

STATEMENT OF SCOPE

WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 105 and DHS 107
RELATING TO: Pharmacist reimbursement for patient care services through Medical Assistance
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDINGS OF EMERGENCY: Not Applicable

SUMMARY

1. Description of rule objective/s

Section 49.46 (2) (bh), Stats., which was created by 2021 Wis. Act 98 (“Act 98”), expands the circumstances under which the department of health services (“the Department”) may provide reimbursement for pharmacist services provided to Medical Assistance (“MA”) recipients. Specifically, Act 98 allows pharmacists to receive reimbursement when they provide physician services to MA members through a collaborative practice agreement, in which patient care service is delegated to the pharmacist by a physician. The Department proposes to do the following:

- Revise ch. DHS 105 to add pharmacists as a provider type, with appropriate requirements for certification that comport with s. 49.46(2) (bh), Stats.
- Revise ch. DHS 107 to include physician services allowed for pharmacists to perform in accordance with ss. 49.46 (2) and 450.033, Stats.

2. Existing policies relevant to the rule:

Under s. 450.033, Stats., a pharmacist may perform a patient care service delegated to the pharmacist by a physician, as defined in s. 448.01 (5). The Department currently does not have any policies in place to permit reimbursement for patient care services rendered by a pharmacist (and delegated by a physician) to an MA recipient.

3. Policies proposed to be included in the rule

The Department proposes to create new rules to allow pharmacists as a provider type under MA and to receive reimbursement for services they provide. Policies proposed should include pharmacist certification requirements and a general statement for physician services pharmacists can provide. The department proposes to revise provisions in chs. DHS 105 and DHS 107 to expand criteria under which the department can reimburse a pharmacist as a provider of services to MA recipients, consistent with s. 49.46 (2) (bh), 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. 49.46 (2) (bh), Stats.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

227.11 The department’s authority to promulgate the proposed rules is provided in ss. 49.46 (2) (bh), 49.45 (10) and 2), Stats.

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

SECTION 49.46 (2) (bh), Stats:

The department shall provide reimbursement for services that are reimbursable under this section and that are provided by a licensed pharmacist within the scope of his or her license or are services performed under s. 450.033.

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 105, relating to provider certification. – 105.155

Chapter DHS 107, relating to covered services. - 107.067

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 rate payers who may reasonably be anticipated to be affected by the rule

- Members who access services from pharmacists
- Professional licensed pharmacists
- Pharmacies
- 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. 482.25 (b) **Standard: Delivery of services.** In order to provide patient safety, drugs and biologicals must be controlled and distributed in accordance with applicable standards of practice, consistent with Federal and State law.

9. Anticipated economic impact, locally or statewide

The proposed rule may have a moderate economic impact.

10. Agency contacts

Bailey Dvorak

Division of Medicaid Services

608-267-5210

DHSDMSAdminRules@dhs.wisconsin.gov