

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred seventy-third meeting
Monday
July 9, 2018

Room 414
State Capitol
Pierre, South Dakota

The three hundred seventy-third meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 9:58 a.m. CDT, on July 9, 2018, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy, Lance Russell, and Alan Solano (Vice Chair, who participated by telephone), and Representatives Julie Bartling, Steven Haugaard, and Jean Hunhoff (Chair). Staff members present were Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file at the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://sdlegislature.gov> under "Interim."

Approval of Minutes

Representative Haugaard moved, seconded by Senator Russell, that the minutes of the June 4, 2018 meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Follow-Up Report from the Department of Social Services

At its June 4, 2018 meeting, the Rules Review Committee approved rules from the Department of Social Services pertaining to substance use disorder treatment for adult Medicaid recipients. During the discussion, Representative Haugaard expressed concern that the changes constituted an expansion of Medicaid and he questioned whether the department had the authority to make the changes. Representative Hunhoff as committee chair requested that the Department of Social Services provide a report at the July meeting verifying the statutory authority.

Ms. Laura Ringling, Department of Social Services, reported that prior to the July meeting, a letter was sent to all committee members outlining the department's position on the issue which is that SDCL § 28-6-1 does provide the necessary authority. Ms. Ringling stated the federal statutes have not changed since 2004 and the South Dakota rules are in line with Title 19 as it existed then and today. The Department of Social Services rules did not adopt any specific provisions from the Social Security Act but specifies the rules must follow the most current version of the Act.

Representative Haugaard asked whether the substance use disorder treatment services could be provided through state funding instead of Medicaid. **Ms. Brenda Tidball-Zeltinger, Department of Social Services**, replied affirmatively.

Representative Hunhoff thanked the department for the information.

Rules Reviewed

Department of Health: Board of Medical and Osteopathic Examiners - Amend rules to establish the criteria and approval process for a dry needling course of study that is completed by a physical therapist; and clarify the qualifications of a medical assistant applying for registration.

Mr. Tyler Klatt, Board of Medical and Osteopathic Examiners, reviewed the proposed rules.

Public Testimony

Mr. Patrick Hauer, President, South Dakota Physical Therapy Association, voiced his organization's support for the changes.

Representative Bartling asked if the majority of the course of study for dry needling was completed in person. Mr. Klatt and Mr. Hauer responded the course contains both online and in-person components.

In response to Senator Kennedy's question about whether physical therapy assistants are trained in dry needling, Mr. Hauer stated that although some interventions are delegated, one of the requirements for higher levels of education in physical therapy is that the individual have graduated from a physical therapist course. He also confirmed that dry needling courses focus on specific parts of the body and a therapist may only perform the procedure on those areas included in the course of study they have completed.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department Health: Board of Medical and Osteopathic Examiners is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Health: Board of Nursing - Amend rules to add certified registered nurse anesthetists (CRNA), clinical nurse specialists (CNS), certified nurse practitioners (CNP), and certified nurse midwives (CNM) to the definition of school; raise the biennial renewal fees for RNs, LPNs, CRNAs, and CNSs from \$70 to \$95; update the rules for the approval of nursing education programs and add requirements for approval of advanced practice nursing programs; repeal outdated rules regarding the Nurse Licensure Compact; and update the rules for nurse practitioners and nurse midwives.

Ms. Gloria Damgaard, Executive Director, South Dakota Board of Nursing, reviewed the proposed rules.

Senator Kennedy noted an incorrect cross reference in a portion of the rules relating to licensee fees; Ms. Damgaard said the error would be corrected.

Representative Bartling moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department Health: Board of Nursing is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Voting nay: Russell.

Department of Health - Amend rules to clarify the authority and processes that administer the J-1 Visa Program.

Mr. Tom Martinec, Department of Health, reviewed the proposed rules.

Senator Kennedy inquired why in the section regarding the posting of a notice of a discounted fee program, specific federal poverty level guidelines were stricken. **Mr. Andy Klitzke, Department of Health, Health Systems Development and Regulation Division**, replied that because federal guidelines fluctuate, the rules would need to be periodically aligned to avoid a double standard. Replacing the specific guidelines with language referring to the current federal poverty guidelines will keep the rules current despite any fluctuations. Senator Kennedy expressed concern that the actual specific discounts were removed and wondered how that benefited the people served by the program. Mr. Martinec reported the department received no negative comments from the health systems or the public regarding the proposed rules.

Replying to Representative Bartling, Mr. Martinec said each facility sets their own discount fee schedule, and he was not aware of any of the individuals who participated in the J-1 Visa Program working with the Indian Health Service.

