

2001 ASSEMBLY BILL 120

February 13, 2001 – Introduced by Representatives WIECKERT, FRISKE, GRONEMUS, RHOADES, PETTIS, KRAWCZYK, PETROWSKI, LOEFFELHOLZ, D. MEYER, LEIBHAM, J. FITZGERALD, TOWNSEND, REYNOLDS, LIPPERT, MCCORMICK, BIES, AINSWORTH, ALBERS, FREESE, GUNDERSON, GUNDRUM, HOVEN, HUNDERTMARK, JESKEWITZ, JOHNSRUD, KAUFERT, KESTELL, KREIBICH, F. LASEE, M. LEHMAN, MUSSER, NASS, OLSEN, OTT, OWENS, SERATTI, SKINDRUD, STONE, SYKORA, TRAVIS, UNDERHEIM, URBAN, VRAKAS, WADE and WARD, cosponsored by Senators ROSENZWEIG, HARSDFORF, S. FITZGERALD, DARLING, SCHULTZ and ROESSLER. Referred to Committee on Health.

1 **AN ACT** *to amend* 49.47 (4) (b) 2m. b., 49.47 (4) (b) 2r., 49.47 (4) (b) 2w., 49.47 (4)
2 (b) 3., 49.47 (4) (c) 1., 49.47 (4) (c) 3. and 49.47 (4) (i) 2. (intro.); 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; specifying
8 requirements for rebate agreements between the department of health and
9 family services and drug manufacturers; limiting prior authorization
10 requirements under medical assistance; requiring the exercise of rule-making
11 authority; 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 (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under the MA program, numerous prescription

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drugs must be authorized by DHFS prior to being dispensed to MA recipients. 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.

Under current law, an individual who is 65 years of age or older, blind, or permanently disabled, 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, blind, or permanently disabled 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 or the combined benefit amount available under the federal supplemental security income (SSI) program.

Beginning March 1, 2002, this bill increases to 100% of the federal poverty level the maximum income level for eligibility for MA for individuals who are 65 years of age or older, blind, or permanently disabled.

This bill provides that, beginning March 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$25 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is the average wholesale price minus 5% or the maximum allowable cost, as determined by DHFS, whichever is less, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$840 in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of \$10 for each generic drug and a copayment of \$20 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 185% of the federal poverty line for a family the size of the persons' eligible families. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

Under the bill, DHFS or an entity with which DHFS contracts may enter with drug manufacturers into rebate agreements that 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 the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under 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. Payment is at the average wholesale price minus 5% or the maximum allowable cost, as determined by DHFS, whichever is less, minus any

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copayment made, plus a dispensing fee. If a manufacturer enters into a rebate agreement, DHFS may not, after February 28, 2002, and before March 1, 2004, expand the prior authorization requirements under the MA program or under the prescription drug program created under the bill for prescription drugs manufactured by that manufacturer beyond those prior authorization requirements in effect under the MA program on March 1, 2002.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the prescription drug assistance program. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the discounted rate that must be charged to certain eligible persons in meeting the deductible for 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 eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions. If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. The bill appropriates \$2,000,000 in general purpose revenues in fiscal year 2001–02 to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys for administration of the program.

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:

ASSEMBLY BILL 120**SECTION 1**

	2001-02	2002-03
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**20.435 Health and family services, department
of**

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

(bv) Prescription drug assistance for
elderly; aids

GPR	A	8,900,000	26,400,000
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SECTION 2. 20.435 (4) (bv) of the statutes is created to read:

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

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

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

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

20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All moneys received from payment of enrollment fees under s. 49.688 (3), to be used for administration of the program under s. 49.688.

SECTION 5. 49.45 (48) of the statutes is created to read:

49.45 (48) **PRIOR AUTHORIZATION FOR LEGEND DRUGS.** If, after February 28, 2002, and before March 1, 2004, a manufacturer has in force a rebate agreement under s. 49.688 (7), the department may not during that period expand the prior

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1 authorization requirements for prescription drugs manufactured by the
2 manufacturer for which coverage is provided under s. 49.46 (2) (b) 6. h. beyond those
3 prior authorization requirements that are in effect on March 1, 2002.

4 **SECTION 6.** 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's
7 income does not exceed 100% of the federal poverty level, and the individual is 65
8 years of age or older or is blind or totally and permanently disabled, as defined under
9 federal Title XVI.

