

1999 DRAFTING REQUEST

Bill

Received: **12/14/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Gregory Huber (608) 266-0654**

By/Representing: **Mark (aide)**

This file may be shown to any legislator: NO

Drafter: **kenneda**

May Contact: **Senator Decker**

Alt. Drafters:

Subject: **Health - miscellaneous
Health - long-term care**

Extra Copies: **ISR**

Pre Topic:

No specific pre topic given

Topic:

Prescription drug program for elderly persons

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2	kenneda 02/01/2000	wjackson 02/02/2000	jfrantze 02/02/2000	_____	lrb-docadmin 02/02/2000		S&L
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FE Sent For:

↪ 02-10-00

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/2	kenneda 02/0 1/2000	wj ackson 02/02/2000	jfrantze 02/02/2000	_____	lrb-docadmin 02/02/2000		

Handwritten initials and dates:
 RM 2/3/00 JB 3/4/00
 RM 3/4

FE Sent For:

<END>

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By/Representing: **Mark (aide)**

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				<END>			

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LEGISLATIVE REFERENCE BUREAU

Legal Section, 5th Floor, 100 N. Hamilton St.
 (608) 266-3561

BILL REQUEST FORM

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill. Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 12/13/99	Legislator or agency requesting this draft: Reuresentative Huber
Name/phone number of person submitting request: Mark 6-0654	
Persons to contact for questions about this draft (names and phone numbers please): Mark, Representative Huber's office, 6-0654	
Describe the problem, including any helpful examples. How do you want to solve the problem? Prescription drugs costs can be exorbitant for the elderly on fixed incomes. I propose a new state program to help certain seniors pay for certain prescription drugs. Program features: 1) \$25200 annual enrollment fee based upon income 2) covers 50% of the medicaid cost of certain drugs 3) covers drugs for chronic medical conditions such as heart disease, high blood pressure, diabetes, arthritis, etc. 4) eligibility - 65 or older, not on medicaid, making less that \$14k single or \$20k married	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-234511 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Senator Decker

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:

Questions for Barb

① Income limit: notes conflict

180% pov. line?

150% pov. line?

14,000 if single?

20,000 if married?

15,244 single } independent
22,500 couple }

② What does "cardiac ^{condition} + high blood pressure" mean?

③ ~~Any total limit on the amount of \$ at 50% copayment of Medicaid rate?~~

④ ~~Wait list or sum sufficient?~~

Income limit - family size 1 ^{- To be determined} based on last year's taxes
 ✓ Yearly fee -
 Will have card 180%
 Pharm will sell at medicare rate 150%
 Copay 50%
 DHFS to reimb. pharms
 ✓ Enrollment fee 25-200 - DHFS to set by rule
 ✓ 65+

Claims processing done as is Medicaid
 Handled at co level, through aging unit -

Administrative costs:
 State JFC supplement: DHFS can submit proposal for

Reimbursement covers drugs used for chronic conditions
 not antibiotics

DHFS to determine drugs to treat diseases
 Diseases to be specified in statute

cardiac, high blood pressure, diabetes, arthritis,
 glaucoma, osteoporosis, Parkinson's, hyperlipidemia

State residency

GPR - Tobacco money

Start - Jan. 1, 2001

Enrollment period - enroll any time after 65
 Must renew 12 mo after first enroll - DHFS to notify

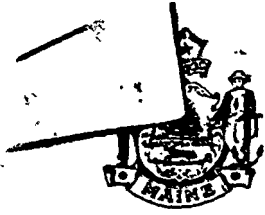
Draft as an entitlement - if meet elig, are in
 1 mo. before expiration

Note: Pharmacies will be receiving 23% less under
the Medicaid rate

No provision about generic drugs

Program is payer of last resort

Penalties for fraud - same as Medicaid penalties



NOV 22 1999

Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-00 13
Telephone: (207) 287- 1670
Fax: (207) 287- 1275

MEMORANDUM

From Jane Orbeton
To: Members, Health and Human Services Committee
Date: October 7, 1999
Re: Prescription Drug Programs

There are a number of programs for Maine residents to provide prescription medications. This memo will provide an overview of the different programs, Please look under each program for implementation dates as they are not all operating at this time or they may change fairly soon.

1. Medicaid, 22 MRSA §3174-G, subsection 1

The Medicaid program is the largest payor for prescription medication, also for hospitalization and care by physicians and other providers. To qualify for Medicaid, a person must meet income criteria and be a member of a category covered by Medicaid, referred to as being "categorically eligible." In Maine Medicaid categories include:

- a. children up to age 12 months and pregnant women - both at family income levels up to 185% of the federal poverty level (fpl) ;
- b. the elderly and the disabled - both at family incomes up to 100% fpl; and
- c. children ages one thru 18 - at family incomes up to 150% fpl.

The income limits have some flexibility for people who have high medical expenses, this being "spend . down" eligibility. There are no co-pays for children. Adults may have a co-pay of \$2 on some services. Co-pays are very limited by the federal government.

2. Cub Care, 22 MRSA 93174-T

Up until October 1, 1999, the Cub Care program provides health coverage for children ages one year through 19, at family incomes up to 185% of the federal poverty level. Beginning October 1, 1999 the income limit increases to 200% fpl. This is being done under the Commissioner's powers under 22 MRSA §3 174-T, subsection 2, paragraph A, to increase or decrease the income limit to maximize coverage within the funding limits of the program. It is anticipated that the increased coverage will be provided within the original Cub Care state and federal budget amounts during FY 99-2000.

Beginning July 1, 2000 the income limit is raised to 200% fpl by statute, PL 1999, Chapter 401, Part QQ (pg 241). and additional funding of 5166.796 is provided from the Fund for a Healthy Maine (the national tobacco settlement money) for the cost of benefits. Also allocated from the Fund for a Healthy Maine during FY 2000-01 is \$29,537 for a staff person in DHS for Cub Care. Matching federal funds were allocated for both accounts.

Children age birth thru age 12 months are covered under the Medicaid program, because persons eligible for Medicaid are required by federal law to be covered under that program. This creates a bit of a gap between the pregnant women and children to age 12 months, with incomes to 185% fpl. who are on Medicaid and the Cub Care kids at 200% fpl. DHS is considering the challenge presented by this disparity at this time.

David E. Boulter, Director
Offices Located in the State House, Rooms 101/107/135

The Cub Care program provides **full health care benefits, including prescription medicines and supplies, exactly the same** as the Medicaid program. There are no co-pays.

Families are required to pay contributions for coverage (premiums), depending on family income, calculated at 5% of benefit cost for families at **150-160%** fpl, 10% of benefit cost for families at **160-170%** fpl, and **15%** of benefit cost for families at 170-I 85% fpl. There is a maximum (the base times 2) in each category of income. My understanding is that the benefit cost is an average for the program, perhaps around \$ **1200** per year per child.

There is no statutory premium figure for children **185** to 200% fpl. My understanding is that **DHS** will charge them the same as children with family incomes **170-** 185% fpl.

3. Elderly Low-Cost Drug Program, 22 MRSA §3174-G, subsection 2 (from years ago, this year amended by LD 617, PL 1999, chapter 401, Part KKK, as further amended by LD 2255, PL 1999, chapter 531, Part F)

a. The basic component

The Elderly Low-Cost Drug Program provides assistance **with** payment for prescription medicines for ^{determined} adults ages 62 and over and disabled adults for certain specified chronic medical conditions. The ^{DHFS by} conditions covered include cardiac and high blood pressure, diabetes, arthritis, anticoagulation, hyperlipidemia, osteoporosis, chronic obstructive pulmonary disease and asthma, incontinence, thyroid ^{0.03} diseases, glaucoma, Parkinson's disease, multiple sclerosis and amyotrophic lateral sclerosis (Lou Gehrig's disease) ^{at 2.0 times}.

Beginning August 1, 1999, the current **ELCDP** is revamped to up the income level and designate it as the basic component of the ELCDP. The income level for the ELCDP will increase from roughly 131% of the federal poverty level to 185%. Until August 1, 1999, the income level was determined by reference to the circuit breaker program and was not expressed as a percentage of fpl. Persons who pay more than 40% of their income for unreimbursed prescription drugs are eligible up to an additional 2.5% of the applicable income levels. The co-pay is \$2 or 20%. whichever is greater.

