#07-53-03

Bulletin

November 16, 2007

Minnesota Department of Human Services -- P.O. Box 64941 -- St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- Fiscal Supervisors
- Community MH Centers
- Adult MH Initiatives
- Local MH Advisory Council Chairs

ACTION/DUE DATE

Counties need to consider this amended MOE as they develop and manage their budgets.

EXPIRATION DATE

The statutes described in this bulletin have no expiration date. DHS will update the implementation procedures in this bulletin by October 1, 2009.

Updated Mental Health Maintenance of Effort (MOE) for Counties

TOPIC

The 2007 Legislature amended the maintenance of effort (MOE) requirement for county mental health expenditures. This bulletin replaces bulletin #06-53-02 to include the 2007 amendment and to reply to questions regarding interaction between the MOE and other funding changes enacted by the 2007 Legislature.

PURPOSE

To inform counties about the amended requirement and answer implementation questions.

CONTACT

Don Allen at 651-431-2325 (Don.Allen@state.mn.us)
David Hanson at 651-431-3737 (David.M.Hanson@state.mn.us)
John Zakelj at 651-431-2231 (John.Zakelj@state.mn.us)

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WES KOOISTRA
Assistant Commissioner
Chemical and Mental Health Services

Background

Before July 1, 2006, counties were subject to three separate requirements to maintain a certain level of spending on mental health services. Such requirements are usually referred to as maintenance of effort, or MOE. These requirements applied to: 1) adult and children's mental health targeted case management, 2) adult mental health rehab services, and 3) children's Rule 5 residential treatment. Counties in regional treatment center (RTC) restructuring areas were also subject to a fourth MOE relating to the county share of RTCs.

The 2006 State Legislature repealed the above MOEs and replaced them with a new, more comprehensive MOE. This MOE was requested by the Governor in the context of the new mental health funding proposed in the Governor's Mental Health Initiative. The key intention was to assure that new funds would be used for service expansion and improvement, and not to replace existing county funding.

The 2007 Legislature amended the 2006 MOE by adding an MOE specific to community support program (CSP) services within the broader mental health MOE. The 2007 Legislature also made a number of changes regarding mental health funding, including transfer of some funds to health care programs and changes in the county share for regional treatment centers. Counties have asked about the interaction between these funding changes and the MOE.

Legal References

Laws of 2007, Ch. 147, Art. 8, Sec. 6: (see MOE section bolded at the end of the amendment)

Minnesota Statutes 2006, section 245.4712, subdivision 1, is amended to read:

Subdivision 1. **Availability of community support services.**

(b) Community support services are those services that are supportive in nature and not necessarily treatment oriented, and include:

(1) conducting outreach activities such as home visits, health and wellness checks, and problem solving;

(2) connecting people to resources to meet their basic needs;

(3) finding, securing, and supporting people in their housing;

(4) attaining and maintaining health insurance benefits;

(5) assisting with job applications, finding and maintaining employment, and securing a stable financial situation;

(6) fostering social support, including support groups, mentoring, peer support, and other efforts to prevent isolation and promote recovery; and

(7) educating about mental illness, treatment, and recovery.

(c) Community support services shall use all available funding streams. **The county shall maintain the level of expenditures for this program, as required under section 245.4835. County boards must continue to provide funds for those services not covered by other funding streams and to maintain an infrastructure to carry out these services.**

Laws of 2006, Ch. 282, Art. 16, Sec. 4. [245.4835] COUNTY MAINTENANCE OF EFFORT.

Subdivision 1. Required expenditures. Counties must maintain a level of expenditures for mental health services under sections 245.461 to 245.484 and 245.487 to 245.4887 so that each year's county expenditures are at least equal to that county's average expenditures for those services for calendar years 2004 and 2005. The commissioner will adjust each county's base level for minimum expenditures in each year by the amount of any increase or decrease in that county's state grants or other noncounty revenues for mental health services under sections 245.461 to 245.484 and 245.487 to 245.4887.
Subd. 2. Failure to maintain expenditures. If a county does not comply with subdivision 1, the commissioner shall require the county to develop a corrective action plan according to a format and timeline established by the commissioner. If the commissioner determines that a county has not developed an acceptable corrective action plan within the required timeline, or that the county is not in compliance with an approved corrective action plan, the protections provided to that county under section 245.485 do not apply.

