

WISCONSIN STATE SENATE



Carol Roessler
STATE SENATOR

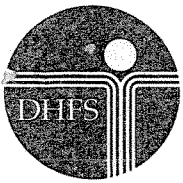
To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care
From: Senator Carol Roessler, Chair
Date: July 30, 2004
Re: Clearinghouse Rule 04-050 relating to the SeniorCare program.

CR 04-050 has been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee. This rule revises ch. HFS 109 to conform to statutory changes made relating to Senior Care. These changes are as follows:

- Increased the annual enrollment fee from \$20 to \$30.
- Increased annual program deductibles for persons whose family income is more than 200% of the federal poverty level from \$500 to \$850.

The Department of Health and Family Services held a hearing on these proposed rule changes on June 30, 2004 in Madison. No individuals attended the hearing.

If you have concerns relating to CR 04-050, please contact Jennifer Stegall in my office by **Monday August 9, 2004**.



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

July 19, 2004

The Honorable Alan J. Lasee, President
Wisconsin State Senate
17 West Main St., Room 401
Madison, WI 53702

The Honorable John Gard, Speaker
Wisconsin State Assembly
17 West Main St., Room 208
Madison, WI 53702

Re: Clearinghouse Rule 04-050

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Al Matano at 267-6848.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helene Nelson'.

Helene Nelson
Secretary

cc Gary Poulson, Assistant Revisor of Statutes
Senator Joseph Liebham, JCRAR
Representative Glenn Grothman, JCRAR

Agency mistake.
Should read CR04-050

**PROPOSED ADMINISTRATIVE RULES – ~~CR04-045~~; HFS 158
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.**

Basis and Purpose of Proposed Rules

SeniorCare is Wisconsin's Prescription Drug Assistance Program for Wisconsin residents who are 65 years of age or older and who meet eligibility requirements. The Department administers the program under ch. HFS 109. 2003 Wisconsin Act 33 revised the following cost sharing provisions of SeniorCare:

- It increased the annual enrollment fee from \$20 to \$30.
- It increased annual program deductibles for persons whose family income is more than 200% of the federal poverty level from \$500 to \$850.

Through this order, the Department proposes to revise ch. HFS 109 to conform to these statutory changes.

Changes to Rulemaking Order Analysis or Fiscal Estimate

- Changes to Rulemaking Order Analysis

In response to a Clearinghouse suggestion, the Department has corrected the date reference to "May of 2004" from its original "May of 2003" in the last paragraph on page 1 of the order. On page two of the order, the Department also corrected the phrase "to high" to "too high;" also at the Clearinghouse's suggestion.

- Changes Fiscal Estimate

The Department has made no changes to its original fiscal estimate.

Responses to Clearinghouse Recommendations

As described above, the Department accepted Clearinghouse suggestions for correct wording in the analysis. The Department also accepted the Clearinghouse's suggested wording change in s. HFS 109.13 (3) (c), also for the purpose of clarifying the meaning of the provision.

The Clearinghouse also asked in comment 5.c., "Will a person whose income is above 200% of the federal poverty level, and eligible for a Medicare prescription drug discount card according to the analysis, be able to use both the discount card and the SeniorCare program payment rate for prescriptions?" The answer is that SeniorCare participants with incomes above 200% of the federal poverty level may enroll in the Medicare discount card and use the card during the deductible and spenddown. Once the cost sharing requirements have been met, they receive the drug at the SeniorCare rate. This means SeniorCare does, in fact, coordinate benefits with the Medicare card if the pharmacy enters the Medicare card information and participates with the particular Medicare card used by the participant.

Effect on Small Business

These proposed rule changes will have no effect on small businesses.

Modifications to Initial Proposed Rule

The only modifications the Department has made to its initial proposed rulemaking order are those offered by the Rules Clearinghouse.

Comments on Proposed Rule

- Public Hearing Summary

The Department held one public hearing on these proposed rule changes on June 30, 2004 in Madison. No individuals attended the hearing.

- Public Comments Summary

The Department received no oral or written testimony on this proposed rule amendment.

PROPOSED ORDER OF
THE DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING AND CREATING RULES

To amend HFS 109.03 (9), 109.13 (3) (c), (d) (intro.) and 2., 109.15 (4) (b) 1. c. and 2. b., and HFS 109.15 (5) (a) 2. b. and (b) 2. and 109.16 and to create HFS 109.13 (3) (c) 1. to 2., relating to the SeniorCare program.

