

ENROLLED ORDINANCE 164-80

APPROVE WAUKESHA COUNTY MEMBERSHIP AND PARTICIPATION IN
THE PROPOSED MARSH COUNTRY HEALTH ALLIANCE COMMISSION

WHEREAS, Dodge County currently owns and operates a facility known as Clearview Long-Term Care and Rehabilitation (“Clearview”), which, among other things, is a skilled nursing facility and facility for the developmentally disabled; and,

WHEREAS, in September, 2008 the Waukesha County Board of Supervisors adopted ordinance 163-0-037, calling for the Waukesha County Department of Health and Human Services to work with Dodge County and other counties to create a non-stock corporation to provide for the continued nursing home care of Waukesha County residents who are Medicaid eligible.

WHEREAS, in late 2008, additional legal clarifications were deemed necessary by the State of Wisconsin and legal counsel working on behalf of the proposed Dodge County partnership, to insure compliance with applicable Medicaid rules and restrictions.

WHEREAS, in October, 2009 the Attorney General for the State of Wisconsin issued a formal legal opinion affirming the ability of counties to enter into intergovernmental agreements to furnish nursing home services to Medicaid-eligible persons.

WHEREAS, Dodge County and other counties have subsequently conferred with legal counsel, and modified the proposed organization and governance structure to that of an intergovernmental commission pursuant to Wis. Stat. § 66.0301(3) to be known as Marsh Country Health Alliance Commission (herein after referred to as the “Commission”) and,

WHEREAS, it remains difficult to find appropriate placements for Waukesha County residents who have special behavioral, developmental disabilities, or mental health needs, and,

WHEREAS, Waukesha County currently authorizes placement of 26 County residents in Clearview for purposes of receiving services under a protective placement order, guardianship and/or private placement; and,

WHEREAS, Waukesha County anticipates a need to place Waukesha County residents in Clearview for the foreseeable future; and,

WHEREAS, Dodge County currently provides funding necessary to operate Clearview at a rate that exceeds the Medicaid reimbursement rate, thus creating a situation where Dodge County is contributing Dodge County tax levy funds for the care of Waukesha County (and other county) residents; and,

WHEREAS, Dodge County has expressed concerns regarding the continued financial viability of Clearview given Dodge County’s increasing tax levy commitment to Clearview’s operations; and,

WHEREAS, it is in Waukesha County’s best interests to ensure the continued financial viability of Clearview as an appropriate placement alternative given the high costs associated with a potential placement at other facilities including the state centers; and,

WHEREAS, the 2010 Waukesha County Health and Human Services budget appropriates funding for Waukesha County's anticipated 2010 share of commission charges; and,

WHEREAS, the creation of the Commission would allow Clearview to continue its operations with funding provided from all of the counties that are members of the Commission; and,

WHEREAS, the legal authority and goals of the Commission are set forth in a draft Intergovernmental Cooperation Agreement, a copy of which is attached hereto; and,

WHEREAS, in accordance with the provisions of the Intergovernmental Cooperation Agreement, Dodge County shall contract with the Commission for the purposes of (1) leasing a portion of Clearview to the Commission and, (2) providing for the administration, maintenance and operation of the leased portion of Clearview; and,

WHEREAS, the goals of the Commission as set forth in the Intergovernmental Cooperation Agreement are in accordance with the philosophy and public policy objectives of Waukesha County; and,

WHEREAS, Wis. Stat. § 66.0301 and the Intergovernmental Cooperation Agreement require each participating county to execute the Intergovernmental Cooperation Agreement before the Intergovernmental Cooperation Agreement is effective and binding; and,

WHEREAS, it is the intent of this Ordinance to authorize Waukesha County to create and become a member of the Commission and authorize a County Executive appointed representative, subject to County Board approval, appointed in accordance with Waukesha County rules and procedures to finalize and execute an Intergovernmental Cooperation Agreement that is approved by the Waukesha County Corporation Counsel.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Board of Supervisors hereby approves the draft Intergovernmental Cooperation Agreement, which is on file in the Department of Health and Human Services, and authorizes and directs the Waukesha County Clerk to sign such document after receipt of preliminary approval from the other participating counties and approval of the Waukesha County Corporation Counsel.

BE IT FURTHER ORDAINED that the County Executive shall appoint a representative, subject to Board confirmation, to act as Waukesha County's representative on the Commission and to otherwise take all action necessary to effectuate the intent of this Ordinance.

