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

To amend ss. HFS 152.065 (2) and (6) 153.07 (2) and (4), and 154.07 (2) and (4); and to create ss. HFS 152.02 (2m) and (26m), 152.03 (1) (e), 152.035, 152.06 (3) (g) and (h), 152.065 (2) (f) to (h), 153.02 (1m), (11g), (11r) and (18), 153.03 (5), 153.035, 153.037, 153.06 (3) (g), 153.07 (2) (f) to (h), 154.02 (1m) and (17), 154.03 (5), 154.035, 154.037, 154.06 (3) (g) and 154.07 (2) (f) to (h), relating to the provision and reimbursement of services under the Wisconsin Chronic Disease Program.

Statute interpreted

Sections 49.68, 49.683, 49.685 and 49.687, Stats.

Statutory authority

Sections 49.68 (2) (a) to (c) and (3), 49.683, 49.685 (8) (c) and 49.687 (1), (1m), (2) and (2m), Stats.

Explanation of agency authority

Section 49.68 (2) (a) to (c) gives the Department the authority to promulgate rules:

a. setting standards for the operation and certification of dialysis and renal transplantation centers and home dialysis equipment and suppliers;
b. setting standards for acceptance and certification of patients into the treatment phase of the treatment program for renal disease; and
c. concerning reasonable cost and length of treatment programs.

Section 49.68 (3) describes the state's financial aid to kidney disease patients, including the beneficiary's payment of deductibles, and authorizes the Department to disburse and collect all funds related to the operation of the kidney disease program.

Section 49.683 authorizes the Department to provide financial assistance for costs of medical care of persons over the age of 18 years with the diagnosis of cystic fibrosis who meet the financial requirements established by the Department in rule under s. 49.687 (1).

Section 49.685 (8) (c) authorizes the Department to promulgate all rules necessary to implement the financial assistance program for persons with hemophilia and other related congenital bleeding disorders.

Section 49.687 (1) authorizes the Department to promulgate rules that require persons who are eligible for benefits under the three chronic disease programs to spend specified portions of their income for medical care before receiving benefits under the pertinent chronic disease program. Section 49.687 (1m) authorizes the Department to specify in rule the other health care coverage programs for which a person with one of the three chronic diseases may be eligible for and that may limit that person's eligibility for benefits under the WCDP. Subsection (1m) also authorizes the Department to waive the requirement that persons must apply for other health care coverage programs before applying for benefits under the financial assistance program for persons with hemophilia and other related congenital bleeding disorders. Section 49.687 (2) authorizes the Department to develop and implement a sliding scale of patient liability for the financial aid under

the three chronic disease programs, based on the patient's ability to pay. Finally, section 49.687 (2m) authorizes the Department to assess a copayment amount for drugs under each of the programs.

Related statutes or rules

The Department knows of no related statutes or rules.

Plain language analysis

Using a legislative appropriation, the Wisconsin Chronic Disease Program (WCDP) reimburses health care providers for disease-related services provided to individuals with one of the following three illnesses: chronic renal disease; hemophilia; and cystic fibrosis. Because the benefit program requirements associated with each illness vary, the Department has established three individual chapters of administrative rules to administer the WCDP benefit program: chapters HFS 152 (chronic renal disease); 153 (hemophilia); and 154 (cystic fibrosis.) In the most recent biennial budget, 2003 Wisconsin Act 33, the Wisconsin Legislature and the Governor made a number of changes to the statutes that authorize the WCDP. These statutory changes require the Department to modify the three chapters of administrative rule so that they are once again consistent with and responsive to the statutes under which the WCDP benefit program operates.

Act 33 made several changes to the benefit programs, all of which are designed to allow the Department to contain the programs' costs:

1. It expanded the requirement that program beneficiaries must apply for other benefits provided under other health care coverage programs they may be eligible for before receiving benefits under WCDP, and authorized the Department to specify in rules what those other health care coverage programs are.
2. It instituted a statutorily-required prescription drug co-payment requirement for all 3 programs. The co-payment amount is $7.50 for each generic drug and $15 for each brand name drug. These amounts are currently $5 and $10, respectively, in chs. HFS 152, 153 and 154.
3. It established the requirement that persons whose family income is at or above 200% of the poverty line must pay a portion of their family income towards their care before the Department pays any benefits. The proportion a person must pay increases with the increase in family income.
4. It authorizes the Department to adopt managed care methods of cost containment for each of the three programs.
5. Under the chronic renal disease program, it requires health care providers to accept the Department's payment to them as payment in full, and prohibited providers from billing patients for charges above the amount paid by the Department.

A separate piece of legislation, 2003 Wisconsin Act 198, authorized the Department to waive the requirement that persons must apply for other health care coverage programs before applying for benefits under the financial assistance program for persons with hemophilia and other related congenital bleeding disorders.