\$ 1,092,000 was appropriated for FY 99-2000 for increased funding for the basic component of the ELCDP. The budget **blippie notes** that this is appropriated on a one-time basis.

b. The supplemental component

Beginning August 1, 1999 the "supplemental component of the program" *comes* into effect. The supplemental component of the program will cover all prescription drugs and medications provided under the Medicaid program. Under the supplemental component of the program participating manufacturers will discount their drug prices by the same amount as the Medicaid discount.

DHS will pay \$2 toward the cost of the prescription. The consumer will pay the remainder. The effect of the DHS \$2 co-pay and the Medicaid level discount will be a discount to the consumer of about 20% off current prices paid by those without drug coverage.

No funds were allocated or appropriated for the supplemental component of the program. It is intended to be self-sufficient, operating on the discounts and \$2 DHS co-pay.

Making Medicines Affordable

A number of states have for years helped older Americans buy needed prescription drugs.

By Richard Cauchi

When Margaret Gallagher, 77, goes to the drug store each month, she makes a choke-to buy her cardiac medicine or her anti-arthritis drugs. Her doctor used to help by providing no-cost samples, but they are no longer available.

Margaret's story is repeated daily in communities across the nation. Prescription drugs make up only 11 percent of the total of all health care costs, but that statistic is no comfort to many patients. There are several real-life obstacles. First, Medicare and some private health insurance plans do not cover prescription drugs. Second, health plans that do cover drugs often have restrictive formularies or lists that exclude coverage for a particular drug. Third, spending for prescriptions was increasing an average of 16 percent in 1999, significantly higher than other major medical expenses.

It is no surprise that President Clinton and some members of Congress are calling for federal drug benefits. Yet senior pharmacy assistance programs have been in place in several states for as long as 25 years--quietly but effectively filling a critical gap for moderate-income seniors and others. Using creative combinations of state funds and public-private partnerships, these programs now are pointing the way for other states, as well as for federal policymakers.

As of mid-1999, 16 states had created pharmacy assistance programs with several common features. Eligibility is based on annual income limits (typically between \$14,000 and \$19,000 for a single person); the minimum age often is 65 (eight states include special coverage for adults under 65 with disabilities). The programs vary significantly in overall size. In New Jersey, some 206,000 people received

help from its program, which marks its 25th year in 1999. The Michigan Emergency Pharmaceutical Program, founded in 1988, serves 31,000 residents.

Three states use earmarked funds: Massachusetts uses a portion of a

25-cent a pack cigarette tax; New Jersey earmarks casino revenues; Pennsylvania uses lottery proceeds. Several others depend on special trust funds. To avoid runaway state costs, most programs have some form of limitations or cost sharing:

◆ Connecticut has a \$12 copayment per prescription.

◆ Illinois requires the first \$15 per month be paid by the patient

◆ Maryland covers only chronic maintenance and anti-infection drugs.

◆ Massachusetts has a \$15 annual enrollment fee and a maximum annual benefit of \$750.

● Minnesota's participants must meet a \$300 annual deductible.

Unlike Medicaid, most state programs are not entitlements. For example, Minnesota's 1999 law states "new enrollment shall cease if costs of the program . . . will exceed appropriated funds." In a bid for federal involvement, that same law specifies, "This section shall be repealed upon federal approval of the waiver to allow the [Minnesota] commissioner to provide prescription drug coverage for qualified Medicare beneficiaries . . ."

Connecticut appropriated \$29 million for N 1999 to serve about 37,700 residents, an average cost of \$775 per recipient.

The Maine Legislature significantly expanded its program this year, raising allowable income levels and expanding the list of drugs covered.

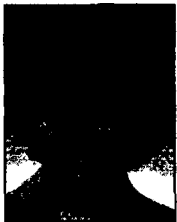
Senator Judy Paradis is co-chair of the Maine Health and Human Services Committee and lead sponsor of the 1999 expansion. "It's a no brainer," she explained. "By providing a drug program that is very

State	Year started	Recipients
Connecticut	'86	37,700
Delaware	'81 & '99	9,600 *
Illinois	'85	53,555 *
Maine	'75 & '99	24,000 *
Maryland	'79	21,400
Massachusetts	'96	26,000
Michigan	'88 & '94	31,000
Minnesota	'97	4,500 est.
Nevada	'99	Not yet in operation
New Jersey	'75	205,900 *
New York	'87	99,500
North Carolina	'99	Not yet in operation
Pennsylvania	'84	239,000
Rhode Island	'85	27,000
Vermont	'89	10,500
Wyoming	'88	550 *

Richard Cauchi is a policy specialist with NCSL's Health Care Program in Denver.



inexpensive per person, we are able to maintain people in their own homes and not use high-cost acute care hospitals or long-term care. People had been discouraged because our program income limits had been very low, but now thousands of additional elders are eligible.”



Senator
Judy Paradis
Maine

Next year, Maine legislators plan to designate tobacco settlement money to pay for a **further** expansion.

Missouri used a different approach, establishing a state income tax credit up to \$750 per year for pharmaceutical costs incurred by qualified seniors and disabled veterans.

The American Association of Retired Persons (AARP) views these programs as helpful. “State officials recognize that many people who are not eligible for Medicaid have severe problems paying for prescriptions. Many older Americans are endangering their health because they cannot afford their drugs, or they are forced to choose between crucial drugs and the other necessities of life,” notes David Gross of AARP’s Public Policy Institute.

The pharmaceutical industry has mixed views on state-run programs. Individual drug manufacturers donated \$500 million worth of pharmaceuticals through doctors in 1998, but there is little coordination of distribution and no guarantee that a specific product is available. The industry supports low-income assistance programs, but opposes broad legislation that mandates price discounts or lower reimbursement rates.

Whether Congress decides to expand Medicare to cover prescription drugs or not, states are likely to remain actively involved in pharmacy assistance.

For more details on these laws and programs, visit the NCSL Web page at: www.ncsl.org/programs/health/drugaid.htm

CALIFORNIA SENIORS TO GET MEDICATION DISCOUNTS

California took a new approach in October to help older residents buy medications. Senate Bill 393 requires that pharmacies participating in the Medicaid program (Medi-Cal) also offer a discount price to all Medicare beneficiaries. The price “shall not exceed the Medi-Cal reimbursement rate for prescription medicines” plus a small processing cost.

The law is aimed at those over age 65, who make up 12 percent of the state’s population, but use 33 percent of the drugs sold, according to its lead sponsor Senator Jackie Speier.

“Retail prices for seniors without drug coverage are far more, often double, than the prices that drug companies charge their most favored customers, such as government agencies and HMOs,” she says. “On average, the savings to seniors would be 20 percent to 40 percent. What makes this law unique is its simplicity and lack of complicated bureaucracy. There is no means test-you show your card and get a discount.”

Unlike other states’ subsidy programs, there is no direct cost to the taxpayers; the California Department of Health Services simply is required “to transmit the price to the pharmacy.” The law does not alter other aspects of the federally regulated Medicare program.

Interestingly, the California Pharmacists Association, which remained neutral as the bill worked its way through the Legislature, commended Senator Speier after the law was signed. Carlo Michelotti, the association’s chief executive officer, said the law “will level the playing field for Medicare patients’ medication costs and ensure continuity of care by encouraging seniors to use community pharmacies” instead of mail-order pharmacies. However, there still is concern that pharmacies in some areas could withdraw from serving Medicaid.

The California law will go into effect next month and will expire in three years unless it is extended.

For details on other state actions on pharmaceuticals, call Richard Cauchi at NCSL, (303) 830-2200.



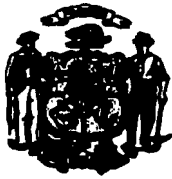
Senator
Jackie Speier
California

12

13

14

CW



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 18, 2000

TO: Senator Russell Decker
Representative Gregory **Huber**

FROM: Charles Morgan, Program Supervisor

SUBJECT: prescription Drug Coverage Proposal for Medicare Recipients

In response to your request, **this** memorandum provides information on a proposal **that** would reduce the costs of prescription drugs for some **Medicare recipients** in Wisconsin. **This** memorandum also provides information on the current costs and utilization of drugs by **this** population.

Background

Medicare does not **currently** provide coverage for outpatient prescription **drugs**. However, some Medicare beneficiaries obtain coverage for prescription drugs through several options, which are **described** below.

