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DEPARTMENT OF JUSTICE

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Ms. Leanna Samardich
Price County
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Dear Ms. Samardich:

¶ 1. A Long-Term Care District is an independent local unit of government created by a single county or combination of counties¹ to operate either a Care Management Organization or Resource Center for the provision of family care. You seek my opinion about the jurisdiction, formation, and governance of Long-Term Care Districts. You ask which statute governs the jurisdiction of a District operating a Care Management Organization (CMO) in a county not a member of the District; whether a District may provide CMO services to a non-member county; and whether the District's governing board must include representatives from every county within the District.

¶ 2. I conclude that the jurisdiction of all Long-Term Care Districts is governed by Wis. Stat. § 46.2895(2). I further conclude that a Long-Term Care District may not offer CMO services to a county beyond the District's jurisdiction and membership. Finally, I conclude that every member county of a District must be represented on the District's governing board.

¶ 3. You report that three Wisconsin counties created a Long-Term Care District. The District entered a five-year contract with the Department of Health Services (DHS) to operate a Care Management Organization that would serve the three member counties. A couple of years later, the District extended its CMO

¹They may also be created by a tribe, band, or combination of counties, tribes, or bands. Wis. Stat. § 46.2895(1)(a).

services to two non-member counties. In 2014, the District extended its reach still further to serve eleven additional non-member counties. As far as you know, the District took no formal or official action to expand its jurisdiction or increase its membership beyond the original three counties when it extended its CMO services to these thirteen non-member counties.

¶ 4. Your letter does not describe the original composition of the District's governing board. However, you explain that after it extended its CMO services to the first two non-member counties, the board consisted of two representatives from each of the five (three member and two non-member) counties served and one at-large representative for a total of eleven members. Later, when the District's CMO took on another eleven non-member counties, the board's composition changed yet again. In that iteration, the board included one representative from each of the first five counties, five members from the group of eleven new counties, and one at-large representative for a total of eleven board members.

¶ 5. The jurisdiction of a Long-Term Care District is set out in Wis. Stat. § 46.2895(2), which states: "A long-term care district's jurisdiction is the geographical area of the county or counties that created the long-term care district and the geographic area of the reservation of, or lands held in trust for, any tribe or band that created the long-term care district." Wisconsin Stat. § 46.284, which outlines how a Care Management Organization shall be created, financed, certified, funded, and governed, does not address the jurisdiction of Long-Term Care Districts. Section 46.2895(2) explicitly and unambiguously limits a District's jurisdiction to the county or counties that created it. In other words, the District has no jurisdiction in any county that is not a member of the District.

¶ 6. Because of the statutory limitation on its jurisdiction, a Long-Term Care District may not provide CMO services to a non-member county. If the District wants to extend its CMO services to a non-member county, the non-member county must become a member of the District. The statute addresses the withdrawal or removal of a county from a District, but does not provide procedures for the inclusion or incorporation of a new county into a District. *See* Wis. Stat. § 46.2895(14). In the absence of a provision explaining how new counties may be added to an existing District, I conclude that the provisions applicable to counties creating a new District are applicable to new counties joining an existing District.

¶ 7. Wisconsin Stat. § 46.2895(1)(a) directs how a Long-Term Care District is to be created. It requires each participating county (or tribe or band) to adopt an enabling resolution and file copies of the resolution with the Secretaries of the

Departments of Administration, Health Services, and Revenue. Thus, a county joining an existing District must adopt an enabling resolution and file a copy of it with the specified department secretaries.

¶ 8. The statutes do not require the creation of a wholly “new” District as you suggest. However, the counties that created the original District may be required to take one or two actions when new counties join. First, the expansion of the District’s membership may correspond to a change in the District’s “primary purpose” as defined by Wis. Stat. § 46.2895(1)(a)1.b. “A long-term care district may change its primary purpose” if all the creating counties “adopt a resolution approving the change in primary purpose.” Wis. Stat. § 46.2895(1)(e). Thus, if the expansion of the District’s membership also results in a change in its primary purpose (such as a shift from a Care Management Organization to a Resource Center), a resolution approving the change must be adopted by the creating counties. Second, the expansion of the District’s membership may result in a reconfiguration of its governing board. If so, each county will be required to adopt and file a new enabling resolution specifying the make-up of the reconfigured board. *See* Wis. Stat. § 46.2895(1)(a)1.c.

¶ 9. A District’s governing board must include representatives from each of its member counties. This requirement is implicit in the statute. *See* Wis. Stat. § 46.2895(1)(a)1.c. (enabling resolution must specify “how many members shall be appointed by each county”); § 46.2895(3)(a) (county board of supervisors, county executive, or county administrator “shall appoint the long-term care district board members whom the county is allotted”); § 46.2895(3)(b)3. (board membership “shall reflect the ethnic and economic diversity in the jurisdiction” of the District); § 46.2895(3)(b)5. (“[o]nly individuals who reside within the jurisdiction of the long-term care district may serve as members of the long-term care district board”). I assume that if a District expands to include additional counties, each new member will be entitled to representation on the governing board. I find nothing in the statute that would support the exclusion of new member counties from the governing board.²

¶ 10. The statute does not direct how District governing boards are to be constituted. It does not require or even suggest that each member county have equal

²You note that Wis. Stat. § 46.284(6), describing the composition of a Care Management Organization’s governing board, and Wis. Stat. § 48.2895(3)(b), describing the composition of a Long-Term Care District’s governing board, are substantively similar. In fact, § 48.2895(3)(b) has more requirements than § 45.284(6) does. You also note that, because the statutory composition requirements for a District’s governing board satisfy the requirements for a CMO’s governing board, many CMOs use their District’s governing board as their own governing board. This seems reasonable to me. However, a CMO’s reliance on its District’s governing board does not illuminate any of the questions presented here.

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representation. It leaves these decisions to the participating counties. According to the statute, each county's enabling resolution must "[s]pecif[y] the number of individuals who shall be appointed as members of the long-term care district board, the length of their terms, and, if the long-term care district is created by more than one county or tribe or band, how many members shall be appointed by each county or tribe or band." Wis. Stat. § 46.2895(1)(a)1.c. Thus, the statute allows the participating counties to determine how each of them will be represented on the governing board.

¶ 11. I conclude that jurisdiction of a Long-Term Care District is governed by Wis. Stat. § 46.2895(2) and is limited to the counties that are members of the District. Before a District may provide CMO services to a county beyond its jurisdiction, that county must become a member of the District. New counties joining a District, like the original creating members, are entitled to representation on the District's governing board.

Very truly yours,

BRAD D. SCHIMEL
Attorney General

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