

1999 DRAFTING REQUEST

Bill

Received: **12/14/2000**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Russell Decker (608) 266-2502**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact: **Rep. Huber, LFB**

Alt. Drafters:

Subject: **Health - miscellaneous
Public Assistance - misc**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Prescription drug program for elderly

Instructions:

See Attached; same as 99-4083/1

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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Page 2

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12/10

Barb Worcester - Decker's Office

323S

Decker wants to cut costs on prescrip drugs

Create elderly affordable drug program

\$30,000 up to \$1200

State-operated drug coop

annually

State purch power

Enroll fee

to negotiate

copay

lower drug rates from

(?) Disabled adults

drug cos.

Specified chronic medical conditions

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 } indep
22,500 couple }

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

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}
- Yearly fee - ^{based on last year's taxes}
- Will have card 180%
- Pharm will sell at medicaid rate 150%
- Copay of 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,
anticoagulation, glaucoma, osteoporosis, Parkinson's, hyperlipidemia

State residency

GPR - Tobacco money

Start - Jan. 1, 2001

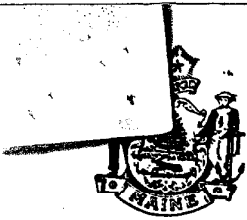
Enrollment period - enroll any time after 65
Must re-enroll 12 mo after first enroll - DHFS to notify
Draft as an entitlement - if meet elig, are in ^{no later than} 1 mo. before expiration

Note: Pharmacia 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 04333-0013
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 §3174-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 §3174-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 \$466,796 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 \$29,587 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 170-185% 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 adults ages 62 and over and disabled adults for certain specified chronic medical conditions. The conditions covered include cardiac and high blood pressure, diabetes, arthritis, anticoagulation, hyperlipidemia, osteoporosis, chronic obstructive pulmonary disease and asthma, incontinence, thyroid diseases, glaucoma, Parkinson's disease, multiple sclerosis and amyotrophic lateral sclerosis (Lou Gehrig's disease). *determined DHS by add Alzheimer's*

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 25% 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.

4. Maine Resident Low-Cost Prescription Drug Program, 22 MRSA §254-B (from LD 2082, Public Law 1999, chapter 431)

Beginning February 1, 2000, or as soon thereafter as the program is implemented, there is a new program, the Maine Resident Low-Cost Prescription Drug Program, MRLCPDP. Under this program manufacturers who choose to participate voluntarily pay rebates to DHS. The voluntary rebates are in the same amount as the Medicaid rebates (around 18-20% at present). A manufacturer who chooses to participate must participate for all drugs sold in the state.

When filling a prescription, the consumer picks whatever pharmacy he or she wishes and may perhaps have a choice of manufacturer. The pharmacist discounts the prescription by the discount amount established by DHS (roughly the rebate amount). Except for applying the mandatory discount to drugs provided by a participating manufacturer, the pharmacy is free to set its own prices.

If the drug purchased is one for which a discount has been applied, the pharmacy notifies DHS and DHS pays the discount amount to the pharmacy weekly or biweekly. To qualify for MRLCPDP the consumer must be a resident and have no 3-rd party prescription drug coverage. There is no enrollment procedure or identification card.

MRLCPDP is self-funded by the voluntary rebates paid by participating manufacturers. There is no appropriation to support this program. There are allocations of \$2,500,000 in FY 99-2000 and \$10,000,000 in FY 2000-01 from the rebate amounts paid in to DHS by the participating manufacturers.

5. Medicaid waiver drug program, 22 MRSA §3174-G, subsection 1-A (from LD 617, Public Law 1999, chapter 401, Part KKK, as amended by LD 2255, Public Law 1999, chapter 531, Part F)
22 MRSA §3174-G, subsection 1-A directs DHS to apply for a Medicaid waiver to provide Medicaid prescription drug benefits to qualified persons ages 62 and over and disabled persons ages 19 and over. The family income limitation for both sets of persons is 185% fpl. These persons would not qualify for benefits under the regular Medicaid program. Coverage under the Medicaid waiver drug program is contingent upon sufficient funds being appropriated and allocated to cover costs. If funding is insufficient, the income limit is to be decreased.

