

2001 DRAFTING REQUEST

Bill

Received: **09/08/2000**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Herself**

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

Drafter: **kenneda**

May Contact:

Alt. Drafters: **isagerro
gibsom**

Subject: **Health - miscellaneous
Health - long-term care
Trade Regulation - other**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Prescription drugs for elderly; annual report on sale of certain drugs

Instructions:

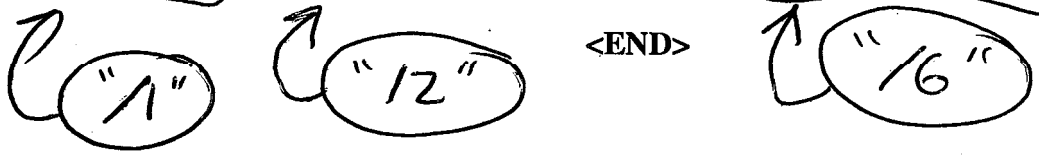
See Attached

Drafting History:

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01-30-01
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 A right-facing curly bracket groups the last two dates.
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 Inside the second bracket is the handwritten text "/2".
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PEGGY KRUSICK
STATE REPRESENTATIVE

TO: Debora Kennedy
FROM: Peggy Krusick
DATE: August 30, 2000
SUBJECT: Senior prescription drug bill

Please redraft Assembly Substitute Amendment 2, To 1999 Assembly Bill 815 with the following changes for the 2001-2002 session. A copy of the former bill that passed in the Assembly on March 7, 2000, is attached.

- ✓ • Delete language that prohibits the Department of Health and Family Services from expanding prior authorization for specified prescription drugs (Page 2, Lines 13-19).
- ✓ • Lower annual deductible from \$840 to \$600 (Page 5, Line 16).
- ✓ • Include a "spend down" provision. This provision would allow individuals and couples who don't meet the income requirements (\$15,448 individual/\$20,813 couple) to deduct their out-of-pocket prescription drug costs from their eligible income. For example, someone who has an income of \$16,448 and meets all other requirements would be eligible for this program after spending \$1,000 on prescriptions covered under the program.
- ✓ • Include the attached language (LRB-4452/2) which requires the Department of Agriculture, Trade and Consumer Protection to report annually on drug sellers' compliance with the state drug price discrimination law and whether retailers have passed any savings on to consumers that resulted from this compliance. The report will also describe programs that offer discounts on prescription drugs to consumers.

Please contact me if you have any questions. Thank you for your help.

**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)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4452/2
MGG:kmg:kjf

1999 BILL

1 **AN ACT to create** 100.31 (2m) of the statutes; **relating to:** requiring an annual
2 report on the sale and pricing of certain drugs and programs that offer discounts
3 on drugs to consumers.

Analysis by the Legislative Reference Bureau

Under current law, a seller who sells drugs that are on the list of therapeutically equivalent drugs published by the federal food and drug administration to any purchaser in this state, who in turn sells the drugs to consumers, must offer the drugs to all such purchasers. These sellers must also offer the same prices, rebates or similar incentives for purchasing these drugs to all of these purchasers.

This bill requires that the department of agriculture, trade and consumer protection (DATCP) prepare an annual report to be submitted to the governor and the legislature on how sellers have complied with these requirements and on whether state retailers has passed on to consumers any savings resulting from these pricing requirements. The report must also describe programs that offer discounts on drugs to consumers and DATCP must publicize these programs to consumers.

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:

BILL**SECTION 1**

1 **SECTION 1.** 100.31 (2m) of the statutes is created to read:

2 **100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.**

3 Before March 1 annually, the department shall submit a report to the governor, and
4 to the chief clerk of each house for distribution to the appropriate standing
5 committees under s. 13.172 (3), on compliance of sellers with sub. (2) and on whether
6 purchasers have passed on to consumers any savings resulting from sellers'
7 compliance with sub. (2) during the preceding year. The report shall also describe
8 programs offered by sellers and others that offer discounts on drugs to consumers.
9 Within the limits of available resources, the department shall publicize these
10 programs to consumers. In preparing the report, the department shall consult with
11 sellers, purchasers and consumers, including elderly consumers.

12

(END)

9/19/00 From Christian - additional change to bill
change income requirements to \$30,000 -
like homestead; spenddown provision
applies - see Sen. Clausen's bills

9/21 From Christian
① Put \$-0- in schedule for gov approp.
② New eff date: 1/1/02



2001 BILL

LPS: Inserts are
out of order.

1 AN ACT ..., relating to: ???

Analysis by the Legislative Reference Bureau

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

2 (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.

regenerate

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 1-10

INSERT 1-11

11

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

INSERT A

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%~~^{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, blind₂ 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, blind₂ 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 ~~\$300~~.

