



Legislative Fiscal Bureau

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December 13, 2000

TO: Senator Charles Chvala
Room 211 South, State Capitol

FROM: Rachel Carabell, Fiscal Analyst

SUBJECT: Vermont Medicaid Expansion for Prescription Drugs

You requested information on the Vermont drug discount plan. In response to your request, this office contacted officials at the Vermont Agency of Human Services. This memorandum provides information about the Vermont drug discount plan based on information obtained verbally from Vermont program staff. If Vermont's program staff provide additional written information on the plan, copies will be forwarded to your office.

In November, Vermont received approval from the Health Care Financing Administration in the U.S. Department of Health and Human Services (DHHS) to expand its Medicaid program to all individuals enrolled in Medicare and any other individuals with incomes up to 300% of the federal poverty level (FPL). Individuals enrolled in other state pharmacy assistance programs are eligible under this expansion for discounts on drugs that are not covered under the other programs. Under this expansion, which is referred to as the Vermont discount drug plan, coverage is limited to discounts on prescription drugs.

Vermont's discount drug plan is designed to pass on discounts to eligible consumers. These discounts reflect the difference between the retail price of prescription drugs and the maximum Medicaid reimbursement rate and the savings available from rebates received from pharmaceutical manufacturers. Vermont officials project the discount available between retail prices and the maximum Medicaid reimbursement rate to equal approximately 12% of the retail price. The discount available from manufacturers' rebates is equal to approximately 17.5% of the Medicaid price.

These discounts are passed on to eligible consumers in the following way. When an eligible consumer purchases a prescription drug, the pharmacist collects 82.5% of the maximum reimbursement rate under Medicaid from the eligible consumer and bills the remainder of the costs

to the state. The amount paid to the pharmacists by the state (17.5% of the maximum Medicaid reimbursement rate) is equal to the projected amount of revenue the state receives from pharmaceutical manufacturers in the form of rebates under the Medicaid program. The only cost to the state is the administrative cost of operating the program, which is expected to be covered by a \$24 annual enrollment fee paid by participants.

Vermont's discount drug plan was approved under a waiver authorized under Section 1115 of the federal Social Security Act. This section of the Social Security Act authorizes the DHHS Secretary to approve waivers of federal Medicaid laws and regulations for experimental, pilot or demonstration projects which, in the judgment of the Secretary, are likely to assist in promoting the objectives of federal Medicaid law. These projects may cover services not otherwise covered under Medicaid and/or expand eligibility to groups of individuals who would not otherwise be eligible for Medicaid. These projects are approved for a limited time (usually five years) and must be cost neutral over the life of the project. If Wisconsin were to pursue a similar program, it too would have to seek approval of a waiver under Section 1115.

Let me know if you require further assistance.

RC/lah

42 USC 1315

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 12

Entered In Computer And Copy Sent To Requestor: 11 / 06 / 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 _____

2001
Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number I.R.B.-0185/2 (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) 11/2/00

By 1/4/01, if possible

D-NOTE

DAK/ISR/MGG:wlj&cjs:

V/
Stays

2001 BILL

requiring the department of health and family services to seek a waiver to provide medical assistance eligibility to certain persons for purposes of a prescription drug benefit; requiring the exercise of rule-making authority;

between the department of health and family services and

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), 49.47 (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 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; and providing penalties

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under current federal law, persons entitled to

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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} ~~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 100% 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% ~~of 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 \$5 for each generic drug and \$10 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.

INSERT
A-1

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

under the bill,

that

or an entity with which DHFS contracts must provide to

material designed for use in entering

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under a sum sufficient appropriation created under this bill

are
INSERT A-3

and purchased

the manufacturer must make payments to the state treasurer for deposit in the general fund for each of the manufacturer's drugs that are 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.

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

Commas

INSERT A-2

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.

INSERT A-4

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.

and local
(1)(3)

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:

3 2001-02 2002-03

4 20.435 Health and family services, department

5 of

6 (4) HEALTH SERVICES PLANNING, REGULATION AND

7 DELIVERY: HEALTH CARE FINANCING

8 (bv) Prescription drug assistance for

9 elderly; aids GPR A -0- -0-

10 SECTION 2. 20.435 (4) (bv) of the statutes is created to read:

no # Payment is at the average manufacturer price, minus 5%, and minus any copayment made, plus a dispensing fee

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A sum sufficient

1 20.435 (4) (by) *Prescription drug assistance for elderly; aids.* ~~The amounts in~~
2 ~~the schedule~~ for payment to pharmacies and pharmacists under s. 49.688 (3) for
3 prescription drug assistance for elderly persons. (7) ✓

4 SECTION 3. 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. (6) ✓ (7) ✓

9 SECTION 4. 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 (3), to be used for
12 administration of the program under s. 49.688. (3) ✓

INSERT 4-12

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

14 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the
15 limitation on income under par. (c) is eligible for medical assistance if the individual
16 is 65 years of age or older, and the individual's income does not exceed 100% of the
17 federal poverty level.

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

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

23 49.47 (4) (b) 2m. b. For persons who are eligible under par. (a) 3. or 4. or (aq),
24 motor vehicles are exempt from consideration as an asset to the same extent as
25 provided under 42 USC 1381 to 1385.

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

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

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

7 49.47 (4) (b) 2w. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), life
8 insurance with cash surrender values if the total face value of all life insurance
9 policies is not more than \$1,500.

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

11 49.47 (4) (b) 3. For a person who is eligible under par. (a) ~~3. or 4.~~ or (aq), funds
12 set aside to meet the burial and related expenses of the person and his or her spouse
13 in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life
14 insurance excluded under subd. 2w. and the amount in any irrevocable burial trust
15 under s. 445.125 (1) (a).

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

17 49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ par. (am) and (aq) and as limited by
18 subd. 3., eligibility exists if income does not exceed ~~133 1/3%~~ 133.33% of the
19 maximum aid to families with dependent children payment under s. 49.19 (11) for
20 the applicant's family size or the combined benefit amount available under
21 supplemental security income under 42 USC 1381 to 1383c and state supplemental
22 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned
23 or unearned income that would be included in determining eligibility for the
24 individual or family under s. 49.19 or 49.77, or for the aged, blind, or disabled under
25 42 USC 1381 to 1385. "Income" does not include earned or unearned income which

BILL

SECTION 10

1 would be excluded in determining eligibility for the individual or family under s.
2 49.19 or 49.77, or for the aged, blind, or disabled individual under 42 USC 1381 to
3 1385.

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

5 49.47 (4) (c) 3. Except as provided in ~~par.~~ pars. (am) and (aq), no person is
6 eligible for medical assistance under this section if the person's income exceeds the
7 maximum income levels that the U.S. department of health and human services sets
8 for federal financial participation under 42 USC 1396b (f).

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

10 49.47 (4) (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
11 described in par. (a) 3. ~~or~~ 4. or (aq) is not eligible for benefits under this section if any
12 of the following criteria is met:

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

14 **49.688 Prescription drug assistance for low-income elderly persons.**

15 (1) In this section:

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

17 (b) "Prescription drug" means a prescription drug, as defined in s. 450.01 (20),
18 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is
19 manufactured by a manufacturer that enters into a rebate agreement in force under
20 sub. (c).
21 (c) "Prescription order" has the meaning given in s. 450.01 (21).

22 (2) (a) A person to whom all of the following applies is eligible to purchase a
23 prescription drug ~~at~~ ^{for} the amounts specified in sub. ~~(5)(a)~~: (5)(a) 1. and 2.

- 24 1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.
- 25 2. The person is at least 65 years of age.

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not a recipient of

annual

300% of the federal poverty line for a family the size of the person's eligible family

1 The person is ~~ineligible for~~ medical assistance.
2 4. The person's household income, as determined by the department, does not
3 exceed ~~\$30,000~~ unless the amount that results from the following calculation is

4 ~~\$30,000~~ or less:

5 1. The total amount of the person's prescription drug costs for 3 consecutive
6 months in the 12 months immediately preceding the month in which the person
7 applies under this paragraph is multiplied by 4.

8 2. The result under subd. 4. a. is subtracted from the person's income.

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

INSERT 7-9

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

11 (a) ~~Annually~~, a program enrollment fee of \$25. *For each 12-month benefit period*

12 (b) ~~Annually~~, a deductible of \$600. *any applicable*

INSERT 7-12

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

14 1. A copayment of \$5 for each prescription drug that bears only a generic name.

15 2. A copayment of \$10 for each prescription drug that does not bear only a
16 generic name.

INSERT 7-16

17 (4) The department shall devise and distribute a form for application for the

18 program under sub. (2), shall determine eligibility of applicants, and shall issue to

19 eligible persons a prescription drug card for use in purchasing prescription drugs, as

20 specified in sub. (5). The department shall promulgate rules that specify the criteria

21 to be used to determine household income under sub. (2) (a) *and (b) and (3)(b)1*

22 (5) *(a)* Beginning January 1, 2002, as a condition of participation by a pharmacy

23 or pharmacist in the program under ~~ss.~~ 49.45, 49.46, or 49.47, the pharmacy or

24 pharmacist may not charge a person who presents a valid prescription order and a

25 card indicating that he or she meets eligibility requirements under sub. (2) *(a)* an

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1 amount for a prescription drug under the order that exceeds ~~the amounts specified~~

2 in ~~sub (6)(b)~~ the following:

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

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

8 1. If applicable, ^{For} a deductible, as specified in sub. (3) (b), ^{1.} ~~for a prescription drug~~
9 ~~that is charged at the rate specified in par. (a)~~, plus a dispensing fee that is equal to
10 the dispensing fee permitted to be charged for prescription drugs for which coverage
11 is provided under s. 49.46 (2) (b) 6. h. the average manufacturer price, ~~minus 5%~~

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

INSERT 3-14

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

19 ^b ⁶ The department or an entity with which the department contracts ~~may~~
20 ~~enter into a rebate agreement that is modeled on the rebate agreement specified~~

21 ~~under 42 USC 1396r-8 with a drug manufacturer that sells drugs for prescribed use~~
22 in this state. shall provide to The rebate agreement, ~~if negotiated,~~ shall include all of the following
23 as requirements: under this subsection

24 (a) That the manufacturer shall make rebate payments for each prescription
25 drug of the manufacturer that is prescribed for and purchased by persons who meet criteria are eligible under sub.

material designed for use by the manufacturer in entering into a rebate agreement with the department or entity that is modeled on the rebate agreement specified under 42 USC 1396r-8

SECTION 13

BILL

(a) and persons who meet criteria under sub. (2) (b) and have paid the deductible under sub. (3) (b) 2.

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

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

(8) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning January 1, 2002, the department shall ~~provide to pharmacies and pharmacists payments~~ under a schedule that is identical to that used by the department for payment of pharmacy provider claims under medical assistance, that correspond to

the amounts charged by the pharmacies and pharmacists to persons who meet criteria for ~~eligibility~~ under sub. (2) ^(a) for a prescription drug at the rate specified in sub. ⁽⁵⁾ (a), minus the amount of a copayment charged under sub. ⁽⁵⁾ ~~(b)~~ ^(a) 2., plus a dispensing fee, as specified in sub. ⁽⁵⁾ ~~(b)~~ ^(a) 1. The department shall devise and

distribute a form for ^{claim} ~~reports~~ ^{use} by pharmacies and pharmacists under this subsection.

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

INSERT 9-19

INSERT 9-23

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

(11) Except as provided in subs. ⁽⁸⁾ (9) to (10) and except for the department's rule-making requirements and authority, the department may enter into a contract

INSERT 9-12 ✓

BILL**SECTION 13**

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

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

4 **100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.**

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

14 **SECTION 15. Appropriation changes.**

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

21 **SECTION 16. Initial applicability.**

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0185/3dn
DAK/ISR/MGG:wlj&cjs:pg

To Representative Krusick:

1. In light of the fact that the Vermont waiver is presently being challenged in federal court by Pharmaceutical Research and Manufacturers of America, do you want to authorize, rather than require, DHFS to seek a waiver and a waiver extension under s. 49.477? If DHFS receives such a waiver, do you want to make s. 49.688 inapplicable or otherwise alter it?

2. Since Medicare Part A beneficiaries ~~generally~~ ^{generally} receive coverage of prescription drugs for inpatient care, do you want to restrict eligibility for medical assistance under the waiver program (s. 49.477) to Medicare Part B beneficiaries?

3. 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 wish to consider having this bill redrafted as an amendment to the budget bill; wish to include an effective date for the bill that is later than the projected date for passage of the budget bill; or wish to introduce this bill after passage of the budget bill. Please let me know if I can be of help.

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

LEGISLATIVE REFERENCE BUREAU

the deductible; after this is paid, the persons may obtain additional prescription drugs in the remaining amount of the 12-month period by using the generic and non-generic copayments

If a person who is eligible has available coverage for prescription drugs, the person must first obtain the maximum amount of prescription drugs available under that coverage.

INSERT A-1

The bill provides that, beginning January 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 obtain a card, issued by DHFS, and may use the card to obtain certain prescription drugs for outpatient care at a rate that is not more than the average manufacturer price minus 5%, plus a pharmacy dispensing fee. ("Average manufacturer price" is defined in the bill.) After an eligible person has paid a deductible by expending \$600 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 \$5 for each generic drug and a copayment of \$10 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are those (who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 300% of the federal poverty line for a family the size of the person's eligible family. Persons who are otherwise eligible but who have household incomes that do not exceed 175% of the federal poverty line for a family the size of the person's eligible family, may obtain prescription drugs by paying the \$5 and \$10 copayments without first paying the deductible of \$600 worth of drugs at the reduced rate. Persons who are otherwise eligible but who have household incomes that exceed 300% of the federal poverty line for a family the size of the person's eligible family, must first, as a deductible, pay for prescription drugs, at a rate that is not reduced, a deductible that equals \$600 plus the difference between the person's annual household income and 300% of the federal poverty line for a family the size of the person's eligible family.

families

state residents

market rate

deductible

in a 12-month period

Under the bill, 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 persons who are eligible for prescription drug assistance an amount for prescription drugs under the program that exceeds the deductible rate plus a dispensing fee or, after an eligible person has met the deductible, an amount that exceeds the copayment amount more than these amounts.

INSERT A-2

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 average manufacturer prices 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

not

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

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.

INSERT A-3

^{not} 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

INSERT A-4

Under the bill, DHFS must request from the secretary of the federal department of health and human services a waiver of federal medicaid laws to permit DHFS to conduct a project to expand MA eligibility for persons who are eligible for and enrolled in Medicare and persons whose annual household incomes do not exceed 300% of the federal poverty line for a family the size of the ~~family~~. Under the waiver, the expanded MA eligibility entitles an eligible person, after paying a \$24 annual enrollment fee, to purchase a prescription drug for 82.5% of the maximum medicaid reimbursement rate for that prescription drug. The pharmacy or pharmacist who sells the drug at this reduced price receives reimbursement for the difference from DHFS, from moneys received by DHFS under rebate agreements with drug manufacturers.

eligible

persons' families

INSERT 4-12

1 SECTION ~~4~~[#] 20.435 (4) (jc) of the statutes is created to read:
2 20.435 (4) (jc) *Prescription drug assistance project; rebate payments.* All
3 moneys received from rebate payments by manufacturers under s. 49.477 (4) (a),[✓] to
4 be used for payment to pharmacies and pharmacists under s. 49.477 (4) [✓] for
5 prescription drug assistance. This paragraph applies only if a waiver, under 42 USC
6 1315(a), is granted as requested under s. 49.477 (2).[✓]

7 SECTION ~~4~~[#] 20.435 (4) (jd) of the statutes is created to read:
8 20.435 (4) (jd) *Prescription drug assistance project; enrollment fees.* All moneys
9 received from payment of enrollment fees under s. 49.477 (2),[✓] to be used for
10 administration of the program under s. 49.477.[✓] This paragraph applies only if a
11 waiver, under 42 USC 1315(a), is granted as requested under s. 49.477 (2).[✓]

INSERT 6-12

12 SECTION ~~4~~[#] 49.477 of the statutes is created to read:

1 **49.477 Prescription drug assistance project.** (1) In this section:

2 (a) "Medicare" means coverage under part A or part B of Title XVIII of the
3 federal social security act, 42 USC 1395 to 1395y.

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

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

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

11 (2) The department shall request from the secretary of the federal department
12 of health and human services a waiver, under 42 USC 1315(a), of federal medicaid
13 laws necessary to permit the department to conduct a project to expand eligibility for
14 medical assistance to include individuals who are eligible for and enrolled in
15 Medicare and individuals whose annual household incomes, as determined by the
16 department, do not exceed 300% of the federal poverty line for a family the size of the
17 eligible individual's family. Eligibility for medical assistance under this subsection
18 entitles an individual, after payment of a \$24 annual enrollment fee, only to the
19 discounted purchase of prescription drugs as specified under sub. (3).

20 (3) Under the project under sub. (2), as a condition of participation by a
21 pharmacy or pharmacist in the program under ~~s.~~ ^{s.} 49.45, 49.46, or 49.47, the
22 pharmacy or pharmacist may not charge an individual who is eligible for medical
23 assistance under sub. (2) and who presents a valid prescription order an amount for
24 a prescription drug under the order that exceeds 82.5% of the maximum
25 reimbursement rate for the prescription drug under 42 USC 1396r-8.

1 (4) From the appropriation under s. 20.435 (4) (jc),[↓] the department shall pay
2 the pharmacy or pharmacist for a prescription drug purchased as specified under
3 sub. (3) an amount that is equal to the projected amount of revenue for the
4 prescription drug that the department shall receive under a rebate agreement that
5 is modeled on the rebate agreement specified under 42 USC 1396r-8 with a
6 prescription drug manufacturer that sells the prescription drug for prescribed use
7 in this state. The rebate agreement under this subsection shall include all of the
8 following as requirements:

9 (a) That the manufacturer shall make rebate payments for each prescription
10 drug of the manufacturer that is prescribed for and purchased by individuals who
11 are eligible for medical assistance under sub. (2),[↓] to the state treasurer to be credited
12 to the appropriation under s. 20.435 (4) (jc),[↓] each calendar quarter or according to a
13 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 (5) The department may not implement the program under this section unless
17 a waiver that is consistent with all of the provisions of this section is granted and in
18 effect. If the department receives the waiver, at the end of the period during which
19 the waiver remains in effect the department shall request any available extension
20 of the waiver.

