

# REGISTER



## South Dakota Legislative Research Council

Volume 37

Monday, 8:00 a.m., November 15, 2010

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

**Attorney General: 24/7 Sobriety Program:** (November 8, 2010) intends to amend rules to provide a definition for the term "ignition interlock device;" provide additional enrollment requirements for ignition interlock device testing; provide for allowing more use of electronic alcohol monitoring devices and permit the use of an ignition interlock device for use in the 24/7 sobriety program; revise the situations in which electronic alcohol monitoring device testing may be utilized and provide requirements for the use of ignition interlock testing; set minimum requirements for electronic monitoring devices; set minimum requirements for ignition interlock device testing; make certain that only approved devices are utilized in the 24/7 sobriety program; require all participants utilizing ignition interlock devices to pay all costs and expenses associated with the installation and operation of the device; and provide that 24/7 program participants utilizing ignition interlock devices pay all costs and expenses to the authorized ignition interlock vendor. The general authority for these rules, as cited by the office, is SDCL 1-11-24.

A public hearing will be held at the George S. Mickelson Criminal Justice Center Commission Conference Room, 1302 East Highway 14, Pierre, South Dakota, on December 9, 2010, at 1:30 p.m. CST. A copy of the proposed rules may be obtained without charge from and written comments sent to the Office of Attorney General, 1302 E. Highway 14, Pierre, South Dakota 57501. Written comments must be received by December 6, 2010, to be

considered. Persons who have special needs for which the office can make arrangements are asked to call (605) 773-3215 before the hearing.

**Department of Health: Board of Examiners in Optometry:** (November 8, 2010) intends to amend rules to increase the number of hours of continuing education credits required for renewal of optometric license, and to establish classifications of self-directed learning and number of hours of continuing education credits allowed for each. The general authority for these rules, as cited by the board, is SDCL 36-7-15 and 36-7-15.1.

A public hearing will be held at the Tieszen Law Office, Prof. L.L.C., 306 East Capitol, Suite 300, Pierre, South Dakota, on December 6, 2010, at 6:30 p.m. (CST). 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, P.O. Box 6, Langford, South Dakota 57454. Written comments must be received by November 30, 2010, 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, Prof. L.L.C., telephone (605) 224-1500 before the hearing.

**Department of Human Services: Division of Developmental Disabilities and Division of Mental Health:** (November 9, 2010) intends to amend ICF/MR rules to clarify that only those behavior treatment plans that involve limitation need to be reviewed by the Human Rights committee and to provide criteria for rating the inventory for client and agency planning; and

amend Mental Health rules to repeal outdated and unused rules; amend rules to ensure the highest quality of service delivered with the least amount of administrative burden on the mental health centers and better reflect quality improvement efforts and current practices; realign chapters for consistency with administrative rules for alcohol and drug providers that are also mental health providers; update the chapter in current rules on community mental health center services that has become core service responsibilities to reflect current practices; modify safety, sanitation, and physical facilities standards to reflect current standards and expectations and has been renamed environmental sanitation safety and fire prevention; approval requirements has become accreditation and has been modified to align with similar requirements for alcohol and drug providers; the new section on personnel combines relevant information from other areas of current administrative rule and logically and clearly organizes it; modifies requirements for staff providing direct services and orientation of personnel to reflect current expectations; organize clinical procedures for mental health services including all clinical requirements for program areas; modify the services areas (Outpatient, CYF, CARE, and IMPACT) to better reflect current practice; and modify PASRR to better reflect federal regulations and make the rules more clear and concise. The general authority for these rules, as cited by the department, is SDCL 1-36A-1.26, 27A-1-9, 27A-5-1, and 27B-2-26.

A public hearing will be held in the Large Conference Room at the Department of Human Services, Hillview Plaza, 3800 E. Highway 34, Pierre, South Dakota, on November 30, 2010, at 1:15 p.m. (CST). 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, Hillview 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 following Department's websites at [www.dhs.sd.gov/drs/](http://www.dhs.sd.gov/drs/); [www.dhs.sd.gov/dmh/](http://www.dhs.sd.gov/dmh/); [www.dhs.sd.gov/dd/](http://www.dhs.sd.gov/dd/); and [www.dhs.sd.gov/sddc/](http://www.dhs.sd.gov/sddc/) or by emailing [velda.bartel@state.sd.us](mailto: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, email, or fax (605-773-5483) must reach the Department of Human Services by 5 p.m. on December 10, 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.

