

REGISTER



South Dakota Legislative Research Council

Volume 34

Monday, 8:00 a.m., July 16, 2007

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

Department of Revenue and Regulation:

Division of Insurance: (July 10, 2007) intends to amend rules to revise the standards for long term care and long term care partnership coverage. The general authority for these rules, as cited by the division, is SDCL 58-4-1, 58-17B-4, 58-17B-15.

A public hearing will be held in the Main Floor Conference Room, Anderson Building, Pierre, South Dakota, on August 2, 2007, at 2:00 p.m. Paper 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 proposed rules will be posted on the Department of Revenue and Regulation's website at <http://www.state.sd.us/drr2/reg/insurance/legal/hearing.html>. The rules may also be obtained as a Microsoft Word attachment by emailing Melissa.Kusser@state.sd.us. 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 Human Services: Board of Counselor Examiners: (July 11, 2007) intends to amend rules to offer unlicensed practitioners an opportunity for licensure, offer a wider selection of qualified supervisors, and make updates and clarifications to assist the licensee.

The general authority for these rules, as cited by the board, is SDCL 36-32-13, 36-32-19, 36-32-23, 36-32-26, 36-32-43, and 36-33-14.

A public hearing will be held in Sullivan Health Center 243, Southeast Technical Institute, 2320 North Career Avenue, Sioux Falls, South Dakota, on August 3, 2007, at 9:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments may be sent to the South Dakota Board of Counselor Examiners, P.O. Box 1822, Sioux Falls, SD 57101-1822. Written comments must be received at least 48 hours before the hearing to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the board can make arrangements are asked to call the board at (605) 331-2927 at least 48 hours before the hearing.

Attorney General: Law Enforcement Officers Standards and Training Commission: (July 12, 2007) intends to amend rules to change the required license fee to \$75 for polygraph examiner applicants currently licensed in another state; add a statutory citation to the general authority section of ARSD 2:01:11:01; and update the Certification of Canine Teams Student Handbook. The general authority for these rules, as cited by the commission, is SDCL 23-3-35, 23-3-39.4, and 23-3-42.

A public hearing will be held at the George S. Mickelson Criminal Justice Center, 1302 E. SD Highway 14, Pierre, South Dakota, on August 2, 2007, at 1: 30 p.m. (CDST). A copy of the proposed rules may be obtained without charge from and written comments sent to the Law Enforcement Officers Standards and Training

Commission, Division of Criminal Investigation, George S. Mickelson Criminal Justice Center, 1302 E. SD Highway 14, Pierre, South Dakota 57501. Written comments must be received by the close of business on August 2, 2007. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-3584 before the hearing.

Department of Health: Board of Examiners in Optometry: (July 13, 2007) intends to amend rules to allow discretion where appropriate in the minimum office equipment requirements of an optometrist; to make uniform references to licensure by endorsement; to clarify and eliminate apparent conflict in time frames for meeting requirements of licensing; to repeal ambiguous and inconsistent requirements for continuing education and licensure of optometrists; and add codes to the Procedural Code List as approved by the Board of Optometry. The general authority for these rules, as cited by the board, is SDCL 36-7-15.

A public hearing will be held at the Tieszen Law Office, LLC, 306 East Capitol, Suite 300, Pierre, South Dakota, on August 6, 2007, at 11:30 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Board of Examiners in Optometry, Executive Secretary, Box 628, Sturgis, South Dakota 57785. Written comments must be received by August 3, 2007, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the board can make arrangements are asked to call Tieszen Law Office, LLC, telephone (605) 224-1500 before the hearing.

FILINGS IN THE SECRETARY OF STATES OFFICE:

Attorney General Appointment:

Randy Bingner, Pierre, was appointed Special Assistant Attorney General, to represent the

Department of Transportation, effective June 18, 2007.

Executive Appointments:

Mike Bartlett, Pierre, was reappointed on July 10, 2007, to the **State Board of Examiners in Optometry**, effective immediately and shall continue until June 30, 2010.

Ruth Brennan, Rapid City, was reappointed on July 10, 2007, to the **State Arts Council**, effective immediately and shall continue until June 30, 2010.

Janet Brown, Sioux Falls, was appointed on July 10, 2007, to the **State Arts Council**, to replace Rebecca Mulvaney, effective July 9, 2007, and shall continue until June 30, 2010.

Robert Carr, Sioux Falls, was reappointed on July 10, 2007, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective immediately and shall continue until June 30, 2010.

Tom Charron, Rapid City, was appointed on July 10, 2007, to the **Board of Massage Therapy**, effective July 9, 2007, and shall continue until June 30, 2010.

Deanne Curran, Flandreau, was appointed on July 10, 2007, to the **Board of Service to the Blind and Visually Impaired**, to replace Susan Birrenkott, effective July 10, 2007, and shall continue until June 30, 2010.

David R. DeJabet, Pierre, was reappointed on July 10, 2007, to the **South Dakota Crime Victims' Compensation Commission**, effective immediately and shall continue until June 30, 2010.

Charles Fullenkamp, Rapid City, was appointed on July 10, 2007, to the **Board of Service to the Blind and Visually Impaired**, to replace Patrick Czerny, effective July 10, 2007, and shall continue until June 30, 2010.

Rebecca Dykema, Aberdeen, was appointed on July 10, 2007, to the **Board of Massage Therapy**, effective July 9, 2007, and shall continue until June 30, 2010.