Through this rulemaking order, the Department is proposing to reflect in chs. HFS 152, 153 and 154 these changes made by Acts 33 and 198 to the WCDP. Finally, the proposed rulemaking order clarifies that eligibility for benefits terminates under certain circumstances, such as death of the patient, and clarifies the limited circumstances under which retroactive eligibility is available under the chronic renal disease program.

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

The Wisconsin Chronic Disease Program offers assistance to Wisconsin residents with chronic renal disease, hemophilia and adult cystic fibrosis. The program is funded entirely by state dollars. The program pays health care providers for disease-related services and supplies provided to certified WCDP participants after all other sources of payment have been exhausted. Since the program is entirely state-funded, there are no analogous federal regulations.

Comparison with rules in adjacent states

None of the four states adjacent to Wisconsin (Illinois, Iowa, Michigan, and Minnesota) has a program similar to Wisconsin's for any of the three chronic diseases. However, each of the states has limited programs relating to these diseases. Each state covers services for these diseases under its regular Medicaid program. Minnesota has a program that provides limited services for individuals who have hemophilia or cystic fibrosis and who would not be eligible for services under Medicaid. The program provides "direct health care services" to individuals with these diseases. Iowa, Illinois, and Michigan do not have services for individuals who have hemophilia or cystic fibrosis and who would not be eligible for services under Medicaid.

Summary of factual data and analytical methodologies

The administrative rule is written to implement the legislative directive to contain costs and increase program revenues for the three programs. The rule changes simply modify the rules to comply with legislative intent. Therefore, no special factual data or analytical methodologies apply.

Analysis and supporting documents used to determine effect on small business

Given that this proposed rule will not have an effect on small business, the Department can cite no analyses and supporting documents.

Effect on small business

The three chronic disease programs provide health care benefits to individuals. This rulemaking order does not have any foreseeable impact on small businesses.

Anticipated costs incurred by private sector

The only fiscal effect on the private sector of this rulemaking order will be the imposition of cost-sharing responsibilities on benefit recipients. As directed by statutory changes through Act 33, program beneficiaries' drug co-payments will increase from the current $5.00 (for generic drugs) and $10.00 (for brand name drugs) to $7.50 (generic) and $15 (brand name.) This rule will not have a fiscal effect on private enterprise.

Agency contact person

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

Place where comments are to be submitted and deadline for submission

The initial proposed rules and hearing notice indicated that comments may be submitted to Al Matano or at the Department's administrative rules website: http://adminrules.wisconsin.gov

Persons who registered at the website received email notification of when the public comment period on this proposed rule began. The comment period ended on July 26, 2004.

Rule text

SECTION 1. HFS 152.02 (2m) and (26m) are created to read:

HFS 152.02 (2m) "BadgerCare" means the medical assistance-related program established under s. 49.665, Stats., and chs. HFS 101 to 108.

(26m) "SeniorCare" means the program of prescription drug assistance for eligible elderly persons under s. 49.688, Stats., and ch. HFS 109.

SECTION 2. HFS 152.03 (1) (e) is created to read:

HFS 152.03 (1) (e) First apply for benefits under all other health care coverage programs for which the person may reasonably be eligible, including medicare, BadgerCare, medical assistance and SeniorCare.

SECTION 3. HFS 152.035 is created to read:

HFS 152.035 Events which affect eligibility. (1) Eligibility under the CRD program is terminated if any of the following events occur:

(a) The patient dies.

(b) The patient stops making medicare premium payments.

(c) The patient moves out of the state of Wisconsin.

(d) The patient no longer requires a regular course of chronic dialysis because the patient's kidneys resume function and the patient has not had a kidney transplant.

(2) An applicant who has died may be retroactively eligible for benefits only if the applicant had signed and completed an application prior to the date of the applicant's death.

SECTION 4. HFS 152.06 (3) (g) and (h) are created to read:

HFS 152.06 (3) (g) A provider shall accept the amount paid under this section for the service as payment in full and may not bill the patient for any amount by which the charge for the service exceeds the amount paid for the service under this section.

(h) The department shall use common methods employed by managed care programs and the medical assistance program to contain costs, including prior authorization and other limitations regarding health care utilization and reimbursement.

SECTION 5. HFS 152.065 (2) is amended to read:

HFS 152.065 (2) INCOME DEDUCTIBLE. A certified patient whose estimated total family income in the current year ~~exceeds 300%~~ is at or above 200% of the federal poverty guidelines shall obligate or expend the following percentage of that income to pay the cost of medical

treatment for the chronic renal disease before the CRD program will provide assistance in paying for the cost of treatment:

(a) When total family income is from ~~300%~~ 200% to ~~325%~~ 250% of the federal poverty guidelines, ~~0.75%~~ 0.50% of that income~~;~~.