Representative Hunhoff asked how many of the physicians participating in the program remained in South Dakota after completing their required time commitment under the waiver. Mr. Martinec replied that data from the most recent years (2012-2014) showed of the 32 visa doctors, 16 have stayed. Once they have met the time requirement, they no longer need to specifically practice in an underserved area.

Under the Flex 10 portion of the program, 10 applicants may service patients in underserved areas while being housed in an area that is not classified as underserved. Mr. Martinec clarified that in the current year, 10 of the 13 applicants for the South Dakota program are in the Flex 10 spots and those physicians may practice in cities like Sioux Falls and Rapid City as long as they can demonstrate they are treating underserved patients from those areas who travel to those locations for treatment.

Committee members asked how the factors for consideration are weighted if there are more applicants than slots available and who participates in the recommendation process. According to Mr. Martinec, the factors are not weighted, each application is evaluated based on the set criteria, and Department of Health staff determine who is approved.

Representatives Haugaard and Hunhoff, and Senators Kennedy and Russell, commented that while the program is well-intentioned, it may also allow the major health systems in the state to recruit highly specialized doctors for their own practices and not seek to improve health care in underserved areas in South Dakota. The point was made that reverting the rules for further clarification and suggested amendments by the committee did not eliminate the program itself.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Health is complete and the rules should be reverted to a prior step according to SDCL § 1-26-4.7 (3)(8). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation - Amend rules to change the speed limit from 35 to 25 miles per hour on portions of U.S. Highway 14A in and around Lead and Deadwood.

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

Senator Kennedy moved, seconded by Representative 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: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Game, Fish and Parks - Amend rules to eliminate the preference point forfeiture; eliminate age requirements for mentored youth hunters to hunt big game seasons; repeal the current size of party limit for hunting; replace the term “factory-rated” with “rated”; require that at least a .50 caliber bullet be used when using muzzleloading handguns; clarify that muzzleloading handguns are authorized for use in big game seasons; require deer that are harvested from Custer State Park to be submitted for chronic wasting disease; allow an individual to carry a firearm while archery hunting as long as they possess a firearms big game license valid for the same geographic area and time of year as the archery license; allow an individual to possess a firearm while accompanying an archery hunter so long as the individual has a valid big game license for the same geographic area and time of year as the licensed archery hunter; repeal the required bowhunter education requirement for certain archery hunters; move the start date for the archery deer hunting season from the fourth Saturday in September to September 1; ban the use of certain snares and extend the time period that all snares are prohibited on public lands and improved road rights-of-way to the end of pheasant season; require trappers to mark their traps to identify who the trap belongs to; and require all fur dealers to list employees/agents on their application who will purchase or contract to purchase fur-bearing animals.

Mr. Tony Leif, Department of Game, Fish and Parks, Wildlife Division, reviewed the proposed rules.

Representative Hunhoff asked what the likelihood is that an individual would have both an archery license and a firearm license. Mr. Leif advised that it was not unusual for hunters to have overlapping licenses, especially in certain parts of the state. He also responded to her question regarding the availability of bowhunter education by saying online and in-person courses are available and that the courses focus on teaching people how to be bowhunters, making them different than a traditional hunter safety course.

Senators Kennedy, Russell and Solano commended the Department for submitting their rules packet in an easy-to-follow organized manner, making the proposed rules regarding snares less controversial, and taking public input into account during their commission hearings.

Representative Hunhoff moved, seconded by Representative Bartling, 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 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Game, Fish and Parks - Adopt an emergency rule to establish rules to allow department Park Rangers and Conservation Officers to regulate the movement of firewood into state parks to slow the spread of the Emerald Ash Borer insect to uninfected trees.

Ms. Katie Ceroll, Department of Game, Fish and Parks, Parks Division, updated the committee on the emergency rule which took effect on June 11, 2018, and remains effective until September 8, 2018.

Ms. Ceroll stated an informational campaign including social media, online notices, and face to face interaction between department staff and state park visitors is being utilized to make people aware of the restriction. She said the public has been supportive of the effort. Any firewood infected with Emerald Ash Borer that is brought into a state park area is confiscated and disposed of or the bearer must take it back with them.

Senator Solano thanked the Department of Game, Fish and Parks for the report.

Department of Labor and Regulation: Division of Insurance - Amend rules to update the sources referenced in rule, and the definition of "health organization" to include "hospital."

Ms. Mallori Barnett, Department of Labor and Regulation, Division of Insurance, reviewed the proposed rules.

