



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 One Call Board (Department of Public Safety): (June 10, 2024) intends to amend rules to mandate excavators to identify the precise site being excavated by pre-marking the area of excavation with white paint or flags ("white lining"); mandate operators to participate in a Positive Response program in which operators must provide response to the notification center prior to the ticket start date and time; and limit excavators from updating current tickets after sixty-three calendar days have elapsed from the state date of the original ticket. The general authority for these rules, as cited by the board, is SDCL [49-7A-4](#).

A public hearing at which persons may present amendments, data, opinions, and arguments for or against the proposed rules will be held at the AmericInn by Wyndham, Scottie Room, 312 Island Drive, Fort Pierre, South Dakota, on July 11, 2024, at 10:00 a.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments on the proposed rules may be sent to, Codi Gregg, South Dakota One Call Board, PO Box 187, Rapid City, South Dakota 57709. The rules are also available online at <http://rules.sd.gov> and sdonecall.com. Comments and requests for copies of the proposed rules may also be emailed to codi@sd811.com. Written comments must reach the board by July 8, 2024, at 10:00 a.m. (CT) 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) 863-0951 at least 48 hours before the public hearing.

South Dakota Housing Development Authority: (June 13, 2024) intends to amend rules to modify the definition of "political subdivision" to include political subdivisions of a federally recognized Indian tribe and modify the eligibility for the housing infrastructure program to eliminate the requirement that the political subdivision be of the state of South Dakota. The general authority for these rules, as cited by the agency, is SDCL [11-15-6](#).

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 Housing Development Authority Boardroom, 3060 East Elizabeth Street, Pierre, South Dakota, on July 9, 2024, at 10:30 a.m. (CT). Interested parties may also participate remotely by calling 1-469-253-5858 and using conference ID 550 838 209# or by using the Microsoft Teams link posted on the agency's homepage, sdhousing.org. Copies of the proposed rules may be obtained without charge from the South Dakota Housing Development Authority, 3060 East Elizabeth Street, P.O. Box 1237, Pierre, South Dakota 57501-5876 and are also available online at <https://www.sdhousing.org/develop-housing/infrastructure-financing#gsc.tab=0> on the agency website or at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=51>. Written comments on the proposed rules may be sent to South Dakota Housing Development Authority Board of Commissioners, 3060 East Elizabeth Street, Pierre, South Dakota 57501 or by email to beverly@sdhda.org. Material sent by mail must be received by July 5, 2024, at 12:00 a.m. (CT) to be considered. All written and email 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 department can make arrangements may call Andy Fuhrman at (605) 773-5156 at least 48 hours before the public hearing.

Petition for Rules

The **Department of Game, Fish and Parks** on June 14, 2024, served on the Interim Rules Review Committee and the director of the Legislative Research Council a petition received from an interested person, per [SDCL 1-26-13](#), to amend ARSD [41:06:13:01](#) to limit the number of nonresident permits to 661 for the spring wild turkey hunting season. The [Game, Fish and Parks Commission](#) will review the petition at its July 11, 2024, meeting.

Notices

The **Department of Social Services** intends to amend the South Dakota Medicaid State Plan to implement inflationary rate increases appropriated by state legislators during the 2024 Legislative Session and assure that the requirements for general annual reporting of child and adult core sets are met.

The Health Home Quality Incentive Payment pool and the Per Member Per Month payments will receive a four percent inflationary increase. The updated fee schedule will be posted on the department's website at <https://dss.sd.gov/medicaid/providers/feeschedules/>.

The proposed state plan amendment (SPA) adds the Health Homes reporting assurance pages to the State Plan and updates the Health Homes fee schedule effective dates in the State Plan. The department intends to make this SPA effective July 1, 2024, and estimates the fiscal impact to be \$19,316 in state funds and \$28,950 in federal funds, totaling \$48,266 in Federal Fiscal Year 2024, and \$77,264 in state funds and \$115,800 in federal funds, totaling \$193,064 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 June 17, 2024, and end July 17, 2024.