Statute interpreted

The rules interpret s. 49.688, Stats.

Statutory authority

The Department's authority to amend and create these rules is found in s. 49.688, Stats.

Explanation of agency authority

Section 49.688 (4), Stats., gives the Department the authority to promulgate rules that specify the criteria to be used to determine household income for the purposes of determining eligibility for SeniorCare program benefits and the amount of the deductible eligible persons must pay before receiving program benefits. Section 49.688 (7) (a), Stats., authorizes the Department to apply to the SeniorCare program the same utilization and cost control procedures that apply to medical assistance under subch. IV of ch. 49. Finally, s. 49.688 (8), Stats., authorizes the Department to specify, in rule, methods for monitoring pharmacy and pharmacist compliance with the statutory requirements for applicable deductibles and copayments.

Related statutes or rules

The Department knows of no related statutes or rules.

Plain language analysis

SeniorCare is Wisconsin's Prescription Drug Assistance Program for Wisconsin residents who are 65 years of age or older and who meet eligibility requirements. The Department administers the program under ch. HFS 109. 2003 Wisconsin Act 33 revised the following cost sharing provisions of SeniorCare:

- It increased the annual enrollment fee from \$20 to \$30.
- It increased annual program deductibles for persons whose family income is more than 200% of the federal poverty level from \$500 to \$850.

Through this order, the Department proposes to revise ch. HFS 109 to conform to these statutory changes.

Summary of, and comparison with, existing or proposed federal regulation

Starting May of 2004, individuals that have Medicare and do not have outpatient prescription drug coverage through Medicaid can receive a Medicare approved drug discount card. Individuals that meet income eligibility requirements may also qualify for a \$600 prescription drug credit. The

discount cards can be used from June 1, 2004 until December 31, 2005. In January of 2006 a prescription drug benefit will be added to the Medicare program. The rules for this benefit are still under development.

Since individuals enrolled in SeniorCare with incomes at or below 200% of the Federal Poverty Level (FPL) are part of a Medicaid waiver, these individuals will not be eligible for a Medicare drug discount card or the \$600 prescription drug credit. Individuals above 200% of the FPL will be able to qualify for a prescription drug discount card, but their incomes will be too high to receive the \$600 prescription drug credit.

Comparison with rules in adjacent states

Both Illinois and Minnesota currently provide prescription drug assistance programs for low-income seniors.

Summary of factual data and analytical methodologies

The Department is proposing these rule changes pursuant to statutory changes made by the legislature through 2003 Act 33. The Department has not based these proposed rules on any additional factual data or analytical methodologies.

Analysis and supporting documents used to determine effect on small business

The Department is proposing these rule changes pursuant to statutory changes made by the legislature through 2003 Act 33. None of these changes affect small business.

Anticipated costs incurred by private sector

None.

Effect on small business

These proposed rule changes will not have an effect on small business.

Agency contact person

Al Matano; 608-267-6848; matana@dhfs.state.wi.us

Place where comments are to be submitted and deadline for submission

Comments may be submitted to Al Matano at the above email address or at the Department's administrative rules website: <http://adminrules.wisconsin.gov>

Once at the Department's admin. rules website, enter the search term "HFS 109" or "SeniorCare" to find the pertinent rule promulgation information and submit comments. While the public comment period is not known at this time, persons may register at the website to receive email notification of when the public comment period on this proposed rule begins.

Rule text

SECTION 1. HFS 109.03 (9) is amended to read:

HFS 109.03 (9) "Prescription benefit" means the prescription drugs that may be purchased with a \$5 or \$15 payment by a SeniorCare participant with low income or who has spent at least \$500 the dollar amount specified in HFS 109.13 (3) on the purchase of prescription drugs during the current benefit period.

SECTION 2. HFS 109.13 (3) (c) and (d) (intro) and 2. are amended to read:

HFS 109.13 (3) (c) *Amount*. The amount of the SeniorCare deductible is ~~\$500~~ based on a fiscal test group's income as a percentage of the federal poverty line for a family the size of the fiscal test group, as follows:

1. If the fiscal test group's income is more than 160% of the federal poverty line, but not more than 200%, the deductible is \$500.

2. If the fiscal test group's income is more than 200% of the federal poverty line, the deductible is \$850.

(d) *Meeting the deductible*. The deductible is considered met and the person shall receive the prescription benefit under sub. (2) (b) when, under the following conditions, the person has spent ~~\$500~~ the dollar amount specified in par. (c) in purchasing prescription drugs:

2. Each spouse has a ~~\$500~~ deductible. When both persons in a 2-person fiscal test group are eligible for SeniorCare, each person's purchases of prescription drugs shall only be counted toward meeting the deductible of the person for whom the drugs are prescribed.

SECTION 3. HFS 109.15 (4) (b) 1. c. and 2. b. and (5) (a) 2. b. and (b) 2. are amended to read:

HFS 109.15 (4) (b) 1. c. If the spouse meets the prorated spend-down during the benefit period, the spouse may receive the deductible benefit and services under s. HFS 109.13 (3) (b). When determining whether the spouse meets the SeniorCare deductible under s. HFS 109.13 (3) (c) and (d), the amount of the SeniorCare deductible shall be prorated. The prorated deductible amount shall be ~~\$500~~ \$850 multiplied by the number of months of the spouse's benefit period derived from subs. (1) and (2), divided by 12.

2. b. When determining whether the spouse meets the SeniorCare deductible under s. HFS 109.13 (3) (c) and (d), the amount of the SeniorCare deductible shall be prorated. The prorated deductible amount shall be ~~\$500~~ the dollar amount specified in s. HFS 109.13 (3) (c) multiplied by the number of months of the spouse's benefit period derived from subs. (1) and (2), divided by 12.

(5) (a) 2. b. When determining whether the spouse meets the SeniorCare deductible under s. HFS 109.13 (3) (b) and (c), the amount of the SeniorCare deductible shall be prorated. The prorated deductible amount shall be ~~\$500~~ \$850 multiplied by the number of months of the spouse's benefit period derived from subs. (1) and (2), divided by 12.

(b) 2. When determining whether the spouse meets the SeniorCare deductible under s. HFS 109.13 (3) (b) and (c), the amount of the SeniorCare deductible shall be prorated. The prorated deductible amount shall be ~~\$500~~ the dollar amount specified in s. HFS 109.13 (3) (c) multiplied by the number of months of the spouse's benefit period derived from subs. (1) and (2), divided by 12.

SECTION 4. HFS 109.16 is amended to read:

HFS 109.16 Fees. For each 12-month benefit period, a program participant shall pay a program enrollment fee of ~~\$20~~ \$30. The department shall refund the fee to applicants found to be ineligible for SeniorCare.

Effective date

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health
and Family Services

Dated:

By: _____
Helene Nelson
Secretary

SEAL:

FISCAL ESTIMATE FOR ADMINISTRATIVE RULES

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number HFS 109

Subject
SeniorCare enrollment fee and deductible changes.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects 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 Costs
 Permissive Mandatory
4. Decrease Costs
 Permissive Mandatory

5. Types of Local Government Units Affected:
 Towns Villages Cities
 Counties Others:
 School Districts WCTS Districts

Private: No Private Sector Costs

1. Increase Costs
2. Amount of Increase

3. Private Entities Affected
Increasing the enrollment fee and deductible amounts will increase a SeniorCare participant's costs.

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
20.435 (4)(bv), (4)(jb), (4)(pg)

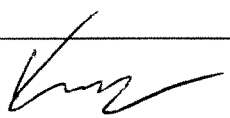
Assumptions Used in Arriving at Fiscal Estimate

Since the provisions of this rule have already been budgeted in Act 33 and implemented, the proposed rule will have no budgetary or fiscal effect. The FY03-05 biennial budget bill, Act 33, increased the SeniorCare enrollment fee from \$20 to \$30 and increased the deductible for individuals with incomes over 200% of the FPL to \$850.

It is estimated that increasing the annual enrollment fee from \$20 to \$30 will reduce SeniorCare funding by \$772,500 (-\$419,200 GPR, -\$353,300 FED) in FY04 and \$720,900 (-\$410,700 GPR, -\$310,200 FED) in FY05 and increase program revenues by \$772,500 PR in FY04 and \$720,900 PR in FY05.

Increasing the deductible from \$500 to \$850 for recipients with incomes over 200% is estimated to reduce SeniorCare funding by \$5,659,700 (-\$4,255,400 GPR and -\$1,404,300 PR) in FY04 and \$8,016,500 (-\$6,069,600 GPR and -1,946,900 PR) in FY05.

Long Range Fiscal Implications

Prepared By Al Matano	Telephone Number (608) 267-6848	Agency DHFS
Authorized Signature 	Telephone Number (608) 266-9622	Date Signed (mm/dd/ccyy) 5-17-04