



South Dakota
Department of
Social Services

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF MEDICAL SERVICES

700 GOVERNORS DRIVE

PIERRE, SD 57501-2291

PHONE: 605.773.3495

FAX: 605.773.5246

WEB: dss.sd.gov

June 6, 2023

Dr. Sally Abbott, MS, PhD
Regional Health Administrator
Centers for Medicare and Medicaid Services
1961 Stout Street, Room 08-148
Denver, CO 80294

Re: South Dakota Medicaid State Plan Amendment SD-23-0012

Dear Dr. Abbott:

Please find enclosed South Dakota's Medicaid State Plan Amendment (SPA) SD-23-0012. The SPA makes changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

The department requests a July 1, 2023 effective date. The SPA amends pages 1, 4, 5, 7, 9-13, 15, and 16 of Attachment 4.19-D of the South Dakota Medicaid State Plan.

The department estimates the federal fiscal impact will be \$6,784,719 in Federal Fiscal Year 2023 and \$27,138,874 in Federal Fiscal Year 2024.

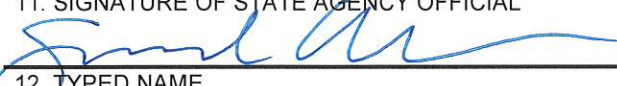
The State conducted Tribal Consultation beginning with notification on April 24, 2023. We have attached a copy of the notification sent to the Tribes. Public notice was published in the South Dakota REGISTER on April 24, 2023. South Dakota received four comments regarding the SPA which are all included with the submission of this SPA. Due to an error regarding the fiscal impact in the documents published on April 24, 2023 the State is conducting a second Tribal Consultation and public notice comment period. This comment period started on June 5, 2023 and ends July 5, 2023. Any comments received during the second comment period will be provided to CMS.

If you have any questions regarding this package, please contact Matthew Ballard, Deputy Director of the Division of Medical Services, 700 Governors Drive, Pierre, SD 57501-2291, e-mail Matthew.Ballard@state.sd.us, or telephone (605) 773-3495.

Sincerely,

Sarah Aker
Director

CC: Matt Althoff, Cabinet Secretary

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES		1. TRANSMITTAL NUMBER <u>2 3 — 0 0 1 2</u>	2. STATE <u>S D</u>
		3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT <input checked="" type="radio"/> XIX <input type="radio"/> XXI	
TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <p style="text-align: center; color: blue;">July 1, 2023</p>	
5. FEDERAL STATUTE/REGULATION CITATION 42 CFR 447 Subpart C		6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY <u>2023</u> \$ <u>6,784,719</u> b. FFY <u>2024</u> \$ <u>27,138,874</u>	
7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 4.19-D, Pages 1, 4, 5, 7, 9-13, 15, and 16		8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Attachment 4.19-D: Page 1, 7, 9-11 (TN# 08-8), Page 4 (TN# 05-10), Page 5 (TN# 09-7), Page 12 (TN# 17-006), Page 13 (TN# 00-9), Page 15 (TN# 21-0005), and Page 16 (TN# 12-11)	
9. SUBJECT OF AMENDMENT <p style="color: blue;">The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.</p>			
10. GOVERNOR'S REVIEW (Check One)			
<input checked="" type="radio"/> GOVERNOR'S OFFICE REPORTED NO COMMENT		<input type="radio"/> OTHER, AS SPECIFIED:	
<input type="radio"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED			
<input type="radio"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
11. SIGNATURE OF STATE AGENCY OFFICIAL 		15. RETURN TO DEPARTMENT OF SOCIAL SERVICES DIVISION OF MEDICAL SERVICES 700 GOVERNORS DRIVE PIERRE, SD 57501-2291	
12. TYPED NAME Sarah Aker			
13. TITLE Director			
14. DATE SUBMITTED June 6, 2023			
FOR CMS USE ONLY			
16. DATE RECEIVED		17. DATE APPROVED	
PLAN APPROVED - ONE COPY ATTACHED			
18. EFFECTIVE DATE OF APPROVED MATERIAL		19. SIGNATURE OF APPROVING OFFICIAL	
20. TYPED NAME OF APPROVING OFFICIAL		21. TITLE OF APPROVING OFFICIAL	
22. REMARKS			

**SOUTH DAKOTA STATE PLAN ATTACHMENT 4.19-D
REIMBURSEMENT FOR NURSING FACILITIES
(OTHER THAN STATE-OPERATED FACILITIES)**

Section A—General:

