

WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (“the department”) proposes an order to **create** DHS 105.155 and 107.067, relating to pharmacist certification and reimbursement for patient care services through Medical Assistance (MA).

RULE SUMMARY

Statute interpreted

Section 49.46 (bh), Stats.

Statutory authority

Sections 49.46 (bh), 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 currently does not have any policies in place to certify pharmacists rendering delegated patient care services to an MA recipient, or to permit reimbursement for those services. In order to comply with Act 98, 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. DHS 105.115 will be created to permit this certification of pharmacists as MA providers, and DHS 107.067 will be created so the MA program will reimburse pharmacists for services rendered for MA recipients.

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

Bailey Dvorak

DHSDMSAdminRules@dhs.wisconsin.gov

608.267.5210

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.** For MA certification, a pharmacist must be licensed under s. 450.03, Stats.

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 provided to a recipient, that are 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. 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.