



2001 SENATE BILL 204

June 12, 2001 - Introduced by Senators ROESSLER, HARSDORF, DARLING and ROSENZWEIG, cosponsored by Representatives KRAWCZYK and SYKORA. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT to create** 20.435 (4) (bv), 20.435 (4) (j), 20.435 (4) (jb), 20.435 (4) (jc) and
2 49.688 of the statutes; **relating to:** requiring pharmacies and pharmacists, as
3 a condition of medical assistance participation, to charge elderly, low-income
4 persons for prescription drugs no more than specific amounts; specifying
5 requirements for rebate agreements between the department of health and
6 family services and drug manufacturers; requiring the exercise of rule-making
7 authority; making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

Under current state law, pharmacies and pharmacists that are certified providers of medical assistance (MA) services are reimbursed, at a rate established by the department of health and family services (DHFS), for providing certain prescription drugs to MA recipients. Under current federal law, persons entitled to coverage under part B of medicare do not receive coverage for prescription drugs for outpatient care as a benefit.

This bill provides that, beginning July 1, 2002, persons who have applied for and have been found by DHFS to be eligible for prescription drug assistance and who have paid an annual enrollment fee of \$30 may use a card, issued by DHFS, to obtain certain prescription drugs for outpatient care at a rate that is not more than the average wholesale price minus 5%, or the maximum allowable cost, as determined

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by DHFS, whichever is less, plus a pharmacy dispensing fee. After an eligible person has paid a deductible by expending \$750 in a 12-month period for prescription drugs at this reduced rate, the person may obtain additional prescription drugs in that period by paying a copayment of \$10 for each generic drug and a copayment of \$20 for each drug that is not a generic drug. Persons who are eligible to obtain prescription drugs for these reduced charges are state residents who are at least 65 years of age, are not MA recipients, and have household incomes, as determined by DHFS, that do not exceed 200% of the federal poverty line for a family the size of the persons' eligible families. Persons who are otherwise eligible but who have household incomes that do not exceed 125% of the federal poverty line for a family the size of the persons' eligible families may obtain prescription drugs by paying a \$15 annual enrollment fee and by paying \$5 and \$10 copayments without first paying the \$750 deductible. Persons who are otherwise eligible but who have household incomes that exceed 200% of the federal poverty line for a family the size of the person's eligible family must first, in a 12-month period, pay for prescription drugs at market rate, a deductible that equals the difference between the person's annual household income and 200% of the federal poverty line; after this is paid, the persons must pay a \$30 annual enrollment fee and an additional \$750 deductible for prescription drugs at the reduced rate; and the persons may then obtain additional prescription drugs in the remaining amount of the 12-month period by paying a copayment of \$10 for each drug that is a generic drug and \$20 for each drug that is not a generic drug. As a condition of participation by a pharmacy or pharmacist in the MA program, the pharmacy or pharmacist may not charge persons who are eligible for prescription drug assistance more than these amounts; as a part of the costs chargeable for the deductible, the pharmacy or pharmacist may include a dispensing fee, but may not charge a dispensing fee after the deductible is met. If a person who is eligible has other available coverage for prescription drugs, the program does not apply to the costs for prescription drugs available under that other coverage.

Under the bill, DHFS or an entity with which DHFS contracts must provide to drug manufacturers material designed for use in entering into rebate agreements that are modeled on federal medicaid rebate agreements, under which the manufacturer must make payments to the state treasurer for deposit in the general fund for the manufacturer's drugs that are prescribed and purchased under the program. The amount of the rebate payment under the agreement is required to be determined by the method that is specified under the federal medicaid rebate agreements. The amounts of the rebate payments must, in turn, together with general purpose revenues under a biennial appropriation created under the bill, be paid by DHFS to pharmacies or pharmacists that have reduced charges for prescription drugs for the eligible persons. Payment is at the average wholesale price minus 5%, or the maximum allowable cost, as determined by DHFS, whichever is less, minus any copayment made, plus a dispensing fee.

