

This brief lists legislation passed during the 2021 Session of the South Dakota Legislature and a brief description of anticipated impacts to health care providers. A full list of legislation monitored by SDAHO is available on SDAHO's [2021 bill tracker](#).

Medicaid Reimbursement

- **[Senate Bill 32: Access Critical Nursing Facilities](#)** | SDCL [34-12-35.5](#)
 - Creates three new access critical nursing facilities in Madison, Platte, and Sisseton. Removes the requirement for an access critical nursing facility to provide skilled services. Replaces nursing facility demand in the county with a 60-bed limit on the 5-year average of occupied beds in the nursing facility.
- **[Senate Bill 167: Regional Nursing Facilities](#)** | SDCL [34-12-35.12](#)
 - Creates a new designation and Medicaid payment methodology for regional nursing facilities. To qualify, nursing facilities must be in good standing with South Dakota Medicaid, provide HCBS services, and construct or substantially remodel a nursing facility by merging with one or more health facilities within a 30-mile radius.
 - Grant funding is available for project evaluation and planning as well as for remodeling a vacated nursing facility. Grant instructions and applications are available at <https://dhs.sd.gov/nfgrants.aspx>
- **[Senate Bill 195: FY 2022 Appropriations & Rate Increases](#)**
 - Appropriates rate increases for State Fiscal Year 2022:
 - 2.4% Increase for all Medicaid Providers
 - 8.6% Increase for Long Term Care (Nursing Home and Assisted Living)
 - Updated Medicaid Fee Schedules are available at <https://dss.sd.gov/medicaid/providers/feeschedules/dss/>

COVID-19

- **[House Bill 1046: COVID Liability Relief](#)** | SDCL [21-68-1 to 21-68-6](#)
 - Limits liability for COVID-19 and protects healthcare facilities and professionals for actions or inactions that occurred due to COVID-19 after January 1, 2020, including the use of pharmaceuticals for an unapproved use, screening, assessing, diagnosing, caring for, or treating persons with COVID-19, as well as delays or cancelling of non-urgent care, and diagnosing or treating patients outside the normal scope of care.
- **[House Bill 1060: Death Certificates and Communicable Diseases](#)** | SDCL [34-25-24.1](#)
 - Requires health care facilities to notify the funeral director of individual who assumes custody of a dead body if the body at the time of death had a communicable disease or condition subject to public health emergency.
- **[House Bill 1139: Visitation Policies in Assisted Livings](#)** | SDCL [34-12-67 to 34-12-69](#)
 - Authorizes visitation rights for residents of assisted livings.
 - Requires assisted living facilities to post visitation policies on their website, if one exists, and in their

facilities. Facilities must provide notice to residents and designated family members of visitation restrictions. Restrictions on visitation must be reviewed every 30 days and cite sources for any continued restrictions.

- **[Senate Bill 3: COVID Public Health Directives](#)** | SDCL [34-22-18.1](#)
 - Allows the South Dakota Department of Health to continue to enforce public health directives related to COVID-19 until June 30, 2022. The department may not require anyone to vaccinated by order of a public health directive.

Health Insurance

- **[House Bill 1131: Primary Care Agreements](#)** | SDCL [34-54-1 to 34-54-4](#)
 - Allows primary care providers to enter into direct primary care agreements with patients. Primary care agreements allow patients to receive primary care services for an agreed-upon fee for a specified period. Primary care agreements are exempt from South Dakota insurance regulations under [Title 58](#).
- **[Senate Bill 55: Health Insurance Innovation Waivers](#)** | SDCL [58-48-1 - 58-48-16](#)
 - Allows the South Dakota Division of Insurance grant waivers to test an innovative insurance product or service. Waiver applications must demonstrate:
 - That a current law or regulation impedes the innovation;
 - The public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;
 - The waiver will not unreasonably increase risk to consumers; and
 - The waiver is in the public interest.
- **[Senate Bill 87: Agricultural Health Benefit Plan](#)** | SDCL [58-1-3.4](#)
 - Exempts a health plan self-funded by Farmer’s Union from South Dakota insurance regulations under [Title 58](#).
- **[Senate Bill 178: Genetic Testing and Life Insurance](#)** | SDCL [58-1-24](#), [58-1-25](#), and [58-1-25.1](#)
 - Prohibits genetic testing companies from sharing any test or genetic information with any health carrier, life insurer, or long-term care insurer without written consent from the consumer.

