

2007 DRAFTING REQUEST

Bill

Received: **09/19/2006**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Pink**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Pink, BB0010 -

Topic:

Eliminate MA outpatient prescription drug coverage for dual eligibles

Instructions:

See Attached

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>
/?	pkahler 09/20/2006	wjackson 09/20/2006		_____			State
/1			rschluet 09/21/2006	_____	sbasford 09/21/2006		State
/2	pkahler 10/04/2006	wjackson 10/04/2006	rschluet 10/05/2006	_____	sbasford 10/05/2006		State
/3	pkahler 10/25/2006 pkahler 11/09/2006	wjackson 10/26/2006	jfrantze 10/27/2006	_____	mbarman 10/27/2006		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	pkahler 11/17/2006	wjackson 11/17/2006	pgreensl 11/20/2006	_____	cduerst 11/20/2006		

FE Sent For:

<END>

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Requester's email:

Carbon copy (CC:) to: **forsaac@dhfs.state.wi.us**

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/2	pkahler 10/04/2006	wjackson 10/04/2006	rschluet 10/05/2006	11/17	sbasford 10/05/2006		State
/3	pkahler	wjackson	jfrantze		mbarman		

11/17/08

1/9 WJ 11/17

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			rschluet 09/21/2006	_____	sbasford 09/21/2006		State
/2	pkahler 10/04/2006	wjackson 10/04/2006	rschluet 10/05/2006	_____	sbasford 10/05/2006		

1/3 WJ 10/26

Jb 10/27

Jb/NN
10/27

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **09/19/2006**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Pink, Michelle**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies: **DHFS**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **forsaac@dhfs.state.wi.us**

Pre Topic:

DOA:.....Pink, Michelle, BB0010 -

Topic:

Eliminate MA outpatient prescription drug coverage for dual eligibles

Instructions:

See Attached

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/?	pkahler 09/20/2006	wjackson 09/20/2006		_____			State
/1		<i>1/2 wj 10/4</i> rschlue 09/21/2006		_____	sbasford 09/21/2006		

FE Sent For:

1056
<END>

2007 DRAFTING REQUEST

Bill

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Identical to LRB:

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By/Representing: **Pink, Michelle**

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/?	pkahler	1 Wlj 9/20					
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FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Eliminate Medicaid Outpatient Prescription Drug Coverage for Dual Eligibles
- Tracking Code: BB0010
- SBO team: Health and Insurance
- SBO analyst: Michelle Pink
 - Phone: 7-7980
 - Email: michelle.pink@wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

Kahler, Pam

From: Nelson, Kirstin [NelsokB@dhfs.state.wi.us]
Sent: Tuesday, October 03, 2006 11:13 AM
To: Kahler, Pam
Subject: Draft 0263/1 link

Pam,

Here's a link to the section referenced in our comments on this draft. I will clarify our other comments and get back to you.

Here's a link to the CMS website.
<http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/>

Scroll to the bottom of the page, where it says "Related Links Outside CMS" and click on the link "Final Rule: Medicare Prescription Drug Benefit." The link will open up a PDF file of the regs as found in the Federal Register. The regs begin on p. 4525 (federal register pagination).

Thanks.
Kirstin

Kirstin Nelson
Budget and Policy Analyst
Office of Strategic Finance
Department of Health and Family Services
(608) 266-5362
nelsokb@dhfs.state.wi.us

* * * * *

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Fed Regs
Friday, Jan 28, 2005
Book 2 of 2
pp 4693-4742

Part II, DHHS, CMS, 42 CFR parts 400, 403, 411,
417, & 423
1

Eliminate Medicaid Outpatient Prescription Drug Coverage for Dual Eligibles

Current Language

(b)6.h.

Under s.49.46(2) Wisconsin's Medicaid program pays the allowable charges for outpatient prescription drugs for persons who are covered under Medicaid.

The Medicaid program is designated as the payer of last resort under s. 49.46(2)(d).

Proposed Change

Amend s.49.46(2)(d) to exclude outpatient drug coverage for drugs covered by Medicare Part D for persons who are eligible for full-benefits under Medicaid and who are also eligible for Medicare Part D coverage. Prescription drugs that are excluded from Medicare Part D coverage would still be covered by Medicaid.

As of January 1, 2006, federal law and regulations will not allow Medicaid coverage of outpatient prescription drugs for full-benefit Medicaid recipients who are also eligible for Part D, if the drug is covered under Part D. This proposal would modify the statutes to ensure that Wisconsin Medicaid is not liable for outpatient drug costs that could be covered under Part D.