\$600

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 (5).[✓] ^{note} The department shall promulgate rules that
specify the criteria to be used to determine household
income under sub. (2) (a) 4.

INSERT
5-13

January 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:

annually

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. ^{NO} dispensing fee, as specified under
18 sub. 10, may be charged to a person under this subdivision.

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

23 (7) The department or an entity with which the department contracts may
24 enter into a rebate agreement that is modeled on the rebate agreement specified
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~~, ²⁰⁰² 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

January

December 31

of an eligible person under sub. (2)

1 another program, the department shall submit a report concerning this fact to ^{the} appropriate standing committees of the legislature under s. 13.172 (3). 2004

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

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

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

INSERT D

STET

\$1,000,000

10 SECTION 14. Appropriation changes.

11 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule under section 20.005 (3) of the statutes for the appropriation to the joint committee on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of ~~1999~~, 2001 the dollar amount is increased by ~~\$2,000,000~~ for fiscal year ~~2000-01~~ to increase funding for administration of the prescription drug assistance for elderly program under section 49.688 of the statutes, as created by this act.

17 SECTION 15. Initial applicability.

January

2001-02

18 (1) The treatment of section 49.47 (4) (aq), (b) 2m. b., 2r., 2w., and 3., (c) 1. and 3. and (i) (2) (intro.) of the statutes first applies to eligibility determinations made for medical assistance on ~~July 1, 2001~~. 2002

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

January

24 (4) (bv) of the statutes takes effect on ~~July 1, 2001~~. 2002

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0185/1dn
DAK/ISR/MGG.....

Wj

Under your revised instructions,

to January 1, 2002, to June 30, 2004,

2001-02

January

To Representative Krusick:

1. I changed the initial applicability and effective date for the program to ~~July~~ 1, 2002, and specified that the funding is for fiscal year ~~2002-03~~; okay?

2. As requested, I deleted the prior authorization requirements with respect to medical assistance; however, I left untouched the prior authorization requirements for the prescription drug program itself (see s. 49.688 (11)); okay? Note also that I advanced the dates ~~by one year~~ under that subsection.

3. As part of the "spenddown" language, I included in s. 49.688 (4) a requirement that DHFS promulgate rules that specify the criteria to be used to determine the household income of an applying person. I also excluded this rulemaking requirement and the DHFS' general rule-making authority from the powers of an entity with which DHFS may contract to administer the program.

4. Because s. 49.688 (8) requires that DHFS pay pharmacies and pharmacists a dispensing fee under the program, I have added to s. 49.688 (6) (b) 2. a provision that prohibits pharmacies and pharmacists from charging eligible persons dispensing fees. (Pharmacies and pharmacists may charge dispensing fees for drug purchases for amounts that can be added to reach both the spenddown and the annual deductible, but is excluded after a person meets the deductible amount, so that pharmacies and pharmacists aren't reimbursed both by the consumer and by DHFS.)

5. Section 16.47 (2), stats., does not permit either house of the legislature to pass a bill that contains an appropriation of or increases the cost of state government by more than \$10,000, except for emergency appropriations bills, until the budget bill has passed both houses. If this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will, as part of the enacted act, be repealed by action of the budget bill (which repeals and recreates the appropriations schedule) unless you have also amended the budget bill to include the correct appropriation line amount. You may, instead, wish to consider having this bill redrafted as an amendment to the budget bill. Alternatively, you may, instead, wish to include an effective date for the bill that is later than the projected date for passage of the budget bill. Last, you may, instead, wish to introduce this bill after passage of the budget bill; if that is done, please check with me after budget bill passage to ensure

(The general effective date is upon publication, although the program is, in the text, specified to begin January 1, 2002)

Even though the appropriation under s. 20435(4)(b) shows zero dollar amounts, at your request,

that the numbers for created statutes in this bill have not been supplanted by the budget bill.

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

INSERT 1-10

(MA)

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to ~~medical assistance 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 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 ~~July~~ ^{January} 1, 2002, this bill increases to 200% of the federal poverty level the maximum income level for eligibility for MA for individuals 65 years of age or older.

