

1999 SENATE BILL 476

March 16, 2000 – Introduced by Senators ROSENZWEIG, PANZER, WELCH, HUELSMAN, ZIEN, DARLING, DRZEWIECKI, SCHULTZ, ROESSLER, A. LASEE, RUDE, FARROW and FITZGERALD, cosponsored by Representatives WIECKERT, PETTIS, PETROWSKI, UNDERHEIM, KESTELL, MONTGOMERY, OLSEN, JESKEWITZ, URBAN, SKINDRUD, HUNDERTMARK, HAHN, RHOADES, TOWNSEND, HOVEN, OWENS, HUTCHISON, DUFF, STONE, SPILLNER and HUEBSCH. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT to amend** 49.47 (4) (b) 2m. b., 49.47 (4) (b) 2r., 49.47 (4) (b) 2w., 49.47 (4)
 2 (b) 3., 49.47 (4) (c) 1., 49.47 (4) (c) 3. and 49.47 (4) (i) 2. (intro.); and **to create**
 3 20.435 (4) (bv), 20.435 (4) (j), 20.435 (4) (jb), 49.45 (48), 49.47 (4) (aq) and 49.688
 4 of the statutes; **relating to:** expanding medical assistance income eligibility
 5 requirements for elderly persons; requiring pharmacies and pharmacists, as a
 6 condition of medical assistance participation, to charge elderly, low-income
 7 persons for prescription drugs no more than specific amounts; authorizing the
 8 department of health and family services to enter into rebate agreements with
 9 drug manufacturers; limiting prior authorization requirements under medical
 10 assistance; and making appropriations.

Analysis by the Legislative Reference Bureau

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

SENATE BILL 476

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

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

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

The bill specifies that, beginning July 1, 2001, as a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge eligible persons an amount for certain prescription drugs for outpatient care that exceeds the average wholesale price minus 5% or the maximum allowable cost, as determined by DHFS, whichever is lower, for providing that drug, plus a dispensing fee. Persons who are eligible for reduced charges are those who are at least 65 years of age and ineligible for MA and who have incomes that do not exceed 185% of the federal poverty line. In order to purchase the drugs, eligible persons must provide to pharmacies or pharmacists a card, issued by DHFS after a determination of eligibility and payment of an annual enrollment fee of \$25, and must pay the pharmacy or pharmacist an annual deductible of \$840 for drugs at the reduced charge and a copayment of \$10 for each generic drug and \$20 for each drug that is not a generic drug. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the amounts that may be charged for providing the specified prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge low-income persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance.

DHFS is authorized, under the bill, to enter with drug manufacturers into rebate agreements, which are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for each of the manufacturer's drugs that is prescribed under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. In addition, DHFS may not, after June 30, 2001, and before July 1, 2003, subject the prescription drugs manufactured by manufacturers that enter into the rebate agreements to prior

SENATE BILL 476

authorization requirements for prescription drugs for the eligible persons or to any expansion of prior authorization requirements under MA.

DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers under the prescription drug assistance program.

DHFS must report to the legislature if federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare. The bill appropriates \$2,000,000 in general purpose revenues in fiscal year 2000–01 to DHFS for administration of the program.

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

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

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.* The amounts in
3 the schedule for payment to pharmacies and pharmacists under s. 49.688 (8) for
4 prescription drug assistance for elderly persons.

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

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

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

11 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All
12 moneys received from payment of enrollment fees under s. 49.688 (2), to be used for
13 administration of the program under s. 49.688.

14 **SECTION 4.** 49.45 (48) of the statutes is created to read:

15 49.45 (48) **PRIOR AUTHORIZATION FOR LEGEND DRUGS.** After June 30, 2001, and
16 before July 1, 2003, if a manufacturer enters into a rebate agreement under s. 49.688
17 (7), the department may not expand the prior authorization requirements for

SENATE BILL 476

1 prescription drugs manufactured by the manufacturer for which coverage is
2 provided under s. 49.46 (2) (b) 6. h. beyond those prior authorization requirements
3 that are in effect on July 1, 2001.

4 **SECTION 5.** 49.47 (4) (aq) of the statutes is created to read:

5 49.47 **(4)** (aq) 1. Subject to subd. 2., an individual who does not meet the
6 limitation on income under par. (c) is eligible for medical assistance if the individual
7 is 65 years of age or older and the individual's income does not exceed 100% of the
8 federal poverty level.

