



# SOUTH DAKOTA REGISTER

Published weekly by the Legislative Research Council

Volume 50

Monday, 8:00 a.m., September 25, 2023

---

## FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

---

### Notice

---

The **Department of Social Services** intends to make a change to the South Dakota Medicaid State Plan to implement coverage of vaccines and their administration for adults without cost sharing in accordance with recommendations of the Advisory Committee on Immunization Practices as required by section 11405 of the Inflation Reduction Act. Currently, Medicaid covers vaccines for adults. Most claims for these services are currently exempt from the cost share. The proposed state plan (SPA) amendment adds page 26c "to Supplement to Attachment 3.1-A of the South Dakota Medicaid State Plan."

The department intends to make this SPA effective October 1, 2023, and estimates the fiscal impact will be \$701 in state funds and \$1,050 in federal funds, totaling \$1,751, in Federal Fiscal Year 2024, and \$701 in state funds and \$1,050 in federal funds, totaling \$1,751, in Federal Fiscal Year 2025. The fiscal impact is due to removal of cost sharing from the small number of claims it currently applies to.

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 the Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291. The public comment period will start September 25, 2023, and end October 25, 2023.

---

## FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

---

### Final Administrative Rules

---

**DEPARTMENT OF HEALTH:** 44:03:01:01, 44:03:01:02, 44:03:01:04, 44:03:01:06, 44:03:01:06.01, 44:03:01:08, 44:03:01:08.02, 44:03:01:08.03, 44:03:01:08.04, 44:03:01:08.05, 44:03:01:08.06, 44:03:01:08.07, 44:03:01:08.08, 44:03:01:10, 44:03:01:10.01, 44:03:01:10.02, 44:03:01:10.05, 44:03:01:11.01, 44:03:01:11.03, 44:03:01:11.04, 44:03:01:12.01, 44:03:01:12.02, 44:03:01:14.01, 44:03:01:14.02, 44:03:01:14.03, 44:03:01:14.04.

**History/Notice:** 50 SDR 14, July 31, 2023

**Hearing:** August 22, 2023

**Filed:** September 21, 2023

**Effective:** October 11, 2023

**STATE BOARD OF FINANCE (OFFICE OF THE SECRETARY OF STATE):** 05:01:01:01; 05:01:02:01, 05:01:02:01.01; 05:01:02:04, 05:01:02:20; 05:01:03:10, 05:01:03:12; 05:01:07:01, 05:01:07:02, 05:01:07:03, 05:01:07:04, 05:01:07:05, 05:01:07:06, 05:01:07:07, 05:01:07:08, 05:01:07:09, 05:01:07:10, 05:01:07:11.

**History/Notice:** 49 SDR 122, June 20, 2023

**Hearing:** August 15, 2023

**Filed:** September 21, 2023  
**Effective:** October 11, 2023

**DEPARTMENT OF SOCIAL SERVICES:** 67:47:01:11, 67:47:01:11.01, 67:47:01:13.01.

**History/Notice:** 50 SDR 1, July 5, 2023  
**Hearing:** July 27, 2023  
**Filed:** September 21, 2023  
**Effective:** October 11, 2023

**DEPARTMENT OF TRANSPORTATION:** 70:01:02:00, 70:01:02:27.

**History/Notice:** 50 SDR 5, July 10, 2023  
**Hearing:** July 27, 2023  
**Filed:** September 21, 2023  
**Effective:** October 11, 2023

**DEPARTMENT OF TRANSPORTATION:** 70:01:02:49, 70:01:02:62; 70:06:03:02.

**History/Notice:** 50 SDR 17, August 7, 2023  
**Hearing:** August 24, 2023  
**Filed:** September 21, 2023  
**Effective:** October 11, 2023

**OFFICE OF THE STATE AUDITOR:** 03:05:04:01, 03:05:04:02.

**History/Notice:** 49 SDR 129, June 26, 2023  
**Hearing:** July 18, 2023  
**Filed:** September 22, 2023  
**Effective:** October 12, 2023