***Department of Human Services: Certification Board for Alcohol & Drug Professionals:*** (November 10, 2010) intends to adopt rules to remove outdated language throughout this article and clarify procedures and deadlines for the application process, recognition and certification process, renewal and upgrade process, and continuing professional training process, add corresponding acronyms being adopted by the International Certification & Reciprocity Consortium (IC&RC), repeal bachelor's level trainee recognition, repeal case presentation method oral examination and evaluator, change titles and definitions for prevention specialist domains and 12 core functions to coincide with IC&RC terminology, add statements saying Code of Ethics and applications are available at no cost on CBADP website, add requirement saying board may deny, suspend, or revoke status or pursue legal action if inaccurate information is reported on applications, add new subdivisions that address residency requirement, child support arrearage and board process for review of applications, add requirement that all fees are non-refundable, simplify the fee schedule and clarify current practice of pro-rating fees for initial trainee recognition, add \$100 mailing label fee as documented in statutes, modify academic and experience requirements for CCDC I, II, III, and

CPS to correspond with IC&RC requirements, clarify current practice of requiring a minimum of three semester hours and a grade of "C" or higher for each course requirement, add new subdivision that reflects current practice of board approving all courses, clarify supervision hours, methods of observation and compliance with code of ethics, remove 12 step philosophies and clarify supervisor's role in providing guidance to trainees, clarify current practice that trainee may not be supervised by a relative, repeal subdivisions requesting extensions and waivers throughout this article and replace with §46:33:09:15, clarify retesting requirements, clarify that a list of approved continuing education activities is available upon request, repeal continuing professional training requirement for trainees, repeal fifty percent maximum restriction on continuing professional training from practitioner's employer and fifty percent maximum from internet or other on line education, clarify current practice that patient lectures or public education lectures may not be used to meet teaching and training requirements, repeal 30-day grace period, add requirement that trainees who lapse in status must wait 15 days before being allowed to reapply for recognition, add requirement that chemical dependency trainees who haven't completed the required three courses within two years, must complete the course work before being allowed to reapply for recognition, add statement reflecting current practice that professionals on retirement status pay half the renewal fee, clarify that practitioners on inactive status are not eligible for reciprocity, clarify that trainees on inactive status do not pay renewal fees and may not actively practice in the field, and add condition that board will not accept appeals of denial for certification based solely on the inability of the candidate to pass the written examination. The general authority for these rules, as cited by the board, is SDCL 25-7A-56, 36-34-12, and 36-34-13.

A public hearing will be held in the Embassy III Room at the Holiday Inn City Centre, 100 West 8<sup>th</sup> Street, Sioux Falls, South Dakota, on

December 2, 2010, at 9:00 a.m. (CDT). Copies of the proposed rules may be obtained from and written comments sent to the CBADP Administrative Office, 3101 West 41<sup>st</sup> Street, Suite 205, Sioux Falls, South Dakota 57105. Written comments must be received by December 2, 2010, to be considered. Copies of the proposed rules may also be obtained from the CBADP website at [www.dhs.sd.gov/brd/cbadp](http://www.dhs.sd.gov/brd/cbadp). 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 (605) 332-2645 at least 48 hours before the hearing.

***Department of Game, Fish and Parks:***

(November 12, 2010) intends to adopt a Refugees rule to establish a refuge in Hand County to be known as the Wall Lake State Game Refuge; amend a Hunting Requirements and Prohibited Methods rule to remove the language which limits the caliber size of muzzleloading firearms used in the hunting of wild turkeys; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; change the opening date for the archery hunting season only to the first Saturday in April; establish the number of licenses/tags available which will include offering residents 200 more one-tag "male turkey" and 50 less two-tag "any turkey" licenses for the Prairie Units than authorized in 2010 for an overall increase of 76 tags; and amend a Custer State Park Spring Wild Turkey Hunting Season rule to establish season dates, requirements and restrictions, establish the number of available licenses, and change the end date of the season from the third Sunday of May to the eighth day prior to Memorial Day. The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-11-5, and 41-17-1.1.