The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to implement inflationary rate increases appropriated by state legislators during the 2024 Legislative Session, effective July 1, 2024, and update multiple areas of the State Plan to align with South Dakota Administrative Rule and current practice. Amendments include the following:

Coverage and Eligibility

- Increases the personal needs allowance for individuals in nursing or intermediate care facilities. The increase is from \$60 to \$100 for individuals and from \$120 to \$200 for couples.

Services

- Updates podiatry services to reflect routine footcare may be covered.
- Clarifies that transportation to or from a covered medically necessary service is covered and is not limited to "appointments".
- Removes obsolete Durable Medical Equipment certificate of medical necessity criteria as a certificate of medical necessity is no longer required.

Inpatient Hospital Payment Methodology

- Updates the inpatient Diagnosis Related Groups (DRG) aggregate charges threshold amount for revenue codes 275 or 278 to \$50,000 to reflect current practice.
- Updates the disproportionate share program payment timing and options to return or redistribute the federal share for overpayments to provide increased flexibility.
- Clarifies out-of-state reimbursement for Psychiatric Residential Treatment Facilities to reflect current practice.

Payment of Medicare Deductible/Coinsurance

- Adds Medicaid coverage of premiums and cost-sharing for certain categories of dual eligible beneficiaries who elect Medicare Advantage Plans (Medicare Part C) to reflect current practice.

Payment Methods for Physician & Other Services

- Updates the reimbursement methodology for anesthesia aligning the conversion factor to Medicare and moves the anesthesia modifier (AD, QK, QX, and QY) payment effect towards alignment with Medicare over a two-year implementation period as follows: 75% in year one, effective July 1, 2024, and 50% in year two, effective July 1, 2025.
- Updates the Prosthetics, Orthotics, and Supplies rate methodology of rebasing to 90% of Medicare's DMEPOS payment file on an annual basis.

Inflationary Increases

The following services otherwise not subject to a targeted increase or rate rebase are receiving a four 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
- Supplies, Orthotics and Prosthetics with no Medicare rate
- 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
- Free Standing Birth Centers
- 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
- Physician Administered Drugs with no Medicare rate
- Community Health Worker Services
- Child Private Duty Nursing Services
- Applied Behavior Analysis Services
- Disproportionate Share Hospital Payment Pools
- Graduate Medical Education Payment Pools
- PCP and Pregnancy Care Management Program Per Member Per Month Payments

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

Service	Type	Method
Private Duty Nursing Services	Targeted Increase	• Code S9122 - \$43.52 • Code S9123 - \$90.40 • Code S9124 - \$75.32

Home Health Services	Targeted Increase	• Code G0156 - \$10.88 • Code G0299 - \$22.60 • Code G0300 - \$18.83 • Other procedure codes are subject to a 4% inflationary increase
Personal Care Services	Targeted Increase	• Code S5130 - \$10.88 • Code T1000 - \$22.60 (RN) • Code T1000 - \$18.83 (LPN) • Code T1019 - \$10.88
Nursing Facility Services	Targeted Increase	• 4.3% Increase
DRG Exempt Pediatric Medically Complex Rehabilitation, and Pediatric Rehabilitation Transition Unit	Targeted Increase	• Per diems rebased based on cost
Dental Services	Targeted Increase	• Endodontic codes rebased to 80% of market rate • Other procedure codes are subject to a 4% inflationary increase
Prosthetics, Orthotics, and Supplies	Rebased	• Prosthetic, Orthotic, and Supply procedure codes rebased to 90% of Medicare
Anesthesia Services	Rebased	• Conversion Factor to 100% of Medicare. • Modifiers AD, QK, QX, and QY to align with Medicare over a two-year implementation period as follows: ○ 75% in year one, effective July 1, 2024 ○ 50% in year two, effective July 1, 2025
Physician Services	Rebased	• Evaluation and Management codes (99202- 99215) to 90% of Medicare • Preventative Services codes (99381-99397) to 100% of Medicare • Procedure codes with rates between 100% - 112.49% to 100% of Medicare • Procedure codes with rates between 112.5%- 125% to 112.5% of Medicare • Procedure codes with rates over 125% to 125% of Medicare • Procedure codes with rates below 90% of Medicare to 90% of Medicare • Procedure codes with no rate to 90% of Medicare • Other procedure codes are subject to a 4% inflationary increase
Physician Administered Drugs	Rebased	• Procedure codes with no rate to the Wholesale Acquisition Cost
Independent Mental Health Services	Rebased	• Procedure codes rebased to 90% of Medicare