(b) When total family income is more than ~~325%~~ 250% but ~~less than or equal to 350%~~ not more than 275% of the federal poverty guidelines, ~~1.5%~~ 0.75% of that income~~;~~.

(c) When total family income is more than ~~350%~~ 275% but ~~less than or equal to 375%~~ not more than 300% of the federal poverty guidelines, ~~2.25%~~ 1.0% of that income~~;~~.

(d) When total family income is more than ~~375%~~ 300% but ~~less than or equal to 400%~~ not more than 325% of the federal poverty guidelines, ~~3.0%~~ 1.25% of that income~~;~~ .

(e) When total family income is more than ~~400%~~ 325% but not more than 350% of the federal poverty guidelines, ~~4.0%~~ 2.0% of that income~~;~~ .

SECTION 6. HFS 152.065 (2) (f) to (h) are created to read:

HFS 152.065 (2) (f) When total family income is more than 350% but not more than 375% of the federal poverty guidelines, 2.75% of that income.

(g) When total family income is more than 375% but not more than 400% of the federal poverty guidelines, 3.5% of that income.

(h) When total family income is more than 400% of the federal poverty guidelines, 4.5% of that income.

SECTION 7. HFS 152.065 (6) is amended to read:

HFS 152.065 (6) PATIENT COPAYMENT. When a pharmacy directly bills the chronic renal disease program for a prescription received by an ESRD patient, the patient is responsible for a ~~$5~~ $7.50 copayment amount for each generic drug and a ~~$10~~ $15.00 copayment amount for each brand name drug.

SECTION 8. HFS 153.02 (1m), (11g), (11r) and (18) are created to read:

HFS 153.02 (1m) “BadgerCare” means the medical assistance-related program established under s. 49.665, Stats., and chs. HFS 101 to 108.

(11g) “Medical assistance” has the meaning specified in s. 49.43 (8), Stats., and chs. HFS 101 to 108.

(11r) “Medicare” means the health insurance program operated by the U.S. department of health and human services under 42 USC 1395 to 1395zz and 42 CFR Pts. 405 to 421.

(18) “SeniorCare” means the program of prescription drug assistance for eligible elderly persons under s. 49.688, Stats, and ch. HFS 109.

SECTION 9. HFS 153.03 (5) is created to read:

HFS 153.03 (5) Complete one of the following actions:

(a) First apply for benefits under all other health care coverage programs for which the person may reasonably be eligible, including medicare, BadgerCare, medical assistance and SeniorCare.

(b) Apply for and receive from the department a waiver from par. (a) for religious reasons. If the department does not approve the request for a waiver, the applicant shall meet the requirements of par. (a).

Note: Persons desiring a waiver from the requirements under par. (a) should submit their request to the Wisconsin Chronic Disease Program, Attention: Eligibility Unit, P.O. Box 6410, Madison, WI 53716-0410, or call 608-221-3701. Requests must describe the basis of the religious belief that precludes application for benefits under one or more of the programs listed under par. (a).

SECTION 10. HFS 153.035 is created to read:

HFS 153.035 Termination of eligibility. Eligibility under the hemophilia home care program is terminated if any of the following events occur:

(1) The patient dies.

(2) The patient moves out of the state of Wisconsin.

SECTION 11. HFS 153.037 is created to read:

HFS 153.037 Retroactive eligibility. Retroactive eligibility is not available under the hemophilia home care program. Patients who are found to be eligible under s. HFS 153.03 become eligible for benefits on the date the application was received.

SECTION 12. HFS 153.06 (3) (g) is created to read:

HFS 153.06 (3) (g) The department shall use common methods employed by managed care programs and the medical assistance program to contain costs, including prior authorization and other limitations regarding health care utilization and reimbursement.

SECTION 13. HFS 153.07 (2) is amended to read:

HFS 153.07 (2) INCOME DEDUCTIBLE. A participant whose estimated total family income in the current year ~~exceeds 300%~~ is at or above 200% of the federal poverty guidelines shall obligate or expend the following percentage of that income to pay the cost of medical treatment for the condition before the hemophilia home care program will provide assistance in paying for the cost of treatment:

(a) When total family income is from ~~300%~~ 200% to ~~325%~~ 250% of the federal poverty guidelines, ~~0.75%~~ 0.50% of that income~~;~~.

(b) When total family income is more than ~~325% but less than or equal to 350%~~ 250% but not more than 275% of the federal poverty guidelines, ~~1.5%~~ 0.75% of that income~~;~~.

