SD Agencies Receive National Recognition

by Sandy Stocklin Hook

South Dakota Parent Connection (SDPC), with offices in Sioux Falls and Rapid City, and South Dakota Advocacy Services (SDAS), with offices in Pierre, Sioux Falls, Yankton, and Rapid City, have recently been recognized as one of three exemplar programs in the United States for collaboration in providing parents of children/youth with disabilities with training, resources, and assistance to meet the needs of their children.

SDPC Executive Director, Elaine Roberts, noted that SDPC is the Parent Training and Information Center (PTI) for South Dakota. She said, “Every state has at least one PTI or Community Parent Resource Center and this network of centers is focused on assisting and empowering parents to take an active role in their child’s education.”

SDPC Associate Director, Lisa Sanderson, added, “For more than 28 years SDPC has worked with families of children birth through age 26.” She said SDPC works to:

- Assist families to obtain appropriate education for their children;
- Improve education results for all children;
- Train and inform parents and the professionals who work with their children;
- Connect families to community resources to address the unique needs of their children;
- Empower families to be the decision makers for their children; and
- Develop collaboration with organizations and agencies that serve children and youth with special needs.

Robert J. Kean, Executive Director for SD Advocacy Services, explained that SDAS is South Dakota’s designated protection and advocacy (P&A) system. “P&As are mandated under various federal statutes to provide legal representation and other advocacy services to all eligible persons with disabilities,” remarked Kean. The services are provided through a variety of vehicles: individual representation; education of policy makers; advocacy for groups; information and referral services; rights education; and self-advocacy training.

Exemplar Programs

(Continued on page 2)
Exemplar Programs
(Continued from page 1)

Program Director for the Protection & Advocacy Developmental Disabilities (PADD) Program, Tim Neyhart, explained that P&As accomplish their goals “by pursuing legal, administrative, and other appropriate remedies under all appropriate federal, state, and local laws.” Neyhart went on to say, “We always try to resolve issues at the lowest possible level.”

South Dakota Advocacy Services is made up of eight component programs:

- Protection and Advocacy Developmental Disabilities Program (PADD);
- Client Assistance Program (CAP);
- Protection and Advocacy for Individuals with Mental Illness Program (PAIMI);
- Protection and Advocacy Individual Rights Program (PAIR);
- Protection and Advocacy of Persons with a Spinal Cord Injury Program (PAISCIP).
- Protection and Advocacy for Beneficiaries of Social Security Program (PASSB);
- Protection and Advocacy Traumatic Brain Injury Program (PABTBI); and
- Protection and Advocacy Vote Act (PAVA).

SDPACS and SDAS collaborate on many projects, including the SDAS statewide training course, Partners in Policymaking, now in its 22nd year in South Dakota. This training is a self-advocacy, leadership program designed to empower self-advocates and family members of individuals with disabilities. Another collaborative program is the SDPC Navigator Program. Roberts said, “These two programs are where we cooperate and work together to empower those we serve to advocate and practice. First and foremost, we work as partners, not in competition. We share data and information on an ongoing basis.”

Neyhart remarked, “Our collaboration began when SDPC was born 28 years ago. Robert and Elaine worked together with the group that created the PTBI in South Dakota.” Sanderson explained the comment, saying, “We share the same vision. SDPC’s mission is to connect families caring for children and youth with the full range of disabilities or special health care needs to information, training, and resources in an environment of support, hope, and respect. SDAS is one of those key connections.”

“Where do we go from here?” remarked Keen. “We will continue to strengthen our current work through joint publications. We will build toward longer term projects, such as the guide, What Parents Should Know... About Special Education in South Dakota, which was written by SDAS Legal Affairs Director, John Hamilton, with collaboration from

South Dakota Advocacy Services (SDAS) is an independent (not a part of state or federal government or any service provider), private, non-profit corporation established in the State of South Dakota and designated by Governor to provide protection and advocacy services to eligible South Dakotans with disabilities. SDAS is funded in part by the U.S. Department of Health and Human Services, U.S. Department of Education, and Social Security Administration. Articles are intended for informational purposes only and are not intended as legal advice. Comments on SDAS services and priorities are welcome.

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Love It or Hate It – The Story of the Transforming Grip E-Raser
by Gail C. Eichstadt

We have all seen the colorful triangle pencil grip. School use it to promote appropriate writing grip. People find it eliminates finger cramps when writing. Businesses give them away as a promotional item. People either love them and use them regularly or never use them. There is an interesting story behind this little writing aid.

Back in November of 1962, I lived in Akron, Iowa, and attended fourth grade. It was my family’s turn to host the extended family Thanksgiving meal. Great Aunt Margaret attended that year, which was unusual since she lived on the West Coast. Prior to her visit, she chanced to see her nephew, James E. Hoyle, of Fillmore, California. James was an inventor, and Aunt Margaret brought samples of his latest invention, the “Grip E-Raser.” The Grip E-Raser was a colored triangle about an inch and a half long. It slipped over the sharpened end of a pencil and, as its name suggests, was intended as both a grip and an eraser.

We rounded up pencils, paper, and fitted the Grip E-Rasers on the pencils. Everyone wrote a few letters and tried erasing them. I took my turn, writing a few words and trying to erase them. The Grip E-Raser smeared my words and did not erase well at all. I thought “This thing isn’t going anywhere!”

Time passed. On October 19, 1977, James applied for a patent on “a removable finger grip adaptable to a wide variety and size of writing instruments.” Patent 40467347 was published on September 11, 1979. James evidently also realized the Grip E-Raser was not going anywhere as an eraser.

When I checked the Kies family history book, I discovered James was born in Hurley, South Dakota, on December 1, 1923. He was the youngest child of Earl and Katherine Kies Hoyle, my Great Uncle and Aunt. Aunt Katherine and Aunt Margaret were sisters of my grandfather, Fred Kies.

I also found a photocopied page from a school catalogue prominently displaying a larger than life “Grip-Rite.” James had manufactured, promoted, and renamed his Grip-E-Raser. [I suspect my mother, an elementary school secretary for 36 years in Akron, added the page showing her cousin’s invention.] The Grip-Rite description stated, “It’s the greatest school invention since the pencil!” The text further described the invention as, “A soft vinyl writing aid, which assures correct finger position, and eliminates cramped fingers. Fits all standard-sized pencils. A ‘must’ in every school! Only 20 cents each – in poly bags of 25.”

Currently, James’ invention, now called “The Classic Triangle Grip,” is available online and at office supply stores, ranging in price from $0.25 to $0.49 for the super-size for larger pens and pencils. James died several years ago. During his life, he received at least three other patents on the lap desk, a process for sheet lamination, and the Acm Arc (adjustable ruler with radius arc) for engineers.

Almost 52 years after my introduction to the Grip-E-Raser, I use two of the grips on my pens and pencils. Using only one grip pokes my hand. James did not realize his Grip-E-Raser was too short. My older sister does not remember the Grip-E-Raser from 1962, but believes that it must have been the precursor for all the soft pencils grips seen now.

James and I never met, but I have memories of his parents. It is probably a good thing he never heard my first opinion about his Grip E-Raser. Now, I wish he knew how often I, along with many others, use his invention.

Meet the Board – Juanita Harrington

Juanita Harrington joined the SDAS Board of Directors last October. She lives on a ranch Northeast of Piedmont, in her husband, LeRoy. Harringtons have seven children: Toni (Shawn) Hill, Tea, SD; Joe (Cady) Harrington, Puyallup, WA; Levi (Kari) Harrington, Minneapolis; Paige Jacomet, Sundance, WY; and Frank, Dalton, and McKenzie Harrington of Piedmont. Juanita worked for the Douglas School District for 18 years. Prior to that, she took in foster children for 18 years.

Juanita attended Year 19 of Partnered in Policymaking and that experience completely changed her life. She successfully ran for the Meade County School Board; she is completing her third year and running for a second term. She has been on the SDAS PADD Advisory Council for three years prior to joining the Board of Directors. Juanita has dedicated her life to advocating for children with different abilities and is now helping adults as well. “Three of our children came to us with different abilities and have taught me so much more than any degree could.”
Tech Bytes
By Valorie Ahrendt

With summer right around the corner, this installment of Tech Bytes highlights assistive technology that can make it easier for people with physical limitations to enjoy warm weather activities right along with their family and friends.