BE IT FURTHER ORDAINED that once the Intergovernmental Cooperation Agreement has been executed, Waukesha County Department of Health and Human Services is authorized to expend funds related to the placement of persons in Clearview and otherwise comply with the terms and conditions of the Intergovernmental Cooperation Agreement.

BE IT FURTHER ORDAINED that the initial membership fee of \$5,000 shall be paid to the Commission from Waukesha County and the Waukesha County Department of Health and Human Services is hereby authorized and directed to make such payment.

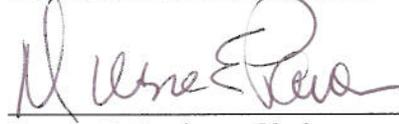
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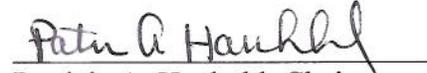
Presented by:
Executive Committee

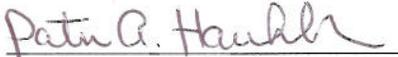
Approved by: Health &
Human Services Committee

Approved by:
Finance Committee


James T. Dwyer, Chair


Duane E. Paulson, Chair

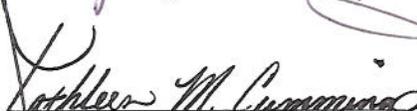

Patricia A. Haukohl, Chair


Patricia A. Haukohl


Janel Brandtjen


James A. Heinrich


Bonnie J. Morris


Kathleen M. Cummings


Robert Hutton

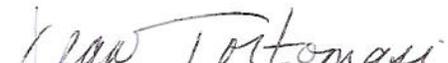

Duane E. Paulson


Pauline J. Jaske

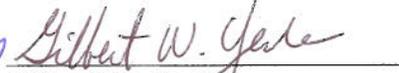

Pamela Meyer


Fritz Ruf

absent
James Jeskewitz

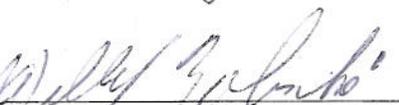

Jean Tortomasi

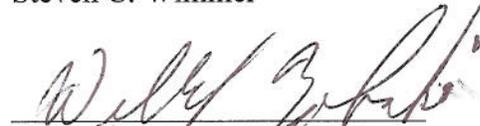

Thomas J. Schellinger


Gilbert W. Yerke


Steven C. Wimmer


David W. Swan


William J. Zaborowski


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 2-26-2010, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 3-1-10, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-02/23/10

(ORD) NUMBER-1640082

1 D. FALSTAD.....AYE
 3 R. HUTTON.....AYE
 5 J. JESKEWITZ.....AYE
 7 P. HAUKOHL.....AYE
 9 J. HEINRICH.....AYE
 11 F. RUF.....AYE
 13 P. DECKER.....AYE
 15 P. MEYERS.....AYE
 17 J. TORTOMASI.....AYE
 19 S. WIMMER.....AYE
 21 W. ZABOROWSKI.....AYE
 23 J. PLEDL.....
 25 G. YERKE.....AYE

2 T. ROLFS.....
 4 J. DWYER.....AYE
 6 J. BRANDTJEN.....AYE
 8 T. SCHELLINGER....AYE
 10 D. SWAN.....AYE
 12 P. WOLFF.....AYE
 14 B. MORRIS.....AYE
 16 D. PAULSON.....NAY
 18 K. CUMMINGS.....AYE
 20 P. JASKE.....AYE
 22 P. GUNDRUM.....AYE
 24 W. KOLB.....AYE

TOTAL AYES-22

TOTAL NAYS-01

CARRIED Y

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-23

Intergovernmental Cooperation Agreement Creating MARSH COUNTRY HEALTH ALLIANCE COMMISSION

This Intergovernmental Cooperation Agreement ("Agreement") is entered into under authority of Wis. Stat. § 66.0301 and is effective as of the date the last Member identified herein executes the Agreement. The Agreement is entered into by, among and between the Counties of Dodge, _____ each a duly organized and existing county of the State of Wisconsin (hereinafter collectively referred to as the "Initial Members") and each county that may hereafter enter into the Agreement in the manner hereinafter described (hereinafter collectively referred to as the "Additional Members" and together with the Initial Members, as the "Members").

