

**2001 Jr2 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB1)**

Received: 03/11/2002

Received By: kahlepj

Wanted: Soon

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Carabell

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Addl. Drafters:

Subject: Insurance - health  
Health - miscellaneous

Extra Copies:

Submit via email: NO

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**Pre Topic:**

LFB:.....Carabell -

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**Topic:**

HIRSP pharmacy overpayment recovery

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 03/12/2002	csicilia 03/12/2002		_____			
/1			pgreensl 03/12/2002	_____	lrb_docadmin 03/12/2002		

FE Sent For:

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FE Sent For:

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ARC

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Post-it® Fax Note	7671	Date	3/9	# of pages	1
To	Pam Kallee	From	Rachel Carabel		
Co./Dept.	LFB	Co.	LFB		
Phone #		Phone #			
Fax #		Fax #			

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1. HIRSP -- RECOVERY OF OVERPAYMENTS

GPR	- \$
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*Assemble* (a)  
~~Governor~~ Prohibit DHFS from recovering from any person, as defined under s. 990.01 (26) of the statutes, any part of a payment that was made for a prescription drug in HIRSP between July 1, 1998 and January 29, 2001, if DHFS issued a notice of intent to recover in December, 2001, to that person and the intended recovery is based on a DHFS determination that the person was incorrectly reimbursed under HIRSP due to the transition of administration for HIRSP from the Office of the Commissioner of Insurance (OCI) to DHFS. Require DHFS to return any such recovery DHFS received prior to the bill's general effective date. (b)

DHFS and the Legislative Audit Bureau found that HIRSP overpaid pharmacies for claims pharmacies submitted for drugs provided to HIRSP enrollees by approximately \$5.5 million during the period from July 1, 1998 through January, 2001. During this period, DHFS had instructed the plan's administrator to suspend controls that had limited HIRSP payments for drugs to the MA reimbursement rate for those drugs (the HIRSP program has the same reimbursement rate as MA for prescription drugs) and to simply pay the amount providers billed to the program. Providers were instructed to bill HIRSP at the MA reimbursement rate. The controls were suspended as a short-term measure to address confusion and complaints by pharmacies and policyholders regarding the transition of administration of HIRSP from OCI to DHFS.

This provision would reduce revenue available to support HIRSP benefits, on a one-time basis, by the amount DHFS would otherwise recover from these pharmacies. HIRSP costs are funded by policyholders (60%), insurers (20%) and providers (20%). Any revenue DHFS collects from overpayments to pharmacies would be available to reduce costs that would otherwise be born by policyholders, insurers and providers. Providers contribute to HIRSP costs by accepting reduced reimbursements, except that DHFS is prohibited from reducing reimbursements to pharmacies for HIRSP-related costs. Therefore, the 20% of HIRSP costs that must be born by providers is distributed across all providers except pharmacies.

[Bill Sections: ~]

Funding Positions	
GPR	- \$ -



Scott McCallum  
Governor

Phyllis J. Dubé  
Secretary

**State of Wisconsin**  
Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

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www.dhfs.state.wi.us

February 21, 2002

To: Margaret Kristan  
From: Shelley Malofsky  
Re: Pharmacy Recovery - HIRSP

This is suggested language, submitted with the understanding that the Legislative Reference Bureau will modify it to meet technical and style requirements. I believe the language should be a nonstatutory provision, but will also leave that decision to the LRB. In addition, LRB will need to determine if this qualifies as a private bill that then restricts the means by which it may be introduced. Perhaps focusing the issue on the payment rate for a prescription drug, rather than the payment made to pharmacies as a class of provider, removes the private bill concern.

Sec. XXXX Nonstatutory provision; health and family services.

- (1) Health Insurance Risk-Sharing Plan. The department of health and family services shall not recover from any person any part of a payment that was made for a prescription drug in the health insurance risk-sharing plan under chapter 149 of the statutes between July 1, 1998 and January 29, 2001 if the reason for the recovery is a department determination that an incorrect payment rate for the prescription drug was used. Any amounts that the Department has received for such a recovery from any person prior to the effective date of this section shall be returned to that person.

Notes:

1. I used the word 'person' in the chapter 990 sense, so that individuals, partnerships and corporate bodies are included in the term.
2. While the intent of this is only to preclude recoveries stemming from the pharmacies' failure to follow the July, 1998 billing instructions, I did not think that it was stylistically appropriate to add that practical detail. If LRB considers it appropriate, it would be preferable to tighten the language in that way. Or, it would be better if the language could refer to recoveries for which the Department issued a notice of intent to recover in December, 2001.

3. We discussed referencing the payment rate for prescription drugs under s. 149.142. I did not include that because I still question referring to a statutory provision that didn't exist at the time HIRSP made the payment it is trying to recover. I raise the issue here, though, to note it for the LRB's consideration.

**Kahler, Pam**

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**From:** Kahler, Pam  
**Sent:** Tuesday, February 26, 2002 10:43 AM  
**To:** Carabell, Rachel  
**Subject:** DHFS language

Rachel:

If the intention is to limit the prohibition on recoveries to those for which notices were sent in December, 2001, then I agree that a nonstatutory provision is best. The definitions in ch. 990 apply only to the statutes, so if the definition of "person" in ch. 990 is important, "as defined in section 990.01 (26) of the statutes" should be added after "person." I agree that a cross-reference to the payment rate under s. 149.142 doesn't have to be made. If the only recoveries that DHFS may not pursue are the ones for which notices were sent in December, 2001, that would be a good way to describe them. (See the end of Note 2. The easier, the better.) If that is not the case, however, then you would have to get into the dates that the payments were made and the reason for the recovery, etc., as in the original language above the Notes.

I don't think there is any "private bill" issue involved. Also, "shall not recover" should be "may not recover" at the beginning of the nonstst section language.

Let me know if you have any other questions.

Pam



State of Wisconsin  
2001 - 2002 LEGISLATURE  
January 2002 Special Session

LRBb2418/

PJK:.....  
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LFB:.....Carabell – HIRSP pharmacy overpayment recovery

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 358, line 15: after that line insert:

3 “(4r) PROHIBITING RECOVERY OF PHARMACY OVERPAYMENTS.

4 (a) The department of health and family services may not recover any part of  
5 a payment to which all of the following apply:

6 1. The payment was made by the department between July 1, 1998, and  
7 January 29, 2001, under the health insurance risk-sharing plan under chapter 149  
8 of the statutes for a prescription drug.

9 2. The department issued in December 2001, a notice of intent to recover all or  
10 part of the payment.

1 3. The <sup>intended</sup> recovery of all or part of the payment is based on a determination by the  
2 department that the amount paid was incorrect due to the transition of  
3 <sup>the</sup> administration of the health insurance risk-sharing plan under chapter 149 of the  
4 statutes from the office of the commissioner of insurance to the department.

5 (b) The department shall return to any person, as defined in section 990.01 (26),  
6 of the statutes, any amount that is prohibited from recovery under this subsection  
7 that was recovered by the department before the effective date of this paragraph.”

8

(END)

of health and family services





State of Wisconsin  
2001 - 2002 LEGISLATURE  
January 2002 Special Session

LRBb2418/1  
PJK:cjs:pg

LFB:.....Carabell – HIRSP pharmacy overpayment recovery

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7           January 29, 2001, for a prescription drug under the health insurance risk-sharing  
8           plan under chapter 149 of the statutes.

9           2. In December 2001, the department issued a notice of intent to recover all or  
10          part of the payment.

1           3. The intended recovery of all or part of the payment is based on a  
2           determination by the department that the amount paid was incorrect due to the  
3           transition of the administration of the health insurance risk-sharing plan under  
4           chapter 149 of the statutes from the office of the commissioner of insurance to the  
5           department.

6           (b) The department of health and family services shall return to any person,  
7           as defined in section 990.01 (26) of the statutes, any amount that is prohibited from  
8           recovery under this subsection that was recovered by the department before the  
9           effective date of this paragraph.”

10

(END)