Medigap Policies. Some Medicare beneficiaries purchase limited supplemental drug coverage through “Medigap” policies. The **Office** of the Commissioner of Insurance (**OCI**) establishes, by rule, **and**, in conformance with **federal** requirements, minimum coverage requirements for basic Medicare supplement coverage, additional coverage provided under separate **riders** and “high deductible **drug** plans.” **First**, every basic Medicare *supplemental* policy *must* provide coverage for at **least** 80% of the charges for **outpatient** prescription drugs after the **beneficiary** pays a deductible of up to 56,250 in any calendar year. Thus, every Medigap policy provides coverage for individuals with very high drug expenses, but only after the \$6,250 deductible is met. **These** minimum **coverage** requirements apply to Medigap policies issued on or **after** September 1, 1994.

Second, any outpatient prescription drug rider on a Medigap policy must cover at least 50% of **the charges** for **outpatient** prescription drugs after **the** beneficiary pays a deductible of up to \$250 per calendar year, to a **maximum** of at least \$3,000 in benefits for the **insured** per year. However,

few Medigap policies available in Wisconsin offer a **prescription** drug rider. As of July 1, 1999, one of 27 individual **Medigap policies** and one of five group Medigap **policies** that were **available** to Wisconsin residents offered a Medigap **rider**. The annual cost of the rider for these two policies ranged **from** \$557 for a female **between** the ages of 65 and 69, to \$ **1,243** for a male over the age of 80. Because **these** policies **require** beneficiaries to share, to a large **extent**, in the cost of the benefit with high premium costs and significant deductibles and cost sharing, they are not attractive to beneficiaries with average drug expenses. **Further**, such policies may be subject adverse selection, which may be reflected in the premiums assessed for such plans. Finally, while elderly Medicare beneficiaries are guaranteed a six-month open enrollment **period when** they first enroll in Medicare Part B **after** they attain the age of 65. **after** that **first** open enrollment period, insurers can refuse to issue Medigap policies 'on the basis of age or health status and can impose preexisting condition exclusion period or **refuse** to cover **certain** conditions at all.

Third, any Medicare supplement "high deductible drug plan" must pay 100% of specified **benefits**, including **the** minimum benefit provided **under** any prescription drug rider. **In** 1999, the deductible for the "high deductible drug plan" was established by rule at **\$1,500**, which will **increase annually** to **reflect** changes in the consumer price **index**. OCI is currently reviewing a policy for the "high deductible drug plan" that Guaranteed Trust Life has submitted **for t&e** agency's approval. **If** approved, this would **be the** only "high deductible **drug plan**" policy available to Wisconsin residents.

Medicare + Choice Options. Medicare recipients can enroll in a **variety** of **Medicare+Choice** options, which offer **Medicare-covered** services through managed **care** systems. Some of **these** plans **offer** reduced copayments and **benefits**, such as coverage for **prescription** drugs, which are not available to other Medicare beneficiaries.

Retiree and Veterans Benefits. In addition to purchasing Medigap supplement policies, Medicare **beneficiaries** may **have** coverage for prescription drugs as part of the health care **benefits** a **retiree** may **receive from** a former employer. Some **beneficiaries** with a military service connection receive coverage through **programs administered** by the U.S. Department of Veterans Affairs or Department of Defense. **Most Medicare beneficiaries** who have **drug** coverage have coverage through employer-sponsored plans.

Medicaid "Dual Eligibles." **Certain** low-income Medicare beneficiaries **have** coverage for **prescription** drugs because they also **qualify** for Medicaid, which **offers** a comprehensive **pharmacy** benefit. As of December, 1999, approximately 63,700 of 438,700 Wisconsin MA recipients were **65 years** of age **or** older. However, not **all** of these MA recipients have prescription drug coverage, because **the number** includes "qualified **Medicare** beneficiaries" and "special low-income Medicare beneficiaries," for whom **the** state pays certain **Medicare** premiums, **coinsurance** and deductibles. After subtracting the number of individuals in these groups (**4,500**), it is **estimated** that **approximately** 59,200 Wisconsin **residents** over the age of 63 **currently** have **MA** coverage for prescription **drugs**.

Current Estimates of Coverage and Utilization

Coverage. It is **estimated** that there are currently 700,000 Wisconsin residents who are 65 years of age or older. Although it is not known how many of these individuals **currently** have coverage for prescription **drugs**, in an article published in the Spring, 1999 **Health Care Financing Review**. Poisal, Murray et. al. indicated that, in 1995, approximately 35.5 percent of **all Medicare beneficiaries** over the age of 65 did not have any health care **coverage** for prescription **drugs**. If this percentage is applied to the current estimate of the number of Wisconsin residents over the age of 65, it is estimated that approximately **248,500** Wisconsin residents over the age of 65 do not currently have **any** coverage for drugs. Virtually all persons who have drug coverage must pay part of the **costs** of the **benefit** offered under their plans, either with copayments, deductibles, or both.

Poisal, Murray et. al showed that the largest source of **drug** coverage for this population is employer-sponsored plans, which account for approximately 44 percent of all persons who have **this** coverage. MA and individually purchased plans account for 17 **percent** and 16 percent of all persons who have this coverage, respectively.

Utilization. Although it is not known what the actual average expenditure for prescription **drugs is for persons over the age** of 65, it is possible to estimate these average costs through a variety of methods. **Based** on national data, Poisal et. al. **determined** that, in **1995**, per capita **drug** spending for beneficiaries with **prescription drug** coverage was \$689 and the average per capita **drug** spending **beneficiaries** without prescription drug coverage was \$432. However, the **researchers** found **that** the average **amount** of total drug spending varied widely based **on several** factors, including **health** status, whether the person was disabled and whether **the person was** enrolled in a **Medicare+Choice** plan. **If** the 1995 estimate of the average per capita spending for persons with drug coverage **is** inflated by the average increase in the average cost of drugs for elderly MA recipients in **Wisconsin** during that **period** (12 percent **per year**), an estimate of the **current average annual cost** of drugs for individuals would be approximately **\$1,200**.

A second method of estimating average **drug** costs for Wisconsin residents over the age of 65 is to use claims data for **noninstitutionalized** MA recipients. In the 1998-99 fiscal year, MA paid **\$15,892,100** to support prescription drug costs for **an** average of **14,515** noninstitutionalized MA recipients over the age of **65**, which would **yield** an average annual cost per **recipient** of approximately \$1,100. Because MA rates paid to providers in **Wisconsin** are approximately 23 **percent** less **than the** providers' usual **and** customary charges, **the** average value of **the benefit**, based on providers' usual **and** customary charges, would be approximately \$1421 per year. **However**, because it is likely that the MA noninstitutionalized population over **the** age of 65, **as** a group, is less healthy than the non-MA population over the age of **65**, it would be **reasonable** to reduce this estimate of **the** value of **these drugs** somewhat to better **reflect** the **health** status of the broader population of Wisconsin **residents** over the age of **65**.

For **the purposes** of preparing **all** of the estimates **described** in this memorandum, it is assumed that the current average **annual** cost of drugs for Wisconsin residents over the age of 65 is \$1,200, based on pharmacies' **usual** and customary charges. However, the average **cost** per enrollee would be approximately 23 percent less (\$924 per **beneficiary** per year) if the program reimbursed pharmacies **based** on the **current** MA rates. This average cost estimate is **fairly** close to an estimate of \$942 per beneficiary per year that was developed for the *Academy of Actuarial Research* Corporation, using data from the 1995 Medicare Current **Beneficiary** Survey, projected **forward** to 1 9 9 9 .

Issues Relating to All Pharmacy Assistance Proposals

In developing cost estimates of **establishing** a state pharmacy assistance program, it is important to recognize the limitations on data and, as a **result**, the uncertainty of these estimates. **Further**, such programs can **be structured in** a variety of ways, which can **significantly** affect program costs. Several of these issues **are** outlined **below**.

Income Distribution of Elderly Population. The Social Security Administration's **Office** of Research, Evaluation and Statistics provides a source of information **for the** income of persons **over** the age of **65**. The **information** in its report, Income of the Population 55 or Older, 1996 can be used to estimate **the** distribution of income among **individuals** by age and living situation. (The report provides income data for **individuals** over **the** age of **65**, as well as for individuals over the age of 55.) For **the** purpose of preparing the cost estimates described in this memorandum, information **from** this source was **applied** to the Wisconsin population of persons **over the** age of 65 to yield estimates of **the number** of persons who **would** be **eligible** for the pharmacy assistance **program described** in this memorandum.

Pharmacy Reimbursement Rates. Under the MA **program**, DHFS pays **pharmacists** a rate for most prescriptions **equal** to the average wholesale price (**AWP**) **less 10%**, **plus** a dispensing fee of **\$4.38** per prescription. **Pharmacies** that participate in the state's **health** insurance risk-sharing plan (**HIRSP**) receive the same rate. **Most states that have** established pharmacy assistance programs reimburse **pharmacies** at **the state's MA** rate.