Under the bill, DHFS is authorized to enter into a contract with an entity to perform DHFS' duties and exercise its powers, other than rule making, under the prescription drug assistance program. DHFS must, under the bill, promulgate rules

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that specify the criteria to be used to determine household income for persons eligible for prescription drug assistance. Prescription drugs for which the reduced charges must be made are those that are available as an MA benefit and that are manufactured by a manufacturer that enters into a rebate agreement with DHFS. DHFS must calculate and transmit to pharmacies and pharmacists that participate in the MA program the prices at the average wholesale price minus 5%, or the maximum allowable cost, as determined by DHFS, whichever is less that must be charged to certain eligible persons in meeting the deductible for prescription drugs and must periodically update this information and transmit the updated information to pharmacies and pharmacists. DHFS must monitor compliance by pharmacies and pharmacists with the requirement to charge eligible persons for the specified prescription drugs at the reduced amounts and annually report to the legislature concerning the compliance. DHFS also must promulgate rules that establish prohibitions against fraud that are substantially similar to MA fraud provisions; the bill specifies penalties applicable to violations of these prohibitions.

If federal law is changed to provide coverage for outpatient prescription drugs as a benefit under medicare or another program, DHFS must provide a report to the legislature that analyzes the differences between the federal program and the program under the bill and that provides recommendations concerning alignment, if any, of the differences. DHFS must also report quarterly to the legislature concerning expenditures of general purpose revenues, revenues from manufacturer rebates, and case loads under the prescription drug assistance program. The bill appropriates \$1,000,000 in general purpose revenues in fiscal year 2001-01 to DHFS for administration of the program. Further, the bill appropriates \$1,000,000 in general purpose revenues to the joint committee on finance and authorizes DHFS to submit a proposal for review and approval by the department of administration and by the joint committee on finance, for expenditure of these moneys.

For further information see the *state and local* 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.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
- 2 the following amounts for the purposes indicated:

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SECTION 1

2001-02 2002-03

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2

20.435 Health and family services, department

3

of

4

(4) HEALTH SERVICES PLANNING, REGULATION AND

5

DELIVERY; HEALTH CARE FINANCING

6

(bv) Prescription drug assistance for

7

elderly; aids

GPR

B

-0-

21,400,000

8

(jc) Prescription drug assistance for

9

elderly; fees; administration

PR

A

-0-

1,000,000

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SECTION 2. 20.435 (4) (bv) of the statutes is created to read:

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20.435 (4) (bv) *Prescription drug assistance for elderly; aids.* Biennially, the

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amounts in the schedule for payment to pharmacies and pharmacists under s. 49.688

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(7) for prescription drug assistance for elderly persons.

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SECTION 3. 20.435 (4) (j) of the statutes is created to read:

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20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*

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All moneys received from rebate payments by manufacturers under s. 49.688 (6), to

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be used for payment to pharmacies and pharmacists under s. 49.688 (7) for

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prescription drug assistance for elderly persons.

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SECTION 4. 20.435 (4) (jb) of the statutes is created to read:

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20.435 (4) (jb) *Prescription drug assistance for elderly; enrollment fees.* All

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moneys received from payment of enrollment fees under s. 49.688 (3) (a), less the

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amounts appropriated under par. (jc), to be used for payment to pharmacies and

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pharmacists under s. 49.688 (7) for prescription drug assistance for elderly persons.

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SECTION 5. 20.435 (4) (jc) of the statutes is created to read:

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1 20.435 (4) (jc) *Prescription drug assistance for elderly; fees; administration.*
2 From payment of enrollment fees under s. 49.688 (3), the amounts in the schedule
3 for administration of the program under s. 49.688.

4 **SECTION 6.** 49.688 of the statutes is created to read:

5 **49.688 Prescription drug assistance for low-income elderly persons.**

6 **(1)** In this section:

7 (a) “Generic name” has the meaning given in s. 450.12 (1) (b).

8 (b) “Poverty line” means the nonfarm federal poverty line for the continental
9 United States, as defined by the federal department of labor under 42 USC 9902 (2).

