

# REGISTER



## South Dakota Legislative Research Council

Volume 33

Monday, 8:00 a.m., November 20, 2006

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

***Bureau of Personnel: Career Service***

***Commission:*** (November 13, 2006) has filed rules that will add the term "emergency" to the definitions section; clarify the procedure to be used in an appeal from the selection process; clarify who may close a state office for the purpose of granting administrative leave and specify that an essential employee who is required to work during an office closure will not receive additional pay; and allow for the granting of furloughs during emergencies as a form of leave from work during which the employee maintains health benefits, may use vacation leave, retains the right to return to his or her job but is not paid. The general authority for these rules, as cited by the commission, is SDCL 3-6-8.4, 3-6-10.1, 3-6A-21, 3-6A-28, 3-6A-29, and 3-6A-36.

A public hearing will be held in Room 464, 4<sup>th</sup> floor, State Capitol, Pierre South Dakota, on December 12, 2006, at 10:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Bureau of Personnel, State Capitol, 500 E. Capitol, Pierre, South Dakota 57501-1234. Written comments must be received by December 12, 2006, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the bureau can make arrangements are asked to call (605) 773-4918 at least 48 hours before the hearing.

***Department of Social Services: Division of Medical Services:*** (November 13, 2006)

intends to amend rules relating to chiropractic services - define the term "manual manipulation"; move the list of covered procedures and the associated fee schedule to the Department's website; specify that an x-ray substantiating a subluxation is not required if the physician documents that it is medically contraindicated; update certain procedure codes; limit manual manipulation of the spine to one treatment a day and 30 treatments in a 12-month period; allow a provider to submit an electronic claim; and expand the diagnostic codes that may be treated. 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 #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on Monday, December 4, 2006, at 9:30 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 December 14, 2006, 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 Social Services: Division of Medical Services:*** (November 13, 2006) intends to amend rules relating to podiatry services – move the list of covered podiatry services and the associated payment rates to the Department's website; specify that the Department will follow the payment methodology established in Chapter 67:16:02 if a provider performs bilateral or multiple surgeries during the same operating session; establish a procedure which a provider can use to request that a payment rate be amended; allow a provider to submit claims electronically; and update the list of covered podiatry services. 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 #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on Monday, December 4, 2006, at 10:00 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 December 14, 2006, 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 Social Services: Division of Medical Services:*** (November 13, 2006) intends to amend rules relating to home health services – define "custodial care"; update the definition of "home health agency"; amend the definition of "visit" to reflect a three-hour segment of time spent delivering services; specify that an individual's place of residence does not include an adjustment training center; increase the number of days a week home health services may be delivered; allow a therapist to conduct a supervisory visit in lieu of a registered nurse if therapy services are being provided; require the home health aide to be present during a supervisory visit; limit postpartum services to two visits following the child's birth unless additional visits are approved by the Department before the additional visits are made; clarify that the risk factors identified by the home health agency be documented in the individual's plan of care; add visits solely for the purpose of teaching the individual or the individual's care giver, services that are not medically necessary, custodial care, and mileage to the list of non-covered services; move the procedure codes and payment rates for the covered services to the Department's website; establish procedures under which a provider can request a review of a particular reimbursement rate for possible adjustment or request the inclusion or exclusion of a particular code; require a provider to bill a procedure code with a modifier of "22" when a skilled nursing or aide visit requires an additional staff person to provide the required care and require the provider to verify in the medical record that the service was authorized by the attending physician and actually provided; if an individual is covered by a third-party payer and the provider submits an electronic claim, the provider must maintain and submit to the Department, on request, evidence of claim payment or rejection from the third-party payer; reduce to 30 days the time within which a home health agency can submit documentation to the Department to support the provision of continued services on behalf of an individual; and allow a provider to submit claims

electronically. 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 #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on Monday, December 4, 2006, at 11:00 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 December 14, 2006, 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:***

***Commission on Gaming:*** (November 14, 2006) is proposing to amend Racing Rules to grant the stewards' discretion in allowing the spouse of a person who has been deemed ineligible or disqualified to enter a horse in a race where the stewards believe the spouse was not guilty of any wrongdoing. Amend Deadwood Gambling Rules to revise the rules for the play of Silverado Stud poker, clarifying five-card and three-card bet play, and adopting new payout schedules for the game; modify the play of Hold 'em 212 poker clarifying the rules on one player Hold 'em 212, two or more players Hold 'em 212 and blackjack; and modify slot machine promotional and bonus systems by removing the requirement that unique identifier numbers be displayed as transaction information on slot

machine event logs. The general authority for these rules, as cited by the commission, is 42-7-56, 42-7B-7, and 42-7B-11.

A public hearing will be held at the City Hall, 102 Sherman Street, Deadwood, South Dakota, on Tuesday, December 12, 2006, at 10:30 a.m. MT. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Commission on Gaming, 425 East Capitol Avenue, Pierre, South Dakota 57501. Materials sent by mail must reach the Commission on Gaming by December 12, 2006, to be considered. However, the Commission requests that all written comments be received by Wednesday, December 6, 2006, to allow for adequate consideration prior to the hearing. This hearing is being held in a physically accessible place. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-6050 or (605) 578-3074 at least 48 hours before the hearing.