The full range of drugs provided in the Medicaid program must be provided. There is no asset limitation. Co-payments are comparable to Medicaid co-payments. Coverage is required to begin July 1, 2000 or as soon thereafter as possible.

Funding is governed by 22 MRSA §3174-G, subsection 1-B and is to be provided by a combination of funds:

- a. funding appropriated to the Elderly Low-Cost Drug Program, ELCDP, and any rebates paid under that program,
- b. funding of at least \$5,000,000 in FY 2000-01 from the Fund for a Healthy Maine, and
- c. allocated federal matching funds for FY 2000-01 of \$23,804,694.

The federal poverty levels for 1999 are:				
	100%	150%	185%	200%
Family of one	\$8240	\$12,360	\$15,244	\$16,480
Family of two	\$11,060	\$16,590	\$20,461	\$22,120

APPROVED

CHAPTER

JUN 07 '99

43 1

STATE OF MAINE
BY GOVERNOR

PUBLIC LAW

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-NINE
—

S.P. 732 - L.D. 2082 .

**An Act to Reduce the Cost of Prescription Drugs to
Qualifying Residents of the State**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §254-B is enacted to read:

§254-B. Maine resident low-cost prescription drug program

The department shall conduct a program, referred to in this section as the "Maine resident low-cost prescription drug program" or the "program," to provide low-cost prescription drugs to qualifying residents of this State.

1. Agreement. A drug manufacturer that sells prescription drugs in this State may voluntarily elect to enter into a rebate agreement with the department. The agreement must be modeled after Section 1927 of the United States Social Security Act and must include the requirement that the manufacturer make rebate payments to the State each calendar quarter or according to a schedule established by the department.

2. Rebate amount. The rebate amount required from a manufacturer to the State is equivalent to the rebate amount calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8.

3. Discount to qualifying residents. Any participating retail pharmacy that sells drugs covered by an agreement pursuant to subsection 1 shall discount the retail price of those drugs sold to qualifying residents. The department shall adopt rules to establish discounts for covered drugs and rules that promote

the use of efficacious and lower-cost drugs. The amount of the discount for covered drugs must be determined by considering an average of all rebates provided pursuant to subsection 2, weighted by sales of drugs subject to these rebates over the most recent 12-month period for which the information is available. The total aggregate discount amount for all covered drugs must be equivalent to the total aggregate rebate amount for all covered drugs sold, less the administrative costs of the program pursuant to subsection 6.

4. Operation of program. Participating retail pharmacies shall submit claims to the department to verify the amount of discount due the resident. The department may not impose charges on retail pharmacies that submit claims or receive payments under the program. The retail pharmacies shall charge residents the current retail price charged by each retail pharmacy for that prescription drug to persons purchasing that drug who are not covered by insurance or 3rd-party payor plans, less the discount amount, pursuant to subsection 3.

The amount of the discount must be indicated on the resident's receipt. On a weekly or biweekly basis, the retail pharmacy must be reimbursed by the department for drug discounts provided to residents. The department shall collect the necessary utilization data from the retail pharmacies submitting claims in order to comply with 42 United States Code, Section 1396r-8. The department shall protect the confidentiality of all information subject to confidentiality protection under state and federal law, rule or regulation.

5. Discrepancies in rebate amounts. Discrepancies in rebate amounts must be resolved using the process established in this subsection.

A. If there is a discrepancy in the manufacturer's favor between the amount claimed by a pharmacy and the amount rebated by the manufacturer, the department, at the department's expense, may hire a mutually agreed-upon independent auditor. Following the audit, if a discrepancy still exists, the manufacturer shall justify the reason for the discrepancy or make payment to the department for any additional amount due.

B. If there is a discrepancy against the interest of the manufacturer in the information provided by the department to the manufacturer regarding the manufacturer's rebate, the manufacturer, at the manufacturer's expense, may hire a mutually agreed-upon independent auditor to verify the accuracy of the data supplied to the department. Following the audit, if a discrepancy still exists, the department

shall justify the reason for the discrepancy or refund to the manufacturer any excess payment made by the manufacturer.

C. Following the procedures established in paragraph A or B, either the department or the manufacturer may request a hearing before the Administrative Hearings Unit. Supporting documentation must accompany the request for a hearing.

6. Administrative and associated computer costs for program. Administrative and computer costs for the program must be funded solely from the rebates received from the pharmaceutical manufacturers. The department may not spend more for the administrative costs and associated computer costs of this program than it spends on the elderly low-cost drug program.

7. Obligation of retail pharmacies in State. The obligation of retail pharmacies to discount drugs to qualifying residents begins 3 months after the drug manufacturer begins to pay the rebate to the department.

8. Dedicated fund. There is established the Prescription Drug Dedicated Fund, referred to in this section as the "fund," to receive revenue from manufacturers who pay rebates as provided in subsection 1, to reimburse retail pharmacies for discounts provided to residents pursuant to subsections 3 and 4, to reimburse the department for administrative and associated computer costs and to pay other reasonable program costs. The fund is a nonlapsing dedicated fund. Interest on fund balances accrues to the fund. Surplus funds in the fund must be used to increase the amount of discounts given to residents under the program.

9. Annual summary report. The department shall report the status of the program to the Legislature on an annual basis. The report must include information on changes in 3rd-party prescription drug coverage and the financial status of the program.

10. Qualifying resident. Qualifying resident, also referred to in this section as a "resident," means a legal resident of this State who does not have 3rd-party prescription drug coverage.

11. Participating retail pharmacy. Participating retail pharmacy, also referred to in this section as a "retail pharmacy," means a retail pharmacy located in this State, or another business licensed to dispense prescription drugs in this State, that voluntarily elects to participate in the program and that provides discounts to residents as provided in subsection 3.

12. Rulemaking. The department shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Authorization. The Department of Human Services is authorized to receive rebates from drug manufacturers under the Maine resident low-cost prescription drug program, Maine Revised Statutes, Title 22, section 254-B, beginning February 1, 2000 or as soon thereafter as rules are adopted to implement the program.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1999-00	2000-01
HUMAN SERVICES, DEPARTMENT OF		
Prescription Drug Dedicated Fund		
All Other	\$2,500,000	\$10,000,000
Provides funds to establish a program to provide low-cost prescription drugs to Maine residents who are not covered by 3rd-party prescription drug plans.		



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

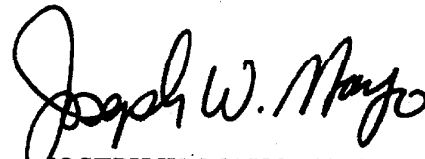
No. 143

H.P. 112

House of Representatives, January 11, 1999

An Act to Reduce Prescription Drug Costs and Increase Coverage.

Reference to the Committee on Health and Human Services suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TWOMEY of Biddeford.
Cosponsored by Representatives: FULLER of Manchester, GAGNE of Buckfield, GERRY of Auburn, JACOBS of Turner, McGLOCKLIN of Embden, NORBERT of Portland, QUINT of Portland, SULLIVAN of Biddeford.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 5 MRSA §12004-I, sub-§49-C is enacted to read:

6	<u>49-C.</u>	<u>Prescription</u>	<u>Expenses</u>	<u>22 MRSA</u>
	<u>Human</u>	<u>Drug Program</u>	<u>Only</u>	<u>\$263</u>
	<u>Services</u>	<u>Advisory</u>		
8		<u>Committee</u>		

10 Sec. 2. 22 MRSA c. 101-A is enacted to read:

12 CHAPTER 101-A

14 PRESCRIPTION DRUG PURCHASING CONSORTIUM AND
16 PRESCRIPTION DRUG PROGRAM

18 §261. Prescription drug purchasing consortium; prescription drug
20 distribution program

22 The department shall form or enter into a prescription drug
24 purchasing consortium, referred to in this chapter as the
26 "consortium," to enable the department to obtain prescription
28 drugs at the most favorable and competitive prices available from
30 the manufacturers of prescription drugs. The department shall
32 establish the Prescription Drug Distribution Program, referred to
34 in this chapter as the "program," to provide for the sale of the
36 drugs to consumers.

38 1. Purchase of prescription drugs. The department shall
40 utilize the consortium to purchase prescription drugs and make
42 them available to consumers, to the extent allowed by the funds
44 appropriated to the program, at the lowest possible cost through
46 the program.

48 2. Sale of prescription drugs. The department shall
50 contract with cooperating pharmacies and hospitals to sell
prescription drugs to consumers at prices to be set by rule
adopted by the department at levels appropriate to ensure an
adequate profit for the pharmacies and hospitals and the lowest
reasonable prices to the consumers.

