

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 08/26/2021
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> DHS 10, 73, 90, 104, and 105	
<b>4. Subject</b> Long-Term Care Services and Medical Assistance Fair Hearing Process	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> None
<b>7. Fiscal Effect of Implementing the Rule</b> <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$0	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> The department is promulgating rules to effectuate the purpose of 2019 Wisconsin Act 9, including: <ul style="list-style-type: none"><li>• modifying the availability and timing of the fair hearing process for certain community-based Medical Assistance programs and services;</li><li>• defining managed care organization decisions, omissions, or actions;</li><li>• requiring members to first file grievances and appeals with managed care organizations, and limiting members' ability to contest managed care organizations' grievance decisions with the Department;</li><li>• removing the Community Options Program as a Medical Assistance program;</li><li>• eliminating regional long-term care advisory committees;</li><li>• 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</li><li>• modifying aging and disability resource center provisions to reflect availability statewide.</li></ul>	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> 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 other parties interested in providing comments by publishing a solicitation for public comment in the Administrative Register and on the Department's website.	
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> None	
<b>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b> None	
<b>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b>	

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There are no reasonable alternatives to the proposed rulemaking. 2019 Wis. Act 9 necessitates rulemaking in order to bring administrative code into alignment with state statute.

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### 16. Long Range Implications of Implementing the Rule

The proposed rules are not anticipated to have an economic or fiscal impact.

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### 17. Compare With Approaches Being Used by Federal Government

42 USC 1396a(a)(3) and 1396u-2(b)(4) require the Medical Assistance program to establish and ensure availability of fair hearing and managed care organization internal grievance procedures. 42 CFR 431 Subpart E sets forth Medical Assistance program fair hearing requirements for non-managed care programs and services. 42 CFR 431.221(d) requires the department to “allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearings.” 42 CFR 438 Subpart F sets forth Medical Assistance grievance and appeal requirements for managed care programs. 42 CFR 438.402(c)(2)(ii) requires the Medical Assistance managed care program to ensure that “[f]ollowing receipt of a notification of an adverse benefit determination by an MCO, PIHP, or PAHP, an enrollee has 60 calendar days from the date on the adverse benefit determination notice in which to file a request for an appeal to the managed care plan.” 42 CFR 438.408(f)(2) requires that an “enrollee must have no less than 90 calendar days and no more than 120 calendar days from the date of the MCO’s, PIHP’s, or PAHP’s notice of resolution to request a State fair hearing.” 42 CFR 438.400(b) defines the MCO, PIHP, and PAHP acts, and failures to act, that are adverse benefit determinations. 42 CFR §438.400(b) defines an appeal as “a review by an MCO, PIHP, or PAHP of an adverse benefit determination.” 42 CFR §438.400(b) defines grievance as “an expression of dissatisfaction about any matter other than an adverse benefit determination.” 42 CFR 438.402(c)(1)(i) states that an “enrollee may request a State fair hearing after receiving notice under §438.408 that the adverse benefit determination is upheld.” Federal law does not establish specific requirements for provision and activities of the Community Options Program, regional long-term care advisory committees, or aging and disability resource centers.

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### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois statute generally requires grievance proceedings and fair hearings to be available to Medicaid applicants and enrollees under 305 ILCS 5/5-30.03(d). Illinois policy establishes that grievance proceedings must be requested within 60 calendar days and fair hearings must be requested within 30 calendar days. Illinois policy also establishes that each managed care organization establishes its own grievance and appeal process which must comply with federal law.

Illinois does not have a group that is comparable to the Wisconsin regional long-term care advisory committees.

Iowa:

Iowa statute requires fair hearings to be available to Medicaid applicants under Iowa Code § 249A.4 (11). Grievance proceedings must be requested within 60 calendar days under 42 CFR 438.402(c)(2)(ii). Iowa administrative code requires grievance proceedings of managed care organization adverse benefit determinations to be requested within the time specified by federal regulation under Iowa Admin Code § 441-73.12(249A) par. 73.12(1)e. Iowa administrative code requires fair hearings to be requested within 90 days of an adverse benefit determination for fee-for-services coverage and within 120 days of exhausting the managed care organization appeal process under Iowa Admin Code § 441-7.4(17A) par. 7.3(3).

Iowa does not have a group that is comparable to the Wisconsin regional long-term care advisory committees.

Michigan:

Michigan administrative code requires internal conferences and appeals for administrative hearings be available when adverse benefit determinations are made under Mich Admin Code, R 400.3404 Rule 4. Internal conferences must be requested within 30 days and hearings must be requested within 90 days of the date specified in the notice of adverse action under Mich. Admin Code, R 400.3404 Rule 4 and 42 CFR 431.221(d).

Michigan does not have a group that is comparable to the Wisconsin regional long-term care advisory committees.

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**Minnesota:**

Minnesota statute requires grievance proceedings and fair hearings to be available to Medicaid applicants under MN s. 256.045 subd. 3 (i). Grievance proceedings must be offered by managed care organizations under MN s. 256L.12 subd. 7. (4). Minnesota policy establishes that fair hearings must be requested within 120 days.

Minnesota does not have a group that is comparable to the Wisconsin regional long-term care advisory committees.

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19. Contact Name

Bailey Dvorak

20. Contact Phone Number

608-267-5210

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**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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