



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

May 3, 2024

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-24-0008

Dear Dr. Abbott:

Please find enclosed South Dakota's Medicaid State Plan Amendment (SPA) SD-24-0008. The SPA allows for coverage of select over-the-counter drugs manufactured by a firm that does not have a signed rebate agreement with the United States Department of Health and Human Services. South Dakota Medicaid is implementing coverage of iron supplements for pregnant women through this amendment. The SPA also allows for South Dakota Medicaid to enter into value-based agreements with manufacturers on a voluntary basis, which would allow the state to recoup partial payment for select high-cost drugs if a drug does not achieve agreed upon health outcomes. The SPA amends page 20 of Supplement to Attachment 3.1-A of the Medicaid State Plan. The Department intends to make this SPA effective April 1, 2024.

The Department estimates the federal fiscal impact associated with this SPA to be \$20,393 Federal Fiscal Year 2024 and \$27,214 in Federal Fiscal Year 2025.

The State conducted Tribal Consultation beginning with notification on March 18, 2024. We have attached a copy of the notification sent to the Tribes. Public notice was published in the South Dakota *REGISTER*, <https://mylrc.sdlegislature.gov/api/Documents/Register/267398.pdf> on March 18, 2024. No comments were received.

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,

A handwritten signature in black ink, appearing to read 'Heather Petermann', written in a cursive style.

Heather Petermann
Director

CC: Matt Althoff, Cabinet Secretary
Matthew Ballard, Deputy Director

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2. STATE

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT

XIX

XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY _____ \$ _____

b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

11. SIGNATURE OF STATE AGENCY OFFICIAL

Heather Petermann

15. RETURN TO

12. TYPED NAME

13. TITLE

14. DATE SUBMITTED

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

SUPPLEMENT TO ATTACHMENT 3.1-A

12a. Prescribed Drugs

Any covered outpatient drug may be subject to prior authorization, and the agency maintains a list of drugs requiring prior authorization. Prescribing physicians, pharmacists, and/or designated representatives may contact the Medicaid Prior Authorization Unit via 1-800 phone or fax lines, mail or encrypted e-mail to request prior authorization. The program will issue responses within 24 hours of the request. Pharmacies may dispense a 72-hour supply of a prior authorized product in the event of an emergency. The program complies with requirements set forth in OBRA 1990 and 1993 pertaining to prior authorization programs.

Supplemental Rebates

Pursuant to Section 1927 of the Act, the State has the following policies for Medicaid supplemental rebates:

South Dakota participates in the Sovereign States Drug Consortium (SSDC) Medicaid multi-State purchasing pool. SSDC will negotiate supplemental rebates for South Dakota. The state retains all options to accept or reject offers. Drugs of manufacturers who do not participate in the supplemental rebate program will still be available to Medicaid recipients.

A model rebate agreement between the state and a drug manufacturer for drugs provided to the Medicaid population, submitted to the Centers for Medicare & Medicaid Services (CMS) with SPA TN # 22-0012, and entitled "SSDC South Dakota Medicaid Supplemental Drug Rebate Agreement" has been authorized by CMS. Any substantive modification to the agreement will be submitted to CMS for authorization.

Per Section 1927 (b)(3)(D) of the Social Security Act the unit rebate amount is confidential and cannot be disclosed. Funds received from supplemental rebate agreements will be reported to CMS. The state will remit the federal portion of any supplemental rebates collected.

Over-the-Counter Drugs

Select over-the-counter (OTC) drugs are covered if they are prescribed by a physician (or other person authorized to prescribe). The list of covered OTC drugs can be found in the Pharmacy Provider Manual.

Excluded Items

The program does not cover the following items:

1. Delivery charges;
2. Agents when used for the treatment of sexual or erectile dysfunction;
3. Items manufactured by a firm that has not signed a rebate agreement with the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services except for select OTC drugs;
4. Drugs and biologicals which the federal government has determined to be less than effective;
5. Experimental items.

The program does not cover any Medicare Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B. (See **Attachment 3.1-A.1** for specific coverage.)

Value Based Agreements

South Dakota may enter into a value-based agreement on a voluntary basis.

