

REGISTER



South Dakota Legislative Research Council

Volume 31

Monday, 8:00 a.m., April 25, 2005

NOTICES OF PROPOSED RULES: (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

Department of Social Services: Office of Medical Services: (April 19, 2005) intends to amend rules relating specifically to prescription drugs, the effects of these changes will be to: remove the coverage limits and prior authorization requirements for Clozaril therapy; no longer require that certain lab tests be conducted as a condition of continued Clozaril therapy; no longer require the treating psychiatrist to notify the department if Clozaril therapy is being discontinued; remove the Clozaril enrollment information form; begin covering items prescribed for weight control and appetite depressants; supply the federal website address from which an individual can obtain a current list of drugs that the federal government has determined to be less than effective; delete a reference to the Health Care Financing Administration and reference instead the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services; change a reference to the brand name drug "Clozaril" to the generic name "Clozapine"; remove the coverage limits for Azidothymidine, brand name Retrovir; allow a pharmacy claim to be submitted electronically; require that a claim for a prescription drug include the provider's National Council of Prescription Drug Providers' (NCPDP) number and the prescribing physician's Drug Enforcement Agency (DEA) number; no longer require a referral from the recipient's primary care physician for prescriptions written by a physician who was not the recipient's primary care provider; no longer print a code on the recipient's medical identification card if a third-party payment source exists and instead notify providers

through either the Department's Medical Eligibility Verification System or the Audio Response System; if a third-party payment source exists and the provider submits an electronic claim to the department for payment, require the provider to maintain and submit to the department, on request, evidence of payment or payment rejection from the third-party payment source. The general authority for these rules, as cited by the department, is SDCL 28-6-1.

A public hearing will be held in the Department of Social Services Conference Room, First Floor, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on Wednesday, May 11, 2005, at 9:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to Jill Wellhouse, Administrative Rules, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Ms. Wellhouse may be contacted by telephone at (605) 773-3305. Written comments must be received by May 23, 2005, to be considered. Individuals intending to present oral testimony at the hearing must make a written copy of their testimony available to the department at the time of the hearing. The testimony must relate directly to the changes being proposed and must cite the specific rule number to which the comments are being directed. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3305 at least 48 hours before the hearing.

Department of Revenue and Regulation: Division of Insurance: (April 20, 2005) intends to amend rules to change the permissible

exclusions in life insurance policies and clarify how certain notice requirements can be made; update Medicare supplement insurance policies and related requirements, clarify overinsurance, clarify the allowance of agent compensation, specify acceptable rating methodologies and update references and the Division's address; define premium; adopt notice requirements to those in long-term care facilities, define overinsurance; allow companies to implement a minimum premium for purposes of returning unearned premiums; clarify how certain notice requirements can be made; and implement definitions for discount plans. The general authority for these rules, as cited by the board, is SDCL 10-44-1.1, 58-4-1, 58-11-63, 58-15-45, 58-17A-2, 58-17A-5, 58-17A-6, 58-17A-7, 58-17B-4, 58-17C-106, 58-33-5.1.

A public hearing will be held in the Governor's Large Conference Room, 2nd floor, State Capitol, Pierre, South Dakota, on May 19, 2005, at 10:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Revenue and Regulation, Division of Insurance, Administrative Rules, 445 E. Capitol Avenue, Pierre, South Dakota 57501-3185. The text of the amended rules will be posted on the department's Web site at www.state.sd.us/drr2/revenue.html. The rules may also be obtained as a Microsoft Word attachment by emailing Ellen.Blauert@state.sd.us. Written comments must be received by May 18, 2005, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3563 at least 48 hours before the hearing.

Department of Revenue and Regulation: Risk Pool Board: (April 20, 2005) intends to amend rules to implement definitions and clarify the tolling of the 63-day timeframe. The general authority for these rules, as cited by the board, is SDCL 58-17-124.