Senator Russell moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Office of the Secretary of State: Board of Elections - Amend rules to provide a check box on the Voter Voter Registration Address Verification Notice to note if a person no longer resides at that address; clarify the offices for which an independent candidate can run and where to submit petitions in the notice of deadline for filing nominating petitions for the primary election and for filing independent candidate petitions; remove language that pertains to the use of an ExpressLink ballot printer at the polling place as that was specific to the 2018 primary election; provide additional requirements on guidelines for acceptance of petitions and for counting signatures on petitions; provide a sample size for the random sample table for statewide candidates to allow for up to 20,000 signatures to be submitted; provide additional language in the petition circulator's oath on the statewide initiative, referendum, and initiated constitutional amendment petitions to include that the circulator is not attesting to any signature obtained by another person and that the circulator is a resident of South Dakota; amend the affidavit of completed ballot petition to include new language the petition sponsor needs to provide on each circulator; add a new column to the recapitulation sheet to provide for ballot counts for those counties using the new ExpressVote ballot marking device; and clarify the instructions absentee voters receive to inform them they need to pay the postage to return their absentee ballot and that the ballot must be received by the person in charge of the election before the polls close.

Ms. Kea Warne, Deputy Secretary of State, Election Services, Office of the Secretary of State, reviewed the proposed rules and noted that all members were being provided with an updated version which corrected a cite issue in a source code reference.

Regarding proposed rule 5:02:08:00.01 (J), Senator Kennedy asked if the requirement for people to sort petitions by circulator before submitting them was being proposed for the convenience of the Secretary of State's office. Ms. Warne explained they were looking for an easier way to identify whether all the information needed per circulator has been submitted, and having the office sort the petitions can delay the start of the random sample process. Senator Kennedy inquired whether under the proposed rules, if a petitioner has not sorted them correctly, a missorted sheet could be rejected and the signatures not counted or disqualified. **Mr. Tom Deadrick, Deputy Secretary of State, Business Services, Office of the Secretary of the State**, replied yes as far as the Secretary of State's office taking a look at the petitions is concerned.

Senator Kennedy noted a similar rule in the proposed package dealing with sheets for one petition being mixed with those of another petition by mistake. Ms. Warne confirmed that if that rule is adopted, if petition sheets are found to be in a packet that do not match the affidavit for that petition packet, those sheets may be rejected.

Senator Kennedy and Representative Hunhoff inquired about the incorporation of statutory language directly into rule to stipulate what information needs to be on an initiative petition form with Senator Kennedy suggesting a form could be created to gather the necessary information. Mr. Deadrick responded that it has long been a practice in the Secretary of State's office to include statutory language on forms. Representative Hunhoff asked whether the Election Board had raised any questions on this proposed section during the initial hearing. Ms. Warne confirmed two board members had asked about the information but no one had commented about the way the information would appear on the form itself.

Representative Haugaard questioned if the statutory authority existed to require the sorting of petition sheets before they are submitted. Ms. Warne and Mr. Deadrick responded the authority exists in SDCL § 12-1-9 (6)(7).

Senator Kennedy commented that two portions of the proposed rules should be reexamined by the Secretary of State's office to see if they are compliant with legislative intent or create an additional burden on the people who circulate and submit petitions. Representative Bartling agreed the two sections could use more work and input.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Office of the Secretary of State: Board of Elections is complete and should be approved with the exception of 5:02:08:00.01 and 5:02:08:07.01 which should be reverted to a prior step according to SDCL § 1-26-4.7 (4)(7)(8).

A substitute motion was made, moved by Senator Solano, seconded by Representative Hunhoff, that the review of the rules proposed by the Office of the Secretary of State: Board of Elections is complete and should be approved with the exception of 5:02:08:07.01 which should be reverted to a prior step

according to SDCL § 1-26-4.7 (4)(7)(8). Motion failed on a roll call vote with 3 ayes and 3 nays. Voting aye: Haugaard, Hunhoff, and Solano. Voting nay: Bartling, Kennedy, and Russell.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Office of the Secretary of State: Board of Elections is complete and should be approved with the exception of 5:02:08:00.01 and 5:02:08:07.01 which should be reverted to a prior step according to SDCL § 1-26-4.7 (4)(7)(8). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Committee Discussion and Closing Comments

Representative Hunhoff thanked the agencies for their presentations and commended the committee members for having good questions and discussion. She advised the group that there are currently eight rules packets for the August 20, 2018 meeting.

Adjournment

Senator Russell moved, seconded by Representative Haugaard, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Chair Hunhoff adjourned the meeting at 1:07 p.m.