

Report From Agency

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 20-012

Ch. DHS 101, 105, and 107

Basis and Purpose of Proposed Rule

The intent of the proposed rules is to define complex rehabilitation technology, define provider certification for complex rehabilitation technology suppliers, and identify the circumstances under which complex rehabilitation technology may be covered or reimbursed by Medicaid fee-for-service and managed care organizations as directed by the Legislature in 2017 Wis. Act 306.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepted the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

No issues were raised by any small businesses during the public hearing.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

No changes in the rule were made because no issues were raised by small businesses during the public hearing.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

None were received because no issues were raised by small businesses during the public hearing.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

The proposed rule changes have the potential to increase durable medical equipment supplier and provider expenses by requiring new professional accreditations and business certifications in order to continue providing complex rehabilitation technology. These new accreditations and certifications create new business or individual expenses in the form of fees and examination costs. The overall impact of these new requirements on durable medical equipment suppliers and providers, including small businesses, is unknown.

The department conducted a preliminary review of the fees and costs associated with various applicable accreditation and certification types. These expenses may be:

- 1) up to \$9,900 for 3-year professional accreditation depending on the type of accreditation; and
- 2) \$780 for initial 1-year business certification and additional required professional development coursework which may cost \$650 per year.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

Due to the accreditation and certification requirements set forth in 2017 Wisconsin Act 306, the department does not have the authority to incorporate methods to reduce the impact on small businesses into the proposed rule changes.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

The department modified the proposed rules to address the recommendations made by the Legislative Council Rules Clearinghouse. Additionally, the department made several modifications to the proposed rules to address public comments received during the August 17, 2020 through August 27, 2020 public comment period and August 27, 2020 public hearing. These modifications are as follows:

-s. DHS 107.24 (2) (c) 9. was modified to reference s. 49.45 (9r) (a) 2., Stats., rather than providing the examples presented in the statute;

-s. DHS 107.24 (3) (i) 1. b. was modified to clarify that required prior authorization request content includes a description of medical necessity; and

-s. DHS 107.24 (5) (b) was modified to add the term "both"

Fiscal Estimate/Economic Impact Analysis

No changes were made to the rule's analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on August 17, 2020. A public hearing was held on August 27, 2020, in a virtual conference call. Public comments on the proposed rule were accepted until August 27, 2020.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Don Clayback, National Coalition for Assistive and Rehab Technology	Support
Tim Lundquist, Wisconsin Association of Health Plans	Not identified

Summary of Public Comments to the Proposed Rule and the Agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
107.24 (1) (b)	Add nurse practitioners to the list of providers that may be qualified health care professionals because a federal interim final rule updated 42 CFR § 440.70 to authorize nurse practitioners to order Medicaid home health care services, including medical equipment, supplies and appliance.	The requested addition was not made because the federal rule change in question is not final and is subject to change.
107.24 (2) (a) 2.	Add requirement that a physician prescribing complex rehabilitation technology specialize in physical medicine and rehabilitation or a similar specialty.	The requested addition was not made because it is more restrictive than s.49.45 (9r) (a) 7. a. and 42 CFR § 440.70.
107.24 (2) (c) 9.	Add additional examples of complex rehabilitation technology to incorporate changes made in 2019 Wis. Act 186.	Specific examples of complex rehabilitation technology were replaced with a reference to s. 49.45 (9r) (a) 2.
107.24 (3) (i) 1. b.	Clarify that the prior authorization request for each complex rehabilitation technology item must include a medical necessity description.	The requested clarification was adopted.
107.24 (5) (b)	Update language to clarify that service denial by both Medicare and Medicaid is required.	The requested clarification was adopted.

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis	X		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			X
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			X
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			X
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			X