1. The purpose of this plan is to define the methodology to establish reimbursement rates for nursing facilities participating in the State's Medicaid program. Provisions of and payments under this reimbursement plan are effective July 1, 2023.
2. The Department requires each Medicaid participating nursing facility to complete and submit a uniform report, known as the "Statistical and Cost Summary for Nursing Facilities," to the Department within 150 days following the close of each facility's fiscal year. The facilities shall complete the reports following generally accepted accounting procedures, the Medicare Provider Reimbursement Manual (CMS Publication 15), and/or instructions from the Department and using the accrual method of accounting.
3. To establish the reimbursement rates to be effective July 1, 2023, the Department will use the cost reporting period based on the nursing facility year-end cost report(s) from April 30, 2021, through March 31, 2022, commonly referred to as the "2021 cost reports." Beginning with the rates effective July 1, 2024, reimbursement rate reviews will occur annually using the facilities' year-end cost report(s) from the April 30 through March 31 period immediately prior to July 1.
4. All providers shall keep all financial and statistical records for a minimum of six years following the submission of cost reports and these records must be made available to the Department Medicaid Fraud Unit (MFCU), and Department of Health and Human Services (HHS) upon request. No facility may knowingly destroy any of the records required by this paragraph when an audit exception is pending.
5. The Department will maintain in files all cost reports submitted by facilities for a minimum of six years or until any audit exceptions are cleared, whichever is longer.

- c. Items which are utilized by individual residents but which are reusable and expected to be available, such as resident gowns, water pitchers, bedpans, ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, alternating pressure pad and pump, other durable medical equipment, etc.;
- d. Social services and activities including supplies for these services;
- e. At least 3 meals/day planned from the Basic Four food groups in quantity and variety to provide the medically prescribed diets. This includes special oral, Enteral, or parenteral supplements for dietary use for meal or nourishment supplementation, even if written as prescription items by a physician—as these supplements have been classified by the FDA as a food rather than a drug;
- f. Laundry services;
- g. Therapy services when provided by facility staff or by a consultant under contract with the facility;
- h. Transportation services necessary to meet the medical and activity needs of the residents exclusive of commercial ambulance and specialized wheelchair transportation services.

Nursing facilities shall participate in the planning, development, and implementation of coordinated transportation efforts. Failure to participate in such efforts may result in disallowance of costs.
- i. Oxygen, regulators, tubing, masks, tents, and other equipment necessary for the administration of oxygen;
- j. Oxygen concentrators;
- k. Respiratory services and supplies such as continuous positive airway pressure machines, bilevel positive airway pressure machines, tracheostomy related supplies, supplies for suctioning; and
- l. Batteries for hearing aids.

Non-Routine Services. These services are considered ancillary for Medicaid payment. The costs of these services should be accounted per instructions for completing the Statistical and Cost Summary Report. The costs of these services must be billed by the physician, laboratory, pharmacy, agency, supplier, or therapist providing the service:

- a. Prescription Drugs;
 - b. Physician services for direct resident care;
 - c. Laboratory and Radiology;
 - d. Mental Health Services;
 - e. Therapy services when provided by someone other than a facility employee;
 - f. Prosthetic devices and supplies for prosthetic devices provided for an individual resident; and
 - g. Services provided by independent medical practitioner for the direct care of patients.
2. Reasonable costs shall be “appropriately documented allowable costs” plus inflation calculated using the Skilled Nursing Facility Market Basket, applied from the midpoint of each provider’s cost report period to December 31, 2022, and that do not exceed the following limitations:
- c. Direct care costs (as defined in the Medicaid Cost Report and Instructions) shall be Case Mix adjusted and limited as follows:
 - 1) The Department will calculate median cost based on a case mix acuity level of 1.00 or more;
 - 2) The Department will then establish a minimum ceiling at 115% of the median and a maximum ceiling at 125% of the median;
 - 3) The Medicaid Program will pay 80% of the costs between the 115% ceiling and the 125% ceiling.

Any costs in excess of the 110% limitation will not be recognized. The ceiling limitations will apply to all nursing facilities participating in the State Medicaid Program.

- d) Capital costs shall be limited to \$20.95 per resident day, effective July 1, 2023, for all nursing facilities participating in the State Medicaid Program. (See Section C, Provision Number(s) 3, 4, 5, and 6). Beginning July 1, 2024, and annually thereafter the capital cost limitation will be inflated by any percentage adjustment provided for in the State legislative appropriation.
3. A return on net equity shall be an allowable cost for proprietary facilities. The allowable rate of return shall be the average mid-point of the prime interest rate and the rate of 180-day U.S. Treasury Bills, as reported on the last business day of June, September, December, and March. The rate of return shall not exceed 10% and will be calculated on the provider's fiscal year-end balance sheet of the cost report required in Section A, Provision Number 3.
 4. Building depreciation shall be limited to 3% on masonry and 4% on frame buildings and shall be calculated on the straight-line method. Generally-accepted accounting procedures will be used in determining the life of any addition(s) and improvements to primary structures. Effective July 1, 1999, the capital basis for depreciation of new construction, major renovation, and or any facilities acquired through purchase, must be subject to a salvage value computation of at least 15% (Section C, Provision Number 6).
 5. Depreciation on fixed equipment shall be calculated on the straight-line method, following the American Hospital Association (AHA) Guidelines for any item(s) purchased after January 1, 1987.
 6. Depreciation on major moveable equipment, furniture, automobiles, and specialized equipment shall be calculated on the straight-line method, following the American Hospital Association (AHA) Guidelines for any item purchased after January 1, 1987. Deviation from the AHA Guidelines may be granted in those instances in which facilities can provide the Department with documented historical proof of useful life.