Power Fish’n Pro

The Power Fish’n Pro features a Shakespeare spinning reel fitted with an electric motor to facilitate the fishing experience. A user can manually hand crank the line in, or, with the touch of a switch, the motor will reel in the line with a big beautiful rainbow trout dangling from the hook. While the Power Fish’n Pro cannot guarantee a big catch, it does allow users to fish longer without reaching fatigue and assists those who may have limited arm strength. The reel can quickly and easily attach to any standard fishing rod and runs on 4 AA batteries. For more information on the additional features of this power reel, visit the Rock Island Equipment Company at www.powerfishn.com.

On the topic of fishing, how about the Wheelchair Fishing Rod Holder?

Wheelchair Fishing Rod Holder

The holder attaches to virtually all wheelchairs with an adjustable clamp. The PVC portion of the device features a long groove allowing the fishing rod to slide completely into the holder. It is easy to attach and remove. For more information, go to www.adaptivesportsequipment.com.

The Extenda-Ball Pickup

Golf is also a fun warm-weather activity. Those with bending or squatting limitations, however, may have a difficult time retrieving the ball from the ground or hole. The Extenda-Ball Pickup is a great way to retrieve golf balls. A steel telescopic tube with a claw pickup tool at the end can extend up to 25 inches. Position the claw over the ball and press down until the ball snaps into place. The ball can be easily removed from the claw. Additional information can be found at www.adaptivesportsequipment.com.

As in each edition of the South Dakota Report, I like to highlight a couple of apps that may be helpful for people with disabilities. People using iPads, iPods, and iPhones are able to find an enormous amount of apps to choose from for their Apple operating system. Android users also have many apps to choose from, but not nearly as many options as Apple users. That holds true for apps that are developed for persons with disabilities or “special needs” apps as they are sometimes listed. Most of the special needs apps are made for the Apple devices. When an app is released for the Android operating system to assist persons with disability-related needs, it is worth noting.

(Continued on page 5)
Exemplar Programs
(Continued from page 2)

SDPC and SD Department of Education. Over 25,000 copies have been distributed.”

All four agreed that SDPC and SDAS will continue to do what they have done for the last 28 years. “We will communicate in an environment of mutual respect to improve the lives of the families and individuals we serve.”

Both agencies are non-profit and do not charge for their services. The SDPC PTI is funded by the US Department of Education, Office of Special Education Programs (OSEP). The SDAS PADD Program receives funding from the Department of Health and Human Services.

For more information, contact SDPC by calling 1-800-640-4533, visiting www.sdparent.org, or emailing sdpc@sdparent.org. Contact SDAS by calling 1-800-658-4782, visiting www.sdadvocacy.com, or emailing sdas@sdadvocacy.com.

The TextMinder app allows you to schedule text reminders to be sent to your Smartphone at the days and times you specify, repeating as often as you choose. Remind yourself when to take your medications, pay bills, feed pets, get ready for work, get to doctor appointments, and anything else that you need to remember. For individuals who have difficulty with memory, this app would be very helpful. The TextMinder service does not charge you for each text; however, your phone carrier’s standard text messaging policies and rates apply.
Informed Consent and the use of Public Benefits / Private Insurance: Know Your Rights

by Tim Neyhart

Every year, the Intake Specialists at South Dakota Advocacy Services receive several calls regarding the use of Medicaid and private insurance to pay for special education services. The callers often want to know if this practice is allowed under state and federal rules. The simple answer to that question is “yes.” A complete answer is a bit more involved.

Public school districts have the ability to ask parents to allow the school to charge or bill public or private insurance for certain services. In South Dakota, the services that can be billed to Medicaid are identified at ARSD 67:16:37:04:01. The services are limited to the following: Psychological services as defined in ARSD 67:16:37:06; physical therapy services; occupational therapy services; speech therapy services; Audiology services; and nursing services as defined under ARSD 67:16:37:11.

There are several other administrative rules that apply to the ability of schools to bill Medicaid for services. The rules require that the service be medically necessary as described in ARSD 67:16:01:06:02. In addition, ARSD 67:13:37:04 requires that the services be outlined in the individual’s care plan, be within the professional’s scope of service, be a direct, face-to-face, contact care service provided to individuals under age 21, and be provided by the school district in which the individual resides.

It is clear that state Medicaid rules allow school districts to bill Medicaid for certain special education services if the school seeks consent from the parent to do so. It is important that parents understand the definition of consent before they provide it to the school to carry out services for their child. “Consent” is defined in the regulations at 34 C.F.R. 300.309: “Consent means that, (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.”

The key words in the definition of “consent” are “fully informed” and “understands and agrees.” The words mean essentially that before the parent has given permission, the parent must be fully informed about all information relevant to the activity for which consent is sought and understands that information. These consent requirements are critical in the discussion of whether to allow school districts to access the child’s public or private insurance to pay for special education services. The reason it is critical is because there are some implications in the use of these funds that could impact whether the services really meet

Informed Consent
(Continued on page 15)

South Dakota Advocacy Services, the South Dakota Council on Developmental Disabilities, and Oahe, Inc. joined together to attend the Pierre City Council meeting on March 4. During the meeting, Pierre Mayor Laurie Gill read and presented a proclamation declaring March as Intellectual and Developmental and Traumatic Brain Injury Awareness Month for the City of Pierre. Governor Dennis Daugaard signed a proclamation declaring the same state-wide.
89th State Legislative Session Concludes

by Robert J. Kean

The 2014 Legislative Assembly concluded its final regular day of session on March 14 and the session itself on March 31, which was reserved for consideration of gubernatorial vetoes. With the 2014 session, the state legislature completed the second legislative session of the 2012 election cycle. All the legislative seats are open to be contested this fall at the general election on November 4, 2014. The session’s membership division by party for the 2013-14 legislative sessions remained predominately Republican. In the 2012 election, the Republicans increased their historical edge over the Democrats in the House to an extent that is hard to recall, while the Democrats gained back two seats from historical low numbers in the Senate. The current Republican/Democrat membership in the Senate is 28-7 (during the 2010 election cycle it was 30-5 and during the 2008 election cycle it was 21-14). In the House, the current membership is 53-17 Republican-Democrat (during the 2010 election cycle it was 51-19 and during the 2008 election cycle it was 46-24).

The impact of the small Democratic numbers from the last several election cycles in both houses continued to be a dramatic and challenging imbalance. The Republicans maintained a greater than 2/3 majority in both houses, making for a very difficult environment for Democrats to be heard, propose, and sustain substantive legislation reflecting a strict party position. The decreased Democratic ranks showed throughout the committee structure the last few sessions and continued to do so this year. For example, since the Appropriations Committees of both houses met as a Joint Committee for most of the session, it was a challenge for the Democrats to fully participate on it and in the many other committees dealing with all of the non-budget related items. Fewer numbers also made procedural maneuvering more difficult when seeking or requiring compromise on issues and positions to get legislation passed. The continuing large number of Republicans in both houses, however, did not dampen the range or intensity of debate and differences of opinion on the hot button issues. Based on conviction, they were fully voiced across party lines.

This year’s legislative calendar called for a 38-day session, including the final day reserved for consideration of gubernatorial vetoes, which was the same as last year. Next year, the 90th Legislative Session will have 39 days. The shifting of the legislative calendar came about with the passage of Constitutional Amendment I in November 2008, which called for sessions to “not exceed forty legislative days, excluding Sundays, holidays, and legislative recess.” Prior to passage of the amendment, the length of yearly sessions strictly alternated between 35 and 40 days. Following recent precedent, this year’s session calendar was set up to allow for a majority of three-day weekends. Eight of the nine weeks the legislature was in regular session consisted of four legislative days. The three-day weekends gave legislators a greater opportunity to spend time at home to pursue personal, professional, and constituent activities, including “cracker barrel” meetings and other locally-scheduled activities. The four-day work week also allowed greater flexibility to deal with weather situations and make needed calendar changes.

