

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 22-043 Report From Agency

Ch. DHS 10, 38, 73, 92, 101, 105, 106, 107, 108, and 109, relating to Medical Assistance program telehealth services.

Basis and Purpose of Proposed Rule

The Wisconsin Legislature directed reimbursement of many Medical Assistance services when delivered by means of telehealth and communications technology services. It directs the department to reimburse Medical Assistance certified providers for services provided through asynchronous telehealth, interactive telehealth, and remote patient monitoring services, including for federally recognized Medicare telehealth services, remote physiological monitoring, remote evaluation of prerecorded patient information, brief communication technology-based services, and care management services delivered via telehealth. 2019 Wisconsin Act 56 also does the following: (1) it directs the department to identify by rule any other reimbursable Medical Assistance telehealth services; and (2) it permits the department to identify by rule certain non-reimbursable Medical Assistance services reflect availability statewide in accordance with Act 56.

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 and comment period.

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.

Not applicable - no issues were raised by small businesses during the public hearing and comment period.

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 impact Medical Assistance providers that are small businesses. These providers have the opportunity to provide covered services via telehealth, which expands the pool of potential members and services provided beyond that potentially available for traditional in-person services, but must ensure that the technology used meets applicable federal and state standards. These providers may also experience increased competition from non-local providers providing similar covered services, including out-of-state providers who meet certification criteria.

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

The department did not identify any negative impact.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

Based on comments received from the Rules Clearinghouse, the department removed references to emergency rulemaking authority from the rule's analysis.

Fiscal Estimate/Economic Impact Analysis

The department directly solicited comments on the economic impact of the proposed rule changes from a wide range of Medical Assistance providers and Medical Assistance member advocates. Additionally, the department solicited comments on the economic impact of the proposed rule changes from all parties interested in providing comments by publishing a solicitation for public comment in the Administrative Register and on the department's website.

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 15, 2022 . A public hearing was held on September 9, 2022, in a virtual conference call. Public comments on the proposed rule were accepted until September 9, 2022.

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

Registrant	Position Taken (Support or Opposed)
Rebecca Hogan – Teledoc and AHI – No verbal comments	Support
Cheryl Meyer- Aurora @ Home – No verbal comments	Support
Nicholas Probst – No comments, observer	-

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
Entire Rule	ATA – Broad Support Comment (commented twice)	No response required
Entire Rule	Teledoc- Broad Support Comment	No response required
SECTION 9. DHS 105.48 (2m) and SECTION 11. DHS 106.02 (9) (b) 9:	AHI- Support of whole rule and these specific provisions were called out	No response required
DHS 107.11 (1)(c)	Aurora at Home – Support of whole rule and this specific provision was called out	No response required

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