



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0578/P3
CMH&PJK:jld:rs

py
kmc

TODAY

DOA:.....Jablonsky, BB0041 - HIRSP pharmacy reform

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

don't get ✓

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

The Health Insurance Risk-Sharing Plan (HIRSP) under current law provides major medical health insurance coverage for persons who are covered under Medicare because they are disabled, persons who have tested positive for human immunodeficiency virus (HIV), and persons who have been refused coverage, or coverage at an affordable price, in the private health insurance market because of their mental or physical health condition. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage for at least 18 months in the past. DHFS and a board of governors (board) administer HIRSP.

Under current law, HIRSP payment rates for prescription drugs are the same as payment rates under the Medical Assistance (MA) program. This bill allows DHFS, with the approval of the board, to set HIRSP prescription drug payment rates.

Under current law, DHFS is allowed by rule to establish for prescription drug coverage copayment amounts, coinsurance rates, and copayment and coinsurance out-of-pocket limits over which HIRSP will pay 100 percent of the covered costs incurred by the covered person during the remainder of the calendar year. This bill allows DHFS to establish a three-tiered copayment structure for prescription drug

benefits, with covered persons paying \$5, \$15, and \$35 for most generic and brand name prescription drugs. This bill establishes the out-of-pocket limit for prescription drug coverage at \$300 for persons who are also covered under Medicare and at \$300 or \$400 for other covered persons, depending on coverage selected. ~~Only the copayment amounts of \$5 and \$15 count toward the out-of-pocket limits, the \$35 copayment amount does not count toward the out-of-pocket limits.~~ This bill also allows DHFS to change the copayment and out-of-pocket limits by administrative rule.

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

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

1 SECTION 1. 149.14 (5) (e) of the statutes is amended to read:

2 149.14 (5) (e) ~~Subject to sub. (8) (b), the department may, by rule under s. 149.17~~
3 ~~(4), establish for prescription drug coverage under sub. (3) (d) copayment amounts,~~
4 ~~coinsurance rates, and~~ The department may establish a 3-tiered copayment
5 structure for prescription drugs with copayments of \$5, \$15, and \$35. The copayment
6 and coinsurance out-of-pocket limits limit for prescription drug coverage under sub.
7 (3) (d) over which the plan will pay 100% of covered costs under sub. (3) (d) is \$300.

8 ~~Only the copayment amounts of \$5 and \$15 count toward the out-of-pocket limit.~~ *may be*

9 The department may provide subsidies for prescription drug copayment amounts
10 paid by eligible persons under s. 149.165 (2) (a) 1. to 5. ~~Any copayment amount,~~
11 ~~coinsurance rate, or out-of-pocket limit established under this paragraph is subject~~
12 ~~to the approval of the board~~ Subject to sub. (8) (b), the department may change, by
13 rule under s. 149.17 (4), the copayment amount and out-of-pocket limit.

14 Copayments and coinsurance paid by an eligible person under this paragraph are
15 separate from and do not count toward the deductible and covered costs not paid by
16 the plan under pars. (a) to (c).

17 SECTION 2. 149.142 (1) (b) of the statutes is amended to read:

Certain
Certain
The department may establish that

(NO \$) This bill allows DHFS to establish that

WS 2-13

1 149.142 (1) (b) The payment rate for a prescription drug shall be the allowable
2 ~~charge paid under s. 49.46 (2) (b) 6. h. for the prescription drug. Notwithstanding~~
3 ~~s. 149.17 (4), the department may not reduce the payment rate for prescription drugs~~
4 ~~below the rate specified in this paragraph, and the rate may not be adjusted under~~
5 ~~s. 149.143 or 149.144 set by the department, subject to the approval of the board.~~

6 **SECTION 3.** 149.142 (2) of the statutes is amended to read:

7 149.142 (2) ~~Except as provided in sub. (1) (b), the~~ The rates established under
8 this section are subject to adjustment under ss. 149.143 and 149.144.

9 **SECTION 4.** 149.143 (1) (am) 4. of the statutes is amended to read:

10 149.143 (1) (am) 4. Fourth, notwithstanding par. (bm), by increasing insurer
11 assessments, excluding assessments under s. 149.144, and adjusting provider
12 payment rates, ~~subject to s. 149.142 (1) (b) and~~ excluding adjustments to those rates
13 under s. 149.144, in equal proportions and to the extent that the amounts under
14 subds. 1. to 3. are insufficient to pay 60% of plan costs.

15 **SECTION 5.** 149.143 (1) (bm) 2. of the statutes is amended to read:

16 149.143 (1) (bm) 2. Fifty percent from adjustments to provider payment rates,
17 ~~subject to s. 149.142 (1) (b) and~~ excluding adjustments to those rates under s.
18 149.144.

19 **SECTION 6.** 149.143 (2) (a) 4. of the statutes is amended to read:

20 149.143 (2) (a) 4. By the same rule as under subd. 3. adjust the provider
21 payment rate for the new plan year, ~~subject to s. 149.142 (1) (b),~~ by estimating and
22 setting the rate at the level necessary to equal the amounts specified in sub. (1) (am)
23 4. and (bm) 2. and as provided in s. 149.145.

24 **SECTION 7.** 149.143 (3) (a) of the statutes is amended to read:

1 149.143 (3) (a) If, during a plan year, the department determines that the
2 amounts estimated to be received as a result of the rates and amount set under sub.
3 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
4 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
5 by rule increase the premium rates set under sub. (2) (a) 2. for the remainder of the
6 plan year, subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2.,
7 by rule increase the assessments set under sub. (2) (a) 3. for the remainder of the plan
8 year, subject to sub. (1) (bm) 1., and by the same rule under which assessments are
9 increased adjust the provider payment rate set under sub. (2) (a) 4. for the remainder
10 of the plan year, subject to sub. (1) (bm) 2. and ~~s. 149.142 (1) (b).~~

11 **SECTION 8.** 149.143 (3) (b) of the statutes is amended to read:

12 149.143 (3) (b) If the department increases premium rates and insurer
13 assessments and adjusts the provider payment rate under par. (a) and determines
14 that there will still be a deficit and that premium rates have been increased to the
15 maximum extent allowable under par. (a), the department may further adjust, in
16 equal proportions, assessments set under sub. (2) (a) 3. and the provider payment
17 rate set under sub. (2) (a) 4., without regard to sub. (1) (bm) ~~but subject to s. 149.142~~
18 ~~(1) (b).~~

19 **SECTION 9.** 149.143 (5) (a) of the statutes is amended to read:

20 149.143 (5) (a) Annually, no later than April 30, the department shall perform
21 a reconciliation with respect to plan costs, premiums, insurer assessments, and
22 provider payment rate adjustments based on data from the previous calendar year.
23 On the basis of the reconciliation, the department shall make any necessary
24 adjustments in premiums, insurer assessments, or provider payment rates, ~~subject~~

1 to ~~s. 149.142 (1) (b)~~, for the fiscal year beginning on the first July 1 after the
2 reconciliation, as provided in sub. (2) (b).

3 **SECTION 10.** 149.143 (5) (b) of the statutes is amended to read:

4 149.143 (5) (b) Except as provided in sub. (3) and s. 149.144, the department
5 shall adjust the provider payment rates to meet the providers' specified portion of the
6 plan costs no more than once annually, ~~subject to s. 149.142 (1) (b)~~. The department
7 may not determine the adjustment on an individual provider basis or on the basis
8 of provider type, but shall determine the adjustment for all providers in the
9 aggregate, ~~subject to s. 149.142 (1) (b)~~.

10 **SECTION 11.** 149.144 of the statutes is amended to read:

11 **149.144 Adjustments to insurer assessments and provider payment**
12 **rates for premium, deductible, and prescription drug copayment**
13 **reductions.** The department shall, by rule, adjust in equal proportions the amount
14 of the assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set
15 under s. 149.143 (2) (a) 4., ~~subject to ss. 149.142 (1) (b) and s. 149.143 (1) (am)~~,
16 sufficient to reimburse the plan for premium reductions under s. 149.165, deductible
17 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
18 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
19 commissioner may levy any increase in insurer assessments.

