

REGISTER



South Dakota Legislative Research Council

Volume 44

Monday, 8:00 a.m., August 28, 2017

FILINGS IN THE LEGISLATIVE RESEARCH COUNCIL'S OFFICE:

Notice of Proposed Rules: (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

Department of Education: South Dakota Board of Education: (August 24, 2017) intends to adopt rules to set forth the public school accountability system, performance goals, school classifications, and school support process as required by South Dakota law and the Every Student Succeeds Act of 2015. The general authority for these rules, as cited by the board, is SDCL §§ 13-3-51, 13-3-55, and 13-3-69.

A public hearing will be held at Northern State University, Student Center Centennial Rooms A & B West, 1200 South Jay Street, Aberdeen, South Dakota, on September 18, 2017, at 9:30 a.m. CT. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Education, Attn: Ferne Haddock, 800 Governors Drive, Pierre, SD 57501 or at <https://rules.sd.gov>. Material sent by mail must reach the Department of Education by September 14, 2017, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the Department of Education can make arrangements are asked to call (605) 773-3553 at least 48 hours in advance of the hearing.

Notice:

The **Department of Social Services** intends to submit an 1115 Demonstration Waiver to the Center for Medicare & Medicaid Services (CMS) to continue to provide Medicaid coverage for youth who aged out of foster care in a different state and now reside in South Dakota. This group is currently covered under the Medicaid state plan. CMS has provided guidance indicating that states should use 1115 Demonstration Waiver authority to cover these individuals. To be eligible for Medicaid coverage under the waiver, an individual must be a citizen of the United States or have a non-citizen status that qualifies for federally funded Medicaid, be a South Dakota resident, be under the age of 26, not otherwise mandatorily eligible for coverage under the state plan, were in foster care under the responsibility of another state and enrolled in Medicaid under another state's plan or 1115 demonstration when they turned 18 or at the time of aging out of the state's foster care program, and have an income less than 182% of the Federal Poverty Level. South Dakota has provided Medicaid coverage for youth who aged out of foster care in a different state and now reside in South Dakota since January 1, 2014. During this time, 8 youths have had Medicaid coverage through this eligibility group. As of July 7, 2017, 3 youths were covered through this eligibility group. The state estimates that a similar number of youth will be covered under this eligibility group going forward. Youths eligible for coverage under the waiver will continue to have the same benefit coverage, cost sharing, and delivery system as those with full coverage under the Medicaid state plan. The goal and objective of the waiver is to continue to provide Medicaid coverage to youth who

aged out of foster care in a different state, now reside in South Dakota, and meet all of the eligibility criteria. The state will conduct analysis on no less than an annual basis to determine the number of individuals with Medicaid coverage under this waiver. This analysis will allow the state to test its hypothesis that the waiver will maintain access to Medicaid coverage for former foster care youth that meet the eligibility criteria. The waiver application requests 1115(a)(2) expenditure authority to cover former foster care youth. The non-federal share of expenditures for this eligibility group will continue to be financed through state general funds.

Two public hearings will be conducted. The first public hearing will be held at the Kneip Building, Kneip 1 Conference Room, 700 Governors Drive, Pierre, South Dakota, on August 29, 2017, at 3:00 p.m. CST. The second public hearing is September 1, 2017, at 8:00 a.m. CST at the Department of Social Services, Pasque Conference Room, 811 E. 10th Street, Sioux Falls, South Dakota. Commenters may appear at the hearings telephonically by calling (866) 410-8397 and entering conference code 6256779181. A copy of the proposed waiver is on the Department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Written requests for a copy of the waiver, and corresponding comments, may also be sent to the Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, SD 57501-2291. Comments may also be emailed to Matthew.Ballard@state.sd.us. The comment period ends September 28, 2017. All comments should be submitted before or on this date.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF SOCIAL SERVICES: BOARD OF SOCIAL WORK

EXAMINERS: 20:59:01:04.01, 20:59:01:10.06, 20:59:01:10.08; 20:59:02:03.03, 20:59:02:04, 20:59:02:05; 20:85:01:01 through 20:85:01:09, inclusive; 20:85:02:01, and 20:85:02:02.

History-Notice: 43 SDR 179, June 26, 2017
Hearing: July 25, 2017
Filed: August 22, 2017
Effective: September 11, 2017

DEPARTMENT OF SOCIAL SERVICES: DIVISION OF CHILD CARE SERVICES:

67:47:01:03.01, 67:47:01:08, 67:47:01:13.01, 67:47:01:18, and 67:47:01:29.

History-Notice: 43 SDR 180, June 26, 2017
Hearing: July 27, 2017
Filed: August 22, 2017
Effective: September 11, 2017

DEPARTMENT OF TRANSPORTATION:

70:12:02:01, 70:12:02:07, 70:12:02:08, 70:12:02:09, 70:12:02:12; 70:13:01:02, 70:13:01:04, and 70:13:01:10.

