



# SOUTH DAKOTA REGISTER

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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.

**Department of Health:** (June 12, 2023) intends to amend rules to define the minimum regulations necessary to maintain the health and safety of residents living in assisted living centers; revise language; correct spelling; update references; add the definition of communicable disease; and add the ability for assisted living centers to stock naloxone for emergency use. The general authority for these rules, as cited by the department, is SDCL 34-1-17, 34-12-7, 34-12-13, and 34-22-9.

A public hearing will be held at the Hayes Building Conference Room, 600 East Capitol Avenue, Pierre, South Dakota, on July 12, 2023, at 1:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from the Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501 or online at <https://rules.sd.gov>. Written comments may be sent to the Department of Health, Office of Licensure and Certification, 600 East Capitol Avenue, Pierre, South Dakota 57501 or may be e-mailed to the address provided at the webpage for these proposed rules at <https://rules.sd.gov>. Material sent by mail must reach the department by July 24, 2023, 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) 773-3361 at least 48 hours before the public hearing.

**State Board of Finance (Office of the Secretary of State):** (June 15, 2023) intends to amend rules to define terms; repeal reimbursement limits for for-hire and private carriers; repeal allowable household moving expenses; repeal the mobile home moving expense allowance; repeal allowable travel pay in addition to moving expenses; repeal allowable storage expenses; repeal the moving allowance for professionals; repeal the authorization required for reimbursement of moving expenses for professionals; repeal requirements for application for moving expenses for professionals; amend return of transit pay allowance; and repeal allowable travel expenses for professionals. The general authority for these rules, as cited by the board, is SDCL 3-9-1, 3-9-2, 3-9-9, and 3-9-11.

A public hearing will be held in the Bear Butte Room, Second Floor, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota, on July 18, 2023, at 2:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, State Board of Finance, 500 East Capitol Avenue, Pierre, South Dakota 57501. Written comments may also be emailed to [BOF@state.sd.us](mailto:BOF@state.sd.us). Material sent by mail or email must reach the board at least 72 hours prior to the hearing date to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the board can make arrangements may call (605) 773-3537 at least 48 hours before the public hearing.

### Notice

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The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to implement the inflationary rate increases appropriated by the South Dakota Legislature during the 2023 legislative session, effective July 1, 2023. The proposed State Plan Amendment (SPA) also updates the Physician Administered Drug payment

methodology to reflect the current practice of rebasing the drugs to 100 percent of Medicare's Part B Drug and Biologicals Average Sales Price payment file on a quarterly basis. The updated fee schedule will be posted on the department's website 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, 2023. Fees 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 proposed amendment revises Attachment 4.19-A, pages 1, 5, 7, 8, 10a, and 10b, and Attachment 4.19-B, Introduction page 1, 1a, and 20b. The department intends to make this SPA effective July 1, 2023.

The following services are receiving a 5.0 percent inflationary increase: Instate DRG Inpatient Hospital Services, Instate DRG Exempt Inpatient Hospitals/Hospital Units, and Instate APC Outpatient Hospital Services; Ambulatory Surgical Center Services; Physician Services; Supplies, Orthotics, and Prosthetics; Durable Medical Equipment (not including items subject to Section 1903(i)(27)) of the Social Security Act); Optometric Services; Chiropractic Services; Occupational, Speech, and Physical Therapy; Nutritionists and Dietician Services; Clinic Services; 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; Physician Administered Drugs with no Medicare rate; Community Health Worker Services; Child Private Duty Nursing Services not subject to a targeted increase; Disproportionate Share Hospital Payment Pools; and Graduate Medical Education Payment Pools.

The following services are receiving a targeted rate increase or are being rebased:

<u>Service</u>	<u>Type</u>	<u>Method</u>
Private Duty Nursing Services	Targeted Increase	<ul style="list-style-type: none"> <li>• Code S9123 - \$85.68</li> <li>• Code S9124 - \$71.28</li> </ul>
Health Home Services	Targeted Increase	<ul style="list-style-type: none"> <li>• Code G0299 - \$21.42</li> <li>• Code G0300 - \$17.82</li> </ul>
Applied Behavior Analysis Services	Targeted Increase	<ul style="list-style-type: none"> <li>• Code 97152 - \$20.36</li> <li>• Code 97153 - \$20.36</li> <li>• Code 97154 - \$5.09</li> </ul>
DRG Exempt Neonatal Intensive Care Units, Pediatric Medically Complex Rehabilitation, and Pediatric Rehabilitation Transition Unit	Rebased	<ul style="list-style-type: none"> <li>• Per diems rebased based on cost.</li> </ul>
Dental Services including Orthodontic Services and Dentures	Rebased	<ul style="list-style-type: none"> <li>• Procedure codes with 50 or more claims in CY 2022 are being rebased to 70 percent of the average billed charges.</li> <li>• Procedure codes with less than 50 claims in CY 2022 are rebased to 70 percent of market rates.</li> </ul>
Freestanding Birth Centers	Rebased	<ul style="list-style-type: none"> <li>• Rebased to 75 percent of the 2022 state fiscal year's average DRG payment for delivery and newborn care.</li> </ul>

