



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2453/1
TJD&KP:amn

2021 SENATE BILL 202

March 12, 2021 - Introduced by Senators TESTIN and COWLES, cosponsored by Representatives VANDERMEER, LOUDENBECK, SORTWELL and KURTZ. Referred to Committee on Health.

1 **AN ACT** *to create* 49.45 (3) (e) 9m., 49.45 (4r), 50.33 (2d), 50.36 (5m), 50.49 (6m)
2 (d) and 440.094 of the statutes; **relating to:** state response to COVID-19
3 related to health services and practice of health care providers licensed outside
4 of this state.

Analysis by the Legislative Reference Bureau

Medical Assistance payment for hospitals for nursing facility care

This bill requires the Department of Health Services to provide reimbursement or a supplemental payment to hospitals under the Medical Assistance program for providing nursing-facility-level custodial care. To receive reimbursement or a supplemental payment, the hospital must notify DHS that it is participating as a swing bed hospital under the Medical Assistance program and providing custodial care for which federal financial participation is approved to an individual who is eligible for discharge after receiving inpatient care in the hospital, who needs nursing-facility-level care, and for whom the hospital is unable to locate a nursing facility that accepts the individual for admission. If providing reimbursement instead of a supplemental payment, DHS must pay the hospital the statewide average per-diem rate paid to nursing facilities. DHS must use the same standards and eligibility criteria as the federal Medicare program uses to determine reimbursement for swing beds or, for hospitals that are not critical access hospitals, the terms of a federal waiver issued during the federally declared national emergency related to the 2019 novel coronavirus. This requirement to reimburse

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hospitals for providing nursing facility care applies until January 1, 2022, or until the termination of any public health emergency declared by the secretary of the federal Department of Health and Human Services related to the 2019 novel coronavirus, whichever is earlier.

Payment for outpatient services provided by hospitals

The bill requires DHS to provide reimbursement or a supplemental payment through the Medical Assistance program to a hospital for services provided on an outpatient basis that are usually reimbursed when provided at the hospital's inpatient facility but are provided at the hospital's outpatient facility due to the 2019 novel coronavirus pandemic. To receive reimbursement or supplemental payment under the bill, the outpatient services must be approved for federal financial participation and must be provided in a facility that is operated by the hospital and is certified for outpatient services under the federal Medicare program, including under the terms of a federal waiver issued during the federally declared national emergency related to the 2019 novel coronavirus. DHS must seek any federal approval necessary to provide the reimbursement or supplemental payment. The payment requirement applies until the conclusion of a public health emergency declared by the secretary of the federal Department of Health and Human Services in response to the 2019 novel coronavirus or until January 1, 2022, whichever is earlier.

Utilization data in the Medical Assistance program

The bill requires DHS to provide, semiannually, to any health care data aggregator all fee-for-service and managed care encounter claims data and data specifications for the Medical Assistance program. A health care data aggregator is a data organization or entity that collects, analyzes, and disseminates health care information under current law and requests that DHS provide the data to it. Current law provides that a data organization contracts with the state to analyze and report health care claims information collected from insurers and administrators and provides that an entity is under contract to collect, analyze, and disseminate claims and other health information from hospitals and ambulatory surgery centers. Either the data organization, the entity, or both could be a health care data aggregator under the bill.

Under the bill, after DHS provides a health care data aggregator with the Medical Assistance data, the health care data aggregator, within five days or a longer period specified by DHS, must create a data set with information from which has been eliminated the ability to trace the information back to a specific patient and then destroy the original data. Once the patient information cannot be traced back to a specific patient the information is known as de-identified health information. The health care data aggregator must make the de-identified data set available to the public and may disseminate custom data sets and reports containing de-identified health information. This de-identified health information must meet the requirements in the federal Health Insurance Portability and Accountability Act, or HIPAA, for ensuring that patient information is not individually identifiable. HIPAA generally requires that health information that identifies a specific individual be kept confidential except for treatment, billing, and other limited

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purposes but allows the use of health information if it cannot identify the individual. The health care data aggregator, in its treatment of the Medical Assistance data received under the bill, must comply with the same patient confidentiality requirements as apply to its collection of data under current law.

Hospital services provided in a home setting

The bill specifies standards for certain services provided by hospitals in a home setting and reimbursement under the Medical Assistance program for those services. These “hospital-associated services” are defined in the bill as health care services that are the same type of services as those provided by a hospital in an inpatient or outpatient facility, that are of the type for which a federal Medicare payment could be claimed as a hospital service, and that are provided in a home setting and not in a setting that is approved as a hospital by DHS. If the federal Centers of Medicare and Medicaid Services (CMS) has approved a hospital to provide any hospital-associated service, DHS may apply and enforce as the state standard for the service the CMS rule or standard on the hospital. A hospital that complies with the bill is not required to be licensed as a home health agency to provide hospital-associated services.

