

WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (“the department”) proposes an order to: **repeal** DHS 107.10 (1) (Note 2); **amend** DHS 107.08 (4) (d) (intro) and 1. to 14., 107.10 (1); and **create** DHS 105.155, 107.067, 107.08 (4) (d) 12m., relating to pharmacist certification and reimbursement for patient care services through Medical Assistance (MA).

RULE SUMMARY

Statute interpreted

Section 49.46 (2) (bh), Stats.

Statutory authority

Section 49.46 (2) (bh), Section 49.45 (2) (a) 11., Section 49.45 (10), and 227.11 (2), Stats.

Explanation of agency authority

Section 49.46 (2) (bh), Stats., directs the department to “provide reimbursement for services that are reimbursable under this section and that are provided by a licensed pharmacist within the scope of his or her licensure or are services performed under s. 450.033.”

Section 49.45 (2) (a) 11., Stats., authorizes the department to (1) establish criteria for certification of providers of Medical Assistance, (2) certify providers who meet certification criteria, and (3) promulgate rules to implement that subdivision.

Section 49.45 (10), Stats., authorizes the department to “promulgate such rules as are consistent with its duties in administering medical assistance,” including its duties relating to reimbursement for services by certified providers.

Related statute or rule

42 CFR 440.60 (a) and 42 CFR s. 482.25 (b)
Chapter DHS 101 and 106

Plain language analysis

Section 49.46 (2) (bh), Stats., which was created by 2021 Wis. Act 98 (“Act 98”), directs the department to provide reimbursement for services that are reimbursable under s. 49.46 and provided by a licensed pharmacist within the scope of his or her license or performed under s. 450.033, Stats. Section 450.033, Stats., permits a pharmacist to “perform any patient care services delegated to the pharmacist by the physician”

The Department’s rules, specifically s. DHS 105.15, include standards for MA certification of pharmacies and s. DHS 107.10 identifies covered services with respect to dispensing drugs. The Department does not, however, have any policies in place specifically to certify pharmacists (as opposed to pharmacies) rendering physician delegated patient care services to an MA recipient, or to permit reimbursement for those services. Pharmacists practice in a variety of settings outside of the pharmacies certified under s. DHS 105.15, and rules are needed in order to reimburse for services provided in those settings. In order to comply with Act 98, chs. DHS 105 and 107 therefore must be amended to permit certification of, and reimbursement to, pharmacists providing services that are reimbursable under MA and provided within the scope of his or her license or are services performed under s. 450.033.

Section DHS 105.155 will be created to permit this certification of pharmacists as MA providers and identify applicable documentation regarding delegated services that are available for the department to

review. Section DHS 107.067 will be created so the MA program will reimburse pharmacists for services rendered for MA recipients.

The proposed rule will amend s. DHS 107.10 (1) to include licensed pharmacists prescribing in accordance with their license and s. 450.033, Stats., to the list of individuals who can prescribe drugs and drug products covered under MA. The proposed rule creates s. DHS 107.08 (4) (d) 12m. to identify pharmacist services as professional services that are not covered as part of a hospital inpatient claim but billed by an appropriately certified MA provider.

Finally, the proposed rule will reformat the subunits in s. DHS 107.08 (4) (d) for consistency with the Administrative Rules Procedures Manual.

Summary of, and comparison with, existing or proposed federal regulations

42 CFR 440.60 (a) “Medical care or any other type remedial care provided by licensed practitioners” means any medical or remedial care or services, other than physicians' services, provided by licensed practitioners within the scope of practice as defined under State law.

42 CFR s. 482.25 (b) Standard: Delivery of services. In order to provide patient safety, drugs and biologicals must be controlled and distributed in accordance with applicable standards of practice, consistent with Federal and State law.

Comparison with rules in adjacent states

Illinois:

As of August 25, 2022, the state has legislation related to pharmacy practices under [Ch. 111, par. 4121](#) and 68 Ill. Admin. Code Part 330. Pharmacy practices are allowed to dispense medicines and drugs as prescribed as well as administer vaccines and the administration of injections. But, in [Chapter I, Section 140.441 Subchapter d](#), the Medical Assistance program excludes vaccine and administration of injections as not reimbursable and excluded from coverage.

Iowa:

As of August 25, 2022, the state has rules related to pharmacy services under [IAC ch. 39, 657 IAC part 39.1 – 39.16](#). This includes 39.8(1) and 39.8 (2) Vaccine administration and Medication administration. In addition, in [IAC ch. 78, IAC part 441—78.42\(249A\)](#) the Medicaid program reimburses when the authorized pharmacist providing the vaccine meets all Iowa board of pharmacy expanded practice standards and Medicaid requirements, payment will be made for the following: Vaccines administered to children, Vaccines administered to adults.

Michigan:

There do not appear to be regulations in Michigan relating to reimbursement of pharmacy services.