The department estimates the total annual aggregate increase in expenditures by service type will be the following: Inpatient Hospital Services - \$10,714,433; Outpatient Hospital Services - \$2,797,451; Physician Services including EPSDT Screenings/Treatment, and Professional Services Provided in a Freestanding Birth Center - \$6,093,552; Dental Services including Orthodontic Services and Dentures - \$8,052,234; Optometric Services - \$147,653; Chiropractic Services - \$49,372; Disproportionate Share Hospital Payments - \$52,519; Graduate Medical Education Payments - \$165,040; and Other Medical Services (Ambulatory Surgical Center Services; Independent Mental Health Practitioners Services; Nutritionists and Dietician Services; Supplies, Orthotics, and Prosthetics; 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) - \$3,094,224.

The total fiscal impact for the combined services associated with this SPA is \$3,160,081 in state funds and \$4,631,539 in federal funds, totaling \$7,791,620 in Federal Fiscal Year 2023, and \$12,640,323 in state funds and \$18,526,155 in federal funds, totaling \$31,166,478 in Federal Fiscal Year 2024.

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 emailed to [MedicaidSPA@state.sd.us](mailto:MedicaidSPA@state.sd.us) or sent to Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291. The public comment period will start June 20, 2023, and end July 20, 2023.

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## FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

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### Final Administrative Rules

**DEPARTMENT OF GAME, FISH AND PARKS:** 41:06:16:11; 41:06:20:02; 41:06:36:02, 41:06:36:02.01; 41:06:41:01; 41:06:44:02.01; 41:06:63:04.

**History/Notice:** 49 SDR 88, April 17, 2023

**Hearing:** May 4, 2023

**Filed:** June 13, 2023

**Effective:** July 3, 2023

**DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES:** 12:56:04:01, 12:56:04:02, 12:56:04:03, 12:56:04:04, 12:56:04:05, 12:56:04:06, 12:56:04:07, 12:56:04:08, 12:56:04:09, 12:56:04:10, 12:56:04:11, 12:56:04:12, 12:56:04:12.01, 12:56:04:12.02, 12:56:04:12.03, 12:56:04:13, 12:56:04:15; 12:56:05:04, 12:56:05:04.01, 12:56:05:04.02, 12:56:05:04.03, 12:56:05:04.04, 12:56:05:04.05, 12:56:05:04.06, 12:56:05:04.07, 12:56:05:04.08, 12:56:05:04.09, 12:56:05:04.10, 12:56:05:04.11, 12:56:05:04.12, 12:56:05:04.13, 12:56:05:04.14, 12:56:05:04.15, 12:56:05:04.17, 12:56:05:04.18; 12:56:10:06; 12:56:12:01, 12:56:12:01.02, 12:56:12:01.04; 12:56:18:02, 12:56:18:03.

**History/Notice:** 49 SDR 86, April 11, 2023

**Hearing:** May 11, 2023

**Filed:** June 13, 2023

**Effective:** July 3, 2023

**DEPARTMENT OF SOCIAL SERVICES:** 67:42:01:01, 67:42:01:06.01; 67:42:03:01 to 67:42:03:23, inclusive; 67:42:07:04.01, 67:42:10:00 to 67:42:10:25, inclusive; 67:42:11:01 to 67:42:11:02.01, inclusive, 67:42:11:05 to 67:42:11:10, inclusive, 67:42:11:12, 67:42:11:14 to 67:42:11:16, inclusive, 67:42:11:18, 67:42:11:20, 67:42:11:23, 67:42:11:29, 67:42:11:33, 67:42:11:34, 67:42:11:36 to 67:42:11:40, inclusive; 67:42:14:01 to 67:42:14:28, inclusive; 67:42:16:01 to 67:42:16:19, inclusive; 67:42:17:01 to 67:42:17:43, inclusive.

**History/Notice:** 49 SDR 91, April 24, 2023

**Hearing:** May 12, 2023

**Filed:** June 13, 2023

**Effective:** July 3, 2023

**DEPARTMENT OF SOCIAL SERVICES:** 67:10:05:03, 67:10:05:05; 67:46:01:02; 67:46:04:13, 67:46:04:14; 67:46:05:15; 67:46:07:12; 67:46:12:11, 67:46:12:16, 67:46:12:17.