10 (c) “Prescription drug” means a prescription drug, as defined in s. 450.01 (20),
11 that is included in the drugs specified under s. 49.46 (2) (b) 6. h. and that is
12 manufactured by a manufacturer that enters into a rebate agreement in force under
13 sub. (6).

14 (d) “Prescription order” has the meaning given in s. 450.01 (21).

15 (e) “Program payment rate” means the average wholesale price minus 5%, or
16 the maximum allowable cost, as determined by the department, whichever is less,
17 plus a dispensing fee that is equal to the dispensing fee permitted to be charged for
18 legend drugs for which coverage is provided under s. 49.46 (2) (b) 6. h.

19 **(2)** (a) A person to whom all of the following applies is eligible to purchase a
20 prescription drug for the amounts specified in sub. (5) (a) 1. and 2.:

21 1. The person is a resident, as defined in s. 27.01 (10) (a), of this state.

22 2. The person is at least 65 years of age.

23 3. The person is not a recipient of medical assistance.

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1 4. The person's annual household income, as determined by the department,
2 does not exceed 200% of the poverty line for a family the size of the person's eligible
3 family.

4 5. The person pays the program enrollment fee specified in sub. (3) (a).

5 (b) A person to whom par. (a) 1. to 3. and 5. applies, but whose annual household
6 income, as determined by the department, exceeds 200% of the federal poverty line
7 for a family the size of the person's eligible family, is eligible to purchase a
8 prescription drug at the amounts specified in sub. (5) (a) 4. only during the remaining
9 amount of any 12-month period in which the person has first paid the annual
10 deductible specified in sub. (3) (b) 2. a. in purchasing prescription drugs at the retail
11 price and has then paid the annual deductible specified in sub. (3) (b) 2. b.

12 **(3)** Program participants shall pay all of the following:

13 (a) For each 12-month benefit period, a program enrollment fee of \$30, except,
14 for a person whose annual household income, as determined by the department, is
15 125% or less of the federal poverty line for a family the size of the person's eligible
16 family, a program enrollment fee of \$15.

17 (b) 1. For each 12-month benefit period, for a person specified in sub. (2) (a),
18 a deductible for prescription drugs of \$750, except that a person whose annual
19 household income, as determined by the department, is 125% or less of the federal
20 poverty line for a family the size of the person's eligible family pays no deductible.

21 2. For each 12-month benefit period, for a person specified in sub. (2) (b), a
22 deductible for prescription drugs that equals all of the following:

23 a. The difference between the person's annual household income and 200% of
24 the federal poverty line for a family the size of the person's eligible family.

25 b. Seven hundred fifty dollars.

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1 (c) After payment of any applicable deductible under par. (b), all of the
2 following:

3 1. For each prescription drug that bears only a generic name, a copayment of
4 \$10, except that, for a person whose annual household income, as determined by the
5 department, is 125% or less of the federal poverty line for a family the size of the
6 person's eligible family, a copayment of \$5.

7 2. For each prescription drug that does not bear only a generic name, a
8 copayment of \$20, except that, for a person whose annual household income, as
9 determined by the department, is 125% or less of the federal poverty line for a family
10 the size of the person's eligible family, a copayment of \$10.

11 (d) Notwithstanding s. 49.002, if a person who is eligible under this section has
12 other available coverage for payment of a prescription drug, this section applies only
13 to costs for prescription drugs for the person that are not covered under the person's
14 other available coverage.

15 (4) The department shall devise and distribute a form for application for the
16 program under sub. (2), shall determine eligibility for each 12-month benefit period
17 of applicants, and shall issue to eligible persons a prescription drug card for use in
18 purchasing prescription drugs, as specified in sub. (5). The department shall
19 promulgate rules that specify the criteria to be used to determine annual household
20 income under sub. (2) (a) 4. and (b) and (3) (b) 1. and (c) 1. and 2.

21 (5) (a) Beginning July 1, 2002, as a condition of participation by a pharmacy
22 or pharmacist in the program under s. 49.45, 49.46, or 49.47, the pharmacy or
23 pharmacist may not charge a person who presents a valid prescription order and a
24 card indicating that he or she meets eligibility requirements under sub. (2) an
25 amount for a prescription drug under the order that exceeds the following:

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1 1. For a deductible, as specified in sub. (3) (b) 1. and 2. b., the program payment
2 rate.

