

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/26/2003**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 7-7980**

By/Representing: **Blaine**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - medical assistance**

Extra Copies: **RLR**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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**Pre Topic:**

DOA:.....Blaine - BB0426,

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**Topic:**

Prescription drug cost controls; drug purchasing agreements

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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>
/?							State
/P1	dkennedy 01/29/2003	kfollett 01/30/2003	chaskett 01/30/2003		lemery 01/30/2003		State
/P2	dkennedy 02/02/2003	wjackson 02/02/2003	rschluet 02/02/2003		sbasford 02/03/2003		

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

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1?	dkennedy	1 PI 1/30 KF	PI cph 1/30	cph/1/30 <del>1/30</del>			State

FE Sent For:

<END>



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**JIM DOYLE**  
GOVERNOR  
**MARC MAROTTA**  
SECRETARY

Division of Executive Budget and Finance  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1736  
Fax (608) 267-0372  
TTY (608) 267-9629

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**Date:** January 23, 2003

**To:** Steve Miller, Chief  
Legislative Reference Bureau

**From:** Robert Blaine, Executive Policy and Budget Analyst  
Health and Public Safety Team, State Budget Office

**Subject:** Statutory Language Requests – Department of Health and Family Services

Attached is one statutory language requests for the 2003-05 biennial budget:

- Provide authority for the department to seek supplemental rebates from pharmaceutical manufacturers.

Please contact either myself (267-7980) if you have any questions.

**Agency:** Department of Health and Family Services

**SBO Analyst:** Robert Blaine (7-7980)

**Title:** Provide authority for the department to seek supplemental rebates from pharmaceutical manufacturers.

**Purpose of Draft:** The department currently receives rebates from pharmaceutical manufacturers tied to expenditures incurred by the department on behalf of Medical Assistance recipients of said manufacturers products. Federal law requires manufacturers to provide these rebates to state Medicaid programs. This draft would provide the department authority to negotiate larger rebate agreements than what are required by federal law.

**Priority:** Medium.

## Kennedy, Debora

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**From:** Blaine, Robert  
**Sent:** Thursday, January 23, 2003 4:59 PM  
**To:** Kennedy, Debora  
**Subject:** stat language

Debora --

You will see this drafting request tomorrow. I would classify it as a low / medium priority. While we would like it included: a) it may not be necessary, and b) the department could very likely live without it. The hard copy of the request will include some "suggested" language from the department, which of course is lengthy (but not very complicated). This might work as a non-stat provision.

If it can't get done, though, then it can't get done.

Thanks,  
Robert



MillerMemo  
012303.doc

State Budget Office -- WI Dept. of Administration  
608/267-7980  
608/267-0372 (fax)  
robert.blaine@doa.state.wi.us



### Model Legislation Prescription Drug Fair Pricing Coalition

#### Section 1. Prescription Drug Fair Pricing Coalition; Pharmacy Best Practices and Cost Control Program

Keep

(a) Prescription Drug Fair Pricing Coalition. The ~~Commissioner of~~ <sup>Secretary of</sup> ~~[identify state agency or other entity]~~ <sup>DHFS</sup> shall participate in a Prescription Drug Fair Pricing Coalition by implementing the Pharmacy Best Practices and Cost Control Program established by this section in concert with any other public or private health benefit plan within or outside of this state that agrees with the Commissioner to participate in the Program.

#### (b) Pharmacy Best Practices and Cost Control Program.

(1) Program established. The ~~Commissioner~~ shall establish a Pharmacy Best Practices and Cost Control Program. ~~[identify rule-making or any other state-specific process to establish program policies and procedures]~~ The Program shall be designed to reduce the cost of prescription drugs, while maintaining high quality in prescription drug therapies.

Secretary

(2)(A) Medicaid and other public assistance programs. The ~~Commissioner~~ shall implement the Program for Medicaid, and for all other public assistance programs ~~[definition of "public assistance programs" is limited to "state pharmaceutical assistance programs" defined by federal Medicaid law].~~ <sup>Secretary</sup>

under the  
insurer's  
liability plan

(B) Participation by other public and private health benefit plans. The ~~Commissioner~~ may implement the Program for any other public or private health benefit plan within or outside of this state that agrees to participate in the Program. A participating health benefit plan may agree with the Commissioner to limit the plan's participation to one or more program components authorized in subdivision (3) of this section. Implementation of the Program for such plans shall be done in a manner than does not adversely affect any Medicaid or public assistance program supplemental rebate program.