(c) When total family income is more than ~~350% but less than or equal to 375%~~ 275%, but not more than 300% of the federal poverty guidelines, ~~2.25%~~ 1.0% of that income~~;~~.

(d) When total family income is more than ~~375% but less than or equal to 400%~~ 300% but not more than 325% of the federal poverty guidelines, ~~3.0%~~ 1.25% of that income~~;~~.

(e) When total family income is more than ~~400%~~ 325% but not more than 350% of the federal poverty guidelines, ~~4.0%~~ 2.0% of that income~~;~~.

SECTION 14. HFS 153.07 (2) (f) to (h) are created to read:

HFS 153.07 (2) (f) When total family income is more than 350% but not more than 375% of the federal poverty guidelines, 2.75% of that income.

(g) When total family income is more than 375% but not more than 400% of the federal poverty guidelines, 3.5% of that income.

(h) When total family income is more than 400% of the federal poverty guidelines, 4.5% of that income.

SECTION 15. HFS 153.07 (4) is amended to read:

HFS 153.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the hemophilia home care program for a prescription received by a program participant, the participant is responsible for a ~~$5~~ $7.50 copayment amount for each generic drug and a ~~$10~~ $15.00 copayment amount for each brand name drug.

SECTION 16. HFS 154.02 (1m) and (17) are created to read:

HFS 154.02 (1m) "BadgerCare" means the medical assistance-related program established under s. 49.665, Stats., and chs. HFS 101 to 108.

(17) "SeniorCare" means the program of prescription drug assistance for eligible elderly persons under s. 49.688, Stats., and ch. HFS 109.

SECTION 17. HFS 154.03 (5) is created to read:

HFS 154.03 (5) First apply for benefits under all other health care coverage programs for which the person may reasonably be eligible, including medicare, BadgerCare, medical assistance and SeniorCare.

SECTION 18. HFS 154.035 is created to read:

HFS 154.035 Termination of eligibility. Eligibility for the adult cystic fibrosis program is terminated if either of the following events occur:

(1) The patient dies.

(2) The patient moves out of the state of Wisconsin.

SECTION 19. HFS 154.037 is created to read:

HFS 154.037 Retroactive eligibility. Retroactive eligibility is not available under the adult cystic fibrosis program. Patients who are found to be eligible under s. HFS 154.03 become eligible for benefits on the date the application was received.

SECTION 20. HFS 154.06 (3) (g) is created to read:

HFS 154.06 (3) (g) The department shall use common methods employed by managed care programs and the medical assistance program to contain costs, including prior authorization and other limitations regarding health care utilization and reimbursement.

SECTION 21. HFS 154.07 (2) is amended to read:

HFS 154.07 (2) INCOME DEDUCTIBLE. A participant whose estimated total family income in the current year ~~exceeds 300%~~ is at or above 200% of the federal poverty guidelines shall obligate or expend the following percentage of that income to pay the cost of medical treatment for the condition before the adult cystic fibrosis program will provide assistance in paying for the cost of treatment:

(a) When total family income is from ~~300%~~ 200% to ~~325%~~ 250% of the federal poverty guidelines, ~~0.75%~~ 0.50% of that income~~;~~.

(b) When total family income is more than ~~325% but less than or equal to 350%~~ 250% but not more than 275% of the federal poverty guidelines, ~~1.5%~~ 0.75% of that income~~;~~.

(c) When total family income is more than ~~350% but less than or equal to375%~~ 275% but not more than 300% of the federal poverty guidelines, ~~2.25%~~ 1.0% of that income~~;~~.

(d) When total family income is more than ~~375% but less than or equal to 400%~~ 300% but not more than 325% of the federal poverty guidelines, ~~3.0%~~ 1.25% of that income~~;~~.

(e) When total family income is more than ~~400%~~ 325% but not more than 350% of the federal poverty guidelines, ~~4.0%~~ 2.0% of that income~~;~~.

SECTION 22. HFS 154.07 (2) (f) to (h) are created to read:

HFS 154.07 (2) (f) When total family income is more than 350% but not more than 375% of the federal poverty guidelines, 2.75% of that income.

(g) When total family income is more than 375% but not more than 400% of the federal poverty guidelines, 3.5% of that income.

(h) When total family income is more than 400% of the federal poverty guidelines, 4.5% of that income.

SECTION 23. HFS 154.07 (4) is amended to read:

HFS 154.07 (4) PARTICIPANT COPAYMENT. When a pharmacy directly bills the adult cystic fibrosis program for a prescription received by a program participant, the participant is responsible for a ~~$5~~ $7.50 copayment amount for each generic drug and a ~~$10~~ $15.00 copayment amount for each brand name drug.

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: September 13, 2004

By:_____
Helene Nelson
Secretary

SEAL: