

# MINUTES

## Rules Review Committee



Representative Jon Hansen, Chair  
Senator Jean Hunhoff, Vice Chair

Four hundred eighth meeting  
Tuesday, May 3, 2022

Room 414 – State Capitol  
Pierre, South Dakota

The four hundred eighth meeting of the Interim Rules Review Committee (IRRC) was called to order by Senator Jean Hunhoff, Vice Chair, at 10:00 a.m. (CT) on May 3, 2022, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach (remote), Jon Hansen, Chair (remote), and Kevin Jensen; and Senators Red Dawn Foster (remote), Jean Hunhoff, Vice Chair, and Timothy Johns (remote). Staff members present were John McCullough, Code Counsel; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, IT Support Specialist.

**NOTE:** For purpose of continuity, the following minutes are not necessarily in chronological order. All referenced documents distributed at the meeting are hyperlinked to the document on the Legislative Research Council website. This meeting was live streamed. The archived live stream is available at [sdlegislature.gov](https://sdlegislature.gov).

### Approval of Minutes

**Representative Jensen moved, seconded by Representative Hansen, that the April 5, 2022, meeting minutes be approved. Motion prevailed on a roll call vote with 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.**

### Staff Report

**Mr. John McCullough, Code Counsel,** noted that the next scheduled meeting on June 7, 2022, falls on South Dakota's Primary Election Day, and suggested that it be moved to June 14, 2022. As no committee members had any objections, the date of the meeting was so moved.

### Rules Reviewed

**[South Dakota Board of Certified Professional Midwives \(Department of Health\):](#)** Amend rules to:

- Add more options to the limited prescriptive authority authorized by SDCL 36-9C-13(7)(b);
- Include emergency treatment for allergic reactions that might arise from the use of medications authorized in SDCL 36-9C-13 (7)(a)(b)(c)(d) and (g); and
- Make the renewal of licenses more expedient, equitable, and in compliance with SDCL 36-9C-16.

**Ms. Tammy Weis, Executive Director, South Dakota Board of Certified Professional Midwives,** reviewed the proposed rules, which include the addition of Epinephrine HCL, Tranexamic Acid (TXA), and IV fluids to the [Drug Formulary](#) used by certified professional midwives. Ms. Weis told members that all LRC suggested edits were accepted with the exception of the removal of language concerning epipens, a device for the auto injection of epinephrine. The board voted to retain the language for the safety of patients and ask the IRRC to let them change the statute in the future while allowing for use of the devices at the present time.

## Public Testimony

**Ms. Jackie Lopez, Member, South Dakota Board of Certified Professional Midwives**, said she practices in both South Dakota and Wyoming, and South Dakota has higher standards for licensure when compared to other states. Referencing the North American Registry of Midwives Candidate Information Booklet ([Document 1](#)), Ms. Lopez discussed the educational requirements to become a licensed midwife and told the committee that patients would want their midwife to be able to administer the necessary drugs and treatment in the case of a hemorrhage during or after the procedure.

**Ms. Susan Rooks, Vice President, South Dakota Board of Certified Professional Midwives**, explained the uses of TXA, which controls bleeding by helping the blood to clot. Ms. Rooks stated that studies have indicated that in the event of a hemorrhage during birth, immediate treatment can improve the survival rate of the patient by 70 percent ([Document 2](#)).

**Dr. Kimberlee McKay, Member, South Dakota Board of Certified Professional Midwives**, said the rules were drafted in the interest of patient safety. Regarding the addition of IV fluids to the drug formulary, administering IV fluids is the first line therapy for treating a hemorrhage and while a certified professional midwife has access to the fluids, they are not authorized to administer them. Dr. McKay noted it is common for a patient to need a liter of IV fluids following delivery.

**Mr. Justin Bell, South Dakota Medical Association**, spoke in opposition to the proposed rules regarding the additions to the drug formulary, saying the board does not have the statutory authority to use epipens and that while they may be needed for patient safety, the board still must do like other entities and get the statutory authority before adding it to their administrative rules. Mr. Bell said the scope of practice for a certified professional midwife is limited to births in a low-risk setting; if the situation has escalated into an emergency, the patient should already have been transferred to a hospital where such drugs and IV fluids are authorized to be administered.