(3) Cost containment tools. The Program is authorized to implement the following cost containment tools to accomplish its purpose of reducing the cost of prescription drugs while maintaining high quality in prescription drug therapies: ~~[individual states may chose some or all program options; limiting program options may reduce cost savings]~~

(A) Preferred drug list. A preferred list of covered prescription drugs that identifies preferred choices within therapeutic classes for particular diseases and conditions, including lower-cost generic and therapeutic equivalents.

(B) Supplemental rebates. Formulary and rebate management, including:

(i) A supplemental rebate program for Medicaid and for any other public assistance program, including the Pharmacy Discount Plan under Section 2 of this Act.

(ii) A supplemental rebate program for any other participating health benefit plan within or without this state, implemented in a manner that does not adversely affect Medicaid and public assistance program supplemental rebates under subdivision (i).

(C) **Utilization review.** Drug utilization review procedures, including early refill review standards, duplicate prescription monitoring, and quality and supply controls.

(D) **Brand-name dispensing limitation.** A brand name dispensing limitation program, whereby prior authorization is required after a specified number of brand name drugs are dispensed to a plan beneficiary during a single month.

(E) **Counter-detailing and utilization management.** Utilization management, including education and counterdetailing programs for prescribers and patients, and fraud and abuse controls.

(F) **Clinical management and prior authorization.** Clinical management, including clinical protocols and step therapy, and prior authorization of limited use drugs and drugs with a lower-cost generic or therapeutic equivalent.

(G) **Other cost containment tools.** Any other cost containment activity designed to reduce the cost of prescription drugs, while maintaining high quality in prescription drug therapies.

(c) **Third Party Administration.** The Commissioner may contract with a third party to administer all or a portion of the Pharmacy Best Practices and Cost Control Program.

(d) **Pharmacy Benefit Manager Disclosure Rules.** [optional]

(1) The Commissioner shall not enter into a contract with a Pharmacy Benefit Manager unless the Pharmacy Benefit Manager has agreed to disclose to the Commissioner, in a manner that preserves the confidentiality of any proprietary information:

(A) any agreement with a pharmaceutical manufacturer to favor the manufacturer's products over a competitor's products, or to switch the drug prescribed by the patient's health care provider with a drug agreed to by the pharmacy benefit manager and the manufacturer;

(B) any agreement with a pharmaceutical manufacturer to share manufacturer rebates and discounts with the Pharmacy Benefit Manager, or to

Can delete since we have this authority already



DOA:.....Blaine – BB0426, Prescription drug cost controls; drug pricing coalition

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

This bill requires DHFS to design and implement a program to reduce the cost of prescription drugs and maintain high quality in prescription drug therapies. Among other activities, the program includes negotiating supplemental rebates under agreements with prescription drug manufacturers for prescription drugs provided to recipients under Medical Assistance and Badger Care. The bill also authorizes DHFS to enter into a prescription drug pricing coalition with any insurer offering a health benefit plan that agrees to participate in any of the activities under the program.

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

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

2 SECTION 1. 49.45 (49m) of the statutes is created to read:

1           49.45 (49m) PRESCRIPTION DRUG COST CONTROLS; PRICING COALITION. (a) In this  
2 section:

3           1. “Brand name” has the meaning given in s. 450.12 (1) (a).

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

5           3. “Prescription drug” has the meaning given in s. 450.01 (20).

6           (b) The department may enter into a prescription drug pricing coalition with  
7 any insurer offering a health benefit plan that agrees to participate in one or more  
8 of the activities specified in par. (c) 1. to 5.

9           (c) The department shall design and implement a program to reduce the cost  
10 of prescription drugs and maintain high quality in prescription drug therapies,  
11 which shall include all of the following:

12           1. A list of the prescription drugs that are included as a benefit under s. 49.46  
13 (2) (b) 6. h. that identifies preferred choices within therapeutic classes for particular  
14 diseases and medical conditions and includes prescription drugs with generic names  
15 and therapeutic equivalents.

16           2. Negotiating supplemental rebates under agreements with prescription drug  
17 manufacturers for prescription drugs provided to recipients under Medical  
18 Assistance and Badger Care and, if it is possible to implement the program without  
19 adversely affecting Medical Assistance and Badger Care supplemental rebates, to  
20 beneficiaries of any insurer that participates under par. (b).

