

**STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES**

CHAPTER: DHS 101
DHS 105
DHS 107

RELATING TO: Introductions and Definitions
Provider Certification
Covered Services

RULE TYPE: Permanent

SCOPE TYPE: Original

SUMMARY

1. Description of rule objective/s

In 2017 Wis. Act 306, the Wisconsin Legislature directed the Department to promulgate rules and implement policy to define complex rehabilitation technology, define provider certification for providers, and define under what circumstances complex rehabilitation technology may be covered or reimbursed by Medicaid fee-for-service and managed care organizations.

2. Existing policies relevant to the rule

DHS 105.40 Durable medical equipment and medical supply vendors
DHS 107.24, Durable Medical Equipment

3. Policies proposed to be included in the rule

Wisconsin 2017 Act 306 requires the Department to promulgate rules and other policies for use of complex rehabilitation technology by recipients of Medical Assistance. Specific directives and parameters for the rulemaking are stated in the Act.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The Legislature has explicitly directed the department to submit the proposed rules to the legislative council staff no later than the first day of the 13th month beginning after the effective date of Section 3. of the Act.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The Department's authority to promulgate the proposed rules is provided in s. 49.45 (9r) (b), Stats., and in 2017 Wis. Act. 306, Section 3.

b. Statute/s that authorize/s the promulgation of the proposed rule

Section 49.45 (9r) (b) reads:

(b) The department shall promulgate rules and other policies for use of complex rehabilitation technology by recipients of Medical Assistance. The department shall include in the rules all of the following:

1. Designation of billing codes as complex rehabilitation technology including creation of new billing codes or modification of existing billing codes. The department shall include provisions allowing quarterly updates to the designations under this subdivision.
2. Establishment of specific supplier standards for companies or entities that provide complex rehabilitation technology and limiting reimbursement only to suppliers that are qualified complex rehabilitation technology suppliers.
3. A requirement that Medical Assistance recipients who need a complex rehabilitation manual wheelchair, complex rehabilitation power wheelchair, or other complex rehabilitation seating component to be evaluated by all of the following:
 - a. A qualified health care professional who does not have a financial relationship with a qualified complex rehabilitation technology supplier.
 - b. A qualified complex rehabilitation technology professional.
4. Establishment and maintenance of payment rates for complex rehabilitation technology that are adequate to ensure complex needs patients have access to complex rehabilitation technology, taking into account the significant resources, infrastructure, and staff needed to appropriately provide complex rehabilitation technology to meet the unique needs of complex needs patients.
5. A requirement for contracts with the department that managed care plans providing services to Medical Assistance recipients comply with this subsection and the rules promulgated under this subsection.
6. Protection of access to complex rehabilitation technology for complex needs patients.

2017 Wis. Act. 306, Section 3., states:

Section 3 . Nonstatutory provisions.

- (1) (a) The department of health services shall submit in proposed form the rules required under section 49.45 (9r) of the statutes, including the rules described under paragraph (b), to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 13th month beginning after the effective date of this paragraph.
- (b) The department of health services shall include in the proposed rules submitted under paragraph (a) rules that designate the healthcare common procedure coding system codes that are used in the federal Medicare program for complex rehabilitation technology for the Medical Assistance program and are in accordance with section 49.45 (9r) of the statutes.
- (c) The department shall in the proposed rules exempt the codes designated from any bidding or selective contracting requirements.

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

- Section 49.45 (9r), Stats.
- Section 49.46 (2) (b) 6. dm., Stats.
- DHS 101
- DHS 105
- DHS 107

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The estimated time for state employees to develop the rule is 2,080 hours.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule

- Members across the lifespan who access complex rehabilitation technology
- Durable medical equipment dealers who do not meet the provider certification criteria in the law, but currently dispense complex rehabilitation technology
- Home health agencies and pharmacies that currently dispense complex rehabilitation technology
- Occupational therapists
- Physical therapists
- Boarder state providers. (No border state has a complex rehabilitation technology benefit.)
- Medicaid Managed Care Organizations
- CLTS Waiver
- IRIS
- Family Care
- Nursing Homes (Power wheelchairs are not included in the nursing home daily rate)

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

2017 Wisconsin Act 306 requires the Department to designate within the promulgated rules the healthcare common procedure coding system (HCPCS) codes that are used in the federal Medicare program for complex rehabilitation technology. There are no Medicare designated complex rehabilitation technology codes at this time. However, Congressional House Bill HR 750 was referred to subcommittee in February 2017. This bill would amend title XVIII (Medicare) of the Social Security Act to establish a separate Medicare benefit category for complex rehabilitation technology (CRT) items that: (1) are designed or configured to meet an individual's unique needs and capacities; (2) are primarily used to serve a medical or functional purpose; and (3) require certain services to ensure appropriate design, configuration, and use. The Centers for Medicare & Medicaid Services (CMS) shall designate CRT items and establish eligibility criteria with respect to such items, in accordance with specified exclusions and other requirements.

The CMS must also establish: (1) a payment system applicable to CRT items, subject to clinical conditions and other specified requirements; (2) quality standards for suppliers of CRT items; and (3) a formal process for the submission of certain CRT code-set modification requests by stakeholder groups.

If specified requirements are met, Medicare payment must be made for the replacement of a CRT item (or item part), without regard to certain continuous-use or useful-lifetime restrictions applicable to items of durable medical equipment.

In addition, Medicare payment may be made for the temporary rental of a CRT item if such an item owned by a qualified enrollee is undergoing necessary repairs.

9. Anticipated economic impact, locally or statewide

The anticipated economic impact of the proposed rules is based on the fiscal estimate for 2017 Senate Bill 381, available at https://docs.legis.wisconsin.gov/2017/related/fe/sb381/sb381_DHS.pdf, and for 2017 Assembly Bill 462, available at https://docs.legis.wisconsin.gov/2017/related/fe/ab462/ab462_DHS.pdf. The department anticipates the proposed rule may have a moderate economic impact.

10. Agency contacts

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AUTHORIZED SIGNATURES

DHS Secretary

Date Submitted for Governor Approval