Health Professionals

- **[House Bill 1004: Medical Assistant Registration](#)** | SDCL [36-9B](#)
 - Repeals registration requirements for medical assistants.
- **[House Bill 1005: EMT Students](#)** | SDCL [36-4B-1 - 36-4B-13](#)
 - Repeals the student status license requirement for emergency medical technicians.
- **[House Bill 1014: Licensure Complaint & Grievance Procedures](#)** | SDCL [36-1C](#)
 - Establishes uniform complaint procedures and timelines for all licensed professionals. Requires licensure boards or agencies to serve licensed professionals with a copy of the complaint and requires a response to the complaint within 20 days. Upon review of the complaint and the response, complaints may be dismissed for lack of probable cause or forwarded for further investigation. Upon completion of investigation, complaints may be dismissed, resolved by informal disposition, or settled with a formal hearing. Failure of licensed professionals to comply with the complaint process is

grounds for disciplinary action.

- **[House Bill 1065: EMT Licensure Compact](#)** | SDCL [34-11C-1](#)
 - Adopts the emergency medical personnel licensure interstate compact to allow emergency medical technicians (EMTs), advanced EMTs and paramedics licensed in a member state to be licensed in South Dakota.
 - All states must use the National Registry of Emergency Medical Technicians (NREMT) examination for initial issuing of licenses.
 - There are 22 member states including Alabama, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

- **[House Bill 1077: Licensure by Endorsement](#)** | SDCL [36-1D-1 to 36-1D-4](#)
 - Allows for licensure by endorsement by any licensing board or agency for any profession if the applicant satisfies certain conditions:
 - Holds a current license from another state or country deemed substantially equivalent;
 - Demonstrates competency in the profession or occupation through methods determined by the licensing board;
 - Has not committed any act that constitutes grounds for refusal;
 - Is in good standing with the jurisdiction that issued the license; and
 - Pays fees established by the licensing board.

- **[House Bill 1154: Non-Compete Contracts](#)** | SDCL [53-9-11](#) and [53-9-11.1](#)
 - Prohibits employment contracts containing non-compete provisions for physicians, physician assistants, certified nurse practitioners, certified nurse midwives, certified registered nurse anesthetists, registered nurses, and licensed practical nurses.
 - Contracts may not restrict the right of a provider to: Practice in any geographic area and for any period of time, after the termination of employment, establish a provider-patient relationship with any current patient of the employer, solicit or seek to establish a provider-patient relationship with any current patient of the employer.
 - Read SDAHO’s Legislative Brief at <https://sdaho.org/wp-content/uploads/2021/03/HB-1154-Non-Compete-Impacts.pdf>

- **[House Bill 1179: Physician Wellness Program](#)** | SDCL [36-2A-16 - 36-2A-19](#)
 - Allows the South Dakota State Medical Association or a similar organization to operate a physician wellness program to address issues related to career fatigue or wellness in a person licensed to practice medicine or osteopathy under chapter 36-4 or a physician assistant under chapter 36-4A.

- **[House Bill 1195: CRNA Recruitment Assistance](#)** | SDCL [34-12G-3](#)
 - Allows certified registered nurse anesthetists (CRNAs) to participate in the [South Dakota Department of Health Recruitment Assistance Program](#).
 - Eligible CRNAs must be licensed under SDCL § [36-9-3.1](#) and agree to practice in an eligible rural community for a minimum of three years.

- **[Senate Bill 4: Health Professionals Assistance Program](#)** | SDCL [36-2A](#)
 - Allows boards to contract with another entity to provide the health professional assistance program and establishes standards: personnel qualifications related to management of mental health and

substance use issues, admission criteria, criteria for denial of admission, program participation components, termination criteria, and successful discharge criteria.

- Boards may use the program as an alternative to, or in conjunction with other sanctions imposed by the board.

