

# **NORTHEASTERN WISCONSIN (NEW) LONG TERM CARE DISTRICT**

## **Discussion Paper Governing Board Design and Composition**

### **Introduction**

This Discussion Paper is presented in response to a request from officials from the Northeast Wisconsin Long Term Care District counties. It is being developed early in the planning process because an issue has been raised as to whether membership on the District Board should be equal among all participating counties or generally proportional to the size of each county's population.

The intent of this preliminary discussion is to determine whether consensus among the participants can be achieved on the concept of equal or proportional representation from counties. The next step would be for each county to determine if the consensus position is acceptable to their governing bodies as a whole.

It will be necessary to engage legal assistance in the final determination of Board composition, discussion of Board appointment procedures, the development of by-laws and the drafting of County Board resolutions.

### **Background Information on Long Term Care District Board**

#### ***Statutory Creation:***

Section 46.2895 allows for the creation of Long Term Care Districts to operate either an Aging or Disability Resource Center or to operate a Managed Care Organization. The statutory language clarifies that a Long Term Care District is a "special purpose district", "that is a local unit of government, that is separate and distinct from and independent of the state and county or tribe or band that created it". The powers and duties of the District are specified in the statute. One statutory limitation is that the District may not issue bonds or levy a tax or assessment. The second limitation is that a single District may not operate both an Aging and Disability Resource Center and a Managed Care Organization

#### ***2. District Board of Directors Statutory Composition***

Section 48.2895 (3) of the statute specifies the membership of the Board:

- "At least one fourth of the members of a long-term care district board shall be representative of the client group or groups whom it is the long-term care district's primary purpose to serve or those clients family members, guardians or other advocates

- Membership of a long-term care district board shall reflect the ethnic and economic diversity in the jurisdiction of the long-term care district term care district
- No member of a long-term care district board may have a private financial interest in or profit directly or indirectly from any contract or other business of the long-term care district
- Only individuals who reside within the jurisdiction of a long-term care district may serve as members of the long-term care district board”.

In addition to the county and consumer representatives, the Northwest, West Central and Southwest District Boards also included two “at large” members with experience in finance, managed care or business. The Central Wisconsin District of Portage, Marathon and Wood did not include any “at large” members and, at this time, the Lakeland District of Fond du Lac, Manitowoc and Winnebago Counties does not intend to do so. The propose of having these finance, business or managed care representatives is to provide an additional level of expertise in consideration of the fact that the District is operating a large, managed care organization that is at risk financially for meeting members outcomes within a capitated rate. The ability to recruit members with this experience who live in the District and don’t have a conflict of interest has been mixed. The Northwest (NorthernBridges) District has had to consider alternatives because of recruitment difficulties.

An issue has also been raised regarding a position or positions on the governing board to represent the Tribes. No other District has Tribal membership on the District Board. A request was recently made to the Northwest (NorthernBridges) Board to add a Board member from each of their three tribes. The Board denied the request; partly because of the timing in that the District Board had already been appointed.

The issue of “at large” expert and Tribal representation should be addressed following the decision on equal or proportional representation from counties. In addition, it is suggested that there be a preliminary meeting with Tribal representatives to discuss the overall role of Tribes in the Family Care system.

Please see attached “Governing Board Composition and Appointments in Wisconsin Long Term Care Districts”.

***3. Appointments to the Board of Directors:***

Statute 48.2895 (3) specifies that:

“The county board of supervisors of a county, or, in a county with a county administrator or county executive, the county administrator or county executive shall appoint the long-term care district board members whom the county is allotted, by resolutions.....”. It doesn’t seem as if the statute an alternate method for appointment of “at large” members or consumers representing more than one county. In most Districts, the governing board makes recommendations on the appointments with ratification or formal appointment by county board resolution.

#### ***4. Size of the Board***

The statute does not specify the size of the Board of Directors. The four existing Districts range in size from 9-18 with the Districts with the most counties having the largest Boards.

### **Relationships between the Long Term Care District and the Counties that create the Board**

In considering the issue of equal versus proportional representation on the Board, the primary reason for proportional representation would appear to be based on one of the concepts of a representational democracy – “one man (person), one vote”. Under this concept, citizens in a geographical area have approximately the same number of representatives as their percentage of the population and therefore, all citizens have generally equal representation.

A second issue in the consideration of equal versus proportional representation would be whether Family Care might impact one county differently than another and, therefore, the County itself has an interest in its relative ability to influence Board discussions. Some of the key factors related to the relationship of the Long Term Care District Board to the counties that created it are addressed below.

#### ***1. County Liability for the Long Term Care District***

The counties that create the Long Term Care District no longer have the responsibility to provide the services that are included in the Family Care benefit or, another way of stating it, no longer have the responsibility to provide the type of services counties previously provided under the Medical Assistance Waiver programs. The counties that create the District also have no fiscal responsibility for the operation of the District. Statute 48.2895 specifies “The obligations and debts of a long-term care district are not the obligations or debts of any county that created the district. If a long-term care district is obligated by statute or contract to provide or pay for services or benefits, no county is responsible for providing or paying for those services or benefits.”