b) Capital Cost—Dollar Limitation

The Capital Cost Components will consist of: (1) Building insurance, (2) Building Depreciation, (3) Furniture and Equipment Depreciation, (4) Amortization of Organization and Pre-Operating Costs, (5) Mortgage Interest, (6) Rent on Facility and Grounds, (7) Equipment Rent and, (8) Return on Net Equity. The Capital Cost will be limited to \$20.95 per resident day for all participating nursing facilities, effective July 1, 2023. Beginning July 1, 2024, and annually thereafter the capital cost limitation will be inflated by any percentage adjustment provided for in the State legislative appropriation.

1. Leased Facility—maximum capital costs for a leased facility are limited to the following:

- a) The maximum capital costs is limited to the lower of actual costs or to the capital cost limitation per Section C, Provision Number 2.b. The capital cost components for computing the above limit shall consist of: (a) rent on facility/grounds and equipment; (b) building insurance; (c) building depreciation; (d) furniture and equipment depreciation; (e) amortization of organization and pre-operating costs; (f) capital related interest; and, (g) return on net equity. The capital cost items are allowable only if incurred and paid by the lessee. Capital costs will not be recognized in any other manner than as outlined in this section if incurred by the lessor (owner) and passed on to the lessee.
- b) The maximum allowable for lease payment(s) for facilities negotiating a new lease and facilities renewing existing leases after June 30, 1999, are limited to the lower of actual lease costs or 70% of the average per diem cost of the capital costs for owner managed facilities, excluding hospital affiliated facilities.

- c) No reimbursement shall be allowed for additional costs related to sub-leases.
2. For reimbursement purposes outlined under this plan, any lease agreement entered into by the operator and the landlord shall be binding on the operator or his successor(s) for the life of the lease, even though the landlord may sell the facility to a new owner. For reimbursement purposes outlined under this plan, the only exceptions for permitting the breaking of a lease prior to its natural termination date shall be:
 - a) The new owner becomes the operator; or
 - b) The owner secures written permission from the Secretary to break the lease.
3. The maximum allowable capital cost for an owner-managed facility shall be limited to \$20.95 per resident day for all nursing facilities. Beginning July 1, 2024, and annually thereafter, the capital cost limitation will be inflated by any percentage adjustment provided for in the State legislative appropriation.
4. New construction notification—Effective July 1, 1999, all nursing facilities that are planning to undertake new construction of a nursing facility, and/or a major expansion, and/or renovation project are required to notify the Department in writing prior to the start of construction, regarding the scope and estimated cost(s) of the project. For purposes of this, notification requirement any improvement, repair or renovation project will be defined as any improvement or repair with an estimated cost of \$125,000 or more.

5. The occupancy factor used in calculating per diem rates shall be the greater of actual or 3% less than the statewide average for all nursing facilities. The occupancy factor will be determined in accordance with the year-end cost reporting period identified in Section A, Provision Number 3. The occupancy factor will be applied to all costs except Direct Care. The occupancy factor shall be waived for the first twelve months of operation for a newly-constructed facility. For the second twelve months of operation, the occupancy factor used to establish the facility's rate will be the greater of 3% less than the state-wide average or the last quarter of the first year of operation, prorated to twelve months.
6. Medicaid Rate Limitation—Effective July 1, 2024, and for all future reimbursement periods, individual nursing facilities will be limited to no greater than an any percentage adjustment provided for in the State legislative appropriation in their overall combined Direct Care Case Mix Adjusted Rate and Non-Direct Care Rate. If the facility's rate exceeds this limitation the department shall amend the facility's non-direct care rate to equalize the rates to the allowable limit.

TN #23-0012
Supersedes
TN #08-8

Approval Date

Effective Date 07/01/23

Section D—Other:

1. Allowances may be made for known future costs due to new or revised Federal or State laws, regulations, and/or standards having an impact on costs incurred by nursing facilities. An explanation of costs of this nature must be attached to the “Statistical and Cost Summary for Nursing Facilities” if they are to be given consideration.
2. Facilities designated as Access Critical and facilities operated under 93-638 PL are not subject to the ceilings and limits stated in Section C. The facilities are reimbursed using the following methodologies:
 - a) Facilities designated as Access Critical in accordance with South Dakota Codified Law 34-12-35.5 are reimbursed using cost reports submitted to the Department per Section A, Provision Number 3 and shall be calculated to recognize additional direct care, non-direct care, and overall costs incurred by the facility.
 - b) The reimbursement rate for facilities operated under 93-638 PL will be calculated based on historical costs reported by the facility and reasonable and allowable prospective costs that support quality and access to care.
3. Allowable per diem rates shall be set annually prior to July 1, using cost reports submitted to the Department per Section A, Provision Number 3.