A public hearing will be held in the Governor's Large Conference Room, 2nd floor, State Capitol, Pierre, South Dakota, on May 19, 2005, at 11:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Revenue and Regulation, Division of Insurance, Administrative Rules – Risk Pool, 445 E. Capitol Avenue, Pierre, South Dakota 57501-3185. The text of the amended rules will be posted on the department's Web site at www.state.sd.us/drr2/revenue.html. The rules may also be obtained as a Microsoft Word attachment by emailing Ellen.Blauert@state.sd.us. Written comments must be received by May 18, 2005, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3563 at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF HEALTH: 44:19:01:01, 44:19:01:04; 44:19:02:03.01, 44:19:02:04.01, 44:19:02:05, 44:19:02:06, 44:19:02:07; and 44:19:03:02.

History-Notice: 31 SDR 93, Dec. 20, 2004
 Hearing: January 26, 2005
 Filed: April 19, 2005
 Effective: May 9, 2005

DEPARTMENT OF LABOR: PUBLIC UTILITIES COMMISSION: ONE-CALL NOTIFICATION BOARD: 20:25:03:04, 20:25:03:04.01, 20:25:03:04.02, 20:25:03:06, 20:25:03:07, 20:25:03:08, 20:25:03:09, and 20:25:03:10.

History-Notice: 31 SDR 101, January 3, 2005
 Hearing: February 22, 2005
 Filed: April 20, 2005
 Effective: May 10, 2005

DEPARTMENT OF GAME, FISH AND

PARKS: 41:05:02:11, 41:05:02:15,
41:05:02:54, 41:05:02:58; 41:06:02:03,
41:06:20:02.01, and 41:06:21:02.01.

History-Notice: 31 SDR 117, February 7, 2005
Hearing: March 3-4, 2005
Filed: April 20, 2005
Effective: May 10, 2005

**DEPARTMENT OF REVENUE AND
REGULATION: COMMISSION ON**

GAMING: 20:18:16:15.09, 20:18:16:15.10,
20:18:16:15.11, 20:18:16:15.12; 20:18:17:22;
20:18:18:15, 20:18:18:26; 20:18:20:05; and
20:18:20:01:03.

History-Notice: 31 SDR 121, Feb. 14, 2005
Hearing: March 16, 2005
Filed: April 20, 2005
Effective: May 10, 2005

**DEPARTMENT OF REVENUE AND
REGULATION: APPRAISERS:** 20:14:06:01.

History-Notice: 31 SDR 115, January 31, 2005
Hearing: March 29, 2005
Filed: April 20, 2005
Effective: May 10, 2005

DEPARTMENT OF TRANSPORTATION:

70:01:02:03, 70:01:02:13, 70:01:02:22,
70:01:02:48, and 70:01:02:62.

History-Notice: 31 SDR 103, January 10, 2005
Hearing: January 27, 2005
Filed: April 21, 2005
Effective: May 11, 2005

**DEPARTMENT OF REVENUE AND
REGULATION: BANKING**

COMMISSION: 20:07:06:01; 20:07:19:02;
20:07:20:01, 20:07:20:02; 20:07:21:01, and
20:07:21:02.

History-Notice: 31 SDR 113, January 24, 2005
Hearing: February 10, 2005
Filed: April 21, 2005
Effective: May 11, 2005

DEPARTMENT OF TRANSPORTATION:
70:01:03:21.

History-Notice: 31 SDR 117, February 7, 2005
Hearing: February 24, 2005
Filed: April 21, 2005
Effective: May 11, 2005

Executive Appointments:

Linda Wittrock, Sioux Falls, was appointed on April 14, 2005, to the **State Electrical Commission**, effective April 15, 2005, and shall continue until April 14, 2009.

Mark Merchen, Rapid City, was appointed on April 15, 2005, to the **Unemployment Insurance Advisory Council**, effective immediately.

Richard Westra, Aberdeen, was reappointed on April 18, 2005, to the **State Banking Commission**, effective immediately and shall continue until July 1, 2007.

Jim Berreth, Artas, was appointed on April 21, 2005, to the **State Plumbing Commission**, to replace George Cook, effective April 15, 2005, and shall continue until April 14, 2009.

Note: A copy of the rules may be obtained directly from the above agencies. Write to the agency at the address given under "Notices of Proposed Rules." There is no charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry, the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Revenue and Regulation, and the Department of Labor for Article 47:03.