**NOTICE:**

The **Medicaid Pharmaceutical and Therapeutics Committee** will be meeting on Friday, December 8, 2006, at 12:30 p.m. in Rooms 1 and 2 of the Sheraton Hotel Convention Center, Sioux Falls, South Dakota. A copy of the agenda is available at: <http://www.hidsdmedicaid.com/>. For additional information contact the Department of Social Services, Division of Medical Services at (605) 773-3495.

**FILINGS IN THE SECRETARY OF STATES OFFICE: (None)**

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

11-30-2006	Transportation	Amend a speed zone in Pennington County on US Highway 16B in the City of Rapid City to create a speed limit along newly constructed portions of this highway and to provide for reduced speeds along areas of development and repeal a speed zone in Lincoln County on SD Highway 11 because the segment of highway referenced in the current rule has been reconstructed and the reduced speed limit is no longer warranted – repeal of this rule would raise the speed limit from the current 55 miles per hour to 65 miles per hour; 33 SDR 83.
12-4-2006	Social Services: Medical Services	Amend rules relating to chiropractic services - define the term "manual manipulation"; move the list of covered procedures and the associated fee schedule to the Department's website; specify that an x-ray substantiating a subluxation is not required if the physician documents that it is medically contraindicated; update certain procedure codes; limit manual manipulation of the spine to one treatment a day and 30 treatments in a 12-month period; allow a provider to submit an electronic claim; and expand the diagnostic codes that may be treated.; 33 SDR 93.
12-4-2006	Social Services: Medical Services	Amend rules relating to podiatry services – move the list of covered podiatry services and the associated payment rates to the Department's website; specify that the Department will follow the payment methodology established in Chapter 67:16:02 if a provider performs bilateral or multiple surgeries during the same operating session; establish a procedure which a provider can use to request that a payment rate be amended; allow a provider to submit claims electronically; and update the list of covered podiatry services; 33 SDR 94.
12-4-2006	Social Services: Medical Services	Amend rules relating to home health services – define "custodial care"; update the definition of "home health agency"; amend the definition of "visit" to reflect a three-hour segment of

		<p>time spent delivering services; specify that an individual's place of residence does not include an adjustment training center; increase the number of days a week home health services may be delivered; allow a therapist to conduct a supervisory visit in lieu of a registered nurse if therapy services are being provided; require the home health aide to be present during a supervisory visit; limit postpartum services to two visits following the child's birth unless additional visits are approved by the Department before the additional visits are made; clarify that the risk factors identified by the home health agency be documented in the individual's plan of care; add visits solely for the purpose of teaching the individual or the individual's care giver, services that are not medically necessary, custodial care, and mileage to the list of non-covered services; move the procedure codes and payment rates for the covered services to the Department's website; establish procedures under which a provider can request a review of a particular reimbursement rate for possible adjustment or request the inclusion or exclusion of a particular code; require a provider to bill a procedure code with a modifier of "22" when a skilled nursing or aide visit requires an additional staff person to provide the required care and require the provider to verify in the medical record that the service was authorized by the attending physician and actually provided; if an individual is covered by a third-party payer and the provider submits an electronic claim, the provider must maintain and submit to the Department, on request, evidence of claim payment or rejection from the third-party payer; reduce to 30 days the time within which a home health agency can submit documentation to the Department to support the provision of continued services on behalf of an individual; and allow a provider to submit claims electronically; 33 SDR 94.</p>
<p>12-12-2006</p>	<p>Personnel: Career Service Commission</p>	<p>Amend rules to add the term "emergency" to the definitions section; clarify the procedure to be used in an appeal from the selection process; clarify who may close a state office for the purpose of granting administrative</p>

		leave and specify that an essential employee who is required to work during an office closure will not receive additional pay; and allow for the granting of furloughs during emergencies as a form of leave from work during which the employee maintains health benefits, may use vacation leave, retains the right to return to his or her job but is not paid; 33 SDR 93.
12-12-2006	Revenue and Regulation: Gaming Commission	Amend Racing Rules to grant the stewards' discretion in allowing the spouse of a person who has been deemed ineligible or disqualified to enter a horse in a race where the stewards believe the spouse was not guilty of any wrongdoing. Amend Deadwood Gambling Rules to revise the rules for the play of Silverado Stud poker, clarifying five-card and three-card bet play, and adopting new payout schedules for the game; modify the play of Hold 'em 212 poker clarifying the rules on one player Hold 'em 212, two or more players Hold 'em 212 and blackjack; and modify slot machine promotional and bonus systems by removing the requirement that unique identifier numbers be displayed as transaction information on slot machine event logs; 33 SDR 95.

### RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, December 5, 2006, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2006 interim: January 8, 2007.

**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.