3 2. After any applicable deductible under subd. 1. is charged, the copayment, as
4 applicable, that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged
5 to a person under this subdivision.

6 3. For a deductible, as specified in sub. (3) (b) 2. a., the retail price.

7 4. After the deductible under subd. 3. is charged, the copayment, as applicable,
8 that is specified in sub. (3) (c) 1. or 2. No dispensing fee may be charged to a person
9 under this subdivision.

10 (b) The department shall calculate and transmit to pharmacies and
11 pharmacists that are certified providers of medical assistance amounts that may be
12 used in calculating charges under par. (a). The department shall periodically update
13 this information and transmit the updated amounts to pharmacies and pharmacists.

14 **(6)** The department or an entity with which the department contracts shall
15 provide to a drug manufacturer that sells drugs for prescribed use in this state
16 material designed for use by the manufacturer in entering into a rebate agreement
17 with the department or entity that is modeled on the rebate agreement specified
18 under 42 USC 1396r-8. A rebate agreement under this subsection shall include all
19 of the following as requirements:

20 (a) That the manufacturer shall make rebate payments for each prescription
21 drug of the manufacturer that is prescribed for and purchased by persons who meet
22 criteria under sub. (2) (a) and by persons who meet criteria under sub. (2) (b) and
23 have paid the deductible under sub. (3) (b) 2. a., to the state treasurer to be credited
24 to the appropriation under s. 20.435 (4) (j), each calendar quarter or according to a
25 schedule established by the department.

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1 (b) That the amount of the rebate payment shall be determined by a method
2 specified in 42 USC 1396r-8 (c).

3 (7) From the appropriation accounts under s. 20.435 (4) (bv), (j), and (jb),
4 beginning July 1, 2002, the department shall, under a schedule that is identical to
5 that used by the department for payment of pharmacy provider claims under medical
6 assistance, provide to pharmacies and pharmacists payments for prescription drugs
7 sold by the pharmacies or pharmacists to persons eligible under sub. (2) who have
8 paid the deductible specified under sub. (3) (b) 1. or 2. or who, under sub. (3) (b) 1.,
9 are not required to pay a deductible. The payment for each prescription drug under
10 this subsection shall be at the program payment rate, minus any copayment paid by
11 the person under sub. (5) (a) 2. or 4., plus, if applicable, incentive payments that are
12 similar to those provided under s. 49.45 (8v). The department shall devise and
13 distribute a claim form for reports by pharmacies and pharmacists under this
14 subsection and may limit payment under this subsection to those prescription drugs
15 for which payment claims are submitted by pharmacies or pharmacists directly to
16 the department. The department may apply to the program under this section the
17 same utilization and cost control procedures that apply under rules promulgated by
18 the department to medical assistance under subch. IV.

19 (8) The department shall, under methods promulgated by the department by
20 rule, monitor compliance by pharmacies and pharmacists that are certified providers
21 of medical assistance with the requirements of sub. (5) and shall annually report to
22 the legislature under s. 13.172 (2) concerning the compliance. The report shall
23 include information on any pharmacies or pharmacists that discontinue
24 participation as certified providers of medical assistance and the reasons given for
25 the discontinuance.

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1 **(9)** (a) The department shall promulgate rules relating to prohibitions on fraud
2 that are substantially similar to applicable provisions under s. 49.49 (1) (a).

3 (b) A person who is convicted of violating a rule promulgated by the department
4 under par. (a) in connection with that person's furnishing of prescription drugs under
5 this section may be fined not more than \$25,000, or imprisoned for not more than 7
6 years and 6 months, or both.

7 (c) A person other than a person specified in par. (b) who is convicted of violating
8 a rule promulgated by the department under par. (a) may be fined not more than
9 \$10,000, or imprisoned for not more than one year, or both.

