



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3887/1
TJD:cjs

2019 SENATE BILL 380

August 29, 2019 - Introduced by Senators KOOYENGA, BEWLEY, TESTIN, CARPENTER, BERNIER, COWLES, DARLING, ERPENBACH, FEYEN, HANSEN, JOHNSON, LEMAHIEU, PETROWSKI, SCHACHTNER, STROEBEL and L. TAYLOR, cosponsored by Representatives LOUDENBECK, KOLSTE, QUINN, RIEMER, ANDERSON, BALLWEG, BILLINGS, BORN, BOWEN, CONSIDINE, CROWLEY, DITTRICH, DOYLE, DUCHOW, EMERSON, FELZKOWSKI, FIELDS, HORLACHER, JAGLER, KITCHENS, KULP, KUGLITSCH, KURTZ, B. MEYERS, MURSAU, L. MYERS, NYGREN, OHNSTAD, OLDENBURG, PETRYK, PLUMER, POPE, ROHRKASTE, SNYDER, SPREITZER, STEFFEN, SUBECK, SUMMERFIELD, TAUCHEN, C. TAYLOR, THIESFELDT, TITTL, TRANEL, TUSLER, VANDERMEER and ZIMMERMAN. Referred to Committee on Health and Human Services.

1 **AN ACT** *to repeal* 49.45 (29w) (b); *to renumber* 49.45 (29w) (a); *to create* 49.45
2 (61), 49.46 (2) (b) 21., 49.46 (2) (b) 22. and 49.46 (2) (b) 23. of the statutes; and
3 **to affect** 2019 Wisconsin Act 9, section 9119 (2); **relating to:** coverage of
4 services under Medical Assistance provided through telehealth and other
5 technologies, extending the time limit for emergency rule procedures, and
6 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Health Services to provide reimbursement under the Medical Assistance program for any benefit that is covered under the Medical Assistance program, delivered by a certified Medical Assistance program, and provided through interactive telehealth. DHS must pay for such a service provided by a certified provider of Medical Assistance at a distant site an amount equal to the amount the certified provider would receive under the Medical Assistance program if the service were provided through a method other than telehealth. The bill also requires DHS to provide as a benefit under the Medical Assistance program and provide reimbursement under the Medical Assistance program for all of the following: a consultation conducted through interactive telehealth between a certified provider and a Medical Assistance recipient's provider; remote patient monitoring of a Medical Assistance recipient; asynchronous telehealth service, also known as store-and-forward; a service provided through

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communication technology that is covered under the federal Medicare program; and any other telehealth service specified by DHS by rule. DHS may exclude services by rule from Medical Assistance reimbursement and may provide reimbursement by rule for certain services that are not typically considered telehealth services.

The bill defines “telehealth” as a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit or a consultation or are used to transfer medically relevant data about a patient. “Telehealth” generally does not include communications delivered solely by audio-only telephone, facsimile machine, or electronic mail unless the department specifies otherwise by rule. Under the bill, “interactive telehealth” is telehealth delivered using multimedia communication technology that permits 2-way, real-time, interactive communications between a provider at a distant site and the Medical Assistance recipient or the recipient’s provider. “Remote patient monitoring” is telehealth in which a patient’s medical data is transmitted to a provider for monitoring and response if necessary. “Asynchronous telehealth service” is telehealth that is used to transmit medical data about a patient to a provider when the transmission is not a 2-way, real-time, interactive communication.

Under the bill, DHS is prohibited from requiring a certified provider of Medical Assistance that provides a reimbursable service under the bill to obtain an additional certification or meet additional requirements solely because the service was delivered through telehealth, except that DHS may require, by rule, that the transmission of information through telehealth be of sufficient quality to be functionally equivalent to face-to-face contact. DHS may apply any requirement that is applicable to a covered service that is not provided through telehealth to any service provided through telehealth under the bill. The bill prohibits DHS from limiting coverage or reimbursement of a service provided through telehealth under the bill based on the location of the Medical Assistance recipient when the service is provided.

Current law requires reimbursement under the Medical Assistance program of certain mental health services provided through telehealth and defines telehealth for that purpose. The bill eliminates the current provision that applies only to mental health services. The benefit and reimbursement requirements under the bill apply to any Medical Assistance services and are not limited to mental health services.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.45 (29w) (a) of the statutes is renumbered 49.45 (29w).

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1 **SECTION 2.** 49.45 (29w) (b) of the statutes, as affected by 2019 Wisconsin Act
2 9, is repealed.

3 **SECTION 3.** 49.45 (61) of the statutes is created to read:

4 49.45 **(61)** SERVICES PROVIDED THROUGH TELEHEALTH AND COMMUNICATIONS
5 TECHNOLOGY. (a) In this subsection:

6 1. “Asynchronous telehealth service” is telehealth that is used to transmit
7 medical data about a patient to a provider when the transmission is not a 2-way,
8 real-time, interactive communication.

9 2. “Interactive telehealth” means telehealth delivered using multimedia
10 communication technology that permits 2-way, real-time, interactive
11 communications between a certified provider of Medical Assistance at a distant site
12 and the Medical Assistance recipient or the recipient’s provider.

13 3. “Remote patient monitoring” is telehealth in which a patient’s medical data
14 is transmitted to a provider for monitoring and response if necessary.

15 4. “Telehealth” means a practice of health care delivery, diagnosis,
16 consultation, treatment, or transfer of medically relevant data by means of audio,
17 video, or data communications that are used either during a patient visit or a
18 consultation or are used to transfer medically relevant data about a patient.
19 “Telehealth” does not include communications delivered solely by audio-only
20 telephone, facsimile machine, or electronic mail unless the department specifies
21 otherwise by rule.