The number of bills filed this year in each house of the legislature did not follow a number of predictions. The pundits, leading up to the session, predicted that the number of bills in both houses this year would be in the 600-650 range. This predicted number probably reflected the presumption that the new members, having gained a year of experience during the 2013 session, would enter the 2014 session with broader agendas and thus more bills. That did not happen. The 75-member House, composed of more newer members, filed 261 bills, eleven more that the 250 bills filed during 2013 session. The 35-member Senate, composed of more experienced members, filed 188 Senate bills, 54 fewer than the 242 bills filed during the 2013 session. The total of 449 bills filed in both houses is 43 fewer bills than the 492 filed during the 2013 session. During the previous two legislative sessions, 274 House bills were filed in 2012 and 278 in 2011. In the Senate, 197 and 196 bills respectively were filed in those sessions. Interestingly, more bills were pre-filed this year. As of the weekend prior to the start of session, 28 bills had been pre-filed, compared to only 11 prior to the 2013 session. The number of pre-filed bills, however, did not match previous years. Prior to the 2012 session, 50 bills were pre-filed and 53 bills were pre-filed at the start of the 2011 Session.

Following long-standing precedent, the legislative session’s first order of business, after both houses formally convened and members were sworn in, was to meet in joint session to hear Governor Daugaard present his “State of the State” message in the House Chamber. The Governor used the occasion to share his thoughts on the status of the state and project his initiatives that will be introduced for legislative action. Capitol pundits try to succinctly describe the Governor’s speech each year, and used phrases like “caretaker,” “infrastructure building,” and “housekeeping” to describe this year’s speech. The speech lasted approximately one hour, which was comparable in length to his presentation last year, but shorter than two years ago when it lasted approximately 90 minutes. The presentation reiterated in greater detail many of the topics that the Governor has been sharing during a number of earlier public and private meetings, including his State Budget Message in December. The presentation length, type of initiatives mentioned, and number of topics signaled to some that his agenda this year would focus on fewer items or, at least, less contentious items. To others, it reflected a
continuing optimistic fiscal picture with budget increases planned for major state-funded programs, salaries, and services, and a lesser need to explain fiscal decisions at greater length. To still others, it reflected simply not fully dealing with some potential substantive issues that South Dakota will be facing next year and in the short-term thereafter, such as expansion of Medicaid.

As in past years, the Governor used the State of the State presentation to build on previous activities and introduce major state initiatives. One key initiative this year was a proposal to significantly increase the state’s support and involvement in key aspects of job training. One element of this effort was the proposal regarding the state’s support of technical education, including providing grants to be directed to career and technical education (CTE) programs in high schools. Another allowed for tuition assistance for students attending one of the state’s technical colleges. The Governor noted that the emphasis towards the technical education arena is in response to feedback from employers who are having difficulty finding qualified employees. To further address the local concerns regarding job availability and a skilled workforce, the Governor pledged to travel the state and develop local workforce summits to get input at the local level. Another aspect of education receiving attention during the Governor’s speech was the health care field. While noting the programs underway from previous initiatives, the Governor also shared his continuing interest in creating more health care resources, including doctors who will hopefully practice in the rural communities of the state. He submitted legislation to expand the number of medical students at the University of South Dakota medical school. Other areas receiving attention during the Governor’s presentation that required legislative action included housing, economic development, and insurance. Continuing a longstanding interest in energy efficiency, the Governor proposed to make the “Governor’s House” program more energy efficient. This program, which began during the Janklow administration, provides homes at a very reasonable cost to persons who would probably never be able to afford a home using conventional markets and financing. Governor’s Houses, which are accessible, often can be afforded by persons with very limited resources. The Governor also proposed to give the state offices that supervise the insurance industry more authority to investigate and impose penalties for violations of the state’s insurance regulations. Surprisingly, it appeared that the current statutory language did not give the state offices that oversee the insurance regulations the authority to impose penalties, sanctions, or other measures when violations are discovered. This initiative is in response to a newspaper expose last year regarding the abuses of a long-term care insurance company that in the final analysis could not be fined without its consent.

The Governor used a portion of his address to return to the ongoing debate over the level of Medicaid coverage that the state should provide. He again indicated that he is looking at various options that will allow for expansion, but perhaps be melded with other options available through the Affordable Care Act (ACA). However, any timeframe that he may have was not clearly set out in his message. Individual states can negotiate the extent of a state’s coverage with the federal government and several have completed this process. Although South Dakota’s
the Committee met for final action on the budget bill, 46 amendments were attached to the bill to be heard.

In South Dakota, the Governor can exercise the veto power to veto an entire bill or a specific line item (SD Constitution Article IV, Section 4). Vetoes are considered on the last legislative day, with the opportunity to override them if enough votes can be gathered. This year, the Governor did not veto any bills.

The remainder of this article describes select bills considered during the 2014 session that relate to and/or impact the general areas of interest of SDAS. As importantly, bills that were introduced but did not pass are described because often legislative efforts, both positive and negative, take several years to pass. Also mentioned are bills that bear watching in their application to ensure that they are not misapplied and become detrimental. Reference to SDCL and “current law” means a current statute as set out in South Dakota Codified Laws (SDCL). Bills are numbered sequentially as they are introduced in each legislative house and are often known by that number throughout their legislative history and beyond. Senate bills begin with the number 1 and House bills begin with 1001 (e.g., SB 122; HB 1257). The South Dakota LRC provides a wealth of ongoing information on the details of the current and past legislative sessions, summer interims, sessions, lobbyist information, and other areas of interest, including Appropriations Letters of Intent conveying a perspective on budget discussions and directing specific attention to line items in the budget. It is located at: http://legis.state.sd.us.

Involuntary Commitment/Possessing Firearms: Last year, HB 1188 was submitted that proposed a framework to determine when a person would be considered sufficiently dangerous to self and others due to a mental illness to lose the 2nd Amendment right to purchase and possess weapons. At the start of the committee hearing, the sponsor offered an amendment that drastically reduced the number of procedural aspects of the determination process and how a determination to not be allowed to purchase or possess a weapon could be appealed. The accepted amendment basically stated that if a person was involuntarily committed through the county board of mental health procedure, the person’s name would be forwarded to the state’s Attorney General’s office for further submission to federal level agencies. The amendment also provided for a method to have the right to possess weapons reinstated through a court process. The bill was offered as a way for South Dakota to get ahead of any federal scheme that would be imposed on the state to require certain persons to be denied the right to purchase or possess weapons. The motion to “Do Pass” the bill as amended failed on a 6/6 tie vote. The bill was then killed by being deferred to the 41st legislative day by a vote of 7/5.

A bill containing similar elements to the key amendments of HB 1188 was introduced this year. HB 1229 provided for the reporting of persons’ names to the National Instant Criminal Background Check System (NICS). NICS is a national database that is administered by the Federal Bureau of Investigation (FBI), listing persons who are prohibited from possessing a firearm under federal law (18 U.S.C. 922(g)(4)). SDCL 27A-10 was changed to require the chairman of the board of mental illness to report to the attorney general the name and other identifying information of a person ordered to an involuntary com-

mitment. The change does not change the standard to be met in requiring the involuntary commitment that is set out at SDCL 27A-1-1(7)(a) (danger to self) or SDCL 27A-1-1(6) (danger to others). The names are to be reported within seven working days after the date of the final order of involuntary commitment. The report “may not” include information relating to the person’s diagnosis or treatment. In addition to persons who are involuntary committed, the bill also covers persons who are acquitted of a crime by reason of insanity pursuant to SDCL 23A-26-5 or who are determined to be incompetent to stand trial pursuant to SDCL 23A-10A-4. The bill contains a process whereby a person who is prohibited from possessing a firearm may petition the state court in the county where the person resides for the restoration of the right to possess or receive a firearm. A hearing must take place within sixty days of filing of the petition. At the hearing, the state court will determine if, by a preponderance of the evidence presented, the person is not danger to self or others according to the statutes. If a person prevails at the hearing and the right to possess and receive a firearm is restored, NICS is to be notified of the fact that the person is no longer prohibited from possessing a firearm under the federal statute. The bill passed and was signed by the Governor.

Mental Health Medical Treatment: Last year, the legislature passed a bill limiting the amount of time psychotropic medication could be given to a person under emergency conditions. One ten-day period was authorized. The limitation was deemed necessary to avoid the situation wherein a continuing series of ten-day treatments were imposed without the person subjected to the forced treatment having the opportunity to have the issue of forced medications determined at a hearing. HB 1198 was introduced this year to allow for the extension of the ten-day limit for an additional ten days. The application of the strict one ten-day limit created issues in achieving therapeutic levels of medications, scheduling, adequately preparing for, and conducting determination hearings. The second ten-day period can only be extended for the additional ten-day period if a petition for a forced medication hearing under SDCL 27A-12.3.13 is filed within the first ten-day period. The bill passed and was signed by the Governor.