20 **SECTION 12.** 149.145 of the statutes is amended to read:

21 **149.145 Program budget.** The department, in consultation with the board,
22 shall establish a program budget for each plan year. The program budget shall be
23 based on the provider payment rates specified in s. 149.142 and in the most recent
24 provider contracts that are in effect and on the funding sources specified in ss.
25 149.143 (1) and 149.144, including the methodologies specified in ss. 149.143,

1 149.144, and 149.146 for determining premium rates, insurer assessments, and
 2 provider payment rates. Except as otherwise provided in s. 149.143 (3) (a) and (b)
 3 and subject to s. 149.142 (1) (b), from the program budget the department shall derive
 4 the actual provider payment rate for a plan year that reflects the providers'
 5 proportional share of the plan costs, consistent with ss. 149.143 and 149.144. The
 6 department may not implement a program budget established under this section
 7 unless it is approved by the board.

8 **SECTION 13.** 149.146 (2) (am) 5. of the statutes is amended to read:

9 149.146 (2) (am) 5. Subject to s. 149.14 (8) (b), the department may, by rule
 10 under s. 149.17 (4), establish for prescription drug coverage under this section
 11 copayment amounts, coinsurance rates, and The department may establish a
 12 3-tiered copayment structure for prescription drugs with copayments of \$5, \$15, and
 13 \$35. The copayment and coinsurance out-of-pocket limits limit for prescription
 14 drug coverage under this section over which the plan will pay 100% of covered costs
 15 for prescription drugs. Any copayment amount, coinsurance rate, or out-of-pocket
 16 limit established under this subdivision is subject to the approval of the board under
 17 this section ^{may be} \$400. Only ^{certain} the copayment amounts of \$5 and \$15 count toward the
 18 out-of-pocket limit. Subject to s. 149.14 (8) (b), the department may change, by rule
 19 under s. 149.17 (4), the copayment amount and out-of-pocket limit. Copayments
 20 and coinsurance paid by an eligible person under this subdivision are separate from
 21 and do not count toward the deductible and covered costs not paid by the plan under
 22 subds. 1. to 3.

23 **SECTION 9321. Initial applicability; health and family services.**

*The department
may establish that*

✓
NW 5 6-19

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0578/P4ins
CMH&PJK:jld:rs

1 Ins 2-13

2 ~~NO~~ ✓ . Using the procedure under s. 227.24, the department may promulgate rules
3 under this paragraph for the period before the effective date of any permanent rules
4 promulgated under this paragraph, but not to exceed the period authorized under s.
5 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the
6 department is not required to provide evidence that promulgating a rule under this
7 paragraph as an emergency rule is necessary for the preservation of the public peace,
8 health, safety, or welfare and is not required to make a finding of emergency for
9 promulgating a rule under this paragraph as an emergency rule ~~NO~~

11 Ins 6-19

12 ~~NO~~ ✓ . Using the procedure under s. 227.24, the department may promulgate rules
13 under this subdivision for the period before the effective date of any permanent rules
14 promulgated under this subdivision, but not to exceed the period authorized under
15 s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the
16 department is not required to provide evidence that promulgating a rule under this
17 subdivision as an emergency rule is necessary for the preservation of the public
18 peace, health, safety, or welfare and is not required to make a finding of emergency
19 for promulgating a rule under this subdivision as an emergency rule

20

Hanaman, Cathlene

From: Jablonsky, Sue
Sent: Tuesday, January 25, 2005 1:39 PM
To: Hanaman, Cathlene
Subject: FW: Fwd: FW: LRB Draft: 05-0578/P4 HIRSP pharmacy reform

Hope this is the last...

-----Original Message-----

From: Cunningham, Curtis
Sent: Tuesday, January 25, 2005 12:50 PM
To: Jablonsky, Sue
Cc: Kristan, Margaret
Subject: Re: Fwd: FW: LRB Draft: 05-0578/P4 HIRSP pharmacy reform

Sue,
Please see Shelly's comment.

Thanks

-----Original Message-----

Date: 01/25/2005 10:56 am -0600 (Tuesday)
From: Margaret Kristan
To: Cunningham, Curtis
Subject: Re: Fwd: FW: LRB Draft: 05-0578/P4 HIRSP pharmacy reform

From Shelley-

>>> Shelley Malofsky 01/25/05 10:15AM >>>

With all due regard for wearing out our welcome, I have a comment.

Assuming that you wanted to delete any copayment amounts and assuming that you want the OOP limit to be permissive, since these were accomplished in this is draft then there's no need to say that we can change, by rule, the copayment amount and probably not the OOP. There are no copay amounts listed, and if the OOP is permissive then why do we need a rule to change it? I suppose there could be an argument that the permissive nature is either \$300 or nothing, so you'd need a rule to make it \$200. In any event, there are no copays listed.

So, at most the sentence should say "the dept may change, by rule. . . . the out of pocket limit."

* * * * *

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>>> Margaret Kristan Tuesday, January 25, 2005 9:42:57 AM >>>
Any final comments?

>>> Jablonsky, Sue 01/25/05 09:08AM >>>
As usual, comments ASAP-we are wearing out our welcome with LRB....

-----Original Message-----

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.state.wi.us]

D-NOTE

DOA:.....Jablonsky, BB0041 - HIRSP pharmacy reform

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

The Health Insurance Risk-Sharing Plan (HIRSP) under current law provides major medical health insurance coverage for persons who are covered under Medicare because they are disabled, persons who have tested positive for human immunodeficiency virus (HIV), and persons who have been refused coverage, or coverage at an affordable price, in the private health insurance market because of their mental or physical health condition. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage for at least 18 months in the past. DHFS and a board of governors (board) administer HIRSP.

Under current law, HIRSP payment rates for prescription drugs are the same as payment rates under the Medical Assistance (MA) program. This bill allows DHFS, with the approval of the board, to set HIRSP prescription drug payment rates.

Under current law, DHFS is allowed by rule to establish for prescription drug coverage copayment amounts, coinsurance rates, and copayment and coinsurance out-of-pocket limits over which HIRSP will pay 100 percent of the covered costs incurred by the covered person during the remainder of the calendar year. This bill allows DHFS to establish a three-tiered copayment structure for prescription drug

benefits. This bill allows DHFS to establish the out-of-pocket limit for prescription drug coverage at \$300 for persons who are also covered under Medicare and at \$300 or \$400 for other covered persons, depending on coverage selected. This bill allows DHFS to establish that only certain copayment amounts count toward the out-of-pocket limits. This bill also allows DHFS to change the copayment and out-of-pocket limits by administrative rule.

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:

INS
A

- 1 SECTION 1. 149.14 (5) (e) of the statutes is amended to read:
- 2 149.14 (5) (e) ~~Subject to sub. (8) (b), the department may, by rule under s. 149.17~~
- 3 ~~(4), establish for prescription drug coverage under sub. (3) (d) copayment amounts,~~
- 4 ~~coinsurance rates, and~~ The department may establish a 3-tiered copayment
- 5 structure for prescription drugs. The copayment and coinsurance out-of-pocket
- 6 limits [✓] limit for prescription drug coverage under sub. (3) (d) over which the plan will
- 7 pay 100% of covered costs under sub. (3) (d) may be \$300. The department may
- 8 establish that only certain copayment amounts count toward the out-of-pocket
- 9 limit. The department may provide subsidies for prescription drug copayment
- 10 amounts paid by eligible persons under s. 149.165 (2) (a) 1. to 5. ~~Any copayment~~
- 11 ~~amount, coinsurance rate, or out-of-pocket limit established under this paragraph~~
- 12 ~~is subject to the approval of the board~~ Subject to sub. (8) (b), the department may
- 13 change, by rule under s. 149.17 (4), the copayment amount and out-of-pocket limit.
- 14 Using the procedure under s. 227.24, the department may promulgate rules under
- 15 this paragraph for the period before the effective date of any permanent rules
- 16 promulgated under this paragraph, but not to exceed the period authorized under s.
- 17 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the
- 18 department is not required to provide evidence that promulgating a rule under this

1 paragraph as an emergency rule is necessary for the preservation of the public peace,
2 health, safety, or welfare and is not required to make a finding of emergency for
3 promulgating a rule under this paragraph as an emergency rule. Copayments and
4 coinsurance paid by an eligible person under this paragraph are separate from and
5 do not count toward the deductible and covered costs not paid by the plan under pars.
6 (a) to (c).