#### ***2. District Relationship to County Board***

The Long Term Care District is a special purpose district, sometimes referred to as a “quazi-governmental” organization. It is not a standing committee of a county board, is not funded by the county so does not participate in the annual county budgeting process. District decisions do not require ratification by the county and the employees are not county employees. There is no statutory requirement for any type of reporting relationship between the District and the individual counties, but counties may choose to require some type of reporting on a periodic basis.

#### ***3. Issues Regarding Who is Served***

After the first two years of operation, when the Waiver population and Wait Lists are transitioned into Family Care, Family Care is an entitlement and anyone eligible for Family Care has to be served. Waiting Lists are not allowed. The District Board would not be establishing any preferences regarding who is served in Family Care.

There could be issues as to which counties would implement Family Care first and which would need to wait. In the developing Districts, these issues seem to have been resolved fairly amicably based on individual county preferences related to a county's willingness to commit to proceed or ADRC readiness, etc.,

#### ***4. Long Term Care District Funding***

The Long Term Care District is funded on the basis of a capitation rate for each person enrolled. The District must provide service to all enrollees that, in total, average less than this rate. The District would use its required reserves to balance profits and losses. The District will be allowed to accumulate these reserves over the course of the first three years of operation, through a State add on to the capitated rate. Counties do not fund the District operation.

The counties, however, need to contribute a pre-determined amount of funding to the State that becomes general State revenue used to offset the statewide cost of Family Care. This amount of money varies by county and is called the "County Contribution". The County Contribution is based on the amount of money a county spent in 2006 from all State and county sources to fund the Medical Assistance Long Term Care Waiver programs.

In the first year of the operation of Family Care, a county contributes 100% of its County Contribution. The County Contribution decreases over five years and then remains at 22% of a County's current Basic County Allocation\*. This funding, however, is not under the control of the Long Term Care District board nor the county board. The question would be whether the dollar amount of funding contributed by counties, even when the District has no control over this funding, should be related to the numbers of board members from each county. Please see attached "County Contribution" chart.

#### ***5. Impact of District Policies and Practices***

Counties have the responsibility to continue some long-term care services that are not included in the Family Care benefit, such as Waiver services to children and Adult Protective Services. The cost of treatment for people in Family Care who require the level of care of an Institute for Mental Disease (Winnebago Mental Health Institute, for example) is also the financial responsibility of the counties.

\*The Basic County Allocation is the primary allocation of state funding for county human services type programs. It is based on a formula that considers the population of the county and some demographic characteristic that weigh more heavily toward counties with lower social economic conditions. The Basic County Allocation has not been adjusted for these population or demographic characteristics in about 20 years so it has less applicability to relative population and demographic differences in counties today.

Counties will have an interest in how the policies and practices of the Long Term Care District could impact the County financially. One such example would be whether the District is aggressive in preventing Institute for Mental Disease placements or getting people discharged rapidly.

There may be some differences in how the Districts' policies and practices impact individual counties but generally, it would seem the impact would be fairly consistent across counties.

#### ***6. District Purchase of County Operated Services***

The issues likely to have the greatest impact on individual counties are when the District is purchasing county services. This could include services such as Work Programs, Personal Care, CBRFs, CSP, Behavioral Health Services, etc. County operated services vary from one county to another and the Northeast has one of the largest numbers of county provided services in the state.

This issue also includes care management services purchased from some counties. One of the principles of the Northeast District planning is that the counties could provide care management services under contract to the District on an indefinite basis. None of the other Districts, except Southwest, intends that counties would provide care management services indefinitely. The issues could be more pronounced in the Northeast when some, but not all counties, intend to provide care management.

Whether the District purchases these services from counties and at what rate could financially impact some counties and not others. Decisions on purchasing these services could be a major financial issue for the District in that some of these county provided services may be more expensive than if the District purchased the services from other vendors. Another potential conflict might arise if the District determines that a particular county's services are not in full compliance with contractual or quality requirements and wishes to terminate the contract. The ability of any one county to impact the decision regarding whether to purchase services from that county or to modify the rate paid could be an issue in determining the county representation on the governing board.

#### ***Note on Purchase of County Services:***

Regardless of whether representation on the Governing board is equal or related to the population, the Board may want to adopt a by-law requiring that a county representative may not vote on issues relating to a District contract with their county.

### **Board Size and Proportional Representation – The Numbers**

At this point, the counties who have indicated intent to plan with the northeastern counties toward development of a Long Term Care District are: Brown, Door, Kewaunee, Marinette, Oconto, and Shawano. Menominee County is in process of seeking County Board authorization to participate. Therefore the options for representation included here relate only to the six initial counties but some background information on Menominee County is included.

