

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

**CHAPTER: DHS 10, 73, 90, 104, and 105**

**RELATING TO: Long-Term Care Services and Medical Assistance Fair Hearing Process**

**RULE TYPE: Permanent**

**SCOPE TYPE: Original**

**FINDINGS OF EMERGENCY: Not Applicable**

**SUMMARY**

**1. Description of rule objective/s**

In 2019 Wisconsin Act 9, the Wisconsin Legislature alters the availability and timing of the fair hearing process for certain community-based Medical Assistance programs and services; modifies the definition of certain managed care organization adverse benefit determinations; defines the process through which a member must contest a managed care organization decision, omission, or action that is not an adverse benefit determination; eliminates the Community Options Program as a Medical Assistance program; eliminates regional long-term care advisory committees; requires each aging and disability resource center governing board to review the number and types of grievances and appeals related to the aging and disability resource center; and removes the requirement that the secretary certify aging and disability resource centers to counties, hospitals, nursing homes, community-based residential facilities, adult family homes, and residential care apartment complexes.

**2. Existing policies relevant to the rule**

- DHS 10.11 Authority and purpose
- DHS 10.13 Definitions
- DHS 10.21 Contracting
- DHS 10.23 Standards for performance by resource centers
- DHS 10.31 Application and eligibility determination
- DHS 10.42 Certification and contracting
- DHS 10.52 Required notifications
- DHS 10.53 Grievances
- DHS 10.54 Department reviews
- DHS 10.55 Fair hearing
- DHS 10.56 Continuation of services
- DHS 73.01 Authority and purpose
- DHS 73.02 Applicability
- DHS 73.03 Definitions
- DHS 73.05 Reimbursement for community options program case plans
- DHS 73.10 Individual hardship exceptions to limits on funding for CBRF care
- DHS 90.06 County administrative agency designation and responsibilities
- DHS 104.01 Recipient rights
- DHS 105.17 Personal care rights

**3. Policies proposed to be included in the rule**

2019 Wisconsin Act 9 made changes which require the Department to bring associated rules into compliance, including:

- modifying the availability and timing of the fair hearing process for certain community-based Medical Assistance programs and services;
- defining managed care organization decisions, omissions, or actions;
- requiring members to first file grievances with managed care organizations, and limiting members' ability to contest managed care organizations' grievance decisions with the Department;
- removing the Community Options Program as a Medical Assistance program;
- eliminating regional long-term care advisory committees;
- requiring each aging and disability resource center governing board to review the number and types of grievances and appeals related to the aging and disability resource center; and
- modifying aging and disability resource center provisions to reflect availability statewide.

#### **4. Analysis of policy alternative**

There are no reasonable alternatives to the proposed rulemaking. The rules must be altered and expanded to bring current rules into compliance with 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.46.03 (25), s. 46.288 (3), and 49.45 (10), Stats.

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

Section 46.03 (25), Stats., reads:

UNIFORM REGULATION AND LICENSING. The department shall promulgate rules to establish licensing and program compliance standards for care and residential facilities, hospitals, hotels, restaurants and the vending of food and beverages after due consideration of the relationship of a licensing code to other related licensing codes, the need for uniform administration, the need to maximize the use of federal funds and the need to encourage the development and operation of needed facilities statewide. In establishing licensing standards designed to ensure that the facility qualifies for federal financial participation, the department shall establish federal regulations as the base requirement. The department may promulgate such additional health and safety standards as it determines to be in the public interest.

Section 46.288 (3), Stats., reads:

Rule-making. The department shall promulgate as rules all of the following:

Procedures and standards for procedures for s. 46.287 (2), including time frames for action by a resource center or a care management organization on a contested matter.

Section 49.45 (10), Stats., reads:

RULE-MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance. The department shall promulgate a rule defining the term "part-time intermittent care" for the purpose of s. 49.46.

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

- Section 46.27, 2017 Stats.
- Section 46.281 (1n) (d) and (3), Stats.
- Section 46.2825, Stats.
- Section 46.283 (3) (f), (3) (e), (3) (k), (4) (f), (4) (g), (4) (e), (6) (b) 7., and (6) (b) 9., Stats.
- Section 46.287 (2) (a) and (b), Stats.

- Section 46.288 (2), Stats.
- Section 49.45 (5) (a) and (ag), Stats.
- 2019 Wisconsin Act 9 Sections 448, 477, and 478
- DHS 10
- DHS 73
- DHS 90
- DHS 104
- DHS 105

**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 receiving certain community-based Medical Assistance programs and services
- Providers providing certain community-based Medical Assistance programs and services
- Medical Assistance managed care organizations
- Medical Assistance managed care organization external quality review organization
- Aging and disability resource centers and related governing boards
- Department of Administration, Division of Hearings and Appeals
- Disability Rights Wisconsin, Family Care and IRIS Ombudsman Program
- Board on Aging and Long Term Care, Ombudsman Program

**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**

42 CFR Part 431 Subpart E sets forth federal regulation of fair hearing for Medical Assistance applicants and recipients. Under 42 CFR § 431.200, states must “provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.” Under 42 CFR § 431.205(d), the hearing system must meet established due process standards. Additionally 42 CFR § 431.242(f) establishes the rights of applicants and recipients to request an expedited fair hearing. 42 CFR § 431.244(f) establishes a timeline for hearing stating that states must “ordinarily” take “final administrative action” within 90 days of a request for a fair hearing and identifies exceptions to this timeline.

42 CFR Part 438 Subpart F sets forth federal regulation of the appeal and grievance system for Medical Assistance managed care plans. 42 CFR § 438.400 defines adverse benefit determinations and grievances. Under 42 CFR § 438.408(f)(1), a member “may request a State fair hearing only after receiving notice under § 438.408 that the adverse benefit determination is upheld” or when the managed care organization “fails to adhere to the notice and timing requirements in § 438.408” in which case the member “is deemed to have exhausted the [managed care organization’s] appeals process.” Under 42 CFR § 438.408, a member “must request a State fair hearing no later than 120 calendar days from the of the [managed care organization’s] notice of resolution.”

**9. Anticipated economic impact, locally or statewide**

The Department anticipates the proposed rule may have a moderate economic impact.

**10. Agency contacts**

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