For the purpose of preparing the estimate described in this memorandum, it is assumed that any reimbursement program **would** pay pharmacies for **services at the MA rate, rather than** pharmacies' **usual** and **customary** charges. During **the** past **three** fiscal **years**, pharmacists have **been** paid an average of **76.6** percent of **their total** usual and customary charges for **pharmacy** products provided to MA recipients. In other words, MA rates paid to pharmacists are, on average, approximately 23 Percent lower **than** the pharmacists' usual and customary charges identified on their reimbursement claims.

If it is assumed that **the** \$1,200 average cost of drug coverage **represents costs** based on the pharmacists' **usual** and customary **charges**, this amount can be reduced by 23 percent to \$924 to represent the average **annual costs** per **enrollee** of a **pharmacy** assistance program that provides payments to pharmacists **based** on the current MA rate. Similarly, if a proposal were enacted that

paid pharmacists **their** usual and **customary** charges, the estimate of benefits costs provided in this memorandum should be increased by approximately 23 percent.

Drug Rebate. Under **federal** MA law, pharmaceutical manufacturers must enter into rebate agreements with the federal government in order for their **products** to be eligible for coverage under the MA program. The rebate **program** was **enacted** to ensure that the MA program received **the** same discounts that drug **manufacturers** had been granting to other high-volume purchasers, such as hospitals, health maintenance organizations and drug store chains. In **1998-99**, MA spending for **drugs** totaled approximately \$259.3 million (all funds), and the state received **drug** rebates totaling 849.3 million (all funds). Thus, the state received a rebate that equaled approximately 19 percent of the total expenditures.

It may be possible **to** create a pharmacy benefits **program** for the Medicare population in Wisconsin that requires manufacturers **to** enter into an agreement with the state to rebate a portion of the costs of **the** drugs **purchased** under the plan. For this reason, two estimates are provided for the proposal described in this memorandum. The lower **cost** estimate assumes **that** the state would enter into a rebate agreement **with** drug manufacturers as the federal government has entered into such agreements under the MA program, and that the rebate amount would equal 19 percent of the total costs of drugs provided under the program.

Primary Coverage vs. Wrap-Around Coverage. Any proposal should clearly indicate whether the benefit would be available to individuals who currently have no drug coverage, or whether individuals **with some drug** coverage **could** enroll **in** the program in order to pay out-of-pocket costs, including copayments and deductibles, required by those plans. This distinction significantly affects the costs of the proposal. For example, a **proposal** that limits eligibility to individuals without any **drug** coverage would, based on the current **estimate**, provide benefits to approximately 35.5% of the Wisconsin population over the age of 65 **that** meet **financial** eligibility requirements for the program. However, a proposal that provides coverage for costs not covered by other plans would provide a benefit to nearly **all** Wisconsin residents over the age of 65, other than individuals covered under the MA **program**, who may be **required** to pay nominal copayments for drugs. The estimate in **this** memorandum assumes that individuals could enroll in the program to partially pay for **expenses that they** currently pay **as** out-of-pocket **expenses**.

Although it would be possible to create a program that would provide prescription **drug** coverage only for persons without any current coverage, it is likely that some individuals who **currently** pay for this coverage through Medigap prescription **drug** riders would discontinue those riders if a state program were enacted. Similarly, businesses that currently **offer** a prescription drug plan to their **retirees** may **discontinue** this benefit. This phenomenon, which is commonly called "crowd out," would **increase future** state program costs.

Administration. At this time, it is not **known** what the cost of administering a pharmacy assistance program would be. For example, individuals could enroll in the program through county income maintenance offices, in a manner similar to the way in which individuals enroll **in other** health and **social** services programs, such as MA, **BadgerCare** and food stamps. Alternatively, persons could enroll in the program by **submitting an** application and any necessary documentation

to the administering agency, or an entity under contract with that agency. In order to recognize the one-time and on-going costs of administering the program, a proposal could be developed that would provide a **specified** amount, such as \$1 million in both **1999-00** and **2000-01**, to the Joint Committee on Finance Committee's program supplements appropriation. This amount, or some portion of it, could be released by the Committee once the administering agency provides a **recommendation** on **how** the program should be administered, based on a review of possible options, including a review of other states' **pharmacy** assistance programs and the feasibility of contracting with the state's **MA fiscal** agent to **administer** the program.

Description and Cost of Proposal

Under the proposal, individuals over the age of 65 in families with income up to 185 **percent** of the federal poverty level would be eligible for coverage of certain drugs not paid by other sources. In 1999, 185 percent of the federal poverty level was **\$15,244** for an individual and \$20,461 for a couple. Drugs **used to cover** the following conditions would be **covered under the program**: (a) cardiac and high blood pressure; (b) diabetes; (c) arthritis; (d) **anticoagulation**; (e) **hyperlipidemia**; (f) osteoporosis; (g) chronic obstructive pulmonary disease and asthma, (h) incontinence; (i) thyroid diseases; (j) glaucoma; (k) **Parkinson's** disease; and (l) multiple sclerosis and **amyotrophic** lateral sclerosis. The program would begin January **1.2001**.

The **benefit** would not be limited to a specified amount **per** year. The state would be a "payer of last resort" so that if the enrollee has access to any other coverage for prescription drugs, the state program **would** only pay **expenses** not **covered** by these **other** sources, including deductibles and copayments. Enrollees would be responsible for paying **50** percent of **the** costs of prescriptions purchased under the program. **In** addition, enrollees would be **required** to pay an **annual** enrollment **fee** of between \$25 and \$200, based on the enrollee's income.

It is estimated that **approximately** 271,100 Wisconsin residents **would qualify** for coverage under the program. It is **assumed that** 35.5 percent of these individuals have no drug coverage (96,200) and **the** average cost of providing **coverage** to enrollees would be approximately \$152. This **estimate** of the average **cost** is derived **by** multiplying the average annual cost for all drugs (\$924 per year) with the DHFS estimate of the percentage of **the** total value of drugs that **would be** reimbursed under the **program** (33 percent), then divided by two to reflect the 50 percent beneficiary cost share requirement. **It is further** assumed that only **10** percent of the rest of the eligible population, less individuals eligible for MA [(**174,900** - 59,200) x .1 = **11,600**) would participate in the program, because of **the** low value of the benefit to them. Consequently, the annual program **expenditures** **would** be approximately **\$15** million [(**96,200** x \$152) + (11,600 x **\$55**)]. **This amount could be reduced** 19 percent to \$12 million if **the** state were able to enter into rebate **agreements** with pharmacy manufacturers. In addition, a **portion** of these costs would be **offset** by annual enrollment **fees** (approximately **\$5** million annually, based on an average enrollment fee of **\$50**), so that the net benefits costs would be \$10 million without the rebate or \$7 **million** with the rebate.

This estimate is based on an assumption that 100 percent of individuals who are eligible for the program would actually **enroll** in the program. If it were assumed that 75 percent of **estimated**

number of persons who are eligible for the program would enroll in the program, the first-year annual costs would **be** approximately \$7.5 million without the rebate or \$5.2 million with the rebate. Based on the January 1, 2001 start date, one-half of this amount could be budgeted in **2000-01 (\$3.7 million without the rebate and \$2.6 million with the rebate).**

I hope you find this **information** helpful. Please contact **me** if you **require** additional information on this matter.

