen on the type of criminal background checks that will be conducted on employees for medical cannabis establishments, Ms. Malsam-Rysdon replied that the statute did not specify the type of background checks to be performed but they could include fingerprint background checks such as those conducted by the Department of Criminal Investigation if the proper statutory authority was provided, but that authority has not been provided yet.

Representative Jensen noted that for state registration card holders, a physician must certify, but then inquired whether a medical practitioner generally could provide the certification. Ms. Malsam-Rysdon confirmed that South Dakota cardholders need a physician, but nonresidents could have a practitioner certify.

Senator Heinert asked how licenses could be kept from becoming a commodity. Ms. Malsam-Rysdon said the issue was discussed with the industry during the drafting process and resulted in the addition of ARSD 44:90:03:16 to the proposed rules. Licensees must become active operations within one year of receiving the license or the license will expire. In answer to Senator Heinert's follow up question, Ms. Malsam-Rysdon confirmed there is no cap on the number of licenses that may be issued.

Representative Hansen asked how a prohibition on billboard advertising of medical cannabis establishments would reduce the potential for diversion. Mr. Williams responded that the goal is to restrict who can see the advertising, such as underage children who would be exposed to the messaging if displayed on a billboard.

Senator Hunhoff asked Mr. Jorgenson if there are testing labs already operating in South Dakota and if labs exist in other states that could expand their operations into South Dakota. Mr. Jorgenson confirmed that one South Dakota lab is already in operation performing testing for the Flandreau Santee Sioux Tribe operation and out-of-state labs could pursue facilities in South Dakota.

Senator Hunhoff posed the question to Mr. Murphy of whether it is feasible to pack something up and transport it in bulk without packaging. Mr. Murphy responded by noting that pharmacies obtain items in bulk without retail packaging.

Representative Cwach inquired if the practitioner certification imposes a liability on the medical community, given that a registration card statutorily establishes a presumptive defense if you are caught growing marijuana. Mr. Williams said the statute contemplates some involvement by a practitioner, likely a physician, in the process. Representative Cwach responded that the medical community may not be equipped to provide that kind of certification.

Representative Cwach then questioned whether a nonresident would only be permitted to use medical cannabis in this state if they have a debilitating condition recognized in South Dakota. The Department confirmed this.

Representative Cwach asked Mr. Murphy why the potency of medical cannabis is important to a patient. Mr. Murphy replied that there is a wide spectrum of patients that utilize medical cannabis and varying potencies are needed to address their conditions. Ms. Mentele added that just as with medications, every patient is different; what may be sufficient for one person may not be for another.

Representative Cwach asked why testing labs are confident that they can be up and running sooner than anticipated by the Department of Health. Mr. Jeffries responded that there are already labs in South Dakota that can perform some testing today.

Senator Hunhoff commented that the patient should be the priority for the medical cannabis program and asked how the potency issue addressed that priority. Ms. Malsam-Rysdon stressed that the priority for the rules is to get patients the relief they need and provide medical cannabis in forms and potencies that are both effective and non-addictive.

Representative Hansen asked Ms. Malsam-Rysdon if she agreed testing labs in South Dakota were ready to begin operations now. She said it would be great if a lab in the state could begin testing on Day 1 of the program but that has not been the case in other states with medical cannabis programs. As secretary of the department that oversees the State Health Lab, she understands that it takes time for a testing facility to ramp up its operations to meet the necessary levels of testing.

Representative Hansen asked for clarification on whether three plants was the minimum or maximum amount a patient would be allowed to cultivate. Ms. Malsam-Rysdon said the number represents neither a minimum nor a maximum but provides a benchmark to guide the practitioner in making their recommendations. Senators Hunhoff, Heinert, and Johns commented that the language regarding this issue was unclear.

Mr. Goetz, at the request of the Chair, gave an overview of the department's appeal of numerous edits suggested by LRC to the proposed rules. He said while the department made a number of good suggestions in response to LRC, due to time constraints, it was not possible to work out all of the issues prior to today's meeting. The rules documents as presented raised fiscal concerns about license fees and registration card fees. Other language of concern involved disqualifying felony offenses by principal

officers and board members; criteria for scoring applicants; inspections of vehicles transporting medical cannabis; and the petition process for adding conditions to the list of debilitating medical conditions for which medical cannabis could be prescribed.