The bill specifies that, beginning ~~July~~ ^{January} 1, 2002, 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 household incomes, as determined by DHFS, that do not exceed ~~185% of the federal poverty line~~ ^{\$30,000}. A person with a household income of more than ~~185% of the federal poverty line~~ may also be eligible for enrollment if ~~185% of the federal poverty line~~ is the figure that results from multiplying by four the total amount of his or her prescription drug costs for three consecutive months in the 12-month period prior to application for enrollment and subtracting the resulting amount from his or her household income. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income. 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 household deductible of \$600 for drugs at the reduced charge and a copayment of \$10 for each generic drug and \$20 for each drug that is not a generic drug. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the amounts that may be charged for providing the specified prescription drugs and must periodically update this information and transmit the updated information to

INSERT
A1

1999 BILL

INSERT A

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~~AN ACT to create~~ 100.31 (2m) of the statutes; ~~relating to~~ requiring an annual report on the sale and pricing of certain drugs and programs that offer discounts on drugs to consumers

Analysis by the Legislative Reference Bureau

Currently

~~Under current law~~, a seller who sells drugs that are on the list of therapeutically equivalent drugs published by the federal food and drug administration to any purchaser in this state, who in turn sells the drugs to consumers, must offer the drugs to all such purchasers. These sellers must also offer the same prices, rebates or similar incentives for purchasing these drugs to all of these purchasers.

At lastly, the

~~This~~ bill requires that the department of agriculture, trade and consumer protection (DATCP) prepare an annual report to be submitted to the governor and the legislature on how sellers have complied with these requirements and on whether state retailers ^{have} passed on to consumers any savings resulting from these pricing requirements. The report must also describe programs that offer discounts on drugs to consumers and DATCP must publicize these programs to consumers.

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 A1

INSERT A2

BOTH TO INSERT 1-10

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,
..... department of

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

(bv) Prescription drug assistance
for elderly; aids

..... GPR A -0- -0-

20. _____

() _____

() _____

.....

Under the bill,

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~~, ^{may} 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.

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 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~~ ²⁰⁰²⁻⁰³ 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.

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INSERT 5-13

2

(2) (a) A person to whom all of the following applies is eligible to purchase a prescription drug at the amounts specified in sub. (6) (b):

3

4

1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

5

2. The person is at least 65 years of age.

6

3. The person is ineligible for medical assistance.

7

4. The person's household income, as determined by the department, does not

8

exceed ~~185%~~ ^{\$30,000} of the poverty line, unless the amount that results from the following

9

calculation is ~~185%~~ ^{January} of the poverty line or less:

December 31, 2001

Not

After ~~year 2000~~, and before ~~year~~ 1, 2004, DHFS is prohibited from subjecting a drug manufacturer that enters into a rebate agreement to prior authorization requirements for the manufacturer's drugs that are prescribed under the Program.

- 1 . a. The total amount of the person's prescription drug costs for 3 consecutive
- 2 months in the 12 months immediately preceding the month in which the person
- 3 applies under this paragraph[✓] is multiplied by 4.
- 4 b. The result under subd. 4. a.[✓] is subtracted from the person's income.
- 5 5. The person pays the program enrollment fee specified in sub. (3) (a).[✓]

BILL

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~~#~~
SECTION 1. 100.31 (2m) of the statutes is created to read:

100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.

Before March 1 annually, the department shall submit a report to the governor^{STET} and to the chief clerk of each house for distribution to the appropriate standing committees under s. 13.172 (3), on compliance of sellers with sub. (2) and on whether ^{STET} purchasers^{retailers} have passed on to consumers any savings resulting from sellers' compliance with sub. (2) during the preceding year. The report shall also describe programs offered by sellers and others that offer discounts on drugs to consumers. Within the limits of available resources, the department shall publicize these programs to consumers. In preparing the report, the department shall consult with sellers, ^{retailers} purchasers^{STET} and consumers, including elderly consumers.

~~END~~

INSERT D

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0185/1dn
DAK:wlj:km

September 21, 2000

To Representative Krusick:

1. Under your revised instructions, I changed the initial applicability and effective date for the program to January 1, 2002, and specified that the funding is for fiscal year 2001-02; okay?

2. As requested, I deleted the prior authorization requirements with respect to medical assistance; however, I left untouched the prior authorization requirements for the prescription drug program itself (see s. 49.688 (11)); okay? Note also that I advanced the dates to January 1, 2002, to June 30, 2004, under that subsection.

3. As part of the "spenddown" language, I included in s. 49.688 (4) a requirement that DHFS promulgate rules that specify the criteria to be used to determine the household income of an applying person. I also excluded this rule-making requirement and DHFS's general rule-making authority from the powers of an entity with which DHFS may contract to administer the program.

4. Because s. 49.688 (8) requires that DHFS pay pharmacies and pharmacists a dispensing fee under the program, I have added to s. 49.688 (6) (b) 2. a provision that prohibits pharmacies and pharmacists from charging eligible persons dispensing fees. (Pharmacies and pharmacists may charge dispensing fees for drug purchases for amounts that can be added to reach both the spenddown and the annual deductible, but are excluded after a person meets the deductible amount, so that pharmacies and pharmacists aren't reimbursed both by the consumer and by DHFS.)