CM/sas/dls



D-NOTE

1999 ASSEMBLY

50% of the cost of each prescription drug, at the rate under which pharmacists are reimbursed under the medical assistance program

providing an exemption from rule-making procedures,

January 1, 2001, state residents

requiring the exercise of rule-making authority,

between

Reger

1 AN ACT to create 20.435 (4) (bv), 20.435 (4) (j) and 49.688 of the statutes;
2 relating to: prescription drug assistance for elderly persons and making
3 appropriations. and providing penalties

INSERT ANAL

Analysis by the Legislative Reference Bureau

This bill creates a program for prescription drug assistance for elderly persons in the Department of Health and Family Services (DHFS) and appropriates \$3,700,000 in general purpose revenues in fiscal year 2000-01 for the program. Under the program, beginning July 1, 2000, persons who are aged at least 65 years, who have been residents of this state for at least six months, who are ineligible for medical assistance and whose gross incomes are not more than 130% of the federal poverty line may apply for assistance of up to \$1,200 per year in paying for prescription drugs. Prescription drugs for which a program participant may receive coverage are those prescription drugs that are covered under the medical assistance program. Participants in the prescription drug assistance program must pay an annual enrollment fee of \$25 and payments of \$4 for each generic prescription drug and \$8 for each brand-name drug. 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. DHFS must also maintain or contract for the maintenance of a toll-free telephone number to provide information, including application information, about the prescription drug assistance program. In addition, if prescription drug assistance for the number of eligible applicants exceeds the amounts of general

\$3,700,000

\$15,244 or, if married, are not more than \$20,461 per couple, as annually indexed for inflation,

a 12-month

and \$200, based on the participant's gross income, as specified by DHFS by

designated by DHFS to be for a chronic condition, as defined in the bill

ASSEMBLY BILL

\$1,000,000

INSERT ANALZ

purpose revenues appropriated under the bill for the program and the program revenue resulting from the ~~annual~~ enrollment fees ~~and copayments~~, DHFS is authorized to create waiting lists of eligible applicants. Beginning in 2001, DHFS must annually, after consulting with pharmacists and advocates for elderly persons, submit to the legislature a report on the previous year's operation of the program and include in the report any recommendations for program changes. The bill appropriates ~~\$800,000~~ in general purpose revenues in ~~each of~~ fiscal years 1999-2000 ~~and 2000-01~~ 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. 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 the 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 the 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.

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

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

1999-00 2000-01

20.435 Health and family services, department

of

(4) HEALTH SERVICES PLANNING, REGULATION AND DELIVERY; HEALTH CARE FINANCING

(bv) Prescription drug assistance for

elderly; aids

GPR A

0-

\$3,700,000

~~1,900,000~~

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

ASSEMBLY BILL

1 **20.435 (4) (bv) Prescription drug assistance for elderly; aids.** The amounts in
2 the schedule for the program for prescription drug assistance for elderly persons
3 under s. 49.688.

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

5 20.435 (4) (j) **Prescription drug assistance for elderly; fees and copayments.** All
6 moneys received from payments of ^(program) enrollment fees ~~and copayments~~ under s. 49.688
7 (3) (b), to be used for prescription drug assistance for elderly persons under s. 49.688.

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

9 **49.688 Prescription drug assistance for elderly persons.** (1) In this
10 section:

11 (a) "Brand name" has the meaning given in s. 450.12 (1) (a),

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

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

15 (2) From the appropriation under s. 20.435 (4) (bv), beginning ~~July 1, 2000~~ ^{January 1, 2001}, the
16 department shall reimburse pharmacists for the provision of ~~up to \$1,200 of~~
17 prescription drugs ~~that correspond to those prescription drugs for which~~
18 ~~reimbursement is made under s. 49.46 (2) (b) 6.4%~~ to persons who meet criteria for
19 eligibility under sub. (3). The department is the payer of last resort for coverage for
20 prescription drugs under this subsection. ~~Provider reimbursement shall be at the~~ ^{The payment rate for}
21 ~~rate paid for reimbursement of pharmacists under s. 49.46~~ ^{Provider reimbursement shall be at the} rate
22 maintain, or contract for the maintenance of, a toll-free telephone number at
23 department headquarters to provide information about the program under this
24 subsection, including information about application procedures,...

INSERT
3-14

enrollment

and (j)

January
1, 2001

allowable charges paid
under s. 49.46 (2) (b) 6.4%
for prescription drugs

designated by the department
for a chronic condition

ASSEMBLY BILL

Subject to sub. (5),

the individual meets

(1) (3) (a) An individual is eligible for participation in the program under sub. (2)

(2) if all of the following ~~eligibility~~ requirements ~~are met~~:

is

as defined in s. 27.01 (10) (a),

(3) 1. The individual is at least 65 years of age, ~~has been~~ a resident of this state

(4) for at least 6 months and is ineligible for medical assistance under s. 49.46, 49.465,

5 49.468 or 49.47.

Every 12 months, to the department

INSERT 4-6

(6) 2. ~~The individual's gross income does not exceed 150% of the poverty line~~

If single,

between

gross

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

(8) 1. ~~Annually~~, a program enrollment fee of \$25

and \$200, based on the participant's income, as specified by the department by rule

(9) 2. A copayment of \$4 for each prescription drug provided under the program

that bears only a generic name.

11 3. A copayment of \$8 for each prescription drug provided under the program

to the selling pharmacy or pharmacist, a

12 that bears a brand name.

INSERT 4-12

13 (4) If prescription drug assistance for the number of applying eligible

14 individuals under sub. (3) exceeds the amount appropriated under s. 20.435 (4) (bv)

15 and the amount available under s. 20.435 (4) (j), the department may place an

(16) eligible applicant's name on a waiting list for the ~~reimbursement~~ program under sub.

17 (2).

INSERT 4-17

18 (5) Beginning in 2001, the department shall annually, after consulting with

19 pharmacists and advocates for persons aged 65 or older, submit a report to the chief

20 clerk of each house of the legislature for distribution to the legislature under s.

21 13.172 (2). The report shall be on the operation of the program under this section for

22 the previous year and shall contain any recommendations for changes in the

23 program.

INSERT 4-23

24 SECTION 5. Nonstatutory provisions.

ASSEMBLY BILL

1 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY PERSONS; ADMINISTRATION. The
 2 department of health and family services may request the joint committee on finance
 3 to supplement, from the appropriation account under section 20.865 (4) (a) of the
 4 statutes, the appropriation account under section 20.435 (4) (a) of the statutes, to pay
 5 the costs of staffing and administration of the program of prescription drug assistance for elderly
 6 persons under section 49.688 of the statutes, as created by this act. If the department
 7 of health and family services requests supplementation of the appropriation account
 8 under section 20.435 (4) (a) of the statutes, the department shall submit a plan to the
 9 joint committee on finance to expend not more than ~~\$800,000~~ \$1,000,000 for fiscal year
 10 1999-2000 ~~and not more than \$800,000 for fiscal year 2000-01.~~ INSERT S-10 If the cochairpersons
 11 of the committee do not notify the secretary of the department within 14 working
 12 days after the date of the department's submittal that the committee intends to
 13 schedule a meeting to review the request, the appropriation account shall be
 14 supplemented as provided in the request. If, within 14 working days after the date
 15 of the department's submittal, the cochairpersons of the committee notify the
 16 secretary of the department that the committee intends to schedule a meeting to
 17 review the request, the appropriation account shall be supplemented only as
 18 approved by the committee. Notwithstanding section 13.101 (3) (a) 1. of the statutes,
 19 the committee is not required to find that an emergency exists.

SECTION 6. Appropriation changes; joint committee on finance.

20 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
 21 under section 20.005 (3) of the statutes for the appropriation to the joint committee
 22 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
 23 the dollar amount is increased by ~~\$800,000~~ \$1,000,000 for fiscal year 1999-00 ~~and the dollar~~
 24 ~~amount is increased by \$800,000 for fiscal year 2000-01.~~ to increase funding for
 25 \$1,000,000

ASSEMBLY BILL

SECTION 6

1 administration of the prescription drug assistance for elderly program under section
2 49.688 of the statutes, as created by this act.

3 (END)

D-NOTE

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. ○

no #

that are identical to those under the medical assistance program

The bill creates penalties for fraud with respect to receipt of payment or receipt of the benefit under the program.

