

## 1999 ASSEMBLY BILL 745

February 10, 2000 – Introduced by Representatives HUBER, KRUSICK, UNDERHEIM, MEYER, MUSSER, BLACK, BOCK, BOYLE, CARPENTER, COLON, CULLEN, HASENOHRL, KREUSER, LASSA, LA FAVE, J. LEHMAN, MEYERHOFER, MILLER, PLALE, PLOUFF, REYNOLDS, RYBA, SHERMAN, STASKUNAS, WAUKAU and YOUNG, cosponsored by Senators DECKER, BRESKE, MOEN, ROESSLER, PLACHE, ERPENBACH, ROSENZWEIG, SHIBILSKI, GROBSCHMIDT, BAUMGART, RISSER and DARLING. Referred to Committee on Health.

1     **AN ACT to create** 20.435 (4) (bv), 20.435 (4) (j), 49.688 and 227.01 (13) (zL) of the  
 2             statutes; **relating to:** prescription drug assistance for elderly persons,  
 3             requiring the exercise of rule-making authority, providing an exemption from  
 4             rule-making procedures, making appropriations and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance services are reimbursed for the provision of certain prescription drugs to medical assistance recipients at a rate established by the department of health and family services (DHFS). 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.

This bill creates a program for prescription drug assistance for elderly persons in DHFS and appropriates \$6,600,000 in general purpose revenues in fiscal year 2000–01 for the program. Under the program, beginning January 1, 2001, state residents who are aged at least 65 years, who are ineligible for medical assistance and whose gross incomes are not more than \$15,244 or, if married, are not more than \$20,461 per couple, as annually indexed for inflation, may apply for assistance in paying for prescription drugs. Prescription drugs for which a program participant may receive coverage are those prescription drugs that are designated by DHFS to be for a chronic condition, as defined in the bill. Participants in the prescription drug assistance program must pay a 12-month enrollment fee of between \$25 and \$200, based on the participant's gross income, as specified by DHFS by rule, and 50% of the

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cost of each prescription drug, at the rate under which pharmacists are reimbursed under the medical assistance program. Under the program, DHFS is the payer of last resort for coverage for prescription drugs and must reimburse pharmacist providers at the rate under which pharmacists are reimbursed under the medical assistance program. In order for drugs manufactured by a manufacturer doing business in this state to be included in the program, the manufacturer must enter with DHFS into a rebate agreement that is modeled on rebate agreements under federal medicaid law. The rebate agreement must provide that the manufacturer make payments to DHFS each calendar quarter or as scheduled by DHFS and that the rebate payment amounts be determined by the method specified in federal medicaid law. The bill creates penalties for fraud that are identical to those under the medical assistance program with respect to receipt of payment or receipt of the benefit under the program. The bill appropriates \$1,000,000 in general purpose revenues in fiscal year 1999–2000 to the general program supplementation appropriation account of the joint committee on finance (JCF) and requires DHFS to submit to JCF a plan for expenditure of these funds for administration of the prescription drug assistance program.

In addition, if the amount of funds in the general purpose revenues appropriation account created for the program is insufficient to meet program demand, the bill requires DHFS to request a supplement from the general program supplementation appropriation account of JCF and to submit to JCF a plan for the expenditure. If the cochairpersons of JCF do not notify the secretary of health and family services of the committee's intent to schedule a meeting to review either plan, JCF must supplement the DHFS general program operations appropriation account as provided in the DHFS plan. If the cochairpersons of JCF notify the secretary of health and family services that JCF intends to schedule a meeting to review either plan, the DHFS appropriation account may be supplemented only as approved by JCF.

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

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

- 1           **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
2 the following amounts for the purposes indicated:

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**1999-00****2000-01**

2

**20.435 Health and family services, department**

3

**of**

4

(4) HEALTH SERVICES PLANNING, REGULATION AND

5

DELIVERY; HEALTH CARE FINANCING

6

(bv) Prescription drug assistance for

7

elderly; aids

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6,600,000

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

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20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* As a continuing

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appropriation, the amounts in the schedule for the program for prescription drug

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assistance for elderly persons under s. 49.688.

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

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20.435 (4) (j) *Prescription drug assistance for elderly; enrollment fees;*

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*manufacturer rebates.* All moneys received from payments of program enrollment

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fees under s. 49.688 (3) (b) 1. and rebate payments by manufacturers under s. 49.688

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(5), to be used for prescription drug assistance for elderly persons under s. 49.688.