### Executive Appointments

| <u>Appointee</u>                                        | <u>Appointed by</u> | <u>Succeeding</u> | <u>Effective/End Date</u> |
|---------------------------------------------------------|---------------------|-------------------|---------------------------|
| <b>Fire Marshal's<br/>Advisory Board</b>                |                     |                   |                           |
| Richard C. Gustad, Jr.<br>Platte                        | Governor            | Reappointed       | 9/18/2023 – 4/12/2024     |
| <b>State Historical Society<br/>Board of Trustees</b>   |                     |                   |                           |
| Brian Sandvig<br>Milbank                                | Governor            | Reappointed       | 9/18/2023 – 4/15/2026     |
| <b>Statewide One-Call<br/>Notification Center Board</b> |                     |                   |                           |
| James R. Wedin<br>Pierre                                | Governor            | Daniel Kaiser     | 9/18/2023 – 10/31/2024    |
| <b>Water Management Board</b>                           |                     |                   |                           |
| Timothy M. Bjork<br>Rapid City                          | Governor            | Reappointed       | 9/18/2023 – 6/30/2027     |

## SCHEDULED PUBLIC HEARINGS

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>9-26-2023</b>  | <b><u>Department of Transportation:</u></b> Amend a rule to change the speed limit on State Trunk Highway 50 in and around Yankton; 50 SDR 28, September 1, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>9-27-2023</b>  | <b><u>State Board of Elections (Office of the Secretary of State):</u></b> Adopt rules to define terms related to post-election audits; prescribe the form to be used for the notice of appointment of post-election auditing boards; require members of such boards to sign an oath of office; require the county auditor to provide administrative support and staff for post-election auditing boards; prescribe the form to be used for the board's receipt for the official ballots; specify the process for a public vote count including the opening of ballot receptacles and containers, hand-counting ballots, and tallying the audit vote count; prescribe the form to be used to certify the results of a post-election audit; define the procedure for placing post-election audit voted ballots in a ballot receptacle or container; prescribe the form to be used for the seal to be placed on a ballot receptacle or container; and define the process for reimbursement of post-election audit costs; 50 SDR 27, September 5, 2023. |
| <b>9-27-2023</b>  | <b><u>State Board of Elections (Office of the Secretary of State):</u></b> Amend and adopt rules to prescribe the form to be used for the acknowledgement notice for invalid or incomplete voter registration applications; provide instructions for voters using optical scan ballots and those voting absentee; define the process for absentee voting at a nursing facility, assisted living center, or hospital; and clarify the procedure for securing ballot boxes; 50 SDR 28, September 6, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>9-28-2023</b>  | <b><u>Department of Health:</u></b> Adopt and amend rules to update and clarify definitions related to medical cannabis; review allowable amounts of cannabis product and scale certification for scales used to weigh and measure cannabis product; define additives and terpenes in the manufacturing process; clarify that all sales of cannabis and cannabis products must be in a certified medical cannabis dispensary; clarify the definition of final form of cannabis prior to retail sale; remove the exemption of pre-roll cannabis from testing requirements; add expiration dates and use by dates to packaged cannabis product; clarify use of inventory tracking system plant tags; increase the establishment certification fee to reflect the inflationary increase allowed by statute; and repeal the petition process for debilitating conditions; 50 SDR 27, September 5, 2023.                                                                                                                                                  |
| <b>9-28-2023</b>  | <b><u>South Dakota Board of Accountancy (Department of Labor and Regulation):</u></b> Adopt and amend rules to update education measurements and accrediting agency names and expand the qualifying period to pass the Uniform CPA exam; 50 SDR 28, September 5, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>10-3-2023</b>  | <b><u>Department of Health:</u></b> Adopt and amend rules to allow the ground component of an air ambulance service to transfer patients from one healthcare facility to another healthcare facility, unless a local government agreement or ordinance provides otherwise, and to allow the ground ambulance component for healthcare facility-operated air ambulance services to provide interfacility transfers under certain conditions; 50 SDR 28, September 5, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>10-5-2023</b>  | <b><u>Department of Game, Fish and Parks:</u></b> Amend and repeal rules to consolidate all park entrance license exemptions into one rule; modify park entrance license exemptions and repeal the rule in its entirety; and adjust license allocations that are issued in the Hunt for Habitat drawing; 50 SDR 34, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>10-10-2023</b> | <b><u>South Dakota Board of Nursing (Department of Health):</u></b> Adopt and amend rules to revise and modernize the RN and LPN scope and standards of practice to be consistent with practice statutes in SDCL <a href="#">36-9-3</a> and <a href="#">36-9-4</a> and national standards of practice; update definitions and terms used; clarify supervision requirements of the LPN, update and modernize the IV therapy tasks an LPN may perform, including the administration of blood components, after obtaining additional education and training; and update tasks and IV medications an LPN may not perform or administer; 50 SDR 14, July 31, 2023.                