

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2922/P2dn

PJK:wlj:jf

October 4, 2005

Defining eligibility, in terms of who is a “resident,” seems to be a major area that is still unresolved. In your latest comments, you indicated that you want to incorporate the state law that allows the UW to designate resident and nonresident categories for students. The designation is not actually who is a resident and who is a nonresident, but who is exempt from the payment of nonresident tuition. See s. 36.27 (2). I don’t think this statute lends itself very well to use in this draft for who is eligible, or not eligible, for the program. In addition, it would increase the eligibility waiting period from the current six months to one year. If you want to use it or any part of it, however, let me know how you want to modify it. If you want to specify that nonresident students at the UW System are not eligible, as you indicated, I could exclude from eligibility persons who are “not exempt from the payment of nonresident tuition under s. 36.27 (2).”

I can see the case for limiting eligibility for the program established in this draft to persons who have lived in the state for at least six months. From the case law it is often difficult to determine exactly why certain “benefits” may not be subject to any sort of waiting period while others may be. One aspect to consider, however, is whether the benefit may be obtained and then “used” elsewhere or whether the “benefit” is so essential a part of living that it can only be “used” where it is obtained, such as welfare benefits. In this case, I can see wanting to discourage someone from establishing a residence in this state just to get “free” treatment for a particular condition and then leaving the state immediately after getting the treatment. Also, the waiting period in this draft does not infringe on a person’s right to travel in the way that a waiting period for welfare benefits does. Unlike welfare benefits, a person is not discouraged from moving here because he or she will be denied something for a period that he or she had before the move. A person who moves here is not being denied health care or health care coverage, just participation in a *particular* program of coverage for a period. During the first six months, a new resident who is not eligible for a public health care program, such as MA, may purchase coverage in the private market, keep his or her current coverage in effect, not have coverage but purchase health care services as needed, etc.

You asked about private colleges and the resident/nonresident issue. My understanding is that private colleges are not regulated with respect to tuition; they are free to do as they please. Tuition at private colleges is usually the same for all students, regardless of residence.

You also indicated that you do not want persons who do not live, or intend to live, here all year long to be eligible for the program. If that is the case, you will have to decide the length of time that is relevant for eligibility, i.e., the number of months, days, weeks, etc., that a person lives outside the state each year that makes the person ineligible for the program.

Since you want the corporation to decide what "legally domiciled" means, perhaps the corporation could decide these and other issues related to residence. You could specifically list a number of issues that you want the corporation to address when determining legal domicile, such as part-time residency each year in another state; attendance at a college or university (or another type of school) in the state, but residency in another state when not attending school; etc. Another suggestion is specifically excluding from the definition of "eligible resident" persons who are part-time residents, as determined by the corporation; persons who attend school in the state but who are residents of another state or country, as determined by the corporation; etc.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Starting this program on January 1 of a year may cause a lag in funding the program if DOR decides to collect the assessments through the individual income tax system. Assessments based on an individual's 2006 return, which will be filed in April 2007, may cause a funding gap if coverage applies and premiums must be paid on January 1, 2007, if you are counting on these assessments as a funding source beginning on January 1, 2007. You may wish to consider starting the program on July 1, 2007.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us