

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 6/22/2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DHS 34, 35, 36, 40, 50, 61, 63, and 75</p>	
<p>4. Subject Telehealth</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.435 (4) (b), Stats.</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The department intends to promulgate administrative rules necessary to effectuate the purpose of 2019 Wisconsin Act 56, namely, reimbursing identified Medical Assistance covered services through telehealth and communications technology services. The act also requires the department to promulgate rules specifying certain reimbursable Medical Assistance telehealth services and authorizes the department to promulgate rules specifying certain non-reimbursable Medical Assistance telehealth services. This rule project identifies changes needed in the Division of Care and Treatment Services (DCTS) administrative rules to align with Division of Medicaid Services rule changes for Act 56. DCTS rules govern behavioral health programs such as Outpatient Mental Health agencies, Comprehensive Community Services, and Crisis Intervention. These programs provide Medicaid-reimbursable services and as such need to be in alignment with Medical Assistance telehealth policy.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The department directly solicited comments on the economic impact of the proposed rule changes from a wide range of Medical Assistance providers, Medical Assistance member advocates, and Tribal leaders. Additionally, the department solicited comments on the economic impact of the proposed rule changes from all other parties interested in providing comments by publishing a solicitation for public comment in the Administrative Register and on the department's website.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule changes have the potential to impact Medical Assistance providers. 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 providers must ensure that the technology used meets</p>	

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applicable federal and state standards. Providers may also experience increased competition from non-local providers providing similar covered services, including out-of-state providers who meet certification criteria.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

There are no reasonable alternatives to the proposed rulemaking. The Wisconsin Legislature has explicitly directed the department to promulgate rules identifying certain reimbursable Medical Assistance services and therefore authorized the department to promulgate rules identifying certain non-reimbursable Medical Assistance services.

16. Long Range Implications of Implementing the Rule

The proposed rule changes will provide additional flexibilities to Medical Assistance members and providers by allowing covered services to be provided in person or via telehealth in allowable circumstances.

17. Compare With Approaches Being Used by Federal Government

Federal law does not establish distinct requirements for Medical Assistance program reimbursement of services provided via telehealth. Instead, the Medical Assistance program may reimburse services provided via telehealth when the underlying service provided meets federal laws and policies. The Centers for Medicare and Medicaid Services (CMS) looks to and generally models its definition of telehealth on the Medicare definition of telehealth services.

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) also applies to services provided via telehealth. Applicable HIPAA requirements include the privacy and security rules to ensure the protection of protected health information transmitted and stored. In order to comply with these requirements, providers must ensure that the platforms used to provide services via telehealth contain adequate security measures.

During the emergency period, as defined in s. 1135 (g) (1) (b) of the Social Security Act, 42 U.S.C. § 1320-5 (g) (1) (b) and declared in response to the COVID-19 pandemic, the federal Department of Health and Human Services granted a number of flexibilities relating to services provided via telehealth. These flexibilities include not penalizing providers for using platforms that do not comply with HIPAA requirements, encouraging the reimbursement of services provided via telehealth under the Medical Assistance program, and expanding the scope of reimbursable telehealth services under the Medicare program.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

305 ILCS 5/5-5.25 (b)-(c) authorizes permanent reimbursement of behavioral health services provided via telehealth when provided by a certain state certified provider. Illinois regulations permanently authorize reimbursement of asynchronous and real-time video services provided via telehealth under certain conditions. These conditions include requiring a certified professional to be present at the originating site at all times, the distant site provider to be a certified professional, and the communication platform to be capable of allowing for proper diagnosis and transmission of clearly audible heart tones and lung sounds, clear video of the patient and diagnostic tools. It also excludes group psychotherapy via telehealth from reimbursement. 89 IL Adm. Code 140.403.

During the federal COVID-19 public health emergency, Illinois laws were temporarily expanded to authorize reimbursement of additional telehealth services authorized by the federal government. 305 ILCS 5/1.5 Illinois regulations were also temporarily expanded to authorize reimbursement of audio-only telephone communication and online portal communications initiated by an established patient. A certified professional is not required to be present at the originating site. Additionally, providers are not required to be certified by the Illinois Medical Assistance program. 89 IL Adm. Code 140.403.

Iowa:

Iowa Code 514C.34 authorizes permanent reimbursement of healthcare services provided via telehealth when provided via an interactive audio and video platform and the services meet legal and generally accepted healthcare practices and standards. Services provided via telehealth are to be reimbursed at the same rate as services provided in-person. Iowa

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regulations authorize reimbursement of services via telehealth that meet professional standards. IA Rule 441-78.55(294A). The Iowa board of medicine authorizes provision of services via telehealth with or without the presence of a health care provider with the member and holds providers to the same standards of care and professional ethics in-person services. IA Rule 653-13.11(147,148,272C).

Michigan:

Michigan Compiled Laws ss. 330.1100d, 333.16283, 333.16285, 400.1 to 400.119b, 550.3476, and 550.1401k authorize reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio or video or asynchronously with HIPAA privacy and security rule compliant platform. Services may be provided at a provider site, a school, or a member's home, with member consent, and accessible follow-up services.

Minnesota:

Minnesota Statutes ss. 256B.0625 subd. 3b. and 147.033 authorize permanent reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio and visual communications and asynchronous services if provided "in the same manner as if the service or consultation was delivered in person." Services provided via telehealth must be reimbursed at the same rate as service provided in person and are generally limited to three visits per calendar week. Provider-to-provider consultations via telephone, email or facsimile and member-to-provider communications via email or facsimile are not reimbursable. With limited exceptions, physicians that do not practice in but are registered in Minnesota may be reimbursed for services provided via telehealth if they are in good standing outside of Minnesota. Minn Stat. s. 147.032. Minnesota regulations authorize reimbursement of mental health services via telehealth when provided via two-way interactive video and the equipment and connection comply with Medicare standards. (Minn. Adm. Code s. 9505.0371.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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 inperson 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.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department solicited the input of Medical Assistance providers, including small businesses, throughout the telehealth policy and proposed rule change process.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

The department intends to limit out-of-state providers who may become certified as Medical Assistance providers to providers who are licensed in Wisconsin and help to ensure network adequacy, such as physician groups, mental health and substance use disorder providers, and narcotic treatment providers.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

While all providers are required to follow the same requirements, the department included a number of requirements with the intent to reduce the burden on small business providers, including the following:

- expanding the pool of potential members and services provided beyond that traditionally available for in person deliver by removing geographic barriers related to in person care delivery;
- limiting out-of-state providers who may become a certified medical assistance provider to individuals who are licensed in Wisconsin;
- and limiting the amount of documentation required when services are provided via telehealth to indicating that a service was performed via telehealth and documenting that recipients were informed of their rights and responsibilities associated with receiving services via telehealth.

5. Describe the Rule's Enforcement Provisions

The proposed rule changes will be enforced through standard Division of Quality Assurance program certification activities.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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