¶ (a) "Chronic condition" means a cardiac condition,
or hematologic disease,
high blood pressure, diabetes, arthritis, blood coagulation,
hyperlipidemia, osteoporosis, chronic obstructive
pulmonary disease, asthma, incontinence,
thyroid disease, glaucoma, Alzheimer's disease,
Parkinson's disease,
multiple sclerosis and amyotrophic lateral
sclerosis (Lou Gehrig's disease)

¶ (b) "Gross income" means all income, from
whatever source derived and in whatever ^{form} form

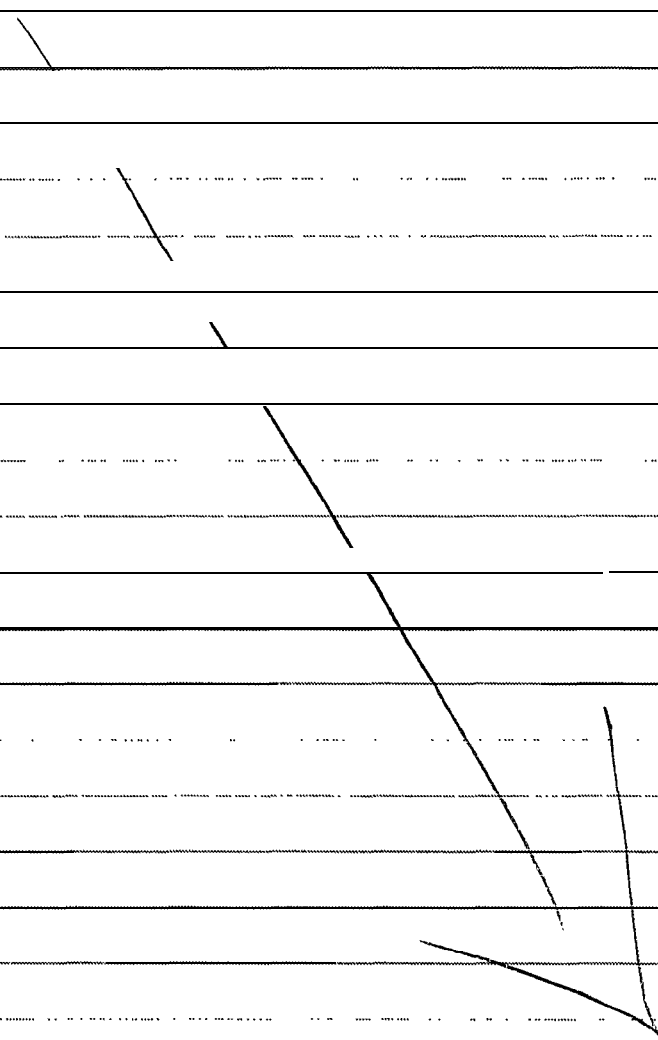
realized, whether in money, property or services.

¶ (c) "Prescription drug" has the meaning given
in s. 450.01 (20).[✓]

No \$ 15,244 or, if married, the couple's gross income

does not exceed \$20,461. These limitations shall
be annually adjusted as specified in sub. (4).[✓]

¶ (c) No program participant may be required to demonstrate that he or she has no disability insurance policy, as defined in s. 632.895(1)(a) ^v0



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

End of INS
4-12

Section #. 49.49 (7) of the statutes is amended to read:

(7)

~~49.49(18) BRADY~~ (a) ~~Prohibited conduct~~ No person, in connection with ~~medical assistance~~ ^{the} program, may: ^{under this section}

1. Knowingly and wilfully make or cause to be made ~~any~~ ^a false statement or representation of a material fact in ~~any~~ ^{an} application for ~~any~~ benefit or payment.

2. Knowingly and wilfully make or cause to be made ~~any~~ ^a false statement or representation of a material fact for use in determining rights to ~~such~~ ^a benefit or payment.

3. Having knowledge of the occurrence of ~~any~~ ^a event ~~affecting~~ ^{that affects} the initial or continued right to ~~any such~~ ^{the} benefit or payment or the initial or continued right to ~~any such~~ ^{the} benefit or payment of any other individual ~~in~~ ^{on} whose behalf ~~he or she~~ ^{the person} has applied for or is receiving ~~such~~ ^{the} benefit or payment, conceal or fail to disclose ~~such~~ ^{the} event with an intent ~~fraudulently~~ ^{fraudulently} to secure ~~such~~ ^{the} benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

4. Having made application to receive ~~any such~~ ^a benefit or payment for the use and benefit of another and having received it, knowingly and wilfully convert ~~such~~ ^{the} benefit or payment or any part ~~thereof~~ ^{of it} to a use other than for the use and benefit of ~~such~~ ^{the} other ~~person~~ ^{individual}.

(b) ~~Whoever~~ Violators of this subsection ~~may be punished as follows~~ ^{are subject to the following}:

1. In the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing by that person of items or services for which medical assistance is or may be made, a person convicted of violating this subsection may be fined not more than \$25,000 or imprisoned for not more than 5 years or both.

NOTE: Subd. 1. is amended eff. 12-31-99 by 1997 Wis. Act 283 to read:

1. In the case of ~~such~~ ^{false} a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing by that person of ~~items or services~~ ^{or} for which medical assistance is or may be made, a person convicted of violating this subsection may be fined not more than \$25,000 or imprisoned for not more than 7 years and 6 months or both.

No (B)

to disclose an event

a prescription drug for which payment



P.3 INSERT 4-17

other than as specified in subd. 1.

false

or

of or

to disclose an event

2. In the case of ~~such~~ a statement, ~~representation, concealment,~~ failure, ~~or~~ conversion by any ~~other~~ person, a person convicted of violating this subsection may be fined not more than \$10,000 or imprisoned for not more than one year in the county jail or both.

who is convicted under this subsection,

(c) ~~Damages~~ ~~if~~ any person is convicted under this subsection, the state shall have a cause of action for relief against ~~such~~ person in an amount 3 times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained. Proof by the state of a conviction under this section in a civil action shall be conclusive regarding the state's right to damages and the only issue in controversy shall be the amount, if any, of the actual damages sustained. Actual damages shall consist of the total amount of excess payments, any part of which is paid by state funds. ~~In any such civil action the state may elect to file a motion in expedition of the action.~~ Upon receipt of the motion, the presiding judge shall expedite the action.

has

is

filed by the state in expedition of the action

History: 1977 c. 418; 1979 c. 89; 1981 c. 317; 1985 a. 29 s. 3202 (23); 1985 a. 269; 1989 a. 23, 31; 1995 a. 27; 1997

a. 283.

End of
INSERT 4-17

SECTION # , CR; 227.01(13) (zL)

227.01(13) (zL) ⁸ Designates prescription drugs

for a chronic condition, under s. ⁹ 49.668(2)

49.688(2)

no# The plan shall be based on a review by the
department of health and family services of
the pharmacy assistance programs of other
states and the feasibility of contracting
with the medical assistance fiscal agent
for this state to administer the program under
section 49.688' of the statutes, as created by
this act.

10

4083/1

DAK: WJ:

D-NOTE

To ~~know~~ ~~Address~~ Representative Huber:

¶ 1. I'll the definition of "resident" in ... s. 49.688

(3)(a) 1. what you want? Possible alternatives

to the definition under s. 27.01(10)(a), stats., that

is cited in that subdivision would be the

definition under s. 29.001(69) or 949.035(3),

stats. Another possibility would be a provision

similar to the requirement under s. 610.70(1)(b),

stats.

¶ 2. I have assumed that you did not

want DHS' designation of appropriate drugs

for a chronic condition, as specified in 49.688

(2), to be subject to rulemaking and therefore

have made an exemption under s. 27.01(13)

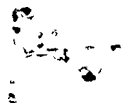
(= L). If that assumption is incorrect, please let

me know and I will redraft the designations as a rule. ①



¶ 3. Although I understand that you intend that the program be an entitlement program (i.e., an eligible person is entitled to the benefit), if the number of eligible participants unaccountably increased, the bill's sum certain appropriation might limit participation. Accordingly, I drafted (waiting lists) s. 49.688 (5), and subjected s. 49.688 (3)(a) (eligibility) to it. Does this meet your intent?

¶ 4. In the definition of "chronic condition" (s. 49.688 (1)(a)), I deleted "anticoagulation" and substituted "blood coagulation or hematologic disease". "Anticoagulation" is not a term that is defined in Dorland's Illustrated Medical Dictionary; I believe, however, that it is a desired result for which a drug (an anticoagulant) is prescribed. Accordingly, I tried to list those conditions for which an anticoagulant would



5

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4083/1dn
DAK:wlj:jf

January 24, 2000

To Representative Huber:

1. Is the definition of "resident" in s. 49.688 (3) (a) 1. what you want? Possible alternatives to the definition under s. 27.01 (10) (a), stats., that is cited in that subdivision would be the definition under s. 29.001 (69) or 949.035 (3), stats. Another possibility would be a provision similar to the requirement under s. 610.70 (1) (b), stats.

2. I have assumed that you did not want DHFS' designation of appropriate drugs for a chronic condition, as specified in 49.688 (2), to be subject to rule making and therefore have made an exemption under s. 227.01 (13) (zL). If that assumption is incorrect, please let me know and I will redraft the designation as a rule.

3. Although I understand that you intend that the program be an entitlement program (i.e., an eligible person is entitled to the benefit), if the number of eligible participants unaccountably increased, the bill's sum certain appropriation might limit participation. Accordingly, I drafted s. 49.688 (5) (waiting lists), and subjected s. 49.688 (3) (a) (eligibility) to it. Does this meet your intent?