3. Consumers. The following residents of the State,
referred to in this chapter as "consumers," qualify to receive
prescription drugs from the department under this chapter:

A. Residents whose incomes are at or below 400% of the
nonfarm income official poverty line, as defined by the
federal Office of Management and Budget and revised annually
in accordance with the United State Omnibus Budget
Reconciliation Act of 1981, Section 673, Subsection 2; and

2 B. Residents whose incomes are above the level in paragraph
4 A but who spend 3% or more of their gross incomes on
6 prescription drugs so that their incomes are below 400% of
8 the nonfarm income official poverty line when the expenses
10 are deducted from gross income.

12 4. Pharmaceutical services. The department shall enter
14 into agreements with pharmacists for the provision of the
16 following services to further the purposes of this chapter:

18 A. Drug use review;

20 B. Management of drug therapy;

22 C. Case management of consumers identified as at high risk
24 of medication-related problems; and

26 D. Management of consumer compliance.

28 5. Rebates. The department shall negotiate with
30 pharmaceutical manufacturers for the payment of rebates by the
32 manufacturers. Manufacturers are ineligible for participation in
34 the program if they have not reached rebate agreements with the
36 department.

38 6. Evaluation. The department shall undertake an annual
40 evaluation of the program and the department's participation in
42 the consortium, which may be contracted out to a nonprofit
44 organization. The annual evaluation must include any drug
46 formulary adopted by the department, drug efficacy, prescription
48 size, consumer satisfaction and consumer demand for prescription
50 drugs not covered by the program. The annual evaluation must be
52 distributed to the Prescription Drug Advisory Committee as
established in section 263, and to the public by January 1, 2000
and each year thereafter.

7. Rulemaking. The department shall adopt rules to
implement this chapter. Rules adopted under this chapter are
major substantive rules as defined by Title 5, chapter 375,
subchapter II-A.

§262. Prescription Drug Dedicated Fund

The Prescription Drug Dedicated Fund, referred to in this
chapter as the "fund," is established to fund the program.
Rebates received from prescription drug manufacturers pursuant to
this chapter must be deposited in the fund. Participating
pharmacies and hospitals shall deposit in the fund payments for
prescription drugs received from consumers, minus the service fee
that may be retained by the pharmacies and hospitals pursuant to
rule adopted by the department. The fund may also receive any
payments due from 3rd-party payors in payment for prescription

2 drugs. The fund is a special, dedicated, nonlapsing fund and any
3 interest generated by the fund is credited to the fund. The
4 department shall administer the fund.

6 **§263. Prescription Drug Program Advisory Committee**

8 The commissioner shall appoint 11 persons to the
9 Prescription Drug Program Advisory Committee, referred to in this
10 chapter as the "committee," to oversee the operation of the
11 program. The members of the committee must represent consumers,
12 pharmacies and hospitals, health coverage administered by the
13 State and pharmacists. The committee shall elect a chair and
14 vice-chair annually. The committee shall meet at least quarterly
15 and may meet more often if the commissioner or 4 of the members
16 determine a meeting should be called. The members of the
17 committee serve without compensation or reimbursement. The
18 department shall provide staff to the committee as required for
19 the performance of its duties. By February 1, 2000 and annually
20 thereafter, the committee shall report to the joint standing
21 committees of the Legislature having jurisdiction over health and
22 human services matters and appropriations and financial affairs
23 on the operation of the program and the cost savings to consumers
24 and to any department of State Government. The report must
25 include any recommendations for legislation or rulemaking.

26
27 **SUMMARY**

28
29 This bill establishes a prescription drug purchasing
30 consortium and the Prescription Drug Distribution Program to
31 enable the Department of Human Services to purchase drugs at
32 favorable prices and make them available to consumers with
33 incomes at or below 400% of the federal nonfarm income official
34 poverty line. The bill includes a dedicated fund into which are
35 placed the revenues from rebates and consumer purchases. The
36 program is overseen by an advisory committee that reports
37 annually to the joint standing committees of the Legislature
38 having jurisdiction over health and human services matters and
39 appropriations and financial affairs.
40

C/M

**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 \$6,250 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 the 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 65 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 benefits 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 1999.