REMINDER OF HEARINGS SCHEDULED

4-26-2005	Agriculture: Animal Industry Board	Amend a rule to update the vaccinology related to rabies in dogs and to include cats in the importation requirements dealing with rabies; to control the spread of and eliminate trichomoniasis from cattle through restricting the sale, loan, lease, or importation of animals presenting the highest risk for this disease; place into regulation identification and record-keeping requirements for sheep and goat producers consistent with those the industry had enacted voluntarily in recent years in order to uniformly market their animals in efforts to control Scrapie, a transmissible spongiform encephalopathy of sheep and goats; 31 SDR 144.
4-28-2005	Transportation	Adopt rules for utility corridor management for relocation of utilities displaced as a result of a highway construction project; 31 SDR 153.
4-29-2005	Labor: Board of Accountancy	Amend a rule that will allow the board to collect the fees associated with the computerized Uniform CPA Examination from candidates, to be paid to the third party providers upon receipt of their services; 31 SDR 137.
4-29-2005	Revenue and Regulation: Lottery Commission	Adopt rules that provide a process to have a video lottery machine declared obsolete and to remove the responsibility of licensees from having to provide associated equipment for a machine declared obsolete, and to allow video lottery operators to purchase non-critical associated equipment from sources not otherwise licensed by the Lottery; 31 SDR 151.
4-29-2005	Social Services: Energy Assistance	Amend rules that will amend the definition of "congregate living arrangement"; delete the requirement that a household must be directly affected by increased heating costs; specify that the designated head of the household for a congregate living unit is responsible for producing the information necessary to determine the household's eligibility; no longer require the household to produce a statement from the landlord that the household's rent has increased or is due to be increased because of heating costs; for non-self-employed

		<p>households that do not qualify for LIEAP due to excess income, discontinue the practice of using an alternative method of calculating the household's income; for self-employed household's that do not qualify due to excess income but have experienced a change in circumstances, base the household's income on anticipated, rather than prior, income; consolidate the types of income excluded when computing a household's income; clarify that the exclusion of cash gifts are limited to cash received for recurring occasions such as birthdays and Christmas; when computing income for a self-employed household, include any net profit or loss and consider the household's income to be \$0 if the self-employment income calculations result in a loss; when establishing the benefit levels for eligible households, include the amount of funds available but no longer include the average cost to heat an 850 square foot house; change the deadline for determining eligibility to specify that the Department has 60 days after an application is received rather than 60 days from the date of the application; clarify that LIEAP funds may only be used to pay for unpaid energy bills; and clarify that a claim for energy assistance must be postmarked on or before May 15 in order to be considered; 31 SDR 152.</p>
<p>5-2-2005</p>	<p>Health</p>	<p>Adopt and amend rules to determine the application requirements for certified and informational copies of a vital record, acceptable proof of identity and the security features required on a certified or informational copy and adopt rules that will establish the requirements for a delayed certificate of marriage; 31 SDR 151.</p>
<p>5-5-2005</p>	<p>Attorney General: Law Enforcement Officers Standards Commission</p>	<p>Adopt rules regarding police canine team certification; 31 SDR 157.</p>
<p>5-5-2005</p>	<p>Game, Fish and Parks</p>	<p>Amend the exceptions on the restrictions on use of firearms and bows at Adams Homestead and Nature Preserve, at La Framboise Island, and at Farm Island Recreation Area, and prohibit deer hunting in state parks and recreation and nature areas during January-1-31; amend the special Custer State Park Antlerless Elk season; amend the National</p>