RECITALS

WHEREAS, Wis. Stat. § 66.0301(2) authorizes municipalities to contract with other municipalities for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law; and

WHEREAS, each of the Initial Members are municipalities within the definition set forth in Wis. Stat. § 66.0301(1)(a); and

WHEREAS, Wis. Stat. § 66.0301(3) authorizes the Members to form a commission for the purpose of administering the Members' contractual obligations set forth herein; and

WHEREAS, every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county pursuant to s. 59.03 Wis. Stats.; and

WHEREAS, to give counties the largest measure of self government under the administrative home rule granted to counties in Wis. Stat. § 59.03(1), Chapter 59 of the Wisconsin Statutes shall be liberally construed in favor of the rights, powers and privileges of counties to exercise any organizational or administrative power; and

WHEREAS, Wis. Stat. § 59.01 Wis. Stats., authorizes each county as a body corporate to make such contracts and to do such other acts as are necessary and proper to the exercise of the powers and privileges granted and the performance of the legal duties charged upon it; and

WHEREAS, Wis. Stat. § 59.51(1) provides that a county board may exercise any organizational or administrative power under Chapter 59 without limitation because of enumeration, and these powers shall be broadly and liberally construed and limited only by express language; and

164-0¹-082

WHEREAS, counties within the State of Wisconsin have found it increasingly difficult to find nursing home placements for their residents that have specialized physical and mental health needs that are complicated by the residents' challenging behaviors; and

WHEREAS, Dodge County currently owns a facility known as Clearview Long-Term Care & Rehabilitation ("Clearview") that is licensed to operate a nursing home and a facility for the developmentally disabled ("FDD"); and

WHEREAS, each of the Members are authorized to individually own, operate and manage a nursing home and FDD under authority granted under, among other statutes, Chaps. 50 and 150 of the Wisconsin Statutes; and

WHEREAS, the Members desire to obtain the availability of placements for its residents that have specialized physical and mental health needs as economically as possible, and have found and determined that, through intergovernmental cooperation and associating together, they can obtain placement of such individuals collectively in a multi-county facility more economically than by acting separately; and

WHEREAS, the Initial Members to this Agreement are desirous of entering into this Agreement for purposes of establishing the Marsh Country Health Alliance Commission ("Commission"), which would, on behalf of the Members, own, operate and manage Clearview; and

WHEREAS, Dodge County is desirous of allowing the Commission, on behalf of its Members, to lease a portion of Clearview to allow the Members to place their residents within the facility upon terms and conditions whereby the Commission assumes responsibility for the costs associated with the maintenance and operation of the real and personal property associated with Clearview; and

WHEREAS, Dodge County is interested in contracting with the Commission for purposes of Dodge County providing the human resources and personnel associated with administering, maintaining and operating the portion of Clearview that would be leased; and

WHEREAS, the governing body of each Member has reviewed this Agreement and found that the goals of the Commission are in accordance with the philosophy and public policy objectives of such Member.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 CREATION AND LEGAL STATUS

1.01 Creation. The Commission is formed by and on behalf of the Members to be known as the "Marsh Country Health Alliance Commission" for the purpose of administering and executing this Agreement and shall have the powers granted to it under this Agreement.

1.02 Title to Commission Assets. Except as otherwise provided in this Agreement, the Commission shall have exclusive title to all of its property and no Member shall have an ownership interest in Commission property.

1.03 Compliance with Law. The Commission shall comply with all federal and state laws, rules, regulations, and orders applicable to this Agreement, as well as with any duties or obligations that may from time to time be transferred to it from any of the Members consistent with this Agreement.

1.04 Relationship of Members. The Members agree that no Member shall be responsible, in whole or in part, for the acts of the employees, agents and servants of any other Member, whether acting separately or in conjunction with the implementation of this Agreement. The Members shall only be bound and obligated under this Agreement as expressly agreed to by each Member. No Member may obligate any other Member.

1.05 Principal Office. The Commission shall maintain a principal office in Dodge County, Wisconsin. The Commission may have such other offices, and may move its principal office either within or without Dodge County, Wisconsin, as may be designated from time to time by resolution of the Board of Commissioners.

1.06 Address of Registered Agent. The Commission shall maintain a registered agent in the State of Wisconsin whose address shall be 199 Home Road, Juneau, Wisconsin. The identity and address of the registered agent may be changed from time to time by resolution of the Board of Commissioners.