Laws of Minnesota 2005, First Special Session, chapter 4, article 9, sec. 2.

[APPROPRIATION LIMITATION.] No part of the appropriation in this article to the commissioner for mental health treatment services at the regional treatment centers shall be used for the Minnesota sex offender program.

Action Requested

Counties need to consider this MOE as they develop and manage their budgets.

K**ey MOE Provisions from the 2007 Legislature**

- Effective 1/1/08, county funding for CSP services was added as a new MOE within the overall mental health MOE.
- The next two items were not MOE changes but counties have asked about their interaction with MOE:
    - A number of changes were approved in state mental health grants: these changes affect the MOE the same way as any other changes in non-county revenue (see below).
    - Changes were approved in the county share of regional treatment centers: these changes affect the MOE the same way as any other changes in county mental health expenditures (see below).

Key MOE Provisions from the 2006 Legislature –

• Includes all children's and adult mental health expenditures except county share of State Operated Services sex offender holds and treatment
• The base period is the average of calendar 2004 and 2005

• Replaces previous county mental health MOEs
• Takes effect January 1, 2007
• MOE is adjusted for changes in non-county revenues for mental health services
    o Counties must spend more if non-county revenues go up
    o Counties may spend less if non-county revenues go down
• DHS will monitor county Social Service Expenditure and Grant Reconciliation (SEAGR) reports to determine compliance
• Counties spending less than their MOE will need to develop a corrective action plan
• Non-compliant counties without an approved corrective action plan will lose the protection of Mental Health Act provisions which limit client lawsuits regarding mandated services

Implementation Timeline

Date	Action
August 2006	DHS provided counties with bulletin #06-53-02 and conducted a statewide interactive videoconference on August 14, 2006
June 2007	DHS provided counties with the first quarterly county MOE status report, based on county SEAGR reports for January – March 2007 – see bulletin #07-32-06 for more info about this quarterly status report
November 2007	DHS issues updated MOE instructions through this bulletin
October and December 2007	Second and third quarterly status reports (these quarterly reports continue in future years)
March 2008	DHS issues initial CY07 report listing counties which are required to develop a corrective action plan due to insufficient expenditures for CY07
May 2008	Counties designated above file corrective action plans for CY08 and 09
June 2008	DHS publishes list of counties which do not have an approved corrective action plan and which did not comply with MOE for CY07

Questions and Answers – (Numbers 1 – 15 Are Repeated from 2006)

1. How did DHS determine each county's MOE base?

The data used in calculating each county's MOE base is from the information reported by counties to DHS through SEAGR for calendar years 2004 and 2005. Detailed information regarding each county's base was provided as part of the materials for a statewide videoconference on August 14, 2006. In addition, quarterly reports are being sent to each county's fiscal supervisor indicating each county's total MOE base and CSP base compared to actual spending and revenues. If you have questions regarding the specific data, please contact Ray Truelson at 651-431-3780.

In summary, each county's base expenditures were arrived at by starting with all expenditures reported by the county in the 400 (mental health) series of BRASS codes on the SEAGR reports for calendar years 2004 and 2005 and then reducing that by the amount of sex offender holds and treatment costs reported by DHS' State Operated Services for the same period. All numbers for calendar years 2004 and 2005 were combined and then divided by two to arrive at an

average to arrive at the base amount of expenditure counties must maintain before any adjustments for changes in revenue are applied. DHS is monitoring changes in the revenues that fund mental health services and modifying the Base Expenditures by the change in revenue to determine if counties have met their MOE requirement.

The revenues applicable to this MOE represent only the portion that has been allocated to fund the 400 series BRASS code expenditures. DHS uses a formula to distribute revenues to BRASS codes based on which codes the revenues are eligible to fund and the amount of expenditures reported in those codes. For revenues that also fund services outside of mental health, such as Child Welfare Targeted Case Management (CW-TCM) and Title XX, the revenues represent only that part that is allocated to Mental Health.

2. In Ramsey County (and possibly others), all TCM money is used as general revenue to the human services department. Specifically, AMH, CMH and CW-TCM are all used as one source of funding to support all parts of the agency. If CW-TCM is lost/cut, the county will cut services throughout the agency – including mental health. Therefore, if CW-TCM is cut, would this be viewed as a change in "non-county revenue" and thus result in a recalculation of the MOE base?

