

# REGISTER



## South Dakota Legislative Research Council

Volume 34

Monday, 8:00 a.m., July 2, 2007

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

### *Department of Tourism and State*

#### *Development: Board of Economic*

*Development:* (June 27, 2007) has filed rules to implement House Bill 1176, as passed by the 2007 South Dakota Legislature, to revise certain provisions concerning the making of grants and loans from the Revolving Economic Development and Initiative Fund and the Value-Added Agriculture Subfund and to repeal the Venture Capital Investment Fund program, the Capital Investment Entity Program, the Value-Added Tourism Subfund program and the Entrepreneur Support Program. The general authority for these rules, as cited by the department, is SDCL 1-16G-5, 1-16G-8, 1-16G-8.3, 1-16G-9, 1-16G-17, 1-16G-28, 1-16G-33, and 1-16G-39.

A public hearing will be held in the Lewis and Clark Room at the Ramkota Inn, Pierre, South Dakota, on July 19, 2007, at 1:00 p.m. CST. Copies of the proposed rules may be obtained from and written comments sent to the Board of Economic Development, c/o Department of Tourism and State Development, Capitol Lake Plaza, 711 East Wells Avenue, Pierre, South Dakota 57501. Written comments must be received by July 17, 2007, 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) 773-5032 at least forty-eight hours before the hearing.

*Department of Social Services: Division of Medical Services:* (June 29, 2007) intends to

amend rules relating to the Medical Services Program as follows: incorporate by reference the latest versions of the Physicians' Current Procedural Terminology (cpt) manual, the International Classification of Diseases, 9<sup>th</sup> Revision, Clinical Modification (ICD-9-CM) manual, and the Common Procedure Coding System (HCPCS) manual; define the term "clinical nurse specialist"; delete the definition of "clozaril therapy"; move the Department's fee schedules for physician services to the Department's website and establish a system under which a provider can request an amendment to the schedules; amend existing rules to relate to the fee schedules being moved to the Department's website; include additional two-letter modifiers to be used by providers when submitting certain claims to the Department; establish the formula for calculating the rate of reimbursement for procedure codes containing modifiers; when applicable, specify those modifier codes that must be reported; delete a reference to a repealed rule; add cross-references; allow hyperbaric oxygen therapy for diabetic wounds of the lower extremities under certain conditions; specify the conditions and supporting evidence that must exist before noninvasive bone-growth stimulation may be a covered service; allow payment for occupational therapy services prescribed by a physician and provided by a licensed therapist; establish the rate of reimbursement for services provided by a clinical nurse specialist; clarify that an employee under the direct supervision of a participating physician must use his or her own provider identification number and may not bill under the supervising physician's number; specify that an employee working under the direct supervision of a participating provider

and providing mental health or counseling services must meet the requirements of chapter 67:16:41 (Mental Health Services by Independent Practitioners); when submitting a claim for immunizations, require that the claim contain the applicable procedure code for the administration of the vaccine and an additional procedure code for the vaccine itself and, if the vaccine is supplied by the state, require that the claim include a specified two-letter modifier that must be attached to the procedure code being billed; expand those medical services that are subject to the requirements contained in Chapter 67:16:39 (Case Management – Primary Care Provider); repeal Appendix A (List of Physician Nonlaboratory Procedures), Appendix B (List of Physician Laboratory Procedures), and Appendix C (Physician Medical Procedures – Medicare Maximum Allowances); transfer the list of modifier codes for physician services from Appendix D to a new rule; increase the amount of the cost outlier for hospital claims paid under the DRG system; no longer require that an x-ray be taken to substantiate the existence of a subluxation of the spine for purposes of chiropractic treatment; clarify that payments made for certain services are subject to and must be billed under existing rules governing hospital services, clinic services, ambulatory surgical services, federally qualified health centers (FQHCs), and rural health clinics (RHCs); specify that the estimated acquisition cost for Schedule II controlled substances is the average wholesale cost of the drug less 10.5 percent; update the definition of “pharmaceutical and therapeutics committee”; and allow medical claims to be submitted in an electronic format. The general authority for these rules, as cited by the department, is SDCL 28-6-1, USC 801 and 812.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on July 27, 2007, at 9:15 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 Monday, August 6, 2007, 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.

## **FILINGS IN THE SECRETARY OF STATES OFFICE:**

### **Executive Appointments:**

**Carla Coplan**, Watertown, was reappointed on June 21, 2007, to the **Board of Barber Examiners**, effective July 1, 2007, and shall continue until June 30, 2010.