END INSERT 6-12

INSERT 6-15

¶ (a) "Average manufacturer price" has the meaning
given in 42 USC 1396r-8 (K) (1) 0

[INSERT 6-16]

§ (c) "Poverty line" means the nonfame federal

poverty line for the continental United States, as

defined by the federal department of labor under

42 USC 9902 (2)

INSERT 7-9

¶ (b) A person to whom par. (a) 1. ✓ to 3. ✓ and 5. ✓ applies, but whose annual household income, as determined by the department, exceeds 300% of the federal poverty line for a family the size of the person's ^(eligible) family, is eligible to purchase a prescription drug at the amounts specified in sub. (5) (a) (4) ^(The remaining amount of) only during any 12-month period ^(first) in which the person has paid the annual deductible specified in sub. (3) (b) 2. ✓ in purchasing prescription drugs at the retail price. (c)

INSERT 7-12

1. (b) For each ^{1.} for a person specified in sub. (2) ^{12-month benefit period}
(a), a deductible ^{for prescription drugs} of \$600, except that a person whose annual household income, as determined by the department, is 175% or less of the federal poverty line for a family the size of the person's eligible family pays no deductible.

2. For each ^{2.} for a person specified in sub. (2) ^{12-month benefit period}
(2) (b), a deductible ^{for prescription drugs} that equals \$600 plus the difference between the person's annual household income and 300% of the federal poverty line for a family the size of the person's eligible family.

INSERT 7-16

§ (d) Notwithstanding s. 49.002¹, if a person who is eligible under this section has available coverage for payment of a prescription drug, the person shall obtain the maximum amount of that coverage before he or she may purchase the prescription drug as specified in sub. (5)(a)!

prescription
drugs
available
under

INSERT 8-14

¶ 3. For ^a deductible, as specified in sub. (3)(b) 2.,
the ~~the~~ retail price.

¶ 4. After the deductible under subd. 3¹ is charged,
the copayment, as applicable, that is specified in
sub. (3)(c) 1. or 2¹ = No dispensing fee, as specified
under subd. 1., may be charged to a person
under this subdivision.

INSERT 9-12

No. 77

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) (b) 1. or 2. or who, under sub. (3) (b) 1., are not required to pay a deductible. The payment for each prescription drug under this subsection shall be at the average manufacturer price, as defined under 42 USC 1396r-8 (K) (1), minus 5%, and minus any copayment paid by the person under sub. (5) (a) 2. or 4., plus a dispensing fee, as specified under sub. (5) (a) 1.

INSERT 9-13

no #

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

subch. IV of ch. 49

INSERT 9-19

§ (9) (a) 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 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 in the county jail, or both.

a report

INSERT 9-23

~~1/2~~ that contains an analysis of the differences

between such a federal program and the

program under this section and that

provides recommendations concerning

alignment of the differences ^{if any}

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0185/3dn
DAK:wlj&cjs:kjf

January 4, 2001

To Representative Krusick:

1. In light of the fact that the Vermont waiver is presently being challenged in federal court by Pharmaceutical Research and Manufacturers of America, do you want to authorize, rather than require, DHFS to seek a waiver and a waiver extension under s. 49.477? If DHFS receives such a waiver, do you want to make s. 49.688 inapplicable or otherwise alter it?
2. Since Medicare Part A beneficiaries generally receive coverage of prescription drugs for inpatient care, do you want to restrict eligibility for medical assistance under the waiver program (s. 49.477) to Medicare Part B beneficiaries?
3. 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 wish to consider having this bill redrafted as an amendment to the budget bill; wish to include an effective date for the bill that is later than the projected date for passage of the budget bill; or wish to introduce this bill after passage of the budget bill. Please let me know if I can be of help.

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

1/8/01 From Christian - Redraft - 0185/3

✓ ① Use MA rate + 5%, rather than AMP - See
01-1282/2

✓ ② More deductible down to \$500 - is per person
1/9 From Rachel - deductible spend down same as SBI

✓ ③ Waiver language same as 2001 SBI

✓ ④ Fiscal effect for expansion of MA ~~from~~ eligibility
to 100% of poverty - add to 20.435(4)(b)

600,000 01-02

1,200,000 02-03

Make effective after bill passage

✓ ⑤ Add disabled to s. 49.47 language; Rachel will contact
Duy re this

✓ ⑥ \$25 enrollment fee p. 8, l. 9

✓ ⑦ p. 11, l. 8-11 - Payor of last resort: use lang. in
Cwala draft

✓ ⑧ Money for DMFS: Rachel will talk w/ Christian
Needs delayed effective date after budget
✓ Make same as SBI

1/17 From Christian: add in MA incentive payments, in
49.688 (7)



← RMR
STAYS

2001 BILL

SEYM
(very sweet?)
Thanks

REGEN

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), 20.435 (4) (jc), 20.435 (4) (jd), 49.47

4 (4) (aq), 49.477, 49.688 and 100.31 (2m) of the statutes; relating to: expanding

5 medical assistance income eligibility requirements for elderly persons;

6 requiring pharmacies and pharmacists, as a condition of medical assistance

7 participation, to charge elderly persons for prescription drugs no more than

8 specific amounts; specifying requirements for rebate agreements between the

9 department of health and family services and drug manufacturers; requiring

10 an annual report on the sale and pricing of certain drugs and programs that

11 offer discounts on drugs to consumers; requiring the department of health and

12 family services to seek a waiver to provide medical assistance eligibility to

13 certain persons for purposes of a prescription drug benefit; requiring the

individuals who are blind, or disabled

BILL

1 exercise of rule-making authority; making appropriations; and providing
2 penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under 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.

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 100% of the federal poverty level the maximum income level for eligibility for MA for individuals 65 years of age or older.

The bill provides that, beginning January 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 not more than the average manufacturer price minus 5%, plus a pharmacy dispensing fee.

After an eligible person has paid a deductible by expending \$500 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 \$5 for each generic drug and a copayment of \$10 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 300% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 175% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying the \$5 and \$10 copayments without first paying the deductible. Persons who are otherwise eligible but who have household incomes that exceed 300% of the federal poverty line for a family the size of the persons' eligible families must first, in a 12-month period, pay for

blind, or permanently disabled

blind, or permanently disabled

security income (SSI) program

blind, or permanently disabled

medical assistance rate plus

\$500

\$500

BILL

must pay an additional \$500 deductible for prescription drugs at the reduced rate; and the persons may then

this

prescription drugs, at market rate, a deductible that equals ~~\$500 plus~~ the difference between the person's annual household income and 300% of the federal poverty line; after ~~the deductible~~ is paid, the persons ~~may~~ obtain additional prescription drugs in the remaining amount of the 12-month period by paying the generic and nongeneric copayments. 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 available coverage for prescription drugs, the ~~person must first obtain the maximum amount of~~ prescription drugs available under that coverage.

Program does not apply to the costs for

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering 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 the federal medicaid rebate agreements. ^{SIFT} The amounts of the rebate payments must, in turn, together with general purpose revenues under a sum sufficient appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the ~~average manufacturer price, minus~~ 5%, ~~and~~ minus any copayment made, plus a dispensing fee.

MA rate plus

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 ~~average manufacturer~~ prices 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.

at the MA rate plus 5%

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,

BILL

2001-02

\$25

\$1,000,000

if any, of the differences. The bill appropriates ~~\$2,000,000~~ in general purpose revenues in fiscal year ~~2002-03~~ to DHFS for administration of the program.

INSERT A

Under the bill, DHFS must request from the secretary of the federal department of health and human services a waiver of federal medicaid laws to permit DHFS to conduct a project to expand MA eligibility for persons who are eligible for and enrolled in Medicare and persons whose annual household incomes do not exceed 300% of the federal poverty line for a family the size of the persons' eligible families. Under the waiver, the expanded MA eligibility entitles an eligible person, after paying a ~~\$25~~ annual enrollment fee, to purchase a prescription drug for ~~82.5%~~ ~~of the maximum medicaid reimbursement rate~~ for that prescription drug. The pharmacy or pharmacist who sells the drug at this reduced price receives reimbursement for the difference from DHFS from moneys received by DHFS under rebate agreements with drug manufacturers.

a copayment, as specified in the bill,

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.435 (4) (bv) of the statutes is created to read:
2 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* A sum sufficient
3 for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug
4 assistance for elderly persons.

5 **SECTION 2.** 20.435 (4) (j) of the statutes is created to read:
6 20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*
7 All moneys received from rebate payments by manufacturers under s. 49.688 (6), to
8 be used for payment to pharmacies and pharmacists under s. 49.688 (7) for
9 prescription drug assistance for elderly persons.

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

BILL

1 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All
2 moneys received from payment of enrollment fees under s. 49.688 (3), to be used for
3 administration of the program under s. 49.688.