9 2. If a federal waiver is necessary to provide medical assistance to individuals
10 specified in subd. 1., the department shall request a waiver from the secretary of the
11 federal department of health and human services before providing medical
12 assistance under this paragraph.

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

14 49.47 **(4)** (b) 2m. b. For persons who are eligible under par. (a) ~~3. or 4.~~ or (aq),
15 motor vehicles are exempt from consideration as an asset to the same extent as
16 provided under 42 USC 1381 to 1385.

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

18 49.47 **(4)** (b) 2r. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), the
19 value of any burial space or agreement representing the purchase of a burial space
20 held for the purpose of providing a place for the burial of the person or any member
21 of his or her immediate family.

22 **SECTION 8.** 49.47 (4) (b) 2w. of the statutes is amended to read:

23 49.47 **(4)** (b) 2w. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), life
24 insurance with cash surrender values if the total face value of all life insurance
25 policies is not more than \$1,500.

SENATE BILL 476

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

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

7 **SECTION 10.** 49.47 (4) (c) 1. of the statutes is amended to read:

8 49.47 **(4)** (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
9 subd. 3., eligibility exists if income does not exceed 133 1/3% of the maximum aid to
10 families with dependent children payment under s. 49.19 (11) for the applicant's
11 family size or the combined benefit amount available under supplemental security
12 income under 42 USC 1381 to 1383c and state supplemental aid under s. 49.77
13 whichever is higher. In this subdivision "income" includes earned or unearned
14 income that would be included in determining eligibility for the individual or family
15 under s. 49.19 or 49.77, or for the aged, blind or disabled under 42 USC 1381 to 1385.
16 "Income" does not include earned or unearned income which would be excluded in
17 determining eligibility for the individual or family under s. 49.19 or 49.77, or for the
18 aged, blind or disabled individual under 42 USC 1381 to 1385.

19 **SECTION 11.** 49.47 (4) (c) 3. of the statutes is amended to read:

20 49.47 **(4)** (c) 3. Except as provided in ~~par. pars.~~ (am) and (aq), no person is
21 eligible for medical assistance under this section if the person's income exceeds the
22 maximum income levels that the U.S. department of health and human services sets
23 for federal financial participation under 42 USC 1396b (f).

24 **SECTION 12.** 49.47 (4) (i) 2. (intro.) of the statutes is amended to read:

SENATE BILL 476

1 49.47 **(4)** (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
2 described in par. (a) 3-~~or~~ 4. or (aq) is not eligible for benefits under this section if any
3 of the following criteria is met:

4 **SECTION 13.** 49.688 of the statutes is created to read:

5 **49.688 Prescription drug assistance for low-income elderly persons.**

6 **(1)** In this section:

7 (a) “Generic name” has the meaning given in s. 450.12 (1) (b).

8 (b) “Prescription drug” means a prescription drug, as defined in s. 450.01 (20),
9 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is
10 manufactured by a manufacturer that enters into a rebate agreement in force under
11 sub. (7).

12 (c) “Prescription order” has the meaning given in s. 450.01 (21).

13 **(2)** A person who is a resident, as defined in s. 27.01 (10) (a), of this state, who
14 is at least 65 years of age, who is ineligible for medical assistance, whose income does
15 not exceed 185% of the poverty line and who pays the program enrollment fee
16 specified in sub. (3) (a) is eligible to purchase a prescription drug at the amounts
17 specified in sub. (6) (b). The person may apply to the department, on a form provided
18 by the department together with program enrollment fee payment, for a
19 determination of eligibility and issuance of a prescription drug card for purchase of
20 prescription drugs under this section.

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

22 (a) Annually, a program enrollment fee of \$25.

23 (b) Annually, a deductible of \$840.

24 (c) After payment of the deductible under par. (b), all of the following:

SENATE BILL 476

1 1. A copayment of \$10 for each prescription drug that bears only a generic
2 name.

3 2. A copayment of \$20 for each prescription drug that does not bear only a
4 generic name.

5 **(4)** The department shall devise and distribute a form for application for the
6 program under sub. (2), shall determine eligibility of applicants and shall issue to
7 eligible persons a prescription drug card for use in purchasing prescription drugs, as
8 specified in sub. (5).

