

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0585/1dn  
DAK:wlj:jf

March 15, 2001

To Representative Coggs:

Please review this draft very carefully; some of its features are included in either 2001 Senate Bill 1 or 2001 Assembly Bill 120, or both. The following are issues that arose in drafting:

1. In the bills mentioned above, "prescription drug" is defined to be, among other things, a drug manufactured by a manufacturer that enters into a rebate agreement. As that definition operates under those bills, therefore, if a manufacturer elects not to enter into a rebate agreement, the manufacturer's drugs would not be purchased by program participants. I did not draft the term "prescription drug" in the same fashion for this bill, because the program participants will be receiving a discounted price for purchase of drugs, regardless of whether the manufacturer or labeler enters into a rebate agreement. If this is not your intent, please let me know.
2. Section 49.688 (3) requires that DHFS determine eligibility for each 12-month benefit period of applicants. Originally when we spoke of this issue, you had eliminated the benefit period, which made little sense if all state residents were eligible. However, if only those residents at or below 300% of the federal poverty line are eligible, it would seem to be important for DHFS to review their income annually; otherwise fraud might occur. Does this meet your intent?
3. Section 49.688 (4) requires a pharmacy or pharmacist to charge no more than the discounted prices as a condition of participation by the pharmacy or pharmacist in the medical assistance program. Okay?
4. An alternative to requiring that a person have had no insurance coverage for outpatient prescription drugs for 90 days prior to applying for the program (see s. 49.688 (2)) would be to state that if an eligible person has other available coverage for payment of prescription drugs, the program applies only to costs of prescription drugs for the person that are not covered under the other available coverage.
5. Please review the language concerning the discounted amount for a drug under s. 49.688 (5) (a) 2.; the language occurs in the Model Act, but I'm not entirely sure of its meaning, or how it would work.
6. Please review s. 49.688 (6) (b). I lack knowledge concerning any federal statute or regulation that would require confidentiality protection for the utilization data

collected under that paragraph. Is my treatment concerning the data as a patient health care record what you want?

7. Section 49.688 (7) permits DHFS to apply to the prescription drug program the same utilization and cost control procedures that apply under medical assistance. Okay?

8. Please note that, although the "Explanation of Legal Issues in the Prescription Drug Fair Pricing Act" that accompanies the Model Act indicates that the prescription drug program in general, and the prior authorization provisions in particular, will lower some drug prices that the Medicaid program pays, there appears to be no direct way that is specified in the Model Act's language, or in this draft, that accomplishes that assertion.

9. I have made the bill effective after publication of the budget bill and have set the start day for the program to be March 1, 2003. Okay?

10. I have made the rate, under s. 49.688 (5) (a), AWP minus 6% (as in the Model Act) or the maximum allowable cost (MAC), as determined by DHFS, whichever is less, because it is my understanding that occasionally the MAC is lower. Okay?

I would suggest that Charlie Morgan or Rachel Carabell, or both, review this draft.

Please let me know if I may provide you with further assistance with regard to the draft.

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