

2001 DRAFTING REQUEST

Bill

Received: 09/08/2000

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 266-2288

By/Representing: Fossum

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact: DHFS

Alt. Drafters:

Subject: Health - long-term care

Extra Copies: ISR

Pre Topic:

DOA:.....Fossum -

Topic:

Family care eligibility

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 09/18/2000	hhagen 09/20/2000	martykr 09/21/2000	_____	lrb_docadmin 09/21/2000		S&L
/2	kenneda 11/24/2000	hhagen 11/27/2000	rschluet 11/27/2000	_____	lrb_docadmin 11/27/2000		S&L

FE Sent For:

<END>

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Title: Family Care corrections – eligibility issues

Current Language

46.286 Family care benefit. (1) **ELIGIBILITY.** Except as provided in sub. (1m), a person is eligible for, but not necessarily entitled to, the family care benefit if the person is at least 18 years of age; has a physical disability, as defined in s. 15.197 (4) (a) 2., or infirmities of aging, as defined in s. 55.01 (3); and meets all of the following criteria:

(a) *Functional eligibility.* A person is functionally eligible if any of the following applies, as determined by the department or its designee:

1. The person's functional capacity is at either of the following levels:

a. The comprehensive level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.

b. The intermediate level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

2. The person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application and, on the date that the family care benefit became available in the person's county of residence, the person was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the following:

a. The long-term support community options program under s. 46.27.

b. Home and community-based waiver programs under 42 USC 1396n (c), including community integration program under s. 46.275, 46.277 or 46.278.

c. The Alzheimer's family caregiver support program under s. 46.87.

d. Community aids under s. 46.40, if documented by the county under a method prescribed by the department.

e. County funding, if documented by the county under a method prescribed by the department.

(1m) **ELIGIBILITY EXCEPTION.** A person whose primary disabling condition is developmental disability is eligible for the family care benefit if the person is a resident of a county or is a member of a tribe or band that has operated, before July 1, 2001, a care management organization under s. 46.281 (1) (d) and meets all other eligibility criteria under this subsection.

(3) ENTITLEMENT. (a) Subject to pars. (c) and (d), a person is entitled to and may receive the family care benefit through enrollment in a care management organization if he or she meets the requirements of sub. (1) (intro.), is financially eligible, fulfills any applicable cost-sharing requirements and meets any of the following criteria:

- 1. Is functionally eligible at the comprehensive level.
 - 2. Is functionally eligible at the intermediate level and is eligible under sub. (1) (b) 1.
- b.
- 3. Is functionally eligible at the intermediate level and is determined by an agency under s. 46.90 (2) or specified in s. 55.05 (1t) to be in need of protective services under s. 55.05 or protective placement under s. 55.06.
 - 4. Is functionally eligible under sub. (1) (a) 2.
 - 5. Is eligible under sub. (1m).

Proposed Change

46.286 (1) (a) 2. is amended to read:

2. ~~The~~ If the condition under subd. 3. is met, the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application but does not meet either the comprehensive or the intermediate level of eligibility, and, on the date that the family care benefit became available in the person's county of residence, the person was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the following:

add

46.286 (1) (a) 3. is created to read:

3. Initial eligibility for a person who meets the conditions of subd. 2. must be exercised within 36 months of the date on which the family care benefit became available in the person's county of residence.

46.286 (3) (a) 6. of the statutes is created to read:

- 6. Is functionally eligible at the intermediate level and:
 - a. On the date that the family care benefit became available in the person's county of residence, the person was a resident in a nursing home or had been receiving for at least 60 days, under a written plan of care, long-term care services, as specified by the department, which were funded under any of the programs specified under sub. (1) (a) 2. a. to c.
 - b. The person exercises his or her right to enroll within 36 months of the date on which the family care benefit became available in the person's county of residence.

46.286 (1m) is amended to read:

46.286 (1m) ELIGIBILITY EXCEPTION. A person whose primary disabling condition is developmental disability is eligible for the family care benefit if the person is a resident of a county or is a member of a tribe or band that has operated, before July 1, 2001, a care

management organization under s. 46.281 (1) (d) and meets all other eligibility criteria under this subsection section.

No; shld. be sub. (1)(a)+(b)

Effect of the Change

The proposed amendments are meant to clarify that:

- A person who will be "grandfathered" into eligibility is one who does not otherwise meet normal functional eligibility criteria.
- A person in the "grandfathered" category must take advantage of the opportunity to enroll within 36 months of its being available. (Once enrolled, the person cannot be disenrolled except under narrowly defined circumstances.)
- A person who is at the intermediate level of functional eligibility and has been receiving services from the county at the time of transition to Family Care is entitled.
- A person who is eligible in a pilot county by virtue of having a developmental disability must meet all other eligibility criteria in s. 46.286.

Rationale for the Change

1. The Department's original intent in proposing to entitle "grandfathered" individuals to Family Care was to assure that in the transition to Family Care, no current county clients would be left without services when funds were transferred from Community Aids, Community Options Program, Home and Community-Based Waivers, or county funded programs used as match for Community Aids. The goal was to ensure that even if one of these clients did not meet either the comprehensive or intermediate level of functional eligibility, he or she would be entitled to enroll in Family Care.

As enacted, however, the entitlement language "grandfathers" all individuals who, on the date that Family Care became available, were in a nursing home or had been receiving certain LTC services through the county, whether or not they meet the comprehensive or intermediate levels of care. An additional problem with the language is that it has no end date; anyone who meets the specified criteria related to having previously received nursing home or county-administered LTC services would still have an entitlement to family care many years later.

Together, these two problems impose an enormous administrative burden, without providing significant benefit to those whom the language was intended to protect. In order to protect a possible future entitlement, the department would have to gather and retain for many years, the names of all nursing home residents and all county clients of LTC programs, as of a certain date, which will vary depending on when a CMO starts in a given county. Moreover, as drafted, this protection goes far beyond what was intended; there is no rationale for one person having an entitlement to initial enrollment years after the transition to Family Care takes place, while another person with similar needs does not have such an entitlement.

2. As enacted, the requirement in sub. (1m) that a person with a developmental disability meet "all other eligibility criteria" is meaningless, since the reference within subsection (1m) is to itself. The "other eligibility criteria" are in other subsections within s. 46.286. Correcting this error is important, since one of the entitlement provisions (46.286 (3)(a) 5.) refers back to this subsection. Unless corrected, these provisions could be construed to mean that every developmentally disabled person in a pilot county is entitled to Family Care, whether or not they meet financial, non-financial, grandfathering or other criteria.

Desired Effective Date: Upon enactment
Agency: DHFS
Agency Contact: Charlie Jones
Phone: 266-0991

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SOON - In edit 9/18

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0196/1

DAK:mh:....
hml
JLD

D-NOTE

DOA:.....Fossum – Family care eligibility

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

LONG-TERM CARE; FAMILY CARE

Under family care, a program of financial assistance in providing long-term care and support items, persons are entitled to and may receive the family care benefit if they are at least 18 years of age, have a physical disability^{ies} or infirmities of aging, meet financial criteria, and fulfill any applicable cost-sharing requirements. They must also meet any of several criteria related to functionality and to eligibility for medical assistance, the need for protective services or protective placement, or the existence of chronic or terminal conditions. Other persons may be eligible for, but are not necessarily entitled to, the family care benefit if they are at least 18 years of age, have a physical disability^{ies} or infirmities of aging, meet financial criteria, fulfill any applicable cost-sharing requirements, and meet any of several criteria relating to functionality. Persons with developmental disability^{ies} in a county in which family care initially was provided before July 1, 2001, are both eligible and entitled. One of the criteria for functionality for both entitled and eligible persons is that the person have a condition that is expected to last at least 90 days or result in death within 12 months after the date of application and, on the date that the family care benefit became available in the person's county of residence, the person was a nursing home resident or had been receiving care under long-term medical assistance, the Alzheimer's family caregiver support program, community aids, or county funding.

This bill changes that criterion for functionality to apply it to persons who ^{EST} do not meet other functionality criteria, and requires that persons seeking a determination of functional eligibility under the criterion first ^{ies} apply for eligibility for the family care benefit within 36 months after the date on which the family care benefit is initially available in the person's county of residence. Further, for persons who are entitled to the family care benefit, the bill creates a criterion that is similar but under which a person qualifies only if he or she does meet another specific functionality criterion. The bill clarifies that a person who is 18 years of age, has a primary disabling condition of developmental disability, and meets financial and functionality criteria is both eligible for and entitled to the family care benefit, if the person is a resident of a county in which family care was initially provided before July 1, 2001. a person

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. 46.286 (1) (a) 2. (intro.) of the statutes is amended to read:

2 46.286 (1) (a) 2. (intro.) The person has a condition that is expected to last at
3 least 90 days or result in death within 12 months after the date of application but that
4 does not meet the level specified under subd. 1. a. or b.; the person first applies for
5 eligibility for the family care benefit within 36 months after the date on which the
6 family care benefit is initially available in the person's county residence; and, on the
7 date that the family care benefit became available in the person's county of residence,
8 the person was a resident in a nursing home or had been receiving for at least 60 days,
9 under a written plan of care, long-term care services, as specified by the department,
10 that were funded under any of the following:

History: 1999 a. 9, 185.

11 SECTION 2. 46.286 (1m) of the statutes is amended to read:

12 46.286 (1m) ELIGIBILITY EXCEPTION. A person whose primary disabling
13 condition is developmental disability is eligible for the family care benefit if the
14 person is a resident of a county or is a member of a tribe or band that has operated,

1 before July 1, 2001, a care management organization under s. 46.281 (1) (d), is at
 2 least 18 years of age and meets all other eligibility criteria under this subsection sub.
 3 (1) (a) and (b).

4 History: 1999 a. 9, 185.

4 **SECTION 3.** 46.286 (3) (a) (intro.) of the statutes is amended to read:

5 46.286 (3) (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
 6 receive the family care benefit through enrollment in a care management
 7 organization if, except as provided in subd. 5., he or she meets the requirements of
 8 sub. (1) (intro.), is at least 18 years of age, has a physical disability, as defined in s.
 9 15.197 (4) (a) 2., or infirmities of aging, as defined in s. 55.01 (3), is financially
 10 eligible, fulfills any applicable cost-sharing requirements and meets any of the
 11 following criteria:

12 History: 1999 a. 9, 185.

12 **SECTION 4.** 46.286 (3) (a) 6. of the statutes is created to read:

13 46.286 (3) (a) 6. Is functionally eligible at the intermediate level and meets all
 14 of the following criteria:

15 a. On the date on which the family care benefit is initially available in the
 16 person's county of residence, is a resident in a nursing home or has been receiving
 17 for at least 60 days, under a written plan of care, long-term care services, as specified
 18 by the department, which are funded as specified under sub. (1) (a) 2. a., b., c., d., or
 19 e.

20 b. Enrolls within 36 months after the date on which the family care benefit is
 21 initially available in the person's county of residence.

22 **SECTION 9323. Initial applicability; health and family services.**

1 (1) FAMILY CARE ELIGIBILITY. The treatment of sections 46.286 (1) (a) 2. (intro.),
2 (1m), and (3) (a) (intro.) and 6. of the statutes first applies to an application for
3 eligibility for family care that is made on the effective date of this subsection.

4

(END)

D - NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0196/1dn

DAK.....

mkh
d
jd

(DATE)

To Gretchen Fossum and Charlie Jones:

Please carefully review my changes to s. 46.286 (1) (a) 2, ^(intro.) and (1m); I believe they fulfill your intent more accurately than the language originally proposed.

Note that I also have changed s. 46.286 (3) (a) (intro.); that provision currently requires that a person meet any of the functional criteria contained in s. 46.286 (3) (a) 1. to 5., plus "the requirements of sub. (1) (intro.)". However, s. 46.286 (1) (intro.), stats., itself requires that a person meet functional criteria, which are different from those under s. 46.286 (3). Therefore, I have in s. 46.286 (3) (a) incorporated all of the requirements of s. 46.286 (1) (intro.) except the reference to functional criteria.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0196/1dn
DAK:hmh&jld:km

September 20, 2000

To Gretchen Fossum and Charlie Jones:

Please carefully review my changes to s. 46.286 (1) (a) 2. (intro.) and (1m); I believe they fulfill your intent more accurately than the language originally proposed.

