



2001 ASSEMBLY BILL 821

February 18, 2002 - Introduced by Representatives KRUSICK, CARPENTER, COGGS, JESKEWITZ, LA FAVE, J. LEHMAN, M. LEHMAN, MEYERHOFER, MILLER, MORRIS-TATUM, MUSSER, PLALE, POWERS, RYBA, SERATTI, SHERMAN, SINICKI, STASKUNAS, STEINBRINK, STONE, TRAVIS, URBAN, WASSERMAN and WILLIAMS, cosponsored by Senators GROBSCHMIDT, BURKE and HANSEN, by request of Coalition of Working Aging Groups, Wisconsin Citizen Action and Allied Council of Senior Citizens of Wisconsin. Referred to Committee on Health.

1 **AN ACT** *to renumber and amend* 100.31 (1) (a) and 100.31 (1) (b); *to amend*
2 100.31 (title), 100.31 (1) (c), 100.31 (2), 100.31 (3), 100.31 (4) and 450.10 (1) (a)
3 2.; and *to create* 100.31 (1) (ae), 100.31 (1) (as), 100.31 (2g) and 100.31 (2r) of
4 the statutes; **relating to:** prescription drug prices, granting rule-making
5 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill imposes a limit on the price of certain prescription drugs. Under the bill, if a person has an insurance policy that requires him or her to pay a portion of the price of a prescription drug, the dispenser of the drug may not require the person to pay an amount for the drug that exceeds that portion, or the average price that the dispenser charges to consumers who do not have insurance coverage of prescription drugs, whichever is less. The bill defines a “dispenser” as a person who delivers a prescription drug to the ultimate user for outpatient use, including an insurer that issues certain types of managed health care plans or a hospital. The bill’s prohibition does not apply to a dispenser who delivers prescription drugs exclusively to persons who have insurance coverage of prescription drugs. A dispenser who violates the bill’s prohibition may be subject to a forfeiture of between \$100 and \$10,000 per violation. The department of agriculture, trade and consumer protection (DATCP) and district attorneys are authorized to bring actions for forfeitures.

The bill also changes a prohibition under current law against price discrimination that applies to persons who trade in prescription drugs for resale.

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Under current law, the prohibition applies to trades with persons who engage primarily in selling prescription drugs directly to consumers. Under the bill, the prohibition applies to trades with dispensers, as defined above.

Finally, the bill provides that the prohibition against price discrimination described above applies to drugs included in the most current version of either of the following: 1) the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is published by the federal food and drug administration (FDA); or 2) another publication specified in rules promulgated by DATCP that identifies drug products approved on the basis of safety and effectiveness by the FDA under the federal Food, Drug, and Cosmetic Act. Current law refers only to the list of therapeutically equivalent drugs published by the FDA.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 100.31 (title) of the statutes is amended to read:

2 **100.31** (title) ~~Unfair discrimination in~~ Prescription drug pricing.

3 **SECTION 2.** 100.31 (1) (a) of the statutes is renumbered 100.31 (1) (bm) and
4 amended to read:

5 100.31 (1) (bm) "~~Drug~~" "Prescription drug" means any substance subject to 21
6 USC 353 (b).

7 **SECTION 3.** 100.31 (1) (ae) of the statutes is created to read:

8 100.31 (1) (ae) "Consumer" means a person for whom a prescription drug is
9 prescribed.

10 **SECTION 4.** 100.31 (1) (as) of the statutes is created to read:

11 100.31 (1) (as) "Federal drug list" means the "Approved Drug Products with
12 Therapeutic Equivalence Evaluations" published by the federal food and drug
13 administration, or other publication specified in rules promulgated by the
14 department under sub. (2r).

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1 **SECTION 5.** 100.31 (1) (b) of the statutes is renumbered 100.31 (1) (am) and
2 amended to read:

3 100.31 (1) (am) “~~Purchaser~~” “Dispenser” means any person who engages
4 ~~primarily in selling dispensing, as defined in s. 450.01 (7), prescription drugs directly~~
5 ~~to consumers for outpatient use.~~ “Dispenser” includes a hospital that directly or
6 indirectly bills patients for prescription drugs, or an insurer that issues a defined
7 network plan, as defined in s. 609.01 (1b), and that provides prescription drugs or
8 prescription drug coverage to the enrollees of the plan.

