

MINUTES

Rules Review Committee



Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair

Four hundred third meeting
Monday, November 15, 2021

Room 414 – State Capitol
Pierre, South Dakota

The four hundred third meeting of the Rules Review Committee was called to order by Representative Jon Hansen, Chair, at 9:01 a.m. (CT) on November 15, 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 Jon Hansen, Chair, and Kevin Jensen; and Senators Jean Hunhoff, Vice Chair, and Timothy Johns. Representative Ryan Cwach and Senator Troy Heinert were excused. Staff members present were John McCullough, 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 October 26, 2021, meeting minutes be approved. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota State Board of Dentistry (Department of Health): Amend rules to:

- Update regulations pertaining to the administration of sedation and anesthesia in a dental office;
- Incorporate updated requirements, standards, and national guidelines;
- Update anesthesia continuing education requirements to include new host permit;
- Update definitions and references;
- Update authority for advertising sedation and anesthesia to include new host permit;
- Update general anesthesia and deep sedation permit requirements;
- Update moderate sedation permit requirements;
- Update pediatric moderate sedation permit requirements;
- Update requirements for employing or contracting with a licensed anesthesia provider that provides general anesthesia, deep sedation, or moderate sedation;
- Clarify exemption for licensed ambulatory surgery center or hospital;
- Incorporate and update moderate sedation course requirements;
- Incorporate a new host permit and host permit requirements that will allow a dentist to utilize a licensed anesthesia provider;
- Incorporate host permit course requirements;
- Incorporate process for review of anesthesia or sedation education accepted in other jurisdictions;

- Update nitrous oxide sedation and analgesia permit requirements for dentists, dental hygienists, and registered dental assistants and ensure consistency among rules;
- Update minimal sedation as it relates to patients under 12 years of age;
- Update permit renewal requirements and incorporate host permit;
- Incorporate required annual sedation or anesthesia cases or continuing education for dentists that hold a general anesthesia and deep sedation or moderate sedation permit;
- Incorporate required team training on emergency response protocols for dentists that hold a general anesthesia and deep sedation, moderate sedation, or host permit;
- Update adverse condition reporting and incorporate host permit;
- Update inspector requirements;
- Update inspection requirements for dentists that hold a host permit, moderate sedation permit, or general anesthesia and deep sedation permit;
- Update equipment requirements for moderate sedation;
- Update equipment requirements for general anesthesia and deep sedation;
- Update clinical guidelines;
- Incorporate requirement that an emergency response protocol be in place for patients undergoing moderate sedation, deep sedation, or general anesthesia; and
- Remove redundant regulations and obsolete provisions.

Ms. Brittany Novotny, South Dakota State Board of Dentistry (Department of Health), reviewed the proposed rules, which were prompted in part by the passage of [Senate Bill 50](#) by the 2020 Legislature. Ms. Novotny reported that of the feedback the board received regarding the proposed rules, the majority related to host permits for dentists using an anesthesia provider, education requirements related to host permits, and moderate sedation permits.

Dr. Harold Doerr, President, South Dakota State Board of Dentistry, said the board incorporated many of the changes suggested by the entities and individuals who provided feedback, and the final proposed rules ensure public safety while providing increased access to care.

Dr. Scott Van Dam, Member, South Dakota State Board of Dentistry, told the committee that while sedation has been used in dental offices for many decades, the proposed rules will allow Certified Registered Nurse Anesthetists (CRNAs) to practice in those offices, meaning dentists can build a team model of care.

Public Testimony

Mr. Paul Knecht, South Dakota Dental Association, testified that his organization created a task force at the beginning of the rules promulgation process to review the proposed rules and provide input to the board. Mr. Knecht expressed his organization's support for the final rules as proposed, saying they balance safety and the need for sedation.

Ms. Teri Schlusen, South Dakota Association of Nurse Anesthetists, said her organization supports the rules as proposed and its members welcomed the opportunity to participate in the process.

Senator Hunhoff asked how approval of the proposed rules would improve access to services by patients

in South Dakota, especially in rural areas where dental offices are closing. Ms. Novotny responded that the creation of host permits will help dentists maintain their practices because they will be able to offer more sedation services by more providers. Senator Hunhoff said she will be watching for the board to provide data going forward that supports the assertion.

Representative Jensen inquired as to whether dentists could contract with multiple CRNAs and if they would be allowed on demand. Ms. Novotny replied that dentists will be able to contract with a CRNA as needed and an inspection process is in place to determine the effectiveness of the operation.

Senator Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the South Dakota State Board of Dentistry (Department of Health) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Board of Certified Professional Midwives (Department of Health): Amend rules to update the general authority for administrative rules for licensing as it relates to complaints and disciplinary hearings.

Ms. Tammy Weis, South Dakota Board of Certified Professional Midwives (Department of Health), reviewed the proposed rules, which resulted from the passage of [House Bill 1014](#) by the 2021 Legislature.