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

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

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

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

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

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

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

4 **SECTION 10.** 49.47 (4) (b) 3. of the statutes is amended to read:

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

10 **SECTION 11.** 49.47 (4) (c) 1. of the statutes is amended to read:

11 49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
12 subd. 3., eligibility exists if income does not exceed ~~133-1/3%~~ 133.33% of the
13 maximum aid to families with dependent children payment under s. 49.19 (11) for
14 the applicant's family size or the combined benefit amount available under
15 supplemental security income under 42 USC 1381 to 1383c and state supplemental
16 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned
17 or unearned income that would be included in determining eligibility for the
18 individual or family under s. 49.19 or 49.77, or for the aged, blind or disabled under
19 42 USC 1381 to 1385. "Income" does not include earned or unearned income which
20 would be excluded in determining eligibility for the individual or family under s.
21 49.19 or 49.77, or for the aged, blind or disabled individual under 42 USC 1381 to
22 1385.

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

24 49.47 (4) (c) 3. Except as provided in ~~par. pars.~~ (am) and (aq), no person is
25 eligible for medical assistance under this section if the person's income exceeds the

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1 maximum income levels that the U.S. department of health and human services sets
2 for federal financial participation under 42 USC 1396b (f).

3 **SECTION 13.** 49.47 (4) (i) 2. (intro.) of the statutes is amended to read:

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

7 **SECTION 14.** 49.688 of the statutes is created to read:

8 **49.688 Prescription drug assistance for low-income elderly persons.**

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

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

11 (b) “Poverty line” means the nonfarm federal poverty line for the continental
12 United States, as defined by the federal department of labor under 42 USC 9902 (2).

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

17 (d) “Prescription order” has the meaning given in s. 450.01 (21).

18 **(2)** A person who is a resident, as defined in s. 27.01 (10) (a), of this state, who
19 is at least 65 years of age, who is not a recipient of medical assistance, whose annual
20 household income, as determined by the department, does not exceed 185% of the
21 poverty line for a family the size of the person’s eligible family, and who pays the
22 program enrollment fee specified in sub. (3) (a) is eligible to purchase a prescription
23 drug at the amounts specified in sub. (6) (b). The person may apply to the
24 department, on a form provided by the department together with program

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1 enrollment fee payment, for a determination of eligibility and issuance of a
2 prescription drug card for purchase of prescription drugs under this section.

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

4 1. For each 12-month benefit period, a program enrollment fee of \$25.

5 2. For each 12-month benefit period, a deductible for each person of \$840.

6 3. After payment of the deductible under subd. 2., all of the following:

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

9 b. A copayment of \$20 for each prescription drug that does not bear only a
10 generic name.

11 (b) Notwithstanding s. 49.002, if a person who is eligible under this section has
12 other available coverage for payment of a prescription drug, this section applies only
13 to costs for prescription drugs for the person that are not covered under the person's
14 other available coverage.

15 **(4)** The department shall devise and distribute a form for application for the
16 program under sub. (2), shall determine eligibility for each 12-month benefit period
17 of applicants, and shall issue to eligible persons a prescription drug card for use in
18 purchasing prescription drugs, as specified in sub. (5). The department shall
19 promulgate rules that specify the criteria to be used to determine annual household
20 income under sub. (2).

21 **(5)** Beginning March 1, 2002, as a condition of participation by a pharmacy or
22 pharmacist in the program under ss. 49.45, 49.46, or 49.47, the pharmacy or
23 pharmacist may not charge a person who presents a valid prescription order and a
24 card indicating that he or she meets eligibility requirements under sub. (2) an

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1 amount for a prescription drug under the order that exceeds the amounts specified
2 in sub. (6) (b).

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

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

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

12 2. After the deductible under subd. 1. is charged, the copayment, as applicable,
13 that is specified in sub. (3) (a) 3. a. or b.

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

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

23 (a) That the manufacturer shall make rebate payments for each prescription
24 drug of the manufacturer that is prescribed for persons who are eligible under sub.

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1 (2), to the state treasurer to be credited to the appropriation under s. 20.435 (4) (j),
2 each calendar quarter or according to a schedule established by the department.

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

5 **(8)** From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
6 March 1, 2002, the department shall, under a schedule that is identical to that used
7 by the department for payment of pharmacy provider claims under medical
8 assistance, provide to pharmacies and pharmacists payments for prescription drugs
9 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
10 paid the deductible specified under sub. (3) (a) 2. The payment for each prescription
11 drug under this subsection shall be at the rate specified in sub. (6) (a), minus the
12 amount of a copayment charged under sub. (6) (b) 2., plus a dispensing fee, as
13 specified in sub. (6) (b) 1. The department shall devise and distribute a form for
14 reports by pharmacies and pharmacists under this subsection and may limit
15 payment under this subsection to those prescription drugs for which payment claims
16 are submitted by pharmacies or pharmacists directly to the department. The
17 department may apply to the program under this section the same utilization and
18 cost control procedures that apply under rules promulgated by the department to
19 medical assistance under subch. IV.