**History/Notice:** 49 SDR 92, April 24, 2023

**Hearing:** May 19, 2023

**Filed:** June 13, 2023

**Effective:** July 3, 2023

**SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY:** 20:09:26, 20:09:26:01, 20:09:26:02, 20:09:26:03, 20:09:26:04, 20:09:26:05, 20:09:26:06, 20:09:26:07, 20:09:26:08, 20:09:26:09, 20:09:26:10, 20:09:26:11, 20:09:26:12, 20:09:26:13, 20:09:26:14, 20:09:26:15, 20:09:26:16, 20:09:26:17, 20:09:26:18, 20:09:26:19, 20:09:26:20, 20:09:26:21, 20:09:26:22.

**History/Notice:** 49 SDR 104, May 15, 2023

**Hearing:** May 31, 2023

**Filed:** June 13, 2023

**Effective:** July 3, 2023

### Executive Appointments

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
<b>American Dairy Association of South Dakota</b>			
Evan Grong Milbank	Governor	Reappointed	6/12/2023 – 10/30/2024
<b>South Dakota Board of Education Standards</b>			
Jean Moulton Watertown	Governor	Steve Willard	6/14/2023 – 12/31/2024
<b>South Dakota State Railroad Board</b>			
Gregory Carmon Brandon	Governor	Reappointed	6/14/2023 – 10/30/2025
Ralph Schmidt Big Stone City	Governor	Jon Kirby	6/13/2023 – 10/30/2025
<b>South Dakota Workforce Development Council</b>			
Amy L. Tiam Mt. Vernon	Governor	Carl Carlson	6/30/2023 – 6/30/2026
<b>State Arts Council</b>			
Nan Venhuizen Sioux Falls	Governor	Reappointed	6/12/2023 – 6/30/2025
<b>State Banking Commission</b>			
Kevin Tetzlaff Brookings	Governor	Doug Balvin	6/6/2023 – 10/30/2025
Richard Westra Aberdeen	Governor	Reappointed	6/6/2023 – 10/30/2025

**State Capitol Complex  
Restoration and  
Beautification Commission**

Laurie R. Gill Pierre	Governor	Sandra Zinter	6/20/2023 – 6/30/2027
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**State Conservation  
Commission**

Doug R. Hansen Webster	Governor	Reappointed	6/8/2023 – 12/31/2025
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Charles Moe Rosebud	Governor	Reappointed	6/8/2023 – 12/31/2025
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Dusty Rodiek Florence	Governor	Reappointed	6/12/2023 – 12/31/2025
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**Transportation Commission**

Chris J. Frick Yankton	Governor	Bruce Cull	6/14/2023 – 4/18/2027
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Austin J. Simons Mobridge	Governor	Benjamin Stoick	6/14/2023 – 4/18/2027
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**Workers' Compensation  
Advisory Council**

Michael D. Williams Mina	Governor	Brooke Bohnenkamp	6/14/2023 – 6/30/2025
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**SCHEDULED PUBLIC HEARINGS**


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<b>6-20-2023</b>	<b><u><a href="#">South Dakota Investment Council:</a></u></b> Adopt rules to clarify the South Dakota Investment Council's declaratory ruling process and repeal unnecessary rules; 49 SDR 107, May 22, 2023.
<b>6-22-2023</b>	<b><u><a href="#">Department of Social Services:</a></u></b> Amend rules to update the nursing facility rate setting and case mix validation process to use the Patient-Driven Payment Model (PDPM) instead of the M3PI; rebase nursing facility rates to use current cost data to match with PDPM case mix data; remove the occupancy rule from direct care; remove the overall rate limit increase; move to inflation calculations based on the nursing facility market basket index; update the depreciation edition referenced in rule; reflect a change in cost ceilings for capital costs; update the case mix validation process; remove the on-site requirement for classification reviews conducted by the department; remove or repeal outdated provisions; and update the Medicaid provider reimbursement manual citation; 49 SDR 113, June 5, 2023.
<b>6-26-2023</b>	<b><u><a href="#">South Dakota Division of Insurance (Department of Labor and Regulation):</a></u></b> Amend rules in ARSD article 20:06 to update the sources referenced in rule to the most recent editions, to clean up a broken URL for another rule, and repeal a rule for which the referenced law implemented statute will be repealed effective July 1, 2023.; 49 SDR 113, June 5, 2023.
<b>6-27-2023</b>	<b><u><a href="#">Board of Addiction and Prevention Professionals (Department of Social Services):</a></u></b> Amend and adopt rules to change the timeline for renewal of certificates and licenses to a biennial renewal; revise fees consistent with a biennial renewal for certificates and licenses; establish an annual renewal for trainee recognition based on issue date; revise fees consistent with an annual renewal of trainee recognition; adopt a Code of Ethics for trainees and certificate or license holders; eliminate fees for certain services; clarify application information needed for trainees and certificate and license holders

