

REGISTER



South Dakota Legislative Research Council

Volume 37

Monday, 8:00 a.m., August 2, 2010

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

Department of Human Services: Division of Developmental Disabilities: (July 26, 2010) intends to amend ICF/MR rules to change individual to person supported or supported person throughout the article, ensure the article is applicable to any facility that qualifies as an intermediate care facility for persons with mental retardation (ICR/MR), clarify what comprehensive functional assessments are needed versus evaluations, clarify when an individual support team must meet, clarify the responsibilities of a qualified mental retardation professional, remove language from the rule on time-out rooms due to their redundancy, clarify who may prescribe psychotropic medication other than a physician, change terminology throughout from strategies to behavior treatment plan, repeal the requirement to notify the parent or legal guardian at least quarterly of the status of the individual support plan, clarify who may discontinue medications other than the physician, add a new chapter that addresses those issues only applicable to a private ICF/MR not otherwise covered in the existing article including: the provision of an on-site review for the completion of an inspection of a minimum of five percent of the persons supported, a requirement to submit a plan to the division for approval of any new construction or remodeling; a requirement that no more than eight people may reside in any home managed by the private ICF/MR after January 1, 2011, a requirement that the division may visit at any time without notice and the requirement that the private ICF/MR must grant access to the division, requirements on completing an

inventory for client and agency planning to determine the supported person's functional limitations, an additional listing of rights that should be afforded to the supported person, a requirement that rights be limited to protection of the supported person or others, to provide specific services or supports and to promote the least restrictive alternative, and a requirement that the supported person, parent or guardian, be made aware of the appeal process, requirement to develop and implement a restoration plan any time rights are limited; requirement that the facility develop a policy on abuse neglect, exploitation or injury of unknown source and procedures for notifying the appropriate entities, a requirement to ensure that any allegations of abuse, neglect, exploitation or injury of unknown source is investigated by the ICF/MR or other officials pursuant to state law, a requirement to give verbal notice the next working day of any critical incident, what constitutes a critical incident and a requirement to submit a critical incident report using the division's on-line system within seven calendar days, a requirement to demonstrate how the supported person's preferences are identified and prioritized during the individual support plan development, a requirement to develop a transition plan within 180 days from the date of admission, to review that plan annually, and to provide the supported person, parent or guardian, with a list of home and community based services and the community support providers. The general authority for these rules, as cited by the department, is SDCL 27B-2-25 and 27B-2-26.

A public hearing will be held in the Large Conference Room at the Department of Human Services, Hillsview Plaza, 3800 E. Highway 34,

Pierre, South Dakota, on September 2, 2010, at 1:15 p.m. (CDT). Copies of the proposed rules may be obtained without charge from and written comments sent to Velda Bartel, Administrative Rules Coordinator, Department of Human Services, Hillsview Plaza, East Hwy 34, c/o 500 East Capitol, Pierre, South Dakota 57501-5070. Copies of the proposed rules may also be obtained at the Department's website www.dhs.sd.gov/dd/, at the SD Developmental Center's website www.dhs.sd.gov/sddc/, or by emailing velda.bartel@state.sd.us. Persons interested in presenting data, statements, opinions and arguments for or against the proposed rules may do so by appearing in person at the hearing. Materials sent by mail must reach the Department of Human Services by 5 p.m. on September 13, 2010, 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) 773-5990 or (605) 773-6412 TTY at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF GAME, FISH AND PARKS: 41:06:14:02, 41:06:14:02.01; 41:06:19:02, 41:06:19:04; 41:06:20:02, 41:06:20:06; 41:08:02:11, 41:08:02:14; 41:09:01:04, and 41:09:02:04.

History-Notice: 36 SDR 189, May 17, 2010
 Hearing: June 3, 2010
 Filed: July 27, 2010
 Effective: August 16, 2010

DEPARTMENT OF GAME, FISH AND PARKS: 41:06:16:07; 41:06:21:02, 41:06:21:05; 41:06:23:02, 41:06:23:03; 41:06:36:02, 41:06:36:02.02; and 41:06:50:03.

History-Notice: 36 SDR 213, June 21, 2010
 Hearing: July 8, 2010
 Filed: July 27, 2010

Effective: August 16, 2010

DEPARTMENT OF TRANSPORTATION: 70:01:02:62(2), 70:01:02:62(7); 70:04:01:01, and 70:04:01:05.

