

1999 ASSEMBLY BILL 870

March 9, 2000 – Introduced by Representative UNDERHEIM, by request of Governor Tommy G. Thompson. Referred to Committee on Health.

1 **AN ACT to amend** 49.47 (4) (b) 2m. b., 49.47 (4) (b) 2r., 49.47 (4) (b) 2w., 49.47 (4)
2 (b) 3., 49.47 (4) (c) 1., 49.47 (4) (c) 3. and 49.47 (4) (i) 2. (intro.); **to create** 49.45
3 (2) (a) 25., 49.45 (8w), 49.47 (4) (aq) and 49.688 of the statutes; and **to affect**
4 1999 Wisconsin Act 9, section 9123 (9n); **relating to:** requiring pharmacies and
5 pharmacists, as a condition of medical assistance participation, to charge
6 elderly, low-income persons for prescription drugs at no more than the rate
7 reimbursed under medical assistance, expanding medical assistance eligibility
8 and making appropriations.

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 (MA) 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. Also under current law, as enacted in 1999 Wisconsin Act 9 (the biennial budget act), DHFS may not discount the average wholesale price of pharmaceutical drugs provided to MA recipients if DHFS reimburses for those drugs under a formula that takes into account the average wholesale price, nor may DHFS reduce pharmacy dispensing fees.

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Under current law, an individual who is 65 years of age or older is eligible to receive MA if he or she meets certain income and asset requirements. Currently, to satisfy the income requirements for MA eligibility, an individual who is 65 years of age or older must have an income that does not exceed 133.33% of the maximum payment amount under the former aid to families with dependent children (AFDC) program.

Beginning January 1, 2001, this bill increases the maximum income level for individuals 65 years of age or older to 100% of the federal poverty level.

The bill requires that DHFS identify categories of pharmaceutical drugs that account for significant volume and expenditure by elderly persons and periodically obtain from the School of Pharmacy at the University of Wisconsin–Madison or a similar organization recommendations as to preferred drugs within these categories. Drugs that are provided to an elderly MA recipient that are not these preferred drugs are not reimbursable under MA unless the provider has received prior authorization from DHFS to provide the drug. In addition, the bill specifies that the rate for MA drug reimbursement in selected categories, as determined by DHFS, is the average wholesale price minus 15% or the maximum allowable cost, as determined by DHFS, whichever is less. The bill makes an exception, effective January 1, 2001, for these selected categories to the current prohibition on reducing MA reimbursement for pharmaceutical drugs.

The bill specifies that, beginning January 1, 2001, as a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge an amount for a prescription drug for outpatient care that exceeds the MA reimbursement rate to persons who are aged at least 65 years, who are ineligible for MA and whose incomes do not exceed 185% of the federal poverty line. Persons must provide a card, issued by DHFS after a determination of eligibility, to qualify for these reduced charges. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the MA reimbursement rates for providing prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must provide information and education to pharmacies, pharmacists and persons aged at least 65 years concerning the program of reduced prescription drug charges for elderly persons and concerning preferred pharmaceutical drugs within categories of drugs that account for significant volume and expenditure by elderly persons.

For further information see the *state* 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:

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1 49.45 (2) (a) 25. Identify categories of pharmaceutical drugs that account for
2 significant prescription order volume and expenditure by persons who are aged at
3 least 65 years and periodically obtain recommendations from the School of Pharmacy
4 at the University of Wisconsin–Madison or a similar medical education and research
5 organization, as defined in s. 448.08 (1) (b), as to preferred drugs within the
6 categories.

7 **SECTION 2.** 49.45 (8w) of the statutes is created to read:

8 49.45 (8w) PRESCRIPTION DRUGS; PRIOR AUTHORIZATION; REIMBURSEMENT. (a)
9 Provision of a prescription drug, as defined in s. 450.01 (20), that is not a preferred
10 drug under sub. (2) (a) 25. and that is provided to an individual aged at least 65 years
11 under s. 49.46 (2) (b) 6. h. is reimbursable under medical assistance only if the
12 pharmacist or pharmacy that provides the drug receives prior authorization from the
13 department for the provision.