7 **SECTION 2.** 149.142 (1) (b) of the statutes is amended to read:

8 149.142 (1) (b) The payment rate for a prescription drug shall be the allowable
9 charge paid under s. 49.46 (2) (b) 6. h. for the prescription drug. Notwithstanding
10 s. 149.17 (4), the department may not reduce the payment rate for prescription drugs
11 below the rate specified in this paragraph, and the rate may not be adjusted under
12 s. 149.143 or 149.144 set by the department, subject to the approval of the board.

13 **SECTION 3.** 149.142 (2) of the statutes is amended to read:

14 149.142 (2) ~~Except as provided in sub. (1) (b), the~~ The rates established under
15 this section are subject to adjustment under ss. 149.143 and 149.144.

16 **SECTION 4.** 149.143 (1) (am) 4. of the statutes is amended to read:

17 149.143 (1) (am) 4. Fourth, notwithstanding par. (bm), by increasing insurer
18 assessments, excluding assessments under s. 149.144, and adjusting provider
19 payment rates, subject to s. 149.142 (1) (b) and excluding adjustments to those rates
20 under s. 149.144, in equal proportions and to the extent that the amounts under
21 subs. 1. to 3. are insufficient to pay 60% of plan costs.

22 **SECTION 5.** 149.143 (1) (bm) 2. of the statutes is amended to read:

23 149.143 (1) (bm) 2. Fifty percent from adjustments to provider payment rates,
24 ~~subject to s. 149.142 (1) (b) and~~ excluding adjustments to those rates under s.
25 149.144.

NOTE: This is amended
s. 149.143 (2) (a) 4
has been affected by the following
LSB #s:
-0268
and
-0578.

Create
A.R.
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as affected by
2005 Wisconsin
Act ...
(this act)

INS 4-1

1 SECTION 6. 149.143 (2) (a) 4. of the statutes is amended to read:
2 149.143 (2) (a) 4. By the same rule as under subd. 3 ^{delete} adjust the provider
3 payment rate for the new plan year, subject to s. 149.142 (1) (b), by estimating and
4 setting the rate at the level necessary to equal the amounts specified in sub. (1) (am)
5 4. and (bm) 2. and as provided in s. 149.145.

INS
4-6

Create
A.R.
def

NOTE: This is amended
s. 149.143 (3)(a). This section has
been affected by the following
LSB #s:
-0268 and -0578.

6 SECTION 7. 149.143 (3) (a) of the statutes is amended to read:
7 149.143 (3) (a) If, during a plan year, the department determines that the
8 amounts estimated to be received as a result of the rates and amount set under sub.
9 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
10 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
11 by rule increase the premium rates set under sub. (2) (a) 2. for the remainder of the
12 plan year, subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2.,
13 by rule increase the assessments set under sub. (2) (a) 3. for the remainder of the plan
14 year, subject to sub. (1) (bm) 1., and by the same rule under which assessments are
15 increased adjust the provider payment rate set under sub. (2) (a) 4. for the remainder
16 of the plan year, subject to sub. (1) (bm) 2. and s. 149.142 (1) (b).

17 SECTION 8. 149.143 (3) (b) of the statutes is amended to read:
18 149.143 (3) (b) If the department increases premium rates and insurer
19 assessments and adjusts the provider payment rate under par. (a) and determines
20 that there will still be a deficit and that premium rates have been increased to the
21 maximum extent allowable under par. (a), the department may further adjust, in
22 equal proportions, assessments set under sub. (2) (a) 3. and the provider payment
23 rate set under sub. (2) (a) 4., without regard to sub. (1) (bm) but subject to s. 149.142
24 (1) (b).

25 SECTION 9. 149.143 (5) (a) of the statutes is amended to read:

SECTION #. RP; 149.143 (4) ✓

1 149.143 (5) (a) Annually, no later than April 30, the department shall perform
2 a reconciliation with respect to plan costs, premiums, insurer assessments, and
3 provider payment rate adjustments based on data from the previous calendar year.
4 On the basis of the reconciliation, the department shall make any necessary
5 adjustments in premiums, insurer assessments, or provider payment rates, subject
6 to ~~s. 149.142 (1) (b)~~, for the fiscal year beginning on the first July 1 after the
7 reconciliation, as provided in sub. (2) (b).

8 **SECTION 10.** 149.143 (5) (b) of the statutes is amended to read:

9 149.143 (5) (b) Except as provided in sub. (3) and s. 149.144, the department
10 shall adjust the provider payment rates to meet the providers' specified portion of the
11 plan costs no more than once annually, ~~subject to s. 149.142 (1) (b)~~. The department
12 may not determine the adjustment on an individual provider basis or on the basis
13 of provider type, but shall determine the adjustment for all providers in the
14 aggregate, ~~subject to s. 149.142 (1) (b)~~.

15 **SECTION 11.** 149.144 of the statutes is amended to read:

16 **149.144 Adjustments to insurer assessments and provider payment**
17 **rates for premium, deductible, and prescription drug copayment**
18 **reductions.** The department shall by rule adjust in equal proportions the amount
19 of the assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set
20 under s. 149.143 (2) (a) 4., ~~subject to ss. 149.142 (1) (b) and s. 149.143 (1) (am)~~,
21 sufficient to reimburse the plan for premium reductions under s. 149.165, deductible
22 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
23 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
24 commissioner may levy any increase in insurer assessments.

25 **SECTION 12.** 149.145 of the statutes is amended to read:

INS 5-15
create A.R. ghi
as affected by 2005 Wisconsin Act... (this act)
NOTE: This is renumbered s. 149.144. This section has been affected by drafts with the following LRB#s: -0578 and -0268.

1 **149.145 Program budget.** The department, in consultation with the board,
2 shall establish a program budget for each plan year. The program budget shall be
3 based on the provider payment rates specified in s. 149.142 and in the most recent
4 provider contracts that are in effect and on the funding sources specified in ss.
5 149.143 (1) and 149.144, including the methodologies specified in ss. 149.143,
6 149.144, and 149.146 for determining premium rates, insurer assessments, and
7 provider payment rates. Except as otherwise provided in s. 149.143 (3) (a) and (b)
8 and subject to s. 149.142 (1) (b), from the program budget the department shall derive
9 the actual provider payment rate for a plan year that reflects the providers'
10 proportional share of the plan costs, consistent with ss. 149.143 and 149.144. The
11 department may not implement a program budget established under this section
12 unless it is approved by the board.