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>10-11-2023</b> | <b><u>Department of Social Services:</u></b> Amend and adopt rules to update citations; update procedure codes that are reimbursed at a percent of the provider's usual and customary charge and included on the applicable fee schedule; clarify coverage for the removal of implanted contraceptives; clarify coverage for routine foot care services for those diagnosed with metabolic, neurologic, or peripheral vascular diseases; update personal care assessment frequency and the information reviewed; clarify                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | reasons for discontinuation of personal care services; remove the certificate of medical necessity requirement to align with Medicare; increase the timeliness of access to breast pumps by updating billing provisions; update treatment plan timing to coordinate with the mental health chapter and current practice; update and clarify nursing facility level of care definitions, categories, and various coverage for services; clarify what settings and services apply to each level of care classification; clarify and detail the specialized therapy services that are covered under the Family Support 360 waiver program and update the applicable procedure codes for billing those services; and remove repealed rule references; 50 SDR 34, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                      |
| 10-11-2023 | <b>Department of Social Services:</b> Adopt and amend rules to replace the term "division" with "department" throughout most of ARSD articles 67:61 and 67:62 to coincide with the transition of the accreditation and licensing of providers or agencies to the newly formed Office of Licensing and Accreditation within the Department of Social Services; 50 SDR 36, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 10-11-2023 | <b>Department of Human Services:</b> Adopt, amend, and repeal rules to add regulatory definitions for the terms "abuse," "exploitation," and "neglect;" revise criteria for imposing probation on certain providers; specify that providers must afford all participants their rights; specify providers may not allow or condone abuse, neglect, or exploitation; update appeal provisions when services are terminated by a provider; update definitions concerning Family Support Waiver Services; clarify hiring responsibilities under the agency with choice model; add new language concerning the common-law employer model; add specialized therapies as a service covered under the Family Support Waiver; repeal review of a qualified provider; update notice requirements for when an intermediate care facility terminates services; and repeal certain registration requirements for interpreters; 59 SDR 36, September 18, 2023.                                                                                                                                                                                      |
| 10-12-2023 | <b>Department of Health:</b> Amend a rule to add Newborn Hearing Screening to South Dakota's newborn screening panel; 50 SDR 35, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 10-12-2023 | <b>Office of the Attorney General:</b> Adopt and amend rules to update and clarify minimum standards, training, and employment regulations for law enforcement officers and 911 telecommunicators; correct certain statutory references and definitions; provide provisions for refusal of school sentinel applications; and expand law enforcement employment eligibility in limited cases, permitting certain technical college students who complete a state-recognized law enforcement program to be potentially eligible for employment prior to reaching age 21; 50 SDR 36, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 10-18-2023 | <b>Department of Health:</b> Adopt and amend rules to update and clarify the minimum regulations related to operation, physical environment, fire protection, management and administration, physician services, nursing and related care services, dietetic services, medication control, medical record services, hospital diagnostic services, hospital complimentary services, long-term care supportive services, construction standards, additional hospital standards, and swing bed patients' rights necessary for hospitals, specialized hospitals, critical access hospitals, and rural emergency hospitals to maintain the health and safety of patients receiving services in these facilities; and add rural emergency hospitals to ARSD article <a href="#">44:75</a> , as authorized by <a href="#">House Bill 1123</a> during the 2022 legislative session, to outline the minimum regulations necessary to operate a rural emergency hospital. Rural emergency hospitals were designated as a new Medicare provider type for Medicare and Medicaid Services (CMS) in January of 2023; 50 SDR 35, September 18, 2023. |
| 10-20-2023 | <b>South Dakota State Board of Dentistry (Department of Health):</b> Amend rules to update license, registration, and permit fees that have not been updated since 2012; 50 SDR 35, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 10-24-2023 | <b>South Dakota Board of Physical Therapy (Department of Health):</b> Adopt and amend rules to update the application and license renewal fee to accommodate biennial licensure; update the code of ethics for physical therapists; adopt a code of ethics for physical therapist assistants; update the hours of continuing education required for license renewal to accommodate biennial licensure; and update references to the Board of Physical Therapy; 50 SDR 35, September 18, 2023.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

---

## RULES REVIEW COMMITTEE MEETINGS

---

The final meeting of the Interim Rules Review Committee for the 2023 Interim is Tuesday, November 7, 2023, at 8:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol. Find information regarding 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.