



# SOUTH DAKOTA REGISTER

Published weekly by the Legislative Research Council

Volume 47

Monday, 8:00 a.m., June 21, 2021

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## FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

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### Notice of Proposed Rules

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Date in parentheses indicates when rules were filed with the Legislative Research Council.  
Copies of proposed rules may be obtained for no charge at <https://rules.sd.gov> or from the agency directly.

**South Dakota Animal Industry Board (Department of Agriculture and Natural Resources):** (June 14, 2021) intends to adopt and amend rules to more accurately reflect current terminology; modernize the language of reference material; and reflect current cervid TB diagnostic testing methods. The general authority for these rules, as cited by the board, is SDCL 40-1-25, 40-3-9, 40-3-14, 40-3-25, 40-3-26, 40-5-5.1, 40-5-8, 40-5-8.6, 40-15-14, and 40-15-36.

A public hearing will be held July 13, 2021, at 9:00 a.m. CT at the Animal Industry Board Office, 411 South Fort Street, Pierre, South Dakota. Written comments may be sent to and copies of the proposed rules obtained without charge from the South Dakota Animal Industry Board, 411 South Fort Street, Pierre, South Dakota 57501. Material sent by mail must reach the board by July 12, 2021, to be considered. All written comments must include the name, hometown/city, and state of the person submitting the comments. This hearing is being held in a physically accessible location. Persons with special needs for which the board can make arrangements may call (605) 773-3321 at least 48 hours before the public hearing.

**Department of Social Services:** (June 14, 2021) intends to amend rules to add a definition for telehealth; update rules to continue telemedicine and audio-only flexibilities beyond the pandemic; and update billable units. The general authority for these rules, as cited by the department, is SDCL 1-36-25, 27A-5-1, and 34-20A-27.

A public hearing will be held July 9, 2021, at 11:00 a.m. CT at the DSS Building, Pheasant Conference Room, 811 East 10<sup>th</sup> Street, Sioux Falls, South Dakota. Interested parties may also attend by calling (844) 833-2681 and using conference code 0094258#. Copies of the proposed rules may be obtained without charge from Teresa Schulte, Department of Social Services, 811 East 10<sup>th</sup> Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may be sent to Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10<sup>th</sup> Street, Sioux Falls, South Dakota 57103. Material sent by mail must reach the department by July 19, 2021, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309 at least 48 hours before the public hearing.

**Department of Game, Fish and Parks:** (June 15, 2021) intends to amend rules to exempt the newly created special antelope unit from the landowner application preference; create a special resident and nonresident any antelope license and establish a fee associated with purchasing these licenses; modify the number of antelope licenses available for the antelope season; put certain requirements on applications for the antelope season; combine the west river units and the east river units into one rule known as "open units"; create a unit for which the special any antelope license would be valid; repeal [ARSD 41:06:23:03](#); modify the beaver trapping and hunting season dates in counties east of the Missouri River to be open year-round; increase the harvest limit for river otter; and allow the use of body-grip and killer trap sets

to be used for beaver in areas where the beaver season is open. The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-6-10, 41-6-18.4, 41-6-19.6, 41-6-21, 41-6-84, 41-8-20, and 41-17-1.1.

A public hearing will be held July 8, 2021, at 2:00 p.m. CT at the Watertown Event Center, 1901 9<sup>th</sup> Avenue SW, Watertown, South Dakota. Those wanting to participate by teleconference can find the information to do so at <https://gfp.sd.gov/commission/information/>. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the Secretary of the Department of Game, Fish and Parks, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Comments may also be submitted at <http://gfp.sd.gov/forms/positions>. All written and email comments must include the name, city, and state of the person submitting them. The comment period will close 72 hours prior to the date of the hearing. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3718 or (605) 223-7684 (Telecommunication Device for the Deaf).

## Notice

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The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to implement inflationary rate increases appropriated by the state legislature during the 2021 legislative session effective July 1, 2021. The updated fee schedules will be posted at: <http://dss.sd.gov/medicaid/providers/feeschedules/dss/>. South Dakota Medicaid providers should continue to submit claims and bill South Dakota Medicaid as they did prior to July 1, 2021. Fee schedules are the maximum allowable reimbursement amount; per [ARSD 67:16:01:09](#) payment for services is limited to the provider's usual and customary charge. The state plan amendment also increases the pharmacy dispensing fee to \$10.55, clarifies that out-of-state inpatient hospital reimbursement is 44.15 percent of the provider's usual and customary charges unless the hospital's home state Medicaid agency agrees to calculate the claim payment, and clarifies that DRG grouper 522 is covered. The proposed amendment revises Attachment 4.19-A, page 1, 2, 5, 7, 8, 10a, and 10b, Attachment 4.19-B, Introduction page 1, 1a, and 20b, and the Health Homes MACPro payment methodology pages. The Department intends to make this SPA effective July 1, 2021.

