

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 4/20/22
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> DHS 10, 38, 73, 92, 101, 105, 106, 107, 108, and 109	
<b>4. Subject</b> Telehealth	
<b>5. Fund Sources Affected</b> <input checked="" type="checkbox"/> GPR <input checked="" 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> s. 20.435 (4) (b), 20.435(4)(o) Stats.
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" 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 checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
<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 intends to promulgate administrative rules necessary to effectuate the purpose of 2019 Wisconsin Act 56, namely reimbursing identified Medical Assistance covered services through telehealth and communications technology services. The act also requires the department to promulgate rules specifying certain reimbursable Medical Assistance telehealth services and authorizes the department to promulgate rules specifying certain non-reimbursable Medical Assistance telehealth services.	
<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, Medical Assistance member advocates, and Tribal leaders. 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> The proposed rule changes have the potential to impact Medical Assistance providers. Providers have the opportunity to provide covered services via telehealth, which expands the pool of potential members and services provided beyond that potentially available for traditional in person services, but providers must ensure that the technology used meets applicable federal and state standards. Providers may also experience increased competition from non-local providers providing similar covered services, including out-of-state providers who meet certification criteria.	
<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. The Wisconsin Legislature has explicitly directed the department to promulgate rules identifying certain reimbursable Medical Assistance services and therefore authorized the department to promulgate rules identifying certain non-reimbursable Medical Assistance services.

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

The proposed rule changes will provide additional flexibilities to Medical Assistance members and providers by allowing covered services to be provided in person or via telehealth in allowable circumstances.

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

Federal law does not establish distinct requirements for Medical Assistance program reimbursement of services provided via telehealth. Instead, the Medical Assistance program may reimburse services provided via telehealth when the underlying service provided meets federal laws and policies. The Centers for Medicare and Medicaid Services (“CMS”) looks to and generally models its definition of telehealth on the Medicare definition of telehealth services.

Federal law establishes a more robust definition and requirements for Medicare program reimbursement of telehealth services. Section 1834(m) of the Social Security Act authorizes reimbursement for “telehealth services that are furnished via a telecommunications system by a physician . . . or a practitioner . . . to an eligible telehealth individual enrolled under [Medicare] notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary.” Telehealth services include “professional consultations, office visits, and office psychiatry services . . . , and any additional service specified.” Excluding stroke and treatment of substance use disorders, reimbursement for services provided via telehealth are limited to services provided by a physician or practitioner located at a distant site.

Additionally, federal regulation provides requirements for Medicare program reimbursement of telehealth services. 42 CFR §410.78 requires that covered telehealth services provided by an interactive telecommunication system when (1) the physician or practitioner must be licensed to furnish the service under State law, (2) the physician or practitioner must provide services from a designated location, (3) the member must receive services at a designated location, and (4) the medical examination is under the control of the physician or practitioner providing the telehealth service. 42 CFR §414.65 allows the physician or practitioner providing the telehealth service to bill for services rendered at the same rate as for in-person services and allows the site where the member is located to charge a fee.

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) also applies to services provided via telehealth. Applicable HIPAA requirements include the privacy and security rules to ensure the protection of personal health information transmitted and stored. In order to comply with these requirements, providers must ensure that the platforms used to provide services via telehealth contain adequate security measures.

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

#### Illinois:

As of September 2020, Illinois statute authorizes permanent reimbursement of behavioral health services provided via telehealth when provided by a certain state certified provider under 305 ILCS 5/5-5.25 (b)-(c). Under 89 Ill. Adm. Code 140.403, Illinois regulation permanently authorizes reimbursement of asynchronous and real-time video services provided via telehealth under certain conditions. These conditions include requiring a certified professional to be present at the originating site at all times, the distant site provider to be a certified professional, and the communication platform to be capable of allowing for proper diagnosis and transmission of clearly audible heart tones and lung sounds, clear video of the patient and diagnostic tools. It also excludes group psychotherapy via telehealth from reimbursement.

#### Iowa:

As of September 2020, Iowa statute authorizes permanent reimbursement of healthcare services provided via telehealth when provided via an interactive audio and video platform and the services meet legal and generally accepted healthcare practices and standards under Iowa Code § 514C.34 1. c. and 3.. Services provided via telehealth are to be reimbursed at

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the same rate as services provided in-person under Iowa Code § 514C.34 2. Iowa regulation authorizes reimbursement of services via telehealth that meet professional standards under Iowa Admin Code § 441-78.55(294A). The Iowa board of medicine authorizes provision of services via telehealth with or without the presence of a health care provider with the member and holds providers to the same standards of care and professional ethics as in-person services under Iowa Admin Code § 653-13.11(147,148,272C).

### Michigan:

As of October 2020, Michigan statute authorizes permanent reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio or video or asynchronously with HIPAA privacy and security rule compliant platform under MCLS s. 400.105h. Services may be provided at a provider site, a school, a member's home, or other appropriate location, with member consent, and, in limited circumstances, with accessible follow-up services under MCLS s. 330.1100d, 333.16284, 333.16285, and 400.105h.

### Minnesota:

As of September 2020, Minnesota statute authorized permanent reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio and visual communications and asynchronous services if provided "in the same manner as if the service or consultation was delivered in person" under Minn. Stat. s. 256B.0625 subd. 3b. Services provided via telehealth must be reimbursed at the same rate as service provided in person and are generally limited to three visits per calendar week under Minn. Stat. s. 256B.0625 subd. 3b. Provider-to-provider consultations via telephone, email or facsimile and member-to-provider communications via email or facsimile are not reimbursable under Minn. Stat. s. 147.033. With limited exceptions, physicians that do not practice in but are registered in Minnesota may be reimbursed for services provided via telehealth if they are in good standing outside of Minnesota under Minn, Stat. s. 147.032. Minnesota regulation authorizes reimbursement of mental health services via telehealth when provided via two-way interactive video and the equipment and the connection complies with Medicare standards under Minn. R. 9505.0371 Subp. 10.

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19. Contact Name

Bailey Dvorak

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20. Contact Phone Number

608-267-5210

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### 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)

The proposed rule changes have the potential to impact Medical Assistance providers that are small businesses. These providers have the opportunity to provide covered services via telehealth, which expands the pool of potential members and services provided beyond that potentially available for traditional inperson services, but must ensure that the technology used meets applicable federal and state standards. These providers may also experience increased competition from non-local providers providing similar covered services, including out-of-state providers who meet certification criteria.

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

The department solicited the input of Medical Assistance providers, including small businesses, throughout the telehealth policy and proposed rule change process.

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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:

The department intends to limit out-of-state providers who may become certified as medical assistance providers to providers who are licensed in Wisconsin and help to ensure network adequacy, such as physician groups, mental health and substance use disorder providers, and narcotic treatment providers.

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

While all providers are required to follow the same requirements, the department included a number of requirements with the intent to reduce the burden on small business providers, including the following.

- expanding the pool of potential members and services provided beyond that traditionally available for in person deliver by removing geographic barriers related to in person care delivery;
- limiting out-of-state providers who may become a certified medical assistance provider to individuals who are licensed in Wisconsin;
- limiting the amount of documentation required when services are provided via telehealth to indicating that a service was performed via telehealth and documenting that recipients were informed of their rights and responsibilities associated with receiving services via telehealth.

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5. Describe the Rule's Enforcement Provisions

The proposed rule changes will be enforced through standard Medical Assistance program claim review and auditing activities.

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

- Yes     No
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