ARTICLE 2 PURPOSE AND AUTHORITY

2.01 Purpose. The purpose of the Commission shall be to organize and establish a multi-jurisdictional public entity that shall: (1) lease, manage and operate a nursing home and facility for the developmentally disabled ("FDD") known as Clearview Long-Term Care & Rehabilitation ("Clearview"); (2) contract with Dodge County to provide personnel and human resources related to the administration and management of Clearview; and (3) provide financial resources for operation of Clearview, including any costs or services incidental thereto. The Board of Commissioners is hereby authorized to enter into any and all contractual relationships necessary to effectuate the purpose of the Commission.

2.02 Authority. The Commission is hereby empowered by the Members to take all action relating to the operation of Clearview as a certified and licensed nursing home and FDD

under the applicable Wisconsin Statutes, together with any and all actions necessary to effectuate the purpose and intent of this Agreement.

ARTICLE 3 MEMBERS

The Commission shall have two classes of Members:

3.01 Voting Members. Each Initial Member, together with any Additional Member admitted to the Commission pursuant to the procedures established herein, shall be considered a Voting Member of the Commission.

3.02 Non-Voting Members. Any entity or individual demonstrating an interest in the Commission or its business may, upon written application to the Commission, be admitted as a Non-Voting Member of the Commission. Non-Voting Members shall be entitled to notice of Commission meetings and shall be allowed to attend and participate in such meetings, but shall not be considered bound by the terms of this Agreement and not be entitled to vote on any matters of business brought before the Commission.

3.03 Voting Rights. Each Voting Member, for business at any meeting, shall have one vote, which shall be cast by the official representative of the Member. The official representative shall be designated in the Member's customary manner of designation relating to committees or commissions. Any Member may otherwise designate an official representative by written notice to the President of the Commission. Each official Member representative must, at the time of making a motion or voting, be a county board supervisor or County Executive. If any Member representative calls for a weighted vote on any matter, the member representative of each Member shall be entitled to one (1) vote for each resident that the Member has in placement in Clearview on the date of the vote.

3.04 Powers of Commission. Consistent with Article 2 above, the Commission's powers shall include the following, without limitation by enumeration:

- A. Establish the annual assessment rate ("Assessment Rate") for Members associated with the costs of operating Clearview.
- B. Establish the initial and annual dues rate for Members as a condition for the continued operation of the Commission.
- C. Establish the terms and conditions, including but not limited to the consideration, relating to the Lease Agreement by and between the Commission and Dodge County related to Clearview.
- D. Upon recommendation of the Commission Board, establish the Commission's annual budget.

- E. Upon recommendation of the Commission Board, establish the Commission's long-range capital plan.
- F. Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property.
- G. Incur debts, liabilities, or obligations consistent with the Commission's budget and as otherwise authorized by the Members.
- H. Cooperate with other public agencies.
- I. Sue and be sued in the name of the Commission.
- J. Be responsible for any liabilities that might be incurred through performance of this Agreement and insure against any such liability.
- K. Engage auditors to perform independent audits of the financial statements and other activities of the Commission as required by law.
- L. Invest surplus funds or proceeds and adopt investment policy in connection with the funds or proceeds.
- M. Purchase and maintain insurance to protect members of the Commission Board or officers or employees of the Commission from personal loss or accountability from liability for any acts or omissions of the Commission.
- N. Exercise any power necessary to effectuate the intent and purpose of this Agreement.

3.05 Meetings of Members.

- A. Annual Meeting. In each calendar year, an annual meeting of members shall be held during the month of August. The Commission Board shall give at least 30 days written notice of an annual meeting to each Member (voting and non-voting) at the address of the Members shown in the records of the Commission. It shall be the responsibility of each Member to inform the Commission of its designated representative to act on behalf of a Member at such meeting.
- B. Agenda. The agenda for each Annual Meeting shall include, but not be limited to the following: election of At-Large Commissioners, set the budget for the following year, set the Assessment Rate for the following year, assess dues and receive other reports or information that are in the interests of the Commission.

- C. Special Meetings. Special meetings of Members may be called by the President or by a majority of the Commission Board. Special meetings shall be held on 5 days written notice from the Secretary of the Commission, which shall describe the business to be transacted at the meeting.
- D. Place of Meetings. All meetings of Members shall be held within the State of Wisconsin.
- E. Quorum and Voting. A majority of Voting Members shall constitute a quorum necessary to conduct business on behalf of the Members. Voting shall be Voting Members present at a meeting. Proxy voting shall not be allowed.
- F. Procedure. Meeting notices shall be given that are in compliance with the Wisconsin Open Meetings Law. Meetings shall be conducted pursuant to Robert's Rules of Order unless some other procedure is approved by a two-thirds vote of Voting Members present and voting.
- G. Adjournment. Meetings may be adjourned from time to time without further notice.