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 \$49.3 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 $[(174,900 - 59,200) \times .1 = 11,600]$ 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 $[(96,200 \times \$152) + (11,600 \times \$55)]$. 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

MONDAY ~~at~~, if possible

4289/1
~~4289/1~~

1999 - 2000 LEGISLATURE

LRB-~~6657~~

DAK:~~4289~~

↓
Stays

D-NOTE

1999 ASSEMBLY BILL

50% of the cost of each prescription drug, at the rate under which pharmacies 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

- 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 1

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 ~~\$1,200,000~~ \$3,700,000 in general purpose revenues in fiscal year 2000-01 for the program. Under the program, beginning ~~July 1, 2000~~ January 1, 2001, 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 ~~150% 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

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

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

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

a 12-month

ASSEMBLY BILL

\$1,000,000

INSERT QUAL 2

purpose revenues appropriated under the bill for the program and the program revenue resulting from the ~~state~~ enrollment fees ~~and payments~~, 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 ~~\$600,000~~ 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:

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

3 1999-00 2000-01

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

~~1,000,000~~

10 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 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(2)(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)~~

INSERT
3-14

15 (2) From the appropriation under s. 20.435 (4) (bv), beginning ~~July 1, 2000~~, 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) ~~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~~

21 ~~rate paid for reimbursement of pharmacists under s. 49.46.~~ The department shall
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.

enrollment

program

1.

and (j)

January
1, 2001

allowable charges paid
under s. 49.46 (2) (b) (i. h.)
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

If single,

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

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

between

(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 ~~\$300,000~~ ^{\$1,000,000} for fiscal year
 10 1999-2000 ~~and not more than \$300,000 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.

21 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
 22 under section 20.005 (3) of the statutes for the appropriation to the joint committee
 23 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
 24 the dollar amount is increased by ~~\$600,000~~ ^{\$1,000,000} for fiscal year 1999-00 ~~and the dollar~~
 25 ~~amount is increased by \$200,000 for fiscal year 2000-01.~~ ^{\$1,000,000} to increase funding for

\$1,000,000

ASSEMBLY BILL

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 medic
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 (Low Gehrig's disease).

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

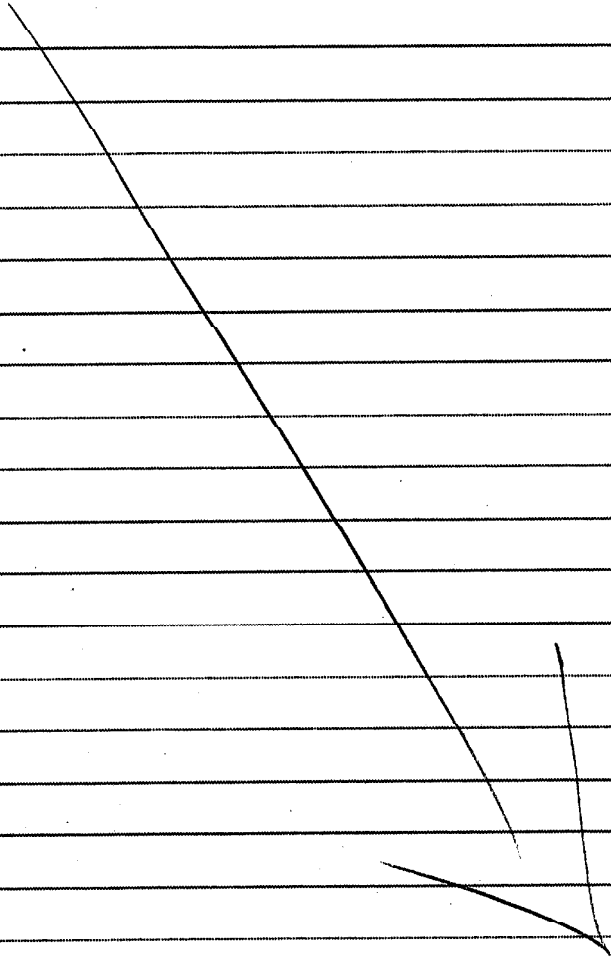
(c) "Prescription drug" has the meaning given in s. 450.01 (20).

INSERT 4-6

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION
(608-266-3561)

\$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).