	to obtain or new; update the continuing education requirements; and update regulations to conform to current standards; 49 SDR 110, May 30, 2023.
<b>6-27-2023</b>	<b><u>Professional Teachers Practices and Standards Commission (Department of Education):</u></b> Amend rules to clarify references to educators and add a requirement to the code of ethics for the reporting of violations of the code; 49 SDR 117, June 12, 2023.
<b>6-28-2023</b>	<b><u>State Board of Elections (Office of the Secretary of State):</u></b> Amend rules to change the date for a statewide runoff; prescribe the oath for a county recount board; prescribe the notice for testing automatic tabulating equipment and prescribe the method for testing such equipment; describe how to seal automatic tabulating machines; prescribe ballot box storage and security; clarify how an auditor is to conduct absentee balloting at nursing facilities, assisted living centers, and hospitals; make changes to the voter registration form; add email address and telephone number to the precinct committeeman or committeewoman statement; change the acknowledgement notice for rejected voter registrations from forwardable to non-forwardable; clarify the procedures for voter registration file security; and prescribe the oath for a post-election audit board; 49 SDR 114, June 5, 2023.
<b>7-7-2023</b>	<b><u>South Dakota Board of Education Standards (Department of Education):</u></b> Adopt a rule to require all school districts to uniformly transcribe postsecondary credits onto a student's high school transcript; 49 SDR 95, May 1, 2023.
<b>7-10-2023</b>	<b><u>South Dakota Real Estate Commission (Department of Labor and Regulation):</u></b> Amend rules to reestablish qualifications for the reinstated restricted broker's license for auctioneers and reinstate a prohibition against unlicensed callers and bid takers in an auction sale; 49 SDR 117, June 12, 2023.
<b>7-11-2023</b>	<b><u>South Dakota Animal Industry Board (Department of Agriculture and Natural Resources):</u></b> Adopt and amend rules to comply with and expand upon statutory authority pertaining to confidential records held by a state agency. The board also intends to adopt a rule to specify that sales of retail meat products only occur when the producing retail store has full control of the sanitation, storage, and transportation of the meat product until purchased by the consumer. Additionally, the board seeks to amend rules regarding meat inspection; 49 SDR 117, June 12, 2023.
<b>7-12-2023</b>	<b><u>Department of Health:</u></b> Amend rules to define the minimum regulations necessary to maintain the health and safety of residents living in assisted living centers; revise language; correct spelling; update references; add the definition of communicable disease; and add the ability for assisted living centers to stock naloxone for emergency use; 49 SDR 122, June 19, 2023.
<b>7-18-2023</b>	<b><u>State Board of Finance (Office of the Secretary of State):</u></b> Amend rules to define terms; repeal reimbursement limits for for-hire and private carriers; repeal allowable household moving expenses; repeal the mobile home moving expense allowance; repeal allowable travel pay in addition to moving expenses; repeal allowable storage expenses; repeal the moving allowance for professionals; repeal the authorization required for reimbursement of moving expenses for professionals; repeal requirements for application for moving expenses for professionals; amend return of transit pay allowance; and repeal allowable travel expenses for professionals; 49 SDR 122, June 19, 2023.
<b>7-20-2023</b>	<b><u>Department of Agriculture:</u></b> Amend and adopt rules to update the state's existing hazardous waste rules by incorporating updated codified federal regulations adopted from July 1, 2018 through June 30, 2022, by reference; 49 SDR 109, May 30, 2023.
<b>7-21-2023</b>	<b><u>South Dakota Speech-Language Pathology Board of Examiners (Department of Health):</u></b> Amend and adopt rules to remove unnecessary barriers to licensure; update language to reflect current technology and practice; and correct references to authority and legal references; 49 SDR 110, May 30, 2023.

### **RULES REVIEW COMMITTEE MEETINGS**

The next meeting of the Interim Rules Review Committee for the 2023 Interim is Tuesday, July 18, 2023, at 10:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol. Future meetings for the 2023 Interim are scheduled for August 8, September 12, and November 7. Find notices of committee 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 is updated regularly to reflect changes in drafting styles and procedures.