Autism Spectrum Definition in Education: When the Education for All Handicapped Children Act (Public Law 94-142), the predecessor to Individuals with Disabilities Education Act (IDEA), was first implemented in South Dakota, students qualifying to be in need of special education were not categorized as having any particular disability or “level” of need. A great deal of attention was given to the evaluative processes used to find whether the student qualified for services. Autism presented a particular challenge due to its complexity and lack of recognized standards by which a student could be measured. In 1990, the legislature passed a bill that created a framework whereby state administrative rules were developed to: establish a formal diagnostic criteria for autism; establish autism screening procedures; provide standards for instruments, tests, and methods for use in diagnosing autism; and adopt screening and autism diagnostic instruments for uniform use. These activities were to be carried out by the state Board of Education, with input by the South Dakota Autism Society and the South Dakota University Affiliated Program director. In the intervening years, the increased infor-
SD Legislation

(Continued from page 9)

Information base concerning autism and the ongoing development and refinement of research resulted in more realistic national standards and methodologies of treatment. As a result, the method used to determine the definition of autism for the state’s educational purposes became outdated. Recognizing this, the state Department of Education submitted HB 1031 through the House Committee on Education. The bill provided that for the purposes of the its education programs, the state Department of Education is to use the definition of autism spectrum disorder that is contained in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V). The bill also changed the criteria for school districts to receive state aid for a level five disability. Currently, a level five disability has to meet the criteria for at least two disability categories in levels two and three, excluding the disability of deaf-blindness. HB 1031 changed the criteria so that a level five disability can be met if a student has at least two disability categories in levels two to four, inclusive, excluding the disability of deaf-blindness. The bill passed and was signed by the Governor.

Autism Spectrum Disorders Insurance Coverage: In early February, the House Committee on Health and Human Services introduced a bill (HB 1257) to "clarify certain autism spectrum disorders insurance coverage." As introduced, the bill contained language setting out definitions and required health benefit plans coverage and exclusions for persons with autism spectrum disorders. Coverage of treatment services would not be subject to limitations as to number of visits for treatment, nor subject to dollar limits less favorable to other aspects of the plan. At the first hearing on the bill on February 20, the bill was hothoused to the extent that the discussion became primarily focused on whether health benefit plans should be able to place limits on the provision of a particular therapy called Applied Behavior Analysis (ABA). ABA was defined in the bill as "the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior." The House Committee on Health and Human Services and House of Representatives passed the bill with wide margins of support (Committee 12; House 57/12). In the Senate, the bill was assigned to the Committee on Commerce and Energy. In one of the longest committee hearings of the session, parents and professionals articulated the efficacy of the ABA therapy and the positive impact it has had for their patients and family members. Opponents generally stressed the greatly expanded coverage and resultant financial impact unlimited coverage would impose on the insurance industry and fellow policy holders. The opponents included the state Division of Insurance, Dakotacare, Wellmark, SD Chamber of Commerce, and SD Retailers Association. The bill was deferred to the 41st Legislative Day.

Special Education Student Fund Allocation: In 1999, the legislature developed a funding mechanism to allocate general fund resources to local school districts to be specifically applied to students receiving special education based on the students’ levels of disability. Students receiving special education and related services are placed into one of six “levels”: 1 - Mild disability; 2 - Cognitive disability or emotional disorder; 3 - Hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury; 4 - Autism; 5 - Multiple disabilities; and 6 - Prolonged assistance. The allocation levels are revisited each year, as they are based on annually reviewing the local school district tax effort, the applied index factor, the amounts previously allocated, and adjusting items based on cost data information received by the State Department of Education from school districts on the actual costs for the past three years. During the early years of using this method, and probably reflecting the incremental rise in the costs of providing special education, the legislature typically adjusted the amounts allocated upwards each year with few year-to-year exceptions based on reported data. Reflecting the challenging state economy, no increases occurred during the 2010 and 2011 legislative sessions in an effort to hold down education costs. This was despite ongoing reports of increased costs in serving students receiving special education. The 2012 session increased the amounts in every level except level 3 and level 6, which were reduced. The 2013 session left the allocation amounts the same as in 2012 (levels: 1, $4,525; 2, $11,124; 3, $14,788; 4, $13,204; 5, $19,993; and 6, $7,205).

SB 38 carried the special education allocation discussion this legislative session. Surprisingly, whereas in the past this legislation usually endured amendments throughout its hearings, during floor action in both Houses and while in Conference Committee (sometimes to such an extent that it was placed on the hothouse bill list), this year the bill increased each level and went through without one change. The allocations are as follows: Level 1, $4,800.57; Level 2, $11,801.45; Level 3, $15,688.59; Level 4, $14,008.12; Level 5, $21,210.57 and Level 6, $7,643.78.

Audiology Services for Children: To what extent audiology services for children should be a required part of health insurance coverage was discussed in this year’s legislative session. It provided a dramatic example of how a well-intended bill to address what is considered a critical state issue can be manipulated to provide an opposite result. SB 122, as introduced, set out a list of new sections to several chapters of the state code that would require policies of health insurance that were delivered, issued for delivery, or renewed in the state to include, in writing, coverage for audiology services for children and then more fully describe covered situations and processes. The state code chapters included SDCL 58-17, SDCL 58-18, SDCL 58-18B, SDCL 58-38, SDCL 58-40, and SDCL 58-41. Exceptions to the mandatory coverage were set out for policies that provided for specified diseases or other limited benefit coverage. At the first reading of the bill, it was referred to the Senate Committee on Commerce and Energy. Seven legislative days later, it was referred to the Senate Committee on Health and Human Services. At the hearing on the bill before the Senate Committee on Health and Human Services, each proposed new section in the bill was amended to include a definition of “child” as a “person twenty-one years of age or younger.” Each section was further amended to include a list of services to be provided and require that prescriptions and recommendations be done by licensed professionals. A limit on coverage was also set at “fifteen hundred dollars per device per ear, with replacement of
the equipment available at least every thirty-six months or sooner if the current device cannot be modified.”

Interestingly, after the bill amendment was passed, the bill was referred to the Senate Appropriations Committee for further deliberation. There, the bill was bogged down in an attempt to limit the extent of coverage. (See additional article below) As amended, each section would require health plans issued after January 1, 2015, that offer coverage for professional audiology services to include coverage for medically necessary physician services appropriate for the treatment of hearing impairment to a person under the age of nineteen. The benefits are to be in the same dollar limits and other limitations of the policy. Most importantly, and damaging, the amendment stated that “nothing in this section requires the payment by the health plan of hearing aids, devices, or equipment to correct hearing impairment or loss.” The bill passed out of the Senate Appropriations Committee as amended on a vote of 9-0. In a further technical action, the Senate Appropriations Committee version of the bill was amended on the Senate floor to make the bill title more closely describe the content of the bill. The bill passed and was signed by the Governor.

Tax Relief: House Bill 1113, modifying SDCL 10-18-A and SDCL 10-45A, continues an effort begun in 1974 by the state to provide real property and sales tax relief for persons who have limited income and resources. Historically, this relief effort was directed primarily towards the elderly, who traditionally were more likely to have a limited fixed income in their later years. Thus, the section of the laws dealing with tax refunds speaks in terms of property tax relief for the “aged” and the heading of the current bill used the term “elderly persons.” More recently, persons with disabilities were added to the refund programs, reflecting their growing presence and participation in the full range of community life. These programs are in addition to others that provide relief to qualified persons from municipal and property taxes through tax reductions and exemptions.

The refund programs are designed for two classes of recipients: persons over the age of sixty-five years and persons with disabilities. While the bill and statute headings refer to “elderly” and “aged,” respectively, and the Department of Revenue and Regulation refund forms mention “Senior Citizens,” the refund statutes themselves do not contain a definition of these terms. The applicable statutes (SDCL 10-18A-2 and 10-45A-2) refer to persons who are 65 years of age or older. However, a person with a disability is defined as a person receiving or qualified to receive monetary payments pursuant to Title II, X, XIV or XVI of the Social Security Act, as amended, and in effect on January 1, 1974, for the first or part of the year for which the refund is claimed. It is important to remember that persons may receive benefits based on disability under the Social Security Act while under the age of 65 and would be eligible for refunds. Further information can be garnered from several sources. Further information on tax relief programs is available at the state website: www.state.sd.us/dtr2.