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**SECTION 4.** 49.688 of the statutes is created to read:

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**49.688 Prescription drug assistance for elderly persons. (1)** In this

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section:

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(a) “Chronic condition” means a cardiac condition, high blood pressure,

21

diabetes, arthritis, blood coagulation or hematologic disease, hyperlipidemia,

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osteoporosis, chronic obstructive pulmonary disease, asthma, incontinence, thyroid

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disease, glaucoma, Alzheimer’s disease, Parkinson’s disease, multiple sclerosis,

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amyotrophic lateral sclerosis (Lou Gehrig’s disease), ulcers, seizures and depression.

**ASSEMBLY BILL 745****SECTION 4**

1 (b) “Gross income” means all income, from whatever source derived and in  
2 whatever form realized, whether in money, property or services.

3 (c) “Prescription drug” has the meaning given in s. 450.01 (20).

4 **(2)** From the appropriations under s. 20.435 (4) (bv) and (j), beginning January  
5 1, 2001, the department shall reimburse pharmacists for the provision of  
6 prescription drugs designated by the department for a chronic condition and for  
7 which the manufacturer has entered into a rebate agreement with the department  
8 under sub. (5), to persons who meet criteria for eligibility under sub. (3). The  
9 department is the payer of last resort for coverage for prescription drugs under this  
10 subsection. The payment rate for provider reimbursement shall be the allowable  
11 charges paid under s. 49.46 (2) (b) 6. h. for prescription drugs. The department shall  
12 maintain, or contract for the maintenance of, a toll-free telephone number at  
13 department headquarters to provide information about the program under this  
14 subsection, including information about application procedures.

15 **(3)** (a) An individual is eligible for participation in the program under sub. (2)  
16 if the individual meets all of the following requirements:

17 1. The individual is at least 65 years of age, is a resident, as defined in s. 27.01  
18 (10) (a), of this state and is ineligible for medical assistance under s. 49.46, 49.465,  
19 49.468 or 49.47.

20 2. If single, the individual’s gross income does not exceed \$15,244 or, if married,  
21 the couple’s gross income does not exceed \$20,461. These limitations shall be  
22 annually adjusted as specified in sub. (4).

23 (b) Program participants shall pay all of the following:

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1           1. Upon enrolling and every 12 months thereafter, to the department, a  
2 program enrollment fee of between \$25 and \$200, based on the participant's gross  
3 income, as specified by the department by rule.

4           2. To the selling pharmacy or pharmacist, a copayment of 50% for each  
5 prescription drug provided under the program.

6           (c) No program participant may be required to demonstrate that he or she has  
7 no disability insurance policy, as defined in s. 632.895 (1) (a).

8           **(4)** Beginning by January 1, 2001, the department shall annually by January  
9 1 increase the dollar amounts specified under sub. (3) (a) 2. by a percentage equal to  
10 the percentage change between the U.S. consumer price index for all consumers, U.S.  
11 city average, for the month of December of the previous year and the U.S. consumer  
12 price index for all urban consumers, U.S. city average, for the month of December of  
13 the year before the previous year, as determined by the federal department of labor.

14           **(5)** A drug manufacturer that sells drugs for prescribed use in this state shall,  
15 as a condition of inclusion of those drugs in the program under this section, enter  
16 with the department into a rebate agreement that is modeled on the rebate  
17 agreement specified under 42 USC 1396r-8. The rebate agreement shall include all  
18 of the following as requirements:

19           (a) That the manufacturer shall make rebate payments to the department each  
20 calendar quarter or according to a schedule established by the department.

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

23           **(6)** The department shall promulgate rules specifying the amount, between  
24 \$25 and \$200, of program enrollment fee required of a program participant, based  
25 on the participant's gross income.

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1           (7) (a) No person, in connection with the program under this section, may:

2           1. Knowingly and wilfully make or cause to be made a false statement or  
3 representation of a material fact in an application for a benefit or payment.

4           2. Knowingly and wilfully make or cause to be made a false statement or  
5 representation of a material fact for use in determining rights to a benefit or  
6 payment.

7           3. Having knowledge of the occurrence of an event that affects the initial or  
8 continued right to a benefit or payment or the initial or continued right to the benefit  
9 or payment of any other individual on whose behalf the person has applied for or is  
10 receiving the benefit or payment, conceal or fail to disclose the event with an intent  
11 to secure fraudulently the benefit or payment either in a greater amount or quantity  
12 than is due or when no such benefit or payment is authorized.

13           4. Having made application to receive a benefit or payment for the use and  
14 benefit of another and having received it, knowingly and wilfully convert the benefit  
15 or payment or any part of it to a use other than for the use and benefit of the other  
16 individual.