**Brad Tennant**, Aberdeen, was appointed on June 21, 2007, to the **State Historical Society Board of Trustees**, to replace Clare Bedsaul, effective June 21, 2007, and shall continue until April 15, 2008.

**Elaine Roberts**, Sioux Falls, was appointed on June 25, 2007, to the **South Dakota Interagency Coordinating Council**, to replace Lynn Boettcher Fjellanger, effective June 22, 2007, and shall continue until December 31, 2008.

**Clinton Waara**, Ft. Pierre, was reappointed on June 25, 2007, to the **Hagen-Harvey Memorial Scholarship Board**, effective July 1, 2007, and shall continue until July 1, 2012.

**William Aeschlimann**, Hurley, was reappointed on June 26, 2007, to the **Animal**

**Industry Board**, effective July 1, 2007, and shall continue until June 30, 2011.

**Gary Galyardt**, Rapid City, was reappointed on June 26, 2007, to the **State Capitol Complex Restoration and Beautification Commission**, effective July 1, 2007, and shall continue until June 30, 2011.

**James Hansen**, Pierre, was reappointed on June 26, 2007, to the **State Capitol Complex Restoration and Beautification Commission**, effective July 1, 2007, and shall continue until June 30, 2011.

**Bill Lynch**, Pierre, was reappointed on June 26, 2007, to the **South Dakota Health and Educational Facilities Authority**, effective July 1, 2007, and shall continue until June 30, 2012.

**Glenn A. Blumhardt**, Bowdle, was appointed on June 27, 2007, to the **Board of Minerals and Environment**, to replace Wilbert Blumhardt, effective July 1, 2007, and shall continue until June 30, 2011.

**Peter Bullene**, Watertown, was appointed on June 27, 2007, to the **Board of Minerals and Environment**, to replace Pat Healy, effective July 1, 2007, and shall continue until June 30, 2011.

**Linda Hilde**, Madison, was reappointed on June 27, 2007, to the **Board of Minerals and Environment**, effective July 1, 2007, and shall continue until June 30, 2011.

**State Bar of South Dakota Appointments:**

**J. Crisman Palmer**, Rapid City, was reappointed on June 28, 2007, to the **Judicial Qualifications Commission**, effective July 1, 2007, and shall continue until June 30, 2011.

**Richard L. Travis**, Sioux Falls, was reappointed on June 28, 2007, to the **Judicial Qualifications Commission**, effective July 1, 2007, and shall continue until June 30, 2011.

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**

7-9-2007	Revenue and Regulation: Abstractors' Board of Examiners	Amend rules to update the various fee schedules and manner for their determination as well as the procedures of the South Dakota Abstractors' Board of Examiners; 33 SDR 229.
7-10-2007	Agriculture: Animal Industry Board	Amend rules to add a definition for biological products; specifically state that biologicals must be approved for sale in South Dakota; to limit risk materials being brought into the state by hunters and taxidermists and assure proper disposal; to include federal regulations as a reference for tuberculosis control; to require identification on roping and dogging cattle; to require testing each year for tuberculosis on