Note that I also have changed s. 46.286 (3) (a) (intro.); that provision currently requires that a person meet any of the functional criteria contained in s. 46.286 (3) (a) 1. to 5., plus "the requirements of sub. (1) (intro.)." However, s. 46.286 (1) (intro.), states, itself requires that a person meet functional criteria, which are different from those under s. 46.286 (3). Therefore, I have in s. 46.286 (3) (a) incorporated all of the requirements of s. 46.286 (1) (intro.) except the reference to functional criteria.

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Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Fossum, Gretchen
Sent: Wednesday, November 22, 2000 2:51 PM
To: Kennedy, Debora
Subject: Family Care Draft Update:

Debora, this is an update on the Family Care drafts.

Pending the Governor's decisions, the following drafts are fine:

0197/1 Family Care facility referrals
0198/2 Family Care phase-in for non-MA eligibles
0200/1 Family Care hospital referrals
0201/1 Family Care estate recovery appropriations
0204/1 Council on Long-Term Care - sunset

For draft 0196/1, Family Care eligibility:

Draft is fine. In addition, please amend s. 46.286(1m) to extend the sunset date for the developmentally disabled to July 1, 2003 (page 3, line 1). This will extend the date for the pilots that did not begin operation in the current biennium (Kenosha County).

For draft 0202/P1, Family Care hearing rights

The department wishes that all enrollees in Family Care have the same hearing rights related to recovery of correctly or incorrectly paid benefits as Medicaid recipients. It acknowledges that its drafting request did not make this clear. The department responses to your drafter questions are the following:

The LRB has requested more information on the reasoning behind ERP's request to repeal s. 46.487(2)(a)1.k., Stats., which grants hearing rights under FC to "Recovery of family care benefit payment under s. 46.286(7)."

The primary reason is that ERP has rights for 3 different types of hearings, each of which needs to be treated differently than the language in s. 46.487(2)(a)1, Stats., provides. That language provides for a straight HA 3 hearing and that is not what is needed in any of the 3 types of ERP hearings. The FC statutes in s. 46.286(7), Stats., simply provide that the department shall write rules for the handling of correctly and incorrectly paid FC benefits that are substantially similar to applicable provisions under ss. 49.496 and 49.497. That is what was done and the rules reflect the differences needed between the different hearing rights. The 3 are as follows:

1. Hearings regarding the department's claims filed in estates are conducted as part of the probate process in circuit court. See s. 49.46(3). Estate claims are not given administrative hearings; they are heard in court. These therefore need to be taken out of s. 46.487(2) because they cannot have administrative hearings. This applies to both MA and non-MA enrollees. See Wis. Adm. Code s. HFS 10.62(1) which states that all recoveries shall be made in accordance with s. 49.496(1), (3), (6m) and (7) and s. 867.035 and s. HFS 108.02(11) and (12).
2. The process regarding the placement of a lien is spelled out in s. 49.496(2). There is a procedure that is different from other administrative hearings that needs to be followed. In the FC rules the lien process and hearing rights are spelled out in HFS s. 10.62(4). It provides that an enrollee's hearing rights regarding liens are provided in s. 49.496(2), Stats., and in ch. HA. This applies to both MA and non-MA enrollees.
3. The process regarding hardship waiver requests is also treated specifically in the rules. This applies to both MA and non-MA enrollees. There are specific rights and procedures regarding requests for hardship waivers that need to be followed. The rules state that the right to hardship waivers and hearings regarding hardship waivers are as provided in s. 49.496(6m), Stats., and s. HFS 108.02(12). See s. HFS 10.62(1) and (4).

A question is also raised regarding recovery of incorrect payments. The FC rules also address that question. In s. HFS 10.61 it states that incorrect payments are to be handled as provided in s. 49.497, Stats., and in s. HFS 108.03. That applies to both MA and non-MA enrollees and refers them to the same process as currently exists for all other MA programs.

The repeal of s. 46.287(2)(a)1.k., Stats., simply completes the directive in s. 46.286(7) to treat correctly and incorrectly

paid FC in a manner that is substantially similar to applicable provisions in s. 49.496 and 49.497, State.