The Medical Assistance program is a joint federal and state program that provides health services to individuals who have limited financial resources, and the Medical Assistance program certifies and provides reimbursement to providers, including hospitals, for those health services that are covered by the program. The bill specifies that hospital-associated services provided by a hospital in accordance with the bill and that are of the type for which Medicare payment could be claimed as inpatient hospital services must be included and reimbursed or paid as inpatient services under the Medical Assistance program. All of the bill’s provisions regarding services provided by a hospital in a home setting apply only before January 1, 2022.

Practice by health care providers from other states

The bill authorizes, in certain situations, health care providers licensed in another state or territory to provide services for which they are licensed or certified. Under the bill, a person who satisfies certain requirements and holds a valid, unexpired credential in another state or territory as any of the following may provide services in this state: 1) a physician, physician assistant, or perfusionist; 2) a nurse; 3) a dentist; 4) a pharmacist; 5) a psychologist; 6) a social worker, marriage and family therapist, professional counselor, or clinical substance abuse counselor; 7) a chiropractor; 8) a physical therapist; 9) a podiatrist; 10) a dietitian; 11) an athletic trainer; 12) an occupational therapist; 13) an optometrist; 14) an acupuncturist; 15) a speech-language pathologist or audiologist; or 16) a massage or bodywork therapist. Generally, these practitioners may practice in this state and the Department of Safety and Professional Services must grant them a temporary credential if they apply for a temporary credential within 30 days of beginning to practice for a health care employer.

The bill also specifies that a health care provider granted a temporary credential under the bill may provide services through telehealth to a patient located in this state.

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Current law generally prohibits a person from engaging in certain health care–related practices without holding a required credential.

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

1 **SECTION 1.** 49.45 (3) (e) 9m. of the statutes is created to read:

2 49.45 (3) (e) 9m. a. In this subdivision, “hospital–associated service” has the
3 meaning given in s. 50.33 (2d).

4 b. Before January 1, 2022, any hospital–associated service that is provided by
5 a hospital in accordance with s. 50.36 (5m) that is of the type for which payment could
6 be claimed as an inpatient hospital service under the federal Medicare program, 42
7 USC 1395 et seq., shall be included as part of and reimbursed or paid as an inpatient
8 service under this section.

9 **SECTION 2.** 49.45 (4r) of the statutes is created to read:

10 49.45 (4r) UTILIZATION DATA. (a) In this subsection, “health care data
11 aggregator” means a data organization or entity that collects, analyzes, and
12 disseminates health care information under subch. I of ch. 153 and that requests the
13 department to provide data under this subsection.

14 (b) Semiannually, the department shall provide to any health care data
15 aggregator all Medical Assistance program fee–for–service and managed care
16 encounter claims data and data specifications maintained by the department.

17 (c) Within 5 business days or a longer period specified by the department, of the
18 receipt of data under par. (b), a health care data aggregator shall create a data set
19 from the data received that is de–identified health information, as described in 42
20 CFR 164.514 (a), and that meets the requirements for de–identification described in
21 42 CFR 164.514 (b) and then shall destroy the original data provided by the

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1 department under par. (b). The health care data aggregator shall make the
2 de-identified data set available to the public and may disseminate custom data sets
3 and reports if the data sets and reports contain only de-identified health
4 information.

5 (d) Data provided by the department to a health care data aggregator under
6 par. (b) are not subject to inspection or copying under s. 19.35. A health care data
7 aggregator shall comply with the requirements under s. 153.50 (3) to ensure
8 protection of patient identity with regard to data received and made available or
9 disseminated under this subsection.

10 **SECTION 3.** 50.33 (2d) of the statutes is created to read:

11 50.33 (2d) "Hospital-associated service" means a health care service that
12 meets all of the following conditions:

13 (a) The service is of the same type as those furnished by a hospital in an
14 inpatient or outpatient facility.

15 (b) The service is of a type for which a payment could be claimed as a hospital
16 service under the federal Medicare program, 42 USC 1395 et seq.

17 (c) The service is provided at a location other than in a facility approved by the
18 department under s. 50.35.

19 (d) The service is provided in a home setting before January 1, 2022.