History-Notice: 44 SDR 9, July 10, 2017
Hearing: July 27, 2017
Filed: August 22, 2017
Effective: September 11, 2017

DEPARTMENT OF EDUCATION:

BOARD OF EDUCATION: 24:58:01:01; 24:58:03:01, 24:58:03:04, 24:58:03:05, 24:58:03:07, and 24:58:03:09.

History-Notice: 43 SDR 175, June 19, 2017
Hearing: July 17, 2017
Filed: August 23, 2017
Effective: September 12, 2017

DEPARTMENT OF EDUCATION: SOUTH DAKOTA STATE HISTORICAL SOCIETY:

24:52:01:02; 24:52:02:01; 24:52:05:02, 24:52:05:07, 24:52:05:09; and 24:52:11:01.

History-Notice: 43 SDR 159, May 30, 2017
 Hearing: July 14, 2017
 Filed: August 23, 2017
 Effective: September 12, 2017

74:36:08:130, inclusive; 74:36:09:02, 74:36:09:03; 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07, 74:36:10:08; 74:36:11:01; 74:36:12:01, 74:36:12:03; 74:36:13:02 to 74:36:13:04, inclusive, 74:36:13:06 to 74:36:13:08, inclusive; 74:36:16:01, 74:36:16:02, 74:36:16:04, 74:36:16:05; 74:36:18:10; 74:36:20:05; 74:36:21:02, 74:36:21:04, 74:36:21:05, and 74:36:21:09.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES: BOARD OF MINERALS AND ENVIRONMENT:

74:28:21:01, 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01, 74:28:25:03, 74:28:25:04, 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01, 74:28:28:03, 74:28:28:04, 74:28:28:05; 74:28:30:01; and 74:28:33:01.

History-Notice: 43 SDR 159, May 30, 2017
 Hearing: July 20, 2017
 Filed: August 23, 2017
 Effective: September 12, 2017

History-Notice: 43 SDR 169, June 12, 2017
 Hearing: July 20, 2017
 Filed: August 24, 2017
 Effective: September 13, 2017

DEPARTMENT OF PUBLIC SAFETY:

24:06:07:02, 24:06:07:03.01, 24:06:07:04, 24:06:07:06, 24:06:07:07; 24:06:08:02, 24:06:08:03, 24:06:08:04, 24:06:08:06; and 61:23:01:04.

History-Notice: 43 SDR 153, May 22, 2017
 Hearing: July 18, 2017
 Filed: August 24, 2017
 Effective: September 13, 2017

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES: BOARD OF MINERALS AND ENVIRONMENT:

74:36:01:01, 74:36:01:05, 74:36:01:20; 74:36:02:02, 74:36:02:03, 74:36:02:04, 74:36:02:05; 74:36:03:01, 74:36:03:02; 74:36:04:04; 74:36:05:04, 74:36:05:06, 74:36:05:16.01; 74:36:06:07; 74:36:07:01 to 74:36:07:07.01, inclusive, 74:36:07:09, 74:36:07:10, 74:36:07:12 to 74:36:07:28, inclusive, 74:36:07:31 to 74:36:07:34, inclusive, 74:36:07:36, 74:36:07:37, 74:36:07:39 to 74:36:07:93, inclusive; 74:36:08:01 to

Note: A copy of the rules may be obtained directly from the above agencies or at <https://rules.sd.gov>. 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

<p>8-29-2017</p>	<p>Department of Health: Division of Health Systems Development and Regulation Adopt rules to give the department authority to license and regulate community living homes in South Dakota; 44 SDR 17, July 24, 2017.</p>
<p>8-30-2017</p>	<p>Department of Human Services: Division of Developmental Disabilities Amend rules to revise the definition of a community support provider to align the rule with statute; change the definition of an organized health care delivery system to include</p>