HB 1113 was amended in the Appropriations Committee to reset upwards the amount of household income considered to establish the percentage of refunds to be paid. This is done periodically to better reflect current economic conditions. The bill called for $450,000 to be set aside for this effort. The amount is

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South Dakota Legislature Passes Law Requiring Medical Insurance Coverage for Treatment of Hearing Impairments for Persons Under Age Nineteen

by Chris Houlette

During the 2014 legislative session in South Dakota, a bill was passed and signed into law that provides for medical insurance coverage for the treatment of hearing impairments for persons under the age of nineteen. This measure, Senate Bill 122, requires such coverage by certain health insurance plans issued on or after January 1, 2015.

The new law provides that South Dakota Codified Law (SDCL) Chapter 58-17 be changed to read as follows: “Any qualified health plan issued on or after January 1, 2015, that offers coverage for professional audiology services shall include coverage for medically necessary physician services appropriate for the treatment of hearing impairment to a person under the age of nineteen. This shall include professional services rendered by an audiologist licensed pursuant to chapter 36-24.”

The law also provides that the “benefits provided shall be subject to the same dollar limits, deductibles, coinsurance and other limitations provided for other covered benefits in the policy.” However, the law states that “nothing in this section” requires that health plans pay for “hearing aids, devices, or equipment to correct hearing impairment or loss.”

SDCL Chapter 58-17, as mentioned above, deals with all health insurance policies delivered in South Dakota. The provisions of Senate Bill 122 also apply to group and blanket health insurance policies (SDCL Chapter 58-18), small business group and blanket health insurance policies (SDCL Chapter 58-18B), and health maintenance organization policies (SDCL Chapter 58-41).

The passage of Senate Bill 122 is a significant development for those individuals under age nineteen who have a hearing impairment and need medical treatment for that impairment. Eligibility for coverage by an insurance plan for treatment of a hearing impairment cannot be presumed and is subject to the requirements set forth by law. The determination whether there is eligibility is made on a case-by-case basis.
A Primer to the Patient Protection and Affordable Care Act

by Elizabeth Overmoe

The Patient Protection and Affordable Care Act (PPACA), also known as “Obamacare” or the “ACA,” was passed by Congress and signed into law on March 23, 2010. South Dakota, along with many other states, opposed the ACA and challenged its constitutionality in court. A final decision from that United States Supreme Court was rendered on June 28, 2012. National Federation of Independent Business v. Sebelius, 567 U.S. ___, 132 S.Ct 2566 (2012). The decision dealt mainly with the constitutionality of two components of the Act: (1) the individual mandate that virtually all Americans buy health insurance or be required to pay a penalty (tax); and (2) the loss of federal funding if states refused to comply with the new Medicaid requirements of the ACA.

The Individual Mandate

The United States Supreme Court found the penalty that someone must pay if he or she refuses to buy health insurance as a kind of tax that Congress can impose using its tax power. Therefore, U.S. citizens and legal residents will be required to carry “minimum essential coverage.” Many insurance plans through an individual’s employer will be considered coverage and will not require a penalty. The same is true for many state and federal plans, such as Medicaid, Medicare, CHIP, and COBRA, as well as coverage through a retirement plan or the VA.

In order to be considered “minimum essential coverage,” the plan will need to include basic coverage of the following services:

- preventive services, including counseling, screenings, and vaccines;
- pediatric services, including dental and vision, for children 0-18;
- outpatient care, lab tests, emergency room care, prescription drugs, inpatient care;
- care before and after a baby;
- mental health and substance use disorder services (including behavioral health treatment, counseling, and psychotherapy); and
- physical and occupational therapy, speech-language pathology, psychiatric rehabilitation, and more.

Insurance plans, also called “metal plans” due to being categorized based on different types of metal, were also designed for the Marketplace (or “Exchange”). Each plan is classified based upon the expense to the consumer, but the minimum benefits are the same. The premiums for each plan increase as the percentage of medical coverage by the insurance company also increases.

The Bronze Plan requires the insurance company to pay 60% of covered healthcare expenses and the consumer pays 40%.

The Silver Plan requires the insurance company to pay 70% of the covered healthcare costs, while the consumer covers the remaining 30%.

The Gold Plan assigns 80% of the covered healthcare costs to the insurance company and the consumer contributes 20%.

The Platinum Plan requires 90% of covered healthcare costs to be paid by the insurance plan, while the consumer covers only 10%.

Those without coverage can be required to pay a tax penalty of the greater of $695 per year for individuals up to a maximum of three times that amount ($2,085) per family, or 2.5% of household income if the individual and/or family does not have health insurance coverage meeting the basic requirements established through the ACA. The penalty will be phased-in according to the following schedule:

- 2014: The higher of $95 per person (up to 3 people, or $285) OR 1.0% of taxable income.
- 2015: The higher of $325 per person (up to 3 people, or $975) OR 2.0% of taxable income.
- 2016: The higher of $695 per person (up to 3 people, or $2,085) OR 2.5% of taxable income.
- After 2016: Penalties are the same as 2016, but adjusted annually for cost-of-living increases.

Exemptions can be requested and may be granted to individuals for financial hardship, religious objections, American Indians, those without coverage for less than three months, undocumented immigrants, incarcerated individuals, those for whom the lowest cost plan option exceeds 8% of an individual’s income, and those with incomes below the tax filing threshold.

States Opting Out of Medicaid Expansion

The Court also determined the loss of federal funding provision to be constitutional as long as states would lose only new funds if they elected not to opt-in to Medicaid expansion as required through the ACA, rather than be subjected to losing all funding. The Court gave state governments flexibility to decide whether to participate in the Affordable Care Act Medicaid expansions.

Prior to the ACA, federal law mandated coverage for the following principal eligibility groups: pregnant women and children under age 6 with family incomes at or below 133% of the federal poverty level (herein, "FPL"), children ages 6 through 18 with family incomes at or below 100% FPL, parents and caretaker relatives who meet the financial eligibility requirements for the TANF (cash assistance) benefits, and elderly and disabled people who qualify for Supplemental Security Income benefits based on low income and resources. The ACA expands the Medicaid

Affordable Care Act
(Continued on page 13)
Affordable Care Act
(Continued from page 12)

program's mandatory coverage groups by requiring that participating states cover nearly all people under age 65 with household incomes at or below 133% the federal poverty level beginning in January, 2014. This key provision of the Affordable Care Act allows individuals in participating states with incomes at or below 133 percent of the federal poverty level who previously did not "fit" under a Medicaid eligibility description to file a new application for Medicaid. If states elected not to participate in the expansion, they would not be eligible for the federal funds allocated for the expansion.

One significant issue for non-participating states, like South Dakota, is that taxpayers will still bear the cost of the expansion through federal taxation without enjoying the benefits because the federal share of the Medicaid expansion is greater than the state share. The federal government will pay most of the costs of financing the Medicaid expansion and will continue to cover those costs through 2016, eventually phasing-out its support. However, in 2020, the federal government will still pay 90 percent of the costs.

Moving Forward with the Affordable Care Act

Many portions of the ACA went into effect following the passage of the Act, as they were not disputed in the litigation. On June 22, 2010, President Obama announced interim final regulations, also known as the Patient’s Bill of Rights, that included a set of protections to apply to health coverage starting on or after September 23, 2010. Many portions of the Act continued to trickle into effect throughout the last few years, including the recent deadline requiring Americans to be signed up for medical insurance by March 31, 2014. Below is a brief synopsis of the components of the ACA implemented since the interim final regulations were imposed in June 2010.