21           3. A brand name dispensing limitation program under which prior  
22 authorization must be obtained by a Medical Assistance or Badger Care recipient or,  
23 if applicable, a beneficiary of an insurer that participates under par. (b), if the  
24 number of prescription drugs bearing a brand name that are dispensed to the  
25 recipient or beneficiary during a month exceeds a specified limit.



Prescription Drug Cost Controls  
LRB-1762/P1

**49.45(49m)**

✓ (b) Strike language that allows DHFS to enter 'pricing coalition' with insurers. This is incorrect; should reflect authority to enter 'multi-state' purchasing agreement with other states or "purchasers" of prescription drugs – as reflected in Governor's statements regarding Midwest states. Referencing insurers significantly limits the ability to enter agreements with large public purchasers; commercial insurers do not offer the market leverage to achieve greater price reductions, e.g. price, rebates, than what DHFS or other public purchasers currently receive.

✓ (c) strike "shall"; use "may" – this language must be permissive to allow DHFS to achieve significant savings within the biennium. ?

✓ 1. strike "for particular diseases and medical conditions"; implementing a PDL that identifies preferred drugs by disease cannot be implemented; such conditions are in effect, prior authorization criteria for which DHFS currently has state and federal authority.

NO ✓ Strike "..names"; refer to generic drugs. Strike "therapeutic equivalents" – this term is subjective and will provide a manufacturer to bring suit in cases where DHFS relies in part on cost to establish prior authorization policy – again, PA is the administrative trigger to creating a PDL.

✓ 2. and 3. Cross-reference SeniorCare and SeniorCare recipients – cost savings assume SeniorCare drug utilization/expenditures will be subject to the Medicaid policies.

✓ 2. Strike reference to beneficiaries of "any insurer"; may be replaced with language referencing other states' programs or alternative language.

✓ 2. Strike "Negotiating"; replace "Establish".  
with?

✓ 3. Brand name limitations have not been subject of DHFS cost containment analysis to date.

*Do I eliminate?*

✓ 5. After "cost" insert "or expenditures for..."; Referring only to cost directly implies a single focus on supplemental rebates, and could be argued to preclude activities that seek to reduce expenditures through administrative policies, e.g. market shift through prior authorization to promote the use of generic drugs.

✓ 5.(d) Insert after "perform" "any or all"; allows flexibility in contracting for certain new services without disrupting current/effective programs.



TODAY, if possible

State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1762/P2

DAK:kjf:cph

WLj

D-NOTE

DOA:.....Blaine - BB0426, Prescription drug cost controls; drug pricing coalition purchasing agreements

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

multi-state purchasing agreements and other agreements with prescription drug purchasers

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

authorizes

This bill requires DHFS to design and implement a program to reduce the cost of prescription drugs and maintain high quality in prescription drug therapies. Among other activities, the program includes negotiating supplemental rebates under agreements with prescription drug manufacturers for prescription drugs provided to recipients under Medical Assistance and Badger Care. The bill also authorizes DHFS to enter into a prescription drug pricing coalition with any insurer offering a health benefit plan that agrees to participate in any of the activities under the program.

establishing

STET ←

(if the other state or purchaser)

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

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

2 SECTION 1. 49.45 (49m) of the statutes is created to read:

and to persons eligible under the

program of prescription drug assistance to elderly persons (commonly known as Senior Care)

**(CS) PURCHASING AGREEMENTS**

1 49.45 (49m) PRESCRIPTION DRUG COST CONTROLS; ~~PHARMACEUTICALS~~ (a) In this  
2 section:

- 3 1. "Brand name" has the meaning given in s. 450.12 (1) (a).
- 4 2. "Generic name" has the meaning given in s. 450.12 (1) (b).
- 5 3. "Prescription drug" has the meaning given in s. 450.01 (20).

multi-state purchasing agreement with another state or with a purchaser of prescription drugs

6 (b) The department may enter into a ~~prescription drug pricing condition~~ with  
7 ~~any insurer offering a health benefit plan that~~ agrees to participate in one or more  
8 of the activities specified in par. (c) 1. to 5.

may if the other state or purchaser a purchasing agreement

9 (c) The department ~~shall~~ design and implement a program to reduce the cost  
10 of prescription drugs and <sup>to</sup> maintain high quality in prescription drug therapies,  
11 which shall include all of the following:

- 12 1. A list of the prescription drugs that are included as a benefit under s. 49.46
- 13 (2) (b) 6. h. that identifies preferred choices within therapeutic classes ~~for particular~~
- 14 ~~diseases and medical conditions~~ and includes prescription drugs <sup>(that bear only</sup> with generic names
- 15 ~~and therapeutic equivalents)~~ <sup>and to eligible persons under s. 49.688</sup>

16 <sup>Establishing</sup> 2. ~~Negotiating~~ supplemental rebates under agreements with prescription drug  
17 manufacturers for prescription drugs provided to recipients under Medical  
18 Assistance and Badger Care and, if it is possible to implement the program without  
19 adversely affecting Medical Assistance <sup>supplemental rebates for</sup> and Badger Care ~~supplemental rebates~~, to  
20 beneficiaries of ~~any insurer that participates~~ <sup>participants</sup> under par. (b).

