

# MINUTES

## Rules Review Committee

Representative Jon Hansen, Chair  
Senator Jean Hunhoff, Vice Chair



Four hundred eleventh meeting  
Tuesday, August 23, 2022

Room 414 – State Capitol  
Pierre, South Dakota

The four hundred eleventh meeting of the Interim Rules Review Committee (IRRC) was called to order by Representative Jon Hansen, Chair, at 10:00 a.m. (CT) on August 23, 2022, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Jon Hansen, Chair, Ryan Cwach (remote), and Kevin Jensen; and Senators Red Dawn Foster, Timothy Johns (remote) and Jean Hunhoff, Vice Chair. Staff members present were Doug Decker, LRC Staff; 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

***Senator Hunhoff moved, seconded by Representative Jensen, that the July 19, 2022, meeting minutes be approved. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.***

### Staff Report

**Mr. Doug Decker, LRC Staff,** noted that three rules packets will be up for consideration at the next meeting, scheduled for September 13, 2022.

### Rules Reviewed

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

- Broaden the definition of protective custody to include children in protective custody arrangements that do not require a court order;
- Update the definition of "adult exercising parental control" to prevent an additional barrier for applicants; and
- Remove acronyms throughout this Article.

**Mr. Greg Tishkoff and Ms. Carrie Johnson, Department of Social Services,** reviewed the proposed rules.

Representative Cwach asked why the requirement to provide a written statement as proof that an individual has the authority to act as an "adult exercising parental control" was being removed. Mr. Tishkoff and Ms. Johnson replied that such information is already provided by a non-custodial parent through other Department of Social Services programs.

Representative Cwach requested clarifying information on the child care voucher program. Ms. Johnson said in Fiscal Year 2022, 1,695 families, representing about three thousand children, participated in the child care subsidy program. All families that apply can be served by the program, which is funded in part by a federal block grant as well as state funds.

***Senator Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.***

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

- Update to current coding manuals;
- Update the dental limit for nonemergency services;
- Clarify the podiatry services reimbursement rate;
- Update podiatric coverage to account for metabolic, neurologic, or peripheral vascular disease coverage;
- Clarify personal care services provider level determinations;
- Update an age limit to align with school district services coverage;
- Repeal obsolete rules regarding case management which are more appropriately detailed in the coverage and reimbursement chapter of community mental health center (CMHC);
- Update "diabetes education program" terminology to "diabetes self-management training" and clarify diabetes education coverage;
- Update language to allow an Independent Mental Health Practitioner (IMHP) to provide medically necessary treatment with a provisional mental diagnosis to align coverage with CMHC;
- Update substance use disorder definitions; and
- Change the ICAP assessment requirements from every three years to annually.

**Mr. Greg Tishkoff and Ms. Sarah Aker, Department of Social Services,** reviewed the proposed rules.

### **Public Testimony**

**Mr. Paul Knecht, South Dakota Dental Association,** expressed the organization's support for the proposed changes to ARSD 67:16:06:04, saying it would help to retain dentists in South Dakota and provide better care to patients. Mr. Knecht told members he and his organization have worked closely with the department on issues such as reimbursement levels and the proposed changes are helpful and encouraging.

Representative Jensen asked about the previous rate of payment on podiatry services and how it was determined to limit payment to 40 percent in the proposed rule. Ms. Aker said the rule currently says payment is limited to the established percentage, for which the department generally used 40 percent.

Senator Hunhoff asked what sectors of the medical community will be impacted by the proposed rules changes. Ms. Aker clarified that preventative care issues face all levels from physicians to podiatrists to nurse practitioners and the intent of the changes is to ensure that preventative care is provided to patients up front to lessen the possibility of medical conditions worsening before the individual gets the treatment they need.

Senator Hunhoff inquired as to who provides personal care services to a patient. Ms. Aker replied that such services can be provided by nurse, home health care agency, or personal care agency, and can be provided to both children and adults, in qualifying circumstances.

***Representative Jensen moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.***

**State Board of Finance (Office of the Secretary of State):** Amend rules to increase the mileage rates for state employees performing official state business.

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

Representative Jensen asked how the proposed rates compare to the federal mileage rates. Mr. Lutz said he believed the federal rate to be 58 cents a mile and that it was used as a guide for increasing rates on the state level.

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

**South Dakota Appraiser Certification Program (Department of Labor and Regulation):** Amend rules to:

- Update application contents for supervisory appraisers and Appraisal Management Companies (AMC);
- Revise exam requirements for certain credentials;
- Establish rules for experience training programs;
- Revise definitions; and
- Bring rules into closer alignment with federal rules.

