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February 7, 2001

TO: Members
Senate Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to 2001 Senate Bill 1

Senate Substitute Amendment 1 to Senate Bill 1 would create a program to assist certain persons over the age of 65 in purchasing prescription drugs. On January 23, 2001, the Senate Committee on Health, Utilities, Veterans and Military Affairs recommended SSA 1, as amended by SA 1 to SSA 1, for passage by a vote of five to four.

Summary of SSA 1

Program Eligibility. Under SSA 1, a person could enroll in the prescription assistance program if he or she: (a) is a state resident who is at least 65 years of age; (b) is not enrolled in the state's medical assistance (MA) program; (c) has annual household income, as determined by the Department of Health and Family Services (DHFS), at or below 300% of the federal poverty level (FPL); and (d) pays an annual $20 enrollment fee. Individuals with prescription drug coverage under other plans would be eligible to enroll, but the program would only cover eligible costs not covered under other plans.

In 2000, 300% of the FPL is equal to $25,050 annually for an individual and $33,750 annually for a two-person family. The 2001 FPL has not yet been established. In addition, individuals with annual household incomes above 300% of the FPL but who meet the other eligibility criteria would be eligible to enroll in the program if, after deducting their out-of-pocket costs for prescription drugs covered under the program from their income, they have income at or below 300% of the FPL. These individuals are referred to as persons that "spend down" to the income eligibility limit.

Enrollee Cost-Sharing and Benefits. Individuals would pay a $20 enrollment fee for each 12-month benefit period as a condition of enrollment. Individuals would also be required to pay a $500 deductible per person for each 12-month benefit period. After meeting the deductible,

enrollees would pay a copayment of $10 for each prescription for a brand name drug and $5 for each prescription for a generic drug for the duration of the 12-month benefit period. Individuals with annual household income at or below 175% of the FPL would not be required to pay the $500 deductible, but would be responsible for the required copayments.

Beginning March 1, 2002, as a condition of participating in the MA program, pharmacies would be prohibited from charging enrollees an amount that exceeds the program payment rate (105% of the MA rate) plus the MA dispensing fee, for drugs purchased during the deductible period. After an enrollee meets the deductible, the pharmacy could only charge the applicable copayments for the duration of the enrollee's 12-month benefit period. Enrollees who spend down to become eligible for the program would pay the pharmacist's retail price for drugs while spending down the income limit. Once these enrollees reach the income limit, they would be required to meet the $500 deductible. After an enrollee meets the deductible, he or she would pay only the applicable copayments. DHFS would be required to calculate and transmit to pharmacies and pharmacists certified under MA the amounts that would be used to calculate these charges to enrollees. DHFS would be required to periodically update the information and transmit the updated amounts to pharmacies and pharmacists.

DHFS would be required to monitor pharmacies' compliance with providing discounted rates to program enrollees for drugs purchased under the program and would be required to submit an annual report to the Legislature concerning compliance. The report would also include information on any pharmacies or pharmacists that discontinue participation in the MA program and the reasons for the discontinuance.

Payments to Pharmacies. Beginning March 1, 2002, DHFS would reimburse pharmacies for drugs provided to enrollees who have met their deductible at a rate equal to 105% of the reimbursement rate paid to pharmacies for an identical drug under MA, less the copayment paid by the enrollee, plus a dispensing fee equal to the MA dispensing fee. Pharmacies may also be eligible for incentive payments pharmacies may receive under the MA program. DHFS would support these payments to pharmacies with a combination of GPR funds and rebate revenue collected from manufacturers. This reimbursement rate is estimated to be equivalent to approximately 82% of a pharmacy's usual and customary charges (the retail price of the drug). DHFS would be required to devise and distribute claim forms for use by pharmacies and pharmacists. DHFS would be able to apply the same utilization and cost control procedures to this program that it applies under MA.

Manufacturer Rebates. The program would provide coverage only for drugs produced by manufacturers that enter into rebate agreements with the state. DHFS, or an entity with which DHFS contracts, would be required to provide drug manufacturers material modeled on the rebate agreements manufacturers make under federal MA law. These materials would be designed for use by the manufacturer in entering into a rebate agreement with DHFS. Such an agreement would require that the manufacturer make rebate payments for each prescription drug of the manufacturer that is prescribed for and purchased by: (a) enrollees who do not spend down to become eligible for the program; and (b) enrollees who spend down for the program,

after they have spent down to the income limit. Manufacturers would make these rebate payments to the state each calendar quarter, or according to a schedule established by DHFS. The amount of the rebate payment would be determined by the same method for determining a manufacturer's rebate payments under the federal MA program.

DHFS Responsibilities. The substitute amendment would assign several specific responsibilities to DHFS relating to the administration of the program.

First, SSA 1 would require DHFS to promulgate rules that specify the criteria that would be used to determine household income for the purposes of making eligibility determinations and exempting enrollees with income at or below 175% of the FPL from the deductible.