20 **SECTION 4.** 50.36 (5m) of the statutes is created to read:

21 50.36 (5m) If the federal centers for medicare and medicaid services has
22 approved a hospital to provide any hospital-associated service, the department may
23 apply to and enforce upon the hospital as the state standard for the
24 hospital-associated service any rule or standard that is required by the centers for

SENATE BILL 202**SECTION 4**

1 medicare and medicaid services for the service. This subsection does not apply on
2 or after January 1, 2022.

3 **SECTION 5.** 50.49 (6m) (d) of the statutes is created to read:

4 50.49 **(6m)** (d) A hospital that is providing hospital-associated services in
5 accordance with s. 50.36 (5m).

6 **SECTION 6.** 440.094 of the statutes is created to read:

7 **440.094 Practice by health care providers from other states. (1)**

8 DEFINITIONS. In this section:

9 (a) "Credential" means a license, permit, certificate, or registration.

10 (b) "Health care employer" means a system, care clinic, care provider,
11 long-term care facility, or any entity whose employed, contracted, or affiliated staff
12 provide health care service to individuals in this state.

13 (c) "Health care provider" means an individual who holds a valid, unexpired
14 credential granted by another state or territory that authorizes or qualifies the
15 individual to perform acts that are substantially the same as the acts that any of the
16 following are licensed or certified to perform:

17 1. A registered nurse, licensed practical nurse, or nurse midwife licensed under
18 ch. 441, or advanced practice nurse prescriber certified under ch. 441.

19 2. A chiropractor licensed under ch. 446.

20 3. A dentist licensed under ch. 447.

21 4. A physician, physician assistant, perfusionist, or respiratory care
22 practitioner licensed or certified under subch. II of ch. 448.

23 5. A physical therapist or physical therapist assistant licensed under subch. III
24 of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

25 6. A podiatrist licensed under subch. IV of ch. 448.

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- 1 7. A dietitian certified under subch. V of ch. 448.
- 2 8. An athletic trainer licensed under subch. VI of ch. 448.
- 3 9. An occupational therapist or occupational therapy assistant licensed under
4 subch. VII of ch. 448.
- 5 10. An optometrist licensed under ch. 449.
- 6 11. A pharmacist licensed under ch. 450.
- 7 12. An acupuncturist certified under ch. 451.
- 8 13. A psychologist licensed under ch. 455.
- 9 14. A social worker, marriage and family therapist, or professional counselor
10 certified or licensed under ch. 457 or a clinical substance abuse counselor certified
11 under s. 440.88.
- 12 15. A speech-language pathologist or audiologist licensed under subch. II of ch.
13 459.
- 14 16. A massage therapist or bodywork therapist licensed under ch. 460.
- 15 **(2) PRACTICE BY HEALTH CARE PROVIDERS FROM OTHER STATES. (a)**
16 Notwithstanding ss. 441.06 (4), 441.15 (2), 441.16, 446.02 (1), 447.03 (1) and (2),
17 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) and (2),
18 449.02 (1), 450.03 (1), 451.04 (1), 455.02 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1),
19 459.24 (1), and 460.02, a health care provider may provide services within the scope
20 of the credential that the health care provider holds and the department shall grant
21 the health care provider a temporary credential to practice under this section if all
22 of the following apply:
23 1. The health care provider applies to the department for a temporary
24 credential under this section within 30 days of beginning to provide health care

SENATE BILL 202**SECTION 6**

1 services for a health care employer. The health care provider shall include in the
2 application an attestation of all of the following:

3 a. The date on which the health care provider first provided health care services
4 in this state under this section.

5 b. That the health care provider holds a valid, unexpired credential granted in
6 another state.

7 c. The health care provider is not currently under investigation and no
8 restrictions or limitations are currently placed on the health care provider's
9 credential by the credentialing state or any other jurisdiction.

10 d. The health care provider has applied for a permanent credential granted by
11 the department or an examining board, as applicable, under chs. 440 to 480. This
12 subd. 1. d. does not apply to a health care provider who provides health care services
13 only during the period covered by a national emergency declared by the U.S.
14 president under 50 USC 1621 in response to the 2019 novel coronavirus or during
15 the 30 days immediately after the national emergency ends.

16 2. If the health care provider provides services other than services provided
17 through telehealth as described in sub. (3), the health care employer of the health
18 care provider attests all of the following to the department within 10 days of the date
19 on which the health care provider begins providing health care services in this state
20 under this section:

21 a. The health care employer has confirmed that the health care provider holds
22 a valid, unexpired credential granted by another state.