Programs & Coverage to Assist Individuals

• The ACA includes rules to prevent health insurance companies from denying coverage to children under the age of 19 due to a pre-existing condition.
• The ACA also includes a Pre-Existing Condition Insurance Plan, which provides new coverage options to those who have been uninsured for at least six months due to a pre-existing condition.
• Now, young adults will be allowed to stay on their parents’ plan until they turn 26 year old.
• The law allows for millions of seniors across the country who reach the gap in their Medicare prescription drug coverage, known as the “donut hole,” to be eligible for a one-time, tax free, $250 rebate check to assist in offsetting costs. These same seniors will receive a 50% discount when buying Medicare Part D covered brand-name prescription drugs. Seniors will continue to receive this type of savings until the coverage gap is predicted to close around 2020.
• All new plans after September 23, 2010, must cover certain preventive services without charging a deductible, co-pay, or coinsurance. These preventive services will include annual wellness visits and personalized prevention plans for seniors on Medicare.
• The ACA also created the Community Care Transition Program, which will help high-risk Medicare beneficiaries who are hospitalized avoid readmission by coordinating care through service providers and care organizations in the community.
• Those states that elect to opt-in to the Medicaid expansion will be able to receive a federal match in order to cover additional low-income individuals and families under Medicaid.
• The Community First Choice Option allows states to offer home and community based services to individuals with disabilities through Medicaid rather than institutional care in nursing homes.
• The Act invests $15 billion in the Prevention and Public Health Fund to fund proven prevention and public health programs, such as smoking cessation and obesity.

Incentives for Employers to Cover Employees

• The ACA provides small businesses with health insurance tax credits to help them provide medical insurance to their employees. Employers with fewer than 25 employees who provide health insurance may qualify for a tax credit of up to 50% (up to 35% for non-profits) beginning in 2014.
• The Act also created a $5 billion program to provide financial assistance to employment-based plans to continue to provide insurance coverage to people who retire between the ages of 55 and 65, as well as their spouses and dependents.

Programs & Incentives for the Healthcare Industry

• The law includes new funding to support the construction and expansion of community health centers to serve approximately 20 million new patients across the country.
• Provisions of the Act provide increased payment to rural health care providers to help them continue to serve in those communities. The law also increases scholarships and loan repayment options to primary care doctors and nurses working in underserved areas, including rural parts of the country.
• The new law invests resources and requires screening procedures for health care providers to reduce fraud in Medicare, Medicaid, and CHIP.
• The law establishes a hospital Value-Based Purchasing program (VBP) in Traditional Medicare. This program offers financial incentives to hospitals to improve the quality of care. Hospital performance is required to be publicly reported, beginning with measures relating to heart attacks, heart failure, pneumonia, surgical care, health-care associated infections, and patients' perception of care.
• The ACA requires health plans to begin adopting and implementing rules for the secure, confidential, electronic ex-

Affordable Care Act
(Continued on page 14)
Affordable Care Act
(Continued from page 13)

change of health information in order to reduce the administrative cost of paper records.

Requirements for Insurance Companies
- The ACA made it illegal for an insurance company to deny payment for services if someone gets sick based on a technical error or mistake the individual had made on their application for coverage. The Rights also prohibit insurance companies from imposing a lifetime dollar limit on essential benefits and restricts the annual dollar limit to eventually phasing out such a practice.
- States that have, or plan to implement, measures that require insurance companies to justify their premium increases will be eligible for $250 million in new grants. Those insurance companies with excessive or unjustified premium exchanges could not participate in the new health insurance exchanges in 2014.
- South Dakota has received approximately $4 million through this grant process since 2010. Our state is utilizing these funds to develop comprehensive premium review standards and internal insurance premium review guidelines, establish a consumer-friendly web portal for consumers, enhance operational technology, and to hire a new staff member.
- The law generally requires that at least 85% of all premium dollars collected by insurance companies for large employer plans are spent on health care services and health care quality improvement and not on administrative costs or categorized as profit. For plans sold to individuals and small employers, at least 80% of the premium must be spent on benefits and quality improvement. If insurance companies do not meet these goals, they must provide rebates to consumers.

Appealing Denials of Claims on New Plans
Beginning September 23, 2010, the ACA provided consumers who have new plans with a way to appeal a coverage determination or insurance claim. When an insurance plan denies payment for treatment, it is required to notify you of (1) the reason the claim was denied, (2) the right to file an internal appeal, (3) the right to request an external review, and (4) the availability of a consumer assistance program. Non-English speaking individuals are entitled to receive appeals information in their native language upon request. If an internal appeal is requested, the insurance provider must give a decision within 72 hours after receiving the request if it is for urgent care, within 30 days for denials of non-urgent care not received, and 60 days for denials of services already received.

Resources for Consumer Protection & Education
States were also provided with the opportunity to apply to receive federal grants in order to set up or expand an independent office to help consumers navigate the health insurance system. This office would assist individuals with completing applications for enrollment, file complaints and appeals, and provide outreach and educational materials. The office would also serve to assist the U.S. Department of Health and Human Services on problems consumers are having and what viable solutions may be available in their respective state. South Dakota does not operate a Consumer Assistance Program under the Affordable Care Act, but resources you can contact with particular questions can be located online at http://www.cms.gov/CCIIO/Resources/Consumer-Assistance-Grants/sd.html.

1 Kim Jones, What Parents Should Know about the Affordable Care Act, South Dakota Parent Connection Circuit, Winter 2013.
8 Sherry Glied and Stephanie Ma, How States Stand to Gain and Lose from Medicaid Expansion, The Commonwealth Fund, Issue Brief, December 2013.
9 Holahan, Buettgens, Carroll et al., Cost and Coverage Implications, 2012.

SD Legislation
(Continued from page 11)

 drastically less than in the years past. For example, in 2008, the proposed amount was one million dollars, but was later amended to $800,000 in the Appropriations Committee. The reason for the need of fewer dollars for this effort is not clear. Obviously, the lesser amount reflects fewer persons applying for the tax relief. However, this may better reflect the time, effort and overall difficulty involved in getting the forms filled out correctly and forwarded to the right state office. The bill passed and was signed by the Governor.
Informed Consent
(Continued from page 6)

the definition of “free” as found in the term “free appropriate public education,” or “FAPE.”

One issue related to parents providing consent for the use of public benefits or private insurance was the potential amount of paperwork created by this process. Schools were concerned that a signed consent form was required for each use of the public benefits or private insurance. In an effort to address this issue in the consent process, an inquiry was made of the Federal Department of Education.

A January 23, 2007, letter from Alexa Posny, Director of the Office of Special Education Programs, United States Department of Education, responded to an inquiry from the Superintendent of Schools of Volusia County, Florida. Posny stated that “permitting a public agency to obtain parent consent for a specified amount of services for a specified time would be sufficient to enable parents to make an informed decision as to whether to consent before a public agency can access their child’s public benefits or public insurance.” The letter provided an example of a child who is to receive three hours a week of occupational therapy for 36 weeks, stating the parents could be asked to give consent to the public agency for 108 hours of service. Then, if additional hours of service are needed or if service costs increase, “the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the public insurance benefits.” Ms. Posny’s response makes it clear that the United Stated Department of Education wanted to assure that parents are provided with all of the information that they need to make an informed decision regarding the use of their public benefits.

In an effort to assure informed consent in South Dakota, the South Dakota Department of Education, Office of Special Education Programs, created three examples of forms for districts to use when obtaining informed consent for these activities. One is a notification form. Another is for consent to use private health insurance. The third is for consent to use Medicaid for services provided under Part B of the federal special education law.

Medicaid and Public Insurance

The Medicaid form contains information from South Dakota Administrative Rules that states:

24:05:14:01.03. Children with disabilities covered by public benefits or insurance. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

1. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
2. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the costs that the parent otherwise would be required to pay;
3. May not use a student’s benefits under a public benefits or insurance program if that use would:
   a. Decrease available lifetime coverage or any other insured benefit;
   b. Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
   c. Increase premiums or lead to the discontinuation of benefits or insurance;
   d. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
4. Must provide written notification to the student’s parents pursuant to § 24:05:14:01.04; and
5. Must obtain written parental consent consistent with § 24:05:29:13 before accessing a student’s or parent’s public benefits or insurance for the first time specifying:

   (a) Personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
   (b) The purpose of the disclosure (e.g., billing for services under this article);
   (c) That disclosure will be made to the state Medicaid agency; and

Informed Consent
(Continued on page 18)

New Fiscal Assistant

Pamela Stout joined South Dakota Advocacy Services in the Pierre office on December 2 as Fiscal Assistant. Pamela lives in Ft. Pierre with her husband, Perry, and four dogs. Stouts have four children - Travis and wife Amber and their two children Treyson (4) and Taynen (10 months); daughter, Jessica; and sons Dennis and Cody.