Hericks, Renae

From: DSS Medical Services <DSSMedicalServices@STATE.SD.US>
Sent: Monday, March 18, 2024 12:07 PM
To: DSSMEDICAIDTRIBAL@LISTSERV.SD.GOV
Subject: State Plan Amendment
Attachments: Notice Package 24-0008.pdf

Good Afternoon,

The South Dakota Department of Social Services intends to amend the South Dakota Medicaid State Plan regarding prescribed drugs. The SPA allows for coverage of select over-the-counter drugs manufactured by a firm that does not have a signed rebate agreement with the United States Department of Health and Human Services. South Dakota Medicaid is implementing coverage of iron supplements for pregnant women through this amendment. The SPA also allows for South Dakota Medicaid to enter into value-based agreements with manufacturers on a voluntary basis, which would allow the state to recoup partial payment for select high-cost drugs if a drug does not achieve agreed upon health outcomes. The SPA amends page 20 of Supplement to Attachment 3.1-A of the Medicaid State Plan. The Department intends to make this SPA effective April 1, 2024.

The department estimates the fiscal impact associated with this SPA to be \$13,607 in State funds and \$20,393 in Federal funds, totaling \$34,000 in Federal Fiscal Year 2024 (April 1, 2024 to September 30, 2024) and \$40,786 in State funds and \$27,214 in Federal funds, totaling \$68,000 in Federal Fiscal Year 2025 (October 1, 2024 to September 30, 2025).

The SPAs are 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 March 18, 2024, and end April 17, 2024.

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.

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March 18, 2024

RE: South Dakota Medicaid Plan Amendment # SD-24-0008

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700 GOVERNORS DRIVE
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The public comment period will start March 18, 2024, and end April 17, 2024.

Sincerely,

Matthew Ballard
Deputy Director
Division of Medical Services
South Dakota Department of Social Services

CC: Matt Althoff, Cabinet Secretary
Heather Petermann, Director

Medicaid and CHIP State Plan Amendment Proposal

Transmittal Number: SD-24-0008

Effective Date: 4/1/2024

Brief Description: Allows for coverage of select over-the-counter drugs manufactured by a firm that does not have a signed rebate agreement with the United States Department of Health and Human Services, including iron supplements for pregnant women. The SPA also allows for South Dakota Medicaid to enter into value-based agreements with manufacturers on a voluntary basis.

Area of State Plan Affected: Supplement to Attachment 3.1-A

Page(s) of State Plan Affected: Page 20

Estimate of Fiscal Impact, if Any: FFY24: \$34,000
FFY25: \$68,000

Reason for Amendment: To expand over-the-counter drug coverage and allow for value-based agreements with drug manufacturers.



SOUTH DAKOTA REGISTER

Published weekly by the Legislative Research Council

Volume 50

Monday, 8:00 a.m., March 18, 2024

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 Game, Fish and Parks: (March 14, 2024) intends to amend rules to clarify where an individual could hunt on private lands leased for public hunting access; modify methods used for identification on tree stands, platforms, and portable blinds; alter where an individual could place bait stations; change the options for placing owner identification information on unattended trail cameras; clarify that permission must be obtained to use trail cameras on private land leased by the department for hunting access; clarify that the Oahe Downstream Recreation Area, West Shore Lake Access Area, and other areas north of Fort Pierre observe the Central Time zone; adjust counties for the August Management Take hunting season unit; revise the number of available nonresident waterfowl licenses; adjust the number of "any elk" and "antlerless elk" licenses for the Black Hills and Custer State Park elk hunting seasons; modify the maximum number of "any elk" licenses and provide the option for "antlerless elk" licenses for the Custer State Park early archery elk hunting season; modify the maximum number of "any elk" and "antlerless elk" licenses for the archery elk hunting season; revamp unit boundary descriptions for Black Hills archery elk and Black Hills firearm elk hunting units; adjust the number of "antlerless elk" licenses for the Special Custer State Park antlerless elk hunting season; modify unit boundary descriptions for the bighorn sheep hunting season; specify the maximum number of ram bighorn sheep licenses available; modify the number of "any elk" and "antlerless elk" licenses for the prairie elk hunting season; and adjust unit boundary descriptions for the prairie elk hunting season. The general authority for these rules, as cited by the department, is SDCL [41-2-18](#), [41-6-18.2](#), [41-6-18.4](#), [41-6-21](#), [41-11-5](#), and [41-17-1.1](#).