4. In the definition of "chronic condition" (s. 49.688 (1) (a)), I deleted "anticoagulation" and substituted "blood coagulation or hematologic disease". "Anticoagulation" is not a term that is defined in Dorland's Illustrated Medical Dictionary; I believe, however, that it is a desired result for which a drug (an anticoagulant) is prescribed. Accordingly, I tried to list those conditions for which an anticoagulant would be appropriate. I am not certain, however, if my substitutions are inclusive or entirely accurate.

Please let me know if I can provide you with further assistance.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137

1/26 From Barbara Worcester Redraft 4083/1
4289/1

✓ Delete waiting lists

✓ Open enrollment - is ok; is implied by 12 month enrollment

✓ Drugs important to elderly persons: Def of chronic condition: ulcers, seizures

Before do 12, wait for call from Barbara including "mental health" in "chronic condition" definition

✓ Direct DHFS to enter into rebate agreements

2/1 From Barbara

Add "depression" to "chronic condition" definition

By Wednesday, if possible

4083/2

1999 - 2000 LEGISLATURE

LRB-~~4289/22~~

DAK:wlj:*

D-NOTE

1999 BILL

Regen

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.

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 \$3,700,000 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 la-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

BILL

INSERTA

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 addition, if prescription drug assistance for the number of eligible applicants exceeds the amounts of general purpose revenues appropriated under the bill for the program and the program revenue resulting from the enrollment fees, DHFS is authorized to create waiting lists of eligible applicants.~~ 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. 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 the 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 the 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.

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:

	1999-00	2000-01
3		
4	20.435 Health and family services, department	
5	of	
6	(4) HEALTH SERVICES PLANNING, REGULATION AND	
7	DELIVERY; HEALTH CARE FINANCING	
8	(bv) Prescription drug assistance for	
9	elderly; aids	GPR A -0- \$3,700,000

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

BILL

1 20.435 (4) (bv) Prescription drug assistance for elderly; aids. The amounts in
2 the schedule for the program for prescription drug assistance for elderly persons
3 under s. 49.688.

*and rebate payments
by manufacturers under
s. 49.688 (5)*

*; manufacturer
rebates*

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

5 20.435 (4) (j) Prescription drug assistance for elderly; enrollment fees. All
6 moneys received from payments of program enrollment fees under s. 49.688 (3) (b)
7 1, to be used for prescription drug assistance for elderly persons under s. 49.688.

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

9 **49.688 Prescription drug assistance for elderly persons. (1)** In this
10 section:

11 (a) "Chronic condition" means a cardiac condition, high blood pressure,
12 diabetes, arthritis, blood coagulation or hematologic disease, hyperlipidemia,
13 osteoporosis, chronic obstructive pulmonary disease, asthma, incontinence, thyroid
14 disease, glaucoma, Alzheimer's disease, Parkinson's disease, multiple sclerosis ~~and~~

15 amyotrophic lateral sclerosis (Lou Gehrig's disease).

*ulcers, seizures
, and depression*

16 (b) "Gross income" means all income, from whatever source derived and in
17 whatever form realized, whether in money, property or services.

*and for which the
manufacturer has
entered into a
rebate agreement
with the department
under sub. (5)*

18 (c) "Prescription drug" has the meaning given in s. 450.01 (20).

19 **(2)** From the appropriations under s. 20.435 (4) (bv) and (j), beginning January
20 1, 2001, the department shall reimburse pharmacists for the provision of
21 prescription drugs designated by the department for a chronic condition, to persons
22 who meet criteria for eligibility under sub. (3). The department is the payer of last
23 resort for coverage for prescription drugs under this subsection. The payment rate
24 for provider reimbursement shall be the allowable charges paid under s. 49.46 (2) (b)
25 6. h. for prescription drugs. The department shall maintain, or contract for the

BILL

1 maintenance of, a toll-free telephone number at department headquarters to
2 provide information about the program under this subsection, including information
3 about application procedures.

4 (3) (a) ~~subject to sub. (5)~~ an individual is eligible for participation in the
5 program under sub. (2) if the individual meets all of the following requirements:

6 1. The individual is at least 65 years of age, is a resident, as defined in s. 27.01
7 (10) (a), of this state and is ineligible for medical assistance under s. 49.46, 49.465,
8 49.468 or 49.47.

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

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

13 1. ~~Every 12 months, to the department,~~ upon enrolling and hereafter
14 \$25 and \$200, based on the participant's gross income, as specified by the department
15 by rule.

16 2. 1b the selling pharmacy or pharmacist, a copayment of 50% for each
17 prescription drug provided under the program.

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

20 (4) Beginning by January 1, 2001, the department shall annually by January
21 1 increase the dollar amounts specified under sub. (3) (a) 2. by a percentage equal to
22 the percentage change between the U.S. consumer price index for all consumers, U.S.
23 city average, for the month of December of the previous year and the U.S. consumer
24 price index for all urban consumers, U.S. city average, for the month of December of
25 the year before the previous year, as determined by the federal department of labor.

BILL

1 (5) If prescription drug assistance for the number of applying eligible
 2 individuals under sub. (3) exceeds the amount appropriated under s. 20.435 (4) (bv)
 3 and the amount available under s. 20.435 (4) (j), the department may place an
 4 eligible applicant's name on a waiting list for the program under sub. (2).

INSERT
 5+

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

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

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

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

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

20 4. Having made application to receive a benefit or payment for the use and
 21 benefit of another and having received it, knowingly and wilfully convert the benefit
 22 or payment or any part of it to a use other than for the use and benefit of the other
 23 individual.

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

BILL

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

6 2. In the case of a false statement or representation, concealment of or failure
7 to disclose an event or conversion by any person other than as specified in subd. 1.,
8 a person convicted of violating this subsection may be fined not more than \$10,000
9 or imprisoned for not more than one year in the county jail or both.

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

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

20 227.01 (13) (zL) Designates prescription drugs for a chronic condition, under
21 s. 49.688 (2).

22 **SECTION 6. Nonstatutory provisions.**

23 **(1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY PERSONS; ADMINISTRATION.** **The**
24 department of health and family services may request the joint committee on finance
25 to supplement, from the appropriation account under section 20.865 (4) (a) of the

BILL

1 statutes, the appropriation account under section 20.435 (4) (a) of the statutes, to pay
2 the costs of **staffing** and administration of the program of prescription drug
3 assistance for elderly persons under section 49.688 of the statutes, as created by this
4 act. If the department of health and family services requests supplementation of the
5 appropriation account under section 20.435 (4) (a) of the statutes, the department
6 shall submit a plan to the joint committee on finance to expend not more than
7 **\$1,000,000** for fiscal year 1999-2000. The plan shall be based on a review by the
8 department of health and family services of the pharmacy assistance programs of
9 other states and the feasibility of contracting with the medical assistance fiscal agent
10 for this state to administer the program under section 49.688 of the statutes, as
11 created by this act. If the cochairpersons of the committee do not notify the secretary
12 of the department within 14 working days after the date of the department's
13 submittal that the committee intends to schedule a meeting to review the request,
14 the appropriation account shall be supplemented as provided in the request. If,
15 within 14 working days after the date of the department's submittal, the
16 cochairpersons of the committee notify the secretary of the department that the
17 committee intends to schedule a meeting to review the request, the appropriation
18 account shall be supplemented only as approved by the committee. Notwithstanding
19 section 13.101 (3) (a) 1. of the statutes, the committee is not required to find that an
20 emergency exists.

SECTION 7. Appropriation changes; joint committee on finance.

21
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 joint committee
24 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
25 the dollar amount is increased by **\$1,000,000** for fiscal year 1999-00 to increase

BILL

1 funding for administration of the prescription drug assistance for elderly program
2 under section 49.688 of the statutes, as created by this act.

3 **(END)**

1999 SENATE BILL 335

January 21, 2000 – Introduced by Senators CLAUSING, WIRCH, ROBSON, RISSER, GROBSCHMIDT, BURKE, MOEN, ERPENBACH, BAUMGART, BRESKE, CHVALA, SHIBILSKI, DRZEWIECKI and DARNING, cosponsored by Representatives WAUKAU, KRUSICK, HASENOHRL, LA FAVE, KREUSER, GRONEMUS, SCHOOFF, MUSSER and PETTIS. Referred to Health, Utilities, Veterans and Military Affairs.