		<p>Wildlife Refuge Deer seasons; modify the Youth Deer Hunting season; amend the Black Hills Deer Hunting season; amend the Fall Wild Turkey Hunting season and establish new hunting units in Hutchinson and Turner County; amend the Special Canada Goose Hunting season by repealing the special hunting units in Fall River, Custer, and Minnehaha County and include the property within Unit 1, modify the season dates in Unit 11B (Bennett County), modify license type in Unit 11A to be 3 tag license, and establish (lower) the number of licenses available in Unit 11B; amend the Nonresident Waterfowl licenses by modifying the numbering system for the applicable units, provide that certain Bennett County nonresident licenses are valid for the January Canada goose season, and modify the number of 3 day temporary nonresident waterfowl licenses available in the hunting units comprised of the counties of Potter, Stanley, Sully, Hughes, and Lyman by transferring a number of them to the unit comprised of the counties of Brown, Marshall, Roberts, Day, Grant, Clark, Codington, Deuel, and Hamlin; amend Tundra Swan hunting season by modifying the number of licenses available to residents and nonresidents; amend Hunting Requirements and Prohibited Methods by modifying conditions, restrictions, and prohibitions relating to "accompaniment" of a big game firearm licensee by a person not similarly licensed to hunt in the same area and at the same time of year and provide exemptions therefrom; amend Archery Restrictions by modifying conditions, restrictions, and prohibitions relating to "accompaniment" of a person licensed to hunt only by archery by a person not similarly licensed to hunt in the same area and at the same time of year and provide exemptions therefrom; and amend Public Water Zoning by designating the waters within Wilmarth Lake in Aurora County as a "no wake" zone; 31 SDR 157.</p>
<p>5-10-2005</p>	<p>Labor: Division of Labor and Management</p>	<p>Update the Workers' Compensation Fee Schedule; 31 SDR 153.</p>

<p>5-11-2005</p>	<p>Social Services: Medical Services</p>	<p>Amend rules relating specifically to prescription drugs, the effects of these changes will be to: remove the coverage limits and prior authorization requirements for Clozaril therapy; no longer require that certain lab tests be conducted as a condition of continued Clozaril therapy; no longer require the treating psychiatrist to notify the department if Clozaril therapy is being discontinued; remove the Clozaril enrollment information form; begin covering items prescribed for weight control and appetite depressants; supply the federal website address from which an individual can obtain a current list of drugs that the federal government has determined to be less than effective; delete a reference to the Health Care Financing Administration and reference instead the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services; change a reference to the brand name drug "Clozaril" to the generic name "Clozapine"; remove the coverage limits for Azidothymidine, brand name Retrovir; allow a pharmacy claim to be submitted electronically; require that a claim for a prescription drug include the provider's National Council of Prescription Drug Providers' (NCPDP) number and the prescribing physician's Drug Enforcement Agency (DEA) number; no longer require a referral from the recipient's primary care physician for prescriptions written by a physician who was not the recipient's primary care provider; no longer print a code on the recipient's medical identification card if a third-party payment source exists and instead notify providers through either the Department's Medical Eligibility Verification System or the Audio Response System; if a third-party payment source exists and the provider submits an electronic claim to the department for payment, require the provider to maintain and submit to the department, on request, evidence of payment or payment rejection from the third-party payment source; 31 SDR 163.</p>
<p>5-13-2005</p>	<p>Secretary of State: Board of Elections</p>	<p>Amend rules to bring the petition to increase or decrease the number of county commissioners,</p>

		confirmation mailing notice, voter registration form and instructions into compliance with statutory changes, set up guidelines for statutory change on acceptance of facsimile absentee ballot applications from UOCAVA voters, set up criteria for approving electronic ballot marking systems, set up parameters for voter registration verification with social security administration records, provide additional information on the provisional ballot envelope, provide agencies with a larger size voter registration, declination and instruction form to use; 31 SDR 151.
5-19-2005	Revenue and Regulation: Division of Insurance	Amend rules to change the permissible exclusions in life insurance policies and clarify how certain notice requirements can be made; update Medicare supplement insurance policies and related requirements, clarify overinsurance, clarify the allowance of agent compensation, specify acceptable rating methodologies and update references and the Division's address; define premium; adopt notice requirements to those in long-term care facilities, define overinsurance; allow companies to implement a minimum premium for purposes of returning unearned premiums; clarify how certain notice requirements can be made; and implement definitions for discount plans; 31 SDR 163.
5-19-2005	Revenue and Regulation: Risk Pool Board	Amend rules to implement definitions and clarify the tolling of the 63-day timeframe; 31 SDR 164.

Rules Review Committee Meetings

The next meeting of the Interim Rules Review Committee will be held Tuesday, May 17, 2005, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2005 interim: June 14, August 9, September 20, October 18, December 6, and January 9, 2006.

Note: An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the LRC web site.

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