Background and Rationale for the Change

The Medicare Modernization Act of 2003 (MMA) transfers responsibility for outpatient prescription drug coverage for dual eligibles, persons with full benefit Medicaid and Medicare eligibility, from Medicaid to Medicare Part D. There are approximately 110,000 individuals in Wisconsin who are eligible for both Medicaid and Medicare. Dual eligibles were automatically enrolled into Medicare Part D plans effective January 2006. However, because Part D is a voluntary program, existing state law still may render the state liable for covering outpatient prescription drugs for dual eligibles in some situations, as described below:

- (a) full-benefit Medicaid recipients who are also eligible for Part D who refuse to participate in Part D;
- (b) full-benefit Medicaid recipients who become newly eligible for Part D who are not immediately enrolled in a prescription drug plan due to federal systems time lags in enrolling new dual eligibles in Part D;
- (c) full-benefit Medicaid recipients who are enrolled in Part D who might use Medicaid as a mechanism to obtain coverage for drugs that Part D has found not to be medically necessary.

If this change is not made, the state may still be liable for 100% payment of outpatient pharmacy claims for dual eligibles under these circumstances. The Department's current policy is not to cover Part D drugs for persons who are eligible for Part D, on the grounds that state statutes, s.49.46(2)(d), makes Medicaid the payer of last resort. However, the Department's policy could be challenged in the cases cited above, potentially resulting in the requirement that the state pay 100% of these costs with state GPR funding. The estimated maximum state liability is \$1.0 million GPR annually.

Medicare Part D co-payments for full-benefit Medicaid recipients who are also eligible for Part D will be minimal and similar to those under Medicaid. Also, Medicare Part D has appeal rights to insure that recipients receive medically needed drugs.

The proposed language change codifies in statutes the Department's current policy of denying Medicaid coverage for Part D drugs.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Kirstin Nelson
Phone: (608) 266-5362



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0263/8

PJK:.....

Wlj

DOA:.....Pink, Michelle, BB0010 - Eliminate MA outpatient prescription drug coverage for dual eligibles

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

do not
gen cat
prescription drug
coverage under Medical
Assistance

1 AN ACT...; relating to: ~~???~~

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

✓ MEDICAL ASSISTANCE

Under current law, DHFS administers the Medical Assistance (MA) program, under which eligible individuals, generally low-income or disabled, receive health care benefits. Some individuals who are eligible for MA are also eligible for Medicare Part D, which is the portion of the federal health insurance program for individuals who are, generally, 65 years of age or older or disabled that provides prescription drug coverage. Enrollment in Medicare Part D is voluntary, and an enrollee must pay a premium.

This bill provides that, for an individual who is eligible for both MA and Medicare Part D, benefits under MA do not include payment for any prescription drug that is covered under Medicare Part D. Thus, such an individual would be required to enroll and participate in Medicare Part D to have coverage for any prescription drug that is covered under Medicare Part D; MA would not cover it.

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.** 49.46 (2) (b) (intro.)[✓] of the statutes is amended to read:
 2 49.46 (2) (b) (intro.) Except as provided in ~~par.~~ pars. (be) and (dc), the
 3 department shall audit and pay allowable charges to certified providers for medical
 4 assistance on behalf of recipients for the following services:

History: 1971 c. 125, 211, 215; 1973 c. 90, 147; 1975 c. 39; 1977 c. 29 ss. 592m, 1656 (18); 1977 c. 389, 418; 1979 c. 34, 221; 1981 c. 20, 93, 317; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 245 ss. 10, 15; 1983 a. 538; 1985 a. 29, 120, 176, 253; 1987 a. 27, 307, 339, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1454d to 1460 and 2909g, 2909i; 1989 a. 122, 173, 333, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 99, 269, 277, 446, 450, 491; 1995 a. 27, 77, 164, 289, 303, 457; 1997 a. 27, 35, 105, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25, 253.

5 **SECTION 2.** 49.46 (2) (dc)[✓] of the statutes is created to read:
 6 49.46 (2) (dc) For an individual who meets the eligibility criteria for medical
 7 assistance under sub. (1)[✓] and who is eligible for coverage under ~~Part D~~ of ~~Medicare~~
 8 under 42 USC 1395w-101 et seq., benefits under par. (b) 6. h.[✓] may not include
 9 payment for any outpatient prescription drug that is covered under ~~Part D~~ of
 10 ~~Medicare~~.