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

5 20.435 (4) (jc) *Prescription drug assistance project; rebate payments.* All
6 moneys received from rebate payments by manufacturers under s. 49.477 (4) (a), to
7 be used for payment to pharmacies and pharmacists under s. 49.477 (4) for
8 prescription drug assistance. This paragraph applies only if a waiver, under 42 USC
9 1315 (a), is granted as requested under s. 49.477 (2).

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

11 20.435 (4) (jd) *Prescription drug assistance project; enrollment fees.* All moneys
12 received from payment of enrollment fees under s. 49.477 (2), to be used for
13 administration of the program under s. 49.477. This paragraph applies only if a
14 waiver, under 42 USC 1315 (a), is granted as requested under s. 49.477 (2).

15 **SECTION 6.** 49.47 (4) (aq) of the statutes is created to read:

16 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the

17 limitation on income under par. (c) is eligible for medical assistance if ~~the individual~~

18 ~~is 65 years of age or older, and~~ the individual's income does not exceed 100% of the

19 federal poverty level, ^{and the individual is 65 years of age or older or}
^{is blind or totally and permanently disabled as defined}

20 2. If a federal waiver is necessary to provide medical assistance to individuals ^{federal}

21 specified in subd. 1., the department shall request a waiver from the secretary of the ^{Title XVI}

22 federal department of health and human services before providing medical

23 assistance under this paragraph.

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

BILL

plain ✓

1 49.47 (4) (b) 2m. b. For persons who are eligible under par. (a) ~~3. or~~ 4. or (aq),
2 motor vehicles are exempt from consideration as an asset to the same extent as
3 provided under 42 USC 1381 to 1385.

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

5 49.47 (4) (b) 2r. For a person who is eligible under par. (a) ~~3. or~~ 4. or (aq), the
6 value of any burial space or agreement representing the purchase of a burial space
7 held for the purpose of providing a place for the burial of the person or any member
8 of his or her immediate family.

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

10 49.47 (4) (b) 2w. For a person who is eligible under par. (a) ~~3. or~~ 4. or (aq), life
11 insurance with cash surrender values if the total face value of all life insurance
12 policies is not more than \$1,500.

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

14 49.47 (4) (b) 3. For a person who is eligible under par. (a) ~~3. or~~ 4. or (aq), funds
15 set aside to meet the burial and related expenses of the person and his or her spouse
16 in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life
17 insurance excluded under subd. 2w. and the amount in any irrevocable burial trust
18 under s. 445.125 (1) (a).

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

20 49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
21 subd. 3., eligibility exists if income does not exceed ~~133 1/3%~~ 133.33% of the
22 maximum aid to families with dependent children payment under s. 49.19 (11) for
23 the applicant's family size or the combined benefit amount available under
24 supplemental security income under 42 USC 1381 to 1383c and state supplemental
25 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned

BILL

1 or unearned income that would be included in determining eligibility for the
2 individual or family under s. 49.19 or 49.77, or for the aged, blind, or disabled under
3 42 USC 1381 to 1385. "Income" does not include earned or unearned income which
4 would be excluded in determining eligibility for the individual or family under s.
5 49.19 or 49.77, or for the aged, blind, or disabled individual under 42 USC 1381 to
6 1385.

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

8 49.47 (4) (c) 3. Except as provided in ~~par.~~ pars. (am) and (aq), no person is
9 eligible for medical assistance under this section if the person's income exceeds the
10 maximum income levels that the U.S. department of health and human services sets
11 for federal financial participation under 42 USC 1396b (f).

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

13 49.47 (4) (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
14 described in par. (a) ^{plain} ~~3. or~~ 4. or (aq) is not eligible for benefits under this section if any
15 of the following criteria is met:

16 **SECTION 14.** 49.477 of the statutes is created to read:

17 **49.477 Prescription drug assistance project. (1)** In this section:

18 (a) "Medicare" means coverage under part A or part B of Title XVIII of the
19 federal Social Security Act, 42 USC 1395 to 1395y.

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

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

BILL

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

2 (2) The department shall request from the secretary of the federal department
3 of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid
4 laws necessary to permit the department to conduct a project to expand eligibility for
5 medical assistance to include individuals who are eligible for and enrolled in
6 medicare and individuals whose annual household incomes, as determined by the
7 department, do not exceed 300% of the federal poverty line for a family the size of the
8 individual's eligible family. Eligibility for medical assistance under this subsection
9 entitles an individual, after payment of a ~~\$24~~ ^{\$25} annual enrollment fee, only to the
10 discounted purchase of prescription drugs as specified under sub. (3).

11 (3) Under the project under sub. (2), as a condition of participation by a
12 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
13 pharmacy or pharmacist may not charge an individual who is eligible for medical
14 assistance under sub. (2) and who presents a valid prescription order an amount for
15 a prescription drug under the order that exceeds 82.5% of the maximum
16 reimbursement rate for the prescription drug under 42 USC 1396r-8.

17 (4) From the appropriation under s. 20.435 (4) (jc), the department shall pay
18 the pharmacy or pharmacist for a prescription drug purchased as specified under
19 sub. (3) an amount that is equal to the projected amount of revenue for the
20 prescription drug that the department shall receive under a rebate agreement that
21 is modeled on the rebate agreement specified under 42 USC 1396r-8 with a
22 prescription drug manufacturer that sells the prescription drug for prescribed use
23 in this state. The rebate agreement under this subsection shall include all of the
24 following as requirements:

BILL

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

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

INSERT
9-7

8 (5) The department may not implement the program under this section unless
 9 a waiver that is consistent with all of the provisions of this section is granted and in
 10 effect. If the department receives the waiver, at the end of the period during which
 11 the waiver remains in effect the department shall request any available extension
 12 of the waiver.

13 SECTION 15. 49.688 of the statutes is created to read:

14 **49.688 Prescription drug assistance for low-income elderly persons.**

15 (1) In this section:

16 ~~(a) "Average manufacturer price" has the meaning given in 42 USC 1396r-8~~

17 ~~(b)~~ (a)

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

19 (c)

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

22 (d)

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

(e)

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

(f) "Program payment rate" means the rate of payment made for the identical drug specified under s. 49.46 (2) (b) 6. h., plus 5%

BILL

1 (2) (a) A person to whom all of the following applies is eligible to purchase a
2 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

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

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

5 3. The person is not a recipient of medical assistance.

6 4. The person's annual household income, as determined by the department,
7 does not exceed 300% of the federal poverty line for a family the size of the person's
8 eligible family.

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

10 (b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household
11 income, as determined by the department, exceeds 300% of the federal poverty line
12 for a family the size of the person's eligible family, is eligible to purchase a
13 prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining
14 amount of any 12-month period in which the person has first paid the annual
15 deductible specified in sub. (3) (b) 2. ^(a) in purchasing prescription drugs at the retail

16 price ^(b) and has then paid the annual deductible specified
17 in sub. (3) (b) 2. b.

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

18 (a) For each 12-month benefit period, a program enrollment fee of \$25.

19 (b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a),
20 a deductible for prescription drugs of ~~\$500~~ ^{\$500}, except that a person whose annual
21 household income, as determined by the department, is 175% or less of the federal
22 poverty line for a family the size of the person's eligible family pays no deductible.

23 2. For each 12-month benefit period, for a person specified in sub. (2) (b), a
24 deductible for prescription drugs that equals ~~\$500 plus~~ the difference between the

all of the following:
a.

BILL

1 person's annual household income and 300% of the federal poverty line for a family
2 the size of the person's eligible family.

b. Five hundred dollars

3 (c) After payment of any applicable deductible under par. (b), all of the
4 following:

5 1. A copayment of \$5 for each prescription drug that bears only a generic name.

6 2. A copayment of \$10 for each prescription drug that does not bear only a
7 generic name.

this section applies only to costs for prescription drugs for the person that are not covered under the person's other available coverage

8 (d) Notwithstanding s. 49.002, if a person who is eligible under this section has

9 other available coverage for payment of a prescription drug, ~~the person shall obtain the~~
10 ~~maximum amount of prescription drugs available under that coverage before he or~~

11 ~~she may purchase the prescription drug as specified in sub. (5)(a).~~

12 (4) The department shall devise and distribute a form for application for the
13 program under sub. (2), shall determine eligibility of applicants for each 12-month
14 benefit period, and shall issue to eligible persons a prescription drug card for use in
15 purchasing prescription drugs, as specified in sub. (5). The department shall
16 promulgate rules that specify the criteria to be used to determine household income
17 under sub. (2) (a) 4. and (b) and (3) (b) 1.

18 (5) (a) Beginning January 1, 2002, as a condition of participation by a
19 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
20 pharmacy or pharmacist may not charge a person who presents a valid prescription
21 order and a card indicating that he or she meets eligibility requirements under sub.

22 (2) ~~(a)~~ an amount for a prescription drug under the order that exceeds the following:

23 1. For a deductible, as specified in sub. (3) (b) 1., ~~the average manufacturer~~
24 ~~price minus 8%~~, plus a dispensing fee that is equal to the dispensing fee permitted

and 2.b. ✓

program payment rate

BILL

1 to be charged for prescription drugs for which coverage is provided under s. 49.46 (2)

2 (b) 6. h.