ARTICLE 4 COMMISSION BOARD

4.01 Creation. There is hereby created a board composed of representatives of the Members to be known as the Commission Board. The Commission Board shall be responsible for the governance of the Commission.

4.02 Powers and Duties of Board. The Commission Board shall have the powers common to its Members and is authorized, in its own name, to do all acts necessary to exercise such common powers to fulfill the purposes of this Agreement referred to in Article 2. In addition, the Commission Board shall have the following powers and duties:

- A. Establish the Commission's annual budget, subject to the approval of the Members as provided in Section 3.04. The Commission's annual budget shall include, without limitation, the following information: (1) anticipated revenues and expenses for the Commission separated by category of revenue or expense; and (2) anticipated capital expenditures.
- B. Pursuant to the Commission's budget, enter into leases or contracts necessary for the provision of services provided under this Agreement including, but not limited to, contracts related to: (1) the provision of management and administrative services related to the operation of Clearview; (2) the provision of accounting or legal services; and (3) the provision of human resources.

- C. Establish the Commission's Assessment Rate, subject to the approval of the Members as provided in Sections 3.04 and 4.04.
- D. In coordination with Dodge County, establish the Commission's long-range capital plan related to Clearview's building and property. The capital plan shall contain, without limitation, (1) an assessment of Clearview's physical plant and a description of capital needs on a short-term and long-term basis; (2) a description of the costs associated with funding Clearview's capital needs; and (3) a recommendation related to how MVHS should fund such capital needs. The long-range capital plan shall be approved by the Board and submitted to the Commission pursuant to Section 3.04 above.

4.03 Limitation on Powers of Commission Board. The Board shall not have the power to take any action specifically reserved to the Members as set forth in this Agreement, nor shall the Board have the power to levy taxes or otherwise borrow funds from any source other than the Members.

4.04 Assessment Rate. At the annual meeting of the Members, the Commission Board shall present to the Members for approval a proposed Assessment Rate that will provide the mechanism for funding the Commission's operations in the next fiscal year. The Assessment Rate shall take into consideration lease payments, operation costs, capital costs and any other expenses that the Commission anticipates will be incurred in the next fiscal year. The Assessment Rate shall consist of two (2) components:

- A. For all Members other than Dodge County, the Assessment Rate shall be a uniform rate that is prorated to the Members based upon the following formula:
 - i. The certified loss from the prior fiscal year operations of the Clearview North and Clearview South facilities (as certified in applicable reports prepared for submission to the State and/or Federal authorities) LESS the allocation to the Clearview Brain Injury Center. This calculation is defined as the "LOSS."
 - ii. LOSS is then adjusted to reflect additional MA reimbursements and costs associated with capital improvements (not including improvements to CBIC and CBH). This calculation is defined as "TOTAL LOSS."
 - iii. TOTAL LOSS is shared proportionally among the Members according to the average patient days utilized by a Member in the five (5) year period immediately preceding the year in which the Assessment Rate is determined. A Member's portion will be reflected as a percentage of utilization (dividing a Member's average patient days by total facility patient days).

iv. A Member's Assessment rate is the product of TOTAL LOSS multiplied by the percentage representing the Member's share of average total patient days.

B. For Dodge County, the Assessment Rate shall consist of the sum of (1) the Assessment Rate assessed all other Members; plus (2) the difference between the sum total of the Assessment Rate proceeds for all Members and the actual costs of the Commission's operations, as determined in the Commission's Medicaid cost reports filed with the State of Wisconsin ("Retroactive Assessment") after taking into account all revenue of the Commission, both received and anticipated. The Retroactive Assessment shall be determined retroactively based upon actual costs and revenues. Nothing herein shall be construed as limiting the Commission's ability to reconsider/audit the Retroactive Assessment if anticipated costs or revenues are different than actual costs or revenues provided, however, that no Member other than Dodge County shall be responsible for such reconsideration/audit.

4.05 Accounting and Reconciliation. Following the close of the previous fiscal year, the Commission Board shall undertake an accounting and reconciliation associated with the determination of the Retroactive Assessment. Dodge County agrees that it shall be responsible for all costs associated with the accounting and reconciliation, together with all sums due and owing under the Retroactive Assessment. In the event the Commission's revenues from sources other than the Assessment Rate or Retroactive Assessment rate exceed its expenses, the excess revenue shall be returned to the Members pro rata based upon a Member's contribution to MVHS in the year in which such excess revenue is realized.