All rights are provided to both MA and non-MA enrollees but they are provided through the rules and through cross-references to currently existing provisions that are used to recover correctly and incorrectly paid MA.

For draft 0203/1, Family Care district:

The draft is fine. The department believes that, in view of quality assurance monitoring and contractual provisions for sanctions, that the draft adequately addresses potential conflicts of interest.

For draft 0205/1, Family Care miscellaneous changes:

I am waiting to get a response from the department and get a recommendation for the definition of a family member. I did like your suggestion for using the definition under s. 157.061(7) with possibly using the first degree of kinship, rather than the third degree.

I will be sending Steve Miller a request for an additional Family Care draft relating to home health agencies.

If you have any questions, please contact me at 266-2288.



200N - In edit 11/24
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0196/2
DAK:hmh&jld:Jan
Stacy

DOA:.....Fossum - Family care eligibility

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Do not sign

1 AN ACT . . . relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

LONG-TERM CARE; FAMILY CARE

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changes provisions concerning persons with developmental disability, so

This bill changes that criterion for functionality to apply it to persons who *do not meet* other functionality criteria, and requires that a person seeking a determination of functional eligibility under the criterion first applies for eligibility for the family care benefit within 36 months after the date on which the family care benefit is initially available in the person's county of residence. Further, for persons who are entitled to the family care benefit, the bill creates a criterion that is similar but under which a person qualifies only if he or she *does meet* another specific functionality criterion. The bill ~~clarifies~~ that a person who is 18 years of age, has a primary disabling condition of developmental disability, and meets financial and functionality criteria is both eligible for and entitled to the family care benefit, if the person is a resident of a county in which family care was initially provided before July 1, ~~2001~~ 2003.

^ 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:

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3 least 90 days or result in death within 12 months after the date of application but that
4 does not meet the level specified under subd. 1. a. or b.; the person first applies for
5 eligibility for the family care benefit within 36 months after the date on which the
6 family care benefit is initially available in the person's county residence; and, on the
7 date that the family care benefit became available in the person's county of residence,
8 the person was a resident in a nursing home or had been receiving for at least 60 days,
9 under a written plan of care, long-term care services, as specified by the department,
10 that were funded under any of the following:

11 **SECTION 2.** 46.286 (1m) of the statutes is amended to read:

12 46.286 (1m) **ELIGIBILITY EXCEPTION.** A person whose primary disabling
13 condition is developmental disability is eligible for the family care benefit if the
14 person is a resident of a county or is a member of a tribe or band that has operated,

2003

1 before July 1, 2001, a care management organization under s. 46.281 (1) (d), is at
2 least 18 years of age and meets all other eligibility criteria under this subsection sub.
3 (1) (a) and (b).

4 **SECTION 3.** 46.286 (3) (a) (intro.) of the statutes is amended to read:

5 46.286 (3) (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
6 receive the family care benefit through enrollment in a care management
7 organization if, except as provided in subd. 5., he or she meets the requirements of
8 sub. (1) (intro.), is at least 18 years of age, has a physical disability, as defined in s.
9 15.197 (4) (a) 2., or infirmities of aging, as defined in s. 55.01 (3), is financially
10 eligible, fulfills any applicable cost-sharing requirements and meets any of the
11 following criteria:

12 **SECTION 4.** 46.286 (3) (a) 6. of the statutes is created to read:

13 46.286 (3) (a) 6. Is functionally eligible at the intermediate level and meets all
14 of the following criteria:

15 a. On the date on which the family care benefit is initially available in the
16 person's county of residence, is a resident in a nursing home or has been receiving
17 for at least 60 days, under a written plan of care, long-term care services, as specified
18 by the department, which are funded as specified under sub. (1) (a) 2. a., b., c., d., or
19 e.

20 b. Enrolls within 36 months after the date on which the family care benefit is
21 initially available in the person's county of residence.

