

1999 DRAFTING REQUEST

Bill

Received: **03/07/2000**

Received By: **kenneda**

Wanted: **Soon**

Identical to LRB:

For: **Peggy Rosenzweig (608) 266-2512**

By/Representing: **Gene Schaefer**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **ISR**

Pre Topic:

No specific pre topic given

Topic:

Prescription drug assistance for elderly

Instructions:

Same as 99s0374/1 (ASA 2 to 1999 AB 815)

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>
/?	kenneda 03/09/2000	wjackson 03/10/2000		_____			State
/1			martykr 03/10/2000	_____	gretskl 03/10/2000	lrb_docadminState 03/14/2000	

FE Sent For:

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1?	kenneda	1, WJ 3/10	Jm 3/10	<u>Leif 3/10</u>			

FE Sent For:

<END>



FRIDAY, by 3:00, if possible
 State of Wisconsin
 1999 - 2000 LEGISLATURE

LRB-4693/1
 DAK.../...
 WLj

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT ^{GenCat} relating to ~~222~~ INSERT REL ✓

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance services are reimbursed for the provision of certain prescription drugs to medical assistance (MA) recipients at a rate established by the department of health and family services (DHFS). Under current federal law, persons entitled to coverage under Part B of Medicare do not receive coverage for prescription drugs for outpatient care as a benefit. Also under current law, as enacted in 1999 Wisconsin Act 9 (the biennial budget act), DHFS may not discount the average wholesale price of pharmaceutical drugs provided to MA recipients if DHFS reimburses for those drugs under a formula that takes into account the average wholesale price, nor may DHFS reduce pharmacy dispensing fees.

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 a 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 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:

INSERT TEXT

(END)

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1999 ASSEMBLY BILL 815**

March 7, 2000 - Offered by Representatives WIECKERT, KRUSICK, PETTIS, HUBER, HUNDERTMARK, MEYER, UNDERHEIM, PETROWSKI, RHOADES, TOWNSEND, KELSO, KESTELL, HANDRICK, URBAN, JESKEWITZ, OLSEN, SPILLNER, WAUKAU, M. LEHMAN, HUEBSCH, FREESE, HOVEN, LADWIG, MONTGOMERY and MILLER.

INSERT REL

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.

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

INSERT TEXT

11

SECTION 1. 20.435 (4) (bv) of the statutes is created to read:

1 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* The amounts in
2 the schedule for payment to pharmacies and pharmacists under s. 49.688 (8) for
3 prescription drug assistance for elderly persons.

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 (7), to
7 be used for payment to pharmacies and pharmacists under s. 49.688 (8) for
8 prescription drug assistance for elderly persons.

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

10 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All
11 moneys received from payment of enrollment fees under s. 49.688 (2), to be used for
12 administration of the program under s. 49.688.

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

14 49.45 (48) **PRIOR AUTHORIZATION FOR LEGEND DRUGS.** After June 30, 2001, and
15 before July 1, 2003, if a manufacturer enters into a rebate agreement under s. 49.688
16 (7), the department may not expand the prior authorization requirements for
17 prescription drugs manufactured by the manufacturer for which coverage is
18 provided under s. 49.46 (2) (b) 6. h. beyond those prior authorization requirements
19 that are in effect on July 1, 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 49.47 (4) (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
19 described in par. (a) ~~3. or 4.~~ or (aq) is not eligible for benefits under this section if any
20 of the following criteria is met:

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

22 **49.688 Prescription drug assistance for low-income elderly persons.**

23 (1) In this section:

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

1 (b) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20),
2 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is
3 manufactured by a manufacturer that enters into a rebate agreement in force under
4 sub. (7).

5 (c) "Prescription order" has the meaning given in s. 450.01 (21).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (7) The department or an entity with which the department contracts may
23 enter into a rebate agreement that is modeled on the rebate agreement specified
24 under 42 USC 1396r–8 with a drug manufacturer that sells drugs for prescribed use

1 in this state. The rebate agreement, if negotiated, shall include all of the following
2 as requirements:

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

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

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

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

24 (10) If federal law is amended to provide coverage for prescription drugs for
25 outpatient care as a benefit under medicare or to provide similar coverage under

1 another program, the department shall submit a report concerning this fact to
2 appropriate standing committees of the legislature under s. 13.172 (3).

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

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

10 **SECTION 14. Appropriation changes.**

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

17 **SECTION 15. Initial applicability.**

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

21 **SECTION 16. Effective dates; health and family services.** This act takes
22 effect on the day after publication, except as follows:

23 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY. The treatment of section 20.435
24 (4) (bv) of the statutes takes effect on July 1, 2001.

25 (END)

**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: 03/10/2000

To: Senator Rosenzweig

Relating to LRB drafting number: LRB-4693

Topic

Prescription drug assistance for elderly

Subject(s)

Health - miscellaneous

1. **JACKET** the draft for introduction _____

Propp Rosenzweig

in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

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

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

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

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

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

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