Reproductive Health

- **House Bill 1051: Maintain the Life of Child Born Alive** | SDCL [34-23A-16](#) and [34-23A-16.2](#)
 - Requires physicians to provide medical care to any child born alive as a result of an attempted abortion. Creates a new definition of born alive to include a human being that breathes, has a beating heart, has a pulsation of the umbilical cord, or has definite movement of voluntary muscles.
 - Creates civil and disciplinary cause of action against physicians in instances where a child is born alive and/or for non-compliance with the provision of medical care to a child born alive. Disciplinary actions include suspension and/or revocation of the physician's license.
 - Requires reporting of infants who survive an abortion attempt, medical action taken to preserve the life of an aborted child born alive, and the outcome for an aborted child born alive, including survival, death and location of death.
- **House Bill 1110: Abortions due to Down Syndrome** | SDCL [34-23A-89](#) to [34-23A-93](#)
 - Prohibits performing or attempting to perform an abortion because an unborn child has been diagnosed with Down syndrome or a genetic screening has indicated they may have Down syndrome. Down syndrome is defined to be a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.
 - Creates a Class 6 felony penalty for physicians performing an abortion due to Down syndrome. Additional civil actions may be brought against the physician and abortion facility.
 - Provisions do not apply to any abortion necessary to save the life of the pregnant woman.
- **House Bill 1114: Revised Definition of Abortion** | SDCL [34-23A-1](#) and [34-23A-45](#)
 - Revises the definition of abortion from the termination of pregnancy with the knowledge that the end of the pregnancy will cause the death of the fetus, to "intentional termination of the life of a human being in the uterus."
- **House Bill 1130: Drug-Induced Abortion Written Statement** | SDCL [34-23A-10.1](#)
 - Requires a pregnant woman has been administered Mifepristone or another drug approved for the same use to be given a written notice containing instructions for if she wishes to give birth and not take the second pill and contact information for physicians or other entities that provide assistance to women seeking to discontinue an abortion.
- **Senate Bill 83: Perinatal Hospice** | SDCL [34-23B-7](#) to [34-23B-9](#)
 - Requires the South Dakota Department of Health (DOH) to develop a website and brochure describing perinatal hospice programs, a list of perinatal hospice providers and programs in South Dakota, a list of programs in surrounding states providing care to South Dakota residents, and a list of other perinatal hospice resources.
 - Requires healthcare providers to provide the mother of a child diagnosed with a lethal fetal anomaly with the information developed by DOH.
- **Senate Bill 183: Contracts Regarding Abortion** | SDCL [22-17-14](#), [37-24-6](#), and [53-9-13](#)
 - Makes a contract void and unenforceable if it coerces or compels a pregnant woman to undergo an

abortion, results in a breach of any term of the contract if a pregnant woman refuses to undergo an abortion, or results in the pregnant woman assuming any cost or obligation for refusing to undergo an abortion.

- Creates a Class 1 misdemeanor for anyone who coerces or compels a pregnant woman to undergo an abortion, results in a breach of any term of the contract if a pregnant woman refuses to undergo an abortion, or results in the pregnant woman assuming any cost or obligation for refusing to undergo an abortion. Subsequent offenses are a Class 6 felony.

Release of Information in Abuse and Neglect Cases

- **Senate Bill 5: Child Abuse Disclosures** | SDCL [26-8A-1326-8A-13](#)
 - Adds legal parents and guardians to the list of parties who may receive information related to reports of the child's abuse or neglect.
- **Senate Bill 31: Adult Abuse Disclosures** | SDCL [1-36A-29.1](#)
 - The Department of Human Services (DHS) may release adult protective services records, files or other information to healthcare professionals providing diagnosis or treatment for a person who is suspected or found to be abused, neglected, or exploited. Records released by DHS must remain confidential except as allowed by court order.

Other

- **Senate Bill 7: Restitution in Criminal Cases** | SDCL [23A-28-2](#)
 - Allows Medicaid and other government agencies to qualify as victims for purposes of restitution in criminal cases.
- **Senate Bill 20: Controlled Substances** | SDCL [34-20B-12 - 34-20B-25](#)
 - Places certain substances on the controlled substance schedule.
 - Schedule I: Isotonitazene, Crotonyl fentanyl, Brorphine, and Pentylone
 - Schedule II: Nalbuphine, Nalmefene, Naltrexone, 6β-naltrexol, Norfentanyl, Oliceridine amine fumarate
 - Schedule IV: Cenobamate, Lasmiditan, Lemborexant, and Remimazolam
 - Epidiolex was removed from Schedule IV.
- **Senate Bill 96: Telehealth** | SDCL [34-52-1 - 34-52-3](#)
 - Revises the definition of telehealth to allow for the use of audio-only telephone, e-mail, text message, and other electronic services. Requires that technology be sufficient to evaluate, diagnosis, and appropriately treat a patient in line with applicable standards of care.
 - Removes the requirement for a provider-patient relationship to exist prior to the delivery of telehealth.

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