The following services are receiving a 2.4 percent inflationary increase: Instate DRG Inpatient Hospital Services; Instate DRG Exempt Inpatient Hospital Units; Instate APC Outpatient Hospital Services; Physician Services including Professional Services Provided in a Freestanding Birth Center, and the Health Homes Per Member Per Month; Dental Services including Orthodontic Services and Dentures; Optometric Services; Chiropractic Services; Nutritionists and Dietician Services; Durable Medical Equipment (not including items subject to Section 1903(i)(27)) of the Social Security Act); Clinic Services; Physical Therapy; Occupational Therapy; Speech, Hearing, or Language Disorder Services; Prosthetic Devices; Eyeglasses; Diabetes Self-Management Training; Nurse Midwife Services; Community Transportation; Secure Medical Transportation; Air and Ground Ambulance Transportation; Home Health Agencies ; Independent Mental Health Practitioners Services; Nutrition Items; Personal Care Services; Child Private Duty Nursing; Community Health Worker Services; Freestanding Birth Centers; Disproportionate Share Hospital Payment Pools; and Graduate Medical Education Payment Pools.

The following estimated expenditures are solely due to rate increases. No rates are being decreased. The department estimates the total annual aggregate increase in expenditures will be the following: Inpatient Hospital Services - \$3,321,473.00; Outpatient Hospital Services - \$2,011,685.78; Physician Services including EPSDT Screenings/Treatment, Professional Services Provided in a Freestanding Birth Center, and Health Home Per Member Per Month - \$2,724,291.75; Dental Services including Orthodontic Services and Dentures - \$591,528.95; Optometric - \$65,293.56; Chiropractic Services - \$21,435.85; Disproportionate Share Hospital Payments - \$23,225.00 ; Graduate Medical Education Payments - \$72,983.00; Pharmacy Dispensing Fee – \$42,500.00; Freestanding Birth Centers - \$0.00 (no enrolled providers); Other Medical Services - \$809,995.63 (Independent Mental Health Practitioners Services, Nutritionists and Dietician Services, Durable Medical Equipment, Clinic Services, Physical Therapy, Occupational Therapy, Speech, Hearing, or Language, Disorder Services, Prosthetic Devices, Eyeglasses, Diabetes Self-Management Training, Nurse Midwife Services, Community Transportation, Secure Medical Transportation, Air and Ground Ambulance Transportation, Nutrition Items, Home Health Services, Personal Care Services, Child Private Duty Nursing, and Community Health Worker Services).

The following Child Private Duty Nursing Services will receive a targeted rate increase and an additional 2.4 percent inflationary increase will also be applied to the rate for these services.

Description	Code	Targeted Rate Increase	Estimated Expenditure
Extended Home Health Aide (Homemaker)	S9122	7.71%	\$687,360
Private Duty Nursing (RN)	S9123	15.74%	\$6,204
Private Duty Nursing (LPN)	S9124	6.80%	\$76,933

The SPA is available to view on the department’s website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes and corresponding comments may be sent to Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291.

**Petition for Rules**

The **South Dakota Board of Education Standards (Department of Education)** on June 17, 2021, served the petition on which its June 7, 2021-filed response was based, per [SDCL 1-26-13](#). The petition sought to repeal the definition of a long-term substitute ([ARSD § 24:28:01:01 \(54\)](#)), and amend administrative rules to remove reference to a long-term substitute teacher in the requirements for certificates for teaching assignment ([ARSD § 24:28:06:01](#)) and change the definition of a teacher ([ARSD § 24:28:01:01\(45\)](#)) to mirror that in statute. The petition, filed by the South Dakota Council of School Attorneys, asserts that the Board lacked general authority to propound the first two changes and that the third change is warranted because the rule definition should be the same as the statutory definition of the same term. The [South Dakota Board of Education Standards](#) on May 17, 2021, denied the petition, saying the Board had met the statutory promulgation requirements, the petitioner had received notice of the proposed rules prior to public hearing and had not voiced opposition or commented, and that their argument was unfounded.

**FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE**

**Final Administrative Rules**

**BUREAU OF HUMAN RESOURCES:** 55:08:01:01; 55:08:02:03; 55:08:03:02, 55:08:03:04; 55:08:04:01, 55:08:04:02, 55:08:04:03, 55:08:04:04, 55:08:04:05, 55:08:04:06, 55:08:04:07.

**History/Notice:** 47 SDR 106, April 6, 2021  
**Hearing:** April 19, 2021  
**Filed:** June 11, 2021  
**Effective:** July 1, 2021

**SCHEDULED PUBLIC HEARINGS**

<b>6-30-2021</b>	<b>Department of Public Safety:</b> Amend rules to adopt the 2020 edition of the National Institute of Standards and Technology; make revisions for testing liquid petroleum gas meters; adopt the 2020 edition of the Annual Book of the American Society for Testing and Materials Standards; adopt the 2021 edition of the Commercial Vehicle Safety Alliance handbook; update the adoption date to parts of 49 C.F.R.; establish entry-level driver training requirements to obtain a commercial driver's license; and expand circumstances for compensation for victims of crime; 47 SDR 134, June 7, 2021.
<b>7-8-2021</b>	<b>Department of Game, Fish and Parks:</b> Amend rules to exempt the newly created special antelope unit from the landowner application preference; create a special resident and nonresident any antelope license and establish a fee associated with purchasing these licenses; modify the number of antelope licenses available for the antelope season; put certain requirements on applications for the

	antelope season; combine the west river units and the east river units into one rule known as "open units"; create a unit for which the special any antelope license would be valid; repeal ARSD 41:06:23:03; modify the beaver trapping and hunting season dates in counties east of the Missouri River to be open year-round; increase the harvest limit for river otter; and allow the use of body-grip and killer trap sets to be used for beaver in areas where the beaver season is open; 47 SDR 140, June 21, 2021.
<b>7-8-2021</b>	<b><a href="#">South Dakota Banking Commission (Department of Labor and Regulation)</a></b> : Amend rules to abate the examination fee assessed to state-chartered banks for the June 2021 semiannual examination fee assessment period; 47 SDR 134, June 7, 2021.
<b>7-9-2021</b>	<b><a href="#">Department of Social Services</a></b> : Amend rules to add a definition for telehealth; update rules to continue telemedicine and audio-only flexibilities beyond the pandemic; and update billable units; 47 SDR 140, June 21, 2021.
<b>7-13-2021</b>	<b><a href="#">South Dakota Animal Industry Board (Department of Agriculture and Natural Resources)</a></b> : Adopt and amend rules to more accurately reflect current terminology; modernize the language of reference material; and reflect current cervid TB diagnostic testing methods; 47 SDR 140, June 21, 2021.
<b>7-14-2021</b>	<b><a href="#">South Dakota Commission on Gaming (Department of Revenue)</a></b> : Adopt and amend rules to set forth the various system requirements for the implementation of cashless gaming in Deadwood for all authorized games; provide for external bonusing systems for all authorized games in Deadwood; provide for the requirements and regulation of sports wagering operations within licensed gaming premises in the City of Deadwood; provide for the testing, approval, and changes to sports wagering systems in licensed gaming premises in Deadwood; provide for the areas where sports wagering may occur and the regulation thereof; implement and regulate the conduct of advanced deposit wagering for all types of authorized games within licensed gaming premises in Deadwood; and provide for the definition of a sports wagering manager and to require internal audits by licensed accounting personnel in Deadwood; 47 SDR 136, June 14, 2021.
<b>7-20-2021</b>	<b><a href="#">South Dakota Electrical Commission (Department of Labor and Regulation)</a></b> : Repeal unnecessary rules and adopt rules to increase revenues to match current expenses and update the installation process for residential heating plants and residential houses moved to a new location; 47 SDR 134, June 7, 2021.

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## RULES REVIEW COMMITTEE MEETINGS

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The next meeting of the Interim Rules Review Committee is Monday, July 19, 2021, at 10:00 a.m. via electronic conference and in Room 414 of the Capitol. Future meetings for the 2021 Interim are scheduled for August 2, September 13, and November 1. Find notices of 2021 meetings in this publication, on the [LRC website](#), and at the Capitol.

The Drafting Manual for Administrative Rules in South Dakota is available on the [Administrative Rules Manual page](#) of the LRC website and will be updated regularly to reflect changes in drafting styles and procedures.