The DHS SEAGR revenue allocation process currently allocates CW-TCM revenues across general children, children's mental health and DD case management. So reductions in CWTCM will automatically be reflected as mental health revenue adjustments, to the extent that some CW-TCM revenue is already allocated to mental health. If a county allocated a larger share of CW-TCM revenue to mental health during 2004-2005 than is indicated through the standard SEAGR process, a county can submit documentation to DHS as part of its corrective action plan (if and when such a plan is required). The expectation is that the county would continue to use the same allocation process for future expenditure reports as it did during 2004-2005.

3. Does the above answer mean that counties can reduce mental health expenditures to offset reductions in child welfare revenues?

Only to the extent that child welfare revenues were used to fund mental health expenditures in the base period. The MOE does not allow counties to shift funds that had been used for mental health into non-mental health areas. In other words, the MOE does not allow counties to cut mental health to mitigate the impact of CW-TCM on child welfare expenditures.

4. Washington County accessed Foundation funds for children's mental health crisis services in 04/05. Will these dollars get excluded from the MOE base calculation?

Foundation funds are treated the same as any other non-county revenues. Basically, if noncounty revenues for mental health services go up, county expenditures must increase in an amount at least equal to the increase in revenues. If non-county revenues go down, counties may, but are not required to, spend less.

5. Itasca County had high use (therefore high cost) of Rule 5 facilities in 04/05 – will this "over-inflate" their MOE base?

The average of a two-year period was chosen as the base to help even out unusual fluctuations. As part of the corrective action plan process allowed under the statute, DHS may be able to address other unusual fluctuations that are specific to mental health. Since the MOE process includes an adjustment for non-county revenues, and since Rule 5 costs are often reimbursed by non-county revenues, it is possible that many Rule 5 fluctuations will be addressed through the non-county revenue adjustment.

6. Carver County has a county operated Rule 29 (Minnesota Rules, parts 9520.0750 - 9520.0870) Mental Health Center. Not only does the county provide outpatient mental health services to the un-insured and under-insured but a significant number of Medical Assistance (MA) and privately insured clients are also served. Because the county serves a broader population, there is great concern that Carver County's MOE will be higher for going "above and beyond" in this service.

Many counties have gone "above and beyond" in their provision of mental health services. The basic nature of an MOE is that it locks each county into spending at least what they did during a base period. The pros and cons of the MOE were discussed at the legislature and the decision was made to establish an MOE based on each county's expenditures during 2004 and 2005.

7. Will the mental health MOE increase in future years?

The mental health MOE increases if non-county revenues increase (see #4 above). The share which is funded by the county's own funds is not required to increase. If a county chooses to increase its own funds, current law continues to set the base at the average of 2004-05; therefore increases in county funding after 2005 do not change the base.

8. Why is DHS excluding sex offender costs from the MOE? Our sex offender costs are rising and we feel we should be able to cut mental health services to fund those costs.

DHS is subject to an appropriations rider which requires State Operated Services (SOS) appropriations for sex offender treatment to be kept separate from all other mental health appropriations. Omitting sex offender treatment costs from mental health expenditures in the mental health MOE honors the intent of state law to treat these as separate expenditure categories. DHS shares county concerns regarding rising sex offender costs and is taking a number of steps to reduce those costs.

9. Our county provides case management and outpatient treatment for sex offenders and includes those costs as part of our mental health expenditures. Will those types of sex offender costs have to be split out from the MOE?

No, only county costs for State Operated Services sex offender hold orders and treatment will be excluded from the MOE.

10. Sometimes revenue changes are unpredictable, both up and down. How quickly are counties expected to reflect those changes in their expenditures?

Counties will be expected to spend increased revenues no later than the calendar year following the receipt of the revenue. Counties may take immediate action to change expenditures based on actual or anticipated changes in revenues.

11. Does this new MOE replace all other mental health MOEs?

Yes. The statute specifically repealed MOEs relating to MH-TCM, Adult MH Rehab Services and Rule 5. In addition, counties affected by movement of RTC services from campuses to community behavioral health hospitals (CBHHs) were expected to reinvest savings from those changes as a condition of their RTC restructuring grants. All of those MOEs are replaced by this new MOE. The basic effect is the same, but counties have more flexibility because the new MOE is one total covering all types of adult and children's mental health services (other than SOS sex offender hold orders and treatment).