Senator Johns moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Board of Certified Professional Midwives (Department of Health) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Department of Health: Amend rules to revise and update language related to ambulatory surgery centers to bring it in line with federal requirements.

Mr. Chris Qualm, Department of Health, reviewed the proposed rules.

Senator Hunhoff asked if it will be left up to the facility whether to review a patient's medical history and conduct a physical examination prior to admission. Mr. Qualm clarified that the provider has the option to forego those actions, if the doctor believes they are not necessary for admission. Senator Hunhoff responded that while she understood the need for South Dakota to adhere to federal regulations, she has concerns over making medical history reviews and physical examinations optional.

Representative Hansen referenced the Form 6, Notice of Public Hearing to Adopt Rules, submitted by the agency with their rules packet, saying the effect of and reasons for adopting the rules listed in the notice were too general. He asked if any additional language was added to the notice before publication. Mr. Qualm said he believed the notices were published as shown in the documents received by the committee members.

Representative Hansen said he did not think the notice met the requirements for a narrative description of the rules but while it was deficient, it was not to the point where the rules should be reverted.

Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Health is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Department of Health: Amend rules to update the form used by a physician to comply with the requirements of SDCL 34-23A-10.1 (1).

Ms. Lynne Valenti, Department of Health, reviewed the proposed rule, which was initially reverted by the Interim Rules Review Committee on August 18, 2020, over concerns that the rule as presented did not correspond with the intent of the 2019 Legislature in passing [Senate Bill 72](#). Ms. Valenti noted that since that time, the department had worked with Representative Hansen to address his concerns before bringing the rule back for consideration.

Public Testimony

Ms. Kristin Hayward, Planned Parenthood North Central States, expressed the organization's opposition to the proposed rule, as outlined in correspondence provided to the committee members prior to the meeting by Dr. Sarah Trexler, Chief Medical Officer, Planned Parenthood North Central States.

Representative Hansen thanked the Department of Health for bringing the rule back to the committee, saying it will help to provide vital information to pregnant women.

Representative Hansen moved, seconded by Representative Jensen, that the review of the rules proposed by the Department of Health is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Board of Education Standards (Department of Education): Amend rules to extend the length of time a long-term substitute can act as the teacher of record and provide additional flexibility for leave pursuant to FMLA or when the individual has a teaching certificate.

Ms. Mary Stadick-Smith and Ms. Amanda LaCroix, Department of Education, reviewed the proposed rule.

Representative Jensen asked for confirmation that the 45 school days of service required to be considered a long-term substitute is cumulative and not continuous service. Ms. LaCroix responded that was correct.

Senator Hunhoff inquired as to whether an individual with an inactive teaching certificate has the skill set necessary to serve as a long-term substitute. Ms. Stadick-Smith said the inactive teaching certificate language allows a person to take a break from teaching without losing their certificate, and to return the status to valid, they must get three college credits and 45 contact hours. She stated the goal of including this provision in the rules was to help alleviate the shortage of substitute teachers in the state.

Senator Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the South Dakota Board of Education Standards (Department of Education) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Board of Technical Education (Department of Education): Adopt and amend rules to change the distribution methodology of funds and update rule language to reflect the "technical institute" to "technical college" name change.

Mr. Nick Wendell, South Dakota Board of Technical Education (Department of Education), reviewed the proposed rules, some of which were prompted by the passage of [House Bill 1083](#) by the 2020 Legislature.

Representative Jensen moved, seconded by Senator Hunhoff, that the review of the rules proposed by the South Dakota Board of Technical Education (Department of Education) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Cosmetology Commission (Department of Labor and Regulation): Amend rules to:

- Repeal unnecessary rules;
- Implement esthetics apprenticeships;
- Make changes to apprenticeships;
- Revise prohibited tools and procedures; and
- Clarify rules.

Ms. Bradi Stampe, South Dakota Cosmetology Commission (Department of Labor and Regulation), reviewed the proposed rules.

Public Testimony

Mr. Justin Loesch and Mr. Jason Glodt, South Dakota Barbers Association, spoke in opposition to the proposed rules. Mr. Loesch stated the changes would allow cosmetologists to use straight blades for shaving customers, which statute stipulates should be used only by trained barbers.

Representative Jensen asked how many hours of training a cosmetologist would receive in order to use a straight blade. Mr. Loesch replied they would take sixteen hours of training, as opposed to the more than 100 hours received by barbers.

Senator Hunhoff asked Ms. Stampe to clarify which proposed rule the South Dakota Barbers Association was disputing. Ms. Stampe said she believed it is ARSD 20:42:08:10 concerning the use of unguarded blades. Mr. Loesch confirmed that was the specific rule, but his organization is opposed to any proposed rules changes in this area.