13 **SECTION 13.** 149.146 (2) (am) 5. of the statutes is amended to read:

14 149.146 (2) (am) 5. ~~Subject to s. 149.14 (8) (b), the department may, by rule~~
15 ~~under s. 149.17 (4), establish for prescription drug coverage under this section~~
16 ~~copayment amounts, coinsurance rates, and~~ The department may establish a
17 3-tiered copayment structure for prescription drugs. The copayment and
18 coinsurance out-of-pocket limits limit for prescription drug coverage under this
19 section over which the plan will pay 100% of covered costs for prescription drugs. Any
20 copayment amount, coinsurance rate, or out-of-pocket limit established under this
21 subdivision is subject to the approval of the board under this section may be \$400.
22 The department may establish that only certain copayment amounts count toward
23 the out-of-pocket limit. Subject to s. 149.14 (8) (b), the department may change, by
24 rule under s. 149.17 (4), the copayment amount and out-of-pocket limit. Using the
25 procedure under s. 227.24, the department may promulgate rules under this

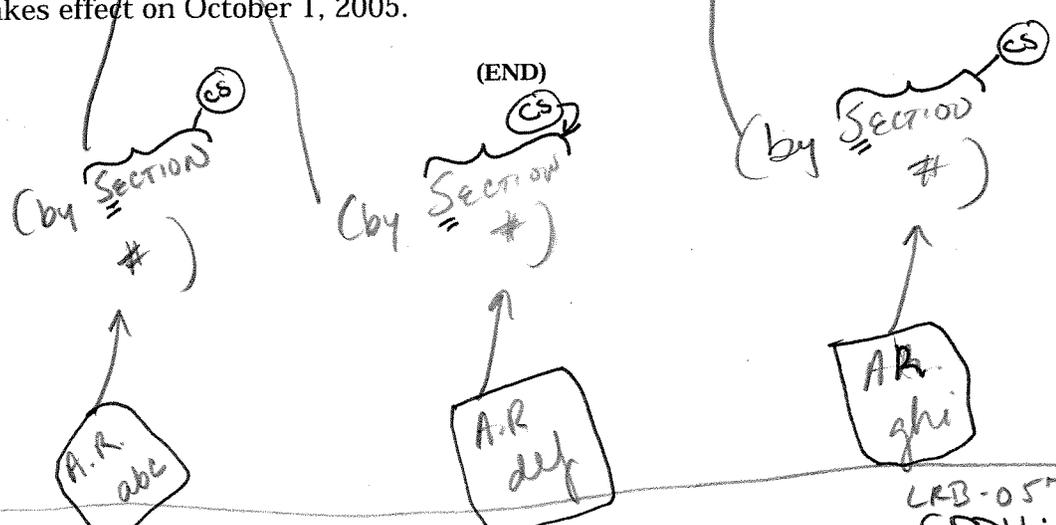
1 subdivision for the period before the effective date of any permanent rules
 2 promulgated under this subdivision, but not to exceed the period authorized under
 3 s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the
 4 department is not required to provide evidence that promulgating a rule under this
 5 subdivision as an emergency rule is necessary for the preservation of the public
 6 peace, health, safety, or welfare and is not required to make a finding of emergency
 7 for promulgating a rule under this subdivision as an emergency rule. Copayments
 8 and coinsurance paid by an eligible person under this subdivision are separate from
 9 and do not count toward the deductible and covered costs not paid by the plan under
 10 subds. 1. to 3.

11 **SECTION 9321. Initial applicability; health and family services.**

12 (1) HEALTH INSURANCE RISK-SHARING PLAN PRESCRIPTION DRUG COPAYS AND
 13 OUT-OF-POCKET LIMITS. The treatment of sections 149.14 (5) (e) and 149.146 (2) (am)
 14 5. of the statutes first applies to prescription drug coverage on July 1, 2006.

15 **SECTION 9421. Effective dates; health and family services.**

16 (1) HEALTH INSURANCE RISK-SHARING PLAN PAYMENT RATE FOR PRESCRIPTION
 17 DRUGS. The treatment of sections 149.142 (1) (b) and (2), 149.143 (1) (am) 4. and (bm)
 18 2., (2) (a) 4., (3) (a) and (b), and (5) (a) and (b), 149.144, and 149.145 of the statutes
 19 takes effect on October 1, 2005.



Handwritten note: 'ANS 7-11' inside a circle with a checkmark.

See: This draft reconciles LRB-0578/P4 and LRB-0268/P2. It replaces LRB-0268 in the compiled bill.
 CMH



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0268/P2

CMH:kjf:pg

DOA:.....Jablonsky, BB0055 - Eliminate the requirement that DHFS promulgate administrative rules on HIRSP premiums, assessments, and provider contribution

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

HIRSP

INS
A
Under current law, DHFS must promulgate administrative rules to set or adjust the Health Insurance Risk-Sharing Plan premium rates, insurer assessments, and provider payment rate. This bill eliminates the requirement that DHFS set or adjust these amounts by administrative rules.

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. 149.143 (2) (a) 2. of the statutes is amended to read:

3 149.143 (2) (a) 2. After making the determinations under subd. 1., by rule set

4 premium rates for the new plan year, including the rates under s. 149.146 (2) (b), in

INS
4-1



NS 4-1 cont.

1 the manner specified in sub. (1) (am) 1. and 3. and such that a rate for coverage under
2 s. 149.14 (2) (a) is approved by the board and is not less than ~~140%~~ 140 percent nor
3 more than ~~200%~~ 200 percent of the rate that a standard risk would be charged under
4 an individual policy providing substantially the same coverage and deductibles as
5 are provided under the plan.

6 SECTION 2. 149.143 (2) (a) 3. of the statutes is amended to read:

7 149.143 (2) (a) 3. ~~By rule set~~ Set the total insurer assessments under s. 149.13
8 for the new plan year by estimating and setting the assessments at the amount
9 necessary to equal the amounts specified in sub. (1) (am) 4. and (bm) 1. and notify
10 the commissioner of the amount.

11 SECTION 3. 149.143 (2) (a) 4. of the statutes is amended to read:

12 149.143 (2) (a) 4. ~~By the same rule as under subd. 3. adjust~~ Adjust the provider
13 payment rate for the new plan year, subject to s. 149.142 (1) (b), by estimating and
14 setting the rate at the level necessary to equal the amounts specified in sub. (1) (am)
15 4. and (bm) 2. and as provided in s. 149.145.

16 SECTION 4. 149.143 (3) (a) of the statutes is amended to read:

INS 27
4-6
18

17 149.143 (3) (a) If, during a plan year, the department determines that the
18 amounts estimated to be received as a result of the rates and amount set under sub.
19 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
20 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
21 ~~by rule~~ [✓] increase the premium rates set under sub. (2) (a) 2. for the remainder of the
22 plan year, subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2.,
23 ~~by rule~~ [✓] increase the assessments set under sub. (2) (a) 3. for the remainder of the plan
24 year, subject to sub. (1) (bm) 1., and ~~by the same rule under which assessments are~~



END OF INS 4-6

1 increased adjust the provider payment rate set under sub. (2) (a) 4. for the remainder
2 of the plan year, subject to sub. (1) (bm) 2. and s. 149.142 (1) (b).

3 ~~SECTION 5. 149.143 (4) of the statutes is repealed.~~

4 SECTION 6. 149.144 of the statutes is amended to read:

5 **149.144 Adjustments to insurer assessments and provider payment**
6 **rates for premium, deductible, and prescription drug copayment**
7 **reductions.** The department shall, by rule, adjust in equal proportions the amount
8 of the assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set
9 under s. 149.143 (2) (a) 4., subject to ss. 149.142 (1) (b) and 149.143 (1) (am), sufficient
10 to reimburse the plan for premium reductions under s. 149.165, deductible
11 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
12 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
13 commissioner may levy any increase in insurer assessments.

INS
5-15

14 SECTION 7. 149.146 (2) (b) (intro.) of the statutes is amended to read:

15 149.146 (2) (b) (intro.) The schedule of premiums for coverage under this
16 section shall be promulgated by rule set by the department, as provided in s. 149.143.
17 The rates for coverage under this section shall be set such that they differ from the
18 rates for coverage under s. 149.14 (2) (a) by the same percentage as the percentage
19 difference between the following:

INS
7-11

20 SECTION 8. 227.01 (13) (nm) of the statutes is created to read:

21 227.01 (13) (nm) Sets or adjusts premium rates, insurer assessments, or
22 provider payment rates under ch. 149.

23

END

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

LRB-0578/P5dn
CMH:jld:rs

January 26, 2005

Sue:

This draft reconciles LRB-0578/P4 and LRB-0268/P2. It replaces LRB-0268 in the compiled bill.

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DOA:.....Jablonsky, BB0041 - HIRSP pharmacy reform

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

D-note

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

The Health Insurance Risk-Sharing Plan (HIRSP) under current law provides major medical health insurance coverage for persons who are covered under Medicare because they are disabled, persons who have tested positive for human immunodeficiency virus (HIV), and persons who have been refused coverage, or coverage at an affordable price, in the private health insurance market because of their mental or physical health condition. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage for at least 18 months in the past. DHFS and a board of governors (board) administer HIRSP.