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

6 3. For a deductible, as specified in sub. (3) (b) 2, ^{(a.) ✓} the retail price.

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

10 (b) The department shall calculate and transmit to pharmacies and
11 pharmacists that are certified providers of medical assistance amounts that may be
12 used in calculating charges under par. (a). The department shall periodically update
13 this information and transmit the updated amounts to pharmacies and pharmacists.

14 (6) The department or an entity with which the department contracts shall
15 provide to a drug manufacturer that sells drugs for prescribed use in this state
16 material designed for use by the manufacturer in entering into a rebate agreement
17 with the department or entity that is modeled on the rebate agreement specified
18 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
19 of the following as requirements:

20 (a) That the manufacturer shall make rebate payments for each prescription
21 drug of the manufacturer that is prescribed for and purchased by persons who meet
22 criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have
23 paid the deductible under sub. (3) (b) 2, ^{(a.) ✓} to the state treasurer to be credited to the
24 appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule
25 established by the department.

BILL

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

3 (7) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
4 January 1, 2002, the department shall, under a schedule that is identical to that used
5 by the department for payment of pharmacy provider claims under medical
6 assistance, provide to pharmacies and pharmacists payments for prescription drugs
7 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
8 paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1.,
9 are not required to pay a deductible. The payment for each prescription drug under

10 this subsection shall be at the ~~average manufacturer price~~ ^{Program payment rate,} minus any

11 copayment paid by the person under sub. (5) (a) 2. or 4., plus a dispensing fee, as

12 specified under sub. (5) (a) 1. (The department shall devise and distribute a claim
13 form for use by pharmacies and pharmacists under this subsection and may limit
14 payment under this subsection to those prescription drugs for which payment claims
15 are submitted by pharmacists or pharmacies directly to the department. The
16 department may apply to the program under this section the same utilization and
17 cost control procedures that apply under rules promulgated by the department to
18 medical assistance under subch. IV of ch. 49, and plus, if applicable,
incentive payments that are similar to those provided under

19 (8) The department shall monitor compliance by pharmacies and pharmacists
20 that are certified providers of medical assistance with the requirements of sub. (5)

21 and shall annually report to the legislature under s. 13.172 (2) concerning the
22 compliance. The report shall include information on any pharmacies or pharmacists
23 that discontinue participation as certified providers of medical assistance and the
24 reasons given for the discontinuance.

s. 49.45
(2v)
0

BILL

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 in the county jail, 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 the appropriate standing
13 committees of the legislature under s. 13.172 (3) a report that contains an analysis
14 of the differences between such a federal program and the program under this section
15 and 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 16.** 100.31 (2m) of the statutes is created to read:

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

BILL

1 compliance with sub. (2) during the preceding year. The report shall also describe
2 programs offered by sellers and others that offer discounts on drugs to consumers.
3 Within the limits of available resources, the department shall publicize these
4 programs to consumers. In preparing the report, the department shall consult with
5 sellers, purchasers, and consumers, including elderly consumers.

INSERT
15-5

SECTION 17. Appropriation changes.

(3) ADDITIONAL

INSERT
15-6

6 (3) (3) ⁽³⁾ PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY, ⁽³⁾ 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~~ ^{\$1,000,000} 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.
12

SECTION 18. Initial applicability.

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

SECTION 19. Effective dates; health and family services. This act takes

17 effect on the ^(2nd) day after publication, except as follows: ^{of the biennial budget act}

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

21

(END)

(2) ⁽³⁾ PRESCRIPTION DRUG ASSISTANCE PROJECT. The treatment of section 49.477(2) of the statutes takes effect on the day after publication, as created by this act,

INSERT A

no # Further, the bill appropriates \$1,000,000 in
general purpose revenues to the joint committee on
finance and authorizes DHPS to submit a
proposal for review and approval by the department
of administration and by the joint committee on
finance for expenditure of these monies.

BILL

1 manufactured by a manufacturer that enters into a rebate agreement in force under
2 sub. (4).

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

4 (2) The department shall request from the secretary of the federal department
5 of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid
6 laws necessary to permit the department to conduct a project to expand eligibility for
7 medical assistance to include individuals who are eligible for and enrolled in
8 medicare and individuals whose annual household incomes, as determined by the
9 department, do not exceed 300% of the federal poverty line for a family the size of the
10 individual's eligible family. Eligibility for medical assistance under this subsection
11 entitles an individual, after payment of a \$20 annual enrollment fee, only to the
12 discounted purchase of prescription drugs as specified under sub. (3).

13 (3) Under the project under sub. (2), as a condition of participation by a
14 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
15 pharmacy or pharmacist may not charge an individual who is eligible for medical
16 assistance under sub. (2), who is not enrolled in the program under s. 49.688, and who

17 presents a valid prescription order, an amount for a prescription drug under the order
18 that exceeds the amount obtained by subtracting the amount under sub. (4) from the
19 medical assistance reimbursement amount for the drug, as determined by the
20 department.

21 (4) From the appropriations under s. 20.435 (4) (b) and (o), the department
22 shall pay the pharmacy or pharmacist for a prescription drug purchased as specified
23 under sub. (3) an amount that results from applying to the medical assistance
24 reimbursement rate amount for the drug the percentage that results from dividing
25 the revenue for the prescription drug that the department received the previous year

total



BLL

1 under ~~the~~ rebate agreement under 42 USC 1396r-8 ~~with a prescription drug~~
2 ~~manufacturer that sells the prescription drug for prescribed use in this state~~ by the
3 total amount of medical assistance expenditures for prescription drugs for the
4 previous year, as determined by the department.

5 (5) The department may not implement the program under this section unless
6 a waiver that is consistent with all of the provisions of this section is granted and in
7 effect. If the department receives the waiver, at the end of the period during which
8 the waiver remains in effect the department shall request any available extension
9 of the waiver.

10 SECTION 6. 49.688 of the statutes is created to read:

11 **49.688 Prescription drug assistance for elderly persons.** (1) In this
12 section:

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

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

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

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

21 (e) "Program payment rate" means the rate of payment made for the identical
22 drug specified under s. 49.46 (2) (b) 6. h., plus 5%.

23 (2) (a) A person to whom all of the following applies is eligible to purchase a
24 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

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

End of
INSERT 9-7

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.

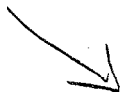
7 (c) A person other than a person specified in par. (b) who is convicted of violating
8 a rule promulgated by the department under par. (a) may be fined not more than
9 \$10,000, or imprisoned for not more than one year, or both.

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 ~~11~~ Nonstatutory provisions.**

21 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before July 1,
22 2002, 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



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.

22 **SECTION 8. Appropriation changes.**
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
15-5

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:** ..

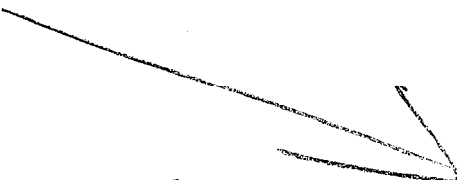
~~(#)~~ ^(C) (1) EXPANSION OF MEDICAL ASSISTANCE

ELIGIBILITY. 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 \$ 600,000 for fiscal year 2001-02 and the dollar amount is increased by \$ 1,200,000 for fiscal year 2002-03 for increase funding

for the purpose/purposes for which the appropriation is made to increase funding for providing medical assistance benefits to individuals eligible under section 49.47(4) Cag. was created by this act of the statutes

* 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.



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.

22 **SECTION 8. Appropriation changes.**

23 2 (3) **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

1 the acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02
2 to increase funding for administration of the prescription drug assistance for elderly
3 program under section 49.688 of the statutes, as created by this act.

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

10 **SECTION 9. Effective dates; health and family services.** This act takes
11 effect on the 2nd day after publication of the biennial budget act, except as follows:

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

14 (2) PRESCRIPTION DRUG ASSISTANCE PROJECT. The treatment of section 49.477 (2)
15 of the statutes takes effect on the day after publication.

16 (END)

End of
INSERT 15-6

1/23/01 From Christian - Redraft 0185/4

Take out waiver provisions



SOON - In edit '123
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0185/45
DAK/ISR/MGG:wlj&cjs/wa

2001 BILL

REGEN

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), 20.435 (4) (jc), 20.435 (4) (jd), 49.47
4 (4) (aq), 49.477, 49.688 and 100.31 (2m) of the statutes; **relating to:** expanding
5 medical assistance income eligibility requirements for individuals who are
6 elderly, blind, or disabled; requiring pharmacies and pharmacists, as a
7 condition of medical assistance participation, to charge elderly persons for
8 prescription drugs no more than specific amounts; specifying requirements for
9 rebate agreements between the department of health and family services and
10 drug manufacturers; requiring an annual report on the sale and pricing of
11 certain drugs and programs that offer discounts on drugs to consumers;
12 ~~requiring the department of health and family services to seek a waiver to~~
13 ~~provide medical assistance eligibility to certain persons for purposes of a~~

BILL

- 1 ~~prescription drug benefit~~ requiring the exercise of rule-making authority;
- 2 making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

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

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

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 100% of the federal poverty level the maximum income level for eligibility for MA for individuals 65 years of age or older, blind, or permanently disabled.