Rebecca Grandpre, Pierre, was reappointed on July 10, 2007, to the **Board of Social Work Examiners**, effective immediately and shall continue until June 30, 2010.

Joseph Hartford, Rapid City, was appointed on July 10, 2007, to the **State Board of Examiners in Optometry**, effective July 9, 2007, and shall continue until June 30, 2010.

Kevin Joffer, Sioux Falls, was reappointed on July 10, 2007, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective immediately and shall continue until June 30, 2010.

Michael Klimisch, Sioux Falls, was reappointed on July 10, 2007, to the **Board of Service to the Blind and Visually Impaired**, effective immediately and shall continue until June 30, 2010.

Karen Lindbloom, Pierre, was reappointed on July 10, 2007, to the **State Arts Council**, effective immediately and shall continue until June 30, 2010.

Steve Lindquist, Sioux Falls, was reappointed on July 10, 2007, to the **Board of Social Work Examiners**, effective immediately and shall

continue until June 30, 2010.

Donald Montileaux, Rapid City, was reappointed on July 10, 2007, to the **State Arts Council**, effective immediately and shall continue until June 30, 2010.

Jerry Pier, Pierre, was reappointed on July 10, 2007, to the **Board of Social Work Examiners**, effective immediately and shall continue until June 30, 2010.

Ed Pinkman, Aberdeen, was reappointed on July 10, 2007, to the **Board of Service to the Blind and Visually Impaired**, effective immediately and shall continue until June 30, 2010.

Kay Johnson, Pierre, was appointed on June 14, 2007, to the **Zaniya Project Task Force**, effective immediately and shall continue until March 1, 2008.

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

7-19-2007	Environment and Natural Resources: Board of Minerals and Environment	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,
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		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.
7-19-2007	Tourism and State Development: Board of Economic Development	Amend 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; 34 SDR 1.
7-27-2007	Social Services: Medical Services	Amend rules to incorporate by reference the latest versions of the <u>Physicians' Current Procedural Terminology (cpt) manual</u> , the <u>International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) manual</u> , and the <u>Common Procedure Coding System (HCPCS) manual</u> ; 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

		<p>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”;</p>
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		and allow medical claims to be submitted in an electronic format; 34 SDR 1.
8-2-2007	Public Utilities Commission	Amend telecommunications rules to add some requirements for applicants requesting a certificate of authority to provide interexchange services in South Dakota, including providing information to customers and the prevention of slamming and to delete some requirements, including the filing of tariffs, cost support for certain rates, and organizational information; clarify that any security filed by an interexchange company is only for the benefit of South Dakota customers; add requirements for alternative operator services regarding notification to customers prior to the customer incurring charges for a call and to delete the requirement to file tariffs; regarding applications for certificates of authority to provide local exchange services in South Dakota: add some additional requirements, including providing information to customers and delete some requirements, including the filing of tariffs, cost support for certain rates, and organizational information; require some form of security as a condition to receiving a certificate of authority; waive the provisioning of a requirement for local exchange service if it is not necessary based on the type of service being provided; require a petition for arbitration of an interconnection agreement to be accompanied by written testimony, exhibits, cost support, request for protective order, and proposed procedural schedule; require that responses to arbitrations must contain the information that is required for petitions for arbitration; require a petition for suspension or modification of an interconnection requirement to include written testimony and exhibits; add a rule which sets forth how a person who is not a party to an arbitration may participate; clarify that an eligible telecommunications carrier must continue to file improvement plans after the filing of the initial plan; require the annual life line report to be filed with the annual certification; require local exchange companies to notify customers in advance of all interruptions due to maintenance, if possible,

		instead of just for “extended” interruptions; set forth the requirements for notifying customers when a new telephone company acquires the subscriber base of another carrier and to require the acquiring carrier must provide to the subscriber the rates, terms and conditions of service as well as other information and give notice 30 days before the transfer which would allow the subscriber sufficient time to choose a new carrier; and change how customers are notified of changes in rates, terms and conditions of service; 34 SDR 11.
8-2-2007	Revenue and Regulation: Division of Insurance	Amend rules to revise the standards for long term care and long term care partnership coverage; 34 SDR 23.
8-2-2007	Attorney General: Law Enforcement Officers Standards and Training Commission	Amend rules to change the required license fee to \$75 for polygraph examiner applicants currently licensed in another state; add a statutory citation to the general authority section of ARSD 2:01:11:01; and update the Certification of Canine Teams Student Handbook; 34 SDR 23.
8-3-2007	Labor: Board of Counselor Examiners	Amend rules to offer unlicensed practitioners an opportunity for licensure, offer a wider selection of qualified supervisors, and make updates and clarifications to assist the licensee; 34 SDR 23.
8-6-2007	Labor: Board of Examiners in Optometry	Amend rules to allow discretion where appropriate in the minimum office equipment requirements of an optometrist; to make uniform references to licensure by endorsement; to clarify and eliminate apparent conflict in time frames for meeting requirements of licensing; to repeal ambiguous and inconsistent requirements for continuing education and licensure of optometrists; and add codes to the Procedural Code List as approved by the Board of Optometry; 34 SDR 24.

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.

The **South Dakota Register**, ISSN 0191-1104, is published by the South Dakota Legislative Research Council pursuant to SDCL 1-26A-1. Subscriptions to Volume 34 are \$25. Make checks payable to "State of South Dakota" and mail to the Legislative Research Council, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. Information from the Register is available free of charge on the Internet at <http://legis.state.sd.us>. Subscribe to receive electronic notification of the availability of the **South Dakota Register** at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).