4.06 Commission Board Membership. The Commission Board shall initially consist of _____ commissioners appointed by the following Members: Dodge County – 3 commissioners, _____ and _____ At-Large commissioners. Terms of the Commissioners appointed by _____ shall be 3 years. The term of the At-Large Commissioners shall be 1 year. A Commissioner may serve an unlimited number of terms. All persons serving on the Board of Commissioners, including At-Large Commissioners, shall be a duly elected county board supervisor or County Executive and appointed by the designated Member in a manner consistent with the Member's customary process for appointment of members to commissions and/or committees. Election of the At-Large Commissioners shall take place at the annual meeting of Members provided, however, that At-Large Commissioners shall be appointed consistent with the process herein at the initial meeting of the Members to serve until the Commission's first annual meeting. Candidates may be nominated by a nominating committee or nominated from the floor of the annual meeting by a Voting Member, provided no candidate for an At-Large Commissioner's position shall be a representative of Dodge County. Each Voting Member may cast 1 vote for each At-Large Commissioner position open for election at such meeting. Election shall be by a majority of the Voting Members present at the meeting, provided a quorum is present. If 1 or more candidates do not receive a majority vote in the first round of balloting, the following number of candidates with the most votes will stand for election in the second round: 2 candidates for 1 At-Large

position or 3 candidates for 2 At-Large positions. In the event of a vacancy in a commissioner position, it shall be the responsibility of the Member with appointing authority relating to such position to provide written notice to the Commission Board of the designation of a replacement commissioner. In the event of a vacancy in an At-Large commissioner position, such vacancy shall be filled by the Commission Board at the next Commission Board meeting in a manner consistent with this Section 4.06. A commissioner may be removed by 2/3 vote of the Commission Board.

4.07 Meetings of Commission Board. There shall be an annual meeting of the Commission Board held during the month of August during each calendar year immediately following the meeting of Members. The Commission Board shall give at least 30 days written notice of the annual meeting at the same time notice is given of the annual membership meeting. At its annual meeting, the Commission Board shall set a schedule of regular Commission Board meetings for the period until the next annual meeting. A written notice of regular Commission Board meetings will be given to all Commissioners at least 5 days prior to the Commission Board meeting. Special meetings of the Commission Board may be called by any Commissioner. Special meetings shall be on 5 days written notice from the Secretary of the Commission, which shall describe the business to be transacted at the meeting. All meetings shall be held within the State of Wisconsin. A majority of Commissioners shall constitute a quorum necessary to conduct business on behalf of the Board of Commissioners. Voting shall be by Commissioners present at the meeting. Proxy voting shall not be allowed. Meetings shall be conducted pursuant to Robert's Rules of Order unless some other procedure is approved by a two-thirds vote of Commissioners present and voting.

4.08 Commission Board Officers. At the annual meeting of the Commission Board in every calendar year, the Commission Board shall elect a President, Vice President, Secretary and Treasurer from the membership of the Commission Board. In addition to the foregoing officers, the Commission Board may appoint a Deputy Secretary and Deputy Treasurer.

- A. Selection and Term of Office. The President and Vice President shall be selected by the Commission Board from among the Commission Board representatives of Dodge County at the annual meeting in each calendar year and shall serve for a term of 1 year from the date of election until such officers' successor shall be elected and qualified. The Secretary and Treasurer shall be appointed for 1 year terms by the President subject to confirmation by majority vote of the Commission Board, and need not be Commission Board representatives or representatives of Members. One person may hold not more than two (2) offices, except that the office of President and Vice President, President and Secretary and President and Treasurer may not be held by the same person at the same time.
- B. Vacancies. A vacancy in any office created by any cause shall be filled by the Commission Board at its next meeting held after such vacancy shall occur subject to the qualification that the President and Vice President shall be Commission Board representatives of Dodge County. The person selected to fill such vacant office shall serve the remainder of the term of the person leaving such office vacant.