5. Section 16.47 (2), stats., does not permit either house of the legislature to pass a bill that contains an appropriation of or increases the cost of state government by more than \$10,000, except for emergency appropriations bills, until the budget bill has passed both houses. Even though the appropriation under s. 20.435 (4) (bv) shows zero dollar amounts, at your request, if this bill is introduced and enacted as an emergency measure prior to passage of the budget, that appropriation will, as part of the act, be repealed by action of the budget bill (which repeals and recreates the appropriations schedule) unless you have also amended the budget bill to include the correct appropriation line amount. You may, instead, wish to consider having this bill redrafted as an amendment to the budget bill. Alternatively, you may wish to include an effective date for the bill that is later than the projected date for passage of the budget bill (the general effective date is upon publication, although the program is, in

the text, specified to begin January 1, 2002). Last, you may, instead, wish to introduce this bill after passage of the budget bill; if that is done, please check with me after budget bill passage to ensure that the numbers for created statutes in this bill have not been supplanted by the budget bill.

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

10/23/00

Redraft - 0185/1

From Peggy Krusick:

① Eliminate prior authorization limitations

② Max. income for MA eligibles shd. be 100%
fed. pov. line

③ Copayment - ~~shd. be~~ \$10, rather than \$5
??

From Tom Frasier: make copayments \$5 + \$10,
rather than \$10 + \$20

Memo

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

Attached is a fiscal estimate prepared for a draft has yet been introduced.

LRB Number: LRB 01 -0185 / 1

Entered In Computer And Copy Sent To Requestor: 10 / 13 / 00

Fiscal Estimate Prepared By: (agency abbr.) DATCP

PA's If this is re-drafted to a new version please attach this early fiscal estimate to the back of the draft's file.

PA's If this draft gets introduced please write the drafts intro. number below and give this fiscal estimate to Mike (or Landon) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 _____

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number LRB-0185/1 (Section 14)	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Subject

DATCP required to provide an annual report on the sale and pricing of certain drugs and programs that offer discounts on drugs to consumers.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.115(1)(a)

Assumptions Used in Arriving at Fiscal Estimate

This bill specifies that, as a condition of participation by a pharmacy or pharmacist in the Medical Assistance program, the pharmacy or pharmacist must limit their prices to within a certain percentage of the average wholesale price.

In addition, the bill requires that DATCP prepare an annual report to be submitted to the governor and legislature on how sellers have complied with s. 100.31(2), stats and on whether state retailers have passed on to consumers any savings resulting from these pricing requirements. This subsection requires drug manufactures and wholesalers to offer prescription drugs to every "purchaser" all the rights and privileges offered or accorded by the seller to the most favored purchaser, including prices for similar volume purchases, rebates, free merchandise, samples and similar trade concessions.

The report must also describe programs that offer discounts on drugs to consumers and DATCP must publicize these programs to consumers.

The fiscal effects of this bill would be minimal. The department would simply need to prepare an annual report on its wholesale drug pricing enforcement program.

Long-Range Fiscal Implications

Prepared By: Kevin LeRoy	Telephone No. (608)224-4928	Agency DATCP
Authorized Signature <i>Barbara Knapp</i>	Telephone No. (608)224-4746	Date (mm/dd/ccyy) 10/12/08



TODAY, if possible 10/24

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0185/2

DAK/ISR/MGG: ~~wj~~

2001 BILL

wj/cjs

LPS:
please proof
w/ folio all
sections
containing
amended
text

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), 49.47 (4) (aq), 49.688 and 100.31
4 (2m) of the statutes; relating to: expanding medical assistance income
5 eligibility requirements for elderly persons; requiring pharmacies and
6 pharmacists, as a condition of medical assistance participation, to charge
7 elderly, low-income persons for prescription drugs no more than specific
8 amounts; authorizing the department of health and family services to enter
9 into rebate agreements with drug manufacturers; requiring an annual report
10 on the sale and pricing of certain drugs and programs that offer discounts on
11 drugs to consumers; and making appropriations.

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

BILL

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 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.

Currently, a seller who sells drugs that are on the list of therapeutically equivalent drugs published by the federal food and drug administration to any purchaser in this state, who in turn sells the drugs to consumers, must offer the drugs to all such purchasers. These sellers must also offer the same prices, rebates, or similar incentives for purchasing these drugs to all of these purchasers.

Beginning January 1, 2002, this bill increases to 200% of the federal poverty level the maximum income level for eligibility for MA for individuals 65 years of age or older.

The bill specifies that, beginning January 1, 2002, 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 household incomes, as determined by DHFS, that do not exceed \$30,000. A person with a household income of more than \$30,000 may also be eligible for enrollment if \$30,000 is the figure that results from multiplying by four the total amount of his or her prescription drug costs for three consecutive months in the 12-month period prior to application for enrollment and subtracting the resulting amount from his or her household income. DHFS must, under the bill, promulgate rules that specify the criteria to be used to determine household income. 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 household deductible of \$600 for drugs at the reduced charge and a copayment of ~~\$10~~ for each generic drug and ~~\$20~~ for each drug that is not a generic drug. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the amounts that may be charged for providing the specified prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge low-income persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance.

DHFS may, under the bill, enter with drug manufacturers into rebate agreements, which are modeled on federal medicaid rebate agreements, under which

100%

\$10

\$5

BILL

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. ~~After December 31, 2001, and before January 1, 2004, DHFS is prohibited from subjecting a drug manufacturer that enters into a rebate agreement to prior authorization requirements for the manufacturer's drugs that are prescribed under the program.~~

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 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 2002-03 to DHFS for administration of the program.

Lastly, the bill requires that the department of agriculture, trade and consumer protection (DATCP) prepare an annual report to be submitted to the governor and the legislature on how sellers have complied with requirements and on whether state retailers have passed on to consumers any savings resulting from these pricing requirements. The report must also describe programs that offer discounts on drugs to consumers and DATCP must publicize these programs to consumers.

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

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

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

BILL

2001-02 2002-03

**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 -0- -0-

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 (2), to be used for administration of the program under s. 49.688.

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

49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the limitation on income under par. (c) is eligible for medical assistance if the individual

BILL

1 is 65 years of age or older, and the individual's income does not exceed 100% of the
2 federal poverty level.

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

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

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

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

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

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

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

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

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

BILL

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

2 49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
3 subd. 3., eligibility exists if income does not exceed ~~133 1/3%~~ 133.33% of the
4 maximum aid to families with dependent children payment under s. 49.19 (11) for
5 the applicant's family size or the combined benefit amount available under
6 supplemental security income under 42 USC 1381 to 1383c and state supplemental
7 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned
8 or unearned income that would be included in determining eligibility for the
9 individual or family under s. 49.19 or 49.77, or for the aged, blind, or disabled under
10 42 USC 1381 to 1385. "Income" does not include earned or unearned income which
11 would be excluded in determining eligibility for the individual or family under s.
12 49.19 or 49.77, or for the aged, blind, or disabled individual under 42 USC 1381 to
13 1385.

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

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

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

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

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

24 **49.688 Prescription drug assistance for low-income elderly persons.**

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

BILL

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

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

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

7 (2) (a) A person to whom all of the following applies is eligible to purchase a
8 prescription drug at the amounts specified in sub. (6) (b):

9 1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

10 2. The person is at least 65 years of age.

11 3. The person is ineligible for medical assistance.

12 4. The person's household income, as determined by the department, does not
13 exceed \$30,000, unless the amount that results from the following calculation is
14 \$30,000 or less:

15 a. The total amount of the person's prescription drug costs for 3 consecutive
16 months in the 12 months immediately preceding the month in which the person
17 applies under this paragraph is multiplied by 4.

18 b. The result under subd. 4. a. is subtracted from the person's income.

19 5. The person pays the program enrollment fee specified in sub. (3) (a).

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

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

22 (b) Annually, a deductible of \$600.

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

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

\$5

BILL

\$10

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

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

8 (5) Beginning January 1, 2002, as a condition of participation by a pharmacy
9 or pharmacist in the program under ss. 49.45, 49.46, or 49.47, the pharmacy or
10 pharmacist may not charge a person who presents a valid prescription order and a
11 card indicating that he or she meets eligibility requirements under sub. (2) an
12 amount for a prescription drug under the order that exceeds the amounts specified
13 in sub. (6) (b).

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

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

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

23 2. After the deductible under subd. 1. is charged, the copayment, as applicable,
24 that is specified in sub. (3) (c) 1. or 2. No dispensing fee, as specified under subd. 1.,
25 may be charged to a person under this subdivision.

BILL

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

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

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

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

16 (8) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
17 January 1, 2002, the department shall provide to pharmacies and pharmacists
18 payments, under a schedule that is identical to that used by the department for
19 payment of pharmacy provider claims under medical assistance, that correspond to
20 the amounts charged by the pharmacies and pharmacists to persons who meet
21 criteria for eligibility under sub. (2) for a prescription drug at the rate specified in
22 sub. (6) (a), minus the amount of a copayment charged under sub. (6) (b) 2., plus a
23 dispensing fee, as specified in sub. (6) (b) 1. The department shall devise and
24 distribute a form for reports by pharmacies and pharmacists under this subsection.

BILL**SECTION 13**

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

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

11 (11) After December 31, 2001, and before January 1, 2004, the department may
12 not subject a manufacturer that enters into a rebate agreement under sub. (7) to prior
13 authorization requirements for a prescription drug for outpatient care for treatment
14 of a chronic condition of an eligible person under sub. (2).