## Rebuttal

Ms. Rooks agreed that midwives anticipate working in low-risk settings and 20 to 40 percent of women who hemorrhage during a birth have no risk factors and did not anticipate any problems during delivery. The use of TXA and IV fluids would only occur when initial anti-hemorrhage treatment has failed, and emergency medical technicians (EMT's) have been notified.

Representative Jensen noted the passage of [Senate Bill 93](#) by the 2022 Legislature, allowing for the use of epipens by ambulance services, and asked what barriers exist between what was allowed for paramedics and what is allowed for midwives. Ms. Weis said the board did review the bill and that emergency medical personnel wanted to go to the use of an epipen as opposed to individual doses of epinephrine because doses expire quickly. The proposed rule would provide for the use of an epipen followed by immediate transport of the patient to a hospital.

Senator Hunhoff requested examples of what types of allergic reaction a postpartum mother would experience that would necessitate the use of epinephrine. Ms. Rooks replied the most likely cause would be the use of the anesthetic with other possible causes being things like bug bites. Such reactions occur in about two cases out of every 100,000 births.

Responding to Senator Hunhoff on the number of IV's a midwife could expect to start, Ms. Lopez said in her practice in Wyoming, she administers IV's bimonthly and routinely does blood draws to maintain the necessary skill set. According to Ms. Lopez, for other licensed midwives, they would likely have patients every other month who would benefit from IV therapy.

Senator Hunhoff asked what the benefit is for using TXA. Ms. Rook responded that the initial hemorrhage treatment would involve the use of uterotonic drugs and if the normal regimen was ineffective, the next level of medications, like TXA, would be needed.

Senator Hunhoff noted that the proposed rule does not specify that the midwife would call an ambulance or transfer the patient to a hospital in case of a problem but mentions that emergency medical personnel would be notified. She asked for clarification on the process. Ms. Rook said in some parts of South Dakota, EMT's may not be located in the immediate vicinity, meaning the patient would have to wait for them to travel to her location to provide assistance. Ms. Weis added that the board rejected language saying the midwife would call for paramedics because it can be quicker to get the person to the hospital in a private vehicle and in many cases, the patient is not admitted to the hospital but is stabilized and sent home. Dr. McKay said when the midwife notifies the patient's care team, it is with the assumption that the patient is coming into the hospital, but the patient can still refuse to go, if they choose to do so.

Senator Hunhoff asked Code Counsel McCullough whether the board has the authority in law to add epipens to their drug formulary. Mr. McCullough replied that the board does not and that [SDCL 36-9C-13](#) outlines their limited authority to administer drugs.

Representative Jensen inquired as to what injectable drugs certified midwives are currently authorized to administer. Ms. Rook referred to the drug formulary in response. Dr. McKay noted that the injectable drugs currently on the list are higher risk than epipens, which are considered a lower risk medication.

Representative Jensen asked Mr. Bell about the difference between lower risk and higher risk medications. Mr. Bell responded that the legal issue is that the other drugs are explicitly authorized for use by law while epipens are not.

Senator Hunhoff said to be consistent, committee members should consider reverting the proposed rule regarding epipens, as was done with the EMT's, until statutory authority is obtained. She also noted that if the patient has an allergy, they likely already have an epipen at home so the midwife would not need to carry one, and the patient is ultimately the decision-maker on whether they want to go to the hospital if the situation requires emergency treatment.

***Representative Jensen moved, seconded by Senator Johns, that the review of the rules proposed by the South Dakota Board of Certified Professional Midwives (Department of Health) is complete and that all rules be adopted with the exception of that portion of the rule regarding epipens, which should be reverted under [SDCL 1-26-4.7\(4\)](#). Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Cwach, Foster, Jensen, Johns, and Hunhoff. EXCUSED: Hansen.***

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

- Modify when and how funds are remitted from licensing agents;
- Repeal ARSD 41:02:01:12;
- Simplify the cancellation policy for campsites and cabins;
- Modify the public water safety zones in Brookings County, Butte County, and Day County, specifically on Waubay National Wildlife Refuge and Waubay State Game Bird Refuge;
- ~~Modify the Oahe Dam State Waterfowl Refuge;~~
- Modify the number of licenses and the open units available for the Black Hills elk hunting season;
- Modify the number of licenses available and the season dates for the Custer State Park elk hunting season;
- Modify the number of licenses available for the Custer State Park early archery elk hunting season, the archery elk hunting season, and the bighorn sheep hunting season;

- Eliminate the ability to obtain a preference point when applying for Unit BHS-ZZ1 for the bighorn sheep hunting season;
- Modify when a hunter has to complete a mandatory briefing prior to hunting in the bighorn sheep season;
- Modify the number of licenses available and the open dates for each open unit as well as create a new unit for the prairie elk hunting season;
- Modify open unit descriptions and add the description of a new hunting unit for the prairie elk hunting season; and
- Modify certain walleye restrictions on Lake Francis Case while ice fishing.