C. Powers and Duties of Officers.

1. President. The President shall manage the day-to-day operations of the Commission subject to the direction of the Commission Board. The President shall preside at all meetings of the Commission Board and Members. The President shall appoint members to standing and special committees created by the Commission Board. The President or his/her designee is responsible for giving notice of each meeting of the Commission and Commission Board in compliance with the Wisconsin Open Meetings Law.
2. Vice President. The Vice President shall exercise the duties of the President in the absence or incapacity of the President. If the President should die, resign, or be removed from office, the Vice President shall succeed to the office of the President.
3. Secretary. The Secretary shall maintain all records of the Commission and shall prepare minutes of all meetings of the Commission Board and Members.
4. Treasurer. The Treasurer shall have custody of the funds of the Commission and shall maintain all financial records of the Commission. The Treasurer shall report to the President, Commission Board and Members on the financial status of the Commission.
5. Deputy Secretary. The Deputy Secretary shall perform all the duties and exercise all the powers of the Secretary in the absence of such officer and shall perform such other duties as the Commission Board or Secretary shall direct.
6. Deputy Treasurer. The Deputy Treasurer shall perform all the duties and exercise all the powers of the Treasurer in the absence of such officer and shall perform such other duties as the Commission Board or Treasurer shall direct.

ARTICLE 5

ADMISSION AND REMOVAL OF MEMBERS

5.01 Admission of Members. The Commission may admit Additional Members upon unanimous consent of the then-current Members and upon such other terms and conditions as the Members shall unanimously determine.

5.02 Removal of Members. Any Member may be removed by two-thirds (2/3) vote of the Members. Any removal occurring hereunder shall be effective immediately provided, however, the removed Member shall be responsible to the Commission for any assessments

and/or dues based upon a Member's past or present placement of an individual in Clearview. Upon removal, a removed Member shall take all actions necessary to remove its residents from Clearview immediately and shall immediately pay the Commission the appropriate Assessment Rate for all days associated with the removed Member's placement of a resident in Clearview, up to and including the day any such resident is removed from Clearview. Dodge County shall not be obligated to remove its residents from Clearview if its membership in the Commission is terminated. Nothing herein shall be construed as limiting or modifying the Commission's obligations under state and/or federal law that may govern certain issues related to the removal of a particular resident(s) from Clearview.

ARTICLE 6 LIABILITY AND INDEMNITY

6.01 Liability for Losses; Ownership of Profits. The Members understand and agree that any and all losses of the Commission are to be borne by the Members themselves consistent with the intent and purpose of Wis. Stat. § 66.0301, *et seq.*, and this Agreement. Each Member further understands and agrees that it is financially responsible for the continuing operation of Clearview so long as the Commission is a party to the contracts and agreements relating to Clearview's operations and the Member continues to be a Member of the Commission.

6.02 Indemnity by Dodge County. Notwithstanding the responsibility for losses set forth in Section 6.01 above, the Members understand and agree that Dodge County has contractually agreed to indemnify and hold the Commission harmless from any and all fines, fees, forfeitures, suits, claims and/or causes of action relating to Clearview's operations by virtue of a lease and administrative agreement. Nothing herein nor in the lease and administrative agreement shall be construed as limiting Dodge County's indemnification obligations. Except for Dodge County, no Member shall be liable to the Commission for any sums beyond sums established through dues and Assessment Rates as provided in this Agreement.

ARTICLE 7 TERM OF AGREEMENT AND DISPOSITION OF ASSETS

7.01 Term of Agreement. The initial term of this Agreement shall be ten (10) years after the effective date and automatically renewed in five (5) year increments. This Agreement may be terminated at any time by unanimous agreement of the Members.

7.02 Continuation. This Agreement shall survive the voluntary withdrawal of any Member.

7.03 Withdrawal of Member. Any Member may voluntarily withdraw from the Commission provided that such withdrawal shall be effective on December 31 of any year and further provided such Member gives the Commission notice of its withdrawal on or before August 1 of the year in which the withdrawal takes place. Upon withdrawal, a Member shall no longer be obligated by any of the provisions set forth herein including, but not limited to, the Assessment Rate provided, however, that a withdrawing Member shall take all actions necessary to remove its residents from Clearview as of the effective date of the withdrawal and shall pay

the Commission the appropriate Assessment Rate for all days associated with the withdrawing Member's placement of a resident in Clearview, up to and including the day any such resident is removed from Clearview. Nothing herein shall be construed as limiting or modifying the Commission's obligations under state and/or federal law that may govern certain issues related to the removal of a particular resident(s) from Clearview.