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, 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 page 4a of Attachment 2.6-A, page 1 of Supplement 12 to Attachment 2.6-A, pages 8, 13, and 43 of Supplement to Attachment 3.1-A, pages 1, 3, 5, 7, 8, 8a, 9, 10a, and 10b of Attachment 4.19-A, Introduction Page 1, Introduction Page 1a, 1b, 6, 13, and 22 of Attachment 4.19-B, pages 1-3 of Supplement 1 to Attachment 4.19-B, and page 7, 9, and 10 of Attachment 4.19-D.

The department estimates the total annual aggregate increase in expenditures by service type will be the following:

- Inpatient Hospital Services - \$7,831,690
- Outpatient Hospital Services - \$4,604,501
- Physician Services including EPSDT Screenings/Treatment, and Professional Services Provided in a Freestanding Birth Center - \$5,525,859
- Dental Services including Orthodontic Services and Dentures - \$1,392,204
- Optometric - \$132,025
- Chiropractic Services - \$62,247
- Disproportionate Share Hospital Payments - \$44,117
- Graduate Medical Education Payments - \$138,634
- Other Medical Services - \$1,504,815
 - 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
 - Community Health Worker Services
- Nursing Facility Services - \$770,778
- Personal Needs Allowance - \$1,486,560

The department intends to make this SPA effective July 1, 2024, and estimates the fiscal impact to be \$2,445,032 in state funds and \$3,428,326 in federal funds, totaling \$5,873,358 in Federal Fiscal Year 2024, and \$9,780,128 in state funds and \$13,713,302 in federal funds, totaling \$23,493,430 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 June 17, 2024, and end July 17, 2024.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Final Administrative Rules

DEPARTMENT OF HUMAN SERVICES: 46:11:08:05.

History/Notice: 50 SDR 115, April 2, 2024

Hearing: April 30, 2024

Filed: June 10, 2024

Effective: June 30, 2024

SOUTH DAKOTA STATE BOARD OF DENTISTRY (DEPARTMENT OF HEALTH): 20:43:10:02, 20:43:10:03.

History/Notice: 50 SDR 118, April 8, 2024

Hearing: May 31, 2024

Filed: June 11, 2024

Effective: July 1, 2024

DEPARTMENT OF REVENUE: 61:24:02:01, 61:24:02:03, 61:24:02:04, 61:24:02:05; 61:24:03:08, 61:24:03:12, 61:24:03:13; 61:24:04:08; 64:17:01:02; 64:28:03:04.01; 64:28:15:01, 64:28:15:02, 64:28:05:03; 64:29:03:11; 64:33:01:01.

History/Notice: 50 SDR 122, April 15, 2024

Hearing: May 9, 2024

Filed: June 11, 2024

Effective: July 1, 2024

SOUTH DAKOTA DIVISION OF INSURANCE (DEPARTMENT OF LABOR AND REGULATION): 20:06:09:45, 20:06:09:49, 20:06:09:50, 20:06:09:51, 20:06:09:52, 20:06:09:53; 20:06:12:07; 20:06:19:04; 20:06:25:01, 20:06:25:01.01, 20:06:25:01.02, 20:06:25:02; 20:06:26:01; 20:06:36:01; 20:06:59:01.

History/Notice: 50 SDR 128, April 29, 2024

Hearing: May 20, 2024

Filed: June 11, 2024

Effective: July 1, 2024

SOUTH DAKOTA BOARD OF FUNERAL SERVICE (DEPARTMENT OF HEALTH): 20:45:01:01, 20:45:01:02, 20:45:01:03, 20:45:01:04; 20:45:02:01, 20:45:02:02, 20:45:02:03, 20:45:02:03.01, 20:45:02:04, 20:45:02:05, 20:45:02:06, 20:45:02:07; 20:45:03:01, 20:45:03:02, 20:45:03:02.01, 20:45:03:03, 20:45:03:03.01, 20:45:03:04, 20:45:03:04.01, 20:45:03:05, 20:45:03:07, 20:45:03:08; 20:45:04:01, 20:45:04:03, 20:45:04:04, 20:45:04:05, 20:45:04:07, 20:45:04:08; 20:45:05:01, 20:45:05:02, 20:45:05:03, 20:45:05:04, 20:45:05:05, 20:45:05:06, 20:45:05:07, 20:45:05:08, 20:45:05:09, 20:45:05:10, 20:45:05:11, 20:45:05:12, 20:45:05:13, 20:45:05:14, 20:45:05:15, 20:45:05:16.

History/Notice: 50 SDR 101, February 26, 2024

Hearing: May 8, 2024

Filed: June 12, 2024

Effective: July 2, 2024

SOUTH DAKOTA BOARD OF EDUCATION STANDARDS (DEPARTMENT OF EDUCATION): 24:28:01:01; 24:28:04:01; 24:28:09:03, 24:28:09:04, 24:28:09:10, 24:28:09:11, 24:28:09:17, 24:28:09:18, 24:28:09:19, 24:28:09:20, 24:28:09:39, 24:28:09:45, 24:28:09:48, 24:28:09:51, 24:28:09:52, 24:28:09:53, 24:28:09:54, 24:28:09:55; 24:28:11:02; 24:28:12:01, 24:28:12:02; 24:28:13:02; 24:28:14:02; 24:28:15:02; 24:28:16:01, 24:28:16:02, 24:28:16:02.01, 24:28:16:04; 24:28:17:12, 24:28:17:15, 24:28:17:18, 24:28:17:19, 24:28:17:20, 24:28:17:21, 24:28:17:22, 24:28:17:23, 24:28:17:24, 24:28:17:25, 24:28:17:26, 24:28:17:26.01, 24:28:17:27, 24:28:17:28, 24:28:17:30; 24:28:28:05.

History/Notice: 50 SDR 132, May 6, 2024

Hearing: May 20, 2024

Filed: June 13, 2024

Effective: July 3, 2024

Executive Appointments

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
State Electrical Commission Stephen F. Burgess Rapid City	Governor	Russel Vanderwerff	6/14/2024 – 4/14/2027
State Plumbing Commission Brian L. Cooper Sioux Falls	Governor	Bill Werner	6/14/2024 – 4/14/2027

SCHEDULED PUBLIC HEARINGS

6-21-2024	<u>Department of Social Services:</u> Repeal Medicaid recipient cost sharing requirements and adopt or amend rules to update citations; update nursing facility level of care classifications; clarify classification levels; and detail what settings or services apply to each level of care classification; 50 SDR 148, June 3, 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.
7-9-2024	<u>South Dakota Housing Development Authority:</u> Amend rules to modify the definition of "political subdivision" to include political subdivisions of a federally recognized Indian tribe, and modify the eligibility for the housing infrastructure program to eliminate the requirement that the political subdivision be of the state of South Dakota; 50 SDR 152, June 17, 2024.
7-11-2024	<u>South Dakota One Call Board (Department of Public Safety):</u> Amend rules to mandate excavators to identify the precise site being excavated by pre-marking the area of excavation with white paint or flags ("white lining"); mandate operators to participate in a Positive Response program in which operators must provide response to the notification center prior to the ticket start date and time; and limit excavators from updating current tickets after sixty-three calendar days have elapsed from the state date of the original ticket; 50 SDR 152, June 17, 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 Tuesday, July 23, 2024, at 10:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol; please note the change from the original meeting date of July 16, 2024. Future meetings for the 2024 Interim are scheduled for 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.