15 (11) Except as provided in subs. (9) to (13) and except for the department's
16 rule-making requirements and authority, the department may enter into a contract
17 with an entity to perform the duties and exercise the powers of the department under
18 this section.

19 **SECTION 14.** 100.31 (2m) of the statutes is created to read:

20 100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.
21 Before March 1 annually; the department shall submit a report to the governor, and
22 to the chief clerk of each house for distribution to the appropriate standing
23 committees under s. 13.172 (3), on compliance of sellers with sub. (2) and on whether
24 purchasers have passed on to consumers any savings resulting from sellers'
25 compliance with sub. (2) during the preceding year. The report shall also describe

BILL

1 programs offered by sellers and others that offer discounts on drugs to consumers.
2 Within the limits of available resources, the department shall publicize these
3 programs to consumers. In preparing the report, the department shall consult with
4 sellers, purchasers, and consumers, including elderly consumers.

SECTION 15. Appropriation changes.

5
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 2001,
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 16. Initial applicability.

12
13 (1) The treatment of section 49.47 (4) (aq), (b) 2m. b., 2r., 2w., and 3., (c) 1. and
14 3., and (i) (2) (intro.) of the statutes first applies to eligibility determinations made
15 for medical assistance on January 1, 2002.

16 **SECTION 17. Effective dates; health and family services.** This act takes
17 effect on the day after publication, except as follows:

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

20 (END)

Comparison of Preliminary Prescription Drug Benefit Proposals

	CWAG, Krusick and Others	Senate Democrats
Annual income requirements	\$30,000 household + spenddown provision	\$30,000 household + spenddown provision
Eligibility	376,900 (100%) 282,700 (75%)	376,900 (100%) 282,700 (75%)
Deductible	\$600 household	\$500 per individual
Discounts during deductible	Average Wholesale Price minus 5% or maximum allowable cost, whichever is lower, plus dispensing fee	No discounts, retail price
Cost-sharing/copayments after deductible	\$5 generic \$10 brand name	25% of costs plus \$5 generic/\$10 brand name
Annual fees	\$25	\$25
Pharmacy Reimbursement	AWP minus 5% plus dispensing fee	AWP minus 5% plus dispensing fee
Manufacturer rebates	DHFS directed to negotiate	DHFS directed to negotiate
Expand MA eligibility form 97% to 100% FPL	Yes	No
Maximum benefit	None	None
Cost		

12/11/00 From Christian for redraft Redraft: - 0185/2

✓ ① Spenddown concept

✓ Program has 12-mo. benefit period (not cal-year)

✓ Spenddown will be prospective: if, e.g., person
costs will be out of pocket at retail price;
after meet spenddown, will have remaining
part of 12-mo. period for discount

⇒ Determination of eligibility under MA
standard - From Christian 12/27 - just indicates DHFS determines income

✓ Eligibility determination by the Dept.

✓ ② Eligibility requirements

p. 7, line 1 - change: "The person is not enrolled in MA."

DAK: do stats. refer to enrollment? - used recipient
of

✓ ③ Penalties for fraud - use same provisions as MA
DHFS to prom. substantially similar rules.

✓ ④ Rebate language - see draft; is ok

✓ ⑤ Appropriation - sum sufficient

✓ ⑥ Deductible is for drugs covered under the plan

12/27/00 From Christian -

✓ ① If feds pass legislation, DHFS reqd. to analyze
differences + report + recommend to legis. how to do detail this program

✓ ② Payor of last resort w/ respect to employer +
Medicaid benefits

11/28 Questions for Charlie + Rachel:

✓ ① Does the deductible that is geared to the person's income replace the spenddown in 0185/2?

✓ Yes - also don't get the discount until meet "spenddown"

✓ ② Does lang. re "300% of the fpl for a fam. the size of the person's family" work? that is eligible

✓ ③ Admin. of program by DHFS - use HIRSP language:

DHFS shall use cost containment measures that apply to MA	① Use of generic drugs		Dept may require pham limit coverage of prescrip drugs to those for which claims are submitted to administrator
149.14(4)(c)	② Prior authorization	\$149.14	
(5)(e)	Specify?	(4c)(a)+(b)	
149.14(8)*	Other?		Provider 149.142(1)(b)

④ From Vermont

1115 waiver to expand cov. under MA

a. Cover all Medicare eligibles, regardless of income

b. Cover other eligibles, up to 300% of poverty

Inapplicable c. Cost share on acute drugs

Payment to pham is app MA rate minus

Discount $\% = \text{to projected revenue from rebates from manuf.}$
(Vt. - 17 1/2% - here ~ 18%)

Indiv pays difference (82% MA rate)

✓ ⑤ Maximum allowable cost - Define

11/28/00 Mtg. Carol Gassen, David Stutterback, Jason AARP, Tom Francis,
Darsie, Rep Krusick, Charlie Morgan, Rachel Carrabell

Krusick: Senate Democrat proposal
Wicket's bill

Comparison:

~~Darsie: \$60 deductible too high~~

Deductible

Darsie: waive ded. for persons under 16,000

Jason: GAO report says no deductible (but in. level is below \$20,000)

Tom: tie to % of income you're spending on drugs - if spending more than 10%, no deductible - is an option (Charlie: how does that work administratively?)