17           (b) Violators of this subsection are subject to the following:

18           1. In the case of a false statement or representation, concealment of or failure  
19 to disclose an event or conversion by any person in connection with the furnishing  
20 by that person of a prescription drug for which payment is or may be made, a person  
21 convicted of violating this subsection may be fined not more than \$25,000 or  
22 imprisoned for not more than 7 years and 6 months or both.

23           2. In the case of a false statement or representation, concealment of or failure  
24 to disclose an event or conversion by any person other than as specified in subd. 1.,

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1 a person convicted of violating this subsection may be fined not more than \$10,000  
2 or imprisoned for not more than one year in the county jail or both.

3 (c) The state has a cause of action for relief against a person who is convicted  
4 under this subsection, in an amount 3 times the amount of actual damages sustained  
5 as a result of any excess payments made in connection with the offense for which the  
6 conviction was obtained. Proof by the state of a conviction under this section in a civil  
7 action is conclusive regarding the state's right to damages and the only issue in  
8 controversy is the amount, if any, of the actual damages sustained. Actual damages  
9 consist of the total amount of excess payments, any part of which is paid by state  
10 funds. Upon receipt of a motion filed by the state in expedition of the action, the  
11 presiding judge shall expedite the action.

12 **SECTION 5.** 227.01 (13) (zL) of the statutes is created to read:

13 227.01 (13) (zL) Designates prescription drugs for a chronic condition, under  
14 s. 49.688 (2).

15 **SECTION 6. Nonstatutory provisions.**

16 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY PERSONS; ADMINISTRATION. The  
17 department of health and family services may request the joint committee on finance  
18 to supplement, from the appropriation account under section 20.865 (4) (a) of the  
19 statutes, the appropriation account under section 20.435 (4) (a) of the statutes, to pay  
20 the costs of staffing and administration of the program of prescription drug  
21 assistance for elderly persons under section 49.688 of the statutes, as created by this  
22 act. If the department of health and family services requests supplementation of the  
23 appropriation account under section 20.435 (4) (a) of the statutes, the department  
24 shall submit a plan to the joint committee on finance to expend not more than  
25 \$1,000,000 for fiscal year 1999–2000. The plan shall be based on a review by the

**ASSEMBLY BILL 745****SECTION 6**

1 department of health and family services of the pharmacy assistance programs of  
2 other states and the feasibility of contracting with the medical assistance fiscal agent  
3 for this state to administer the program under section 49.688 of the statutes, as  
4 created by this act. If the cochairpersons of the committee do not notify the secretary  
5 of the department within 14 working days after the date of the department's  
6 submittal that the committee intends to schedule a meeting to review the request,  
7 the appropriation account shall be supplemented as provided in the request. If,  
8 within 14 working days after the date of the department's submittal, the  
9 cochairpersons of the committee notify the secretary of the department that the  
10 committee intends to schedule a meeting to review the request, the appropriation  
11 account shall be supplemented only as approved by the committee. Notwithstanding  
12 section 13.101 (3) (a) 1. of the statutes, the committee is not required to find that an  
13 emergency exists.

14 (2) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY PERSONS; PROGRAM SUPPLEMENT.

15 If the amount of funds in the appropriation account under section 20.435 (4) (bv) of  
16 the statutes, as created by this act, is insufficient to meet program demand under  
17 section 49.688 of the statutes, as created by this act, the department of health and  
18 family services shall request the joint committee on finance to supplement, from the  
19 appropriation under section 20.865 (4) (a) of the statutes, the appropriation account  
20 under section 20.435 (4) (bv) of the statutes and shall submit a plan to the joint  
21 committee on finance for the expenditure. If the cochairpersons of the committee do  
22 not notify the secretary of the department within 14 working days after the date of  
23 the department's submittal that the committee intends to schedule a meeting to  
24 review the request, the appropriation account shall be supplemented as provided in  
25 the request. If, within 14 working days after the date of the department's submittal,



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1 the cochairpersons of the committee notify the secretary of the department that the  
2 committee intends to schedule a meeting to review the request, the appropriation  
3 account shall be supplemented only as approved by the committee. Notwithstanding  
4 section 13.101 (3) (a) 1. of the statutes, the committee is not required to find that an  
5 emergency exists.

6 **SECTION 7. Appropriation changes; joint committee on finance.**

7 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule  
8 under section 20.005 (3) of the statutes for the appropriation to the joint committee  
9 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,  
10 the dollar amount is increased by \$1,000,000 for fiscal year 1999–00 to increase  
11 funding for administration of the prescription drug assistance for elderly program  
12 under section 49.688 of the statutes, as created by this act.

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(END)