(B)
 (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

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

Section #. 49 (7) of the statutes is amended to read:

~~49A.49 (1) (a)~~ ⁽⁷⁾ ~~prohibited condition~~ (a) ~~prohibited condition~~ 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~~ ^a 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 ~~to secure such~~ ^{to secure 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~~ ^{an} other ~~person~~ ^{individual}.

(b) ~~Violators~~ ^{are subject to} Violators of this subsection ~~may be punished as follows:~~ ^{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~~ ^{these} a statement, ~~representation~~ ^{or}, concealment, failure, or conversion by any person in connection with the furnishing by that person of ~~items or services~~ ^{of 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.

to disclose an event

a prescription drug for which payment

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) ~~Whenever~~ a 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) [Ⓟ] designates prescription drugs

for a chronic condition, under s. 49.68(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.

D-NOTE

To Senator Decker:

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), state, that is cited in that subdivision would be the definition under s. 29.001(69) or 949.035(3), state. Another possibility would be a provision similar to the requirement under s. 610.70(1)(b), state.

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 rule-making and therefore have made an exemption under s. 227.01(13) (z L). If that assumption is incorrect, please let me know and I will redraft the designations as rules.

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.

DAK

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

LRB-4289/1dn
DAK:wlj:jf

January 24, 2000

To Senator Decker:

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.

Debora 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

✓ Things 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

1999 - 2000 LEGISLATURE

LRB-4289/2

DAK:wlj

D-NOTE

1999 BILL

1 **AN ACT** ^{Reger} ~~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 12-month enrollment fee of between \$25 and \$200, based on the participant's gross income, as specified by DHFS by rule, and 50% of the

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) ✓*

*①
; 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 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~~ ^②
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,~~ ^{upon enrolling and} ~~to the department,~~ ^{hereafter} a program enrollment fee of between
14 \$25 and \$200, based on the participant's gross income, as specified by the department
15 by rule.

16 2. To 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 - 2000 LEGISLATURE

LRB-4189/1
DAK:wj:ch/km**1999 SENATE BILL 335**

January 21, 2000 - Introduced by Senators CLAUSING, WIRCH, ROBSON, RISSER, GROBSCHMIDT, BURKE, MOEN, ERPENBACH, BAUMGART, BRESKE, CHVALA, SHIBILSKI, DRZEWIECKI and DARLING, 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).

End of INSERT A

SENATE BILL 335

SECTION 3

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 Decker:

Please review s. 49.688(3)(b) 1.¹ 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-4289/2dn
DAK:wlj:jf

February 2, 2000

To Senator Decker:

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 non-emergency approp. supplement
language for program deficiency

MONDAY 2/7

1999 - 2000 LEGISLATURE

4289/3
LRB-4082/13
DAK:wlj:§

1999 BILL

ReGen

\$6,600,000

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 12-month enrollment fee of between \$25 and \$200, based on the participant's gross income, as specified by DHFS by rule, and 50% of the

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:

either

INSERT ✓
ANAL

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

6,600,000

-0- ~~\$3,700,000~~

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

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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.

INSERT 8-13

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)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4083/3ins
DAK:wlj:jf

INSERT ANAL

¶ 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.

INSERT 8-13

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: 02/04/2000

To: Senator Decker

Relating to LRB drafting number: LRB-4289

Topic

Prescription drug program for elderly

Subject(s)

Health - miscellaneous, Public Assistance - misc

1. **JACKET** the draft for introduction R. Decker

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 _____ or state or general local government fiscal liability or revenues _____ and estimate prior to introduction. If you choose to in _____ the fiscal estimate will be requested automatically upon intro _____ estimate. Requesting the fiscal estimate prior to intro _____ g of the proposal.

If you have _____ ase call 266-3561. If you have any questions relating to the _____

*could you please
jacket right away
& send over.
Thank you.
Barb Worcester
6-2000*

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



STEPHEN R. MILLER
CHIEF

State of Wisconsin

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REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

FISCAL ESTIMATES

BILL NUMBER:

1999 SENATE BILL 377

Note: The analysis of this bill states that a fiscal estimate was required for this bill. A request was made through the department of administration to have a fiscal estimate prepared. The agency(s) assigned to prepare a fiscal estimate for this bill did not return an estimate for this bill so none are included in this file.