Second, DHFS would be required to promulgate rules relating to prohibitions on fraud that are substantially similar to the prohibitions that apply under the MA program. Persons convicted of violating a rule in connection with that person's furnishing of prescription drugs could be fined up to $25,000, imprisoned for up to seven years and six months, or both. Persons convicted of violating other rules promulgated by DHFS could be fined up to $10,000, imprisoned up to one year, or both.

Third, DHFS would be required to devise and distribute application forms for the program, determine applicants' eligibility for each 12-month benefit period and issue drug cards that enrollees would use to purchase drugs under the program.

Fourth, if federal law were amended to provide coverage for prescription drugs for outpatient care as a benefit under Medicare or to provide similar coverage under another program, DHFS would be required to submit to the appropriate standing committees of the Legislature a report that contains an analysis of the differences between such a federal program and the new state prescription assistance program, and provides recommendations concerning alignment, if any, of the differences.

Finally, the substitute amendment would permit DHFS to contract with an entity to perform the responsibilities the substitute amendment assigns to DHFS, other than monitoring pharmacies' compliance with the law, the promulgation of rules and notifying the Legislature of changes in federal law regarding coverage of prescription drugs.

Effective Date. All of the provisions of SSA 1 would take effect on the second day after the publication of the biennial budget act, except that GPR funding to reimburse pharmacies for claims they submit for drugs purchased by program enrollees would first be available on March 1, 2002.

Senate Amendment 1 to SSA 1

Senate Amendment 1 to SSA 1 would require DHFS, before January 1, 2002, to notify by mail all Wisconsin residents enrolled in Medicare as a result of a disability and who are not

enrolled in the health insurance risk-sharing plan (HIRSP) that they may be eligible for HIRSP and how to apply for coverage under HIRSP. This provision would only apply to the extent permitted under federal law.

Fiscal Effect

Program Benefits. The substitute amendment would create a GPR sum sufficient appropriation, which, together with program revenue derived from manufacturers' rebate revenue, would fund claims submitted by pharmacies for drugs purchased by enrollees who have met their deductibles. Consequently, the actual GPR benefits expenditures for the program would be based on claims submitted by pharmacies and would not be limited to a sum certain amount of funding established by the Legislature.

In preparing this estimate, it was assumed that approximately 335,000 individuals would be eligible for the program and 170,000 individuals would enroll. Of the individuals expected to enroll in the program, it is estimated that approximately 76,000 of these individuals would not be required to pay a deductible because their incomes would be at or below 175% of the FPL.

In preparing this estimate, it was necessary to make numerous assumptions regarding program participation, drug coverage and average drug costs of enrollees and the availability of rebate revenue. For this reason, this cost estimate should be reviewed as speculative. However, based on these assumptions, it is estimated that program benefits costs would be approximately $106 million GPR annually. Of this amount, $101 million represents projected costs for enrolled individuals with incomes at or below 300% of the FPL. For purposes of this estimate, it is assumed that costs for individuals that enroll in the program with incomes above the income limit but spend down to 300% of the FPL based on their out-of-pocket costs for prescription drugs would be approximately $5.0 million.

Based on the March 1, 2002, effective date, it is estimated that GPR expenditures for benefits paid under this program would total $16 million in 2001-02 and $106 million in 2002-03.

Administration. The substitute amendment would provide DHFS $1.0 million GPR in 2001-02 to support the administrative costs to implement the prescription drug program. The substitute amendment also provides an additional $1.0 million GPR in the Joint Committee on Finance program supplements appropriation in 2001-02 to fund additional costs associated with the administration of the program. DHFS would be required to develop and submit a plan to the Department of Administration (DOA) for the proposed expenditure of funds provided in the Committee's appropriation. DOA could approve, disapprove or modify the plan. If DOA modified or approved the plan, DOA would forward the plan to the Co-Chairs of the Committee along with any modifications. The Joint Committee on Finance could approve the plan under a 14-day passive approval process.

The Secretary of DOA could only approve the transfer of funds from the Committee's appropriation and approve any position authority included in the plan if the Committee approved the plan under the 14-day passive approval process.

Ongoing administrative costs for the program would be funded from revenue received from the $20 annual enrollment fee paid by participants. It is estimated that approximately $3.3 million PR would be available annually from enrollment fee revenue. Because the enrollment fee is paid as a condition of enrollment, rather than at the time of application, this estimate is based on the assumption that only those that actually enroll in the program would be required to pay the fee.

It is assumed that DHFS would incur some administrative costs to mail information on HIRSP to Wisconsin's Medicare beneficiaries who are under age 65, as required under SA 1 to SSA 1. Provisions in the substitute amendment would not enable DHFS to use the administrative funding budgeted in the substitute amendment for this purpose. Consequently, DHFS would be required to fund these costs from the HIRSP administration appropriation or the Division of Health Care Financing's general program operations budget in 2001-02.

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