

State of Wisconsin



2019 Senate Bill 380

Date of enactment: **November 25, 2019**
Date of publication*: **November 26, 2019**

2019 WISCONSIN ACT 56

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

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

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

SECTION 2. 49.45 (29w) (b) of the statutes, as affected by 2019 Wisconsin Act 9, is repealed.

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

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

1. "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.

2. "Interactive telehealth" means telehealth delivered using multimedia communication technology that permits 2-way, real-time, interactive communications between a certified provider of Medical Assistance at a distant site and the Medical Assistance recipient or the recipient's provider.

3. "Remote patient monitoring" is telehealth in which a patient's medical data is transmitted to a provider for monitoring and response if necessary.

4. "Telehealth" means 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" does not include communications delivered solely by audio-only telephone, facsimile machine, or electronic mail unless the department specifies otherwise by rule.

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

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

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

3. Except as provided by the department by rule and subject to par. (e) 4., services that are covered under the Medicare program under 42 USC 1395 et seq. for which the federal department of health and human services provides Medical Assistance federal financial participation and that are any of the following:

- a. Telehealth services as defined under 42 USC 1395m (m) (4) (F).
- b. Remote physiologic monitoring.
- c. Remote evaluation of prerecorded patient information.
- d. Brief communication technology-based services.
- e. Care management services delivered through telehealth.
- f. Any other telehealth or communication technology-based services.

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

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

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

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

4. The department may not cover or provide reimbursement under Medical Assistance for a service described under par. (c) 3. that is first covered under the Medicare program under 42 USC 1395 et seq. after July 1, 2019, until the date that is one year after the date the service is covered under the Medicare program or the

date the secretary explicitly approves the service as a Medical Assistance covered service, whichever is earlier.

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

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

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

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

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

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

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

SECTION 8. Nonstatutory provisions.

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

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

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

(3) RULES REGARDING COVERAGE OF TELEHEALTH SERVICES. The department of health services may promulgate rules allowed under this act as emergency rules under s. 227.24. Notwithstanding s. 227.24 (1) (a) and (3), the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the sooner of July 1, 2022, or the date the permanent rules take effect, except that, if the department of health services has submitted in proposed form permanent rules to the legislative council staff under s. 227.15 (1) before July 1, 2022, emergency rules promulgated under this subsection remain in effect until the permanent rules take effect.