The bill provides that, beginning January 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 not more than the medical assistance rate plus 5%, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$500 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 \$5 for each generic drug and a copayment of \$10 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 300% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 175% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying the \$5 and \$10 copayments without first paying the \$500 deductible. Persons who are otherwise eligible but who have household incomes that exceed

BILL

300% of the federal poverty line for a family the size of the persons' eligible families must first, in a 12-month period, pay for prescription drugs, at market rate, a deductible that equals the difference between the person's annual household income and 300% of the federal poverty line; after this is paid, the persons must pay an additional \$500 deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying the generic and nongeneric copayments. 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 available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that coverage.

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering 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 the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a sum sufficient appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the MA rate plus 5%, minus any copayment made, plus a dispensing fee.

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 MA rate plus 5% 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

BILL

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 \$1,000,000 in general purpose revenues in fiscal year 2001-02 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance for expenditure of these moneys.

~~Under the bill, DHFS must request from the secretary of the federal department of health and human services a waiver of federal medicaid laws to permit DHFS to conduct a project to expand MA eligibility for persons who are eligible for and enrolled in Medicare and persons whose annual household incomes do not exceed 300% of the federal poverty line for a family the size of the persons' eligible families. Under the waiver, the expanded MA eligibility entitles an eligible person, after paying a \$25 annual enrollment fee, to purchase a prescription drug for a copayment, as specified in the bill, for that prescription drug. The pharmacy or pharmacist who sells the drug at this reduced price receives reimbursement for the difference from DHFS, from moneys received by DHFS under rebate agreements with drug manufacturers.~~

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* A sum sufficient
3 for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug
4 assistancc for elderly persons.

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

6 20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*

7 All moneys received from rebate payments by manufacturers under s. 49.688 (6), to

BILL

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

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

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

7 **SECTION 4.** 20.435 (4) (jc) of the statutes is created to read:

8 20.435 (4) (jc) *Prescription drug assistance project; rebate payments.* All
9 moneys received from rebate payments by manufacturers under s. 49.477 (4) (a), to
10 be used for payment to pharmacies and pharmacists under s. 49.477 (4) for
11 prescription drug assistance. This paragraph applies only if a waiver, under 42 USC
12 1315 (a), is granted as requested under s. 49.477 (2).

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

14 20.435 (4) (jd) *Prescription drug assistance project; enrollment fees.* All moneys
15 received from payment of enrollment fees under s. 49.477 (2), to be used for
16 administration of the program under s. 49.477. This paragraph applies only if a
17 waiver, under 42 USC 1315 (a), is granted as requested under s. 49.477 (2).

18 **SECTION 6.** 49.47 (4) (aq) of the statutes is created to read:

19 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the
20 limitation on income under par. (c) is eligible for medical assistance if the individual's
21 income does not exceed 100% of the federal poverty level, and the individual is 65
22 years of age or older or is blind or totally and permanently disabled, as defined under
23 federal Title XVI.

24 2. If a federal waiver is necessary to provide medical assistance to individuals
25 specified in subd. 1., the department shall request a waiver from the secretary of the

BILL**SECTION 6**

1 federal department of health and human services before providing medical
2 assistance under this paragraph.

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

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

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

8 49.47 (4) (b) 2r. For a person who is eligible under par. (a) 3. or 4. or (aq), the
9 value of any burial space or agreement representing the purchase of a burial space
10 held for the purpose of providing a place for the burial of the person or any member
11 of his or her immediate family.

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

13 49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4. or (aq), life
14 insurance with cash surrender values if the total face value of all life insurance
15 policies is not more than \$1,500.

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

17 49.47 (4) (b) 3. For a person who is eligible under par. (a) 3. or 4. or (aq), funds
18 set aside to meet the burial and related expenses of the person and his or her spouse
19 in an amount not to exceed \$1,500 each, minus the sum of the cash value of any life
20 insurance excluded under subd. 2w. and the amount in any irrevocable burial trust
21 under s. 445.125 (1) (a).

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

23 49.47 (4) (c) 1. Except as provided in ~~par. pars.~~ (am) and (aq) and as limited by
24 subd. 3., eligibility exists if income does not exceed ~~133-1/3%~~ 133.33% of the
25 maximum aid to families with dependent children payment under s. 49.19 (11) for

BILL

1 the applicant's family size or the combined benefit amount available under
2 supplemental security income under 42 USC 1381 to 1383c and state supplemental
3 aid under s. 49.77 whichever is higher. In this subdivision "income" includes earned
4 or unearned income that would be included in determining eligibility for the
5 individual or family under s. 49.19 or 49.77, or for the aged, blind, or disabled under
6 42 USC 1381 to 1385. "Income" does not include earned or unearned income which
7 would be excluded in determining eligibility for the individual or family under s.
8 49.19 or 49.77, or for the aged, blind, or disabled individual under 42 USC 1381 to
9 1385.

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

11 49.47 (4) (c) 3. Except as provided in ~~par.~~ pars. (am) and (aq), no person is
12 eligible for medical assistance under this section if the person's income exceeds the
13 maximum income levels that the U.S. department of health and human services sets
14 for federal financial participation under 42 USC 1396b (f).

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

16 49.47 (4) (i) 2. (intro.) Notwithstanding par. (b) 2r. and 3., a person who is
17 described in par. (a) 3. or 4. or (aq) is not eligible for benefits under this section if any
18 of the following criteria is met:

19 **SECTION 14.** 49.477 of the statutes is created to read:

20 **49.477 Prescription drug assistance project.** (1) In this section:

21 (a) "Medicare" means coverage under part A or part B of Title XVIII of the
22 federal Social Security Act, 42 USC 1395 to 1395y.

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

BILL**SECTION 14**

1 (c) "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. (4).

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

6 (2) The department shall request from the secretary of the federal department
7 of health and human services a waiver, under 42 USC 1315 (a), of federal medicaid
8 laws necessary to permit the department to conduct a project to expand eligibility for
9 medical assistance to include individuals who are eligible for and enrolled in
10 medicare and individuals whose annual household incomes, as determined by the
11 department, do not exceed 300% of the federal poverty line for a family the size of the
12 individual's eligible family. Eligibility for medical assistance under this subsection
13 entitles an individual, after payment of a \$25 annual enrollment fee, only to the
14 discounted purchase of prescription drugs as specified under sub. (3).

15 (3) Under the project under sub. (2), as a condition of participation by a
16 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
17 pharmacy or pharmacist may not charge an individual who is eligible for medical
18 assistance under sub. (2), who is not enrolled in the program under s. 49.688, and who
19 presents a valid prescription order, an amount for a prescription drug under the
20 order that exceeds the amount obtained by subtracting the amount under sub. (4)
21 from the medical assistance reimbursement amount for the drug, as determined by
22 the department.

23 (4) From the appropriations under s. 20.435 (4) (b) and (o), the department
24 shall pay the pharmacy or pharmacist for a prescription drug purchased as specified
25 under sub. (3) an amount that results from applying to the medical assistance

BILL

1 reimbursement rate amount for the drug the percentage that results from dividing
2 the total revenue that the department received the previous year under rebate
3 agreements under 42 USC 1396r-8 by the total amount of medical assistance
4 expenditures for prescription drugs for the previous year, as determined by the
5 department.

6 (5) The department may not implement the program under this section unless
7 a waiver that is consistent with all of the provisions of this section is granted and in
8 effect. If the department receives the waiver, at the end of the period during which
9 the waiver remains in effect the department shall request any available extension
10 of the waiver.

11 **SECTION 15.** 49.688 of the statutes is created to read:

12 **49.688 Prescription drug assistance for low-income elderly persons.**

13 (1) In this section:

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

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

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

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

22 (e) "Program payment rate" means the rate of payment made for the indential
23 drug specified under s. 49.46 (2) (b) 6. h., plus 5%.

24 (2) (a) A person to whom all of the following applies is eligible to purchase a
25 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

BILL

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

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

3 3. The person is not a recipient of medical assistance.

4 4. The person's annual household income, as determined by the department,
5 does not exceed 300% of the federal poverty line for a family the size of the person's
6 eligible family.

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

8 (b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household
9 income, as determined by the department, exceeds 300% of the federal poverty line
10 for a family the size of the person's eligible family, is eligible to purchase a
11 prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining
12 amount of any 12-month period in which the person has first paid the annual
13 deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail
14 price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

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

16 (a) For each 12-month benefit period, a program enrollment fee of \$25.

17 (b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a),
18 a deductible for prescription drugs of \$500, except that a person whose annual
19 household income, as determined by the department, is 175% or less of the federal
20 poverty line for a family the size of the person's eligible family pays no deductible.

21 2. For each 12-month benefit period, for a person specified in sub. (2) (b), a
22 deductible for prescription drugs that equals all of the following:

23 a. The difference between the person's annual household income and 300% of
24 the federal poverty line for a family the size of the person's eligible family.

25 b. Five hundred dollars.

BILL

1 (c) After payment of any applicable deductible under par. (b), all of the
2 following:

- 3 1. A copayment of \$5 for each prescription drug that bears only a generic name.
4 2. A copayment of \$10 for each prescription drug that does not bear only a
5 generic name.

