

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

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

Statute interpreted

The rules interpret s. 49.688, Stats.

Statutory authority

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

Explanation of agency authority

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

Related statutes or rules

The Department knows of no related statutes or rules.

Plain language analysis

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

- It increased the annual enrollment fee from \$20 to \$30.

- It i ncreased annual program deductibles for persons whose family income is more than 200% of the federal poverty level from \$500 to

\$850.

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

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

Starting May of 2004, individuals that have Medicare and do not have outpatient prescription drug coverage through Medicaid can receive a Medicare approved drug discount card. Individuals that meet income eligibility requirements may also qualify for a \$600 prescription drug credit. The discount cards can be used from June 1, 2004 until December 31, 2005. In January of 2006 a prescription drug benefit will be added to the Medicare program. The rules for this benefit are still under development.

Since individuals enrolled in SeniorCare with incomes at or below 200% of the Federal Poverty Level (FPL) are part of a Medicaid waiver, these individuals will not be eligible for a Medicare drug

discount card or the \$600 prescription drug credit. Individuals above 200% of the FPL will be able to qualify for a prescription drug discount card, but their incomes will be too high to receive the \$600 prescription drug credit.

Comparison with rules in adjacent states

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

Summary of factual data and analytical methodologies

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

Analysis and supporting documents used to determine effect on small business

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

Anticipated costs incurred by private sector

None.

Effect on small business

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

Agency contact person

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

Place where comments are to be submitted and deadline for submission

Comments may be submitted to Al Matano at the above email address or at the Department's administrative rules website: <http://adminrules.wisconsin.gov>
Once at the Department's admin. rules website, enter the search term "HFS 109" or "SeniorCare" to find the pertinent rule promulgation information and submit comments. While the public comment period is not known at this time, persons may register at the website to receive email notification of when the public comment period on this proposed rule begins.

Rule text

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. HFS 109.16 is amended to read:

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

Effective date

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

Wisconsin Department of Health
and Family Services

Dated: September 13, 2004

By: _____
Helene Nelson
Secretary

SEAL: