



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 Examiners in Optometry (Department of Health): (September 9, 2019) intends to amend rules to clarify existing language for release of prescriptions; set out processes for reviewing license applications; establish and clarify processes for license renewal and late renewal fee; update and clean up continuing education requirements and documentation; revise requirements of notification of change in professional corporation membership; and add three CPT codes to clinical procedures approved for optometrists. The general authority for these rules, as cited by the board, is SDCL 36-7-12, 36-7-13, 36-7-15, 36-7-15.1, 36-7-15.2, 36-7-15.3, 36-7-20, 36-7-31, and 47-11B-23.

A public hearing will be held at Tieszen Law Office, Prof. LLC, 306 East Capitol, Suite 300, Pierre, South Dakota, on October 17, 2019, at 6:00 p.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Executive Secretary, South Dakota Board of Examiners in Optometry, P.O. Box 513, Wall, South Dakota 57790. Copies are also available at <https://rules.sd.gov/>. The comment period will close on October 17, 2019. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 224-1500 at least 48 hours before the public hearing.

South Dakota Board of Minerals and Environment (Department of Environment and Natural Resources): (September 9, 2019) intends to amend rules to update South Dakota's existing air quality rules by incorporating updated, codified federal regulations; incorporating by reference the revised federal National Ambient Air Quality Standards; and incorporating federal requirements for municipal solid waste landfills. The general authority for these rules, as cited by the board, is SDCL 34A-1-6, 34A-1-12, 34A-1-15, 34A-1-18, 34A-1-19, and 34A-1-21.

A public hearing will be held in the Matthew Training Center, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, on October 17, 2019, at 10:00 a.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Environment and Natural Resources, Air Quality Program, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. Copies may also be obtained by calling Ashley Brakke at (605) 773-3151 or at <http://denr.sd.gov/public/default.aspx>. The comment period will close on October 14, 2019. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3151 at least 48 hours before the public hearing.

Division of Developmental Disabilities (Department of Human Services): (September 10, 2019) intends to amend rules to limit participants in shared living to individuals with IDD/DD age 22 and older; require training for disability awareness, the participants Individual Service Plan, and abuse, neglect, and exploitation for respite care providers and anyone over 18 years of age living in the home; allow a cell phone to be used instead of requiring a landline; prohibit a shared living provider from being a representative payee over a participant's money; specify the staff orientation requirements of providers of case management; clarify what Individual Service Plan expectations are for a participant's goals; eliminate a rule concerning alternative day services; add new training requirements to include focusing on the participant's needs to

achieve their good life; add new requirements to ISP development to include Charting the LifeCourse principles; modify coordination of required actions and timeframes; repeal a rule which is repetitive with DSS Medicaid rules; eliminate a rule stating that no services are provided if state funds are not available; change the name of Statewide Family Support to Strengthening Families Program; and update the age requirement from 2-1/2 to 3 years of age for incontinence supplies. The general authority for these rules, as cited by the division, is SDCL 27B-2-25, 27B-2-26, and 28-1-24.1

A public hearing will be held in the Large Conference Room, Hillsvie Plaza, 3800 East Hwy 34, Pierre, South Dakota, on October 10, 2019, at 1:00 p.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Human Services, Hillsvie Plaza, 3800 East Hwy 34, Pierre, South Dakota 57501-5070. The comment period will close on October 21, 2019. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-5990 or (605) 773-6412 TTY at least 48 hours before the public hearing.

Department of Health: (September 11, 2019) intends to amend rules to prescribe a form to be used by a physician to comply with the requirement of SDCL 34-23A-10.1(1). The general authority for this rule, as cited by the department, is SDCL 34-23A-10.5.

A public hearing will be held in the Large Conference Room, Health Laboratory Building, 615 East Fourth Street, Pierre, South Dakota, on October 15, 2019, at 3:00 p.m. CT. Copies of the proposed rule may be obtained without charge from and written comments sent to the Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501. The comment period will close on October 25, 2019. 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.

Department of Public Safety: (September 11, 2019) intends to adopt an emergency rule for a 1-psi vapor pressure waiver for ethanol-blended gasoline to allow the continued shipment and sale of ethanol-blended gasoline after the expiration of the federal waiver. The general authority for this rule, as cited by the department, is SDCL 37-2-6 and 37-2-7.

A copy of the proposed rule may be obtained without charge from the Department of Public Safety, 118 West Capitol Avenue, Pierre, South Dakota 57501. Emergency rules must be filed with the Secretary of State within 30 days of the date of admission to the Legislative Research Council and are effective for 90 days from the date of filing.

Department of Game, Fish and Parks: (September 12, 2019) intends to amend or create rules to require all traps and snares to be checked within 24 hours from the time the trap was set; allow GFP personnel to grant extensions to the 24 hour time check and require them to keep records on such extensions; require trappers to check the weather report for the next 48 hours after a trap is set and record such data; allow GFP personnel or any person receiving permission from GFP personnel to release or euthanize an animal in a trap or snare longer than 24 hours; require all traps and snares to be checked prior to midnight of the third full calendar day following a previous check or when the trap was initially set; require all traps and snares fully submerged in water that remain set beneath ice to be checked prior to midnight of the fifth full calendar day following a previous check or when the trap was initially set; allow for telescopic sights utilizing magnification; establish a fee for nonresident licenses for the mountain lion hunting season; extend the mountain lion hunting season dates in the Black Hills Fire Protection District from December 26 through March 31 to December 26 through April 30 and increase the number of access permits in Custer State Park; allow the GFP Commission to extend the mountain lion hunting season beyond April 30 if necessary; create a limited number of mountain lion hunting licenses for nonresidents and expand the allowance for the use of dogs that originate on private land to cross over or culminate on any public lands where unleashed dogs are permitted; extend the Custer State Park coyote hunting season from December 26 through March 31 to December 26 through April 30 and remove the requirement to have a free access permit; add a definition of "setline" and "wire fish traps"; add the term "traps" to the title of Chapter 41:07:08; allow for the use of wire fish traps and require check and empty times by midnight of the day following when they were first set; align hoop net, trap, and setline gear restrictions on border waters to match those for inland waters; allow the use of hoop nets, traps, and setlines in the James, Vermillion, and Big Sioux River mainstems; allow the use of hoop nets and traps in the western Missouri River tributaries; create a process for the permitting of aeration systems on meandered waters or other waters to which the state has acquired a right, title or interest; allow for a single importation permit from an out-of-state source to cover an entire year from their last fish health inspection; specify which species of fish need to be tested for particular pathogens; add spiny waterflea, round goby, and specified perch to the aquatic invasive species

list; add Lake Sharpe and Francis Case to the list of containment waters to help control the spread of aquatic invasive species; add and update specific authority to the current rules and correct language for style and form; update language for consistency purposes and to reduce redundancy of terms; repeal repetitive references and unnecessary rules; increase the park entrance license fees and increase the fee for having a vehicle in the park without a park entrance license; increase camping fees across the state; create a definition for a "tent only" campsite; increase the cost of firewood from \$5.00 to \$6.00 a cubic foot; identify the state's known chronic wasting disease (CWD) endemic areas at the hunting unit level for deer and elk; require hunters, wildlife processors, and taxidermists to dispose of out-of-state cervids, regardless of CWD status, and cervids harvested from a known South Dakota CWD endemic area through their waste management provider or a permitted landfill; and alter the days of the week that individuals could use a horse for training dogs on public lands. The general authority for these rules, as cited by the department, is SDCL 32-3A-1, 32-3A-4, 32-3A-11, 41-2-18, 41-5-4, 41-6-10, 41-6-18.4, 41-6-19.6, 41-6-84, 41-8-15, 41-8-20, 41-8-33, 41-17-1.1, 41-17-13, 41-17-13.4, 41-17-18, 41-23-5, 41-23-9, 41-23-12, and 42-8-1.1.

A public hearing will be held at the AmericInn Conference Center, 1981 East King Avenue, Chamberlain, South Dakota, on October 3, 2019, at 2:00 p.m. CT. Copies of the proposed rules may be obtained without charge from and written comments 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) at least 48 hours before the public hearing.

Department of Health: (September 12, 2019) intends to amend rules to reflect current practices; delete unnecessary rules; and increase flexibility in providing Assisted Living services. 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 in Room 102, Health Laboratory Building, 615 East Fourth Street, Pierre, South Dakota, on October 15, 2019, at 1:30 p.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501. Copies are also available at <https://rules.sd.gov/>. The comment period will close on October 25, 2019. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3923 at least 48 hours before the public hearing.

Notice

The **Department of Social Services** intends to make changes to the South Dakota CHIP State Plan regarding the State's primary care case management program, commonly referred to as the Primary Care Provider (PCP) Program. The proposed State Plan Amendment (SPA) updates the CHIP plan to include assurances that the PCP Program complies with recent federal regulations. It will update section three of the CHIP State Plan, pages 15 to 55. The department intends to make this SPA effective July 1, 2019; it is estimated there will be no fiscal impact in Federal Fiscal Years 2019 and 2020. The SPA can be viewed on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. 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.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Legislative Appointment

John Lake, Gettysburg, was appointed on September 5, 2019, to the **South Dakota Senate**, to fill the District 23 vacancy created by the resignation of Senator Justin Cronin. The appointment is effective immediately. Mr. Lake previously served as a Representative in the **South Dakota House of Representatives**; an appointment to fill that vacancy is pending.

Final Administrative Rules

BOARD OF ELECTIONS (OFFICE OF THE SECRETARY OF STATE): 5:02:03:01; 5:02:04:17; 5:02:07:04; 5:02:08:00, 5:02:08:00.01, 5:02:08:01, 5:02:08:05; 5:02:09:02.02; 5:02:10:02.

History/Notice: 46 SDR 15, July 22, 2019

Hearing: August 13, 2019

Filed: September 9, 2019

Effective: September 30, 2019

DEPARTMENT OF PUBLIC SAFETY: 20:15:06:01; 61:23:01:04; 67:55:04:01, 67:55:04:03.

History/Notice: 46 SDR 15, July 22, 2019

Hearing: August 12, 2019

Filed: September 11, 2019

Effective: October 1, 2019

ABSTRACTERS' BOARD OF EXAMINERS (DEPARTMENT OF LABOR AND REGULATION): 20:36:01:01, 20:36:01:02; 20:36:02:02, 20:36:02:03, 20:36:03:04, 20:36:02:05, 20:36:02:06, 20:36:02:07, 20:36:02:09, 20:36:02:10; 20:36:03:01, 20:36:03:02, 20:36:03:03, 20:36:03:04, 20:36:03:07, 20:36:03:08, 20:36:03:09; 20:36:04:01, 20:36:04:01.01, 20:36:04:04, 20:36:04:04.03, 20:36:04:04.04, 20:36:04:05, 20:36:04:06, 20:36:04:07; 20:36:05:05.

History/Notice: 45 SDR 153, June 10, 2019

Hearing: June 28, 2019

Filed: September 13, 2019

Effective: October 3, 2019

UNIFIED JUDICIAL SYSTEM

Supreme Court Special Rules

SDCL 15-6-45(b)

History/Notice: 46 SDR 20, August 5, 2019

Hearing: August 26, 2019

Filed: September 6, 2019

Effective: September 6, 2019

SDCL 15-26A-75

History/Notice: 46 SDR 20, August 5, 2019

Hearing: August 26, 2019

Filed: September 6, 2019

Effective: September 6, 2019

SDCL 19-19-502

History/Notice: 46 SDR 20, August 5, 2019

Hearing: August 26, 2019

Filed: September 6, 2019

Effective: September 6, 2019

SCHEDULED PUBLIC HEARINGS

<p>9-17-2019</p>	<p><u>South Dakota Board of Nursing Facility Administrators (Department of Health)</u>: Amend rules to update the reference to the national examination and clarify continuing education requirements; 46 SDR 23, August 12, 2019.</p>
<p>9-23-2019</p>	<p><u>Department of Health</u>: Amend rules to allow municipalities to regulate the practice of saline tattoo removal; 46 SDR 26, August 19, 2019.</p>
<p>9-23-2019</p>	<p><u>Department of Health</u>: Amend rules to clean up existing rules and clarify the methodology for determining testing fees; 46 SDR 29, August 26, 2019.</p>
<p>10-1-2019</p>	<p><u>Department of Revenue</u>: Repeal rules with no legislative authority and no implementation purpose in the codified laws relating to the inheritance tax; 46 SDR 32, September 3, 2019.</p>
<p>10-3-2019</p>	<p><u>Department of Game, Fish and Parks</u>: Amend or create rules to require all traps and snares to be checked within 24 hours from the time the trap was set; allow GFP personnel to grant extensions to the 24 hour time check and require them to keep records on such extensions; require trappers to check the weather report for the next 48 hours after a trap is set and record such data; allow GFP personnel or any person receiving permission from GFP personnel to release or euthanize an animal in a trap or snare longer than 24 hours; require all traps and snares to be checked prior to midnight of the third full calendar day following a previous check or when the trap was initially set; require all traps and snares fully submerged in water that remain set beneath ice to be checked prior to midnight of the fifth full calendar day following a previous check or when the trap was initially set; allow for telescopic sights utilizing magnification; establish a fee for nonresident licenses for the mountain lion hunting season; extend the mountain lion hunting season dates in the Black Hills Fire Protection District from December 26 through March 31 to December 26 through April 30 and increase the number of access permits in Custer State Park; allow the GFP Commission to extend the mountain lion hunting season beyond April 30 if necessary; create a limited number of mountain lion hunting licenses for nonresidents and expand the allowance for the use of dogs that originate on private land to cross over or culminate on any public lands where unleashed dogs are permitted; extend the Custer State Park coyote hunting season from December 26 through March 31 to December 26 through April 30 and remove the requirement to have a free access permit; add a definition of "setline" and "wire fish traps"; add the term "traps" to the title of Chapter 41:07:08; allow for the use of wire fish traps and require check and empty times by midnight of the day following when they were first set; align hoop net, trap, and setline gear restrictions on border waters to match those for inland waters; allow the use of hoop nets, traps, and setlines in the James, Vermillion, and Big Sioux River mainstems; allow the use of hoop nets and traps in the western Missouri River tributaries; create a process for the permitting of aeration systems on meandered waters or other waters to which the state has acquired a right, title or interest; allow for a single importation permit from an out-of-state source to cover an entire year from their last fish health inspection; specify which species of fish need to be tested for particular pathogens; add spiny waterflea, round goby, and specified perch to the aquatic invasive species list; add Lake Sharpe and Francis Case to the list of containment waters to help control the spread of aquatic invasive species; add and update specific authority to the current rules and correct language for style and form; update language for consistency purposes and to reduce redundancy of terms; repeal repetitive references and unnecessary rules; increase the park entrance license fees and increase the fee for having a vehicle in the park without a park entrance license; increase camping fees across the state; create a definition for a "tent only" campsite; increase the cost of firewood from \$5.00 to \$6.00 a cubic foot; identify the state's known chronic wasting disease (CWD) endemic areas at the hunting unit level for deer and elk; require hunters, wildlife processors, and taxidermists to dispose of out-of-state cervids, regardless of CWD status, and cervids harvested from a known South Dakota CWD endemic area through their waste management provider or a permitted landfill; and alter the days of the week that individuals could use a horse for training dogs on public lands; 46 SDR 40, September 16, 2019.</p>
<p>10-10-2019</p>	<p><u>Division of Developmental Disabilities (Department of Human Services)</u>: Amend rules to limit participants in shared living to individuals with IDD/DD age 22 and older; require training for disability</p>

	awareness, the participants Individual Service Plan, and abuse, neglect, and exploitation for respite care providers and anyone over 18 years of age living in the home; allow a cell phone to be used instead of requiring a landline; prohibit a shared living provider from being a representative payee over a participant's money; specify the staff orientation requirements of providers of case management; clarify what Individual Service Plan expectations are for a participant's goals; eliminate a rule concerning alternative day services; add new training requirements to include focusing on the participant's needs to achieve their good life; add new requirements to ISP development to include Charting the LifeCourse principles; modify coordination of required actions and timeframes; repeal a rule which is repetitive with DSS Medicaid rules; eliminate a rule stating that no services are provided if state funds are not available; change the name of Statewide Family Support to Strengthening Families Program; and update the age requirement from 2-1/2 to 3 years of age for incontinence supplies; 46 SDR 39, September 16, 2019.
10-15-2019	Department of Health: Amend rules to prescribe a form to be used by a physician to comply with the requirement of SDCL 34-23A-10.1(1); 46 SDR 40, September 16, 2019.
10-15-2019	Department of Health: Amend rules to reflect current practices; delete unnecessary rules; and increase flexibility in providing Assisted Living services; 46 SDR 41, September 16, 2019.
10-17-2019	South Dakota Board of Examiners in Optometry (Department of Health): Amend rules to clarify existing language for release of prescriptions; set out processes for reviewing license applications; establish and clarify processes for license renewal and late renewal fee; update and clean up continuing education requirements and documentation; revise requirements of notification of change in professional corporation membership; and add three CPT codes to clinical procedures approved for optometrists; 46 SDR 39, September 16, 2019.
10-17-2019	South Dakota Board of Minerals and Environment (Department of Environment and Natural Resources): Amend rules to update South Dakota's existing air quality rules by incorporating updated, codified federal regulations; incorporating by reference the revised federal National Ambient Air Quality Standards; and incorporating federal requirements for municipal solid waste landfills; 46 SDR 39, September 16, 2019.
10-18-2019	South Dakota State Board of Dentistry (Department of Health): Amend rules to incorporate the Integrated National Board Dental Examination; streamline and update requirements regarding clinical competency examinations; update supervision levels; update the duties and procedures performed by dental assistants and registered dental assistants; update registered dental assistant registration requirements and training program criteria; remove redundant regulations and obsolete provisions, and update references; update student exemption to registration; and update continuing education requirements applicable to registered dental assistants; 46 SDR 37, September 9, 2019.

RULES REVIEW COMMITTEE MEETINGS

The final meeting of the Interim Rules Review Committee for the 2019 interim is Monday, November 4, 2019, at 10:00 a.m. CT in Room 414 of the Capitol.

Notices of 2019 Rules Review Committee meetings will be provided 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.