Regarding the petition process, Ms. Malsam-Rysdon told the committee the department anticipates outlining the process in rule so the addition of conditions to the list would come through the regular rules review process. Senator Heinert asked what the turnaround time would be to add a condition to the list. Ms. Malsam-Rysdon said she anticipates the department would come before IRRC twice a year on these kinds of petitions.

Committee questions ended, and members proceeded to take action on the rules.

***Senator Johns moved, seconded by Senator Heinert, that proposed rule 44:90:10:01 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Heinert, Hunhoff, and Johns. Voting nay: Jensen.***

***Senator Johns moved, seconded by Senator Heinert, that proposed rule 44:90:02:18 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Cwach, Hansen, Heinert, and Johns. Voting nay: Hunhoff and Jensen.***

Senator Johns noted that he was comfortable with the remainder of the rules package as presented and requested to be excused from the meeting as he was due in court. He was so excused.

***Senator Heinert moved, seconded by Representative Hansen, that proposed rule 44:90:10:14 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Cwach, Hansen, and Heinert. Voting nay: Hunhoff and Jensen.***

***Senator Heinert moved, seconded by Representative Cwach, that the Department of Health be instructed to promulgate rules concerning cooperation with Tribal governments as it pertains to medical cannabis.***

In making the motion, Senator Heinert noted that cooperation was a better avenue than confrontation, and a cooperative medical cannabis program could be more beneficial to patients, the state, and the Tribes.

Senator Hunhoff and Representative Jensen said as the Tribes already have their rules in place, it was important to get the state program up and running and a combined program could be proposed at a later time. Representative Hansen commented that it may be outside of IRRC's authority to pass such a motion.

***The motion failed on a roll call vote with 2 ayes and 3 nays. Voting aye: Cwach and Heinert. Voting nay: Hansen, Hunhoff, and Jensen.***

***Senator Heinert moved, seconded by Representative Cwach, that proposed rule 44:90:02:03 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, and Jensen.***

***Senator Heinert moved, seconded by Representative Hansen, that proposed rule 44:90:02:15 be reverted to a step prior under SDCL 1-26-4.7. Motion failed on a roll call vote with 1 aye and 4 nays. Voting aye: Heinert. Voting nay: Cwach, Hansen, Hunhoff, and Jensen.***

Commenting on options regarding the fee rules, including options that would result in reverting the rule, Mr. Goetz said one option is to not revert the rule but have the department come back after a year and retool the fee structure. Senator Hunhoff commented that the Committee on Appropriations will also be reviewing the department's proposed budget and will be aware how much is being collected in fees and can evaluate the fee structure.

***Representative Hansen moved, seconded by Representative Jensen, that proposed rule 44:90:13:01 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Cwach, Hansen, and Jensen. Voting nay: Heinert and Hunhoff.***

***Representative Cwach moved, seconded by Senator Heinert, that proposed rule 44:90:10:17 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Cwach, Hansen, and Heinert. Voting nay: Hunhoff and Jensen.***

***Representative Hansen moved, seconded by Representative Jensen, that the review of the remaining rules proposed by the Department of Health is complete.***

***Representative Cwach made a substitute motion, seconded by Senator Heinert, that proposed rules 44:90:09:01 and 44:90:09:02 be reverted to a step prior under SDCL 1-26-4.7. Motion failed on a roll call vote with 2 ayes and 3 nays. Voting aye: Cwach and Heinert. Voting nay: Hansen, Hunhoff, and Jensen.***

Senator Heinert indicated his early skepticism of the proposed rules, and while he saw them improve as the day went on, he would continue to resist the proposed rules as a whole, citing the greater complications these rules present, in contradiction to IM26.

***Representative Hansen's previous motion prevailed on a roll call vote with 4 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, and Jensen. Voting nay: Heinert.***

Senator Hunhoff thanked the Department of Health, the testifiers, and the committee members for their good work on a hard task, saying it was an historic day for the state of South Dakota.

#### **Public Testimony: General Purposes**

No public testimony was provided.

#### **Adjournment**

***Senator Hunhoff moved, seconded by Senator Heinert, that the meeting be adjourned. Motion prevailed on a unanimous voice vote with 5 ayes.***

Chair Hansen adjourned the meeting at 4:20 p.m.