22 (b) Subject to par. (e), the department shall provide reimbursement under the
23 Medical Assistance program for any benefit that is a covered benefit under s. 49.46
24 (2), that is delivered by a certified provider for Medical Assistance through
25 interactive telehealth.

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1 (c) Subject to par. (e), the department shall provide reimbursement under the
2 Medical Assistance program for all of the following:

3 1. Except as provided by the department by rule, a consultation pertaining to
4 a Medical Assistance recipient conducted through interactive telehealth between a
5 certified provider of Medical Assistance and the Medical Assistance recipient's
6 treating provider that is certified under Medical Assistance.

7 2. Except as provided by the department by rule, remote patient monitoring of
8 a Medical Assistance recipient and asynchronous telehealth service in which the
9 medical data pertains to a Medical Assistance recipient.

10 3. Except as provided by the department by rule and subject to par. (e) 4.,
11 services provided through communication technology that are covered under the
12 Medicare program under 42 USC 1395 et seq.

13 4. Any service that is not specified in subds. 1. to 3. or par. (b) that is provided
14 through telehealth and that the department specifies by rule under par. (d) is a
15 covered and reimbursable service under the Medical Assistance program.

16 (d) The department shall promulgate rules specifying any services under par.
17 (c) 4. that are reimbursable under Medical Assistance. The department may
18 promulgate rules excluding services under par. (c) 1. to 3. from reimbursement under
19 Medical Assistance. The department may promulgate rules specifying any
20 telehealth service under par. (b) or (c) 1. or 2. that is provided solely by audio-only
21 telephone, facsimile machine, or electronic mail as reimbursable under Medical
22 Assistance.

23 (e) 1. The department shall pay for services provided under par. (b) by a
24 certified provider of Medical Assistance at a distant site an amount equal to the

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1 amount the certified provider would receive under the Medical Assistance program
2 if the service were provided through a method other than telehealth.

3 2. The department may not require a certified provider of Medical Assistance
4 that provides a reimbursable service under par. (b) or (c) to obtain an additional
5 certification or meet additional requirements solely because the service was
6 delivered through telehealth, except that the department may require, by rule, that
7 the transmission of information through telehealth be of sufficient quality to be
8 functionally equivalent to face-to-face contact. The department may apply any
9 requirement that is applicable to a covered service that is not provided through
10 telehealth to any service provided under par. (b) or (c).

11 3. The department may not limit coverage or reimbursement of a service
12 provided under par. (b) or (c) based on the location of the Medical Assistance recipient
13 when the service is provided.

14 4. The department may not cover or provide reimbursement under Medical
15 Assistance for a service described under par. (c) 3. that is first covered under the
16 Medicare program under 42 USC 1395 et seq. after July 1, 2019, until the date that
17 is one year after the date the service is covered under the Medicare program or the
18 date the secretary explicitly approves the service as a Medical Assistance covered
19 service, whichever is earlier.

20 **SECTION 4.** 49.46 (2) (b) 21. of the statutes is created to read:

21 49.46 (2) (b) 21. Subject to s. 49.45 (61), consultations between providers
22 conducted through interactive telehealth described under s. 49.45 (61) (c) 1.

23 **SECTION 5.** 49.46 (2) (b) 22. of the statutes is created to read:

24 49.46 (2) (b) 22. Subject to s. 49.45 (61), asynchronous telehealth services and
25 remote patient monitoring described under s. 49.45 (61) (c) 2.

SENATE BILL 380**SECTION 6**

1 **SECTION 6.** 49.46 (2) (b) 23. of the statutes is created to read:

2 49.46 (2) (b) 23. Subject to s. 49.45 (61), services described under s. 49.45 (61)
3 (c) 3. that are provided through communication technology and that are covered
4 under the federal Medicare program and any telehealth services that the
5 department specifies by rule under s. 49.45 (61) (d).

6 **SECTION 7.** 2019 Wisconsin Act 9, section 9119 (2) is repealed.

7 **SECTION 8. Nonstatutory provisions.**

8 (1) **TELEHEALTH SERVICES COVERED UNDER MEDICAL ASSISTANCE.** The department
9 of health services shall provide the coverage and reimbursement required under ss.
10 49.45 (61) (c) and 49.46 (2) (b) 21., 22., and 23. on the earlier of the following:

11 (a) The first day of the 13th month beginning after the effective date of this
12 paragraph.

13 (b) A date specified by the department of health services that is included in a
14 notice submitted to the legislative reference bureau for publication in the Wisconsin
15 Administrative Register.

16 **SECTION 9. Nonstatutory provisions.**

17 (1) **RULES REGARDING COVERAGE OF TELEHEALTH SERVICES.** The department of
18 health services may promulgate rules allowed under this act as emergency rules
19 under s. 227.24. Notwithstanding s. 227.24 (1) (a) and (3), the department of health
20 services is not required to provide evidence that promulgating a rule under this
21 subsection as an emergency rule is necessary for the preservation of the public peace,
22 health, safety, or welfare and is not required to provide a finding of emergency for a
23 rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2),
24 emergency rules promulgated under this subsection remain in effect until the sooner
25 of July 1, 2022, or the date the permanent rules take effect, except that, if the

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1 department of health services has submitted in proposed form permanent rules to
2 the legislative council staff under s. 227.15 (1) before July 1, 2022, emergency rules
3 promulgated under this subsection remain in effect until the permanent rules take
4 effect.

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(END)