History-Notice: 36 SDR 203, June 7, 2010
 Hearing: June 24, 2010
 Filed: July 27, 2010
 Effective: August 16, 2010

**DEPARTMENT OF AGRICULTURE:
 OFFICE OF AGRONOMY SERVICES:** 12:41:02:01; 12:41:03:01, 12:41:03:10; 12:41:04:05, 12:41:04:06; 12:41:06:02, 12:41:06:03; 12:41:07:01, 12:41:07:01.01, 12:41:07:01.02, 12:41:07:01.03, 12:41:07:07 to 12:41:07:11, inclusive.

History-Notice: 36 SDR 207, June 14, 2010
 Hearing: July 6, 2010
 Filed: July 29, 2010
 Effective: August 18, 2010

**DEPARTMENT OF EDUCATION:
 PROFESSIONAL TEACHERS
 PRACTICES AND STANDARDS
 COMMISSION:** 24:08:03:01, 24:08:03:02; and 24:08:04.01:01.

History-Notice: 36 SDR 189, May 17, 2010
 Hearing: June 15, 2010
 Filed: July 29, 2010
 Effective: August 18, 2010

Executive Appointments:

Kristin L. Possehl, Brookings, was appointed on July 19, 2010, to the **South Dakota Board of Nursing**, to replace Robin York, effective July 19, 2010, and shall continue until June 30, 2013.

James C. Spies, Watertown, was appointed on July 19, 2010, to the **Game, Fish and Parks Commission**, to replace Tim Kessler, effective July 15, 2010, and shall continue until January 10, 2013.

Glenn Barber, Rapid City, was reappointed on July 20, 2010, to the **Workers' Compensation Advisory Council**, effective immediately and shall continue until June 30, 2013.

Arne Brown, Brookings, was reappointed on July 20, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

Shirley Eisnach, Pierre, was reappointed on July 20, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

Charles Hart, Rapid City, was reappointed on July 20, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

Carol Hinderaker, Watertown, was reappointed on July 20, 2010, to the **Workers' Compensation Advisory Council**, effective immediately and shall continue until June 30, 2013.

Duane Majeres, Huron, was reappointed on July 20, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

John Porter, Yankton, was reappointed on July 20, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

Randy Stainbrook, Rapid City, was reappointed on July 20, 2010, to the **Workers' Compensation Advisory Council**, effective immediately and shall continue until June 30, 2013.

Carla Borchardt, Sioux Falls, was reappointed on July 21, 2010, to the **South Dakota State Board for Nursing Facility Administrators**, effective immediately and shall continue until June 30, 2013.

Sarah Folsland, Rapid City, was appointed on July 21, 2010, to the **South Dakota Workforce Development Council**, to replace Larry Tolzin, effective July 19, 2010, and shall continue until June 30, 2011.

Randy W. Hanson, Brookings, was appointed on July 21, 2010, to the **South Dakota Workforce Development Council**, to replace Patricia Kenner, effective July 20, 2010, and shall continue until June 30, 2011.

Gale N. Walker, Parkston, was reappointed on July 21, 2010, to the **South Dakota State Board for Nursing Facility Administrators**, effective immediately and shall continue until June 30, 2013.

Scott Munsterman, Brookings, was reappointed on July 26, 2010, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2013.

Aaron Shives, Watertown, was appointed on July 26, 2010, to the **South Dakota State Board of Nursing Facility Administrators**, to replace Dr. Buron O. Lindbloom, effective July 23, 2010, and shall continue until June 30, 2013.