All of the other Long Term Care Districts have chosen equal representation from each county. In most Districts, however, there is less disparity in size among the counties. In the “La Crosse” (now called Western Wisconsin Cares) area, however, the size disparity between La Crosse County and the other seven counties is similar to Northeastern Wisconsin.

Because of the size differences among Northeastern Counties, totally proportional representation is impracticable. If members were to be appointed based on relative population and every county had at least one representative, Kewaunee County would have one representative, Marinette, Oconto and Shawano and possibly Door would have two representatives and Brown County would have 11. With the addition of the required one-fourth consumer representatives, the Board would have a minimum of 26 members. If Menominee County was to be included and there were to be totally proportional representation, the Board size would jump to 111 members. Since the ideal Board size is usually considered to be 9-15, a 26 member Board (not to mention a 111 member Board) is not recommended.

Each of the counties, except Brown County, has less than 11% of the population of the District and these counties are relatively close in size.

The combined population of the counties, without Brown County, is 44% of the NEW District population.

## **Options for Board Composition**

### ***Assumptions:***

- 1). An option that provides for totally proportional representation is not included because it is not practicable for the Northeast District.
- 2). The options below assume that each county would have at least one representative.
- 3). Based on the recommendations of county officials, county population, rather than projected enrollments, is used in considering proportional representation.
- 4). Since the number of counties participating in the NEW District has not been finalized and a final decision has not been made on Tribal representatives or “at large” experts in finance, managed care or business, the options below may not reflect the final number of Board members. If decisions were made to include other representatives, the numbers and examples used below would need to be adjusted.

### **Alternative #1 - Equal Representation**

One representative from each county.

With six participating counties and the required ¼ consumer representatives (three consumers), this would result in a minimum Board size of nine. With seven participating counties (including Menominee), the minimum Board size would increase to ten as the number of consumers would not increase.

**NORTHEAST WISCONSIN LONG TERM CARE DISTRICT  
BOARD COMPOSITION - ALTERNATIVE #1**

County	2008 Population	Percent of NEW District Population	Number of Board Seats
Brown	245,168	57.89%	1
Door	30,303	7.16%	1
Kewaunee	21,358	5.04%	1
Marinette	44,823	10.58%	1
Oconto	39,261	9.27%	1
Shawano	42,602	10.06%	1
<b>TOTAL</b>	<b>423,515</b>	<b>100.00%</b>	<b>6</b>
Consumer representatives			3
<b>Minimum Board Size</b>			<b>9</b>
Menominee	4,630		

**Alternative #2 - Modified Proportional Representation**

Each County has at least one representative. Any county over 15% of the total population of the District has four additional representatives.

This alternative would not distinguish between the size differences of counties other than Brown County. It does recognize the larger concentration of people in Brown County by allotting Brown County a percentage of county representatives that is nearly equal to their share of the total population served by the NEW District.

With six participating counties and four consumers, the minimum Board size under this alternative would be 14 members. With seven participating counties (including Menominee), the number of consumers would remain the same and the minimum board size would be 15 members.

NORTHEAST WISCONSIN LONG TERM CARE DISTRICT  
BOARD COMPOSITION - ALTERNATIVE #2

County	2008 Population	Percent of NEW District Population	Number of Board Seats
Brown	245,168	57.89%	5
Door	30,303	7.16%	1
Kewaunee	21,358	5.04%	1
Marinette	44,823	10.58%	1
Oconto	39,261	9.27%	1
Shawano	42,602	10.06%	1
<b>TOTAL</b>	<b>423,515</b>	<b>100.00%</b>	<b>10</b>
Consumer representatives			4
<b>Minimum Board Size</b>			<b>14</b>
Menominee	4,630		

**Alternative #3 – Balanced Proportional Representation**

Each County has at least one representative. Any county over 15% of the total population of the District has two additional representatives.

This alternative also does not distinguish between the size differences of counties other than Brown County. It balances the issue of equal versus proportional representation by giving some additional representation to Brown County's population but not representation in numbers equal to Brown County's share of the population.

With six participating counties and three consumers, the minimum Board size under this alternative would be 11 members. With seven participating counties, the minimum Board size would be 12 members.

NORTHEAST WISCONSIN LONG TERM CARE DISTRICT  
BOARD COMPOSITION - ALTERNATIVE #3

County	2008 Population	Percent of NEW District Population	Number of Board Seats
Brown	245,168	57.89%	3
Door	30,303	7.16%	1
Kewaunee	21,358	5.04%	1
Marinette	44,823	10.58%	1
Oconto	39,261	9.27%	1
Shawano	42,602	10.06%	1
<b>TOTAL</b>	<b>423,515</b>	<b>100.00%</b>	<b>8</b>
Consumer representatives			3
<b>Minimum Board Size</b>			<b>11</b>
Menominee	4,630		