



SOUTH DAKOTA REGISTER

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FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

Notice of Proposed Rules

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 Board of Physical Therapy (Department of Health): (May 21, 2024) intends to amend rules to update the activities that meet continuing education requirements and update the waiver of continuing education requirements. The general authority for these rules, as cited by the board, is SDCL [36-10-36](#).

A public hearing at which persons may present amendments, data, opinions, and arguments for or against the proposed rules will be held at the South Dakota Board of Physical Therapy Office, 521 South 32nd Street, Suite B, Spearfish, South Dakota, on August 20, 2024, at 11:00 a.m. (MT). Interested persons may also attend the public hearing remotely, via videoconference, through Microsoft Teams at the following link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDNkZ-GEzYWUtY2Q-GEzYWUtY2Q1YS00MGI5LWI5ZTU0DY3MjViMGE5YzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22e69efb98-56ef-4797-a76b-e1ec658a639c%22%2c%22Oid%22%3a%22ee0a24e7-6d2c-4495-ade54377098865d2%22%7d. Copies of the proposed rules may be obtained without charge from the South Dakota Board of Physical Therapy, 810 North Main Street #298, Spearfish, South Dakota 57783. Copies are also available at <https://rules.sd.gov> and by emailing office@sdlicensing.com. Written comments on the proposed rules may be sent to South Dakota Board of Physical Therapy, 810 North Main Street #298, Spearfish, South Dakota 57783 or by going to <https://rules.sd.gov>. Material sent by mail or email must reach the board by August 14, 2024, 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) 773-3361 at least 48 hours before the public hearing.

South Dakota Electrical Commission (Department of Labor and Regulation): (May 24, 2024) intends to amend rules to adopt the 2023 National Electrical Code (NEC); implement standards for the approval and management of third-party inspectors; apply the statutory minimum inspection fee of one hundred dollars under SDCL 36-16-30; and formalize the third-party inspector process. The general authority for these rules, as cited by the commission, is SDCL [36-16-12](#), [36-16-13.2](#), [36-16-17](#), [36-16-27](#), and [36-16-30](#).

A public hearing at which persons may present amendments, data, opinions, and arguments for or against the proposed rules will be held at the Missouri River Event Center Conference Room, 217 West Missouri Avenue, Pierre, South Dakota, on July 23, 2024, at 9:00 a.m. (CT). Interested persons may also attend the public hearing remotely through Microsoft Teams using meeting ID 217 347 551 645 and passcode BtP7kj or by calling (605) 679-7263 and using conference ID 428449270#. Copies of the proposed rules may be obtained without charge from the South Dakota Electrical Commission, 217 West Missouri Avenue, Pierre, South Dakota 57501. Copies are also available at <https://rules.sd.gov> and by emailing electrical@state.sd.us. Written comments on the proposed rules may be sent to the South Dakota Electrical Commission, 217 West Missouri Avenue, Pierre, South Dakota 57501 or by email to electrical@state.sd.us. Material sent by mail or email must reach the commission by July 19, 2024, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the commission can make arrangements may call (605) 773-3573 at least 48 hours before the public hearing.

Notices

The **Department of Social Services** intends to amend the South Dakota Medicaid State Plan regarding Medicaid recipient cost shares to remove cost sharing from medical services. Currently, most Medicaid recipients are exempt from cost sharing. This includes children under age 21, American Indians who have received services at Indian Health Services, individuals on hospice care, and individuals residing in a long-term care facility or receiving home and community-based services. In addition, many services are also currently exempt from cost sharing, including emergency services, family planning services, pregnancy-related services, laboratory services, radiology services, vaccines, substance use disorder services, and services received from an individual's primary care or health home care management provider.

Federal regulations at 42 CFR 447.56(f) further limit cost-sharing incurred by all individuals in the Medicaid household to an aggregate limit of five percent of the family's income applied on either a quarterly or monthly basis, as specified by the agency. The dynamic nature of this cost share limit would be extraordinarily costly and difficult to implement. The limit will likely result in greater confusion and uncertainty amongst Medicaid providers and recipients regarding whether and how much cost share applies. Administrative costs to collect the minimal co-pay and cost share amounts exceed their value. In order to comply with this federal limit, the department is exempting the remaining Medicaid recipients and services that are currently subject to cost sharing.

The proposed state plan amendment (SPA) adds G1, G2a, G2b, and G2c to the South Dakota Medicaid state plan. These pages supersede pages 1-3 of Attachment 4.18-A.

The department intends to make this SPA effective July 1, 2024, and estimates the fiscal impact to be \$77,975 in state funds and \$258,857 in federal funds, totaling \$336,832 in Federal Fiscal Year 2024, and \$311,901 in state funds and \$1,035,427 in federal funds, totaling \$1,347,328 in Federal Fiscal Year 2025.

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 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 May 28, 2024, and end June 28, 2024.