Representative Hansen asked Mr. Loesch and Mr. Glodt if their argument against the rule is that under [SDCL 36-14-1](#), it is illegal for a cosmetologist to use an unguarded blade and the change in rules would allow them to do so. They said yes.

Representative Hansen asked **Mr. Graham Oey, Department of Labor and Regulation**, what the current status of the law is regarding unguarded blades. Mr. Oey, who is a staff attorney for the department, said under current law, only barbers can use unguarded blades. The proposed rules would allow cosmetologists to use unguarded blades but not straight blades.

Representative Hansen inquired what in the law prevents cosmetologists from using straight blades. Mr. Loesch responded that the law is specific that shaving is an act performed by a barber. Mr. Glodt concurred, adding that SDCL 36-14-1 prohibits the proposed rule because use of a straight blade is exclusive to barbers.

Senator Johns asked what type of implement would have an unguarded blade that is not a straight blade. Ms. Stampe gave the example of an instrument, available at any drug store, that is used for dermaplaning. Dermaplaning is a procedure used to exfoliate the skin and remove fine hairs from a person's face as part of a facial.

Representative Hansen commented that SDCL 36-14-1 lists some services that cosmetologists can provide and the law does not appear to give exclusive authority to barbers, but more outlines what barbers can do. Mr. Glodt said cosmetologists are addressed in [SDCL 36-14-12](#), and some overlap exists between the laws over what each side can provide for services. He added that nothing prevents a cosmetologist from obtaining additional training or licenses.

Representative Hansen said the commission appears to have the authority to promulgate the rules they have proposed, and if the barbers have concerns they want addressed, they may want to consider bringing them to the entire legislature.

Senator Hunhoff stated that she had no problem with the rules overall except for the training hours issue, and said the committee needed to stay out of the turf battle between the barbers and the cosmetologists. Regarding the educational requirements, she said there should be consistency when it comes to public safety. Senator Johns and Representative Jensen agreed.

Senator Hunhoff moved, seconded by Representative Jensen, that proposed rule 20:42:08:10 be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 3 ayes, 1 nay, and 2 excused. Voting aye: Hunhoff, Jensen, and Johns. Voting nay: Hansen. Excused: Cwach and Heinert.

Senator Hunhoff moved, seconded by Senator Johns, that the review of the remaining rules proposed by the South Dakota Cosmetology Commission (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Department of Game, Fish and Parks: Amend rules to:

- Close one of the hunting units for spring turkey season;
- Change March 31 to April 30 in rule regarding the mountain lion hunting season in the Black Hills Fire Protection District;
- Allow the pursuit of mountain lions by dogs outside of the Black Hills Fire Protection District

under certain circumstances;

- Add the words "traps" and "floatlines" to ARSD [41:07:08](#);
- Create a definition for a fishing "floatline";
- Allow 10 channel catfish and 5 flathead catfish to be taken daily;
- Clarify an angler could only take one flathead catfish 30 inches or longer, and one blue catfish as part of their daily limit;
- Allow spearing statewide on inland waters with certain exceptions;
- Add floatlines into the licensing structure;
- Add floatline to ARSD [41:07:08:02](#) and delineate the number of hooks allowed per floatline and the number of floatlines allowed in total;
- Add the term "traps" to ARSD [41:07:08:05.02](#);
- Require floatlines to be attended while fishing;
- Add floatlines to ARSD [41:07:08:06](#);
- Add hoop nets and traps as methods of take in certain areas;
- Remove certain restrictions on mesh size and length for seines and nets;
- Reduce the reporting requirements by licensed bait dealers;
- Eliminate annual fish health and aquatic invasive species (AIS) inspections for private hatcheries;
- Modify the age of a youth from 17 to 18 for fishing tournaments;
- Create an exemption for individuals transporting AIS for disposal purposes;
- Create an exemption for launching a boat, dock, or boat lift that is not cleaned, drained, and dried, into the water if certain qualifications are met; and
- Repeal ARSD [41:09:04:16.03](#), [41:10:04:08](#) and [41:10:04:09](#).

Mr. Tom Kirschenmann, Department of Game, Fish and Parks, reviewed the proposed rules, noting that those rules relating to the use of blowguns had not been adopted by the Game, Fish and Parks Commission. The rules were submitted via public petition, and Mr. Kirschenmann wanted to ensure the committee was aware of them.

Public Testimony

Ms. Nancy Hilding, Prairie Hills Audubon Society, spoke in opposition to the proposed rule regarding the use of dogs for mountain lion hunting outside of the Black Hills Fire Protection District. She also commented on several procedural issues, contending that the Department of Game, Fish and Parks did not provide a reasonable opportunity for the public to comment on the proposed rules during the commission meeting; electronic comments were unable to be uploaded to the department website; commenting deadlines were unclear as they did not take into consideration the difference in time zones from one side of the state to the other; and that the department met with petitioners behind closed doors to reach agreements.