Prior to joining SDAS, Pamela worked at St. Mary’s Healthcare Center for 25 years as assistant controller and then at JES Farms as office manager for five years. She enjoys trips to Oregon to visit her daughter, spending time with her grandsons, and going to motocross races to watch her sons. Pamela also likes to read and do puzzles. “Thank you to all the staff for making me welcome.”
Year 22 — Class of 2014 Readied for Graduation

by Sandy Stocklin Hook

What is the school responsible to provide?” etc. Hamilton told the class that silence is NOT golden. “Oftentimes, you, as the parent, are the only advocate for your child at IEP meetings.” He also discussed “How to be a Superhero for Your Child’s Education” and explained discussion points that apply equally to parents and self-advocates.

Dr. Patrick Schwarz from Skokie, IL, provided valuable insight and actual experiences for successful inclusion in educational settings. “Inclusion means everyone belongs everywhere in our schools and community,” said Schwarz, a professor at National-Louis University in Chicago, “and successful school inclusion can lead to successful community inclusion.”

DECEMBER TRAINING
Katherine Munson, Pierre, and Brenda Smith, Sioux Falls, opened the training describing Person Centered Thinking. They spoke about one-page profiles, focusing on the person, not the disability. They had each participant make a one-page profile to help them understand what an important tool it can be. Smith is a Year 5 Partners graduate.

SDAS Legal Affairs Director, John Hamilton of Sioux Falls, presented on IDEA (Individuals with Disabilities Education Improvement Act of 2004). He helped the group answer questions of “What are my rights and how do I get what my child needs to be successful?”

JANUARY TRAINING
Tim Neyhart, SDAS PADD Program Director, discussed how it is never too early to start thinking about transition and to talk to your child about what he/she wants to do. He stressed including the child in all IEP meetings addressing transition services.

David Hancox of Golden Valley, MN, a lobbyist in the state of Minnesota, spoke about the legislative process. He encouraged the class: “Don’t be afraid to talk to your legislators. They are regular people just like you. And always remember, they work for you!” He explained, “You are a resource to legislators on all levels and what you bring to the table is important.” Hancox shared pointers on providing effective testimony, to always tell the truth and if you don’t know an answer to a question, just say you don’t know but you will find someone who does. He also discussed campaigns and coalition building and using the media effectively.

After an evening of preparation, the class used their newly-acquired skills providing mock testimony on current bills before the SD Legislature. Helping the class to calm their nerves and give them tips and pointers were bill coaches Chris Houlette and Neyhart of SDAS, Tom Scheinost, Dennis Hook, Dan Rounds, Arlene Poncete, and Craig Eichstadt of Pierre; and Vikki Day of Highmore. Eichstadt is a Year 14 graduate of Partners and Day graduated in Year 10.

The mock testimony panel included District 9 Representative, Paula Hawks, of Hartford; Representative Jacqueline Sly, District 33, from Rapid City; Senators Mike Vehle of Mitchell, District 20, and Angie Buhl-O’Donnell, Sioux Falls, District 15. Representative Brian Gosch, Speaker of the House from District 32 in Rapid City, served as chair of the mock committee. Gosch is also an SDAS staff attorney and program director. The class also viewed the House and Senate in action and met with Governor Dennis Daugaard for a photo on the Rotunda steps.

SDAS Executive Director, Robert J. Kean, and Shelly Pfaff, Executive Director of the Coalition for Persons with Disabilities, gave a presentation on the Americans With Disabilities Act. PL

FEBRUARY TRAINING
The session opened with a panel on types of local government. Panel members were Leon Schoenenhauser from the City of Pierre. Kevin Hipple of Pierre

Partners in Policymaking (Continued on page 17)
represented county government. Representing a school board was Cari Leidholt of Pierre. Secretary of Tribal Relations, Leroy "J.R." LaPlante of Pierre, spoke on behalf of tribal government. The panel members described the similarities and differences in their governmental bodies and how individuals are invited to attend meetings and how they can get on the agenda.

Pat Czerny, DakotaLink in Rapid City, discussed and demonstrated assistive technology devices and how those devices can make the difference from being dependent to becoming independent. Czerny brought several examples of assistive technology and gave a "hands-on" demonstration on how they work and can make things simpler for everyone.

Jim Kellar of Sioux Falls presented on the Talking Circle. In this circle, each person is given a chance to talk, without judgment or interruption, when they are in possession of the talking circle piece. When finished speaking, the piece is handed to the next person until the circle is completed. This exercise teaches very effective listening skills. Kellar explained, "Listening is an art and sometimes listening to others is a lost art. You need to listen and respect others as they speak and if you are a good listener you can help affect attitudes, life changes, and personalities."

Kellar also taught meeting management and the importance of being in control, but not aggressive. He showed how to include everyone in the meeting, listen to ideas, summarize what they heard, and get the group to work as a team. He spoke of self-advocacy skills and the importance of knowing who you are and what you want. "It is important your voice be heard, and with your voice being heard, you will also learn the skills of negotiating as you make the choices for your life."

MARCH TRAINING

Social Security was a topic of interest in March. Kean and Neyhart highlighted who qualifies and why, and what happens when a person returns to work.

Dr. Wayne Duehn of Arlington, TX, made his sixteenth trip to South Dakota Partners in Policymaking to teach the class how to detect abuse and neglect. He discussed where, how, and to whom it should be reported, the profile of the perpetrator, and how abuse and neglect occurs anywhere, including South Dakota. He also provided an overview on human sexuality issues, including suggestions of what and how to educating children about abilities on the importance of "it is your body and it is private." Duehn reported, "Sexual and physical abuse of our elderly, children, and individuals with disabilities is on the rise and you need to know the signs and how to stop it."

The class enjoyed watching and participating in a child abduction prevention seminar and a self-defense mini-course by Dennis Hook, a Sr. Master 4th degree black belt in Tae Kwon Do. Hook taught basic defensive skills that can be used by everyone, including those with limited movement and mobility. He also gave a brief demonstration of Tai Chi, an exercise for everyone. Melissa and Samantha Grogan of Pierre assisted.

The sixth and final session of Year 22 was held April 25-26, 2014. The weekend also included continuing education, Common Grounds, and the graduation banquet and ceremony. Look for a graduation weekend report in the July issue of the South Dakota Report.
Informed Consent
(Continued from page 15)

(d) That the parent understands and agrees that the public agency may access the parent’s or student’s public benefits or insurance to pay for services under this article.

This administrative rule provides a good framework for questions that parents should ask to ensure that they are fully informed about their public benefits and how the use of these benefits could impact them now and in the future. Parents should be prepared to ask the school a number of questions about the possible impact of what could happen if these funds are used for special education services. For example:

- Is there any cap on eligibility for Medicaid benefits in South Dakota?
- Will Medicaid attempt to recoup the costs of services from my private health insurance (if the student is covered under both)?
- What costs will Medicaid attempt to recover?
- Is there any possibility that Medicaid will attempt to recover funds from a person’s estate?
- If so, what type of expenditures will Medicaid attempt to recover?
- Are there any other rules or laws that apply to this discussion that are not part of this education notice process?

In regard to the final question in this list, there is at least one rule people should be aware of before agreeing to allow for the use of Medicaid funds for the placement of students in out-of-district facilities. South Dakota Codified Law (SDCL) 28-6-23 states in part: “Any payment of medical assistance by or through the Department of Social Services to an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with developmental disabilities, or other medical institution is a debt due to the department.” (Emphasis added).

I consulted with staff at the Department of Social Services, Recovery and Fraud Investigations, and they indicated that funds used to pay for stays at Psychiatric Residential Treatment Facilities may also be costs that are recoverable under this provision. If the facility where the child is placed is a medical facility under state rules and the services are billed or coded as medical costs, it is possible that those expended Medicaid funds could be recoverable from the child’s estate.

When the placement of a child is part of a child’s IEP, before the parents agree to that placement and the use of public or private insurance, they should ask questions of the school regarding the nature of the facility in which the school plans to place the student. The parents should ask if the proposed placement is a medical facility, will the services be billed or coded as medical costs and if there is going to be any requirement that costs be recovered by anyone.