**Ms. Anna McCarthy, South Dakota Appraiser Certification Program,** reviewed the proposed rules.

### **Public Testimony**

Letters of support were received prior to today's meeting from the South Dakota Bankers Association ([Document 1](#)) and the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ([Document 2](#)).

**Ms. Sandra Gresh, Professional Appraisers Association of South Dakota (PAASD),** explained the appraiser credential levels in South Dakota and noted that it is difficult for an individual to move from one level to the next because of a lack of certified supervisors to train and oversee them. This has resulted in an insufficient number of appraisers available to meet the state's needs. Ms. Gresh provided informational material about her organization ([Document 3](#)) and referenced handouts ([Documents 4, 5](#)) supporting its opposition to the training rules being proposed by the Appraiser Certification Program.

**Ms. Amy Frink, Appraiser Advisory Council,** testified in opposition to the proposed training rules, telling members that it is time-consuming to serve as a supervisor to appraiser trainees which is why it is difficult to find certified appraisers willing to act as supervisors. Ms. Frink said she is in support of two proposed programs – Practical Application of Real Estate Appraising (PAREA) and South Dakota Experience Training Program (ETP) – which do not require supervisors nor have mandated minimum hours, adding it is important for trainees to come out of training employable and ready to start working. Ms. Frink also referenced the handouts provided by Ms. Gresh.

**Mr. Craig Steinley, PAASD,** is one of three subject matter experts who worked on the grant for the ETP and presented information ([Document 6](#)) on the history and timeline for the program. Mr. Steinley said that while the department and industry professionals have worked together to iron out a lot of issues, training continues to be a challenge. Prior to 2018, if a supervisor was available, appraiser trainees were required to take from 2,000 to 4,000 hours of training to become certified. After 2018, federal requirements lowered the number of training hours in an

attempt to increase the number of appraisers. Mr. Steinley testified that the number of appraisers did not increase, saying the barrier was having to have a supervisor not the number of hours of training.

The federal grant the subject matter experts wrote proposed a three year program and the scope of work included researching and developing a required timeline. Mr. Steinley said in discussions with bankers and credit unions in South Dakota, all entities wanted more appraisers but would not commit to hiring someone with just six months of training and no supervisor or mentor. According to Mr. Steinley, the timeline developed for the ETP, which is longer than that proposed by the Appraiser Certification Program, would allow for appraisers to be trained well enough to do their jobs.

Mr. Steinley concluded his opposing testimony by saying the memorandum of understanding (MOU) being proposed between the department and South Dakota State University (SDSU) to develop the ETP will prolong any implementation of the program.

**Mr. Daryl Washechek, self**, is a past and current member of the Appraiser Advisory Council. According to Mr. Washechek, supervisor rules were introduced in 2009 in response to the 10 to 20 complaints concerning untrained appraisers which were received and handled by the Appraiser Certification Program annually. He has trained five individuals during his career, saying it is a costly process because it is time-consuming for the supervisor and can result in a loss of income to them because instead of appraising, they are spending that time training others. Mr. Washechek advised committee members of the summer study group comprised of 12 appraisers which met with all interested parties to develop training options; the ETP was one of the results of that meeting. Mr. Washechek also testified in opposition that today's proposed rules do not require an appraiser trainee's work to be reviewed before they test for their license.

**Mr. Kent Roe, self**, provided perspective from an appraiser trainee standpoint, as he is a state registered general appraiser currently training to become a certified appraiser. Mr. Roe agreed that there is a legitimate shortage of appraisers in South Dakota and while the ETP would help, guidance from PAASD would assist the Appraiser Certification Program in making it a better, more viable, option.

Letters of opposition were received prior to today's meeting from **Mr. Joe Ibach, self** ([Document 7](#)) and **Mr. Ken Simpson, self** ([Document 8](#)).

### Rebuttal

**Ms. Amber Mulder, Department of Labor and Regulation**, responded that the ETP will address the shortage of appraisers in South Dakota and the financial and time burden for supervisors. The MOU was arrived at through discussions with the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. Ms. Mulder stated the department will enter into the MOU with SDSU to meet the minimum federal requirements and ensure the appropriate training and skills will be available to those who need them. She also clarified that appraisers will be required to submit reports on their work during the ETP, meaning their work will be reviewed prior to licensing. Proposed rules changes regarding credentialing will be coming before the IRRC this fall.