The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to update the provider lists and supplemental payment amounts for the inpatient and nursing facility providers that have a signed care coordination agreement with Indian Health Services and have ensured access and proper coordination of care of health services. The supplemental payment amounts are listed below:

Inpatient Provider	Amount
Abbot House Inc	\$1,616
Aurora Plains Academy	\$9,167
Avera	\$359,552
Bennett County	\$13,320
Black Hills Surgical	\$25,597
Mobridge Regional	\$7,605
Monument Health	\$611,528
Lutheran Social Services	\$2,660
Our Home	\$3,833
Rushmore Ambulatory Surgery	\$4,898
Sanford	\$438,720
Sioux Falls Children's Home	\$8,913

Nursing Facility Provider	Amount
Avera	\$62,377
Bennett County	\$27,289
Monument Health	\$3,209
Sanford	\$45,292

The proposed state plan amendment (SPA) amends page 14 of Attachment 4.19-A, and amends page 17b of Attachment 4.19-D of the South Dakota Medicaid State Plan.

The department intends to make this SPA effective June 1, 2024, and estimates the fiscal impact to be \$650,556 in state funds and \$975,024 in federal funds, totaling \$1,625,577 in Federal Fiscal Year 2024; no fiscal impact is anticipated in Federal Fiscal Year 2025.

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 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 May 28, 2024, and end June 28, 2024.

The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to implement community mental health center (CMHC) and substance use disorder (SUD) agency rate increases appropriated by the state legislature during the 2024 legislative session effective June 1, 2024.

Medicaid CMHC and SUD Agency rates will be updated to the target rate methodology that was established by the rate workgroup, which included behavioral health providers and the Department of Social Services Division of Finance and Division of Behavioral Health. The updated fee schedules will be posted by June 1, 2024, 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 June 1, 2024. 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 proposed state plan amendment (SPA) revises Attachment 4.19-B, Introduction page 1. The department intends to make this SPA effective June 1, 2024, and estimates the fiscal impact to be \$183,053 in state funds and \$273,752 in federal funds, totaling \$456,804 in Federal Fiscal Year 2024, and \$732,211 in state funds and \$1,095,006 in federal funds, totaling \$1,827,217 in Federal Fiscal Year 2025.

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 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 May 28, 2024, and end June 28, 2024.

The **Department of Social Services**, in conjunction with the **Department of Human Services**, has proposed an amendment to the Family Support 360 Medicaid 1915 (c) waiver, which is operated by the Division of Developmental Disabilities in the Department of Human Services (DHS/DDD). The proposed amendment is available on the Department of Human Services website at <https://dhs.sd.gov/content/dam/digital/united-states/south-dakota/sdo/pdf/public-notice/FS360-Proposed-Waiver-Amendment.pdf>.

The purpose of the amendment is related to a change to the Family Support 360 waiver to support the revised intake and eligibility process designed by DHS/DDD to include an initial intellectual/developmental disability screening to be completed by the DHS/DDD prior to a final waiver eligibility determination being made by the SSMA. This initial screening review will allow DHS/DDD to quickly review a participant's eligibility status and communicate a decision timely while still allowing them the right to appeal.

DHS/DDD is revising the current Agency with Choice model to change the reimbursement structure for waiver services provided through the Agency with Choice Model. The state is also revising the provider groups that are eligible to provide both Agency with Choice and Common-Law providers. This change will allow DHS/DDD to continue to support offering both Agency with Choice and Common-Law to support self-directed service options.

DHS/DDD is clarifying that people can use Companion services in a small group. Additionally, DHS/DDD is clarifying that people who live together can use Respite services together.

Finally, DHS/DDD is adding a new category of provider for the following services, to allow the use of an Organized Health Care Delivery System (OHCDS): Nutritional Supplements, Specialized Medicaid Adaptive Equipment and Supplies, Specialized Therapies, and Vehicle Modification.

The proposed effective date of this change is October 14, 2024. The proposed amendment will be open for public comment for 30 days from May 28, 2024, to June 26, 2024. Additionally, DHS/DDD will be hosting two online town hall meetings to share details about the waiver amendments, answer questions, and receive public comments. The town hall meetings will take place at the times shown below; additional meeting information, including Zoom links, will be announced soon on the DHS website:

- Tuesday, June 11, 2024, at 6:30 p.m. (CT)/5:30 p.m. (MT)
- Thursday, June 13, 2024, at 12:30 p.m. (CT)/11:30 a.m. (MT)

Copies of the proposed Family Support 360 Medicaid waiver amendment are available at the Department of Human Services, Division of Developmental Disabilities. Written requests for a copy of the proposed waiver, and corresponding comments, may be sent to the Division of Developmental Disabilities, ATTN: Family Support 360 Waiver Amendment, c/o 500 East Capitol Avenue, Pierre, South Dakota 57501. Comments made also be made by email to DDD.Update@state.sd.us or by phone at (605) 773-3438.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Final Administrative Rules

