

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 107
RELATING TO: Complex Rehabilitation Technology Reimbursement
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDINGS OF EMERGENCY: Not Applicable

SUMMARY

1. Description of rule objective/s

Section 49.45 (9r) (e), Stats., which was created by 2021 Wis. Act 88 (“Act 88”), expands the circumstances under which the department of health services (“the department”) may provide reimbursement for certain complex rehabilitation technology (“CRT”) prescribed to Medical Assistance (“MA”) recipients who reside in nursing homes. Specifically, Act 88 requires reimbursement for CRT provided to an MA recipient who resides in a nursing home when it will (1) contribute to the recipient’s independent completion of activities of daily living, (2) support the recipient’s occupational, vocational, or psychosocial activities, or (3) provide the recipient the ability to independently move about the nursing home or attain self-care. The department proposes to revise section DHS. 107.24 to comport with s. 49.45 (9r) (e), Stats.

2. Existing policies relevant to the rule

Chapter DHS 107.24 (4) (c) 2. and 3. provide criteria for covered services for MA recipients who reside in nursing homes. Section DHS 107.24 (4) (c) 2. limits reimbursement to certain types of durable medical equipment, and s. 107.24 (4) (c) 3. limits reimbursement for wheelchairs to specific circumstances. These provisions separate wheelchairs from other CRT.

3. Policies proposed to be included in the rule

The department proposes to revise provisions in s. DHS 107.24 to expand criteria under which the department can reimburse a provider of CRT to MA recipients who reside in nursing homes, consistent with s. 49.45 (9r) (e), Stats.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The department’s current administrative rules are in conflict with s. 49.45 (9r) (e), Stats.

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 (9r) (e), 49.45 (10) and 227.11 (2), Stats.,

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

Section 49.45 (9r) (e), Stats.:

The department shall, consistent with this subsection and without imposing any additional requirements or restrictions under this subsection, reimburse a provider for a complex rehabilitation technology with prior authorization when prescribed by a physician, medically necessary, and used by a recipient of Medical Assistance who is a resident of a nursing home if the complex rehabilitation technology will do any of the following:

1. Contribute to the recipient's independent completion of activities of daily living.
2. Support the recipient's occupational, vocational, or psychosocial activities.
3. Provide the recipient the independent ability to move about the facility, or to attain or retain self-care.

Section 49.45 (10), Stats.:

RULE-MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance. The department shall promulgate a rule defining the term "part-time intermittent care" for the purpose of s. 49.46.

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 nonstatutory 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. DHS 107.24(4)(c)2 and 107.24(4)(c)3.

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 who access CRT
- CRT professionals
- Qualified CRT suppliers
- Nursing homes
- The department

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 CFR s. 440.70 (b) (3), which requires that states provide medical equipment, including durable medical equipment (of which CRT is a subset) suitable for use in the home as home health services and that this equipment be reviewed by a physician annually.

42 CFR s. 483.24 (a) (1), which requires that nursing homes give residents the “appropriate treatment and services to maintain or improve his or her ability to carry out the activities of daily living,” including hygiene, mobility, toileting, dining, and communicating.

42 CFR s. 414.234(b) contains a master list of durable medical equipment (of CRT is a subset) requiring a face-to-face encounter with a provider, written authorization or prescription, and prior authorization in order to be a covered Medicare service.

42 CFR s 441.357 (b) includes requirements to ensure that durable medical equipment suppliers who rent CRT follow specific requirements.

9. Anticipated economic impact, locally or state wide

The proposed rule may have moderate economic impact.

10. Agency contacts

Bailey Dvorak

Division of Medicaid Services

608-267-5210

DHSDMSAdminRules@dhs.wisconsin.gov

Governor Approval Date: