



2001 ASSEMBLY BILL 53

February 1, 2001 – Introduced by Representatives PLOUFF, KRUSICK, SCHOOFF, HEBL, SHERMAN, SINICKI, BOYLE, RICHARDS, J. LEHMAN, BOCK, KRUG, MEYERHOFER, CARPENTER, MILLER, BLACK, LA FAVE, STASKUNAS, TRAVIS, BALOW, POCAN, HUBER, SCHNEIDER, BERCEAU, COGGS, CULLEN, COLON, RYBA, REYNOLDS, TURNER, RILEY, YOUNG, WOOD, SHILLING, LASSA, WASSERMAN and PLALE, cosponsored by Senators ROBSON, ERPENBACH, HANSEN, MOEN, GEORGE, SHIBILSKI, ROESSLER, PLACHE, CHVALA, DECKER, GROBSCHMIDT, WIRCH, RISSER, M. MEYER, BAUMGART and JAUCH. Referred to Committee on Health.

1 **AN ACT to create** 20.435 (4) (bv), 20.435 (4) (j), 20.435 (4) (jb), 20.435 (4) (jd),
2 49.477 and 49.688 of the statutes; **relating to:** requiring pharmacies and
3 pharmacists, as a condition of medical assistance participation, to charge
4 elderly persons for prescription drugs no more than specific amounts;
5 specifying requirements for rebate agreements between the department of
6 health and family services and drug manufacturers; requiring the department
7 of health and family services to seek a waiver to provide medical assistance
8 eligibility to certain persons for purposes of a prescription drug benefit;
9 requiring the exercise of rule-making authority; making appropriations; and
10 providing penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under current federal law, persons entitled to coverage under part B of medicare do not receive coverage for prescription drugs for outpatient care as a benefit.

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This bill provides that, beginning March 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$20 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is not more than the medical assistance rate plus 5%, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$500 in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of \$5 for each generic drug and a copayment of \$10 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 300% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 175% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying the \$5 and \$10 copayments without first paying the \$500 deductible. Persons who are otherwise eligible but who have household incomes that exceed 300% of the federal poverty line for a family the size of the person's eligible family must first, in a 12-month period, pay for prescription drugs at market rate, a deductible that equals the difference between the person's annual household income and 300% of the federal poverty line; after this is paid, the persons must pay an additional \$500 deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying the generic and nongeneric drug copayments. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee, but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering into rebate agreements that are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a sum sufficient appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the medical assistance rate plus 5%, minus any copayment made, plus a dispensing fee.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the

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prescription drug assistance program. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the medical assistance rate plus 5% that must be charged to certain eligible persons in meeting the deductible for prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions.

If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. The bill appropriates \$1,000,000 in general purpose revenues in fiscal year 2001-01 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys.

Lastly, under the bill, DHFS must request from the secretary of the federal department of health and human services a waiver of federal medicaid laws to permit DHFS to conduct a project to expand MA eligibility for persons who are eligible for and enrolled in Medicare and persons whose annual household incomes do not exceed 300% of the federal poverty line for a family the size of the persons' eligible families. Under the waiver, the expanded MA eligibility entitles an eligible person, after paying a \$20 annual enrollment fee, to purchase a prescription drug for a copayment, as specified in the bill, for that prescription drug. The pharmacy or pharmacist who sells the drug at this reduced price receives reimbursement for the difference between the copayment and the medical assistance reimbursement amount from DHFS, from moneys received by DHFS under rebate agreements with drug manufacturers.

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.** 20.435 (4) (bv) of the statutes is created to read:

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1 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* A sum sufficient
2 for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug
3 assistance for elderly persons.

4 **SECTION 2.** 20.435 (4) (j) of the statutes is created to read:

5 20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*
6 All moneys received from rebate payments by manufacturers under s. 49.688 (6), to
7 be used for payment to pharmacies and pharmacists under s. 49.688 (7) for
8 prescription drug assistance for elderly persons.

9 **SECTION 3.** 20.435 (4) (jb) of the statutes is created to read:

10 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All
11 moneys received from payment of enrollment fees under s. 49.688 (3), to be used for
12 administration of the program under s. 49.688.

13 **SECTION 4.** 20.435 (4) (jd) of the statutes is created to read:

14 20.435 (4) (jd) *Prescription drug assistance project; enrollment fees.* All moneys
15 received from payment of enrollment fees under s. 49.477 (2), to be used for
16 administration of the program under s. 49.477. This paragraph applies only if a
17 waiver, under 42 USC 1315 (a), is granted as requested under s. 49.477 (2).

18 **SECTION 5.** 49.477 of the statutes is created to read:

19 **49.477 Prescription drug assistance project. (1)** In this section:

20 (a) "Medicare" means coverage under part A or part B of Title XVIII of the
21 federal Social Security Act, 42 USC 1395 to 1395y.

22 (b) "Poverty line" means the nonfarm federal poverty line for the continental
23 United States, as defined by the federal department of labor under 42 USC 9902 (2).

24 (c) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20),
25 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is

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1 manufactured by a manufacturer that enters into a rebate agreement in force under
2 sub. (4).

3 (d) "Prescription order" has the meaning given in s. 450.01 (21).

4 (2) The department shall request from the secretary of the federal department
5 of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid
6 laws necessary to permit the department to conduct a project to expand eligibility for
7 medical assistance to include individuals who are eligible for and enrolled in
8 medicare and individuals whose annual household incomes, as determined by the
9 department, do not exceed 300% of the federal poverty line for a family the size of the
10 individual's eligible family. Eligibility for medical assistance under this subsection
11 entitles an individual, after payment of a \$20 annual enrollment fee, only to the
12 discounted purchase of prescription drugs as specified under sub. (3).

13 (3) Under the project under sub. (2), as a condition of participation by a
14 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
15 pharmacy or pharmacist may not charge an individual who is eligible for medical
16 assistance under sub. (2), who is not enrolled in the program under s. 49.688, and who
17 presents a valid prescription order an amount for a prescription drug under the order
18 that exceeds the amount obtained by subtracting the amount under sub. (4) from the
19 medical assistance reimbursement amount for the drug, as determined by the
20 department.

21 (4) From the appropriations under s. 20.435 (4) (b) and (o), the department
22 shall pay the pharmacy or pharmacist for a prescription drug purchased as specified
23 under sub. (3) an amount that results from applying to the medical assistance
24 reimbursement rate amount for the drug the percentage that results from dividing
25 the revenue for the prescription drug that the department received the previous year

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1 under the rebate agreement under 42 USC 1396r-8 with a prescription drug
2 manufacturer that sells the prescription drug for prescribed use in this state by the
3 total amount of medical assistance expenditures for prescription drugs for the
4 previous year, as determined by the department.

5 (5) The department may not implement the program under this section unless
6 a waiver that is consistent with all of the provisions of this section is granted and in
7 effect. If the department receives the waiver, at the end of the period during which
8 the waiver remains in effect the department shall request any available extension
9 of the waiver.

10 **SECTION 6.** 49.688 of the statutes is created to read:

11 **49.688 Prescription drug assistance for elderly persons.** (1) In this
12 section:

13 (a) "Generic name" has the meaning given in s. 450.12 (1) (b).

14 (b) "Poverty line" means the nonfarm federal poverty line for the continental
15 United States, as defined by the federal department of labor under 42 USC 9902 (2).

16 (c) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20),
17 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is
18 manufactured by a drug manufacturer that enters into a rebate agreement in force
19 under sub. (6).

20 (d) "Prescription order" has the meaning given in s. 450.01 (21).

21 (e) "Program payment rate" means the rate of payment made for the identical
22 drug specified under s. 49.46 (2) (b) 6. h., plus 5%.

23 (2) (a) A person to whom all of the following applies is eligible to purchase a
24 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

25 1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

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1 2. The person is at least 65 years of age.

2 3. The person is not a recipient of medical assistance.

3 4. The person's annual household income, as determined by the department,
4 does not exceed 300% of the federal poverty line for a family the size of the person's
5 eligible family.

6 5. The person pays the program enrollment fee specified in sub. (3) (a).

7 (b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household
8 income, as determined by the department, exceeds 300% of the federal poverty line
9 for a family the size of the persons' eligible family, is eligible to purchase a
10 prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining
11 amount of any 12-month period in which the person has first paid the annual
12 deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail
13 price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

14 **(3)** Program participants shall pay all of the following:

15 (a) For each 12-month benefit period, a program enrollment fee of \$20.

16 (b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a),
17 a deductible for prescription drugs of \$500, except that a person whose annual
18 household income, as determined by the department, is 175% or less of the federal
19 poverty line for a family the size of the person's eligible family pays no deductible.

20 2. For each 12-month benefit period, for a person specified in sub. (2) (b), a
21 deductible for prescription drugs that equals all of the following:

22 a. The difference between the person's annual household income and 300% of
23 the federal poverty line for a family the size of the person's eligible family.

24 b. Five hundred dollars.

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1 (c) After payment of any applicable deductible under par. (b), all of the
2 following:

- 3 1. A copayment of \$5 for each prescription drug that bears only a generic name.
- 4 2. A copayment of \$10 for each prescription drug that does not bear only a
5 generic name.

6 (d) Notwithstanding s. 49.002, if a person who is eligible under this section has
7 other available coverage for payment of a prescription drug, this section applies only
8 to costs for prescription drugs for the person that are not covered under the person's
9 other available coverage.

10 (4) The department shall devise and distribute a form for application for the
11 program under sub. (2), shall determine eligibility for each 12-month benefit period
12 of applicants and shall issue to eligible persons a prescription drug card for use in
13 purchasing prescription drugs, as specified in sub. (5). The department shall
14 promulgate rules that specify the criteria to be used to determine household income
15 under sub. (2) (a) 4. and (b) and (3) (b) 1.

16 (5) (a) Beginning March 1, 2002, as a condition of participation by a pharmacy
17 or pharmacist in the program under s. 49.45, 49.46, or 49.47, the pharmacy or
18 pharmacist may not charge a person who presents a valid prescription order and a
19 card indicating that he or she meets eligibility requirements under sub. (2) (a) an
20 amount for a prescription drug under the order that exceeds the following:

- 21 1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment
22 rate, plus a dispensing fee that is equal to the dispensing fee permitted to be charged
23 for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

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1 2. After any applicable deductible under subd. 1. is charged, the copayment, as
2 applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee, as specified under
3 subd. 1., may be charged to a person under this subdivision.

4 3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

5 4. After the deductible under subd. 3. is charged, the copayment, as applicable,
6 that is specified in sub. (3) (c) 1. or 2. No dispensing fee, as specified under subd. 1.,
7 may be charged to a person under this subdivision.

8 (b) The department shall calculate and transmit to pharmacies and
9 pharmacists that are certified providers of medical assistance amounts that may be
10 used in calculating charges under par. (a). The department shall periodically update
11 this information and transmit the updated amounts to pharmacies and pharmacists.

12 **(6)** The department or an entity with which the department contracts shall
13 provide to a drug manufacturer that sells drugs for prescribed use in this state
14 material designed for use by the manufacturer in entering into a rebate agreement
15 with the department or entity that is modeled on the rebate agreement specified
16 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
17 of the following as requirements:

18 (a) That the manufacturer shall make rebate payments for each prescription
19 drug of the manufacturer that is prescribed for and purchased by persons who meet
20 criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have
21 paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited to the
22 appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule
23 established by the department.

24 (b) That the amount of the rebate payment shall be determined by a method
25 specified in 42 USC 1396r-8 (c).

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1 **(7)** From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
2 March 1, 2002, the department shall, under a schedule that is identical to that used
3 by the department for payment of pharmacy provider claims under medical
4 assistance, provide to pharmacies and pharmacists payments for prescription drugs
5 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
6 paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1.,
7 are not required to pay a deductible. The payment for each prescription drug under
8 this subsection shall be at the program payment rate, minus any copayment paid by
9 the person under sub. (5) (a) 2. or 4., plus a dispensing fee, as specified under sub.
10 (5) (a) 1., and plus, if applicable, incentive payments that are similar to those
11 provided under s. 49.45 (8v). The department shall devise and distribute a claim
12 form for use by pharmacies and pharmacists under this subsection and may limit
13 payment under this subsection to those prescription drugs for which payment claims
14 are submitted by pharmacists or pharmacies directly to the department. The
15 department may apply to the program under this section the same utilization and
16 cost control procedures that apply under rules promulgated by the department to
17 medical assistance under subch. IV of ch. 49.

18 **(8)** The department shall, under methods promulgated by the department by
19 rule, monitor compliance by pharmacies and pharmacists that are certified providers
20 of medical assistance with the requirements of sub. (5) and shall annually report to
21 the legislature under s. 13.172 (2) concerning the compliance. The report shall
22 include information on any pharmacies or pharmacists that discontinue
23 participation as certified providers of medical assistance and the reasons given for
24 the discontinuance.

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1 **(9)** (a) The department shall promulgate rules relating to prohibitions on fraud
2 that are substantially similar to applicable provisions under s. 49.49 (1) (a).

3 (b) A person who is convicted of violating a rule promulgated by the department
4 under par. (a) in connection with that person's furnishing of prescription drugs under
5 this section may be fined not more than \$25,000, or imprisoned for not more than 7
6 years and 6 months, or both.

7 (c) A person other than a person specified in par. (b) who is convicted of violating
8 a rule promulgated by the department under par. (a) may be fined not more than
9 \$10,000, or imprisoned for not more than one year, or both.

10 **(10)** If federal law is amended to provide coverage for prescription drugs for
11 outpatient care as a benefit under medicare or to provide similar coverage under
12 another program, the department shall submit to appropriate standing committees
13 of the legislature under s. 13.172 (3) a report that contains an analysis of the
14 differences between such a federal program and the program under this section and
15 that provides recommendations concerning alignment, if any, of the differences.

16 **(11)** Except as provided in subs. (8) to (10) and except for the department's
17 rule-making requirements and authority, the department may enter into a contract
18 with an entity to perform the duties and exercise the powers of the department under
19 this section.

SECTION 7. Nonstatutory provisions.

20 **(1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION.** Before July 1,
21 2002, the department of health and family services may develop and submit to the
22 department of administration a proposal for expenditure of the funds appropriated
23 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
24 assistance for elderly program under section 49.688 of the statutes, as created by this
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1 act. The department of administration may approve, disapprove, or modify and
2 approve any proposal it receives under this subsection. If the department of
3 administration approves the proposal, the department shall submit the proposal,
4 together with any modifications, to the cochairpersons of the joint committee on
5 finance. If the cochairpersons of the committee do not notify the secretaries of
6 administration and health and family services within 14 working days after
7 receiving the proposal that the cochairpersons have scheduled a meeting for the
8 purpose of reviewing the proposal, the secretary of administration may transfer from
9 the appropriation under section 20.865 (4) of the statutes to the appropriation under
10 section 20.435 (4) (a) of the statutes the amount specified in the proposal or any
11 proposed modifications of the proposal for expenditure as specified in the proposal
12 or any proposed modifications of the proposal and may approve any position
13 authority specified in the proposal or any proposed modifications of the proposal. If,
14 within 14 working days after receiving the proposal, the cochairpersons notify the
15 secretaries of administration and health and family services that the cochairpersons
16 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
17 administration may not transfer any amount specified in the proposal or any
18 proposed modifications of the proposal from the appropriation under section 20.865
19 (4) of the statutes and may not approve any position authority specified in the
20 proposal or any proposed modifications of the proposal, except as approved by the
21 committee.

SECTION 8. Appropriation changes.

22 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
23 under section 20.005 (3) of the statutes for the appropriation to the department of
24 health and family services under section 20.435 (4) (a) of the statutes, as affected by
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1 the acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02
2 to increase funding for administration of the prescription drug assistance for elderly
3 program under section 49.688 of the statutes, as created by this act.

4 (2) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADDITIONAL ADMINISTRATION. In
5 the schedule under section 20.005 (3) of the statutes for the appropriation to the joint
6 committee on finance under section 20.865 (4) (a) of the statutes, as affected by the
7 acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02 to
8 increase funding for administration of the prescription drug assistance for elderly
9 program under section 49.688 of the statutes, as created by this act.

10 **SECTION 9. Effective dates; health and family services.** This act takes
11 effect on the 2nd day after publication of the biennial budget act, except as follows:

12 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY. The treatment of section 20.435
13 (4) (bv) of the statutes takes effect on March 1, 2002.

14 (2) PRESCRIPTION DRUG ASSISTANCE PROJECT. The treatment of section 49.477 (2)
15 of the statutes takes effect on the day after publication.

16 (END)