

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 107
RELATING TO: Provider Certification and Covered Services
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDINGS OF EMERGENCY: Not applicable

SUMMARY

1. Description of rule objective/s

2019 Wis. Act 105 (“Act 105”), which took effect on March 1, 2020, establishes Medicaid reimbursement for certain third-party emergency detention transportations of Medical Assistance recipients, and further directs the department to establish criteria for third-party transporters that must be met in order to obtain reimbursement. In accordance with s. 227.29 (4), the department has determined that Act 105 necessitates rulemaking.

2. Existing policies relevant to the rule

Chapter DHS 107, relating to covered services.

3. Policies proposed to be included in the rule

The department of health services (“the department”) intends to promulgate administrative rules necessary to effectuate the purpose of Act 105, namely that the department establish criteria for Medicaid reimbursement to counties for third-party vendor emergency detention transportations of Medical Assistance recipients.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The Wisconsin Legislature has directed the department to establish criteria for Medicaid reimbursement to counties for third-party vendor emergency detention transportation. In order to ensure that the established criteria are enforceable, the department must promulgate administrative rules.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department’s authority to promulgate the proposed rules is provided in ss. 49.45 (29x) (a) and 227.11 (2), Stats.

b. Statute/s that authorize/s the promulgation of the proposed rule

Section 49.45 (29x) (a), Stats., reads:

Subject to par. (b), the department shall provide reimbursement as provided under s. 49.46 (2) (b) 3. to counties for transport of individuals who are recipients of medical assistance for purposes of emergency detention under s. 51.15 (2) as provided under s. 51.15 (2) (e). The department shall establish criteria that any 3rd-party vendor that is not a law enforcement

agency or ambulance service provider must meet in order for the county to obtain reimbursement for transport provided by that 3rd-party vendor under the Medical Assistance program.

Section 227.11 (2), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

Chapter DHS 107 relating to covered services.

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The estimated time for state employees to develop the rule is 2,080 hours.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule

- Members receiving Medical Assistance services.
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- The department.
- County health departments.
- Vendors providing emergency detention transportation services.

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

42 C.F.R. p. 431.53 Assurance of transportation. A State plan must— (a) Specify that the Medicaid agency will ensure necessary transportation for beneficiaries to and from providers; and (b) Describe the methods that the agency will use to meet this requirement.

9. Anticipated economic impact, locally or statewide

The proposed rule may have a moderate economic impact.

10. Agency contacts

Laura Brauer
Division of Medicaid Services
(608)266-5368
DHSDMSAdminRules@dhs.wisconsin.gov