

2001 DRAFTING REQUEST

Bill

Received: **11/30/2000**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Scott Becker**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters: **isagerro**

Subject: **Health - miscellaneous
Public Assistance - med. assist.**

Extra Copics:

Pre Topic:

No specific pre topic given

Topic:

Prescription drug program for elderly

Instructions:

Draft 1999 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 01/25/2001	wjackson 01/25/2001		_____			S&L
/1			kfollet 01/25/2001	_____	lrb_docadmin 01/25/2001		S&L
/2	kenneda 01/30/2001	wjackson 01/30/2001	pgreensl 01/30/2001	_____	lrb_docadmin 01/30/2001	lrb_docadmin 02/05/2001	S&L
				_____		lrb_docadmin 02/07/2001	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	kenneda 02/09/2001	wjackson 02/09/2001	haugeca 02/09/2001	_____	lrb_docadmin 02/09/2001	lrb_docadmin 02/09/2001	

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/?	kenneda 01/25/2001	wjackson 01/25/2001					S&L
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PG

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FE Sent For:

<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.

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:

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)

1/4/01 From Scott Becker:

① OK to speak w/ LFB

② Starting date: April 1, 2002

To discuss w/ Rachel Carabell: 1/24

✓ ① Figures for appropriations

- Include approp increase due to prior authority limits (Yes)

- Biennial? (No)

pk ② Utilization + cost control language from SB-1282/2:
what does this refer to? Relevant to this draft? (Yes)

✓ ③ Michael Heifetz language re prior authorizations
(i.e., that DHP, in new program, may not expand
prior auth. regts that were in effect under MA program
for identical drugs on Mar 1, 2002)

④ For sum certain, what about: wait lists

proportion? (D Note)

Approp increase:

20.435(4)(b)

3,600,000

16,100,000

To reflect increased cost of MA as result of
limiting prior authority.

20.435(4)(bv)

8,900,000

26,400,000

From Scott Becker 1/19/01

Permission to add, from 2001 SB 1, these:

- 49.688(2) ✓ ① Household income
- " ✓ - as determined by DHS
- (4) ✓ - under criteria by rule
- (2) ✓ - for family size of elig. person's family
- (3)(a) ✓ ② 12-mo benefit period
- (3)(b) ✓ ③ Payor of last resort language
- (10) ✓ ④ Fraud provisions
- " ✓ ⑤ Penalties
- (11) ✓ ⑥ Report, if fed law is changed
- X ⑦ Rebate info given out
- X ⑧ Incentive payments
- ✓ ⑨ Mechanism for it-fin. to give out \$ to DHS
- ⑩ Utilization + cost controls 49.688(8)

Note: If have a sum certain, any mechanism for determining what to do if money runs out?
Wait lists? Proportion?

DAK: list all above in D-Note

2001

Date (time)
needed

TODAY,
by 4:30,
please

LRB - 1284 / 1

DAK: Wlj

BILL

D-NOTE

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ;* and *to create . . .* of the statutes; relating to:

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

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

SECTION #.

**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.

regenerate

specifying requirements for

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 ^{and} to enter into rebate agreements with
9 drug manufacturers; limiting prior authorization requirements under medical
10 assistance; ^{requiring the exercise of rule-making authority;} and making appropriations.

INSERT A ✓

; and providing penalties

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

INSERT 1-10

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
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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
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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
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16 (7), the department may not expand the prior authorization requirements for
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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.

and the individual is 65 years of age or older or
is blind or totally and permanently disabled,
as defined under federal Title XVI

3

March 1, 2004

February 28, 2002

March 1, 2002

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%~~ ^{133.33%} 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.~~ ^{plan} 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).

SECTION 13

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

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

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

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

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

1. ~~Annually~~, a program enrollment fee of \$25.

2. ~~Annually~~, a deductible of \$840.

3. ~~After payment of the deductible under~~ ^{Subd. 2.} ~~part (b)~~, all of the following:

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

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

(4) The department shall devise and distribute a form for application for the program under sub. (2), shall determine eligibility of applicants and shall issue to eligible persons a prescription drug card for use in purchasing prescription drugs, as specified in sub. (5). The department shall promulgate rules that specify the criteria to be used to determine annual household income under sub. (2).

INSERT
5-21

for a family the size of the person's eligible family

not a recipient of

annual household

For each 12-month benefit period

, as determined by the department,

for each person

for each 12-month benefit period

March 1, 2002

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,
 ⑬ that is specified in sub. (3) ~~(b) 6. h.~~

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

(a) 2. ✓

(a) 3. a. m. b

(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). March 1, 2002

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~~ INSERT 7-14 ✓

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. INSERT 7-17

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 INSERT 7-23 (6) (11) (14) 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

, under methods ~~that are~~ promulgated by the department by rule,

February 28, 2002

March 1, 2004

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).