9 **SECTION 6.** 100.31 (1) (c) of the statutes is amended to read:

10 100.31 (1) (c) “~~Seller~~” means any person who trades in prescription drugs for
11 resale to ~~purchasers~~ dispensers in this state.

12 **SECTION 7.** 100.31 (2) of the statutes is amended to read:

13 100.31 (2) **PRICE DISCRIMINATION PROHIBITED.** Every seller shall offer
14 prescription drugs from the most current federal drug list of therapeutically
15 equivalent drugs published by the federal food and drug administration to every
16 ~~purchaser~~ dispenser in this state, with all rights and privileges offered or accorded
17 by the seller to the most favored ~~purchaser~~ dispenser, including purchase prices for
18 similar volume purchases, rebates, free merchandise, samples, and similar trade
19 concessions. Nothing in this subsection prohibits the giving of a discount for volume
20 purchases.

21 **SECTION 8.** 100.31 (2g) of the statutes is created to read:

22 100.31 (2g) **PRICE LIMITATION.** If a consumer has insurance coverage for
23 prescription drugs and is required to pay a portion of the price of a prescription drug
24 covered under the consumer’s insurance policy, a dispenser who sells the
25 prescription drug to the consumer may not require the consumer to pay an amount

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1 for the prescription drug that is more than the portion that the consumer is required
2 to pay under the policy, or the average price that the dispenser charges for the
3 prescription drug to consumers who do not have insurance coverage of prescription
4 drugs, whichever is less. This subsection does not apply to a dispenser who dispenses
5 prescription drugs exclusively to consumers who have insurance coverage of
6 prescription drugs.

7 **SECTION 9.** 100.31 (2r) of the statutes is created to read:

8 100.31 (2r) RULES. The department may promulgate rules that, for purposes
9 of sub. (1) (as), specify a publication that identifies drug products approved on the
10 basis of safety and effectiveness by the federal food and drug administration under
11 the federal Food, Drug, and Cosmetic Act.

12 **SECTION 10.** 100.31 (3) of the statutes is amended to read:

13 100.31 (3) TREBLE DAMAGES. Any ~~purchaser~~ dispenser damaged by a violation
14 of ~~this section~~ sub. (2) may bring an action against the seller to recover treble
15 damages sustained by reason of such violation.

16 **SECTION 11.** 100.31 (4) of the statutes is amended to read:

17 100.31 (4) PENALTIES. For any violation of this section, the department or a
18 district attorney may commence an action on behalf of the state to recover a forfeiture
19 of not less than \$100 nor more than \$10,000 for each offense. Each delivery of a
20 prescription drug sold to a ~~purchaser~~ dispenser or consumer at a price in violation
21 of this section and each separate day in violation of an injunction issued under this
22 section is a separate offense.

23 **SECTION 12.** 450.10 (1) (a) 2. of the statutes is amended to read:

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1 450.10 (1) (a) 2. Violating this chapter, s. 100.31 (2g), or, subject to s. 961.38 (4r),
2 ch. 961 or any federal or state statute or rule which substantially relates to the
3 practice of the licensee.

SECTION 13. Nonstatutory provisions.

4
5 (1) If a dispenser, as defined in section 100.31 (1) (am) of the statutes, as
6 affected by this act, is subject to a contract that is in effect on the effective date of this
7 subsection and that contains provisions regarding prices of prescription drugs, as
8 defined in section 100.31 (1) (bm) of the statutes, as affected by this act, that are
9 inconsistent with section 100.31 (2g) of the statutes, as created by this act, then,
10 notwithstanding section 100.31 (2g) of the statutes, as created by this act, the
11 dispenser may perform its obligations, and exercise its rights, under that contract
12 until the contract expires, or is extended, modified, or renewed, whichever occurs
13 first.

SECTION 14. Effective date.

14
15 (1) This act takes effect on the first day of the 3rd month beginning after
16 publication.

17 (END)