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

10 (4) The department shall devise and distribute a form for application for the
11 program under sub. (2), shall determine eligibility of applicants for each 12-month
12 benefit period, and shall issue to eligible persons a prescription drug card for use in
13 purchasing prescription drugs, as specified in sub. (5). The department shall
14 promulgate rules that specify the criteria to be used to determine household income
15 under sub. (2) (a) 4. and (b) and (3) (b) 1.

16 (5) (a) Beginning January 1, 2002, as a condition of participation by a
17 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
18 pharmacy or pharmacist may not charge a person who presents a valid prescription
19 order and a card indicating that he or she meets eligibility requirements under sub.
20 (2) an amount for a prescription drug under the order that exceeds the following:

- 21 1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment
22 rate, plus a dispensing fee that is equal to the dispensing fee permitted to be charged
23 for prescription drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

BILL

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

4 3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

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

8 (b) The department shall calculate and transmit to pharmacies and
9 pharmacists that are certified providers of medical assistance amounts that may be
10 used in calculating charges under par. (a). The department shall periodically update
11 this information and transmit the updated amounts to pharmacies and pharmacists.

12 (6) The department or an entity with which the department contracts shall
13 provide to a drug manufacturer that sells drugs for prescribed use in this state
14 material designed for use by the manufacturer in entering into a rebate agreement
15 with the department or entity that is modeled on the rebate agreement specified
16 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
17 of the following as requirements:

18 (a) That the manufacturer shall make rebate payments for each prescription
19 drug of the manufacturer that is prescribed for and purchased by persons who meet
20 criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have
21 paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited to the
22 appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule
23 established by the department.

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

BILL

1 (7) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
2 January 1, 2002, the department shall, under a schedule that is identical to that used
3 by the department for payment of pharmacy provider claims under medical
4 assistance, provide to pharmacies and pharmacists payments for prescription drugs
5 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
6 paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1.,
7 are not required to pay a deductible. The payment for each prescription drug under
8 this subsection shall be at the program payment rate, minus any copayment paid by
9 the person under sub. (5) (a) 2. or 4., plus a dispensing fee, as specified under sub.
10 (5) (a) 1., and plus, if applicable, incentive payments that are similar to those
11 provided under s. 49.45 (8v). The department shall devise and distribute a claim
12 form for use by pharmacies and pharmacists under this subsection and may limit
13 payment under this subsection to those prescription drugs for which payment claims
14 are submitted by pharmacists or pharmacies directly to the department. The
15 department may apply to the program under this section the same utilization and
16 cost control procedures that apply under rules promulgated by the department to
17 medical assistance under subch. IV of ch. 49.

18 (8) 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 discontinuc participation as certified providers of medical assistance and the
23 reasons given for the discontinuance.

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

BILL**SECTION 15**

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

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

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

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

18 **SECTION 16.** 100.31 (2m) of the statutes is created to read:

19 **100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.**
20 Before March 1 annually, the department shall submit a report to the governor, and
21 to the chief clerk of each house for distribution to the appropriate standing
22 committees under s. 13.172 (3), on compliance of sellers with sub. (2) and on whether
23 purchasers have passed on to consumers any savings resulting from sellers'
24 compliance with sub. (2) during the preceding year. The report shall also describe
25 programs offered by sellers and others that offer discounts on drugs to consumers.

BILL

1 Within the limits of available resources, the department shall publicize these
2 programs to consumers. In preparing the report, the department shall consult with
3 sellers, purchasers, and consumers, including elderly consumers.

SECTION 17. Nonstatutory provisions.

4
5 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before July 1,
6 2002, the department of health and family services may develop and submit to the
7 department of administration a proposal for expenditure of the funds appropriated
8 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
9 assistance for elderly program under section 49.688 of the statutes, as created by this
10 act. The department of administration may approve, disapprove, or modify and
11 approve any proposal it receives under this subsection. If the department of
12 administration approves the proposal, the department shall submit the proposal,
13 together with any modifications, to the cochairpersons of the joint committee on
14 finance. If the cochairpersons of the committee do not notify the secretaries of
15 administration and health and family services within 14 working days after
16 receiving the proposal that the cochairpersons have scheduled a meeting for the
17 purpose of reviewing the proposal, the secretary of administration may transfer from
18 the appropriation under section 20.865 (4) (a) of the statutes to the appropriation
19 under section 20.435 (4) (a) of the statutes the amount specified in the proposal or
20 any proposed modifications of the proposal for expenditure as specified in the
21 proposal or any proposed modifications of the proposal and may approve any position
22 authority specified in the proposal or any proposed modifications of the proposal. If,
23 within 14 working days after receiving the proposal, the cochairpersons notify the
24 secretaries of administration and health and family services that the cochairpersons
25 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of

BILL**SECTION 17**

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

SECTION 18. Appropriation changes.

6
7 (1) EXPANSION OF MEDICAL ASSISTANCE ELIGIBILITY. In the schedule under section
8 20.005 (3) of the statutes for the appropriation to the department of health and family
9 services under section 20.435 (4) (b) of the statutes, as affected by the acts of 2001,
10 the dollar amount is increased by \$600,000 for fiscal year 2001–02 and the dollar
11 amount is increased by \$1,200,000 for fiscal year 2002–03 to increase funding for
12 providing medical assistance benefits to individuals eligible under section 49.47 (4)
13 (aq) of the statutes, as created by this act.

14 (2) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
15 under section 20.005 (3) of the statutes for the appropriation to the department of
16 health and family services under section 20.435 (4) (a) of the statutes, as affected by
17 the acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001–02
18 to increase funding for administration of the prescription drug assistance for elderly
19 program under section 49.688 of the statutes, as created by this act.

20 (3) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADDITIONAL ADMINISTRATION. In
21 the schedule under section 20.005 (3) of the statutes for the appropriation to the joint
22 committee on finance under section 20.865 (4) (a) of the statutes, as affected by the
23 acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001–02 to
24 increase funding for administration of the prescription drug assistance for elderly
25 program under section 49.688 of the statutes, as created by this act.

BILL**1 SECTION 19. Initial applicability.**

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

5 **SECTION 20. Effective dates.** This act takes effect on the 2nd day after
6 publication of the biennial budget act, except as follows:

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

9 (2) ~~PRESCRIPTION DRUG ASSISTANCE PROJECT.~~ The treatment of section 49.477 (2)
10 of the statutes, ~~as created by this act,~~ takes effect on the day after publication.

11

(END)

* Christian, Rep Krusick's Office

- MA eligibility changes take effect 1/1/01



RMR

2001 BILL

Thurs
1/25/01
Thanks!

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inserts

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 individuals who are elderly, blind, or disabled;
6 requiring pharmacies and pharmacists, as a condition of medical assistance
7 participation, to charge elderly persons for prescription drugs no more than
8 specific amounts; specifying requirements for rebate agreements between the
9 department of health and family services and drug manufacturers; requiring
10 an annual report on the sale and pricing of certain drugs and programs that
11 offer discounts on drugs to consumers; requiring the exercise of rule-making
12 authority; making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established

BILL

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.

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.

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 100% of the federal poverty level the maximum income level for eligibility for MA for individuals 65 years of age or older, blind, or permanently disabled.

The bill provides that, beginning January 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 not more than the medical assistance rate plus 5%, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$500 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 \$5 for each generic drug and a copayment of \$10 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 300% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 175% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying the \$5 and \$10 copayments without first paying the \$500 deductible. Persons who are otherwise eligible but who have household incomes that exceed 300% of the federal poverty line for a family the size of the persons' eligible families must first, in a 12-month period, pay for prescription drugs, at market rate, a deductible that equals the difference between the person's annual household income and 300% of the federal poverty line; after this is paid, the persons must pay an additional \$500 deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying the generic and nongeneric copayments. As a condition of participation by a pharmacy or pharmacist in the MA program, the

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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 available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that coverage.

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering 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 the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a sum sufficient appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the MA rate plus 5%, minus any copayment made, plus a dispensing fee.

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 MA rate plus 5% 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 \$1,000,000 in general purpose revenues in fiscal year 2001–02 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance for expenditure of these moneys.

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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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* A sum sufficient
3 for payment to pharmacies and pharmacists under s. 49.688 (7) for prescription drug
4 assistance for elderly persons.

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

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

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

11 20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All
12 moneys received from payment of enrollment fees under s. 49.688 (3), to be used for
13 administration of the program under s. 49.688.

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

15 49.47 (4) (aq) 1. Subject to subd. 2., an individual who does not meet the
16 limitation on income under par. (c) is eligible for medical assistance if the individual's
17 income does not exceed 100% of the federal poverty level, and the individual is 65

BILL

1 years of age or older or is blind or totally and permanently disabled, as defined under
2 federal Title XVI.

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 5.** 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 6.** 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 7.** 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 8.** 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 9.** 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 10.** 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 11.** 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 12.** 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:

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

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

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

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

9 (e) “Program payment rate” means the rate of payment made for the identical
10 drug specified under s. 49.46 (2) (b) 6. h., plus 5%.