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

8-3-2010	Social Services: Medical Services	Amend rules to revise definitions; remove obsolete and duplicative references; update internal references; centralize prior authorization information; remove certain gastric procedures from the list of noncovered services; add liver transplants for qualifying adults to the list of covered organ transplants; revise time limits for submission of claims; clarify existing cost sharing exemptions and age requirements; and revise requirements related to federally qualified health centers and rural health clinics; 37 SDR 5.
8-5-2010	Game, Fish and Parks	Amend Motorboats and Watercraft (Boat License Fees and Licensing Period) rules to eliminate the 3 year licensing option for motorboat licenses effective January 1, 2011; amend Waterfowl Hunting Seasons rules to establish season dates, open areas, and establish daily bag and possession limits for duck, coot, and merganser, which would include increasing the daily bag limit for pintails from 1 to 2 contingent upon the pintail harvest strategy at the Flyway level by the U.S. Fish and Wildlife Service, and establish season dates, open areas, and daily bag and possession limits for Canada geese, light geese, and white-fronted geese, which would include increasing the Canada goose daily bag limit from 3 to 4 and the possession limit from 6 to 8 contingent upon approval from the Central Flyway Council and U.S. Fish and Wildlife Service; 37 SDR 9.
8-10-2010	Revenue and Regulation: Division of Insurance	Amend a Premium Tax rule to clarify the definition of "Annuity Considerations Returned"; amend Individual Plans rules to prohibit discrimination in individual health plan coverage based on genetic information; and amend Employer Plans rules to prohibit discrimination in group health plan coverage based on genetic information; 37 SDR 9.
8-12-2010	Board of Regents	Amend rules to allow students an opportunity to complete coursework in Career and Technical education, allow for an alternative calculation of the credit hour requirements for continuing eligibility in the South Dakota

		Opportunity Scholarship program, and allow for students pursuing alternative forms of instruction to establish initial eligibility in the program; 37 SDR 9.
8-13-2010	Revenue and Regulation: Sales Tax and Motor Vehicles	Amend Business Tax rules to comply with the Streamlined Sales Tax Agreement; correct language; and clarify that a daily pass or membership fee to a fitness club is not subject to the municipal gross receipts tax or tourism tax; and adopt a Motor Vehicles rule to make the boat licensing process consistent with other vehicles and trailers; 37 SDR 13.
8-25-2010	Military and Veteran Affairs	Amend a rule regarding furloughs for residents of the Michael J. Fitzmaurice South Dakota Veterans Home; 36 SDR 199.
9-2-2010	Human Services: Division of Developmental Disabilities	Amend ICR/MR rules to change individual to person supported or supported person throughout the article, ensure the article is applicable to any facility that qualifies as an intermediate care facility for persons with mental retardation (ICR/MR), clarify what comprehensive functional assessments are needed versus evaluations, clarify when an individual support team must meet, clarify the responsibilities of a qualified mental retardation professional, remove language from the rule on time-out rooms due to their redundancy, clarify who may prescribe psychotropic medication other than a physician, change terminology throughout from strategies to behavior treatment plan, repeal the requirement to notify the parent or legal guardian at least quarterly of the status of the individual support plan, clarify who may discontinue medications other than the physician, add a new chapter that addresses those issues only applicable to a private ICF/MR not otherwise covered in the existing article including: the provision of an on-site review for the completion of an inspection of a minimum of five percent of the persons supported, a requirement to submit a plan to the division for approval of any new construction or remodeling; a requirement that no more than eight people may reside in any home managed by the private ICR/MR after January 1, 2011, a requirement that the division may visit at any time without notice

	<p>and the requirement that the private ICR/MR must grant access to the division, requirements on completing an inventory for client and agency planning to determine the supported person's functional limitations, an additional listing of rights that should be afforded to the supported person, a requirement that rights be limited to protection of the supported person or others, to provide specific services or supports and to promote the least restrictive alternative, and a requirement that the supported person, parent or guardian, be made aware of the appeal process, requirement to develop and implement a restoration plan any time rights are limited; requirement that the facility develop a policy on abuse neglect, exploitation or injury of unknown source and procedures for notifying the appropriate entities, a requirement to ensure that any allegations of abuse, neglect, exploitation or injury of unknown source is investigated by the ICR/MR or other officials pursuant to state law, a requirement to give verbal notice the next working day of any critical incident, what constitutes a critical incident and a requirement to submit a critical incident report using the division's on-line system within seven calendar days, a requirement to demonstrate how the supported person's preferences are identified and prioritized during the individual support plan development, a requirement to develop a transition plan within 180 days from the date of admission, to review that plan annually, and to provide the supported person, parent or guardian, with a list of home and community based services and the community support providers; 37 SDR 17.</p>
--	--

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 31, 2010, in Room 414, Fourth Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2010 interim: September 28, November 17, and December 20.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the Legislative Web site at <http://legis.state.sd.us/rules/index.aspx>.

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 37 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>).