INSERT
8-2V

3 ⁽¹²⁾ ~~(11)~~ After ~~June 30, 2001~~, and before ~~July 1, 2003~~, the department may not
4 ~~under sub. (11)~~ 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. *under this section that are an expansion of prior authorization requirements in effect under the medical assistance program on March 1, 2002*

7 ⁽¹³⁾ ~~(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.

(12) and except for the department's rule-making requirements and authority

INSERT 8-9

INSERT 8-10

SECTION 14. Appropriation changes.

11 ⁽²⁾ ~~(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~~ ²⁰⁰¹⁻⁰² 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.

^{A.R. (A)}
SECTION 15. Initial applicability.

17 *Medical assistance eligibility. (cs)*
18 ^{A.R. (B)} (1) ^{a.} The treatment of section 49.47 (4) (aq), (b) 2m. b., 2r., 2w, and 3., (c) 1. and
19 3^v, and (i) ⁽²⁾ (intro.) of the statutes first applies to eligibility determinations made
20 for medical assistance on ^{the effective date of this subsection} ~~July 1, 2001~~.

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~~ ^{March 1, 2002}

(END)

D-NOTE

Insert
8-25

FROM THE

LEGISLATIVE REFERENCE BUREAU

.....

Under the MA program numerous prescription drugs must be authorized by DHFS prior to being dispensed to MA recipients.

INSERT A

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 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.

INSERT J
ISRA

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 copayment made, plus a dispensing fee. If a manufacturer enters into a rebate agreement, DHFS may not, after February 28, 2004, 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 MA on ^{the} ^{program} 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 moncy.

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

for administration of the program

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1284/?insISR
ISR:.....

Insert ISR-A

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 ~~January~~^{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.

File With Statute **20.005 (3)** Schedule

\$\$\$ SCHEDULE

In the component bar:

For the action phrase, execute: create → action: → ch20

For the table layout, execute: create → <Table> → \$sched

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

2001-02 2002-03

20. 435 . Health and family services ¹
 Department of

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

(bv) Prescription drug
assistance for elderly;
aids

GPE A \$,900,000 26,400,000

20.
.....
()
.....
()
.....
.....

INSERT 5-21

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

INSERT 7-14

No 11

provide to pharmacies and pharmacists payments

for prescription drugs sold by the pharmacies or

pharmacists to persons eligible under sub.

(2) who have paid the deductible specified under

sub. (3)(a) 2. The payment for each prescription

drug under this subsection shall be

INSERT 7-17

not and may limit payment under this subsection
to those prescription drugs for which payment
claims are submitted by pharmacists or
pharmacies directly to the department. The
department may apply to the program under this
section the same utilization and cost control
procedures that apply under rules promulgated
by the department to medical assistance
under sub ch. IV.

INSERT 7-23

¶ (10) (a) ⁽¹³⁾ The department shall promulgate rules relating to prohibitions on fraud that are substantially similar to applicable provisions under s. 49.49(1)(a).

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

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

INSERT 8-2

No
ff

a report that contains an analysis of the differences between such a federal program and the program under this section and that provides recommendations concerning ^{alignment} alignment, if any, of the differences

IN SECT 8-9

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

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

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

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

16 (11) Except as provided in subs. (8) to (10) and except for the department's
17 rule-making requirements and authority, the department may enter into a contract
18 with an entity to perform the duties and exercise the powers of the department under
19 this section.

20 SECTION 7. Nonstatutory provisions.

21 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before July 1,
22 ~~2002~~ ²⁰⁰¹, the department of health and family services may develop and submit to the
23 department of administration a proposal for expenditure of the funds appropriated
24 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
25 assistance for elderly program under section 49.688 of the statutes, as created by this



(p. 2 of 2)