Under current law, HIRSP payment rates for prescription drugs are the same as payment rates under the Medical Assistance (MA) program. This bill allows DHFS, with the approval of the board, to set HIRSP prescription drug payment rates.

Under current law, DHFS is allowed by rule to establish for prescription drug coverage copayment amounts, coinsurance rates, and copayment and coinsurance out-of-pocket limits over which HIRSP will pay 100 percent of the covered costs incurred by the covered person during the remainder of the calendar year. This bill allows DHFS to establish a three-tiered copayment structure for prescription drug

benefits. This bill allows DHFS to establish the out-of-pocket limit for prescription drug coverage at \$300 for persons who are also covered under Medicare and at \$300 or \$400 for other covered persons, depending on coverage selected. This bill allows DHFS to establish that only certain copayment amounts count toward the out-of-pocket limit. This bill also allows DHFS to change the out-of-pocket limit by administrative rule.

Under current law, DHFS must promulgate administrative rules to set or adjust HIRSP premium rates, insurer assessments, and provider payment rate. This bill eliminates the requirement that DHFS set or adjust these amounts by administrative rules.

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:

1 SECTION 1. 149.14 (5) (e) of the statutes is amended to read:

2 149.14 (5) (e) ^{plan} ~~(Subject to sub. (8) (b), the department may, by rule under s. 149.17~~
3 ~~(4), establish for prescription drug coverage under sub. (3) (d) copayment amounts,~~
4 ~~coinsurance rates, and~~ The department may establish a 3-tiered copayment
5 structure for prescription drugs. The copayment and coinsurance out-of-pocket
6 limits limit for prescription drug coverage under sub. (3) (d) over which the plan will
7 pay 100% of covered costs under sub. (3) (d) may be \$300. The department may
8 establish that only certain copayment amounts count toward the out-of-pocket
9 limit. The department may provide subsidies for prescription drug copayment
10 amounts paid by eligible persons under s. 149.165 (2) (a) 1. to 5. ~~Any copayment~~
11 ~~amount, coinsurance rate, or out-of-pocket limit established under this paragraph~~
12 ~~is subject to the approval of the board~~ Subject to sub. (8) (b), the department may
13 change, by rule under s. 149.17 (4), the out-of-pocket limit. Using the procedure
14 under s. 227.24, the department may promulgate rules under this paragraph for the
15 period before the effective date of any permanent rules promulgated under this

1 paragraph, but not to exceed the period authorized under s. 227.24 (1) (c) and (2).
2 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
3 provide evidence that promulgating a rule under this paragraph as an emergency
4 rule is necessary for the preservation of the public peace, health, safety, or welfare
5 and is not required to make a finding of emergency for promulgating a rule under this
6 paragraph as an emergency rule. Copayments and coinsurance paid by an eligible
7 person under this paragraph are separate from and do not count toward the
8 deductible and covered costs not paid by the plan under pars. (a) to (c).

9 **SECTION 2.** 149.142 (1) (b) of the statutes is amended to read:

10 149.142 (1) (b) The payment rate for a prescription drug shall be the allowable
11 ~~charge paid under s. 49.46 (2) (b) 6. h. for the prescription drug.~~ Notwithstanding
12 ~~s. 149.17 (4), the department may not reduce the payment rate for prescription drugs~~
13 ~~below the rate specified in this paragraph, and the rate may not be adjusted under~~
14 ~~s. 149.143 or 149.144 set by the department, subject to the approval of the board.~~

15 **SECTION 3.** 149.142 (2) of the statutes is amended to read:

16 149.142 (2) ~~Except as provided in sub. (1) (b), the~~ The rates established under
17 this section are subject to adjustment under ss. 149.143 and 149.144.

18 **SECTION 4.** 149.143 (1) (am) 4. of the statutes is amended to read:

19 149.143 (1) (am) 4. Fourth, notwithstanding par. (bm), by increasing insurer
20 assessments, excluding assessments under s. 149.144, and adjusting provider
21 payment rates, ~~subject to s. 149.142 (1) (b) and~~ excluding adjustments to those rates
22 under s. 149.144, in equal proportions and to the extent that the amounts under
23 subs. 1. to 3. are insufficient to pay 60% of plan costs.

24 **SECTION 5.** 149.143 (1) (bm) 2. of the statutes is amended to read:

1 149.143 (1) (bm) 2. Fifty percent from adjustments to provider payment rates,
2 subject to ~~s. 149.142 (1) (b)~~ and excluding adjustments to those rates under s.
3 149.144.

4 **SECTION 6.** 149.143 (2) (a) 2. of the statutes is amended to read:

5 149.143 (2) (a) 2. After making the determinations under subd. 1., ~~by rule~~ set
6 premium rates for the new plan year, including the rates under s. 149.146 (2) (b), in
7 the manner specified in sub. (1) (am) 1. and 3. and such that a rate for coverage under
8 s. 149.14 (2) (a) is approved by the board and is not less than 140% nor more than
9 200% of the rate that a standard risk would be charged under an individual policy
10 providing substantially the same coverage and deductibles as are provided under the
11 plan.

12 **SECTION 7.** 149.143 (2) (a) 3. of the statutes is amended to read:

13 149.143 (2) (a) 3. ~~By rule set~~ Set the total insurer assessments under s. 149.13
14 for the new plan year by estimating and setting the assessments at the amount
15 necessary to equal the amounts specified in sub. (1) (am) 4. and (bm) 1. and notify
16 the commissioner of the amount.

17 **SECTION 8.** 149.143 (2) (a) 4. of the statutes is amended to read:

18 149.143 (2) (a) 4. ~~By the same rule as under subd. 3. adjust~~ Adjust the provider
19 payment rate for the new plan year, subject to s. 149.142 (1) (b), by estimating and
20 setting the rate at the level necessary to equal the amounts specified in sub. (1) (am)
21 4. and (bm) 2. and as provided in s. 149.145.

22 **SECTION 9.** 149.143 (2) (a) 4. of the statutes, as affected by 2005 Wisconsin Act
23 (this act), is amended to read:

24 149.143 (2) (a) 4. Adjust the provider payment rate for the new plan year,
25 ~~subject to s. 149.142 (1) (b)~~, by estimating and setting the rate at the level necessary

1 to equal the amounts specified in sub. (1) (am) 4. and (bm) 2. and as provided in s.
2 149.145.

****NOTE: This is reconciled s. 149.143 (2) (a) 4. This SECTION has been affected by
drafts with the following LRB numbers: -0268 and -0578.

3 **SECTION 10.** 149.143 (3) (a) of the statutes is amended to read:

4 149.143 (3) (a) If, during a plan year, the department determines that the
5 amounts estimated to be received as a result of the rates and amount set under sub.
6 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
7 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
8 ~~by rule~~ increase the premium rates set under sub. (2) (a) 2. for the remainder of the
9 plan year, subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2.,
10 ~~by rule~~ increase the assessments set under sub. (2) (a) 3. for the remainder of the plan
11 year, subject to sub. (1) (bm) 1., and ~~by the same rule under which assessments are~~
12 ~~increased~~ adjust the provider payment rate set under sub. (2) (a) 4. for the remainder
13 of the plan year, subject to sub. (1) (bm) 2. and s. 149.142 (1) (b).

14 **SECTION 11.** 149.143 (3) (a) of the statutes, as affected by 2005 Wisconsin Act
15 (this act), is amended to read:

16 149.143 (3) (a) If, during a plan year, the department determines that the
17 amounts estimated to be received as a result of the rates and amount set under sub.
18 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
19 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
20 increase the premium rates set under sub. (2) (a) 2. for the remainder of the plan year,
21 subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2., increase the
22 assessments set under sub. (2) (a) 3. for the remainder of the plan year, subject to sub.

1 (1) (bm) 1., and adjust the provider payment rate set under sub. (2) (a) 4. for the
2 remainder of the plan year, subject to sub. (1) (bm) 2. and ~~s. 149.142 (1) (b).~~

***NOTE: This is reconciled s. 149.143 (3) (a). This SECTION has been affected by
drafts with the following LRB numbers: -0268 and -0578.

3 **SECTION 12.** 149.143 (3) (b) of the statutes is amended to read:

4 149.143 (3) (b) If the department increases premium rates and insurer
5 assessments and adjusts the provider payment rate under par. (a) and determines
6 that there will still be a deficit and that premium rates have been increased to the
7 maximum extent allowable under par. (a), the department may further adjust, in
8 equal proportions, assessments set under sub. (2) (a) 3. and the provider payment
9 rate set under sub. (2) (a) 4., without regard to sub. (1) (bm) ~~but subject to s. 149.142~~
10 ~~(1) (b).~~

11 **SECTION 13.** 149.143 (4) of the statutes is repealed.

12 **SECTION 14.** 149.143 (5) (a) of the statutes is amended to read:

13 149.143 (5) (a) Annually, no later than April 30, the department shall perform
14 a reconciliation with respect to plan costs, premiums, insurer assessments, and
15 provider payment rate adjustments based on data from the previous calendar year.
16 On the basis of the reconciliation, the department shall make any necessary
17 adjustments in premiums, insurer assessments, or provider payment rates, ~~subject~~
18 ~~to s. 149.142 (1) (b),~~ for the fiscal year beginning on the first July 1 after the
19 reconciliation, as provided in sub. (2) (b).

20 **SECTION 15.** 149.143 (5) (b) of the statutes is amended to read:

21 149.143 (5) (b) Except as provided in sub. (3) and s. 149.144, the department
22 shall adjust the provider payment rates to meet the providers' specified portion of the
23 plan costs no more than once annually, ~~subject to s. 149.142 (1) (b).~~ The department

1 may not determine the adjustment on an individual provider basis or on the basis
2 of provider type, but shall determine the adjustment for all providers in the
3 aggregate, ~~subject to s. 149.142 (1) (b).~~

4 **SECTION 16.** 149.144 of the statutes is amended to read:

5 **149.144 Adjustments to insurer assessments and provider payment**
6 **rates for premium, deductible, and prescription drug copayment**
7 **reductions.** The department shall, ~~by rule,~~ adjust in equal proportions the amount
8 of the assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set
9 under s. 149.143 (2) (a) 4., subject to ss. 149.142 (1) (b) and 149.143 (1) (am), sufficient
10 to reimburse the plan for premium reductions under s. 149.165, deductible
11 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
12 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
13 commissioner may levy any increase in insurer assessments.

14 **SECTION 17.** 149.144 of the statutes, as affected by 2005 Wisconsin Act (this
15 act), is amended to read:

16 **149.144 Adjustments to insurer assessments and provider payment**
17 **rates for premium, deductible, and prescription drug copayment**
18 **reductions.** The department shall adjust in equal proportions the amount of the
19 assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set under
20 s. 149.143 (2) (a) 4., subject to ~~ss. 149.142 (1) (b) and s.~~ 149.143 (1) (am), sufficient
21 to reimburse the plan for premium reductions under s. 149.165, deductible
22 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
23 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
24 commissioner may levy any increase in insurer assessments.

***NOTE: This is reconciled s. 149.144. This SECTION has been affected by drafts with the following LRB numbers: -0268 and -0578.

1 SECTION 18. 149.145 of the statutes is amended to read:

2 **149.145 Program budget.** The department, in consultation with the board,
3 shall establish a program budget for each plan year. The program budget shall be
4 based on the provider payment rates specified in s. 149.142 and in the most recent
5 provider contracts that are in effect and on the funding sources specified in ss.
6 149.143 (1) and 149.144, including the methodologies specified in ss. 149.143,
7 149.144, and 149.146 for determining premium rates, insurer assessments, and
8 provider payment rates. Except as otherwise provided in s. 149.143 (3) (a) and (b)
9 and subject to s. 149.142 (1) (b), from the program budget the department shall derive
10 the actual provider payment rate for a plan year that reflects the providers'
11 proportional share of the plan costs, consistent with ss. 149.143 and 149.144. The
12 department may not implement a program budget established under this section
13 unless it is approved by the board.

14 SECTION 19. 149.146 (2) (am) 5. of the statutes is amended to read:

15 149.146 (2) (am) 5. ^{plain} ~~Subject to s. 149.14 (8) (b), the department may, by rule~~
16 ~~under s. 149.17 (4), establish for prescription drug coverage under this section~~
17 ~~copayment amounts, coinsurance rates, and~~ ~~the department may~~ establish a
18 3-tiered copayment structure for prescription drugs. The copayment and
19 coinsurance out-of-pocket limits limit for prescription drug coverage under this
20 section over which the plan will pay 100% of covered costs for prescription drugs. ~~Any~~
21 ~~copayment amount, coinsurance rate, or out-of-pocket limit established under this~~
22 ~~subdivision is subject to the approval of the board~~ under this section may be \$400.
23 The department may establish that only certain copayment amounts count toward

1 the out-of-pocket limit. Subject to s. 149.14 (8) (b), the department may change, by
2 rule under s. 149.17 (4), the out-of-pocket limit. Using the procedure under s.
3 227.24, the department may promulgate rules under this subdivision for the period
4 before the effective date of any permanent rules promulgated under this subdivision,
5 but not to exceed the period authorized under s. 227.24 (1) (c) and (2).
6 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
7 provide evidence that promulgating a rule under this subdivision as an emergency
8 rule is necessary for the preservation of the public peace, health, safety, or welfare
9 and is not required to make a finding of emergency for promulgating a rule under this
10 subdivision as an emergency rule. Copayments and coinsurance paid by an eligible
11 person under this subdivision are separate from and do not count toward the
12 deductible and covered costs not paid by the plan under subs. 1. to 3.

13 **SECTION 20.** 149.146 (2) (b) (intro.) of the statutes is amended to read:

14 149.146 (2) (b) (intro.) The schedule of premiums for coverage under this
15 section shall be promulgated by rule set by the department, as provided in s. 149.143.
16 The rates for coverage under this section shall be set such that they differ from the
17 rates for coverage under s. 149.14 (2) (a) by the same percentage as the percentage
18 difference between the following:

19 **SECTION 21.** 227.01 (13) (nm) of the statutes is created to read:

20 227.01 (13) (nm) Sets or adjusts premium rates, insurer assessments, or
21 provider payment rates under ch. 149.

22 **SECTION 9321. Initial applicability; health and family services.**

23 (1) HEALTH INSURANCE RISK-SHARING PLAN PRESCRIPTION DRUG COPAYS AND
24 OUT-OF-POCKET LIMITS. The treatment of sections 149.14 (5) (e) and 149.146 (2) (am)
25 5. of the statutes first applies to prescription drug coverage on July 1, 2006.

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SECTION 9421. Effective dates; health and family services.

(1) HEALTH INSURANCE RISK-SHARING PLAN PAYMENT RATE FOR PRESCRIPTION DRUGS. The treatment of sections 149.142 (1) (b) and (2), 149.143 (1) (am) 4. and (bm) 2., (2) (a) 4. (by SECTION 9), (3) (a) (by SECTION 11) and (b), and (5) (a) and (b), 149.144 (by SECTION 17), and 149.145 of the statutes takes effect on October 1, 2005.

(END)

Sue:

While reviewing ^{this} draft, Pam Kahler noticed that "Subject to s. 149.14 (8)(b)," should have been restored in ss. 149.14 (5)(e) and 149.146 (2)(am) 5. Otherwise, one could interpret ^{that} these statutes to allow the DHFS to apply the same copayments as are applied under MA.

Cathleen 

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

LRB-0578/P6dn
CMH:jld:rs

February 1, 2005

Sue:

While reviewing this draft, Pam Kahler noticed that "Subject to s. 149.14 (8) (b)," should have been restored in ss. 149.14 (5) (e) and 149.146 (2) (am) 5. Otherwise, one could interpret that these statutes allow DHSF to apply the same copayments as are applied under MA.

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0578/P6
CMH&PJK:jld:rs

DOA:.....Jablonsky, BB0041 - HIRSP pharmacy reform

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

The Health Insurance Risk-Sharing Plan (HIRSP) under current law provides major medical health insurance coverage for persons who are covered under Medicare because they are disabled, persons who have tested positive for human immunodeficiency virus (HIV), and persons who have been refused coverage, or coverage at an affordable price, in the private health insurance market because of their mental or physical health condition. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage for at least 18 months in the past. DHFS and a board of governors (board) administer HIRSP.

Under current law, HIRSP payment rates for prescription drugs are the same as payment rates under the Medical Assistance (MA) program. This bill allows DHFS, with the approval of the board, to set HIRSP prescription drug payment rates.

Under current law, DHFS is allowed by rule to establish for prescription drug coverage copayment amounts, coinsurance rates, and copayment and coinsurance out-of-pocket limits over which HIRSP will pay 100 percent of the covered costs incurred by the covered person during the remainder of the calendar year. This bill allows DHFS to establish a three-tiered copayment structure for prescription drug

benefits. This bill allows DHFS to establish the out-of-pocket limit for prescription drug coverage at \$300 for persons who are also covered under Medicare and at \$300 or \$400 for other covered persons, depending on coverage selected. This bill allows DHFS to establish that only certain copayment amounts count toward the out-of-pocket limit. This bill also allows DHFS to change the out-of-pocket limit by administrative rule.

Under current law, DHFS must promulgate administrative rules to set or adjust HIRSP premium rates, insurer assessments, and provider payment rate. This bill eliminates the requirement that DHFS set or adjust these amounts by administrative rules.

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:

1 SECTION 1. 149.14 (5) (e) of the statutes is amended to read:

2 149.14 (5) (e) Subject to sub. (8) (b), the department may, by rule under s. 149.17
3 (4), ~~establish for prescription drug coverage under sub. (3) (d) copayment amounts,~~
4 ~~coinsurance rates, and~~ establish a 3-tiered copayment structure for prescription
5 drugs. The copayment and coinsurance out-of-pocket limits limit for prescription
6 drug coverage under sub. (3) (d) over which the plan will pay 100% of covered costs
7 under sub. (3) (d) may be \$300. The department may establish that only certain
8 copayment amounts count toward the out-of-pocket limit. The department may
9 provide subsidies for prescription drug copayment amounts paid by eligible persons
10 under s. 149.165 (2) (a) 1. to 5. ~~Any copayment amount, coinsurance rate, or~~
11 ~~out-of-pocket limit established under this paragraph is subject to the approval of the~~
12 board Subject to sub. (8) (b), the department may change, by rule under s. 149.17 (4),
13 the out-of-pocket limit. Using the procedure under s. 227.24, the department may
14 promulgate rules under this paragraph for the period before the effective date of any
15 permanent rules promulgated under this paragraph, but not to exceed the period

1 authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b),
2 and (3), the department is not required to provide evidence that promulgating a rule
3 under this paragraph as an emergency rule is necessary for the preservation of the
4 public peace, health, safety, or welfare and is not required to make a finding of
5 emergency for promulgating a rule under this paragraph as an emergency rule.

6 Copayments and coinsurance paid by an eligible person under this paragraph are
7 separate from and do not count toward the deductible and covered costs not paid by
8 the plan under pars. (a) to (c).

9 **SECTION 2.** 149.142 (1) (b) of the statutes is amended to read:

10 149.142 (1) (b) The payment rate for a prescription drug shall be the allowable
11 charge paid under s. 49.46 (2) (b) 6. h. for the prescription drug. Notwithstanding
12 s. 149.17 (4), the department may not reduce the payment rate for prescription drugs
13 below the rate specified in this paragraph, and the rate may not be adjusted under
14 s. 149.143 or 149.144 set by the department, subject to the approval of the board.

15 **SECTION 3.** 149.142 (2) of the statutes is amended to read:

16 149.142 (2) ~~Except as provided in sub. (1) (b), the~~ The rates established under
17 this section are subject to adjustment under ss. 149.143 and 149.144.

18 **SECTION 4.** 149.143 (1) (am) 4. of the statutes is amended to read:

19 149.143 (1) (am) 4. Fourth, notwithstanding par. (bm), by increasing insurer
20 assessments, excluding assessments under s. 149.144, and adjusting provider
21 payment rates, subject to s. 149.142 (1) (b) and excluding adjustments to those rates
22 under s. 149.144, in equal proportions and to the extent that the amounts under
23 subs. 1. to 3. are insufficient to pay 60% of plan costs.

24 **SECTION 5.** 149.143 (1) (bm) 2. of the statutes is amended to read:

SECTION 5

1 149.143 (1) (bm) 2. Fifty percent from adjustments to provider payment rates,
2 ~~subject to s. 149.142 (1) (b) and~~ excluding adjustments to those rates under s.
3 149.144.

4 **SECTION 6.** 149.143 (2) (a) 2. of the statutes is amended to read:

5 149.143 (2) (a) 2. After making the determinations under subd. 1., ~~by rule set~~
6 premium rates for the new plan year, including the rates under s. 149.146 (2) (b), in
7 the manner specified in sub. (1) (am) 1. and 3. and such that a rate for coverage under
8 s. 149.14 (2) (a) is approved by the board and is not less than 140% nor more than
9 200% of the rate that a standard risk would be charged under an individual policy
10 providing substantially the same coverage and deductibles as are provided under the
11 plan.

12 **SECTION 7.** 149.143 (2) (a) 3. of the statutes is amended to read:

13 149.143 (2) (a) 3. ~~By rule set~~ Set the total insurer assessments under s. 149.13
14 for the new plan year by estimating and setting the assessments at the amount
15 necessary to equal the amounts specified in sub. (1) (am) 4. and (bm) 1. and notify
16 the commissioner of the amount.

17 **SECTION 8.** 149.143 (2) (a) 4. of the statutes is amended to read:

18 149.143 (2) (a) 4. ~~By the same rule as under subd. 3. adjust~~ Adjust the provider
19 payment rate for the new plan year, subject to s. 149.142 (1) (b), by estimating and
20 setting the rate at the level necessary to equal the amounts specified in sub. (1) (am)
21 4. and (bm) 2. and as provided in s. 149.145.

22 **SECTION 9.** 149.143 (2) (a) 4. of the statutes, as affected by 2005 Wisconsin Act
23 (this act), is amended to read:

24 149.143 (2) (a) 4. Adjust the provider payment rate for the new plan year,
25 ~~subject to s. 149.142 (1) (b),~~ by estimating and setting the rate at the level necessary

1 to equal the amounts specified in sub. (1) (am) 4. and (bm) 2. and as provided in s.
2 149.145.

***NOTE: This is reconciled s. 149.143 (2) (a) 4. This SECTION has been affected by
drafts with the following LRB numbers: -0268 and -0578.

3 **SECTION 10.** 149.143 (3) (a) of the statutes is amended to read:

4 149.143 (3) (a) If, during a plan year, the department determines that the
5 amounts estimated to be received as a result of the rates and amount set under sub.
6 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
7 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
8 by rule increase the premium rates set under sub. (2) (a) 2. for the remainder of the
9 plan year, subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2.,
10 by rule increase the assessments set under sub. (2) (a) 3. for the remainder of the plan
11 year, subject to sub. (1) (bm) 1., and ~~by the same rule under which assessments are~~
12 ~~increased~~ adjust the provider payment rate set under sub. (2) (a) 4. for the remainder
13 of the plan year, subject to sub. (1) (bm) 2. and s. 149.142 (1) (b).

14 **SECTION 11.** 149.143 (3) (a) of the statutes, as affected by 2005 Wisconsin Act
15 (this act), is amended to read:

16 149.143 (3) (a) If, during a plan year, the department determines that the
17 amounts estimated to be received as a result of the rates and amount set under sub.
18 (2) (a) 2. to 4. and any adjustments in insurer assessments and the provider payment
19 rate under s. 149.144 will not be sufficient to cover plan costs, the department may
20 increase the premium rates set under sub. (2) (a) 2. for the remainder of the plan year,
21 subject to s. 149.146 (2) (b) and the maximum specified in sub. (2) (a) 2., increase the
22 assessments set under sub. (2) (a) 3. for the remainder of the plan year, subject to sub.

1 (1) (bm) 1., and adjust the provider payment rate set under sub. (2) (a) 4. for the
2 remainder of the plan year, subject to sub. (1) (bm) 2. ~~and s. 149.142 (1) (b).~~

****NOTE: This is reconciled s. 149.143 (3) (a). This SECTION has been affected by
drafts with the following LRB numbers: -0268 and -0578.

3 **SECTION 12.** 149.143 (3) (b) of the statutes is amended to read:

4 149.143 (3) (b) If the department increases premium rates and insurer
5 assessments and adjusts the provider payment rate under par. (a) and determines
6 that there will still be a deficit and that premium rates have been increased to the
7 maximum extent allowable under par. (a), the department may further adjust, in
8 equal proportions, assessments set under sub. (2) (a) 3. and the provider payment
9 rate set under sub. (2) (a) 4., without regard to sub. (1) (bm) ~~but subject to s. 149.142~~
10 ~~(1) (b).~~

11 **SECTION 13.** 149.143 (4) of the statutes is repealed.

12 **SECTION 14.** 149.143 (5) (a) of the statutes is amended to read:

13 149.143 (5) (a) Annually, no later than April 30, the department shall perform
14 a reconciliation with respect to plan costs, premiums, insurer assessments, and
15 provider payment rate adjustments based on data from the previous calendar year.
16 On the basis of the reconciliation, the department shall make any necessary
17 adjustments in premiums, insurer assessments, or provider payment rates, ~~subject~~
18 ~~to s. 149.142 (1) (b),~~ for the fiscal year beginning on the first July 1 after the
19 reconciliation, as provided in sub. (2) (b).

20 **SECTION 15.** 149.143 (5) (b) of the statutes is amended to read:

21 149.143 (5) (b) Except as provided in sub. (3) and s. 149.144, the department
22 shall adjust the provider payment rates to meet the providers' specified portion of the
23 plan costs no more than once annually, ~~subject to s. 149.142 (1) (b).~~ The department

1 may not determine the adjustment on an individual provider basis or on the basis
2 of provider type, but shall determine the adjustment for all providers in the
3 aggregate, ~~subject to s. 149.142 (1) (b).~~

4 **SECTION 16.** 149.144 of the statutes is amended to read:

5 **149.144 Adjustments to insurer assessments and provider payment**
6 **rates for premium, deductible, and prescription drug copayment**
7 **reductions.** The department shall, ~~by rule,~~ adjust in equal proportions the amount
8 of the assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set
9 under s. 149.143 (2) (a) 4., subject to ss. 149.142 (1) (b) and 149.143 (1) (am), sufficient
10 to reimburse the plan for premium reductions under s. 149.165, deductible
11 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
12 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
13 commissioner may levy any increase in insurer assessments.

14 **SECTION 17.** 149.144 of the statutes, as affected by 2005 Wisconsin Act (this
15 act), is amended to read:

16 **149.144 Adjustments to insurer assessments and provider payment**
17 **rates for premium, deductible, and prescription drug copayment**
18 **reductions.** The department shall adjust in equal proportions the amount of the
19 assessment set under s. 149.143 (2) (a) 3. and the provider payment rate set under
20 s. 149.143 (2) (a) 4., subject to ~~ss. 149.142 (1) (b) and s.~~ 149.143 (1) (am), sufficient
21 to reimburse the plan for premium reductions under s. 149.165, deductible
22 reductions under s. 149.14 (5) (a), and any prescription drug copayment reductions
23 under s. 149.14 (5) (e). The department shall notify the commissioner so that the
24 commissioner may levy any increase in insurer assessments.

***NOTE: This is reconciled s. 149.144. This SECTION has been affected by drafts with the following LRB numbers: -0268 and -0578.

1 **SECTION 18.** 149.145 of the statutes is amended to read:

2 **149.145 Program budget.** The department, in consultation with the board,
3 shall establish a program budget for each plan year. The program budget shall be
4 based on the provider payment rates specified in s. 149.142 and in the most recent
5 provider contracts that are in effect and on the funding sources specified in ss.
6 149.143 (1) and 149.144, including the methodologies specified in ss. 149.143,
7 149.144, and 149.146 for determining premium rates, insurer assessments, and
8 provider payment rates. Except as otherwise provided in s. 149.143 (3) (a) and (b)
9 ~~and subject to s. 149.142 (1) (b)~~, from the program budget the department shall derive
10 the actual provider payment rate for a plan year that reflects the providers'
11 proportional share of the plan costs, consistent with ss. 149.143 and 149.144. The
12 department may not implement a program budget established under this section
13 unless it is approved by the board.

14 **SECTION 19.** 149.146 (2) (am) 5. of the statutes is amended to read:

15 149.146 (2) (am) 5. Subject to s. 149.14 (8) (b), the department may, ~~by rule~~
16 ~~under s. 149.17 (4), establish for prescription drug coverage under this section~~
17 ~~copayment amounts, coinsurance rates, and~~ establish a 3-tiered copayment
18 structure for prescription drugs. The copayment and coinsurance out-of-pocket
19 limits limit for prescription drug coverage under this section over which the plan will
20 pay 100% of covered costs for prescription drugs. ~~Any copayment amount,~~
21 ~~coinsurance rate, or out-of-pocket limit established under this subdivision is subject~~
22 ~~to the approval of the board~~ under this section may be \$400. The department may
23 establish that only certain copayment amounts count toward the out-of-pocket

1 limit. Subject to s. 149.14 (8) (b), the department may change, by rule under s. 149.17
2 (4), the out-of-pocket limit. Using the procedure under s. 227.24, the department
3 may promulgate rules under this subdivision for the period before the effective date
4 of any permanent rules promulgated under this subdivision, but not to exceed the
5 period authorized under s. 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a),
6 (2) (b), and (3), the department is not required to provide evidence that promulgating
7 a rule under this subdivision as an emergency rule is necessary for the preservation
8 of the public peace, health, safety, or welfare and is not required to make a finding
9 of emergency for promulgating a rule under this subdivision as an emergency rule.
10 Copayments and coinsurance paid by an eligible person under this subdivision are
11 separate from and do not count toward the deductible and covered costs not paid by
12 the plan under subds. 1. to 3.

13 **SECTION 20.** 149.146 (2) (b) (intro.) of the statutes is amended to read:

14 149.146 (2) (b) (intro.) The schedule of premiums for coverage under this
15 section shall be promulgated by rule set by the department, as provided in s. 149.143.
16 The rates for coverage under this section shall be set such that they differ from the
17 rates for coverage under s. 149.14 (2) (a) by the same percentage as the percentage
18 difference between the following:

19 **SECTION 21.** 227.01 (13) (nm) of the statutes is created to read:

20 227.01 (13) (nm) Sets or adjusts premium rates, insurer assessments, or
21 provider payment rates under ch. 149.

22 **SECTION 9321. Initial applicability; health and family services.**

23 (1) HEALTH INSURANCE RISK-SHARING PLAN PRESCRIPTION DRUG COPAYS AND
24 OUT-OF-POCKET LIMITS. The treatment of sections 149.14 (5) (e) and 149.146 (2) (am)
25 5. of the statutes first applies to prescription drug coverage on July 1, 2006.

SECTION 9421. Effective dates; health and family services.

(1) HEALTH INSURANCE RISK-SHARING PLAN PAYMENT RATE FOR PRESCRIPTION DRUGS. The treatment of sections 149.142 (1) (b) and (2), 149.143 (1) (am) 4. and (bm) 2., (2) (a) 4. (by SECTION 9), (3) (a) (by SECTION 11) and (b), and (5) (a) and (b), 149.144 (by SECTION 17), and 149.145 of the statutes takes effect on October 1, 2005.

(END)