1 **AN ACT** to create 20.435 (4) (bv), 20.435 (4) (j) and 49.688 of the statutes;
2 relating to: prescription drug assistance for elderly persons and making
3 appropriations.

Analysis by the Legislative Reference Bureau

This bill creates an entitlement program for prescription drug assistance for elderly persons in the department of health and family services (DHFS) and a sum sufficient appropriation of general purpose revenues 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, if single, are not more than \$50,000 or, if married, are not more than \$75,000 per couple, as annually indexed for inflation, may apply for assistance of up to \$10,000 per year in paying for prescription drugs. Prescription drugs for which a program participant may receive coverage are those prescription drugs that are covered under the medical assistance program. Participants in the prescription drug assistance program must pay 25% of the cost of the prescription drug, at the rate under which pharmacists are reimbursed under the medical assistance program, plus copayments of \$5 for each generic prescription drug and \$10 for each brand-name drug. 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. DHFS must also maintain or contract for the maintenance of a toll-free telephone number to provide application information about the prescription drug 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 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. 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 the 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 the 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.

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:

2 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* A sum sufficient
3 for the program for prescription drug assistance for elderly persons under s. 49.688.

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

8 SECTION 3. 49.688 of the statutes is created to read:

9 **49.688 Prescription drug assistance for elderly persons.** (1) In this
10 section:

11 (a) "Brand name" has the meaning given in s. 450.12 (1) (a).

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

SENATE BILL 335

1 1. Twenty-five percent of the allowable charge paid under s. 49.46 (2) (b) 6. h.
2 for each prescription drug provided under the program.

3 2. A copayment of \$5 for each prescription drug provided under the program
4 that bears only a generic name.

5 3. A copayment of \$10 for each prescription drug provided under the program
6 that bears a brand name.

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

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

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

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

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

25 ~~SECTION 4. Nonstatutory provisions.~~

D-NOTE

To ~~Senator Dickson~~ Representative Haber:

Please review s. 49.688(3)(b)1. I changed the wording slightly, to emphasize the fact that a person may enroll at any time and to avoid the inference that a person need not ^{initially} pay an enrollment fee until after the first 12 months have elapsed.

DAK

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4083/2dn
DAK:wlj:jf

February 2, 2000

To Representative Huber:

Please review s. 49.688 (3) (b) 1. I changed the wording slightly, to emphasize the fact that a person may enroll at any time and to avoid the inference that a person need not initially pay an enrollment fee until after the first 12 months have elapsed.

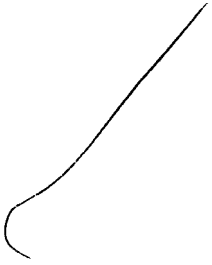
Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

2/3 From Barbara Worcester Redraft -4083/2
-4289/2

Continuing appropriation

6,600,000

Add JCF not-emergency approp. Supplement
language for program deficiency



7

1999 BILL

\$6,600,000

Reger

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.

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 ~~\$2700,000~~ 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 la-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

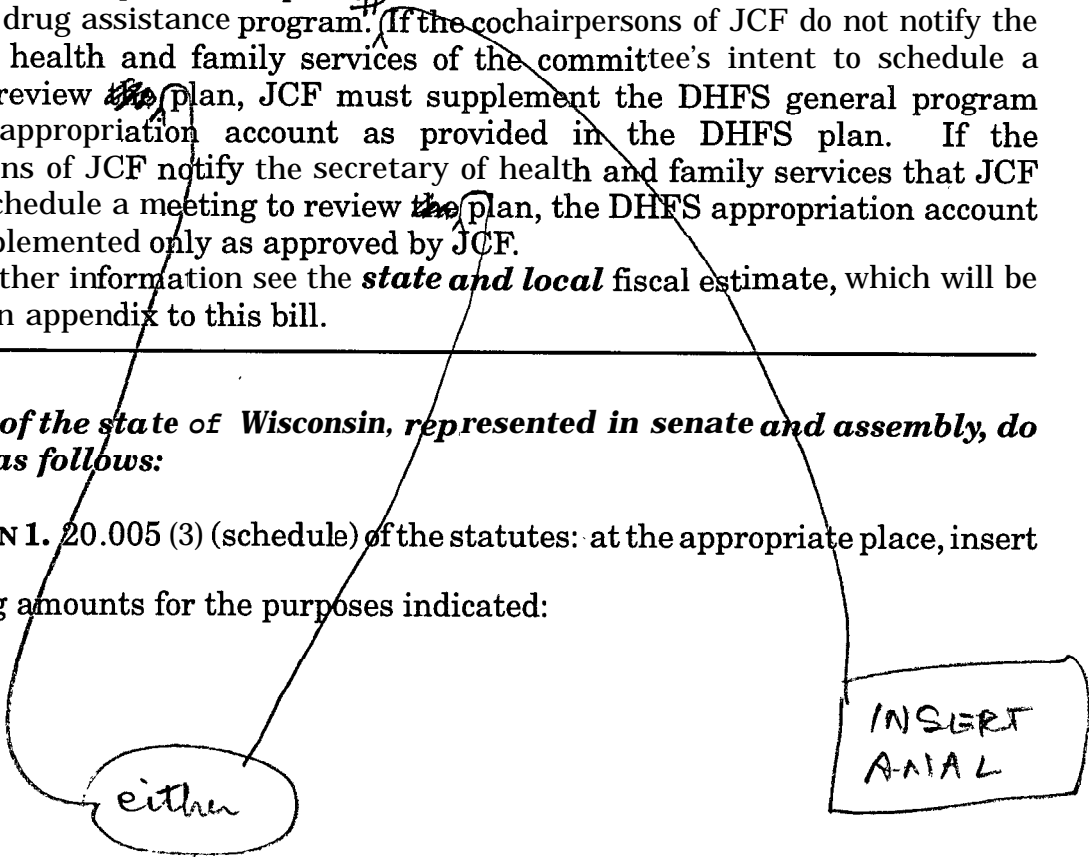
BILL

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. 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 ~~the~~ 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 ~~the~~ 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.

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:



BILL

1

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

GPR

C

6,600,000

-0- ~~\$2,700,000~~

8

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

As a continuing appropriation, C

9

20.435 (4) (bv) Prescription drug assistance for elderly; aids.

The amounts in

10

the schedule for the program for prescription drug assistance for elderly persons

11

under s. 49.688.

12

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

13

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

14

manufacturer rebates. All moneys received from payments of program enrollment

15

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

16

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

17

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

18

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

19

section:

20

(a) "Chronic condition" means a cardiac condition, high blood pressure,

21

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

22

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

23

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

24

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

BILL

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:

BILL

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 DRUGASSISTANCE FORELDERLYPERSONS ; 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

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

15 (1) **PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY ADMINISTRATION.** In the schedule
16 under section 20.005 (3) of the statutes for the appropriation to the joint committee
17 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
18 the dollar amount is increased by \$1,000,000 for fiscal year 1999-00 to increase
19 funding for administration of the prescription drug assistance for elderly program
20 under section 49.688 of the statutes, as created by this act.

21 **(END)**

*Tykel.
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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.

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

2 If the amount of funds in the appropriation account under section 20.435 (4) (bv) of
3 the statutes, as created by this act, is insufficient to meet program demand under
4 section 49.688 of the statutes, as created by this act, the department of health and
5 family services shall request the joint committee on finance to supplement, from the
6 appropriation under section 20.865 (4) (a) of the statutes, the appropriation account
7 under section 20.435 (4) (bv) of the statutes and shall submit a plan to the joint
8 committee on finance for the expenditure. If the cochairpersons of the committee do
9 not notify the secretary of the department within 14 working days after the date of
10 the department's submittal that the committee intends to schedule a meeting to
11 review the request, the appropriation account shall be supplemented as provided in
12 the request. If, within 14 working days after the date of the department's submittal,
13 the cochairpersons of the committee notify the secretary of the department that the
14 committee intends to schedule a meeting to review the request, the appropriation
15 account shall be supplemented only as approved by the committee. Notwithstanding
16 section 13.101 (3) (a) 1. of the statutes, the committee is not required to find that an
17 emergency exists.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 02/07/2000

To: Representative Huber

Relating to LRB drafting number: LRB-4083

Topic

Prescription drug program for **eldely** persons

Subject(s)

Health - miscellaneous, Health - long-term care

1. **JACKET** the draft for introduction

Greg Huber

in the Senate or **the Assembly** (check only one). Only the requester under whose name the

drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Debora A. Kennedy, Managing Attorney
Telephone: (608) 266-0137