11 (2) (a) A person to whom all of the following applies is eligible to purchase a
12 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

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

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

15 3. The person is not a recipient of medical assistance.

16 4. The person’s annual household income, as determined by the department,
17 does not exceed 300% of the federal poverty line for a family the size of the person’s
18 eligible family.

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

20 (b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household
21 income, as determined by the department, exceeds 300% of the federal poverty line
22 for a family the size of the person’s eligible family, is eligible to purchase a
23 prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining
24 amount of any 12-month period in which the person has first paid the annual

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1 deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail
2 price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

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

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

5 (b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a),
6 a deductible for prescription drugs of \$500, except that a person whose annual
7 household income, as determined by the department, is 175% or less of the federal
8 poverty line for a family the size of the person's eligible family pays no deductible.

9 2. For each 12-month benefit period, for a person specified in sub. (2) (b), a
10 deductible for prescription drugs that equals all of the following:

11 a. The difference between the person's annual household income and 300% of
12 the federal poverty line for a family the size of the person's eligible family.

13 b. Five hundred dollars.

14 (c) After payment of any applicable deductible under par. (b), all of the
15 following:

16 1. A copayment of \$5 for each prescription drug that bears only a generic name.

17 2. A copayment of \$10 for each prescription drug that does not bear only a
18 generic name.

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

23 **(4)** The department shall devise and distribute a form for application for the
24 program under sub. (2), shall determine eligibility of applicants for each 12-month
25 benefit period, and shall issue to eligible persons a prescription drug card for use in

BILL

1 purchasing prescription drugs, as specified in sub. (5). The department shall
2 promulgate rules that specify the criteria to be used to determine household income
3 under sub. (2) (a) 4. and (b) and (3) (b) 1.

4 (5) (a) Beginning January 1, 2002, as a condition of participation by a
5 pharmacy or pharmacist in the program under s. 49.45, 49.46, or 49.47, the
6 pharmacy or pharmacist may not charge a person who presents a valid prescription
7 order and a card indicating that he or she meets eligibility requirements under sub.
8 (2) an amount for a prescription drug under the order that exceeds the following:

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

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

15 3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

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

19 (b) 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 (6) The department or an entity with which the department contracts shall
24 provide to a drug manufacturer that sells drugs for prescribed use in this state
25 material designed for use by the manufacturer in entering into a rebate agreement

BILL

1 with the department or entity that is modeled on the rebate agreement specified
2 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
3 of the following as requirements:

4 (a) That the manufacturer shall make rebate payments for each prescription
5 drug of the manufacturer that is prescribed for and purchased by persons who meet
6 criteria under sub. (2) (a) and persons who meet criteria under sub. (2) (b) and have
7 paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited to the
8 appropriation under s. 20.435 (4) (j), each calendar quarter or according to a schedule
9 established by the department.

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

12 (7) From the appropriation accounts under s. 20.435 (4) (bv) and (j), beginning
13 January 1, 2002, the department shall, under a schedule that is identical to that used
14 by the department for payment of pharmacy provider claims under medical
15 assistance, provide to pharmacies and pharmacists payments for prescription drugs
16 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
17 paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1.,
18 are not required to pay a deductible. The payment for each prescription drug under
19 this subsection shall be at the program payment rate, minus any copayment paid by
20 the person under sub. (5) (a) 2. or 4., plus a dispensing fee, as specified under sub.
21 (5) (a) 1., and plus, if applicable, incentive payments that are similar to those
22 provided under s. 49.45 (8v). The department shall devise and distribute a claim
23 form for use by pharmacies and pharmacists under this subsection and may limit
24 payment under this subsection to those prescription drugs for which payment claims
25 are submitted by pharmacists or pharmacies directly to the department. The

BILL

1 department may apply to the program under this section the same utilization and
2 cost control procedures that apply under rules promulgated by the department to
3 medical assistance under subch. IV of ch. 49.

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

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

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

16 (c) A person other than a person specified in par. (b) who is convicted of violating
17 a rule promulgated by the department under par. (a) may be fined not more than
18 \$10,000, or imprisoned for not more than one year in the county jail, or both.

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

BILL

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

5 **SECTION 13.** 100.31 (2m) of the statutes is created to read:

6 **100.31 (2m) ANNUAL REPORT AND PUBLICITY ON SELLER DISCOUNT PROGRAMS.**
7 Before March 1 annually, the department shall submit a report to the governor, and
8 to the chief clerk of each house for distribution to the appropriate standing
9 committees under s. 13.172 (3), on compliance of sellers with sub. (2) and on whether
10 purchasers have passed on to consumers any savings resulting from sellers'
11 compliance with sub. (2) during the preceding year. The report shall also describe
12 programs offered by sellers and others that offer discounts on drugs to consumers.
13 Within the limits of available resources, the department shall publicize these
14 programs to consumers. In preparing the report, the department shall consult with
15 sellers, purchasers, and consumers, including elderly consumers.

16 **SECTION 14. Nonstatutory provisions.**

17 (1) **PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION.** Before July 1,
18 2002, the department of health and family services may develop and submit to the
19 department of administration a proposal for expenditure of the funds appropriated
20 under section 20.865 (4) (a) of the statutes for administration of the prescription drug
21 assistance for elderly program under section 49.688 of the statutes, as created by this
22 act. The department of administration may approve, disapprove, or modify and
23 approve any proposal it receives under this subsection. If the department of
24 administration approves the proposal, the department shall submit the proposal,
25 together with any modifications, to the cochairpersons of the joint committee on

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1 finance. If the cochairpersons of the committee do not notify the secretaries of
2 administration and health and family services within 14 working days after
3 receiving the proposal that the cochairpersons have scheduled a meeting for the
4 purpose of reviewing the proposal, the secretary of administration may transfer from
5 the appropriation under section 20.865 (4) (a) of the statutes to the appropriation
6 under section 20.435 (4) (a) of the statutes the amount specified in the proposal or
7 any proposed modifications of the proposal for expenditure as specified in the
8 proposal or any proposed modifications of the proposal and may approve any position
9 authority specified in the proposal or any proposed modifications of the proposal. If,
10 within 14 working days after receiving the proposal, the cochairpersons notify the
11 secretaries of administration and health and family services that the cochairpersons
12 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
13 administration may not transfer any amount specified in the proposal or any
14 proposed modifications of the proposal from the appropriation under section 20.865
15 (4) (a) of the statutes and may not approve any position authority specified in the
16 proposal or any proposed modifications of the proposal, except as approved by the
17 committee.

SECTION 15. Appropriation changes.

18
19 (1) EXPANSION OF MEDICAL ASSISTANCE ELIGIBILITY. In the schedule under section
20 20.005 (3) of the statutes for the appropriation to the department of health and family
21 services under section 20.435 (4) (b) of the statutes, as affected by the acts of 2001,
22 the dollar amount is increased by \$600,000 for fiscal year 2001–02 and the dollar
23 amount is increased by \$1,200,000 for fiscal year 2002–03 to increase funding for
24 providing medical assistance benefits to individuals eligible under section 49.47 (4)
25 (aq) of the statutes, as created by this act.

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1 (2) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. In the schedule
 2 under section 20.005 (3) of the statutes for the appropriation to the department of
 3 health and family services under section 20.435 (4) (a) of the statutes, as affected by
 4 the acts of 2001, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02
 5 to increase funding for administration of the prescription drug assistance for elderly
 6 program under section 49.688 of the statutes, as created by this act.

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

SECTION 16. Initial applicability.

13 *Medical assistance eligibility. } CS*
 14 (1) The treatment of section 49.47 (4) (aq), (b) 2m. b., 2r., 2w., and 3., (c) 1. and
 15 3., and (i) (2) (intro.) of the statutes first applies to eligibility determinations made
 16 for medical assistance on ^{2.} *the effective date of this bill* ~~the~~ subsection
 January 1, 2002.

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

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

(END)

create auto-ref "A"
create auto-ref "B"

Inset
14-21

Medical assistance eligibility.

Insert 14-21

use auto-ref "A"
use auto-ref "B"

→ A ~~(X)~~ The treatment of section 49.47(4)(ag), (b) 2m.
b., 2r., 2w., and 3., (c) 1. and 3., and (i) ~~(ii)~~ (intro.)
of the statutes and ^(CS) Section 16(1) of this act
take effect on January 1, 2002.

no stat:
eff date

NOTE

Representative Krusick:
=

¶ This "1/6" version corrects a technical error
in the Initial applicability and Effective date
provisions of the bill.

ISR

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0185/6dn
ISR:cjs:rs

January 25, 2001

Representative Krusick:

This "/6" version corrects a technical error in the Initial applicability and Effective date provisions of the bill.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: ivy.sager-rosenthal@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Tuesday, January 30, 2001 3:46 PM
To: Moran, Christian
Subject: LRB 01-0185/6 (per your request)



01-0185/6

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 25, 2001

MEMORANDUM

To: Representative Krusick

From: Debora A. Kennedy, Managing Attorney

Re: LRB-0185 Prescription drugs for elderly; annual report on sale of certain drugs

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

X JACKET FOR ASSEMBLY _____ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0137 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.