4. In the Case Mix Reimbursement System, two per diem rates shall be established: (1) the Case Mix Adjusted Direct Care Rate, and (2) the Non-Direct Care Rate. Both rates will be established per facility and paid for every Medicaid-eligible resident in that facility, excluding those classified as Assisted Living Care.
 - a) The Case Mix Adjusted Direct Care Rate will be determined prior to July 1 of each year and payment will be subjected to the residents' level of care needs, determined by the Case Mix weights assigned to each nursing case mix group under the Patient Driven Payment Model classification system.
 - b) The Non-Direct Care Rate will be determined prior to July 1 of each year and payment will be applied to all eligible residents.
5. Nursing facilities which elect to participate in the Medicaid program must notify the Department of their average per diem charge to individuals who are not presently receiving nursing facility benefits under Medicare, Medicaid, or Veterans Administration programs. Medicaid reimbursement will be limited to the lower of the facility's average private pay per diem charge or the facility's Medicaid per diem rate (Direct and Non-Direct Care Rate), as established by the Department prior to July 1, of each year. The Department will make a pro-rata adjustment to both the Direct Care Rate and the Non-Direct Care Rate in limiting the Medicaid per diem rate. Each nursing facility has until the first (1st) day of the third month following notification regarding the Medicaid per diem rate to report this information to the Department. Facilities designated as Access Critical and facilities operated under 93-638 PL are not subject to this provision.
6. Annual rates established prior to July 1 of each year shall be effective for the full twelve-month period, July 1 through June 30. All payments as established through rate setting procedures outlined in this plan and Department rules shall be final. Interim rate adjustments may be made for the following reasons only:
 - a) Adjustments for erroneous cost or statistical reporting discovered during the course of an audit;
 - b) Amended cost reports which reflect changes in information previously submitted by a provider shall be allowed when the error or omission is material in amount and results in a change in the provider's rate of \$.05 or more per patient day;
 - c) New or revised federal or state laws, regulations and/or standards having an impact on costs incurred by nursing facilities become effective during the twelve-month period for which rates have been established.

11. The Department may allow an add-on payment for the In-state care of recipients needing extraordinary care. This payment is designed to recognize and compensate providers for patients who require an inordinate amount of resources due to the intensive labor involved in their care that is not captured in the normal case mix reimbursement methodology. Such an add-on payment requires prior authorization. The individual requiring extraordinary care must be a South Dakota Medicaid recipient and must meet nursing facility level of care as defined in ARSD 67:45:01. The add-on payment is not available to individuals who are in the hospital, on a Medicare A or Medicare Advantage Plan skilled nursing stay, or are receiving hospice services.

Extraordinary care recipients are:

- a. Chronic Ventilator Dependent Individuals—Individuals who are ventilator dependent due to major complex medical disease or other accidents.
- b. Chronic Wound Care Recipients—Individuals who need therapeutic dressings/treatments/equipment that are designed to actively manipulate the sound healing process.
- c. Behaviorally Challenging Individuals—Individuals who meet the following criteria:
 1. Have a history of regular/recurrent, persistent disruptive behavior which is not easily altered. Behaviors which require increased resource use or nursing facility staff must exist, and
 2. Have an organic or psychiatric disorder of thought, mood, perception, orientation, memory, or social history which significantly affects behavior and is interfering with care and placement. Social history refers to convicted sexual offenders, inmates, or individuals who are otherwise challenging due to past behaviors.
- d. Traumatic Brain or Spinal Cord Injured—Individuals who have had an injury to the skull, brain, or spinal cord. The injury may produce a diminished or altered state of consciousness resulting in impairment in cognitive abilities or physical functioning, as well as behavioral and/or emotional functioning. The individual must have either 1) completed an acute rehabilitation program in another facility and be continuing the rehabilitation plan or, 2) if an individual does not qualify for an acute rehabilitation program, they must have a psychiatry consultation documenting the ability and willingness to participate in and benefit from therapy. Documentation must also show that the individual is alert and able to follow simple directions, medically stable, and no longer needing acute level of care. If an individual already resides in a skilled nursing facility and is not able to receive a psychiatry consultation (either face to face or virtual), a licensed therapist may also perform the assessment.
- e. Individuals requiring total parenteral nutritional therapy—Individuals who meet the following criteria:
 1. Have an internal body organ or body function such as severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the individual's general condition.
 2. Have a physician's order or prescription for the therapy and medical documentation describing the diagnosis and the medical necessity for the therapy.
 3. The therapy is the only means the individual has to receive nutrition.
 4. Reimbursement is limited to the Total Parenteral Nutrition solution and necessary supplies to administer the solution.

- f. Individuals with multiple chronic complex medical conditions requiring specialized equipment and/or increased staff resources—Individuals who meet the following criteria:
 - 1. Require increased resources of nursing facility staff.
 - 2. Have physician-documented diagnoses of multiple complex medical conditions to document the co-morbidities.
 - 3. Require specialized, non-standard equipment or services that would not be encompassed by Routine Services addressed in Part 1 Section B of this attachment.