9 **(5)** Beginning July 1, 2001, as a condition of participation by a pharmacy or
10 pharmacist in the program under ss. 49.45, 49.46 or 49.47, the pharmacy or
11 pharmacist may not charge a person who presents a valid prescription order and a
12 card indicating that he or she meets eligibility requirements under sub. (2) an
13 amount for a prescription drug under the order that exceeds the amounts specified
14 in sub. (6) (b).

15 **(6)** (a) The charge for a prescription drug shall be calculated at the average
16 wholesale price minus 5% or the maximum allowable cost, as determined by the
17 department, whichever is less.

18 (b) The amounts that a pharmacy or pharmacist may charge a person specified
19 in sub. (2) in a calendar year period for a prescription drug are the following:

20 1. If applicable, a deductible, as specified in sub. (3) (b), for a prescription drug
21 that is charged at the rate specified in par. (a), plus a dispensing fee that is equal to
22 the dispensing fee permitted to be charged for prescription drugs for which coverage
23 is provided under s. 49.46 (2) (b) 6. h.

24 2. After the deductible under subd. 1. is charged, the copayment, as applicable,
25 that is specified in sub. (3) (c) 1. or 2.

SENATE BILL 476

1 (c) The department shall calculate and transmit to pharmacies and
2 pharmacists that are certified providers of medical assistance amounts that may be
3 used in calculating charges under par. (a). The department shall periodically update
4 this information and transmit the updated amounts to pharmacies and pharmacists.

5 (7) The department or an entity with which the department contracts may
6 enter into a rebate agreement that is modeled on the rebate agreement specified
7 under 42 USC 1396r-8 with a drug manufacturer that sells drugs for prescribed use
8 in this state. The rebate agreement, if negotiated, shall include all of the following
9 as requirements:

10 (a) That the manufacturer shall make rebate payments for each prescription
11 drug of the manufacturer that is prescribed for persons who are eligible under sub.
12 (2), to the state treasurer to be credited to the appropriation under s. 20.435 (4) (j),
13 each calendar quarter or according to a schedule established by the department.

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

16 (8) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
17 July 1, 2001, the department shall provide to pharmacies and pharmacists
18 payments, under a schedule that is identical to that used by the department for
19 payment of pharmacy provider claims under medical assistance, that correspond to
20 the amounts charged by the pharmacies and pharmacists to persons who meet
21 criteria for eligibility under sub. (2) for a prescription drug at the rate specified in
22 sub. (6) (a), minus the amount of a copayment charged under sub. (6) (b) 2., plus a
23 dispensing fee, as specified in sub. (6) (b) 1. The department shall devise and
24 distribute a form for reports by pharmacies and pharmacists under this subsection.

SENATE BILL 476

1 **(9)** The department shall monitor compliance by pharmacies and pharmacists
2 that are certified providers of medical assistance with the requirements of sub. (5)
3 and shall annually report to the legislature under s. 13.172 (2) concerning the
4 compliance. The report shall include information on any pharmacies or pharmacists
5 that discontinue participation as certified providers of medical assistance and the
6 reasons given for the discontinuance.

7 **(10)** If federal law is amended to provide coverage for prescription drugs for
8 outpatient care as a benefit under medicare or to provide similar coverage under
9 another program, the department shall submit a report concerning this fact to
10 appropriate standing committees of the legislature under s. 13.172 (3).

11 **(11)** After June 30, 2001, and before July 1, 2003, the department may not
12 under sub. (4) subject a manufacturer that enters into a rebate agreement under sub.
13 (7) to prior authorization requirements for a prescription drug for outpatient care for
14 treatment of a chronic condition.

15 **(12)** Except as provided in subs. (9) to (11), the department may enter into a
16 contract with an entity to perform the duties and exercise the powers of the
17 department under this section.

SECTION 14. Appropriation changes.

18 **(1)** PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
19 under section 20.005 (3) of the statutes for the appropriation to the joint committee
20 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
21 the dollar amount is increased by \$2,000,000 for fiscal year 2000–01 to increase
22 funding for administration of the prescription drug assistance for elderly program
23 under section 49.688 of the statutes, as created by this act.
24

SECTION 15. Initial applicability.
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