10 **(10)** If federal law is amended to provide coverage for prescription drugs for
11 outpatient care as a benefit under medicare or to provide similar coverage under
12 another program, the department shall submit to appropriate standing committees
13 of the legislature under s. 13.172 (3) a report that contains an analysis of the
14 differences between such a federal program and the program under this section and
15 that provides recommendations concerning alignment, if any, of the differences.

16 **(11)** Beginning October 1, 2002, the department shall by October 1, January
17 1, April 1, and July 1 annually submit to appropriate standing committees of the
18 legislature under s. 13.172 (3) a report concerning expenditures of general purpose
19 revenues, receipt of revenues from manufacturers under rebate agreements, and
20 program participant case loads under the program under this section.

21 **(12)** Except as provided in subs. (8) to (11), and except for the department's
22 rule-making requirements and authority, the department may enter into a contract
23 with an entity to perform the duties and exercise the powers of the department under
24 this section.

25 **SECTION 7. Nonstatutory provisions.**

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1 (1) PRESCRIPTION DRUG ASSISTANCE FOR ELDERLY; ADMINISTRATION. Before the first
2 day of the 2nd month following publication of the biennial budget act, the
3 department of health and family services may develop and submit to the department
4 of administration a proposal for expenditure of the funds appropriated under section
5 20.865 (4) (a) of the statutes for administration of the prescription drug assistance
6 for low-income elderly program under section 49.688 of the statutes, as created by
7 this act. The department of administration may approve, disapprove, or modify and
8 approve any proposal it receives under this subsection. If the department of
9 administration approves the proposal, the department shall submit the proposal,
10 together with any modifications, to the cochairpersons of the joint committee on
11 finance. If the cochairpersons of the committee do not notify the secretaries of
12 administration and health and family services within 14 working days after
13 receiving the proposal that the cochairpersons have scheduled a meeting for the
14 purpose of reviewing the proposal, the secretary of administration may transfer from
15 the appropriation under section 20.865 (4) (a) of the statutes to the appropriation
16 under section 20.435 (4) (a) of the statutes the amount specified in the proposal or
17 any proposed modifications of the proposal for expenditure as specified in the
18 proposal or any proposed modifications of the proposal and may approve any position
19 authority specified in the proposal or any proposed modifications of the proposal. If,
20 within 14 working days after receiving the proposal, the cochairpersons notify the
21 secretaries of administration and health and family services that the cochairpersons
22 have scheduled a meeting for the purpose of reviewing the proposal, the secretary of
23 administration may not transfer any amount specified in the proposal or any
24 proposed modifications of the proposal from the appropriation under section 20.865
25 (4) (a) of the statutes and may not approve any position authority specified in the

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1 proposal or any proposed modifications of the proposal, except as approved by the
2 committee.

3 **SECTION 8. Appropriation changes.**

4 (1) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY; ADMINISTRATION. In
5 the schedule under section 20.005 (3) of the statutes for the appropriation to the joint
6 committee on finance under section 20.435 (4) (a) of the statutes, as affected by the
7 acts of 1999, the dollar amount is increased by \$1,000,000 for fiscal year 2001-02 to
8 increase funding for administration of the prescription drug assistance for elderly
9 program under section 49.688 of the statutes, as created by this act.

10 (2) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY; ADDITIONAL
11 ADMINISTRATION. In the schedule under section 20.005 (3) of the statutes for the
12 appropriation to the joint committee on finance under section 20.865 (4) (a) of the
13 statutes, as affected by the acts of 2001, the dollar amount is increased by \$1,000,000
14 for fiscal year 2001-02 to increase funding for administration of the prescription
15 drug assistance for elderly program under section 49.688 of the statutes, as created
16 by this act.

17 **SECTION 9. Effective dates.** This act takes effect on the 2nd day after
18 publication of the 2001-03 biennial budget bill, except as follows:

19 (1) PRESCRIPTION DRUG ASSISTANCE FOR LOW-INCOME ELDERLY. The treatment of
20 section 20.435 (4) (bv) of the statutes takes effect on July 1, 2002.

21 (END)