SENATE BILL 1

INSERT 8-9

1 act. The department of administration may approve, disapprove, or modify and
 2 approve any proposal it receives under this subsection. If the department of
 3 administration approves the proposal, the department shall submit the proposal,
 4 together with any modifications, to the cochairpersons of the joint committee on
 5 finance. If the cochairpersons of the committee do not notify the secretaries of
 6 administration and health and family services within 14 working days after
 7 receiving the proposal that the cochairpersons have scheduled a meeting for the
 8 purpose of reviewing the proposal, the secretary of administration may transfer from
 9 the appropriation under section 20.865 (4) of the statutes to the appropriation under
 10 section 20.435 (4) (a) of the statutes the amount specified in the proposal or any
 11 proposed modifications of the proposal for expenditure as specified in the proposal
 12 or any proposed modifications of the proposal and may approve any position
 13 authority specified in the proposal or any proposed modifications of the proposal. If,
 14 within 14 working days after receiving the proposal, the cochairpersons notify the
 15 secretaries of administration and health and family services that the cochairpersons
 16 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
 17 administration may not transfer any amount specified in the proposal or any
 18 proposed modifications of the proposal from the appropriation under section 20.865
 19 (4) of the statutes and may not approve any position authority specified in the
 20 proposal or any proposed modifications of the proposal, except as approved by the
 21 committee.

SECTION 8. Appropriation changes.

22
 23 (1) ~~PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION.~~ In the schedule
 24 under section 20.005 (3) of the statutes for the appropriation to the department of
 25 health and family services under section 20.435 (4) (a) of the statutes, as affected by

End of
INSERT 8-9

2001

INSERT 8-10

Nonstat File Sequence: **DDD**

LRB _____/____

\$\$\$ CHANGE

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → \$change

For the budget action phrase, execute: create → action: → *NS: → 92XX

For the text, execute: create → text: → *NS: → \$change

2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9200 department code.

SECTION # [92]. Appropriation changes;

(#1) ^(CS) P.R.I.O.R. AUTHORIZATION; MEDICAL ASSISTANCE

In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and family services

under section 20.435 (4)(b) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$ 3,600,000 for fiscal year 2001-02 and the dollar amount is increased by \$ 16,100,000 for fiscal year 2002-03 to increase funding

for the purposes for which the appropriation is made to increase funding for as the result of limiting prior authorization for prescription drugs

* Use the 2nd alternative if the purpose of the increase or decrease is more limited than the purpose or purposes of the appropriation as currently shown in the text of ch. 20, stats.

Insert 8-25

^(CS)
*
(17) Medical assistance eligibility. The treatment
of section 49.417 (4)(a), (b) 2m, b., 2r., 2w., and
3., (c) 1. and 3., and (i) ~~2.~~ (Intro.) of the
statutes and ^{(CS) A.R. (A) A.R. (B)} Section 15(1) of this act taken
effect on March 1, 2002.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1284/?dn

.....

WLJ

To Representative Wieckert:

As I have explained to your aide, Scott Becker, this bill includes several provisions that also appear in 2001 SB¹, which are, in effect, refinements to the concept of funding for prescription drugs or are changes that make the bill "work" in a better fashion. The changes are these:

1. The potential program participant's income is treated as annual household income, as determined by DHFS, under criteria promulgated as rules by DHFS (see s. 49.688 (2) and (4)).

2. The potential program participant's income limitation is at 185% of the poverty line *for a family the size of the person's eligible family* (see s. 49.688 (2)); the italicized language ensures that only the household income of the persons in a family that are eligible for the benefit will be counted. Thus, it would cover an 80-year-old woman with an income of 175% of the poverty line who is paying for her own prescription drugs but is living in a room of a house belonging to her 40-year-old daughter who makes \$40,000 a year.

3. The period of the benefit is specified as 12 months (see s. 49.688 (3) (a)); that means that it is a "rolling" benefit period, i.e., ~~that~~ a person may apply in May and begin eligibility June 1 instead of waiting for the onset of the calendar year on January 1; this "rolling" benefit period is administratively simpler for DHFS because it can find people eligible throughout the year rather than having to determine an avalanche of applications in December.

4. I have included "payor of last resort" language (see s. 49.688 (3) (b)) to ensure that persons do not have duplicate coverage.

5. I have included fraud provisions and penalties for their violation (see s. 49.688 (10)).

6. The requirements for the report that DHFS must provide to the legislature if similar federal law is enacted are expanded (see s. 49.688 (11)).

7. I have included a mechanism under which joint finance may provide administrative funds to DHFS without requiring that DHFS go through a s. 13.10 procedure (which would require joint finance to make a finding of emergency) (see the Nonstatutory provisions).

8. I have included the authorization for DHFS to apply to the prescription drug program the same utilization and cost control procedures that it uses under MA; these utilization and cost control procedures are cost-saving mechanisms that DHFS employs in addition to prior authorization (see s. 49.688 (8)); okay?

This bill contains a sum certain appropriation for the funding of the program. Are you interested in having any mechanism included for determining what action should be taken if the money is insufficient, such as waiting lists or proration?

Please let me know if I may provide further assistance with respect to this bill.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us