Senator Hunhoff asked the department to specify which proposed rules are being opposed by today's testifiers. Ms. Mulder said they are those rules pertaining to the ETP.

Senator Hunhoff inquired as to whether the program will be housed entirely through SDSU, meaning any individual wanting to participate in the program would have to take it there. Ms. Mulder said the relationship is still being worked out but SDSU will be unable to set up the framework for the program without passage of the proposed rules. She also specified that the MOU will be between the Department of Labor and Regulation, the Appraiser Certification Program, and SDSU.

Representative Hansen asked if the desire is to adopt the minimum federal standards, why would an MOU be utilized instead of making the changes directly in rule. Ms. Mulder replied that the Appraisal Subcommittee that awarded the grant advised them to use an MOU.

In response to Representative Hansen as to whether they could still get the program moving and come back with proposed rules for hour requirements next month if the rule was reverted today, Ms. Mulder responded that they would still be unable to reach an agreement with the opponents as to required hours and SDSU would be unable to develop the necessary curriculum.

Representative Jensen asked if a current supervisor would teach the ETP or would it be a static curriculum. Ms. Mulder answered that the lead trainer would be an adjunct professor at SDSU.

Representative Cwach inquired as to what law or rule was preventing the department and SDSU from working together to work out a program proposal without the proposed rules in place. Ms. Mulder said the intent is to use federal funding from the Appraisal Subcommittee grant to develop the program, and if that money were not available, the department would need to fund the program through license fee revenues.

Senator Foster asked if other states require 1,000 hours of training and a six-month timeframe. Ms. Mulder replied that all surrounding states have similar minimum requirements, but South Dakota's ETP would be the first such program in the nation and other states will be monitoring it to see if the model is successful. She responded yes when asked by Senator Foster if there are reciprocity programs with other states for these training requirements.

Senator Hunhoff asked what training approaches are currently being offered to prospective appraisers in South Dakota and what will be available to them if the proposed rules are approved. Ms. Mulder said currently only the traditional training model of direct training between a supervisor and a trainee is available. If the rules pass, ETP and PAREA would become training options, too.

Senator Foster inquired of the opponents as to why they oppose the reduction in training hours and the removal of the supervisor requirement. Mr. Steinley responded that the current minimums of 1,000 hours and six months apply if the trainee has a supervisor and the ETP is a way to still meet those minimums without having a supervisor. The MOU being discussed doesn't specify the number of required training hours and would allow the Department of Labor and Regulation to make changes to the requirements without coming back to the IRRC to change the rules.

Representatives Cwach, Hansen, and Jensen, and Senator Johns all expressed concern over the MOU and the quality of the training a person could expect to receive in becoming a certified appraiser. Comments were made suggesting that several rules, if not the entire chapter, could be reverted.

***Representative Cwach moved, seconded by Representative Hansen, that Chapter 20:14:15 as proposed by the South Dakota Appraiser Certification Program (Department of Labor and Regulation) should be reverted to a step prior under SDCL 1-26-4.7.***

***In a substitute motion, Representative Hansen moved, seconded by Senator Hunhoff, that proposed rule 20:14:15:04 be reverted to a step prior under SDCL 1-26-4.7. Motion failed on a roll call vote with 3 AYES and 3 NAYS. Voting AYE: Johns, Hunhoff, and Hansen. Voting NAY: Cwach, Foster, and Jensen.***

***Committee action returned to the original motion made by Representative Cwach, which failed on a roll vote with 3 AYES and 3 NAYS: Voting AYE: Cwach, Foster, and Jensen. Voting NAY: Johns, Hunhoff, and Hansen.***

***Representative Hansen moved, seconded by Senator Hunhoff, that proposed rules 20:14:15:04 and 20:14:15:08 be reverted to a step prior under SDCL 1-26-4.7(3)(4). Motion prevailed on a roll call vote with 4 AYES and 2 NAYS. Voting AYE: Jensen, Johns, Hunhoff, and Hansen. Voting NAY: Cwach and Foster.***

***Representative Hansen moved, seconded by Representative Jensen, that the review of the remaining rules proposed by the South Dakota Appraiser Certification Program (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 4 AYES and 2 NAYS. Voting AYE: Jensen, Johns, Hunhoff, and Hansen. Voting NAY: Cwach and Foster.***

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

No public testimony was offered or received.

### **Adjournment**

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

Chair Hansen adjourned the meeting at 12:45 p.m.