21 3. A brand name dispensing limitation program under which prior  
22 authorization must be obtained by a Medical Assistance or Badger Care recipient or,  
23 if applicable, a beneficiary of an insurer that participates under par. (b), if the  
24 number of prescription drugs bearing a brand name that are dispensed to the  
25 recipient or beneficiary during a month exceeds a specified limit.

and prescription drug assistance under s. 49.688



- ①
- ②
- 3
- ④
- ⑤
- 6

~~4.~~ <sup>③</sup> Utilization management and fraud and abuse controls.  
~~5.~~ <sup>④</sup> Any other activity to reduce the cost of prescription drugs and maintain high quality in prescription drug therapies.

*or expenditures for*

(d) The department may enter into a contract with an entity to perform the duties and exercise the powers of the department under this subsection.

(END)

*any of*

*D-NOTE*


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

LRB-1762/P2dn

DAK:~~af~~:cph

Wij

To Robert Blaine:

- 
1. Please note that almost all of the revisions in this redraft, as requested, are to language originally provided by DHFS.
  2. I did not change the ~~reference~~ "prescription drugs that bear only generic names" in s. 49.45 (49m) (c) 1. to "generic drugs," as requested, since the term is vague and no definition for the term was provided.
  3. The term "purchaser of prescription drugs" under s. 49.45 (49m) (b), as requested and drafted, is ~~very~~ vague; it could refer to any private person.

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

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

LRB-1762/P2dn  
DAK:wlj:rs

February 2, 2003

To Robert Blaine:

1. Please note that almost all of the revisions in this redraft, as requested, are to language originally provided by DHFS.
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3. The term "purchaser of prescription drugs" under s. 49.45 (49m) (b), as requested and drafted, is vague; it could refer to any private person.

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



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1762/P2  
DAK:kjf&wlj:rs

DOA:.....Blaine – BB0426, Prescription drug cost controls; drug purchasing agreements

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

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**MEDICAL ASSISTANCE**

This bill authorizes DHFS to design and implement a program to reduce the cost of prescription drugs and to maintain high quality in prescription drug therapies. Among other activities, the program includes establishing supplemental rebates under agreements with prescription drug manufacturers for prescription drugs provided to recipients under Medical Assistance and Badger Care and to persons eligible under this program of prescription drug assistance to elderly persons (commonly known as Senior Care). The bill also authorizes DHFS to enter into prescription drug multi-state purchasing agreements and other agreements with prescription drug purchasers if the other state or purchaser agrees to participate in any of the activities under the program.

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

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6           3. “Prescription drug” has the meaning given in s. 450.01 (20).

7           (b) The department may enter into a multi-state purchasing agreement with  
8 another state or a purchasing agreement with a purchaser of prescription drugs if  
9 the other state or purchaser agrees to participate in one or more of the activities  
10 specified in par. (c) 1. to 5.

11           (c) The department may design and implement a program to reduce the cost  
12 of prescription drugs and to maintain high quality in prescription drug therapies,  
13 which shall include all of the following:

14           1. A list of the prescription drugs that are included as a benefit under s. 49.46  
15 (2) (b) 6. h. that identifies preferred choices within therapeutic classes and includes  
16 prescription drugs that bear only generic names.

17           2. Establishing supplemental rebates under agreements with prescription  
18 drug manufacturers for prescription drugs provided to recipients under Medical  
19 Assistance and Badger Care and to eligible persons under s. 49.688 and, if it is  
20 possible to implement the program without adversely affecting supplemental  
21 rebates for Medical Assistance, Badger Care, and prescription drug assistance under  
22 s. 49.688, to beneficiaries of participants under par. (b).

23           3. Utilization management and fraud and abuse controls.

24           4. Any other activity to reduce the cost of or expenditures for prescription drugs  
25 and maintain high quality in prescription drug therapies.