23 b. To the best of the health care employer's knowledge and with a reasonable
24 degree of certainty, the health care provider is not currently under investigation and

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1 no restrictions or limitations are currently placed on the health care provider's
2 credential by the credentialing state or any other jurisdiction.

3 (b) A health care provider who practices within the scope of a temporary
4 credential granted under this section has all rights and is subject to all
5 responsibilities, malpractice insurance requirements, limitations on scope of
6 practice, and other provisions that apply under chs. 440 to 480 to the practice of the
7 health care provider.

8 (c) 1. A temporary credential granted under this section becomes effective on
9 the date identified in the attestation under par. (a) 1. a. that the health care provider
10 first provided health care services in this state under this section.

11 2. a. Except as provided in subd. 2. b., a temporary credential granted under
12 this section expires on the date that the department, or an examining board in the
13 department, as applicable, grants or denies the application under par. (a) 1. d. for a
14 permanent credential submitted by the health care provider.

15 b. If a health care provider provides health care services only during the period
16 covered by a national emergency declared by the U.S. president under 50 USC 1621
17 in response to the 2019 novel coronavirus or during the 30 days immediately after
18 the national emergency ends, a temporary credential granted under this section to
19 the health care provider expires 30 days after the national emergency ends.

20 **(3) TELEHEALTH.** A health care provider who practices within the scope of a
21 temporary credential granted under this section may provide services through
22 telehealth to a patient located in this state.

23 **SECTION 9119. Nonstatutory provisions; Health Services.**

24 (1) PAYMENT FOR HOSPITALS FOR NURSING FACILITY CARE.

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1 (a) In this subsection, “public health emergency period” means the period
2 ending on January 1, 2022, or the termination of any public health emergency
3 declared under 42 USC 247d by the secretary of the federal department of health and
4 human services in response to the 2019 novel coronavirus, whichever is earlier.

5 (b) During the public health emergency period, subject to par. (c), the
6 department of health services shall provide, under the Medical Assistance program,
7 reimbursement at the statewide average per-diem rate paid to nursing facilities or
8 a supplemental payment to hospitals for providing nursing-facility-level care when
9 all of the following criteria apply:

10 1. The individual for whom the hospital provided nursing-facility-level care
11 is enrolled in the Medical Assistance program, has been admitted on an inpatient
12 basis to the hospital, is eligible for discharge after receiving care in the hospital,
13 requires nursing-facility-level care upon discharge, and due to the hospital being
14 unable to locate a nursing facility that accepts the individual for admission, is unable
15 to be transferred to a nursing facility.

16 2. The services provided to the individual described under subd. 1. are custodial
17 care for which federal financial participation is approved.

18 3. The hospital notifies the department of health services that it is
19 participating as a swing bed hospital under the Medical Assistance program.

20 (c) The department of health services shall use the same standards and criteria
21 for determining whether a hospital is eligible for reimbursement or a supplemental
22 payment under par. (b) as are used by the federal Medicare program under 42 USC
23 1395 et seq. for the payment for use of swing beds or, for any hospital that is not a
24 critical access hospital, under the terms of a federal waiver approved under section
25 1135 of the federal social security act. The department shall seek any approval from

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1 the federal government necessary to implement the reimbursement under this
2 subsection.

3 (2) PAYMENT FOR OUTPATIENT SERVICES PROVIDED BY HOSPITALS.

4 (a) Until the conclusion of a public health emergency declared under 42 USC
5 247d by the secretary of the federal department of health and human services in
6 response to the 2019 novel coronavirus or until January 1, 2022, whichever is earlier,
7 the department of health services shall provide reimbursement or a supplemental
8 payment under the Medical Assistance program to a hospital for providing any
9 outpatient service when all of the following criteria are satisfied:

10 1. The facility at which the outpatient service is performed is operated by the
11 hospital and certified under the Medicare program under 42 USC 1395 et seq.,
12 including under the terms of a federal waiver approved under section 1135 of the
13 federal social security act, for outpatient services.

14 2. The outpatient service is reimbursable when provided in the hospital's
15 inpatient facility but is not provided at the inpatient facility due to reasons
16 associated with the 2019 novel coronavirus pandemic.

17 3. The outpatient service is one for which federal financial participation is
18 approved.

19 (b) The department of health services may not include in a reimbursement
20 under par. (a) payments under s. 49.45 (3) (e) 11. or 12. or (59).

21 (c) The department of health services shall seek any approval from the federal
22 department of health and human services that is necessary to provide the
23 reimbursement or a supplemental payment in accordance with this subsection.

24

(END)