Charlie + Jason - 2 type programs - deductible
or no deductible

(Charlie: also a problem on spenddowns re MA eligibility)

How do you create workable spenddown

Darsie: could accept eligibility with deductible that corresponds to diff between elig + actual income

□ Krusick will contact DHS + ask to think up options

Charlie: Is deductible household or individual?

Charlie: For income, fed gov. level works well

Jason: wd. like ↑ if would remove deductible for some people " e.g., 300% of poverty

To draft

Jason:

No deductible until over 200% of poverty
Income level at 300% of poverty (25,000 / 33,000)

Tom: 150% re deductible

Krusick: level is \$68,000,000 - need to crunch #s to figure how %ages hit

* 300% ~~of~~ ^{poor} for income
w/ higher income, allow to sign up w/ greater deductible

* 175% of pov. - no deductible until over

Discounts during deductible

MA rate is AWP - 10%

Charlie M = MA rate + 5%

Krusick = will talk to DHFS to see if it works

Cost-sharing copayments

* Keep Krusick's version

* Many rebates - off ~~costs~~

* Require DHFS to enter into rebate agreements - don't negotiate (DHFS sends stuff to manufacturers for them to sign)

* CM DHFS to administer ^{program} same way as administers drugs under MA - generic drugs unless med necessary prior authority?

~~DHFS to apply for fed MA waiver~~

* Direct DHFS to apply for fed MA waivers based on Vermont plan - ask Rachel Carrabel

To be decided later =

Charlie = Issues that are left: waiting lists
entitlement
federal change
start date - when
do benefits kick
in re when ^{starts} prog
payer of last resort
MA hand penalties

12/5/00 Christian, Charlie Morgan, Rachel Carabell, DAK

✓ 1. Rebate language - DAK draft is ok

2. Deductible - drugs ~~that~~ bought in meeting the deductible are drugs of manufacturers who enter into rebate agreements; ~~same~~?

Same - drugs subject to discount ~~are~~
Christian will decide

3. AWP minus 5% rate - Rachel says is considerably higher (more generous) than MA rate DHFS proposal is AWP minus 15% - also affects admin. costs

No decision.

Charlie - suggests language like "MA rate plus 5%" (w/o ^{up to} MAC)

CM will take this issue to DHFS

(Either use MA + 5% or AWP - 5% and MAC - 5%)

✗

4. Entitlement - what happens if program is short

Could add "within the limits" of the appropriated funds or differentiate betw/ eligibility + entitlement

or could ~~not~~ have DHFS monitor + suspend enrollment until ~~money~~ \$ is appropriated

Christian will discuss

5. Determination of income - DHFS should do

Draft should say more explicitly that need to determine eligibility each ~~year~~ benefit period

Benefit period - ends 12 mo after eligibility determined
not 12 mo after meet spenddown or deductible

6. What if feds do something? - Should it sunset? Medicare expansion

new grant program
Don't end state program until fed program that is substantially similar is in place
If fed program is less, or more generous

7. This program shd be payor of last resort - employer benefit, Medicare benefit

DHFS could be required to analyze differences + report + recommend to legis. how this could be dovetailed

8. Maintenance of effort problem - state can't really address

9. Penalties for fraud -

MA penalties

Can't transfer drugs to others

DHFS can be required by rule to set up fraud provisions that are similar to MA's

Estate recovery? - ↑

Christian will discuss

Rachel - GAO report addresses manufs' raising drug prices

Pharmacy Discount Program (PDP)

Program Background

Governor Dean, Agency of Human Services staff and the Legislature have wrestled with the issue of how to address the rising cost of prescription drugs. While several proposals have been introduced and analyzed, none have quickly produced the desired result of lower prices for Vermonters that do not have insurance that covers drugs.

To partially address this problem, the administration proposed an innovative approach during the SFY2001 budget discussions. Implementation of this proposal required an amendment to the state's 1115 demonstration waiver to include an expansion of the Pharmacy Program of the Vermont Health Access Plan (VHAP). The federal Health Care Financing Administration (HCFA) approved the amendment to the state's VHAP waiver. This expansion is called the Pharmacy Discount Program (PDP).