11

(END)

Kahler, Pam

From: Nelson, Kirstin [NelsoKB@dhfs.state.wi.us]
Sent: Thursday, September 28, 2006 9:52 AM
To: Kahler, Pam
Cc: Johnston, James; Pink, Michelle; Albertoni, Richard; Appleby, Pamela; McIlquham, Cheryl; Forsaith, Andrew
Subject: Comments on LRB Draft 0263/1

Pam,

Below are comments from the Department on the draft stat language. Let me know if you have any questions. Thanks.

LRB has drafted the following language for addition to state statutes:

" . . . benefits under par. (b) 6. h. may not include payment for any outpatient prescription drug that is covered under part D of medicare."

This language still implies that the Department will cover drugs, for dual eligibles, that are not covered by Part D due to a formulary exclusion, etc, which is not the case. The Department no longer pays for Part D drugs for Medicaid eligibles also eligible for Medicare.

The language should state that the Department will not pay for Part D drugs and it should define a Part D drug according to the MMA regulations, section 423.100.

Kirstin Nelson
Budget and Policy Analyst
Office of Strategic Finance
Department of Health and Family Services
(608) 266-5362
nelsokb@dhfs.state.wi.us

45 CFR 423.100

?

* * * * *

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Kirsten

10-4

by phone

Concern is that person's plan (Part D)
may not cover the drug even though
Part D does provide coverage for the
drug - DHFS won't cover even
if their plan doesn't



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0263/1

PJK:wj:rs

STAYS →
r m is run

DOA:.....Pink, Michelle, BB0010 - Eliminate MA outpatient prescription drug coverage for dual eligibles

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-note

do not
gen cat

1 AN ACT ...; relating to: prescription drug coverage under Medical Assistance.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Medical Assistance (MA) program, under which eligible individuals, generally low-income or disabled, receive health care benefits. Some individuals who are eligible for MA are also eligible for Medicare Part D, which is the portion of the federal health insurance program for individuals who are, generally, 65 years of age or older or disabled that provides prescription drug coverage. Enrollment in Medicare Part D is voluntary, and an enrollee must pay a premium. → Inset A ✓

This bill provides that, for an individual who is eligible for both MA and Medicare Part D, benefits under MA do not include payment for any prescription drug that is covered under Medicare Part D. Thus, such an individual would be required to enroll and participate in Medicare Part D to have coverage for any prescription drug that is covered under Medicare Part D; MA would not cover it. → Inset B ✓

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

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7 assistance under sub. (1) and who is eligible for coverage under part D of medicare
8 under 42 USC 1395w-101 et seq., benefits under par. (b) 6. h. ~~may~~ do not include
9 payment for any outpatient prescription drug that is covered under part D of
10 medicare e

11 (END)

Insert 2-10 ↓

D - vote

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0263/2ins
PJK:wlj:rs

INSERT A

woff
Not all Part D plans in which individuals may enroll cover all of the prescription drugs that may be covered under Medicare Part D.

(END OF INSERT A)

INSERT B

woff
for which there may be coverage under Medicare Part D, regardless of whether the individual is enrolled in Medicare Part D and, if he or she is enrolled, regardless of whether the individual's Part D plan covers the drug. Thus, to have coverage for a prescription drug for which Medicare Part D may provide coverage, an individual who is eligible for both MA and Medicare Part D must enroll in Medicare Part D in a Part D plan that covers the drug

(END OF INSERT B)

INSERT 2-6

- woff*
- 1 Part D drug, as defined in 42 CFR 423.100, regardless of whether the individual
 - 2 is enrolled in Part D of Medicare or whether, if the individual is enrolled, his or her
 - 3 Part D plan covers the Part D drug

(END OF INSERT 2-6)

as defined in 42 CFR 423.04,

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

LRB-0263/2dn
PJK:wlj:rs

I've tightened up the language so that it is clear MA does not cover a Part D drug even if a dual eligible is not enrolled in Part D or is not enrolled in a plan that actually covers the drug. I used "Part D plan, as defined in 42 CFR 423.4" to describe the dual eligible's plan, but perhaps that is too broad and I should have used "prescription drug plan," which is one of the types of plans included in the definition of "Part D plan." Let me know if "Part D plan" is too broad. Thanks.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0263/2dn
PJK:wlj:rs