Ms. Julie Anderson, self, expressed opposition to allowing hound hunters more access to hunt mountain lions on public and private lands. Ms. Anderson said passage of the rule may result in unforeseen trespassing and injuries to dogs and other animals, and would not help to control mountain lion populations. She told members that over 100 public comments were submitted on the proposed rules, none of which were given consideration by the commission.

In rebuttal, **Mr. Jon Kotilnek, Department of Game, Fish and Parks**, explained that the public comment system used by the department tags comments as they are received to determine if they are submitted by the deadline, and noted Ms. Hilding also has his personal email address and has corresponded with him in that manner on previous occasions. Mr. Kotilnek said the department often works directly with petitioners during the process to ensure the intent of the petition is clear before it is acted upon.

Mr. Kirschenmann clarified the guidelines that must be followed when using hounds to hunt mountain lions in the expanded area being proposed and said there have been multiple rules changes affecting the mountain lion hunting season over the past ten to fifteen years.

Senator Hunhoff asked why one of the proposed rules would eliminate fish health inspections. Mr. Kirschenmann responded the change was aimed at reducing the burden on the private fish hatcheries in the state who may have difficulty finding a veterinarian to do the inspection and are only moving fish in-state.

Senator Hunhoff requested an explanation of the proposed rules regarding zebra mussels. Mr. Kirschenmann clarified that under current rule, property owners who live on a lake where zebra mussels have been identified are required to remove them from their dock or boat but cannot have them in hand. The proposed rule gives them the ability to dispose of the zebra mussels. The rules, which were brought by department staff, do not require the owner to decontaminate the boat or dock if they are putting it back in the same body of water from which it was removed as the water has already been contaminated by the invasive species.

Senator Hunhoff expressed concern about the zebra mussel situation in the state, saying the department's efforts are neither decreasing nor stabilizing the spread of the species. Contamination is being caused by human behavior, and solutions have yet to be identified to control it.

Representative Jensen asked if a mountain lion is taken on public land, whether an officer must confirm that the hunt originated on private land. Mr. Kirschenmann replied that a mandatory check-in is required and if there is some doubt as to the results, the case may be turned over to law enforcement staff to follow up with the hunter.

Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Department of Game, Fish and Parks: Amend rules to:

- Allow greater flexibility to the department as to when park entrance licenses may be offered for sale;
- Designate some lakeside use areas as basic campgrounds and establish a fee for those campsites;
- Designate Randall Creek as a prime campground and establish a fee for those campsites;
- Correct an administrative error by increasing the French Creek Horse Camp fee to a price that was already passed by the Commission;
- Align check out times of camping cabins with other structural camping facilities throughout the state; and
- Incorporate cabin suites into the checkout times.

Mr. Scott Simpson, Department of Game, Fish and Parks, reviewed the proposed rules.

Senator Johns moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Commission on Gaming (Department of Revenue): Adopt and amend rules to:

- Add additional pay tables for the Dakota Duel Draw game;
- Clarify the definition of a prohibited person;
- Clarify the requirements for notification to the Commission regarding tournaments, contests, and pools;
- Clarify the requirements for submissions to an independent testing laboratory;
- Clarify the requirements that a licensee or sports wagering services provider must address in establishing test accounts;
- Delete the recording information for vouchers and place them in a separate rule for clarity;
- Clarify the requirements of the system recordings for vouchers which was previously set forth in ARSD 20:18:35.02:05;
- Clarify the accounts credits and deposits and approved methods of funding;
- Clarify the suspension and restoration of accounts;
- Clarify the effects of suspension of an account; and
- Clarify methods of securing payments.

Mr. Doug Abraham, South Dakota Commission Gaming (Department of Revenue), reviewed the proposed rules, some of which were style and form changes to the sports wagering rules presented by the commission at the August 2, 2021, IRRC meeting.

Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Commission on Gaming (Department of Revenue) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

South Dakota Real Estate Commission (Department of Labor and Regulation): Amend rules to:

- Repeal unnecessary rules;
- Reduce barriers for out of state applicants;
- Increase educational opportunities; and
- Clarify rules.

Ms. Melissa Miller, South Dakota Real Estate Commission (Department of Labor and Regulation), reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Real Estate Commission (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Public Testimony: General Purposes

No public testimony was provided in addition to that offered on specific rules.

Closing Comments

Representative Hansen announced that an ad hoc meeting of the IRRC is being planned for late December or early January. When the date is finalized, it will be posted on the LRC website.

Adjournment

Senator Hunhoff moved, seconded by Representative Jensen, that the meeting be adjourned. Motion prevailed on a roll call vote with 4 ayes and 2 excused. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Excused: Cwach and Heinert.

Chair Hansen adjourned the meeting at 12:32 p.m.