Medicaid reimbursement for services provided to an extraordinary recipient in state shall be the per diem rate (case mix rate) plus a negotiated rate to cover the additional cost of medically necessary services and supplies associated with the treatment of extraordinary recipients to encompass but not exceed the total cost of care for the individual.

- a. The Department will negotiate with providers on a case-by-case basis to determine the negotiated rate and the billing procedures for extraordinary recipients.
- b. Prior to such negotiations, the provider shall submit:
 - 1. A treatment plan including a physician's order documenting the medical necessity of the treatment, and
 - 2. A proposed reimbursement rate, including all relevant financial records for services provided to an extraordinary recipient as requested by the Department.
- c. The Department may request, and the provider shall furnish before a negotiated rate is established, additional information to document the medical necessity for services and equipment provided to an extraordinary recipient.
- d. The negotiated rate is the rate agreed upon by the provider and the Department for medically necessary services and equipment.
- e. The Department shall reevaluate the condition of an extraordinary recipient at least quarterly dependent upon the approved add-pay category, to determine continued need for specialized care reimbursement. Reauthorization is determined by Department staff. The Department may require the provider to submit any appropriate medical and other documentation to support a request for reauthorization. The renegotiated rate shall reflect any changes in the recipient's condition.
- f. Providers must notify the Department of significant changes in an individual's condition. A new rate may be negotiated when this change occurs.

Hericks, Renae

From: DSS Medical Services <DSSMedicalServices@STATE.SD.US>
Sent: Monday, June 5, 2023 8:14 AM
To: DSSMEDICAIDTRIBAL@LISTSERV.SD.GOV
Subject: State Plan Amendment
Attachments: SD 23-0012 SPA Package.pdf

Good Morning,

The South Dakota Department of Social Services is providing an additional tribal consultation period on the proposed changes below due to an error regarding the fiscal impact in the original tribal consultation document.

South Dakota Department of Social Services intends to make changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

The SPA amends pages 1, 4, 5, 7, 9-13, 15, and 16 of Attachment 4.19-D of the South Dakota Medicaid State Plan. We intend to make this SPA effective July 1, 2023. The department estimates the fiscal impact will be \$5,457,646 in State funds and \$6,784,719 in Federal funds, totaling \$12,242,365 in Federal Fiscal Year 2023 (July 1, 2023 to September 30, 2023) and \$21,830,585 in State funds and \$27,138,874 in Federal funds, totaling \$48,969,459 in Federal Fiscal Year 2024 (October 1, 2023 to September 30, 2024).

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments, may be emailed to MedicaidSPA@state.sd.us or sent to:

DIVISION OF MEDICAL SERVICES
DEPARTMENT OF SOCIAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

The public comment period will start June 5, 2023, and end July 5, 2023.

Sincerely,

South Dakota Medicaid
Department of Social Services
700 Governors Drive
Pierre, SD 57501
In-State: 1-800-452-7691
Out-of-State 605-945-5006



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Medicaid State Plan Amendment Proposal

Transmittal Number: SD-23-0012

Effective Date: 07/1/2023

Brief Description: The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

Area of State Plan Affected: Attachment 4.19-D

Page(s) of State Plan Affected: 1, 4, 5, 7, 9-13, 15, and 16

Estimate of Fiscal Impact, if Any: FFY23: \$12,242,365
FFY24: \$48,969,459

Reason for Amendment: Update the nursing facility reimbursement methodology.



South Dakota
Department of
Social Services

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF MEDICAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291
PHONE: 605.773.3495
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June 5, 2023

RE: South Dakota Medicaid State Plan Amendment #SD-23-0012

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The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments, may be emailed to MedicaidSPA@state.sd.us or sent to:

DIVISION OF MEDICAL SERVICES
DEPARTMENT OF SOCIAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

The public comment period will start June 5, 2023, and end July 5, 2023.

Sincerely,

A handwritten signature in blue ink that reads 'Renae Hericks'.

Renae Hericks
Policy and Programs Manager
Division of Medical Services
South Dakota Department of Social Services

CC: Matt Althoff, Cabinet Secretary
Sarah Aker, Director



SOUTH DAKOTA REGISTER

Published weekly by the Legislative Research Council

Volume 49

Monday, 8:00 a.m., June 5, 2023

FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

Notice of Proposed Rules

Date in parentheses indicates when rules were filed with the Legislative Research Council.

Copies of proposed rules may be obtained for no charge at <https://rules.sd.gov> or from the agency directly.

Department of Social Services: (May 31, 2023) intends to amend rules to update the nursing facility rate setting and case mix validation process to use the Patient-Driven Payment Model (PDPM) instead of the M3PI; rebase nursing facility rates to use current cost data to match with PDPM case mix data; remove the occupancy rule from direct care; remove the overall rate limit increase; move to inflation calculations based on the nursing facility market basket index; update the depreciation edition referenced in rule; reflect a change in cost ceilings for capital costs; update the case mix validation process; remove the on-site requirement for classification reviews conducted by the department; remove or repeal outdated provisions; and update the Medicaid provider reimbursement manual citation. The general authority for these rules, as cited by the department, is SDCL 28-6-1.

