

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3275/P1dn
MDK:jld:pg

June 12, 2001

Representative Krusick:

Please review this draft very carefully to make sure that it achieves your intent. In particular, please note the following:

1. Under current law, DATCP and local district attorneys enforce a prohibition on wholesale price discrimination for prescription drugs. Therefore, I thought it was appropriate to require DATCP and local district attorneys to enforce the draft's prohibition on retail prescription drug prices. Is that okay, or do you want some other state agency to have enforcement authority?
2. The draft prohibits charging a retail price that is more than the copayment amount or the **average** price charged to uninsured consumers, whichever is less. Is that okay? I referred to average price because I understand that the same retailer may charge different prices for a prescription drug to different groups of consumers. For example, according to the federal Department of Health and Human Services in its Report to the President on Prescription Drug Coverage, Spending, Utilization, and Prices (April 2000), pharmacies may offer across-the-board discounts on drugs to certain groups of cash customers, such as senior citizens. See chapter 3 of the report, which deals with prices, at <http://aspe.hhs.gov/health/reports/drugstudy/chap03.htm>.
3. The prohibition regarding retail prices does not apply to a retailer who sells prescription drugs exclusively to insured consumers. The reason is that such a retailer doesn't provide prescription drugs to uninsured consumers, and, as a result, the prohibition cannot logically apply to such a retailer. Is that okay, or do you want to impose some other requirements on such retailers?
4. Under current law, a retailer may obtain treble damages from a wholesale seller who violates the price discrimination prohibition. Do you want to allow consumers to obtain treble damages from retailers who violate the retail price prohibition?
5. The draft has a delayed effective date (three months after publication) to give retailers some time to comply with the draft's requirements.
6. The nonstatutory provision is intended to avoid any impairment of contracts issues that might otherwise arise. Is it okay?

Please contact me if you have any questions or redraft instructions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us