

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

CHAPTER: DHS 107
RELATING TO: Complex Rehabilitation Technology Prior Authorization Review
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDINGS OF EMERGENCY: Not Applicable

SUMMARY

1. Description of rule objective/s

Section 49.45 (9r) (d), Stats., which was created in 2019 Wis. Act 186 (“Act 186”), directs the department of health services (“the department”) to make a determination on prior authorization requests for complex rehabilitation technology within 10 working days of receiving complete, clinically relevant written documentation.

2. Existing policies relevant to the rule

Chapter DHS 107, relating to covered services. The current rule provides that the department shall act on 95% of requests for prior authorization within 10 working days, and on 100% of requests for prior authorization within 20 working days following receipt of complete, clinically relevant documentation.

3. Policies proposed to be included in the rule

The department intends to promulgate administrative rules necessary to effectuate the requirements in s. 49.45 (9r) (d), Stats.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The department’s current administrative rules are in conflict with s. 49.45 (9r) (d), Stats.

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 ss. 49.45 (10), 49.45 (9r) (d), and 227.11 (2), Stats.,

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

Section 49.45 (9r) (d), Stats., reads:

When reviewing prior authorization requests for complex rehabilitation technology items, the department and managed care plans shall act within 10 working days of receiving complete, clinically relevant written documentation necessary to make a determination.

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.

Section 227.11 (2), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this

paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

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

Chapter DHS 107, relating to covered services.

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 who access complex rehabilitation technology
- Complex rehabilitation technology professionals
- Qualified complex rehabilitation technology suppliers
- The department

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 §440.70(b)(3) requires that states provide medical equipment, including durable medical equipment of which complex rehabilitation technology is a subset, suitable for use in the home as home health services and that this equipment be reviewed by a physician annually.

42 CFR §441.15 requires that states provide medical equipment, including durable medical equipment of which complex rehabilitation technology is a subset, as home health services.

“Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Amounts, DMEPOS Competitive Bidding (CBP) Proposed Amendments, Standard Elements for a DMEPOS Order, and Master List of DMEPOS Items Potentially Subject to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements,” 84 Fed. Reg. 151,38330 (2019) proposes to change 42 CFR §414.234(b) to establish a master list of durable medical equipment, of which complex rehabilitation technology is a subset, requiring a face-to-face encounter with a provider, written authorization or prescription, and prior authorization in order to be a covered Medicare service.

“Medicare Program: Modernizing and Clarifying the Physician Self-Referral Regulations,” 84 Fed. Reg. 201,55766 (2019) proposes to change 42 CFR §§411.351 and 441.357 to exclude durable medical equipment suppliers from being value-based enterprise participants.

9. Anticipated economic impact, locally or state wide

The proposed rule may have minimal or no economic impact.

10. Agency contacts

Laura Brauer
Division of Medicaid Services
608-266-5368
DHSDMSAdminRules@dhs.wisconsin.gov