A public hearing will be held at the Department of Social Services Building, Prairie Conference Room, 811 East 10th Street, Sioux Falls, South Dakota, on June 22, 2023, at 11:00 a.m. (CT). Interested parties may also attend by calling (605) 679-7263 and using conference code 235 971 658#. Copies of the proposed rules may be obtained without charge from Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may be sent to Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103 or emailed to DSSAdminRules@state.sd.us. Material sent by mail must reach the department by July 2, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309, at least 48 hours before the public hearing.

South Dakota Division of Insurance (Department of Labor and Regulation): (June 1, 2023) intends to amend rules in ARSD article 20:06 to update the sources referenced in rule to the most recent editions, to clean up a broken URL for another rule, and repeal a rule for which the referenced law implemented statute will be repealed effective July 1, 2023. The general authority for these rules, as cited by the division, is SDCL 58-3-11, 58-3-26, 58-4-48, 58-5A-93, 58-6-75, 58-26-13.1, 58-26-45.1, 58-26-46, 58-27-7, 58-27-108, 58-30-117, and 58-171-16.

A public hearing will be held in the Oahe Conference Room, 124 South Euclid Avenue, 1st Floor, Pierre, South Dakota, on June 26, 2023, at 1:30 p.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, South Dakota Division of Insurance, Administrative Rules, 124 South Euclid Avenue, 2nd Floor, Pierre, South Dakota 57501. Comments may also be emailed to lisa.harmon@state.sd.us. Copies of the proposed rules are also available at http://dlr.sd.gov/insurance/admin_rules/public_hearings.aspx or by email request to lisa.harmon@state.sd.us. Information submitted in writing must be received on or before July 6, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3563 at least 48 hours before the public hearing.

State Board of Elections (Office of the Secretary of State): (June 2, 2023) intends to amend rules to change the date for a statewide runoff; prescribe the oath for a county recount board; prescribe the notice for testing automatic tabulating equipment and prescribe the method for testing such equipment; describe how to seal automatic tabulating machines; prescribe ballot box storage and security; clarify how an auditor is to conduct absentee balloting at nursing facilities, assisted living centers, and hospitals; make changes to the voter registration form; add email address and telephone number to the precinct committeeman or committeewoman statement; change the acknowledgement notice for rejected voter registrations from forwardable to non-forwardable; clarify the procedures for voter registration file security; and prescribe the oath for a post-election audit board. The general authority for these rules, as cited by the board, is SDCL 12-1-9, 12-4-35, 12-4-37, 12-4-56, 12-17B-5.2, 12-17B-17, 12-17B-18, 12-19-9.1, 12-19-9.3, and 12-21-2.

A public hearing will be held in the Secretary of State Business Office, 215 East Prospect Avenue, Pierre, South Dakota, on June 28, 2023, at 11:00 a.m. (CT). Copies of the proposed rules may be obtained without charge from the State Board of Elections, 500 East Capitol Avenue, Pierre, South Dakota 57501, or at <https://sdsos.gov> or <https://rules.sd.gov>. Written comments may be sent to State Board of Elections, 500 East Capitol Avenue, Pierre, South Dakota 57501 or emailed to elections@state.sd.us. Material sent by mail or email must reach the board seventy-two hours before the date of the hearing. This hearing is being held in a physically accessible location. Persons with special needs for which the board can make arrangements may call (605) 773-3537 at least 48 hours before the public hearing.

Notice

The **Department of Social Services** is providing an additional public comment period on the proposed changes below due to an error regarding the fiscal impact in the original notice document.

The department intends to make changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The proposed State Plan Amendment (SPA) proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data. The SPA amends pages 1, 4, 5, 7, 9, 10, 11, 12, 13, 15, and 16 of Attachment 4.19-D of the Medicaid State Plan.

The department intends to make the SPA effective July 1, 2023 and estimates the fiscal impact will be \$5,457,646 in state funds and \$6,784,719 in federal funds, totaling \$12,242,365 in Federal Fiscal Year 2023, and \$21,830,585 in state funds and \$27,138,874 in federal funds, totaling \$48,969,459 in Federal Fiscal Year 2024.

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments may be sent to Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291, or emailed to MedicaidSPA@state.sd.us. The public comment period will start June 5, 2023, and end July 5, 2023.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Executive Order

Governor Noem has signed [Executive Order 2023-08](#), dated June 2, 2023, declaring a disaster to exist in ten South Dakota counties and one reservation under provisions of [SDCL chapter 34-48A](#) due to moderate to major flooding caused by rapid snow melt along the James, Big Sioux, and Minnesota River basins. The Order declares the disaster exists in the counties of Brown, Clark, Codington, Day, Faulk, Grant, Hand, Marshall, Potter, Roberts, and for the Sisseton Wahpeton Oyate of the Lake Traverse Reservation. It states that federal resources are needed to help alleviate the impacts of the flooding for local governments in South Dakota, including damage to road infrastructure resulting in unexpected costs for emergency and permanent road repairs. The Order does not contain an expiration date.