**Mr. Al Nedved, Parks and Recreation Division, and Mr. Tom Kirschenmann, Wildlife Division, Department of Game, Fish and Parks,** reviewed the proposed rules. Mr. Kirschenmann advised members that the proposed rules being brought for consideration did not include a rule to modify the Oahe Dam State Waterfowl Refuge, as noted on the meeting agenda. The proposed rule was not approved by the Game, Fish and Parks Commission for inclusion with the packet.

Representative Cwach asked if data was available explaining the need for an increase in the number of available elk hunting tags. Mr. Kirschenmann responded that as the department does with all deer hunting seasons and some other big game seasons, the number of available licenses are denoted as "no more than" in administrative rule as the ultimate number that may be distributed and provided. The actual number issued will be less than that. The recommended number of license tags is based on population, depredation issues, and environmental issues.

In response to Senator Hunhoff's question as to why the numbers are not more realistic if the department knows it will not meet the posted cap, Mr. Kirschenmann said they look at a five to ten year average of licenses issued, review population objectives, and then consider environmental impacts. For example, if the state experiences a prolonged drought and the elk population needed to be thinned as a result, the number of licenses issued would need to be increased for a year or two to allow for hunter harvesting. Senator Hunhoff and Mr. Kirschenmann agreed that the general public may not be aware of that aspect in looking at license tag numbers.

Senator Hunhoff inquired as to what topics are covered during big horn sheep orientation and if the orientation is conducted in person or by electronic means. Mr. Kirschenmann replied that as the number of big horn sheep tags issued is limited, getting one may be a once in a lifetime opportunity for a hunter so they are made aware of the animal's behavior, habitat, appearance, and the differences between the classes of animals. Orientation is provided both electronically and in person.

Representative Jensen asked if setting the elk hunting license numbers to a higher cap allows the department to increase or decrease the number of licenses as needed without the department having to propose rules changes for every adjustment. Mr. Kirschenmann said yes.

***Senator Hunhoff moved, seconded by Senator Johns, 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 5 AYES and 1 EXCUSED. Voting AYE: Cwach, Foster, Jensen, Johns, and Hunhoff. EXCUSED: Hansen.***

Senator Johns announced that as proposed rules from the South Dakota Appraiser Certification Program (Department of Labor and Regulation) had been removed from today's agenda at the department's request, he would proceed to the hearing on proposed rules from the South Dakota Division of Insurance.

**South Dakota Division of Insurance (Department of Labor and Regulation):** Amend rules to incorporate 2022 Medicare Supplement coverage amounts set by the federal government.

**Ms. Lisa Harmon, Counsel, South Dakota Division of Insurance,** reviewed the proposed rules.

Senator Hunhoff inquired about the timeframe for implementation for changes on policies. Ms. Harmon responded that the federal government updates the coverage amounts in November and as the proposed rule updates the amounts on the state level, the timeframe begins on January 1, 2022, to allow for individuals to receive accurate plan information when they are enrolling.

***Representative Jensen moved, seconded by Senator Hunhoff, 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 5 AYES and 1 EXCUSED. Voting AYE: Cwach, Foster, Jensen, Johns, and Hunhoff. EXCUSED: Hansen.***

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

No public testimony was offered or received.

### **Closing Comments**

Senator Hunhoff asked that all committee members notify the LRC at least the day before all remaining meetings during the 2022 Interim if they will be attending and if so, whether they will participate remotely or in person.

### **Adjournment**

***Representative Jensen moved, seconded by Senator Johns, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Cwach, Foster, Jensen, Johns, and Hunhoff. EXCUSED: Hansen.***

Vice Chair Hunhoff adjourned the meeting at 11:49 a.m.