14 (b) Beginning January 1, 2001, the rate for reimbursement for drugs under s.
15 49.46 (2) (b) 6. h. in selected categories, as determined by the department, is the
16 average wholesale price minus 15% or the maximum allowable cost, as determined
17 by the department, whichever is less.

18 **SECTION 3.** 49.47 (4) (aq) of the statutes is created to read:

19 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the
20 limitation on income under par. (c) is eligible for medical assistance if the individual
21 is 65 years of age or older and the individual's income does not exceed 100% of the
22 federal poverty level.

23 2. If a federal waiver is necessary to provide medical assistance to individuals
24 specified in subd. 1., the department shall request a waiver from the secretary of the

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1 federal department of health and human services before providing medical
2 assistance under this paragraph.

3 **SECTION 4.** 49.47 (4) (b) 2m. b. of the statutes is amended to read:

4 49.47 **(4)** (b) 2m. b. For persons who are eligible under par. (a) ~~3. or 4.~~ or (aq),
5 motor vehicles are exempt from consideration as an asset to the same extent as
6 provided under 42 USC 1381 to 1385.

7 **SECTION 5.** 49.47 (4) (b) 2r. of the statutes is amended to read:

8 49.47 **(4)** (b) 2r. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), the
9 value of any burial space or agreement representing the purchase of a burial space
10 held for the purpose of providing a place for the burial of the person or any member
11 of his or her immediate family.

12 **SECTION 6.** 49.47 (4) (b) 2w. of the statutes is amended to read:

13 49.47 **(4)** (b) 2w. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), life
14 insurance with cash surrender values if the total face value of all life insurance
15 policies is not more than \$1,500.

16 **SECTION 7.** 49.47 (4) (b) 3. of the statutes is amended to read:

17 49.47 **(4)** (b) 3. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), funds
18 set aside to meet the burial and related expenses of the person and his or her spouse
19 in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life
20 insurance excluded under subd. 2w. and the amount in any irrevocable burial trust
21 under s. 445.125 (1) (a).

22 **SECTION 8.** 49.47 (4) (c) 1. of the statutes is amended to read:

23 49.47 **(4)** (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
24 subd. 3., eligibility exists if income does not exceed 133 1/3% of the maximum aid to
25 families with dependent children payment under s. 49.19 (11) for the applicant's

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1 family size or the combined benefit amount available under supplemental security
2 income under 42 USC 1381 to 1383c and state supplemental aid under s. 49.77
3 whichever is higher. In this subdivision “income” includes earned or unearned
4 income that would be included in determining eligibility for the individual or family
5 under s. 49.19 or 49.77, or for the aged, blind or disabled under 42 USC 1381 to 1385.
6 “Income” does not include earned or unearned income which would be excluded in
7 determining eligibility for the individual or family under s. 49.19 or 49.77, or for the
8 aged, blind or disabled individual under 42 USC 1381 to 1385.

9 **SECTION 9.** 49.47 (4) (c) 3. of the statutes is amended to read:

10 49.47 (4) (c) 3. Except as provided in ~~par. pars.~~ (am) and (aq), no person is
11 eligible for medical assistance under this section if the person’s income exceeds the
12 maximum income levels that the U.S. department of health and human services sets
13 for federal financial participation under 42 USC 1396b (f).

14 **SECTION 10.** 49.47 (4) (i) 2. (intro.) of the statutes is amended to read:

15 49.47 (4) (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
16 described in par. (a) ~~3. or 4.~~ or (aq) is not eligible for benefits under this section if any
17 of the following criteria is met:

18 **SECTION 11.** 49.688 of the statutes is created to read:

19 **49.688 Prescription drug charges; low-income elderly persons. (1)** In
20 this section:

21 (a) “Prescription drug” has the meaning given in s. 450.01 (20).

22 (b) “Prescription order” has the meaning given in s. 450.01 (21).

23 **(2)** Beginning January 1, 2001, as a condition of participation by a pharmacy
24 or pharmacist in the program under ss. 49.45, 49.46 and 49.47, the pharmacy or
25 pharmacist may not charge a person who presents a valid prescription order and a

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1 card indicating that he or she meets eligibility requirements under sub. (3) an
2 amount for a prescription drug for outpatient care under the order that exceeds the
3 medical assistance reimbursement rate for providing the corresponding legend drug
4 under s. 49.46 (2) (b) 6. h.

