

2019 Senate Bill 380 (LRB -3887)

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. (FE)

2019

08-29.	S.	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.	350
08-29.	S.	Read first time and referred to Committee on Health and Human Services	350
09-09.	S.	Representative Skowronski added as a cosponsor	362
09-10.	S.	Representative James added as a cosponsor	363
09-17.	S.	Senator Larson added as a coauthor	377
09-18.	S.	Senate Amendment 1 offered by Senators Kooyenga and Bewley (LRB a0521)	385
09-19.	S.	Representative Edming added as a cosponsor	387
10-03.	S.	Fiscal estimate received	
10-09.	S.	Public hearing held	
10-21.	S.	LRB correction	451
10-23.	S.	Executive action taken	
10-23.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Health and Human Services, Ayes 5, Noes 0	454
10-23.	S.	Report passage as amended recommended by Committee on Health and Human Services, Ayes 5, Noes 0	454
10-23.	S.	Available for scheduling	
10-24.	S.	Senate Amendment 2 offered by Senators Kooyenga and Bewley (LRB a0683)	456
10-28.	S.	Representative Wittke added as a cosponsor	462
11-01.	S.	Placed on calendar 11-5-2019 pursuant to Senate Rule 18(1)	473
11-05.	S.	Read a second time	
11-05.	S.	Senate Amendment 1 adopted	
11-05.	S.	Senate Amendment 2 adopted	
11-05.	S.	Ordered to a third reading	
11-05.	S.	Rules suspended	
11-05.	S.	Read a third time and passed	
11-05.	S.	Ordered immediately messaged	
11-05.	A.	Received from Senate	357
11-05.	A.	Read first time and referred to calendar of 11-7-2019 pursuant to Assembly Rule 42 (1)(a)	358
11-07.	A.	Rules suspended to withdraw from calendar and take up	
11-07.	A.	Read a second time	
11-07.	A.	Ordered to a third reading	
11-07.	A.	Rules suspended	
11-07.	A.	Read a third time and concurred in	
11-07.	A.	Ordered immediately messaged	



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ENROLLED BILL

Adopted Documents

Original

Engrossed

Substitute Amdt

19 -3887, 1 ✓

Amendments: None or Listed below.

SA 1 & SA 2

Corrections: None or Listed by date below.

10/18

Topic: Same as relating clause or Indicated below.

coverage of services under Medical Assistance
provided through telehealth and other technologies

11/11/19

Date

Enrolling Drafter



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CORRECTIONS IN:

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Prepared by the Legislative Reference Bureau
(October 18, 2019)

- ✓ **1.** Page 6, line 16: delete that line.
- ✓ **2.** Page 6, line 17: delete "(1)" and substitute "(3)".

(END)



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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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SECTION 3

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.

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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.

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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.

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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.

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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) ³ **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.

5 (END)



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**SENATE AMENDMENT 1,
TO SENATE BILL 380**

September 18, 2019 - Offered by Senators KOOYENGA and BEWLEY.

1 At the locations indicated, amend the bill as follows:

- 2 **1.** Page 4, line 11: delete lines 11 and 12 and substitute “services that are
3 covered under the Medicare program under 42 USC 1395 et seq. for which the federal
4 department of health and human services provides Medical Assistance federal
5 financial participation and that are any of the following:
- 6 a. Telehealth services as defined under 42 USC 1395m (m) (4) (F).
 - 7 b. Remote physiologic monitoring.
 - 8 c. Remote evaluation of prerecorded patient information.
 - 9 d. Brief communication technology-based services.
 - 10 e. Care management services delivered through telehealth.
 - 11 f. Any other telehealth or communication technology-based services.”.

12 (END)

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**SENATE AMENDMENT 2,
TO SENATE BILL 380**

October 24, 2019 - Offered by Senators KOOYENGA and BEWLEY.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 23: delete the material beginning with “1. The department” and
3 ending with “telehealth.” on page 5, line 2.

4 (END)