

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE CR 22-053

Ch. DHS 34, 35, 36, 40, 50, 61, 63, and 75, relating to Division of Care and Treatment Services telehealth.

Basis and Purpose of Proposed Rule

In 2019 Wisconsin Act 56 ("Act 56"), the Wisconsin Legislature explicitly identified certain types of reimbursable Medical Assistance telehealth and communications technology services. It directs the Department of Health Services ("the department") to reimburse Medical Assistance certified providers for services provided through asynchronous telehealth, interactive telehealth, and remote patient monitoring services, including for federally recognized telehealth services, remote physiological monitoring, remote evaluation of prerecorded patient information, brief communication technology-based, and care management services. It also directs the department to identify certain Medical Assistance reimbursable telehealth services and authorizes the department to identify certain Medical Assistance non-reimbursable telehealth services in the Administrative Code.

Based on the directives in Act 56, it is necessary for the department's Division of Care and Treatment Services ("DCTS") to update administrative rules which administer behavioral health treatment programs reimbursable by Medical Assistance. Specifically, these rules need to be updated to align with the requirements of Act 56 and the ensuing Division of Medicaid Services ("DMS") telehealth policies. Such changes will bring DCTS rules into compliance with Act 56 and allow affected providers to be in compliance with DMS administrative rules and telehealth policies for billing and other purposes.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepted the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested.

Specifically, the department changed the definition in response to Legislative Council comment #2. b. by no longer using "clinically appropriate" in various definitions of the term "functionally equivalent."

In addition, the department removed all references to the "old" ch. DHS 75 since CHR 20-047 took effect on October 1, 2022.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

No issues were raised by any small businesses during the public hearing and comment period.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

Not applicable – no issues were raised by small businesses during the public hearing and comment period.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

None were received because no issues were raised by small businesses during the public hearing.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

The proposed rule changes pose minimal impact to behavioral health providers. The rule changes allow providers to bill Medicaid for behavioral health services delivered via telehealth which Medicaid previously did not cover.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

The department did not identify any impact on small businesses.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

No changes were made to the rule's analysis.

Fiscal Estimate/Economic Impact Analysis

The department directly solicited comments on the economic impact of the proposed rule changes from a wide range of Medical Assistance providers and Medical Assistance member advocates. Additionally, the department solicited comments on the economic impact of the proposed rule changes from all parties interested in providing comments by publishing a solicitation for public comment in the Administrative Register and on the department's website. No changes were made to the rule's analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on January 30, 2023. A public hearing was held on February 17, 2023, in via zoom. Public comments on the proposed rule were accepted until February 17, 2023.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Elizabeth Collier	Support
Alyssa Fisher	Observer only
Amber	Observer only
Amber Ellis PA	Observer only
Amy Gunderson	Observer only
Angie Grogan - Trailways Counseling	Observer only
Angie Moran - DHS	Observer only
Ann Kelley-Kuehmichel - DHS	Observer only
Anthony Tadych - Washington County	Observer only
Ashley Ciancio - KATS	Observer only
Bette Trimble - Rock County	Observer only
Brandon Franzke	Observer only
Brett guest	Observer only
Carlos Frick - NAMI Racine County	Observer only
Carrie Kubasta	Observer only
Cassandra Merboth - DCDHS	Observer only
Catherine	Observer only
Chantil Harris	Observer only
Chris Luchterhand - WI DHS	Observer only
Cindy O'Connell - DHS	Observer only
David E	Observer only
Davide Donaldson	Observer only
Dawn Driscoll	Observer only
Dr. Gonsalves	Observer only
Heather Carlson - DHS	Observer only
Holly Audley - DHS	Observer only
Janet Fleege - DHS	Observer only
Jason Cram - DHS	Observer only
Jbodo guest	Observer only
Jennie McCann	Observer only
Jess G	Observer only
Jill Chaffee	Observer only

Joanette Robertson – DHS	Observer only
Kathleen Lyons - BAL	Observer only
Kathys	Observer only
Katie Haupt	Observer only
Katie Rappel	Observer only
Kaylin Shampo	Observer only
Kelsey Avery	Observer only
Ken Cole	Observer only
Kenya Bright - DHS	Observer only
Kim Fairchild - Waushara DP	Observer only
Kim Stein	Observer only
Krisi Woznicki	Observer only
Kristin Austin - HealthNet - Rock County	Observer only
Lauren	Observer only
Ligia Wipfli	Observer only
Illoyd	Observer only
Matthew Fure - DHS	Observer only
McElroy's Ipad	Observer only
Melody Joiner	Observer only
Michael Maletis	Observer only
Michelle Carr	Observer only
Michelle Shaker - DHS	Observer only
Mindy	Observer only
MJ Griggs	Observer only
Nastassia Jackson	Observer only
Norlle	Observer only
Paige Dorn	Observer only
Paula Swatek - Crawford County	Observer only
Saima Chauan - DHS	Observer only
Sams	Observer only
Shane Moisio	Observer only
Shannon Esala	Observer only
Shauna Grossman	Observer only
Sheline Cieczka	Observer only
Simran Arora - DHS	Observer only

Tracy Bellman	Observer only
Tryson Spears	Observer only
Vicky Coppens	Observer only
Libbi Burke	Observer only
Melissa Brown	Observer only
USC Grant County	Observer only
1.608.471.4691	Observer only

Summary of Public Comments to the Proposed Rule and the Agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
DHS 75.59	Regarding Opioid Treatment Providers (OTP): This section should be updated to allow for telehealth to be used for intakes for buprenorphine and methadone induction, because there will be federal guidance coming soon which allows for this.	Since the federal guidance is not yet published, we cannot make this change at this time. Once the guidance is published, the department will consider if this rule should be changed to be in alignment with federal regulations; this will potentially increase access to services.

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		x	
Department response to Rules Clearinghouse recommendations		x	
Final Regulatory Flexibility Analysis	x		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			x
Public Hearing Summary	x		
List of Public Hearing Attendees and Commenters	x		
Summary of Public Comments and Department Responses	x		
Fiscal Estimate/Economic Impact Analysis		x	
Revised Fiscal Estimate/Economic Impact Analysis			x
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			x
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			x
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			x
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			x