	<p>cattle used for rodeo/roping purposes; repeal the TB blood test as it has been invalidated as an official test for tuberculosis in cervidae; change and update current dates of reference material; change the accepted date for a valid tuberculosis test from 30 to 60 days; include semen and embryos in health certificate requirements for import; require specific identification on semen and embryo imports; state the time frame for keeping records available; specify reporting requirements for shipping certain poultry and hatching eggs; require the lot number and expiration date of testing material be included on the report; to use the correct term “certificate of veterinary inspection” rather than “health certificate;” specify information to be included on reporting forms; use correct terminology for certificate of veterinary inspection and require proper terminology on certificates; specify that certain forms are kept as records by hatchery operators and dealers; ensure proper terminology is used throughout the rules consistent with the definition section; specify issuance of permits and expiration periods for pullorum testers; include primates in animals regulated by the board; specify time frame for required testing for two diseases; specify further information required to be reported by permittees; extend the valid testing period for 60-90 days for ram epidymitis within the state; to decrease the number of herd tests for accredited status from three to two and include NVSL contract labs as approved; eliminate use of the BTB test; to change the time frames for establishing and renewing accredited law status; to allow lab as approved by the board for state lab approval and clarify definition of official identification; to allow two additional tests to be approved for brucellosis testing; to extend the period for certified free status; to allow the re-test of additions to a certified herd to be tested along with the next herd test; to provide for tissue in addition to the brain to be tested for CWD; to decrease the eligible age for CWD testing from 16 to 12 months; to extend the closed herd status on imported cervidae from three to five years; to eliminate restrictions on funding</p>
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		<p>assistance for Johne’s control efforts; to provide for the approval of newer testing methods; and to allow waiver of requirements for nonvirgin nonpregnant females; 33 SDR 229.</p>
<p>7/12/2007</p>	<p>Game, Fish and Parks</p>	<p>Amend an East River Deer Hunting Season rule to establish season dates, requirements and restrictions, establish the number of licenses/tags available which will include offering 525 less one-tag and 550 more two-tag licenses (1% increase of 575 tags) than in 2006, create a “super unit” consisting of the McPherson, Edmunds, Faulk, Spink, Brown, Marshall, Day, Clark, Hamlin, Codington, Roberts, Grant and Deuel County Units, with unfilled tags for any of these units to be valid anywhere in the “super unit” during the January season dates, and change the unit description for ERD-44A to read as follows: Lincoln County, excluding Newton Hills State Park; amend Antelope Hunting Season rules to establish season dates, requirements and restrictions, establish the number of resident and nonresident licenses/tags available which will include offering residents 540 less one-tag and 1,075 more two-tag licenses (overall increase of 1,610 tags) than 2006, and offering nonresidents 45 less one-tag and 86 more two-tag licenses (overall increase of 127 tags) than 2006; amend National Wildlife Refuge Deer Hunting Season rules to establish season dates, requirements and restrictions, establish the number of resident and nonresident licenses/tags available which will include elimination of 25 resident and 2 nonresident “any deer” licenses and instead offer 20 resident and 2 nonresident two-tag “any deer plus any antlerless deer” licenses for the third set of season dates on Waubay National Wildlife Refuge, and change the length of the third Waubay National Wildlife Refuge season from 14 to 21 days; amend a Youth Waterfowl Hunting Season rule to establish season dates, requirements and restrictions, and change the season opening date from the third Saturday of September to the Saturday prior to the last Saturday of September; amend Early Fall Canada Goose Hunting Season rules to</p>

		<p>establish season dates, bag limits, requirements and restrictions, to merge all existing units and, in addition, add all areas not included in the regular Canada Goose Hunting Unit 2 (central South Dakota and portions of Fall River/Custer Counties) and Unit 4 (Bennett County) into one Early Fall Canada Goose Hunting Unit that opens on the second Saturday of September (September 8, 2007) and runs until the Friday before the last Saturday of September; amend Private Shooting Preserves rules to create a deadline for preserve permittees to submit the fee for kill tags, clarify that permittees who operate multiple preserves must maintain separate sets of records for each permitted preserve, eliminate the provision requiring permittees to record the sex of pheasants harvested on their shooting preserves, eliminate the provision that requires preserve acreage adjustments, as approved by the Director of the Division of Wildlife, to be contiguous to the preserve, and provide that such acreage adjustments shall not be considered as acreage included in an “existing shooting preserve” for purposes of a renewal application; and amend a Dock rule to allow a riparian landowner who owns 50 feet or less in width of property adjacent to a public water to have no more than one dock and one floating dock, would allow a riparian landowner who owns in excess of 50 feet in width of property adjacent to a public water to have no more than two docks and a floating dock, and would allow a riparian landowner to have more than two docks only upon securing a variance permit from the Department and placing the docks in accordance with the department rules and regulations, would also prohibit a dock or floating dock from being placed in a manner which would prevent public access to waters and shoreline areas accessible to the public under existing state law; 33 SDR 235.</p>
<p>7-16-2007</p>	<p>Revenue and Regulation: Appraiser Certification Program</p>	<p>Amend rules to clarify that continuing education is not required during inactive status; to return to active status from inactive status an appraiser must complete all continuing education that would have been required if the appraiser was on an active</p>