22 **SECTION 9323. Initial applicability; health and family services.**



DOA:.....Fossum – Family care eligibility

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

LONG-TERM CARE; FAMILY CARE

Under family care, a program of financial assistance in providing long-term care and support items, persons are entitled to and may receive the family care benefit if they are at least 18 years of age, have physical disabilities or infirmities of aging, meet financial criteria, and fulfill any applicable cost-sharing requirements. They must also meet any of several criteria related to functionality and to eligibility for medical assistance, the need for protective services or protective placement, or the existence of chronic or terminal conditions. Other persons may be eligible for, but are not necessarily entitled to, the family care benefit if they are at least 18 years of age, have physical disabilities or infirmities of aging, meet financial criteria, fulfill any applicable cost-sharing requirements, and meet any of several criteria relating to functionality. Persons with developmental disabilities in a county in which family care initially was provided before July 1, 2001, are both eligible and entitled. One of the criteria for functionality for both entitled and eligible persons is that the person have a condition that is expected to last at least 90 days or result in death within 12 months after the date of application and, on the date that the family care benefit became available in the person's county of residence, the person was a nursing home resident or had been receiving care under long-term medical assistance, the Alzheimer's family caregiver support program, community aids, or county funding.

This bill changes that criterion for functionality to apply it to persons who *do not meet* other functionality criteria, and requires that a person seeking a determination of functional eligibility under the criterion first applies for eligibility for the family care benefit within 36 months after the date on which the family care benefit is initially available in the person's county of residence. Further, for persons who are entitled to the family care benefit, the bill creates a criterion that is similar but under which a person qualifies only if he or she *does meet* another specific functionality criterion. The bill changes provisions concerning persons with developmental disability, so that a person who is 18 years of age, has a primary disabling condition of developmental disability, and meets financial and functionality criteria is both eligible for and entitled to the family care benefit, if the person is a resident of a county in which family care was initially provided before July 1, 2003.

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.** 46.286 (1) (a) 2. (intro.) of the statutes is amended to read:

2 46.286 (1) (a) 2. (intro.) The person has a condition that is expected to last at
3 least 90 days or result in death within 12 months after the date of application but that
4 does not meet the level specified under subd. 1. a. or b.; the person first applies for
5 eligibility for the family care benefit within 36 months after the date on which the
6 family care benefit is initially available in the person's county residence; and, on the
7 date that the family care benefit became available in the person's county of residence,
8 the person was a resident in a nursing home or had been receiving for at least 60 days,
9 under a written plan of care, long-term care services, as specified by the department,
10 that were funded under any of the following:

11 **SECTION 2.** 46.286 (1m) of the statutes is amended to read:

12 46.286 (1m) ELIGIBILITY EXCEPTION. A person whose primary disabling
13 condition is developmental disability is eligible for the family care benefit if the
14 person is a resident of a county or is a member of a tribe or band that has operated,

1 before July 1, ~~2001~~ 2003, a care management organization under s. 46.281 (1) (d), is
2 at least 18 years of age and meets ~~all other~~ eligibility criteria under ~~this subsection~~
3 sub. (1) (a) and (b).

4 **SECTION 3.** 46.286 (3) (a) (intro.) of the statutes is amended to read:

5 46.286 (3) (a) (intro.) Subject to pars. (c) and (d), a person is entitled to and may
6 receive the family care benefit through enrollment in a care management
7 organization if, except as provided in subd. 5., he or she ~~meets the requirements of~~
8 sub. (1) (intro.), is at least 18 years of age, has a physical disability, as defined in s.
9 15.197 (4) (a) 2., or infirmities of aging, as defined in s. 55.01 (3), is financially
10 eligible, fulfills any applicable cost-sharing requirements and meets any of the
11 following criteria:

12 **SECTION 4.** 46.286 (3) (a) 6. of the statutes is created to read:

13 46.286 (3) (a) 6. Is functionally eligible at the intermediate level and meets all
14 of the following criteria:

15 a. On the date on which the family care benefit is initially available in the
16 person's county of residence, is a resident in a nursing home or has been receiving
17 for at least 60 days, under a written plan of care, long-term care services, as specified
18 by the department, which are funded as specified under sub. (1) (a) 2. a., b., c., d., or
19 e.

20 b. Enrolls within 36 months after the date on which the family care benefit is
21 initially available in the person's county of residence.

22 **SECTION 9323. Initial applicability; health and family services.**