PDP Eligibility

This program covers two groups:

- Any Medicare-covered individual with income above 150% of federal poverty level (FPL) without drug coverage. This would include drugs for acute conditions for those beneficiaries currently eligible for VScript (up to 225% FPL) who currently receive a benefit only for maintenance drugs.
- All individuals with incomes up to 300% FPL who do not have a benefit program that includes drug coverage. Currently, this translates to monthly income of \$2088 for a household of one, \$2813 for a household of two, and \$3538 for a household of three.

PDP Benefits

The Medicaid payment and rebate structure will be extended to the above two groups of people. Beneficiaries will have the ability to purchase drugs at a price that is equivalent to the price that Medicaid pays net of the manufacturers' rebate available to the Medicaid program. This translates into a cost to the individual that is approximately 30 percent lower than what the person normally pays for the prescription.

For prescriptions at the Medicaid rate of \$20 or more, a beneficiary's discount will be reduced by \$3 for the first eight prescriptions to cover the \$24 annual enrollment fee for this program. This fee will offset the state's cost of administrating this program, including the additional claims processing costs and staff to process enrollment into the program.

Population Served

Approximately 37,550 Medicare covered beneficiaries and an additional 31,350 individuals under 300% FPL will be eligible for this expansion. Projected calendar year-end enrollment is 20,600 for 2001, 24,375 for 2002, and 28,123 for 2003.

Implementation

Implementation begins January 1, 2001. Applications will be available on December 1, 2000. Call 1-800-250-8427. Applications will also be included in the Vermont tax booklet, which is available at the end of January.

Thursday December 14 6:11 PM ET

Battle Over Vermont Drug Plan Heats Up

By Karen Pallarino

NEW YORK (Reuters Health) - The pharmaceutical industry's lead trade group is suing the Health Care Financing Administration (HCFA) to block a Vermont program designed to give drug discounts to certain individuals who lack prescription drug coverage.

The complaint filed by the Pharmaceutical Research and Manufacturers of America (PhRMA) alleges that HCFA violated federal law when it approved a Medicaid waiver allowing the state to implement the program. PhRMA contends that the program changes the rules of Medicaid.

"The Secretary of the Department of Health and Human Services (news - web site) and the state of Vermont have, in effect, made an 'end run' around existing federal law by creating a new 'government' program with no government cost, but paid for solely by private manufacturers," PhRMA Assistant General Counsel Marjorie Powell said in a statement. "By doing so, the Secretary clearly exceeded her authority," she added.

HCFA spokeswoman Mary Kahn had no immediate comment, saying that the agency was preparing a response.

The lawsuit, filed in federal court in Washington, DC, represents PhRMA's latest attempt to quash the proposed discounting arrangement.

In a letter to HCFA this summer, the trade group highlighted three areas in which it said the program violates federal law. HCFA approved Vermont's waiver request despite industry objections. Those objections resurfaced in the lawsuit filed yesterday.

State officials said last week that they would be pressing ahead with implementation of the program effective January 1, 2001, despite

http://dailynews.yahoo.com/hnm/20001214/h/vermont_drugs_1.html

Battle Over Vermont Drug Plan Heats Up

rumors that the industry was preparing to bring suit.

Jackie Levine, staff assistant to state Human Services Commissioner Eileen I. Elliott, said Thursday that the agency could not comment because it had yet to see a copy of the complaint.

Vermont's program entitles certain Medicare beneficiaries and other individuals who lack prescription drug coverage to a discount on drug purchases at the pharmacy. Of an estimated 70,000 eligible residents, some 20,000 are expected to enroll in the first year, initially saving an average of 17.5% on drug purchases.

PhRMA contends that Vermont's limited offer of rebates violates Medicaid law, which requires that the state offer a wide range of programs and services. Vermont's new program would simply use Medicaid to compel manufacturers to grant discounts to a new group of people, it said.

Furthermore, PhRMA argues that the 17.5% discount leaves beneficiaries holding the bag for the remaining 82.5% of the cost of the drugs. That level of "co-payment" violates federal Medicaid law, which allows no more than a "nominal" co-payment.

Medicaid law also specifies that states may only require rebates if the state is paying for the cost of the drug, which is not the case under the Vermont program. "State government is not anteing up," said PhRMA spokesman Jeff Trewitt.

PhRMA's Trewitt concedes that industry opposition to mandated discounts is "a factor" in the suit. "We just do not think that government-mandated drug price controls are the right way to solve the problem," he told Reuters Health.

The larger issue, PhRMA suggests, is the bad precedent that HCFA would set by allowing the Vermont program to go forward as structured. "There's a better way to do this that doesn't hurt the potential viability of the Medicaid program by bending the rules of how the program operates," Trewitt said.