

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 105 and 107

RELATING TO: Prenatal care coordination and child care coordination services

RULE TYPE: Permanent

SCOPE TYPE: Revised. This Statement of Scope modifies Scope Statement SS 012-23, which was approved by the Governor on January 26, 2023, published in Administrative Register 805B on January 30, 2023, and approved by the Secretary of the Department of Health Services on June 20, 2023. This revised statement of scope seeks to update the proposed policies to be included in the rule.

**FINDINGS OF
EMERGENCY:** Not Applicable

SUMMARY

1. Description of rule objective/s

In order to ensure that MA recipients have access to high-quality, culturally appropriate prenatal and child care coordination services (“PNCC” and “CCC”), the proposed rule seeks to do all of the following:

- Revise outdated rules regarding the duration of eligibility for the PNCC benefit.
- Expand PNCC eligibility to more pregnant MA recipients, based on findings that MA recipients generally face higher risks for adverse pregnancy outcomes, such as preterm birth and low birth weight,¹ than individuals who are not eligible for MA.
- Revise administrative rules related to PNCC and CCC provider certification requirements and covered services to mitigate the risks of fraud, waste, and abuse in the provision of those benefits.

2. Existing policies relevant to the rule

Section DHS 105.52 includes criteria under which entities may be certified by the department to provide PNCC services to eligible MA recipients. Subsection (1) identifies specific entities that may be certified as PNCC providers, such as a community-based health organization, city or county public health agency, or private case management agency. Subsection (2) identifies personnel required to provide certain PNCC services, such as a nurse practitioner, nurse midwife, physician assistant, or registered dietician. Subsection (3) and (4) establish specific documentation requirements that providers must meet in order to be certified, such as maintaining a list of personnel under subsection (2) and submitting a plan to DHS upon enrollment. Subsection (5) establishes specific requirements for the confidential file that providers must maintain for each member receiving services.

Section DHS 107.34 includes criteria for covered PNCC services furnished by certified providers to eligible MA recipients that may be reimbursed by the department. Subsection (1) establishes general requirements for covered services, such as that the PNCC benefit is available from “the beginning of the pregnancy up to the sixty-first day after delivery,” as well as specific requirements for each service provided under the PNCC benefit, including outreach, risk assessment, care planning, ongoing care coordination, health education, and nutrition counseling. Subsection (2) establishes limitations on covered services, such as limiting reimbursement to a maximum amount per pregnancy. Subsection (3) identifies services that are not covered as PNCC services, such as diagnosis and treatment and transportation.

Section 49.45 (44), Stats., states that providers certified to provide PNCC services in Milwaukee County and the city of Racine may also be certified to provide CCC services, which are reimbursable under MA under s. 49.46 (2) (b) 12m., Stats. Prior to November 10, 2023, ² certified PNCC providers in Milwaukee County and the City of Racine were automatically certified to provide CCC services.

¹ Access in Brief: Pregnant Women and Medicaid. Medicaid and CHIP Payment and Access Commission (MACPAC). (November 2018). <https://www.macpac.gov/wp-content/uploads/2018/11/Pregnant-Women-and-Medicaid.pdf>

² DHS Announces New Accountability Measures for Medicaid Providers to Ensure Families Receive Critical, Effective Post-Birth Care Services. <https://www.dhs.wisconsin.gov/news/releases/111023.htm>

3. Policies proposed to be included in the rule

First, the department proposes to revise the duration in which the PNCC benefit is available under s. DHS 107.34. Sections 49.46 (1) (a) 1m., 49.46(1) (j), 49.47(4) (ag) 2., 49.471 (6) (b), and 49.471 (7) (b) 1., Stats., all provide that any person who is eligible for MA due to pregnancy remains eligible, at minimum, until “the last day of month in which the 60th day . . . after the last day of the pregnancy falls.” The rule provision provides a shorter eligibility period and must be updated.

Second, the department would also amend s. DHS 107.34 to recognize that all pregnant MA recipients are at higher risk for adverse pregnancy outcomes, such as preterm birth and low birth weight, than individuals who are not eligible for MA. The proposed change would expand covered PNCC services to enable all pregnant MA recipients to access high-quality, culturally appropriate prenatal care coordination services.

Third, the department proposes to revise provisions in s. DHS 105.52 to amend enrollment and certification requirements and personnel criteria for PNCC providers to enable MA recipients to access high-quality, culturally appropriate prenatal care coordination services. The proposed rules would also create separate and additional certification requirements for providers in Milwaukee County or the City of Racine who wish to provide CCC services.

Finally, the department proposes to revise provisions related to covered PNCC services to reduce the risks of fraud, waste and abuse within the benefit. The proposed changes would also identify services that are covered as part of the CCC benefit for providers in Milwaukee County or the City of Racine who are certified to provide those services.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The eligibility provided in the rule is already inconsistent with existing laws. The other identified policies in the current rule relating to enrollment and certification are outdated and need to be updated to ensure access to necessary care for MA recipients, and to eliminate risks of fraud, waste, and abuse in the PNCC and CCC benefits.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

Under s. 49.46 (2) (b) 12. and 12m., Stats., the department is required to audit and pay allowable charges to certified MA providers for “[c]are coordination services for women with high-risk pregnancies” and “[p]renatal, postpartum and young child care coordination services under s. 49.45 (44).” Chapter DHS 107 was promulgated to effectuate the Department’s obligation to audit and pay for covered services, and based on authority provided in ss. 49.45 (2) (a) 1. and 2., 11., 12., (3) (f) 2., and (10) and 227.11 (2), Stats.