In order to be fully informed, it is important that parents know that schools are required to provide the needed services, even if the parent refuses to allow the school to access public benefits or insurance. The language found in ARSD 24:05:14:01:04 provides the following:

Use of public benefits or insurance – Annual notification. A public agency, before accessing a student’s or parent’s public benefits or insurance for the first time, and annually thereafter, must provide written notification consistent with § 24:05:30:06 to the student’s parents that includes a statement:

(1) Of the parental consent and no cost requirements in § 24:05:14:01:03;

(2) That parents have the right under FERPA, as defined in § 24:05:29:02(1), and Part B of the IDEA to withdraw their consent to disclosure of their student’s personally identifiable information to the state Medicaid agency at any time; and

(3) That the withdrawal of consent or refusal to provide consent under FERPA and Part B of the IDEA to disclose personally identifiable information to the state Medicaid agency does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

Private Insurance

School districts may also seek to access a family’s private insurance for the provision of special education services. “A public agency may access a parent’s private insurance proceeds only if the parent provides informed consent consistent with this article. Each time the public agency proposes to access the parent’s private insurance proceeds, it must: (1) Obtain parent consent in accordance with this article; and (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.” ARSD 24:05:14:01:05.

If parents consent to the use of private insurance, and/or public benefits or insurance, sometimes there will be costs to parents for allowing the school district to use the private insurance and/or public benefits or insurance. For example, many policies contain deductible, co-insurance, and/or co-pay amounts. ARSD 24:05:14:01:06 addresses this, stating: “To avoid financial cost to parents who otherwise would consent to use private

Informed Consent
(Continued on page 20)

SDAS Board of Directors, L-R: Morris Brewer; Bev Gunderson (ex-officio); Dillon Haug; Cary Gronemeyer; Jack Mortenson; Roger Bowie; Juanita Harrington; Tim Lemke; and Chris Beesley. Not pictured: Monica Matt.
Callison: Man Dealing with Life After Brain Injury

Jill Callison, Argus Leader, March 27, 2014 (reprinted with permission of Argus Leader Media)

VIBORG — I just backspaced through my original introductory paragraph for this column because I decided it was too flippant. And as Rodney and Lori Sletten know all too well, living with a traumatic brain injury really is not all that funny.

March, observed as National Brain Injury Awareness Month, is coming to a close, but not for the Slettens, their four children, their extended family and their friends, not since a 1991 car accident that left Rodney permanently disabled.

Thinning hair still covers an indentation in Rodney’s head, his speech is slurred, and only about 30 percent of his body has any sensation. He can, for example, burn his arm and not realize the skin has blistered, or slice his skin while woodworking and feel no pain.

An artist, Rodney had to give up the photography he loved because his vision has been affected. Multi-tasking is impossible, and his brain often becomes fatigued because he must concentrate so intently.

And that’s only a fraction of the changes his wife, Lori, can list. Twenty-three years later, the couple, who also survived a house fire several years after the accident, say each day can be a challenge.

But, you know what? The Slettens also have found a bright side. Lori can list those, too: Their children are more patient with others and they learned early on to give up for feel sorry for themselves. Life is new every day, Lori says, and Rodney is a role model for others.

He felt called to go on a mission trip to Cameroon, and his church pastor and others made that happen. For 20 years, he has spoken to driver’s ed students at O’Gorman High School, urging them to wear their seat belts.

Rodney himself had worn his seat belt that day in 1991. He and Lori were coming back from an arts and craft show in the Twin Cities. When they paused to fill up the car in Sioux Falls, Rodney took the passenger seat. Hoping to sleep, he skipped buckling up.

When Lori hit a patch of black ice near Centerville, their car catapulted. “The policeman told us we rolled five times, spinning like a top,” Lori says. “Rodney was thrown out somewhere in one of those rotations, and he went out through the passenger window.”

Both Slettens have been emergency medical technicians while attending college. As soon as Lori crawled from her car and saw Rodney prostrate in the field, she began performing emergency procedures. Passersby helped, and the Centerville ambulance service was on the scene within minutes.

Midway to Sioux Falls, Rodney was transferred to another ambulance. Also in need of assistance was his wife, then six months pregnant with their second child. Concerned for Rodney, however, Lori did not go into shock until she reached the hospital emergency room.

She soon was reunited with her husband, and in that first week, he occasionally squeezed her hand. Soon, even that sign of hope ended, and Rodney lay still.

It was at the five-week mark of his coma that his eyes first tracked a vacuum cleaner going across the floor. It took several more weeks before an arm first showed any movement. It was a celebration the first time he moved a thumb enough to signify approval.

“I just remember when they put me in a wheelchair and took me down to occupational therapy and physical therapy,” Rodney says. “I would say OT was for other torture and PT was for pain and torture.”

His muscles had atrophied, and the need to stretch them out again caused intense pain. His arms curled against his chest, and even today, his left leg still turns in.

But he improved, and finally the day came when his physical therapist walked him to the hospital’s front door to head home in the family’s Pepto-Bismol pink Datsun, a replacement vehicle.

“I said, I got wheeled in, I don’t want to get wheeled out,” Rodney says. “It was an important thing to me, to be able to walk to the car. From the first week of February till the first week of May, I was always getting wheeled around in a wheelchair.”

Every brain injury is different, Lori says. In Rodney’s case, he says every part of his brain was affected.

“When the brain flies, it’s like a big bowl of Jell-O, and you get damage on the other side, too,” Lori says. “The brain will swell for 38 hours. In Rodney’s case, it kept swelling, and he had 56 pounds per square inch of pressure in his brain. All that pressure caused damage in all these different places in his head.”

Rodney’s temperament became more volatile, with Rodney now quick to anger. His actions were unpredictable, since he was unable to tell what was acceptable and what was not. Lori was left watching her husband struggle.

Through faith and prayer, however, the Slettens focused on the progress Rodney made during the years. They expanded their family with another son and a daughter, and they tend a herd of sheep. Rodney can do repair work around their acreage under his sons’ supervision.

He no longer feels emotions such as grief, Rodney says, adding, “We laugh about it. I can’t cry, anyway.”

The short-term memory loss can be the most frustrating, as he searches for a wrench before finding it tucked in a pants pocket.

Callison
(Continued on page 20)
Informed Consent
(Continued from page 18)

insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use funds obtained through Part B of IDEA to pay the cost the parents otherwise would have to pay to use the parent’s benefits or insurance (e.g., the deductible or co-pay amounts).” Thus, there should be no costs borne to parents in the form of deductibles, co-insurance, or co-pays from use of either private insurance or public benefits or insurance.

Conclusion
As with all elements of Special Education, each situation is unique to the child and to the family. All parents should carefully consider the elements of this discussion prior to granting consent for placement. Some insurance coverage may not have lifetime limits. Some parents may agree to allow the school to pay the deductible and related costs not covered by their private insurance. Parents may decide that the access to services overrides other considerations and choose to make the placement despite the possibility of costs.

This article is written for the purpose of informing parents of their rights and encouraging them to ask the right questions. The article is not intended for use as a legal document nor should it be considered legal advice. It is an attempt to give parents a greater understanding of the information surrounding the use of public and private insurance benefits to pay for special education services. If you have any questions related to this article, please contact South Dakota Advocacy Services at 1-800-658-4782 and talk with the Intake Specialist. Intake hours are Monday through Friday, 9:00 A.M. to 3:00 P.M.

Calendar

- May 17, 2014 - Run4YOUth, 9:00 a.m., Riverdale Park, Sioux Falls; NAMI Walks, 9:30 a.m., Sertoma Park; Sioux Falls
- June 3, 2014 - PAIMI Advisory Council, 4:00-7:00, JoDean’s, Yankton
- June 4-5, 2014 - 2014 Yankton Area Mental Wellness Conference, Mount Marty College, Yankton
- June 8-10, 2014 - Dare to Dream Conference, Best Western Motel, Aberdeen
- June 12-13, 2014 - Lighting the Way Conference, Augustana College, Sioux Falls

Callison
(Continued from page 19)

Conversations are slow, as he takes time to process statements. Changes in his schedule are jarring, and his abilities fluctuate by day and by hour. But they’re together, Lori says. Even as Brain Injury Awareness Month comes to a close, they have a future.

Reach Jill Callison at 331-2307 or jcallison@argusleader.com.

To learn more, visit the Brain Injury Alliance of South Dakota at www.bra uninjury sd.org.