12. Our county has restructured so that some services that were part of mental health in 2004-05 are now outside of Social Services. Can we exclude that from our base?

If a county should fall below the required expenditure level due to a restructuring, DHS will follow an "apples-to-apples" principle in determining the appropriateness of corrective action plans. The basic expectation is that revenues and expenditures in future years will be counted in a manner that is comparable to the base period.

13. Sometimes counties receive revenues in a different year than the associated expenditures. Can this be recognized in the MOE?

Counties are on a cash basis of accounting for purposes of reporting expenditures and revenues to the state, and this can sometimes result in mismatches of revenues and expenditures in any given year. Adjustments which appropriately match revenues and expenditures will be accepted as part of any required corrective action plan.

14. How will multi-county grants be affected by the MOE?

Multi-county grants will not be affected by the MOE any differently than any other grants. As long as the county receiving the grant spends it (or transfers it to other counties) within the year the grant is received, there will be no impact on MOE.

15. Are expenditures for children's mental health collaboratives included in the MOE?

Currently, most counties report their children's collaborative expenditures in BRASS code 197, which is outside the mental health area and thus not included in the MOE. DHS recommends that counties continue this practice, at least for the non-county revenues which constitute the majority of collaborative expenditures. If a county contributes its own funds to a children's mental health collaborative, it can contact David Hanson at 651-431-3737 (David.M.Hanson@state.mn.us) regarding ways to include these funds in the MOE base and in future reporting.

Additional Questions and Answers – After 2007 Legislative Session

16. What rules apply to the new CSP MOE?

The new CSP MOE is subject to the same terms as the overall mental health MOE, i.e. base period is 2004-2005, required spending is adjusted by changes in non-county revenues, etc.

17. What is the effective date for the new CSP MOE?

January 1, 2008

18. We have already set our budget for 2008. Do we have to change it to comply with the new CSP MOE ?

The new CSP MOE is within the overall mental health MOE and therefore does not require counties to change their bottom-line total for mental health. It does prohibit counties from moving county funds out of CSP into other mental health services.

19. Is the new CSP MOE adjusted for changes in revenues in the same manner as the overall MOE?

Yes. This means that revenues for CSP expenditures must be identified using the same principles that were used to identify revenues for the overall mental health MOE.

20. Are CSP revenues identified in the quarterly status reports being sent by DHS to counties ?

No, DHS has insufficient information to estimate CSP revenues from existing county reports. If a county's total reported CSP expenditures for 2008 or future years are less than their total CSP expenditures in 2004 – 2005, DHS will ask the county to provide the additional information needed to identify CSP revenues as part of the corrective action process. If the additional information regarding CSP revenues does not explain the reduction in CSP expenditures, the county will be required to increase their CSP expenditures.

21. Which BRASS codes are included as CSP expenditures?

For 2004 – 2005, the applicable BRASS codes were 403 and 434. Since then, BRASS code 446 (Adult MH Rehabilitative Services – ARMHS) has been added and will be considered as a CSP expenditure for 2008 and beyond. Some counties have experienced increases in MA revenues for ARMHS since 2004-2005. Application of the overall MOE principles means that these increased revenues must be used for increased expenditures.

22. Our grant award letter for 2008 indicates that some of our mental health grant funds will be transferred to General Assistance Medical Care (GAMC) and MinnesotaCare. Do we have to replace those funds?

No, changes in non-county revenues continue to be subject to the same terms as before:

- *Counties must spend more if non-county revenues go up*
- *Counties may spend less if non-county revenues go down*

The question refers to 2007 legislation which transfers responsibility for adult mental health rehabilitation services, such as intensive residential treatment (IRTS), from counties to GAMC and MinnesotaCare for individuals in those programs, effective January 1, 2008. Under that legislation, funds are being transferred based on the most recent data regarding county expenditures for those services for those individuals.

23. Our grant award letter for 2008 also indicates that the GAMC and MinnesotaCare transfer may be adjusted during the year based on more recent data. How do we manage budgets and maintain MOE when our grant is changing?

2007 legislation requires DHS to update the 2008 GAMC/MinnesotaCare transfer each quarter as newer data becomes available regarding the value of county expenditures for the services being transferred. In fact, the database that determines the value of these county expenditures is the Community Mental Health Reporting System (CMHRS) which is only updated twice a year. Therefore, grant adjustments will only occur when new CMHRS data becomes available in March and September 2008.