7.04 Disposition Upon Termination. If the Members unanimously agree to terminate this Agreement, the Commission shall wind up its affairs as follows:

- A. All of the Commission's debts, liabilities and obligations and all expenses incurred in connection with the termination shall be paid first provided, however, that to the extent any debts are subject to proration based upon the Assessment Rate, such expenses shall be prorated consistent with the Assessment Rate; and
- B. Title to all property and assets owned by the Commission shall be distributed among the Members as determined by the Commission Board.

ARTICLE 8 AMENDMENT

This Agreement may be amended at any time by unanimous consent of the Members. Amendments shall be in writing and shall become effective only after execution by duly authorized representatives of the Members.

ARTICLE 9 MISCELLANEOUS

9.01 Fiscal Year. The Commission's fiscal year shall end on December 31 each year.

9.02 Choice of Law and Venue. This Agreement shall be construed according to the laws of the State of Wisconsin. Any lawsuit arising out of this Agreement shall be venued exclusively in the State and Federal courts in Wisconsin.

9.03 Notices. Notices under this Agreement to Members shall be sufficient if delivered to their Representatives and the office of the Clerk of the Member. Notices to the Commission under this Agreement shall be sufficient if delivered to the President at his or her regular business office.

9.04 Severability. Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Wisconsin, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

9.05 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

9.06 Prohibition Against Assignment. Neither Members nor the Commission may assign any right, claim or interest it may have under this Agreement.

9.07 Execution. This Agreement shall be executed on behalf of each Member, upon approval thereof by its Governing Body by duly authorized officials. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

FISCAL NOTE

APPROVE WAUKESHA COUNTY MEMBERSHIP AND PARTICIPATION IN THE
PROPOSED MARSH COUNTRY HEALTH ALLIANCE COMMISSION

This proposed ordinance approves the draft Intergovernmental Cooperation Agreement and authorizes the County Executive to appoint a County representative on the Marsh Country Health Alliance Commission, subject to County Board confirmation, to take all action necessary to effectuate the intent of the Ordinance. Once the Intergovernmental Cooperation Agreement has been executed, the County Department of Health and Human Services (H &HS) management is authorized to expend funds related to the placement of County residents in Clearview and comply with the terms and conditions of the Agreement.

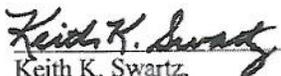
This proposed ordinance also authorizes the County's H&HS department to pay an initial membership fee of \$5,000 to the Commission from Waukesha County. Funding appropriations for this payment is available from the 2010 H&HS contracted services budget in the Adult Protective Services program.

The Intergovernmental Cooperative Agreement will allow the County to continue to make necessary placements of its residents; participate in the decision making process of the Commission; share in the cost of serving the County's clients; and continue its participation on a year by year basis.

Based on the Agreement, at the annual meeting of the Members, the Commission Board shall present to the Members for approval a proposed Assessment Rate that provides the mechanism for funding the Commission's operation in the next fiscal year. The Members assessment rate is specifically defined in the agreement. It essentially consists of a Loss - which is defined as the certified loss mainly from prior fiscal year operations of the Clearview North and Clearview South facilities, adjusted to reflect any additional Medical Assistance reimbursements and capital improvements costs. This amount is shared proportionally among the Members based on the average patient days utilized by a Member over the previous five year period. The assessment rate for Dodge County is also detailed in the agreement which includes a retroactive assessment rate based on actual costs and revenues of the actual reconciliation which only Dodge County will be responsible for.

H&HS management indicates the County currently has 26 clients placed at the Dodge County Clearview facility. Based on the current Assessment Rate proposal using 2004-2008 client days, the County's portion of the cost is estimated to be about \$522,000 or approximately \$55 per day per client. The cost estimate for 2010 is expected to be approximately \$400,000 based on an assumed start date of April 1, 2010. The 2010 H&HS budget includes \$225,155 for the County clients placed at the Dodge County Clearview facility. The department has also requested County Board approval (as part of the Carryover ordinance) to carryover \$175,000 of expenditure appropriations to the 2010 budget which was funded by general fund balance appropriations budgeted in 2009 for this same purpose.

In addition, H&HS Department management indicates that the estimated daily rate of providing comparable care and placement of each client ranges from \$250 to \$281 per day without Medical Assistance funding. Therefore, the department indicates that the total estimated annual cost of these 26 clients could be up to \$2.67 million versus the estimated \$522,000 assuming the County could find sufficient alternative service providers capable of caring for these difficult to place clients.


Keith K. Swartz,
Budget Manager