5 (3) A person who is at least 65 years of age, who is ineligible for medical
6 assistance and whose income does not exceed 185% of the poverty line is eligible to
7 purchase a prescription drug at the amount specified in sub. (2). The person may
8 apply to the department, on a form provided by the department, for a determination
9 of eligibility and issuance of a prescription drug card for purchase of prescription
10 drugs under this section.

11 (4) The department shall devise and distribute a form for application for the
12 program under this section, shall determine eligibility of applicants and shall issue
13 to eligible persons a prescription drug card for use in purchasing prescription drugs
14 at the amount specified in sub. (2).

15 (5) The department shall, for the purposes of sub. (2), calculate and transmit
16 to pharmacies and pharmacists that are certified providers of medical assistance the
17 medical assistance reimbursement rates for providing legend drugs under s. 49.46
18 (2) (b) 6. h. and any additional discounts on the drugs. The department shall
19 periodically update this information and transmit the updated rates to pharmacies
20 and pharmacists.

21 (6) The department shall provide information and education to pharmacies,
22 pharmacists and persons aged at least 65 years concerning the program under this
23 section and concerning the preferred drugs under s. 49.45 (2) (a) 25.

24 **SECTION 12.** 1999 Wisconsin Act 9, section 9123 (9n), is amended to read:

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1 [1999 [Wisconsin Act 9] Section 9123 (9n) LIMITATION ON REDUCTION OF
2 REIMBURSEMENT FOR PHARMACEUTICAL DRUGS. During the 1999–2001 fiscal biennium,
3 except for pharmaceutical drugs in selected categories, as determined by the
4 department, the department of health and family services may not discount the
5 average wholesale price of pharmaceutical drugs provided under section 49.45 of the
6 statutes to medical assistance recipients by more than 10% if the department
7 reimburses for those pharmaceuticals under a formula that takes into account the
8 average wholesale price, and the department may not reduce pharmacy dispensing
9 fees.

SECTION 13. Appropriation changes; health and family services.

10 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
11 under section 20.005 (3) of the statutes for the appropriation to the department of
12 health and family services under section 20.435 (4) (a) of the statutes, as affected by
13 the acts of 1999, the dollar amount is increased by \$1,000,000 for fiscal year 1999–00
14 and the dollar amount is increased by \$1,000,000 for fiscal year 2000–01 to increase
15 funding for administration of the prescription drug assistance for elderly program
16 under section 49.688 of the statutes, as created by this act.

17 (2) EXPANDED MEDICAL ASSISTANCE ELIGIBILITY; BENEFIT. In the schedule under
18 section 20.005 (3) of the statutes for the appropriation to the department of health
19 and family services under section 20.435 (4) (b) of the statutes, as affected by the acts
20 of 1999, the dollar amount is increased by \$1,200,000 for fiscal year 2000–01 to
21 increase funding for expanded eligibility for medical assistance program benefits.
22

23 (3) EXPANDED MEDICAL ASSISTANCE ELIGIBILITY; ADMINISTRATION. In the schedule
24 under section 20.005 (3) of the statutes for the appropriation to the department of
25 health and family services under section 20.435 (4) (bm) of the statutes, as affected

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1 by the acts of 1999, the dollar amount is increased by \$1,000,000 for fiscal year
2 2000–01 to increase funding for administration of expanded eligibility for medical
3 assistance program benefits.

4 **SECTION 14. Initial applicability.**

5 (1) The treatment of section 49.47 (4) (aq), (b) 2m. b., 2r., 2w. and 3., (c) 1. and
6 3. and (i) (2) (intro.) of the statutes first applies to eligibility determinations made
7 for medical assistance on January 1, 2001.

8 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
9 except as follows:

10 (1) **MEDICAL ASSISTANCE REIMBURSEMENT FOR PHARMACEUTICAL DRUGS.** The
11 treatment of SECTION 12 of this act takes effect on January 1, 2001.

12 (END)