SOUTH DAKOTA COMMISSION ON GAMING (DEPARTMENT OF REVENUE): 20:18:06:01, 20:18:06:04, 20:18:06:09; 20:18:07:01, 20:18:07:01.01, 20:18:07:02, 20:18:07:03; 20:18:09:02, 20:18:09:03, 20:18:09:04; 20:18:10:02, 20:18:10:03, 20:18:10:06, 20:18:10:07, 20:18:10:10, 20:18:10:11; 20:18:11:01, 20:18:11:02; 20:18:12:02, 20:18:12:03, 20:18:12:04; 20:18:15:30.06; 20:18:16:15.14, 20:18:16:15.18; 20:18:17:24.04, 20:18:17:24.05, 20:18:17:24.06, 20:18:17:24.08, 20:18:17:24.09, 20:18:17:24.10, 20:18:17:24.13, 20:18:17:24.16, 20:18:17:24.18; 20:18:26:01, 20:18:26:02, 20:18:26:03; 20:18:31:03.

History/Notice: 50 SDR 60, November 6, 2023

Hearing: December 12, 2023

Filed: May 22, 2024

Effective: June 11, 2024

SOUTH DAKOTA COMMISSION ON GAMING (DEPARTMENT OF REVENUE): 20:18:15:30.17.**History/Notice:** 50 SDR 101, February 26, 2024**Hearing:** March 19, 2023**Filed:** May 22, 2024**Effective:** June 11, 2024**Executive Appointments**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
Transportation Commission Rick A. Vallery Fort Pierre	Governor	Kathleen Zander	4/21/2024 – 4/18/2026

SCHEDULED PUBLIC HEARINGS

5-31-2024	<u>South Dakota State Board of Dentistry (Department of Health):</u> Amend rules to update the collaborative supervision administrative rules and remove a clinical practice requirement to make the rules consistent with <u>House Bill 1074</u> , which was passed by the 2024 Legislature; 50 SDR 118, April 8, 2024.
6-5-2024	<u>South Dakota Board of Nursing (Department of Health):</u> Adopt and amend rules to revise the approval process for clinical enrichment programs and use of nurse preceptors, add requirements for nurses and registrants to report to the board within 60 days a new address, name, or other reportable event; 50 SDR 132, May 6, 2024.
6-11-2024	<u>South Dakota Secretary of State:</u> Amend rules to add e-notary to the current notary public form and modify the oath to better conform to other oaths currently in use; 50 SDR 135, May 13, 2024.
6-11-2024	<u>Department of Human Services:</u> Amend rules to update and add definitions; clarify institutionalized and clarify the setting for eligibility; add the requirement for HOPE waiver services to include that the individual must have an Individual Support Plan per the Centers for Medicare and Medicaid Services; update the provisions; clarify the requirement for each individual to participate in a needs assessment when applying for HOPE waiver services and participate in the assessment; specify the contents of the individual support plan and that it must be signed by the participant; clarify the department must annually redetermine the participant's level of care; and update and reorder the list of services available through the HOPE waiver; clarify language on the participant cost share when applicable; update the location of the fee schedule; update reasons for discontinuance or denial; and add the cost of services and an exceptions process; 50 SDR 137, May 20, 2024.
6-11-2024	<u>Department of Game, Fish and Parks:</u> Amend rules to describe a new prairie elk season license type; describe a qualifying landowner or landowner-operator; establish the fee for the landowner on own land antlerless elk license; repeal ARSD 41:06:27:02.07 in order to allow an individual to obtain more than one elk raffle license in a lifetime; and modify the restrictions of nonresidents in the taking of a raccoon; 50 SDR 138, May 20, 2024.
6-25-2024	<u>South Dakota Commission on Gaming (Department of Revenue):</u> Amend rules to incorporate the most recent version of the Association of Racing Commissioners International Uniform Clarification Guidelines for Foreign Substances and Recommend Penalties as applied to authorized drugs used in relation to horse racing; 50 SDR 138, May 20, 2024.
7-8-2024	<u>South Dakota Board of Education Standards (Department of Education):</u> Amend rules to align with the appeal window in codified law and make updates for consistent reference to due process complaints and the 30-day resolution period; 50 SDR 128, April 29, 2024.
7-23-2024	<u>South Dakota Electrical Commission (Department of Labor and Regulation):</u> Amend rules to adopt the 2023 National Electrical Code (NEC); implement standards for the approval and management of

	third-party inspectors; apply the statutory minimum inspection fee of one hundred dollars under SDCL 36-16-30; and formalize the third-party inspector process; 50 SDR 142, May 28, 2024.
8-16-2024	South Dakota Board of Podiatry Examiners (Department of Health) : Amend a rule to update the renewal fees to ensure financial viability of the board; 50 SDR 137, May 20, 2024.
8-20-2024	South Dakota Board of Physical Therapy (Department of Health) : Amend rules to update the activities that meet continuing education requirements and update the waiver of continuing education requirements; 50 SDR 142, May 28, 2024.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee for the 2024 Interim is Monday, June 10, 2024, at 10:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol. Future meetings for the 2024 Interim are scheduled for July 16, August 20, September 10, and October 22. 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.