		<p>status; establish requirements for registering supervisors for appraisal experience credit and removal of a supervisor; require a supervisor to be in good standing; allow applicants that have moved to the state of South Dakota that are licensed or certified by another state to be deemed to have met the Appraiser Qualifications Board criteria and be issued an equivalent appraiser classification; a candidate that does not complete the examination within the specified time limit would have to submit another application and the fee before being approved to sit for the examination again; delete language regarding complete appraisal; replace introduction to computers, word processing/spreadsheets with computer science required for general education for certified appraisers; remove the word “deferred” and replace with “not required” for continuing education requirements; establish when continuing education is not required by first time applicants; delete unnecessary word; delete mandatory fee requirement for acceptable courses without state review; clarify requirements for acceptable distance continuing education; and require written examination for distance qualifying education; 33 SDR 225.</p>
<p>7-19-2007</p>	<p>Environment and Natural Resources: Board of Minerals and Environment</p>	<p>Amend rules to update existing hazardous waste rules by incorporating the federal regulations by reference. Changes to the rules include clarifications to the used oil management standards; special provision for National Environmental Performance Track Program companies; amends existing national emission standards for permitted hazardous waste treatment, storage and disposal facilities; includes certain wastes generated by the dye, pigment, food, drug and cosmetic colorant manufacturing industries as hazardous wastes; clarifies requirements for the management of mercury-containing equipment; modifies requirements for the hazardous waste manifest system; and establishes requirements for the safe management of used electronic devices that contain cathode ray tubes; 33 SDR 205.</p>
<p>7-19-2007</p>	<p>Tourism and State Development: Board of Economic Development</p>	<p>Amend rules to implement House Bill 1176, as passed by the 2007 South Dakota Legislature,</p>

		<p>to revise certain provisions concerning the making of grants and loans from the Revolving Economic Development and Initiative Fund and the Value-Added Agriculture Subfund and to repeal the Venture Capital Investment Fund program, the Capital Investment Entity Program, the Value-Added Tourism Subfund program and the Entrepreneur Support Program; 34 SDR 1.</p>
<p>7-27-2007</p>	<p>Social Services: Medical Services</p>	<p>Amend rules to incorporate by reference the latest versions of the <u>Physicians' Current Procedural Terminology</u> (cpt) manual, the <u>International Classification of Diseases, 9<sup>th</sup> Revision, Clinical Modification</u> (ICD-9-CM) manual, and the <u>Common Procedure Coding System</u> (HCPCS) manual; define the term "clinical nurse specialist"; delete the definition of "clozaril therapy"; move the Department's fee schedules for physician services to the Department's website and establish a system under which a provider can request an amendment to the schedules; amend existing rules to relate to the fee schedules being moved to the Department's website; include additional two-letter modifiers to be used by providers when submitting certain claims to the Department; establish the formula for calculating the rate of reimbursement for procedure codes containing modifiers; when applicable, specify those modifier codes that must be reported; delete a reference to a repealed rule; add cross-references; allow hyperbaric oxygen therapy for diabetic wounds of the lower extremities under certain conditions; specify the conditions and supporting evidence that must exist before noninvasive bone-growth stimulation may be a covered service; allow payment for occupational therapy services prescribed by a physician and provided by a licensed therapist; establish the rate of reimbursement for services provided by a clinical nurse specialist; clarify that an employee under the direct supervision of a participating physician must use his or her own provider identification number and may not bill under the supervising physician's number; specify that an employee working under the direct supervision of a participating</p>

		<p>provider and providing mental health or counseling services must meet the requirements of chapter 67:16:41 (Mental Health Services by Independent Practitioners); when submitting a claim for immunizations, require that the claim contain the applicable procedure code for the administration of the vaccine and an additional procedure code for the vaccine itself and, if the vaccine is supplied by the state, require that the claim include a specified two-letter modifier that must be attached to the procedure code being billed; expand those medical services that are subject to the requirements contained in Chapter 67:16:39 (Case Management – Primary Care Provider); repeal Appendix A (List of Physician Nonlaboratory Procedures), Appendix B (List of Physician Laboratory Procedures), and Appendix C (Physician Medical Procedures – Medicare Maximum Allowances); transfer the list of modifier codes for physician services from Appendix D to a new rule; increase the amount of the cost outlier for hospital claims paid under the DRG system; no longer require that an x-ray be taken to substantiate the existence of a subluxation of the spine for purposes of chiropractic treatment; clarify that payments made for certain services are subject to and must be billed under existing rules governing hospital services, clinic services, ambulatory surgical services, federally qualified health centers (FQHCs), and rural health clinics (RHCs); specify that the estimated acquisition cost for Schedule II controlled substances is the average wholesale cost of the drug less 10.5 percent; update the definition of “pharmaceutical and therapeutics committee”; and allow medical claims to be submitted in an electronic format; 34 SDR 1.</p>
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**RULES REVIEW COMMITTEE MEETINGS**

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 21, 2007, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2007 interim: September 27, December 4, and January 7, 2008.

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