A public hearing will be held at the Ramkota RiverCentre Convention Center, 920 W. Sioux Avenue, Pierre, South Dakota, on December 2, 2010, at 2:00 p.m. (CST). Copies of the proposed rules may be obtained from and

written comments sent to Jeffrey R. Vonk, Secretary, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Written comments must be received by and in the office of the Secretary of the Department of Game, Fish and Parks on or before 12:00 p.m. three (3) days prior to the date of the hearing to be included within the record of the public hearing and to be considered by the Commission. Comments may also be sent by email to [chuck.schlueter@state.sd.us](mailto:chuck.schlueter@state.sd.us). All written and email comments must include the commenter's name and address. 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) 773-3387 before the hearing.

**FILINGS IN THE SECRETARY OF STATE'S OFFICE:**

**Executive Order:**

The Governor has signed **Executive Order 2010-41** dated November 10, 2010, which establishes and adopts the State Emergency Operations Plan, dated 2011, as the framework to facilitate the state response to emergencies and disasters.

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**

11-17-2010	Attorney General: Law Enforcement Officers Standards and Training Commission	Adopt rules to establish a county coroner training program; 37 SDR 67.
11-29-2010	Education: Board of Education	Amend a rule to require the curriculum must provide not less than 15 semester credits in general education and not less than 50 percent of the credit hours in technical education; 37 SDR 93.
11-30-2010	Revenue and Regulation: Gaming Commission	Amend Gaming rules to provide a list of the variations of blackjack authorized for play; add several variations of poker that have been previously authorized for play in Deadwood; and allow a progressive side bet variation of play for Let it Ride Poker, Caribbean Stud Poker, Four-Card Poker, Texas Hold'em Bonus Poker, Mississippi Stud Poker, and Ultimate Texas Hold'em Poker; 37 SDR 99.
11-30-2010	Human Services: Division of Developmental Disabilities and Division of Mental Health	Amend ICF/MR rules to clarify that only those behavior treatment plans that involve limitation need to be reviewed by the Human Rights committee and to provide criteria for rating the inventory for client and agency

		<p>planning; and amend Mental Health rules to repeal outdated and unused rules; amend rules to ensure the highest quality of service delivered with the least amount of administrative burden on the mental health centers and better reflect quality improvement efforts and current practices; realign chapters for consistency with administrative rules for alcohol and drug providers that are also mental health providers; update the chapter in current rules on community mental health center services that has become core service responsibilities to reflect current practices; modify safety, sanitation, and physical facilities standards to reflect current standards and expectations and has been renamed environmental sanitation safety and fire prevention; approval requirements has become accreditation and has been modified to align with similar requirements for alcohol and drug providers; the new section on personnel combines relevant information from other areas of current administrative rule and logically and clearly organizes it; modifies requirements for staff providing direct services and orientation of personnel to reflect current expectations; organize clinical procedures for mental health services including all clinical requirements for program areas; modify the services areas (Outpatient, CYF, CARE, and IMPACT) to better reflect current practice; and modify PASRR to better reflect federal regulations and make the rules more clear and concise; 37 SDR 103.</p>
<p>12-1-2010</p>	<p>Agriculture: South Dakota Oilseeds Council</p>	<p>Amend rules to update the collection, remittance, enforcement, and refund procedures for the Oilseeds Council; 37 SDR 93.</p>
<p>12-2-2010</p>	<p>Human Services: Certification Board for Alcohol and Drug Professionals</p>	<p>Adopt rules to remove outdated language throughout this article and clarify procedures and deadlines for the application process, recognition and certification process, renewal and upgrade process, and continuing professional training process, add corresponding acronyms being adopted by the International Certification &amp; Reciprocity Consortium (IC&amp;RC), repeal bachelor's level trainee recognition, repeal case presentation</p>