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

Section 49.45 (2) (a) 1. and 2., 11., 12., (3) (f) 2., and (10), Stats.:

(2) DUTIES.

(a) The department shall:

1. Exercise responsibility relating to fiscal matters, the eligibility for benefits under standards set forth in ss. 49.46 to 49.471, and general supervision of the medical assistance program.

2. Employ necessary personnel under the classified service for the efficient and economical performance of the program and shall supply residents of this state with information concerning the program and procedures.
. . . 11.

a. Establish criteria for certification of providers of medical assistance and, except as provided in par. (b) 6m. and s. 49.48, and subject to par. (b) 7. and 8., certify providers who meet the criteria.

b. Promulgate rules to implement this subdivision.

. . . 12.

a. Decertify a provider from or restrict a provider's participation in the medical assistance program, if after giving reasonable notice and opportunity for hearing the department finds that the provider has violated a federal statute or regulation or a state statute or administrative rule and the violation is, by statute, regulation, or rule, grounds for decertification or restriction. The department shall suspend the provider pending the hearing under this subdivision if the department includes in its decertification notice findings that the provider's continued participation in the medical assistance program pending hearing is likely to lead to the irretrievable loss of public funds and is unnecessary to provide adequate access to services to medical assistance recipients. As soon as practicable after the hearing, the department shall issue a written decision. No payment may be made under the medical assistance program with respect to any service or item furnished by the provider subsequent to decertification or during the period of suspension.

b. Promulgate rules to implement this subdivision.

... (3) PAYMENT.

... (f)

... 2. The department may deny any provider claim for reimbursement which cannot be verified under subd. 1. or may recover the value of any payment made to a provider which cannot be so verified. The measure of recovery will be the full value of any claim if it is determined upon audit that actual provision of the service cannot be verified from the provider's records or that the service provided was not included in s. 49.46 (2) or 49.471 (11). In cases of mathematical inaccuracies in computations or statements of claims, the measure of recovery will be limited to the amount of the error.

... (10) 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

- Section 49.46 (2) (b) 12., Stats., relating to the medical assistance benefit of care coordination for women with high-risk pregnancies.
- Sections 49.45(44) and § 49.46 (2) (b) 12m., Stats., relating to the medical assistance benefit of prenatal, postpartum and young child care coordination (“CCC”) services for residents of Milwaukee County and the city of Racine. These CCC services are subject to the same provisions in chs. DHS 105 and 107 as PNCC services.
- Sections 49.46 (1) (a) 1m., 49.46 (1) (j), and 49.47 (4) (ag) 2., and 49.471 (6) (b), which extend the period of PNCC coverage from 60 to 90 days postpartum, if approved by the federal government.
- Section 49.471(6)(L), Stats., requiring the department to request from the federal department of health and human services approval of a state plan amendment or a waiver of federal law to implement subs. (6) (b) and (7) (b) 1. and ss. 49.46 (1) (a) 1m. and (j) and 49.47 (4) (ag) 2.
- Chapter DHS 105, relating to provider certification—specifically ch. DHS 105.52(2)(a), 105.52(3), and 105.52(4).
- Chapter DHS 107, relating to covered services—specifically ch. DHS 107.34(1)(a)2, 107.34(1)(c)-(g), 107.34(2)(a), and 107.34(3)(e).

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 rate payers who may reasonably be anticipated to be affected by the rule

- The department
- Public and private-sector entities that provide PNCC services
- Wisconsin MA members who receive PNCC services

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 440.210(a)(2), which requires that state medical assistance programs provide, for the categorically needy, pregnancy-related services and services for other conditions that might complicate the pregnancy, including prenatal and postpartum care.

42 CFR 440.210(a)(3), which requires that state medical assistance programs provide, for the categorically needy, pregnancy-related services for a postpartum period that begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

42 CFR 440.220(a)(1), which requires that state medical assistance programs provide, for the medically needy, prenatal care and delivery services for pregnant women.

42 CFR 440.220(a)(5), which requires that state medical assistance programs provide, for the medically needy, pregnancy-related services for a postpartum period that begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

42 CFR 440.250(m), which in part limits services provided by state medical assistance programs, for certain eligible lawful temporary residents, to services for pregnant women as defined by section 1916(a)(2)(B) of the Social Security Act [42 USC § 1396o(a)(2)(b)] for a period of five years from the date the individual is granted lawful temporary resident status.

42 CFR 440.250(p), which allows state medical assistance programs to provide a greater amount, duration, or scope of services to pregnant women than provided to other Medicaid-eligible individuals, if these services are

pregnancy-related or related to any other condition which may complicate pregnancy and if these services are provided in equal amount, duration, and scope to all pregnant women covered under the State plan.

42 CFR 440.250(r), which allows state medical assistance programs to limit targeted case management services to certain geographic areas without regard to statewide requirements or to targeted groups specified by the State.

42 CFR 440.255(b)(2), which allows state medical assistance programs to provide, for certain lawful temporary residents, services for pregnant women which are included in the approved State plan, which include routine prenatal care, labor and delivery, and routine post-partum care. 42 CFR § 440.255(b)(2) also allows state medical assistance programs to provide, for certain lawful temporary residents, additional plan services for the treatment of conditions which may complicate the pregnancy or delivery.

42 CFR 431(G), which allows state medical assistance programs to seek waiver of requirements in Title XIX of the Social Security Act to implement 1115 demonstration projects.

42 CFR 441.18, which establishes requirements and limits applicable to medical assistance state plan case management services.

9. Anticipated economic impact, locally or statewide

The proposed rule may have moderate economic impact.

10. Agency contacts

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