20 **(9)** The department shall, under methods promulgated by the department by
21 rule, monitor compliance by pharmacies and pharmacists that are certified providers
22 of medical assistance with the requirements of sub. (5) and shall annually report to
23 the legislature under s. 13.172 (2) concerning the compliance. The report shall
24 include information on any pharmacies or pharmacists that discontinue

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1 participation as certified providers of medical assistance and the reasons given for
2 the discontinuance.

3 **(10)** (a) The department shall promulgate rules relating to prohibitions on
4 fraud that are substantially similar to applicable provisions under s. 49.49 (1) (a).

5 (b) A person who is convicted of violating a rule promulgated by the department
6 under par. (a) in connection with that person's furnishing of prescription drugs under
7 this section may be fined not more than \$25,000, or imprisoned for not more than 7
8 years and 6 months, or both.

9 (c) A person other than a person specified in par. (b) who is convicted of violating
10 a rule promulgated by the department under par. (a) may be fined not more than
11 \$10,000, or imprisoned for not more than one year, or both.

12 **(11)** If federal law is amended to provide coverage for prescription drugs for
13 outpatient care as a benefit under medicare or to provide similar coverage under
14 another program, the department shall submit to appropriate standing committees
15 of the legislature under s. 13.172 (3) a report that contains an analysis of the
16 differences between such a federal program and the program under this section and
17 that provides recommendations concerning alignment, if any, of the differences.

18 **(12)** After February 28, 2002, and before March 1, 2004, the department may
19 not subject a manufacturer that enters into a rebate agreement under sub. (7) to prior
20 authorization requirements for a prescription drug under this section that are an
21 expansion of prior authorization requirements in effect under the medical assistance
22 program on March 1, 2002.

23 **(13)** Except as provided in subs. (9) to (12), and except for the department's
24 rule-making requirements and authority, the department may enter into a contract

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1 with an entity to perform the duties and exercise the powers of the department under
2 this section.

3 **SECTION 15. Nonstatutory provisions.**

4 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before July 1,
5 2001, the department of health and family services may develop and submit to the
6 department of administration a proposal for expenditure of the funds appropriated
7 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
8 assistance for elderly program under section 49.688 of the statutes, as created by this
9 act. The department of administration may approve, disapprove, or modify and
10 approve any proposal it receives under this subsection. If the department of
11 administration approves the proposal, the department shall submit the proposal,
12 together with any modifications, to the cochairpersons of the joint committee on
13 finance. If the cochairpersons of the committee do not notify the secretaries of
14 administration and health and family services within 14 working days after
15 receiving the proposal that the cochairpersons have scheduled a meeting for the
16 purpose of reviewing the proposal, the secretary of administration may transfer from
17 the appropriation under section 20.865 (4) of the statutes to the appropriation under
18 section 20.435 (4) (a) of the statutes the amount specified in the proposal or any
19 proposed modifications of the proposal for expenditure as specified in the proposal
20 or any proposed modifications of the proposal and may approve any position
21 authority specified in the proposal or any proposed modifications of the proposal. If,
22 within 14 working days after receiving the proposal, the cochairpersons notify the
23 secretaries of administration and health and family services that the cochairpersons
24 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
25 administration may not transfer any amount specified in the proposal or any

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1 proposed modifications of the proposal from the appropriation under section 20.865
2 (4) of the statutes and may not approve any position authority specified in the
3 proposal or any proposed modifications of the proposal, except as approved by the
4 committee.

SECTION 16. Appropriation changes.

6 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
7 under section 20.005 (3) of the statutes for the appropriation to the joint committee
8 on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1999,
9 the dollar amount is increased by \$2,000,000 for fiscal year 2001–02 to increase
10 funding for administration of the prescription drug assistance for elderly program
11 under section 49.688 of the statutes, as created by this act.

SECTION 17. Initial applicability.

13 (1) MEDICAL ASSISTANCE ELIGIBILITY. The treatment of section 49.47 (4) (aq), (b)
14 2m. b., 2r., 2w., and 3., (c) 1. and 3., and (i) 2. (intro.) of the statutes first applies to
15 eligibility determinations made for medical assistance on the effective date of this
16 subsection.

17 **SECTION 18. Effective date.** This act takes effect on the 2nd day after
18 publication of the biennial budget act, except as follows:

19 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY. The treatment of section 20.435
20 (4) (bv) of the statutes takes effect on March 1, 2002.

21 (2) MEDICAL ASSISTANCE ELIGIBILITY. The treatment of section 49.47 (4) (aq), (b)
22 2m. b., 2r., 2w., and 3., (c) 1. and 3., and (i) 2. (intro.) of the statutes and SECTION 17
23 (1) of this act take effect on March 1, 2002.

24 (END)