A public hearing will be held at the Matthews Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, on April 4, 2024, at 2:00 p.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments on the proposed rules may be sent to, the Secretary of the Department of Game, Fish and Parks, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. The rules are also available online at <https://rules.sd.gov>. Comments may also be submitted at <http://gfp.sd.gov/forms/positions>. All written and email comments must include the name, city, and state of the person submitting them. The comment period will close 72 hours prior to the date of the hearing. This hearing is being held in a physically accessible location. Persons with special needs for which the department can make arrangements may call (605) 773-3718 or (605) 223-7684 (Telecommunication Device for the Deaf).

Notice

The **Department of Social Services** intends to amend the South Dakota Medicaid State Plan regarding prescribed drugs. The proposed state plan amendment (SPA) allows for coverage of select over-the-counter drugs manufactured by a firm that does not have a signed rebate agreement with the United States Department of Health and Human Services. South Dakota Medicaid is implementing coverage of iron supplements for pregnant women through this amendment. The SPA also allows for South Dakota Medicaid to enter into value-based agreements with manufacturers on a voluntary basis, which would allow the state to recoup partial payment for select high-cost drugs if a drug does not achieve agreed upon health outcomes. The SPA amends page 20 of Supplement to Attachment 3.1-A of the Medicaid State Plan.

The department intends to make this SPA effective April 1, 2024, and estimates its fiscal impact will be \$13,607 in state funds and \$20,393 in federal funds, totaling \$34,000 in Federal Fiscal Year 2024, and \$40,786 in state funds and \$27,214 in federal funds, totaling \$68,000 in Federal Fiscal Year 2025.

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 the Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291. The public comment period will start March 18, 2024, and end April 17, 2024.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Executive Appointments

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
Board of Massage Therapy Thor R. Thonvold Watertown	Governor	Christine Ellwein	3/15/2024 – 10/30/2026
State Board of Medical and Osteopathic Examiners Heather N. Spies Sioux Falls	Governor	Jeffrey Murray	3/15/2024 – 10/30/2026

SCHEDULED PUBLIC HEARINGS

3-19-2024	South Dakota Commission on Gaming (Department of Revenue) : Amend a rule to add an additional pay level to the TriLux Bonus Blackjack with Super 3 table game; 50 SDR 101, February 26, 2024.
3-25-2024	Department of Health : Amend a rule to correct language to clarify that home health agency personnel and hospice providers are required to be Medicare-certified, not Medicaid-certified; 50 SDR 104, March 4, 2024.
4-4-2024	Department of Game, Fish and Parks : Amend rules to clarify where an individual could hunt on private lands leased for public hunting access; modify methods used for identification on tree stands, platforms, and portable blinds; alter where an individual could place bait stations; change the options for placing owner identification information on unattended trail cameras; clarify that permission must be obtained to use trail cameras on private land leased by the department for hunting access; clarify that the Oahe Downstream Recreation Area, West Shore Lake Access Area, and other areas north of Fort Pierre observe the Central Time zone; adjust counties for the August Management Take hunting season unit; revise the number of available nonresident waterfowl licenses; adjust the number of "any elk" and "antlerless elk" licenses for the Black Hills and Custer State Park elk hunting seasons; modify the maximum number of "any elk" licenses and provide the option for "antlerless elk" licenses for the Custer State Park early archery elk hunting season; modify the maximum number of "any elk" and "antlerless elk" licenses for the archery elk hunting season; revamp unit boundary descriptions for Black Hills archery elk and Black Hills firearm elk hunting units; adjust the number of "antlerless elk" licenses for the Special Custer State Park antlerless elk hunting season; modify unit boundary descriptions for the bighorn sheep hunting season; specify the maximum number of ram bighorn sheep licenses available; modify the number of "any elk" and "antlerless elk" licenses for the prairie elk hunting season; and adjust unit boundary descriptions for the prairie elk hunting season; 50 SDR 109, March 18, 2024.