	<p>method oral examination and evaluator, change titles and definitions for prevention specialist domains and 12 core functions to coincide with IC&amp;RC terminology, add statements saying Code of Ethics and applications are available at no cost on CBADP website, add requirement saying board may deny, suspend, or revoke status or pursue legal action if inaccurate information is reported on applications, add new subdivisions that address residency requirement, child support arrearage and board process for review of applications, add requirement that all fees are non-refundable, simplify the fee schedule and clarify current practice of pro-rating fees for initial trainee recognition, add \$100 mailing label fee as documented in statutes, modify academic and experience requirements for CCDC I, II, III, and CPS to correspond with IC&amp;RC requirements, clarify current practice of requiring a minimum of three semester hours and a grade of "C" or higher for each course requirement, add new subdivision that reflects current practice of board approving all courses, clarify supervision hours, methods of observation and compliance with code of ethics, remove 12 step philosophies and clarify supervisor's role in providing guidance to trainees, clarify current practice that trainee may not be supervised by a relative, repeal subdivisions requesting extensions and waivers throughout this article and replace with §46:33:09:15, clarify retesting requirements, clarify that a list of approved continuing education activities is available upon request, repeal continuing professional training requirement for trainees, repeal fifty percent maximum restriction on continuing professional training from practitioner's employer and fifty percent maximum from internet or other on line education, clarify current practice that patient lectures or public education lectures may not be used to meet teaching and training requirements, repeal 30-day grace period, add requirement that trainees who lapse in status must wait 15 days before being allowed to reapply for recognition, add requirement that</p>
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		<p>chemical dependency trainees who haven't completed the required three courses within two years, must complete the course work before being allowed to reapply for recognition, add statement reflecting current practice that professionals on retirement status pay half the renewal fee, clarify that practitioners on inactive status are not eligible for reciprocity, clarify that trainees on inactive status do not pay renewal fees and may not actively practice in the field, and add condition that board will not accept appeals of denial for certification based solely on the inability of the candidate to pass the written examination; 37 SDR 104.</p>
<p>12-2-2010</p>	<p>Game, Fish and Parks</p>	<p>Adopt a Refuges rule to establish a refuge in Hand County to be known as the Wall Lake State Game Refuge; amend a Hunting Requirements and Prohibited Methods rule to remove the language which limits the caliber size of muzzleloading firearms used in the hunting of wild turkeys; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; change the opening date for the archery hunting season only to the first Saturday in April; establish the number of licenses/tags available which will include offering residents 200 more one-tag "male turkey" and 50 less two-tag "any turkey" licenses for the Prairie Units than authorized in 2010 for an overall increase of 76 tags; and amend a Custer State Park Spring Wild Turkey Hunting Season rule to establish season dates, requirements and restrictions, establish the number of available licenses, and change the end date of the season from the third Sunday of May to the eighth day prior to Memorial Day; 37 SDR 105.</p>
<p>12-4-2010</p>	<p>Health: Board of Chiropractic Examiners</p>	<p>Amend rules to delete language regarding inactive chiropractor from the definitions; update educational institution requirements and delete obsolete information regarding the same; clarify rules for reciprocity provisions; update rules for reactivation of inactive license; establish a rule for activating a lapsed license; modify language regarding inactive license fee; amend a rule regarding Code of Ethics and update disciplinary procedures;</p>

		37 SDR 93.
12-6-2010	Health: Board of Examiners in Optometry	Amend rules to increase the number of hours of continuing education credits required for renewal of optometric license, and to establish classifications of self-directed learning and number of hours of continuing education credits allowed for each; 37 SDR 103.
12-9-2010	Attorney General: 24/7 Sobriety Program	Amend rules to provide a definition for the term "ignition interlock device;" provide additional enrollment requirements for ignition interlock device testing; provide for allowing more use of electronic alcohol monitoring devices and permit the use of an ignition interlock device for use in the 24/7 sobriety program; revise the situations in which electronic alcohol monitoring device testing may be utilized and provide requirements for the use of ignition interlock testing; set minimum requirements for electronic monitoring devices; set minimum requirements for ignition interlock device testing; make certain that only approved devices are utilized in the 24/7 sobriety program; require all participants utilizing ignition interlock devices to pay all costs and expenses associated with the installation and operation of the device; and provide that 24/7 program participants utilizing ignition interlock devices pay all costs and expenses to the authorized ignition interlock vendor; 37 SDR 103.

### RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Wednesday, November 17, 2010, via the Digital Dakota Network (DDN) in Room 414, Fourth Floor, of the State Capitol. Other DDN sites will be: Aberdeen – NSU, 1200 S. Jay Street, Room Lib117; Huron – DOT, 901 Dakota St.; Mitchell – MTI, 1800 E. Spruce, Room TC155; Rapid City – DOT, 2300 Eglin St.; Sioux Falls – University Center, 2205 Career Ave., Room 282 S, and Yankton – DOT 1306 W. 31<sup>st</sup> St. The committee chair has set the following tentative meeting schedule for the 2010 interim: 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>.