



2003 SENATE BILL 114

April 16, 2003 - Introduced by Senators CARPENTER, RISSER and BRESKE, cosponsored by Representatives CULLEN, TURNER, YOUNG, BLACK, J. LEHMAN, BERCEAU, MORRIS, POCAN, ZEPNICK, SINICKI and A. WILLIAMS. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to amend* 20.435 (4) (j), 49.688 (2) (a) 2., 139.31 (1) (a) and 139.31 (1) (b);
2 and *to create* 49.69 and 139.326 of the statutes; **relating to:** prescription drug
3 assistance, rebates on prescription drugs, increasing the cigarette tax rate, and
4 making appropriations.

Analysis by the Legislative Reference Bureau

Under current law, elderly persons may purchase prescription drugs at reduced amounts under a program commonly known as "Senior Care." Persons eligible for Senior Care are state residents who are at least 65 years of age, who are not medical assistance (MA) recipients or do not receive prescription drug coverage as MA recipients, and whose annual household incomes, as determined by the Department of Health and Family Services (department), do not exceed 240% of the federal poverty line. A person must pay an annual \$20 fee to enroll in Senior Care. An enrollee pays the "program payment rate" for prescription drugs (105% of the MA prescription drug payment rate plus a dispensing fee) until the enrollee has met a \$500 annual deductible, and thereafter pays only a copayment of \$5 for generic prescription drugs and a copayment of \$15 for nongeneric prescription drugs. (Eligible persons with an annual household income that does not exceed 160% of the federal poverty line are not required to pay the \$500 deductible.) Other persons who meet all of the requirements except the income limitation are also eligible to purchase prescription drugs for the \$5 and \$15 copayment amounts for the time remaining in a 12-month period after spending the difference between their household income and 240% of the federal poverty line by paying for prescription

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drugs at the retail price and meeting the \$500 deductible by purchasing prescription drugs at the program payment rate. Pharmacies and pharmacists are prohibited, as a condition of participation in MA, from charging Senior Care enrollees more than the program payment rate for the deductible and the applicable copayment charge for prescription drugs.

The department reimburses pharmacies and pharmacists the program payment rate minus any copayment paid by a Senior Care enrollee for prescription drugs purchased by Senior Care enrollees who have paid any applicable deductible. Payments to pharmacies and pharmacists are funded with general purpose revenue and rebates described below. Also, under a federal Medicaid waiver, the federal government pays a portion of the cost of prescription drugs purchased under Senior Care for persons whose annual household income does not exceed 200% of the federal poverty line.

Currently, manufacturers of prescription drugs must pay the state rebates that are set by the federal government for prescription drugs purchased under MA and under Badger Care. Current law requires the department to solicit similar rebates for drugs purchased under Senior Care and several aids programs for persons with certain diseases. Those manufacturers who have entered into agreements with the department currently pay rebates on prescription drugs purchased under Senior Care and the disease aids programs.

This bill expands eligibility for Senior Care to persons who are eligible for Medicare because they receive Social Security insurance benefits for a disability and who meet all of the current eligibility requirements for Senior Care other than the age requirement. The bill directs the department to request that the federal secretary of the health and human services extend the Medicaid waiver for Senior Care to cover persons made eligible for Senior Care under this bill. The bill also directs the department to solicit rebates from manufacturers on prescription drugs purchased under Senior Care by persons made eligible for Senior Care under this bill.

The bill increases the tax on cigarettes by five cents per pack, directs that the revenue generated from the tax increase be deposited in the general purpose revenue appropriation for Senior Care, and increases the amounts in the appropriation schedule for the general purpose revenue appropriation for Senior Care.

Finally, the bill directs the department to negotiate with drug manufacturers to obtain supplemental rebates on prescription drugs purchased under MA, Badger Care, Senior Care, and the disease aids programs. For purposes of the bill, a rebate is supplemental if it is greater than the amount required under federal law for drugs purchased under MA. Any supplemental rebates obtained under the bill are appropriated for the purchase of prescription drugs under Senior Care.

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:

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1 **SECTION 1.** 20.435 (4) (j) of the statutes is amended to read:

2 20.435 (4) (j) *Prescription drug assistance for elderly; manufacturer rebates.*
3 All moneys received from rebate payments by manufacturers under s. 49.688 (6) and
4 all moneys received from supplemental rebate payments by manufacturers under s.
5 49.69, to be used for payment to pharmacies and pharmacists under s. 49.688 (7) for
6 prescription drug assistance for elderly persons.