Hericks, Renae

From: DSS Medical Services <DSSMedicalServices@STATE.SD.US>
Sent: Monday, April 24, 2023 8:11 AM
To: DSSMEDICAIDTRIBAL@LISTSERV.SD.GOV
Subject: State Plan Amendment
Attachments: SD 23-0012 SPA Package.pdf

Good Morning,

South Dakota Department of Social Services intends to make changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

The SPA amends pages 1, 4, 5, 7, 9-13, 15, and 16 of Attachment 4.19-D of the South Dakota Medicaid State Plan. We intend to make this SPA effective July 1, 2023. The department estimates the fiscal impact will be \$6,750,303 in State funds and \$10,304,530 in Federal funds, totaling \$17,054,833 in Federal Fiscal Year 2023 (July, 2023 to September 30, 2023) and \$9,000,404 in State funds and \$13,739,373 in Federal funds, totaling \$22,739,777 in Federal Fiscal Year 2024 (October 1, 2023 to September 2024).

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments, may be emailed to MedicaidSPA@state.sd.us or sent to:

DIVISION OF MEDICAL SERVICES
DEPARTMENT OF SOCIAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

The public comment period will start April 24, 2023, and end May 24, 2023.

Sincerely,

South Dakota Medicaid

Department of Social Services
700 Governors Drive
Pierre, SD 57501
In-State: 1-800-452-7691
Out-of-State 605-945-5006



This message is being sent by or on behalf of the South Dakota Department of Social Services. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, attorney-client privileged, confidential, or

otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by telephone at (605) 773-3495 or by reply transmission by e-mail, and delete all copies of the message.

The Department of Social Services does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of actual or perceived race, color, religion, national origin, sex, age, gender identity, sexual orientation or disability in admission or access to, or treatment or employment in its programs, activities, or services. For more information about this policy or to file a Discrimination Complaint you may contact: Discrimination Coordinator, Director of DSS Division of Legal Services, 700 Governor's Drive, Pierre SD 57501, 605-773-3305.

[Access the DSSMEDICAIDTRIBAL Home Page and Archives](#)

[Unsubscribe from the DSSMEDICAIDTRIBAL List](#)

Medicaid State Plan Amendment Proposal

Transmittal Number: SD-23-0012

Effective Date: 07/1/2023

Brief Description: The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

Area of State Plan Affected: Attachment 4.19-D

Page(s) of State Plan Affected: 1, 4, 5, 7, 9-13, 15, and 16

Estimate of Fiscal Impact, if Any: FFY23: \$17,054,833
FFY24: \$22,739,777

Reason for Amendment: Update the nursing facility reimbursement methodology.



South Dakota
Department of
Social Services

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF MEDICAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291
PHONE: 605.773.3495
FAX: 605.773.5246
WEB: dss.sd.gov

April 24, 2023

RE: South Dakota Medicaid State Plan Amendment #SD-23-0012

South Dakota Department of Social Services intends to make changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The SPA proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data.

The SPA amends pages 1, 4, 5, 7, 9-13, 15, and 16 of Attachment 4.19-D of the South Dakota Medicaid State Plan. We intend to make this SPA effective July 1, 2023. The department estimates the fiscal impact will be \$6,750,303 in State funds and \$10,304,530 in Federal funds, totaling \$17,054,833 in Federal Fiscal Year 2023 (July, 2023 to September 30, 2023) and \$9,000,404 in State funds and \$13,739,373 in Federal funds, totaling \$22,739,777 in Federal Fiscal Year 2024 (October 1, 2023 to September 2024).

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments, may be emailed to MedicaidSPA@state.sd.us or sent to:

DIVISION OF MEDICAL SERVICES
DEPARTMENT OF SOCIAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

The public comment period will start April 24, 2023, and end May 24, 2023.

Sincerely,

A handwritten signature in blue ink that reads 'Renae Hericks'.

Renae Hericks
Policy and Programs Manager
Division of Medical Services
South Dakota Department of Social Services

CC: Matt Althoff, Cabinet Secretary
Sarah Aker, Director



SOUTH DAKOTA REGISTER

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Monday, 8:00 a.m., April 24, 2023

FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

Notice of Proposed Rules

Date in parentheses indicates when rules were filed with the Legislative Research Council.

Copies of proposed rules may be obtained for no charge at <https://rules.sd.gov> or from the agency directly.

Department of Social Services: (April 18, 2023) intends to amend rules to repeal four chapters; add a new chapter covering the licensing requirements for family day care homes, licensed day care programs, and before and after school care; streamline and clarify rules related to group care centers, residential treatment centers, and intensive residential treatment centers; apply the 15:1 ratio for five-year-old children for a licensed program; increase by one the number of infants a family day care provider can care for; change the group size to align with the capacity of a room and for licensed programs serving twenty or less to have a ratio of 10:1 in a mixed age group with no more than four children under age two; expand the duties of a 14-year-old staff member when working at a before or after school program; remove the requirement for a family day care provider to have a physical examination; remove the limitation on the number of hours a substitute provider can be used; remove the requirement to have a staff training plan; remove the requirement for annual training for bus drivers or other staff who do not care for children; reduce the ongoing training requirements for family day care providers; and incorporate style and form edits. The general authority for these rules, as cited by the department, is SDCL 25-7A-56 and 26-6-16.

A public hearing will be held at the Department of Social Services Building, Prairie Conference Room, 811 East 10th Street, Sioux Falls, South Dakota, on May 12, 2023, at 11:00 a.m. (CT). Interested parties may also attend by calling (605) 679-7263 and using conference code 293 001 934#. Copies of the proposed rules may be obtained without charge from Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may be sent to Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103 or emailed to DSSAdminRules@state.sd.us. Material sent by mail must reach the department by May 22, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309, at least 48 hours before the public hearing.

Board of Medical and Osteopathic Examiners (Department of Health): (April 18, 2023) intends to adopt rules to create educational requirements and training for the issuance of a critical care endorsement and amend a rule to update the educational standards of athletic trainers to the 2020 Commission on Accreditation of Athletic Training Education. The general authority for these rules, as cited by the board, is SDCL 36-4B-35 and 36-29-17.

A public hearing will be held at the First Dakota National Bank building, Room 306, 101 N. Main Avenue, Sioux Falls, South Dakota, on June 8, 2023, at 9:00 a.m. (CT). Interested parties may also participate via Microsoft Teams using Meeting ID 266 402 206 906 with passcode Vmxz5B. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the South Dakota Board of Medical and Osteopathic Examiners, 101 North Main Avenue, Suite 301, Sioux Falls, South Dakota 57104. Comments may also be sent by email to SDBMOE@state.sd.us. Material sent by mail or email must reach the board by June 7, 2023, to be considered. This hearing is being held in a

physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-7781 at least 48 hours before the public hearing.

Department of Health: (April 19, 2023) intends to amend a rule to add dental hygienists to the list of professions eligible to participate in the Rural Healthcare Facility Recruitment Assistance Program. The general authority for these rules, as cited by the department, is SDCL 34-12G-12.

A public hearing will be held at the Hayes Building Conference Room, 600 East Capitol Avenue, Pierre, South Dakota, on May 16, 2023, at 1:30 p.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the Department of Health, 600 East Capitol Avenue, Pierre, South Dakota 57501. Copies of the proposed rules are also available online at <https://rules.sd.gov>. Material sent by mail must reach the department by May 26, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3361 at least 48 hours before the public hearing.

Department of Social Services: (April 21, 2023) intends to amend rules to update the Temporary Assistance to Needy Families (TANF) payment standard amounts; update federal medical services eligibility standards that are reflected in rule; update the Medicaid eligibility categories to remove the Limited Coverage Pregnancy Group; extend the eligibility for the Post-Partum Group from 60 days to 12 months; and add the new Adult Group of individuals aged 19 or older and under age 65. The general authority for these rules, as cited by the department, is SDCL 28-6-1, 28-6-18, and 28-7A-3.

A public hearing will be held at the Department of Social Services Building, Prairie Conference Room, 811 East 10th Street, Sioux Falls, South Dakota, on May 19, 2023, at 10:00 a.m. (CT). Interested parties may also attend by calling (605) 679-7263 and using conference code 385 249 439#. Copies of the proposed rules may be obtained without charge from Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103. The rules are also available online at <http://rules.sd.gov>. Comments may be sent to Teresa Schulte, Administrative Rules, Department of Social Services, 811 East 10th Street, Sioux Falls, South Dakota 57103 or emailed to DSSAdminRules@state.sd.us. Material sent by mail must reach the department by May 29, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 367-5444, extension 1000309, at least 48 hours before the public hearing.

Notice

The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan regarding Nursing Facility reimbursement. The proposed State Plan Amendment (SPA) proposes to move South Dakota Medicaid from the Resource Utilization Group III (RUG III) reimbursement model to the Patient Driven Payment Model (PDPM) reimbursement model for Nursing Facility services. The reimbursement rates will also be updated to the provider fiscal year 2021 cost report period and PDPM case mix data. The SPA amends pages 1, 4, 5, 7, 9, 10, 11, 12, 13, 15, and 16 of Attachment 4.19-D of the Medicaid State Plan.

The department intends to make the SPA effective July 1, 2023 and estimates the fiscal impact will be \$6,750,303 in state funds and \$10,304,530 in federal funds, totaling \$17,054,833 in Federal Fiscal Year 2023, and \$9,000,404 in state funds and \$13,739,373 in federal funds, totaling \$22,739,777 in Federal Fiscal Year 2024.

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments may be sent to Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291, or emailed to MedicaidSPA@state.sd.us. The public comment period will start April 24, 2023, and end May 24, 2023.