Minnesota:

As of August 25, 2022, under [Minn. Admin. Code 9505.0340](#) payment limitations under pharmacy services are described. "Pharmacy service" means the dispensing of drugs under Minnesota Statutes, chapter 151 or by a physician under subpart 2, item B. Minnesota does not address services outside the dispensing of drugs for pharmacists.

Summary of factual data and analytical methodologies

The department relied on requirements set forth in s. 49.46 (bh), Stats.

Analysis and supporting documents used to determine effect on small business

The department published a solicitation in the Administrative Register from September 18, 2023 to October 16, 2023, in which it requested comments on the economic impact of the proposed rule.

Effect on small business

The proposed rule is anticipated to have moderate economic impact on small businesses.

Agency contact person

DMS Administrative Rules Coordinator

DHSAdminRules@dhs.wisconsin.gov

Statement on quality of agency data

The data used by the Department to prepare these proposed rules and analysis comply with s. 227.14 (2m), Stats.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 105.155 is created to read:

DHS 105.155 Pharmacists.

- (1) For MA certification, a pharmacist must be licensed under s. 450.03, Stats.
- (2) When a pharmacist performs services under a delegation agreement in accordance with s. 450.033, Stats., all of the following shall be documented, and made available by the pharmacist for review by the department:
 - (a) The name and license number of any physician who is delegating services to the pharmacist.
 - (b) The name and license number of the pharmacist who is entering into the agreement.
 - (c) The specific timeframe, not to exceed three years, for which the agreement is in effect.
 - (d) The patient or groups of patients eligible to receive delegated services under the agreement, including any patient inclusion or exclusion criteria.
 - (e) The delegated services that the pharmacist may perform.
 - (f) The process for the physician or designee of the physician to monitor compliance with the delegation agreement by the pharmacist.
 - (g) The process for how the delegated services provided by the pharmacist will be documented or included in the patient's health record.
 - (h) The signature and date of any physician delegating services.
 - (i) The signature and date of the pharmacist entering into the agreement.

SECTION 2. DHS 107.067 is created to read:

DHS 107.067 Pharmacist Services.

(1) COVERED SERVICES. Pharmacist services covered by the MA program are any medically necessary services that are covered under this chapter, provided to a recipient, and delivered by a licensed pharmacist when one of the following apply:

- (a) The services are provided within the scope of the pharmacist's license.
- (b) The services are performed in accordance with s. 450.033, Stats.

(2) OTHER LIMITATIONS. Services covered under sub. (1) shall be performed by a pharmacist licensed under s. 450.03, Stats.

SECTION 3. DHS 107.08 (4) (d) (intro) and 1. to 14. are amended to read:

DHS 107.08 (4) (d) The following professional services are not covered as part of a hospital inpatient claim but shall be billed by an appropriately certified MA provider~~;~~:

1. Services of physicians, including pathologists, radiologists and the professional-billed component of laboratory and radiology or imaging services, except that services by physician intern and residents services are included as hospital services~~;~~:
2. Services of psychiatrists and psychologists, except when performing group therapy and medication management, including services provided to a hospital inpatient when billed by a hospital, clinic or other mental health or AODA provider~~;~~:
3. Services of podiatrists~~;~~:
4. Services of physician assistants~~;~~:
5. Services of nurse midwives, nurse practitioners and independent nurses when functioning as independent providers~~;~~:
6. Services of certified registered nurse anesthetists~~;~~:
7. Services of anesthesia assistants~~;~~:
8. Services of chiropractors~~;~~:
9. Services of dentists~~;~~:
10. Services of optometrists~~;~~:
11. Services of hearing aid dealers ~~for~~ instrument specialists~~;~~:
12. Services of audiologists~~;~~:
13. Any of the following provided on the date of discharge for home use~~;~~:
 - a. Drugs~~;~~:
 - b. Durable medical equipment~~;~~:
 - c. Disposable medical supplies~~;~~:
14. Specialized medical vehicle transportation~~;~~ and~~;~~

SECTION 4. DHS 107.08 (4) (d) 12m. is created to read:

DHS 107.08 (4) (d) 12m. Services of pharmacists.

SECTION 5. DHS 107.10 (1) is amended to read:

DHS 107.10 (1) COVERED SERVICES. Drugs and drug products covered by MA include legend and non-legend drugs and supplies listed in the Wisconsin medicaid drug index which are prescribed by a physician licensed under s. [448.04](#), Stats., by a dentist licensed under s. [447.05](#), Stats., by a podiatrist licensed under s. [448.04](#), Stats., by an optometrist licensed under ch. [449](#), Stats., by an advanced practice nurse prescriber licensed under s. [441.16](#), Stats., or when a physician delegates the prescribing of drugs to a licensed pharmacist in accordance with s. DHS 107.067, or to a nurse practitioner or to a physician's assistant certified under s. [448.04](#), Stats., and the requirements under s. [N 6.03](#) for nurse practitioners and under s. Med 8.07 for physician assistants are met.

SECTION 6. DHS 107.10 (1) (Note 2) is repealed.

SECTION 5. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.