In order to facilitate county budget management and compliance with MOE, DHS is making the following commitments in relation to the GAMC/MinnesotaCare grant transfers:

- *If newer data requires a higher transfer amount, the corresponding reduction in the county's grant will be delayed until 2009.*
- *If newer data requires a lower transfer amount (i.e. indicating that the county is retaining a larger responsibility than previously projected), the corresponding increase in the county's grant will be provided immediately in 2008.*

24. Do you expect additional adjustments in the GAMC and MinnesotaCare transfers for 2009?

After September 2008, no additional adjustments are expected for adult mental health rehabilitative services. However, effective January 1, 2009, Prepaid Medical Assistance Program (PMAP), GAMC and MinnesotaCare will take on responsibility for adult and children's mental health case management and children's residential treatment (subject to DHS legislative reports at the 2008 Session). Additional grant transfers will occur in 2009 to reflect that transfer of responsibility. The 2009 transfers will be updated during 2009 using the same process as the 2008 transfers.

Counties were provided with estimates regarding the value of the 2008 and 2009 transfers as part of the interactive videoconferences conducted on March 7 and March 30, 2007. Updated estimates for 2009 will be provided with the updated 2008 numbers in March and September 2008.

25. Our grant award letter for 2008 indicates that we will receive funding for state staff who were previously paid directly by the state. How does that affect MOE?

For MOE purposes, this is like any other change in non-county revenues. Increased revenues have to be used for increased expenditures. In this case, the additional revenues might not be used for new services, but they are new expenditures from the standpoint of the county budget. This does not affect the county's own funds.

More information about this funding change was provided in a memo to counties from Sharon Autio on June 13, 2007.

26. Due to the development of community behavioral health hospitals (CBHHs), some counties are spending less for regional treatment center (RTC) mental health placements. On the other hand, some counties may spend more for RTC placements due to new legislation increasing the county share of RTC mental health placements after 60 days. How does this affect MOE?

For MOE purposes, the county share of RTC mental health placements other than sex offenders (see Question #8), counts the same as any other mental health expenditure. Therefore, if county RTC costs go down (in relation to the 2004-05 base), the savings have to be reinvested in other mental health services. If county RTC costs (other than sex offenders) go up, counties may reduce other mental health expenditures. The one exception to the latter rule is CSP expenditures. As indicated in Question #18, the new CSP MOE prohibits counties from moving county funds out of CSP into other mental health services.

Before a county reduces other mental health expenditures to cover the increased county share of long-term RTC stays, DHS strongly recommends development of services which will reduce the need for long-term RTC stays. Additional funding was provided by the Legislature for this purpose. For more information about ways to reduce long-term RTC stays, please contact your regional mental health consultant.

27. The CSP MOE legislation (see page 2 of this bulletin) appears to expand the definition of CSP services. Does that mean counties have to provide more funds for CSPs?

No, not unless counties have cut their CSP funding since the MOE base period (2004-2005). The list of CSP services in the 2007 legislation is a clarification and affirmation of what CSPs have been providing since their inception and is not intended to be an expansion. For example, some people have asked about the inclusion of employability services. Actually, employability services have been listed as CSP services in another statute (Minnesota Statutes, section 245.462) since 1987. Note also that inclusion of employability services in CSPs does not, and was never intended, to replace services that may be available through Vocational Rehabilitation.

28. Our county budgets supported employment services for people with mental illness under general Adult Services. Can we move that into Mental Health to get credit under the mental health MOE?

See Question #12. Revenues and expenditures in future years should be counted in a manner that is comparable to the base period.

29. What is the consequence for non-compliance with the MOE requirement?

Minnesota Statutes, section 245.485 of the Mental Health Act states that the Mental Health Act does not independently establish a right of action on behalf of recipients or service providers against a county board. This provision has made it difficult for clients and providers to use the Mental Health Act as a basis to sue a county for failure to provide mandated mental health services. If DHS determines that a county has not complied with MOE requirements because it has not developed an acceptable corrective action plan within the required timeline, or is not in compliance with an approved corrective action plan, the protections provided to that county under Minnesota Statutes, section 245.485 will not apply.

Special Needs
This information is available in other forms to people with disabilities by contacting us at 651-431-2225. TDD users can call the Minnesota Relay at 711 or (800) 627-3529. For the Speech-to-Speech Relay, call (877) 627-3848.