7 **SECTION 2.** 49.688 (2) (a) 2. of the statutes is amended to read:

8 49.688 (2) (a) 2. The person is at least 65 years of age or is eligible for Medicare
9 under 42 USC 1395c to 1395f because he or she is disabled and receiving Social
10 Security Disability Insurance benefits under 42 USC 423.

11 **SECTION 3.** 49.69 of the statutes is created to read:

12 **49.69 Supplemental prescription drug rebates. (1)** In this section:

13 (a) "Prescription drug" has the meaning given in s. 450.01 (20).

14 (b) "Supplemental rebate" means a rebate for a prescription drug that is in
15 addition to the rebate amount paid by a manufacturer of the prescription drug and
16 received by the state under 42 USC 1396r-8.

17 **(2)** The department, or an entity with which the department contracts, shall
18 negotiate with manufacturers of prescription drugs to obtain supplemental rebates
19 for prescription drugs purchased under the Medical Assistance program and under
20 ss. 49.665, 49.68, 49.683, 49.685, and 49.688. Any supplemental rebate paid by a
21 manufacturer for a prescription drug purchased under the Medical Assistance
22 program or under s. 49.665, 49.68, 49.683, 49.685, or 49.688 shall be deposited in the
23 appropriation account under s. 20.435 (4) (j).

24 **SECTION 4.** 139.31 (1) (a) of the statutes is amended to read:

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1 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,
2 38.5 41 mills on each cigarette.

3 **SECTION 5.** 139.31 (1) (b) of the statutes is amended to read:

4 139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, ~~77~~ 82
5 mills on each cigarette.

6 **SECTION 6.** 139.326 of the statutes is created to read:

7 **139.326 Revenue distribution.** From the taxes collected under this
8 subchapter, the department shall deposit in s. 20.435 (4) (bv) an amount equal to 2.5
9 mills on each cigarette weighing not more than 3 pounds per thousand and 5 mills
10 on each cigarette weighing more than 3 pounds per thousand.

11 **SECTION 7. Nonstatutory provisions.**

12 (1) **ISSUANCE OF PRESCRIPTION DRUG CARDS.** By the first day of the 3rd month
13 beginning after publication, the department of health and family services shall begin
14 issuing prescription drug cards under section 49.688 (4) of the statutes to persons
15 who are under 65 years of age and are eligible for prescription drug assistance under
16 section 49.688 (2) of the statutes, as affected by this act.

17 (2) **WAIVER.** By the first day of the 4th month beginning after publication, the
18 department of health and family services shall request that the federal secretary of
19 health and human services extend the federal Medicaid waiver under section 49.688
20 (11) of the statutes to cover persons who are under 65 years of age and are eligible
21 for prescription drug assistance under section 49.688 (2) of the statutes, as affected
22 by this act.

23 (3) **MANUFACTURER REBATES.** By the first day of the 4th month beginning after
24 publication, the department of health and family services, or an entity with which
25 the department of health and family services contracts, shall solicit rebates from

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1 manufacturers of prescription drugs as provided under section 49.688 (6) of the
2 statutes for prescription drugs that are purchased under section 49.688 of the
3 statutes, as affected by this act, by persons who are under 65 years of age.

4 **SECTION 8. Appropriation changes.**

5 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
6 to the department of health and family services under section 20.435 (4) (bv) of the
7 statutes, as affected by the acts of 2003, the dollar amount is increased by \$6,900,000
8 for fiscal year 2003-04 and the dollar amount is increased by \$20,900,000 for fiscal
9 year 2004-05 to fund prescription drug assistance under section 49.688 of the
10 statutes, as affected by this act, for persons who are under 65 years of age.

11 **SECTION 9. Effective date.** This act takes effect on the day after publication,
12 except as follows:

13 (1) The treatment of sections 139.31 (1) (a) and (b) and 139.326 of the statutes
14 takes effect on the first day of the 2nd month beginning after publication.

15 (2) The treatment of section 49.688 (2) (a) 2. of the statutes takes effect on the
16 first day of the 4th month beginning after publication.

17 **(END)**