October 5, 2006

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kirsten by phone - fr-0263, need to
make it apply to persons who are
eligible under S. 49.47 also -
suggest adding reference to (dc)
in S. 49.47(c)(a)1.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0263/2
PJK:wlj:rs
r mis run 3

DOA:.....Pink, BB0010 - Eliminate MA outpatient prescription drug coverage for dual eligibles

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: prescription drug coverage under Medical Assistance.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

elderly

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This bill provides that, for an individual who is eligible for both MA and Medicare Part D, benefits under MA do not include payment for any prescription drug for which there may be coverage under Medicare Part D, regardless of whether the individual is enrolled in Medicare Part D and, if he or she is enrolled, regardless of whether the individual's Part D plan covers the drug. Thus, to have coverage for a prescription drug for which Medicare Part D may provide coverage, an individual who is eligible for both MA and Medicare Part D must enroll in Medicare Part D in a Part D plan that covers the drug; MA will not cover it.

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6 49.46 (2) (dc) For an individual who meets the eligibility criteria for medical
7 assistance under sub. (1) and who is eligible for coverage under Part D of Medicare
8 under 42 USC 1395w-101 et seq., benefits under par. (b) 6. h. do not include payment
9 for any Part D drug, as defined in 42 CFR 423.100, regardless of whether the
10 individual is enrolled in Part D of Medicare or whether, if the individual is enrolled,
11 his or her Part D plan, as defined in 42 CFR 423.4, covers the Part D drug.

is eligible
↑

12

(END)

↖
Insert 2-11 ✓

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0263/3ins
PJK:wj:rs

INSERT 2-11

- 1 **SECTION ~~49.47~~** 49.47 (6) (a) 1. of the statutes is amended to read:
- 2 49.47 **(6)** (a) 1. Except as provided in subds. 6. to 7., all beneficiaries, for all
- 3 services under s. 49.46 (2) (a) and (b), subject to s. 49.46 (2) (dc). ✓

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 253.

(END OF INSERT 2-11)

Kahler, Pam

From: Pink, Michelle C - DOA [michelle.pink@wisconsin.gov]
Sent: Friday, November 17, 2006 9:44 AM
To: Kahler, Pam
Cc: Nelson, Kirstin B - DHFS
Subject: Version 3 of Part D & drug coverage

Good morning, Pam,

Please see the comments below pertaining to draft 0263/3 from staff at DHFS and let me know if you need any clarification.

Thank you!

Michelle Pink

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

Date: 11/17/2006 09:08 am -0600 (Friday)
From: Pamela Appleby
To: Megna, Richard
CC: Nelson, Kirstin
Subject: Re: version 3 of Part D & drug coverage

Richard,
I think the bill text looks fine. The only thing I would change is in the bill summary, not the bill text. I would eliminate the phrase that enrollees must pay a premium for Part D, since dual eligibles, the subject of this bill, do not pay Part D premiums.

-Pam



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0263/3

PJK:wlj:jf

r mis run

DOA:.....Pink, BB0010 - Eliminate MA outpatient prescription drug coverage for dual eligibles

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-note

*do not
you cost*

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Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

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

LRB-0263/4dn
PJK:wlj:pg

November 17, 2006

This redraft removes the reference in the analysis to premium payment for Medicare Part D coverage.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0263/4

PJK:wlj:pg

DOA:.....Pink, BB0010 - Eliminate MA outpatient prescription drug coverage for dual eligibles

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Medical Assistance (MA) program, under which eligible individuals, generally low-income, elderly, or disabled, receive health care benefits. Some individuals who are eligible for MA are also eligible for Medicare Part D, which is the portion of the federal health insurance program for individuals who are, generally, 65 years of age or older or disabled that provides prescription drug coverage. Enrollment in Medicare Part D is voluntary. Not all Part D plans in which individuals may enroll cover all of the prescription drugs that may be covered under Medicare Part D.

This bill provides that, for an individual who is eligible for both MA and Medicare Part D, benefits under MA do not include payment for any prescription drug for which there may be coverage under Medicare Part D, regardless of whether the individual is enrolled in Medicare Part D and, if he or she is enrolled, regardless of whether the individual's Part D plan covers the drug. Thus, to have coverage for a prescription drug for which Medicare Part D may provide coverage, an individual who is eligible for both MA and Medicare Part D must enroll in Medicare Part D in a Part D plan that covers the drug; MA will not cover it.

