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2021 Assembly Bill 148

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* Section 991.11, Wisconsin Statutes : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

2021 WISCONSIN ACT 10

An Act ***to create*** 50.33 (2d), 50.36 (5m), 50.49 (6m) (d) and 440.094 of the statutes; **relating to:** state response to COVID-19 related to health services and practice of health care providers licensed outside of this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 3. 50.33 (2d) of the statutes is created to read:

50.33 **(2d)** “Hospital-associated service” means a health care service that meets all of the following conditions:

(a) The service is of the same type as those furnished by a hospital in an inpatient or outpatient facility.

(b) The service is of a type for which a payment could be claimed as a hospital service under the federal Medicare program, 42 USC 1395 et seq.

(c) The service is provided at a location other than in a facility approved by the department under s. 50.35.

(d) The service is provided in a home setting before January 1, 2022.

Section 4. 50.36 (5m) of the statutes is created to read:

50.36 **(5m)** If the federal centers for medicare and medicaid services has approved a hospital to provide any hospital-associated service, the department may apply to and enforce upon the hospital as the state standard for the hospital-associated service any rule or standard that is required by the centers for medicare and medicaid services for the service. This subsection does not apply on or after January 1, 2022.

Section 5. 50.49 (6m) (d) of the statutes is created to read:

50.49 **(6m)** (d) A hospital that is providing hospital-associated services in accordance with s. 50.36 (5m).

Section 6. 440.094 of the statutes is created to read:

440.094 Practice by health care providers from other states. (1) Definitions. In this section:

(a) “Credential” means a license, permit, certificate, or registration.

(b) “Health care employer” means a system, care clinic, care provider, long-term care facility, or any entity whose employed, contracted, or affiliated staff provide health care service to individuals in this state.

(c) “Health care provider” means an individual who holds a valid, unexpired credential granted by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as the acts that any of the following are licensed or certified to perform:

1. A registered nurse, licensed practical nurse, or nurse midwife licensed under ch. 441, or advanced practice nurse prescriber certified under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447.

4. A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

5. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

6. A podiatrist licensed under subch. IV of ch. 448.

7. A dietitian certified under subch. V of ch. 448.

8. An athletic trainer licensed under subch. VI of ch. 448.

9. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

10. An optometrist licensed under ch. 449.

11. A pharmacist licensed under ch. 450.

12. An acupuncturist certified under ch. 451.

13. A psychologist licensed under ch. 455.

14. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457 or a clinical substance abuse counselor certified under s. 440.88.

15. A speech-language pathologist or audiologist licensed under subch. II of ch. 459.

16. A massage therapist or bodywork therapist licensed under ch. 460.

(2) Practice by health care providers from other states. (a) Notwithstanding ss. 441.06 (4), 441.15 (2), 441.16, 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 455.02 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), 459.24 (1), and 460.02, a health care provider may provide services within the scope of the credential that the health care provider holds and the department shall grant the health care provider a temporary credential to practice under this section if all of the following apply:

1. The health care provider applies to the department for a temporary credential under this section within 30 days of beginning to provide health care services for a health care employer. The health care provider shall include in the application an attestation of all of the following:

a. The date on which the health care provider first provided health care services in this state under this section.

b. That the health care provider holds a valid, unexpired credential granted in another state.

c. The health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.

d. The health care provider has applied for a permanent credential granted by the department or an examining board, as applicable, under chs. 440 to 480. This subd. 1. d. does not apply to a health care provider who provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends.

2. If the health care provider provides services other than services provided through telehealth as described in sub. (3), the health care employer of the health care provider attests all of the following to the department within 10 days of the date on which the health care provider begins providing health care services in this state under this section:

a. The health care employer has confirmed that the health care provider holds a valid, unexpired credential granted by another state.

b. To the best of the health care employer's knowledge and with a reasonable degree of certainty, the health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.

(b) A health care provider who practices within the scope of a temporary credential granted under this section has all rights and is subject to all responsibilities, malpractice insurance requirements, limitations on scope of practice, and other provisions that apply under chs. 440 to 480 to the practice of the health care provider.

(c) 1. A temporary credential granted under this section becomes effective on the date identified in the attestation under par. (a) 1. a. that the health care provider first provided health care services in this state under this section.

2. a. Except as provided in subd. 2. b., a temporary credential granted under this section expires on the date that the department, or an examining board in the department, as applicable, grants or denies the application under par. (a) 1. d. for a permanent credential submitted by the health care provider.

b. If a health care provider provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends, a temporary credential granted under this section to the health care provider expires 30 days after the national emergency ends.

(3) Telehealth. A health care provider who practices within the scope of a temporary credential granted under this section may provide services through telehealth to a patient located in this state.

Section 9119. Nonstatutory provisions; Health Services.

(1) Payment for hospitals for nursing facility care.

(a) In this subsection, “public health emergency period” means the period ending on January 1, 2022, or the termination of any public health emergency declared under 42 USC 247d by the secretary of the federal department of health and human services in response to the 2019 novel coronavirus, whichever is earlier.

(b) During the public health emergency period, subject to par. (c), the department of health services shall provide, under the Medical Assistance program, reimbursement at the statewide average per-diem rate paid to nursing facilities or a supplemental payment to hospitals for providing nursing-facility-level care when all of the following criteria apply:

1. The individual for whom the hospital provided nursing-facility-level care is enrolled in the Medical Assistance program, has been admitted on an inpatient basis to the hospital, is eligible for discharge after receiving care in the hospital, requires nursing-facility-level care upon discharge, and due to the hospital making a reasonable attempt but being unable to locate a nursing facility that accepts the individual for admission, is unable to be transferred to a nursing facility.

2. The services provided to the individual described under subd. 1. are custodial care for which federal financial participation is approved.

3. The hospital notifies the department of health services that it is participating as a swing bed hospital under the Medical Assistance program and that it has been unable to locate a suitable nursing home placement in its community for each individual.

(c) The department of health services shall use the same standards and criteria for determining whether a hospital is eligible for reimbursement or a supplemental payment under par. (b) as are used by the federal Medicare program under 42 USC 1395 et seq. for the payment for use of swing beds or, for any hospital that is not a critical access hospital, under the terms of a federal waiver approved under section 1135 of the federal social security act. The department shall seek any approval from the federal government necessary to implement the reimbursement under this subsection.

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