	<p>community services provider; align the rule definition of community services provider with statutory definition, allowing a for profit entity to provide direct services; add a definition of home and community services; repeal duplicative rule; require similar enrollment documents for profit and not for profit entities; replace the phrase "CSP or SP" with provider; clarify the applicable ARSD chapters for the biennial review of providers; change the language from CSP to provider to make the process applicable to SP's; clarify that either a CSP or SP provider of direct HCB services establish and use a human rights committee for certain rights restrictions; clarify that either a CSP or SP must have policies and procedures for calculations of wages owing to participants in a vocational training and employment setting; extend the time frame for implementing ISP revisions; require providers of direct HCB services to meet certain standards in owned or leased buildings and meet certain fire extinguisher requirements and updates the DOH reference to linens and fire code; require any provider of direct HCB services to provide a medication administration system; extend fair hearing protections to a termination of waiver services by a SP; allow an individual employed by a SP to be a coordinator of family support waiver services; allow a SP to be an employer of record; allow a SP to provide home and community based services; allow a SP to be a provider and specifies the responsibilities of being a provider; correct references to ARSD; transfer a section regarding confidentiality; add SP to entities required to provide notice of a critical incident; add SP to those entities available to deliver services under the family support program; add SP to the agency of choice model of service delivery; allow an individual to use a SP to deliver services; allow a SP to provide family support coordination; clarify the services available through the agency with choice service model; add SP to the transfer of records process; add SP to the entities subject to biennial review and to a participant satisfaction survey; add SP to those entities subject to revocation of a provider agreement for failure to meet ARSD standards; require CSP's, SP's and qualified providers to recognize rights of participants, parents and guardians; expand definition of coordinator; remove definition of provider; specify that a local family support provider can be a SP; shorten and clarify rule by changing phrase to provider; and clarify that community training services must meet the service standards of Chapter 46: 11 :05. The primary effect of the rules will be to allow for profit entities to deliver community services to individuals with intellectual and developmental disabilities; 44 SDR 26, August 7, 2017.</p>
8-31-2017	<p>Department of Labor and Regulation: Division of Insurance Adopt the National Association of Insurance Commissioners' Own Risk and Solvency Assessment (ORSA) Guidance Manual, and update the credit for reinsurance rules for domestic insurance companies; 44 SDR 32, August 14, 2017.</p>
9-6-2017	<p>Department of Revenue: South Dakota Commission on Gaming Amend and adopt rules to add outriders to the officials for a race meeting; set forth the duties of outrider officials; clarify workouts necessary for the eligibility of a horse; eliminate the requirement that deposits of money for multi-jurisdictional totalizator hubs be located in banks in South Dakota; adopt a new variation of the game of blackjack called TriLux Bonus Blackjack with Super 3; allow an option to play the game of Texas Hold'em twice; adopt a new variation of the game of poker called Cover All Bonus; and adopt a new variation of the game of craps called Sharp Shooter; 44 SDR 35, August 21, 2017.</p>

9-6-2017	Department of Health: South Dakota Board of Nursing Amend rules to include a definition of registrant; add the requirements for the operation of the unlicensed assistive personnel registry by defining the application process for registration, the renewal and reactivation requirements, and the process for denial or removal from the registry; and amend the process for disciplinary action for licensed nurses and registrants; 44 SDR 35, August 21, 2017.
9-7-2017	Department of Game, Fish and Parks Amend rules to create a "no boating zone" on the waters of Swan Lake in Clark County from October 20 to December 31, inclusive; and establish a process whereby an owner of private property underlying any nonmeandered lake listed in SDCL 41-23-8 may petition the Game, Fish and Parks Commission to allow the owner of private property to restrict recreational use of the water overlying the owner's private property; 44 SDR 31, August 14, 2017.
9-7-2017	Department of Labor and Regulation: South Dakota Real Estate Commission Adopt rules to update the disciplinary process for licensees to increase efficiency and decrease the time it takes to resolve complaints; 44 SDR 35, August 21, 2017.
9-14-2017	Department of Health: South Dakota Board of Medical and Osteopathic Examiners Adopt rules to clarify the timeframe for those individuals renewing their license through the interstate medical licensure compact; establish the different options the Board has when it considers mirroring physician discipline from another state; and establish continuing education as a requirement for physical therapy license renewal; 44 SDR 36, August 21, 2017.
9-18-2017	Department of Education: South Dakota Board of Education Adopt rules to set forth the public school accountability system, performance goals, school classifications, and school support process as required by South Dakota law and the Every Student Succeeds Act of 2015; 44 SDR 41, August 28, 2017.
10-20-2017	Department of Health: South Dakota Board of Dentistry Amend rules to update the registration process for dental entities to bring it into compliance with SB 47 and repeal obsolete provisions; 44 SDR 21, July 31, 2017.
10-20-2017	Department of Labor and Regulation: South Dakota Athletic Commission Amend rules to clarify provisions of current rules including general definitions; safety requirements for events; responsibilities of event promoters; requirements for contestants in mixed martial arts contests; penalties for mixed martial artists who fail to make weight for a contracted bout; options for correcting a score entered in error; officials required to be in attendance at an event; the role of a cut man at an event; the authority of a ringside physician during a bout; allowable wraps for a mixed martial artist during a bout; requirements for a ring used for a contest; the process by which a contestant can request a review of a bout; and the adoption of unified rules of mixed martial arts; 44 SDR 31, August 14, 2017.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held on September 25, 2017, in Room 414, Fourth Floor of the State Capitol. The committee chair has set the following meeting schedule for the 2017 interim: November 14.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the LRC website at <http://www.sdlegislature.gov/Rules/RulesManual.aspx>.

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